



An  
Bord  
Pleanála

## Inspector's Report ABP316067-23

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<b>Development</b>	House with a detached garage.
<b>Location</b>	Aughnish, Ramelton, Letterkenny, Co. Donegal.
<b>Planning Authority</b>	Donegal County Council.
<b>Planning Authority Reg. Ref.</b>	22 - 52026.
<b>Applicant(s)</b>	Alfie Mannion.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Grant.
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Ian & Suzanne Ward.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	23 <sup>rd</sup> August 2023.
<b>Inspector</b>	A. Dineen.

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## **1.0 Site Location and Description**

- 1.1. The subject site has a stated area of 0.28 Ha and is in the townland of Aughnish, which is situated c. 2 km east of Ramelton in County Donegal. The area of the site has scenic views in a generally northerly/north-westerly direction towards Lough Swilly inlet. The landscape is gently undulating and the uses in the area comprise farmland/pasture and one-off rural dwellings.
- 1.2. The site is positioned to the east side of an existing established two storey dwelling (which is the appellants property). There is an area of undeveloped land to the east of the subject site and further east of this space there is a single storey dwelling (50 metres east of the subject site). The east boundary of the site contains a stone wall ditch and hedgerow. The shared boundary of the site with the appellants property to the west is contained by a timber fence, to the front, and a post and wire fence.
- 1.3. The road which serves the site is a non-through county road, the L 57121-0, which connects to Aughnish Road c400 metres to the south.

## **2.0 Proposed Development**

- 2.1. It is proposed to construct a single storey dwelling house with attic accommodation. The overall floor area of the proposed dwelling is 194 square metres and the proposed garage port, to be situated forward of the dwelling building line, is proposed to measure 8.5 metres. Both the dwelling and the garage/car port are connected by a boundary wall, which creates a courtyard effect.
- 2.2. A domestic waste water treatment system with secondary and tertiary treatment is proposed for the site.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

The planning authority made a decision to grant permission subject to 19 no. conditions on the 16<sup>th</sup> February 2023. Conditions are of a generic nature with the exception of the following:

Condition No 2: Occupancy Condition.

Condition No 15: Bedroom and bathroom windows on the SW elevation shall be frosted.

The Chief Executive's decision reflects the planner's report.

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

The planners report describes the area as being of High Scenic Amenity and within a Stronger Rural Area. The report describes the site as being 530 metres SE of the Lough Swilly SAC/SPA, including Big Isle, Blanket Nook and Inch Lake proposed Natural Heritage Areas.

One observation is discussed under the following categories; established building line, privacy, request of relocate the building line to the SW, stated hydrological link to Natura 2000 site, policy NH-P-17, visibility lines, scale and design, water pressure, cumulative impacts.

The planner's report is detailed and considers all elements of the observation submitted. Various aspects will be discussed under section 7 below.

The report considers the live grant of planning permission on the site for 'a substantially larger dwelling'.

#### **3.2.2. Other Technical Reports**

None.

#### **3.2.3. Prescribed Bodies**

The planning report indicates that An Taisce and the Department of Housing Local Government and Heritage (Wildlife and Monuments) were consulted regarding the application but did not make a submission.

## **4.0 Planning History**

Planning Register Reference No 19/50255 granted to Melissa Hanlon for the construction of a two-storey dwelling, integral domestic garage, detached domestic garage, waste water treatment system and all associated services and site works.

## 5.0 Policy and Context

### 5.1. Development Plan

#### Donegal County Development Plan 2018 – 2024

The site is in a rural, unzoned part of County Donegal. Map 6.2.1 'Rural Area Types' identifies that the site is in a stronger rural area.

**RH-P-1:** It is a policy of the Council that the following requirements apply to all proposals for rural housing:

Proposals for individual dwellings shall be subject to the application of Best Practice in relation to the siting, location and design of rural housing as set out in Appendix 4 and shall comply with Policy RH-P-2; 2.

1. Proposals for individual dwellings shall be sited and designed in a manner that enables the development to assimilate into the receiving landscape and that is sensitive to the integrity and character of rural areas as identified in Chapter 7 and Map 7.1.1 of this Plan.
2. Proposals for individual dwellings shall also be located in such a manner so as not to adversely impact on Natura 2000 sites or other designated habitats of conservation importance, prospects or views including views covered by Policy NH-P-17;
3. Any proposed dwelling, either by itself or cumulatively with other existing and/or approved development, shall not negatively impact on protected areas defined by the North Western International River Basin District plan;
4. Site access/egress shall be configured in a manner that does not constitute a hazard to road users or significantly scar the landscape, and shall have regard to Policy T-P15.
5. Any proposal for a new rural dwelling which does not connect to a public sewer or drain shall provide for the safe and efficient disposal of effluent and surface waters in a manner that does not pose a risk to public health and accords with Environmental Protection Agency codes of practice;

6. Proposals for individual dwellings shall be subject to the flood risk management policies of this Plan;

7. In the event of a grant of permission the Council will attach an Occupancy condition which may require the completion of a legal agreement under S47 of the Planning and Development Act 2000 (as amended).

**RH-P-2:** It is a policy of the Council to consider proposals for a new rural dwelling which meets a demonstrated need (see Policies RH-P-3–RH-P-6) provided the development is of an appropriate quality design, integrates successfully into the landscape, and does not cause a detrimental change to, or further erode the rural character of the area. In considering the acceptability of a proposal the Council will be guided by the following considerations:

1. A proposed dwelling shall avoid the creation or expansion of a suburban pattern of development in the rural area;

2. A proposed dwelling shall not create or add to ribbon development (see definitions);

3. A proposed dwelling shall not result in a development which by its positioning, siting or location would be detrimental to the amenity of the area or of other rural dwellers or would constitute haphazard development;

4. A proposed dwelling will be unacceptable where it is prominent in the landscape; and shall have regard to Policy T-P-15;

5. A proposed new dwelling will be unacceptable where it fails to blend with the landform, existing trees or vegetation, buildings, slopes or other natural features which can help its integration. Proposals for development involving extensive or significant excavation or infilling will not normally be favourably considered nor will proposals that result in the removal of trees or wooded areas beyond that necessary to accommodate the development. The extent of excavation that may be considered will depend upon the circumstances of the case, including the extent to which the development of the proposed site, including necessary site works, will blend in unobtrusively with its immediate and wider surroundings.

### **RH-P-3**

Stronger Rural Areas

It is a policy of the Council to consider proposals from prospective applicants in need of housing within an area defined as Stronger Rural Area, provided they demonstrate that they can comply with all other relevant policies of this Plan, including RH-P-1 and RH-P-2, where the applicant can demonstrate that they comply with one or more of the following:

- Persons whose primary employment is in a rural-based activity with a demonstrated genuine need to live in the locality of that employment base, for example, those working in agriculture, forestry, horticulture etc.;
- Persons with a vital link to the rural area by reason of having lived in this community for a substantial period of their lives (7 years minimum), or by the existence in the rural area of long-established ties (7 years minimum) with immediate family members, or by reason of providing care to a person who is an existing resident (7 years minimum);
- Persons who, for exceptional health circumstances, can demonstrate a genuine need to reside in a particular rural location. This policy shall not apply where an individual has already had the benefit of a permission for a dwelling on another site, unless exceptional circumstances can be demonstrated. An exceptional circumstance would include, but would not be limited to, situations where the applicant has sold a previously permitted, constructed and occupied dwelling, to an individual who fulfils the bonafides requirements of that permission. New holiday home development will not be permitted in these areas.

#### **RH-P-9**

It is a policy of the Council to seek the highest standards of siting and architectural design for all new dwellings constructed within rural areas and the Council will require that all new rural dwellings are designed in accordance with the principles set out in Appendix 4 of the County Development Plan, entitled 'Building a House in Rural Donegal – A Location, Siting and Design Guide'.

#### **NH-P-7**

Within areas of 'High Scenic Amenity' (HSC) and 'Moderate Scenic Amenity' (MSC) as identified on Map 7.1.1: 'Scenic Amenity', and subject to the other objectives and policies of this Plan, it is the policy of the Council to facilitate development of a

nature, location and scale that allows the development to integrate within and reflect the character and amenity designation of the landscape.

#### **NH-P-1**

It is a policy of the Council to ensure that development proposals do not damage or destroy any sites of international or national importance, designated for their wildlife/habitat significance in accordance with European and National legislation including: SACs, Special SPAs, NHAs, Ramsar Sites and Statutory Nature Reserves.

#### **NH-P-17**

It is a policy of the Council to seek to preserve the views and prospects of special amenity value and interest, in particular, views between public roads and the sea, lakes and rivers. In this regard, development proposals situated on lands between the road and the sea, lakes or rivers shall be considered on the basis of the following criteria:

- Importance value of the view in question.
- Whether the integrity of the view has been affected to date by existing development.
- Whether the development would intrude significantly on the view.
- Whether the development would materially alter the view.

In operating the policy, a reasonable and balanced approach shall be implemented so as to ensure that the policy does not act as a blanket ban on developments between the road and the sea, lakes and rivers

#### **Appendix 3, Part B.**

### **5.2. Natural Heritage Designations**

The subject site is not located within or contiguous to a Natura 2000 site. The nearest Natura 2000 sites; Lough Swilly SAC (Site Code: 002287) and Lough Swilly (Site Code: 004075) are located approximately 578 metres to the northwest, 590 metres north and 752 metres to the northeast. The planners report found the said Natura 2000 sites to be 530 metres to the north. (Given the indentation/curvature of



the coastline in the area, I am satisfied to accept the nearest dimension, as being 530 metres north of the site).

### 5.3. EIA Screening

Having regard to the limited nature and scale of the proposed development and the absence of any connectivity to any sensitive location, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

- It is stated that the proposed dwelling would detract from the quality of the landscape as it does not fit in/blend in with any of the surrounding dwellings. Objective NHP 7 is referred to, which states that in areas of High Scenic Amenity, policy requires development to integrate within and reflect the character and amenity designation of the landscape.
- The proposed development would injure the residential amenity of the site and neighbouring properties.
- The planning authority has not taken account of the cumulative impact of all existing and proposed dwellings in this rural area. A large number of permissions have been granted in the area and it is stated that the rural character is being eroded completely.
- The proposed dwelling has inadequate separation distances between it and surrounding dwellings and would give rise to a suburban piecemeal pattern of development. RH-P-2 requires avoidance of suburban pattern of development in a rural area.
- The proposal would depart from the established building line. The appellant's dwelling is positioned at 14.5 metres whereas the proposed dwelling is to be positioned at 35-40 metres from the road edge. This would mean the front

windows of the proposed dwelling would over look into the rear garden and rear of the adjacent house. This would have a massive impact on the enjoyment of the home and rear garden of the adjacent dwelling.

- It is stated that the condition to replace the first floor overlooking window with obscure glass is not agreed with as this window can be opened. Also, two full length ground floor windows will face towards the appellants dwelling.
- Under the application process the appellants suggested bringing the building line forward to reduce the overlooking issue but this was not accepted by the planning authority.
- The planner's report is referred to which states that consideration was given to the omission of the first-floor window but it appeared that it was required for fire safety reasons. It is stated that the applicant should have been asked to redesign the proposal rather than permit overlooking.
- The proposed dwelling is to be positioned just over 5 metres from the appellant's site.
- Regarding rural housing need it is stated that a proper and concrete housing need has not been established and that additional information should have been requested.
- Planning precedent is cited; ABP 302955-18, whereby an applicant was refused as the Board said the site was in a 'stronger rural area' and the applicant had not established a genuine local housing need, in compliance with rural housing policy.
- It is stated that the subject site is positioned c. 447 m from the Lough Swilly SAC/SPA. It is submitted that the NPWS require an ecological report or fully NIS if a development is less than 500 m from an SAC. Several planning applications are listed which are stated to be within 500 m from the SAC and where it is stated that NISs were requested in regard to each. The consistency/fairness of the planning authority is questioned.
- A dead badger was found at the side of the road. If a NIS was requested it would have found that the area is an important habitat for badgers. The lack of NIS shows no regard for European sites or protected species.

- Regarding vision lines it is stated that the appellants have not given consent for the vision lines over their property, or to maintain such vision lines into the future.
- It is stated that the traffic report carried out in 2019 is not a true reflection of current road usage, when the population was 50% of what it is now. There are also a further 5 planning permissions, which have been granted in 2020/2021.
- The timing of the previous traffic survey is questioned as it was carried out between 9 am and 12 noon, when many residents would have already left for work.
- T-P-15 requires all development proposals to comply with technical standards under Appendix 3 regarding road safety.
- Regarding building line, it is stated that the dwelling should be pulled forward to be in line with the appellants' home. Planning register reference number 22/50039 was required to modify its building line with the established development.
- A number of stated differences between the subject application and the previous 2019 application are highlighted. The previous application was required to submit an ecological report however the present application was not. Significant sites were identified in the 2019 report but the report for the subject application did not. The 2019 report identified the SAC as risk, however the present application did not. The 2019 report refers to Lough Swilly and Ardee Burn, however the present application report states 'none within 250 metres'. Other applications in the area were conditioned to comply with Inland Fisheries Ireland requirements for development near water courses and the present decision to grant did not include such a condition.
- It is stated that the appellant was aware of the live grant of permission on the adjacent site at the time of their purchase of the adjacent house and were told that the applicant was not proceeding with it, however, the appellants considered that any future applications would take all aspects of a development into account.

- It is stated that the length of the dwelling is 24.65 metres long and is excessive for a house on a site 34 metres in width. Other design options would be much more in keeping with existing buildings in the area and with the site.
- Regarding the condition applied stating that occupancy was for 6 people, relating to the proprietary treatment system, it is suggested that the rooms would accommodate 10 people. Copy of layout given to appellants at time of planning application is attached to appeal. The proposed use of the dwelling is questioned and concerns are raised that the proposed dwelling may be for use as a holiday home or an air BnB.

## 6.2. Applicant Response

- The designation High Scenic Amenity is the middle of the three amenity designations in the County.
- The permitted house on the site is 276.92 sq. m. whereas the currently proposed house is 202.5 sq. m., only 73% of the size of the already permitted house.
- The appellants did not lodge submissions or observations in respect to any of the six permissions granted in the area and these decisions cannot be revisited.
- Regarding residential amenity it is submitted that the movement of the building line from the permitted point to the proposed point together with overlooking appears to form the basis for this point. Comparisons of both are submitted. There will be no directly overlooking windows looking into habitable spaces. However, if deemed necessary a condition may be attached requiring obscure glass to be fitted to a height of 1.5 metres on the proposed SW facing window.
- The height of the permitted house is 8 metres while the height of the proposed house is 6.32 metres. Contiguous elevations are submitted.
- It is argued that it appears that the appellants are not local to the immediate area as Mr Mannion's family have lived in the area for 41 years and Mr

Mannion has co-parented his family in this area and now wishes to retire and spend time with his children and grandchildren.

- It is stated that a house will be built on the site by Mr. Mannion, whether it is the permitted house or the one proposed under this application.
- It is submitted that the appellant cites five sites, which are located closer to the Lough Swilly SAC and were required to submit NISs. In each instance permission was granted by the Council. If considered appropriate a similar condition to those applied to the said permissions can be applied, in this instance.
- The nearest open stream is 95 metres north of the site. The appellant has not identified any hydrological links between the site and Lough Swilly SAC.
- Badgers are not a qualifying interest in the Lough Swilly SAC.
- The applicant supports the attachment of conditions regarding protecting fisheries habitats during construction, as suggested by the appellants although there are no hydrological links.
- Regarding sight lines, the exact same sight lines have already been permitted in 2019. The sight lines do not cross the appellants site, rather the front of their boundary wall. The requirement for the appellant to maintain their own sight lines was raised in the planner's report.
- It is stated that all of the submissions relating to traffic are anecdotal and no evidence has been provided. A recent traffic survey was carried out under planning application 23/50133 on a site directly across the road to the SE, dated 23<sup>rd</sup> January 2023. Under this application the planning authority or the appellants did not raise any objection to traffic generation.
- The proposed building line is designed to have the main views towards the walled courtyard to the SE and NW. There will be no overlooking impacts.
- Issues raised regarding additional loading to the WWTS are unsubstantiated.
- It is stated that this is, in effect, a change of house type. It would be unfortunate if the applicant were to build the existing permitted larger house type than that proposed.

### 6.3. **Planning Authority Response**

- The Board may refer to the Planner's report which has been endorsed and signed by the A/Senior Executive Planner.
- The appeal contents largely reflect the planning application submission.
- In relation to other planning permissions granted it is submitted that each has been assessed and determined on its own merits, specific to the site context and in particular their proximity to more sensitive receptors such as hydrological links to a Natura 2000 site.
- Risk of overlooking was addressed through the imposition of condition no 15. Any overlooking at ground level is considered minimal as standard boundary treatment and/or planting is secured by condition no 16.
- Regarding the design approach and standards of the area planner, it is submitted that the area planner makes a recommendation, which is endorsed and signed by the Senior Planner, by delegated authority. The decision is a decision of the Council.

### 6.4. **Observations**

None

### 6.5. **Further Responses**

None

## 7.0 **Assessment**

7.1. Having examined all the application and appeal documentation on file and having regard to the relevant local and national policy and guidance, I consider that the main issues in this appeal are those raised in the grounds of appeal and the planning authorities' reasons to grant planning permission and I am satisfied that no other substantive issues arise. AA also needs to be considered. The main issues, therefore, are as follows:

- Principle of Development

- Rural Housing Policy
- Landscape/Setting/Design
- Residential Amenity
- Traffic Safety
- Waste Water Treatment
- Appropriate Assessment

7.2. Principle of Development

7.3. The planning authority previously granted planning permission for a dwelling house and standard septic tank system on the subject site, planning register reference number 19-50255. Under that application a case under rural housing policy, as cited above under section 4 was made and the grant of permission was subject to an occupancy clause. The grant of planning permission is still live and is due to expire in April 2024.

7.4. The agent for the applicant makes a case that this is essentially a change of house type application.

7.5. I do not concur with this point of view and I consider that this application and appeal is being assessed as an application for permission for the stated development.

7.6. As this is an application for planning permission all of the necessary planning criteria, including rural housing policy *inter alia* apply. However, it is noted that the previous applicant is within her rights to build the dwelling house granted subject to the conditions applied therewith including the occupancy condition, subject to general planning provisions.

7.7. However, considering that there is a live grant of permission on site, there is merit in considering and comparing key elements of the permitted development with the proposed development, particularly in the context of siting and design and with regard to treatment of effluent.

7.8. The principle of permitting a dwelling house on the subject site is considered to be acceptable subject to satisfying all of the necessary planning criteria.

7.9. Rural Housing Policy

7.10. The subject site is located in the townland of Aughnish, Ramelton, Co. Donegal. It is in an area designated by the development plan as a 'stronger rural area'.

Development plan policy RH-P-3 is the applicable rural housing policy in stronger rural areas and it requires applicants to comply with one or more of the following criteria: -

- Persons whose primary employment is in a rural-based activity with a demonstrated genuine need to live in the locality of that employment base, for example, those working in agriculture, forestry, horticulture etc.;
- Persons with, or by reason of providing care to a person who is an existing resident (7 years minimum);
- Persons who, for exceptional health circumstances, can demonstrate a genuine need to reside in a particular rural location.

7.11. National Policy Objective (NPO) 19 of the National Planning Framework is also pertinent to the appeal and it states that in areas under urban influence the provision of single housing in the countryside should be facilitated based on the core consideration of demonstrable economic or social need to live in the rural area and siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements.

7.12. A supplementary rural housing form was provided as part of the application, indicating that the applicant classifies himself as being a person with a vital link to the rural area, having lived there for a period of at least 7 years, and also by reason of an immediate family member having lived in the area for a period of at least 7 ye

7.13. The applicant has an address in Donegal Town, where his business is located. However, in support to the appeal submission, the applicants' ex-wife has submitted a letter stating that the applicant co-owns the family home in Ramelton since 1982 has spent almost all of his non-working life co-parenting their children together in the area. Also, in support of the appeal submission on behalf of the applicant, the applicant's daughter submits that she has planning permission a few hundred metres from the appeal site and having her father live close by would provide enormous benefit and support to her family. It is confirmed that there is a grant of planning permission, in the nearby vicinity in the name of the applicants' daughter.



- 7.14. It is noted that the planning authority have already assessed the applicants' daughters housing need, under planning register reference number 21/50166 and have accepted a bona fide case, on her behalf. This appears to support the bona fides of the subject case and it would appear that the applicant has considerable close family links to this area for a considerable time period.
- 7.15. In support of the case, a bona fide letter of support from an elected member of Donegal County Council has been provided with the application. This letter states that the applicant resided in the area from 1982 to 1994 and that his family home is still in Castle Street, Ramelton. The proposed new home would be his retirement permanent residence. Additionally, this letter states that the applicant's daughter, son-in-law and grandchildren have lived locally in Glenery for the past 8 years and have recently been granted planning permission for a dwelling house 400 metres from the appeal site.
- 7.16. It is considered that with regard to policy RH-P-3 that the applicant has demonstrated *'a vital link to the rural area by reason of having lived in this community for a substantial period of their lives (7 years minimum), or by the existence in the rural area of long-established ties (7 years minimum) with immediate family members'*. Furthermore, regarding NPO 19, it is considered that the applicant has also demonstrated a social need to live in the subject rural area.
- 7.17. Landscape/Setting/Design
- 7.18. The area within which the site is located has the designation of 'High Scenic Amenity'. Regarding this designation, Policy NH-P-7 states that it is the policy of the Council to facilitate development of a nature, location and scale that allows the development to integrate within and reflect the character and amenity designation of the landscape.
- 7.19. While the area is undoubtedly scenic and it has attractive inlet views towards the north and northwest, it does not have the benefit of 'special amenity value' under NHP17 and it is not identified as a protected view under the Scenic Amenity Map in the CDP.
- 7.20. The appellant suggests that the proposed dwelling would definitely detract from the quality of the landscape as it does not fit in with any of the surrounding dwellings. The agent for the applicant submits that the floor area of the proposed dwelling is

202.5 square metres (incl. of garage), while the permitted dwelling is of a much larger scale at 276.92 square metres. Additionally, the proposed height of the dwelling is 6.32 metres while the existing permitted height of is 8 metres. The agent for the applicant also submits that regardless of the Boards decision in the instant appeal, the already permitted dwelling house will be constructed on the site.

- 7.21. I consider that nature, scale and location of the proposed dwelling allows it to integrate in and reflect the character of the landscape. The nature of the design is of contemporary traditional type dwelling, with A-typical rectangular form with straight lines and minimalist theme. The design note, submitted with the application, refers to it as '*characteristic of the traditional Irish longhouse*'. The proposed garage is to the front of the dwelling, which is not against any policy and I consider that it assimilates/integrates well with the overall design. The planner refers to the proposed design as being '*a nod to the traditional farm house*', which the appellant takes issue with. I consider that the planner's comment to be quite accurate and reflective of the proposed house design. The proposed dwelling is 194 square metres in floor area (garage proposed is 8.5 square metres), which I consider to be acceptable in terms of scale and I note other dwellings in the area have floor areas exceeding this floor area dimension. As an observation, I note that the proposed height is to be 6.32 metres and the already permitted dwelling has a proposed height of 8 metres. Accordingly, I consider the nature of the dwelling, in terms of style, scale and design to be acceptable within this landscape designation.
- 7.22. However, I note the absence of a landscaping scheme with the application. I consider that the overall assimilation of the proposal within this particular landscape designation would benefit from a detailed landscaping scheme. This could be implemented by way of condition of permission should the board be minded to grant permission.
- 7.23. The location of the dwelling house in terms of building line relative to the adjacent house to the southwest and to that of the dwelling house to the northeast is staggered between both. I consider this to be an appropriate design solution in the spatial context. The appellant has argued that the building line should be brought forward in line with the appellants dwelling. I consider that this measure would in fact detract from the setting of the proposed dwelling and would certainly accord with a suburban style of development with typical uniform building lines and would therefore

not be in accordance with RH-P-2, which requires the avoidance of the creation or expansion of a suburban pattern of development in the rural area.

- 7.24. Furthermore, I acknowledge that the proposed building line would afford the applicants and the appellants' properties added privacy, in terms of the significant separation distance between their outdoor living spaces. I understand the planner alludes to this describing the proposed building line as 'more neighbourly', rather than reducing the building line to come in line with the appellants property.
- 7.25. Overall, it is my considered opinion that the nature, scale and location of the proposed dwelling is in accordance with Policy NH-P-7.
- 7.26. Residential Amenity
- 7.27. Building line has been discussed under the previous section with regard to the location of the proposed dwelling in the context of the setting/landscape designation of High Scenic Amenity. The appellant has suggested that the building line be brought forward in order to safe guard the appellants privacy and to safe guard from overlooking of their site area and the overall residential amenity of the appellants property.
- 7.28. With regard to overlooking, I note that the planning authority decided to impose a condition that the bathroom and bedroom windows on the SW elevation be frosted. The appellant disagrees with this condition as it is stated such windows can be opened. I note that the agent for the applicant submits that there are no directly overlooking issues relating to the proposal, in that no windows are directly fronting onto habitable areas on the adjacent property. The proposed windows on the SW elevation are overlooking the rear garden of the appellants property as opposed to directly into any habitable space in the appellants property.
- 7.29. The agent for the appellant also submits that overlooking does not apply at ground floor level. I agree with the agent for the appellant in some respects regarding the issue of directly opposing first floor windows, which I agree does not exist, within the interpretation of the draft 'Sustainable and Compact Settlements Guidelines for Planning Authorities'. However, the subject site is not situated within the boundaries of a compact settlement, rather in open rural landscape.
- 7.30. There is a separation distance of 5.24 metres between the SW elevation of the proposed dwelling and the shared boundary (SW). I consider that given the close

proximity of the proposed SW elevation to the shared boundary, albeit there are no directly overlooking issues into any habitable space, that the planning authority were correct in their decision to apply condition no 15 to their notification of decision to grant planning permission. I consider that this condition is applicable to all windows on the SW elevation, in the interest of preservation of amenity of the adjacent property.

- 7.31. I note that there is already a first-floor window permitted on the SW elevation of the house already permitted on the subject site. However, upon assessing the instant appeal on a *de novo* basis, the residential amenity of the adjacent property requires consideration.
- 7.32. Accordingly, I do not consider that bringing the building line forward in this instance would benefit the residential amenity of the adjacent property. In fact, I consider that the staggered approach while benefitting the proposed development to assimilate into the landscape at this location, would also contribute to protecting the residential amenity/privacy of both properties, that of the subject site and the appellants property.
- 7.33. Traffic Safety
- 7.34. Sight distances are clearly established in a NE and SW direction from the site. The sight distance triangle is demarcated to the front of the front boundary of the adjacent dwelling to the SW. It would be unconscionable to consider impeding the sight distances purposefully, in front of one's property, where traffic safety is concerned. The planners report notes that the removal of hedgerow on the objectors' site does not appear to be needed at present but refers that sight distances would be required to be compliant with the grant of permission on the adjacent site.
- 7.35. The planning authority notes the gradual build up of development on this road and notes the existing grant of planning permission on the subject site for a dwelling house. The County Development Plan provides for a reduction in sight visibility standards where traffic speeds are lower. The previous application on the site accepted visibility lines of 50 metres in each direction and the Area Engineer had no objections. The planners report also notes that traffic speeds are low and limited as this is a non-through road.

7.36. Having inspected the site and reviewed the sight distances achievable at the point of access on the subject local county road, which is a non-through road, I consider that the proposal presented with respect of sight distances is acceptable.

7.37. Waste Water Treatment

7.38. Upon inspection of the site, I noted that land conditions appeared dry underfoot and there were no significant vegetative indicators of ponding or water-logging. Photographs submitted with the Site Suitability Assessment also support this viewpoint.

7.39. It is proposed to install a waste water treatment system and polishing filter to serve the proposed dwelling. The proposal also includes the importation of tertiary treatment bed.

7.40. A Site Characterisation Report accompanied the planning application. Upon trial hole excavation the depth from ground surface to water table was evaluated to be 1.3 metres. There was no evidence of mottling in the trial holes based on the photographic details submitted and there is no evidence of preferential flow paths. Bedrock was not encountered to a depth of 2.2 metres. The Ground Water Protection Response (GWPS) is R1. Under Table E1 of the CoP (EPA Code of Practice 2021), it is stated that for a GWPR of R1, the risk to groundwater is 'acceptable subject to normal good practice (i.e., system selection, construction, operation and maintenance in accordance with this CoP)'. The Aquifer vulnerability rating is high.

7.41. The site characterisation assessment concluded a septic tank and percolation area was not suitable and that a secondary treatment system along with soil polishing filter in addition to a tertiary treatment infiltration system were recommended options. Details of the proposed unit and associated measured soil polishing filter and infiltration system have been submitted based on the tests undertaken on the site. It is noted that the tests carried out are based on a population equivalency of the proposed dwelling being for 5 persons.

7.42. The appellants raise issue with the number of bed spaces demonstrated on the plans and indicate that there may be an intention to provide an Air BnB facility from the proposed dwelling. The appeal submission includes plans of the proposed dwelling, which it is stated were given to the appellants at the time of the planning

application. Said plans appear to suggest more bed spaces than would be required for a population equivalency of 5 persons. However, this plan is not the same plan that was submitted under the planning application, which is subject of assessment. I consider that this concern raised by the appellants is reasonable, based on the house plan, which they state they were given.

- 7.43. From an assessment of the Site Characterisation report, which is based on the soil characteristics of the site together with a number of other related factors, it is apparent that the proposed population equivalency (PE) is for 5 persons. A PE of 5 is reiterated numerous times throughout the plans and particulars submitted. While the general definition of PE under para 3.1 of the EPA Code of Practice 2021(CoP) for DWWTSs, generally, is 'less than or equal to 10 PE', I note that the actual design of this specific treatment system, on a site-specific basis, is based on the proposed three-bedroom home, i.e., is for 5 persons. Section 1 of the Site Characterisation form clearly states that the number of bedrooms to be 3 and maximum number of residents to be 5 persons. This complies with Table 3.2 of said CoP, which is satisfactory.
- 7.44. However, the site layout drawing submitted under Appendix A of the Site Suitability Assessment Report, which contains sizing, design and minimum distance details of the proposed secondary and tertiary treatment system (Drawing No PCE13522/001) states that the waste water treatment system should be designed to serve a population of 'at least' 5 persons. I would take issue with the term 'at least' which infers 5 persons is the minimum PE to be accommodated at the dwelling. This is ambiguous and is a clear contradiction of what is implicitly stated under Section 1 of the form, i.e., a maximum PE of 5. This is also a clear misinterpretation of Table 3.2 of the CoP. In the interest of clarity and for the avoidance of doubt, I would recommend that the PE of 5 be conditioned, should the board be minded to grant planning permission.
- 7.45. I am therefore assured that the proposed occupancy will not be greater than a PE of 5 persons. In the event of a grant of planning permission, condition No 1 would generally confirm this regarding the reference to 'plans and particulars' lodged with the application' in addition to a PE condition.

7.46. The proposals for WWT are considered to be acceptable subject to compliance with the requirements of the planning authority and the EPA guidelines.

7.47. As an observation, it is noted that the proposed detailed assessment of the site and proposed treatment options with scaled drawings supporting the construct of the proprietary treatment system and infiltration system (which includes the importation of tertiary treatment bed) is a superior solution for the safe and effective waste water treatment system on the subject site, over and above the proposed septic tank and percolation area submitted and granted planning permission relating to the extant planning permission on the subject site.

7.48. Appropriate Assessment

Appropriate Assessment Screening

*Compliance with Article 6(3) of the Habitats Directive*

7.48.1. The requirements of Article 6(3) as related to screening the need for appropriate assessment of a project under part XAB, section 177U of the Planning and Development Act 2000 (as amended) are considered fully in this section.

Background on the Application

7.48.2. A screening report for Appropriate Assessment was submitted with this appeal case. It concluded that AA was not required. It is important to consider cumulative impacts given the submissions on file. This screening assessment has been carried de-novo.

7.48.3. A screening report was carried out on a previous application on the subject site for a dwelling house and septic tank, planning register reference number 19/50255 and the screening determination concluded that AA was not required.

Screening for Appropriate Assessment- Test of likely significant effects

7.48.4. The project is not directly connected with or necessary to the management of a European Site and therefore it needs to be determined if the development is likely to have significant effects on a European site(s).

The proposed development is examined in relation to any possible interaction with European sites designated Special Conservation Areas (SAC) and Special Protection Areas (SPA) to assess whether it may give rise to significant effects on any European Site.

### Brief description of the development

7.48.5. The development is described at Section 2 of this Report. In summary, permission is sought for the construction of a two-storey house, wastewater treatment system and connection to existing services, on a site with a stated area of 0.28ha. The development includes a wastewater treatment system and polishing filter and tertiary treatment. Surface water is proposed to discharge to a land drain to the northeast of the site.

### Submissions and Observations

7.48.6. The submissions from the appellant, applicant and Planning Authority are summarised as Section 6 of my Report.

### European Sites

7.48.7. The site is not located within or adjacent to any designated European site. The closest such sites are Lough Swilly SAC (Site Code 002287) and Lough Swilly SPA (Site Code 004075), which are c.530 metres north of the site.

7.48.8. There are a number of other European sites within a 15km search zone but I am satisfied that there is no possibility of significant effects arising other than for those European sites in the vicinity of the subject site.

### Evaluation of potential significant effects

7.48.9. The development does not give rise to any direct effects on the European sites, in terms of habitat loss or fragmentation.

7.48.10. There is no direct hydrological connection between the subject site and European sites.

7.48.11. Regarding the potential for indirect effects, the construction phase gives rise to the potential for run-off containing suspended solid and/or pollutant content. The site layout location map identifies that there is an open land drain drainage ditch c. 320 metres west of the site and a stream is situated 95 metres southeast of the site – on the opposite side of the servicing county road.

7.48.12. The direction of water flow in the area is from southeast to northwest. Owing to this fact I am satisfied that water flow during construction i.e., with suspended solid/or pollutant content would not enter the surface stream located 95 metres north



of the subject site. Regarding the open drain, owing to the nature and location of the drain along with separation distance I am satisfied that run-off containing suspended solid and/or pollutant content is unlikely to discharge into the open drain c. 320 metres away. In the unlikely event of such a discharge there is a distance of over 530m to the European site and I am satisfied that there is no likelihood of material being discharged to waters within the European sites. I am thus satisfied that the issue can be excluded at this stage.

7.48.13. For the operational phase, surface waters are proposed to discharge to the ditch and there is potential for run-off containing suspended solid and/or pollutant content to be discharged to the ditch. Similar to construction run-off, I am satisfied that run-off containing suspended solid and/or pollutant content is unlikely to discharge into the nearest watercourse. However, in the unlikely event of such a discharge, there is a distance of over 530m to the European site, which is adequate to ensure there is no likelihood of material being discharged to waters within the European sites. I am thus satisfied that the issue can be excluded at this stage.

7.48.14. Effluent will be treated within a wastewater treatment system and polishing filter along with tertiary treatment, prior to discharge to groundwater. The site has been shown by percolation testing to be suitable for the treatment of effluent. It is relatively distant from the European sites and I am satisfied that there is no likelihood of significant effects arising from the treatment of effluent on the site.

7.48.15. With regard to cumulative impacts, concern is raised regarding the granting of permission for a number of developments in the area in recent times. Having reviewed each of the recently granted permissions, which were located in closer proximity to Lough Swilly SAC/SPA than the subject site, it is noted that the planning authority, following screening for AA and in some instances, AA, decided that there would be no impacts on any designated European sites. I am satisfied that there will be no significant effects arising from cumulative impacts.

#### Screening Determination

7.48.16. The proposed development was considered in light of the requirements of Section 177U of the Planning and Development Act 2000 as amended. Having carried out Screening for Appropriate Assessment of the project, it has been concluded that the project individually or in combination with other plans or projects

would not be likely to give rise to significant effects on European Site Nos. 004034 and 002012, or any other European site, in view of the site's Conservation Objectives, and Appropriate Assessment (and submission of a NIS) is not therefore required.

## 8.0 Recommendation

8.1. I recommend that permission be granted, subject to conditions as set out below.

## 9.0 Reasons and Considerations

Having regard to: -

- The location of the site in a rural area designated by the Donegal County Development Plan 2018-2024 as a Stronger Rural Area,
- The provisions of development plan Policy RH-P-3, which states proposals for new one-off housing within Stronger Rural Areas will be considered, subject to compliance with other relevant policies,
- The provisions of National Policy Objective 19 of the National Planning Framework (2018), which states that in rural areas other than those identified as being under urban influence, proposals for single housing in the countryside should be facilitated based on siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements,
- The provisions of the Sustainable Rural Housing Guidelines (2005), which state that in stronger rural areas the demand be accommodated for individual houses in rural areas subject to good practice in relation to matters such as siting and design as outlined elsewhere in these guidelines.

It is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area or property in the vicinity and would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 10.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application dated 19<sup>th</sup> December 2022 except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p><b>Reason:</b> In the interest of clarity.</p>
2.	<p>(a) The proposed dwelling, when completed, shall be first occupied as a place of permanent residence by the applicant, members of the applicant's immediate family or their heirs, and shall remain so occupied for a period of at least seven years thereafter [unless consent is granted by the planning authority for its occupation by other persons who belong to the same category of housing need as the applicant].</p> <p>Prior to commencement of development, the applicant shall enter into a written agreement with the planning authority under section 47 of the Planning and Development Act, 2000 to this effect.</p> <p>(b) Within two months of the occupation of the proposed dwelling, the applicant shall submit to the planning authority a written statement of confirmation of the first occupation of the dwelling in accordance with paragraph (a) and the date of such occupation. This condition shall not affect the sale of the dwelling by a mortgagee in possession or the occupation of the dwelling by any person deriving title from such a sale.</p> <p><b>Reason:</b> To ensure that the proposed house is used to meet the applicant's stated housing needs and that development in this rural area is</p>

	appropriately restricted [to meeting essential local need] in the interest of the proper planning and sustainable development of the area.
3.	The windows on the southwest elevation shall be glazed with obscure glass. <b>Reason:</b> To prevent overlooking of adjoining residential property.
4.	The developer shall enter into water and wastewater connection agreements with Uisce Éireann. <b>Reason:</b> In the interest of public health.”
5.	The vehicular access, including visibility splays, shall comply with the requirements of the planning authority for such works and services, details of which shall be agreed in writing prior to the commencement of development. <b>Reason:</b> In the interests of traffic and road safety.
6.	<p>a. The proposed wastewater drainage system shall be in accordance with the standards set out in the document entitled “Code of Practice – Domestic Waste Water Treatment Systems (Population Equivalent ≤ 10)” – Environmental Protection Agency, 2021.</p> <p>b. The occupancy of the proposed dwelling shall not exceed 5 persons.</p> <b>Reason:</b> In the interest of public health.
7.	<p>The site shall be landscaped in accordance with a comprehensive scheme of landscaping, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This scheme shall include the following:</p> <p>A plan to scale of not less than [1:500] showing –</p> <p>(i) The species, variety, number, size and locations of all proposed trees and shrubs [which shall comprise predominantly native species such as mountain ash, birch, willow, sycamore, pine, oak, hawthorn, holly, hazel, beech or alder] [which shall not include prunus species],</p>

	<p>(ii) Details of screen planting [which shall not include cupressocyparis x leylandii],</p> <p>(iii) A timescale for implementation [including details of phasing],</p> <p>All planting shall be adequately protected from damage until established. Any plants which die, are removed or become seriously damaged or diseased, within a period of [five] years from the completion of the development, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.</p> <p><b>Reason:</b> In the interest of residential and visual amenity.</p>
8.	<p>Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.</p> <p><b>Reason:</b> In order to safeguard the residential amenities of property in the vicinity.</p>
9.	<p>The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the</p>

	<p>matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.</p> <p><b>Reason:</b> It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.</p>
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'I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.'

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Aisling Dineen  
Planning Inspector  
21<sup>st</sup> September 2023