



An
Bord
Pleanála

Inspector's Report ABP-320157-24

Development	Construction of a dwelling house, garage and all associated site development works.
Location	Lurgabrack, Dunfanaghy, Co. Donegal.
Planning Authority	Donegal County Council
Planning Authority Reg. Ref.	2351645
Applicant	Thomas Alcorn
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Kenneth and Norah Stewart
Observer(s)	Niall Campbell and Catherine Burke
Date of Site Inspection	18 th October 2024
Inspector	Matthew O'Connor

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1.0 Site Location and Description

- 1.1. The appeal site is 0.23ha and located in the townland of Lurgabrack, some 3.7 km to the northwest of the settlement of Dunfanaghy in the southern extent of the Horn Head peninsula in Co. Donegal. The appeal site is on elevated lands which slope in a southerly direction towards the coastline. The topography of the surrounding area is generally undulating.
- 1.2. The appeal site is situated on the eastern side of a private lane some 100 metres to the south of the L-7083-1 which serves a limited number of dispersed one-off rural dwellings on individual plots with varying styles, designs and configurations and agricultural lands. There is a dwelling (holiday home) to the south and a contemporary dwelling (Breac House – available for accommodation) to the southwest.
- 1.3. The roadside (western) boundary comprises a stone wall; the southern (side) boundary is formed by a wire fence and is the rear area of a holiday home residence; and, the northern (side) and eastern (rear) boundaries are undefined as they are within a field. Overhead wires traverse the northern part of the appeal site. 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:
 - Construction of a single storey dwelling house (229sq.m).
 - Construction of a detached domestic garage (34.60sq.m).
 - Installation of a wastewater treatment system.
 - Provision of new vehicular entrance.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. Grant permission for the subject development, subject to 17 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.

- Conditions 6,8,9: Surface water collection/ drainage.
- Condition 16: Wastewater treatment
- Condition 16: Development contributions totalling €3,324.64

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The first Planner's Report had regard to the submitted documentation, locational context of the site, planning history in vicinity, policy framework of the Development Plan and inter departmental/referral reports.
- In terms of assessment, the Planning Authority noted the proposed development is in an Stronger Rural Area. Documentary evidence required to confirm applicant's rural housing need.
- Dwelling design considered to be low impact with a precedent in area for contemporary design.
- Concerns raised in respect of siting of the dwelling having regard to landscape designation. Laths to be erected for Planning Authority to conduct a visual assessment of proposed development from the north of the site.
- No concerns raised in relation to residential amenity.
- Access provision noted however evidence required to confirm applicant's right of way over existing private access road.
- The proposed wastewater treatment noted and deemed acceptable, subject to conditions returned from the EHO.
- Details required for surface water drainage calculations/design to demonstrate whether or not receiving storm infrastructure has capacity to cater for additional loadings without flood risk to road or third party lands.
- No issues raised with respect to AA or EIA.

Further Information was sought in relation to 4 no. items:

- Erection of laths to a height of 5.49 metres for inspection by Planning Authority.
- Details of surface water drainage design and calculations.

- Submission of a Supplementary Rural Housing Application Form and documentary evidence in support of a rural housing need.
- Submission of documentary evidence of legal interest/3rd party consent in the private access road serving the site.

The second Planner's Report provides an analysis of the applicant's Further Information response and forms the basis for the grant of permission with conditions. The Planning Authority considered that the siting and design was acceptable having regard to the laths erected; the details for the surface water drain was adequate; the submission of the Supplementary Rural Housing Form and Bona Fide letter was acknowledged and deemed acceptable; and, land registry documentation detailing Right of Way over the access lane demonstrated a legal interest but that the onus is on the applicant to ensure that they have legal consent to access the site.

3.2.2. Other Technical Reports

- Area Roads Engineer – Comment returned – Storm Water
- Environmental Health Officer (EHO) – No objection, subject to conditions

3.3. **Prescribed Bodies**

- Uisce Eireann - No response received.
- An Taisce - No response received.
- Dept of Housing, Local Government and Heritage - No response received.

3.4. **Third Party Observations**

3.4.1. Two third party observations were received by the Planning Authority. One observation opposed the development and raised several issues whilst the other observation related to the proposed vehicular entrance. The observations are broadly summarised as follows:

- Siting/finished floor levels of proposed dwelling will cause a breach of privacy and overbearance on neighbouring property to the south and effect value of property.
- Health risk concerns from possible run-off from proposed wastewater treatment system onto neighbouring property.

- A strip of land between the proposed site and neighbouring property is shown on drawings but the purpose is unclear. If used for third party access this would impinge on privacy.
- The lands are accessed by a Right of Way lane which has issues with drainage which may be exacerbated by development.
- Lack detail as to how surface water will connect to existing drains or if existing network has capacity for additional water.
- Risk of contaminated water from Soil Polishing Filter/Soakaway entering piped drains and being carried off-site.
- Original proposal was discussed with applicant having regard to indicated entrance located immediately opposite entrance to neighbouring property.
- A revised entrance would take account of issues such as privacy, noise, avoiding/minimising shining of vehicle lights.

4.0 Planning History

- None.

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. 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 Amenity' of this Plan.

5.1.3. 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 Holiday Home Influence'. The following policy is relevant:

RH-P-2 To consider proposals for new one-off rural housing within 'Areas Under Strong Holiday Home 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 holiday home 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 Policies 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 Especially High Scenic Amenity. According to the landscape classification contained in Chapter 11: 'Natural, Built, and Archaeological Heritage' of the Development Plan, these are *'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.'*

5.1.5. The following objective and policies are relevant:

- L-O-1 To protect, manage and conserve the character, quality and value of the Donegal landscape.*
- 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.*
- L-P-6 To safeguard prominent skylines and ridgelines from inappropriate development.*

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

WW-P-2 Ensure that new developments: a. do not have an adverse impact on surface and ground water quality, drinking water supplies, Bathing Waters and aquatic ecology (including Water dependent qualifying interests within Natura 2000 sites); and b. do not hinder the achievement of, and are not contrary to: i. The objectives of the EU Water Framework Directive. ii. EU Habitats and Bird Directives. iii. The associated Programme of Measures in the River Basin Management Plan 2022-2027 including any associated Water Protection or Restoration Programmes. iv. Drinking Water Safety Plan. v. The Guidelines on the Protection of Fisheries During Construction Works In and Adjacent To Waters (IFI, 2016).

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 12 of the Development Plan relates to 'Community Development' and contains the following policy in respect of stone wall boundaries.

CC-P-13 Seek the protection of stone wall boundaries where they are shown to play a significant heritage role. Where the demolition of such stone walls is unavoidable, the reinstatement of stone walls at revised location/set back within the site using agreed local materials and techniques, will be required.

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 on or within any designated Natura 2000 sites, with the nearest designated sites being the Horn Head and Rinclevan Special Area of Conservation (Site Code: 000147) and Horn Head to Fanad Head Special Protection Area (Site Code: 004194) which are located approximately 0.51km to the west of the site. This site is also a pNHA.

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 south of the appeal site. The appeal reiterates

a number of matters raised in the Appellant's original planning submission to the Planning Authority. The grounds of appeal can be summarised as follows:

Siting & Visual Impact

- Dwelling is not appropriate and not in accordance Donegal County Council's planning guidance for one-off rural dwellings in Especially High Scenic Amenity areas or environmentally sensitive locations.
- The dwelling should integrate with countryside. It is not clear how a dwelling on higher ground can be obtained when appellants were required to cut-and-fill their building.
- The Finished Floor Levels (FFLs) of the dwelling will be above the appellants dwelling.
- Visual impact concerns regarding how the dwelling would be viewed southwards from public road (L-7083-1) or northwards from the pier in Dunfangahy. The dwelling will be visually obstructive and break the skyline.

Wastewater Treatment & Drainage

- Results of the Site Characterisation Report demonstrate very high quality percolation for Donegal context which is unusual for the area which has poorly drained marshy soil.
- The location and design of the wastewater treatment system is not adequate given the site location/conditions and separation distances from neighbouring properties.
- The Site Characterisation Report does not contain cross-sections/topographical sections which are deemed critical to determine risks of overflow to neighbouring property.
- It is questionable as to whether the proposed wastewater treatment system can satisfy the requirements of the EPA's Code of Practice. The proposal may present an environmental and health and safety risk.
- The recommendations/specifications of the Environmental Health Officer (EHO) regarding provision of land drains and set-backs should have been included as conditions
- Drainage information regarding detailed capacity and calculation has not been provided.

- No details as to how new drainage will connect to existing pipes or how they will be maintained.

Stone Wall & Access

- The existing stone wall is considered to be a feature of the Horn Head landscape. The removal of 49 metres of stone wall in Condition No. 4 of decision to grant is contrary to the Rural Design Guide and result in a loss of heritage.
- Conditions 4,8 and 9 of decision to grant refer to 'public road' and 'carriageway'. This is an incorrect reference to the existing Right of Way Lane.

Reference to Third Party Submissions

- The wording of the second Planner's Report makes reference to no third-party submissions being made which is incorrect.

6.2. Applicant Response

- No response received.

6.3. Planning Authority Response

- A response has been received from the Planning Authority which informs that all contents of the application was considered in the Planner's Report. The correspondence indicates that the Planning Authority inspected the laths and deemed the siting and design of the dwelling to be acceptable. The Planning Authority had no undue concerns with regard to the drainage network. No significant concerns arose from the proposed. The Planning Authority request that An Bord Pleanála uphold its decision.

6.4. Observations

- One observation has been received in respect of the subject proposal from the owners of the property to the west/southwest. The matters raised are summarised as follows:
 - Location of Gate Entrance
 - Acknowledges revised entrance to address concerns raised in submission.
 - Clarification that the revised entrance is appropriately/specifically stated in Condition No. 1 of decision.

- Retention of Historic Dry Stone Walls
 - Refence made to Condition No. 4 of decision. Historic dry stone walls forming the western boundary of site should be retained and protected.
 - The replacement of the stone walls with a timber fence will conflict with the Design Guide and would be an inappropriate style of development.
- Water / Wastewater and Building/Siting
 - Development should ensure no excess surface water or wastewater run-off from the site due to existing land conditions.
 - An Bord Pleanála should review the appropriateness of the proposed building height and location given the rural location.

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 and Observers. I am satisfied that no other substantive issues arise. This appeal can be addressed under the following relevant headings:

- Compliance with the Rural Housing Strategy
- Impact on Visual Amenity
- Wastewater Treatment
- Surface Water Drainage
- Access & Sightlines
- Removal of Stone Wall
- Appropriate Assessment (Screening)

7.1. **Compliance with the Rural Housing Strategy (New Issue)**

7.1.1. The appeal site is located approximately 3.7km from Dunfanaghy, in an area identified in Map 6.3.1: 'Rural Area Types' of the Development Plan as an 'Area Under Strong Holiday Home Influence'. Policy RH-P-2 of the Development Plan is applicable and informs that proposals for new one-off dwellings can be considered 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). This policy does not apply if the individual already had the benefit of a dwelling on another site (except in exceptional circumstances) and new holiday homes will not be permitted.

7.1.2. In considering 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.*

7.1.3. The application was assessed under the previous County Donegal Development Plan 2018-2024 where the site was designated as a 'Stronger Rural Area' and the provisions of Policy RH-P-3 were applicable. A Supplementary Rural Housing Application Form was submitted with the response to Further Information and the applicant indicated that they resided on the family farm in Claggan for their entire life. The applicant relied solely on a Bona Fide Letter from an Elected Member of Donegal County Council who indicated the applicant is known to them and claimed they meet all the criteria under Policy RH-P-3 of the County Donegal Development Plan 2018-2024.

- 7.1.4. It is my consideration that although the Rural Area Type and applicable policy of the former County Donegal Development Plan 2018-2024 for this site differs from the Rural Area Type and applicable policy of the current County Donegal Development Plan 2024-2030; the fundamental requirement of the applicant to provide evidential/documentary evidence of a genuine housing need remained pertinent.
- 7.1.5. Having regard to the provisions of the operative Development Plan, I do not consider the applicant has demonstrated compliance with Policy RH-P-2. In my view, the applicant has failed to provide any information or evidence to substantiate either a genuine 'Economic' or 'Social' need to live in the area. I am not satisfied that a Letter of Support from an Elected Member or a stated family connection to the area (without any supporting material) is an adequate basis to assess the proposed development against relevant Development Plan policies. While such a letter may have been deemed acceptable to the Planning Authority, in my opinion this 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 the development of further one-off housing without adequate justification would only serve to further undermine this rural area. Permission should be refused on this basis.
- 7.1.6. I note that this matter has not been raised by the appellant and was considered in the assessment of the Planning Authority. The Board may be of the view that the requirement of the applicant to demonstrate an 'economic' or social need, as per Policy RH-P-2 of the operative Development Plan, may be a 'New Issue' in the context of this appeal.

7.2. Impact on Visual Amenity

- 7.2.1. The Third Party do not raise any specific issue with the general design of the proposed dwelling. However, the appellants consider the siting of the proposed dwelling is inappropriate and not in accordance with Planning Authority guidelines for one-off dwellings located in an 'Especially High Scenic Amenity' area. The appellants claim the FFL of the proposed dwelling would be above the ridge of their dwelling and would be visually obstructive when viewed southwards from the L-7083-1. The appeal states the proposed dwelling would be obtrusive and break the sky line when viewed across the bay from Dunfanaghy Pier. Reference is made in the appeal to the Rural Housing Location, Siting, and Design Guide whereby developments (in Mountain areas) should

integrate into the countryside and building on the crest/shoulder of a slope be avoided. The appellants inform that they were required to 'cut' their dwelling into the hill so as to not break the skyline and it is unclear how a new dwelling on higher ground can obtain permission. I note that images and self-prepared composite drawings detailing the visual impact/effect of the proposed development have been included.

7.2.2. The appeal site is situated in an 'Area of Especially High Scenic Amenity' which is defined in the Development Plan 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'*. 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-1 seeks to protect these areas and only consider developments of strategic importance, or developments that are provided for by policy elsewhere in the Development Plan. Policy L-P-6 seeks to safeguard prominent skylines and ridgelines from inappropriate development.

7.2.3. In addition to landscape provisions, Policy RH-P-9 of the Development Plan is relevant in considering a rural house. This policy requires individual dwellings to be sited and designed in a manner that is sensitive to the integrity and character of rural areas and enables development to be assimilated into the receiving landscape. I note that supporting design criteria requires that dwellings are not detrimental to the amenity of the area or other rural dwellers by reason of its positioning, siting or location; would not constitute haphazard development; be unacceptable where it is prominent in the landscape; or, fails to blend with the landform, existing trees or vegetation, buildings, slopes or other natural features which can help its integration with its immediate and wider 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. Having regard to the location of the proposed dwelling in the southern extent of the Horn Head peninsula, it is my opinion that the character of the 'Especially High Scenic Amenity' area has been eroded on account of pre-existing development. In the immediate vicinity of the appeal site, there is a dwelling (appellant's holiday/retirement home) to the south; a contemporary dwelling (observer's property) to the west/southwest and a further dwelling to the southwest. These buildings are accessed via the Right of Way lane, stepped below the appeal site and orientated toward the

coast. Some 250 metres directly north of the appeal site on the opposing side of the L-7083-1, two dwellings and associated garage/outbuildings are set in a linear form. In the wider locality, there other residences and associated outbuildings dotted across this part of the Horn Head peninsula. As such, I do not consider that the location of the appeal site has an unspoiled character.

7.2.5. The proposed dwelling is located in the north-eastern extent of the site with a set-back of approximately 27.3 metres from the private Right of Way lane and broadly in line with the existing dwelling to the south. The appeal site rises steadily uphill (south to north) over roughly 50 metres. I estimate the western incline ranging from approximately 73.4m to 79.1m and the eastern incline ranging from approximately 75.3m to 79.6m. The stated finished floor levels (FFL) of the proposed dwelling is 78.25m and 78.85m and is sited across the 78m-80m contour range with the step in floor levels balancing the change in land levels. No section drawings were included to aid consideration of the extent of cut/fill required. I note the appellant's reference to the FFLs of the proposed dwelling being above the ridge line of their dwelling. I consider that perspective is required in considering this assertion. The appellants' holiday home residence is 'cut' into the hillside which offsets the dwelling height against the natural slope but the proposed dwelling is positioned approximately 35 metres to the north on higher/elevated ground. I consider the proposed dwelling would be largely consistent with prevailing land levels and would not be disproportionate or out of character in the context of the area so as to overbear/dominate neighbouring properties. Additionally, I note that the land continues to rise northward from the appeal site towards the public road which is on a contour of approximately 87-88m and that the existing dwellings to the north are sited on the crest of the raised lands and break the skyline in this area.

7.2.6. I acknowledge the roof profile/ridge of the proposed dwelling would be visible from the public road (L-7083-1) when viewed southward. However, from my observations of the sloping land and review of images provided with the appeal file, I note that the roof of both the appellants' and observers' respective properties presently visible from this location. In my opinion, the southward view would not change dramatically. I consider that when viewed from Dunfanaghy, the proposed dwelling would be predominantly tucked behind the appellants' property and below the dwellings sited further to the north of the appeal site. In my view, the siting of the dwelling would be appropriate in

the context of the existing concentration/clustering of development in the surrounding area. Furthermore, I consider it important to note that there are no protected views, as identified in the Development Plan, in the vicinity of the appeal site which would be disrupted from the proposed dwelling.

7.2.7. In conclusion, I am satisfied that the area has capacity for a dwelling. I consider the low profile height and contemporary “H” shape design of the proposed development has been sensitively considered and would assimilate into the receiving landscape. I am also satisfied the proposed development would not detract from the quality or character of this ‘Especially High Scenic Amenity’ landscape area and would be acceptable when viewed in the context of other dwellings in the surrounding locality. I consider that the proposal would not be contrary to the parameters of RH-P-9 of the Development Plan in terms of location, siting and design and would accord with the Rural Housing – Location Siting and Design Guide.

7.3. Wastewater Treatment

7.3.1. The Third Party appeal contends that the location and design of the wastewater treatment system and percolation area is not adequate on account of the topography and ground conditions of the lands. Concern is also raised in the grounds of appeal in respect of the separation of the proposed soil polishing filter from boundary of the property to the south which may result in water soaking into this property via an existing embankment. According to the appellants, the proposed development would present an environmental and health and safety risk. In addition, the appellants refer to the contents of the Site Suitability Assessment Report and note that there are no cross-sections and that the percolation value is of a high quality in the context of County Donegal where the lands have poor drainage. The appellants claim to have received professional opinion on the Site Characterisation but have not provided any further details to corroborate same. The grounds of appeal also include comments returned by the Environmental Health Officer (EHO) for provision of perimeter drains around the polishing filter but queries why no condition requiring same has been included. It is further claimed by the appellants that it is questionable as to whether the proposal can satisfy the requirements of the EPA’s Code of Practice given the need to provide a 4 metres distance from a slope break/cut rather than normal 3 metre distance from the boundary.

- 7.3.2. I consider that Policy WW-P-6 and part (b)(iv) of Policy RH-P-9 respectively of the Development Plan are relevant as they seek to ensure that wastewater treatment systems demonstrate safe and efficient disposal of effluent and comply the EPA's Code of Practice for Domestic Waste Water Treatment Systems (PE <10) (EPA 2021).
- 7.3.3. I have reviewed the submitted Site Suitability Assessment Report (SSAR) which indicates the aquifer category as being Poor (PI) and having an 'Extreme' groundwater vulnerability classification. The Groundwater Protection Response Category is identified as 'R2 1' 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'. The Code of Practice includes the advisory that where domestic water supplies are located nearby, particular attention should be given to the depth of subsoil over bedrock such that the minimum depths required in Chapter 6 of the Code of Practice are met and the likelihood of microbial pollution is minimised.
- 7.3.4. The SSAR states a 1.4 metre deep trial hole which is also the indicated bedrock depth. The water table was not encountered. The soil/sub-soil is classified as silt/clay which is crumb and compact between 0.1m - 0.5m, silt/ gravel which is blocky and compact between both 0.5m – 1m and 1m – 1.5m. The sub-surface test result for soil percolation is indicated at 23.11min/25mm. The comments on results recommend a secondary treatment system and soil polishing filter to discharge to groundwater.
- 7.3.5. During my site inspection, I had initial concern that there may be a hydraulic constraint on the site with water going to the ground. I noted extensive on-site vegetation (rushes) and trampled sod from cattle which I identified as being visual markers of wet ground conditions and poorly drained soil(s). However, notwithstanding these factors, I note the photographs in the SSAR indicate a top layer of compact silt/clay which would limit permeability close to the surface. I am of the view that recommended site improvement works such as excavation of subsoils and provision of interceptor drains would be appropriate to ensure efficiency of the wastewater treatment system.
- 7.3.6. The proposed treatment system is located 3 metres from the site boundary and approximately 9.5 metres from the appellant's property where the site is cut into the hillside. I am satisfied that the minimum separation distances and associated

requirements can be met on the site and are in accordance with EPA's Code of Practice for Domestic Waste Water Treatment Systems (PE <10) (EPA 2021).

7.3.7. I note that no details of interceptor drains upgradient of the polishing filter have been demonstrated on the Site Layout Plan despite being referenced in the SSAR and that cross sections detailing conditions across the site against the subject works are absent. However, I am of the view that the proposal can be reasonably considered as the fall/slope in the area of the polishing filter is relatively minor and will not require significant alteration to ground levels in this area. I consider that this item can be addressed by way of condition in the event of a grant of permission (see section 7.6 of this report).

7.3.8. Having regard to the above, I consider that it has been demonstrated that the subject site can accommodate a wastewater treatment system and would also be in accordance with Policy RH-P-9(b)(iv) and Policy WW-P-6 of the County Donegal Development Plan 2024-2030 respectively. To this end, should the Board be minded to grant permission, I recommend that reasonable worded condition(s) be attached *requiring the applicant to* construct the wastewater treatment system in accordance with recommendations provided in the Site Suitability Assessment Report and that any detailed specifications be agreed with the Planning Authority.

7.4. Surface Water Drainage

7.4.1. The appellants and observers raise concerns in respect of surface water run-off and claim that the submitted information does not detail capacity of existing surface water drain serving the lands and that there is no detail as to how new pipes will connect to existing pipe infrastructure to ensure proper operation, maintenance or clearance of blockages. The observers also state that the proposed development should ensure that there is no excess surface water run-off from the site due to the existing land conditions.

7.4.2. The applicant's response to Item No. 2 of the Further Information Request included a Storm Water Calculations and Pipe Sizes report to address concerns of additionally loading and risks to the road and third party lands. The report indicates run-off from the dwelling, garage and hardstanding areas and states that as the discharge is to an existing 375mm roadside pipe which connects to an open drain there is adequate capacity to accommodate the development and that no flooding issues would arise.

These arrangements were deemed appropriate by the Planning Authority to manage the control of surface water.

7.4.3. I note the calculations provided and details on the Site Layout Plan indicating the existing piped network traversing the appeal site. The existing drain runs in a north-south direction prior to turning towards the lane. I consider it reasonable that the applicant can connect to the existing infrastructure on the site. I acknowledge the recommendations of the EHO for a land drain to be constructed around the perimeter of the soil polishing filter (setback 2 metres so as to protect this area from surface water run-off from the higher ground on the site). I am of the view that such a drain, upgradient of the polishing filter, would suffice and could connect to the existing storm water drain.

7.4.4. It is my view that the fundamental consideration for drainage from a proposed development is that surface water run-off of adjoining lands or roads should not be exacerbated. There is nothing in the appeal file which leads me to further question the proposed surface water arrangement or that such a proposal would be contrary to technical standards in respect of Surface Water and Roadside Drainage as pertained in Chapter 16 of the Development Plan. Should the Board be minded to grant permission, it is my consideration that management of surface water drainage for a single dwelling on this site could be treated as a standard issue through a condition of permission - subject to agreement of such a proposal with the Local Authority.

7.5. Access & Sightlines

7.5.1. The proposed development will be accessed by a proposed vehicular entrance from the Right of Way lane in the north-western corner of the appeal site. I note from a review of the appeal file that the entrance was revised from the initial proposal on foot of a submission. The observers refer to the location of the relocated entrance and seek clarity on this entrance location being conditioned.

7.5.2. I note that Chapter 16 of the Development Plan relates to Technical Standards and provides details on entrances and sightlines. The Development Plan provides 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. However, on this matter, the proposed development is located on a private Right of Way lane and not a public road.

- 7.5.3. During my site inspection, I observed that the lane has a tarmacadam surface, is of limited width, a straight alignment and has a sloping gradient. Given the nature of this carriageway as a private Right of Way lane, I am of the view that it is very lightly trafficked (serving a small number of dwellings and agricultural lands) and would be conducive to lower traffic speeds on account of the carriageway width.
- 7.5.4. I note that sightlines in both directions from the entrance have not been implicitly detailed on the revised Site Layout Plan. However, having regard to the limited scale of the development which relates to a single dwelling and noting the private nature of the carriageway, I consider that the proposed vehicular entrance to the site would be acceptable.
- 7.5.5. Further to the above and in the interests of clarity, I am satisfied that the revised entrance submitted as part of unsolicited information was also detailed on the planning drawings submitted at Further Information stage and forms part of Condition No.1 of the decision to grant. In addition, I note the claim of the appellants that there are incorrect references to the Right of Way Lane as a 'public road' and 'carriageway' in Conditions 4,8 and 9 of the decision. The assessment of the Planning Authority acknowledged the private status of the lane and I consider that the conditions contain standardised wording rather than bespoke phrasing to address the subject application. It is my opinion that this matter can be addressed by way of amended condition wording to specify the lane status should permission be granted.

7.6. Removal of Stone Wall

- 7.6.1. The appellants and observers refer to the removal of some 49 metres of stone wall forming the western boundary of the appeal site. According to the appellant, Condition No. 4 of decision to grant permission is contrary to the Planning Authority's own regulations for retaining stone walls. The Third Party consider this wall to be a feature of the Horn Head landscape and its removal would result in a loss of heritage. The observers claim that the replacement of the stone wall with a timber fence would conflict with the Design Guide and be an inappropriate style of development.
- 7.6.2. Policy CC-P-13 of Chapter 12: 'Community Development' of the Development Plan seeks the protection of stone wall boundaries where they are shown to play a significant heritage role. Where the demolition of stone walls is unavoidable, they should be reinstated at revised locations/set-backs on the site. The Rural Housing

Location, Siting, and Design Guide provides similar commentary on boundary treatments and informs that boundary walls are to respect traditional road boundaries and where possible, be retained and rebuilt where they provide a positive contribution to the surrounding area.

7.6.3. Condition No. 4 of the Planning Authority's decision to grant permission requires the removal of the existing roadside boundary along the entire road frontage of the site and provision of a new timber fence, back planted with a hedgerow and outlines entrance details in accordance with the Technical Standards of the Development Plan. I note an omission in terms of the fence position in this condition which states that the fence is to be 'located along a line at least X metres from centre line of public road'.

7.6.4. In light of the subject development, I note the Planning Authority have recommended the removal of part of the dry stone wall. While I note its ultimate loss, over 105 metres of stone wall would remain in-situ along the Right of Way lane to the junction of the L-7083-1 and so the removed section would not disrupt how the wall would be read from the public road given the downhill gradient. On balance, I have no objection to the removal of part of the stone wall along the extent of the appeal site.

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 0.51km from the Horn Head and Rinclevan Special Area of Conservation (Site Code: 000147) and Horn Head to Fanad Head Special Protection Area (Site Code: 004194) respectively. 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 outlined below.

10.0 Reasons and Considerations

1. Having regard to the location of the site in an 'Area Under Strong Holiday Home Influence' and Policy RH-P-2 as set out in 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 a demonstrable economic or social need at this location, the proposed development would result in a haphazard and unsustainable form of development, 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.

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 Case Reference	ABP-320157-24		
Proposed Development Summary	Construction of a dwelling house, garage and all associated site development works.		
Development Address	Lurgabrack, Dunfanaghy, 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-320157-24
Proposed Development Summary	Construction of a dwelling house, garage and all associated site development works.
Development Address	Lurgabrack, Dunfanaghy, Co. Donegal.
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. This preliminary examination should be read with, and in the light of, the rest of the Inspector's Report attached herewith.	
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).	The proposal comprises a single development of 1 no. house in a rural area. The size of the house would not be described as exceptional in the context of the existing environment. 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.
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 removed from sensitive habitats/features,

complexity, duration, cumulative effects and opportunities for mitigation).	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:

DPI/ADP: _____ **Date:** _____

(only where Schedule 7A information or EIAR required)