



An
Bord
Pleanála

Inspector's Report

ABP-320194-24

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| Development | Removal of blockwork and foundations, construction of dwelling house with detached domestic garage and associated site development works. |
| Location | Creggan, Ballybofey, Co. Donegal. |
| Planning Authority | Donegal County Council |
| Planning Authority Reg. Ref. | 2460634 |
| Applicant(s) | Oisín O'Donnell & Hannah O'Connell |
| Type of Application | Permission |
| Planning Authority Decision | Grant |
| Type of Appeal | Third Party |
| Appellant | Colm Hegarty |
| Observer(s) | None. |
| Date of Site Inspection | 17 th October 2024 |
| Inspector | Matthew O'Connor |

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Appendix 1 – Form 1: EIA Pre-Screening

Appendix 2 – Form 2: EIA Preliminary Examination

1.0 Site Location and Description

- 1.1. The appeal site is 0.215ha and is located in the townland of Creggan, some 4 km to the northwest of the twinned settlements of Ballybofey-Stranorlar in Co. Donegal. The appeal site is situated on the northern side of the L-6644-1 (Local Road). The lands have been part-cleared of various trees and vegetation but remains somewhat unkempt and overgrown. There is a partially constructed dwelling unit on the site comprising a floor slab and concrete blockwork built to ground floor level. The works are extant for a considerable period of time.
- 1.2. The appeal site sits slightly above the public road and there is a mound/ridge within the central part of the site which may have been formed from earlier ground works on the lands. The roadside boundary comprises a raised bank with vegetation and a track entrance; the eastern (side) and northern (rear) boundaries are defined by dense planted woodland; and the western (side) boundary adjoins a residential property and is formed by trees and other vegetation. The topography of the surrounding area is lightly undulating.
- 1.3. The surrounding locality is characterised by the mixed woodland and agricultural fields in addition to a large number one-off rural dwellings in individual and linear settings of varying styles, designs and configurations. The appeal site is not located within a Flood Zone and there are no Protected Structures or National Monuments within or immediately adjoining the site.

2.0 Proposed Development

- 2.1. The proposed development comprises the following:
 - Removal of existing blockwork and foundations relating to a previously approved dwelling.
 - Construction of a two-storey dwelling house (231.74sq.m).
 - Construction of a detached domestic garage (24.4sq.m).
 - Installation of a septic tank/wastewater treatment system.
 - Associated site development works.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. Grant permission for the subject development, subject to 16 no. conditions. I note the following conditions of particular relevance:

- Condition 2: Occupancy condition for 7 (seven) years.
- Condition 3: Provision of 50 metres of sightlines in both directions.
- Condition 4: Removal of roadside boundary.
- Conditions 6,8,9: Surface water collection.
- Condition 12: Garage restricted for domestic purposes
- Condition 15: Wastewater treatment
- Condition 16: Development contributions totalling €3,324.64

3.2. Planning Authority Reports

3.2.1. Planning Report

- Planner's Report forms the basis for the decision to grant permission.
- The report provides a description of the site, relevant planning history and associated policy context from the County Donegal Development Plan 2024-2030.
- In terms of assessment, principle of development and local needs considered to be acceptable.
- No concerns in respect of the siting and design of the dwelling.
- No issues arise regarding impacts of residential amenity (overlooking, overshadowing and privacy).
- Access is acceptable and sightlines can be achieved – subject to conditions.
- No concerns raised in respect of water supply, drainage and foul treatment.
- Appropriate assessment is deemed 'N/A' and EIA is excluded at preliminary examination.

3.2.2. Other Technical Reports

- Area Roads Engineer - No objection, subject to conditions.
- Donegal Roads Office – No objection.

3.3. Prescribed Bodies

- Dept of Housing, Local Government and Heritage - No response received.
- Heritage Council - No comment on file.
- Uisce Eireann – No objection in principle
- Transport Infrastructure Ireland (TII) – Comments returned.
- Loughs Agency – Comments returned, no objection in principle.

3.4. Third Party Observations

One third party observation was received by the Planning Authority. The following issues raised are broadly summarised as follows:

- Application drawings (plans, elevations, sections) do not show levels and do not comply with regulations.
- Residential Amenity concerns in terms of overlooking, impingement on privacy and overbearing impacts.
- Proposed dwelling will overshadow neighbouring property and result in a loss of light.
- Concerns regarding topography of site and water/foul drainage and run-off.
- Noise impacts from construction works.
- Construction parking will impinge on access/egress from neighbouring property.
- House design is not in keeping with dwellings in the locality.

4.0 Planning History

The following valid planning history is associated on/adjoining the subject site:

- | | |
|---------------|--|
| 941694 | Permission GRANTED for the erection of two storey dwelling and septic tank. Applicant: Jim Glackin. |
| 008249 | EXTENSION OF DURATION GRANTED (to the appropriate period of 21 st September 2003) for the erection of two storey dwelling and septic tank. Applicant: John O Donnell. |

5.0 Policy Context

5.1. Development Plan

5.1.1. The application was assessed by Donegal County Council in accordance with the policies and objectives of the County Donegal Development Plan 2018-2024. The County Donegal Development Plan 2024-2030 was adopted by Donegal County Council on the 16th of May 2024 and came into effect on the 26th of June 2024 – with the exception of parts of the Plan affected by a Draft Ministerial Direction. I have assessed the proposal under the provisions of the operative Development Plan, namely the County Donegal Development Plan 2024-2030.

5.1.2. The appeal site is located in a rural area of County Donegal which is not within a designated/zoned settlement. According to Map 6.3.1: Rural Area Types of the Development Plan, the appeal site is located in an 'Area Under Strong Urban Influence'.

5.1.3. Chapter 6 of the Development Plan relates to 'Housing' and contains policies and objectives in respect of residential development. Section 6.3 of the Development Plan contains commentary on Rural Housing and the following objectives are considered relevant to the subject proposal:

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

RH-O-2 To protect rural 'Areas Under Strong Urban Influence', rural 'Areas Under Strong Holiday Home Influence', and rural areas immediately outside towns from intensive levels of unsustainable urban/suburban residential development.

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 Amenities' of this Plan.

The appeal site is located in an 'Area Under Strong Urban Influence' where the following policy is relevant:

RH-P-1 To consider proposals for new one-off rural housing within 'Areas Under Strong Urban Influence' from prospective applicants that can provide

evidence of a demonstrable economic or social need (see 'Definitions') to live in these areas including, for example, the provision of evidence that they, or their parents or grandparents, have resided at some time within the area under strong urban influence in the vicinity of the application site for a period of at least 7 years. The foregoing is subject to compliance with other relevant policies of this plan, including Policy RH-P-9.

This policy shall not apply where an individual has already had the benefit of a permission for a dwelling on another site, unless exceptional circumstances can be demonstrated.

An exceptional circumstance would include, but would not be limited to, situations where the applicant has sold a previously permitted, constructed and occupied dwelling, to an individual who fulfils the bonafides requirements of that permission.

New holiday homes will not be permitted in these areas.

With respect to Location, Siting and Design and Other Detailed Planning Considerations, the following policy is relevant:

RH-P-9 (a) Proposals for individual dwellings (including refurbishment, replacement and/or extension projects) shall be sited and designed in a manner that is sensitive to the integrity and character of rural areas as identified in Map 11.1: 'Scenic Amenity' of this Plan, and that enables the development to be assimilated into the receiving landscape. Proposals shall be subject to the application of best practice in relation to the siting, location and design of rural housing as set out in Donegal County Council's 'Rural Housing Location, Siting and Design Guide'. In applying these principles, the Council will be guided by the following considerations:-

- i. A proposed dwelling shall avoid the creation or expansion of a suburban pattern of development in the rural area;*
- ii. A proposed dwelling shall not create or add to ribbon development (see definitions);*
- iii. A proposed dwelling shall not result in a development which by its positioning, siting or location would be detrimental to the amenity of*

the area or of other rural dwellers or would constitute haphazard development;

- iv. A proposed dwelling will be unacceptable where it is prominent in the landscape;*
- v. A proposed new dwelling will be unacceptable where it fails to blend with the landform, existing trees or vegetation, buildings, slopes or other natural features which can help its integration. Proposals for development involving extensive or significant excavation or infilling will not normally be favourably considered nor will proposals that result in the removal of trees or wooded areas beyond that necessary to accommodate the development. The extent of excavation that may be considered will depend upon the circumstances of the case, including the extent to which the development of the proposed site, including necessary site works, will blend in unobtrusively with its immediate and wider surroundings.*

(b) Proposals for individual dwellings shall also be assessed against the following criteria:

- i. the need to avoid any adverse impact on Natura 2000 sites or other designated habitats of conservation importance, prospects or views including views covered by Policy L-P-8;*
- ii. the need to avoid any negative impacts on protected areas defined by the River Basin District plan in place at the time;*
- iii. the site access/egress being configured in a manner that does not constitute a hazard to road users or significantly scar the landscape;*
- iv. the safe and efficient disposal of effluent and surface waters in a manner that does not pose a risk to public health and accords with Environmental Protection Agency codes of practice;*
- v. Compliance with the flood risk management policies of this Plan;*

(c) In the event of a grant of permission the Council will attach an Occupancy condition which may require the completion of a legal agreement under S47 of the Planning and Development Act 2000 (as amended).

5.1.4. As detailed in Map 11.1: 'Scenic Amenity' of the Development Plan, the appeal site is situated in an 'Area of High Scenic Amenity'. According to the definition contained in Chapter 11: 'Natural, Built, and Archaeological Heritage' of the Development Plan, these are *'landscapes of significant aesthetic, cultural, heritage and environmental quality that are unique to their locality and form a fundamental element of the landscape and identity of County Donegal. These areas have the capacity to absorb sensitively located development of scale, design and use that will enable assimilation into the receiving landscape and which does not detract from the quality of the landscape, subject to compliance with all other objectives and policies of the plan'*.

5.1.5. The following objective and policy are relevant:

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

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.

5.1.6. Chapter 8 of the Development Plan relates to 'Infrastructure' and contains policies and objectives in respect of residential development.

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*

5.1.7. Chapter 16 of the Development Plan relates to 'Technical Standards' and contains specifications for dwellings such as surface water and roadside drainage, entrances and visibility. The following relevant policy:

TS-P-1 To require compliance with the following technical standards, where applicable, in addition to all other relevant policy provisions of this Plan and relevant Governmental guidance and standards.

5.2. Other Relevant Guidance

Rural Housing – Location Siting and Design Guide

'Building a House in Rural Donegal - A Location, Siting and Design Guide' is a guide to provide assistance to persons involved in the planning and development process of designing a house in the countryside. The document is specific to the character of Donegal and provides guidance on visual impacts and design elements.

EPA Code of Practice – Domestic Waste Water Treatment Systems (Population Equivalent ≤ 10), 2021

This document sets out a methodology for site assessment and selection and maintenance of Domestic Waste Water Treatment Systems including guidance on appropriate percolation values for different types of systems, setback distance and sizing of percolation areas.

5.3. Natural Heritage Designations

5.3.1. The appeal site is not located within any designated Natura 2000 sites, with the nearest designated site being the River Finn Special Area of Conservation (Site Code: 002301) which is located approximately 0.28km to the west of the site.

5.4. EIA Screening

5.4.1. Having regard to the nature and scale of the development, which is for a one-off dwelling in a rural area, it is not considered that it falls within the classes listed in Part 1 or Part 2 of Schedule 5 of the Planning and Development Regulations 2001 (as amended), and as such preliminary examination or an Environmental Impact Assessment is not required. See Form 1 and Form 2 attached to this report.

6.0 The Appeal

6.1. Grounds of Appeal

The Third Party appeal has been received in relation to the Planning Authority's decision to grant permission. The grounds of appeal are submitted from the neighbouring property to the immediate west of the subject site. The grounds of appeal can be summarised as follows:

- Concern regarding negative impacts from development such as overlooking.
- Validity of the application is queried with the absence of levels from floor plans, heights/dimensions on elevation drawings and the Application Form is unsigned.
- The assessment of the Planning Authority failed to have regard to guidelines/planning policy (Sustainable Rural Housing Guidelines for Planning Authorities and the National Planning Framework) in the consideration of the application.
- Proposed dwelling is located in an 'Area Under Strong Urban Influence' and an area of 'High Scenic Amenity'. The conclusion of the Planner that the site is 'removed from any sensitive designations' is unreasoned/irrational.
- Unclear as to how the applicants satisfy the requirements of local needs for a one-off house.

6.2. Applicant Response

- A response has been received from the applicants which is summarised as follows:
 - Claims to have resided in Ballybofey their entire life and that their grandfather had ties to the townland of Creggan.
 - Intends to build a dwelling on the site of parent's partially constructed dwelling.
 - Issues raised by appellant regarding validity of application drawings and other information is unsupported.
 - There is an ongoing boundary issue with the appellant which does not impact the proposed works and is deemed a 'civil matter'.

- The appeal is without substance to delay the development and should be dismissed.

6.3. Planning Authority Response

- A response has been received from the Planning Authority which confirms its decision based on the Planner's Report. The correspondence also provides a response to the appellant's claims about the validation of the file, accuracy of planning drawings, available files for public viewing, confirmation of applicant's local needs and design considerations.

6.4. Observations

- There are no observations

7.0 Assessment

Having examined the application details, the appeal and all other documentation on file, the reports of the Planning Authority, having conducted an inspection of the site, and having reviewed relevant planning policies and guidance, I am satisfied that the main issues to be considered are those raised by the Third Party in their grounds of appeal. I am satisfied that no other substantive issues arise. This appeal can be addressed under the following relevant headings:

- Principle of Development (Compliance with the Rural Housing Strategy)
- Siting & Design
- Impact on Residential Amenity
- Wastewater Treatment & Drainage
- Access & Sightlines
- Validity of Application
- Appropriate Assessment (Screening)

7.1. Principle of Development (Compliance with the Rural Housing Strategy)

7.1.1. The appellant queries the applicant's demonstration of local housing need. It is also claimed by the appellant that the assessment of the Planning Authority failed to have regard to national guidelines/planning policy in the determination of the application. In considering the proposed development for a rural house, I note that the applicants'

compliance with the rural housing policy is an important aspect of the assessment. The appeal site is located approximately 3.5km to the northwest of the twin settlements of Ballybofey/Stranorlar, in an area identified in Map 6.3.1: Rural Area Types of the Development Plan as an 'Area Under Strong Urban Influence'. Policy RH-P-1 of the Development Plan is applicable and informs that rural housing is permissible in this area where applicants can provide evidence of a demonstrable economic or social need to live in the area (e.g. provision of evidence that they, or their parents or grandparents, have resided at some time within the vicinity of the application site for a period of at least 7 years).

7.1.2. On the matter of the appellant's grounds regarding the consideration of the proposal against national planning policy, I consider that Policy RH-P-1 of the Development Plan complies with national planning documentation such as the National Planning Framework and the Sustainable Rural Housing Guidelines for Planning Authorities (Section 28 Guidelines). Therefore, I contend that the Planning Authority had regard to appropriate national planning policy through the provisions of the relevant Development Plan.

7.1.3. In considering the above-mentioned Policy RH-P-1 and the question of what constitutes an 'Economic' or 'Social' need, the Development Plan includes the following definitions:

'Economic Need'

Persons working full-time or part-time in rural areas including:

- *Full-time farming, forestry, or marine related occupations,*
- *Part time occupations where the predominant occupation is farming/natural resource related.*
- *Persons whose work is intrinsically linked to rural areas such as teachers in rural schools.*

'Social Need'

Persons who are Intrinsic part of the Rural Community including:

- *Farmers, their sons, and daughters and or any persons taking over the ownership and running of farms.,*

- *People who have lived most of their lives in rural areas.*
- *Returning emigrants who lived for substantial parts of their lives in rural areas.*

7.1.4. This application was assessed by the Planning Authority under the County Donegal Development Plan 2018-2024 which has since been superseded by the County Donegal Development Plan 2024-2030. Policy RH-P-5 of the previous Development Plan required that applicants to demonstrate a genuine need for a new dwelling house through provision of evidence that they, or their parents or grandparents, have resided at some time within the area under strong urban influence in the vicinity of the application site for a period of at least 7 years.

7.1.5. A Supplementary Rural Housing Application Form was submitted where the applicant indicated that their parents residency and grandparents residency was previously Creggan 'in excess of 7 Years'. The applicant informs that they currently reside in the townland of Dreenan (approx. 5km from the appeal site to the southeast of Ballybofey-Stranorlar) and has resided in the Ballybofey area for their entire life. It is further stated that the applicant's parents partially completed the house on the appeal site. In terms of supporting documentary evidence, the applicant relied solely on a Supporting Letter from a T.D representing the Donegal Dáil Constituency who states that the applicant has ties to the area.

7.1.6. Although the wording of Policy RH-P-5 of the former County Donegal Development Plan 2018-2024 and Policy RH-P-1 of the current County Donegal Development Plan 2024-2030 differs; I consider that the fundamental requirement of the applicant to provide evidential/documentary evidence of a genuine housing need remains pertinent.

7.1.7. I have considered the information submitted with the application and matters raised in the appeal and I do not consider the applicant has submitted sufficient evidence with the application to demonstrate compliance with Policy RH-P-1 of the Development Plan and has failed to provide any evidence to substantiate either a genuine 'Economic' or 'Social' need to live in the area. Furthermore, I note the applicant's response to the appeal has only sought to reaffirm their claim to have resided in Ballybofey for their entire life and family ties to Creggan but has not been supported by any evidential records/documentation.

7.1.8. I am not satisfied that a Letter of Support from a T.D or a stated family connection to the area (without any supporting material) constitutes an adequate basis from which to consider a grant of permission. While the letter from an Oireachtas member may have been acceptable as a bona fide letter to the Planning Authority, I am of the view that such correspondence only constitutes an internal procedure/practice of Donegal County Council rather than an adopted policy context enshrined in the Development Plan. Therefore, I consider that permission should be refused.

7.2. Design & Layout

7.2.1. The appellant does not raise any specific concerns with regard to the siting and design of the proposed dwelling (general concerns regarding residential amenity covered in section 7.3 below and the validity of the application as referred in section 7.6 of this report). However, I do note that the Third Party refers to the location of the site in an Area Under Strong Urban Influence and its designation as an area of 'High Scenic Amenity' and contends that the Planning Authority's conclusions on same are unreasoned.

7.2.2. The appeal site is situated in an 'Area of High Scenic Amenity' as detailed in Map 11.1 of the Development Plan where development will be facilitated subject to being appropriate in nature and scale so as to integrate and reflect the character and amenity designation of the landscape. It is a Development Plan objective to protect, manage and conserve the character, quality and value of the Donegal landscape (L-O-1). Policy L-P-2 seeks to protect these areas and only consider developments of a nature, location and scale that integrates with, and reflects the character and amenity of the landscape.

7.2.3. In addition to landscape provisions, Policy RH-P-9 (Location, Siting and Design and Other Detailed Planning Considerations) of the Development Plan is relevant for considering rural dwellings. Proposals shall be designed in a manner that is sensitive to the integrity and character of rural areas and that the development assimilates into the receiving landscape through best practice regarding siting, location and design of rural housing. The key criterion seeks to avoid the creation/expansion of a suburban pattern of development; shall not be detrimental to the amenity of the area or of other rural dwellers or constitute haphazard development; shall not be prominent in the landscape; or, fail to blend with the landform, existing trees or vegetation, slopes or

other natural features which can help its integration with its surroundings. Furthermore, proposals for rural dwellings must apply best practice in accordance with the Donegal County Council's Rural Housing Location, Siting, and Design Guide.

- 7.2.4. The proposed development seeks the removal of blockwork and foundations associated with a part-constructed dwelling (previously granted under Pl. Ref. 941694 in 1995 and subject to an Extension Of Duration application approved in 2000 under Pl. Ref. 008249). This structure has been constructed to ground floor level however, it is evident from my inspection of the lands that the development works were subsequently abandoned. I have no objection to the removal of the part-constructed dwelling.
- 7.2.5. The appeal site is in a generally wooded location with undulating terrain where views are limited and localised. I note that the lands have been part cleared of trees but it is apparent that vegetation has re-established itself over time. The proposed dwelling is two-storey (231.74sq.m) and contains 4 no. bedrooms with a ridge height of 8.52 metres. A single storey detached garage (24.4sq.m) is also proposed to the rear (north) of the dwelling and has a hipped roof with a height of 4.07 metres. There will be a projecting wall from the garage to screen bins. The dwelling will centrally located on the site and set-back approximately 23 metres from the public road which is broadly in line with the existing dwelling to the west. The proposed dwelling is generally south facing and aligned to address the public road. The FFL is indicated as 74.39 which is roughly 2 metres above the adjacent road level of 72.44 but reflects the prevalent rise in land level of the surrounding terrain.
- 7.2.6. The form and the design is a contemporary take on a Georgian two storey house. The massing of the proposed dwelling has been broken up with the porch and single storey element. On its own merits, I consider the design approach of proposed dwelling is broadly in accordance with the Rural Housing – Location Siting and Design Guide and the design principles in Policy RH-P-9 of the County Donegal Development Plan 2024-2030 in terms of siting, design, layout and materials.
- 7.2.7. Notwithstanding the above, I have considered the location of the proposed development and note the extensive proliferation of one-off houses in the vicinity. While I acknowledge the established principle of development on these subject site, there has been a considerable passage of time and I am of the view that there is

considerable housing pressure in this 'Area Under Strong Urban Influence' due to the prevalence of one-off houses in a 1km radius of the site.

7.2.8 Therefore, I am satisfied that there is limited capacity for development in this area and I consider that a further dwelling in this location, without adequate justification, would contribute to a wider pattern of urbanisation which would undermine the rural character due to the existing concentration of one-off houses in this Area Under Strong Urban Influence. Furthermore, I consider that the proposed development would result in the erosion of the wooded character in this particular location which would detract from the quality of the 'High Scenic Amenity' landscape and not in accordance with Development Plan Objective L-O-1 to protect, manage and conserve the character, quality and value of the Donegal landscape or Policy L-P-2 which seeks to protect these areas and only consider developments of a nature, location and scale that integrates with, and reflects the character and amenity of the landscape. It is my opinion that the proposal would be contrary to Policy RH-P-9 of the Development Plan as it would not avoid the creation/expansion of a suburban pattern of development and would constitute a haphazard form of development. I recommend that permission be refused.

7.3. Impact on Residential Amenity

7.3.1. The Third Party refers to concerns about potential negative impacts on their property from overlooking as a result of the proposed development. I note that the appeal has not expanded on how the proposed dwelling will cause residential amenity impacts.

7.3.2. Having regard to the proposed dwelling design and its siting relative to the neighbouring property of the appellant, I am satisfied there is appropriate separation from the proposed two-storey element of the proposed dwelling and the appellants' dwelling to the west (approximately 27 metres). Moreover, the appellant's residence and the proposed development maintain the same orientation and building line which removes any direct overlooking and first floor level windows. I acknowledge that the proposal is on a more elevated position to the appellant's dwelling; however, such levels in my view are consistent with the topographical nature of the area. I am satisfied that the proposed development would not result in any negative residential amenity impacts such as overlooking of the neighbouring property.

7.4. Wastewater Treatment & Drainage (New Issue)

7.4.1. The Third Party appeal does not raise any particular concerns with regard to the wastewater treatment system or surface water drainage to serve the proposed dwelling. However, this appeal represents my *de novo* consideration of all planning matters relating to the proposed development in association with issues raised by the appellant.

Wastewater Treatment

7.4.2. With respect to wastewater treatment, I consider Policy WW-P-6 and part (b)(iv) of Policy RH-P-9 of the Development Plan to be relevant as they essentially seek that wastewater treatment systems demonstrate compliance with the EPA's Code of Practice for Domestic Waste Water Treatment Systems (PE <10) (EPA 2021).

7.4.3. I have reviewed the Site Suitability Assessment Report (SSAR) submitted the Planning Department which indicates the aquifer category as being Poor (PI) and having a 'High' groundwater vulnerability classification. The Groundwater Protection Response Category is identified as 'R1' which is detailed in Table E1 (Response Matrix for DWWTSs) of the EPA Code of Practice Domestic Wastewater Treatment Systems as being 'acceptable subject to normal good practice (i.e. system selection, construction, operation and maintenance in accordance with this CoP)'.

7.4.4. The SSAR states the depth of the trial hole is 1.8 metres (and indicated the depth of bedrock). The soil/sub-soil is classified as gravelly silt/clay (with some small cobbles and silt) which is soft between 0.1m - 0.6m, gravelly silt/clay (with stoney gravel and small cobbles in places) which is also soft between 0.6m – 1.4m and gravel till and silt between 1.4m – 1.8m. The sub-surface test result is indicated at 50.97min/25mm and the surface percolation value is indicated at 47.18min/25mm. The comments on the results claim the site is not suitable for a septic tank system or a secondary treatment system but would be suitable for a tertiary treatment system and infiltration/treatment area discharging to the groundwater via existing watercourses.

7.4.5. Notwithstanding the contents and recommendations of the SSAR, I have concerns with the details provided. The report indicates that pre-soaking of test holes was carried out on 25/03/2024 and that the percolation tests were carried out on 27/03/2024. According to Appendix D: 'Percolation Test Procedure' of the EPA's Code of Practice, both the surface and sub-surface percolation holes should be pre-soaked

twice from 4 to 24 hours before the start of the percolation. Therefore, testing was conducted outside of the recommended timeframe and I am not satisfied that the site characteristics have been accurately determined for this site. I further note inaccuracies presented in the SSAR with the Discharge Route identified as 'groundwater via existing watercourses' but the submitted particulars do not identify any watercourses on or adjoining the site. During my site inspection, I was unable to verify the precise location of the trial holes to examine the sub-surface conditions and so I can only rely on the information and photographs provided with the SSAR.

7.4.6 Having regard to the above, I consider the details provided in the Site Characterisation Assessment have not appropriately demonstrated that the site can accommodate a wastewater treatment system as recommended. Therefore, I am of the view that the proposed development would be at a variance with the County Donegal Development Plan 2024-2030, namely Policy RH-P-9(b)(iv) and Policy WW-P-6 which require the safe and efficient disposal of effluent in a manner that does not pose a risk to public health and accords with the EPA's Code of Practice for Domestic Wastewater Treatment Systems (PE <10) (EPA 2021).

Surface Water

7.4.7. In relation to surface water drainage, I note that the Site Layout Plan drawing indicates surface water arising from the proposed dwelling and hardstanding discharging to an existing drain to the southern extent of the site towards the road. No further details of the proposed drainage system have been provided.

7.4.8. I have concern with the lack of clarity regarding these discharge arrangements. Section 3: 'On-site Assessment' of the SSAR states that there are unmaintained 'sheoughs' (furrows) through the site and along the road front which require upgrade. From my site observations, I did not readily identify the existence of any such roadside drain and so I cannot determine whether or not proposal will impact on surface water run-off from the site or if it would be in compliance with the Technical Standards for Surface Water and Roadside Drainage in Chapter 16 of the Development Plan. In addition, the mitigation measures outlined in the SSAR state that new land drains are to be created upgradient of the proposed percolation facility to protect it from surface water run-off and that the drainage network be diverted beyond the percolation area. However, no land drains in the (northern) extent of the appeal site have been

demonstrated on the Site Layout Plan. As such, I cannot conclude that surface water arising on the site would not infiltrate the proposed treatment system and polishing filter.

Concluding Remarks on Wastewater Treatment & Drainage

- 7.4.9. Taking the proposals for wastewater treatment and surface water drainage into consideration, I do not consider that sufficient details have been provided to confirm that the proposed development would efficiently dispose of effluent so as to not pose a risk to public health; or, that surface water run-off would not have consequential impacts on surrounding lands or the public road. In my view, it is not acceptable for these issues to be addressed by way of a post-consent condition based on the shortfall of information required.
- 7.4.10. I note that these matters were considered by the Planning Authority but is a 'new issue' in relation to this appeal. Therefore, the Board may wish to seek the views of the parties. However, should the Board be minded to refuse this application based on the substantive reason of compliance with the Rural Housing Strategy, the applicants shall be advised that any future application on the subject lands should accurately access the site characteristics in accordance with the EPA's Code of Practice and provide appropriate details with respect to surface water drainage.

7.5. Access & Sightlines

- 7.5.1. The subject development will be accessed by a proposed vehicular entrance at the south-eastern corner of the subject site. The Site Layout Plan has indicated sightlines provision of 2.4 metres x 50 metres in both directions along the L-6644-1. A Traffic and Transport Assessment was submitted with the application along with a Letter of Consent from a third party landowner to achieve and maintain visibility to the east.
- 7.5.2. Chapter 16 of the Development Plan relates to Technical Standards and provides details on entrances and sightlines. There is provision for deviations from the vision lines/stopping sight distance requirements to be considered once entrances can be designed and constructed in accordance with the DMRB/DMURS as appropriate. The submitted Traffic and Transport Assessment contains records of the speed limits and traffic count (7 no. cars over a 1.5 hour period) along the L-6644-1. The report states an average speed of 33.8kmph and an average speed taking into account the 85th

percentile of 39.78kmph. According to the Assessment, the average speed equates to a maximum of 50m visibility splay in any direction for an access point.

7.5.3. During my inspection of the appeal site, I observed the L-6644-1 to be of limited width and contains a number of bends and variation in gradients over short distances. I am of the view that visibility from the proposed entrance on the appeal site is poor and restricted at present. However, the road is lightly trafficked (serving a number of dwellings and agricultural lands) and would be conducive to lower traffic speeds on account of the alignment and carriageway width. In this regard, I would have no objection to a relaxation of sightlines from 160 metres to 50 metres.

7.5.4. The achievement of unobscured sightlines to the east of the proposed entrance is reliant upon the carrying out of works on third-party lands. I have concern with the lack of submitted detail surrounding the extent of work required to facilitate these sightlines which includes extensive vegetation/trees and the lowering of land across these neighbouring lands over a distance of approximately 20 metres. I have previously outlined my concerns regarding the proposed development in terms of the designation of the area being of 'High Scenic Amenity' and the extent of existing development in the vicinity which is an 'Area Under Strong Urban Influence'. However, I acknowledge that Letter of Consent to achieve and maintain visibility has been submitted with the application and deemed acceptable to the Planning Authority.

7.5.5. On balance, I am satisfied that the existing poor visibility from the front of the appeal site would be improved and that the proposed access from the site would be sufficient. Should the Board be minded to grant permission, I recommend condition(s) be attached requiring the provision/maintenance of vision lines by way of removal of all trees/walls/fences/hedging/bankings prior to construction of the dwelling.

7.6. Validity of Application

7.6.1. The appellant has raised the matter of the validity of the application. It is claimed that there are multiple breaches of mandatory requirements such as the absence of levels on floor plan drawings, absence of heights on elevational drawings, omission of north points and an unsigned declaration on the planning application. It is claimed by the appellant that these items are fundamental for the consideration of a development. The response of the applicants claim that the issue of validation is unsupported and that all necessary detail was illustrated. The response of the Planning Authority refers

to the details of the ridge height, finished floor levels and north arrow on the submitted documentation which was available on file for public inspection.

7.6.2. I have reviewed the planning drawings on the appeal file and note that various dimensions have been illustrated along with the FFL and the north point. I note that the elevation drawings omit the proposed ridges height however they are indicated on the sections for both the house and the garage. I do acknowledge that the Application Form has not been signed but the applicant and agent details have been included with the submitted particulars. In conclusion, I have no concerns with the accuracy and level of details provided with the application drawings which in my view are acceptable. It is my contention that the Planning Authority were also satisfied with the detail provided on the particulars so as to validate the planning application and have confirmed same through the Validation Checklist. Furthermore, I am also satisfied that these perceived issues did not prevent the concerned party from making representations/observations.

8.0 Appropriate Assessment (Screening)

8.1. I have considered the subject development, which comprises the construction of a new dwelling in light of the requirements S177U of the Planning and Development Act 2000 (as amended).

8.2. The subject development is located in a rural area approximately 0.28km from the River Finn Special Area of Conservation (Site Code: 002301). The subject development comprises a single dwelling and has no hydrological or other connection to any European site.

8.3. Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment as there is no conceivable risk to any European site. The reason for this conclusion is as follows:

- The scale and nature of the development;
- The distance to the nearest European site and the lack of connections; and,
- Taking into account the screening determination of the Planning Authority.

8.4. I conclude on the basis of objective information, that the proposed development would not have a likely significant effect on any European site either alone or in combination with other plans or projects. Likely significant effects are excluded and therefore a

retrospective Appropriate Assessment (Stage 2) under Section 177V of the Planning and Development Act 2000 (as amended) is not required.

9.0 Recommendation

- 9.1. I recommend that permission be REFUSED for the reasons and considerations set out hereunder.

10.0 Reasons and Considerations

1. Having regard to the provisions of Policy RH-P-1 of the County Donegal Development Plan 2024-2030, and, the documentation on file submitted as part of the application and appeal; the Board considers that, in the absence of any identified locally based need for the house, would contribute to the encroachment of random rural development in the area and would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
2. Having regard to the extent of existing development in the immediate vicinity, the location of the site in an 'Area Under Strong Urban Influence', and area of 'High Scenic Amenity', the Board considers that the proposed development would not avoid the creation/expansion of a suburban pattern of development in this area and constitutes a haphazard form of development which contravenes Policy RH-P-9 of the County Donegal Development Plan 2024 - 2030 which seeks that proposals for individual dwellings be sited and designed in a manner that is sensitive to the integrity and character of rural areas. The proposed development would also result in the further erosion of the character of the 'High Scenic Amenity' area and detract from the quality of the receiving landscape which would be contrary to objective L-0-1 of the Development Plan which seeks to protect, manage and conserve the character, quality and value of the Donegal landscape and policy L-P-2 of the Development Plan where areas identified as 'High Scenic Amenity' are protected and that only development of a nature, location and scale that integrates with, and reflects the character and amenity of the landscape may

be considered. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

3. Having regard to inconsistencies contained in the submitted Site Characterisation Assessment Form and submitted planning drawings, the Board is not satisfied that the site is suitable for the wastewater treatment system, as proposed. In addition, having regard to the lack of detail in relation to proposals for surface water drainage on the site, namely, drainage to the roadside boundary and absence of drains to protect the infiltration area of the wastewater treatment system, the Board cannot be satisfied that the proposal will not lead to adverse surface water impacts on the public road or in the immediate surrounding area. Therefore, the proposed development is contrary to both Policy RH-P-9(b)(iv) and Policy WW-P-6 of the County Donegal Development Plan 2024-2030 in relation to wastewater treatment and would be at variance with Policy TS-P-1 which requires compliance with technical standards for surface water and roadside drainage. The proposed development would therefore be prejudicial to public health and 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.

Matthew O Connor
Planning Inspector

19th December 2024

Appendix 1 - Form 1

EIA Pre-Screening

| | | | |
|--|---|--|---|
| An Bord Pleanála | ABP-320194-24 | | |
| Case Reference | | | |
| Proposed Development Summary | Removal of blockwork and foundations, construction of dwelling house with detached domestic garage and associated site development works. | | |
| Development Address | Creggan, Ballybofey, Co. Donegal | | |
| 1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings) | | Yes | X |
| | | No | |
| 2. Is the proposed development of a CLASS specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended)? | | | |
| Yes | | | Proceed to Q3. |
| No | X | | No further action required |
| 3. Does the proposed development equal or exceed any relevant THRESHOLD set out in the relevant Class? | | | |
| Yes | | | EIA Mandatory EIAR required |
| No | X | Class 10, (b), (i) (threshold is 500 dwelling units) | Proceed to Q4 |
| 4. Is the proposed development below the relevant threshold for the Class of development [sub-threshold development]? | | | |
| Yes | X | | Preliminary examination required (Form 2) |

| | | |
|---|----------|--|
| 5. Has Schedule 7A information been submitted? | | |
| No | X | Pre-screening determination conclusion remains as above (Q1 to Q4) |
| Yes | | Screening Determination required |

Inspector: _____ Date: _____

Appendix 2 - Form 2

EIA Preliminary Examination

| | |
|---|---|
| An Bord Pleanála Case Reference | ABP-320194-24 |
| Proposed Development Summary | Removal of blockwork and foundations, construction of dwelling house with detached domestic garage and associated site development works. |
| Development Address | Creggan, Ballybofey, Co. Donegal |
| <p>The Board carried 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.</p> <p>This preliminary examination should be read with, and in the light of, the rest of the Inspector's Report attached herewith.</p> | |
| Characteristics of proposed development. | Examination |
| (In particular, the size, design, cumulation with existing/proposed development, nature of demolition works, use of natural resources, production of waste, pollution and nuisance, risk of accidents/disasters and to human health). | <p>The proposal comprises a single development of 1 no. house in a rural area.</p> <p>The size of the house would not be described as exceptional in the context of the existing environment.</p> <p>The proposal will not give rise to the production of significant waste, emissions or pollutants. By virtue of its development type, it does not pose a risk of major accident and/or disaster, or is vulnerable to climate change.</p> |
| Location of the Development | Examination |
| (The environmental sensitivity of geographical areas likely to be affected by the development in particular existing and approved land use, abundance/capacity of natural resources, absorption capacity of natural environment e.g. wetland, coastal zones, nature reserves, European sites, densely populated areas, landscapes, sites of historic, cultural or archaeological significance). | The proposed development is situated in a rural area. The proposed development is removed from sensitive natural habitats, centres of population and sites of historic/cultural/archaeological importance. |
| Types and characteristics of potential impacts | Examination |
| (Likely significant effects on environmental parameters, magnitude and spatial extent, nature of impact, transboundary, intensity and | Having regard to the limited nature and scale of the proposed development (i.e. a single one-off dwelling), its location |

| | | |
|---|--|-----------|
| complexity, duration, cumulative effects and opportunities for mitigation). | removed from sensitive habitats/features, the likely limited magnitude and spatial extent of effects, and the absence of in combination effects; there is no potential for significant effects on the environmental factors listed in section 171A of the Act. | |
| Conclusion | | |
| Likelihood of Significant Effects | Conclusion in respect of EIA | Yes or No |
| There is no real likelihood of significant effects on the environment. | EIA is not required. | Yes |

Inspector:

Date:

DP/ADP: _____ **Date:** _____

(only where Schedule 7A information or EIAR required)