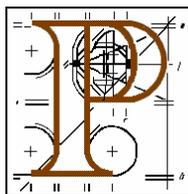

An Bord Pleanála



Inspector's Report

Ref.: PL13. 237160

Development: Demolish existing dwelling house, to construct 5 No. entrances, a front boundary wall together with the construction of sub-divisional walls to subdivide land into 5 No. plots and outline permission for 5 No. detached dwellings together with associated site works.

Wolfes Burgess, Rathkeale, Co. Limerick.

PLANNING APPLICATION

Planning Authority: Limerick County Council

Planning Authority Ref.: 10/417

Applicant: Danny O'Brien, James O'Brien, Thomas Kealy, Patrick O'Driscoll and Patrick Kealy Jnr.

Type of Application: Permission & outline permission

Planning Authority Decision: Refusal

APPEAL

Type of Appeal: First Party

Observers: None.

INSPECTOR: Robert Speer

Date of Site Inspection: 22 September, 2010

1.0 SITE LOCATION AND DESCRIPTION

The proposed development site is located in the town of Rathkeale, Co. Limerick, approximately 25km southwest of Limerick City and 11km northeast of Newcastlewest. The site itself is located to the east of the built-up area of the town and to the north of the R523 Regional Road opposite the Abbeylands housing estate. The surrounding area is primarily residential, with the notable exception of Mick Neville Park, the local GAA playing field, and is characterised by a variety of housing types and styles. To the immediate north and east the site is bounded by a 3m high blockwork wall which abuts the adjacent GAA lands whilst to the west the site adjoins a terrace of conventional two-storey housing. The southern site boundary is defined by a stonework wall alongside the public footpath.

The site is irregularly shaped, generally level and has a stated site area of 0.3821 hectares. It can be broken into two distinct elements with the south-western frontage of the site occupied by a detached two-storey dwelling house whereas the remainder of the site consists of overgrown and undeveloped land.

2.0 DESCRIPTION OF PROPOSED DEVELOPMENT

The subject application seeks permission to demolish an existing two-storey dwelling house and to subdivide this area, in combination with the adjacent undeveloped lands which make up the wider application site, through the construction of dividing boundary walls, into a series of 5 No. individual plots served by separate entrances. In addition, the proposal seeks outline planning permission for the erection of 5 No. detached dwelling houses on the respective plots together with associated site development works. Water and sewerage services are available from the public mains.

3.0 RELEVANT PLANNING HISTORY

On Site:

None.

On Adjacent Sites:

PA Ref. No. 061595. Was granted on 31 August, 2006 permitting Limerick County G.A.A. Board permission for the construction of new splayed entrance with security gates, a 3m high boundary division wall and ancillary site works at Mick Neville Park, Wolfes Burgess, Rathkeale.

PA Ref. No. 09198. Was granted on 14 May, 2009 permitting Limerick County G.A.A. Board permission for revision to planning permission previously approved (Ref: 06/1595), construct a new splayed entrance with security gates, a three metre high boundary division wall and ancillary site works (Revision consists of relocation of back boundary division wall) at Mick Neville Park, Wolfes Burgess, Rathkeale, Co. Limerick.

4.0 PLANNING AUTHORITY CONSIDERATIONS AND DECISION

Decision:

On 21 June, 2010 the Planning Authority issued a notification of a decision to refuse permission / outline permission for the proposed development for the following reason:

- The site is located on lands zoned predominantly 'open space' in the Rathkeale Local Area Plan, 2007 where development of a dwelling is generally not permitted as per Table 4.1 and, therefore, the proposed development would materially contravene the Rathkeale Local Area Plan and would be contrary to the proper planning and sustainable development of the area.

Internal Reports:

Executive Archaeologist: States that there are no archaeological issues in respect of the subject application.

Prescribed Bodies / Other Consultees:

None.

Objections / Observations:

A single submission from an interested party was received by the Planning Authority and the principle grounds of objection can be summarised as follows:

- The site is predominantly zoned as 'Open Space' in the Rathkeale Local Area Plan, 2007.
- According to the Land Registry the applicants are not the registered owners of the site.
- There are concerns with regard to the impact of the development on traffic safety and congestion.
- The site notice was only erected two weeks after the lodgement of the planning application.

5.0 GROUNDS OF APPEAL

The grounds of appeal are summarised as follows:

- The subject application was refused permission on the grounds that the proposed development would materially contravene the predominantly 'open space' land use zoning of the subject site, however, the Planner's Report proceeds to state that the proposed development would *'otherwise be acceptable in terms of layout having regard to the existing pattern of residential development in the vicinity, and the location of the site within the defined settlement boundary of Rathkeale town, subject to the front building line of the proposed dwellings being parallel to the public road'*. Having regard to the foregoing, it is unclear as to why this was not used as a basis by the Council to invoke the material contravention process. It is submitted that the provisions of Section 37(2)(b)(iv) of the Planning and Development Act,

2000 apply in this instance and establish a clear and unambiguous reason to grant permission.

- It is considered that the use of the subject site for residential purposes is consistent with the guidance ‘test’ set out in the *‘Sustainable Residential Development in Urban Areas (Cities, Towns and Villages), Guidelines for Planning Authorities, 2009’*. The guidelines promote higher density development in urban areas and in this respect the submitted proposal is entirely consistent with their overall objectives. Accordingly, the proposal should be considered in light of Section 37(2)(b)(iii) of the Act.
- With regard to Section 37(2)(b), it is only necessary for the subject proposal to meet one of the ‘exceptions’ set out in subsection 37(2)(b)(i-iv) and in this respect it is submitted that the proposal meets at least two of the criteria which would permit the Board to grant permission.
- The proposed development will not have any adverse impact on residential amenity and is in keeping with the surrounding pattern of development.
- The proposal is consistent with those provisions of the *‘Sustainable Residential Development in Urban Areas (Cities, Towns and Villages), Guidelines for Planning Authorities, 2009’* which pertain to ‘Small Town and Village Development’. In general terms, the Guidelines promote compact settlements where ease of access and ‘walkability’ are key elements whereas the application site is within easy reach of the town core.
- The applicants are members of the Travelling Community and whilst it is acknowledged that Council policy is positive with respect to social inclusion and traveller accommodation permission was refused in this instance. In this respect the Board is referred to the Council’s policy as regards the Travelling Community and the respective purposes of the ‘Residential’ and ‘Open Space’ land use zoning objectives. In addition, it should be noted that whilst the Council’s policy with regard to the Travelling Community focuses on its statutory role as Housing Authority, the subject application is somewhat different in that the applicants are addressing their housing need through their own resources.
- The proposed residential properties are generally located on those lands zoned for residential purposes.
- It should be noted that the subject proposal need not have been considered a material contravention as housing development is only ‘generally’ not permitted within areas zoned as ‘Open Space’ whilst within such areas *‘reasonable development proposals in relation to this use will be considered on their merits’*.
- Given the previous decisions of the Planning Authority with regard to the development of the adjacent GAA lands and its approval of the boundary details, it would have been clear that the lands in question no longer formed part of any potential open space area and were privately owned.
- At the time of its decision the Planning Authority would have been aware of the ongoing works on the adjacent GAA lands as permitted under PA Ref. No. 061595 and as revised under PA Ref. No. 09198. The effect of these permissions, with particular reference to PA Ref. No. 09198 which relocated the boundary division between the GAA lands and the subject site, was to create an enclosed site which formed part of an existing residential property. It is submitted that this site area was always part of the established residential use and that this further validates the use of the lands for residential and other

associated uses. In support of the grounds of appeal the Board is referred to the ruling in the case of *O’Hara and McGuinness v. An Bord Pleanala* which held that:

‘where a right exists an owner cannot be deprived of it by oblique means but only in the manner laid down by statute. So where an owner has the right to maintain a certain level of use in a premises then as a matter of principle a planning authority cannot restrict this use under the guise of the imposition of a condition upon the grant of a further planning permission’.

- The applicants purchased the subject site as a residential property and at no time did the Council object to the subdivision of same from the GAA lands on the grounds that it would compromise the open space area and the associated zoning. It is considered that the accompanying photographs demonstrate that the site is not an ‘open space’ location for amenity purposes and therefore its use for residential purposes will not compromise the planning authority’s ability to meet any future amenity objectives. On the contrary it is submitted that the proposal will facilitate the Council in meeting its objectives under Policy HR of the Local Area Plan and therefore the decision to refuse permission can be dismissed under Section 37(2)(b)(a)(ii) of the Planning and Development Act, 2000.
- The decision of the GAA to sell the lands in question and to construct a boundary wall to the rear of same reinforces the use of this property as residential as it is now a discrete self-contained site.
- With regard to the objection lodged with the Planning Authority during its determination of the subject application, it is submitted that the applicants own the lands in question and that they retain legal title to pass and re-pass the lands adjacent.

6.0 RESPONSE TO GROUNDS OF APPEAL

Response of Planning Authority:

- In the event that the Board is favourably disposed to a grant of permission, it is respectfully requested that a condition be attached requiring the submission of a revised site layout orientating the front building line of the proposed dwelling houses to be parallel with the public road. This layout is requested in the interests of proper planning and sustainable development in order to continue the existing pattern of development along the public road in this area.

7.0 DEVELOPMENT PLAN

Limerick County Development Plan, 2005:

Chapter 3: Settlement Strategy:

Section 3.3: Towns and Villages

Policy SP2: Development & Land Use Zoning:

It is the policy of the Council to ensure sufficient land is zoned for development in the County. The zoning provisions will have regard to the local areas where the Council has adopted Local Area Plans in accordance with the needs of the area.

Policy SP7: *Derelict Sites:*

It is the policy of the Council to give favourable consideration to residential development in towns and villages on derelict sites, infill sites and in areas in need of regeneration.

Chapter 4: Housing

Chapter 6: Recreation and Community:

Section 6.7: *Leisure and Recreation Facilities:*

Policy CR18: *Safeguarding Facilities:*

It is the policy of the Council to protect leisure and recreation facilities from change of use or redevelopment to other uses, unless the following requirements are clearly demonstrated:

- a) there is no longer a need for the existing facility. This should take into account the long-term needs of the community, the type and recreational and amenity value of such provision; or
- b) suitable replacement facilities are identified which are both accessible and of equal or greater quality and benefit to the community; or
- c) the retention or enhancement of the facility can best be achieved by the redevelopment of a small part of the site that will not affect its sporting, recreational or amenity value.

Chapter 12: Development Control Guidelines:

Rathkeale Local Area Plan, 2007:

Land Use Zoning:

The proposed development site is subject to two land use zoning objectives in that the area of the site which is presently occupied by the existing dwelling house and its immediate surrounds is zoned as ‘*Established Development (Primarily Residential)*’ whereas the remainder of the site to the north and east which comprises the adjoining undeveloped lands is zoned as ‘*Open Space*’.

That area zoned as ‘Established Development’ is subject to the following land use zoning objectives:

- Promote developments that support the predominant land use in the surrounding area;
- Encourage development on land zoned for new residential development mainly for housing, associated open space, community uses;
- Accommodate a range of other uses that support the overall residential function of the area where an acceptable standard of amenity can be maintained and where the amenities of existing residents/occupiers are protected;
- Encourage a high standard of residential design in new residential areas and to improve permeability and accessibility;
- Discourage the expansion or intensification of existing uses that are incompatible with residential amenity;
- Have regard to the Urban Framework Plan in proposed new developments.

That area zoned as ‘*Open Space*’ is subject to the following land use zoning objectives:

- To protect, improve and provide for recreation, open space and amenity provision;
- To protect, improve and maintain public open space;
- To preserve private open space and to provide recreational and community facilities.

The areas included in this zoning objective cover both private and public open space and are dispersed throughout the town. The LAP Plan includes designations for both existing and planned new open spaces. The Council will not normally permit development that would result in a loss of open space within the town except where specifically provided for in this Plan. Existing agricultural uses in open space areas will continue to be permitted, and reasonable development proposals in relation to this use will be considered on their merits. The Council will support the provision of development for playgrounds, parks, other areas for outdoor activities, sports centres, sports pitches, outdoor recreation training centres and landscaped areas.

Other Relevant Sections / Policies:

Section 5: *Development Control Policies:*

Section 5.2 *Housing*

Section 5.6: *Amenity & Recreation*

Section 6: *Design Guidelines*

8.0 NATIONAL AND REGIONAL POLICY:

The ‘*Sustainable Residential Development in Urban Areas, Guidelines for Planning Authorities*’ acknowledge the importance of smaller towns and villages and their contribution towards Ireland’s identity and the distinctiveness and economy of its regions. It is accepted that many of these smaller towns and villages have experienced significant levels of development in recent years, particularly residential development, and that concerns have been expressed regarding the impact of such rapid development and expansion on the character of these towns and villages through poor urban design and particularly the impact of large housing estates with a standardised urban design approach. In order for small towns and villages to thrive and succeed, their development must strike a balance in meeting the needs and demands of modern life but in a way that is sensitive and responsive to the past.

9.0 ASSESSMENT

From my reading of the file, inspection of the site and assessment of the relevant local, regional and national policies, I conclude that the key issues raised by the appeal are as follows:

- Land use zoning / the principle of the proposed development
- Overall design and layout

These are assessed as follows

Land Use Zoning / Principle of Development:

9.1 The proposed development site is subject to two separate land use zoning objectives in that the area of the site which is presently occupied by the existing dwelling house and its immediate surrounds is zoned as ‘*Established Development (Primarily Residential)*’ whereas the remainder of the site to the north and east which comprises the adjoining undeveloped lands is zoned as ‘*Open Space*’. From a review of the land use zoning map it is clear that the majority of the site is zoned as ‘Open Space’ and in accordance with Figure 4.1: ‘*Land Use Zoning Matrix Table*’ of the Rathkeale Local Area Plan, 2007 the development of dwelling houses is ‘Generally Not Permitted’ within this land use zoning. Accordingly, the Planning Authority opted to refuse permission for the proposed development on the grounds that it would materially contravene the land use zoning objective applicable to the site.

9.2 In accordance with the provisions of Sections 37(2)(a) and (b) of the Planning and Development Act, 2000, as amended, in instances where the Planning Authority has refused permission on the grounds that a proposed development materially contravenes the Development Plan, the Board may only grant permission where it considers that –

- i) the proposed development is of strategic or national importance,
- ii) there are conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned, or
- iii) permission for the proposed development should be granted having regard to regional planning guidelines for the area, guidelines under section 28, policy directives under section 29, the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government, or
- iv) permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan.

9.3 I propose to assess the proposed development against the aforementioned criteria in turn as follows:

- i) The proposed development consists of the demolition of an existing dwelling house followed by the subdivision of the wider site to accommodate the future construction of 5 No. detached dwelling houses. Considering the scale and nature of the proposal I am not of the opinion that the proposed development is of strategic or national importance.
- ii) Whilst I would accept that the site in question is subject to two land use zonings, the zoning provisions applicable to the site are clear and are not disputed by the applicants although they may disagree with the rationale for same. Furthermore, the written statement provides clear details of the objectives of each land use zoning. On consideration of the aforementioned factors, I am satisfied that the objectives of the Plan are unambiguous and without conflict insofar as the proposed development is concerned.
- iii) With regard to Section 37(2)(b)(iii) of the Act, I have considered the provisions of the Mid-West Regional Planning Guidelines, 2004 and

remaining ministerial guidelines and policy directives, and I am of the view that the achievement of the strategic aims of same is not reliant on the proposed development which materially contravenes the current Local Area Plan for the area.

Whilst the case could be made that the subject site is suitable for residential development given its location and the desire to ensure the sequential development of the town, similar arguments could be made with regard to other landbanks in the town and in this respect I would suggest that the appropriate forum for raising such points would be during the consultative process when preparing any future Local Area Plan / Development Plan. Whilst the applicants may disagree with the Planning Authority's rationale as regards the zoning of the subject site the Board has no function in respect of the zoning of land which is entirely within the remit of the Planning Authority.

- iv) With regard to the pattern of development, and permissions granted, in the area since the making of the Local Area Plan, I note the applicants reference to the grant of permission issued in respect of PA Ref. No. 061595 on the adjacent GAA lands as subsequently amended by PA Ref. No. 09198. The initial grant of permission issued to the Limerick County G.A.A. Board under PA Ref. No. 061595 permitted the construction of a new splayed entrance with security gates and the erection of a 3m high boundary division wall on its lands at Mick Neville Park which abut the subject site. This had the effect of severing part of the GAA's lands from the remainder of Mick Neville Park. In essence, it created an enclosed area of land which has since been acquired by the applicants and amalgamated into the application site. The subsequent grant of permission issued under PA Ref. No. 09198 revised the location of the rear dividing boundary wall between the subject site and the GAA lands with the result that an increased area of land was disposed of to the applicants and incorporated into the proposed development site.

Having reviewed the submitted information and the grounds of appeal, I would consider that there is merit in the applicants case that the Planning Authority, in granting permission for PA Ref Nos. 061595 & 09198, would have been aware of the intention of the GAA to subdivide its lands and to create a separate enclosed site, however, it remains unclear as to why the Planning Authority, despite being apparently otherwise satisfied with the general principle of the proposed development, decided not to grant permission by way of a material contravention. In this respect it could be surmised that the Planning Authority remains of the opinion that the element of the subject site which is zoned as 'Open Space' should be retained as such i.e. despite being separated from the remainder of the GAA lands and having changed ownership it should be used / developed for amenity / open space purposes. Although the Planning Authority has not elaborated on its decision to refuse permission I would have reservations with regard to the precedent that could be set in allowing the redevelopment of lands identified as open space, in effect, simply because they have been disposed of to another party for such purposes.

At this point I would draw the Board's attention to Section 5.6 (Amenity and Recreation) of the Rathkeale Local Area Plan which states that it is an objective of the Plan to protect and improve the existing provision of open space, both passive and active, within the town. In addition, '*Policy C2: Amenity and Recreation Facilities*' seeks to '*ensure that the public open spaces identified within the Urban Framework Plan and Land Use Zoning Map are protected and developed*' whilst the Plan is also specific in stating that this policy is intended to provide adequate protection to the existing amenity and recreational facilities in the town. I would also refer the Board to *Map No. 4: Rathkeale Amenity Strategy* of the Plan which identifies the lands in question as an existing recreation / amenity space.

On the basis of the foregoing, whilst I would accept that that element of the subject site which is zoned as 'Open Space' has been severed both physically and in terms of ownership from the adjacent playing fields, I am not satisfied that this in itself is sufficient to demonstrate that the lands in question were not intended to be used / or could not continue to be used for an alternative recreational / amenity purpose. In this respect I would suggest that if the Planning Authority had been entirely satisfied with the proposal and the consequential loss of open space that it would have been open to it to grant permission by way of material contravention. In the absence of any further justification or rationale for the loss of this amenity area / open space contrary to the provisions of the Local Area Plan which seeks to protect such areas, in my opinion, the Board is precluded from considering a grant of permission in this instance.

9.4 Accordingly, on the basis of the foregoing, and having regard to the provisions of Section 37(2)(a) of the Act, I am of the opinion that it is not open to the Board to grant permission in this instance.

Overall Design and Layout:

9.5 With regard to the overall design and layout of the proposed dwelling houses, the Planning Authority has raised concerns regarding the orientation of the proposed units relative to the public road and has requested that, in the event that the Board is favourably disposed to a grant of permission, a condition be imposed requiring the proposed dwelling houses to be repositioned such that their front building line is parallel with the public road in order to continue the existing pattern of development in the area.

9.6 In response to this suggestion a case has been made on behalf of the applicants that this reconfiguration of the unit / site alignment would make access to the sides of the individual dwellings difficult in that the plot layouts are dictated by their relationship to the GAA club access and the western site boundary. Reference is also made to the 'prohibition of discrimination' contained in the European Convention on Human Rights Act, 2003 as the reorientation of the proposed dwellings to face the public road may compromise the applicants ability, as members of the Travelling Community, to park caravans to the side of their properties when they return from travelling.

9.7 On consideration of the foregoing, and having regard to the prevailing pattern of development in the area, in my opinion, it would be preferable if the proposed dwelling houses were to be re-orientated to be parallel with the public road. I would accept that this will necessitate alterations to the submitted layout, however, I am satisfied that this can be accommodated whilst retaining sufficient area within each individual housing plot to accommodate the parking of a caravan.

10.0 RECOMMENDATION

Having regard to the foregoing I recommend that permission & outline permission be refused for the proposed development for the reasons and considerations set out below:

Reasons and Considerations:

1. The proposed development site is primarily zoned as 'Open Space' in the Rathkeale Local Area Plan, 2007 with the stated land use zoning objectives 'To protect, improve and provide for recreation, open space and amenity provision', 'To protect, improve and maintain public open space' and 'To preserve private open space and to provide recreational and community facilities'. These objectives are considered reasonable. The proposed development would contravene materially the development objectives as set out in the local area plan and would be contrary to the proper planning and sustainable development of the area.

Signed: _____

Robert Speer
Inspectorate

Date: _____