

Ronan Megannety

From: Carl Rainey <carlrainey1@gmail.com>
Sent: Thursday 5 June 2025 16:48
To: Appeals2
Subject: ABP Case Number: ABP-322247-25; DCC Planning Authority Reference Number: S525/04

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Dear Sir,

Thank you for your letter of 16th May 2025.

We note and thank you for your decision that in the particular circumstances of this referral, it is appropriate in the interests of justice to request us to make submissions or observations in relation to the enclosed submission dated 9 May 2025 from Smyth & Sons on behalf of Patrick Mc Quade.

We gratefully take this opportunity to do so and have set out our comments below (that are within the scope of the matter in question).

Mr McQuade's submission is inaccurate and or misinformed in a number of respects.

- As the Board will be aware, it is incorrect to state that we did not exhaust our appeal remedy. There was no statutory appeal available to us, which is a flaw in the legislation. We have not therefore failed to exercise a non-existent right of statutory appeal.
- Donegal County Council elected to add the relevant note to the S5 declaration No2 in relation to S5 Declaration No. 1. By so doing, it brings the latter within the purview of this appeal in respect of S5 Declaration No. 2. This does not amount to a collateral attack. Rather, it is an appeal on foot of the specific action taken by DCC to attach the note. The two section 5 decisions are therefore patently inextricably linked and relate to the same dwelling-house.
- Furthermore, we wish to point out that judicial review of S5 Declaration No. 1 was neither an available or adequate alternative remedy where inaccurate details were provided to DCC, the decision-maker. More specifically, the decision-making process and / or the decision of DCC was not necessarily legally flawed because it determined the declaration application on the basis of the inaccurate and misleading information it was provided and we had no statutory right to be consulted as part of that decision-making process to make submissions in relation to the facts of the proposed use as publicly advertised by the developer and as confirmed by him personally during a conversation in a meeting which he agreed to have and which at the outset he agreed could be recorded. In this regard, there is absolutely no doubt as regards what the facts and specifics of what the proposed use is. We are not calling the developer a liar. We are simply confirming what the facts included in his application for S5 Declaration No. 1 are not the facts he has confirmed.

In terms of the developer's request that the Board dismiss our appeal as vexatious. We object in the strongest possible terms to the characterisation of our appeal as such. Our submissions are all entirely related to planning considerations, the relevant planning exemption criteria which established case-law says must be strictly construed, the Article 9 planning 'de-exemptions' which each need to be confirmed as non-applicable in order for an exemption to continue to be available and to the overarching question of whether the proposed (actual and publicly reported) use of this dwelling house in this private estate, accessed by a privately-owned road, in this rural area is in accordance with proper planning and sustainable development. These are the precise points on which we are seeking the Board's determination.

There is a distinction between the two declarations; notably, there has been a material change in facts and circumstances since S5 Declaration No. 1 was issued by DCC as regards the facts provided in

respect of both applications.

Thank you for your time in considering this appeal. We respectfully request that in the interests of justice and having regard to all of the above, you determine our appeal in respect of S5 Declaration No. 2 having regard to S5 Declaration No.1.

Finally, we note the statement that the developer is "aware the property is connected to the public road byway of a right of way granted to

all owners within the development, there is no difficulty in this regard."

This is incorrect. The right of way is granted for use as a dwelling-house, not a commercial enterprise.

We kindly request that the Board take into account all of our submissions set out in our letter of 9th April 2025.

Regards,

*sent by email and therefore bears no signature

Carl Rainey
for Cornagill Residents