



An
Bord
Pleanála

Inspector's Report PL03.248751

Development	Permission to (a) demolish existing shed and (b) construct a dwelling house, new vehicular entrance, boundary wall and mains water connection to sewer
Location	Barrack Street, Clarecastle, Co. Clare
Planning Authority	Clare County Council
Planning Authority Reg. Ref.	P17/158
Applicant(s)	Chris Keane
Type of Application	Permission
Planning Authority Decision	Refusal
Type of Appeal	First Party
Appellant(s)	Chris Keane
Observer(s)	None
Date of Site Inspection	18 th of August 2017
Inspector	Angela Brereton

1.0 Site Location and Description

- 1.1.1. The subject site has a stated area of .062ha. There is an existing outbuilding on site located close to the road frontage of the site and immediately adjacent to the District Daycare Centre in Clarecastle. The site is relatively flat with grassed area and trees and shrubs. There is a block wall along the southern site boundary with the Community Centre and a timber fence along the western boundary with the Daycare Centre. The river Fergus flows some distance to the north east.
- 1.1.2. Access to the site is via the existing access road from Barrack Street which runs between the parking area of the local Centra shop and the community centre. This turns sharply to the west to access the day care centre and scout den and lane to the north of same. This also serves partly as a car park for the shop, community centre, credit union and car repair garage. The road continues to the rear of the residential in Madden's Terrace and egresses onto the main road to the north of Madden's Terrace. These are residential properties with rear gardens facing on the western side of this access road.

2.0 Proposed Development

- 2.1.1. The applicant is seeking permission to demolish the existing flat roofed shed which is located along the south western edge of the site and planning permission to construct a dwelling on the subject site.
- 2.1.2. The application form provides that the area of the site is .062ha. The area of the shed for demolition is 36sq.m and of the proposed house is 195.62sq.m.
- 2.1.3. A Site Layout Plan, Floor Plans and Elevations have been submitted. Details have also been submitted relative to site ownership.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. On the 26th of May 2017, Clare County Council refused permission for the proposed development for the following reason:

Having regard to the extent of lands zoned for residential purposes within Clarecastle, the zoning of the site as 'Community' and the location of the site adjoining the existing day care centre and to the provisions of Objective CDP 5.8 'Community Facilities' as set out in the Clare County Development Plan 2017-2023, it is considered that the proposed development would set an undesirable precedent for non-community uses on these lands, would prejudice the potential expansion of the community day care facilities onto 'Community' zoned lands, and would materially contravene a development objective in the Development Plan for the zoning of land for Community use. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planner's Report

This has regard to the locational context of the site, planning history and policy. Note was had to the site being zoned for Community Use and they referred to Section 5.3.7 and Objective CDP5.8 of the CCDP 2017-2023. While 'open to consideration' they do not consider that this site located between two community uses in the village of Clarecastle is suitable for residential development. They also have regard to Objective 18.6 – Strategic Flood Risk Assessment and note their concerns about flood risk and that a Flood Risk Assessment has not been submitted. They note that a previous application Reg.Ref.PL15/303 has been refused on grounds of traffic safety and that this has not been addressed. Note is also had regarding concerns that the applicant has insufficient legal interest in the site. They conclude that the proposal would be in material contravention of the CDP 5.8 relative to the need for community lands in the area and recommended that permission be refused. It is of note that they also included a Screening for AA & Determination Report and photographs of the site. Regard was also had to unsolicited information submitted. It is noted that a time extension was granted by the Council up to and including the 26/05/2017.

4.0 Planning History

4.1.1. The Planner's Report provides details of the Planning History of the site and adjoining sites. This includes the following:

Subject site:

- Reg. Ref.15/303 – Permission refused to demolish outbuilding and Outline Permission to construct dwelling house and garage on same site and to connect to foul and surface water sewer, public water mains and to telephone and electricity.

Reasons for refusal included material contravention of the land use zoning in the Ennis and Environs DP 2008-2014, endangerment of public safety by reason of traffic hazard, absence of a Flood Risk Assessment and undesirable precedent.

Adjoining sites

- Reg. Ref.01/957 – Permission granted subject to conditions to Clarecastle and District Day Care Centre to (a) construct extensions to existing day care centre together with associated remedial works (b) construct Day Care Alzheimers Centre including associated site works. The Day Care Centre is to the north west of and adjoins the subject site.

5.0 Policy Context

5.1. Clare County Development Plan 2017-2023

This sets out the overall strategy for the proper planning and sustainable development of the functional area of Clare County Council over a 6year period. It replaces the CCDP 2011-2017 and Ennis Development Plan 2008-2014 (as varied). As a result of the implementation of the Local Government Reform Act 2014, this development plan incorporates the areas formerly within the jurisdiction of Ennis Town Council and Kilrush Town Council, both of which previously had their own development plans.

Section 1.4 notes that Ennis is the County Town and the administrative centre of County Clare. It is also designated as a Hub town in the National Spatial Strategy (NSS).

Section 2.3.5 notes that Ennis will also have a dedicated local area plan prepared for it within the lifetime of this plan to support its sustainable development into the future.

Section 5.3.7 supports provision of Community Facilities and seeks to prevent the loss of such facilities.

Objective CDP 5.8 refers and seeks to:

- a) *To promote and encourage optimum usage of the large number of community facilities across the county;*
- b) *To update the inventory of community, social and cultural facilities throughout the county within the lifetime of this plan;*
- c) *To encourage, advise and assist community groups wishing to provide community facilities in their area;*
- d) *To ensure that sufficient lands are zoned for community use to meet the demands of the projected population during the lifetime of this plan.*

Section 18.6 and CDP 18.6 refers to Strategic Flood Risk Assessment.

5.1.1. Volume 3(a) –refers to Ennis Municipal District Written Statement and Maps

The settlement area is located within the municipal district area of Ennis and comprises the urban areas of Ennis and Clarecastle together with the surrounding rural environs. Section 1.1 provides: *The village of Clarecastle is located 3km south of the town centre of Ennis and even though it is part of the census population of Ennis, it has retained its own unique identity. It is situated on the River Fergus, a significant natural asset which is designated as a Special Area of Conservation, Special Protection Area and proposed Natural Heritage Area.*

Section 1.10.1 provides the Strategic Aims for Community, Culture, Education and Recreation and includes: *To encourage, promote and facilitate active and inclusive participation in physical, social, cultural and community activities in Ennis and Clarecastle and the surrounding areas.*

Section 1.12.3 of Vol. 3 of the CCDP 2017-2023 refers to Capital Works and Flood Alleviation/Defence Works Programme. This includes relative to Clarecastle where works at approval stage include: *Ennis South Flood Scheme – Proposal includes works at Ballybeg and St Flannan’s swallow holes and the right bank (west side) of*

the River Fergus between Doora Bridge and the tidal barrage at Clarecastle. This scheme has received approval with condition from An Bord Pleanála and will proceed subject to funding approval.

Section 1.13 refers to Green Infrastructure, Biodiversity and Natural Heritage and includes relative to Clarecastle.

Section 1.14.4 has regard to Water Supply and Conservation and Section 1.14.5 to Waste Water Treatment.

Section 2.12 refers to Clarecastle Village and a list of priorities for strategic aims are given.

This includes: *To enhance connectivity between residential areas and community areas.*

Further details in relation to the future development of Clarecastle village will be set out in the forthcoming Ennis and Environs Local Area Plan.

Section 2.12.2 New Housing in Clarecastle sets out the overall strategy for the provision of housing.

Site briefs for development of lands that have been identified for future development are set out.

Clarecastle Village to the south of Ennis town centre is included in the boundaries of the Ennis Settlement Plan. The site is zoned for community uses.

5.2. The Planning System and Flood Risk Management Guidelines 2009

These have been adopted and are the DOEHLG Guidelines for Planning Authorities (November 2009). The key principles are:

- Avoid the risk, where possible –precautionary approach.
- Substitute less vulnerable uses, where avoidance is not possible, and
- Mitigate and manage the risk, where avoidance and substitution are not possible.

Flood Zone A has the highest probability of flooding, Zone B has a moderate risk of flooding and Zone C (which covers all remaining areas) has a low risk of flooding.

The sequential approach should aim to avoid development in areas at risk of flooding through the development management process.

An appropriate flood risk assessment and justification for development in and management of areas subject to flooding and adherence to SUDS is recommended.

6.0 The Appeal

6.1. Grounds of Appeal

Andrew Hersey Planning Consultant has submitted a First Party appeal on behalf of the applicants. Details are provided of the contextual location of the site.

- They note that according to the Zoning Matrix set out in Appendix 2 of the Plan that residential use is 'open to consideration' on Community zoned land.
- Considering that there was no submission/objection received from the Day Care Centre it cannot be assumed that it is still their intension to provide sheltered housing units on these lands.
- There have never been any formal planning applications for sheltered housing on lands owned by the Day Care Centre.
- Sterilising these lands on the chance that the Day Care Centre will expand in the future is detrimental and prejudices the potential development of the village centre.
- They note that the Planning Authority did not request an Exemption Certificate as the site is not on residentially zoned land.
- To exclude residential use from all other zoned lands especially vacant derelict sites in village centre locations is fundamentally flawed.
- This is a rare opportunity to allow the development of a single house in the village centre on a site which is currently derelict.
- They consider that this site is a suitable location for residential development and will provide a viable alternative to single rural housing in the countryside.

- They contend that there is a shortage of residential sites in the village and note that there has been no residential development in the centre since 2005, while some rural houses in the vicinity have been granted permission.
- The PA should view this as an opportunity to expand the number of dwellings in the core of the village which is of significant planning merit. They also note this is not a backland site.
- They consider that this proposal provides for a well-integrated site in the village centre and complies with the *Sustainable Residential Development in Urban Areas – Guidelines for Planning Authorities (DOELG 2008)*.
- They provide that to say the site is located between two significant community sites is incorrect and have regard to aerial photography. They note that there are both community and residential uses and vacant lands in proximity to the proposed development site.
- Clarecastle is already served by sufficient community uses and they provide details of such. They consider that the only potential use would only be associated with the Day Care Centre and there is no specific objective for these community zoned lands.
- They have regard to the land use zoning objectives and consider that a vacant site does not become a community facility unless its developed as such.
- They note that having regard to *The Planning System and Flood Risk Management Guidelines* the site is within an area designated Flood Zone C where there is the least risk of flooding. They consider that having regard to the same and to the recent embankment works on the River Fergus there is an extremely low risk the proposed development site has ever been flooded.
- They consider that having regard to the site designation as Flood Zone C, and having regard to the flood relief works which have recently been undertaken that the risk of flooding at this site is minimal. They note this reason for refusal was omitted.

- They note that there is no internal report from the Roads/Road Design Section of the Council relative to concerns about traffic safety and that this reason for refusal was omitted.
- They note that the pedestrian gate to the Day Care Centre is frequently padlocked and most users use the vehicular entrance to the north west.
- Users to the pedestrian access to the Community Centre/Sports Hall to the south of the site use the access for late afternoon and evening use.
- They provide details of proposed boundary treatment which includes the use of an automatic gated entrance. As a consequence, they do not consider that the proposal will cause traffic hazard.
- A residential use on this derelict brownfield site in the village centre would not be contrary to the proper planning and sustainable development of the area

6.2. Planning Authority Response

Clare County Council's response to the grounds of appeal includes the following:

- It is not envisaged that community zoned lands are central to the housing strategy for Clarecastle. In a sequential approach the building of a house on community lands should not be the first option.
- There are many alternative options for the provision of housing without the requirement to provide a house on a community zoned parcel of land.
- There are a number of vacant properties in the town in need of refurbishment that if converted to residential would consolidate the core of the village and significantly enhance its streetscape.
- It is clearly not the intention of the PA to prevent housing from being provided in the settlement.
- Rural Settlement Policy applies to the hinterland of Ennis and Clarecastle designated as 'an area under pressure' where local needs policies apply. The applicant does not appear to fit into this category.

- While they note Clarecastle is well served in terms of community and recreational facilities the area of the subject site is within the only community zoned lands within the core of the village.
- Permitting a non-community use on these lands which would be better consolidated for community uses would not be in the interests of proper planning.
- They request the Board to uphold their decision.

7.0 Assessment

7.1. Principle of Development and Planning Policy

- 7.1.1. Volume 3(a) of the Clare County Development Plan 2017-2023 refers to Ennis Municipal District Written Statement and Maps and it is of note that the village of Clarecastle which is located c.3km south of the town centre of Ennis is included within the urban boundaries of the Ennis Settlement Plan. Section 1.1 of this Plan includes: *Clarecastle has a strong village core, extensive sports facilities and important architectural and heritage assets including the historic pier, numerous protected structures and monastic archaeology.* Therefore, while Clarecastle is associated with the town of Ennis, it retains its own identity.
- 7.1.2. As shown on the Ennis Settlement Plan the site is within the 'Community' land use zoning, within the core area of the village of Clarecastle. Objective CDP 5.8 of Volume 1 of the CCDP 2017-2023 (quoted in the Policy Section above) seeks to ensure that sufficient land is zoned for community use and to encourage and promote community facilities in the area. Section 5.3.7 supports the provision of Community Facilities and includes: *The loss of such facilities can have a major impact on a community, especially in areas where no other dedicated facilities exist. In order to prevent the loss of community facilities, the Council will discourage their change of use to non-community uses.*
- 7.1.3. The proposed development seeks to provide a residential property on what the First Party considers a brownfield derelict and vacant site. While the site is cordoned off with a shed on the southern part, it includes a grassed area and trees and for the most part it does not appear to have been previously developed. The Council's

reason for refusal which includes regard to the contextual setting, proximity to other community uses, undesirable precedent and being materially contrary to the land use zoning is noted.

- 7.1.4. The Third Party consider that Clarecastle is well supplied with community facilities and provide details of these. They provide this is a site vacant within the core of the village and is suitable for residential use. Also that such a use would be desirable on this site and will not impact upon the amenities of adjacent properties by way of excessive noise, overshadowing or overlooking, will not be a cause of traffic hazard and there is access to mains water and sewerage. Therefore, this proposal offers a viable use of a vacant site and provides an alternative to single rural housing in the surrounding hinterland.
- 7.1.5. Section 6.3 of the *Sustainable Residential Development in Urban Areas – Guidelines for Planning Authorities (DOELG 2008)* is referred to by the First Party. This provides some General Advice which includes: *Development in smaller towns and villages must be plan led.* Section (e) is referred to by the Third Party and includes: *It is generally preferable that the overall expansion (of a town/village) proceeds on the basis of a number of well integrated sites within and around the town/village centre.*
- 7.1.6. The Council's response considers that this site should be retained for community use. They note the proximate community uses of the Day Care Centre and the Scout Hall to the north west and the Community/Sports Hall to the south and consider that the proper planning and sustainable development of Clarecastle is better served by consolidating the use on community zoned land at this location within the village core. They also note that the rural hinterland of Ennis is an 'area under strong urban pressure' and as such local needs policy (CDP 3.11 of the CCDP refers) would apply, and note that there is not a shortage of land zoned for residential in Clarecastle. Section 2.12.2 refers to New Housing in Clarecastle and provides details of a number of sites, some of which are suitable for residential development. It is also provided that there are a number of vacant properties in the village that would be capable of refurbishment.
- 7.1.7. Therefore, there is an issue as to whether the principle of this development which is 'open to consideration' within the zoning matrix, would be desirable on this site on these community zoned lands within the village centre of Clarecastle or whether the

site should be retained for future community uses. Regard is had to issues raised including relative to material contravention, design and layout, traffic safety, drainage and flooding and impact on the character and amenities of the area in this Assessment below.

7.2. Material Contravention

- 7.2.1. Regard is had to Planning and Development Act 2000 (as amended) and to the particular circumstances where a material contravention would apply. Section 34(6) sets out the procedure under which a planning authority may decide to grant permission for such a development. Section 37(2) of the 2000 Act provides the constrained circumstances in which the Board may grant permission for a material contravention. These include whether the development is of strategic or national importance, where the development should have been granted having regard to regional planning guidelines and policy for the area etc, where there are conflicting objectives in the Development Plan or they are not clearly stated, or permission should be granted having regard to the pattern of development and permissions granted in the area since the making of the Plan.
- 7.2.2. In this instance the proposed development is clearly not of strategic or national importance. Regard is had to the Indicative Land Use Zoning Matrix as provided in Section 19.5 and Appendix 2 of the CCDP where it is provided that Community facilities will normally be acceptable in principle on the sites zoned for such. Residential however, is 'Open to Consideration' within Community Zoned lands i.e: *The proposed use may be permitted where the local authority is satisfied that it is in compliance with the zoning objectives, standards and requirements as set out in the County Development Plan and by other government bodies/sections, and will not conflict with the permitted, existing or adjoining land-uses in accordance with the proper planning and sustainable development of the area.* In this case it is noted that the local authority did not consider the residential use acceptable and refused permission.
- 7.2.3. Therefore, as the site is zoned for 'Community Facilities', it is considered that taking the locational context of the site into account, it would be preferable to retain this site to consolidate such facilities in this central area of Clarecastle. Also it is noted that there are alternative sites available, within the residential zoning. Having regard to

these issues, it is considered that a community use would be more appropriate to these lands. Therefore, the proposal would be considered to be contrary to planning policy in Section 5.3.7 of the CCDP which seeks to prevent the loss of Community facilities and to Objective CDP 5.8 which seeks to ensure that sufficient lands are provided to promote and encourage such facilities.

7.3. Design and Layout

- 7.3.1. There is no objection to the demolition of the existing shed on the site. The Site Layout Plan shows the proposed dwelling is to be sited midway on the site, set back in excess of 11m from the site frontage. This also shows the set back off the side and rear boundaries, including the rear garden area, which is considered to be acceptable. It is considered that the proposed layout has been designed to correspond to shape and orientation of the site.
- 7.3.2. The total floor area of the 4no. bedroom 2 storey house is given as 195.62sq.m i.e. ground floor – 97.14sq.m and first floor 98.48sq.m. The proposed ridge height is 7.5m. Other than a first floor bathroom window which will be obscure glazed it is not proposed to have windows on the first floor side elevations which will prevent overlooking of adjoining properties.
- 7.3.3. It is considered that provided quality external finishes are used that the design and layout of the proposed dwelling is acceptable and will not impact adversely on the adjoining community developments.

7.4. Access and Parking

- 7.4.1. It is proposed that the access to the site be at the frontage now located by the shed to be demolished. The proposed vehicular access to serve the dwelling would be adjoining two pedestrian accesses (one serves the Daycare Centre, another the GAA sports complex). It is noted that there is poor forward visibility at this location having regard to road alignment at the corner where it is proposed to provide vehicular access. The section of road between the day care centre and the community hall is very busy with cars turning in and out of parking spaces.
- 7.4.2. It is noted that traffic safety was included as a reason for refusal in Reg. Ref.15/303 relative to the previous application on this site. This was concerned with traffic

hazard because of potential 'pedestrian – vehicular' conflict that could arise due to the proximity of the proposed vehicular entrance to the existing pedestrian entrance servicing the Clarecastle District Day Centre and the Sports Complex.

- 7.4.3. The First Party note that the pedestrian access to the Day Care Centre is generally locked and is rarely used. It was noted that it was padlocked on the day of the site visit. They provide that access to the Centre is primarily via the vehicular entrance to the north west of the Centre. Also that the other pedestrian entrance to the south of the site serves the Community Hall/Sports Hall and that use of this entrance tends to be for the most part later afternoon and evening use. It was also noted that this access was also locked on the day of the site visit which was around midday.
- 7.4.4. They provide that it is their intension to construct a high boundary wall along the boundary of the site and install an automatic gate at the vehicular entrance as per the site layout plan submitted with the application. Any cars accessing or egressing the site will therefore have to wait until the gate opens. They contend that this will slow any cars down when they have to access the site and when leaving the site any pedestrians will see the gate open and will take caution as a consequence.
- 7.4.5. It is noted that access to the site is via the Barrack Road entrance which serves the Centra and community hall carparking area. While it is considered that the proposed development will lead to an increase in comings and goings through this busy area to the subject site, adjacent to pedestrian entrances, it is not considered that this is necessarily a reason for refusal as the site is capable of development and has access to this link road.

7.5. Regard to Drainage and Flooding issues

- 7.5.1. The application form provides that the proposed residential development is to be connected to the public sewer/drainage system for Clarecastle. The Site Layout Plan shows the separate lines for connection to the main sewer and the mains water. Section 1.14.4 of Vol 3 of the CCDP 2017-2023 notes that at present, the Drumcliff water treatment plant supplies Ennis and surrounding settlements including Clarecastle. Section 1.14.5 provides that the WWTP at Clareabbey provides treatment for the southern part of Ennis and part of the Clarecastle area.

- 7.5.2. The subject site is within 120m of the River Fergus. The previous refusal included a reason relative to flooding and the absence of a flood risk assessment. Regard is had to 'The Planning System and Flood Risk Management Guidelines' 2009. This includes that the vulnerability of development to flooding depends on the nature of the development, its occupation and the construction methods used (S.2.19 refers). Table 3.1 provides a classification of vulnerability of different types of development and Residential is within the Highly vulnerable area. In accordance with Table 3.2 this is considered to be 'appropriate' only in Flood Zones C, otherwise a Justification Test is needed. Regard is had to the Map included in Vol.3 of the CCDP 2017-2023 relative to Flood Risk Zones and Flooding in the Ennis area, including the flood plain of the River Fergus. It is noted that the subject site while in Zone C is located immediately adjacent to Zones A and B and that a Flood Risk Assessment has not been included. Therefore, it is considered that relative to the proposed use, that potentially the site is located proximate to areas where flooding could be an issue.
- 7.5.3. The First Party note that flooding has not been included in the Council's reason for refusal and consider that having regard to the site designation as Flood Zone C, and having regard to the flood relief works which have recently been undertaken that the risk of flooding of the site is minimal.
- 7.5.4. Section 12.3.10 of the SFRA of Vol 10 of the CCDP 2017-2023 refers to Clarecastle, and has regard in particular to two potential development sites, MU4 and R37. The former is to the north of the subject site and is closer to the River Fergus, the latter is to the north of Madden's Terrace. A Flood Map has been included with these showing the subject site just within Flood Zone C to the south of Flood Zone B. This includes: *It is recommended that new development is limited to infilling between areas of existing development (such as the plot to the south of the day-care centre). This may be extended to include the proposed road to the rear of the Scouts hut and day care centre, but should not include new land-take which would extend further towards the river.* Therefore, the principle of new development on this infill site appears to have been accepted in the SFRA and that it is not necessary to carry out an additional FRA.

7.6. Appropriate Assessment

- 7.6.1. A Screening for AA Report has been carried out by the Council. This notes that the site is within 120m of the Lower River Shannon SAC (site code:002165). They conclude that there is no likely effect on the European site as the proposal is to be connected to public services.
- 7.6.2. Having regard to the nature and scale of the development proposed relative to this application and to the nature of the receiving environment, namely an urban and fully serviced location, no appropriate assessment issues arise.

8.0 Recommendation

- 8.1. It is recommended that permission be refused.

9.0 Reasons and Considerations

1. As shown on the Ennis Settlement Plan, the site in the village centre of Clarecastle forms part of a greater area zoned for 'Community' uses and facilities. While 'Residential' is 'Open to Consideration' it is considered that having regard to the adjoining community uses, it would be preferable to retain this centrally located site to allow for the consolidation of 'Community' uses in this area. It is also noted that there is scope for the proposed development to be located within the Residential land use zoning. Therefore, it is considered that the loss of these community zoned lands would set an undesirable precedent and would be contrary to Section 5.3.7 and Objective CDP 5.8 of Volume 1 of the Clare County Development Plan 2017-2023, and to the proper planning and sustainable development of the area.

Angela Brereton
Planning Inspector

22nd of September 2017