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Pleanála

## Inspector's Report ABP-300168-17

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Development	Permission for the proposed subdivision of the existing property and rear garden, into two separate residential dwellings (116 sq.m and 93 sq.m) and retention of 7.6 sq.m single storey side extension and of ground floor window from garage door on front elevation.
Location	1 Millmount, Ballinderry, Mullingar, Co Westmeath.
Planning Authority	Westmeath County Council
Planning Authority Reg. Ref.	17/6229
Applicant(s)	Richard Smith.
Type of Application	Permission and Retention permission.
Planning Authority Decision	Refuse.
Type of Appeal	First Party
Appellant(s)	Richard Smith.
Observer(s)	None.
Date of Site inspection	20 <sup>th</sup> February 2018
Inspector	Patricia Calleary

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## **1.0 Site Location and Description**

- 1.1. The appeal site with a stated area of 0.053 ha is located at the entrance to a cul-de-sac within a mature residential area known as Millmount estate in a suburban area of Mullingar in County Westmeath. It is bounded by and accessed off the Ballinderry road to the north. The site is relatively flat and is occupied by a five-bedroom semi-detached dwellinghouse, which together with the adjoining semi-detached house is situated alongside a row of semi-detached dwellinghouses of similar design. The dwellinghouse features a more recently added single-storey side extension and some hard-standing area suitable for parking has been provided along each side of the existing driveway to the front.
- 1.2. There are single storey detached houses on the opposite side of the estate road to the west and Millmount Health centre / Doctors surgery is located directly opposite the dwelling to its west. There are more recently constructed three storey blocks of apartments and duplex units, Saunders Court, located to the north east of the site along Ballinderry road.

## **2.0 Proposed Development**

### **2.1. Retention Permission**

- 2.1.1. Retention permission is sought for an existing single storey side extension of 7.6sq.m in size together with an added front window which is stated has replaced a garage door along the front elevation. The extension as constructed includes a timber door to the front which is shown as serving the two-bedroom residential unit of the proposed development.

### **2.2. Permission**

- 2.2.1. Permission is sought for the sub-division of the existing dwelling to form two residential units. The inner residential unit would have three bedrooms and would have a stated gross floor area (GFA) of 116sq.m, while the adjoining outer unit would have two bedrooms with a stated GFA of 93 sq.m.

- 2.2.2. These sub-divided units would be interlocking whereby a portion of the proposed three-bedroom unit at first floor level, including the bathroom and part of the landing, would sit directly above the kitchen area of the two storey unit at ground floor level.
- 2.2.3. Both residential units would be served by the existing driveway and parking and green space would be available to the front in an open communal arrangement.

## 3.0 Planning Authority Decision

### 3.1. Decision

- 3.1.1. The Planning Authority refused permission for two reasons, which can be summarised as follows:

- **R1:** The development would result in an excessive density, would constitute overdevelopment of the site and would materially contravene policy contained in Section 9.9.1 (conversion of houses to apartments) of the Mullingar Local Area Plan 2014-2020.
- **R2:** In the absence of satisfactory justification for the need to subdivide an existing dwelling house on the subject site, it is considered that the development if permitted would constitute piecemeal, adhoc development and would materially contravene policies 4.16 and 4.17 (Granny flat / family flat policy) of the Westmeath County Development Plan 2014-2020.

### 3.2. Planning Authority Reports

- 3.2.1. Planning Officers report

- The Planning officer considers that the development standards can be complied with, however it is necessary that the proposal would be acceptable in principle.
- It is considered that development plan policy would indicate that the proposed subdivision of a house can only be accommodated where the original house is a large house on a relatively extensive site and where the subdivision would not result in a dramatic alteration of the character of the area.
- The proposal to sub-divide a semi-detached house within a mature estate of exactly the same house types, would alter the character of the area and would

be contrary to Section 9.9.1 (**Conversion of Existing Houses to Apartment Accommodation**) of the Mullingar Local Area Plan 2014-2020 (hereinafter referred to as the LAP).

- Given the provisions of Section 4.16 and 4.17 (granny/family flats) of the Westmeath County Development Plan 2014-2020, an acceptable justification has not been provided for the development.
- Proposal would constitute overdevelopment of the subject site and would set an undesirable precedent for similar developments.

### 3.2.2. Other Technical Reports

- Water services: No response
- Area Engineer: No objection

### 3.3. Prescribed Bodies

- Water services: No response
- Irish Water: No response
- DAHG (Dev App Unit) Built Heritage and Natural Heritage: No response
- An Taisce: No response
- The Heritage Council: No response

### 3.4. Third Party Observations

- 3.4.1. A third-party submission was received from the Millmount Residents Association. The observation refers to a letter which the Millmount residents received from the appellant in which it is submitted that the sub-division development would accommodate the appellant's mother in the three-bedroom unit and a professional couple in the two-bedroom unit. The observers state they would accept the letter at face value, unless the proposals change.

## 4.0 Planning History

- 4.1. No planning history has been brought to my attention in relation to this case. The appellant states that a planning search of the site did not reveal any planning history.

4.2. The Planning officers report refers to a warning letter issued to the appellant on 8<sup>th</sup> June 2017 under Enforcement File reference:17042 concerning a side extension which was constructed in the absence of planning permission.

## 5.0 Policy Context

### 5.1 Mullingar Local Area Plan 2014-2020

- The site is located within the town boundary as identified within the Mullingar Local Area Plan 2014-2020 and 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’.
- Section 9 – Residential Development including:
  - Section 9.9.1 (Conversion of Existing Houses to Apartment Accommodation) which provides that ‘in general there is a presumption in favour of retaining houses suitable for family accommodation in their original undivided form’. This will only be acceptable in areas, ‘which are characterised by large houses on relatively extensive sites, which are well served by public transport and where subdivision into a number of units would not result in a dramatic alteration to the character of the area’.
- Policy P-RD01 – promote higher residential density development – town centre, brownfield and infill sites.

### 5.2 Westmeath County Development Plan 2014-2020

- Policies in relation to Granny Flats/Family Flats are set out under Section 4.16 and 4.17.

### 5.3 Natural Heritage Designations

- The Royal Canal pNHA – Site Code 002103 is located c.70m north east of the appeal site.

- Lough Ennell SPA (Site Code 004044) and SAC (Site Code 000685) are located c.3.5m south east and Lough Owel SPA (Site Code 004047) and SAC (Site Code 000688) are located c.4.5m north west of the site.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

- 6.1.1. The appeal has been submitted by Richard Smith, Architect (MRIA) who is also the applicant and stated owner of the site.
- 6.1.2. The appeal provides background on consultation with adjoining residents of the Millmount estate and provides details of efforts to engage with the Planning Authority. It is stated that the reason for the sub-division proposal is to form a three-bedroom dwelling for the applicant's mother and a new two-bedroom dwelling which would be rented. The appeal is accompanied by a letter from the owner/appellant containing a response to a warning letter received from the Planning Authority regarding an unauthorised extension which was constructed at the side of the house.
- 6.1.3. Specific responses to each of the Planning Authority's reasons for refusal are put forward in the grounds of the appeal, summarised as follows:

#### **Reason No.1**

- Proposed development is for the sub-division of the existing dwelling into two units rather than apartments. The development would meet the standards set out under Section 9.9.1 of the Mullingar Local Area Plan.
- The proposal would be in line with current demographics and applicable planning policy.
- Proposal would meet the policies set out under Sections 9.9.2 (Extension and Alterations to Dwellings), Section 9.9.3 (New Residential Development in an Urban Area Infill Residential Development, Section 9.9.4 (Density), Section 9.9.5 (Site Coverage), Section 9.9.6 (Plot Ratio), Section 9.9.11 (Private Open Space for Houses), 9.9.18 (Residential Car parking) of the LAP and could not be considered excessive density.

- Proposal is supported by Policy P-RD1 (policy to promote higher residential development) of the LAP.
- The development would be supported by policies in relation to increasing densities as set out in the draft (now finalised) National Planning Framework.

## **Reason No.2**

- Proposal is not piecemeal or ad-hoc development, but rather a considered design response, which is respectful of its boundaries and neighbours.
- No additional floor area is proposed and development would not alter the character of the area.
- Scale of the existing house on a corner site presents a unique opportunity for the type of development proposed.
- Proposal would not be contrary to Section 4.16 and 4.17 of the LAP, which relate to Granny Flats.
- Notwithstanding the proposal to let out the two-bedroom unit, the Planning Authority could have granted permission for its sub-division based on it functioning as a granny flat.

## **6.2. Planning Authority Response**

- None

## **6.3. Observations**

- None

## **7.0 Assessment**

### **7.1. Introduction**

- 7.1.1. This planning application seeks **retention permission** for development which has taken place, including a small side extension and a window feature which it is stated has replaced a garage door on the front elevation. **Permission** is sought for the sub-division of the semi-detached dwelling into two smaller units, one would have a GFA



of 116 sq.m and the other a GFA of 93 sq.m. By way of background, it is stated by the appellant that these would be separate units and that the three-bedroom unit would be occupied by the applicant's mother and the two-bedroom unit would be rented.

7.1.2. I have considered the considered each of the elements (permission and retention permission) as follows:

## 7.2. **Retention Permission**

7.2.1. Retention permission is sought for the single storey side extension and the alteration of a ground floor garage to a window. This extension would form part of the two-bedroom unit for which permission is sought. The extension and window element generally satisfy the criteria set out in Section 9.9.2 of the Mullingar LAP (Extensions and alterations to Dwellings). I am also satisfied that having regard to the minor scale and the position of the elements, that they would not adversely impact on the residential amenities of neighbouring properties or of the visual amenities of the area. Accordingly, I recommend that retention permission is permitted for these elements as sought.

## 7.3. **Permission for sub-division**

7.3.1. The proposed units would be interlocking in that the first-floor landing and bathroom serving the three-bedroom unit at first floor level would sit over an area of the kitchen of the two-bedroom unit at ground floor level.

7.3.2. **Refusal Reason No.1** centres around the Planning Authority's view that the development would result in an excessive density and overdevelopment of the site and would materially contravene Section 9.9.1 of the Mullingar LAP with respect to the conversion of existing houses to apartment accommodation.

7.3.3. In their appeal, the first party states their disagreement that the development would be excessive in density, having regard to national and local policy. The appellant also asserts that Section 9.9.1 of the LAP is incorrectly relied on by the Planning Authority, as the section refers to conversion of existing houses to apartment accommodation, whereas the current proposals seek to sub-divide the dwelling into two autonomous units which are not apartments. It is also submitted by the appellant

that notwithstanding the incorrect reliance on Section 9.9.1, even when the development is assessed against this section, it comfortably meets the development standards set out on Page 170 of the LAP.

- 7.3.4. A review of the proposals would indicate that the development would not constitute overdevelopment of the area in the context of the inner suburban location and it would meet the specific applicable development criteria set out under Section 9.9.1. However, the key consideration in this appeal is whether the principle of the sub-division of the house into two own door residential units is acceptable. In this regard, Section 9.9.1 of the LAP (Conversion of Existing Houses to Apartment Accommodation) states that 'in general, there is a presumption in favour of retaining houses suited for family accommodation in their original undivided forms' and also that 'sub-division of houses into a number of smaller units will only be acceptable in areas which are characterised by large houses on relatively extensive sites which are well served by public transport and where subdivision into a number of units would not result in a dramatic alteration to the character of the area'.
- 7.3.5. Having visited the site and adjoining areas, it is evident that the established pattern of development in the immediate area is characterised by pairs of matching two-storey semi-detached houses along the same row of houses at Millmount. With a stated area of 0.053ha, the site cannot be considered a relatively extensive site size as is required for sub-division under Section 9.9.1.
- 7.3.6. The sub-division of one of two semi-detached dwellinghouses into two interlocking residential units would be unrepresentative of the established character of the area and would result in an unacceptable change to the character. The proposal would lie contrary to stated policy for sub-division of houses outlined under Section 9.9.1 and would if permitted set an undesirable precedent for similar such sub-division of other semi-detached houses on similar sites. Furthermore, by virtue of the awkward layout and constrained configuration of the rear private amenity space proposed, where one rear garden would wrap around the other, this would result in a poor standard of residential amenity for existing and future occupants of the residential units because of the lack of qualitative private open space which would be provided. The proposed development is therefore considered to lie contrary to the provisions of the Mullingar Local Area Plan 2014-2020 and would not therefore be in accordance with the proper planning and sustainable development of the area.

7.3.7. **Refusal Reason No.2** of the Planning Authority's decision centres around the Planning authority's view that the development would contravene policy 4.16 and 4.17 of the Westmeath County Development Plan 2014-2020. Which set out policy on Granny flat(s) / Family flat(s). It is clear based on the information on file that the current proposal is for two individual units rather a dwelling and a granny flat/family flat. At appeal stage, the appellant reaffirms their position that it is intended to form two sub-divided residential units. I therefore consider that policy on granny flat/family flat is not applicable in this instance and I do not recommend that it would form a reason for refusal.

#### 7.4. **Consideration of Material Contravention of the Development Plan**

7.4.1. The decision of the Planning Authority states that the development (if permitted) would materially contravene policies set out under Section 9.9.1 (sub-division of dwelling house) of the Mullingar LAP and Section 4.16 and 4.17 (Granny/family flats) of the Westmeath County Development Plan 2014-2020.

7.4.2. In this context, if the Board are minded to grant permission for the proposed development, Section 37(2) of the Planning and Development Act 2000 must be considered. Section 37(2) requires that if the Planning Authority have decided to refuse permission on the grounds that a proposed development materially contravenes the Development plan, the Board may only grant permission in certain circumstances. However, I do not share the view to the Planning Authority that the development would materially contravene either the Mullingar LAP or the Westmeath County Development Plan. The policies referenced in the reasons for refusal are general policies rather than policies which specifically relate to the appeal site. In addition, the site is zoned O-LZ1 – 'To provide for residential development, associated services and to protect and improve residential amenity' under the Mullingar LAP and the proposal would not materially contravene this zoning objective. Accordingly, I do not consider that the proposed development, if permitted, would materially contravene the applicable development plans and Section 37(2) of the Act requires no further consideration.

## 7.5. **Appropriate Assessment**

- 7.5.1. Having regard to the nature and scale of the proposed development and the location of the site in a serviced urban area and the nature of the receiving environment and proximity to the nearest European site, 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.

## 8.0 **Recommendation**

- 8.1. I recommend a split decision as follows:

(1) **grant** permission for a single storey side extension (7.6 sq.m) and change garage door to ground floor window, for the following reasons and considerations marked (1), and subject to the following conditions,

(2) **refuse** permission for sub-division of existing dwelling and rear garden into two separate residential units for the reasons and considerations (2) as outlined below.

## 9.0 **Reasons and Considerations (1)**

- 9.1.1. Having regard to the nature and scale of the proposed development and the existing pattern of development in the vicinity, it is considered that subject to compliance with the conditions set out below, the elements of the development proposed to be retained would not seriously injure the residential amenities of the area and would be in accordance with the stated planning policy outlined under section 9.9.2 of the Mullingar Local Area Plan 2014-2020 (Extensions and alterations to Dwellings). The development proposed to be retained would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 10.0 Conditions

1. The development shall be retained 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 door provided in the porch extension shall serve as an additional entrance to the existing dwelling and the existing dwelling shall not be sub-divided.

**Reason:** In the interest of orderly development.

## 11.0 Reasons and Considerations (2)

- 11.1. Section 9.9.1 (Conversion of Existing Houses to Apartment Accommodation) of the Mullingar Local Area Plan 2014-2020 provides that in general there is a presumption in favour of retaining houses suitable for family accommodation in their original undivided form and that sub-division will only be acceptable in areas which are characterised by large houses on relatively extensive sites which are well served by public transport and where subdivision into a number of units would not result in a dramatic alteration to the character of the area. The proposal to sub-divide one of two adjoining semi-detached house into two residential units on a site which is not extensive in scale, would be unrepresentative of the established character of the area and would result in an unacceptable change to the established character. The proposal would lie contrary to the provisions of Section 9.9.1 of the Local Area Plan and would if permitted set an undesirable precedent for similar such sub-division of other semi-detached houses on similar sites. Furthermore, by virtue of the awkward layout and constrained configuration of the rear private amenity space proposed, where one rear garden would wrap around the other, this would result in a poor

standard of residential amenity for existing and future occupants of the residential units because of the lack of qualitative private open space which would be provided. The proposed development is therefore considered to lie contrary to the provisions of the Mullingar Local Area Plan 2014-2020 and would not therefore be in accordance with the proper planning and sustainable development of the area.

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Patricia Calleary

Senior Planning Inspector

21<sup>st</sup> February 2018