



An  
Bord  
Pleanála

## Inspector's Report

### ABP-316147-23

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<b>Development</b>	Proposed house, wastewater treatment system and associated site works.
<b>Location</b>	Glenfad, Ballindrait, Lifford, Co. Donegal.
<b>Planning Authority</b>	Donegal County Council
<b>Planning Authority Reg. Ref.</b>	2251668
<b>Applicant(s)</b>	Charlie Doohar
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Charlie Doohar
<b>Observations</b>	(1) Mary Doohar (2) Kathleen Doohar

**Date of Site Inspection**

15<sup>th</sup> July 2023

**Inspector**

Colin McBride

## 1.0 Site Location and Description

- 1.1. The appeal site, which has a stated area of 0.28 hectares, is located approximately 4km north of Lifford and to the west of the R-265-2. The appeal site is portion of a larger field area in agricultural use. There is an existing agricultural access off the public road and appeal site is a triangular shaped site accessed over an existing farm track. The southern and western boundaries of the site are defined by existing tress and hedgerow and there is no existing boundary along the northern perimeter of the site (defined by the existing access track).

## 2.0 Proposed Development

- 2.1 Permission is sought for construction of a single-storey dwelling and installation of a wastewater treatment system. The proposed dwelling has a floor area of 143sqm and a ridge height of 5.7m. The dwelling features a pitched roof with external finishes not specified. The dwelling is to use an existing vehicular access and laneway that currently serves agricultural lands the site is part of.

## 3.0 Planning Authority Decision

### 3.1. Decision

Permission refused based on two reasons...

1. The subject site is located within a rural area as designated in the County Development Plan 2018-2024 (as varied) and it is the policy of the Plan that '...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...in a manner which does not pose a risk to public health and accords with Environmental Protection Agency Codes of Practice (Policy RH-P-1 & Policy WES-P-11). On the basis of the surface ponding on site, the Planning Authority is not satisfied in the context of prevailing onsite ground conditions that the proposal provides of the safe, sustainable and effective treatment and disposal of effluent. Accordingly, to permit the proposed development would be prejudicial to public health and would thereby be contrary to

Policy RH-P-1 & Policy WES-P-11 of the aforementioned Plan, and thereby the proper planning and sustainable development of the area.

2. The development proposal is served by a private laneway which joins with a Regional Road, R-265-2. Policy T-P-15 of the County Donegal development Plan 2018-2024 (as varied) states that 'it is a policy of the Council to require that all development proposals comply with Development & Technical Standards set out in Appendix 3 to promote road safety'. On the basis of information submitted, the Planning Authority is not satisfied that the applicant has sufficient legal interest in the land to the north of the entrance to provide the vision lines as proposed. Furthermore the Planning Authority is not satisfied that the proposed vision lines to the south as proposed are sufficient having regard to the location of the entrance relative to the 80kph speed limit zone, where visibility splay and stopping distance of 160m would be necessary. Therefore, to permit the development as proposed would endanger public safety by reason of traffic hazard, materially contravene the provisions of the County Development Plan 2018-2024 (as varied) Policy T-P-15 and would be contrary to the proper planning and sustainable development of the area.

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

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

Planning Report (21/02/23): The applicant has failed to demonstrate compliance with the provisions of rural housing policy RH-P-5, no issue raised regarding design/visual impact or adjoining amenities. Concern expressed regarding ability to provide sufficient site lines to the north due to lack of sufficient legal interest in lands and sightlines to the south considered inadequate. The site was considered unsuitable for installation and operation of a wastewater treatment system. Refusal was recommended based on the reasons outlined above.

### 3.3. **Prescribed Bodies**

Uisce Eireann (05/10/22): No objection.

### 3.4. **Third Party Observations**

3.4.1 10 third party submissions were received. The issues raised are as follows...

Site unsuitable for residential development due to inadequate laneway access, unsuitable for wastewater treatment, inadequate sightlines/insufficient legal interest, failed to demonstrate sufficient legal interest to site/existing legal dispute regarding ownership.

## 4.0 **Planning History**

No planning history on the site.

Adjoining lands/immediate vicinity...

94/514: Permission granted for a dwelling house and septic tank on a site approximately 150m to the east of the subject site.

## 5.0 **Policy Context**

### 5.1. **Development Plan**

The relevant Development Plan is the County Donegal Development Plan 2018-2024.

The site is in an area designated as an area 'Under Strong Urban Influence'.

Rural Housing Policy RH-P-5 applies.

RH-P-5: It is a policy of the Council to consider proposals for new one-off rural housing within Areas Under Strong Urban Influence from prospective applicants that have demonstrated a genuine need for a new dwelling house and who can provide evidence that they, or their parents or grandparents, have resided at some time within the area under strong urban influence in the vicinity of the application site for a period of at least 7 years. The foregoing is subject to compliance with other relevant policies of this plan, including RH-P-1 and RH-P-2. New holiday home development will not be permitted in these areas.

WES-P-11: It is a policy of the Council to support and facilitate Irish Water to ensure that waste water generated is collected and discharged in a safe and sustainable manner that is consistent with the combined approach outlined in the latest Waste Water Discharge (Authorisation) Regulations and with the objectives of the relevant River Basin Management Plan and in doing so the following will apply:

1. For a single dwelling (or equivalent) with a population equivalent less than or equal to 10 in an un-sewered area: Proposals for a single dwelling (or equivalent) in an un-sewered area will only be permitted where the planning authority is satisfied that the development, when considered in addition to existing and previously approved development, would not adversely affect the ability to meet the objectives set out in the relevant River Basin Management Plan. When making a planning application the applicant must submit information on the type of on-site treatment system proposed and evidence as to the suitability of the site for the system proposed. Site suitability assessors must carry out all assessments in accordance with the most recent guidance provided in the Code of Practice.

T-P-15: It is a policy of the Council to require that all development proposals comply with the Development and Technical Standards set out in Appendix 3 to promote road safety.

Appendix 3: Table 3, Vision Lines at accesses to Non-National Rural Roads, outside 60kph speed limit zone (source DMURS).

50kph 70m (setback 3-9m)

60kph 9m (setback 3-9m)

85kph 160m (setback 3-9m)

## 5.2 Sustainable Rural Housing Guidelines for Planning Authorities (2005):

The guidelines require a distinction to be made between 'Urban Generated' and 'Rural Generated' housing need. A number of rural area typologies are identified including rural areas under strong urban influence which are defined as those within proximity to the immediate environs or close commuting catchment of large cities and towns. Examples are given of the types of circumstances for which 'Rural Generated Housing Need' might apply. These include 'persons who are an intrinsic part of the rural community' and 'persons working full time or part time in rural areas'.

The site is located in an area classified as a Stronger Rural Area under Indicative Outline of NSS Rural Area Types.

## 5.3 National Planning Framework – Project Ireland 2040

NPO19 Ensure, in providing for the development of rural housing, that a distinction is made between areas under urban influence, i.e. within the commuter catchment of cities and large towns and centres of employment, and elsewhere:

- In rural areas under urban influence, facilitate the provision of single housing in the countryside based on the core consideration of demonstrable economic or social need to live in a 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;

- In rural areas elsewhere, facilitate the provision of single housing in the countryside 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.

## 5.4 Natural Heritage Designations

None within the zone of influence of the project.

## 5.5 EIA Screening

Having regard to the nature and scale of the proposed development, comprising of construction of a dwelling house and driveway in an urban area, it is considered that there is no real likelihood of significant effects on the environment arising from the proposed development. The need for an environmental impact assessment can, therefore, be excluded by way of preliminary examination.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

6.1.1 A first party appeal has been lodged by Dominic Whoriskey Building Design & Surveying on behalf of the applicant Charlie Doohar. The grounds of appeal are follows...

- In response to refusal reason no. 1 it is noted that the site was inspected during the winter season and during a wetter than average October. Ponding noticed was due to compaction of the top layer of soil due to parking and loading farm machinery. The applicant/appellant intends to carry out drainage works and it is noted that the site assessment indicates ground conditions suitable for operation of a wastewater treatment system in line with the requirements of the EPA Code of Practice. The development will not give rise to surface water or groundwater pollution and there is no over concentration of wastewater treatment systems in the area. The site is not located within an SAC or SPA.
- In response to refusal reason no. 2 the applicant/appellant notes that they have maintained the hedgerow north of the site entrance for 30 years and will continue to do so. The sightline to the north is within the 50kph speed limit



and 70 m would be acceptable in this regard and can be achieved. The applicant/appellant notes that 90m can be achieved to the south and such a standard was deemed acceptable in the case of ref no. 19/51519 which is also off the R-265-2 in the 80kph speed limit zone. If necessary to provide 160m to the south the applicant has submitted a letter of consent from the land owner to the south to maintain such.

## **6.2. Planning Authority Response**

### **6.2.1 Response from Donegal County Council.**

- The issues raised in the appeal have all been addressed by the Planning report associated with this application and the Council relies on the content of such in response to appeal submission.

## **6.3. Observation**

### **6.3.1 Observation by Mary Dooher.**

- The applicant has failed to demonstrate sufficient legal interest in the lands in question to make the application contrary to the Planning and Development Regulations and the recommendations of Development Management Guidelines.
- The observation indicates that there are legal issues regarding the ownership of the land.
- The observation notes that the applicant does not have a housing need at this location.

### **6.3.2 Observation by Kathleen Dooher.**

- The applicant has not complied with conditions of grant of planning permission by Donegal County Council (03/6177 Condition no. 2) relating to slurry spreading with concerns regarding environmental hazard.

## 7.0 **Assessment**

7.1 Having inspected the site and associated documents, the main issues can be assessed under the following headings.

Rural Housing policy

Design, scale, pattern of development

Public Health

Traffic

Site ownership/other issues

7.2 Rural Housing policy:

7.2.1 Compliance with rural policy was not raised as a reason for refusal, however the planning report associated with the application does state that the applicant has failed to demonstrate compliance with the provisions of rural housing policy RH-P-5. One of the third party observations states that the applicant does not have a housing need at this location. Under the County Development Plan the appeal site is located in an area designated as 'Under Strong Urban Influence' where Rural Housing Policy RH-P-5 applies. Under policy RH-P-5 "it is a policy of the Council to consider proposals for new one-off rural housing within Areas Under Strong Urban Influence from prospective applicants that have demonstrated a genuine need for a new dwelling house and who can provide evidence that they, or their parents or grandparents, have resided at some time within the area under strong urban influence in the vicinity of the application site for a period of at least 7 years. The foregoing is subject to compliance with other relevant policies of this plan, including

RH-P-1 and RH-P-2. New holiday home development will not be permitted in these areas”.

7.2.2 The file is accompanied by supplementary rural housing application form. Based on the information on file the applicant housing need is based on having resided at their current address over 7 years. The applicants address has been redacted so I cannot confirm its location relative to the site. The information on file notes that the applicant farms the landholding the site is taken from and the form was accompanied by a letter from a Councillor supporting the application. The planning report states that the applicant has failed to demonstrate compliance with the provisions of rural housing policy RH-P-5, however the issue of rural housing is not a reason for refusal. The criteria under Policy RH-P-5 states “it is a policy of the Council to consider proposals for new one-off rural housing within Areas Under Strong Urban Influence from prospective applicants that have demonstrated a genuine need for a new dwelling house and who can provide evidence that they, or their parents or grandparents, have resided at some time within the area under strong urban influence in the vicinity of the application site for a period of at least 7 years”. Based on the information on file the applicant may be able to demonstrate that they have resided at some point in an area under strong urban influence for a period of at least 7 years, however they not appear have provided sufficient evidence to satisfy the first part of the criteria, a genuine need for a new dwelling.

7.2.3 Development Plan policy clearly identifies the site as being in an area under area under strong urban influence. Consideration must be given to national policy with the site located in an area under urban influence based on it classification under national policy. National policy set out under the Objective 19 of the National Planning Framework and the guidance set out in the Sustainable Rural Housing Guidelines emphasises the requirement to demonstrate an economic, social or functional need to live in a rural area under strong urban influence such as this. In this case the applicants clearly has links to the rural area and a desire to reside in the area however insufficient evidence is provided to conclude that the applicant does not have a defined social or economic need to live in this area under urban influence and

the development would be contrary to Rural Housing policy set out under policy RH-P-5 of the County Donegal Development Plan 2018-2024 and Objective 19 of the National Planning Framework and would be contrary to the guidance set out in the Sustainable Rural Housing Guidelines.

7.2.4 The proposed development, in absence of any identified local based need for the house at this location, would result in a haphazard and unsustainable form of development in an unserviced area, would contribute to the encroachment of random rural development in the area and would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure and undermine the settlement strategy set out in the development plan. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

7.3 Design, scale and pattern of development:

7.3.1 The proposal is for a single-storey dwelling on a relatively flat site. I would be of the view that the overall scale and design of the proposed dwelling would be satisfactory in terms of visual impact as it is low profile in design, located on a flat site and not in an area that is prominent or visible in the surrounding area with a significant level of existing vegetation along the boundaries of the site. In relation to adjoining amenity the dwelling is single-storey and provision of adequate boundary treatment or landscaping (existing high level of boundary vegetation) would mean no adverse impact on adjoining amenities. I would be of the view that the overall design and scale of the dwelling is acceptable in the context of visual amenity.

7.4 Public Health:

7.4.1 The proposal entails the installation of a new proprietary wastewater treatment system to serve the new dwelling. Permission was refused on the basis of wet conditions observed on site with it noted that ponding was visible on site. The applicant has indicated that the time of inspection was an exceptionally wet period and that site suitability tests indicate suitable conditions on site for wastewater treatment.

7.4.2 A site characterisation was submitted for the proposed development. The site is underlain by an aquifer classified as locally important with groundwater vulnerability indicated as being high. Site characterisation was carried out including trial hole and percolation tests. The trial hole test (1.9m deep) detected the water table at 1.7m from the ground surface. Subsurface and surface percolation test values by the standard method were carried out with percolation values that are within the standards that would be considered acceptable for the operation of a wastewater treatment system set down under the EPA Code of Practice: Wastewater Treatment and Disposal Systems Serving Single Houses.

7.4.3 Notwithstanding the results of the site characterisation tests indicating that soil conditions on site are suitable for wastewater treatment, the appeal site is in an area classified as having high groundwater vulnerability with the water table at a high level below the surface as indicated in the trial hole test. In regards to surface ponding I inspected the site on wet day and there was some ponding on the existing access track, which is likely due to compacting of the surface as the access track is being used by agricultural machinery. I would consider that having regard to the proliferation of domestic wastewater treatment systems (with a reasonable concentration of existing dwellings at this location) in this rural area, to the high level of the water table at this location, and to the Sustainable Rural Housing Guidelines for Planning Authorities published by the Department of Environment, Heritage and Local Government 2005 which recommend, in un-sewered rural areas, avoiding sites where it is inherently difficult to provide and maintain wastewater treatment and disposal facilities, I could not be satisfied, on the basis of the information on file, that the impact of the proposed development in conjunction with existing and permitted wastewater treatment systems in the area would not give rise to a risk of groundwater pollution in an area classified as highly vulnerable. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

7.5 Traffic:

7.5.1 The site has use of an existing entrance, which currently serves agricultural lands at this location and will continue to serve the remainder of the landholding the site is taken from. The existing entrance is within a 50kph zone along the R-265-2, which relates a very small rural settlement of Porthall. The development was refused on traffic grounds with concerns that the sightlines to the south are deficient and that the applicant does not have sufficient legal interest in the lands to the north to provide adequate sightlines. Development plan policy on sightlines is outlined under Policy T-P-15 of the County Donegal Development Plan 2018-2024 (as varied) with sightlines lands outlined under Appendix 3, Table 3. The site entrance is within a 50kph zone, however this speed limit zone to small rural settlement that exhibits no urban characteristics. I would be of the view that despite the speed limit zone, the site is located off a heavily trafficked regional route with high traffic speeds that are not curtailed by the speed limit zone. The entrance is also located close to a bend in the road where there is a single continuous white line. The applicant has indicated that sightlines of 70m can be achieved to the north and are satisfactory given the 50kph zone and are consistent with sightlines under Table 3. The applicant has indicated that sightlines of 90m are achievable to the south, however the appellant has noted that 160m can be provided with a letter of consent from an adjoining landowner indicating willingness to maintain such.

7.5.2 Having inspected the site, I would have concerns that the site entrance is located off a heavily trafficked regional route with high road speeds at this location regardless of the speed limit zone and is a point where close to a bend in the road and a location with a continuous white line. The applicant based on landownership map (blue line boundary) does have control over the lands to the north to improve sightlines however I would be of the view 70m is insufficient and that the applicant does not have sufficient control beyond these lands to provide more. In relation to the sightlines to the south, the applicants appeal submission including the letter of consent form the adjoining landowner to maintain sightlines is acknowledged, however I would be of the view that sightlines to the south are obstructed by the actual speed limit sign in place just south of the site. I would be of the view that having regard to location of the site entrance close to a bend in the road where there is continuous white line, the location of such off a heavily trafficked regional route

with high road speeds regardless of the existing 50kph limit, that sightlines to the existing entrance are restricted to the north with the applicant having insufficient legal interest in lands required to provide increased sightlines and to the south due to obstruction caused by the existing speed limit signage. The proposed development if permitted would endanger public safety by reason of traffic hazard and would, therefore, be contrary to the proper planning and sustainable development of the area.

#### 7.6 Site ownership/other issues:

7.6.1 The third party observations raise the issue of site ownership with such disputing that the applicant has sufficient legal interest to make the application with it noted that a dispute over land ownership have been subject to a legal dispute. I do not consider this to be a planning matter and would draw attention to Section 34 (13) of the Planning and Development Act 2000 (as amended) which reads that '*a person shall not be entitled solely by reason of a permission under this section to carry out development*'.

7.6.2 One of the observations highlights the applicant's failure to comply with conditions of permission elsewhere. This is not relevant matter for consideration with the appeal being assessed on its merits.

### 8.0 **Appropriate Assessment**

8.1 Having regard to the nature and scale of the proposed development and its proximity to the nearest European site, no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

## 9.0 Recommendation

9.1 I recommend refusal based on the following reasons.

## 10.0 Reasons and Considerations

1. Having regard to the location of the site within an area designated as Under Strong Urban Influence under the County Donegal Development plan 2018-2024 the applicant has failed to demonstrate a genuine need for a new dwelling house at this location as required under Rural Housing policy RH-P-5. National Policy Objective 19 of the National Planning Framework (February 2018) which, for rural areas under urban influence, seeks to facilitate the provision of single housing in the countryside based on the core consideration of demonstrable economic or social need to live in a rural area, having regard to the viability of smaller towns and rural settlements, the Board could not be satisfied on the basis of the information on the file that the applicants complies with rural housing policy under the County Development Plan or comes within the scope of either economic or social housing need criteria as set out in the overarching National Guidelines.

The proposed development, in absence of any identified local based need for the house at this location, would result in a haphazard and unsustainable form of development in an unserviced area, would contribute to the encroachment of random rural development in the area and would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure and undermine the settlement strategy set out in the development plan. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

2. Notwithstanding the proposal to use a proprietary wastewater treatment system on site, the Board had regard to the proliferation of domestic wastewater treatment systems in this rural area, the high level of the water table on site, the classification of groundwater vulnerability as high, and to the Sustainable Rural Housing Guidelines for Planning Authorities published by the Department of Environment,



Heritage and Local Government 2005 which recommend, in un-sewered rural areas, avoiding sites where it is inherently difficult to provide and maintain wastewater treatment and disposal facilities. The Board could not be satisfied, on the basis of the information on the file, that the impact of the proposed development in conjunction with existing wastewater treatment systems in the area would not give rise to a risk of groundwater pollution. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

3. Having regard to location of the site entrance close to a bend in the road where there is a continuous white line, the location of such off a heavily trafficked regional route with high road speeds evident regardless of the existing 50kph limit, sightlines to the existing entrance are restricted to the north with the applicant having insufficient legal interest in lands required to provided increase sightlines and to the south due to obstruction caused by the existing speed limit signage. The proposed development if permitted would endanger public safety by reason of traffic hazard and would, therefore, be contrary to the proper planning and sustainable development of the area.

I confirm that the report represents my profession planning assessment, judgment and opinion on the matter assigned to me and that no person has influenced or tried to influence, directly or indirectly, the exercise of my professional judgment in an improper or inappropriate way.

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Colin McBride  
Senior Planning Inspector

17<sup>th</sup> July 2023