



An
Bord
Pleanála

Inspector's Report PL25M.247596

Development	Extension to rear of storage shed, alterations to doors, windows and roof to provide change of use to pharmacy dispensary and all ancillary works.
Location	Millmount, Mullingar, Co. Westmeath.
Planning Authority	Westmeath County Council
Planning Authority Reg. Ref.	16/6216
Applicant(s)	Declan Brennan
Type of Application	Permission
Planning Authority Decision	Refuse
Type of Appeal	First Party
Appellants	Declan Brennan
Observers	Millmount Residents Association James Buckley
Date of Site Inspection	14 th January 2017
Inspector	Patricia Calleary

Contents

1.0 Site Location and Description	3
2.0 Proposed Development	3
3.0 Planning Authority Decision.....	3
4.0 Planning Authority Reports	4
4.1. Planning Reports.....	4
4.2. Other Technical Reports	4
4.3. Prescribed Bodies	4
4.4. Third Party Observations	4
5.0 Planning History.....	5
6.0 Policy Context.....	5
6.1. Mullingar Local Area Plan 2014-2020.	5
7.0 The Appeal	6
8.0 Assessment	8
8.1. Introduction	8
8.2. Compliance with Development Plan Policy	9
8.3. Character of the area	10
8.4. Traffic	11
8.5. Residential Amenity	12
8.6. Other	12
9.0 Recommendation	13
10.0 Reasons and Considerations	13

1.0 Site Location and Description

- 1.1. The appeal site with a stated area of 0.142 hectares is located at the northern end of Millmount, close to the junction with Ballinderry road in Mullingar. The site, which is well elevated over the road, contains a single storey building, a former house, which is currently in use as a GP practice. It also contains an ancillary single storey shed with a stated floor area of 33 sq.m and whose change of use and extension is the subject of this appeal.
- 1.2. The area is characterised by residential development along Millmount and there is a small retail centre comprising a shop, petrol station and tyre sales business to the east of the site along Ballinderry road. Ballinderry road continues north at the nearby roundabout, directly linking with Millmount road when it crosses under the railway bridge.

2.0 Proposed Development

- 2.1. The proposed development would comprise 1) Change of use of a storage shed to pharmacy dispensary. 2) Increase in floor area by constructing extension to rear of shed. 3) External alterations to doors, windows and roof. 4) Addition of signage and all ancillary site works. The extension would measure c.11 sq.m and the building as extended would measure c.44 sq.m in total.
- 2.2. The original application drawings on file indicated 6 car parking spaces and as part of the appeal, a revised site layout was presented with 11 spaces in total. The appeal was also accompanied by a revised building design.
- 2.3. It is stated in the appeal that the development is intended as a pharmacy to solely dispense medicines and is not intended to trade complementary convenience goods.

3.0 Planning Authority Decision

- 3.1. The Planning Authority issued a decision to **refuse permission** for five reasons which included matters of contravening the land use zoning, traffic hazard, negative impact on residential amenity, undermine vitality and viability of existing retail and design.

4.0 Planning Authority Reports

4.1. Planning Reports

The main issues put forward in the Planning Officers assessment are listed under as follows:

- Policy does not support retail use on residentially zoned land;
- Impacts on residential amenity with increased customer traffic;
- Domestic garage form is consistent with its setting but this would not be the case if development proceeds;
- Poor sightlines.

The Planning officer concluded that the proposed development would not deliver on the zoning objective for the area or safeguard residential areas from encroachment of commercial uses and put forward a recommendation to **refuse permission**.

4.2. Other Technical Reports

- District Engineer – Sought further information regarding sightlines;
- Fire Officer – No objections.

4.3. Prescribed Bodies

- No responses on file.

4.4. Third Party Observations

A submission was received by the Planning Authority from Millmount Residents Association and from James Buckley c/o Walsh Associates stating their objection to the development. Issues were raised around contravening the zoning objective, retail impact, traffic and parking issues and drainage.

5.0 Planning History

5.1. Appeal site

- 04/5562 – On 28th February 2005, permission was **granted** for the change of use of a single storey residence to clinic with car parking for 6 cars.

6.0 Policy Context

6.1. Mullingar Local Area Plan 2014-2020.

Zoning

- Site has a zoning objective O-LZ1 – To provide for residential development, associated services and to protect and improve residential amenity. Within this zoning, Local shops may be permitted in principle. Local Shops are described under Section 3.19.

Section 3.16 – Retail Policy

- Policies for retailing are currently set out in the Retail Strategy for County Westmeath 2007-2012 which is to remain in force pending the adoption of a Joint Retail Strategy for the Midlands Gateway Towns.
- The Council will seek to safeguard predominantly residential areas on the edge of the Town Centre by prohibiting undue encroachment of commercial uses into established residential areas and streets, **examples** of which include Harbour Street, Bishopsgate Street, Millmount Road¹, Auburn Road, Sundays Well Road and Lynn Road. This is considered desirable to protect the residential amenity of existing properties, to retain residential character and to foster and protect a sense of community.
- Retail Policies include - P-RET3 - To protect the retail function of the Core Shopping Area; P-RET5 - To sustain the vitality and viability of the major

¹ Millmount road is located north of the site at Millmount. It is a residential road situated north of the railway line and is closer to the town centre. See roads labelled on site location map in appendix attached to this report.

shopping areas and to encourage measures to improve their attractiveness and P-RET6 - To adhere to the provisions of the sequential approach in the consideration of retail applications located outside of core retail area.

- Retail Objectives include: O-RET8 - To reinforce the retail core area of the town as the priority location for new retail development, with quality of design and integration within the existing urban form and layout being fundamental prerequisites.

S4.10 – Development Uses Policies & Objectives

- Table 9.11 Car parking standards – 6 spaces for every 100 sq.m gross floor area for shopping.

6.2. Natural Heritage Designations

- pNHA – Site Code 002103 - Royal Canal (70m from the appeal site).

7.0 The Appeal

7.1. Grounds of First Party Appeal

7.1.1. An appeal was received from **Emma Pillion Planning** representing the applicant/appellant **Declan Brennan**, against the decision made by the Planning Authority to refuse planning permission. The following provides a summary of the appeal.

- The unit would only serve the dispensing of medication and would not function as a 'browse' destination;
- Aligns with HSE preference which is to provide for 'one-stop shop' model;
- Site and former residence has been used as a medical centre for 12 years;
- Site is inaccurately zoned under the current LAP and if it was zoned accurately for 'education/institutional/community' the development would be permitted in principle;
- Within the current zoning, the proposal fits with the category 'shop - local' which would be permitted in principle (Section 10.2.1 referenced);

- No material increase in traffic would result having regard to the existing medical use on site;
- Existing facility is modest in scale and the addition of a unit to dispense pharmacy only medication would not cause any material impact on residential amenity;
- Given the modest and specific nature of the development, would not impact on vitality or viability of Mullingar town;
- Design amended to reflect the character of the existing medical centre.

The appeal was accompanied by a revised site layout plan which includes 5 additional car parking spaces for staff (a total of 11 spaces). A drawing which presented an amended building design was also enclosed.

7.2. Planning Authority Response

7.2.1. The Planning Authority response requests An Bord Pleanála to uphold its decision to refuse permission. The following points are put forward.

- It is not considered that the description of local shop in the residential land use zoning was intended to include this type of retailing proposed on the subject site particularly given the adjacent commercial zoning;
- Assertion that the proposed development will only serve patients of the adjoining GP practice is not considered reasonable and the development will generate additional traffic movements. Limitation on the retail offer in the proposed pharmacy is not considered viable or enforceable;
- Additional 6 car spaces demonstrate the deficiency and potential to increase traffic movements. Reference in the grounds of appeal to an amendment to the entrance but no detail presented;
- Pharmacy uses play a significant part of the town centre retail offer and the provision of competition in peripheral areas could have a negative impact on the vitality and viability of these uses;

- Design improvements noted, however proposal remains incongruous to its setting in an established residential area.

7.1. Observers

7.1.1. An observation on the appeal was submitted by **Millmount Residents Association**. It contained a copy of their submission made to the Planning Authority which centres on traffic congestion and lack of parking. It is also stated that there are retail units for lease in the local retail centre within 100m of the site and that it would be more suitable to locate a pharmacy in one of those units. The residents suggest that the commercial property at this location should not be permitted.

7.1.2. An observation on the appeal was also received from Walsh Associates on behalf of **James Buckley**, the main points which are summarised under.

- Would contravene zoning if permitted and would undermine the vitality and viability of the adjacent commercially zoned neighbourhood centre;
- Increase in traffic is likely to arise and which would impact on the established residential amenity;
- Its location in a shed/ancillary building would be incongruous with the existing established built character of the site.

8.0 Assessment

8.1. Introduction

8.1.1. I have read and considered the contents of the planning application, grounds of appeal, responses and relevant planning policy. I have also attended the site and environs. I consider the key issues in determining the application and appeal before the Board are as follows:

- Compliance with Development Plan Policy
- Character of the Area
- Traffic
- Residential Amenity

- Other

I consider each of the issues below.

8.2. Compliance with Development Plan Policy

- 8.2.1. The site is in a mature residential area, Millmount, which is located off Ballinderry road in Mullingar. It has a zoning objective O-LZ1 – ‘To provide for residential development, associated services and to protect and improve residential amenity’. In relation to this objective, the plan states that the priority of the Council is to ‘improve the quality of existing residential areas and to protect their amenities’. The appellant’s case is that the zoning is incorrect and that even under the residential zoning applied, the proposed pharmacy would fit the category of a ‘shop-local’ and accordingly should be permitted in principle.
- 8.2.2. Section 3.19 of the plan deals with both local shops alone, which is relevant in the consideration of this appeal, and shops attached to petrol stations. The plan encourages ‘local shops’ which should be easily accessible to all sections of society. It is stated in the appeal that the pharmacy would serve to facilitate the filling of prescriptions and is a unit for dispensing medicines only. The appeal makes it clear that it would not sell convenience goods. I note that this model is very different to a typical retail pharmacy which normally trades a variety of complementary convenience goods as well as dispensing medicines. I concur with the Planning Authority that the land use zoning could not reasonably have been intended to include the type of retail offer proposed in the description of local shop.
- 8.2.3. Under Section 3.16, retail policy makes specific reference to seeking to safeguard predominantly residential areas on the edge of town centres by prohibiting undue encroachment of commercial uses into established areas. Examples referenced include Millmount road and the reason given is ‘to protect the residential amenity of existing properties, to retain residential character and to foster and protect a sense of community’. From a review of the maps, Millmount road appears to be located further north and closer to town centre but also connects with Millmount, where the appeal site is located, via the Ballinderry road. Given that the appeal site at Millmount is in a residential area, the development would lie contrary to this stated retail policy.

- 8.2.4. I note the first party's assertion that the proposed character of the development is more akin to a health service or an activity ancillary to a health service than a retail use. It is however described on the public notice as a pharmacy dispensary which I am clear is a retail use. Retail Policy including P-RET3 and P-RET5 together with Retail Objective O-RET8 collectively seek to protect the retail function of the core shopping area and to sustain the vitality and viability of shopping areas.
- 8.2.5. I note that 'shops-neighbourhood' are open for consideration in a residential area. The proposed 'pharmacy dispensary' would not be sited in a neighbourhood centre.
- 8.2.6. Noting the stated provisions of the current Mullingar Local Area Plan, I consider the proposal for a change of use from a storage shed to a pharmacy dispensary in a residential area would contravene the provisions to protect established residential areas and to direct retail to the core shopping areas. It would also if permitted contribute to undermining the vitality and viability of the existing retail locations, which it is the policy of Westmeath County Council to protect and strengthen. Overall, the development would not comply with applicable planning policy and should be refused for this reason.

8.3. **Character of the area**

- 8.3.1. The pattern of development in the immediate adjoining area consists of established detached houses laid out along the road (Millmount) and there is a small retail centre comprising a shop, petrol station and tyre sales business within a defined site to the north east of the appeal site along Ballinderry road which has a commercial zoning. The primary building on the appeal site was a former dwelling house and now functions as a GP surgery / medical centre on foot of a grant of permission for a change of use of the house to a clinic 04/5562. The shed structure would have functioned originally as a domestic store / garage which is typical of such a structure ancillary to a house of its time and noting its scale and similar render finish, it would have integrated satisfactorily with the original house on site. I accept that it also integrates satisfactorily with the primary building on site which functions as a GP surgery and with the established rhythm of the area consisting of houses, added extensions and domestic garages. I have formed this view based on the building being ancillary and subordinate to the function of the primary building on site.

8.3.2. I hold an entirely different view in assessing the building functioning as a pharmacy dispensary, as this retail use would be out of character and inconsistent with the established residential pattern of development in the area. It would result in un-coordinated disorderly development and have the potential to set an undesirable precedent for future such inappropriate developments. I have considered that a doctor's surgery is a use which is permitted in principle in a residential area under the current Mullingar LAP. A pharmacy use is entirely different. Having regard to the foregoing, I consider that the development should be refused for reasons of being out of character with the area and contrary to the proper planning and sustainable development of the area.

8.4. **Traffic**

8.4.1. The observers have expressed their concerns that the development would generate unacceptable traffic levels in a residential area. The Planning Authority considered the development would lead to a traffic hazard. The appellant dispute this stating that the development is modest in scale and would complement the GP surgery business, allowing patients of the surgery to obtain their medicines from the new pharmacy dispensary, if permitted. It is further stated that given the nature of the pharmacy functioning as a dispensary only, it is highly unlikely to attract customers from passing trade and that it would only open the same hours as the GP surgery, including not opening on Wednesday afternoons or at weekends.

8.4.2. The structure is situated on a residential road which is a cul de sac. Given that it is currently used only for storage, there would likely be some increase in traffic movements onto the road close to a junction with a busy Ballinderry road with potential to impact on residents who live there. Sightlines are poor in the south direction and there is reference on the site layout drawing received by the Board to widening of the entrance. I also note the speed limit of 50kph applies. I have considered the arguments presented regarding complementary uses when combined with the existing permitted GP use on site and the modest size of the structure at c.43 sq.m. I accept that given the description of the nature of the pharmacy which would only be to dispense medicines, the increase in traffic would unlikely be significant or endanger public safety such as would warrant a refusal.

8.4.3. The site layout, as updated at appeal stage, provides for 11 car spaces which I consider is sufficient having regard to Table 9.11 Car parking standards of the current Mullingar LAP.

8.4.4. Having regard to the above, I do not consider the development as described would give rise to an unacceptable traffic hazard and I consider that the development should not be refused on traffic grounds or car parking.

8.5. Residential Amenity

8.5.1. The third reason for refusal given by the PA and the issues raised by the observers relate to residential amenity and the effects that increased traffic would have, resulting in a negative impact on residential amenity. It is also considered by the observers that the development would be entirely inconsistent with the residential nature of the area. I have dealt with these issues under Section 8.3 (Character of the area) and 8.4 (Traffic) directly above.

8.5.2. Regarding other matters of residential amenity, I do not consider that any issues of overlooking, overshadowing or overbearing arise given the structure already exists on site and the modest physical extension proposed. Neither do I consider that noise would be an issue. Accordingly, the development would give rise to unacceptable residential amenity issues in this instance.

8.6. Other

8.6.1. Appropriate Assessment

Having regard to the nature and scale of the development proposed, namely the change of use of an existing storage shed to a pharmacy dispensary and to the nature of the receiving environment, a suburban serviced location, **no appropriate assessment** issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

9.0 Recommendation

- 9.1. I recommend that **permission** should be **refused** for the reasons and considerations set out below.

10.0 Reasons and Considerations

1. Having regard to the objectives of the Planning Authority as set out in the Mullingar Local Area Plan 2014-2020, which seeks to safeguard predominately residential areas on the edge of town centre by prohibiting undue encroachment of commercial uses into established residential areas and streets, it is considered that the proposal for a change of use from a storage shed to a pharmacy dispensary in an established residential area would fail to respond to stated policy and would contravene the residential land use zoning objective on the subject site, O-LZ1, which seeks to provide for residential development, associated services **and to protect and improve residential amenity**. The proposed development, would not therefore be in accordance with the proper planning and sustainable development of the area.
2. The proposed development would, if permitted, contribute to undermining the vitality and viability of existing retail locations, which it is the policy of Westmeath County Council to protect and strengthen. It would fail to delivery on Objective O-RET8 which seeks to reinforce the retail core area of the town as the priority location for new retail development. It would therefore lie contrary to the proper planning and sustainable development of the area.
3. The conversion of an ancillary detached storage shed within the site of a detached GP surgery/medical centre, to form a new pharmacy for a limited function to dispense medicines only, would result in a shop which would be out of character and inconsistent with the pattern of development in the immediate area which predominately consists of houses and domestic garages. It would also have potential to set an undesirable precedent for other similar development and accordingly would

lead to disorderly development which would be contrary to the proper planning and sustainable development of the area.

Patricia Calleary

Senior Planning Inspector

13th February 2017