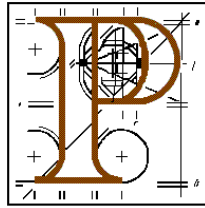


# An Bord Pleanála



## Inspector's Report

**PL 61.246311**

**DEVELOPMENT:**

1 no. apartment with screened clothes drying area on 4<sup>th</sup> Floor and ancillary works, regularise unauthorised elements under PL61.223873 at Cloch Míle, Dublin Rd., Renmore, Galway.

**Planning Authority:**

Galway City Council

**Planning Authority Reg. No:**

15/363

**Applicant:**

Xenium Clarinbridge Limited.

**Application Type:**

**Permission and Retention  
Permission**

**Planning Authority Decision:**

Grant

**Appellant:**

Wellpark Grove Residents  
Association

**Type of Appeal:**

Third Party –v- Grant

**Observers:**

None

**Date of Site Inspection:**

18 May 2016

**INSPECTOR:**

**Patricia Calleary**

## 1.0 INTRODUCTION

PL 61.246311 relates to a third party appeal against the decision of Galway City Council to issue a notification to **grant permission and retention permission** for works to an apartment, office and retail development, known as Cloch Mhíle, on the Dublin Road in Renmore, Galway. The building was partially complete in 2008 and has since remained unfinished. It has recently been acquired by the first party, who has sought permission to make changes to and complete the development. The primary subject at the centre of the appeal is the proposal to add a new penthouse apartment and a screened clothes drying area at fourth floor level.

## 2.0 SITE LOCATION AND DESCRIPTION

The appeal site, with a stated area of 0.21 hectares is situated on the west side of Galway City. It is triangular in shape and comprises of a partly developed 4 storey building with roof terrace over 2 levels of basement. There is an existing lift and stairwell positioned on the roof terrace which measures c.5m x 5.5m externally with an internal gross floor area of c.23 sq.m. The building consists of ground floor retail (446 sq.m), first floor office accommodation (768 sq.m) and 2 floors of residential space (843 sq.m) with a roof terrace. Car parking is provided at basement level with 59 spaces and there are also 19 car parking spaces at surface level. Currently two retail units are occupied by Centra convenience store and a hairdressing business at ground floor. Upper floors remain partially complete to shell only.

The building fronts onto the Dublin Road (R338) and is directly accessed off this road. It is located between Bradley Motors car showrooms and garage to the north and west of the site and DPL Builders Merchants to the east and north east. An established residential area, Wellpark Grove is located to the rear of these adjoining Bradleys and DPL sites, c.40m from the closest appeal site boundaries.

## 3.0 PROPOSED DEVELOPMENT

This proposed development and development proposed to be retained would consist of the following:

### 3.1 Proposed Development (Permission sought)

- Construct 1 no. apartment and communal screened clothes drying area on 4<sup>th</sup> Floor level.

- Alterations to and completion of existing façades.
- New fire escape stairs from 3<sup>rd</sup> floor to 2<sup>nd</sup> floor on North façade.
- New glazed enclosures to 2 existing escape stairwells from basement on south façade.
- Alteration to existing vents to basement and additional planting.
- New signage and all ancillary works.

### 3.2 Development proposed to be retained (Retention Permission)

It is stated that these elements proposed to be retained are intended to regularise unauthorised elements granted under PL 61.223873 including:

- Escape stairs on north façade from 1<sup>st</sup> to 2<sup>nd</sup> floor level
- Height of stairwells on roof
- Composition and size of windows as built.

The application was accompanied by a Planning Statement. Unsolicited additional information was submitted by the first party to the planning authority. This included a response to issues raised in the third party submission and a design statement.

## 4.0 PLANNING AUTHORITY DECISION

### 4.1 Planning Authority Decision

The Planning Authority issued a decision to **grant permission** and **retention permission** subject to 18 conditions, the following of note:

- Condition No.3 – Use of retail Unit No.2 at ground level shall be restricted to serving local need.
- Condition No.4 – Use of office accommodation shall be restricted to small scale businesses serving a local need.
- Condition No.5 – Totem pole sign shall be removed.
- Condition No.8, 9 and 10 – Landscape proposals to be submitted, certified and maintained.
- Condition No.11 – Provide a visual screen on 4<sup>th</sup> floor along eastern and western boundaries.
- Condition No.16 – Hours of construction activities (excluding fit out) 08.00 to 18.00 Monday-Friday and 09.00 to 13.00 Saturdays. No work on Sundays or Public Holidays.
- Condition No. 18 – Compliance with Section 96 of the Planning and Development Act 2000, as amended.

## 4.2 Planning Authority Reports

### 4.2.1 Planning Report

The Planning Officer recommended a **grant** of permission (and by inference, **grant of retention permission**). The main points set out in the planning officer's report are summarised under.

- Existing building substantially incomplete; upper floors not yet fitted out. Window opes on 2<sup>nd</sup> and 3<sup>rd</sup> floors are boarded up and windows are not fitted.
- Following an extension of duration, permission expired on 15 February 2015.
- Application seeks to complete development with an added penthouse apartment and to address and regularise unauthorised development.
- Notes that the height of the apartment will be c.1m lower than the existing stair and lift core, which currently provides access to the roof level. Apartment will be set back from the perimeter of the building by 1.5m-3.0m.
- Proposed design changes - e.g replacing cladding system (Frazinol) with a new Zinc cladding system and rebalancing of fenestration will significantly improve the visual appearance of the building.
- Plot ratio and site coverage are below the permitted values set out in the current Galway City Development Plan on CI zoned lands.
- No significant level of overlooking arises in the context of the previously permitted development and the surrounding commercial buildings.
- No increase in overshadowing will result.
- Landscape proposals are acceptable.
- Signage is acceptable except totem pole sign which is considered excessive.
- Principle of providing glazed enclosures to escape stairs is acceptable subject to agreement of detailed specifications.
- Fire escape structures are acceptable.
- Concludes that the proposed development as revised is acceptable subject to conditions.

The Planning Authority received **1 no. third party submission** from Wellpark Grove Residents Association. The main planning points raised include:

- Concern re: increase in height of the existing building.
- Previous planning permission required the omission of the top floor apartments.
- Would set an undesirable precedent of over development if permitted.
- Would cause impact on private amenity of properties (No.s 72 to 97).

- Would result in overshadowing and loss of light (especially No.s 72-75).

#### 4.2.2 Other Technical Reports

- Roads – No objection
- Drainage (surface water) – No objection
- Planning and Transportation – No objection subject to conditions.
- Fire Authority – No objection subject to conditions; Highlights that a Regularisation certificate would be required.
- Recreation and Amenity Department – No response on file.

#### 4.2.3 Prescribed Body Reports

- Irish Water – No response on file.

### 5.0 PLANNING HISTORY

The following planning history on the appeal site is considered relevant:

- 06/516 / PL 61.223873 – Permission **granted** to demolish existing structures and buildings on site and to construct a mixed-use development. [This refers to the parent permission].
- 08/669 – Permission **granted** to construct an ESB substation.
- 08/670 – Permission **granted** for a revised layout of ground floor retail units (to include provision of off-licence area) from that granted under Planning No.06/516.
- 10/78 –Permission **granted** for revised layout of ground floor retail units from that granted under Planning Permission No.06/516 and 08/670. This included the sub-division of Unit 2 to two units.
- 13/36 – Extension of duration of planning permission **granted** to extend the appropriate period of Planning Ref: 06/615/ ABP Ref: PL 61.223873.

### 6.0 POLICY CONTEXT

#### 6.1 Development Plan

The proposed development is governed by the policies and provisions contained in the Galway City Development Plan 2011-2017 (CDP).

- The site is located in an area with a zoning objective '**Commercial Industrial - CI**', i.e. '**To provide for enterprise, light industry and commercial uses**'.
- Section 11.2.6 of the CDP Plan sets out the type of uses which may contribute to the zoning objective and it includes '**residential**' uses.
- Section 11.3.1 (d) – Overlooking: Residential units shall not directly overlook private open space or land with development potential from above ground floor level by less than 11metres minimum. In the case of **developments exceeding 2 storeys** in height a **greater distance than 11 metres** may be required, depending on the specific site characteristics.
- Section 11.3.1 (e) – Daylight: All buildings should receive adequate daylight and sunlight. All habitable rooms must be naturally ventilated and lit and living rooms and bedrooms shall not be lit solely by roof lights.
- Table 11.3 provides Site Coverage and Plot Ratio for CI zoned lands as follows: **Maximum Site Coverage = 0.8** and **Maximum Plot Ratio = 1.25**.

## 7.0 THE APPEAL

### 7.1 Grounds of Appeal

A third party appeal was lodged by Wellpark Grove Residents Association.

The principal grounds of the appeal are summarised as follows:

- Information supplied on previous planning permission made reference to reduction in the scale and height of structure by omission of a fourth floor.
- Surprise at the knowledge that the most prominent feature (stairs and lift core) is unauthorised and considers that it was constructed to facilitate the erection of a penthouse apartment on the rooftop.
- Shadow test was not relevant or meaningful.
- Loss of light has occurred on some residents' homes. The unauthorised structure and proposed screening of an area at roof level will add to the loss of light.
- A copy of a response to a request for further information on the previous parent planning permission is enclosed in which it is stated that the height of the building has been reduced by eliminating the fourth floor.
- Unauthorised development and disregard for planning law.

## 7.2 Planning Authority Response

- The planning assessment carried out addresses the concerns raised in the third party Appeal.
- Previous proposal under parent planning permission 06/516 / PL 61.223873 was for 4 no. apartments at fourth floor level which was greater in size and massing than current proposal for 1 no. apartment.
- Current proposal has a setback from perimeter of 1.5m-3.0m and existing building is well set back from surrounding neighbouring properties.
- Additional landscaping and works to external elevations are proposed which will result in an improved visual appearance of existing largely vacant building on site.
- Many of the appellants concerns were previously dealt with under parent permission.

## 7.3 First Party Response

A response to the third party appeal was submitted by McCarthy Keville O'Sullivan. The principal planning points made in the response are summarised as follows:

- Roof level of proposed penthouse is over 1m lower than existing lift and stair core
- Plot ratio of 1.9 is below the maximum plot ratio of 1.25 permitted under CI zoning applicable to the site. Site coverage at 0.31 is also less than the permitted 0.8m within the same zoning.
- National guidelines encourage the provision of higher density development.
- Design statement submitted to the Planning Authority and 3D sketches attached with the appeal demonstrate that the mass, height and form of the proposed penthouse is appropriate.
- Design of the residential unit complies with the DECHLG 'Sustainable Urban Housing: Design Standards for New Apartments' and Chapter 11 of the extant Galway City Development Plan.
- Proposed penthouse will be set back by between 1.5m to 3m from perimeter of the building on all sides.

- No windows proposed to the north or west façades. Limited windows to the east which would be 13m from the eastern boundary and well screened by the existing 1.4m high perimeter wall.
- Site surrounded by existing commercial enterprises and residential element located behind those are over 40m from the subject site which is more than adequate and will not cause overlooking or loss of privacy.
- Issue of overshadowing was addressed during the assessment of the parent application. The shadow analysis showed that there would be no loss of sunlight enjoyed by the adjacent Wellpark Grove houses as a result of the development.
- Unauthorised elements of the scheme relate mainly to requirements arising out of the original Fire Safety Certificate. Stair block and lift to the roof level were permitted under the parent permission but was built marginally higher due to the requirements which subsequently arose from the Fire Safety Certificate application.
- The current applicant recently acquired the property and is seeking to regularise the alterations by way of an application for retention permission.

#### **7.4 Third Party Further Response**

The relevant new planning points made in the further response by the third party includes the following:

- If the stair and lift core were in accordance with the planning permission granted by Galway City Council, it would be around the same level as the penthouse now proposed.
- Reference made to history apartment development in vicinity. None of the 4 storey high apartments at ‘Sailin’ development present a problem to Wellpark Grove as they do not bound the existing Wellpark Grove.
- Highlights previous removal of 4<sup>th</sup> storey apartments on appeal site.
- Heights of apartments proposed would compromise right of privacy.
- Development currently causes loss of light to house no.s 72-78.
- Stairwell should be restored to the size permitted.
- Overdevelopment of the site.
- Considers that the development would not contribute to zoning CI objective of the area.

The submission was accompanied by maps and photographs.



## **7.5 Second Party Further Response**

The Planning Authority advise that they concur with the contents of the first party's response to the appeal.

## **7.6 Additional information received from the planning authority.**

In response to a request by the Board, further information was furnished from the planning authority which included the following.

- Copies of drawings and documents relating to history files, i.e. PI Reg Ref 08/669, 08/670 and 10/78.
- Pre-planning records which relate to the current planning application.
- Colour drawings and a site location map for the current application.

## **7.7 Observations**

- None

## **8.0 ASSESSMENT**

I consider the key issues in determining the application and appeal before the Board are those raised in the grounds of the appeal and that no other substantive issues arise. The issue of appropriate assessment also needs to be addressed. The issues can be dealt with under the following headings:

- Design, Scale and Height
- Overlooking, Overshadowing and Loss of Privacy
- Unauthorised Development
- Appropriate Assessment

I outline my considerations on each of those aspects as presented under.

### **8.1 Design, Scale and Height**

The existing building was permitted under 06/516 / PL 61.223873 and it is stated that it was partially complete in 2008. The main new element of the proposal now before the board is that of the addition of 1 no. penthouse apartment at roof level. I first and foremost note that the development of an apartment is a use category (residential) which is open for consideration under Commercial Industrial (CI) zoning. Given the general area is

characterised by a mix of uses, including commercial, employment, leisure and residential, I consider that an apartment is acceptable within the zoning context. The relevant development parameters of the CI zoning include a maximum plot ratio of 1.25 and a maximum site coverage of 0.8m. The existing and proposed development would result in a plot ratio of 0.91 and a site coverage of 0.31 which are well within the development parameters set down in the adopted development plan. Currently the building façades have a poor visual appearance with unpainted walls, unfinished window opes, many which are boarded up and there is a notable lack of landscape throughout the scheme.

I consider that the design changes proposed, including the re-alignment of window opes, addition of modern balconies, replacement of 'Frazinol' cladding, a substitute for copper cladding, with natural zinc cladding and the addition of landscaping would result in a much improved visual appearance and enhanced design. The completion of the building would in itself improve the quality and visual appearance of the development within the vicinity and when viewed from the public realm. In terms of the addition of the penthouse apartment and naturally ventilated cedar wood screened clothes drying area, I note that this would be set back from the perimeter of the building, a feature commonly employed to reduce the visual dominance of added floor space at top floor level. I also note that it would be c.1m lower than the current lift and stair block but it would present an increased footprint. Based on a review of the drawings approved under the parent permission (PL61.223873), the lift core and stair block is constructed higher than that which was then permitted. The apartment façade is proposed to be finished in grey aluminium panels which would also assist in reducing its visual prominence.

I concur with the Planning Authority who consider that the apartment and ventilated clothes drying area can be successfully assimilated into the existing development. While the apartment would be visible from Wellpark Grove, I consider the addition in scale would be minimal, having regard to the existing building and the previous parent planning permission, against which I have based my assessment. The separation distance from Wellpark Grove houses and the building is significant and the addition of the apartment recessed from the perimeter would in my view not result in any significant change in scale. In terms of the remaining development, including a new fire escape, glazed enclosures to existing stairwells, alteration to vents, re-balancing of window arrangements, landscaping and new signage, I consider that these would result in a positive addition to the overall design and would undoubtable improve the visual appearance of the

building. I consider they would not result in any noticeable increase in overall scale.

Overall I am satisfied that the proposed development is acceptable in terms of its design and scale and would, when taken in conjunction with the existing development, have no adverse impact on the residential amenities of properties in the vicinity.

In conclusion, I do not consider that the application should be refused on the grounds of scale and design which I consider to be acceptable and within the parameters for the CI zoning applicable to the site. In terms of specific concerns regarding overlooking and privacy of adjoining residential property, I will deal with this under Section 8.2 below.

## **8.2 Overlooking, Overshadowing and Loss of Privacy**

The Galway City Development plan 2011-2017 requires that residential units do not overlook private open space above ground level by less than 11m with a greater separation distance required for developments with an excess of 2 storeys. I note the development is directly located adjacent to established commercial businesses. The existing building is located c.40m from the closest house in Wellpark Grove which lie beyond the commercial businesses and accordingly is well separated from the existing established houses in Wellpark Grove. The penthouse apartment proposed to be recessed by 1.5-3.0m from the existing building perimeter. Windows proposed to the South would look onto Dublin road where no overlooking issues arise. A small return of the glazing (c.1.3m) is shown on the east façade, located c.4m from the eastern boundary. A window proposed to the bedroom facing east is set back 13m from the eastern boundary. It is important to recognise that there is an existing 1.4m high parapet wall along the eastern perimeter. There are no windows proposed on the west or north elevation. Having inspected the site from Wellpark Grove roads and green areas, I consider the context and the large separation distances between the development and the housing are such that the proposed penthouse apartment would not cause overlooking onto the established residential housing or result in a loss of privacy. I note that the rooftop garden space was proposed to be semi-enclosed in its parent permission by way of a 1.8m high opaque glass screen. A similar condition attached to the decision to grant permission which required a visual screen and I am recommending that such a condition should also attach to any grant of permission by the Board.

In relation to overshadowing, I have reviewed the shadow analysis submitted with the appeal. This analysis relate to the original building as

proposed under the parent permission and it is clear that shadows cast did not extend as far as the residential development in Wellpark Grove. The proposed penthouse apartment and screened clothes drying area would be significantly separated from the established houses and I am satisfied based on the evidence submitted in connection with the application and appeal, that no overshadowing would result from the addition of an apartment and clothes drying area at fourth floor level.

I consider that the development should not be refused on the grounds of overlooking, overshadowing or loss of privacy.

### **8.3 Unauthorised Development**

The third party considers the development is unauthorised, particularly the lift and stairs core which exists at roof top / fourth floor level. The applicant states that this element was permitted under PL Ref 06/615 (ABP reference: PL61.22873) but was built marginally higher. They also contend that other aspects in which retention permission is sought relate to requirements arising from the original fire safety certificate.

Having reviewed the parent permission (06/516 / PL 61.223873), I note that the building parapet was constructed c.1m higher than permitted and the stairs and lift core is c.1.9m higher again. The proposed penthouse apartment would be positioned c.2.47m higher than the existing parapet and c.1m lower than the existing level of the lift core and stairwell.

While being cognisant that enforcement of unauthorised development is not within the remit of An Bord Pleanála, I am satisfied that the applicant, who recently acquired the property, has identified elements which were unauthorised and is now seeking retention permission for these elements and in doing so has presented the existing and proposed building heights, form and design with the planning application. I have taken full account of the permitted development in my assessment.

### **8.4 Appropriate Assessment**

Having regard to the nature and scale of the development proposed and to the nature of the receiving environment, namely an urban and fully 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**

It is considered that the proposed development should be granted, subject to conditions in accordance with the following draft order.

### **REASONS AND CONSIDERATIONS**

Having regard the location of the site on 'CI' zoned lands under the current Galway City Development Plan 2011-2017, where residential may contribute to the zoning objective, to the nature and scale of the existing and proposed development, the planning history of the site, the pattern of development in the area, it is considered that subject to compliance with the conditions set out below, the proposed development and the development proposed to be retained would not seriously injure the amenities of the area or of property in the vicinity. The proposed development and the development proposed to be retained would therefore be in accordance with the proper planning and sustainable development of the area.

### **CONDITIONS**

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application on the 21st day of December 2015, 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 developer shall comply with all relevant conditions attached to the grant of permission under PL61.223873 subject to the conditions below taking precedence.

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

3. Details of the landscape proposal for the rooftop terrace area shall be submitted for the written agreement of Galway City Council prior to the commencement of the development. The landscaping scheme as submitted to the Planning Authority on the 21<sup>st</sup> day of December, 2015 and the

agreed rooftop landscape proposal shall be carried out within the first planting season following substantial completion of external construction works. All planting shall be adequately protected from damage until established. Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

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

4. The applicant shall submit details of a visual screen, located at fourth floor level, along/inside the eastern and western perimeter of the site, adjacent to the roof terrace. The screen shall be of sufficient height to prevent overlooking onto residential properties.

**Reason:** To protect the residential amenities of the area.

5. Details of all proposed signage (position, form, dimensions, materials and colours) shall be submitted to the planning authority for written agreement, prior to the commencement of the development on site.

**Reason:** To protect the visual amenities of the area.

6. Site development and building works shall be carried out between the hours of 07.00 to 19.00 Mondays to Fridays, between 08.00 to 14.00 on Saturdays and not at all on Sundays or public holidays. Deviation from these shall only be allowed in exceptional circumstances where prior written approval has been received from the Planning Authority.

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

7. The management and maintenance of the proposed development following its completion shall be the responsibility of a legally constituted management company. A management scheme providing adequate measures for the future maintenance of public open spaces, roads and communal areas shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** To provide for the satisfactory future maintenance of this development in the interest of residential amenity.

8. Prior to commencement of development, the applicant or other person with an interest in the land to which the application relates shall enter into an agreement in writing with the planning authority in relation to the provision of housing in accordance with the requirements of section 94(4) and section 96(2) and (3) (Part V) of the Planning and Development Act 2000, as amended, unless an exemption certificate shall have been applied for and been granted under section 97 of the Act, as amended. Where such an agreement is not reached within eight weeks from the date of this order, the matter in dispute (other than a matter to which section 96(7) applies) may be referred by the planning authority or any other prospective party to the agreement to An Bord Pleanála for determination.

**Reason:** To comply with the requirements of Part V of the Planning and Development Act 2000, as amended, and of the housing strategy in the development plan of the area.

9. 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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Patricia Calleary  
Senior Planning Inspector

08 June 2016

**Appendix:** Location Maps & photographs