



An
Bord
Pleanála

Inspector's Report

ABP-317869-23

Development	Construction of 2 storey house
Location	Ballywilliam, Rathkeale , Co. Limerick
Planning Authority	Limerick City and County Council
Planning Authority Reg. Ref.	2360399
Applicant(s)	Kathleen Ann O'Brien
Type of Application	Permission
Planning Authority Decision	Refusal
Type of Appeal	First Party
Appellant(s)	Kathleen Ann O'Brien
Observer(s)	None
Date of Site Inspection	10 th May 2024
Inspector	Ciara McGuinness

1.0 Site Location and Description

- 1.1. The appeal site is located in Ballywilliam to the south of Rathkeale town centre in County Limerick. The site is located off the New Line Road (R518), a road that runs from west to east through the south of the town centre. The Ballywilliam Estate lies to the north of the site. Detached houses on individual plots are located to the south of the site. Coláiste na Trócaire School is located to the west of the site.
- 1.2. A partially constructed house with only the blockwork and roofing complete, directly adjoins the site to the north. There is no delineation of boundaries between the partially completed house and the subject site. A stone wall boundary separates the site from the New Line Road. The southern boundary comprises mature trees and hedging. The rear(eastern) boundary is open with access to Ballywilliam estate possible. The site has a stated area of 0.028ha.

2.0 Proposed Development

- 2.1. Permission is sought for the construction of a new domestic two-storey dwelling house including connections to all public services and associated site development works. The proposed house has a stated floor area of 130sqm and a maximum ridge height of 8.78m. The house is proposed to be finished with a smooth plaster finish and blue/black slate roof.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The Planning Authority issued notification of a decision to refuse permission on the 28th July 2023 for the following reason;

“The proposed development would result in the loss of a potential access point which would link the wider residential zoned lands to the southern part of the town and would be at variance with Objective TR O2 in the Rathkeale Local Area Plan 2023-2029 which seeks to improve safe and direct connectivity to the town centre and existing services including schools and other community facilities. Additionally, the proposed development materially contravenes planning reference 18/398 which

makes provision for the stated connectivity. The proposed 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 Planner's Report (20/07/2023) notes that a previous application on this site (PA Reg Ref 18/389) was granted for the construction of a dwelling and the construction of an access road into the lands to the rear. The dwelling permitted under this previous application is partially complete. The proposed dwelling under the subject appeal is located on the access road that was granted. It is considered that the loss of an access which would link the future residential development lands with the regional road would be contrary to good planning and would reduce connectivity within this area of the town. The proposed development materially contravenes PA Reg Ref 18/398 which makes provision for the stated connectivity.

3.2.2. Other Technical Reports

Roads Department – No objections subject to conditions.

3.3. Prescribed Bodies

Irish Water – No objection subject to pre-connection enquiry.

3.4. Third Party Observations

None.

4.0 Planning History

PA Reg Ref 18/389 - Permission Granted in September 2018 for the construction of a two-storey dwelling and for the formation of a vehicular access to the rear of the site from existing housing estate with pedestrian access at the front from Newline and all associated development works.

PA Reg Ref 16/396 - Permission Refused in July 2016 for the construction of two dwellings and for the formation of a vehicular access to the rear of the site from

existing housing estate with pedestrian access at the front from Newline and all associated site works.

5.0 Policy Context

5.1. Rathkeale Local Area Plan 2023-2029

- 5.1.1. The Rathkeale Local Area Plan 2023-2029 was adopted on the 10th of January 2023 and has been in effect from the 21st February 2023. The subject site is zoned 'New Residential' with the following Objective and Purpose Land-Use Zoning

Objective: To provide for new residential development in tandem with the provision of social and physical infrastructure.

Purpose: This zone is intended primarily for new high quality housing development. The quality and mix of residential areas and the servicing of lands will be a priority to support balanced communities. New housing and infill developments should include a mix of housing types, sizes and tenures, to cater for all members of society. Design should be complimentary to the surroundings and should not adversely impact on the amenity of adjoining residents. These areas require high levels of accessibility, including pedestrian, cyclists and public transport (where feasible). This zoning may include a range of other uses particularly those that have the potential to facilitate the development of new residential communities such as open space, schools, childcare facilities, doctor's surgeries and playing fields etc.

- 5.1.2. The following objective is referenced in the Planning Authority's reason for refusal;

Objective TR O2: Improve and seek investment for safe and direct pedestrian and cycleway link throughout the town, including connecting to the Limerick Greenway and a pedestrian and cycle connection across the River Deel to improve connectivity to the town centre and existing services including schools and other community facilities.

5.2. Natural Heritage Designations

- 5.2.1. There are no European Sites in the vicinity of the site. The closest site is the Askeaton Fen Complex SAC (Site Code 002279) located approximately 4km to the north of the site.

5.3. EIA Screening

See completed Form 2 on file. Having regard to the nature, size and location of the proposed development, and to the criteria set out in Schedule 7 of the Regulations I have concluded at preliminary examination that there is no real likelihood of significant effects on the environment arising from the proposed development. EIA, or EIA determination, therefore, is not required.

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of appeal can be summarised as follows;

- The site does not provide access to the residentially zoned lands. There is a strip of land owned by adjoining landowner which runs to the rear of the Appellant's site, which separates it from the residentially zoned lands. Folio mapping is enclosed.
- The zoned lands to the rear have been in the council's ownership for years without any development taking place.
- An access road was constructed in front of No. 12 Ballywilliam with its open end abutting the remaining council lands indicating that access can be provided here to the lands for future development. This is further evidenced by the absence of a turning head where the road ends.
- Three roads within the Abbycourt Estate directly abut the residentially zoned lands. The use of the appellants lands must be weighed against the Councils own ownership of the lands and the several existing access points serving those lands.

- The Council's actions do not promote connectivity. A barrier of bollards between Abbeyview and Ballyewilliam estate has been maintained by the Council for years. The Council has also erected steel gates on two pedestrian laneways to the North of Main Street, adjacent the former post office and Bank of Ireland.
- Connectivity would be better directed northwards to the town centre services via the Well Lane, thus preserving the carrying capacity of the R518.
- The Planning Authority erred in their assessment of PA Reg Ref 18/389. The applicant did not have any legal interest in those lands. The appellants herein should not be prejudiced by the PA's error.

6.2. Planning Authority Response

None

6.3. Observations

None

7.0 Assessment

- 7.1. From my reading of the file, inspection of the site and assessment of the relevant policy provisions, I conclude that the key issue arising in this appeal relates to the principle of development.
- 7.2. The site of the proposed development is on lands zoned 'New Residential'. The zoning objective seeks *'to provide for new residential development in tandem with the provision of social and physical infrastructure'*. While the development of a dwelling is permitted in principle on 'New Residential' zoned lands, I note that permission was granted on the subject site under PA Reg Ref 18/389 for the construction of an access to the lands to the rear as per the indicative access shown at this location on the Rathkeale Local Area Plan 2012- 2018, which was operative at the time. I note the current Rathkeale LAP (2023-2029) does not show indicative access locations. The Planning Authority considers that the proposed development would result in the loss of an access point which would link the wider residential

zoned lands to the southern part of the town and would materially contravene PA Reg Ref 18/389 which makes provision for this stated connectivity.

- 7.3. I note from my site visit, that PA Reg Ref 18/389 has been implemented but not completed, with only the blockwork and roof of the dwelling house complete. I am not aware of any record of an extension of duration of the permission. The development is therefore not be in accordance with the terms of the original permission. I would note that this is a separate matter of enforcement which falls under the jurisdiction of the Planning Authority.
- 7.4. I would note that this site is the only direct linkage from the wider 'New Residential' zoned lands onto New Line Road. Having regard to access use established under PA Reg Ref 18/389, I consider that the proposed development would serve to undermine the potential for the optimal development of the wider 'New Residential' zoned lands. I note the zoning objective seeks to provide for social and physical infrastructure in tandem with residential development. I also note the purpose of the 'New Residential' zoning with requires 'high levels of accessibility, including pedestrian, cyclists and public transport (where feasible)'. I consider that the provision of this linkage is hugely important for the proper planning and development of the lands going forward. I therefore agree with the substance of the Planning Authorities reason for refusal.
- 7.5. The appellant notes that there is another folio to the rear separating the site from the 'New Residential' zoned lands. I do not consider this a barrier to development. The appellant has also offered other alternative access roads that can connect to the 'New Residential' zoned lands. I note these possible linkages, however as stated above this site is the only direct linkage from the wider zoned lands onto New Line Road and the purpose of the zoning requires high levels of accessibility. I consider that other linkages including those to the north will also be required to ensure an accessible and permeable development of the lands. Examples of poor connectivity referenced by the appellant highlight further the importance of this linkage.
- 7.6. The appellant considers that the PA erred in their assessment of PA Reg Ref 18/389 as the applicant did not have any legal interest in those lands. In terms of the legal interest, applicants must provide sufficient evidence of their legal interest for the purposes of the planning application and decision. Any further consents that may

have to be obtained are essentially a subsequent matter and are outside the scope of the planning appeal. This is a matter to be resolved between the parties, having regard to the provisions of s.34(13) of the 2000 Planning and Development Act.

8.0 AA Screening

- 8.1.1. I have considered the proposed development in light of the requirements S177U of the Planning and Development Act 2000 as amended.
- 8.1.2. There are no European Sites in the vicinity of the site. The closest site is the Askeaton Fen Complex SAC located approximately 4km to the north of the site.
- 8.1.3. The proposed development relates to the construction of a two-storey dwelling. A detailed description of the proposal is outlined in Section 2 of this report.
- 8.1.4. No nature conservation concerns were raised in the planning appeal.
- 8.1.5. Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment because there is no conceivable risk to any European Site. The reason for this conclusion is as follows:
- Nature of works e.g. the construction of a two-storey dwelling in an urban environment
 - Lack of connections to the nearest European site
 - Taking into account screening report/determination by the Planning Authority
- 8.1.6. I conclude that on the basis of objective information, that the proposed development would not have a likely significant effect on any European Site either alone or in combination with other plans or projects.
- 8.2. Likely significant effects are excluded and therefore Appropriate Assessment (stage 2) (under Section 177V of the Planning and Development Act 2000) is not required.

9.0 Recommendation

- 9.1. I recommend that permission be refused for the following stated reason.

10.0 Reasons and Considerations

The proposed development would result in the loss of an access point which would link the wider 'New Residential' zoned lands to the southern part of the town and would be at variance with the purpose of the 'New Residential' zoning in the Rathkeale Local Area Plan 2023-2029 which requires high levels of accessibility to these areas. The proposed development would also materially contravene planning reference 18/389 which makes provision for the stated connectivity. The proposed would therefore be contrary to 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.

Ciara McGuinness
Planning Inspector

4th June 2024

Appendix 1 - Form 1

EIA Pre-Screening

[EIAR not submitted]

An Bord Pleanála Case Reference			
Proposed Development Summary	Construction of 2 storey house		
Development Address	Ballywilliam , Rathkeale , Co. Limerick		
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)		Yes	✓
		No	No further action required
2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?			
Yes		Class.....	EIA Mandatory EIAR required
No	✓		Proceed to Q.3
3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?			
		Threshold	Comment (if relevant)
		N/A	Conclusion
No			No EIAR or Preliminary Examination required
Yes	✓	Class 10(b)(i) Construction of more than 500 dwelling units - Sub Threshold	Proceed to Q.4

4. Has Schedule 7A information been submitted?

No	✓	Preliminary Examination required
Yes		Screening Determination required

Inspector: _____ **Date:** _____

Appendix 2 - Form 2

EIA Preliminary Examination

An Bord Pleanála Case Reference	317869-23	
Proposed Development Summary	Construction of 2 storey house	
Development Address	Ballywilliam , Rathkeale , Co. Limerick	
<p>The Board carries out a preliminary examination [Ref. Art. 109(2)(a), Planning and Development Regulations 2001 (as amended)] of, at least, the nature, size or location of the proposed development having regard to the criteria set out in Schedule 7 of the Regulations.</p>		
	Examination	Yes/No/ Uncertain
<p>Nature of the Development</p> <p>Is the nature of the proposed development exceptional in the context of the existing environment?</p> <p>Will the development result in the production of any significant waste, emissions or pollutants?</p>	<p>The nature of the development is not exceptional in the context of the urban environment.</p> <p>The proposed development will not result in the productions of any significant waste, emissions or pollutants. Localised constructions impacts will be temporary.</p>	No
<p>Size of the Development</p> <p>Is the size of the proposed development exceptional in the context of the existing environment?</p> <p>Are there significant cumulative considerations having</p>	<p>The size of the development is not exceptional in the context of the existing urban environment.</p> <p>There is no real likelihood of significant cumulative effects having regard to existing or permitted projects.</p>	No

<p>regard to other existing and/or permitted projects?</p>		
<p>Location of the Development Is the proposed development located on, in, adjoining or does it have the potential to significantly impact on an ecologically sensitive site or location?</p> <p>Does the proposed development have the potential to significantly affect other significant environmental sensitivities in the area?</p>	<p>The nearest European site is 4km to the north of the site. Having regard to the nature and scale of the proposed development, and the separation distance to any European site, and in the absence of any hydrological or other connections to European Sites, and it is not considered that the proposed development would be likely to have a significant effect a European site.</p> <p>The proposed development does not have the potential to significantly affect other significant environmental sensitivities in the area.</p>	<p>No</p>
<p>Conclusion</p>		
<p>There is no real likelihood of significant effects on the environment.</p> <p>EIA not required.</p> <p style="text-align: center;">✓</p>	<p>There is significant and realistic doubt regarding the likelihood of significant effects on the environment.</p> <p>Schedule 7A Information required to enable a Screening Determination to be carried out.</p>	<p>There is a real likelihood of significant effects on the environment.</p> <p>EIAR required.</p>

Inspector:

Date:

DP/ADP: _____ Date: _____

(only where Schedule 7A information or EIAR required)