



An  
Bord  
Pleanála

## Inspector's Report ABP-318931-24

<b>Development</b>	Erection of (1) a single-storey dwelling house and domestic garage; (2) a commercial gundog training and breeding facility and all associated site works. A Natura Impact Statement accompanies this application.
<b>Location</b>	Clondallon, Rathmullan, Co. Donegal
<b>Planning Authority</b>	Donegal County Council
<b>Planning Authority Reg. Ref.</b>	2251949
<b>Applicant(s)</b>	Anne Sullivan and Alan Dolan
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant Permission
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Patrick Shovelin Martin Sheridan
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	22 <sup>nd</sup> November 2024

**Inspector**

Ronan O'Connor

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## **1.0 Site Location and Description**

- 1.1. The subject site comprises a stated area of 2.22ha, in the townland of Clondallon (Near), approximately 3km north of Rathmullan. The site is accessed from the regional road R-247-10. The site slopes down from the road towards a stream to the rear of the site.

## **2.0 Proposed Development**

- 2.1. Erection of (1) a single-storey dwelling house and domestic garage; (2) a commercial gundog training and breeding facility and all associated site works. A Natura Impact Statement accompanies this application.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

- 3.1.1. Grant Permission (decision date 11<sup>th</sup> January 2024).

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

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

The Planner's Report (Dated 2<sup>nd</sup> February 2023) is summarised below:

- Notes the site is located within a 'Structurally Weak Area' /Policy RH-P-4 applies (of the previous Development Plan).
- No Supplementary Rural Housing application form submitted/FI required.
- Documentary evidence of compliance RH-P-4 required.
- Ethics of the business is not a consideration for the Planning Authority.
- Accept that the proposed facility could not be accommodated in an urban area.
- Is in compliance with Policy ED-P-1/constitutes a home-based business of limited scale/located within the curtilage of an existing dwelling house.
- Recognised that dwelling does not currently existing.

- Subject to a condition that the dwelling be built either before or at the same time as the commercial element, the proposed development is considered to comply with said Policy EP-P-1.
- Dependant on compliance with ED-P-14.
- Siting considered acceptable/gorse areas should be retained/access should be relocated so hedge can be retained.
- Bulk, scale and mass of the dwelling acceptable.
- Certain elements not acceptable/FI required in relation to same.
- Proposed breeding and training building considered acceptable in terms of design.
- FI required in relation to compliance with relevant standards.
- FI required in relation to impacts on residential amenities.
- Details in relation to access and emptying arrangement of the foul holding tank are required.
- In relation to vision lines setback 3m from the road required /commercial nature of the site.
- FI required in relation to the loading of the wastewater treatment system/to include commercial element.
- Details in relation to surface water and storm water drainage required.
- FI required in relation to AA matters.

3.2.2. Further Information was requested on 7<sup>th</sup> February 2023 in relation to the following issues:

1. Supplementary Rural Housing Application Form/Evidence of Rural Housing Need.
2. Revised Design Details.
3. Evidence of compliance with the Dog Breeding Establishment 2010 Act and associated regulations.

4. Revised site layout indicating retention of hedgerows/outdoor dog accommodation/security fencing/training lands.
5. Vision lines of 120m from a point 3m from the road edge.
6. Details of employees no.s/PE load to the WWTS.
7. Ecological Report.

3.2.3. **Significant Further Information** was received on 17<sup>th</sup> July 2023 including but not limited to the submission of a Natura Impact Statement (NIS).

3.2.4. The second Planner's report (dated 1<sup>st</sup> August 2023) is summarised below:

- In relation to housing need, notes the submission of the Supplementary Housing Form and letter of bone fides from Elected Member/No evidence submitted that applicant's home has been sold/to permit the development of a further second home would materially contravene Development Plan/No housing need demonstrated.
- Note revised dwelling details (noting also that these were not requested).
- Reference is made to the documentation relating to compliance with the Dog Breeding Establishment 2010 Act and associated regulations.
- Note submission of a revised site layout plan.
- Vision lines of a least 50m considered acceptable noting speed survey submitted with the FI request.
- Notes that 4 no. full time employees are proposed on site.
- Notes submission of a NIS/AA carried out/concludes that proposed development will not adversely affect the integrity of any European Site.
- Recommendation was that Further Information was sought in relation to housing need/clarification that applicant's previous home has been sold.

3.2.5. Further Information was requested on 4<sup>th</sup> August 2023 in relation to the following issue:

- Evidence that the applicant's previous home, granted under 01/6211, has been sold.

3.2.6. Further Information was received on 16<sup>th</sup> October 2023 which included a copy of the estate agent's sale brochure for the applicant's property.

3.2.7. The third Planner's report (dated 1<sup>st</sup> November 2023) is summarised below:

- In relation to housing need, the nature of the application is considered an exceptional circumstance/proposed occupation of the subject site by this applicant is considered acceptable in this instance only.
- Recommends that the applicants be requested to erect and publish new public notices.

3.2.8. I would note that 2 no. additional submissions were received after publication of the new notices. These are summarised within the Planner's report (see Section 3.4 below).

3.2.9. The fourth Planner's report (dated 8<sup>th</sup> January 2024) is summarised below:

- Summarises and responds to the 2 no. written submissions.
- Was stated that no further matters were outstanding.
- Recommends a grant of permission.

3.2.10. Other Technical Reports

Area Roads Engineer (dated 19/01/2023) - FI required in relation to the additional traffic generated by the commercial element of the business/vision lines required as a multiple access/drainage required at access.

Roads Report (dated 11/09/2023)– Contains results of a traffic speed survey carried out at site by the Roads Section.

Building Control (dated 21/12/2022) – No objection subject to conditions.

3.2.11. Conditions

Conditions of note include:

Condition No. 3 – Occupancy condition.

Condition No.16 – Maximum of 4 no. full time employees/one of which shall be the occupier of the dwelling hereby granted.

Condition No. 17 – All dog waste to be collected separately, bagged and disposed off site at an authorised facility.

Condition No. 18 – Operated in accordance with the Dog Breeding Established Act 2010/associated Dog Breeding Establishment Guidelines.

Condition No. 20 – Restrictions on times of use of firearms.

Condition No. 22 – Restrictions on noise levels.

### **3.3. Prescribed Bodies**

- County Veterinary Inspector (report date 5<sup>th</sup> January 2023) – Development will likely require registration under the Dog Breeding Establishment Act 2010 and must therefore comply with the requirements of this Act and associated Dog Breeding Establishment Guidelines.
- Uisce Eireann (report date 5<sup>th</sup> December 2022)– No objection subject to conditions

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

- 3.4.1. 12 no. observations were received at application stage and 2 no. at FI stage. The issues raised are summarised in the Planner's reports (Dated 2<sup>nd</sup> February 2023 and 8<sup>th</sup> January 2024). I would note that the issues raised are similar to those raised in the grounds of appeal as summarised below.

## **4.0 Planning History**

- 4.1.1. No planning history.

## **5.0 Policy Context**

### **5.1. Development Plan**

The operative Development Plan is the County Donegal Development Plan 2024-2030.

Housing Policies

The site falls within a 'Structurally Weak Area' with reference to Map 6.3.1 Rural Area Types of the Donegal County Development Plan 2024-2030.

Relevant Objectives and Policies include:

Objective RH-O-1 To ensure that new residential development in rural areas provides for genuine rural need.

Objective RH-O-4 - To ensure that rural housing is located, designed and constructed in a manner that does not detract from the character or quality of the receiving landscape having particular regard to Map 11.1: 'Scenic Amenity' of this Plan.

Policy RH-P-3 -To consider proposals for new one-off housing within 'Structurally Weak Rural Areas' from any prospective applicants for a dwelling house, subject to siting and design considerations and compliance with all other relevant policies of this Plan including Policy RH-P-9. New holiday homes will not be permitted in these areas.

Policy RH-P-9 relates to impact on the landscape, design, ribbon development, impact on amenity, site characteristics and impact on the environment, including the safe disposal of effluent and surface waters.

### Rural Businesses

Policy ED-P-4 Consider proposals for the businesses in rural areas of the nature identified in 'a.', 'b.' and 'c.' below, where such uses would comply with the terms of 'c.' below: a. Valuable additions to the local economy and/or tourism offering in an area, such as those relating to food (particularly value-added products such as artisan food), forestry (e.g. wood products), crafts, creative industries, ecotourism and agritourism (e.g. farmhouse accommodation, pet farms, farm holidays, health farms, equestrian activities, bird-watching holidays, painting and photography tuition, angling tourism, field studies cycling and hill-walking); and

b. Genuine Farm Diversification Schemes where the diversification scheme is to be run in conjunction with the agricultural operations of the farm. The provision of associated short-term let rental accommodation purposes (up to a maximum of five units) may be considered.

c. i. As far as possible, proposed developments should reuse or adapt existing redundant farm buildings. ii. Any new proposed building must be of a scale, form and design appropriate to the rural area. iii. Compliance with all the relevant criteria of Policy ED-P-10. iv. Where there are deficiencies in water infrastructure and/or where it is not possible to connect to the public systems, the developer will be required to demonstrate that bespoke development-led solutions can be identified, agreed in writing, implemented, and maintained

Policy ED-P-5 - Support a home-based business of limited scale (circa 1-5 employees), located within the curtilage of an existing dwelling house; subject to compliance with Policy ED-P-10 and having regard to all other material planning considerations.

Policy ED-P-6: To support the principle of the following small businesses in distinctly rural areas: a. ICT-based micro enterprises (i.e. those with up to 10 employees), and enterprises addressing climate change and sustainability. In such cases, the applicant will be required to demonstrate in general terms that the projected workforce could be drawn from the locality. b. Businesses providing professional services to the local community. In such cases, the applicant will be required to demonstrate in general terms that the anticipated clientele is likely to be drawn from the locality. In all cases, the applicant shall be required to demonstrate that the proposed development: a. would be physically sympathetic to, and would not be visually incongruous with, the locality having regard to the quality, character and distinctiveness of the local landscape; b. would be compatible with surrounding existing or approved land uses and would not be detrimental to the amenities of any nearby residents; c. is otherwise generally in accordance with the requirements of Policy ED-P-10.

Policy ED-P-9 - It is a policy of the Council that any proposal for economic development use, in addition to other policy provisions of this Plan, will be required to meet all the following criteria; a. It is compatible with surrounding land uses existing or approved; b. It would not be detrimental to the character of any area designated as being of Especially High Scenic Amenity (EHSA); c. It does not harm the amenities of nearby residents d. There is existing or programmed capacity in the water infrastructure (supply and/or effluent disposal) or suitable developer-led improvements can be identified and delivered; e. The existing road network can

safely handle any extra vehicular traffic generated by the proposed development or suitable developer-led improvements are identified and delivered to overcome any road problems; f. Adequate access arrangements, parking, manoeuvring and servicing areas are provided in line with the development and technical standards set out in this plan or as otherwise agreed in writing with the planning authority; g. It does not create a noise nuisance; h. It is capable of dealing satisfactorily with any emission(s); i. It does not adversely affect important features of the built heritage or natural heritage including natura 2000 sites; j. It is not located in an area at flood risk and/or will not cause or exacerbate flooding; k. The site layout, building design, associated infrastructure and landscaping arrangements are of high quality and assist the promotion of sustainability and biodiversity; l. Appropriate boundary treatment and means of enclosure are provided and any areas of outside storage proposed are adequately screened from public view; m. In the case of proposals in the countryside, there are satisfactory measures to assist integration into the landscape; n. It does not compromise water quality nor conflict with the programme of measures contained within the current north western river basin management plan.

### Landscape

The site falls within an Area of High Scenic Amenity with reference to Map 11.1 of the County Development Plan 2024-2030

Objective and Policies of relevance are as follows:

Objective L-O-1 : To protect, manage and conserve the character, quality and value of the Donegal landscape.

Policy L-P-2 To protect areas identified as 'High Scenic Amenity' and 'Moderate Scenic Amenity' on Map 11.1 'Scenic Amenity'. Within these areas, only development of a nature, location and scale that integrates with, and reflects the character and amenity of the landscape may be considered, subject to compliance with other relevant policies of the Plan.

### Other

Policy WW-P-6 Facilitate development in urban or rural settings for single dwellings or other developments to be maintained in single ownership with a projected PE <10

in unsewered areas proposing the provision of effluent treatment by means of an independent wastewater treatment system where such systems:

- a. Demonstrate compliance with the EPA's Code of Practice for Domestic Waste Water Treatment Systems (PE. ≤10) (EPA 2021) or any subsequent or updated code of practice.
- b. Would not result in an over concentration or over proliferation of such systems in an area which cumulatively would be detrimental to public health or water quality.
- c. Otherwise comply with Policy WW-P-2.

Chapter 16 Technical Standards including in relation to visibility splays and surface water and roadside drainage.

Rural Housing Location Siting and Design Guide County Donegal Development Plan 2024-2030

## **5.2. Natural Heritage Designations**

- 5.2.1. The nearest designated sites are 'Lough Swilly SAC (site code 000287) and 'Lough Swilly Including Big Isle, Blanket Nook & Inch Lake pNHA (site code 000166)' (both approximately 470m to the south-east of the site at its closest point) and 'Lough Swilly SPA (site code (approximately 2.1km to the south-east of the site at its closest point)).

## **5.3. EIA Screening**

- 5.3.1. See completed Form 2 on file. Having regard to the nature, size and location of the proposed development, and to the criteria set out in Schedule 7 of the Regulations, I have concluded at preliminary examination that there is no real likelihood of significant effects on the environment arising from the proposed development. EIA, therefore, is not required.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

- 6.1.1. 2 no. appeals were submitted from: (1) Martin Sheridan and (2) Patrick Shovelin.  
The grounds of appeal are summarised below:

#### 1. Martin Sheridan

##### Traffic

- Many flaws in the Traffic Survey submitted/refers to his previous submission.
- Survey was carried out by a single person standing on the roadside/would result in being a hindrance to traffic/resulting in traffic slowing considerably.
- 85<sup>th</sup> percentile of 38km/hr which is not accurate for this particular piece of road.
- Roads Dept of DCC requested sight lines of 70m.
- Attention drawn to the Traffic Survey carried out by DCC Road's Dept 12/09/23- recorded an 85<sup>th</sup> percentile of 50 kmh which is more than 30% higher than the flawed survey carried out by the applicant.
- Clear that sight lines of 70m cannot be achieved at this site/anything less would create a significant traffic hazard.

##### Housing Need

- Applicants failed to inform DCC that they already owned houses in America and Donegal.
- Applicants did not give any information in relation to the Structurally Weak Rural Area section of the Supplementary Rural Housing Application Form.
- No genuine rural need exists/would set a dangerous precedent.
- Many houses for sale in Donegal/could build their facility close to an existing house with land.

##### Noise

- No evidence that 16 dogs housed in one building will not create a noise nuisance.
- DCC have allowed for the use of firearms for up to 4 hours per day, every day.

- Sounds of dogs barking and gun shots would make remove remote working as an option.

#### Security

- Dogs are highly valuable/will attract gangs.
- Is not compliant with Policy PH-P-2 (of the previous Development Plan).

#### Impact on farming/Impacts Lough Swilly SAC (Appropriate Assessment)

- Site is surrounded on three sides by working farmland.
- Impacts on livestock from barking dogs/gun shots.
- Site like this should be in an area surrounded by woodland/would create a natural buffer.
- NIS submitted does not address the many concerns raised by objectors including proximity of the site to Carradoan Wood/site is within 500m from the wood/wood supports a range of breeding birds including woodcock.
- NIS does not address the impact that this facility would have on these birds.

Encl: Original submission attached to the appeal.

## **2. Patrick Shovelin**

#### Housing Need

- Applicant does not have a rural housing need/still own a residence at Ballymaleel, Do. Donegal/attached folio details.
- DCC have contradicted a number of statements they have made in relation o housing need .
- Condition No. 3 allows for the house to be sold.

#### Location

- The location of the site is not suitable as there is a residence at the entrance to the site as well as others close by.

#### Traffic

- Traffic Survey submitted by the applicant is unrealistic.

- Survey completed by the Roads Dept is a more complete survey.
- Survey was available to the Planner prior to making a decision.

#### Environment/Appropriate Assessment

- The reduced working area does not provide any of the features indicated as necessary in their original business plan.
- NIS recommends that started pistols be used/applicant states that some 'active' ammunition will be used.
- Would lead to disturbance of Otter population along with other populations of wildlife and birds in the immediate area that are also noted in the Lough Swilly SAC.

#### Noise

- Impact on noise on younger children/appellants house is 80m from the site/another house even closer.
- Reference is made to appeal ref 308773-20 as justification to permit this application.
- This case has little relevant to this current case/nearest residence was 150m away/no gun firing in that case.
- Would be impossible to keep noise levels below 55dB.

#### Farming

- Noise from gunfire could cause a danger to animals and others/impact of dogs on cows.
- River that runs north of the farm has been fenced off to protect the habitats of the otter.
- Allowing the facility would contradict everything the Department of Agriculture have been trying to achieve (improve and protect biodiversity).
- Donegal County Council have showing significant inconsistency in granting this application.

Encl: Site Layout Plan; Original submission

## 6.2. Applicant Response

- 6.2.1. First-party responses to the 2 no. appeals were received on 22<sup>nd</sup> February 2024 (in relation to the Martin Sheriden appeal) & 6<sup>th</sup> March 2024 (in relation to the Patrick Shovelin appeal). These responses are summarised below:

### Sight Lines

- Given the description of the road, its condition and location of the appeal site, sightlines of 50m in each direction are reasonable/Condition 5 provides for same.
- Condition 6 is also aimed to improve visibility and traffic safety.
- A 70m sightline can be provided within the applicant's land ownership if a 50m sightline is not found to be acceptable/can relocate the access within the site.

### Rural Housing Need

- Applicant has provided a copy of the estate agent's sale brochure for the applicant's current property providing the property is on the open market to be sold.
- Due to the nature of the business the proposed house is essential for monitoring, security and supervision purposes.
- Imposition of a condition requiring the owner or employees to reside on the appeal site ensures that the threshold for rural need is met.
- Condition 16 ensures it will not be used as a holiday home.
- Proposal is compliant with the provisions of Policy RH-P-1, Policy RH-P-2 and Policy RH-P-4 (of the previous Development Plan).
- Local Authority are satisfied that the applicant satisfied the relevant definition of housing need as per Policy RH-P-2.

### Noise and Odour

- Condition 20 restricts the use of firearms to a limited time during the day (only 4 hours in any given day).
- Condition 22 limits noise levels to 55dBA (between 8am to 8pm) and 45dBA (between 8pm to 8am). These limits are reasonable and achievable.

- NIS states that only 30 shots per month with a started pistol will be used/low noise level blank cartridges suggested a peak of 78-80 dB, which would be reduced to 5.8dB at 800m i.e. the distance to the Lough Swilly Coast.
- Will not negatively impact bird species on Lough Swilly nor on nearby residents.
- Shooting is a well-known rural pastime and farming activity.
- Dogs will be trained as per the Dog Breeding Establishment Act 2010/will be trained not to bark/training programmes used to reduce stress and avoid dog noise/location design and noise insulation reduces dog noise.
- In relation to odour, daily cleaning will be employed along with exercise plans and grooming of dogs/kennels are designed for appropriate ventilation and sterilization.
- Video evidence of dogs interacting with farm animals/lands adjacent to client's property is primarily cut for silage and is not grazing land.

#### Security

- CCTV will be angled to face into the site/applicant living on site to ensure security/will not attract thugs into the area.
- All trees and hedgerows within the site are being retained and supplemented with additional planting/Conditions 12, 13 and relate to landscaping.

#### Location

- Layout is carefully considered/proposed buildings are centrally located within the client's landholding/set back from boundaries/does not compromise amenity of the adjacent residential dwelling/there is no objection from this property.
- In relation to the adjacent dwelling to the west – proposed entrance is 85m away, proposed garage is 33m from the western boundary/52m from the adjacent dwelling/proposed residence is 75m from the adjacent dwelling/gundog facility is c90m from the adjacent dwelling.
- Rural dwelling that is inextricably limited to a rural activity entirely suitable in a rural location.

#### Security

- Condition 18 refers to the operation of the facility/site is fenced off to improve security.

#### Impact on Lough Swilly

- There is no impact given the distance from the site to the Lough Swilly SPA is some 0.8km away.

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

- 6.3.1. A response from the Planning Authority was received on 20<sup>th</sup> February 2024. The PA is of the view that all matters raised in the appeal have previously been addressed in the Planners' Reports and the Council wishes to rely on content of same. The PA request that ABP uphold the decision of the Planning Authority in this case.

### **6.4. Observations**

- 6.4.1. None.

## **7.0 Assessment**

- 7.1. Having examined the application details and all other documentation on file, including all of the submissions received in relation to the appeal, the reports of the local authority, and having inspected the site, and having regard to the relevant local/regional/national policies and guidance, I consider that the substantive issues in this appeal to be considered are as follows:

- Principle of Development
- Rural Housing Need
- Noise and Disturbance/Impacts on Amenity
- Traffic Issues
- Wastewater
- Other Issues

## **7.2. Principle of Development**

- 7.2.1. In relation to the principle of the proposed dog training facility at this location, the Planning Authority were of the view that the proposal constituting a home-based business within the curtilage of an existing dwelling house and was therefore in compliance with Policy ED-P-13 (of the previous Development Plan) although it was recognised that a dwelling house does not yet exist. If the dwelling house was built before or at the same time as the commercial element, the proposal was considered to comply with said policy.
- 7.2.2. The third-party appellants have stated that the site is not suitable as there are residential dwellings close by.
- 7.2.3. In the response to the appeals, the applicants have stated that the proposal is a linked to a rural activity and is suitable in a rural location (and conversely, it would be unsuitable in an urban location).
- 7.2.4. I would note that a new Development Plan has come into force since the decision of the Planning Authority, and since the submission of the 2 no. appeals and responses to same. Notwithstanding, the broad thrust of policies in relation to business and commercial activity in rural area remains the same. Policy ED-P-5 seeks to support home-based business of a limited scale within the curtilage of an existing house, subject to compliance with Policy ED-P-10. I would note that Policy ED-P-10 relates to commercial developments on the periphery of settlements, and I am not of the view the criteria therein would be relevant in the context of this proposed development. Policy ED-P-9 is of relevance however, and this states that any proposal for economic development use will be required meet certain criteria relating to design and landscaping, surrounding land uses, impact on landscape, amenity impacts (including noise), capacity of water and potable water infrastructure, impact on surrounding roads and access arrangements, environmental impacts including impacts of emissions and on water quality, and on designated sites, and impacts on cultural heritage.
- 7.2.5. In relation to compliance with Policy ED-P-5 of the current plan (a similar Policy ED-P-13 of the previous Development Plan was considered by the Planning Authority), I do not share the view of the Planning Authority that this policy could apply to a site where there is no dwelling house existing. The policy unequivocally states that such

business should be located within the curtilage of an existing dwelling house (as did the previous Development Plan). There is no provision within this policy for the completion of a dwelling house, in advance of a business being set up or the completion of a dwelling house at the same time as the commercial element being initiated. As such, I am not of the view that the proposal is compliant with Policy ED-P-5 of the current Development Plan.

- 7.2.6. In relation to other policies that may be relevant to the proposed gundog training element, I note that Policy ED-P-4 considers proposals for business in rural areas including those which are valuable additions to the local economy and or tourism related. The facility is to train gundogs for export to the USA, as per information provided in the response to the appeals. The first party response to the appeal states that employment will be generated on site as well as other economic benefits to the region in terms of construction, dog food and pet store supplies, veterinary services and visitors to the facility. I accept there may be some economic benefits that are associated with the proposed training facility. However, these are not quantified in any formal manner by the applicant, and as such I am not of the view that it has been demonstrated that the facility would qualify under Policy ED-P-4 as there is insufficient information to determine that the business would provide a valuable economic benefit to the local economy. There is no evidence that the business would be related in any way to a tourism activity within the County.
- 7.2.7. Policy ED-P-6 supports the principle of certain business types in rural areas, including ICT businesses, enterprises addressing climate change and sustainability, and business providing professional services to the local community. The proposed gundog training facility does not fall into any of these categories.
- 7.2.8. In conclusion, I am of the view that the proposed gundog training facility is not supported in principle by the policies of the Development Plan and should be refused on this basis. Notwithstanding, and even if the Board was to accept that the proposed facility was acceptable in principle on the site, under the provisions of any of the above policies applicable to the commercial element, this development is still required to comply with the provisions of Policy ED-P-9 (which relate to surrounding land use, noise impacts, traffic impacts etc) as considered below.

### **7.3. Rural Housing Need**

- 7.3.1. In relation to rural housing need, the Planning Authority is of the view that exceptional circumstances apply in this instance, subject to the proposed occupation of the subject dwelling by the applicant. Condition 3 of the Council's decision requires that the dwelling is occupied by the applicant (or with the consent of the PA, by persons who belong to the same category of housing need as the applicant, as described in Policy RH-P-4 of the previous Development Plan). Condition No. 16 limits the number of employees on the site to a maximum of 4 no. full-time employee positions, one of which shall be the occupier of the dwelling.
- 7.3.2. The third-party appellants state that no genuine rural need exists and the granting for permission would set a dangerous precedent. It is stated that there are many houses for sale in Donegal and they could build their facility close to an existing house with land.
- 7.3.3. The first-party response to the appeal has cited evidence on file that the applicant's current is on the open market to be sold. It is stated that due to the nature of the business the proposed house is essential for monitoring, security and supervision purposes. It is further stated that the imposition of a condition requiring the owner or employees to reside on the appeal site ensures that the threshold for rural need is met. The applicant is of the view that the proposal is compliant with all relevant housing policies of the Development Plan.
- 7.3.4. Objective RH-O-1 seeks to ensure residential development in rural area provides for rural need. I would note that the site lies within a Structurally Weak Rural Area with reference to Map 6.3.1 of the Development Plan and Policy RH-P-3 applies in this instance. Policy RH-P-3 considers proposals from any perspective applicants, and there is no requirement to demonstrate an economic or social need to live in the area.
- 7.3.5. The National Planning Framework seeks to encourage population to be sustained in more structurally weak areas, that have experienced low growth or decline in recent decades, while sustaining vibrant rural communities (Section 5.3 refers). National Policy Objective (NPO) 15 seeks inter alia to support the sustainable development of rural areas by encouraging growth and arresting decline in areas that have experienced low population growth or decline in recent decades. NPO 19 seeks to

facilitate the provision of housing, outside areas of urban influence, 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

- 7.3.6. The Sustainable Rural Housing Guidelines 2005 further state that the housing requirements of persons with roots or links in rural areas are to be facilitated and that planning policies should be tailored to local circumstances.
- 7.3.7. In relation to the issue of rural need, it is clear from information on file that the applicant has ownership of another house in Donegal (granted under 016211, and as referred to in the applicant's Supplementary Rural Housing Application form received by the Planning Authority at FI stage), and from the information on file there is no evidence that this house has been sold, although there is evidence on file that the applicant has sought, or is seeking, to sell this house. The Rural Housing Application Form states the house will be sold after completion of this proposed development. The first-party submission on the appeal is less than clear on this, and infers that either the applicant or an employee will reside in the proposed house, in compliance with Condition 16 of the permission (I refer to Page 8 of the first-party submission received by the Board on 22<sup>nd</sup> February). This somewhat unsatisfactory, in my view. In the scenario that the applicant does reside in the proposed house on site, there is no requirement for the applicant to sell the current house (notwithstanding that this may be the intention). Should an employee occupy the proposed house, it would appear that the applicant would still retain ownership of this house (and there is no evidence on file to contradict this). In either scenario, the applicant could have ownership of both houses, and as such, to my mind at least, genuine rural need has not been demonstrated, and the proposal falls at the first hurdle, i.e. compliance with Objective RH-O-1. I would further note that Conditions 3 and 16 of the permission would appear to be mutually incompatible, in that Condition 3 requires the proposed dwelling to be occupied by the applicant (or by a person with the same housing need, with the written consent of the Planning Authority) and Condition 16 allows the proposed dwelling to be occupied by either the applicant or an employee of the gundog facility. There is also the scenario of where the commercial element of the proposed development does not continue yet the dwelling house would still occupy the site and would possibly be within ownership of the applicant. I am not of the view

that it is possible to impose a reasonable, enforceable condition, or conditions, that would overcome these issues.

- 7.3.8. I note the other supporting documentation on file i.e. letter of *bone fides* and the Supplementary Housing Form, neither of which overcome the fundamental issue of the lack of demonstrated genuine housing need. The need for the house on the site would appear to arise from the location of the gundog training facility on the site (i.e. to provide around the clock security for same). This is understandable, but there are no provisions within the Development Plan to allow for this, noting also that the principle of such an enterprise at this location would not appear to be supported by Development Plan policy in any case, as discussed above.

#### **7.4. Noise and Disturbance/Impacts on Amenity**

- 7.4.1. The Planning Authority would appear to be satisfied that there would be no adverse impacts on residential amenity subject to a limitation on the number of hours gunshots would be fired, and subject a limitation on noise levels, and subject to the proposed dog training facility being operated in accordance with the relevant legislative requirements and associated guidelines.
- 7.4.2. The 2 no. appeals have raised concerns in relation to noise impacts (from gunfire and from dogs barking). It is contended that it would be impossible to keep noise levels below the required 55dB as specified in Condition 22. Impact of noise on remote working is also raised as a concern.
- 7.4.3. The first party response to the appeals refers to Conditions 20 and 22 which restrict gunfire to certain times and limit noise levels, respectively. It is set out that a low noise level blank cartridges would be used which a peak noise level of 78-80 dB. It is further stated that shooting is a well know rural pastime and farming activity. Furthermore, it is stated that the dogs will be trained not to bark, with programmes and training to reduce stress. Sound insulation and the location of the training facility will further reduce noise levels.
- 7.4.4. Of relevance, when considering noise issues, is Policy ED-P-9 which states that when considering proposals for economic development use, in addition to other policy provisions of this Plan, such proposals will be required to meet a number of criteria including compatibility surrounding land uses and ensuring that the use does not create a noise nuisance.

- 7.4.5. In relation to noise levels, I would note that the nearest Noise Sensitive Locations (NSLs) are the residential dwellings in the vicinity of the site. The nearest such dwelling is located approximately 6m to the south of the site, and shares a boundary with the site (the first-party submission states that no objection was received from the occupier of said dwelling). The next nearest dwelling is located approximately 95m to the south-east of the site, with the boundary of same located approximately 81m to the south-east of the site. There is a dwelling located approximately 120m to the south-west of the site, with the boundary of same located approximately 87m south-west of the site. There is a further dwelling is located approximately 127m to the north of the site, with the boundary of same located approximately 119m to the north.
- 7.4.6. Having regard to the nature of the application, there is potential for two distinct noise sources of note from this facility, from gunfire and from barking dogs. I would firstly note that no assessment of potential noise impacts has accompanied the application, i.e. a Noise Impact Assessment. As such, there is no technical assessment of potential noise levels generated from activities on the site or likely noise levels at the Noise Sensitive Locations (NSLs) as described above, and there is no assessment of the types of noise impacts (i.e. intermittent, continuous or impulsive noise sources) nor is there any reference to appropriate noise standards as relates to acceptable noise levels. There is potential that noise levels from gunfire on the site could be significant, notwithstanding that the applicants propose to use low noise level cartridges. It is set out that these have a noise level of 78-80dB. In relation to same, it is not clear if the noise limitation of 55dB can be achieved at the nearest residence, as per the requirements of Condition 22 (see discussion of this condition below). I note that the Council has imposed a condition limiting the use of gunfire to 4 hours per day, between 10am and 5pm, October to March and between 10am to 6pm, April to September (Condition No. 20). Notwithstanding, if noise emanating from the site impacts in an adverse manner on residential amenity, I would not be of the view that allowing this for 4 hours per day, every day of the week would be appropriate. I would also note that allowing shooting between March and October is not in line with the recommended mitigation measures set out in the NIS (See Appendix 3 for discussion of same) and in this regard Condition No. 20 would appear to be incompatible with Condition No. 2, which requires the mitigation measures as

set out in the NIS to be implemented in full. There is also potential for noise from barking dogs to be significant, noting that a maximum 16 no. dogs (excluding puppies) are proposed to be on site at any one time, notwithstanding that it stated in the first party response to the appeal that the dogs on site will be trained not to bark. There is no supporting documentation on the effectiveness of this training.

- 7.4.7. In relation to Condition No. 22, I would have some concerns with the potential effectiveness of same. In the in the interests of comprehensiveness I have reproduced same here:

*Condition No. 22: Noise levels as a result of activities associated with the operation of the gundog training facility, as measured externally at the nearest residence **of** the site boundaries shall not exceed 55dBA (between 8am to 8pm) and 45 dBA (between 8pm to 8am). Where noise levels exceed those specified, the development shall submit detailed proposals for ameliorating excessive noise levels. (my emphasis).*

- 7.4.8. Firstly, there would appear to be a typo in same. It is likely the word ‘of’ should read ‘off’. However, this is not a fundamental issue, in and of itself, and should the Board be minded to grant, this can be rectified relatively simply. However, I would have some concern in relation to the second part of the condition, and it would seem to indicate that there is a likelihood that the noise levels specified could be exceeded, and it is also not clear what measures could be out in place to ensure that that they remain within the limits specified. It is also not clear who would be responsible for monitoring and measuring said noise levels.

- 7.5. In conclusion therefore, having regard to the considerations above, and in the absence of a Noise Impact Assessment, I am of the view that there is a likelihood of adverse impacts on surrounding residential amenity, and on surrounding rural amenity, having regard to potential noise levels generated by activities on the site. As such, the proposed development is contrary to Policy ED-P-9 of the Donegal Development Plan 2024-2030.

## **7.6. Traffic Issues**

- 7.6.1. The Planning Authority were of the view that vision lines of 50m from either direction from the proposed site access were sufficient, having regard to the conclusions of the applicant’s Traffic Survey, as submitted with the application.

- 7.6.2. The 2 no. third-party appeals raise concerns in relation to the submitted Traffic Survey and point to alleged flaws in same including the fact it was carried out by a single person standing on the roadside, which could have caused traffic to slow considerably, hence skewing the speed survey results. It is set out that the 85<sup>th</sup> percentile of 38km/hr is not accurate for this particular stretch of road. It is further noted that the Roads Department of Donegal County Council carried out its own traffic survey and requested sight lines of 70m, having regard to the results of same, which recorded an 85<sup>th</sup> percentile<sup>1</sup> of 50 km/h. It is further stated that it is clear that sightlines of 70m cannot be achieved at this site.
- 7.6.3. The first-party response to the appeals states that given the description of the road, its condition and location of the appeal site, sightlines of 50m in each direction are reasonable, and it is noted that Conditions 5 and 6 provide for traffic safety. However, it is stated that it is possible to provide sightlines of 70m by relocating the access within the site.
- 7.6.4. In relation to same, I note the contents of the applicant's Traffic Survey Report which over the course of 1hr 5 mins recorded 16 no. traffic movements and presents an 85<sup>th</sup> percentile speed of 38.13km/hr. This in turn requires sight lines of 50m from the site entrance in both directions, having regard to standards as set out in the Development Plan. The Traffic Survey Report states that the survey was carried out in accordance with guidelines as set out in TA 22/81. While not named in the report, the TA 22/81 document is a document entitled 'Vehicle Speed Measurement on All Purpose Roads', which is a UK Guidance Document.<sup>2</sup> This document appears to be withdrawn. Notwithstanding, I would have some concern in relation to the sample size obtained (16 movements), noting that this guidance document, as referred to by the applicant's survey, refers to a minimum sample size of 200 vehicles. I would only give limited weight to the contention of the 2 no. appeals that the methodology of the survey, i.e. a single surveyor located opposite the site entrance, would potentially have an impact on vehicle speeds, by virtue of vehicles slowing down (there is no footpath on either side of the road at this location) as this is difficult to verify, and it is likely that this methodology is a usual one in order to gain samples for such traffic speed surveys. However, of particular note, in this instance, is the report of the

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<sup>1</sup> The speed only exceeded by 15% of the cars surveyed.

<sup>2</sup> Vehicle Speed Measurement on All Purpose Roads (Highways Agency et al, 1981)

Roads Section (dated 11<sup>th</sup> September 2023) which contains the conclusions of a road survey carried out by the Roads Section at the location of the site over 3 no. days (30<sup>th</sup> Aug 2023 to 02<sup>nd</sup> Sep 2023). A total of 549 cars were surveyed, and an 85<sup>th</sup> percentile speed of 50 km/hr was obtained. I have greater confidence in the results of this survey, in particular given the larger sample size that has been obtained by virtue of the survey being carried out over a longer period than the applicant's survey. I would note that this internal report was received by the Planner after the request for FI was issued (4<sup>th</sup> August 2023) and the Planner was of the view that there was no mechanism to enable FI to be requested in relation to same (Section 3.1 of Planner's Report dated 1<sup>st</sup> November 2023 refers). Notwithstanding, the traffic survey produced by the Roads Department would indicate that vision lines of 70m in either direction are required at the site access.

- 7.6.5. The applicant, in the response to the appeal, has stated that they can achieve 70m vision lines in either direction, by repositioning the site entrance, and that this would not involve third party lands. No drawing has been submitted indicating that this is achievable. However, it may possible that it can be achieved, subject to amendments to the positioning of the proposed access point. Notwithstanding, in the absence of an amended drawing demonstrating this I am not satisfied that it has been demonstrated that the proposed development will not result in a traffic hazard. However, given the substantive reasons for refusal as set out above, and as per my recommendation below, I do not consider it should form a standalone reason for refusal. However, should the Board be minded to refuse permission, in line with the recommended reasons for refusal below, the applicant should be advised that any future applications should ensure that the requisite sightlines can be achieved from the site access point, with appropriate documentary evidence supporting same.

## **7.7. Wastewater**

- 7.7.1. I would note that wastewater has not been raised as an issue within the appeal submission. Notwithstanding, the Board should be satisfied that the site is suitable for wastewater discharge to ground as is proposed here.
- 7.7.2. In relation to the documentation provided with the application, I note a Revised Site Suitability Report was received by the PA on 17<sup>th</sup> July 2023, as part of the FI submission. (Dated March 2023). This was revised in light of the commercial use on

the site, and taking this use into consideration, a Population Equivalent (PE) of 9 persons was considered for design purposes, taking into account the dwelling house and employees on the site.

- 7.7.3. The report identifies the category of aquifer underlying the site as 'Poor', with a vulnerability classification of 'Extreme'. For such sites, Table E1 (Response Matrix for DWWTSs) of the EPA Code for Practice Domestic Wastewater Treatment Systems identifies an 'R21' response category i.e. 'acceptable subject to normal good practice. 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.' No group water supply is identified as being within 1km.
- 7.7.4. The Site Characterisation Assessment Report notes that that potential targets at risk are groundwater and surface water. No domestic wells were apparent within the immediate vicinity of the proposed percolation site. The site is described as relatively flat. The presence of rush outcrop was an indication of hydraulic issues with the site, although this could be improved with land drainage improvements. It was noted as being imperative that surface water drainage should be discharged to nearby watercourses, i.e. beyond the proposed percolation area. It is stated the site is relatively flat with a slop of less than 1:20.
- 7.7.5. The report indicates that a trial hole, with a depth of 2m, recorded Silt/Clay to a depth of 2m with no water table or bedrock encountered. In relation to the percolation characteristics of the soil, a sub-surface percolation test result of 50.23 (previously known as a 'T' Test) was returned. A surface water test was also carried out (to establish a percolation value for soils that are being considered for use in constructing a mounded percolation system or for use in polishing filters). The surface water test returned a percolation value of 52.47. As a result of same, it was determined that the site was not suitable for a septic tank and percolation area but is suitable for a secondary treatment system and tertiary treatment system, discharging to ground water (and I note that this is as per Table 6.4 of the EPA Code of Practice). The recommended WWTS is a packaged WWTS with associated packaged Tertiary Treatment System. It is also noted that a separate standalone hold tank (4000L) should be installed and a foul network put in place to ensure the

separation of same throughout the wastewater treatment process. A land drainage programmed is also recommended.

7.7.6. The PA did not raise any concerns in relation to the suitability of the site for the wastewater treatment system proposed and no third parties have raised concerns in relation to same. The proposed system would appear to be suitable for the site, noting the reported characteristics of the site and underlying soil, and noting the requirements of the EPA Code of Practice. I would note that the proposed DWWTS will be required to be installed to EPA requirements. Should the Board be minded to grant permission, a standard condition can be imposed in relation to same. In this manner, and having regard to the suitability of the soil and subsoil for the system as proposed, and the nature of the site, the Board can be satisfied that the proposed DWWTS will operate in a satisfactory manner.

7.7.7. In conclusion therefore, and having regard to the site percolation test results, and the supporting documentation accompanying the application, I consider it has been demonstrated that the site can accommodate a wastewater treatment system as recommended in the Site Characterisation Form, subject to the system being installed as recommended and in line with the EPA Code of Practice – Domestic Waste Water Treatment Systems (p.e. ≤ 10), 2021.

## **7.8. Other Issues**

7.8.1. Impact on Farming/Livestock – The appellants have stated that the noise from gunfire and from dogs would lead to adverse impacts on livestock, as a result of stress. The first party appellant has stated that the immediate adjoining fields are not used for grazing livestock. Notwithstanding, I am of the view that impact on livestock is a valid concern, insomuch as the proposed development could impact on the rural amenity of the area, as a result of the noise issues I have identified in Section 7.5 above.

7.8.2. Security – I am not of the view that the security of surrounding properties would be adversely affected by the proposed development as there is insufficient evidence in my view to demonstrate that this would be the case.

## 8.0 AA Screening

- 8.1.1. See Appendix 3. Therein I have concluded the following:
- 8.1.2. Following Appropriate Assessment, it has been ascertained that the proposed development, individually or in combination with other plans or projects would not adversely affect the integrity of Lough Swilly SPA, Lough Swilly SAC or any other European site, in view of the Conservation Objectives of these sites.
- 8.1.3. The proposed development will not prevent or delay conservation objective set for the screened in European Sites.
- 8.1.4. My conclusion is based on a complete assessment of all aspects of the proposed project as provided in the Natura Impact Statement and there is no reasonable doubt as to the absence of adverse effects.
- 8.1.5. This conclusion is based on:
- a full and detailed assessment of all aspects of the proposed project, including proposed mitigation measures,
  - an assessment of in-combination effects with other plans and projects including existing statutory plans, historical projects, current / permitted proposals and future plans, and
  - there being no reasonable scientific doubt as to the absence of adverse effects on the integrity of these European sites.

## 9.0 Recommendation

I recommend that permission be REFUSED for the reasons and considerations below:

1. Having regard to the rural location of the proposed development site, and having regard to the nature of the proposed commercial element of the proposal (i.e. a gundog training facility), it is not considered that the principle of same is supported by the policies of the Donegal Development Plan 2024-2030, noting that the proposed commercial element is not a business that is within the curtilage of an existing dwelling house (as required by Policy ED-P-5). It is further noted that the proposal is not supported by any evidence of a demonstrable

economic benefit to the local economy (with reference to Policy ED-P-4 of the Development Plan) nor does the proposed commercial element fall within those category of rural business. as set out in Policy ED-P-6 of the Plan. As such it is considered the proposed gundog training facility is contrary to the provisions of the Development Plan (as relates to business in rural areas) and is contrary to the proper planning and sustainable development of the area.

2. It is not considered that the applicant has demonstrated a genuine rural need for a dwelling house at this location, as required by Objective RH-O-1 of the Donegal Development Plan 2024-2030, noting the evidence on file that the applicant currently owns an existing dwellinghouse within Donegal (as granted under Planning Ref 016211). As such, the proposed development is contrary to said objective of the Development Plan, and is contrary to the proper planning and sustainable development of the area.
3. Having regard to the nature of the proposed development, and having regard to the lack of information on file in relation to potential noise impacts arising from the operation of the gundog training facility, in the form of a Noise Impact Assessment, it is considered that the development as proposed would have an adverse impact on surrounding residential amenity and on the wider rural amenity of the area. As such, the proposed development would be contrary to the provisions of Policy ED-P-9 (as relates to residential amenity and noise nuisance) of the Donegal Development Plan 2024-2030.

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

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Ronan O'Connor  
Senior Planning Inspector

7<sup>th</sup> February 2025

## Appendix 1 - Form 1 - EIA Pre-Screening

**[EIAR not submitted]**

<b>An Bord Pleanála Case Reference</b>	ABP-318931-24		
<b>Proposed Development Summary</b>	Erection of (1) a single-storey dwelling house and domestic garage; (2) a commercial gundog training and breeding facility and all associated site works. A Natura Impact Statement accompanies this application.		
<b>Development Address</b>	Clondallon, Rathmullan, Co. Donegal		
<b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b> (that is involving construction works, demolition, or interventions in the natural surroundings)		<b>Yes</b>	X
		<b>No</b>	
<b>2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?</b>			
<b>Yes</b>			
<b>No</b>	X		Proceed to Q.3
<b>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]?</b>			
		<b>Threshold</b>	<b>Comment (if relevant)</b>
<b>No</b>			
<b>Yes</b>	X	Class (10)(b) of Schedule 5 Part 2 (i) Construction of more than 500 dwelling units; (ii) Urban development which would involve an area greater than	1 dwelling house on a site of 2.22 Ha. The applicable site
			Proceed to Q.4

		2 ha in the case of a business district, 10 ha in the case of other parts of a built-up area and 20 ha elsewhere	area threshold is 20ha.	
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4. Has Schedule 7A information been submitted?		
No	X	Preliminary Examination required
Yes		Screening Determination required

Inspector: \_\_\_\_\_ Date: \_\_\_\_\_

## Appendix 2 - Form 2 - EIA Preliminary Examination

<b>An Bord Pleanála Case Reference</b>	As per Form 1	
<b>Proposed Development Summary</b>	As per Form 1	
<b>Development Address</b>	As per Form 1	
<p><b>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.</b></p>		
	<b>Examination</b>	<b>Yes/No/ Uncertain</b>
<p><b>Nature of the Development</b></p> <p>Is the nature of the proposed development exceptional in the context of the existing environment?</p> <p>Will the development result in the production of any significant waste, emissions or pollutants?</p>	<p>The proposed development is for a dwelling house and a gundog training facility. There are existing dwelling houses and farmyards in proximity to the site. The proposed development would therefore not be exceptional in the context of the existing environment in terms of its nature.</p> <p>The development would not result in the production of any significant waste, emissions or pollutants.</p>	<p>No</p> <p>No</p>
<p><b>Size of the Development</b></p> <p>Is the size of the proposed development exceptional in the context of the existing environment?</p>	<p>The proposed dwelling is a single storey dwelling house. The training facility consists of single storey structures. The development would generally be consistent with the scale of surrounding developments and would not be exceptional in scale in the context of the existing environment.</p>	<p>No</p>



**Inspector:** \_\_\_\_\_

**Date:** \_\_\_\_\_

## **Appendix 3 Appropriate Assessment Screening Determination (Stage 1) and Appropriate Assessment (Stage 2)**

### **Screening for Appropriate Assessment**

#### **Screening Determination**

##### **Step 1: Description**

I have considered the proposed development in light of the requirements of S177U of the Planning and Development Act 2000 as amended.

I note that the PA has carried out an Appropriate Assessment and has concluded that the proposed development will not affect the integrity of any European Site (Planner's Report dated 1<sup>st</sup> August 2023).

The 2 no. third-party appellants have raised issues relating to Appropriate Assessment, and it is stated that the NIS as submitted does not address the many concerns raised by objectors including proximity of the site to Carradoan Wood, noting that the site is within 500m from the wood. It is further noted that the wood supports a range of breeding birds including woodcock. The potential impacts of the proposed development on otter and birds associated with the Lough Swilly SAC and SPA are raised as a concern.

The applicant has submitted a Natura Impact Statement (dated June 2023), as part of the Further Information submission received by the Planning Authority on 17<sup>th</sup> July 2023. This concludes that, provided the recommended mitigation measures outlined therein are implemented in full, the proposed development is not expected to result in any adverse residual impacts on the European Sites considered within the NIS, and in particular those 2 no. sites which are within the Zone of Influence – Lough Swilly SAC (002287) and Lough Swilly SPA (004075).

The applicant provides a description of the proposed development in Section 4.1 of the report and, of note, it is stated that all surface water generated from the kennel cleaning regime will be held in a 4,000L holding tank that will be de-sludged on a regular basis. All storm water will be collected and discharged via an oil filter to a field

drain that is located on the northern boundary of the site. Water supply will be from a local ground water scheme. Wastewater will be treated by a WWTS with a mechanical aeration system and soil polishing filter (as per the discussion in Section 7.7 of this report) . A rainwater harvesting tank will be installed with an overflow directed towards the stream at the northern boundary of the site. Lighting will be limited to hooded lights (facing away from south and east direction). Solid waste will be removed of and disposed via bin collection. In relation to the operational regime, it is stated that training with a pistol and remote launcher will occur within the boundary of the site. The report sets out that the shots will be within the summer months only (April to August), with 10 no. shots, 3 times per month.

The development site is described in Section 4.2 of the report. It is noted that the site is 2.2 ha in size and is located on flat ground that slopes slightly north-east and surrounded by grazing land and private dwellings to the west. The Drumhallagh River runs along the northern boundary of the site (this drains to Lough Swilly, at a point approximately 800m to the north-east of the site). The site consists of three fields with the largest field encompassing improved grassland (GS4). The two smaller fields are most wet grassland with extensive cover of rushes. Hedgerow habitat divides the fields and also bounds the site.

## **Step 2: Potential impact mechanisms from the project**

The Zone of Influence, as described in the AA Screening Report, has been determined by the Source-Pathway-Receptor model. The development site is not located in or immediately adjacent to a European site. The closest European sites are Lough Swilly SAC (002287) located c473m from the site (terrestrial habitats associated with same are located to the south of the site), Lough Swilly SPA (004075) located c2.1km south of the site and Horn Head to Fanad Head SPA (004194), 5.2km north of the site. The Lough Swilly sites are hydrologically connected to the proposed development site via the Drumhallagh River, which runs along the northern boundary of the site, and were considered to be within the zone of influence of the proposed development. The report concludes that all other sites are outside the zone of influence due to distance and/or lack of a hydrological connections.

Section 4.5 of the report identifies potential impacts on Lough Swilly SPA and SAC. In terms of impacts on Lough Swilly SAC, it is noted that at construction phase and operational phase, there is potential for a deterioration of nearby habitats or water quality at this location. In relation to potential impacts on Lough Swilly SPA, it is noted that potential impacts could include deterioration of water quality and indirect impacts as a result of anthropogenic activities.

In considering potential impacts, and having regard to the NIS and other documentation on file, I am of the view that the elements of the proposed development that would potentially generate a source of impact are:

#### Construction Stage

- The construction of the dwellinghouse, the dog training facility and associated buildings and hard standing on site which would involve *inter alia* excavation and infilling.
- Hydrocarbon and other potential spillages.
- Noise and disturbance (*ex-situ* impacts)

#### Operational Stage

- Run-off and surface water and general site management.
- Soiled water generated on the site/ Hydrocarbon spillages from operational activities.
- Solid waste matter entering the surface water network (i.e. dog waste)
- Waste Water disposal.
- Noise and disturbance.

Potential impact mechanisms at construction stage include those from surface water pollution from construction works (silt/ hydrocarbon/ construction related), resulting in a deterioration of water quality. This could occur as a result of silt and contaminants entering the river to the north of the site. Disturbance to otter habitat along the river bank to the north is also a potential impact mechanism (*ex-situ* impact).

At operational stage, contaminated surface water runoff from hard standing and roofs, as well as possible hydrocarbon spillages from cars, delivery vehicles, and on-site plant could enter the surface water network. The proposed surface water network outfalls to the Drumhallagh River. This river enters Lough Swilly at a location approximately 800m north-east of the site. Also at operational stage, the solid waste (i.e. dog waste) generated on site could enter Lough Swilly SAC/SPA via the mechanism described above with subsequent impacts on water quality within the Lough Swilly sites.

In terms noise and disturbance impacts on species associated with a Natura 2000 site, given the proximity of the site to Lough Swilly SAC, and the nature of the development (i.e. gunfire as part of the training process) there is some potential for noise and disturbance impacts on the otter and harbour purpose qualifying interests of the SAC, resulting from gunfire, as well as potential *ex-situ* impacts on the habitat of the otter, resulting from both gunfire and dog activity (noting the proximity of the river to the north of the site and its connection with Lough Swilly SAC). Given the proximity of the site to Lough Swilly SPA (c2.1km), there is also potential for the proposed development to result in noise and disturbance impacts from gunfire as well as *ex-situ* disturbance impacts on bird species associated with same. I am mindful of the distance of the site from Lough Swilly SPA, and the lack of any evidence on file that would indicate that the site represents an important *ex-situ* feeding habitat for birds associated with the SPA. As such I am not of the view that it is likely that there would be a loss of *ex-situ* feeding and foraging habitat for said bird species.

There are no other readily apparent impact mechanisms that could arise as a result of this project.

### Step 3: European Sites at risk

#### European Sites within the Potential Zone of Impact

- Lough Swilly SAC
- Lough Swilly SPA

Table 2: Could the project undermine the conservation objectives 'alone'		
European Site and qualifying features	Conservation objective	Could the conservation objectives be undermined (Y/N)?

	(summary)		
<b>Lough Swilly SAC (Site Code 002287)</b>			
Estuaries [1130] Coastal lagoons [1150] Atlantic salt meadows (Glauco-Puccinellietalia maritimae) [1330] Molinia meadows on calcareous, peaty or clayey-silt-laden soils (Molinion caeruleae) [6410] Old sessile oak woods with Ilex and Blechnum in the British Isles [91A0] Phocoena phocoena (Harbour Porpoise) [1351] <sup>3</sup>	<p>To maintain the favourable conservation condition of:</p> <ul style="list-style-type: none"> <li>• Estuaries [1130]</li> </ul> <p>To restore the favourable conservation condition of:</p> <ul style="list-style-type: none"> <li>• Coastal lagoons [1150]</li> <li>• Atlantic salt meadows (Glauco-Puccinellietalia maritimae) [1330]</li> <li>• Old sessile oak woods with Ilex and Blechnum in the British Isles [91A0]</li> <li>• Lutra lutra (Otter) [1355]</li> </ul>	Yes. See discussion below.	

<sup>3</sup> I note that the Harbour Porpoise was added as a new Qualifying Interest in March 2023 with reference to [https://www.npws.ie/sites/default/files/protected-sites/amendment\\_notifications/AN002287.pdf](https://www.npws.ie/sites/default/files/protected-sites/amendment_notifications/AN002287.pdf). I would further note that there is no specific conservation objective relating the harbour porpoise.

Lutra lutra (Otter) [1355]			
<b>Lough Swilly SPA (004075)</b>			
Bird species listed as qualifying interests for the Lough Swilly SPA <sup>4</sup>	To maintain the favourable conservation condition of bird species of special conservation interest.	Yes. See discussion below.	

Table 1 European Sites at risk from impacts of the proposed project			
Effect mechanism	Impact pathway/Zone of influence	European Site(s)	Qualifying interest features at risk
Indirect surface water pollution	River running along the northern boundary which provides a direct hydrological connection to Lough Swilly SAC/Lough Swilly SPA.	Lough Swilly SAC  Lough Swilly SPA	<u>Lough Swilly SAC</u>  Estuaries [1130]  Coastal lagoons [1150]  Atlantic salt meadows (Glauco-Puccinellietalia maritimae) [1330]  Molinia meadows on calcareous, peaty or clayey-silt-laden soils (Molinion caeruleae) [6410]

<sup>4</sup> See list in Appendix 4 of this report and at <https://www.npws.ie/protected-sites/spa/004075>

			<p>Phocoena phocoena (Harbour Porpoise) [1351]</p> <p>Lutra lutra (Otter) [1355]</p> <p><u>Lough Swilly SPA</u></p> <p>Bird species that are qualifying interests of Lough Swilly SPA (please refer to Appendix 4 for list of same)</p>
Noise and Disturbance (both direct and <i>ex-situ</i> anthropogenic impacts)	Proximity of the site to the SAC/SPA	<p>Lough Swilly SAC</p> <p>Lough Swilly SPA</p>	<p><u>Lough Swilly SAC</u></p> <p>Phocoena phocoena (Harbour Porpoise) [1351]</p> <p>Lutra lutra (Otter) [1355]</p> <p><u>Lough Swilly SPA</u></p> <p>Bird species that are qualifying interests of Lough Swilly SPA (please refer to Appendix 4 for list of same)</p>

#### Step 4: Likely significant effects on the European site(s) 'alone'

As noted above the main aspects of the proposed development which could undermine conservation objectives and result in significant effects on Lough Swilly SPA and SAC include the alteration / deterioration of water quality arising mainly due to *inter alia* earthworks, potential release of hydrocarbons, contamination from wastewater disposal, release of cement-based products, etc. At operational stage, the potential

contamination of surface water run off due to spillages, hydrocarbon run off etc could also impact on water quality. At both construction and operational stages, noise and disturbance could impact on qualifying species associated with Lough Swilly SPA and SAC, as described above.

While I note that mitigation is provided at both construction and operational stages, the nature of such mitigation is non-standard in my view, in particular the implementation of water quality and noise control measures (as described below), which could be taken as a mitigation measure designed to avoid impacts on proximate Natura 2000 sites, namely the Lough Swilly Sites.

I therefore conclude that the proposed development would have a likely significant effect 'alone' on qualifying features of the following European Sites from effects associated with the potential alteration / deterioration of water quality and changes to local hydrological regime:

- Lough Swilly SPA and SAC

An Appropriate Assessment (Stage 2) (NIS) is required on the basis of the effects of the project 'alone'. Further assessment in-combination with other plans and projects is not required at this time.

**Proceed to AA.**

**Overall Conclusion - Screening Determination**

In accordance with Section 177U(4) of the Planning and Development Act 2000 (as amended) and on the basis of objective information, provided in the screening report for AA.

I conclude that the proposed development is likely to have a significant effect on the qualifying features of the following European Sites from effects associated with the potential alteration / deterioration of water quality and potential changes to local hydrological regime:

- Lough Swilly SPA and SAC

It is therefore determined that Appropriate Assessment (stage 2) [under Section 177V of the Planning and Development Act 2000] is required on the basis of the effects of the project 'alone'.

## Appropriate Assessment

### Integrity test

#### **Natura Impact Statement**

Section 5 of the NIS is the Stage 2 – Appropriate Assessment. This sets out in detail a description of each of the Lough Swilly sites and the potential impact on each of the qualifying interests of Lough Swilly SAC and SPA.

In relation to Lough Swilly SAC, impacts on terrestrial habitats ('Old sessile oak wood with Ilex and Blechnum in the British Isles' and 'Molinia meadows on calcareous, peaty or clayey-silt-laden soils (Molinion caeruleae)' are ruled out, noting the former habitat is uphill and upstream from the site, and the latter habitat is located c10km from the proposed development, outside the zone of influence. In relation to the only marine habitat within the SAC (Estuaries) it is noted that this habitat is located c4km downstream from the proposed development site. Notwithstanding, it is set out that it is critical that runoff waters from the development remain of good standard, and mitigation measures are set out to ensure that this is the case (as described below).

Table 3 rules out impacts on coastal habitats (Coastal Lagoons and Atlantic salt meadows) as they are located more than 10km from the site.

In terms of other species, it is noted that otter habitats and territory are widespread in Lough Swilly. It is stated that any impact is likely to be low given the development is not located on the coast and no disturbance will occur on stream banks. In relation to disturbance, it stated that noise levels will remain below relevant thresholds. However, a number of mitigation measures are set out to ensure that there will be no impacts on otters. I note that the NIS does not refer to Harbour Porpoise, which was added as a qualifying interest of Lough Swilly in March 2023. Notwithstanding, I am of the view that any consideration of water quality impacts and noise and disturbance impacts, when considering otter species (and bird species associated with the SPA), would equally apply to the harbour porpoise, and the mitigation measures as relates to same would also equally apply to the harbour porpoise. As such, I do not consider this omission to be a fundamental flaw or lacunae in the NIS.

In relation to Lough Swilly SPA, the NIS notes that the SPA is located 2.1km from the site, and as such there will be no disturbance impacts at construction phase, although there is potential for same at operational stage from gunfire. The use of low noise cartridges is recommended, along with designated shooting periods during the year (April to August only). It is stated that the recorded noise levels of the low noise cartridges (which was measured at a peak of 78-80 dB on site, would be reduced to 5.8dB at 800m (which is the distance to the Lough Swilly Coast. It is stated this is not a noise level that would disturb bird species listed as qualifying interests. It is noted that while habitats on site (improved grassland) may have been used by birds, it is not a primary type of habitat used by birds associated with this SPA. Mitigation measures are set out however are detailed below. There is no detailed discussion within the NIS in relation to water quality impacts on the SPA, but mitigation measures as relates to water quality are set out. However, it is assumed that water quality impacts would impact on the feeding opportunities for birds associated with the SPA. In combination impacts are ruled out.

The NIS concludes that, with the implementation of mitigation measures as outlined in the report, there would be no significant adverse effects on the integrity of any European Site as a result of the proposed development.

I concur with the conclusions as set out in the NIS i.e. that there is potential for impacts on the integrity of the European Sites referenced above, for the reasons set out therein. This is due to possible future degradation of water quality and works during the construction phase, and other activities that are part of the operational phase, as well as potential noise and disturbance impacts as described above.

Negative impacts on surface water could result in degraded water quality leading to a loss of habitat directly, to a loss of foraging grounds and food supplies for certain species, population decline, and noise and disturbance impacts could lead to negative effects for otter and harbour porpoise, and bird species associated with the SPA. The effects described could therefore undermine the Conservation Objectives for the relevant qualifying interests, which would adversely affect the integrity of the screened-in European sites. Mitigation measures are set out in Section 5.3 of the NIS and include but are not limited to the measures I have described below.

Regarding the impact on the water quality of these sites. the avoidance of water pollution reaching the designated areas is proposed by the applicant through various mitigation measures as set out below:

1. Use of silt traps and no site excavation during or immediately after high rainfall events.
2. Working area confined to defined site boundary i.e. 300m from the river's edge, as shown in Appendix 1b of the NIS and no refuelling works within 50m of the stream.
3. Appropriate storage of construction materials.
4. Oil filter as part of the surface water drainage design.
5. WWTS to be installed as per Guidelines.
6. Cleaning process to following strict guidelines as set out in the NIS (i.e. in relation to concentrations of chlorine for example).

Regarding potential noise and disturbance impacts, the avoidance of same is proposed by the applicant through various mitigation measures as set out below:

1. Working area confined to defined site boundary i.e. 300m from the river's edge – no dogs allowed past this point.
2. Gun training limited to the period April to August (to avoid impacts on wintering bird species associated with Lough Swilly SPA).
3. Gun training limited to the use of a starter pistol and limited to 10 shots, 3 times per month, and the use of a silent remote launcher.
4. Contained isolation building to prevent spread of disease to wildlife.

I am of the view that, subject to the mitigation measures as described in Section 5.3 of the NIS being implemented, adverse onsite integrity effects on the Lough Swilly SPA and SAC, can be ruled out, having taken into account the conservation objectives of the sites. The proposed development will not prevent or delay the attainment of Conservation Objectives for the Lough Swilly SPA and SAC. I would note that for a number of qualifying interests for Lough Swilly SAC, the conservation objective is to 'restore the favourable conservation condition' of same (of relevance here is the Otter). There will be no deterioration of water quality within Lough Swilly SAC, as a result of this proposed development, either by itself or in-combination with other developments,

and there will be no disturbance to the otter, with the above mitigation measures in place. As such there is no reasonable scientific doubt that the proposed development would prevent the above conservation objective being achieved.

#### **In combination assessment**

I consider that cumulative effects could potentially result from individually insignificant, but collectively significant, actions taking place over a period of time, particularly if they are concentrated in a physical location simultaneously. Cumulative effects can make habitats and species more vulnerable or sensitive to change. The NIS references other plans and projects considered for their potential to act in-combination with the proposed development. I have considered same and following assessment of the above-referenced plans and projects, I have concluded that that, the overall proposed development would not result in any residual adverse effects on any of the European Sites, their integrity or their conservation objectives when considered on its own, subject to mitigation. There is, therefore, no potential for the proposed development to contribute to any cumulative adverse effects on any European Site when considered in-combination with other plans and projects.

## **Conclusion**

Following Appropriate Assessment, it has been ascertained that the proposed development, individually or in combination with other plans or projects would not adversely affect the integrity of the Lough Swilly SPA nor the Lough Swilly SAC or any other European site, in view of the Conservation Objectives of these sites.

The proposed development will not prevent or delay conservation objective set for the screened in European Sites.

My conclusion is based on a complete assessment of all aspects of the proposed project as provided in the Natura Impact Statement 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 proposed mitigation measures and environmental monitoring of the Conservation Objectives of each European Site referenced above,
- an assessment of in-combination effects with other plans and projects including existing statutory plans, historical projects, current / permitted proposals and future plans, and
- There being no reasonable scientific doubt as to the absence of adverse effects on the integrity of these European sites.

#### **Appendix 4 - Qualifying Interests of Lough Swilly SPA**

Great Crested Grebe (*Podiceps cristatus*) [A005]

Grey Heron (*Ardea cinerea*) [A028]

Whooper Swan (*Cygnus cygnus*) [A038]

Greylag Goose (*Anser anser*) [A043]

Shelduck (*Tadorna tadorna*) [A048]

Wigeon (*Anas penelope*) [A050]

Teal (*Anas crecca*) [A052]

Mallard (*Anas platyrhynchos*) [A053]

Shoveler (*Anas clypeata*) [A056]

Scaup (*Aythya marila*) [A062]

Goldeneye (*Bucephala clangula*) [A067]

Red-breasted Merganser (*Mergus serrator*) [A069]

Coot (*Fulica atra*) [A125]

Oystercatcher (*Haematopus ostralegus*) [A130]

Knot (*Calidris canutus*) [A143]

Dunlin (*Calidris alpina*) [A149]

Curlew (*Numenius arquata*) [A160]

Redshank (*Tringa totanus*) [A162]

Greenshank (*Tringa nebularia*) [A164]

Black-headed Gull (*Chroicocephalus ridibundus*) [A179]

Common Gull (*Larus canus*) [A182]

Sandwich Tern (*Sterna sandvicensis*) [A191]

Common Tern (*Sterna hirundo*) [A193]

Greenland White-fronted Goose (*Anser albifrons flavirostris*) [A395]

Wetland and Waterbirds [A999]