



An
Bord
Pleanála

Inspector's Report PL91.246703

Development	Retention for existing two storey extension constructed to rear of dwelling at No. 14 Baker's Walk, Rathkeale, County Limerick.
Planning Authority	Limerick City and County Council.
Planning Authority Reg. Ref.	16/258.
Applicant(s)	James Kealy.
Type of Application	Permission for Retention.
Planning Authority Decision	Refuse Retention.
Appellant(s)	James Kealy.
Type of Appeal	1 st party versus decision.
Observer(s)	None.
Date of Site Inspection	1 September 2016.
Inspector	Stephen Rhys Thomas.

1.0 Site Location and Description

1.1. The site which is the subject of the appeal is located within Baker's Walk, a small housing estate located off Well Lane in Rathkeale, County Limerick. The subject site is number 14 Baker's Walk, which is located at the western end of the scheme and faces the only access street to the estate. Most houses in the estate are in a completed state, however most are not occupied and windows and doors are set behind protective wire grills. The doors and windows of the subject dwelling have been damaged and the overall garden is not defined or landscaped. Overall, the estate is in poor repair with a large degree of damage to properties and debris in the streets and open spaces.

1.1.1 The rear return of the subject dwelling rises straight from the boundary wall, which backs on to a narrow unmetalled laneway. The rear boundary treatment appears unfinished and is at a different height to adjacent boundary treatments which provide approximately two metre high walls to the rear of dwellings. There is a drop in ground level from the subject site to the laneway to the west. A first floor window (broken at present) is located on the rear/western elevation of the two storey rear extension. There is no first floor window on the rear two storey extension on the northern elevation as indicated on planning documentation submitted by the applicant.

1.1.2 Unconnected service pipes exit the rear of the dwelling at above ground level of the rear laneway.

Appendix 1 contains photographs of the site and surrounds.

2.0 Proposed Development

2.1. Permission is sought for:

- The retention of a two storey extension constructed to rear of dwelling. The rear extension takes the form of a 2.5 metre by 2 metre, 6.2 metre high

extension return, constructed of materials which match the main dwelling. The extension has a gable pitched roof profile similar to the main dwelling, with a ground floor window which serves a toilet and a first floor window which provides light to a study.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to refuse retention permission for a single reason, summarised below:

- The design and location of the extension will result in the removal of private open space associated with the dwelling, which results in overdevelopment of the site and loss of residential amenity for the occupants of the dwelling.
- The development would result in overlooking of the adjoining property.
- Injurious to the amenities and properties in the area, and set an undesirable precedent.

3.2. Planning Authority Reports

3.2.1 Planning Report

Basis for the planning authority decision includes:

The site is located within the Rathkeale Local Area Plan. No explanation has been submitted which explains why the rear extension has not been removed. A first floor window on the rear elevation has not been shown on plans and increases the potential for overlooking. The rear garden space is limited and has been further reduced by the development. The current application does not address previous reasons for refusal on the site and results in deficient private amenity space.

3.3. Other Technical Reports

None received.

3.4. Third Party Observations

None received.

4.0 Planning History

4.1. Subject site.

4.1.1 Planning authority register reference 12/334.

Permission granted for numerous amendments including first floor extensions to a number of houses and specifically the revision of house type and demolition of two storey annex to rear of houses 14 and 15. Relevant conditions are summarised below:

- Condition 3, in which drawings submitted on 7th January 2013 indicates the removal of the rear return the subject of this current appeal.
- Condition 4 relates to the removal/block up of gable windows on dwelling units 5,6,7,8,10,13 and 16.
- Condition 5 relates to the amendment of the rear garden (south side) of the subject site, as per additional information submitted and as evidenced with photographs and drawings submitted for written agreement with the planning authority.

4.1.2 Planning authority register reference 05/1623.

Permission granted for construction of 18 no. detached dwellings.

4.2. Nearby sites.

4.2.1 Planning authority register reference 15/876.

Permission granted for the retention and completion of the ground and first floor extension to the rear of dwelling currently under construction (site number 17).

5.0 Policy Context

5.1. Development Plan

5.1.1 Limerick County Development Plan 2010-2016

Table 10.1 Design Guidelines for Urban Residential Developments - Minimum Rear Garden length - In general a minimum back to back distance between dwellings of 22 metres shall apply in order to protect privacy, sunlight and avoid undue overlooking. Reductions will be considered in the case of single storey developments and/or innovative schemes where it can be demonstrated that adequate levels of privacy, natural lighting and sunlight can be achieved.

Section 10.5.7 House Extensions

In assessing an application for a house extension, the Planning Authority will have regard to the following: -

- ‘Sustainable Residential Development in Urban Areas’, 2009 and the accompanying ‘Urban Design Manual – A Best Practice Guide’ in considering the existing site density and remaining private open space.
- High quality designs for extensions will be required that respect and integrate with the existing dwelling in terms of height, scale, materials used, finishes, window proportions etc.
- Pitched roofs will be required except on some single storey rear extensions. Flat roof extensions visible from public areas will not normally be permitted.
- Impact on amenities of adjacent residents, in terms of light and privacy. Sunlight and daylight assessment may be required.

5.1.2 The site is located adjacent to the boundary of the Rathkeale Architectural Conservation Area and within the boundary of the Record of Monument and Places – Historic Town.

5.2. **Rathkeale Local Area Plan 2012-2018** – site is subject to zoning objective ‘existing residential’.

Appendix 1 contains the relevant land use zoning maps.

6.0 **Natural Heritage Designations**

None relevant to this urban site.

7.0 **The Appeal**

7.1. **Grounds of Appeal**

The grounds of appeal can be summarised as follows:

- Exempted Development - The applicant laid out the dwelling, including the ground floor annex, based upon the drawings which formed part of a planning permission and followed advice from building contractors with regards to exempted development extensions.
- Planning History - The applicant was aware of planning permission register reference 12/334 which permitted amendments and required demolitions, in this case the applicants rear extension.
- Unfairness - The applicant notes that other houses with similar rear extensions were subsequently permitted to retain such structures, but in his case its removal was necessitated.
- Private Amenity Space – the applicant states that the private amenity space afforded to the dwelling amounts to 103.3 sq.m., there is no minimum

requirement in the County Development plan for private amenity space. In excess of 25 sq.m. is all that is required for 'exempted development'.

- Undue overlooking – the first floor window would overlook the gable wall of a neighbouring property to the north west.
- Building on the boundary – the applicant states that the owner of the neighbouring property states no objection to the construction of the extension on the boundary. A letter from the property owner confirms this.

7.2. Planning Authority Response

The Planning Authority has no further comment.

7.3. Observations

There are no observations with reference to this appeal. It is however noted that reports requested by An Bord Pleanála from Failte Ireland, An Chomhairle Ealaíon, The Heritage Council, An Taisce and the Development Applications Unit of the Department of Arts, Heritage and The Gaeltacht, have not been received. The specified period for the receipt of these reports has elapsed.

8.0 Assessment

8.1. The main issues in this appeal are those raised in the grounds of appeal and the reason for refusal, I am satisfied that no other substantive issues arise. The issues can be dealt with under the following headings:

- Residential Amenity
- Rathkeale Local Area Plan
- Building on the Boundary
- Development Contributions
- Appropriate Assessment

8.2. Residential Amenity

8.2.1 The Council's reason for refusal highlights the negative impact that the rear extension has on the removal of private open space associated with the dwelling and concludes that such a loss of space would lead to overdevelopment of the site. It is noted that almost a third of the dwellings in this housing layout are provided with rear gardens of shallow depth, between 2 to 7 metres. In addition, where private amenity space is quite minimal to the rear of the dwelling, as in the case of the subject site, a wide side garden is provided which results in private amenity spaces of approximately 60 sq.m. and in some cases up to 100 sq.m. I consider that given the permitted and existing layout, private amenity space has been provided to the side of dwellings and not solely provided as traditional rear gardens with an 11 metre depth.

8.2.2 The private amenity space associated with the subject site amounts to approximately 100 sq.m. The construction of the 5 sq.m. rear extension associated with the subject dwelling results in a slight reduction to the overall private amenity space. Consequently, the provision of the rear extension has marginally reduced the overall private amenity space afforded to the occupants of the dwelling, on a site which was originally permitted with an unconventional private amenity space and very narrow rear yard. Therefore, I consider that the rear extension only marginally impacts upon the overall amenity of the dwelling and thus, overdevelopment of the site has not taken place and there is no perceptible loss of residential amenity for the occupants of the dwelling.

8.3. Rathkeale Local Area Plan

8.3.1 The Council's reason for refusal also identifies the potential for overlooking of the adjoining property, which results from a first floor window. This first floor window overlooks a vacant property to the south west. The plans submitted as part of this appeal and planning application are inaccurate and detail a first floor window located on the north western elevation. The window provides light to a study and overlooks land which is zoned Town Centre in the Rathkeale Local Area Plan (LAP).

Residential development is encouraged in this land use zoning and the lands to the southwest of the site are identified as Opportunity Area 9. The Council's concerns with regard to the potential for overlooking maybe warranted were it not for the policy objectives contained within the LAP. The LAP, under Objective H4: Infill Development, Restoration and Town Renewal, states that it is an objective of the Council to consider on their merits proposals for residential development of rear plots where they can be adequately accessed, and where they would not affect existing or proposed private amenities, storage or parking requirements. Therefore, in combination with the existing development and the prevalence of existing and permitted first floor windows which are between 2 and 3 metres from the property boundary (sites 14 and 15), it is likely that any residential scheme planned for the lands to the south west would be designed so as to take account of an existing residential condition.

8.3.2 In addition, the LAP provides an indicative layout for Opportunity Area 9 which shows a large retail unit and surface car parking in the vicinity of the subject site. I consider that the placement of a first floor window on the rear two storey return will present overlooking opportunities and this may be useful for the provision of passive supervision of any new development which must take account of these factors and be designed accordingly. I conclude that the position of the first floor window will not result in undue overlooking to adjoining property and is therefore acceptable.

8.4. Building on the boundary

8.4.1 It is noted that the two storey rear extension, which is the subject of this appeal, is constructed on the property boundary with lands to the south west, as are other dwellings at sites 13 and 15. This is not factor which concerns the reason for refusal or the grounds of appeal, this may be a legal matter and therefore falls outside the scope of this assessment. It is noted however, that the rear boundary of the subject site does not match the heights of other boundary walls in the vicinity. In order to ensure the protection of residential amenity an appropriate condition should be attached to ensure the completion of this boundary wall.

8.5. Development Contributions

8.5.1 Limerick City and County Council has adopted a Development Contribution scheme under Section 48 of the Planning and Development Act 2000 (as amended) for the period 2014-2016. Appendix A of that document relates to residential development and outlines that domestic extensions in excess of 60 sq.m. will be charged at €20 per sq.m. The extension the subject of this appeal is less than the threshold, however, it is an application for retention and under section 11 of the Development Contribution scheme, applications for retention will be charged at the full rate. It is therefore recommended that should the Board be minded to grant permission that a suitably worded condition be attached requiring the payment of a Section 48 Development Contribution in accordance with the Planning and Development Act 2000.

8.6. Appropriate Assessment

8.6.1 Having regard to the nature and scale of the development it is proposed to retain within an established urban environment, no Appropriate Assessment issues arise and it is not considered that the development it is proposed to retain would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

9.0 Recommendation

9.1. I recommend that retention permission be granted, subject to conditions for the reasons and considerations as set out below.

10.0 REASONS AND CONSIDERATIONS

Having regard to the provisions of the Limerick County Development Plan 2010-2016, the Rathkeale Local Area Plan 2012-2018 and to the nature and scale of the development it is proposed to retain and to the pattern of development in the area, it is considered that subject to compliance with the following conditions, the

development it is proposed to retain would not seriously injure the amenities of the area or of property in the vicinity. The development it is proposed to retain would, therefore, be in accordance with the proper planning and sustainable development of the area.

11.0 CONDITIONS

1. The development shall be retained and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The development it is proposed to retain shall be amended as follows:

(a) The rear boundary wall of the site shall be raised in height and constructed in matching materials to align with the height of boundary walls to the north west and south west of the subject site.

Revised drawings and photographs showing compliance with these requirements shall be submitted to the planning authority within six months of the date of this order.

Reason: In the interests of visual and residential amenity.

3. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid within six months of the date of this order or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

Stephen Rhys Thomas
Planning Inspector

9 September 2016