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Bord  
Pleanála

## Inspector's Report ABP 301703-18

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<b>Development</b>	Amendment to planning permission 15/160 and 16/707 to provide for revised boundary wall and site entrance detail.
<b>Location</b>	Lower Main Street, Rathkeale, Co. Limerick.
<b>Planning Authority</b>	Limerick City and County Council
<b>Planning Authority Reg. Ref.</b>	17/1005
<b>Applicant</b>	John O'Connor
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse
<b>Type of Appeal</b>	1 <sup>st</sup> Party v. Refusal
<b>Appellant</b>	John O'Connor
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	27/07/18
<b>Inspector</b>	Pauline Fitzpatrick

## 1.0 Site Location and Description

This constitutes the 2<sup>nd</sup> appeal for works on the subject site. File ref. PL91.246348 refers.

The site subject of the appeal is an end of terrace site that fronts onto Lower Main Street in the centre of Rathkeale with a laneway providing pedestrian access to a public car park bounding the site to the east. The original two storey building on the site has been demolished with construction on a replacement dwelling nearing completion. Part of the side stone boundary wall onto the car park has been removed to facilitate construction works. A storage shed with access from the car park bounds the site to the south.

## 2.0 Proposed Development

Permission is sought for amendments to the approved plans (refs.15/160 & 16/707) to allow for a revised boundary wall and vehicular entrance along the side boundary onto the existing car park.

During the assessment of the original proposal under ref. 15/160 the applicant was required to set back the boundary wall 1 metre from that as proposed.

The agent for the applicant in support of the application states the requirement to set back the boundary is not logical following the grant of permission for the storage building to the south and that it makes sense to put a straight line between the new builds to form the boundary line. The location of the vehicular entrance as close as possible to the dwelling, is the most practical solution and will have less impact on car parking spaces in the car park.

The PA in a further information request dated 19/12/17 required revised plans delineating the entrance and boundary wall in line with permission 15/160 and identification of all changes proposed from those permitted under 16/707.

A response dated 06/04/18 is accompanied by a masterplan proposal for the Mart Site. The community building granted under re. 12/487 will negatively impact on the straight road alignment of the proposed relief road. The requirement to push back the boundary wall will be at odds with this. The original application was on the

understanding that there was no parking restriction to the front of the applicant's site. The parking provision within the curtilage is seen as a reasonable approach.

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

Refuse permission for the following two reasons:

1. The development would contravene materially condition no.1 of planning permission 15/160 and condition no. 6 of planning permission 16/707.
2. The proposed boundary wall and entrance location would prejudice the alignment of the proposed through road from the junction of New Road and Main Street to the R518 Ballingarry Road, as identified for Opportunity Area 9 in the Rathkeale Local Area Plan 2012.

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

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

The 1<sup>st</sup> Planner's report states that the applicant has previously been advised that the proposed vehicular entrance is not acceptable. No justification has been submitted for this entrance location. Further information recommended on proposals to locate the entrance and boundary wall in line with the previous permission.

The 2<sup>nd</sup> Planner's report following further information considers that as per the previous decisions on the site that the proposed new location of the boundary wall and entrance would prejudice the alignment of the through road from the junction of New Road and Main Street to the R519 as identified for Opportunity Area 9 in the LAP. A refusal of permission for two reasons is recommended.

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

None

#### **3.3. Prescribed Bodies**

None

### 3.4. **Third Party Observations**

None

## 4.0 **Planning History**

15/160 – permission granted for demolition of existing dwelling and construction of a replacement dwelling and vehicular access to the rear from the adjoining car park.

PL91.246348 (15/1071) – permission refused in June 2016 on appeal for boundary wall and vehicular entrance for two reasons which can be summarised as follows:

1. Would contravene materially condition 1 attached to permission ref. 15/160.
2. The boundary wall and entrance location would prejudice the alignment of a proposed through road from the junction of New Road and Main Street to the R519 Ballygarry Road as identified for Opportunity Area 9 in the Rathkeale LAP 2012.

16/707 – permission granted in March 2017 for completion of dwelling as constructed from that previously approved under 15/160.

Condition 6 stated that the proposed relocation of the rear vehicular entrance and rear boundary wall was not permitted and that they are to be constructed as permitted under ref. 15/160.

12/487 – permission granted for storage building on the site immediately to the south of the appeal site.

## 5.0 **Policy Context**

### 5.1. **Development Plan**

Rathkeale Local Area Plan 2012-2018

Policy UD1 - to promote high quality design throughout the Plan area and ensure that future development in Rathkeale is guided by principles of best practice and sustainability.

The site is within an area zoned Town Centre and is within Opportunity Site 9. As part of the redevelopment of the opportunity site a through road for vehicular traffic

from the junction of New Road and Main Street to the R518 Ballingarry Road should be provided. The road would run through part of the Council owned car park. An indicative layout for the opportunity site is provided on which the through road is delineated.

## 5.2. **Natural Heritage Designations**

None in the vicinity

## 6.0 **The Appeal**

### 6.1. **Grounds of Appeal**

The submission by Seamus McElligott Planning and Design Consultancy on behalf of the applicant against the planning authority's notification of decision to refuse permission can be summarised as follows:

- A masterplan has been prepared for the overall lands in Opportunity Site 6 (sic).
- The structure granted permission under 12/487 compromises the straight line continuation of new Street as envisaged by the plan. It is now unreasonable to impose a 1 metre setback of the boundary wall thereby destroying his car parking and private amenity space.
- The applicant's wall would have no impact on the master plan concept.
- The report on the previous appeal presumed the setback was to facilitate the site entrance. This is an irrelevant matter in an urban situation.
- The approved kitchen window is just 730mm from the corner. If the wall is to be set back 1m it is will impinge on this window.
- The optimum solution is to be take a straight line from the corner of the building permitted under 12/487 and the corner of the dwelling as permitted under 17/1005 (sic)

## 6.2. **Planning Authority Response**

None

## 6.3. **Observations**

None

## 7.0 **Assessment**

This constitutes the 2<sup>nd</sup> appeal with regard to the positioning of the boundary wall and vehicular entrance serving a dwelling permitted under ref. 15/160 (as amended by way 16/707). I refer the Board to the Inspector's report on file ref. PL91.246348.

Consequent to the Board's refusal the applicant sought and secured permission for retention of the dwelling as constructed on the site in March 2017 under ref. 16/707. The dwelling is nearing completion with part of the original side wall demolished to facilitate construction. It is larger than that as originally permitted with a stated floor area of 179.78 sq.m. (original - 159.87 sq.m.). As can be extrapolated from the relevant floor plans the rear return is larger than originally permitted. I note reference to the proximity of a kitchen window in the rear elevation to the boundary. As extrapolated from the relevant plans it is only marginally closer to the boundary than as originally permitted under 15/160. I also note that the eastern boundary as delineated on the relevant site layout plan accompanying 16/707 appears to correspond with the requirements of the original permission, namely a 1 metre setback from the original boundary line. Condition 6 attached to the decision further clarifies this in stating that the proposed relocation of the rear vehicular entrance and rear boundary wall was not permitted and that they were to be constructed along the line as permitted under planning permission 15/160. The applicant did not appeal this decision.

I also note that the storage shed as permitted under ref. 12/487 has been constructed to the south with a building line marginally forward of the boundary line as required on the appeal site.

The current proposal now entails a boundary wall which would run in a straight line from the rear wall of the dwelling as constructed to the corner of the said shed. Of specific note is the fact that the irregular alignment and 'kink' in the original boundary wall has been removed with the boundary set behind same. The relocation of the vehicular entrance northwards from that originally proposed and the installation of a sliding gate are also proposed.

It is noted that the original permission on the site allowed for a vehicular access from the car park.

I consider that the amendments as proposed are a reasonable compromise and would not impact on the potential line of the road alignment as shown on the indicative layout for Opportunity Site NO. 9 in the Rathkeale LAP as to prejudice its future provision. I therefore recommend permission for the proposed amendments be granted.

### **Appropriate Assessment**

Having regard to the nature and scale of the development within Rathkeale town centre, 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.

## **8.0 Recommendation**

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

## **9.0 Reasons and Considerations**

Having regard to the nature and scale of the proposed development, the size and configuration of the subject site, the planning history on the site and the pattern of development in the vicinity, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of area, would be acceptable in terms of traffic safety and convenience, and 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 plans and particulars submitted on the 6<sup>th</sup> day of April 2018 , except as may otherwise be required in order to comply with the following conditions.

**Reason:** In the interest of clarity.

2. The access gates shall open inwards or by a sliding mechanism only.

**Reason:** In the interest of clarity and to ensure public safety

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**Pauline Fitzpatrick**  
**Senior Planning Inspector**

**August, 2018**