



An  
Bord  
Pleanála

## Inspector's Report ABP-302308-18

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<b>Development</b>	Construction of a storey and a half type dwelling.
<b>Location</b>	Corrig, Foynes, Co. Limerick
<b>Planning Authority</b>	Limerick City and County Council
<b>Planning Authority Reg. Ref.</b>	17/994.
<b>Applicant(s)</b>	Michelle Gallagher
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Michelle Gallagher
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	22 November 2018
<b>Inspector</b>	Fiona Fair.

## 1.0 Site Location and Description

- 1.1. The appeal site (of stated 0.057 ha) is located to the rear of a row of terraced houses – Creeven Cottages (Protected Structures) east off the N69 Limerick – Listowel road in the village of Foynes, Co. Limerick.
- 1.2. The appeal site is assessed by means of a right-of-way over a narrow lane from the N69 to the south east of the terrace of cottages. The access lane runs to the rear / east of the cottages. The site is bound to the north, east and west by a perimeter concrete wall. There are 2 large sheds / buildings located to the north / north east (formerly in commercial use). The site is a brownfield site, it comprises the rear garden area formerly associated with the cottages.
- 1.3. The appeal site was very overgrown with scrub at the time of my site visit. There are clear views from the site towards the N69. Plots of land adjoining immediately to the east and south west are similarly brownfield, backland garden areas associated with the cottages and vacant.

## 2.0 Proposed Development

The proposal comprises permission to construct:

- A storey and a half type dwelling, (159 sq. m)
- A site entrance,
- Effluent treatment system, and
- All associated site works

Note: House design changed to single storey by way of F.I. with a ridge height of 5.8m and a revised GFA of 155 sq. m

## 3.0 Planning Authority Decision

### 3.1. Decision

Following a request for further information with respect to:

1. Revised house design and site layout to address the concern that the proposed development has the potential to be injurious to the protected structures' setting and amenities and their curtilage.
2. The proposal to use the existing laneway as the only access to the site is not acceptable as it would have a negative impact upon amenity of Creeveen Cottages. Alternative access required.
3. A justification test should be carried out for the proposed development in accordance with the planning System and Flood Risk Management Guidelines because the site is at risk of a 1 in 1000 year coastal flood risk event. The likely impact of climate change on the development should also be included in the flood risk assessment.

Planning Permission was Refused for three number reasons, summarised as follows;

R1. Having regard to the site location and configuration and the substandard nature of the access lane it is considered that the proposed development by reason of its layout and design, and in the absence of an approved layout for the overall lands, would constitute haphazard and piecemeal development, which would prejudice the orderly development of adjoining zoned lands in the vicinity, and would seriously injure the amenities and depreciate the value of properties in the area.

R2. The proposed development by reason of its design would not be capable of satisfactory assimilation into the local streetscape and would be seriously injurious and detrimental to the residential amenities of properties in the area including Creeveen cottages, which are protected structures as designated in the Limerick County Development Plan 2010 – 2016.

R3. The proposed development is in an area at risk of flooding and as such would be contrary to Objective IN O35: Minimise threat and consequence of flooding as set out in the County Development Plan 2010 – 2016 and the Planning System and Flood Risk Management – Guidelines for local Authorities, November 2009

### 3.2. **Planning Authority Reports**

### 3.3. **Planning Reports**

The Planners Report recommends a refusal of permission for the reasons set out above. The report states: '...an overall plan for the subject site and the adjoining lands to the east should be prepared with proper provision being made for access and parking facilities...'

### 3.4. **Other Technical Reports:**

- Conservation Officer. No report on file however the Planners report states: 'Conservation Officer: Notwithstanding the commercial aspects of the land to the immediate rear and in front of the chosen development site. I have concerns that the development has the potential to be injurious to the Protected Structures' settings and amenities and their curtilage. Bearing in mind a previous refusal in respect of a similar proposal to develop a single house to the rear of the terrace of buildings known as Creveen Cottages. I recommend a refusal in this instance also.'
- Physical Development Directorate: Objection noted from a flooding perspective. The proposed development is classed as Highly Vulnerable under the Planning System and Flood Risk Management Guidelines, Justification Rest required.
- Environment Section: No Objection.
- Transport Infrastructure Ireland (TII): Report states no observations
- Mid-West National Road Design Office: Report states no observations
- Irish Water (I.W.): No Objection

### 3.5. **Prescribed Bodies**

None

Inspectors Note: The file was referred to An Chomhairle Ealaion, An Taisce, Fáilte Ireland and The Heritage Council by The Board. No response has been forthcoming.

### 3.6. **Third Party Observations**

A number of objections were received by the planning authority. Issues raised are summarised in the planners report as follows:

- Access lane is narrow.
- Sewerage infrastructure does not have additional capacity.
- Loss of privacy
- Laneway is subject to flooding

### 4.0 **Planning History**

4.1. Planners report states 'None'.

4.2. I note Reg. Ref. 08/2068 relates to a refusal of planning permission on adjoining site to the east for a dwelling house.

### 5.0 **Policy Context**

#### 5.1. **Development Plan**

The Limerick County Development Plan 2010 – 2016 and the Foynes Local Area Plan are the relevant statutory plans.

The town of Foynes falls into the category of a Tier 3 settlement in the County Development Plan.

Objective SS O11: Zoning of land for tier 3 settlements has set out an objective to specifically zone land within the town of Foynes.

The appeal site is located close to the centre of the town and is zoned as mixed use in the Limerick County Council Development Plan. On lands zoned 'Mixed Use' within the village the Council shall encourage a mix of uses that contribute to the economic life of the village and that are consistent with village centre location and residential amenity. The development of small scale enterprises, shops and local services will be encouraged.

It is a requirement of the Development Plan that proposals are subject to an appropriate flood risk assessment.

Section 3 of the DOELG Flood Risk Management Guidelines for Planning Authorities requires that any development and land use types including residential dwellings be subject to a justification test. The planning authority must be satisfied that it can clearly demonstrate on a solid evidence base that the zoning or designation for development will satisfy the justification test.

## **5.2. Natural Heritage Designations**

- Special Protection Area: River Shannon and River Fergus Estuaries SPA is located approx. 0.4 Km to the north of the subject appeal site.
- Special Area of Conservation: Barrigone SAC is located approx. 3.7Km to the south east of the subject appeal site.
- Lower River Shannon SAC is located approx. 3.0 Km to the east of the subject appeal site.
- Special Protection Areas: Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA is located approx. 6.4 Km to the south west of the subject appeal site.
- Special Area of Conservation: Askeaton Fen Complex SAC is located approx. 11.4 Km to the south east of the subject appeal site.

## **5.3. Environmental impact Assessment (EIA)**

Having regard to the nature and scale of the proposed development, the nature of the receiving environment and proximity to the nearest sensitive location, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

The third-party appeal is summarised as follows:

#### **Refusal Reason 1**

##### **Haphazard / Piecemeal Development**

- The appeal site comprises zoned lands
- Adjoining plot to the east has been built upon dating back to the 1970's / 1980's
- The L.A. believe an overall plan can be drafted for these lands but the reality is different.
- An adjoining site is under the ownership of a person objecting strenuously to the proposal for 1 no. additional residential dwelling to the rear and would not countenance any development of his plot.
- To create a unilateral master plan of sorts would be a fallacy.
- The lane, at 4m in width, at its narrowest point is similar to a mews like scenario and is suitable for limited development only. Possibly up to 3 individual dwellings maximum.
- The laneway is currently used daily by homeowners and visitors and there are no issues.
- The lane would be resurfaced and maintained by the applicant as she now owns 3 of the 6 dwellings in the terrace.
- The design speed of the lane is low.

#### **Refusal Reason 2:**

##### **Design and Satisfactory Assimilation**

- The house design proposed has been revised to single storey.
- Proposed development would not have a detrimental impact upon the setting of the adjoining protected strictures.

- The slate roof of the dwelling would be the only part of the dwelling visible from the N69.

### **Refusal Reason 3**

#### **Flood Risk**

- Flood defence proposals are now completed (2017) for the village, at a cost of €2.8 million
- Refusal on grounds of flood risk is disappointing given that a FFL of 2.55m was agreed with the environment section of the p.a.
- Raising the ground level of a small brownfield site by 1 m is more than sufficient to alleviate residual flood concerns in the subject situation.
- Raising the level further to well over 3m would render the plot and most of the village unsuitable for residential development.
- A scenario could develop where Foynes is designated a Tier One Port and projected to double in size over the coming years but the flood defences completed are discounted and residential development in the village core is stymied.
- This is a modest proposal on zoned lands.



## 7.0 Assessment

I consider the key issues in determining this appeal are as follows:

- **Haphazard / Piecemeal Development**
- **Design and Impact upon Creveen Cottages, which are Protected Structures.**
- **Flood Risk**
- **Appropriate Assessment**

### 7.1. Haphazard / Piecemeal Development

As set out in section 5.1 of this report above the appeal site is located close to the centre of the town of Foynes and is zoned as mixed use in the Limerick County Council Development Plan. The Plan states that 'Mixed use zoning permits the widest variety of uses including residential and commercial. It is essential that such uses would be mutually compatible. This zoning, in the centre of the towns, is intended to provide a degree of flexibility in land uses that will allow the widest possible range of activities to ensure the vibrancy of the town centres'. A 'dwelling' is considered 'open for consideration' within 'mixed use' zone, as per Table APP 1.1 Zoning Matrix in the Limerick County Council Development Plan.

Table 2.5: 2022 Core Strategy table: Population, unit and zoned land requirements for Foynes sets out the following:

2006 Pop	2022 Additional Pop Allocation	2022 Additional housing units	Zoned land required to accommodate 2022 additional pop- Hectares	Undeveloped Existing & proposed zoned land all phases – Hectares
606	101	54	4.57	3.36

The proposed development is for one number dwelling. This is a backland brownfield site, located close to the center of Foynes. It is surrounded by extensive brownfield lands all zoned 'mixed use' as per Map A-2 of the County Development Plan.

Notwithstanding that a dwelling house is 'open for consideration' I am of the opinion in agreement with the planning authority that having regard to the site location and configuration it is considered that the proposed development would represent an unimaginative and inappropriate response to the constraints of this site and to its wider context, including the pattern of existing development in the vicinity. It is also considered that the proposed development by reason of its layout and design, and in the absence of an approved layout for the overall lands, would constitute haphazard and piecemeal development, which would prejudice the orderly development of adjoining zoned lands in the vicinity, and would seriously injure the amenities and depreciate the value of properties in the area.

I note the site constraints and arguments put forward by the first party, however, the site is clearly located centrally within the vacant backland and therefore development in isolation of this site would prejudice the orderly development of adjoining lands.

## **7.2. Design and Impact upon Creveen Cottages**

The subject appeal site is associated with the rear garden / open space to the rear of no. 1 Creveen Cottages located to the south east of the appeal site fronting the N69. Creeveen cottages are designated protected structures in the Limerick County 2010 – 2016. The NIAH states that Creveen cottages are of Regional Importance for architectural and artistic merit. The RIAH appraisal (which relates to no. 1 Creveen Cottages directly to the front of the subject appeal site) states: 'This house, which forms a handsome terminus of this symmetrical and picturesque terrace of six, was designed by William Clifford Smith. The terrace is distinguished by its distinctive roofline and rendered walls with well crafted limestone dressings. The terrace's long low form and broken massing gives it a domestic scale'. The terrace dates to 1905 – 1910.

Section 7.6.2 of the County Development Plan states; ‘Developments of, or in proximity to, protected structures, which would seriously affect their character, will not be permitted’.

The serious concerns of the Conservation Officer that notwithstanding the commercial aspects of the land to the immediate rear and in front of the chosen development site concerns prevail that the development has the potential to be injurious to the Protected Structures’ settings and amenities and their curtilage.

The further information request gave the first party opportunity to address concerns of impact upon the setting of the protected structures’, amenities and their curtilage. I agree with the planning authority that albeit the dwelling has been reduced in scale and is now single storey that its design does not complement the protected structures and it would not be capable of satisfactory assimilation into the local streetscape. It would be visually injurious when viewed from the N69 and from the front of Creveen cottages, which are protected structures as designated in the Limerick County Development Plan 2010 – 2016.

### **7.3. Flood Risk**

The appeal site close to the N69 and town of Foynes has been shown by the OPW maps to be at risk from an extreme tidal event. The site is shown to be at risk from a 1:200 yr event (or there is a 0.5% risk of flooding at the property in any one year). By default, the site would also be at risk from a 1:1000 yr event. The site is located in Zone A as per the Planning System and Flood Risk Management – Guidelines for local Authorities, November 2009 and therefore carries a high probability of flooding.

A justification test has been applied and measures proposed to mitigate against any flood risk. The test outcome has shown that the proposed development will not impact on the flood defence work nor necessitate the concentration of additional flood defence works nor impact on flooding elsewhere.

The current 1:1000 yr flood level at the nearest node to the study location in Foynes is projected to be 3.13m AOD Malin. The environmental report submitted indicates that this figure now becomes the new 1:200 i.e. any property in the vicinity of the node and below 3.13m would have a 1 in 200 chance of being impacted in the future. The original 1:200 yr projected flood level was 2.07m AOD Malin. The original proposed FFL of the new dwelling was 1.55m Malin. It was proposed by way of F.I. to revised the FFL further by 1 m to 2.55m Malin. Although this level means that the property would still be at risk from the new projected 1:200 yr event the following design measures are proposed to be implemented by the applicant: waterproof tanking to the external wall areas and measures to prevent water ingress via the surface water and foul system. It is submitted that such measures would mitigate against flood water ingress.

Cognisance is had to the first party's arguments that this is a modest proposal on zoned lands. That given flood defence proposals are now completed (2017) for the village, at a cost of €2.8 million refusal on grounds of flood risk is ungrounded. Cognisance is also had to the first party's argument that raising the ground level of a small brownfield site by 1 m is more than sufficient to alleviate residual flood concerns in the subject situation and that raising the level further to well over 3m would render the plot and most of the village unsuitable for residential development.

Draft refusal reason 3 of the planning authority's decision (see section 3.1 above) considers that the proposal would be contrary to Objective IN O35: Minimise threat and consequence of flooding as set out in the County Development Plan 2010 – 2016 and the Planning System and Flood Risk Management – Guidelines for Local Authorities, November 2009.

Overall given my concerns set out in section 7.1 and 7.2 of this report above and given that the site is located in flood Zone A and therefore carries a high probability of flooding, I consider that a plan – led approach with flood mitigation measures incorporated for development of the overall zoned backlands at this location, would be more appropriate and acceptable.

I consider that in the absence of an approved layout for the orderly development of the overall lands, the proposal would be unacceptable from a Flood Risk perspective.

#### **7.4. Appropriate Assessment**

Having regard to the nature and scale of the proposed development, to the infrastructure in place, nature of the receiving environment and proximity to the nearest European site, no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

### **8.0 Recommendation**

8.1. I recommend that planning permission should be Refused for the following reasons.

### **9.0 Reasons and Considerations**

1. Having regard to its overall layout and design, it is considered that the proposed development would represent an unimaginative and inappropriate response to the constraints of this site and to its wider context, and in the absence of an approved layout for the overall lands, would constitute haphazard and piecemeal development, which would prejudice the orderly development of adjoining zoned lands in the vicinity, and would seriously injure the amenities and depreciate the value of properties in the area.

2. It is considered that, the proposed development by reason of its design would not be capable of satisfactory assimilation into the local streetscape and would be seriously injurious and visually obtrusive when viewed from the N69 and in particular would be injurious to the setting, amenities and curtilage of Creveen cottages, which are protected structures as designated in the Limerick County Development Plan 2010 – 2016.

3. The proposed development is in an area at risk of flooding and in the absence of an overall approved plan led approach for development of the overall zoned lands at this location would be contrary to Objective IN O35: Minimise threat and consequence of flooding as set out in the County Development Plan 2010 – 2016 and the Planning System and Flood Risk Management – Guidelines for local Authorities, November 2009.

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Fiona Fair  
Planning Inspector  
17.01.2019