



An  
Bord  
Pleanála

## Inspector's Report PL09.246888

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<b>Development</b>	Construction of an extension with storage space, roof lights and associated site works
<b>Location</b>	47 Millbridge Way, Naas, Co. Kildare.
<b>Planning Authority</b>	Kildare County Council
<b>Planning Authority Reg. Ref.</b>	16/401
<b>Applicant(s)</b>	Edward & Elaine O'Loughlin.
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant with conditions.
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Brendan, Elaine, Dara & Evan Kenny
<b>Observer(s)</b>	Wiltshire International
<b>Date of Site Inspection</b>	4 <sup>th</sup> November 2016
<b>Inspector</b>	Philip Davis

# Contents

1.0 Site Location and Description .....	4
2.0 Proposed Development .....	4
3.0 Planning Authority Decision .....	4
3.1. Decision .....	4
3.2. Planning Authority Reports .....	5
3.3. Prescribed Bodies .....	5
3.4. Third Party Observations .....	5
4.0 Planning History.....	6
5.0 Policy Context.....	6
5.1. Development Plan.....	6
5.2. Natural Heritage Designations .....	6
6.0 The Appeal .....	6
6.1. Grounds of Appeal .....	6
6.2. Applicant Response .....	7
6.3. Planning Authority Response.....	7
6.4. Observations.....	7
6.5. Further Responses.....	8
7.0 Assessment.....	8
7.1. Principle of the development.....	8
7.2. Overshadowing and ambient light.....	9
7.3. Design, bulk and scale .....	10
7.4. Privacy .....	11
7.5. Parking.....	11
7.6. Other issues.....	11

7.7. Appropriate Assessment ..... 11

8.0 Recommendation..... 12

9.0 Reasons and Considerations..... 12

10.0 Conditions ..... 12

## 1.0 Site Location and Description

- 1.1. Millbridge Way is the primary road serving a suburban estate at the northern side of Naas town, located between the R407 Sallins Road and the Naas/Corbally Spur of the Grand Canal. The estate, which also includes a large nursing home, dates from around 2004 and the predominantly 2-storey houses are laid out in a series of terraces with some detached dwellings around narrow traffic-calmed shared surface feeder streets. Millbridge Way forms the western boundary of this small estate.
- 1.2. 47 Millbridge Way is a 2 storey 3-bay detached dwelling forming the corner house at a junction of two branches of Millbridge Way. It faces north to the feeder road, with a side (western) gable to the main loop. The house is on a plot which is roughly L-shaped. To the east there is a gap of around 8 metres between the house and the neighbouring dwelling. This gap includes a small side yard used for parking for the house, with the remainder a parking bay (not within the appeal site). The house fronts onto the road with just a very narrow front garden. The rear garden extends around 8 metres, and includes the area behind the side yard and the parking bays. The rear garden abuts the side gable of a terrace extending south.

## 2.0 Proposed Development

The proposed development is described on the site notice as follows:

*The development will comprise the construction of an 82 m<sup>2</sup> two storey hipped roof rear extension (with part flat roof at ground floor level), with storage space and 2 no. east facing roof lights at attic level, and associated landscaping, drainage and site works.*

## 3.0 Planning Authority Decision

### 3.1. Decision

The planning authority decided to grant permission subject to 11 standard conditions.

## 3.2. Planning Authority Reports

### 3.2.1. Planning Reports

The planning report on file notes that the AA Screening Report indicates that an NIS is not required. It is considered that policy 13.3.6 in the Naas Town Development Plan 2011-2017 applies (extensions to dwellings). The report concludes that the proposed design is acceptable in terms of layout and proportions. It recommends alterations to the new fenestration to the western elevation to match the front elevation of the dwelling, and recommends a condition to this end.

### 3.2.2. Other Technical Reports

- An **Appropriate Assessment Screening Report and Conclusion Statement** notes that the closest Natura 200 site is 8.5 km distant (Mouds Bog SAC). It is not considered that it would have potential significant effects and so an NIS is not required.
- A development contribution calculation indicates that under the Scheme, a levy of €2120.00 is required.
- **Irish Water** stated that it had no objection subject to a standard condition.
- **Water Services** department indicated no objection subject to standard conditions.
- **Kildare Fire Service** had no objection.
- **Naas Municipal District Engineer** stated no objection subject to a number of standard conditions.

## 3.3. Prescribed Bodies

None

## 3.4. Third Party Observations

There were five no. observations with the submission, all outlining objections and concerns.

## 4.0 Planning History

The overall development, including a nursing home, was permitted under 00/500185. There are no records on file regarding any planning applications for alterations to the appeal site or the adjoining dwellings.

## 5.0 Policy Context

### 5.1. Development Plan

The appeal site is in an area zoned R2-existing residential in the Naas Town Development Plan 2011-2017, in which the objective is to protect existing residential and improve existing residential amenity, to provide for appropriate infill residential development and to provide for new and improved ancillary services. Section 13.3.6 of the Development Plan addresses extensions in such areas.

### 5.2. Natural Heritage Designations

The site is within Naas Town area and there are no Natura 2000 sites in the near vicinity. The closest is Mouds Bog SAC, site code 002331 which is just over 8km to the west. Pollardstown Fen SAC, site code 000396, is just beyond Mouds Bog. There are no NHA's within 10 km of the site.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

- It is argued that the western elevation includes windows to a party wall – it is submitted that this party wall is in the ownership of the estate management company, who have not given permission for this.
- It is argued that it will result in significant overshadowing to the east (no's 46 and 48) in the evening hours.
- It is submitted that it is contrary to section 13.3.6 of the Naas Town Development Plan with regard to its design and scale relative to neighbouring

properties. It is submitted that the bulk, height, and extent of the property is out of scale and inappropriate for the location.

- It is submitted that the proposed new gable wall is too close to the adjoining dwelling (no. 48) – it is noted that the Development Plan states that there should be a minimum distance of 2.5 metres.
- A letter is enclosed from the management company – this was originally submitted as an objection.

## 6.2. Applicant Response

- An outline is made of family circumstances – it is stated that the purpose of the extension is to make the house appropriate for the applicant's medical needs.
- With regard to fenestration on the western elevation, it is submitted that the windows are consistent with patterns elsewhere in the estate.
- It is denied that the wall is a party wall as it does not form part of the boundary – it is stated that the Millbridge Way Management Company did not object (it is argued that the letter attached with the objection is not a valid objection)
- A shadow assessment is attached with the response to support the argument that there will be no significant loss of light to adjoining properties (drawings attached).
- It is argued that there is no significant level of overlooking of neighbouring properties.

## 6.3. Planning Authority Response

The Board is referred to the planner's report.

## 6.4. Observations

- The managing agents for Millbridge way state that they consider that having windows overlook the boundary wall with the common area will result in the common areas being overlooked and in effect privatised. It is also submitted

that the wall is a party wall and works to it would require the permission of the management company.

## 6.5. Further Responses

In response to the applicant's response letter, the appellant's re-stated a number of arguments regarding amenity and the party wall. With regard to the submitted sunshine analysis submitted by the applicants, photos are submitted showing evening sun into their gardens, and they emphasise their belief that the proposed development would significantly reduce evening sunshine.

## 7.0 Assessment

### 7.1. Principle of the development

The site is within a developed and established residential area, which is zoned for the protection of residential amenities. In such areas, extensions are considered acceptable subject to the protection of amenities. Paragraph 13.3.6 specifically addresses extensions.

*Primarily the design and layout of extensions should have regard to the amenities of adjoining properties, particularly as regards sunlight, daylight and privacy. In addition the following basic principles shall be applied:*

- The extension should be sensitive to the existing dwelling and should not adversely distort the scale or mass of the structure, or adjoining properties.*
- While the form, size and appearance of an extension should complement the area, and the design and scale should have regard to adjoining properties. A flexible approach will be taken to the assessment of alternative design concepts. In particular contemporary designs will be encouraged.*
- The extension should not provide for new overlooking of the private area of an adjacent residence where no such overlooking previously existed.*
- In an existing developed area, where a degree of overlooking is already present, the new extension must not significantly increase overlooking possibilities.*



- *New extensions should not overshadow adjacent dwellings to the degree that there is a significant decrease in day or sunlight entering into the house.*
- *In all cases a minimum private rear garden area must be retained.*

The applicants have outlined personal circumstances regarding their need for extra space at ground floor level and a generally larger dwelling. I note this, and while there are no specific development plan policies regarding such needs, it would be normal planning practice to acknowledge that flexibility should be applied towards the adaption of any dwelling to changing lifestyle requirements and circumstances. The zoning designation implicitly recognises that dwellings can be subject to extensions and alterations in accordance with the needs of the occupants. Notwithstanding this, any such alterations should be reasonable and in accordance with the basic principle of ensuring the protection of the amenities of adjoining dwellings.

The appellants and observers have questioned the status of the western boundary wall – it is submitted that this is a party wall and any works to it will require the agreement of the estate management company, and it seems this agreement is not forthcoming. It is not clear to me from the evidence on file as to whether it is a clear cut case that the applicants do not have the legal status to construct the proposed western elevation for these reasons. However, in these circumstances I would refer to the provisions of S.34(13) of the 2000 Act, as amended, which states that a person shall not be entitled solely by reason of a permission under this section to carry out any development. As this is primarily a civil matter between the management company and the applicant and there is insufficient evidence on file to definitively state that the applicant cannot carry out the works without management company permission I do not recommend that the appeal be dismissed for this reason.

## **7.2. Overshadowing and ambient light**

The applicant submitted shadowcast plans with the appeal response. I have examined these and I believe them to give a reasonable and accurate assessment of overshadowing impacts at the times and dates chosen. The eaves height of the

proposed extension to the rear, which will almost entirely infill an existing gap, is just over 4.6 metres, with a ridge height of just over 7.5 metres. The edge of the eaves is 11.5 metres from the side of the property to the east, with the ridge being about 14.5 metres. As a general rule of thumb, there is likely to be a significant impact if such a side extension is 45 degrees from the midpoint of any ground floor room on adjoining properties, - if not - I would consider it very unlikely, absent specific local circumstances, that it would have a serious impact. In this case the proposed development is significantly under 45 degrees, so I would not consider that there would be a loss of direct light except at certain specific times. The orientation is such that I would accept that at certain specific times of the year there would be some blockage of the setting sun, as the gap is almost directly due west of the properties to the east. However, I could consider the impact to be only during a very restricted period and so not particularly significant having regard to the overall local development context.

The orientation is such that I do not consider that it would have any direct impact on sunlight to the property (house or garden) of the house to the south. It would have a slight impact on overall ambient light levels, but I would consider these to be minor and acceptable in a suburban context.

### **7.3. Design, bulk and scale**

The existing house is an unusual detached dwelling within an estate otherwise mostly consisting of terraces. It presents a blank gable wall to the road to the west. The proposed extension fills in the rear garden gap between the house and the side gable of the dwelling to the south and adds eight new windows facing to the road to the west. I would consider this a significant improvement to the aspect from public areas to the west.

The extension to the rear would only be partly visible from other public areas. It will infill the current 'break' between the dwellings as seen from the rear gardens of the terrace to the east, which would I consider be a significant, but not serious intrusion. The overall scaling is consistent with the overall pattern of development in what was a generally very well designed suburban estate. The pattern of eaves and ridge heights are in line with those existing. It is quite close to the gable of the dwelling to the south, but there seems sufficient room for removing bins and access, so I could

consider this narrow passage acceptable in this context. Subject to a few minor alterations I would consider the design acceptable in visual impact, and in bulk and scale.

#### **7.4. Privacy**

The proposed extension has two windows (one to a bedroom, one to an ensuite) facing to the east, looking over existing gardens. However, given the separation distances from gardens opposite, and the existing pattern of windows to the rear of the terrace to the south, I do not consider that this would result in any significant increase in overlooking of adjoining gardens or other private areas.

#### **7.5. Parking**

The dwelling has one curtilage parking space, in the yard to the eastern side of the existing dwelling. While the house will be expanded to a 4 bedroom, given the overall nature and layout of the area, I do not consider that this would lead to a requirement for further parking.

#### **7.6. Other issues**

There are no indications from the file that the proposed development has any implications for water supply or wastewater. The site is not indicated on any available sources as being prone to flooding. There are no recorded ancient monuments or protected structures in the vicinity – the closest is the former Naas gas works, along with two canal locks – both are to the west of the site, but screened by thick planting.

#### **7.7. Appropriate Assessment**

There are no Natura 2000 sites in or immediately around Naas. The closest to the site is Mouds Bog (site code 002331), a raised bog about 8 km west of the site. The Conservation Objective for this site is to protect the 70 hectare bog, which involves ensuring the water levels are maintained and no further cutting is permitted. The site appears to be in the same overall watershed as the bog, but there are no

watercourses nearby linking to the site. The Grand Canal (Naas/Corbally branch line) runs just across some open space from the estate, but this is not in hydraulic continuity with the Bog (although it may be with Pollardstown Fen, which provides some water to the Grand Canal system). There are no clear pathways for any direct or indirect impacts from the proposed development having regard to its small scale. I therefore consider that it is reasonable to conclude that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on European Site No. 002331, or any other European site, in view of the site's Conservation Objectives, and a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required.

## **8.0 Recommendation**

I recommend that planning permission be granted for the proposed development for the following reasons and considerations, subject to the conditions set out in the schedule below.

## **9.0 Reasons and Considerations**

Having regard to the zoning designation for the area, the existing design and layout of the estate, and the design and scale of the proposed development, it is considered that subject to the conditions set out below the proposed development would not seriously injure the amenities of the area and would otherwise be in accordance with the proper planning and sustainable development of the area.

## **10.0 Conditions**

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning

authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

**Reason: In the interest of clarity**

2. The fenestration to the western elevation shall be revised to match that of the existing dwellings front elevation in all respects (proportions and detailing).

**Reason: In the interest of visual amenity and architectural harmony.**

3. The existing dwelling and proposed extension shall be jointly occupied as a single residential unit and the extension shall not be sold, let or otherwise transferred or conveyed, save as part of the dwelling.

**Reason:** To restrict the use of the extension in the interest of residential amenity.

4. The external finishes of the proposed extension (including roof tiles/slates) shall be the same as those of the existing dwelling in respect of colour and texture. Samples of the proposed materials shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** In the interest of visual amenity.

5. Notwithstanding the exempted development provisions of the Planning and Development Regulations, 2001, and any statutory provision replacing or amending them, no development falling within Class 1 or Class 3 of Schedule 2, Part 1 of those Regulations shall take place within the curtilage of the house, without a prior grant of planning permission.

**Reason:** In order to ensure that a reasonable amount of rear garden space is retained for the benefit of the occupants of the extended dwelling.

6. Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

**Reason:** In the interest of public health.

7. Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

**Reason:** In order to safeguard the residential amenities of property in the vicinity.

8. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

**Reason:** It is a requirement of the Planning and Development Act 2000, as

amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

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. Philip Davis  
Planning Inspector

14<sup>th</sup> November 2016