



An  
Bord  
Pleanála

## Inspector's Report ABP-314671-22.

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|-------------------------------------|---|
| <b>Development</b>                  | Retention of 2 existing site entrances as constructed including all associated works. The application relates to a protected structure Ref M29aM(14). |
| <b>Location</b>                     | Lower Main Street, Rathkeale, Co. Limerick.   |
| <b>Planning Authority</b>           | Limerick City & County Council.   |
| <b>Planning Authority Reg. Ref.</b> | 22/749.   |
| <b>Applicant(s)</b>                 | Philip & Danny O'Donoghue.  |
| <b>Type of Application</b>          | Retention permission.   |
| <b>Planning Authority Decision</b>  | Refuse.   |
| <b>Type of Appeal</b>               | First Party   |
| <b>Appellant(s)</b>                 | Philip & Danny O'Donoghue.  |
| <b>Observer(s)</b>                  | None.   |
| <b>Date of Site Inspection</b>      | 20/03/2023.   |
| <b>Inspector</b>                    | A. Considine.   |

## **1.0 Site Location and Description**

- 1.1. The appeal site is located within the town of Rathkeale and to the north west of Lower Main Street. The site comprises the entrance to two properties, including a protected structure which is located within the streetscape, and a second house which is located to the rear of the streetside buildings. Two gates, with associated piers, have been installed to provide independent access to both properties, with the piers being constructed in granite.
- 1.2. The site lies within the Rathkeale Architectural Conservation Area and the adjacent property to the north is also a protected structure.

## **2.0 Proposed Development**

- 2.1. Permission is sought, as per the public notices to retain 2 no. existing site entrances as constructed (previously granted under 13/709) including all associated site works. This application relates to a protected structure Ref M29aM(14), all at Lower Main Street, Rathkeale, Co. Limerick.
- 2.2. The application included the plans and particulars, completed planning application form and public notices.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

The Planning Authority decided to refuse planning permission for the proposed development for the following stated reason:

Having regard to the location of the proposed development within the curtilage of a protected structure (Ref.1576) and within an Architectural Conservation Area, it is considered that the proposal by reason of its design and fabric has had a detrimental impact on the setting of both the streetscape and the protected structure. Therefore, the proposal materially contravenes Objective EH 1 (Protected Structures) and Objective EH 2 (Architectural Conservation Area) of the Rathkeale Local Area Plan 2012-2018, would be injurious to

architectural heritage and would be contrary to the proper planning and sustainable development of the area.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

The Planning report considered the proposed development in the context of the details submitted with the application, the planning history associated with the site, internal technical reports and the Rathkeale LAP policies and objectives. The report also includes an EIA and AA Screening assessment.

The planning report notes that the previous application for retention for the works, PA ref. 16/1060 refers, and notes that there has been no change in circumstances and that the previous issues remain applicable.

The report concludes that the proposed development is unacceptable, and the Planning Officer recommends that permission be refused for the proposed development. This recommendation formed the basis of the Planning Authority's decision to refuse planning permission.

#### 3.2.2. Other Technical Reports

**Architectural Conservation Officer:** Notes that the proposed development involves the curtilage of a protected structure being a detached dwelling, the site is also located within the Rathkeale Architectural Conservation Area. The report recommends that permission be refused on the basis that the elements as constructed, for which retention is sought use imported material alien to the streetscape, thereby altering the character of the Architectural Conservation Area, and are not in harmony with the traditional materials used for the construction of the main building on the site, which is a protected structure.

**Roads, Traffic & Cleansing / Central Services:** No objection subject to conditions relating to surface water.

#### 3.2.3. Prescribed Bodies

None.

### 3.2.4. Third Party Submissions

None.

## 4.0 Planning History

### Enforcement:

**DC-232-16:** Enforcement notice issued in September 2016 noting that the selection of granite as a material for the piers at the modified entrance layout within the ACA and curtilage of PS was not compatible with the historic and traditional built environment and is in breach of Conditions 1 and 12 of planning permission ref: 13/709. Applicant was requested to remove the unauthorised granite piers.

An application to retain the piers was refused in January 2017 (PA ref: 16/1060 refers). Inspections of the site in May 2017 and January 2020 has shown that the terms of the enforcement notice had not been complied with and the matter was referred for legal proceedings. These proceedings have adjourned until a decision is made on the current application.

### Planning Applications:

**PA Ref. 20/70:** Permission granted to Danny O'Donoghue, for retention of domestic shed.

**PA Ref. 16/1060:** Permission refused to Daniel O'Donoghue for the retention and completion of site entrance as constructed. The reason for refusal was stated as follows:

The proposed entrance by reason of its fabric and design would materially contravene Objective EH 2-Protected Structures Rathkeale LAP 2012-2018 and would materially affect the setting of the protected structures reference 1576. Furthermore, it would detract from the setting streetscape of the Architectural Conservation Area.

**PA Ref. 13/709:** Permission granted to Danny O'Donoghue, for the construction of a dwelling, garage, site entrance, reposition of existing shed and connection to public services.

**PA Ref. 10/1040:** Permission refused to Philip O'Donoghue, for the construction of two detached two storey dwelling houses.

**PA Ref. 00/2157:** Permission granted to Fred O'Donoghue, for retention and completion of garage and car port.

**PA Ref. 95/699:** Permission granted to Fred O'Donoghue, for construction of an entrance.

**PA Ref. 95/698:** Permission granted to Fred O'Donoghue, for OPP for construction of residence and entrance.

**PA Ref. 93/902:** Permission granted to Fred O'Donoghue, for retention of existing gateway.

**PA Ref. 92/534:** Permission granted to Fred O'Donoghue, for retention of existing gateway and entrance.

Adjacent Site:

**PA Ref. 12/600:** Permission refused to Patrick, James, John, Patrick Jnr, James Jnr and Mary Culligan, for the construction of 6 no. two storey detached dwelling houses together with access road, associated site works and services.

## 5.0 Policy and Context

### 5.1. Architectural Heritage Protection Guidelines for Planning Authorities (Department of Arts, Heritage and the Gaeltacht 2011).

5.1.1. The proposed development involves works to a protected structure and as such, *'Architectural Heritage Protection, Guidelines for Planning Authorities'* are considered relevant. These guidelines are issued under Section 28 and Section 52 of the Planning and Development Act 2000. Under Section 52(1), the Minister is obliged to issue guidelines to planning authorities concerning development objectives:

- a) for protecting structures, or parts of structures, which are of special architectural, historical, archaeological, artistic, cultural, scientific, social, or technical interest, and

b) for preserving the character of architectural conservation areas.

5.1.2. The guidelines provide guidance in respect of the criteria and other considerations to be taken into account in the assessment of proposals affecting protected structures. The guidelines seek to encourage the sympathetic maintenance, adaption and re-use of buildings of architectural heritage, and notes that it is generally recognised that the best method of conserving a historic building is to keep it in active use.

5.1.3. Chapter 13 deals with Curtilage and Attendant Grounds and Section 13.5 relates to Development within the Curtilage of a Protected Structure and Section 13.8 of the Guidelines relate to Other Development Affecting the Setting of a Protected Structure or an Architectural Conservation Area, including consideration of proposals affecting boundary features contributing to the character of protected structures of an ACA. The following sections are considered relevant:

- Section 13.3
- Section 13.4

## **5.2. Limerick City & County Development Plan 2022-2028**

5.2.1. The 2022 CDP is the relevant policy document pertaining to the subject site. The Plan is set out over 6 Volumes with Volume 1 comprising the Written Statement and Volume 2 dealing with Settlements. The remaining volumes deal with Record of Protected Structures and ACAs, Environmental Reports, Designated Sites & RMPs and accompanying strategies such as the Housing Strategy, Retail Strategy etc.

## **5.3. Rathkeale Local Area Plan 2023-2029**

5.3.1. The Board will note that the subject application was considered under the previous Rathkeale LAP, extended to 2022. The Rathkeale Local Area Plan 2023 - 2029, was adopted by Limerick City and County Council on January 10th, 2023, in accordance with the provisions of the Planning and Development Act 2000 (as amended). The Local Area Plan took effect from 21st of February 2023, and is the relevant policy document pertaining to the subject appeal.

5.3.2. The subject site is zoned 'Existing Residential' and is located within the established Architectural Conservation Area of the town. The site also comprises a protected

structure – Ref 1576 - with the adjacent structure to the north east also identified as a protected structure – Ref 1575. Section 11.3 of the LAP relates to Architectural Heritage. Section 11.3.1 relates to protected structures and Section 11.3.2 deals with the ACA. Section 11.4 of the LAP sets out the Archaeological and Architectural Heritage Strategic Policy and Objectives where the strategic policy seeks ‘to protect, conserve and manage the archaeological, architectural and built heritage of Rathkeale, and promote sensitive, appropriate and sustainable development and re-use of older historic built fabric in accordance with Limerick Development Plan 2022 – 2028’.

5.3.3. The following are considered relevant:

**HE O4:** Strongly resist the demolition of Protected Structures, in whole or in part, the removal or modification of features of architectural importance, and design element that would adversely affect the character or setting of a Protected Structure, unless exceptional circumstances can be clearly demonstrated by a suitably qualified professional.

**HE O5:** Ensure the design of any development in the Architectural Conservation Area, including any changes of use of an existing building, should preserve and/ or enhance the character and appearance of the Architectural Conservation Area as a whole.

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

The site is not located within any Natura 2000 site. The closest Natura 2000 site is the Askeaton Fen Complex SAC (002279) which is located approximately 4.1km to the north of the site. In addition to the above, the Curraghchase Woods SAC (Site Code: 000174) lies approximately 8.2km to the north east of the site. The River Shannon and River Fergus Estuaries SPA (Site Code: 004077) lies 9.6km to the north, the Lower River Shannon SAC (Site Code: 002165) lies 10.9km to the north west and the Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA (Site Code: 004161) lies approximately 9.6km to the west.

## 5.5. EIA Screening

5.5.1. Schedule 5 Part 2 of the Planning and Development Regulations 2001 (as amended) sets out the class of developments which provide that mandatory EIA is required.

The proposed development comprises retention works to a protected structure located within the Rathkeale ACA and is not of a scale or nature which would trigger the need for a statutory EIAR. It is therefore considered that the development does not fall within any cited class of development in the P&D Regulations and does not require mandatory EIA.

5.5.2. Having regard to:

- (a) the nature and scale of the development, and
- (b) the location of the development outside of any sensitive location specified in article 109(3) of the Planning and Development Regulations 2001 (as amended),

It is concluded that 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. This is a first-party appeal, submitted by Seamus McElligott Planning & Design Consultancy, on behalf of the applicants Philip and Danny O'Donoghue, against the decision of the Planning Authority to refuse planning permission for the retention of the development. The appeal is summarised as follows:

- The entrance piers and gates are all items that are fully reversible in future years. The proportioning, sizing and detailing of the piers are in proportion with the protected structure.
- The finish on the piers is a neutral colour and does assimilate with the natural stone of the protected structure.



- The approved dwelling (PA ref 13/709) is a modern dwelling and is a clear departure from the regular, simpler shape of the protected structure and the piers are a nod to the modern house.
- There are similar departures regarding constructions adjacent to protected structures.
- There are multiple examples of such of use material, cornicing and quoin stone detailing – PA ref 22/90 is an example.

It is requested that permission for retention be granted.

## 6.2. **Planning Authority Response**

None.

## 6.3. **Observations**

None.

## 7.0 **Assessment**

Having undertaken a site visit and having regard to the relevant policies pertaining to the subject site, the nature of existing uses on and in the vicinity of the site, the nature and scale of the development the subject of this application and the nature of existing and permitted development in the immediate vicinity of the site including the planning history of the subject site, I consider that the main issues pertaining to the proposed development can be assessed under the following headings:

1. Principle of the development
2. Appropriate Assessment

### 7.1. **Principle of the Development:**

- 7.1.1. The proposed development seeks to retain 2 existing site entrances as constructed at the site which includes a protected structure, Ref M29aM(14) at Lower Main Street Rathkeale. The Board will note that permission was granted for the two entrances under PA ref: 13/709, which included 16 conditions. Enforcement action has been

taken by the Council on the grounds that the entrances were not constructed in accordance with the provisions of Conditions 1 and 12 of that permission, and that the introduction of the granite piers is not compatible with the historic and traditional built environment. The applicant was requested to remove the piers and to construct piers in accordance with the drawings on which permission was granted. An application to retain the piers as constructed was refused under PA ref: 16/1060, and the current appeal relates to the same development.

7.1.2. While the principle of the development of the two entrances has been established on the site, the issues arising essentially relate to the materials used to construct the piers. This issue arises due to the location of the site within the Architectural Conservation Area of Rathkeale and its association with a Protected Structure. In terms of the principle of the proposed development, the Board will note that both national and local planning policy seek to protect architectural heritage, with the *'Architectural Heritage Protection, Guidelines for Planning Authorities'* providing guidance in respect of the criteria and other considerations to be taken into account in the assessment of proposals affecting protected structures and ACAs.

7.1.3. The Limerick City & County Development Plan 2022-2028 also includes a number of policies and objectives which seek to protect architectural heritage, as did the 2012 Rathkeale Local Area Plan, extended to 2022, under which the subject application was considered by the Planning Authority. The Rathkeale Local Area Plan 2023 - 2029, was adopted by Limerick City and County Council on January 10th, 2023, in accordance with the provisions of the Planning and Development Act 2000 (as amended). The Local Area Plan took effect from 21st of February 2023, and is the relevant policy document pertaining to the subject appeal.

7.1.4. The site lies within the established ACA for the town of Rathkeale and includes a protected structure. The adjacent property to the north east is also identified as a protected structure. Therefore, the entrances the subject of this appeal lie within a prominent and heritage rich streetscape. Section 11.4 of the LAP sets out the Archaeological and Architectural Heritage Strategic Policy and Objectives where the strategic policy seeks 'to protect, conserve and manage the archaeological, architectural and built heritage of Rathkeale, and promote sensitive, appropriate and sustainable development and re-use of older historic built fabric in accordance with Limerick Development Plan 2022 – 2028'. In addition, Objective HE O4 and HE O5

of the LAP are relevant and seeks to protect the character or setting of a protected structure and any development should preserve and / or enhance the character and appearance of the ACA.

- 7.1.5. In terms of the subject appeal, I note that the applicant has been advised over a number of years that the introduction of the granite piers, contrary to what was permitted under PA ref. 13/709, was not acceptable and has had a significant impact on the character and setting of both the protected structures and the ACA. The appellant seeks to submit that the works carried out are fully reversible and that they are in proportion with the protected structure, assimilating with the natural stone of the PS. I would also note the references to the grant of permission for the modern house at the site.
- 7.1.6. Having regard to all of the information available to me, I would note that the Councils Conservation Officer is opposed to the retention of the piers on the grounds that the granite is an imported material which is alien to the streetscape and thereby, alters the character of the ACA. The applicant has not provided any conservation support for the retention of the granite piers, and I would note that the Architectural Heritage Protection Guidelines, while acknowledging that works to protected structures is necessary to keep them in viable economic use, the new work should involve 'the smallest possible loss of historic fabric and ensure that important features are not obscured, damaged or destroyed.' In addition, the Guidelines provide that 'extensions should complement the original structure in terms of scale, materials and detailed design while reflecting the values of the present time.'
- 7.1.7. I further note that Chapter 14 of the guidelines deal with Non-habitable Protected Structures, where it is also advised that proposals should not involve an unacceptable amount of alteration or loss of important historic fabric.
- 7.1.8. In terms of the works the subject of this retention application, I would wholly agree with the decision of the Planning Authority. I would consider that the interventions carried out at the entrance have resulted in the significant loss of historic fabric in the streetscape and that the granite piers as constructed do not reflect the character, the appearance or traditional materials used in the Rathkeale ACA.
- 7.1.9. The proposed retention of the entrances as constructed, including the granite piers, would, therefore, be contrary to the policy objectives HE O4 and HE O5 of the

Rathkeale Local Area Plan 2023-2029 and with the guidance contained in the Architectural Heritage Protection Guidelines.

7.1.10. In addition to the above, I would note that the as constructed entrances do not accord with the conditions attached to the original grant of planning permission and therefore, do not comply with a number of conditions attached to same. Should the Board be minded to include this as a reason for refusal, it may be construed as a new issue.

## **7.2. Appropriate Assessment**

7.2.1. Under Article 6(3) of the Habitats Directive, an Appropriate Assessment must be undertaken for any plan or programme not directly connected with or necessary to the management of a European site but likely to have a significant effect on the site in view of its conservation objectives. The site is not located within any Natura 2000 site and the development the subject of this application and appeal is not directly connected with or necessary to the management of a European site. The applicant did not submit an AA Screening or Natura Impact Statement.

7.2.2. The site is not located within any Natura 2000 site. The closest Natura 2000 site is the Askeaton Fen Complex SAC (002279) which is located approximately 4.1km to the north of the site. In addition to the above, the Curraghchase Woods SAC (Site Code: 000174) lies approximately 8.2km to the north east of the site. The River Shannon and River Fergus Estuaries SPA (Site Code: 004077) lies 9.6km to the north, the Lower River Shannon SAC (Site Code: 002165) lies 10.9km to the north west and the Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA (Site Code: 004161) lies approximately 9.6km to the west. In terms of AA, the Board will note that the development is not directly connected or necessary to the management of a European Site.

7.2.3. I am satisfied that the above sites can be screened out in the first instance, as although located within the zone of significant impact influence, the ecology of the species and / or the habitat in question is neither structurally nor functionally linked to the proposal site. There is no potential impact pathway connecting the designated sites to the development site and therefore, I conclude that no significant impacts on

the identified site is reasonably foreseeable. I am satisfied that the potential for impacts on the identified Natura 2000 sites can be excluded at the preliminary stage.

7.2.4. I have considered the NPWS website, aerial and satellite imagery, the scale of the proposed works, the nature of the Conservation Objectives, Qualifying and Special Qualifying Interests, the separation distances and I have had regard to the source-pathway-receptor model between the proposed works and the European Sites. It is generally reasonable to conclude that on the basis of the information available, that the proposed development, either individually or in combination with other plans or projects, would not be likely to have a significant effect on the European Sites identified within the zone of influence of the subject site.

## 8.0 Recommendation

I recommend that retention of the two site entrances as construction be refused for the following stated reason.

## 9.0 Reasons and Considerations

Having regard to the location of the proposed development within the curtilage of a protected structure (Ref.1576) and within an Architectural Conservation Area, it is considered that the proposal by reason of its design and fabric has had a detrimental impact on the setting of both the streetscape and the protected structure. Therefore, the proposal materially contravenes Objective HE 04 and Objective HE 05, as they relate to the protection of the Architectural Heritage, of the Rathkeale Local Area Plan 2023-2029, would be injurious to architectural heritage and would be contrary to the proper planning and sustainable development of the area.

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A. Considine  
Planning Inspector  
05/04/2023