

# An Bord Pleanála



## Inspector's Report

**PL. 61 246171**

**DEVELOPMENT:** Retention and completion of non vision first floor windows on the south west and north west elevations of previously permitted development (P.A. Reg. Ref. 14/330).

**LOCATION:** 10 Carragh Grove, Knocknacarra, Salthill Galway.

### PLANNING APPLICATION

Planning Authority: Galway City Council.  
P. A. Reg. Ref: 15/351  
Applicant: Deirdre Larkin.  
Decision: Grant Permission.

### PLANNING APPEAL

Appellant: John Donnelly.  
Type of Appeal: Third Party Against Decision to Grant Permission.

**Date of Site Inspection:** 13<sup>th</sup> April, 2016.

**Inspector:** Jane Dennehy.

## 1.0 SITE LOCATION AND DESCRIPTION

- 1.1 The site has a stated area of 528 square metres and is that of a detached two storey house with a rear extension which has a total stated floor area of 210.6 square metres and is at the eastern end of a row of ten houses in a cul de sac in Knocknacarra. The north east side of the footprint is roughly perpendicular to the rear elevations of two storey detached houses to the north east on Carragh Hill which includes the appellant party's property. The road level is elevated about the level within the site which has a slight fall in a southerly direction.
- 1.2 At the time of inspection, extension and alterations works were incomplete and the site was fenced off.

## 2.0 PLANNING HISTORY.

- 2.1 The appeal site is subject of the planning history:

**PL 61 5 80519/ P. A. Reg. Ref.195.89.** This was an application for seventeen houses. The third party appeal against the decision to grant permission was withdrawn prior to determination of a decision according to documentation submitted with the appeal.

**P. A. Reg. Ref. 89.1049.** According to the planning officer's report, Permission was granted for fifteen houses. This is the parent permission and includes the development of a house on the application/appeal site.

**P. A. Reg. Ref. 14/330:** Permission was granted for refurbishment and for an extension to the existing dwelling which includes changes to the elevations and associated works. (A copy of the documents is on file).

## 3.0 THE PLANNING APPLICATION:

- 3.1 The application lodged with the planning authority on 11<sup>th</sup> December, 2015 indicates proposals retention of changes to the permitted development under P.A. Reg. Ref. 14/330 comprising the retention and the completion two windows. These windows are traditional to the windows provided for in the previously permitted development under P.A. Reg. Ref. 14/330, One window is shown in the north west elevation for a landing at first floor level. The windows are shown with a cill height at 110 mm above floor level. The measure 870 mm x 600 mm and fitted according to the details on the plans.

- 3.2 The application was lodged with the planning authority following receipt by the applicant of enforcement correspondence.
- 3.3 In third party objections the issues raised related to validity and to enforcement issues relating to unauthorised development.

#### 4.0 **DECISION of the PLANNING AUTHORITY.**

- 4.1 By order dated, 21<sup>st</sup> January, 2016, the planning officer decided to refuse permission for three reasons outlined in summary form below:

Condition No 2 is reproduced below:

*“The first floor side elevation windows shall be permanently glazed in obscure glass and opening sections shall be restricted to top hung pivot. Photographic evidence shall be submitted to the Planning Authority within 1 month of the issuing of the final grant of permission and shall be agreed in writing with the Planning Authority.*

**Reason:** *In the interest of privacy and amenity of occupiers of adjacent houses.”*

#### 5.0 **THE APPEAL**

- 5.1 An appeal was received from John Donnelly on his own behalf on 17<sup>th</sup> February, 2016. The attachments include photographs and correspondence relating to legal agreements reached within local residents and the developer of the scheme which include the current application/appeal site. (PL 61 5 80519/ P. A. Reg. Ref. 195 89 refers.) The appellant’s property is north east of the appeal.
- 5.2 The appeal contains a detailed account and comments on the planning and enforcement history relating to the development on the appeal site on the basis of which it is argued that the applicant did not comply with the enforcement requirements and that the planning authority was misguided in deciding to grant permission for retention after issuing an Enforcement Notice.

The planning issues can be outlined as follows:

- The objection is to the upper floor window in the north east gable wall. This window is not required because the first floor bedroom has a large front window and bathroom window.
- In the interest of neighbourliness no objection was made to the original proposal for three windows in the north east gable but there is now the appearance of five windows. A replacement door for an obscure glazed door has a clear glazing at the top. Overall there is a major change in aspect configuration and orientation between the houses.
- The position and variation in level will increase the impact of the new windows on the appellant's property. The window overlooks the rear ground and first floor windows of the appellant's property and the rear garden intruding on privacy of the occupants and on the value of the property.
- It is an injustice that the current proposal and recently permitted development is so much at variance with the formal agreement between the residents and the developer twenty six year ago.
- It is requested that the planning authority decision be overturned.

## **6.0 OBSERVATIONS ON APPEAL by the PLANNING AUTHORITY.**

6.1 There is no submission from the planning authority on file.

## **7.0 APPLICANT'S RESPONSE TO THE APPEAL**

7.1 A submission was received from Fergus O'Dowd on behalf of the applicant on 25<sup>th</sup> April, 2016. An outline summary follows:

- The two windows at first floor level were omitted in error. Light to the dressing room and bathroom is very important non vision glazing is to be used. The window on the east elevation as installed in the created opening to seal the building while the application for retention was considered. Similar upper floor gable end windows are provided in most housing schemes.

- The window is 9.5 metre from the boundary wall of the appellant property and twenty four metres to the rear wall of the house. The development complies with the standards in section 11.3.1 of the development plan regarding overlooking.
- The boundary wall is eight feet high due to the two foot difference in level between the two properties. The relationship between the two properties shown in the section drawing in appendix 1 of the submission (along with photographs) demonstrates that overlooking of the applicant's property occurs to a greater degree from the rear elevation of the property of the appellant.
- No extension infringing the setback distances referred to in the legacy agreement to which the appellant refers. This agreement is not relevant to the works.

## **8. FURTHER SUBMISSION OF THE APPELLANT**

- 8.1 A further submission was received from the appellant on 13<sup>th</sup> May, 2016 attached to which is a photograph of the window.
- 8.2 The submission contains comments on the applicant's submission and it is claimed the window is not hung and glazed as required by condition and that the statements and drawings provided in the applicant's submission are not accurate.
- 8.3 The ground levels, conditions and boundary treatment are described in detail and claims in the appeal as to adverse impact are reiterated and it is submitted that other residents also object to the proposed development.

## **9. DEVELOPMENT PLAN.**

- 9.1 The operative development plan is the Galway City Development Plan, 2011-2017 according to which the site location is:
- Within an area subject to the zoning objective: "*R: To provide for residential development, which will ensure the protection of existing residential amenity and will contribute to sustainable residential neighbourhoods*".
  - It is the policy of the development plan according to section not to permit development that would lead to direct overlooking of

private open space from within a distance of eleven from above ground level.

## 10.0 ASSESSMENT

- 10.1 The details of the legal agreement between original developer and the residents of the adjoining properties to the east which are provided with the appeal are noted. It is an agreement between the parties and it is considered that dispute over the agreement would be for resolution through the legal system. The scope of the consideration of the appeal by the Board is confined planning issues in accordance with its planning remit in determination of appeals.
- 10.2 The planning issues to be considered are as to whether the proposed window adversely affects the residential amenity and value of the adjoining properties to the east by itself or cumulatively in conjunction with the other windows in the east elevation.
- 10.3 The appeal site property which is at the end of a cul de sac is subject of a significant development which includes the introduction of doors and windows in the two side elevations and extensive glazing in the rear extension. It is agreed that this elements of the development amount to a significant departure from the originally permitted house type for the properties at Carragh Grove.
- 10.4 Subject to the use of obscure glazing and to the window being fitted it is considered that the location window on the east elevation relative to the properties to the east is such that the privacy and amenity of the properties to the east are not compromised by the proposed window. The window provides light to the rear section of the upper floor master bedroom towards the centre of the house. The requirement for light at this position on the east elevation is warranted and justified given the configuration of the house and of the master bedroom which has a front elevation window. It is agreed that incorporation of doors and windows in the east elevation is a material departure from the blank elevations of the originally permitted development and that this could give rise to perception of overlooking. However it is considered that overlooking or other impact on privacy, residential amenity and value of properties to the east will not be affected.
- 10.5 It is noted that there are no objections to the window at first floor level in the west elevation the retention of which is proposed in the application. The window is also considered acceptable subject to it being fitted and the glazing being in obscure glass.

10.6 It is therefore recommended that the planning authority decision be upheld and that permission for retention be granted and that the appeal be rejected.

10.7 Appropriate Assessment Screening:

Having regard to the nature and scale of the development proposed and to the nature of the receiving environment, namely a suburban and fully service location, no appropriate assessment issues arise.

#### 11.0 **CONCLUSION AND RECOMMENDATION.**

In view of the foregoing, it is recommended that the appeal be rejected, the planning authority decision be upheld and that permission be granted on the basis of the reasons and considerations set out in the draft order overleaf.

## DECISION

**Grant Permission for Retention on the basis of the Reasons and Considerations and subject to the Conditions set out below:**

### REASONS AND CONSIDERATIONS

Having regard to the separation distances, to the site configuration relative to that of the adjoining development to the east and to the established pattern of development in the area, it is considered that subject to compliance with the conditions set out herunder, the windows proposed for retention would alone and in addition to the permitted side elevation windows and doors are not be seriously injurious to the residential amenity and do depreciate value of property in the vicinity.

### CONDITIONS

1. The development shall be 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 points of detail to be agreed with the planning authority, these matters shall be the subject of written agreement and shall be implemented in accordance with the agreed particulars.

**Reason:** In the interest of clarity.

2. The first floor side elevation windows shall be fitted and glazed in obscure glass. Within one month of the date of this order, photographic evidence shall be submitted to the planning authority.

**Reason:** In the interest of residential amenity and clarity.

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**JANE DENNEHY.**  
**Senior Planning Inspector**  
**18<sup>th</sup> May, 2016.**