



<b>Development</b>	Refurbishment of existing derelict house with construction of an extension and all associated site works.
<b>Location</b>	Ballysaggart Td, Dunkineely, Donegal Po, Co Donegal
<b>Planning Authority</b>	Donegal County Council
<b>Planning Authority Reg. Ref.</b>	2561374
<b>Applicant(s)</b>	Michael Mc Monagle
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant Permission + Conditions
<b>Type of Appeal</b>	Third Party Normal Planning Appeal
<b>Appellant(s)</b>	James McGowan
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	23 <sup>rd</sup> March 2026
<b>Inspector</b>	Terence McLellan

## **1.0 Site Location and Description**

- 1.1. The subject site is located in the townland of Ballysaggart, on the St John's Point peninsula in southern Donegal. The subject site has a stated area of approximately 1.037 hectares and is carved out of a much larger landholding in the control of the Applicant. The existing building on site is derelict and vacant, however all four walls are intact, as is the roof. The building is two storeys in height and located at the end of an agricultural track which extends to a private road that links to the main local road. The private road, which also appears to be in the ownership of the Applicant, serves approximately six existing dwellings. The site sits centrally within the peninsula and levels gently fall to the north, towards the main local road, and to the south, towards the south coast of the peninsula where levels eventually begin to fall more deliberately. There are a number of one-off dwellings in the wider area.

## **2.0 Proposed Development**

- 2.1. Planning permission is sought to refurbish and extend the existing derelict building for residential purposes, incorporating a wastewater treatment system and all ancillary works, including upgrades to the access road.
- 2.2. It was originally proposed to install a box dormer extension in addition to a single storey rear extension, the roof of which would be used as a terrace. Following the submission of Further Information, the box dormer and roof terrace were omitted, but the single storey rear extension was retained.
- 2.3. The refurbished building would provide three bedrooms. Proposed materials would include blue/black natural slates, timber windows and doors, natural stone cladding, lime rendered finish to the external walls and a standing seam roof to the extension.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

- 3.1.1. Donegal County Council granted permission by Order dated 19<sup>th</sup> December, subject to nine standard conditions.

### 3.2. Planning Authority Reports

3.2.1. The first Planner's Report contains the following points of note:

- The principle of development is acceptable and in line with Policy RH-P-7, subject to compliance with Policy RH-P-9.
- The ridge height would increase by 0.35m which is acceptable but the proposed material, corrugated aluminium, is not.
- Concerns raised regarding the box dormer and the use of the roof of the single storey rear extension as a roof terrace. The design is considered to be inappropriate. It is considered that any refurbishment shall focus on the existing building and make use of local stone and of the existing openings.
- No neighbouring amenity issues anticipated.
- The road to the site edge requires upgrading and the introduction of passing bays to facilitate safe passage.
- There is very little evidence of the existence of an access across the field and no information submitted as to upgrading. It is not known if fencing is to be erected to prevent livestock entering the site area.

3.2.2. The report concluded in a request for Further Information to address the following three points:

1. Submit revised proposals for the refurbishment and extension of the existing building to provide for a natural stone finish externally, omission of the proposed balcony and box dormer feature.
2. Provide details of the proposed upgrading of the access to the existing building from the end of the private roadway and clarify if the access is to be physically bounded from agricultural lands.
3. Submit proposals for upgrade of the existing private access road from the junction of the local road to the subject site and shall include at least two passing bays to ensure safe vehicular movements.

3.2.3. Further Information was received on the 10<sup>th</sup> of December 2025 and can be summarised as follows:

- The box dormer and roof terrace have been omitted. The existing building was always lime rendered due to its exposed location and the need to waterproof the dry stone construction and allow it to wet and dry naturally. Lime render is proposed in line with conservation recommendations. The extension can be finished in natural stone.
- The laneway to the existing building has an existing stone base and has been there for many years. The proposal is to upgrade it to a better standard with a gravel finish (crushed Mountcharles sandstone).
- The Applicant's land ownership is demonstrated and includes the private road linking to the local road. The Applicant has already provided a passing bay on the first bend from the local road and will provide an additional passing bay at the second bend.

3.2.4. These matters were assessed and addressed in the second planner's Report which concluded in a recommendation to grant permission.

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

3.3.1. The application was referred to the Area Roads Engineer. No response was recorded on file or in the Planner's Report.

### 3.4. **Prescribed Bodies**

3.4.1. The application was referred to An Taisce, DHLGH, the Heritage Council, and Uisce Éireann. No response was recorded on file or in the Planner's Report

### 3.5. **Third Party Observations**

3.5.1. One observation was received (from the Appellant). The observation has been summarised and addressed in the Planner's Report and is on file for the Commission's information. I am satisfied that the substantive points made are covered in the grounds of appeal.

## 4.0 **Planning History**

### *Subject Site*

4.1. **Planning Authority Reference 00/272:** Permission was refused for up-grading and refurbishment of the existing farmhouse and erection of 7 no. 3 bed holiday houses,

2 no. 4 bed holiday houses, puraflo sewage treatment plant all associated site development works. Permission was refused for the following reasons:

1. The proposed development is located within an area of high amenity in the current County Development Plan, 1988. It is the policy of the Council not to permit developments which would be seriously injurious to the amenity of such areas (paragraph 2.11 refers) and it is the policy of the Council as set out at paragraph 2.7.3 to require developments to reflect its rural environs. It is considered that this proposed development constitutes a suburban form of development in the clusters of 5 no. houses per cluster within a rural sparsely populated landscape which would represent strident intrusive forms of development in this landscape which would seriously injure the amenity of the area. Accordingly, to permit the development would materially contravene the aforementioned provisions of the County Development Plan, 1988 and would be contrary to the proper planning and development of the area.
2. The proposed access to the site from the public roads is inadequate in width, alignment and strength to facilitate the proposed development and inadequate vision lines are available at the junction of access road with public road. Accordingly, to permit the development would endanger public safety by reason of traffic hazard, obstruction of road users or otherwise. Therefore, to permit the development would be contrary to the proper planning and development of the area.
3. On the basis of applicant's submission, the Planning Authority are not satisfied that the proposed development would not be prejudicial to public health as details of system nor site suitability assessment results have been submitted in support of the application. Accordingly, to permit the development would be contrary to the proper planning and development of the area.

## 5.0 Policy Context

### Donegal County Development Plan 2024-2030

- 5.1. The site is located within a ‘Structurally Weak Rural Area’ and an ‘Area of Especially High Scenic Amenity’. Especially high scenic amenity is described as: *Sublime natural landscapes of the highest quality that are synonymous with the identity of County Donegal. These areas have extremely limited capacity to assimilate additional development.*
- 5.2. Chapter 6 contains the housing policies. Relevant policies and objectives include:
- 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.
  - RH-P-7: To consider proposals for the refurbishment of derelict traditional buildings (refer to definitions below<sup>1</sup>) within rural areas, for use as either a permanent dwelling or as a holiday home, subject to (inter alia) the following criteria being satisfied:
    - a) The proposed development will provide for the retention of the majority of the existing building.
    - b) Proposals for extensions shall respect the character and appearance of the traditional building. The design, size, height and finishes of the proposed refurbishment/ extension must respect the architectural character of the original building type unless otherwise agreed with the Planning Authority, and the finished building must otherwise be of a scale and form such that the development integrates effectively into the host landscape.
    - c) Compliance with the terms of Policy RH-P-9.
  - 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

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<sup>1</sup> Derelict building: In general, this is defined as a building with most external walls intact. Where the external walls consist of low wallsteads within an area of High or Moderate Scenic Amenity, each case will be considered on its merits with regard to location and siting. However, proposals for the refurbishment of low wallsteads will not be given favourable consideration within Areas of Especially High Scenic Amenity (refer to Map 11.1).

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).

5.3. Chapter 11 contains policies and objectives regarding natural, built and archaeological heritage. Relevant policies include:

- L-P-1: To protect areas identified as 'Especially High Scenic Amenity' on Map 11.1 'Scenic Amenity'. Within these areas, only developments of strategic importance, or developments that are provided for by policy elsewhere in this Plan may be considered.

#### 5.4. **Natural Heritage Designations**

5.4.1. The subject site is not within or immediately adjacent to any European Sites. The nearest European Site is:

- St John's Point SAC (Site Code:000191), c. 150m to the south

## 6.0 **The Appeal**

### 6.1. **Grounds of Appeal**

6.1.1. A third party appeal has been submitted by Donnacha Ó Baoighill Solicitor, for and on behalf of the Appellant, James McGowan. The grounds of appeal can be summarised as follows:

6.1.2. Easement/Right of Way (RoW)

- The Appellant has a right of way and/or easement over the Applicant's land.
- The Appellant owns and farms land that depends on access through the Applicant's lands in order to connect to the public road, via a farm track passing the gable of the derelict structure.
- This access has been in place since the mid-19<sup>th</sup> century, as shown on historic maps.
- This access continues to be used on a regular and ongoing basis for the movement of livestock and machinery.
- The track over which the Appellant has a right of way will be upgraded and incorporated into the development.
- The Application is deficient as no details of the easement/RoW have been included on the drawings and no consent has been obtained from the Appellant/RoW owner for the development. This is contrary to Article 22 and 22A of the PDA 2001.
- Donegal County Council were made aware of this, but it has not been considered.
- The absence of details regarding easements and RoW means the decision is deficient as the impact of the development on surrounding landowners and their property rights has not been considered.
- No information has been provided on how the Appellant will be able to continue to use the easement/RoW should the development be granted and constructed.

### 6.1.3. Derelict Structure

- The application is incomplete and inadequate where it describes the development as the refurbishment of an existing derelict house.
- The building is an agricultural building and there is no evidence to indicate otherwise.
- The Appellant contends that the property has been used as an agricultural building and never as a dwelling in his lifetime (in excess of 70 years).
- The Applicant's architect states that the property has not been lived in/used as a dwelling since the 1970's with no evidence to support this claim.
- The High Court has previously found that a derelict house not used for approximately 50 years was abandoned (*Wicklow CC V. Jessop*).

- There is no record of the property ever being used as a house. It should be considered as abandoned and the proposal would be for a material change of use of an agricultural building to a new residential property.
- The proposal would then materially contravene the CDP

#### 6.1.4. Design and Amenity

- The site is in an area of Especially High Scenic Amenity, and the developer has not demonstrated a genuine rural need for the property.
- The developer has not declared a clear purpose for the proposed development. They have not demonstrated rural need, they have another house in Mountcharles, and the property cannot be used as a holiday home.
- The site is prominent on the landscape, in an area of Especially high Scenic Amenity, and will interfere with the Appellant's amenity and access.
- Visual impact has not been adequately considered/assessed.
- Lime render is not acceptable and will create a stark white building, even more prominent on the landscape.
- The extent of private road to be constructed on the existing farm track will affect visual amenity. This cannot be evaluated in the absence of a visual impact assessment.

#### 6.1.5. Appropriate Assessment

- The PA failed to carry out EIA Screening and/or an EIA. The site measures 1.037 hectares and would result in the provision of a private road of 300m. it is not limited in scale. As a minimum an EIA Screening Report should have been required and the Commission should refuse permission on this basis.
- The PA failed to carry out an AA. As a minimum an AA Screening Report is required given the scale of development, location within an area of EHSA and the provision of a private road of 300m.
- The PA have erred in law in considering that St John's Point SAC is the only site that requires consideration and erred in law in only considering hydrological connections.

- Other sites around Donegal should have been considered, including those for which Barnacle geese are a qualifying interest as they are known to forage in the area. Evident from PP 22/52094.
- The Appellant has identified Barnacle Geese on the land. The Commission should refuse permission where no surveys have been carried out for Barnacle Geese and no assessment has been undertaken for potential ex-situ foraging.
- The Council have failed to comply with Objective BIO-0-1 of the CDP in this regard.

#### 6.1.6. Procedural Matters (Asbestos Roof)

- The Commission should refuse permission as no plans have been submitted detailing how the asbestos roof will be removed without harming the environment and construction workers.
- The Application fails to mention the roof, that it will need to be removed, or how it will be safely removed.
- No provision is made in the conditions for its safe removal.
- The Planning Application is incomplete as it does not include a RWMP. EPA guidance requires this.

### 6.2. **Applicant Response in the case of a 3<sup>rd</sup> Party Appeal**

6.2.1. A first party response has been received from Quarry Consulting, for and on behalf of the Applicant, Michael McMonagle. The response can be summarised as follows:

#### 6.2.2. Right of Way

- Rights of Way are a civil matter, not a planning issue. Disputes fall within the remit of civil courts, not the planning system.
- No registered burden of Right of Way is demonstrated on land registry mapping.
- The presence of an agricultural track and historic use does not in itself establish a legally binding easement in planning law.
- There is no objection to the continued use of the existing access track but this is without prejudice to the Applicant's legal property rights and cannot be construed as recognition or acceptance of an easement or prescriptive right.

- All access upgrade works are on lands in the Applicant's ownership and are adequate to permit safe passage of traffic and there is no basis to refuse permission on access, capacity, or safety grounds.

#### 6.2.3. Derelict Structure

- The appeal suggest that any former residential use has been abandoned. The question is whether it falls within a category of structures that the CDP envisages as capable of refurbishment.
- Refurbishment of derelict traditional buildings is provided for under Policy RH-P-7 which focuses on the physical integrity of the building rather than continuity of residential occupation.
- The Planning Authority implicitly confirmed the status of the building as one capable of refurbishment rather than a structure requiring a change of use.
- Housing need policies and one-off housing controls relate mainly to greenfield dwellings. The proposal is for the refurbishment of an existing building.

#### 6.2.4. Design and Amenity

- Planning Authority design concerns were addressed by FI
- The development occurs on an existing building footprint. No new isolated building is introduced into the landscape.
- Scale, massing and form are consistent with the existing structure.
- Access works follow the line of the existing access track.
- The development does not result in unacceptable visual or landscape impacts.

#### 6.2.5. EIA and Appropriate Assessment

- EIA is not required for a small-scale domestic refurbishment and there is no credible likelihood of significant effects on the environment.
- In terms of Appropriate Assessment, no evidence has been submitted to identify any credible source-pathway-receptor linkage or mechanism by which the development could give rise to significant effects.
- The PA screened out AA.

#### 6.2.6. Procedural Matters

- Matters relating to site notice timing, asbestos, RWMP, construction management, and conditions are either procedural or controlled by separate regulatory regimes or planning conditions and are not grounds for refusal.
- The Planning Authority addressed procedural matters under Article 35. Issues relating to the shared access and right of way are outside the scope of planning and do not trigger a requirement for re-notification or new notices.
- The appeal relies on civil property disputes, misinterpretation of planning law, misapplication of policy, incorrect EIA/AA thresholds and speculative environmental claims.
- The grant of permission by Donegal CC is procedurally valid, policy compliant, legally sound, environmentally robust and consistent with sustainable rural development principles.

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

6.3.1. The Planning Authority response can be summarised as follows:

- The Applicant has demonstrated sufficient legal interest to allow development and any issues with regard to rights of way or easement across the subject site are civil matters to be addressed outside of the Planning Act.
- The works proposed are to refurbish an existing building to bring it into residential use. The building is clearly identified on historical ordnance survey black and white mapping as a dwelling.
- The scale of refurbishment has been reduced through further information and, given the existence of the building, the proposal does not impact significantly or detrimentally on third party amenities.
- The site is in an area of Especially High Scenic Amenity. The refurbishment of a derelict building does not contravene the intent of the land use zoning. Policies RH-P-6 & 7 of the CDDP do not preclude renovation of buildings within Areas of Especially High Scenic Amenity.
- The Applicant has been advised that the building may not be used for short-term letting without a separate grant of permission.

- Appropriate Assessment and Environmental Impact Assessment can be precluded at preliminary examination stage.

#### 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 to be considered in this appeal are as follows:

- Easement/Right of Way
- Derelict Structure
- Design and Amenity
- Procedural Matters

#### 7.2. **Easement/Right of Way**

7.2.1. It is stated in the grounds of appeal that the Appellant owns and farms land that depends on access through the Applicant's lands in order to connect to the public road via the farm track that passes the gable of the derelict structure. The Appellant argues that they have a right of way/easement over the Applicant's lands to use the access track and that it is used on a regular and ongoing basis. The Appellant considers the application to be deficient as no details of the right of way were included on the drawings, noting that the access has been in place since the 19<sup>th</sup> century and that it will be upgraded as part of the proposal. On this matter, the Appellant states that the Applicant has not sought their consent for the development and it is their position that no information has been provided as to how they will be able to continue to use the right of way should the development be granted and constructed.

7.2.2. The Applicant argues that there is no evidence of a right of way and that the presence of an agricultural track and historic use does not establish a legally binding easement in planning law. The Applicant states that they have no objection to the continued use

of the existing access track, but that this is without prejudice to the Applicant's legal property rights and cannot be construed as recognition or acceptance of an easement or prescriptive right. It is argued that all upgrade works are on land owned by the Applicant and that they are adequate to permit safe passage of traffic. It is further argued that there is no basis to refuse permission on access, capacity, or safety grounds and that rights of way are a civil matter for the courts as opposed to the planning system.

- 7.2.3. No evidence has been submitted on the matter by either party and I note that no right of way is recorded on land registry mapping. As such, I am unable to come to a determination on the issue, which in any event is a matter for the courts rather than the Commission. In this regard I note that the Development Management Guidelines (Section 5.13) states:

*'The planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution in the Courts. In this regard, it should be noted that, as section 34(13) of the Planning Act states, a person is not entitled solely by reason of a permission to carry out any development.'*

- 7.2.4. That being said, I do consider it likely that a right of way exists given the landlocked nature of the Appellant's land, which relies on traversing the Applicant's land to access the road network. In any event, I note that the Applicant has no objection to the Appellant continuing to access their land via the existing track. Clearly the agricultural track is long in existence, being shown on all maps that I have consulted, including historic maps. From my site inspection I would agree with the Applicant that it has a stone base, albeit overgrown/colonised in some sections.

- 7.2.5. In that regard I note that the track is to be upgraded, which I have no objection to, and I note that a passing place would be provided in the unlikely event of two vehicles meeting each other, which is a necessary provision given the length of the track, even having regard to the excellent visibility along its length.

- 7.2.6. Whilst the Appellant may have a right of way, this would not mean that the Applicant as owner of the land would require their permission to perform necessary upgrades, as long as any right of access isn't interfered with. On this matter I note that the proposed boundary treatment shows tree/shrub planting blocking the continuance of

the track beyond the refurbished dwelling. This could interfere with onward access, however, it is a matter that could be easily addressed by way of a condition and would not, in my mind, warrant refusal of permission.

- 7.2.7. In that respect I consider that the proposed development would not interfere with access, subject to a condition requiring boundary treatment details to be agreed with the Planning Authority to ensure that onward access to the farm track beyond the dwelling is not hampered. This would achieve an amended boundary treatment that would align with the northern gable of the dwelling, leaving the access track unhindered, and would, in my opinion, address the core substance of the Appellants main concerns.

### 7.3. **Derelict Structure**

- 7.3.1. The Appellant submits that the derelict structure is an agricultural building and that it has never been used as a dwelling, arguing that the Applicant has provided no evidence to support their claim that it was previously used as a dwelling. The Appellant states that it has been abandoned and should be seen as a change of use, which would materially contravene the CDP given the location of the site in an area of Especially High Scenic Amenity. It is further stated that the developer has not demonstrated rural need and that there is no clear purpose for the development as the Applicant has a house in Mountcharles and the dwelling cannot be used as a holiday home.
- 7.3.2. The Applicant states that refurbishment of derelict traditional buildings is provided for under Policy RH-P-7 which focuses on the physical integrity of the building rather than continuity of residential occupation and that the Planning Authority implicitly confirmed the status of the building as one capable of refurbishment rather than a structure requiring a change of use. It is further stated that housing need policies and one-off housing controls relate mainly to greenfield dwellings. The proposal is for the refurbishment of an existing building.
- 7.3.3. I note the Applicant's claim that the building was last used as a dwelling in the 70s and the Appellant's competing claim that it has never been used as a dwelling as it is an agricultural building. No evidence is provided from either party. The Planning Authority considered it to be a dwelling, noting that the building is clearly identified as such on historical ordnance survey maps. From my site inspection I would agree with the

Planning Authority. It is a two-storey property with both floors served by windows. Internally there is evidence of the building split into rooms as would be expected by a dwelling and there is at least some indication of a previous flue. Outwardly the building is clearly representative of a dwelling, albeit long term vacant and in a derelict state. I therefore consider that the proposal is for the refurbishment of a derelict dwelling for residential purposes.

7.3.4. In any event, the Applicant is correct to state that acceptability is not dependant on the former use of buildings as dwellings as Policy RH-P-7 applies to derelict traditional buildings (refer to definitions below) within rural areas, for use as a permanent dwelling. The definition of derelict building reads:

*‘...a building with most external walls intact. Where the external walls consist of low wallsteads within an area of High or Moderate Scenic Amenity, each case will be considered on its merits with regard to location and siting. However, proposals for the refurbishment of low wallsteads will not be given favourable consideration within Areas of Especially High Scenic Amenity.’*

7.3.5. The existing building has external walls intact, and it is roofed. Whilst I consider the proposal to be the refurbishment of an existing derelict dwelling, the wording of policy RH-P-7 allows consideration of all proposals for the refurbishment of derelict traditional buildings within rural areas for use as a dwelling and as such, in reference to other derelict buildings that are not in existing residential use, the acceptability of a change of use is implicit in the wording of the policy. Having regard to the foregoing I do not accept the Appellant’s claim that there would be a material contravention of the development plan in respect of the current proposal.

7.3.6. In terms of demonstrating rural need, I would note that as a refurbishment case, demonstration of rural housing need would not be required. In any event, the site is in a structurally weak rural area and Policy RH-P-3 states that the Council will 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. Either way, refurbishment or new house, rural need does not need to be demonstrated in this area. Having regard to the restrictions of this policy however, I consider it appropriate to restrict the use of

the dwelling to prohibit use as a holiday home/short term rental. I note that this was the intention of the Planning Authority, however the condition was not applied. I recommend that it be applied should the Commission grant permission.

#### **7.4. Design and Amenity**

- 7.4.1. The Appellant submits that the site is prominent on the landscape in an area of Especially High Scenic Amenity, that visual impact has not been adequately assessed, and that it will interfere with their amenity and access. It is stated that the lime render is not acceptable and that the upgrade to the existing farm track will affect visual amenity. It is the Appellant's position that a visual impact assessment is required in order to properly assess the development.
- 7.4.2. The Applicant counters that the design concerns were addressed at FI stage and that the development occurs on an existing built footprint, with no new isolated building being introduced to the landscape. The Applicant submits that the scale, massing and form are consistent with the existing structure, that upgrades to the track follow its existing alignment and that the development does not result in unacceptable landscape or visual impacts.
- 7.4.3. I have addressed the matter of access previously. In terms of visual amenity, the existing building is already established on the landscape. The refurbishment would retain its form entirely and the increase in ridge height is very minor and would not be perceptible from the surrounding areas. The proposed extension is single storey, located to the rear, centrally positioned, and very subservient in scale and massing. It would be finished in traditional materials and would not represent a significant or inappropriate addition to the landscape. From my site inspection the existing dwelling was clearly rendered, and I have no objection to the lime render proposed. Should the Commission disagree then materials could be conditioned, but I consider the proposal to be an appropriate response. I have no objections to the track upgrade and do not consider it feasible that they would impact on either the Appellant's amenity or the visual amenity of the wider area and the EHSA. Furthermore, the nature and scale of the proposal is such that a landscape impact assessment would not be required.

#### **7.5. Procedural Matters**

- 7.5.1. The Applicant submits that the appeal should be refused as no details have been submitted on how the asbestos roof would be safely removed and that a Resource

Waste Management Plan has not been provided. The Applicant considers that these are matters that are controlled by condition or under separate regulatory regimes and that they are not grounds for refusal. A Resource Waste management plan could be conditioned, noting that this is a generally standard condition. The removal of the asbestos roof could be dealt with under a Construction Management Plan and I note that onward disposal of asbestos is subject to a separate licencing regime.

## 8.0 AA Screening

- 8.1. I have considered the proposal in light of the requirements S177U of the Planning and Development Act 2000 as amended. The subject site is located in the townland of Ballysaggart on the St John's Point peninsula in southern Donegal. The development comprises the refurbishment and extension of a derelict building for resident use, incorporating a wastewater treatment system and upgrades to the access lane. Surface water would drain to an existing open drain. The nearest European Site is the St John's Point SAC which is around 150m to the south of the site.
- 8.2. The Appellant argues that an Appropriate Assessment Screening Report is required given the scale of development, the location within an area of EHSA, and the provision of a private road of 300m. It is also submitted that the Planning Authority erred in only considering hydrological connections and that other sites should have been considered, including those for which Barnacle Geese are a qualifying interest as they are known to forage in the area.
- 8.3. The Appellant's position on Barnacle Geese is directly related to a letter received from DHLGH in response to the Appellant's own planning application a number of years ago to develop an agricultural shed on their residential plot, which is around 400m to the east of the subject site. The letter from DHLGH stated that overwintering Barnacle Geese forage in the adjoining fields, it is not clear what adjoining fields are being referred to, noting that the subject site in this case was surrounded to the south by the Appellant's own land and to the east and west by third party lands that are not those of the Applicant. The current subject site is not adjoining the land referred to in the DHLGH letter. In any event, DHLGH recommended that development works take place outside the overwintering period (October – April). The condition was ultimately not imposed on the Appellant's grant of permission.

8.4. The Planning Authority referred the current application to DHLGH. No response was received. As noted above, the nearest European Site is the St John's Point SAC. The qualifying interest of this SAC are as follows:

- Large shallow inlets and bays
- Reefs
- Semi-natural dry grasslands and scrubland facies on calcareous substrates (Festuco-Brometalia) (\* important orchid sites)
- Molina meadows on calcareous, peaty or clayey-silt-laden soils (Molinion caeruleae)
- Alkaline fens
- Limestone pavements
- Submerged or partially submerged sea caves

8.5. Having considered the conservation objectives for each of the qualifying interests, it is clear that the proposed development would not have any likely significant effects on the SAC. Barnacle Geese are not a qualifying interest of this SAC. In this regard I have consulted the qualifying interests of all European Sites within a 15km zone of influence and note that none of them list Barnacle Geese as a qualifying interest. Following this, I consulted the nearest European Site which lists Barnacle Geese as a qualifying interest, the Inishmurray SPA, an island European Site off the coast of Sligo, located c. 23.7km to the south-west of the subject site.

8.6. The conservation objectives for Barnacle Geese is to maintain the favourable conservation condition of Barnacle Goose in the Inishmurray SPA. The attribute/measure/target/notes information in the conservation objectives covers forage spatial distribution and it is stated in relation to Barnacle Geese that '*Birds are highly likely to exhibit foraging site fidelity and may be found foraging on offshore islands as well as commuting to forage on the mainland. Maximum foraging distance is approximately 7km for wintering birds (Doyle et al., 2023)*'.

8.7. Having regard to the distance between the subject site and the Inishmurray SPA, which at c.23.7km significantly exceeds the maximum foraging distance set out in the conservation objectives, I am satisfied that it can be ruled out that the development

would have any likely significant effects on the qualifying interest of this SPA. I would also note that other European Sites that list Barnacle Geese as a qualifying interest are located even further away from the site and all list the 7m maximum distance. Having regard to the relevant information in the conservation objectives, which post date the letter from DHLGH referred to by the Appellant, I am satisfied that the development would not have a significant effect on Barnacle Geese in the context of the qualifying interests and conservation objectives of surrounding and more distant European Sites. In screening out Appropriate Assessment, in addition to the foregoing, my conclusion is based on:

- The nature and scale of the works, which relate to refurbishment of an existing building, provision of a small scale rear extension, and upgrades to an existing lane.
- The provision of an acceptable and COP compliant Wastewater Treatment System.
- The distance from the nearest European site, the qualifying interest of that site and the fact that the development would not interfere with the conservation objectives.
- The screening determination of the Planning Authority.

8.8. No mitigation or measures beyond industry standard interventions and best practice have been relied on to come to this conclusion. I therefore conclude, on the basis of objective information, that the 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 Appropriate Assessment (under Section 177V of the Planning and development Act 2000) is not required.

## 9.0 **Water Framework Directive**

9.1. An assessment of the proposed development has been undertaken with regard to the objectives set out in Article 4 of the EU Water Framework Directive, together with relevant guidance published by the Environmental Protection Agency (Ireland), including applicable codes of practice for the protection of water quality.

- 9.2. Having considered the nature, scale, and location of the proposed development, it is concluded that the proposal will not result in any risk of deterioration in the status of any water body, including surface waters (rivers and lakes), groundwater, transitional waters, or coastal waters. This applies to both qualitative and quantitative status, and in respect of temporary and permanent effects.
- 9.3. The proposed development has been designed in accordance with EPA codes of practice and best practice guidance, ensuring that appropriate measures are incorporated to prevent pollution, control runoff, and protect both surface water and groundwater receptors. Furthermore, the development will not adversely affect the achievement of established environmental objectives, including the maintenance or attainment of Good Ecological Status/Potential and Good Chemical Status, as required under the Directive. Accordingly, the proposed development is considered to be compliant with the requirements of Article 4.

## 10.0 EIA Screening

- 10.1. I note that the Appellant's view that the development would not be minor as the site measures 1.037 hectares and the provision of a private road of 300m. Firstly, the site size is largely irrelevant in the context of the actual development proposal, which is the refurbishment and extension of a dwelling, which is not a class for the purposes of EIA as per the classes of development set out in Schedule 5 of the Planning and Development Regulations 2001, as amended (or Part V of the 1994 Roads Act). Secondly, a new road is not being provided. The existing track, as attested to by the Appellant themselves, is long in existence, shown on all plans consulted, and from my site inspection exists with a stone/hardcore base. The proposal in this respect is therefore the upgrading and improvement of the existing track, and this does not change my conclusion that an EIAR is not required.

## 11.0 Recommendation

- 11.1. I recommend that the Commission grant planning permission subject to conditions, for the reasons and consideration set out below:

## **12.0 Reasons and Considerations**

12.1. Having regard to the landscape objectives relating to the site, the provisions of the Donegal County Development Plan with regards to replacement dwellings and refurbishment of derelict structures, the nature and extent of the development both in terms of the refurbishment works/proposed extension and the access upgrade, it is considered that the proposal, subject to the conditions set out below, would not seriously injure the amenities of the area or of property in the vicinity, would not be prejudicial to public health or the environment and would generally be acceptable in terms of design, access, visual amenity, and nature conservation.

## **13.0 Conditions**

1. The development shall be retained and completed in accordance with the plans and particulars lodged with the application on 11<sup>th</sup> August 2025 and Further Information received on 10<sup>th</sup> December 2025 except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the

development shall be carried out and completed in accordance with the agreed particulars.

2. Prior to the commencement of development the developer shall enter into a Connection Agreement with Uisce Éireann (Irish Water) to provide for a service connection to the public water supply network.

**Reason:** In the interest of public health and to ensure adequate water/wastewater facilities.

3. Drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

**Reason:** In the interest of public health and surface water management.

4. The proposed dwelling shall be retained and occupied as single residential unit and not let or otherwise transferred or conveyed unless permitted by way of a separate planning application.

**Reason:** To restrict the use of the dwelling in the interest of residential amenity.

5. Prior to the commencement of development, details of the materials, colours and textures of all the external finishes to the proposed development shall be submitted to and agreed in writing by the Planning Authority.

**Reason:** In the interests of orderly development and the visual amenities of the area

6. A Construction and Environmental Management Plan (CEMP) shall be submitted to and agreed in writing with the planning authority prior to the commencement of development. The CEMP shall include but not be limited to construction phase controls for dust, noise and vibration, asbestos removal measures, waste management, protection of soils, groundwaters, and surface waters, site

housekeeping, emergency response planning, site environmental policy, and project roles and responsibilities.

**Reason:** In the interest of environmental protection.

7. Notwithstanding the exempted development provisions of the Planning and Development Regulations, 2001, and any statutory provision replacing or amending them, no development falling within Class 1 or Class 3 of Schedule 2, Part 1 of those Regulations shall take place within the curtilage of the house without a prior grant of planning permission.

**Reason:** Having regard to the site location within an area of Especially High Scenic Amenity and to retain effective planning control in the interest of the amenities of the area.

8. Full details of boundary treatment and landscaping shall be submitted to and agreed in writing with the planning authority, prior to commencement of development. This scheme shall include the following: (a) Details of all proposed hard surface and/or permeable surface finishes for footpaths, kerbing and road surfaces, (b) proposed planting including species, number, location, (c) details of proposed boundary treatments at the perimeter of the site and within the site itself having regard to shared access matters. The boundary treatment and landscaping shall be carried out in accordance with the agreed scheme.

**Reason:** In the interest of visual amenity.

9. All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground. Ducting

shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development.

**Reason:** In the interests of visual amenity.

10. Prior to the commencement of development, the developer or any agent acting on its behalf, shall prepare a Resource Waste Management Plan (RWMP) as set out in the EPA's Best Practice Guidelines for the Preparation of Resource and Waste Management Plans for Construction and Demolition Projects (2021) including demonstration of proposals to adhere to best practice and protocols. The RWMP shall include specific proposals as to how the RWMP will be measured and monitored for effectiveness; these details shall be placed on the file and retained as part of the public record. The RWMP must be submitted to the planning authority for written agreement prior to the commencement of development. All records (including for waste and all resources) pursuant to the agreed RWMP shall be made available for inspection at the site office at all times.

**Reason:** In the interest of proper planning and sustainable development.

11. (a) The proposed effluent treatment and disposal system shall be located, constructed and maintained in accordance with the details submitted to the planning authority and in accordance with the requirements of the document entitled "Code of Practice – Domestic Waste Water Treatment Systems (p.e. ≤ 10)" – The Environmental Protection Agency, 2021. Arrangements in relation to the ongoing maintenance of the system shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. (b) Within three months of the first occupation of the dwelling, the developer shall submit a report from a suitably qualified person with professional indemnity insurance certifying that the proprietary effluent treatment system has been installed and commissioned in accordance with

the approved details and is working in a satisfactory manner in accordance with the standards set out in the EPA document.

**Reason:** In the interest of public health.

12. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

**Reason:** It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

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 me, directly or indirectly, following my professional assessment and recommendation set out in my report in an improper or inappropriate way.

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Terence McLellan  
Senior Planning Inspector

23<sup>rd</sup> April 2026

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

<b>Case Reference</b>	PL-500641-DL-26
<b>Proposed Development Summary</b>	Refurbishment of existing derelict house with construction of an extension and all associated site works
<b>Development Address</b>	Ballysaggart Td, Dunkineely, Donegal Po, Co Donegal
<b>IN ALL CASES CHECK BOX / OR LEAVE BLANK</b>	
<b>1. Does the proposed development come within the definition of a 'Project' for the purposes of EIA?</b>	<input checked="" type="checkbox"/> Yes, it is a 'Project'. Proceed to Q.2.
	<input type="checkbox"/> No, No further action required.
(For the purposes of the Directive, "Project" means: - The execution of construction works or of other installations or schemes, - Other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources)	
<b>2. Is the proposed development of a CLASS specified in Part 1, Schedule 5 of the Planning and Development Regulations 2001 (as amended)?</b>	

<input type="checkbox"/> Yes, it is a Class specified in Part 1. <b>EIA is mandatory. No Screening required. EIAR to be requested. Discuss with ADP.</b>	<b>State the Class here</b>
<input checked="" type="checkbox"/> No, it is not a Class specified in Part 1. Proceed to Q3	
<b>3. Is the proposed development of a CLASS specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) OR a prescribed type of proposed road development under Article 8 of Roads Regulations 1994, AND does it meet/exceed the thresholds?</b>	
<input checked="" type="checkbox"/> No, the development is not of a Class Specified in Part 2, Schedule 5 or a prescribed type of proposed road development under Article 8 of the Roads Regulations, 1994. <b>No Screening required.</b>	
<input type="checkbox"/> Yes, the proposed development is of a Class and meets/exceeds the threshold. <b>EIA is Mandatory. No Screening Required</b>	
<input type="checkbox"/> Yes, the proposed development is of a Class but is sub-threshold.  <b>Preliminary examination required. (Form 2)</b> <b>OR</b>	

<b>If Schedule 7A information submitted proceed to Q4. (Form 3 Required)</b>	
<b>4. Has Schedule 7A information been submitted AND is the development a Class of Development for the purposes of the EIA Directive (as identified in Q3)?</b>	
<b>Yes</b> <input type="checkbox"/>	<b>Screening Determination required (Complete Form 3)</b>
<b>No</b> <input type="checkbox"/>	<b>Pre-screening determination conclusion remains as above (Q1 to Q3)</b>

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

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