



An
Bord
Pleanála

Inspector's Report ABP-314683-22.

Development	Demolish existing three storey building and construct 2 houses
Location	Old Road & Lower Main Street, Rathkeale, Co. Limerick.
Planning Authority	Limerick City & County Council.
Planning Authority Reg. Ref.	22/449.
Applicant(s)	Maria Franchesce Sheridan.
Type of Application	Permission.
Planning Authority Decision	Refuse.
Type of Appeal	First Party
Appellant(s)	Maria Franchesce Sheridan.
Observer(s)	None.
Date of Site Inspection	20/03/2023.
Inspector	A. Considine.

1.0 Site Location and Description

- 1.1. The appeal site is located within the town of Rathkeale and on the western corner of Lower Main Street and Old Road. The site wraps around the corner of the junction and currently comprises an end of terrace three storey building which fronts onto Lower Main Street. The high boundary wall wraps around the corner and the public footpath outside, stops a short distance into Old Road.
- 1.2. Vehicular access to the property is currently via two points on Old Road and the boundary wall onto Old Road is set back from the public road with parking facilitated between the wall and the public road surface. The access to the property to the north west of the site, onto Old Road, is located at an angle with the boundary wall of that property connecting with the road surface further north. There is a public footpath across the road from the site which extends into the residential area beyond.
- 1.3. The site lies within the Rathkeale Architectural Conservation Area and the site has a stated area of 0.088693ha. The existing buildings on the site have an overall stated floor area of 165.58m².

2.0 Proposed Development

- 2.1. Permission is sought, as per the public notices for the demolition of existing 3 story veterinary surgery building out buildings and existing boundary wall, along with planning permission for the construction of two new dwelling houses on the site including the existing adjacent derelict site. The application seeks permission for the realignment of the junction inclusive of the footpath and all necessary ancillary works at the junction, all at Old Road & Lower Main Street, Rathkeale, Co. Limerick.
- 2.2. The application included the following documents:
 - Plans and particulars
 - Completed planning application form and public notices
 - Photographic Site Survey
 - Asbestos Survey Report
 - Archaeological Conservation Report.

2.3. The applicant submitted a response to the request advising that the red line boundary was extended to include the path and cover proposals to fix the treacherous nature of the public infrastructure. It is submitted that the question of ownership is not a reason for refusal. The proposed building is located well within the historic building line and the area is not considered to be the public realm. It is submitted that this is a restoration of the original character of the streetscape. There is no official street parking, and no parking is proposed. Parking in the area has been ad-hoc and the land is in the ownership of the applicant. No revision to the site layout is proposed.

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:

The proposed site layout and access arrangements, which include a proposal to take over a section of road outside the ownership of the applicant and outside the existing boundary wall on Old Road, would result in a narrowing of the public roadway and thereby create a traffic hazard. Furthermore, the proposed access would endanger public safety by reason of traffic hazard because the traffic movements generated by the proposed development where the sightlines are restricted by on-street car parking would interfere with the safety and free flow of traffic on the public road. The proposed development would, therefore, 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 initial planning report required further information to be submitted in accordance with the requirements of the Roads Section of Limerick County Council.

The final planning report concludes that the proposed development is unacceptable, and notes that the applicant is unwilling to propose revisions to address the concerns raised. The Planning Officer recommends that permission be refused for the proposed development and this recommendation formed the basis of the Planning Authority's decision to refuse planning permission.

3.2.2. Other Technical Reports

Environment, Recreation & Climate Change Dept: The report notes that asbestos roof slates have been identified on the property. A condition to be included in a grant of permission relating to the removal of the asbestos.

Archaeologist: No archaeological issues.

Roads, Traffic & Cleansing / Central Services: Notes that the current application is a repeat application. The issues raised previously relating to works in the public realm were advised to the applicant and the Council will not permit the realignment of the junction inclusive of the footpath. Further information is required in relation to a number of issues including:

1. The application includes a large section of public road / footpath within the red-line boundary without permission. objection subject to conditions relating to surface water.
2. The proposed building within the public realm is not acceptable.
3. Access location is not acceptable.
4. The revision of the site layout may result in the roof water / surface water being revised.

Following the submission of the response to the FI request, the Roads Section submitted a further report noting that the response to the issues raised is not satisfactory as it refuses to amend the layouts as requested.

Architectural Conservation Officer: Notes that the proposed development involves a building and ancillary structures which are located within the Rathkeale Architectural Conservation Area. The report advises that a site inspection was undertaken and that the building to be demolished is of no apparent architectural or historic merit. Conditions recommended to be included in a grant of permission.

3.2.3. Prescribed Bodies

TII: No observations.

Irish Water: No objection

3.2.4. Third Party Submissions

None.

4.0 Planning History

The following is the relevant planning history associated with the subject site:

PA Ref. 21/466: Permission refused for the demolition of 3 storey veterinary building and construction of two dwellings on grounds of traffic hazard and restricted sightlines. The reason for refusal was the same reason associated with the current appeal.

PA Ref. 04/1505: Permission granted to Derek Long, for the construction of two storey extension comprising a waiting room/office on ground floor, living accommodation on first floor, and an open car port.

PA Ref. 03/1033: Permission granted to Derek Long, for the construction of a two-storey extension comprising of a waiting room and store.

PA Ref. 94/1266: Permission granted to Derek Long, for the construction of an extension to shop.

PA Ref. 91/22: Permission granted to Derek Long, for the erection of horse surgery, surgery, consulting rooms, dark room and toilets.

PA Ref. 86/26850: Permission granted to Derek Long, for the change of use of part of dwellinghouse to veterinary supply shop and surgery, erection of sign and provision of new entrance and car park.

Adjacent Site to the north west:

PA ref: 15/214: Permission granted for the demolition of existing funeral home and storage sheds and the construction of 4 no. two storey houses, with front walls and entrances and connection to all existing services (previous planning reference nos. 10/315 & 10/605) - extended under 21/7005 until 06/01/2026. This development has not commenced.

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 within an Architectural Conservation Area 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. Chapter 13 deals with Curtilage and Attendant Grounds 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:

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 'Town Centre' and 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. The purpose of the zoning objective is to consolidate Rathkeale's Town Centre through densification of appropriate commercial and residential developments ensuring a mix of commercial, recreational, civic, cultural, leisure, residential 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, pedestrians and cyclists, while minimising the impact of private car-based traffic and enhancing the existing urban fabric. Residential is acceptable in principle on such zoned lands.
- 5.3.3. Chapter 6 of the LAP deals with Housing and it is the stated Housing Strategic Policy 'to deliver new residential development in accordance with the Settlement and Housing Strategy of the Limerick Development Plan 2022 – 2028, supporting a choice of quality housing, mixed tenure and unit size/type universally designed for ease of adaption to the lifecycle and mixed mobility needs.' The following objectives are considered relevant in this regard:

- **H O1:**
 - (a) Ensure the sequential development of serviced residential lands identified to cater for the envisaged population growth.
 - (b) Ensure that at least 30% of all new housing development is delivered within existing built-up areas on infill, brownfield and backland sites.
 - (c) Consolidate existing development and increase existing residential density, through a range of measures, including reductions in vacancy, re-use of existing buildings, infill development schemes, area or site-based regeneration and appropriate increased building heights.
- **H O2:**
 - c) Encourage increased densities that contribute to the vitality of the town by reinforcing street patterns or assisting in re-development of backlands or brownfield sites, subject to satisfying other planning criteria including access, permeability, connection to town centre and services, traffic safety, public realm, high quality sensitive design etc.

5.3.4. The site is also located within the established Architectural Conservation Area of Rathkeale. Section 11.3 of the LAP relates to Architectural Heritage. Section 11.3.2 deals with the ACA and 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'.

5.3.5. The following is considered relevant:

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 4km to the north of the site. In addition to the above, the Curraghchase Woods SAC (Site Code: 000174) lies approximately 8km to the north east of the site. The River Shannon and River Fergus Estuaries SPA (Site Code: 004077) lies 9.3km to the north, the Lower River Shannon SAC (Site Code: 002165) lies 11km to the north west and the Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA (Site Code: 004161) lies approximately 10km 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 the demolition of an existing building located within the Rathkeale ACA and the construction of two houses in its place, on a site covering an area 0.088693ha. The development 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 Hutch O'Malley Consulting Ltd., on behalf of the applicant Mrs. Maria Franchesca Sheridan, against the decision of the Planning Authority to refuse planning permission for the proposed development. The appeal is summarised as follows:

- The site has been subject to a number of applications whereby the design has been modified at the behest of the PA to provide an improved streetscape as well as clarity on how the junction could be upgraded to be safer and more accessible.
- The roads authority has failed to acknowledge that the current junction arrangement is unsafe.
- The current junction is considered to be excessive, but the LA required the width to be retained at 6.36m.
- A 1m footpath is proposed to extend outside the neighbouring property.
- The footprint of the building is set back from the existing building line close to Main Street in order to retain the kerb line at the corner. There is no encroachment at the junction.
- The existing commercial premises has an entrance to Old Road and parking is therefore unlikely to regularly take place. There is no official parking at this location.
- The question of ownership is not to be debated on this forum but a review of the historic mapping indicates that the roadway was traditionally narrower than the current configuration. While the LA claims ownership of the wall, the middle of the original road is the likely ownership line for the site, or at a minimum the original building line.
- The FI request was adjudged to be overly onerous and incorrect.

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. Planning Authority Issues
3. Visual Impacts
4. Other Issues
5. Appropriate Assessment

7.1. **Principle of the Development:**

- 7.1.1. The proposed development seeks to demolish existing buildings and construct two houses on an urban site in the town of Rathkeale. The site is located within an area zoned 'Town Centre' and the Board will note that residential use is an acceptable use in such areas. The principle therefore is considered to be acceptable.

7.2. **Planning Authority Issues:**

- 7.2.1. The Board will note that the Planning Authority refused planning permission for the proposed development on the grounds of encroachment onto the public realm and the narrowing of the public roadway which would give rise to a traffic hazard.

- 7.2.2. The applicant has submitted an appeal against the decision to refuse permission and submits that the question of ownership should not be considered a reason for refusal of planning permission. The appeal document seeks to suggest that a review of the historic mapping indicates that the roadway was traditionally narrower than the current configuration. While the LA claims ownership of the wall, the middle of the original road is the likely ownership line for the site, or at a minimum the original building line.
- 7.2.3. I would not accept that the appeal provides clarity or certainty in terms of the ownership question and while the planning application indicates ownership of the site, it includes an extensive area of public road and footpaths. As such, and on the basis of the submissions made in connection with the planning application and appeal, I am satisfied that the application has been made by a person who has neither sufficient legal interest in the land the subject of the application to carry out the proposed works on the land, nor the approval of the person who has such sufficient legal estate or interest. In these circumstances, I consider that the Board is precluded from giving further consideration to the granting of permission for the development the subject of the application.
- 7.2.4. Should the Board not agree with this opinion, I would further note that the application seek to carry out works to the public road and footpath without the permission of Limerick City & County Council. The issues arising relate to traffic hazard due to the proposed location of the entrance onto a narrowed roadway and which would impact on the safety and free flow of traffic on the public road. I would note that there are currently two access points to the site and the proposed development will see their replacement with a single vehicular access point in a more central location along the boundary onto Old Road. The existing eastern entrance is located approximately 7m from the junction with Lower Main Street and the proposed vehicular access will be located at approximately 15m from the junction.
- 7.2.5. The proposed development will see the construction of the houses outside the existing boundary wall and into an area which has been used as parking. The applicant indicates that the parking has been facilitated by the owner and submits that it occurs in an ad-hoc fashion and is not an official parking area within the town. It is further submitted that Old Road primarily services the St. Mary's Park estate and should not be considered a distributor or local link road.

7.2.6. While I acknowledge the opinion of the appellant in this regard, I would consider that the Planning Authority has been clear on its requirements in order to facilitate the redevelopment of the site. The further information request sought revisions in order to ensure that the development did not encroach onto the public realm. The applicant chose to proceed with the application as presented. As such, I do not consider that the development is acceptable in its current form and would, if permitted interfere with the safety and free flow of traffic on the public road, due to sightlines being restricted by on-street parking.

7.3. **Visual Impacts:**

7.3.1. The Board will note that the subject site lies within the established Architectural Conservation Area of Rathkeale. 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.

7.3.2. 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.

7.3.3. 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 O5 of the LAP is relevant and seeks that any development should preserve and / or enhance the character and appearance of the ACA.

- 7.3.4. I would note the Archaeological Conservation Report submitted with the application. I would suggest that this report is incorrectly titled as it relates to Architectural Conservation and not archaeology. In addition, the Board will note that the while Document Control Sheet attached to the same report does not relate to the subject site, the content of the report does. The report includes a full photographic record for the building and includes a justification for the demolition of the existing building and its replacement with a building to recreate the old street corner.
- 7.3.5. In terms of the demolition of the existing building, I note the report of the Councils Conservation Officer, who advises that the building to be demolished is of no architectural or historical merit and concludes that there is no objection to its' demolition. I also note that the Conservation Officer has visited the site and inspected the interior of the building. Subject to compliance with conditions with regard to finishes as detailed in the Conservation Officers report, I have no objection to the proposed development in the context of impacts to the character of the ACA.

7.4. **Other Issues:**

7.4.1. **Water Services**

The existing building on the site is connected to public water services. Irish Water has raised no objection to the proposed development. I am satisfied that the development is acceptable in this regard.

7.4.2. **Archaeological Impacts**

The Board will note that the subject site is located within Recorded Monument LI029-031, Historic Town of Rathkeale. As the subject site comprises a brownfield site, and has been substantially built upon, I am satisfied that there are no archaeological issues arising.

7.4.3. **Development Contribution**

The subject development is liable to pay development contribution, a condition to this effect should be included in any grant of planning permission.

7.5. Appropriate Assessment

- 7.5.1. 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.
- 7.5.2. 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 4km to the north of the site. In addition to the above, the Curraghchase Woods SAC (Site Code: 000174) lies approximately 8km to the north east of the site. The River Shannon and River Fergus Estuaries SPA (Site Code: 004077) lies 9.3km to the north, the Lower River Shannon SAC (Site Code: 002165) lies 11km to the north west and the Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA (Site Code: 004161) lies approximately 10km 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.
- 7.5.3. 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.
- 7.5.4. 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 permission be refused for the following stated reason.

9.0 Reasons and Considerations

On the basis of the submissions made in connection with the planning application and appeal, the Board is not satisfied that the application has been made by a person who has

- (a) sufficient legal estate or interest in the land the subject of the application to enable the person to continue the existing use of, or carry out the proposed works on the land, or
- (b) the approval of the person who has such sufficient legal estate or interest.

In these circumstances, it is considered that the Board is precluded from giving further consideration to the granting of permission for the development the subject of the application.

A. Considine
Planning Inspector
13/04/2023