



An
Bord
Pleanála

Inspector's Report ABP 313594-22.

Development	Retention of single storey dwelling house and for permission to convert attic space to bedrooms with roof windows and all associated site works including 2 metre high screen wall.
Location	Pound Lane, Rathkeale, Co. Limerick.
Planning Authority	Limerick City and County Council
Planning Authority Reg. Ref.	22233
Applicant	Tomas Kealy
Type of Application	Permission
Planning Authority Decision	Refuse permission
Type of Appeal	First Party
Appellant	Tomas Kealy
Observers	None
Date of Site Inspection	2 nd of May 2023
Inspector	Siobhan Carroll

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1.0 Site Location and Description

- 1.1. The appeal site is located in the centre of the town of Rathkeale, Co. Limerick. It is situated on the northern side of the Main Street and accessed off Pound Lane. The site is located within a cul-de-sac to the southern end. Immediately to the north of the site there is of a row of four detached houses and opposite the site are three separate sites which are hard surfaced with vehicular access.
- 1.2. The site has a stated area of 0.043 hectares. It is occupied by a single storey detached dwelling with a floor area of 104sq m. The dwelling is setback circa 3m from the footpath to the front. There is a concrete area immediately to the southern side of the dwelling. The remaining area of the site to the south of the dwelling is a partially grass area with piles of earth and construction and demolition materials.

2.0 Proposed Development

- 2.1. Permission is sought for the retention of single storey dwelling house and for permission to convert attic space to bedrooms with roof windows and all associated site works including 2 metre high screen wall.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority refused permission for the following reason.

1. The development as proposed and the precedent which a grant of permission would set for similar type developments would result in the loss of a significant amount of the public open space provided as part of planning permission 12/102 and 14/1035 for the wider estate. Additionally the size and scale of the proposed development on the plot on which it stands represents overdevelopment of the site. Therefore the proposed development would seriously injure the amenities, depreciate the value of properties in this area and would be contrary to proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- In relation to the conversion of the attic space it was considered that it meets the requirement of 2.4m floor to ceiling height as per the Building Regulations. Regarding the private open space to the south of the dwelling and to the front and rear of the property the provision is inadequate. It is highlighted in the report that there is a long planning history and enforcement history on the site. Under Reg. Ref. 07/1540 permission was granted for 4 no. detached dwellings and 2 no. semi-detached dwellings with each site having a 11m rear garden. A further application was made under Reg. Ref. 11/210 for the retention of the houses with reduced rear gardens of between 5.5m to 1.2m and permission was refused. Under Reg. Ref. 12/102 permission was granted for the retention of houses 1 - 4 with the removal of the partially constructed house 5 & 6 to provide a larger area of open space to compensate for the deficient rear gardens. The location of the house which is proposed for retention under this application is within the area of public open space. Under Reg. Ref. 14/1035 permission was granted for 3 detached dwellings, the open space has been included in the overall site. Under Reg. Ref. 17/642 permission was sought for the construction of a new dwelling on part of the public open space which is the location of the dwelling on the current application. Permission was refused by the Board on the basis of the size and scale and overdevelopment and loss of public open space. The report of the Planning Officer concluded that the proposed development to retain a dwelling on part of the public open space provided under Reg. ref. 12/102 and Reg. Ref. 14/1035 is not considered acceptable. A refusal of permission was recommended on that basis.

3.2.2. Other Technical Reports

- 3.2.3. Roads – This application is located within a private estate. It has not been identified how stormwater generated within the site is accommodated. If it is piped to a network within the estate that this in turn outfalling to the public storm network then this is to be identified and outlined in a revised drawing. The applicant should be conditioned to replace a 20m section of the footpath along the front of the site at the

southern side which is broken up and damaged. Should this estate be taken in charge this footpath will need to be in a good condition.

3.2.4. Local Authority Archaeologist – No observation

3.2.5. Conservation Officer – Refusal recommended on the basis of the previous decision in respect of the site and the nature of additional development sought at attic level.

3.3. **Prescribed Bodies**

3.3.1. Irish Water – No objection subject to water/or wastewater connection agreements.

3.4. **Third Party Observations**

- None

4.0 **Planning History**

Reg. Ref. 17/642 & PL91.249305 – Permission was refused for the construction of a dwelling, plot entrance, connection to public services including all associated site works. Permission was refused for the following reason.

Having regard to:

- The small size of the plot,
- The large scale of the proposed house,
- The proximity of the proposed house to site boundaries, in particular the rear boundary,
- The inadequate levels of private open space serving the proposed house,
- The pattern of development in the area and the planning history of the area,

It is considered that the proposed development would represent over-development of the site, would fail to provide a satisfactory standard of residential amenity, and would seriously injure the amenities of the area and of property in the vicinity. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

Reg. Ref. 14/1035 – Permission was granted for the construction of 3 no. detached dwellings, connection to public services, including all associated site development works. The site area under this permission includes the entire cul-de-sac of development which includes the subject site which is indicated as open space area.

Reg. Ref. 12/102 – Permission was granted for changes to proposal previously granted under planning reference 07/1545 including changes to elevations and internal layout of dwellings 1, 2 & 3 and retention of dwelling no. 4 as constructed, changes to site layout and site boundary and Planning Permission for the removal of partially constructed semi-detached dwellings 5 & 6 to facilitate new open space and all associated site works. The area under this permission includes the entire cul-de-sac of development which includes the subject site.

Reg. Ref. 07/1545 – Permission was granted for retention of existing divisional boundary walls that form 5 no. individual sites (one of which is for a semi-detached house) together with common access road and green areas. Permission sought for completion of service connections to each individual site together with the completion of the entrance from Pound Lane, completion of the main access roads and footpaths etc. Permission sought for 4 no. two storey detached houses and two no. semi-detached houses together with associated site works. The layout as granted was for five detached dwellings.

5.0 Policy Context

5.1. Limerick Development Plan 2022 – 2028

5.1.1. Chapter 11 refers to Development Management Standards

5.1.2. Section 11.4 refers to Residential Development – Quality Standards

5.2. Rathkeale Local Area Plan 2023 – 2029

5.2.1. The appeal site at Pound Lane is located on lands which have two zonings. The northern section of the site is zoned Existing Residential. Objective: To provide for residential development, protect and improve existing residential amenity. Purpose: This zoning reflects established housing areas. Existing residential amenity will be protected while allowing appropriate infill development. The quality of the area will be

enhanced with associated open space, community uses and where an acceptable standard of amenity can be maintained, a limited range of other uses that support the overall residential function of the area, such as schools, creches, doctor's surgeries, playing fields etc.

- 5.2.2. The southern section of the appeal site is zoned Town Centre. Objective: To protect, consolidate and facilitate the development of Rathkeale's commercial, retail, educational, leisure, residential, social and community uses and facilities. Purpose: To consolidate Rathkeale's Town Centre through densification of appropriate commercial and residential developments ensuring a mix of commercial, recreational, civic, cultural, leisure uses and urban streets, while delivering a high-quality urban environment, which will enhance the quality of life of residents, visitors and workers alike. The zone will strengthen retail provision in accordance with the Retail Strategy for the County Limerick, emphasise urban conservation, ensure priority for public transport, pedestrian and cyclist, while minimising the impact of private car-based traffic and enhancing the existing urban fabric.
- 5.2.3. The appeal site is located within a Special Area of Development Control as designated in the Plan. Figure 6: Special Area for Temporary Private Sites for Motorised Vehicles, Mobile Homes and Caravans.
- 5.2.4. Special Development Area for temporary private sites for mobile homes/caravans. Objective: To facilitate a limited number of temporary private sites for mobile homes/caravans for extended family members within the curtilage of existing dwellings. Purpose: To accommodate the nomadic Traveller families on their return during winter to extended family living in the town.

5.3. **Natural Heritage Designations**

- 5.3.1. There are no designated sites in the immediate area.

5.4. **EIA Screening**

- 5.4.1. Having regard to the limited nature and scale of the proposed development, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental assessment can therefore be excluded at preliminary examination.

6.0 The Appeal

6.1. Grounds of Appeal

A first party appeal was submitted by John Barrett Architectural Consultant on behalf of the applicant Thomas Kealy. The issues raised are as follows.

- The refusal to grant permission is on the basis that the development as proposed would set a precedent for similar type developments, which would result in significant loss of public open space providing for the wider estate. Also, that the size and scale of the proposed development represents an overdevelopment of the site and that the proposed development would depreciate property value in the area, negatively affect amenities and would be contrary to proper planning guidelines.
- The history of the site goes back to 2007 when under Reg. Ref. 07/1545 permission was granted for two no. semi-detached houses on the applicant's section of the multi-dwelling development area.
- It is stated that the Planning Authority has already set a precedent in granting Reg. Ref. 11/351, Reg. Ref. 12/413, Reg. Ref. 13/307 and Reg. Ref. 16/951 in lots surrounding the applicant's property. The permissions all provided for the development of two-storey dwellings on sites smaller than the applicant's site and without any green space provided.
- It is submitted that the properties in the nearby Fairview area are of significantly higher density and have no green space provided.
- The applicant is seeking permission for the retention of a single storey dwelling which represents half the density of the neighbouring sites which have been permitted.
- Permission is sought for the conversion of the attic space internally without any increase in the footprint of the dwelling.
- The proposed development represents a density of 26 residential units per hectare.

- It is set out in the guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (2009) that centrally located sites have a density of 30-40 dwelling houses per hectare with sites at the edge of centre locations recommended at 20-25 dwelling houses per hectare.
- Therefore, it is refuted that the size and scale of the development on the plot represents overdevelopment of the site.
- The applicant is seeking to construct a screen wall of 2 metres on the southerly border of the site guaranteeing the safety of the space. This wall will serve to screen the dwelling from houses to the rear on the Main Street of Rathkeale. It would also address the danger of the 2m and higher drop onto the adjoining property which will remain when the fill material onsite is removed as per the Enforcement Notice DC-457-21.
- The Planning Authority refused permission on the basis of “the loss of a significant amount of the public open space provided as part of the Planning permission Reg. Ref. 12/102 and Reg. Ref. 14/1035 for the wider estate.”
- What has failed to be recognised is that the applicant’s site is unsuitable to preserve for the benefit of the wider estate without the proposed house in situ, as the space is not overlooked by the other houses nearby. This would be contrary to the guidance provided in Section 5.7.3 of the Guidelines for Planning Authorities in Residential Developments (1999). Under the section which refers to Recommended qualitative standards for design of open space it states, “Planning Authorities should not permit the provision of open space where it is inadequately overlooked, supervised or accessible.”
- Without the applicants development on the site the space is of no positive benefit to the residents of the wider estate as it is removed from the existing housing.
- While the applicant has failed to build the dwelling as outlined in the permission granted under Reg. Ref. 07/1545 and has instead built a single storey detached dwelling of the site this has not diminished the green space available. The development as built has provided a significant area of green space to the side of the single storey dwelling house.

- Furthermore, it is proposed to remove the window at the rear serving the kitchen, due to insufficient site depth and to relocate it to the side wall.
- There are familial relations between the neighbouring site owners and the communal green area will serve all the families living in the surrounding properties.
- It is highlighted that all of the residents surrounding the site support the proposal and a letter of support which has been signed by seven residents is included with the appeal.
- It is not accepted that the proposed development would result in the depreciation of the value of property in the area.
- It is submitted that the proposed development in relation to size, scale and provision of open space would be in accordance with the proper planning and sustainable development of the area.

6.2. **Planning Authority Response**

- None

7.0 **Assessment**

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

- Principle of development and planning history
- Appropriate Assessment

7.1. **Principle of development and planning history**

- 7.1.1. There are two zoning objectives which are applicable to the subject site. The dwelling on the site for which retention permission is sought is located lands zoned

'Existing Residential' where it is the Objective "to provide for residential development, protect and improve existing residential amenity." The southern section of the site is located on lands zoned 'Town Centre' where it is the Objective "to protect, consolidate and facilitate the development of Rathkeale's commercial, retail, educational, leisure, residential, social and community uses and facilities."

- 7.1.2. It is proposed to retain the dwelling on site and also permission is sought for the conversion of the attic space with a floor area of 70sq m to provide a habitable space to accommodate 2 no. bedrooms and a bathroom.
- 7.1.3. The Planning Authority in their determination of the proposal refused permission on the basis that it would result in the loss of a significant amount of the public open space provided as part of planning permission Reg. Ref. 12/10 and Reg. Ref. 14/1035 for the wider estate. The Planning Authority also considered that the size and scale of the proposed development on the plot represents overdevelopment of the site.
- 7.1.4. Accordingly, in respect of this appeal, I would note that the planning history on the site is of particular relevance in assessing the current proposal.
- 7.1.5. The permission granted under Reg. Ref. 12/102 refers to changes to proposal previously granted under planning reference 07/1545 including changes to elevations and internal layout of dwellings 1, 2 & 3 and retention of dwelling no. 4 as constructed, changes to site layout and site boundary and planning permission for the removal of partially constructed semi-detached dwellings 5 & 6 to facilitate new open space and all associated site works. Condition no. 1 of the permission requires that the development to be retained shall be carried out in accordance with the plans and particulars lodged with the application except as may otherwise be required under the other conditions of the permission.
- 7.1.6. As detailed in Condition no. 2 of this permission it states,
 2. This permission is subject to the terms of the governing permission, Planning Reference No. 07/1545, except where departure from the terms of that permission, in respect of changes to elevations and internal layout of dwellings 1,2 & 3 and retention of dwelling no. 4 as constructed, changes to site layout and site boundary and planning permission for the removal of partially constructed semi-detached dwellings 5 & 6 to facilitate new open

space and all associated site works, is hereby authorized by this permission. This permission and the governing permission expires on the 18th of June 2103. Reason: In the interest of the proper planning and sustainable development of the area and in the interest of clarity.

- 7.1.7. The location of dwelling no. 5 was on the site of the current application.
- 7.1.8. Under Reg. Ref. 14/1035 permission was granted for the construction of 3 no. detached dwellings, connection to public services, including all associated site development works. That permission refers to three detached dwellings to the north-eastern side of the cul-de-sac. The site of the application included the entire cul-de-sac including the current application site. Condition no. 1 of the permission stated,
1. The development shall be carried out in accordance with the plans and particulars lodged with the application on the 24th September 2014, as amended by the further plans and particulars submitted on the 20th November 2014, except as may otherwise be required in order to comply with the following conditions. Reason: In order to clarify the development to which this permission applies.
- 7.1.9. The location of the subject site is within the public open space area as indicated on Drawing no: 2014.15.522A submitted to the Planning Authority on 20th November 2014.
- 7.1.10. Most recently the applicant sought permission for the construction of a dwelling on the site under Reg. Ref. 17/642. The Planning Authority refused permission on the basis that the proposed development represented overdevelopment of the site and that it would result in the loss of public open space provided as part of Reg. Ref. 12/102. The decision was appealed by the applicant, PL91.249305 refers to the case. The Board upheld the decision of the Planning Authority and refused permission on the basis that due to the small size of the plot, the large scale of the proposed house, the proximity of the proposed house to site boundaries particularly to the rear, the inadequate levels of private open space serving the proposed house and the pattern of development in the area and the planning history of the area that the proposed development would represent overdevelopment of the site that it would fail to provide a satisfactory standard of residential amenity and that it would seriously injure the amenities of the area and of property in the vicinity.

- 7.1.11. In respect of that application, I would note that the site is smaller than the site in this application. The site area in relation to that application was 0.021 hectares and the house design proposed in that case was a two-storey detached dwelling with a floor area of 142.71sq m. While I would note the differences between the two cases the fact remains that the site area in both cases forms part of public open space which was provided for as part of the schemes granted under Reg. Ref. 12/102 and Reg. 14/1035 for the wider estate.
- 7.1.12. I note in the appeal that a number of other applications are cited. It is argued in the appeal that the Planning Authority has already set a precedent in granting Reg. Ref. 11/351, Reg. Ref. 12/413, Reg. Ref. 13/307 and Reg. Ref. 16/951 in lots surrounding the applicant's property the development of two-storey dwellings on sites smaller than the applicant's site and without any green space provided. In respect of this matter, I would note that a number of these permissions do not refer to this location and are therefore not relevant. Reg. Ref. 12/413 refers to a site within the cul-de-sac to the north-east of the appeal site and this would benefit from the provision of the public open space to the southern end of the cul-de-sac.
- 7.1.13. Therefore, I would concur with the assessment of the Planning Authority that the proposed development would result in the loss of a significant amount of the public open space provided as part of Reg. Ref. 12/102 and Reg. Ref. 14/1035 for the wider estate. Furthermore, I would conclude that the proposed development would contravene existing conditions no. 1 and no. 2 of Reg. Ref. 12/102 and condition no. 1 of Reg. Ref. 14/1035.
- 7.1.14. The Planning Authority in their refusal of permission also cited that having regard to the size and scale of the proposed development on the plot on which it stands represents overdevelopment of the site. The first party appeal disputed this and submitted that the proposed development represents a density of 26 residential units per hectare. It is stated in the appeal that permission is sought for the conversion of the attic space internally without any increase in the footprint of the dwelling. It is set out in the appeal that the proposed density is inline with the provisions of the guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (2009) that centrally located sites have a density of 30-40 dwelling houses per hectare with sites at the edge of centre locations recommended at 20-25 dwelling houses per hectare. Regarding the matter of density, the site has a stated area of

0.043 hectares with one dwelling proposed on site. That would be equivalent to 23.25 units per hectare. While I would note using this metric of the equivalent density that it would be within the ranges as recommended under the guidelines for an edge of centre location other siting and design considerations must also be acceptable in terms of the suitability of the development as proposed.

- 7.1.15. The report of the Planning Officer in their assessment stated that the private open space to the rear and front of the dwelling is inadequate. The dwelling as constructed on site is located 1.2m from the northern site boundary to the side of the dwelling. It is 1-2m from the western, rear site boundary. The front of the dwelling is set back 3m from the footpath with a hard surface area built surrounding the property. Having regard to the siting of the dwelling relative to the boundaries there is no usable private open space provided for the dwelling. The area immediately to the south of the dwelling is indicated as open space, however as previously detailed in the report this area forms part of public open space from previously permitted development within the overall estate.
- 7.1.16. In relation to the requirements for private open space for dwellings, Section 11.3.7 of the Limerick Development Plan 2022-2028 sets out the minimum requirements for rear garden gardens. As detailed in Table DM:3 a 1-2 bedroom dwelling would require 48sq m. a 3-5 bedroom dwelling would require 60-75sq m and for inner urban/infill dwellings 25sq m would be required. The proposed dwelling has three bedrooms and therefore would require a rear garden of 60-75sq m. With the location of the dwelling within the town a rear garden area of 25sq m could be considered in this context. However, given the proximity of the dwelling to the boundaries this minimum area of 25sq m is not provided.
- 7.1.17. Regarding the depth of the site, it is stated in the appeal that it is proposed to remove the window at the rear serving the kitchen, due to insufficient site depth and to relocate it to the side wall. It is also highlighted in the appeal that it is proposed to construct a screen wall of 2 metres on the southerly border of the site guaranteeing the safety of the space. While I would note these proposed measures, they do not serve to overcome the deficiencies in terms of the design and layout specifically the insufficient private open space and proximity of the dwelling to the site boundaries. Accordingly, I would concur with the Planning Authority that the having regard to the configuration of the site, its limited size and the proximity of the dwelling to site

boundaries, it is considered that the proposed development would constitute overdevelopment of the site.

7.2. Appropriate Assessment

- 7.2.1. Having regard to the nature and scale of the proposed development and the location of the site in a serviced urban area, no Appropriate Assessment issues arise, and it is not considered that the development would be likely to give rise to a significant effect individually or in combination with other plans or projects on an European site.

8.0 Recommendation

- 8.1. I recommend that permission be refused for the reasons set out below.

9.0 Reasons and Considerations

1. The site of the proposed dwelling is located within an area covered by the zoning objective 'Existing Residential' in the Rathkeale Local Area Plan 2023-2029, the objective of which is to provide for residential development, protect and improve existing residential amenity. Having regard to the configuration of the site, its limited size and the proximity of the dwelling to site boundaries, it is considered that the proposed development would constitute overdevelopment of the site. Furthermore, the proposed development would result in the loss of a significant amount of the public open space provided as part of planning register reference 12/102 and planning register reference 14/1035 for the wider estate. The proposed development would, therefore, seriously injure the amenities of the residential properties in the vicinity, would set an undesirable precedent for similar development and would be contrary to the proper planning and sustainable development of the area.
2. The proposed development would contravene existing conditions (number 1 & 2) to a permitted development granted under planning register reference 12/102 and would contravene existing conditions (numbers 1 & 3) to a permitted development granted under planning register reference number 14/1035 and would not be in accordance with the proper planning and sustainable development of the area.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Siobhan Carroll
Planning Inspector

29th of June 2023