



An
Bord
Pleanála

Inspector's Report

ABP-317530-23

Development	Erection of a dwelling house with detached domestic garage/private studio with septic tank and all associated site development works.
Location	Meenderrygamp, Gweedore, Co. Donegal
Planning Authority	Donegal County Council
Planning Authority Reg. Ref.	23/50078
Applicant(s)	Cathal Gillespie & Roisin McFadden
Type of Application	Permission
Planning Authority Decision	Grant, subject to 17 conditions
Type of Appeal	Third Party -v- Decision
Appellant(s)	John & Eoin Gallagher
Observer(s)	None
Date of Site Inspection	19 th October 2023
Inspector	Hugh D. Morrison

Contents

1.0 Site Location and Description	3
2.0 Proposed Development	3
3.0 Planning Authority Decision	4
3.1. Decision	4
3.2. Planning Authority Reports	4
3.3. Prescribed Bodies	5
3.4. Third Party Observations	5
4.0 Planning History.....	5
5.0 Policy Context.....	5
5.1. Development Plan.....	5
5.2. Natural Heritage Designations	8
5.3. EIA Screening	8
6.0 The Appeal	8
6.1. Grounds of Appeal	8
6.2. Applicant Response	8
6.3. Planning Authority Response.....	9
6.4. Observations.....	9
6.5. Further Responses	10
7.0 Assessment.....	10
8.0 Recommendation.....	21
9.0 Reasons and Considerations.....	21

Appendix 1 – Form 1: EIA Pre-Screening

1.0 Site Location and Description

- 1.1. The site is located 0.4km to the north-east of the junction between the N56 and the R258 in Gweedore. It lies on moderately steep slopes that rise to the north-east of the village. This site is situated within a fork formed by the junction between a local road, the L-5253-1, and a private road to the Cronalaght Wind Farm further to the north.
- 1.2. The site itself is of rectangular form and it extends over an area of 0.61 hectares. This site is subject to gentle gradients, which rise in a north-easterly direction. Its south-eastern and south-western boundaries are open to the above cited local and private roads. Its remaining boundaries are unacknowledged "on the ground". The southern tip of the site has been laid out as a hardstanding finished in gravel. The remainder of the site is undeveloped. Several drainage channels cross the site, and a further drainage channel runs along the nearside of the two roads.

2.0 Proposed Development

- 2.1. The proposal would entail the construction of a two-storey four-bed/eight-person dwelling house with, as originally proposed, a floorspace of 192 sqm. This dwelling house would be sited centrally within the site and its front and rear elevations would face south-west and north-east, respectively. The dwelling house would be accompanied to the rear by a freestanding garage and private studio with a floorspace of 34 sqm. It would be served by a driveway, which, as originally proposed, would be accessed off the private road. It would also be served by a wastewater treatment system, which would be sited in front of the dwelling house.
- 2.2. Under further information, the size and design of the dwelling house were changed. Consequently, as revised, the floorspace would be 245.24 sqm, and the design would be more reflective of the vernacular. The alignment of the driveway was also changed, and so it would be accessed from the centre of the above cited fork.

3.0 Planning Authority Decision

3.1. Decision

Following receipt of further information, permission was granted, subject to 17 conditions. Condition No. 2 requires the following:

- The site is to be directly accessed off the L-5253-1, and so the access point is to be relocated to the south-western/western corner of the site.
- Driveway and WWTS to be reconfigured to tie in with the relocated access point.
- The access point to be served by sightlines 2.4m x 90m.

The reason for Condition No. 2 is to avoid the need to use the access road to the wind farm further to the north.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The following further information was requested:

- A supporting statement of housing need in compliance with Policy RH-P-4.
- The proposed dwelling house to be redesigned.
- The proposed dwelling house, site access, and WWTS to be re-sited.
- Sightlines of 2.4m x 90m to be provided.
- Natura Impact Statement to be submitted.

The requested information was submitted and, except for the items specified under the third and fourth bullet points, it was accepted. The outstanding points were made the subject of Condition No. 2, which was attached to the PA's permission.

3.2.2. Other Technical Reports

Case planner's original report advised that the Area Engineer has no objection, subject to standard drainage and roadside conditions.

3.3. Prescribed Bodies

Department of Housing, Local Government and Heritage: Advises that the application needs to be the subject of screening for appropriate assessment.

3.4. Third Party Observations

See grounds of appeal.

4.0 Planning History

The site

- 22/51803: Similar proposal to the current one with proposed dwelling house and garage/studio sited further to the north-east: Withdrawn.

To the north of the site – Cronalaght Wind Farm

- 95/272: 3 no. wind turbines: Permitted.
- 09/30104: 5 no. wind turbines (maximum height 125m): Permitted.
- 22/50813: Replace existing 8 no. wind turbines with 3 no. 4.5 mW wind turbines (maximum height 150m): Permitted.

5.0 Policy Context

5.1. Development Plan

Under the Donegal County Development Plan 2018 – 2024 (CDP), the site lies within a structurally weak rural area. Rural Housing Policy (RH-P-4) is of relevance:

It is a policy of the Council to consider proposals for new one-off housing within structurally weak rural areas from any prospective applicants with a need for a dwelling house (urban or rural generated need), provided they demonstrate that they can comply with all 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.

RH-P-1

It is a policy of the Council that the following requirements apply to all proposals for rural housing:

- 1. 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. 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. 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-P-15;*
- 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 (as elaborated below).*

Under Map 7.1.1 of the CDP, the site lies in a rural area, which is of high scenic amenity. Natural Heritage Policy (NH-P-7) is of relevance:

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.

Under Appendix 4 of the CDP, a location siting and design guide is set out on building a house in rural Donegal. This guide advises on locations within mountain landscape as follows:

The very nature of the mountainous landscape, the exposed terrain of the mountain range and frequent lack of vegetation, provides for a high level of visibility and consequently presents difficulties for the introduction of a new building in the landscape with limited opportunity for integration.

The success of any proposal will depend on a thorough understanding of the site, providing for a sensitive integration of a new building within the landscape. Building on the

crest or shoulder of a slope is to be avoided. Alternatively, naturally occurring tucks and hollows should be considered to provide shelter and privacy and assist in setting a building satisfactorily into the landscape. Significant excavation to create a level platform is not acceptable in this landscape.

5.2. **Natural Heritage Designations**

Fawnboy Bog/Lough Nacung SAC (000140)

5.3. **EIA Screening**

See Appendices 1 and 2 attached to this report.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

- Attention is drawn to Land Registry folio DL82901F, which states that the applicant, Cathal Gillespie, is the registered owner of the subject land. This folio also states that the registered owners of folios DL28367 and DL30211F have grazing and turbary rights over this land, and these owners are the appellants.
- The appellants object to the proposal as it would affect the grazing of their cattle and sheep on the subject land and impact thereby upon their livelihood and income. A copy of correspondence from the Department for Agriculture, Food and the Marine is attached, which refers to grant payments for grazing.
- The view is expressed that the proposal would affect the appellants' legal rights as cited above, rights which need to be upheld.

6.2. **Applicant Response**

- The applicants have submitted a letter from their solicitor, which expresses the view that, as the grazing rights in question extend over a vast area, the proposed development of the application site would not lead to any significant loss of these rights.

- The applicants have also submitted a letter from their solicitor, which advises that by means of a deed of transfer the ownership of the application site is being transferred from Cathal Gillespie (snr.) to Cathal Gillespie (jnr.).
- The applicants have themselves responded to the appeal as follows:
 - They comply with the CDP's policies insofar as they are from the local Gaeltacht, they have a housing need, as testified to by their public representative, and the proposal would be sited on family-owned land.
 - The folio cited by the appellants relates to an area of 3.13 hectares of which 0.32 hectares would be developed under the proposal.
 - Any dispute between the parties is a civil matter and so beyond the remit of the planning system.
 - The wider Gillespie family owns in excess of 250 hectares and the appellants have grazing and turbary rights over all of these lands.
 - The application site is not suitable for grazing, i.e., it is without grass, and it is not suitable for cutting turf, i.e., any peat is very shallow.
 - The applicants allege that the appeal is vexatious.
 - The proposal was thoroughly assessed by the PA and permission granted. The applicants undertake to comply with the conditions attached to the same.

6.3. Planning Authority Response

The PA relies upon the case planner's reports. It adds that the development of the application site as proposed would not restrict access to the remainder of the lands under folio DL82901F, as the site is small relative to these lands, and they are open in nature.

6.4. Observations

None

6.5. Further Responses

None

7.0 Assessment

7.1. I have reviewed the proposal in the light of the National Planning Framework (NPF), the Sustainable Rural Housing (SRH) Guidelines, the Donegal County Development Plan 2018 – 2024 (CDP), relevant planning history, the submissions of the parties, and my own site visit. Accordingly, I consider that this application/appeal should be assessed under the following headings:

- (i) Legalities,
- (ii) Rural housing policy,
- (iii) Landscape and visual impacts,
- (iv) Access,
- (v) Water, and
- (vi) Appropriate Assessment.

(i) Legalities

7.2. The appellants drawn attention to the site's location within lands over which they enjoy legally recognised grazing and turbary rights. They object to the proposed development of this site, on the grounds that it would affect the area available to them for the grazing of cattle and sheep. Their rights in this respect would be infringed.

7.3. The applicants have responded by stating that the rights in question extend over a vast area, i.e., in excess of 250 hectares, and so their proposed development would lead to a negligible infringement, which, in practice, would be notional as the site has no grass and any peat is too shallow for turf cutting. They concur with the PA's view, expressed in the case planner's report, that the conflict identified is a civil matter. That being so, they consider that the appeal is vexatious, and so request the Board to dismiss the appeal.

- 7.4. I, too, consider the identified conflict to be a civil matter. In this respect, Section 34(13) of the Planning and Development Act, 2000 – 2023, expressly recognises that there are matters beyond the remit of the planning system, which landowners may need to satisfy before development can proceed.
- 7.5. I note that at the application stage, the PA discussed the issue in question and concluded that it was a civil matter. I can, therefore, understand the applicants' contention that the appeal is vexatious. However, in appealing, the appellants *prima facie* want the Board to consider this matter afresh, and so I am unable to confidently conclude that the appeal is vexatious.
- 7.6. I conclude that there are no legal impediments to the Board assessing/determining the application/appeal in the normal manner.

(ii) Rural housing policy

- 7.7. National Planning Objective 19 of the NPF makes a distinction between rural areas which are and which are not under urban influence. Within the latter rural areas, the provision of single housing in the countryside is to be facilitated based on siting and design criteria in CDPs and having regard to the viability of smaller towns and rural settlements.
- 7.8. The site lies within a structurally weak rural area. Under RH-P-4 of the CDP, proposals for one-off dwelling houses can be considered from applicants who need a dwelling regardless of whether that need is an urban or rural generated one.
- 7.9. The applicants completed a supplementary rural housing application form in which they indicated that they have been resident at their current address for over 7 years, their proposed dwelling would be their primary principal and permanent residence, and they have not been granted planning permission previously for a dwelling on another site.
- 7.10. Under further information, the applicants submitted a letter from their TD in which he states that he is satisfied that they have a housing need under the CDP. He further states that the Gillespie family own the site and reside nearby and that the applicants grew up in the locality and are now seeking to return home.
- 7.11. The PA accepted the *bona-fides* of the above submissions, and it granted permission, subject to conditions, including Condition No. 3, which requires that the

dwelling house be used by the applicant as his principal place of residence and not as a holiday home.

7.12. I, therefore, consider that, in view of the site's location within a rural area which is not under urban influence and which is structurally weak, the proposal would come within the ambit of NPO 19 of the NPF and R-HP-4 of the CDP. Based on the submitted information from the applicants, I consider that they have a *prima facie* rural housing need, and so I conclude that their proposal would comply with the County's rural housing policy.

(iii) Landscape and visual impacts

7.13. Under the Donegal Landscape Character Assessment, the site lies within the Bloody Foreland Uplands, Coast & Gaeltacht (LCA 27), where it is shown as being part of the Atlantic Peatland Bog, which rises to 200m ASL, to the north of Gweedore. Under the CDP, this landscape is deemed to be of high scenic amenity, and so, under NH-P-7, "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."

7.14. The site lies at above 100m ASL on the lower slopes of Cronalaght, which is 406m ASL at its summit. These lower slopes rise at moderate gradients in a north-easterly direction. The site is situated within the fork formed between the L-5253-1 and a private road to the Cronalaght Wind Farm, which lies in the background to the site. The local road is of relatively straight alignment as it rises moderately and then steeply from its junction with the N56. On the approach to the fork, the site "reads" as a destination site. After the fork, it rises at gentle gradients to the north-west, where several bungalows are sited on either side of it.

7.15. Appendix 4 of the CDP recognises the challenges posed by mountains to the successful integration of development on sites within this landscape type. By definition, sites tend to be conspicuous and the opportunities for screening tend to be either limited or absent altogether. The subject site is an example of such a site. While the proposal for it would entail some tree planting in the northernmost corner, effectively the opportunity to provide extensive screening consistent with the character of the surrounding bogland does not exist.

- 7.16. During my site visit, I observed that cul-de-sacs off the south-western side of the top stretch of the L-5253-1 have been developed to afford access to sites at lower levels. Dwelling houses have been constructed of both single storey form with roofspace accommodation and one-and-a-half storey form. Additionally, to the east of the site is a one-and-a-half storey dwelling house, which has been sited at a similar level to that now envisaged for the proposed dwelling house.
- 7.17. The aforementioned dwelling houses form a scattered cluster on the lower slopes to the north of Gweedore. They are highly visible on the approach to the village from the south on the N56. As revised, the main body of the proposed dwelling house would be of one-and-a-half form and its narrower return would be of two-storey form. Its ground floor finished floor level would be 107m ASL and its ridge height would be 7.293m. Its accompanying driveway would rise from the centre of the fork (100m ASL) to serve the dwelling house. It would have a length of c. 55m and so its gradient would average 1 in 8. While the proposed dwelling house would be comparable to the one further to the east accessed off the private road, I am concerned that the prominence of the subject site would lead to a situation within which the proposed dwelling house and its driveway would be more conspicuous again, both on the approach from the south and from the north-west along the L-5253-1. Furthermore, its location on the northern side of the local road would establish an adverse precedent for higher dwelling houses on the upper side of this local road than those that pertain at present, i.e., existing dwelling houses further to the north-west are bungalows.
- 7.18. I acknowledge that, under further information, the height of the proposed dwelling house was reduced by 1.295m, from 8.588m to 7.293m, this dwelling house was resited 14.5m further forward on the site, and its design was changed to one that is more reflective of a vernacular farmhouse with some contemporary features and finishes. In its own terms, these revisions have yielded a proposal that is aesthetically more pleasing. However, my above cited concerns, over the inevitable prominence of the proposal within the landscape, and the adverse precedent that it would establish for similar dwelling houses along the upper side of the top stretch of the L-5253-1, still stand.
- 7.19. I conclude that the proposal would be unduly conspicuous within the surrounding area, and it would fail to integrate with its host mountain landscape, which is of high

scenic amenity. Accordingly, it would harm the character of this landscape and be seriously injurious to the visual amenities of the area, in its own right, and by the adverse precedent that it would establish.

(iv) Access

- 7.20. As originally submitted, the driveway to the proposed dwelling house would have been accessed off the private road to the Cronalaght Wind Farm. Under further information, the applicants re-sited this access point to the southernmost tip of the site within the fork formed by the L-5253-1 and the said private road. It would thus be accessed off the local road.
- 7.21. The applicants submitted a traffic speed survey of the L-5253-1 in the vicinity of the site on Tuesday 25th October 2022 between 09.30 and 11.00. This survey established that the 85th percentile speed is 62.17 kmph. Under the revised access point, sightlines with the requisite dimensions of 3m x 90m would be available.
- 7.22. On-site access arrangements would facilitate parking in the open and in a garage and turning movements to facilitate forward gear movements to and from the local road. The driveway would span a difference in heights of c. 7m over a “straight line” distance of c. 55m. An average gradient of 1 in 8 would ensue. This gradient would be steep. It may be capable of being reduced somewhat with additional length being achieved through the meandering alignment of the proposed driveway. If the Board is minded to grant, then detailed plans of the driveway design should be conditioned.
- 7.23. I conclude that the proposed access arrangements for the site would, subject to detailed plans of the driveway design, be satisfactory.

(v) Water

- 7.24. Under the proposal, the dwelling house would be connected to the public water mains under the L-5253-1. Uisce Eireann was consulted, although no response was received. The PA’s Condition No. 15 refers to potable water being from the public water mains.
- 7.25. Under the OPW’s flood maps, the site is not shown as being the subject of any identified flood risk.
- 7.26. The existing site is served by a network of land drains, which are depicted in Figure 4.2 of the applicant’s Screening Report for AA, and the original site layout plan.

Under the proposal, the land drain through the eastern quadrant of the site is shown as being retained, and surface water run-off from sealed surfaces would be collected and piped to the stream that runs along the nearside of the adjoining private road. The existing land drain across the south-western portion of the site was originally shown as being retained, but under the revised site layout plan it was omitted. Under this plan, too, the proposed percolation area, which would serve the WWTS, was re-sited further to the south-west in conjunction with the re-siting of the dwelling house. In this respect, the applicant's site assessor advises that an interceptor drain be placed 5m up gradient of the percolation area "to ensure that all surface water run-off and seepage is intercepted and diverted away."

7.27. During my site visit, which occurred during wet weather, I observed that appreciable water was evident in the land drains across the site and in the roadside drains along the south-eastern and the south-western boundaries of the site. I am, thus, concerned that, under the proposal, the site should be adequately drained, and that the proposed soil polishing filter, especially, should be protected.

7.28. Under the proposal, wastewater would be handled by means of a WWTS and a soil polishing filter. In this respect, the applicant has submitted a Site Suitability Assessment Report, which I will draw upon in my own assessment of the site.

- The aquifer is poor and of moderate vulnerability. The groundwater protection response is R1. Appendix E of the EPA's CoP DWWTSS states that this response is "Acceptable subject to normal good practice."
- Local groundwater is assumed to flow in a south-westerly direction.
- The trial hole was dug to a depth of 1.8m. Top-soil consists of peaty loam. The sub-soil consists initially of silt/gravel above the water table at a depth of 1.5m. Bedrock occurs at a depth of 1.6m.
- The "T" (sub-surface/depth of 700mm) test results were 25.08 min/25mm. "P" (surface/depth of 300mm) tests were not undertaken.

7.29. In the light of the above characteristics, the applicants propose to install a secondary treatment system with a soil polishing filter. A detailed specification for the construction of the soil polishing filter is set out, which would include the excavation and breaking up of existing sub-soils and the laying of gravel beds. The proposed

invert level of the trench/bed gravel or drip tubing would be 107.40m ASL. This level would be well-above existing ground levels, and so it would suggest a mounded soil polishing filter rather than the one described, which would be laid in the ground. I am therefore unable to reconcile these aspects of the proposal.

- 7.30. In the light of both my review of land drainage and the proposed soil polishing filter, I conclude that the applicants have not demonstrated that both surface water and wastewater would be capable of being handled in a satisfactory manner.

(vi) Appropriate Assessment

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

- 7.31. The Habitats Directive deals with the Conservation of Natural Habitats and of Wild Fauna and Flora throughout the European Union. Article 6(3) of this Directive requires that any plan or project not directly connected with or necessary to the management of the site but likely to have had a significant effect thereon, either individually or in combination with other plans or projects shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. The competent authority must be satisfied that the proposal would not adversely affect the integrity of the European site before planning consent can be given.

Screening the need for appropriate assessment

- 7.32. The applicant has submitted a Stage 1 Screening Report for AA which is dated 23rd March 2023.
- 7.33. The Screening Report was prepared in line with current best practice guidance and provides a description of the development and identifies European sites within a possible zone of influence of the development. This appraisal concludes, on Page 43, as follows:

Following the assessment as detailed in this AA Screening Report, it is concluded that significant effects on the Natura 2000 network arising from the proposed development, either individually or in combination with other plans or projects, cannot be excluded at this stage. Therefore Stage 2 Appropriate Assessment is required.

7.34. Having reviewed the documents and submissions, I am satisfied that the information allows for a complete examination and identification of any potential significant effects of the development, alone, or in combination with other plans and projects on European sites.

7.35. The applicant provides a description of the project on Page 36 of its Screening Report. This description states the following:

The construction of a dwelling house, detached domestic garage/private studio with septic tank and all other associated site development works.

7.36. The applicant also provides a description of the site on Page 37 of its Screening Report, which draws attention to its area of 0.65 hectares, and its location adjoining the L-5253-1 and heathland/grassland. It also draws attention to the presence of two drainage channels, which run through the site and ultimately discharge to the Clady River.

7.37. Taking account of the characteristics of the development in terms of its location and the nature of operations, the following issues are considered for examination in terms of implications for likely significant effects on a European site:

- Sediment laden run-off, or run-off contaminated with silt, debris and hydrocarbons could be discharged off-site during the site clearance, construction and operational phase, and
- Potential disturbance to wildlife due to lighting and/or dust/noise associated with the construction and operational phase.

7.38. The site has a hydrological link with the Fawnboy Bog & Lough Nacung SAC (000140).

Fawnboy Bog & Lough Nacung SAC (000140)

7.39. The qualifying interests and their conservation objectives to restore their favourable conservation condition, are listed below.

Northern Atlantic wet heaths with Erica tetralix [4010]

Blanket bogs (if active bog) [7130]*

Depressions on peat substrates of the Rhynchosporion [7150]

Margaritifera margaritifera (Freshwater Pearl Mussel) [1029]

- 7.40. The site does not lie within the SAC. Accordingly, under the proposal, no direct habitat loss would occur, and no indirect habitat loss would occur.
- 7.41. During both the construction and operational phases of the proposal, surface water run-off from the site has the potential to result in contamination of connected water bodies, i.e., the stream to the east, which flows into the Clady River.
- 7.42. During the construction and operational phases, contaminated water could affect the following qualifying interests: The Freshwater Pearl Mussel. Neither this qualifying interest nor any of the other qualifying interests would be affected by lighting and dust/noise during the construction and operational phases.
- 7.43. In-combination effects from other development sites were not excluded under the Screening Report.
- 7.44. No measures designed or intended to avoid or reduce any harmful effects of the project on a European site have been relied upon in this screening exercise.
- 7.45. The 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 either individually or in combination with other plans and projects could have a significant effect on European site No. 000140, in view of its conservation objectives, and appropriate assessment is therefore required.

The NIS

- 7.46. The applicant's NIS is dated 28th March 2023. The NIS examines and assesses potential adverse effects of the proposed development on the following European site: Fawnboy Bog & Lough Nacung SAC (000140).
- 7.47. The NIS was prepared in line with current best practice guidance, and it concluded that "The proposed project as detailed, either individually or in combination with other plans and projects, will have no significant adverse effects on the integrity of any European sites if all mitigating measures...are implemented. The proposed development as described will not alter the structure or function of any Natura 2000 site or negatively impact the conservation of any qualifying interest/special conservation interest therein."

7.48. Having reviewed the NIS, I am satisfied that the information allows for a complete assessment of any adverse effects of the development on the conservation of the following European site alone, or in combination with other plans and projects: Fawnboy Bog & Lough Nacung SAC (000140).

Appropriate assessment of implications of the proposed development on each European site

7.49. The following is a summary of the objective scientific assessment of the implications of the project on the qualifying interest features of the European sites using the best scientific knowledge in the field. All aspects of the project which could have resulted in significant effects are assessed, and mitigation measures designed to avoid or reduce any adverse effects are considered and assessed.

7.50. The following site is subject to appropriate assessment: Fawnboy Bog & Lough Nacung SAC (000140).

7.51. The qualifying interests and conservation objectives for these sites are set out above under my screening exercise.

7.52. The main aspect of the proposed development that could adversely affect the conservation objectives of European sites is, during the construction and operational phases of the project, contaminated water leading to a loss of water quality downstream.

7.53. The qualifying interest that could be affected by a deterioration in water quality would be as follows: Freshwater Pearl Mussel.

7.54. Under Table 6.2 of its NIS, the applicant sets out a series of mitigation measures, which would address issues arising during the construction and operational phases.

7.55. During the construction phase, the need to avoid contaminated water flowing downstream into the Clady River would be addressed by means of standard best practice methodologies and protocols for:

- Site drainage arrangements,
- The storage and handling of materials, plant and equipment, and waste,
- Refuelling and dealing with leaks and spillages, and
- Dust minimisation and interception.

- 7.56. During the operational phase, the need to avoid contaminated water flowing downstream into the Clady River would be addressed by the following measures:
- The installation of a bypass separator, and
 - The installation of a wastewater treatment system and soil polishing filter.
- 7.57. The applicant expresses confidence that, with the above cited mitigation measures in place, no residual impacts would arise.
- 7.58. In-combination effects are considered by the NIS. The current project and other project would conform to the best practice water quality management as set out in the IFI “Guidelines on Protection of Fisheries during Construction Works in and adjacent to Waters 2016”. No significant in combination effects would ensue.
- 7.59. I consider that the above cited mitigation measures would ensure that the proposal would not adversely affect Fawnboy Bog & Lough Nacung SAC (000140). Likewise, I consider that the no significant in-combination effects would ensue on this European Site.
- 7.60. In the light of the foregoing considerations, I am able to ascertain with confidence that the project would not adversely affect the integrity of the Fawnboy Bog & Lough Nacung SAC (000140).
- 7.61. The project has been considered in light of the assessment of the requirements of Sections 177U and 177V of the Planning and Development Act 2000, as amended.
- 7.62. Having carried out screening for appropriate assessment, it was concluded that it may have a significant effect on the Fawnboy Bog & Lough Nacung SAC (000140). Consequently, an appropriate assessment is required of the implications of the project on the qualifying feature of this site in light of its conservation objective.
- 7.63. On the basis of the information provided with the application and appeal, including the NIS, and in light of the assessment carried out above, I am satisfied that the proposed development individually, or in combination with other plans or projects would not adversely affect the integrity of European Site No. 000140, in view of the site’s conservation objectives.

This conclusion is based on a complete assessment of all aspects of the proposed project and there is no reasonable doubt as to the absence of adverse effects.

This conclusion is based on:

- A full and detailed assessment of all aspects of the proposed project including mitigation measures in relation to the conservation objectives of the Fawnboy Bog & Lough Nacung SAC (000140).
- Detailed assessment of in combination effects with other plans and projects.
- No reasonable scientific doubt as to the absence of adverse effects on the integrity of the Fawnboy Bog & Lough Nacung SAC (000140).

8.0 Recommendation

That permission be refused.

9.0 Reasons and Considerations

1. Having regard to Policy NH-P-7 and Appendix 4 of the Donegal County Development Plan 2018 – 2024, it is considered that, due to its siting, size, and height, the proposal would be unduly conspicuous within the surrounding mountain landscape, which is of high scenic amenity. This proposal would be elevated in relation to the L-5253-1, and it would lie on the upper side of this local road, where formerly only bungalows have been built. Consequently, it would fail to integrate with the character of the landscape, and it would risk the establishment of an adverse precedent for larger dwelling houses than have pertained heretofore. The proposal would thus contravene Policy NH-P-7 of the County Development Plan, and it would be seriously injurious to the visual amenities of the area. As such, this proposal would be contrary to the proper planning and sustainable development of the area.
2. The applicants have failed to demonstrate that the proposed soil polishing filter would be compatible with either the topography of the site or the proposed surface water drainage arrangements for the site. In these circumstances, it would be premature to grant permission, as to do so would potentially lead to the pollution of local watercourses and jeopardise public health. As such, this proposal would be contrary to the proper planning and sustainable development of the area.

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.

Hugh D. Morrison
Planning Inspector

26th February 2024

Appendix 1 - Form 1

EIA Pre-Screening

[EIAR not submitted]

An Bord Pleanála Case Reference	ABP-317530-23			
Proposed Development Summary	Erection of a dwelling house with detached domestic garage/private studio and septic tank including all other associated site development works.			
Development Address	Meenderrygamp, Gweedore, Co. Donegal			
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? <small>(that is involving construction works, demolition, or interventions in the natural surroundings)</small>	Yes	x		
	No	No further action required		
2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) or does it equal or exceed any relevant quantity, area or limit where specified for that class?				
Yes		Class.....	EIA Mandatory EIAR required	
No	x		Proceed to Q.3	
3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?				
		Threshold	Comment (if relevant)	Conclusion
No		N/A		No EIAR or Preliminary Examination required
Yes		Class 10(b)(i) of Part 2 of Schedule 5 – threshold 500 dwelling units		Proceed to Q.4

4. Has Schedule 7A information been submitted?

No	X	Preliminary Examination required
Yes		Screening Determination required

Inspector: _____ **Date:** _____

Appendix 2: EIA Preliminary Examination

An Bord Pleanála Case Reference	ABP-317530-23	
Proposed Development Summary	Erection of a dwelling house with detached domestic garage/private studio and septic tank including all other associated site development works.	
Development Address	Meenderrygamp, Gweedore, Co. Donegal	
The Board carries out a preliminary examination [Ref. Art. 109(2)(a), Planning and Development Regulations 2001 (as amended)] of, at least, the nature, size or location of the proposed development having regard to the criteria set out in Schedule 7 of the Regulations.		
	Examination	Yes/No/ Uncertain
Nature of the Development <ul style="list-style-type: none"> • Is the nature of the proposed development exceptional in the context of the existing environment? • Will the development result in the production of any significant waste, emissions or pollutants? 	Single rural house with on-site wastewater treatment plant	No
	No significant waste, emissions or pollutants would ensue	No
Size of the Development <ul style="list-style-type: none"> • Is the size of the proposed development exceptional in the context of the existing environment? • Are there significant cumulative considerations 	Single rural house with onsite wastewater treatment plant	No
	No significant waste, emissions or pollutants would ensue in combination with any other permitted projects	No

<p>having regard to other existing and/or permitted projects?</p>		
<p>Location of the Development</p> <ul style="list-style-type: none"> • Is the proposed development located on, in, adjoining or does it have the potential to significantly impact on an ecologically sensitive site or location? • Does the proposed development have the potential to significantly affect other significant environmental sensitivities in the area? 	<p>Apart from Fawnboy Bog/Lough Nacung SAC, no other ecologically sensitive sites in the vicinity – this SAC is addressed under Appropriate Assessment</p> <p>Apart from Fawnboy Bog/Lough Nacung SAC, no other significant environmental sensitivities in the vicinity – this SAC is addressed under Appropriate Assessment</p>	<p>No</p> <p>No</p>
<p>Conclusion</p>		
<p>There is no real likelihood of significant effects on the environment.</p> <p>EIA not required.</p>	<p>There is significant and realistic doubt regarding the likelihood of significant effects on the environment.</p> <p>Schedule 7A Information required to enable a Screening Determination to be carried out.</p>	<p>There is a real likelihood of significant effects on the environment.</p> <p>EIAR required.</p>

Inspector: _____

Date: _____

