



An  
Bord  
Pleanála

## Inspector's Report ABP-314314-22

<b>Development</b>	Retention of house and garage as constructed and alterations to boundaries.
<b>Location</b>	Castlemungret, Mungret, Co. Limerick
<b>Planning Authority</b>	Limerick City and County Council
<b>Planning Authority Reg. Ref.</b>	211835
<b>Applicant(s)</b>	Áine Mulcahy
<b>Type of Application</b>	Retention Permission
<b>Planning Authority Decision</b>	Grant Permission
<b>Type of Appeal</b>	First Party v. Condition
<b>Appellant(s)</b>	Áine Mulcahy
<b>Observer(s)</b>	John O'Donoghue
<b>Date of Site Inspection</b>	23 <sup>rd</sup> January 2023
<b>Inspector</b>	Liam Bowe

## **1.0 Site Location and Description**

- 1.1. The appeal site is located in the built-up area of Mungret, County Limerick. It is situated in the suburbs of Limerick City approximately 1.6km to the southwest of the junction (2) of the N69 and the N18 national roads, and approximately 4.8km to the southwest of Limerick City centre. The site is located off the N69 national road, within the 50kph zone, and has its own private access from this road.
- 1.2. The site of the development for retention has a stated area of 0.3 hectares. The site is comprised of a substantially complete dormer house and associated domestic garage. The eastern and southern boundaries are mature hedgerows; the western site boundary is a low block wall c.1.2m in height; and the northern boundary is comprised of sheds associated with the house to the north. There are houses immediately to the north, south, east and west of the appeal site.

## **2.0 Proposed Development**

- 2.1. The development comprises the retention of the reorientation of a detached dwelling house, alterations to the site boundaries and first floor windows on the southern and western elevations on the site at Castlemungret, Mungret, Co. Limerick.
- 2.2. The house is dormer in design. It has a floor area of 448.21m<sup>2</sup> and a ridge height of 8m, with render finish and black slates / tiles. The domestic garage has a floor area of 28.16m<sup>2</sup> and a ridge height of 5.1m. A landscaping plan is proposed, and this involves the planting of a hawthorn, whitethorn and holly hedge along all site boundaries and some ash / hazel (5 no.) trees.

## **3.0 Planning Authority Decision**

### **3.1. Request for Further Information**

Prior to notification of decision, the Planning Authority issued a further information request on 23<sup>rd</sup> February 2022 requiring a revised site layout plan showing all adjoining buildings, a photographic survey of the site, a Planning Statement justifying and mitigating changes to the dwelling and its location on the site, revised drawings showing what windows are additional and proposed for retention, confirmation of

whether the granny flat has been constructed, a contiguous elevation, and a landscaping plan. The first party submitted a revised site layout plan showing all adjoining buildings, a photographic survey of the site, a Design Statement, revised drawings showing additional windows to be retained and the windows to be omitted, confirmation that the granny flat has been constructed, a revised contiguous elevation and a detailed landscaping plan.

### **3.2. Decision**

- 3.2.1. By order dated 15<sup>th</sup> July 2022 Limerick City & County Council issued a notification of decision to Grant Permission for the retention of the development subject to 11 no. conditions. Of note is the following condition:

#### **Condition No.3**

- (a) Within 2 months of the receipt of this notification the applicant shall submit revised plans and elevations showing the removal of the following for written agreement of the planning authority:
  - (i) West elevation – 2 x windows at first floor not permitted under 19/959;
  - (ii) South elevation – 2 x windows at first floor not permitted under 19/959.
- (b) Photographic evidence of the completed agreed changes set out in point (a) shall be submitted for written agreement of the planning authority prior to occupation of the dwelling.

Reason: In the interest of proper planning and residential amenity.

### **3.3. Planning Authority Reports**

#### **3.3.1. Planning Reports**

There are two Planning Reports on file dated 22<sup>nd</sup> February 2022 and 14<sup>th</sup> July 2022, respectively. The Planning Officer in the initial report noted the relevant policy, responses from statutory consultees and third party submissions but raised concerns about the reorientation of the house and overlooking of adjoining properties from first floor windows. The report recommended further information be requested regarding a revised site layout plan showing all adjoining buildings, a photographic survey of the site, a Planning Statement justifying and mitigating changes to the dwelling and

location on the site, revised drawings showing what windows are additional and proposed for retention, confirmation of whether the granny flat has been constructed, a contiguous elevation, and a landscaping plan.

Appropriate Assessment Screening was carried out and concluded that there is no likely potential for significant effects to any Natura 2000 site.

A second Planner's Report (dated 14<sup>th</sup> July 2022) refers to the further information submitted and considered that, having regard to the additional information, permission should be granted subject to 11 No. conditions.

### 3.3.2. **Other Technical Reports**

None.

### 3.4. **Prescribed Bodies**

**Irish Water:** No objections. Conditions recommended.

**TII:** No observations to make.

**Mid-West NRDO:** No observations to make.

### 3.5. **Third Party Observations**

Submissions were received from John Cusack and John O'Donoghue. They raised concerns about overlooking, the location of the domestic garage, and third party agreement regarding access to their property.

## 4.0 **Planning History**

### 4.1. **Appeal site:**

**P.A. Ref. No. 19/959:** Permission granted for change of house design to include a granny flat, detached domestic garage, and associated works.

**P.A. Ref. No. 18/968:** Permission Consequent granted for a single storey house.

**P.A. Ref. No. 16/1012:** Outline permission granted for a house.

## 5.0 Policy Context

### 5.1. Limerick Development Plan 2022-2028

The Board should note that the Limerick Development Plan 2022-2028 came into effect on 29<sup>th</sup> July 2022.

#### 5.1.1. The appeal site has a land use zoning of ‘Existing Residential’.

The objective of this land use zoning is “to provide for residential development, protect and improve existing residential amenity”.

#### 5.1.2. The land use zoning is intended for primarily for established housing areas. The Development Plan states:

“Existing residential amenity will be protected while allowing appropriate infill development. The quality of the zone will be enhanced with associated open space, community uses and where an acceptable standard of amenity can be maintained, a limited range of other uses that support the overall residential function of the area, such as schools, creches, doctor’s surgeries, playing fields, etc.”

#### 5.1.3. Section 11.3.7 of the Development Plan states that “a minimum 11m (22m back-to-back) garden depth will apply in order to protect privacy, sunlight and avoid undue overlooking”.

### 5.2. Natural Heritage Designations

The site is not located within any designated site. The closest Natura 2000 sites are the River Shannon and River Fergus Estuaries SPA (Site Code: 004077) and the Lower River Shannon SAC (Site Code: 002165) which are located approximately 1.7km to the northwest and 1.6km to the north of the appeal site, respectively.

### 5.3. EIA Screening

Alterations to a house is not a class of development for which EIA is required.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

6.1.1. The grounds of appeal are submitted by HRA Planning, 3 Hartstonge Street, Limerick City on behalf of the first party, Áine Mulcahy. The main points made can be summarised as follows:

- Submits amended plans to the Board for consideration reflecting as constructed changes on the southern and western elevations of the house that is the subject of this appeal.
- States that the appeal submission seeks the removal of condition no.3 only.
- Contends that the removal of velux roof lights on the southern elevation, and a velux roof light with a vertical face and a standard window on the western elevation per condition no.3 is not required given the land use zoning for residential use and distance of these roof lights/windows from the respective boundaries.
- Highlight that the northern protruding gable has a permitted first floor window only 8.8m from the western site boundary whereas the first-floor windows for retention are located 18m and 13.4m, respectively, from the western site boundary.
- Demonstrates view (photograph) from first floor window into rear yard of adjoining house but contends that there is no view into ground floor windows and, therefore, no invasion of privacy.
- Contends that the proposed landscaping will mitigate and reduce direct views into the yard.
- States that the velux roof lights on the southern elevation are positioned 16.8m from the southern site boundary and contends that there is no view into the adjoining garden or house.

## **6.2. Planning Authority Response**

The Planning Authority has not responded to the grounds of the appeal.

## **6.3. Observations**

An observation was submitted by John O'Donoghue, Castlemungret, Mungret, Co. Limerick and can be summarised as follows:

- Mature hedge has been removed and no boundary wall has been constructed.
- Contends that the addition of a granny flat to the house necessitated the house to be reorientated, which has resulted in his property being overlooked.
- States that he does not accept the first party's explanation for the increase in height.
- Contends that the location of the domestic garage contravenes condition no.10 of the grant of permission issued by Limerick City & County Council.
- States that the windows on the western elevation look directly into the back of his neighbour's property and states that he remains concerned about a single panel window on the gable end of the granny flat.
- Contends that the photographs submitted with the appeal are poor quality and do not represent an accurate depiction of the site at its current stage.

## **7.0 Assessment**

### **7.1. Principle of the Development**

- 7.1.1. The appeal site is located within an area with a land use zoning of 'Existing Residential' per the Limerick Development Plan 2022-2028. As stated earlier in this report, the permission was issued for a house on the appeal site under P.A. Ref. No. 19/959. The site is fully serviced with connections to both public sewer and public water supply feasible. I also consider that the development of a house on the appeal site is in accordance with the land use zoning and objectives of the Development Plan and, therefore, I consider that the principle of development is acceptable on this site.
- 7.1.2. This is a first party appeal only against Condition No.3 attached to the planning authority's decision to grant permission. This condition relates to the removal first floor windows on the western and southern elevations of her house.
- 7.1.3. Having regard to the nature and scale of the proposed development and the nature of Condition No.3 it is considered that the determination by the Board of the application, as if it had been made to it in the first instance is not needed, and that a de novo assessment would not be warranted. Therefore, the Board should determine the matters raised in the appeal only, in accordance with Section 139 of the Planning and Development Act 2000, as amended.

### **7.2. Condition No.3**

- 7.2.1. As stated earlier in this report, the house is dormer in design. It has a floor area of 448.21m<sup>2</sup> and a ridge height of 8m, with render finish and black slates / tiles. The domestic garage has a floor area of 28.16m<sup>2</sup> and a ridge height of 5.1m. A landscaping plan is proposed, and this involves the planting of a hawthorn, whitethorn and holly hedge along all site boundaries and some ash / hazel (5 no.) trees. Condition No.3 requires the removal of first floor windows not permitted under the parent permission (P.A. Ref. No. 19/959 refers) i.e., two on the western elevation and two on the southern elevation. The Board should note the revised drawings submitted to the Board on 9<sup>th</sup> August 2022 that accurately reflect the as constructed elevations of the house.



- 7.2.2. The Planning Authority's reason for attaching condition No.3 to their notification of a decision to grant permission is stated as 'in the interests of residential amenity' as concerns were expressed within the Planning Officer's report regarding the overlooking of adjoining properties caused by the reorientation of the house and the addition of first floor windows that did not form part of the permission issued under P.A. Ref. No. 19/959.
- 7.2.3. In relation to residential amenity, I particularly note the revised drawings submitted as part of this appeal demonstrating a landscaping plan for the appeal site. The first party contends that this proposed landscaping will mitigate and reduce direct views into the yard to the west. Further to this, the first party highlights that the northern protruding gable has a permitted first floor window located 8.8m from the western site boundary whereas the first-floor windows for retention are located 18m and 13.4m, respectively, from the western site boundary. For clarity, as this is a first party appeal against Condition No.3, I am not undertaking an assessment of the possible impacts that the first floor window on the northern protruding gable has on the properties to the west of the appeal site.
- 7.2.4. Following my site inspection, I can confirm that the southern and western elevational drawings of the house are accurate and represent the on-site first floor windows that are the subject of this appeal. The Board should note, in particular, that there are five velux roof lights for retention on the southern elevation of the house and not two as referenced in Condition No.3(a)(ii) of the Planning Authority's notification of decision. For clarity, these 5 no. velux rooflights at first-floor level for retention on the southern elevation are demonstrated on the elevation drawing submitted to the Board with this appeal on 9<sup>th</sup> August 2022.
- 7.2.5. I do note that these velux roof lights for retention on the southern elevation are positioned a distance of 16.8m from the southern site boundary. In this regard, I am satisfied, given the extent of the existing screening along the southern boundary of the appeal site, that no overlooking of the private amenity space of properties to the south occurs. Consequently, I consider that the retention of these roof lights would be acceptable, and I recommend to the Board that Condition No.3 be amended to reflect this.

- 7.2.6. In relation to the roof lights and window for retention on the southern elevation, the Board should note that there were three rooflights and a window permitted on the western elevation of the proposed house under P.A. Ref. No. 19/959. Condition No.3(a)(ii) of the Planning Authority's notification of decision requires the removal of an additional window in the southernmost gable of the house and the removal of the cluster of rooflights with associated vertical panes. Again, for clarity, these velux rooflights with vertical panes and window at first-floor level for retention on the western elevation are demonstrated on the elevation drawing submitted to the Board with this appeal on 9<sup>th</sup> August 2022.
- 7.2.7. In support of this appeal, the first party has submitted a photograph taken from the first floor window for retention that demonstrates the view into rear yard of adjoining house. The first party contends that there is no view into ground floor windows and, therefore, no invasion of privacy. I consider that this demonstrates the extent of overlooking that would occur from this window for retention and I agree with the planning authority's reasoning for the imposition of the part of Condition No.3 that refers to this window and their decision that it should be omitted from the development. I am also satisfied that similar overlooking would accrue from the vertical panes associated with the dormer window for retention and I recommend that these vertical panes should also be omitted.
- 7.2.8. I note that the first party has proposed a landscaping scheme for the appeal site. This comprises the planting of a hawthorn, whitethorn and holly hedge along all site boundaries and some ash / hazel (5 no.) trees. I am satisfied that the inclusion of a hedge, if allowed to grow to 1.8m-2m, would screen the house and prevent overlooking from ground floor windows towards the house to the west. However, I consider the proposed planting of ash/hazel trees at this suburban location in close proximity to existing buildings to be inappropriate as these trees, if allowed to grow to maturity, would present health and safety issues. Notwithstanding this, I do not consider that they would provide the required level of screening all year round to protect the residential amenities of the occupants of houses to the west and, consequently, I recommend that these be omitted from the landscaping scheme.

7.2.9. On the above basis, I consider that the retention of windows on the western elevation of the house, per the revised drawings submitted to the Board on 9<sup>th</sup> August 2022, would have a significant impact on the residential amenities of the area and property in the vicinity, and that the removal of these windows on the western elevation is warranted. I therefore recommend to the Board that Condition No.3 be amended to reflect this.

## 8.0 Recommendation

Having regard to the nature of the conditions the subject of the appeal, the Board is satisfied that the determination by the Board of the relevant application as if it had been made to it in the first instance would not be warranted and, based on the reasons and considerations set out below, directs the said Council under subsection (1) of section 139 of the Planning and Development Act, 2000 to:

**AMEND** condition number 3.

## 9.0 Reasons and Considerations

Having regard to the location of the site within the development boundary for the Limerick City and Suburbs, the land use zoning of 'Existing Residential' under the Limerick Development Plan 2022-2028, the design of the house with additional windows for retention on the western and southern elevations, it is considered that the development would have a significant negative impact on residential amenities of the area and that the planning authority's Condition No.3 requiring the omission of first floor windows is, therefore, warranted.

### Condition No.3

- a) Within 2 months of the receipt of this notification the applicant shall submit revised plans and elevations showing the removal of the following for written agreement of the planning authority:
  - i) The first-floor window on the western elevation of the southernmost gable not permitted under P.A. Ref. No. 19/959,
  - ii) The vertical face from the velux window grouping on the western elevation not permitted under P.A. Ref. No. 19/959.

- b) Revised drawings and photographic evidence of the completed agreed changes set out in point (a) shall be submitted for written agreement of the planning authority prior to occupation of the house.
- c) A revised landscaping plan omitting the ash / hazel trees shall be submitted for written agreement of the planning authority prior to occupation of the house.

Reason: In the interest of proper planning and residential amenity.

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.

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Liam Bowe  
Senior Planning Inspector

18<sup>th</sup> April 2023