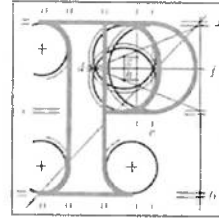


Our Case Number: ACP-324474-26

Your Reference: Hugh Stephen Vere O'Brien



An
Coimisiún
Pleanála

Augustus Cullen Law LLP
7 Wentworth Place
Wicklow
A67FX59

Date: 24 August 2026

Re: Proposed Compulsory Purchase Order of Lands at Foynes Island, Foynes Co. Limerick
Foynes Island, Foynes Co. Limerick

Dear Sir / Madam,

An Coimisiún Pleanála acknowledges receipt of your objection to the above mentioned application for compulsory acquisition of land under the Harbours Act 1996, as amended.

Your letter of objection will be taken into consideration by the Commission in its determination of the matter.

If you have any queries in relation to the application please contact the undersigned officer of the Commission. Please quote the above mentioned An Coimisiún Pleanála reference number in any correspondence or telephone contact with the Commission.

Yours faithfully,

Lauren Griffin
Executive Officer
Direct Line: 01-8737244

CQ03

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AN COIMISIÚN PLEANÁLA	
LDG-	_____
ACP-	_____
21 AUG 2026	
Fee: €	_____ Type: _____
Time: 12:34	By: HAND

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21 August 2026

Our Ref: DMC/AMF/OBR242/0001

Your Ref: TBA

Our Client: Hugh Stephen Vere OBrien
RE: Proposed CPO of lands on Foynes Island, Co. Limerick
Acquiring Authority: Shannon Foynes Port Company

Objection in respect of the making of an application for an Order, authorising the compulsory acquisition of land, under Section 16 of the Harbours Act 1996 and the Fourth Schedule thereto (as amended)

TAKE NOTICE that we act on behalf of Hugh Stephen Vere OBrien, of 10 Dungar Terrace, Dún Laoghaire, Co. Dublin, and we make this objection to an application by Shannon Foynes Port Company to compulsorily acquire the interest as set out in the schedule to a proposed compulsory purchase order, namely the interest of Hugh Stephen Vere OBrien, identified in the schedule as the owner of two separate areas outlined in purple on the plan attached to the said notice, dated 2 June 2026 with the title "CPO Map 1".

Our full grounds of objection together with the arguments and considerations relating thereto are set out hereunder.

1. BACKGROUND

- 1.1. Our client is Hugh Stephen Vere OBrien, who is the owner of approximately 70 hectares of land on Foynes Island, Co. Limerick (the "**Lands**").
- 1.2. In or around 23 July 2026, Shannon Foynes Port Company (the "**Authority**") served a notice on our client (the "**Notice**"), informing him that it intended to acquire approximately 13.8 hectares of the Lands (the "**CPO**") for the purpose of a new deepwater port and accompanying infrastructure, including a bridge to the mainland and an access road (the "**Scheme**").

- 1.3. We understand that whilst the application to An Coimisiún Pleanála (the “**Commission**”) regarding the CPO has been made, no application or approval has been made for the Scheme.
- 1.4. For various reasons, as are more particularly set out in this letter, our client objects to the CPO. The objection consists of two parts:
 - 1.4.1. a procedural objection to the CPO, having regard to the mandatory requirements of the Harbours Act 1996 (as amended) (the “**Act**”) and the obligations that arise for the Authority in the making of a notice pursuant to Section 16 of the Act; and
 - 1.4.2. a substantive objection to the CPO.

2. PROCEDURAL OBJECTION

- 2.1. Under Section 16 of the Harbours Act 1996 (the “**Act**”), the Authority is empowered with rights of compulsory purchase. The Authority is entitled to apply to the Commission for confirmation of a compulsory purchase order, in respect of lands that it requires for the implementation of any scheme of development of its harbour or any part thereof, which in the opinion of the Authority would prove impracticable without the land, interest, or right concerned being included in the scheme.
- 2.2. The test in this regard is set out at paragraph 14.09 in “*Compulsory Purchase and Compensation in Ireland; Law and Practice*,” (Second Edition, Galligan and McGrath), which refers to the provisions of Section 16 of the Act.
- 2.3. The authors of *Compulsory Purchase and Compensation in Ireland* go on to address the mandatory documentation that must be included with any such application to the Commission. They state, at paragraph 14.11, that such an application “*must be accompanied with maps, plans and books of reference relating to the land*”. The maps and plans must be sufficient in quantity and character to show, on adequate scales, the land or right proposed to be acquired. The books of reference are to contain the names of the owners or reputed owners, lessees or reputed lessees and occupiers of the land that is proposed to be acquired, or in respect of which the right is proposed to be exercised.
- 2.4. While our client is properly and correctly identified as the owner of the lands, the columns in respect of lessees and occupiers are left blank or are limited to the owner. This is incorrect, as the lands are occupied not only by the owner, but also by Alison OBrien, Katie Vellner (née OBrien), Robert OBrien, and Donough OBrien, all of whom are required under the statutory requirements to be listed as owners or occupiers.
- 2.5. The failure of the Authority to comply with the statutory obligations is seriously prejudicial to our client, because the legislation only provides for persons who are identified in the notice to make submissions or objections in respect of the development. Accordingly, it

is impermissible for any person other than those identified in the schedule to lodge an objection in respect of the CPO. Therefore, because of the invalid form of notice, this objection is limited to our client only. As a matter of law and as a matter of fact, the notice seeking to have the Commission confirm the compulsory acquisition of the land is invalid and void.

- 2.6. The requirements in respect of the compulsory acquisition of land and the obligations on both the Authority and the Commission following the decision of the Supreme Court in *Gormley v. ESB* is very high, because it purports to extinguish the constitutionally protected rights of the landowner. Therefore, there must be strict compliance with the relevant statutory requirements, if the Commission is to retain jurisdiction to proceed with consideration and determination of the application. Furthermore, it is in contravention of the equivalent provisions of the European Convention of Human Rights and is also contrary to the constitutional protection of the family, in circumstances where the land is occupied as a family home and is contrary to Article 40.5, which protects the inviolability of the family home.
- 2.7. The family home, Monare, is a period house constructed in the mid-19th century and is a protected structure under the Limerick City and County Development Plan 2022 – 2028 (the “**Development Plan**”), being listed as a protected structure at entry 1175. The proposed development, in respect of the form of the Notice and in particular the schedule and maps attached to the Notice (which is fundamental to its validity), is contrary to the obligations under the relevant statutory scheme. Accordingly, the Commission has no jurisdiction to determine the said application where these mandatory statutory requirements have not been complied with.
- 2.8. The Authority has detailed knowledge of the family of the owner, and has detailed knowledge of the occupation of the Lands by Alison OBrien, Katie Vellner (née OBrien), Robert OBrien, and Donough OBrien. Given this knowledge, as well as the degree of engagement by the family members, it is difficult to understand why the Authority would have consciously and deliberately excluded these persons from the category of occupiers and therefore, excluded them from being entitled to participate in the process of confirmation of the CPO.
- 2.9. Furthermore, the Notice specifies that the last date for the submission of an objection is 22 August 2026. This date falls on a Saturday, when it would be impossible to lodge a submission by hand and therefore, the Notice is even further contrary to and inconsistent with the statutory scheme, contrary to fair procedures, and contrary to natural or constitutional justice. Part of the facility afforded to landowners and to persons affected by a CPO is to lodge a submission in the form prescribed, within the requisite statutory period. This facility is not available to our client, having regard to the truncation of the period within which an objection can be made. Therefore, any decision by the Commission on foot of the Notice would be invalid and *ultra vires*.

- 2.10. The heading of the Notice, which incorporates the relevant statutory provisions, refers to the “*Planning and Development Acts 2000 - 2025*”. The Planning and Development Act 2000 is a separate and distinct legislative provision from the Planning and Development Act 2025, and the appropriate manner in which the legislative provisions are required to be recited is the Planning and Development Act 2000 (as amended) and the Planning and Development Act 2025; rather than to conflate two separate legislative provisions.

3. SUBSTANTIVE OBJECTION

- 3.1. In paragraph 14.09 of *Compulsory Purchase and Compensation in Ireland: Law and Practice*, the authors set out the requirements in respect of the entitlement of the Authority to apply for a compulsory purchase order. This includes:

“a power of compulsory purchase of land (including land covered by water) or any interest or right over land whether inside or outside this harbour for the purpose of ensuring the implementation of any scheme of development of its harbour or any part thereof which in the opinion of the company would prove impracticable without the land interest or right concerned being included in the scheme”

(Page 328, Second Edition, Chapter 14).

- 3.2. The accepted approach of the Commission, in the consideration and determination of applications to confirm the compulsory purchase of land, must be based upon and justified by reference to a scheme of development. As is set out at paragraph 14.12, any development that is proposed to be carried out by an acquiring authority is subject to a requirement to obtain planning permission. In this case, it does not appear that there is any scheme of development upon which the proposed CPO can be judged against.
- 3.3. Whilst there is a planning report that outlines the scheme of development, this is merely a proposed development, and not one that has been approved by any competent authority; either the planning authority at the first instance, or the Commission on appeal. It is therefore premature, and fundamentally contrary to the Act, to permit an application for the compulsory acquisition of land in the absence of an approved scheme of development.
- 3.4. Whilst the statutory position is clear, per the relevant legislation and as described by the authors of *Compulsory Purchase and Compensation in Ireland: Law and Practice* (as quoted in the extracts outlined above), the practical application of a scheme of development to the various tests which the Commission is required to be satisfied of, makes clear the significance of an approved scheme of development.
- 3.5. At paragraph 3.26, the authors of *Compulsory Purchase and Compensation in Ireland: Law and Practice* set out four tests, which must be satisfied in respect of compulsory acquisition. These are:

- 3.5.1. there is a community need that is to be met by the acquisition of the property in question;
 - 3.5.2. the particular property is suitable to meet that community need;
 - 3.5.3. any alternative methods of meeting that community needs have been considered but are not demonstrably preferable (taking into account environmental effects, where appropriate); and
 - 3.5.4. the works to be carried out should accord with or at least not be in material contravention of the provisions of the statutory development plan.
- 3.6. These tests have been shortened in recent decisions of both the High Court and the Supreme Court, to a question that can be summarised as being:
- 3.6.1. that the lands are necessary;
 - 3.6.2. that the lands are suitable;
 - 3.6.3. that there is no alternative method of satisfying the needs identified in the compulsory purchase notice; and
 - 3.6.4. that the development should be in accordance with the development plan.
- 3.7. The only way in which it can be objectively demonstrated that these requirements have been complied with, is if there is a scheme of development in place, whereby the various elements of these tests can be objectively determined by an appropriate authority.
- 3.8. Therefore, in the case of these tests, any planning application would be required to justify that the proposed development is consistent with the proper planning and sustainable development of the area. That would explicitly require that it be demonstrated that there is a need for the proposed development.
- 3.9. The second test can be met only through a planning application, where it can be demonstrated that this need is met by the design and extent of the development proposed. In the absence of approval of a scheme of development, it is not possible to demonstrate that the design and consequently the extent of the land required is appropriate. It may be that there is too little or too much land being sought to be acquired, having regard to an objective assessment of the scheme, which can only be made during an application.
- 3.10. Therefore, there is real prejudice in our client seeking to engage with the various tests that are required for the Commission to be satisfied, in the absence of an approved scheme of development. Accordingly, the absence of a scheme of development is fatal to any application to confirm the compulsory purchase of part of the Lands. The consideration of alternatives is a critical and necessary part of any planning application

for a scale and a scheme of development of the type that is the subject matter of this application.

3.11. The draft scheme of development, as proposed by the Authority, proposes a major bridge, a major road, as well as dredging and major industrial development. All these items fall into certain classes of development, as specified in Schedule 5 of Parts 1 and 2 of the Planning and Development Regulations 2001. Therefore, any such application would require an appropriate assessment for the purposes of the Habitats Directive, and a development consent under the Environmental Impact Assessment Directive. The granting of permission or approval of any such scheme of development would address by way of mitigation any adverse effects that might arise having regard to these directives as well as the requirements of the Planning and Development Act 2000.

3.12. It is impossible, in the absence of completion of such assessments, that the extent of the land required, and the need to introduce appropriate mitigation measures, can be determined. It is wholly inappropriate and inconsistent with the legislative provisions governing the compulsory acquisition of land that an application should be made seeking the confirmation of a compulsory purchase of land, when these lands have not been the subject matter of an approved scheme of development.

3.13. This practice was the subject matter of a decision in *King v An Bord Pleanála*, delivered on 22 January 2024. In that decision, Simons J. held that a decision to confirm a compulsory purchase order in the absence of an approved scheme of development (in that case, a wastewater treatment plant proposed by Irish Water) raised substantial grounds that the decision to approve the scheme in those circumstances was invalid and ought to be quashed. The Court found that in confirming the scheme in the absence of an Environmental Impact Assessment, the parameters of the scheme in terms of its footprint on land had already been determined. Therefore, various requirements of the directive had been fundamentally undermined, including the consideration of alternative locations by reference to the environmental effects of the proposed project. The Court went on to state that:

"there are strong grounds for saying that effective public participation requires the Board be heard at a time when site selection options are open that is prior to the confirmation of the compulsory purchase order which endorses a particular location for the proposed development project."

3.14. In this case, the Authority has proposed to compulsorily acquire our client's lands and in doing so, deprive our client of the constitutionally protected property that is the subject matter of the said draft order. This is in circumstances where there has been no objective consideration of the scheme of development that would justify the CPO. Furthermore, there has been no environmental impact assessment, which would determine the appropriateness of the development itself and whether it is justified to proceed with this scheme of development and if so, the extent of the land that is required to implement such a scheme. There has also been no assessment for the purposes of the Habitats Directive, which would equally determine the appropriateness of the scheme and/or

determine the extent of the land that is required. Therefore, this application is fundamentally misconceived, where the Commission has no jurisdiction to determine the application in the absence of an approved scheme of development.

4. DEVELOPMENT PLAN

- 4.1. The final test relates to whether the proposed development accords with, or at least is not a contravention, of the statutory development plan.
- 4.2. The relevant plan in this case is the Development Plan. Whilst it would appear that the Lands are suitable for and consistent with the provisions of the Development Plan, it is primarily a matter for the planning authority to make such a determination and in the absence of specific exceptions provided for in the legislation, is binding on all parties to the process.
- 4.3. The Development Plan states that it is an objective of the Council to support and facilitate the Strategic Integrated Framework Plan for the Shannon Estuary, including Foynes Island, at objective ECON056. Further, at objective ECON057, it states that it is an objective of the Council to safeguard the strategic development locations at the island for sustainable growth of development of marine related industry and industrial development. There is also specific support for the objective to support the Authority's Master Plan Vision 2041 at ECON058 and ECON059.
- 4.4. Map 5.4 of the Development Plan provides for the area designated on Foynes Island to be such as to promote these objectives. Further, it states that these objectives relate to all the island and accordingly, any scheme of development must be objectively assessed as to whether it provides for the scale, density and type of industrial development that is provided for in the Development Plan. This would require that provision be made for any objectors on the island to not be compromised by a development that does not facilitate or open areas outside the scheme of development, but which the Development Plan provides for to be developed. All of these matters would be addressed in any scheme of development, where the planning authority would need to be satisfied not only that the use, density and layout proposed is consistent with and provided for in the Development Plan, but that it does not prejudice the overall proper planning and sustainable development of the remainder of the island, all of which is specifically provided for marine related industrial development in the Development Plan.

5. CONCLUSION

- 5.1. In conclusion, in terms of the application for the CPO, the Notice is bad on its face and where the legal requirements in terms of fair procedures must be strictly construed.

- 5.2. The schedule to the Notice does not comply with the statutory requirements, in that the owners / lessees / occupiers have not been identified and therefore, cannot participate in the process. This is contrary to fair procedures, and natural and constitutional justice.
- 5.3. The period for submissions is incorrect, as the deadline falls over a weekend. Further, the reference to the Planning and Development Acts 2000-2025 in the title is misconceived and in error.
- 5.4. The substance to the application cannot be considered in the absence of an approved scheme of development, where the need for the lands the subject of the CPO is critically connected to such a scheme. Further, the suitability of the land (that is required to be addressed) cannot be considered in the absence of an approved scheme of development, and compliance with the Development Plan (as a matter for the planning authority) cannot be said to have arisen or been approved in the absence of a consideration of the scheme by the planning authority. Should this proposed CPO proceed, the lands for the Scheme would be determined without having first been considered from an environmental impact assessment perspective and suitability not having been addressed for the purposes of the Habitats Directive.
- 5.5. The Lands constitute and include a family home, a land area extending to approximately 70 hectares, of which 13.8 hectares would be compulsorily acquired. These lands include our client's dwelling house, which has been occupied by our client's family for over 170 years. The dwelling house, Monare, was constructed by Sir Stephen De Vere between 1856 and 1858. The estate has continued, through succession, to be occupied by the family until the present day.
- 5.6. The proposed development would fundamentally undermine and irretrievably damage the existing character and nature of the island, whereby the development proposed (and in the absence of any approval/permission for the said scheme) it is difficult to define precisely what will ultimately be developed. However, the scheme would seemingly involve the construction of a major bridge from the mainland across the Shannon Estuary onto the island, and thereafter a major road extending to the western extremity of the island, where a major industrial commercial development would proceed. The effect and terms of the scale and extent of the development, the elevated nature of the road in particular, the noise, dust, visual impact and associated impacts will transform the character of this island from one of a quiet small scale commercial development to one which is based on heavy industry as defined in the schedule to the Planning and Development Act 2000.
- 5.7. On behalf of our client, we request that the Commission confirms, as a preliminary matter, that it will convene an oral hearing of this matter. This would allow for clarification of the nature and extent of what is being proposed by the Authority, and to address the basis for the said CPO in the absence of an approved scheme of development. It may also allow an opportunity to address the issues relating to the extent that it is in compliance with Council Directives 2011/92 EU and 92/43 EEC. It would also allow the Authority to address the issue of the impact on our client's retained lands in the event of

the Scheme being approved. It would, in addition, have the effect of curing one of the defects in the Notice, by allowing the family members to participate in the process within the submission lodged above by our client. It would also allow for engagement between the parties with a view to seeking a resolution of these issues and where the Authority can clarify the nature and extent of what is being proposed.

Yours faithfully,



Andrew McFadden

AUGUSTUS CULLEN LAW LLP

Andrew.McFadden@acslsolicitors.ie