



An  
Bord  
Pleanála

## Inspector's Report

### ABP-314022-22

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<b>Development</b>	Change of use to dwelling and all associated site works
<b>Location</b>	Sidebrook , Rochfortbridge , Co. Westmeath N91 KH95
<b>Planning Authority</b>	Westmeath County Council
<b>Planning Authority Reg. Ref.</b>	21682
<b>Applicants</b>	Bernard and Jacqueline Carey Flynn
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse Permission
<b>Type of Appeal</b>	First Party
<b>Appellants</b>	Bernard and Jacqueline Carey Flynn
<b>Date of Site Inspection</b>	19 <sup>th</sup> December 2022
<b>Inspector</b>	Dolores McCague

## 1.0 Site Location and Description

- 1.1.1. The site is located near the centre of the settlement of Rochfortbridge. The address is given as Sidebrook, Rochfortbridge. The town of Rochfordbridge was until recently on the line of the N6 Dublin Galway road, which now passes to the south.
- 1.2. The Mongagh River, a tributary of the River Boyne, flows southwards, close to the rear of the site. A bridge, known as Begger's Bridge, crosses the river close to the site, on what is now a minor road. The main crossing, known as Rochfort Bridge, is only 50m further north. The minor road forms the northern site boundary. The R400 to Rhode forms the western site boundary. To the north and east an adjoining small field runs along the river. The site is approximately 14m from the river.

## 2.0 Proposed Development

- 2.1.1. The development consists of change of use from a hair salon premises into a private two bedroom dwelling house, including internal revisions, with all associated services and site works.

## 3.0 Planning Authority Decision

### 3.1. Decision

- 3.1.1. The planning authority decided to refuse permission for 2 reasons:

1 The subject development by virtue of use proposed would, if permitted constitute overdevelopment of the site by reason of the siting of this structure to its site boundary. Accordingly, to permit the development as proposed would provide a substandard level of residential amenity for future occupants of the proposed development and depreciate the value of property in the vicinity, would set an undesirable precedent and would therefore be contrary to the proper planning and sustainable development of the area.

2 The development proposed on lands which are serviced and zoned 'mixed use' would if permitted result in a non-integrated form which would impair potential future comprehensive development of the subject site and existing undeveloped zoned and serviced lands which surround this site. Accordingly, to permit the

development as proposed would contravene policy objective CPO 8.210 and CPO 8.192 of the Westmeath County Development Plan 2021-2027 and would be contrary to the proper planning and sustainable development of the area.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

3.2.2. There are two planning reports on the file. The first recommending a further information request includes.

- Private open space – 1-2 bedrooms – 48 sq m. in certain circumstances a reduction in this standard may be considered; including a contribution in lieu.
- Exceptional circumstances – close to existing public parks, in smaller residential developments; the need to protect the established pattern of streets and spaces.
- Recommending a request for further information, which issued:
  - 1) may compromise the potential future comprehensive development of adjoining undeveloped lands, no private open space.
  - 2) revised site layout – removal of existing sign, whether public lamp stand; steps from the boiler house outside red line.
  - 3) submit a map which demonstrates that the proposed vehicular access serving this development is in line with Council's requirements.

#### 3.2.3. Other Technical Reports

#### 3.2.4. Area Engineer

Sight distance is unsatisfactory as it is right on the junction of the L5002 and the R400. Property was accessed off the local road to the rear in the past. This access is now in the ownership of others.

OPW preliminary flood risk assessment maps indicate a flood risk for fluvial flooding.

Submit a layout showing how car parking will be accessed safely.

#### 3.2.5. Fire Officer – condition.

### 3.3. Further Information

3.3.1. A further information request on 3 points issued, 23<sup>rd</sup> February 2022, including:

- 1) Due cognisance is afforded to the fact that the subject structure is established on this site. However, it is Council's policy objective to promote commensurate population, service and employment growth to enable Rochfortbridge to fulfil its role as a self-sustaining town (CPO 8.192) In this context and having regard to the footprint of the proposed development and its intended future use, concerns are expressed that this development may compromise the potential future comprehensive development of adjoining undeveloped lands, which surround this development site and are zoned 'mixed-use'. Concerns are also expressed that this development incorporates no private open space and that the subject site is constrained in accommodating same. Applicant to address.
- 2) revised site layout indicating – a) site boundary treatment proposed along the perimeter of the site, particularly to the west which currently opens onto the public footpath; b) confirm removal of existing sign; c) clarify whether public lamp stand within the site is to remain in situ; d) the steps from the boiler house are outside red line, address.
- 3) submit a map which demonstrates that the proposed vehicular access serving this development is in line with Council's requirements.

### 3.4. Further Information Response

3.4.1. A further information response was received 17<sup>th</sup> May 2022, including:

- Applicant's response.
- Wayleave agreement.
- Revised drawings.
- Auctioneer's letter confirming housing need in Rochfortbridge.

Applicant states that re. no private open space, it is his intention to rent the property to either an older person or a person with a disability or a person seeking independent living. Applicant is happy to install a small garden to the north of the building.

Adjoining lands are owned by another party; they have no input into it's future use.

This area is subject to a wayleave agreement from WCC. The area subject to wayleave states that no construction works of any kind may be carried out.

No issue with removing advertising sign.

No issue with public lamp standard remaining.

No change to current access which has been in place for many years.

Revised site layout map states that there is an existing right of way in place to step of boiler house.

### **3.5. Further Reports**

3.5.1. The second planning recommending refusal, which issued, includes:

- Assessment of responses:
- To item 1 - The site is very restrictive in nature with the existing building abutting the north-east and south-east boundary and lacks residential development standards. To permit the proposed development would prejudice the comprehensive development of the site and adjacent undeveloped lands which are zoned for mixed use development.
- To item 2 - impair potential future surround this site, noted.
- The area is subject to a wayleave, sign will be removed, lamp stand will remain, access has been in place and used for many years.
- To item 3 - no change is proposed.

3.5.2. Area Engineer:

- Proposals regarding access are unsatisfactory. Vehicular access to be eliminated. A 600mm high wall to match the existing wall should be constructed inside the footpath along the R400 with the provision of a pedestrian access.

## **4.0 Planning History**

Exemption Cert 12/2021

99/930 to extend an existing hair salon 22/7/1999.

## 5.0 Policy Context

### 5.1. Development Plan

- 5.1.1. Westmeath County Development Plan 2021-2027 is the operative plan. Relevant provisions include:

Rochfortbridge - Settlement Plan - General Policy Objectives

It is a policy objective of Westmeath County Council to:

CPO 8.192 Promote commensurate population, service and employment growth to enable the settlement to fulfil its role as a self-sustaining town.

CPO 8.193 Expand the range of services and facilities available to residents and the wider rural hinterland.

CPO 8.194 Make provision for sustainable communities in Rochfortbridge by identifying sufficient land for new development, in particular housing, commercial, community and recreational uses

CPO 8.197 Provide for new residential development in accordance with the requirements of the Housing Strategy and Core Strategy.

CPO 8.197a Development proposals on identified lands shall be accompanied by a site-specific Flood Risk Assessment (FRA) carried out in accordance with the methodology set out in 'The Planning System and Flood Risk Management – Guidelines for Planning Authorities, 2009'.

CPO 8.199 Encourage the appropriate re-development of brownfield and infill sites for residential uses within the footprint of the existing built-up area.

CPO 8.209 Sustain, enhance and consolidate the retail and services offer of the town.

CPO 8.210 Reinforce the centre of Rochfortbridge as the priority location for new commercial and retail development, with quality of design and integration/linkage being the key underpinning principles in the expanded mixed-use town core.

CPO 8.211 Support the provision of mixed-use developments in the town centre which create opportunities to live, work, shop, etc. within the town and reduce the need to travel by private car.

CPO 8.212 Encourage and facilitate the re-use and regeneration of derelict land and buildings for retail and other town centre uses, with due cognisance given to the Sequential Approach prescribed in the Retail Planning Guidelines 2012.

The site is zoned mixed use.

#### 15.9 Mixed Use

‘Mixed Use’ zoning reflects the mixture of uses which have always co-existed in town/village centres and which offers the variety required to make them attractive and important places for community interaction. The zoning provides for a range of uses to sustain and enhance the vitality and viability of town centres, making provision where appropriate, for primary and secondary uses e.g. commercial/ retail/ service development as the primary use with residential development as a secondary use. Secondary uses will be considered by the local authority having regard to the particular character of the area and its role in the Settlement Hierarchy. On lands that have been zoned ‘mixed-use’ in or near town or village centres, a diverse range of day and evening uses is encouraged and an over-concentration of any one use in the area will not normally be permitted. These areas require high levels of accessibility, including pedestrian, cyclists and public transport (where feasible).

CPO 15.6 Provide for, protect and strengthen the vitality and viability of town centres, through consolidating development, encouraging a mix of uses and maximising the use of land.

### 5.2. **Planning and Development (Amendment) (No. 2) Regulations 2018**

Amendment to Article 10 of the 2001 regulations

By insertion of sub article (6)

(6) (a) In this sub-article— ... “relevant period” means the period from the making of these Regulations until 31 December 2021.

### 5.3. **Flood Management Guidelines**

Development management for flooding should be based on sound strategy, policies and objectives within the development plan and LAP where appropriate, setting out

the basis for considering planning applications in principle and in detail. Where plans have been adopted before publication of these Guidelines, planning authorities should use the flood risk information available to them to identify the flood zones within their area. They should then ensure that planning applicants submit any necessary flood risk assessment so that flood risk issues within these flood zones can be taken into account in accordance with these Guidelines. Notwithstanding the availability of flood zone maps and a SFRA, the applicant is primarily responsible in the first instance for assessing whether there is a flood risk issue and how it will be addressed in the development they propose.

Assessment of the application should be based principally on the policies and detailed objectives of the development plan, with flood risk considered along with the full range of planning considerations for the application. In assessing development proposals in areas at risk of flooding, planning authorities should adopt a risk-based sequential and balanced approach that gives priority to development in areas of lowest risk, while at the same time allowing consideration of appropriate and necessary development, through the use of the sequential approach based on flood zones and application of the Justification Test.

Box 5.1 Justification Test for development management (to be submitted by the applicant)

When considering proposals for development, which may be vulnerable to flooding, and that would generally be inappropriate as set out in Table 3.2, the following criteria must be satisfied:

The subject lands have been zoned or otherwise designated for the particular use or form of development in an operative development plan, which has been adopted or varied taking account of these Guidelines.

The proposal has been subject to an appropriate flood risk assessment that demonstrates:

- The development proposed will not increase flood risk elsewhere and, if practicable, will reduce overall flood risk;
- The development proposal includes measures to minimise flood risk to people, property, the economy and the environment as far as reasonably possible;



- The development proposed includes measures to ensure that residual risks to the area and/or development can be managed to an acceptable level as regards the adequacy of existing flood protection measures or the design, implementation and funding of any future flood risk management measures and provisions for emergency services access; and
- The development proposed addresses the above in a manner that is also compatible with the achievement of wider planning objectives in relation to development of good urban design and vibrant and active streetscapes.

The acceptability or otherwise of levels of residual risk should be made with consideration of the type and foreseen use of the development and the local development context.

Planning authorities must strike a fair balance between avoiding flood risk and facilitating necessary development, enabling future development to avoid areas of highest risk and ensuring that appropriate measures are taken to reduce flood risk to an acceptable level for those developments that have to take place, for reasons of proper planning and sustainable development, in areas at risk of flooding.

#### **5.4. Natural Heritage Designations**

- 5.4.1. The nearest Natura sites are Lough Ennell SPA (site code 004044), and Lough Ennell SAC (site code 000685) located c 8km straight line distance to the north west, and upstream of the site.

#### **5.5. EIA Screening**

- 5.5.1. Having regard to the nature and scale of the proposed development and the absence of any significant environmental sensitivity in the vicinity there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

6.1.1. The first party appeal has been submitted by Andrew Hersey Planning, the grounds includes:

- They have attempted to rent the building as a hair salon, which is the permitted use on the site, but there were no enquiries. They have had numerous enquiries for use of the building for residential purposes. If the building is not used it will go derelict.
- Lands to the north-east and south-east are unused/derelict and not owned by the applicant. The walls of the building are on the party boundary. The applicant has a right of way along a path along the eastern boundary.
- The prevailing use in the area is residential. The Main Street begins at the junction of the R400 and the R446 and continues westwards along the R446.
- Policy referenced
  - CDP CPO 8.192
  - CPO 8.199,
  - CPO 16.1
  - CPO 7.35
  - CPO 7.35
  - CPO 7.39
  - Section 15.9
  - Section 2.16.2
  - Section7.4.9
  - CPO 8.199
  - NPF
  - NPO 18b

- Town Centre First Policy
- Housing for All
- Section 28 Guidelines
- Sustainable Residential Development in Urban Areas 2009

6.1.2. Principle of the development - Mixed use residential use is permitted in principal.

2.16.2. (Urban Regeneration and Development Fund (URDF) and the Rural Regeneration and Development Fund (RRDF)) to reduce vacancy

Section 7.4.9 ( Re-Use & Regeneration of Derelict & Underutilised Land & Buildings)

6.1.3. Re. Residential amenities – reason one – it is not overdevelopment. Plot ratio and site coverage are referred to.

Re. overlooking of windows – obscured glazing proposed for the bathroom, Roman blinds can be attached to bedroom windows.

25 sq m of private open space to be provided. Although overlooked from the street it gives some level of amenity. It can be screened by some type of boundary fence if the Board deem it necessary.

6.1.4. Comprehensive development of lands

Re. reason 2 – it is part of a larger parcel of mixed use lands at the edge of the urban centre. It appears that there is a preference for comprehensive development. There is no specific policy to support this.

It is stated that the proposed development contravenes two policies:

CPO 8.192 - Promote commensurate population, service and employment growth to enable the settlement to fulfil its role as a self-sustaining town; and

CPO 8.210 - Reinforce the centre of Rochfortbridge as the priority location for new commercial and retail development, with quality of design and integration/linkage being the key underpinning principles in the expanded mixed-use town core;

However residential is permitted in principal.

Per CPO 8.211 residential units are encouraged in the town centre.

Exempted development: Article 10 (6) of the 2018 regulations sets out that change of use from commercial to residential, to be exempted.

This building comes under class 2 of part 4 of schedule 1.

The building has been vacant for over two years, since February 2020.

Developed under Reg Ref 99 930.

No external works, other than removal of signage, will be involved.

6.1.5. They claim that the development would potentially be exempt.

## **6.2. Planning Authority Response**

6.2.1. The planning authority has not responded to the grounds of appeal.

## **7.0 Assessment**

7.1.1. The issues which arise in relation to this appeal are: appropriate assessment, Principle of the development, exempted development, residential amenity, flood risk and other issues and the following assessment is dealt with under those headings.

### **7.2. Appropriate Assessment**

7.2.1. Having regard to the nature and scale of the proposed development, I am satisfied that 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.

### **7.3. Principle of the development**

7.3.1. The zoning provisions state that 'Mixed Use' reflects the mixture of uses which have always co-existed in town/village centres and which offers the variety required to make them attractive and important places for community interaction.

7.3.2. The zoning provides for a range of uses to sustain and enhance the vitality and viability of town centres, making provision where appropriate, for primary and secondary uses e.g. commercial/retail/service development as the primary use with residential development as a secondary use. Secondary uses will be considered by the local authority having regard to the particular character of the area and its role in the Settlement Hierarchy.

7.3.3. The emphasis is therefore on commercial/retail/service development in this location.

7.3.4. The other most relevant use objectives are CPO 8.209 & CPO 8.210:

CPO 8.209 is an objective to sustain, enhance and consolidate the retail and services offer of the town.

CPO 8.210 is an objective to reinforce the centre of Rochfortbridge as the priority location for new commercial and retail development, with quality of design and integration/linkage being the key underpinning principles in the expanded mixed-use town core.

7.3.5. The existing service / commercial offering in the centre of Rochfortbridge is a very limited. It's dormitory role, initially established by the Bord na Móna housing at Derrygreenagh Park in the 1950's, has been re-enforced in recent years by further large housing developments within the town. Service / commercial development in the town centre has not yet followed. The objectives of the Development Plan (Settlement Plan section) reflect the need to address this shortfall in town centre provision.

7.3.6. The loss of a commercial unit in the town centre therefore runs counter to the objectives of the plan. This is a reason to refuse permission.

#### **7.4. Exempted development**

7.4.1. As pointed out by the applicant, provisions introduced by the Planning and Development (Amendment) (No. 2) Regulations 2018, allowed for exempted change of use in certain circumstances from commercial to residential. Restrictions on the change of use included that:

(iv) No development shall consist of or comprise the carrying out of works to the ground floor area of any structure which conflicts with any objective of the relevant local authority development plan or local area plan, pursuant to the Part 1 of the First Schedule to the Act, for such to remain in retail use, with the exception of any works the purpose of which is to solely provide on street access to the upper floors of the structure concerned.

There are objectives in the plan to retain commercial use.

Per sub-article (6) (a) the period during which any such exemption applied expired on 31 December 2021. The proposed change of use is not exempted development.

## **7.5. Residential Amenity**

- 7.5.1. The provision of inadequate residential amenity for future occupants, is part of the first reason for refusal. This is stated in terms of the size of the site and the inadequacy of the private open space available. The applicant has revised the proposed site layout to incorporate a small outdoor amenity area.
- 7.5.2. It is of concern that the building is sited on two boundaries with adjoining currently un-developed land. The boiler house door opens onto adjoining land and right of way is stated (on the site layout) to run along the building on this side as far as the steps to the door. The oil tank servicing the building is within adjoining land; no similar reference to a right of way is stated. Windows which light two bedrooms and a shower room are sited in a boundary wall and it is not clear how light to these windows can be guaranteed.
- 7.5.3. It is therefore considered that inadequate residential amenity is a reason to refuse permission.

## **7.6. Flood Risk**

- 7.6.1. The Flood Management Guidelines, advise that the acceptability or otherwise of levels of residual risk should be determined with consideration of the type and foreseen use of the development and the local development context.
- 7.6.2. The site is in an area at risk (1% AEP) from fluvial flooding. The proposed residential use, being a more vulnerable use than the existing use, involves increased risk, which is not justified.
- 7.6.3. Although this is considered a reason to refuse permission, as this was not raised as during the application, if the Bord were minded to refuse permission for this reason, the applicant should be afforded the opportunity to address the issue. The Board may consider it is unnecessary to include this as a refusal reason, if other reasons are found to exist.

## **7.7. Other Issues**

### **7.7.1. Traffic Safety**

7.7.2. The proposed development has access to a regional road, beside the junction with a minor local road and close to the junction with another regional road, in the centre of the town. The Area Engineer requests the closure of the vehicular entrance and the use only of a pedestrian entrance to this site.

7.7.3. This vehicular entrance is currently in place, the proposed change of use would likely entail a lower level of usage of the entrance, therefore it's closure as a condition permitting the proposed development would be inappropriate.

### **7.8. Potential Future Comprehensive Development**

7.8.1. Refusal reason no. 2 states that the proposed development would impair potential future comprehensive development of the subject site and undeveloped zoned and serviced lands.

7.8.2. There are zoned lands adjoining the site, comprising a small field. The subject site, which is at the edge of the adjoining undeveloped land, is currently occupied by a building and the footprint of the building would remain largely unaltered. As previously stated future development of the adjoining lands could impact the subject building which is on the property boundary, on two sides. However the fact that the building is in-situ means that there is little potential for impairment of future comprehensive development arising from the proposed change of use, and this should not be a reason to refuse or modify the proposed development.

## **8.0 Recommendation**

8.1.1. In accordance with the foregoing, I recommend that permission should be refused for the following reasons and considerations.

## **9.0 Reasons and Considerations**

1 Having regard to the location of the proposed development within the town of Rochfortbridge where, in this mixed use area, the objective is to sustain and enhance the vitality and viability of the town centre, with commercial/retail/service

development as the primary uses; the proposed change of use from hair salon to dwelling would be contrary to objective CPO 8.209 to sustain, enhance and consolidate the retail and services offer of the town, and would accordingly be contrary to the proper planning and sustainable development of the area.

2 The proposed development would provide a substandard level of residential amenity for future occupants and would therefore be contrary to the proper planning and sustainable development of the area.

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Planning Inspector

20<sup>th</sup> December 2022

## **Appendices**

Appendix 1 Photographs

Appendix 2 Westmeath County Development Plan 2021-2027, extracts.