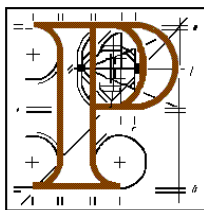


An Bord Pleanála Ref.: PL 91.246561

An Bord Pleanála



Inspector's Report

Development: Permission for the construction of a dwelling, connection to public services including all associated site development works (this application is located within the curtilage of a protected structure ref numbers M29a, M(12)RHK11 and M29a, M(13)RHK12), all at Lower Main Street, Rathkeale, Co. Limerick.

Planning Application:

Planning Authority: Limerick County Council
Planning Authority Reg. Ref.: 16/108
Applicant: Patrick Culligan
Type of Application: Permission
Planning Authority Decision: Refuse permission

Planning Appeal:

Appellant(s): Patrick Culligan
Type of Appeal(s): First Party against refusal
Observers: None
Date of inspection: 25th July 2016
Inspector: A. Considine

1.0 THE SITE

- 1.1 The proposed development site is located in the town of Rathkeale, Co. Limerick, approximately 25km southwest of Limerick City and 11km northeast of Newcastle West. The site itself is located to the south of the town center on Lower Main Street, and adjacent to the existing river walk along River Deel. The surrounding area comprises primarily residential use, with some commercial uses also. The area is also notable for the protected structures in the vicinity of the site. To the rear of the site there is the County Council Pump Station.

- 1.2 The site has a regular shape and has a stated area of 0.315ha and is currently occupied by an existing house and attendant grounds. The site fronts onto Lower Main Street and the boundary comprises a very high stone wall. The existing vehicular entrance is located onto Lower Main Street and has high gates (locked on the date of inspection). The existing house is set back from the road and it is proposed that the new house will be located to the rear of this house.

2.0 PROPOSED DEVELOPMENT

- 2.1 Permission is sought for the construction of a dwelling, connection to public services including all associated site development works (this application is located within the curtilage of a protected structure ref numbers M29a, M(12)RHK11 and M29a, M(13)RHK12), all at Lower Main Street, Rathkeale, Co. Limerick.

- 2.2 The proposed two storey house is to be located to the rear of the existing house on the site. The proposed house will rise to a height of 8.816m and will have a stated floor area of 165.44m². The external finishes include a smooth plaster finish with stone surrounds to windows and doors. The windows will be double glazed uPVC, facias, soffits and gutters will be black seamless aluminium and the roof will be a dark coloured slate or tile finish. The front door is to be a hardwood door.

- 2.3 The house will have a floor to ceiling height for the ground floor rising to 2.7m with the first floor rising to 2.66m. The proposed house will

provide for a large entrance hall, and a primarily open plan living / dining and kitchen area with utility and WC at ground floor level and three double bedrooms, 1 en-suite, and family bathroom at first floor level. Vehicular access to the site is proposed via the existing entrance to the existing house and will run to the south of the existing house.

3.0 REPORTS ON PLANNING AUTHORITY FILE

3.1 There are 2 no. interdepartmental reports from on the Local Authority file from the following:

Conservation Officer: The report considers that the proposed development, in the context of the site's protected status, is overdevelopment. It is further considered that there is no benefit or planning gain accruing for the dwelling on the site. It is recommended that permission be refused.

Water Services: The Water Services SEE presented a Flood Report and concludes that the CFRAM draft maps, which do not take account of climate change, for fluvial flooding show that the proposed site is within flood zone. The highest flood level in the vicinity of the site is 33.5mOD. The information provided indicates that the FFL of the development will be 34.65mOD while the existing house has an FFL of 34.5mOD. Site surveys however, suggest that the top level of the step of the existing building is 33.38mOD and that the ground level of the existing yard ranges from 33.166mOD to 33.041mOD which are lower than the potential flood levels. The report concludes that the area is at risk of flooding and that a dwelling house is classified as a 'Highly Vulnerable Use'. It is recommended that planning permission be refused from a flooding point of view.

3.2 There are no third party observations noted on the planning file.

3.3 There is 1 external report noted on the planning file from Irish Water. This report notes that a foul sewer line to the County Council Pump Station goes through the proposed site and requires that the applicant clearly show the line of the sewer on drawings, including details of pipe diameter, pipe type, manholes etc. In addition, a 10m wayleave is to apply. Further to the above, other information is required as follows:

- Details of foul sewer lines for existing house
- Identify what the dot-dash line is
- No building over public water mains or sewers
- Details of metered water supply
- Connections to surface water sewer
- All levels to be shown to OD. Levels shown are at variance to those used in previous planning application.

3.4 The Planning Report on the Limerick County Council file considered the proposed development against the information provided, submissions in relation to same and the development plan requirements. The report concludes that the proposed site layout is not acceptable and reduces the private open space of the existing house to a depth of 6.6m, which is unacceptable. It is considered that notwithstanding the sizeable landholding, the layout as proposed is considered to represent overdevelopment and would result in a loss of residential amenity. In addition, it is noted that the site is located within Flood Risk Zone A lands. The report from Water Services is noted. The reporting officer recommends that planning permission be refused for three reasons.

4.0 DECISION OF THE PLANNING AUTHORITY

The Planning Authority decided to refuse planning permission for the following three reasons:

1. The proposed development is in an area at risk of flooding and as such would be contrary to Objective IN 035: Minimise the threat and consequences 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. The development would, therefore, be contrary to the proper planning and sustainable development of the area.

2. Having regard to the size and scale of the proposed development and having regard to its proximity to the protected structure it is considered that the proposal would represent overdevelopment of a backland site and would set an unwelcome precedent for this type of development at this location. And as such, would be contrary to the proper planning and sustainable development of the area.

3. The proposed development would materially contravene Objective EH 2 - Protect Structures – Rathkeale Local Area Plan 2012-2018 and would materially affect the setting of the protected structures Bridge House, Reg. No.: 1577 (previously Ref. No. B11 (25)) and would be contrary to the proper planning and sustainable development of the area.

5.0 RELEVANT PLANNING HISTORY

The following is the planning history associated with the subject site:

PA ref. 00/2896: Permission was sought for the construction of 9 dormer style houses on the site. Further information was sought but not responded to.

PA ref. 05/335: Permission granted for the construction of a dwelling house on the site subject to conditions.

PA ref. 09/1013: Permission refused for the construction of 3 no. two storey detached dwellings on the site. The reasons for refusal were as follows:

1. Insufficient legal interest
2. The development is haphazard and non-integrated development which would be prejudicial to the comprehensive future development of overall backlands behind Main Street.
3. Inadequate sight lines and potential impacts on protected structure.
4. Flood Risk

PA ref. 12/441: Permission sought for the construction of 6 no. two storey detached dwellings on the site. The application was deemed invalid.

PA ref. 12/600: Permission refused for the construction of 6 no. two storey detached dwelling houses on the subject site as well as part of the site to the north east. The reasons for refusal were as follows:

1. Risk of flooding
2. Materially affecting a protected structure
3. Inadequate sight lines and potential impacts on protected structure.

PA ref. 13/778: Permission refused for the construction of 3 no. terraced dwellings on the site. The reasons for refusal were as follows:

1. Risk of flooding
2. Materially affecting a protected structure
3. Overdevelopment of a backland site.

Adjacent sites:

PA ref. 01/2352: Permission granted for the replacement of existing derelict roof with a new slated roof, the provision of new windows and external doors to match existing on listed building which is a protected structure. And the provision of a temporary dwelling on site for duration of work.

ABP ref PL13.231185 (PA ref. 08/1469): Permission refused by both PA and ABP for outline permission for the construction of 2 two storey houses and all associated site works. The reason for refusal was based on the adverse effect the development would have on the character of the protected structure.

PA ref. 12/108: Permission granted for the construction of an extension and elevational changes to existing dwelling house.

6.0 POLICY CONTEXT

6.1 Development Plan:

6.1.1 The Limerick County Development Plan 2010 – 2016 is the statutory Development Plan for County Limerick. Rathkeale has a Local Area Plan, I consider it reasonable to address the relevant policies contained in the County Development Plan at this juncture.

6.1.2 Rathkeale is identified as a Tier 3 town in the County Development Plan being a centre located on Transportation Corridor. Chapter 4 of the Plan deals with residential development and section 10.5.5 deals with infill residential development in towns and villages. This section of the Plan provides for guidelines, which should be applied in the assessment of such proposed developments and states that ‘Design, height, scale, materials used and finishes should respect existing adjacent properties’.

6.1.3 Objective IN O35 of the County Development Plan is considered relevant in terms of this proposed development in that it seeks to minimise threat and consequences of flooding. It is the objective of the Council to avert, or where this is not possible, to minimise the threat of flooding in new developments and existing built up areas. Priority will be given to the protection of vulnerable uses that would be seriously affected by the consequences of flood events. The Council will have regard to Government Guidelines, ‘The Planning System and Flood Risk Management’ and OPW data and advice in the assessment of all development proposals and any subsequent amendments.

6.1.4 Section 7.6 of the CDP deals with built heritage and the following objectives are considered relevant:

- EH 031: General Protection of Structures
- EH 032: Promotion of Conservation of Protected Structures
- EH 035: Protection of Architectural Conservation Areas

6.2 Rathkeale Local Area Plan, 2012-2018:

6.2.1 The subject site is located to the south of Rathkeale town centre and is zoned as existing residential in the LAP. The zoning matrix contained in the LAP provides that residential development is open for

consideration within such zoned lands. The purpose of the existing residential zoning is to ensure that new development is compatible with adjoining uses and to protect the amenity of existing residential areas.

6.2.2 Chapter 10 of the LAP deals with Urban Design and section 10.3 deals with Opportunity sites. The subject site is affected by Opportunity Area 11 – Riverside in that the area runs along the River Deel to the south west of the site, and along the existing riverside walkway there. It is a requirement that any development in such areas is appropriately planned and provide a high quality riverside walkway and cycleway alongside the Deel River, in particular on the eastern banks. Finally, it is required that all development shall demonstrate that they enhance the biodiversity value of the area through suitable landscape and management measures.

6.2.3 Chapter 8 of the LAP deals with Environment & Heritage. The site is also located within the ACA and within the boundaries of the Recorded Monument (LI029-031) classified as the historic town of Rathkeale. Chapter 8 of the LAP deals with Environment and Heritage, with section 8.2 dealing with the built environment. Objective EH 1: Architectural Conservation Area (ACA) is considered relevant in this instance.

6.2.4 The comprises a protected structure, Reg No. 1578 which is the boundary wall to the site and is described as follows;

This boundary wall with arches is an interesting feature along the streetscape. It displays a high level of stonework and it may have been part of the Abbey House demesne.

The site is also located within the curtilage of a protected structure, Bridge House, Reg No.: 1577 (previously Ref. No. B11(25)). Bridge House is described as follows:

End of terrace five-bay three-storey townhouse, built c. 1820, with pitched slate roof and rendered chimneystacks and walls. Ionic doorcase with decorative fanlight window. Timber sash windows replaced with PVC alternatives and existing centre windows enlarged.

In addition, there are 4 further protected structures within the immediate vicinity of the site including 1575 Terrace two storey townhouse, 1576 end of terrace five-bay two storey townhouse and Reg no. 1579, bridge over the River Deel. In this regard, Objective EH 2: Protected Structures, is considered relevant.

6.2.5 The subject site is identified as being located within a predictive Flood Zone A as identified in the 2012 LAP. In this regard, Objective IN 4: Flood Risk Management is considered relevant.

7.0 GROUNDS OF APPEAL

This is a first party appeal against the decision of Limerick County Council to refuse planning permission for 3 no. reasons. The grounds of appeal are summarised as follows:

Reason 1:

- In relation to the flooding issue, it is submitted that the maps contained in the Rathkeale LAP became superseded by the OPW CFRAM Mapping Study. The actual site is not located within the flood study area. Permission should not have been refused on these grounds.

Reason 2:

- There is little clarity in terms of the reason for this reason.
- It is submitted that the masterplan for the site is to provide for two houses for the sons of the dwelling owner. Development is restricted to two houses due to the need to maintain 50m from the pump station.
- It is not backland development and has ample main road frontage, as well as key riverside walk frontage, which could be opened up by the proposal.
- The scale of the development has a contextual relationship with the existing dwelling on the site and would be obscured from the protected bridge wall.

- There are no proposed alterations to be made to the bridge wall and the metal gates will be removed to facilitate communal access.
- The development seeks to provide for family and there will be no speculative sales, which should suit the PA in terms of controlling development around protected structures.

Reason 3:

- The Board is asked to note that the existing modern house is closer to a protected structure than the proposed development
- There is precedent for granting permission for houses in proximity to Protected Structures.

It is requested that the Board look favourably on the applicant

8.0 RESPONSES

Planning Authority:

The Planning Authority submitted a letter indicating that it has no observations to make on this appeal.

9.0 OBSERVERS TO APPEAL

There are no observers noted in relation to this appeal.

10.0 ASSESSMENT

Having regard to the nature of the proposed development and the details submitted with the planning application and appeal documents, I conclude that issues arising for consideration should be addressed under the following headings:

- The principle of the development
- Reasons for refusal

- Appropriate Assessment

10.1 The principle of the development.

10.1.1 The subject site is located within the town of Rathkeale and appears to have had a long standing residential use. The site itself has existing residential zoning afforded to it. The purpose of the existing residential zoning is to ensure that new development is compatible with adjoining uses and to protect the amenity of existing residential areas. The zoning matrix in the LAP provides that residential development is generally permitted within such zoned lands, subject to the protection of the amenity of existing residential areas. In terms of the proposed development, the Board will note that there have been a number of planning applications associated with this site and that the appeal submitted on behalf of the applicant would suggest that it is intended to seek permission to construct a second house in the vicinity of the proposed house.

10.1.2 Notwithstanding the large site area, given the location of the existing house on the site, together with the other constraints of the site, notably in terms of its proximity to the County Council pumping station to the north west, as well as a number of protected structures, it is difficult to see how the development can be facilitated on the site without undue impacts on the existing residential amenity of the existing house. Access to the site will result in the creation of an access road which will run along the southern elevation of the existing house. In terms of the proposed layout of the overall site, the development, if permitted, will result in the rear private amenity space of the existing house being reduced significantly in depth to approximately 6.6m. In addition, the contiguous elevation submitted in support of the proposed development implies that a 1.9m high boundary wall will be constructed towards the rear of the existing house which will enclose the reduced private amenity space. As such, while it might be reasonably be considered that in principle, the development is acceptable, I do not consider that the development as proposed, can be accommodated on the site without undue impacts on the existing residential amenity of the existing house on the site.

10.1.3 The site is also located within the ACA and within the boundaries of the Recorded Monument (LI029-031) classified as the historic town of

Rathkeale. Chapter 8 of the LAP deals with Environment and Heritage, with section 8.2 dealing with the built environment. Objective EH 1: Architectural Conservation Area (ACA) is considered relevant in this instance. This objective seeks to encourage retention / incorporation / replication of exterior features which contribute or enhance the character and streetscape. In addition, the subject site is located within close proximity to a number of protected structures, including Bridge House, Reg No. 1577, and the bridge over the River Deel, Reg no. 1579. In addition, the boundary wall of the subject site is a protected structure, Reg no. 1578 and in this regard, the potential impacts of the development on these structures needs to be considered. Objective EH 2: Protected Structures provides that it is the objective of the Council to protect structures entered onto the Record of Protected Structures, and that the Council shall resist development that would adversely affect the setting of the protected structure.

10.1.4 In terms of the potential impacts associated with the proposed development on the existing protected structures in the area, the Board will note the submission from the Conservation Officer of Limerick County Council. This report considers that the development represents an overdevelopment of the site without any benefit or planning gain accruing for the dwelling on the site and it is recommended that permission be refused. The protected structure, the subject of concern for the Conservation Officer is Bridge House, and no reference is made to the boundary wall, also a protected structure. The existing house on the site is a modern build, approximately 2005 and works on the site have included extensive tar macadam to the front of the site. I could not gain access to the rear of the property and the boundary wall was too high for the camera to photograph. The development, if permitted and as per the site layout plan submitted, would involve the removal of an ivy covered low wall which seems to form part of a 'right of way' for the applicants family.

10.1.5 I am concerned that overall, the development would have an impact on the on the setting of a number of protected structures in this area, but primarily, the development would constitute overdevelopment by reason of the existing constraints of the site in terms of the pump station and the existing house. I would also note the intention to include an access gate from the development site to the adjacent river walkway and the Board should note that there is an existing gate in the wall in close proximity to the south western corner of the site. I am

unclear from the information provided if it is intended to open a new gate access on the boundary wall and would recommend that this not be permitted. Should the Board be minded to grant planning permission in this instance a condition excluding a new pedestrian opening in the boundary wall should be included, in the interests of protecting the integrity of the boundary wall, part of which is identified as a protected structure.

10.1.6 Section 10.3 of the LAP deals with Opportunity Sites and identifies the area to the south of the subject proposed development site as being located within Opportunity Site 11 – Riverside – incorporating the banks of the River Deel and includes the well established Matrix Way River Walk which runs immediately adjacent to the site boundary wall. I have considered the potential impacts of the development on this identified Opportunity Site and I acknowledge what it is that the LAP and the Planning Authority are seeking to achieve with the inclusion of the area as an Opportunity Area. I have addressed the issue of the proposed pedestrian access gate to be opened in the site boundary wall above, but overall, would conclude that if permitted, the development is unlikely to affect the objectives of the overall opportunity site and would suggest that a grant of planning permission would not have a negative impact on achieving the stated objectives. As such, I consider that the development, if permitted would not contravene the Rathkeale LAP, 2012-2018 as it relates to the achievement of objectives associated with Opportunity Area 11.

10.2 Other Issues:

10.2.1 It is proposed that the development will connect to public services, water and sewerage. The details of the proposed connections are unclear and Irish Water have advised that further information would be required prior to any grant of permission issuing. The primary concerns arising relate to the location of an existing foul sewer to the County Council Pump Station which is said to go through the subject site. The submitted details have not clearly shown this line, and no further details of the line have been provided. Irish Water advise that a 10m wayleave is required to apply to this foul sewer line. In addition, details of the services to the existing house have not been provided and clarification on the levels used is required as variances are noted from previous planning applications. Should the Board be minded to grant planning

permission in this instance, further information would be required to address these issues, prior to such a positive decision issuing.

10.2.2 Having regard to the proposed design of the house, I would have no objection in principle to same.

10.2.3 In relation to the proposed site layout as submitted, I would have a real concern that the proposed development seeks to over-develop the site and that the development would be substandard by reason of inadequate provision of open space. The Board will note the intention of the landowner to apply for a second house on the site, as advised in the appeal documentation. In the effort to provide two houses, the current proposal significantly impacts on the existing residential amenities of the existing property on the site, notwithstanding the family connections, the principle of proper planning and sustainable development require me to consider the existing residential amenities as well as the amenities for future residents. Indeed, the actual open space area proposed around the proposed house is significantly below the standard requirements. In light of the above, I consider that the development if permitted would constitute overdevelopment and would provide for inadequate amenities for future residents, by reason of the restricted private amenity space proposed.

10.2.4 In relation to the issue of flooding, the Board will note that the site lies within the predictive flood zone area while part of the subject site lies within the CFRAM flood zone area. The appellant has submitted that the Flood Study Mapping contained in the Rathkeale LAP has been superseded by the CFRAM maps which show that 'the proposed site area on foot of which it is proposed to build the dwelling plot is completely outside any flood study area and as a direct result the Planning Authority should not have refused permission on these grounds'. I note the report provided by the LCC SEE of Water Services in relation to flooding and would note that both parties seemed to have relied on the same CFRAM map in their consideration of the flooding issue. Having considered this matter very carefully, I would agree with the Planning Authority in this regard. The flood levels identified in the vicinity of the site would suggest that the FFL of the proposed house would be lower than the potential flood levels in the general area. The Planning System and Flood Risk Management Guidelines for Planning

Authorities, November, 2009, classifies a dwelling house as a 'Highly Vulnerable Development'.

10.2.5 Objective IN O35 of the County Development Plan seeks to minimise threat and consequences of flooding, and in this regard, it is the stated objective of the Council to avert, or where this is not possible, to minimise the threat of flooding in new developments and existing built up areas. Priority will be given to the protection of vulnerable uses that would be seriously affected by the consequences of flood events. Given that the residential use is classified as a highly vulnerable use, I am not satisfied that the applicant has fully addressed the flood risk potential associated with the site. I therefore consider that the flood risk remains a concern and that a grant of permission would run contrary to the intentions of Objective IN 035 of the County Development Plan, 2010.

10.3 Appropriate Assessment:

10.3.1 The subject site is located at a distance of approximately 5km from the nearest SAC, Askeaton Fen Complex, within an established urban area. The site itself can be considered an urban brownfield site. Having regard to the restricted scale of the proposed development on an existing residential urban site, together with the separation distance between same and the Natura 2000 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.

11.0 **Conclusions and Recommendations**

11.1 Conclusion:

Having regard to the nature and extent of the proposed development works, together with the requirements of the Rathkeale Local Area Plan, I consider that the development, if permitted, would contravene the objectives of the said Local Area Plan, particularly as it relates to Opportunity Area 9. I further consider that the development, if permitted would constitute overdevelopment of this urban site and would

represent an inappropriate form of development which would not provide for appropriate levels of residential amenity for future residents.

11.2 Recommendation:

I recommend that planning permission be **Refused** for the proposed development for the following stated reasons.

REASONS

1. The proposed development within an area zoned Existing Residential in the Rathkeale Local Area Plan, 2012 – 2018 where it is the stated intent of such zoning to protect the amenity of existing residential areas. The site is also located within the Architectural Conservation Area of the town and lies within the curtilage of a number of protected structures including the boundary wall of the site, Reg Ref 1578. It is the stated objective of the Planning Authority, EH 2 of the Rathkeale LAP 2012-2018, Protected Structures, to protect structures entered onto the Record of Protected Structures, and to resist development that would adversely affect the setting of the protected structure.

Notwithstanding the large site area, given the location of the existing house on the site, together with the other constraints of the site, notably in terms of its proximity to the County Council pumping station to the north west, as well as a number of protected structures in the vicinity, the Board is not satisfied that the development as proposed, can be accommodated on the site without undue impacts on the existing residential amenity of the existing house on the site, particularly as it relates to the significant reduction of private amenity space to the existing house. It is further considered that the development, if permitted would adversely affect the setting of a number of protected structures.

Having regard to the restricted site configuration and lack of adequate private amenity space and precedent the proposed development is likely to set, the proposed development would constitute over development of the site and would be contrary to the proper planning and sustainable development of the area.

2. The proposed development is in an area which is deemed to be at risk of flooding, by reference to the current Limerick County Development

Plan 2010-2016 and the Rathkeale Local Area Plan, 2012-2018 and the documentation on file. Having regard to the provisions of the Development Plan in relation to development proposals in areas at risk of flooding, it is considered that, in the absence of adequate information relating to the risk of flooding, analysis of such risk, and appropriate mitigating measures to address any risk, a grant of permission would run contrary to the intentions of Objective IN 035 of the County Development Plan, 2010. The proposed development would therefore, be contrary to the proper planning and sustainable development of the area.

NOTE:

In addition the above, the Board might consider the concerns raised by Irish Water in terms of the location of an existing foul sewer to the County Council Pump Station which is said to go through the subject site. The submitted details have not clearly shown this line, and no further details of the line have been provided. Irish Water advise that a 10m wayleave is required to apply to this foul sewer line. In addition, details of the services to the existing house have not been provided and clarification on the levels used is required as variances are noted from previous planning applications.

Refusal on these grounds would likely constitute new issues. Should the Board be minded to grant planning permission in this instance, further information would be required to address these issues, prior to such a positive decision issuing.

A. Considine
Planning Inspector
5th August 2016

PTO

ADDITIONAL COMMENTS:

Following the completion of the above report, a submission from the Department of Arts, Heritage, Regional, Rural and Gaeltacht Affairs was received by the Board, on the 8th August, 2016. The content of the report considered the proposed development in terms of architectural heritage and concluded that there is no information with the documents forwarded that suggests that the project designer has looked at the effect on the character of this area of the town in choosing a site in the landholding, or has assessed the design in the context of the ACA and other relevant development plan and local area plan objectives. Should the Board be minded to grant permission for the proposed development, the Department recommends the inclusion of two conditions in any grant of permission.

I have considered the issues raised in the Departments submission, as has the local authority in their assessment of the proposed development. There are no new issues arising from the submission and my recommendation for refusal remains the same.

A. Considine
Planning Inspector
16th August 2016