



An
Bord
Pleanála

Inspector's Report

ABP-318381-23

Development	(1) Demolition of dwelling and decommissioning of septic tank and (2) Erection of a house with waste water treatment system and all other associated site development works including associated amendments to grant of permission ref. 15/51698 (as extended via grant of extension of duration permission ref. 20/51547).
Location	Kinnalargy, Downings, Co. Donegal.
Planning Authority	Donegal County Council
Planning Authority Reg. Ref.	2351257
Applicant(s)	Declan McCrory
Type of Application	Permission
Planning Authority Decision	Grant Permission
Type of Appeal	Third Party
Appellant(s)	Paul Fox
Observer(s)	None
Date of Site Inspection	17 th February 2024
Inspector	Stephen Ward

1.0 Site Location and Description

- 1.1. The site is located approximately 1km northeast of the rural village centre of Downings, on the Rosguill peninsula in north Donegal. It is within a largely unserviced rural area and is at an elevated position which overlooks the coastline of Mulroy Bay (approximately 300m to the east). The levels in the area generally rise from east to west, from Mulroy Bay towards the central part of the peninsula.
- 1.2. The site has a stated site area of 0.21ha and is roughly square in shape. The majority of the site is already developed, consisting of a dormer type dwelling and associated gardens. The site levels rise from east to west and the site perimeter is generally overgrown with trees and hedgerows. There is an existing access road and entrance point off the adjoining road at the northeast corner of the site.
- 1.3. To the east and north of the site are clusters of dwelling houses, some of which appear to be holiday homes. The adjoining land to the south and west consists of undeveloped agricultural fields.

2.0 Proposed Development

- 2.1. In summary, permission is sought for the following:
 - Demolition of existing dormer type dwelling and decommissioning of existing septic tank.
 - Erection of a dwelling house with waste water treatment system. The proposed dwelling is a single storey three-bed unit. It has a gross floor area of 77m² and an overall height of c. 4.5m. The design is based on a simple rectangular plan form with a pitched roof, while the elevational treatment is somewhat more contemporary in terms of materials and the proportions of openings. The proposed dwelling would be constructed on the footprint of the existing dwelling but at a slightly lower level (c. 300mm).
 - All other associated site development works, including access off a private access road previously permitted (but not yet constructed) along the northern edge of the site. The access road was permitted to serve a dwelling permitted under P.A. Reg. Ref. No. 15/51698 (duration subsequently extended under P.A. Reg. Ref. No. 20/51547).

- Amendments to grant of permission P.A. Reg. Ref. No. 15/51698 (as extended via grant of extension of duration permission P.A. Reg. Ref. No. 20/51547).

3.0 Planning Authority Decision

3.1. Decision

By order dated 12th October 2023, Donegal County Council (DCC) issued notification of the decision to grant permission, subject to conditions. The decision to grant permission contains the following notable conditions (in summary):

Condition 2 – Occupancy condition restricting residence to the applicant or (as otherwise agreed) persons with a need for a dwelling house in accordance with a Section 47 Agreement.

Condition 3 – Requires visibility splays of 50m at the vehicular entrance.

Condition 4 – Requires the setback of the entire roadside boundary.

Condition 11 – Requires retention of vegetation unless otherwise required.

Condition 12 – Requires planting along the site boundaries.

Conditions 14 - Outlines conditions relating to the installation of the wastewater treatment system.

Condition 15 – Requires a Development Contribution (€1,897.99) in accordance with the DCC Section 48 Scheme.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The DCC Planner's Report can be summarised as follows:

- The proposal will not compromise the adjoining permission 15/51698 (extended by 20/51547). It is a separate entity and there is adequate space within the overall landholding.
- The fact that the application is a repeat of a recently withdrawn application is not a reason for refusal.

- It is noted that the building could be adapted to another use, as is the case with any building.
- The site is located within a 'Structurally Weak Rural Area'. Based on the information submitted and DCC practice and procedures, the principle of development is acceptable in terms of rural housing need.
- Regarding 'siting and design', consideration has been given to Policies RH-P-1, RH-P-2 and RH-P-9 of the CDDP (as varied) and Appendix 4 of Part B of the CDDP. The previous permission on the overall landholding (P.A. Reg. Ref. 15/51698, as extended) was for a 'replacement dwelling' and occupancy conditions were not applied. Condition 2(a) of the previous permission requires the removal of the existing dwelling. The placing of another dwelling within the overall landholding is accepted subject to further assessment. There is adequate space within the landholding to accommodate the permitted and proposed dwelling. The proposed siting and design can be accommodated on the site.
- No issues arise in relation to residential amenity.
- Access is proposed via the proposed entrance to the previously permitted dwelling. A traffic survey has been submitted which records an average speed of less than 40km/hr. A visibility distance of at least 50m is acceptable and can be achieved without consent from any third party.
- The submitted 'Site Suitability Assessment' confirms a T-Test result of 25.33 min/25mm. Considering a T-Value of 3-50 indicates that subsoil is suitable to treat and dispose wastewater, the PA is satisfied that subject to conditions, the proposal can efficiently dispose of effluent. Applicant submitted a revised site layout 10th October 2023, which provides for the slight relocation of the WWTS and percolation area, in order to achieve minimum separation distances.
- Having regard to the scale and nature of the proposed development on an existing brownfield site, alongside the physical distances from the nearest Natura 2000 site (259m), and no known direct hydrological links, it is not considered that the proposed development would be likely to have any significant effect, individually or in combination with any other plan or project, and it is not

considered that Screening for Appropriate Assessment is required in this instance.

- The report recommends a grant of permission, and this forms the basis of the DCC decision.

3.2.2. Other Technical Reports

Roads: No objections.

3.3. Prescribed Bodies

None.

3.4. Third Party Observations

The planning authority received 12 no. submissions from third parties in this case. The issues raised are covered in the grounds of appeal.

4.0 Planning History

P.A. Reg. Ref. 15/51698: On a larger site which included the appeal site, permission granted on 15th April 2016 to a previous owner (Tony & Dympna Lagan) for demolition of existing dwelling and decommissioning of existing septic tank, construction of replacement dwelling, domestic garage, wastewater treatment system and all associated site development works.

The new dwelling was permitted to the northwest of the appeal site. Condition 2(b) requires that the existing dwelling shall be demolished and removed from the site within a period of 6 months of the date of first occupancy of the new dwelling house.

P.A. Reg. Ref. 20/51547: On 10th December 2020, an extension of duration was granted for P.A. Reg. Ref. 15/51698 until 14th April 2026.

P.A. Reg. Ref. 22/50315: Erection of (a) new dwelling house in lieu of dwelling house granted under planning ref: 20/51547, (b) 12 no. glamping pods, wastewater treatment system and all other associated site development works (Withdrawn).

P.A. Reg. Ref. 23/50063: Erection of a new dwelling house with septic tank and all other associated site development works (Withdrawn).

P.A. Reg. Ref. 23/50529: Erection of a dwelling house with wastewater treatment system and all other associated site development works (Withdrawn).

5.0 Policy Context

5.1. National Policy

National Planning Framework

- 5.1.1. The NPF is the Government's high-level strategic plan for shaping the future growth and development of the country to the year 2040. In planning for the development of the countryside, it acknowledges that there is a continuing need for housing provision for people to live and work in the countryside, but also highlights the need to differentiate between types of rural areas and housing needs.
- 5.1.2. National Policy Objective 15 aims to support sustainable development for rural areas by encouraging growth in areas that have experienced low growth and managing growth in areas under strong urban influence.
- 5.1.3. National Policy Objective 19 aims to ensure, in providing for the development of rural housing, that a distinction is made between areas under urban influence, i.e. within the commuter catchment of cities and large towns and centres of employment, and elsewhere:
- In rural areas under urban influence, facilitate the provision of single housing in the countryside based on the core consideration of demonstrable economic or social need to live in a rural area and siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements;
 - In rural areas elsewhere, facilitate the provision of single housing in the countryside based on siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements.

Sustainable Rural Housing Guidelines for Planning Authorities (2005)

- 5.1.4. In supporting sustainable housing development patterns in rural areas, the guidelines outline that planning authorities should identify the needs of rural communities in the development plan process and manage pressure for overspill development in the rural areas closest to the main cities and towns.
- 5.1.5. Development plans should identify the location and extent of rural area types set out in section 5.3.2 of the NSS (superseded by the NPF), including rural areas under strong urban influence; stronger rural areas; structurally weaker rural areas; and areas with clustered settlement patterns. Having identified the rural area types, planning authorities should then tailor policies that respond to the different housing requirements of urban / rural communities and the characteristics of rural areas.
- 5.1.6. Chapter 4 of the Guidelines deals with development management and provides guidance aimed at ensuring that all the necessary information and documentation is assembled to facilitate an efficient and thorough consideration of applications.

5.2. County Donegal Development Plan 2018-2024

Rural Housing Policy

- 5.2.1. Section 6.3.1 of the Plan outlines that an assessment has identified rural area types which are classified in accordance with the Sustainable Rural Housing Guidelines. Map 6.2.1. outlines that the subject site is within a 'Structurally Weak Rural Area', within which the policies of the Plan will, in general, facilitate both urban and rural generated rural housing need. Relevant policies and objectives can be summarised as follows:

RH-O-2: Support a balanced approach to rural areas which retain vibrancy.

RH-O-3: Ensure new development provides for rural generated need.

RH-O-4: Protect rural areas immediately outside towns from intensive levels of residential development and safeguard the potential for incremental growth.

RH-O-5: Promote rural housing that does not detract from the landscape.

RH-P-1: All proposals for rural housing shall be subject to the consideration of requirements relating to location, siting and design and the impact on landscape and

views; the protection of Natura 2000 sites and other habitats; water quality; traffic conditions; disposal of surface water and wastewater; flood risk management; and the occupancy of the dwelling.

RH-P-2: Consider proposals that meet a demonstrated need (see RH-P-4) provided the development integrates successfully into the landscape and does not further erode rural character. The Council will be guided by the considerations that a new dwelling shall:

- (1) Avoid creation / expansion of a suburban pattern of development.
- (2) Not create or add to ribbon development.
- (3) Not be detrimental to the amenity of the area or other rural dwellers or constitute haphazard development.
- (4) Not be prominent on the landscape and shall have regard to Policy T-P-15.
- (5) Shall not fail to blend with natural features and or involve excessive excavation or infilling

RH-P-4: 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-7: Consider proposals for the replacement of dwellings in rural areas, where (a) the existing dwelling does not make any significant contribution to the built heritage of the area and;

(b) The replacement dwelling would be of a scale and form generally consistent with that of the existing house on the site and would not result in any significant additional visual impact and;

(c) Adequate provision can be made for wastewater treatment on site; and

(d) The proposed development would otherwise comply with all other relevant policies of the County Development Plan.

RH-P-9: Requires that all new rural dwellings are designed in accordance with the principles set out in Appendix 4 of the Plan 'Building a House in Rural Donegal – A Location, Siting and Design Guide'.

Landscape

- 5.2.2. In terms of landscape character, the county has been categorised into three layers of landscape value (Especially High Scenic Amenity', 'High Scenic Amenity' and 'Moderate Scenic Amenity'), which are illustrated on Map 7.1.1 of the Plan. The subject site is within an area classified as 'High Scenic Amenity'.
- 5.2.3. Within areas of 'High Scenic Amenity', Policy NH-P-7 seeks 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.

Other provisions

- 5.2.4. In relation to wastewater disposal, Policy WES-P-11 outlines that single dwellings in un-sewered areas shall comply with the Code of Practice for Waste Water Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10) published by the Environmental Protection Agency.
- 5.2.5. Part B: Appendix 3 of the CDP outlines Development Guidelines and Technical Standards, including those relating to access, traffic, and drainage.
- 5.2.6. Policy NH-P-1 is to ensure that development proposals do not damage or destroy any sites of international or national importance, designated for their wildlife/habitat significance and in accordance with European and National legislation.

5.3. Natural Heritage Designations

The nearest Natura 2000 site is the Mulroy Bay SAC, which is located c. 260m east of the appeal site.

5.4. EIA Screening

Having regard to its limited scale and the nature of the proposed development involving a replacement dwelling, together with the absence of significant connectivity to any sensitive location, there is no real likelihood of significant effects on the environment arising from the development. The need for environmental

impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

The DCC decision to grant permission has been appealed by Harley Newman Planning Consultants on behalf of Paul Fox, Kinnalargy, Downings, who lives opposite the appeal site. The grounds of appeal can be summarised under the following headings.

Planning history

- There is an existing extant permission for a dwelling on the site.
- This is the latest in a long history of attempts to get planning permission for an additional house. Two similar applications were previously withdrawn and another application for a dwelling and 12 no. glamping pods was also withdrawn.

Validity

- The proposal aims to implement two separate permissions for the same site and to 'cherry pick' different elements from each permission, which would appear to be contrary to the planning code and the proper planning of the area.
- The proposal intends to implement the extant permission by using the permitted entrance and constructing a new modular type dwelling, whilst also possibly constructing the previously permitted replacement dwelling.
- The proposed development would prejudice and materially contravene the previous permission. It should be invalidated or refused permission.
- If the applicant has no intention of implementing the extant permission, the permitted entrance and access lane should form no part of the latest proposal. All elements of the previous permission are totally separate to the latest proposal, are not required for same, and should be removed from any new proposal.
- It would seem most likely that the applicant is attempting to implement in a piecemeal fashion the previous proposal for a dwelling and glamping pods.

Eligibility for a rural dwelling

- No documentary evidence of the applicant's rural housing need has been included such that the proposal would contravene the CDP.
- The applicant has not confirmed whether they own/retain a principal residence elsewhere, nor have they given details of local connections other than land ownership.
- A letter submitted from an elected member has been deemed by the Board to be a deficient evidential threshold and contrary to NPO 19 in the NPF.
- The appellant outlines details pertaining to the applicant and ownership of the land and would appear to indicate that the applicant already owns a house and is without a demonstrable housing need.
- Given the small size and modular design of the dwelling, it is questioned whether it would in fact be used as a permanent place of residence.
- Given the extant permission for a dwelling on the overall lands, it is queried whether the applicant would have a genuine need for an additional dwelling.

Haphazard inappropriate over-development & impact on rural character

- No further dwellings/structures should be permitted within the curtilage of the extant permission.
- The application would appear to be an attempt to pursue an overall commercial tourism scheme as previously proposed.
- Even the extant and proposed dwelling would represent a haphazard and inappropriate form of over-development in a sensitive rural area.
- The area has witnessed a build-up of housing in recent times and further residential development would be excessive and inappropriate.
- The proposal would create and extend a suburban pattern of development which would be detrimental to the rural character of the area as per section 6.3.3 of the CDP and would also contravene Policy RH-P-2 (1) of the CDP.

Inappropriate design & building regulations

- The drawings provide little information about the proposed materials, finishes etc.
- The design is not consistent with a permanent principal residence and may be used as (or as part of) a commercial tourism use.
- The modular design would set an undesirable precedent and would be contrary to the CDP Design Guide (Part B) and proper planning.
- It is queried whether the proposed design complies with building regulations.

Public Health

- The proposal for a second waste water system on the overall land would clearly lead to a proliferation in an area already served by several such systems. It would therefore be prejudicial to public health and injurious to the environment, which would materially contravene the CDP (Policy RH-P-1 (5)).

Injurious to Natura 2000 site

- The site is within 300m of Mulroy Bay SAC and is not accompanied by any assessment to determine any potential negative impacts.
- The suburban nature of the development, including a large-scale effluent treatment system, in this rural area with a hydrological link to the SAC (via open drain along roadside boundary), would likely be prejudicial to public health and injurious to the environment.
- The proposal would contravene CDP policy NH-P-1.

Traffic Hazard

- The traffic survey/assessment was conducted in 2022 and is outdated.
- The proposed access would be a hazard for all road users in the area and would materially contravene the extant permission.
- It would lead to a material intensification of a domestic entrance (permitted for one dwelling only) at a dangerous junction with a blind 90-degree bend.
- It would lead to conflicting manoeuvres between on-road vehicles and those entering/exiting the site, resulting in a traffic hazard which would be in contravention of the CDP and proper planning.

6.2. Applicant Response

A response has been submitted by Genesis Planning Consultants on behalf of the applicant. The response can be summarised under the following headings.

National & Regional Planning Policy

- The proposed development is supported by Objectives 15 and 19 of the NPF. The CDP has correctly implemented the distinction between rural area types and there is no conflict with NPO 19. The applicant is an established member of the local rural community, and the principle of the development is consistent with NPF rural housing policy.
- The Sustainable Rural Housing Guidelines outlines that people who are established as an intrinsic part of a rural community should be facilitated for rural housing and a need for well-balanced decisions on applications. The Guidelines set a clear context for the assessment of the proposal and determining weight is to be given to the relevant national, regional, and section 28 guidelines as set out under section 34(2)(ba) of the Act.
- The proposal aligns with the policy objectives of the RSES, specifically point 'B' of RPO 9.3 which highlights the need to meet appropriate rural housing need.

Appropriate Assessment

- The Appropriate Assessment carried out by the Planning Authority is correct and has informed the decision-making process wherein the project is deemed acceptable.
- The Board should now also reach a conclusion that on the basis of objective information that the proposed development, individually or in combination with other plans and projects, will not have a significant effect on a Natura 2000 site.

CDP Rural Housing Policy

- The site is within a 'structurally weak rural area' and is covered by Policy RHP4.
- The proposal is consistent with settlement objectives for rural generated housing given that the applicant qualifies as a person who is an intrinsic part of the rural community (as confirmed by bona fide letter of support from an elected member).

- The planning authority was satisfied in this regard.
- A refusal of permission would not represent sustainable development as it would not meet the needs of the present.

Siting, Design, & Rural Character

- The existing dwelling sets the context for the assessment of the proposal. The low-lying enclosed nature of the site will ensure that the proposal integrates satisfactorily. The principle of a dwelling has been accepted in the DCC planner's report and the proposal is 'betterment' given the appropriate vernacular design and the reduced height and scale.
- The proposal would not contravene natural heritage or policy NHP7.
- The proposed design is an appropriate response as an infill development.
- Design and site layout matters are acceptable and for the purposes of this appeal are to be regarded as settled.
- The proposal would not compromise the surrounding rural character. The layout and vegetation will ensure that the proposal does not read visually with other developments and there will only be localised views of the site.
- The proposal does not exacerbate or result in ribbon development. It is to be regarded as infill development which can only accommodate one dwelling and would be consistent with the settlement pattern.
- The assertion that the proposal is an attempt to pursue a larger commercial tourism scheme is unfounded.
- The compact design is a deliberate choice in line with modern trends favouring sustainable and efficient living spaces.

Traffic & Access

- The CDP requirements for access to be DMRB compliant are noted.
- The traffic survey has recorded an average speed of less than 40 km/hr, for which a sight distance of 50m is acceptable in accordance with CDP standards. The DCC engineers were satisfied in this regard.

Wastewater & Drainage

- The accompanying Site Assessment demonstrates that the site can accommodate a wastewater treatment system in accordance with relevant EPA and CDP standards.
- The planning authority was satisfied with wastewater and surface water drainage.
- The CDP does not prohibit multiple wastewater systems within a specific area and each proposal is evaluated on its merits taking into account EPA guidelines.

Residential Amenity

- No issues arise in terms of impacts on neighbouring properties.

Validity

- The application particulars fully comply with the requirements of the Regulations.
- The proposal will not compromise the adjoining permission and there is adequate area to accommodate both dwellings.

6.3. Planning Authority Response

The Council wishes to rely on the content of the Planner's report.

6.4. Observations

None.

6.5. Further Responses

None.

7.0 **Assessment**

7.1. Having regard to the documentation submitted in connection with the application and the appeal, and having inspected the site, I consider that the main issues for assessment are as follows:

- Planning History
- Rural Housing Policy
- Visual Amenity & Character
- Access & Traffic
- Wastewater Treatment
- Appropriate Assessment.

7.2. **Planning History**

7.2.1. The appeal has highlighted several withdrawn applications, including an application for a commercial tourism development including 12 no. glamping pods. Concerns have been raised that the current application is part of a wider attempt to establish such a commercial tourism business. However, irrespective of the previous applications, there is no indication of a commercial tourism use in this application and the proposal will be assessed on its merits as a dwelling house.

7.2.2. Concerns have also been raised that the proposed development would contravene the extant permission on the site (P.A. Reg. Ref. 15/51698, as extended by P.A. Reg. Ref. 20/51547 until 14th April 2026). However, it should be noted that the description of the current application specifically includes 'associated amendments' to the extant permission and I am satisfied that, in principle, the proposal would not prohibit the completion of the extant permission. Accordingly, I would have no objection to the consideration of the current application on these grounds.

7.3. **Rural Housing Policy**

7.3.1. I note that the application ostensibly proposes a 'replacement dwelling' in lieu of the existing dwelling on site. The CDP policy RH-P-7 generally considers such proposals on the basis of visual impact, wastewater treatment, and all other relevant policies. It

would appear that the principle of a dwelling is acceptable in such cases on the basis that it would not be creating an additional dwelling.

- 7.3.2. However, I consider that the planning history of the site and overall landholding must be considered in this case. There is an extant permission on the site which was granted on the basis of a 'replacement dwelling'. This was an important consideration in the assessment of P.A. Reg. Ref. 15/51698. Further Information was requested on the future occupancy of the existing dwelling and the 'replacement' nature of the proposal informed the DCC decision not to attach an occupancy condition. However, condition 2(b) requires that the existing dwelling shall be demolished and removed from the site within a period of 6 months of the date of first occupancy of the new dwelling house.
- 7.3.3. The current application proposes to facilitate the completion of the extant permission and would therefore effectively constitute a new or 'additional' dwelling. Accordingly, I do not consider that the 'replacement' policy (RH-P-7) applies. It should be noted that this is consistent with the approach of the planning authority and the applicant has not specifically argued that policy RH-P-7 should apply.
- 7.3.4. More relevantly, section 6.3.1 of the CDP outlines that an assessment has identified rural area types which are classified in accordance with the Sustainable Rural Housing Guidelines. Map 6.2.1. outlines that the subject site is within a 'Structurally Weak Rural Area', within which the policies of the Plan will, in general, facilitate both urban and rural generated rural housing need.
- 7.3.5. In the first instance, policy RH-P-4 is to consider proposals for new one-off housing within structurally weak rural areas from any prospective applicants with a need for a dwelling house. I acknowledge that the policy accommodates both urban and rural generated need, but nonetheless there is still a requirement that the applicant has 'a need for a dwelling house'. In this regard, having outlined that there is already an extant permission for a replacement dwelling house on the applicant's land, I do not consider that a case can be made for the need for an additional dwelling. Accordingly, I do not consider that the proposal complies with policy RH-P-4.
- 7.3.6. I note the supporting information submitted with the application, including the '*bona fide*' letter from an elected member. It has been outlined that the dwelling is intended as a permanent full-time home and that the applicant has long established links with

the area. However, notwithstanding the planning authority's view that the principle of the proposal is acceptable (in terms of rural housing need), it is my opinion that none of these circumstances would override the fact that there is an extant permission on the applicant's land and there is no need for a new/additional dwelling.

- 7.3.7. Having regard to the foregoing, it is my opinion that the proposal has not established a need for a new dwelling house and that the principle of the development would not be acceptable in accordance with CDP policy RH-P-4. I note that policy RH-P-4 also outlines the need to comply with other relevant policies and those relevant will be discussed in the following sections of my report.

7.4. Visual Amenity and Character

- 7.4.1. Again, I acknowledge that the application ostensibly proposes to replace an existing. However, for the reasons previously outlined in this report, I consider that the cumulative impact of the extant permission and the proposed development must be considered (i.e., the provision of 2 new dwellings in place of the existing dwelling).
- 7.4.2. I note that the site is located within an area of 'High Scenic Amenity' which the CDP describes as 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. Policy NH-P-7 is relevant to such areas and seeks 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.
- 7.4.3. The site is located within an elevated position in the landscape which overlooks Mulroy Bay and the Fanad Peninsula to the east. It is within a rural area, although it is in close proximity to the built-up edge of the village of Downings, which is an important centre for the area containing a high concentration of tourism-related accommodation. According to CDP Map 15.52, the appeal site is c. 550 metres (as the crow flies) from the Downings 'Settlement Framework Boundary'. However, the area has experienced significant ribbon development and other suburban patterns of development outside the framework boundary. As a result, there is an almost

continuous pattern of development between the appeal site and the village centre. I consider that this pattern of development is contrary to CDP policy and has resulted in a suburban character which detracts from a landscape of 'High Scenic Amenity'.

- 7.4.4. When limited to the scope of only the current proposal itself and its impact on the immediate site surroundings, I acknowledge that the application involves the replacement of an existing dwelling on a site that is enclosed by vegetation and rising land to the rear. However, it is my opinion that the visual impact must be considered in the wider context, both in terms of the cumulative proposal to replace one dwelling with two, and in terms of the wider landscape/visual impacts. In this context, I consider that the proposed development would exacerbate the visual impact of development at this location (by creating a 'net' additional dwelling) and that it would be significant in localised views and in views from the wider surrounding area to the east. It would exacerbate an existing pattern of suburban type development that already extends outside the village and seriously detracts from the 'high scenic amenity' rural landscape.
- 7.4.5. The proposed development would be visible over Mulroy Bay and the Fanad Peninsula and would contribute to an excessive density of development which would be contrary to the proper planning and sustainable development of the area. Accordingly, I consider that the proposals would be contrary to CDP policies RH-P-2 and NH-P-7 as the proposed development would result in the expansion of a suburban pattern of development which would not satisfactorily integrate into the 'high scenic amenity' landscape and would erode the rural character of the area.
- 7.4.6. I note the applicant's argument that the proposed development would constitute 'infill' development. However, I do not accept this suggestion given that the lands to the south of the site are currently undeveloped. In fact, to accept this proposal as being 'infill' development would create an undesirable precedent to facilitate further such development on those lands to the south.

7.5. Access & Traffic

- 7.5.1. There is an existing entrance to the dwelling at the northeast corner of the site. In accordance with the extant permission (P.A. Reg. Ref. 15/51698), a new entrance would replace this entrance to facilitate a private access road to a new dwelling to the northwest of the appeal site. In that context, the proposed development does not

propose an additional entrance onto the public road. It proposes to gain access off the permitted private access road, which itself would use the existing entrance onto the public road. The application has demonstrated that 50 metre sightlines can be achieved over the applicants lands to the north and south of the entrance.

- 7.5.2. I acknowledge that the appeal raises concerns about the intensification of traffic movements and safety concerns for all road users. However, I would accept that the proposal effectively involves the improvement of an existing entrance along a road network where traffic volume and speed is limited. And while I acknowledge that the cumulative development on the applicant's lands would result in an intensification of use of the entrance (i.e., an additional dwelling) I do not consider that this would significantly impact on road conditions in terms of traffic convenience or safety.

7.6. **Wastewater Treatment**

- 7.6.1. It is proposed to install a Biological Aerated Filter mechanical wastewater treatment module followed by a soil polishing filter. The application is accompanied by a Site Suitability Assessment Report in accordance with the EPA Code of Practice for Domestic Wastewater Treatment Systems (2021).
- 7.6.2. The Site Assessment identifies that the Aquifer Category is 'Poor' (PI). It states that the groundwater vulnerability is 'High', although I note that the rating is in fact 'extreme'. The trial hole depth of 1.7 metres did not encounter the water table or bedrock. The soil conditions include a mixture of slightly sandy clay loam and gravelly clay. The excavated soils were deemed to have good drainage qualities and the soil colour was deemed to suggest good aeration.
- 7.6.3. As per Table E1 of the Code of Practice (CoP), the Groundwater Protection Response Matrix (R2¹) indicates that wastewater treatment is acceptable subject to normal good practice. It states that where domestic water supplies are located nearby, particular attention should be given to the depth of subsoil over bedrock such that the minimum depths required in Chapter 6 are met and the likelihood of microbial pollution is minimised.
- 7.6.4. The application has carried out a subsurface percolation T-Test in accordance with the CoP. I am satisfied that test conditions and results are consistent with the site conditions observed on my site inspection. The results indicate a 'T' value of 25.33. The Site Assessment concludes that the T-test results confirm that conditions are

ideal for the efficient disposal of effluent through a Secondary Treatment System. I note that this is consistent with the interpretation of the percolation values as outlined in Table 6.4 of the CoP.

- 7.6.5. The Site Assessment recommends the installation of a packaged wastewater treatment system with a PE of 5 and a polishing filter (90m²) with a minimum depth of 0.9m (as per Table 6.3 of the CoP). I am satisfied that the proposed wastewater treatment system would generally comply with the minimum separation distances as outlined in Table 6.2 of the CoP. Furthermore, I am satisfied that the proposal complies with the recommendations for secondary packaged wastewater treatment systems and polishing filters as outlined in sections 9 and 10 of the CoP.
- 7.6.6. The planning authority has not raised any objection to the wastewater proposals subject to conditions. And while the site assessment has not identified any specific concerns about the suitability of the appeal site, I would concur with the appellant and other third-party concerns about an excessive concentration of wastewater treatment systems in this area. However, I consider that this matter is somewhat irrelevant given my fundamental concerns about the principle of the development in the first instance.

8.0 Appropriate Assessment

8.1. Background

- 8.1.1. The application did not include an AA Screening Report. However, Donegal County Council concluded that the proposed development would not be likely to have any significant effect on Natura 2000 sites, individually or in combination with any other plan or project, and that Screening for Appropriate Assessment is not required. The applicant's response to the appeal contends that the Board should now also reach a conclusion that on the basis of objective information the proposed development, individually or in combination with other plans and projects, will not have a significant effect on any Natura 2000 site.
- 8.1.2. Having reviewed the documents, drawings and submissions included in the appeal file, 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.

- 8.1.3. The project is not directly connected with or necessary to the management of a European Site and therefore it needs to be determined if the development would have any possible interaction that would be likely to have significant effects on a European Site(s).
- 8.1.4. As previously outlined, the development involves the demolition of the existing dwelling and construction of a new dwelling with packaged wastewater treatment system and polishing filter. The existing site is partially developed and consists of a mixture of hard/built surfaces, grass, and boundary vegetation. There is a land drain along the roadside boundary but no other watercourses in the vicinity. The surrounding terrain generally slopes down towards Mulroy Bay to the east. The surrounding area consists of similar housing and undeveloped agricultural land.

8.2. Submissions & Observations

- 8.2.1. The appellant and other third parties have raised concerns about the potential pollution of Natura 2000 sites.

8.3. European Sites

- 8.3.1. I note that there are several Natura 2000 sites in the surrounding area. This includes Sheephaven Bay SAC (c. 1km to the southeast), Lough Nagreany Dunes SAC (c. 2.5km northeast), Horn Head to Fanad Head SPA (c. 2.5km northeast), and Tranarossan and Melmore Lough SAC (c. 2.4km to the north). The nearest Natura 2000 site is Mulroy Bay SAC (c. 250 metres to the east).
- 8.3.2. Therefore, the proposed development is significantly distanced from any Natura 2000 sites. There is an existing land drain along the roadside boundary, but it is of minimal scale and its pathway and ultimate outfall is not clear. However, there is potential that it drains towards a Natura 2000 site. There is also the potential for groundwater connectivity with Natura 2000 sites.
- 8.3.3. However, I consider these possibilities to be relatively weak hydrological links and I note that the scale and complexity of the proposed development is limited. And given that the Natura 2000 sites are well distanced from the appeal site and would benefit from a large hydrological buffer, I consider that the assessment of potential for impacts on the Natura 2000 network can be limited to the closest site at Mulroy Bay

SAC. I do not consider that any other European Sites fall within the possible zone of influence.

Summary of European Sites within a possible zone of influence of the development

European Site (Code)	Qualifying Interests / Special Conservation Interests	Distance from development (metres)	Connections (source, pathway, receptor)
Mulroy Bay SAC (002159)	Mudflats and sandflats not covered by seawater at low tide [1140] Large shallow inlets and bays [1160] Reefs [1170] Lutra lutra (Otter) [1355]	250	Potential hydrological connection from surface water or groundwater.

8.3.4. The Conservation Objectives for Mulrou Bay SAC are to maintain the favourable conservation condition of ‘Large shallow inlets and bays’ and ‘Reffs’, and to restore the favourable conservation condition of ‘Otter’.

8.4. Assessment of likely significant effects

8.4.1. In relation to potential construction-related impacts, I note that the site is not within or directly adjacent to the European Site, which is located at least 250 metres from the development site. Potential impacts at construction stage include site clearance works, surface water run-off from excavation, and impacts on groundwater. The site is sufficiently distanced from European Sites to ensure that there will be no significant habitat/species disturbance effects at construction stage.

8.4.2. There is a small drain along the roadside boundary which may be connected to the wider drainage network and Mulroy Bay. The underlying groundwater may also be connected. There is, therefore, a potential hydrological pathway between the potential temporary construction impacts (i.e. site clearance works, excavation, run-off etc.) and the European Site. However, the route of any connection is likely to be indirect and weak, which significantly reduces the potential for pathway impacts. Furthermore, Mulroy Bay consists of a substantial water body, which would have significant capacity for dilution of any effects due to its volume and tidal movements. Accordingly, I consider that significant construction-related effects in relation to water quality are unlikely having regard to the limited scale of the development; the

separation distances involved; and the presence of substantial hydrological assimilative capacity.

- 8.4.3. With regard to habitat / species disturbance at operational stage, it is acknowledged that there will be on-site wastewater treatment and surface water disposal to the existing drain on site. However, as per section 7.6 of this report, I am satisfied that wastewater can be adequately treated on site and would not significantly impact on surface water or groundwater. Surface water will be diverted to the roadside drain which may be connected to Mulroy Bay. However, having regard to the limited scale of the development; the separation distances involved; and the presence of substantial hydrological assimilative capacity; I do not consider that any discharge of surface water associated with the development would be likely to impact on Mulroy Bay SAC.
- 8.4.4. In terms of cumulative effects, the development must be considered in the context of various other projects in the area. All extant developments in the area are similarly served by on-site wastewater treatment systems and have been screened out for appropriate assessment. As previously outlined, the proposed development would not be considered to have a significant impact in respect of emissions at construction or operational stage. Similarly, I do not consider that the development is likely to have any such cumulative impact with other developments.
- 8.4.5. The application site is not located adjacent or within a European site and there is no risk of habitat loss or fragmentation. The site does not contain suitable habitat for qualifying interests and therefore there would be no potential ex-situ effects. The existing environment includes numerous on-site wastewater systems. The significant distance between the proposed development site and the European Site, and the weak and indirect ecological pathway is such that the proposal will not result in any likely changes to Mulroy Bay SAC.

8.5. **Mitigation Measures**

- 8.5.1. I confirm that 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.

8.6. Screening Determination

- 8.6.1. The proposed development was considered in light of the requirements of section 177U of the Planning and Development Act 2000 (as amended). Having carried out Screening for Appropriate Assessment of the project, it has been concluded that the project, individually, or in combination with other plans or projects, would not be likely to give rise to significant effects on Mulroy Bay SAC or any European Sites in view of the sites' conservation objectives, and Appropriate Assessment including the submission of a Natura Impact Statement is not, therefore, required.

9.0 Recommendation

Having regard to the foregoing, it is recommended that permission should be refused for the reasons and considerations set out hereunder.

10.0 Reasons and Considerations

It is the policy of the County Donegal Development Plan 2018-2024 (Policy RH-P-4) to consider proposals for new one-off housing within structurally weak rural areas from applicants with a need for a dwelling house. Having regard to the extant permission for a dwelling on the applicant's landholding, it is not considered that there is a demonstrable need for an additional dwelling house. Furthermore, taken in conjunction with existing and permitted development in the area, the proposed development would contribute to an excessive density of suburban type development in a rural landscape that is designated in the Development Plan as being of 'High Scenic Amenity'. The development, if permitted, would result in the expansion and consolidation of a suburban pattern of development in the rural area, would further erode the rural character of the area and be seriously injurious to the visual amenities of the area, and accordingly would be contrary to the provisions of policies RH-P-2 and NH-P-7 of the Development Plan. The proposed development would, therefore, 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.

Stephen Ward
Senior Planning Inspector

18th February 2024