



An  
Bord  
Pleanála

## Inspector's Report ABP 316224-23

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<b>Development</b>	Dwelling house with wastewater treatment system and domestic garage
<b>Location</b>	Marblehill, Dunfanaghy, Co. Donegal
<b>Planning Authority</b>	Donegal County Council
<b>Planning Authority Reg. Ref.</b>	2251586
<b>Applicant(s)</b>	Hugh Harkin
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	1. Ann Breen 2. Lua Breen 3. James and Marie Hendron
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	14th August 2023
<b>Inspector</b>	Rosemarie McLaughlin

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## 1.0 Site Location and Description

- 1.1. The appeal site is located c 125 metres southwest of Marblehill blue flag beach which is on the southwestern shores of Sheephaven Bay, in north County Donegal. c 3 km east of Dunfanaghy village. The wider general area is characterised by mobile homes and one off houses. The site is located on the western side of a local road L1712, which connects the N56 to Marblehill beach over a distance of c 1.5km. The local road continues beyond Marblehill beach around the headland connecting back onto the N56 closer to Portnabla beach and Dunfanaghy. The subject site is located on land outlined in blue in the site location map associated with Ochiltree House, a period 1930s large house located within a woodland setting accessed c 120m south of the appeal site.
- 1.2. The subject site is relatively flat and is located in a section of the townland characterised with a sylvan character for an extensive length of the west side of the local road, free from one-off housing that is evident in the wider area. The south and west of the appeal site is wooded. The site, 0.26 ha is rectangular in shape and consists predominantly of trees and brambles, with a central more open area where the proposed house is located.
- 1.3. Opposite the appeal site on the eastern side of the local road is a public toilet block and large layby area. To the west of the toilet block is a large mobile home park. Along the northern boundary of the appeal site is an east-west access road to three large, detached houses, set back from the public road in a row. Northwards from this adjacent access road, towards the beach are double yellow lines interspersed with a series of parking bays.
- 1.4. The appeal site fronts a slight bend in the road and a number of bends occur closer to the beach. There are no footpaths on either side of the road.
- 1.5. A drain runs along the road side of the appeal site on the east and along the northern boundary with the lane to the north. A further drain is located outside of the red line of the application site to the west and within the blue line of the overall lands. A drain/sheugh also is located centrally within the site, running north-south across the site and is illustrated in Appendix 2a of the Habitat map of the Ecological Report (and is not shown on any other submitted drawings/reports).

1.6. The townland of Marblehill borders the townlands of Clonmass to the south, Dundrudian to the north, Faugher to the west and Parkmore to the north.

## 2.0 Proposed Development

2.1. The proposed development is for the erection of a broadly L shaped 1.5 storey and single storey detached dwelling house with a floor area of 202 sqm, a finished floor level of 3.6 m, a ridge height of 6.685 m and set back from the public road c.33 m. Two pitched roof sections are connected by a flat single story glazed connection. The front elevation facing east to the public road is extensively glazed at ground floor in the submitted application and was revised by way of further information (FI) dated 27<sup>th</sup> February 2023 where sections of ground floor cladding were added, and the glazing reduced. The side elevation which is two storeys facing the access road to the north is set back from the boundary 7.1m. The proposed layout illustrates retention of the existing native planting on the site particularly to the southeast and west. A domestic garage 64.5 sqm is proposed.

2.2. A wastewater treatment system, with mechanical aeration and a soil polishing filter is proposed. A new drain is proposed on the eastern side (along the local road) and surface water is proposed to be discharged to a drain to the west of the appeal site which flows south and connects in a series of bends to a watercourse (ROCKHILL 38 EPA\_Code 38R05) that discharges into sea. A new section of drain is proposed along part of the northern boundary and at the roadside.

2.3. FI was submitted in relation to the following:

- housing need
- additional natural material and reduction in extent of glazing on the front elevation
- wastewater treatment
- appropriate assessment and ecology

## **3.0 Planning Authority Decision**

### **3.1. Decision**

Permission was recommended to be granted subject to 17 conditions. The relevant conditions may be summarised as follows and the remaining are considered standard conditions applicable to a one off rural dwelling.

1. The application to be carried out in accordance with details submitted as part of further information, and ecological report.
2. Invasive management Plan.
- 3 Section 47 restrictive condition to the use/ occupation.
4. Visibility splays of 70 metres to be provided in each direction.
16. Retention of planting.
17. Contribution required for dwelling house over 200 square metres.

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

#### **3.2.1. Planning Report 8/11/2022**

The first planning report refers to the 8 No. third party submissions and responds to same. In summary the objections related to the following:

- Traffic Safety/access and inadequate survey
- visual impact
- housing need
- removal of trees
- natural habitats
- public health/site assessment
- drainage/flooding of site
- intended use of garage

- 3.2.2. In relation to rural housing need, it was considered that local links have been demonstrated via the applicant's parents however the applicant was requested to identify the location of original home via a map as FI.
- 3.2.3. The previous application which was refused by the council considered the removal of trees would materially alter the local character and distinctiveness of this area which is characterised by a band of mature trees. The current application is supported by a tree survey which confirms that the site was predominantly in agricultural use prior to 2009. It was acknowledged the area is relatively unspoiled with no other buildings along this stretch of road, but the significant backdrop may allow the dwelling to assimilate into the site, if trees along the northern boundary are retained. In response to the previous refusal the proposed development is part single story and part story and 1.5 and it was considered a reduction in the extent of glazing would aid the development blend into this wooded site, so FI was required.
- 3.2.4. The planning report states the subject site falls within an area of moderate scenic community and quotes policy NH-P-7.
- 3.2.5. A letter of consent in maintaining the proposed vision lines has been provided and the access is considered acceptable.
- 3.2.6. FI was required in relation to the EPA Code of Practice for Domestic Wastewater Treatment Systems 2021. Flooding was considered to be dealt with by condition.
- 3.2.7. FI was required seeking an AA screening and ecological assessment.

### 3.3. **Other Technical Reports**

- 3.3.1. Area road engineer report
- 3.3.2. No objection subject to conditions
- 3.4. Environmental Health
  - 3.4.1. A letter dated 1st of March 2023 states environmental health cannot assess planning application due to lack of resources.
  - 3.4.2. **Second Planning Report 13/3/2023**
  - 3.4.3. Further information received was considered acceptable. Permission was recommended to be granted subject to conditions.

## 4.0 Planning History

4.1.1. Planning reference 2250923.

4.1.2. Permission was refused for the following summarised 6 reasons:

1. Rural housing need not established in accordance with Policy RH-P-3.
2. Excessive removal of mature trees, would set a precedent for further development and in turn the subsequent removal of further trees and hedgerows, which together would erode this existing natural feature, which defines the character and distinctiveness of this local rural landscape and cause a detrimental change to and further erode the rural character and visual amenities of this rural area
3. Two-storey suburban scale of the proposed dwelling, the inconsistent and inappropriate fenestration pattern on the front and side elevations which are not reflective of the rural vernacular, would fail to achieve a high standard of architectural design.
4. PA not satisfied on the basis of the information submitted that safe visibility splays can be provided in each direction to the required.
5. Appropriate Assessment Screening has determined that the likelihood of a significant impact on SAC from the proposed development cannot be excluded.
6. Failure of the subject application to demonstrate that storm / surface waters can be appropriately collected, managed and disposed.

## 5.0 Policy and Context

### 5.1. Development Plan

5.1.1. The County Donegal Development Plan 2018-2024 applies. On Map 7.1.1 Scenic Amenity Designations, the site is within designation High Scenic Amenity (HSA).

5.1.2. Areas of High Scenic Amenity (HSA) are defined "*landscapes of significant aesthetic, cultural, heritage and environmental quality that are unique to their locality and are a fundamental element of the landscape and identity of County Donegal. These areas*

*have the capacity to absorb sensitively located development of scale, design and use that will enable assimilation into the receiving landscape and which does not detract from the quality of the landscape, subject to compliance with all other objectives and policies of the plan.”*

- 5.1.3. On Map 6.2.1, the appeal site is located in an area defined as Stronger Rural Area. Within such areas, the Plan states that one-off rural-generated housing will be facilitated subject to compliance with all relevant policies and provisions of the Plan.
- 5.1.4. The following summarised policies are main applicable policies
- 5.1.5. Policy RH-P-3 of the Plan specifically outlines that applications for rural housing in stronger rural areas need to comply with Policies RH-P-1 and RH-P-2 of the Plan and that the applicant must demonstrate that they fit into at least one of three specified categories.
- 5.1.6. RH-O-2: To support a balanced approach to rural areas to retain vibrancy and ensure the sustainability of established rural communities while having proper regard to environmental considerations.
- 5.1.7. RH-O-3: To ensure that new residential development in rural areas provides for genuine rural need.
- 5.1.8. RH-O-4: To protect rural areas immediately outside towns from intensive levels of residential development.
- 5.1.9. RH-O-5: To promote rural housing that is located, designed and constructed in a manner that is sustainable and does not detract from the character or quality of the receiving landscape.
- 5.1.10. NH-P-7: Within areas of 'High Scenic Amenity' (HSC) and 'Moderate Scenic Amenity' (MSC) and subject to the other objectives and policies it is the policy 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.
- 5.1.11. NH-P-17: 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 shall be considered on the basis of the several criteria.
- 5.1.12. RH-P-1: It is a policy of the Council that requirements apply to all proposals for rural housing including:



- 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.
- 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
- 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.
- 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.
- 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-P-15.
- provide for the safe and efficient disposal of effluent and surface waters in a manner that does not pose a risk to public health
- individual dwellings shall be subject to the flood risk management policies of this Plan.
- In the event of a grant Council will attach an Occupancy condition which may require the completion of a legal agreement.

5.1.13. RH-P-2: 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 summarised considerations:-

- avoid the creation or expansion of a suburban pattern of development in the rural area;
- not create or add to ribbon development (see definitions);

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

5.1.14. NH-O-9: To promote and implement sustainable forest management principles and to ensure that the establishment of new woodlands and forests.

5.1.15. Ribbon Development: “In general 5 houses on any one side of 250 metres road frontage”.

## 5.2. **National Policy**

### 5.3. National Planning Framework

5.3.1. NPO 15 – encourage growth and arrest decline in areas that have experienced low population growth or decline in by managing the growth of areas that are under strong urban influence to avoid overdevelopment, while sustaining vibrant rural communities.

5.3.2. NPO 19 - ensure, in rural housing, that a distinction is made between areas under urban influence.

### 5.4. Sustainable Rural Housing, Guidelines for Planning Authorities (2005)

5.4.1. The Guidelines confirm development plans should identify the location and extent of rural area types as identified in the NSS (now superseded by the NPF).

### 5.5. EPA Code of Practice Domestic Waste Water Treatment Systems (Population Equivalent $\leq$ 10) 2021.

5.5.1. Site suitability assessments should include the location of any archaeological or natural heritage sites [special areas of conservation (SACs), special protection areas (SPAs), etc.] within 1 km of the proposed site should be identified.

## 5.6. Natural Heritage Designations

5.6.1. The appeal site is not located in a designated site. Two sites are within 1000m of the subject site Sheephaven SAC Site Code 001190 and Horn Head to Fanad Head SPA Site Code 004194.

5.6.2. Sheephaven SAC c 135 m from subject site. The Qualifying Interests are as follows:

- Mudflats and sandflats not covered by seawater at low tide [1140]
- Annual vegetation of drift lines [1210]
- Vegetated sea cliffs of the Atlantic and Baltic coasts [1230]
- Salicornia and other annuals colonising mud and sand [1310]
- Atlantic salt meadows (*Glauco-Puccinellietalia maritima*) [1330]
- Mediterranean salt meadows (*Juncetalia maritimi*) [1410]
- Embryonic shifting dunes [2110]
- Shifting dunes along the shoreline with *Ammophila arenaria* (white dunes) [2120]
- Fixed coastal dunes with herbaceous vegetation (grey dunes) [2130]
- Humid dune slacks [2190]
- Machairs (\* in Ireland) [21A0]
- Old sessile oak woods with *Ilex* and *Blechnum* in the British Isles [91A0]
- *Euphydryas aurinia* (Marsh Fritillary) [1065]
- *Petalophyllum ralfsii* (Petalwort) [1395]

5.6.3. Horn Head to Fanad Head SPA Site Code 004194 c 1 km from subject site. The Qualifying interests are:

- Fulmar (*Fulmarus glacialis*) [A009]
- Cormorant (*Phalacrocorax carbo*) [A017]
- Shag (*Phalacrocorax aristotelis*) [A018]
- Barnacle Goose (*Branta leucopsis*) [A045]
- Peregrine (*Falco peregrinus*) [A103]
- Kittiwake (*Rissa tridactyla*) [A188]
- Guillemot (*Uria aalge*) [A199]
- Razorbill (*Alca torda*) [A200]
- Chough (*Pyrrhocorax pyrrhocorax*) [A346]
- Greenland White-fronted Goose (*Anser albifrons flavirostris*) [A395]

5.6.4. The following sites are in the wider area:

- Sessiagh Lough SAC Site Code 00185 c 1 km
- Muckish Mountain SAC Site Code 001179 c 5.4 km
- Mulroy Bay SAC Site Code 0021596.2 c 6 km
- Mulroy Bay SAC SiteCode 002159 c14 km
- Horn Head and Rinclevan SAC Site Code 000147 c2.6 km
- Cloghernagore Bog and Glenveagh National Park SAC Site Code 002047 c 6 km
- Tranarossan and Melmore Lough SAC Site Code 000194 c 4 km
- Derryveagh And Glendowan Mountains SPA Site Code 04039 c 7.8 km

## 5.7. EIA Screening

5.7.1. The proposed development is not one to which Schedule 5 of the Planning and Development Regulations, 2001, as amended, applies and therefore, the requirement for submission of an EIAR and carrying out of an EIA may be set aside at a preliminary stage

## 6.0 The Appeal

### 6.1. Grounds of Appeal

Three appeals have been submitted and the grounds which are summarised below:

- Permission was strenuously rejected on several reasons by the Council recently, yet a similar application has been granted where there is no discernible difference.
- The exit from the proposed site emerges onto a country road 5 m wide opposite a public toilet which is in much use and where cars/SUVs park on both sides of the road, obstructing emergency vehicles, and causing difficulty to farm traffic.
- The traffic survey is considered insufficient at 2.5 hours in late summer and does not reflect an accurate picture of traffic volumes. One appellant who is a resident on the road attests that during periods of the summer, there are very heavy traffic volumes and times when the road is blocked due to traffic volume and poor parking practice.
- Marblehill is a small townland which encircles the beautiful U shape beach renowned throughout the country and beyond. The adjoining lands form an area of outstanding natural beauty. The entire area has been the subject of wildlife protection. The trees and woodlands heighten the material beauty an amenity and are home to a range of birds and wildlife.
- The existing drains which flow along the front and rear of the application site connect to a variety of field drains in the area. The application site is low lying and subject to flooding. Removal of trees from the site would increase the waterlogged nature of the site greatly.
- The permission would lead to a precedent for further development.
- Observations to the planning authority are appended to the appeals and are summarised in section 3 above.

## 6.2. Applicant Response

The responses to the three appeals may be summarised:

- The proposed development complies with objectives 15 and 19 of the NPF and the Rural Housing Guidelines. The local needs justification complies with the guidelines and CDP. The regional spatial economic strategy for the border region references meeting appropriate rural housing need.
- The design considerations are met. A photograph of an existing dwelling circa 500 metres to the south is provided (a large two storey house).
- All site drainage is to be accommodated on site via a silt trap and discharged via a land drain to the northwest of the site.
- The survey traffic speeds were noted as relatively slow averaging at less than 50 kilometres per hour and the relevant standard in the development plan of a 70 metre vision line is appropriate.
- The site falls within an area of moderate scenic amenity. It is the council policy to facilitate appropriate development in areas of high scenic amenity.
- It is policy of the council to retain and protect significant stands of trees, hedgerows and woodlands. This matter was addressed in the forestry report which accompanies the application which indicates some 21% of the site is open ground and along the northern boundary non-native trees were planted. Aerial photographs evidence that the site was an agricultural field until some stage before 2009, whereafter, young trees began to colonise the site. There is no evidence of an associated woodland flora. Under the forestry legislation, the owners of the land are within their rights to clear the site without permission. The design retains some measure of developing tree cover by avoiding development beyond the build footprint.
- No issues arise in relation to residential amenity.
- The proposed development is wholly different from the previous application.
- The area is not a flood risk and there are no recorded flood events in the area. The council are also satisfied the area is not a flood risk. The flood map

viewer database confirms this. Fluvial flooding typically occurs when extreme rainfall overwhelms drainage systems. Furthermore, the proposed finished floor level will be raised as part of site development works by c 700 millimetres. CFRAM programmes give confidence that they are correct for assessing climate change. The appeals are absent of material evidence in support of any points raised in relation to flooding.

- There's no previous dwelling on the site and the site is not waterlogged as demonstrated via the site characterisation report.
- The location is not an area of outstanding natural beauty and policy provides that within areas of high scenic amenity, development can be facilitated that integrates with the character and amenity designation.

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

None on file.

### **6.4. Observations**

None on file.

### **6.5. Further Responses**

None.

## **7.0 Assessment**

7.1. The issues arising in this assessment may be addressed under the following headings.

- Principle of development / Rural Housing Policy
- Design and impact of development within landscape setting
- Design and layout within landholding – New Issue
- Vehicular Access and traffic
- Wastewater Treatment

- Flooding
- Appropriate Assessment

7.2. Principle of development / Rural Housing Policy

7.3. The Guidance on the location of new developments in rural areas in the CDP provides that the Donegal countryside is a unique resource, a recreational resource and a considerable tourist asset. It contains landscapes of considerable quality and amenity, and it is vital new rural residential development, integrates successfully and does not result in detriment to the character of the rural area. I consider the subject site is in a landscape of considerable high scenic amenity and quality. The planning report points out this area is unspoiled and free from one off houses along the local road but considers contrary to their previous decision that the backdrop of trees, may allow assimilation into the site.

7.4. Policy RG-P-3 applies to criteria for proposals from prospective applicants in need of housing within an area defined as Stronger Rural Area. The only criteria applicable to this appeal is :

- *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);*

7.5. The applicants address is in Dalkey, Co. Dublin and he is a one third owner of that property, two thirds being owned by his daughter and a land registry folio with these details were provided. The applicant has access to a right to use of a house in the area in ownership of a relative during his lifetime. from time to time, along with others.

7.5.1. Consent to making the application on the subject site on has been provided by owner of Ochiltree House, the applicant's daughter who owns part of the Dalkey property, the current address of the applicant. The application documents submit that his daughter recently purchased Ochiltree house and surrounding lands and wish to provide the applicant a site on which to retire.



- 7.5.2. The documents submit that the applicant was born and reared in the townland of Derryart and he has extended family remaining in the area. I note that this townland is bordered by the townlands Ballymore Upper to the north Cashelmore and Clonmore to the east, and Derryharriff Glebe and Swillybrin to the west, not Marblehill. A letter from Councillor McClafferty states the applicant is known to him and he was born within 2km of the subject site. The FI submitted a map Drawing name "Bonna Fides", which indicates the location of the applicants birth home and the location of the appeal site which I have measured as c3.6 km southwest via the N56.
- 7.5.3. The Rural Housing Guidelines 2005 consider that in stronger rural areas, such as the subject site, population levels are generally stable within a well-developed town and village structure and in the wider rural areas around them. This stability is supported by a traditionally strong agricultural economic base and the level of individual housing development activity in these areas tends to be relatively low and confined to certain areas. Persons who are an intrinsic part of the rural community may be considered as *"Returning emigrants who lived for substantial parts of their lives in rural areas, then moved abroad and who now wish to return to reside near other family members, to work locally, to care for elderly family members, or to retire should be also be accommodated."* I would note the level of one off houses in this rural area as high.
- 7.5.4. The applicant has demonstrated that he is from the wider area of the appeal site and wishes to retire and build a house on lands associated with a house owned by his daughter who he owns his Dublin property with. While he is from a place c 3.6 km away originally, he appears to meet the criteria as *"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)"*. The question of whether his home place which a different part of the rural area to the appeal site is part of the community of the appeal site is relevant and not defined. On balance, in a rural area, I would consider that the distance between the properties as part of the one community.
- 7.5.5. Having regard to the above, I consider the applicant has established the right to make an application in this area subject to all other relevant and applicable policies.

7.5.6. It may also be noted that the proposed development site for which consent has been given by the applicants daughter, is part of a much larger lands outlined in blue in the application, where other locations may have been considered given the substantial overall landholding, the large existing house and outbuildings. In this regard, while the applicant, in my opinion, meets the CDP policies for a new house for his retirement on the subject site, by reason of being born in the townland c 3.6 km away, a grant of permission will result in the addition of a large one-off house in a stronger rural area where there is clearly a demand for homes close to the Marblehill beach and coast. Consideration if an additional dwelling could have been provided at a different location within the landholding is addressed below as a New issue.

**7.6. Design and impact of development within landscape setting**

7.7. For the purpose of clarification, the appeal site landscape characterisation is that of High Scenic Amenity and not Moderate as referred to in some of the PA and applicant documentation. Policy RH-P-2 seeks to ensure that new dwellings integrate successfully into the landscape and do not cause a detrimental change to or further erode the character of the area with several design criteria to be applied. NH-P-7 provides within areas of 'High Scenic Amenity' (and subject to the other objectives and policies, it is the policy 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.

7.8. There is evidence of erosion of the character of the highly scenic area by the location of several one off houses both in linear form and in clusters along the local road to which the appeal site fronts. The site and area to the south is unspoiled on the western side of the local road, and sylvan in character.

7.9. I accept the applicants point that the site was not always forested and has been the subject of natural regeneration from 2009. However, I do not consider that 2009 is recent. I also accept the mature woodland cover is close to, but outside the appeal site and the forestry report believes these woodlands were likely to planted to augment Ochiltree House. The report notes that while some of the species are not ideal, if left unchecked all woodland could develop into a habitat with rich ecological value. The forestry report states the applicants are entitled to clear the trees on site (Willow, Alder, Sycamore and Horse chestnut).

- 7.10. The proposed development will by the introduction of a new access road and construction of a large house with removal of trees/planting along the front boundary of the site significantly alter the landscape character of this western section of the local road close to Marblehill beach. While the trees on the site are young, they read as part of the overall woodland area. There are three large one off houses in the vicinity of the appeal site stepping up the hill, accessed from the local road and two additional large houses to the west of that row, oriented towards the coast.
- 7.11. Having regard to the policies of the CDP, I consider the test to be applied, is does the site have the capacity for the proposed scale, design and use that will enable assimilation into the receiving landscape and not detract from the quality of the significant aesthetic amenity? The previous application that was refused for 6 reasons by the PA, included a house of a different design which and a ridge line of 7.581m versus the proposed 6.685m over a FFL of 3.6m. While the proposed design is for a modern house, stepping down to one storey (as previously), I remain unconvinced that this particular section of landscape, on an important tourist scenic route and close to a destination beach should be altered so significantly by the construction of a one off house in an area undeveloped by this type of rural housing. I consider that the proposal will irrevocably alter and detract from the quality of the High Amenity landscape contrary to the policy RH-P-2. Accordingly, I consider that permission should be refused. I also consider that when read with the row of houses to the north west of the northern boundary that the additional house will present as a suburban pattern of development in the rural area, again contrary to policy RH-P-2.
- 7.12. I consider that even if the trees had been cleared from the site, that a house in this area against the backdrop of the established woodlands associated with Ochiltree House would introduce built form along this section of the road seriously detracting from the quality of the High Amenity landscape.
- 7.13. I also consider that the proposed development would establish a precedent for rural housing on this section of the road for those who meets the rural housing need criteria in the CDP which would have a significant adverse visual impact in the area.
- 7.14. **Design and layout within landholding- NEW ISSUE**
- 7.15. The details of the family landholding as outlined in blue, consent to make the application, and the parental relationship between the applicant and owner who

purchased the house/lands has been provided but the issue of an alternative location has not been raised specifically in the appeal.

7.16. I consider the proposal is not an optimum response in assimilating an additional house on family owned lands and does not respond positively to the receiving landscape in a high amenity area and as such should be refused.

#### 7.17. **Vehicular Access and traffic**

7.17.1. 70m visibility lines are proposed and the applicant has provided permission from his daughter to maintain same on lands outside of the appeal site. The subject site is adjacent to a curve on the road but benefits from the toilet block and layby opposite which widens the road at this location. The road condition is good.

7.17.2. The Roads engineer and planning section have not raised any issue about a second entrance onto the local road with c 25m distance between the centre point of the road to the north which serve three houses and the centre point of the proposed access or the new layby opposite to facilitate the toilet unit. The road was observed as being used by pedestrians walking to and from the beach along this section of the road on the carriageway as there are no footpaths. I consider that owing to the new public toilet facility and layby area that is unmarked but clearly capable of taking several vehicles, that this particular section of the road would potentially have a number of additional traffic turning movements particularly in the holiday periods. Vehicles travelling north may pause on the carriageway at the proposed entrance site and turn right into to the public facilities.

7.17.3. I note the traffic survey carried out on Wednesday 24<sup>th</sup> August 2022 over a 2.5 survey period, that indicates the road was not particularly heavily trafficked with traffic travelling in both directions as broadly even. I consider that a weekend survey would also be of assistance. Having regard to the traffic survey, the condition of the road, the benefit of the layby opposite, the proposed limited traffic as reported in the survey, and the consent of the overall landowner to maintain the visibility lines proposed, I consider on balance, despite the issues regarding lack of footpaths and turning movements, that the proposed traffic arrangement is satisfactory.

#### 7.18. **Wastewater Treatment surface water disposal**

7.18.1. A revised site characterisation report was provided further to a FI request to specifically address the 2021 EPA Code of Practice. A report was submitted where

surface percolation test values by the standard method were carried out indicating 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. No environmental health report was carried out owing to the workload in that section. The grounds of appeal include that the site floods, but no evidence is provided. The applicant disputes this and states the CFRAM flood assessments do not bear the objections out. The Council do not consider flooding an issue and same can be dealt with by condition.

- 7.18.2. There is no reference in the site characterisation report visual assessment to the open shallow drain which is detailed in the ecological assessment of the lands and Map 2a of that report and series of accompanying photographs which identify this relevant feature. There is no reference to the presence of wet grassland on c 20 % of the site and other vegetation associated with poor drainage. The report has not addressed the reeds located at the wetter part of the site around the ditch in the centre of the site which has stagnant water. The site characterisation report states that the ground conditions and vegetation present would suggest good percolation and also states the vegetation indicators as predominantly grasses with occasional rush and semi mature planting.
- 7.18.3. I consider that this is a considerable degree of contradiction between the ecological report and the site characteristic report. The site is designated as a poor aquifer and the groundwater vulnerability category is “high”. The site characterisation report does not supply a map with the location of each of the trial/percolation hole locations in accordance with the EPA guidance and I consider that all the relevant features on the site and in the vicinity above have not been included. While photographs have been submitted with the site characterisation report, there is no way of identifying what is where, in the absence of a map. The photographs do, however, illustrate the extent of the rushes in the areas provided. I believe these issues may have been identified by the PA if the Environmental Health section had reviewed same. Accordingly, on the basis of the information provided, I would not be satisfied that the applicant has demonstrated that the site can accommodate a sewage disposal system.
- 7.19. The site characterisation report in the response to surface features within a minimum of 250m “Houses” states “see site layout map”. I refer to the three existing houses to

the north of the appeal site, the two further houses to the west of them, the existing period house, the public toilets opposite and the very large caravan park (all within 250 metres) are not illustrated on the site layout map but are included in the drainage drawings. Marblehill beach is specified as 0.3km to the east and an open drain to the west and north of the site but the roadside drain to the east is not specified.

7.20. 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, 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 would not be satisfied, on the basis of the information on file and in particular the details in the ecological report, 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.

7.21. Flooding and other matters

I accept in the absence of evidence to the contrary, the appellants position as summarised in the response to the appeal that the site has not flooded.

In relation to the potential use of the garage, I consider that it is a large, high structure with a WC but the use of the garage for any other purpose beyond ancillary would require planning permission.

7.22. Appropriate Assessment Screening

7.23. The site is not located adjoining or within a Natura 2000 site. The application illustrates surface water is to be piped west across the site to an open ditch, which then flows in several directions into a watercourse that discharges into Sheephaven Bay SAC and accordingly it is considered that the Sheephaven Bay SAC is within the zone of influence of the site. Horn Head to Fanad Head SPA is c 1 km from the appeal site and also may be considered as within the zone of influence.

7.24. Given the distance from the other European sites identified in section 5.4 , it is possible to screen out the requirement for the submission of an NIS and carrying out of an EIA at an initial stage in relation to those sites.

**7.25. Stage 1 Screening**

7.26. The Board as the competent authority will undertake a screening exercise pursuant to Part XAB of the Planning and Development Act 2000 as amended to assess, in view of best scientific knowledge, if a proposed development, individually or in combination with another plan or project is likely to have a significant effect on the European site.

**7.27. Proposed development and receiving environment**

7.28. The proposed development is described in section 1 and the receiving environment in section 2 and in section 7.8 above.

**7.29. Description of European Sites**

7.30. The list of sites within a c15 km radius is provided in section 5.4.

**7.31. Is the Project necessary to the Management of European sites?**

The project is not necessary to the management of a European site.

**7.32. Direct, Indirect or Secondary Impacts**

7.33. The potential direct, indirect and secondary impacts that could arise as a result of the proposed works, which could have a negative effect on the qualifying interests of European sites, include impacts on water quality during the construction phase, e.g. via release of suspended solids and impacts on water quality during the operation phase, e.g. via release of pollutants from wastewaters arising.

7.34. Using the source-pathway-receptor model, there is potential direct connectivity as the proposed drainage on site is to connect west across the site to an open ditch, which then flows in a number of directions into a watercourse, known as Rockhill river EPA Code 38R05 that subsequently discharges into Sheephaven Bay SAC over a drainage distance of c 1.3m.

7.35. The qualifying interests of the Sheephaven SAC Site Code 001190 and Horn Head to Fanad Head SPA Horn Head to Fanad Head SPA Site Code 004194 are set out in section 5.4.

7.36. Conservation Objectives for Sheephaven SAC are as follows:

- 1410 Mediterranean salt meadows
- 2120 Shifting dunes along the shoreline with *Ammophila arenaria* (white dunes)
- 2130 Fixed coastal dunes with herbaceous vegetation (grey dunes)
- 21A0 Machairs
- 91A0 Old sessile oak woods with *Ilex* and *Blechnum* in the British Isles
- 1395 Petalwort *Petalophyllum ralfsi*

7.37. The site synopsis of Sheephaven SAC (abbreviated) states the site is of particular conservation significance for the presence of good examples of several habitats listed on Annex I of the E.U. Habitats Directive and for the important bird populations it supports. The synopsis includes that there are extensive areas of intertidal sands and muds. Large areas of sand dune occur at Rosapenna and at Marble Hill. Annual vegetation of drift lines and embryonic shifting dunes are recorded at these sites, as well as at Ards and Glenree. A small slack occurs at Marble Hill in the fixed dunes that slope down to the back strand at Clonmass. The slack area contains standing water and a drain from the surrounding land empties into it. The slack is dominated by the typical species Common Sedge (*Carex nigra*), Horsetail spp. (*Equisetum* spp.), Marsh Pennywort (*Hydrocotyle vulgaris*), Water Mint (*Mentha aquatic*), Silverweed (*Potentilla anserina*) and the moss *Calliergonella cuspidate*. The intertidal mud and sandflats support moderate numbers of waterfowl in autumn and winter.

7.38. The Conservation Objectives for Horn Head to Fanad Head SPA are as follows: To maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA (as listed in section 5.4). The site synopsis (abbreviated) includes that the Horn Head to Fanad Head SPA is of high importance for Chough and Peregrine, both species that are listed on Annex I of the E.U. Birds Directive. It also supports an internationally important assemblage of breeding seabirds, that includes nationally important populations of six species, i.e. Fulmar, Cormorant, Shag, Kittiwake, Guillemot and Razorbill. The Greenland White-fronted Goose and Barnacle Goose populations are also of national importance. Both of these species, as well as Whooper Swan, are listed on Annex I of the E.U.



Birds Directive. A good diversity of other wildfowl species occurs. Part of the Horn Head to Fanad Head SPA is a Wildfowl Sanctuary.

7.39. The closest qualifying habitats are located at the sand dunes in Marble Hill beach and no direct damage is foreseen. Potential damage to coastal habits from a deterioration of water quality from potential pollutants from the proposed drainage on the site that eventually discharges into Sheephaven Bay SAC occurs over a distance of c 1.3m of what are described as slow flowing drains.

7.40. As stated above, I consider there are inconsistencies in the submitted site characterisation report and the AA screening report which highlights the fauna and stagnant water on the site which generally indicates that a site is unsuitable to accommodate a well-functioning proprietary wastewater treatment system. I do consider that owing to the distance of the drainage route to the SAC that dilution will reduce the risk considerably but having regard to the concerns raised before, I consider that proposed development poses a potential risk to water pollution and as such has the potential to impact on Natura 2000 sites by way of hydrological connections which exist between the subject site and the Sheephaven SAC and it is my considered opinion that the subject site could potentially give rise to pollution.

7.41. If the Board agree with the general conclusion that effluent from the development cannot be satisfactorily treated and disposed of off site, in my view, it follows that the proposed development potentially poses a threat to the nearby Sheephaven SAC. Based on this reasoning the Board in my view cannot be satisfied that the proposed development, individually or in combination with other plans or projects would not adversely affect the integrity of the Sheephaven SAC and cannot be screened out.

7.42. In relation to the Horn Head to Fanad head SPA, given the nature of the proposed development, the location c 1km away, it is considered that the proposed development would not impact on the qualifying interests and can be screened out.

#### 7.43. **In-Combination Effects**

7.44. I do not consider that there are any specific in-combination effects that arise from the development when taken in conjunction with other plans. I note there are other wastewater treatment systems in the vicinity of the appeal site.

#### 7.45. **Appropriate Assessment Screening Conclusion**

7.46. On the basis of the information provided with the application and appeal, and in the absence of a Natura Impact Statement, the Board cannot be satisfied that the proposed development individually, or in combination with other plans or projects would not be likely to have a significant effect on the Sheephaven SAC Site Code 001190 , in view of the sites' conservation objectives. In such circumstances, the Board is precluded from granting permission.

## 8.0 Recommendation

8.1. I recommend that permission be refused. In relation to the potential new issue I have raised, the Board may consider that it could be added as a note having regard to the substantive reasons below.

## 9.0 Reasons and Considerations

1. It is considered that the proposed development would introduce a building and associated site works into a highly scenic area, designated as an area of High Scenic Amenity, that contributes significantly to the quality of the character of the landscape that has remained free from one-off houses and it is considered the proposal would fail to assimilate into the receiving landscape. It is also considered that to permit development in the proposed location would set an undesirable precedent for further one off housing to the south of the subject site with individual accesses onto the local road. It is considered that the proposed development would interfere negatively with the character and high quality of the landscape which is designated as an area of High Scenic Amenity and would cause a detrimental change to and further erode the rural character of the area, contrary to policies RH-P-1, RH-P-2 and NH-P-7 in the County Donegal Development Plan 2018-2024.
2. Having regard to the features and fauna on the subject site identified in the Ecological Report for Screening for Appropriate Assessment received by the Planning Authority on the 27th of February 2023, it is considered that the Site

Characterisation Report received by the Planning Authority on the 27th of February 2023 does not reflect fully the identified features and fauna on the site and does not provide sufficient detail in accordance with the Environmental Protection Agency Code of Practice for Domestic Waste Water Treatment Systems (Population Equivalent  $\leq 10$ ), 2021. Accordingly, the Board is not satisfied, on the basis of the submissions made in connection with the planning application and appeal, that effluent from the development can be satisfactorily treated and disposed of on site, notwithstanding the proposed use of a proprietary wastewater treatment system and the incorporation of site drainage improvement works. The proposed development would, therefore, be considered prejudicial to public health and would be contrary to the proper planning and sustainable development of the area.

3. On the basis of the information provided with the application and in response to the appeal, and in the absence of a Natura Impact Statement, the Board cannot be satisfied that the proposed development individually, or in combination with other plans or projects would not be likely to have a significant effect on the Sheephaven SAC Site Code 001190 in view of the sites' conservation objectives. In such circumstances, the Board is precluded from granting permission.

**Note:** Having regard to the size of the landholding outlined in blue in the planning application documentation, and that there is an existing access and house on that landholding, it is considered that the proposed new housing site specifically fronting and accessed from the local road, is not an optimum design response in assimilating an additional house on family lands in a designated High Scenic Amenity receiving landscape. It is considered that the proposed development would interfere negatively with the character and high quality of the landscape which is designated as an area of High Scenic Amenity and would cause a detrimental change to and further erode the rural character of the area, contrary to

policies RH-P-1, RH-P-2 and NH-P-7 in the County Donegal Development Plan 2018-2024.

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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Rosemarie McLaughlin  
Planning Inspector

5th September 2023