



An  
Bord  
Pleanála

## Inspector's Report ABP 300839-18

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<b>Development</b>	2 dwellings, entrances and associated site works
<b>Location</b>	Monkshill, Rathkeale, Co.Limerick
<b>Planning Authority</b>	Limerick City and County Council
<b>Planning Authority Reg. Ref.</b>	17/27
<b>Applicants</b>	Jerry & Jimmy Gammell
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse
<b>Type of Appeal</b>	1st Party v. Refusal
<b>Appellants</b>	Jerry & Jimmy Gammell
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	28/03/18
<b>Inspector</b>	Pauline Fitzpatrick

## **1.0 Site Location and Description**

1.1. The site, which has a stated area of 0.59 hectares, is within a partly developed housing estate in an area known as Monkshill on the north-western outskirts of Rathkeale, Co. Limerick. Access is via an estate road which slopes up from the local road. To date 11 no. detached dwellings and 4 no. semi-detached dwellings have been constructed to the north and east of the appeal site. Footpaths and street lighting have been provided but the estate roads are not yet finished. The external finishes of the said dwellings consist of render with some having stone detailing to the front elevation. The appeal site is immediately to the south of a detached dwelling which is side-on to same. The shared boundary is delineated by a c.1.2 metre high block wall. The lands to the west are undeveloped and under grass. The site itself forms part of a larger area which has been covered in stone.

## **2.0 Proposed Development**

The application was lodged with the Planning Authority on the 17/01/17 with further details submitted on the 12<sup>th</sup> December 2017 following a further information request dated 09/03/17

Permission is sought for 2 no. semi-detached, two storey, three bedroom dwellings, each served by an access from the estate road. Each dwelling is to have a stated area of 155.72 sq.m. with rear private open space of between 121 and 124 sq.m.

The external finishes are to be a mix of stone and render.

Connection to site services in the estate are proposed. Surface water disposal is to be via a soakpit on each site.

The dwellings are for two brothers who currently live in caravans on family property.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

Refuse permission for three reasons which can be summarised as follows:

1. The proposal would be out of character with the existing pattern of development. It would constitute over development of the site resulting in deficient private open space and would injure the residential amenities.
2. The access arrangements adjacent to a junction would interfere with the safety and free flow of traffic on the public road.
3. The applicant has not demonstrated that the site is suitable for surface water disposal via soak pits.

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

#### **3.2.1. Planning Reports**

The 1<sup>st</sup> planning report dated 08/03/17 (countersigned) states that the proposal for two dwellings is out of keeping with the pattern of development. It should be reduced to one house with a site layout similar to adjoining sites. Further information is recommended seeking reduction in number of units, alterations to layout and details on water supply, foul sewer and soakpits. The 2<sup>nd</sup> report following FI dated 09/01/08 (countersigned) notes that the number of units and layout has not been altered. The proposed site layout, with the rear of dwellings backing onto the site of the dwellings to the north, would have a negative impact on the amenity of same. The proposed rear garden depth of 6.8 metres is deficient. The proposed parking, particularly for site 1, is not acceptable as the traffic movement into and out of the site would conflict with traffic movements at the road junction to the west. The soakpit test was not carried out. A refusal of permission for three reasons is recommended.

#### **3.2.2. Other Technical Reports**

The Area Engineer notes that there is an issue with the surface water network in the estate. The BRE 365 system should be approved and cross checked before permission is granted.

Environment Section recommends FI on the soakpits and disposal of foul effluent.

Mid West National Road Design Office has no observations.

### 3.3. Prescribed Bodies

Irish Water in a report dated 13/02/17 requires further information on individual metered water supply units and connections and sewer connections.

Transport Infrastructure Ireland has no observations.

## 4.0 Planning History

02/1811 – permission granted in 2003 to Richard O’Brien for 44 detached and semi-detached dwellings and outline permission for 3 detached dwellings on the overall site.

PL13.243306 (13/708) – permission refused to James Gammell in 2014 for two dwellings on a site to the south-east of the appeal site. Access was proposed from the estate road serving the appeal site. The reasons for refusal related to conventional suburban estate type housing development contrary to the ‘Residential Services Sites’ zoning in the Rathkeale LAP and prematurity pending preparation of a masterplan.

## 5.0 Policy Context

### 5.1. Development Plan

#### 5.1.1. Rathkeale Local Area Plan 2012-2018

The site is zoned existing residential. The purpose of this zoning is to ensure that new development is compatible with adjoining uses and to protect the amenity of existing residential areas.

#### 5.1.2. Limerick County Development Plan 2010 - 2016 (as extended)

Chapter 10 set out the Development Management Guidelines

Houses should be designed in such a manner as to minimise overlooking and overshadowing of adjoining residences and to facilitate future extensions to do likewise.

Table 10.1 Design Guidelines for Urban Residential Developments

- Front garden lengths should generally be 6 metres, but where ground floor dwellings have little or no front gardens a 'defensible space' must be created behind the public footpath, such as a planting strip. Notwithstanding this, the importance of maintaining building lines and providing adequate car parking will also be taken into account. Variation in building lines will be permitted provided that there is overall coherence to the design.
- 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.

## 5.2. Natural Heritage Designations

None

## 6.0 The Appeal

### 6.1. Grounds of Appeal

The submission by Seamus McElligott on behalf of the appellants against the planning authority's notification of decision to refuse permission refers. It is accompanied by copies of the further information submission to the planning authority. The appeal can be summarised as follows:

- The site is zoned residential.
- There is an existing pattern of semi-detached properties in the estate. Any of the detached properties built are modest with large plots for caravan parking. The proposed development is appropriate.
- The dwellings will front onto the main spine road which would be a more appropriate design.
- There is adequate foul sewer capacity.
- Storm water can be disposed by way of soak pits under BRE365 on each site as has been used in the vicinity. Any deficiency in the estate is a matter for

enforcement with the site developer. There have been no issues of flooding in the estate.

- The site is within a residential estate where the movement of traffic is self-regulating at low speeds. The proximity of the site entrances to the road junction would not affect the movement of traffic in the scheme. A comparable issue arose in appeal ref. PL91.246954.
- The design has taken account of its environs. No overlooking of adjacent property would arise.
- Each dwelling has private amenity space of 121-123 sq.m.
- There are inadequate zoned lands in Rathkeale.
- The current LAP is not fit for purpose.

## 6.2. Planning Authority Response

None

## 6.3. Observations

None

## 7.0 Assessment

I consider that the issues arising can be assessed under the following headings:

1. Compatibility with existing pattern of development
2. Access and site services
3. Appropriate Assessment

### 7.1. Compatibility with existing pattern of development

- 7.1.1. The site is within an estate zoned 'existing residential'. The proposal for two dwellings would accord with same.
- 7.1.2. The estate as constructed to date comprises of approx. 15 dwellings, both detached and semi-detached in design, developed on foot of a permission granted under

planning reference 02/1811 for 44 dwellings and outline permission for 3 dwellings. On a site of approx. 3 hectares the 46 units equated to a density of approx. 15.6 units per hectare. I note that the remainder of the lands which was subject of the said permission and which are as yet undeveloped is zoned 'Residential Development Area – Phase 2' in the Rathkeale LAP. As per objective H2 development of sites in phase 2 can only proceed when at least 50% of all development in phase 1 areas is completed.

- 7.1.3. The layout and pattern of development in the estate to date is characterised by a somewhat uniform house design, whether detached or semi-detached, with clearly defined building lines and front and rear garden areas. The site subject of the appeal and that immediately to the east were originally designated as detached dwelling sites matching those developed to the north with their side boundaries to be onto the main estate road to the south.
- 7.1.4. In the context of the Guidelines for Sustainable Residential Development in Urban Areas and the need for increased densities, a balance has to be struck between the reasonable protection of the amenities and privacy of adjoining dwellings, the protection of established character and the need to provide for further residential development, ensuring the efficient use of scarce, serviced, zoned lands.
- 7.1.5. I submit that the established layout and pattern of development in the immediate vicinity does not, of itself, preclude development which does not mirror same. I also note that in view of the semi-detached dwellings developed to date the principle for such dwelling type cannot be considered to be at variance with that adjoining as contended by the planning authority. However the two dwellings are to be orientated so as to back onto the detached dwelling which is side-on and to the north of the site. The front building line to the main estate spine road is generally acceptable with a setback of 2 metres from the footpath to be maintained. Although falling short of the 6 metre requirement as set out in the Rathkeale LAP I consider that subject to the appropriate boundary delineation that the setback is acceptable. One parking space is to be provided for each dwelling which accords with the vehicular parking requirements for a 3 bedroom dwelling as set out Table 10.5 of the County Development Plan (as extended). The western building line will be forward of that established by the two dwellings to the north by approx. 2 metres, but subject

to suitable boundary treatment to screen rear gardens from public view and preclusion against vehicular access from same, is considered acceptable.

- 7.1.6. Each dwelling is to have in excess of 120 sq.m. of private open space to the rear which is more than adequate to serve such three bedroom dwellings. As to why the planning authority considers such provision to fall short is unclear nor does it state the parameters against which it was assessed. I note that neither the County Development Plan or the Rathkeale LAP set out minimum requirements in this regard.
- 7.1.7. The back to back separation distance recommendation of 22 metres does not strictly apply in this instance as the dwellings will be side on to the dwelling to the north. Whilst the rear garden lengths are to be in the region of 6.896 metres I note that no windows serving habitable rooms at 1st floor level are proposed in the rear elevation. Opaque glazing to the bathroom windows would be the norm. As such issues of overlooking are addressed. A 2 metre high boundary wall along the rear boundary will be required to protect the amenities of adjoining property.
- 7.1.8. I consider that the house design, height and scale takes due cognisance of that developed within the estate to date and proposes to mirror the external finishes used. I therefore consider that it is generally appropriate and consistent with the existing pattern of development in the vicinity. Whilst the window in the side elevation of dwelling no.1 to serve bedroom no. 3 is acceptable, that proposed for dwelling no.2 will overlook the adjoining undeveloped plot. In view of the 2nd window serving the bedroom proposed to the southern elevation I recommend that the window in the side elevation be omitted. In this regard I note that the side elevation drawings do not accurately reflect the details given on the floor plans.
- 7.1.9. Thus, subject to conditions I consider that the proposal would be acceptable having regard to the existing pattern of development in the immediate vicinity and protection of their amenities whilst providing for an acceptable level of residential amenity for prospective occupants. In this context, it is considered that the scale of the development is appropriate and does not constitute over development of the site. I therefore do not concur with the planning authority's view in this regard.



## 7.2. Access and Site Services

- 7.2.1. To date the main estate road services 15 dwellings only. Whilst the proposed parking arrangement for the western dwelling is in close proximity to the junction of the main estate road and the spur serving the two dwellings to the north, I submit that the said two dwellings would not give rise to such a level of vehicular movements as to raise concerns in terms of conflicting manoeuvres. Therefore I do not concur with the planning authority in this regard.
- 7.2.2. It is proposed to connect into the site services within the estate. It has not been taken in charge by the local authority and, as such, the consent of the estate owner would be required to allow for same. Evidence of contract of sale with the site owner was submitted by way of further information. A grant of permission in this instance would not override the necessity to secure the necessary consents. Should permission be granted the applicants should be advised of the provisions of Section 34(13) of the Planning and Development Act, 2000, as amended, whereby a person is not entitled solely by reason of a permission granted to carry out any development and to conclude that any grant of permission for the subject proposal would not, in itself, confer any right over private property.
- 7.2.3. In relation to the issues arising with the surface water drainage which formed part of the wider development approved under ref. 02/1811, it is proposed to dispose of surface water runoff directly to ground on the sites via soakaways designed in accordance with the recommendations of BRE 365. In this respect I would advise the Board that a similar proposal was made on an application subject of an appeal under ref PL13. 243306 which pertained to a site to the south and which was accepted by the Planning Authority in its decision to grant permission. I note that the Board in its decision to refuse permission did not refer to specific concerns in terms of site services. On balance and having regard to the limited nature and extent of the development I submit that the proposals are generally acceptable provided they are employed as a temporary solution pending the availability of a connection to a dedicated surface water drainage network.

### **7.3. Appropriate Assessment**

- 7.3.1. Having regard to the nature and scale of the proposed development on a serviced, zoned site within the town of Rathkeale, it is my opinion that no appropriate assessment issues arise and that the proposed development would not be likely to have a significant effect, either individually or in combination with other plans or projects, on any Natura 2000 site.

### **8.0 Recommendation**

- 8.1. I recommend that permission for the above described development be granted for the following reasons and consideration subject to conditions.

### **9.0 Reasons and Considerations**

Having regard to the 'Existing Residential' zoning objective for the area as set out in the Rathkeale Local Area Plan 2012-2018, to the pattern of development and planning history in the area and to the nature, form, scale and design of the proposed development, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential amenities of the area or of property in the vicinity, would be acceptable in terms of traffic safety and convenience and would not be prejudicial to public health. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

### **10.0 Conditions**

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further particulars submitted on the 12<sup>th</sup> day of December 2017, 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. Details of the materials, colours and textures of all the external finishes to the proposed dwellings shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** In the interest of visual amenity.

3. Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services. Full details of the proposed soakpits shall be submitted to the planning authority for written agreement prior to commencement of development. No surface water shall discharge onto adjoining properties or the public road.

**Reason:** In the interest of public health.

4. (a) Screen walls shall be provided along the side boundaries of the two dwellings (western boundary of House No.1 and eastern boundary of House No.2 as delineated on the site layout plan received by the planning authority on the 17<sup>th</sup> day of January 2017) to screen rear gardens from public view.  
Such walls shall be two metres in height above ground level. The said walls shall step down in height to the front garden area. No vehicular or pedestrian access shall be permitted in the side boundary walls.
- (b) The screen walls to the side elevations shall be constructed in stone to match the stone used in the dwellings or concrete block or similar durable materials and, if in concrete block, shall be suitably capped and rendered on the side facing public areas.
- (c) Boundary walls to the front garden areas and along the front (southern) boundary shall be to a height matching the front boundary walls to the dwellings to the north of the site shall be constructed. They shall be suitably

capped and finished in a material that matches the external finish of the dwellings.

- (d) The rear gardens shall be bounded with 2.0 metre high concrete block walls, suitably capped and rendered, on both sides.

Plans and details of all boundary treatments shall be submitted to the planning authority for written agreement prior to commencement of development.

**Reason:** in the interest of residential and visual amenity.

5. (a) The first floor window in the eastern (side) elevation serving bedroom no.3 in house no. 2 as delineated on Drawing No. 2016.17.203 received by the planning authority on the 17<sup>th</sup> day of January 2017 shall be omitted. (b) The windows on the northern elevations at first floor level shall be glazed with obscure glass.

Revised plans with the alterations shown thereon shall be submitted to the planning authority for written agreement prior to commencement of development.

**Reason:** In the interest of protecting the amenities of adjoining property.

6. All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development.

**Reason:** In the interest of visual and residential amenity.

7. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including noise management measures and off-site disposal of construction/demolition waste.

**Reason:** In the interests of public safety and residential amenity.

8. The site and building works required to implement the development shall be carried out only between the hours of 0800 to 1800 Monday to Fridays, between 0800 to 1400 hours on Saturdays and not at all on Sundays and Public Holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

**Reason:** In order to safeguard the residential amenities of adjoining property in the vicinity

9. 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 prior to commencement of development 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.

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**Pauline Fitzpatrick**  
**Senior Planning Inspector**  
**April, 2018**