



An  
Bord  
Pleanála

## Inspector's Report PL61.248827.

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<b>Development</b>	Retain and amend existing boundary wall and existing patio area.
<b>Location</b>	21 The Orchard, Kingston, Galway.
<b>Planning Authority</b>	Galway City Council.
<b>Planning Authority Reg. Ref.</b>	17/105.
<b>Applicant(s)</b>	Karen and Phil Brown.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Grant.
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Patrick Hayden.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	21 <sup>st</sup> of September 2017.
<b>Inspector</b>	Karen Hamilton.

## 1.0 Site Location and Description

1.1. The subject site contains a large two storey detached dwelling and is located within a residential area to the north of Galway City. The dwellings in the estate front onto a communal green and have been developed individually so all the styles and external materials are different. The subject site is located on the northern corner of the estate, where the levels fall down away from the road and the dwelling has been built at a similar level at the front. The site has a raised patio area to the rear and a 2m high supporting block wall along the west of the site, from the patio at the rear to the front building line.

## 2.0 Proposed Development

2.1. The proposed development relates alterations within the rear gardens of a dwelling and may be summarised as follows:

- Retain and alter the existing boundary wall to the side of the dwelling,
- Retain existing patio area to the rear of the dwelling.

## 3.0 Planning Authority Decision

### 3.1. Decision

Decision to grant permission with 3 no conditions of which the following two are of note:

C 2- Within 3 months the patio wall is to be reduced to 1.2m and the inclusion of a planter, to include semi-mature hedging at a height of 1.6m, from the patio level.

C 3- The finish along the southern facing wall is to be retained and not plastered unless a private agreement permitting access to the southern section has been sought.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

The report of the area planner reflects the decision to grant with permission and refers to the impact on the residential amenity and the need to retain the structure to prevent overlooking.

### 3.2.2. Other Technical Reports

Drainage Department- No objection subject to conditions.

### 3.3. Prescribed Bodies

None.

### 3.4. Third Party Observations

Two objections were received from adjoining neighbours and the issues raised have been summarised in the grounds of appeal.

## 4.0 Planning History

### 11/292

Permission granted for a change in roof pitched from 29 degrees to 35 degrees and retention and completion of a shed (58.8m<sup>2</sup>) previously 23.3m<sup>2</sup>.

### 11/85

Permission granted for construction of a dwelling, associated services and a shed.

## 5.0 Policy Context

### 5.1. Galway City Development Plan 2017-2023

The site is zoned R (residential) where it is an objective *“To provide for residential development and for associated support development, which will ensure the protection of existing residential amenity and will contribute to sustainable residential neighbourhoods.”*

#### 11.3.1 (f) Distance between Dwellings for new residential development.

- The distance between side gables and side boundaries of dwellings shall normally be a minimum of 1.5 metres.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

The grounds of appeal are submitted from the residents of the neighbouring property to the south of the site and may be summarised as follows:

- The patio is not built in accordance with the grant of permission and the permission for retention of the structure for an unauthorised patio should be refused.
- The wall is a visual intrusion on the residents, photographs have been submitted to illustrate from the site along the south, which is lower than the adjoining property.
- The inclusion of condition no 2 within the grant of permission is not adequate to protect the impact on the adjoining residential amenities.
- The wall is plastered on the applicant's side but is crude and unfinished along the south.
- Drawings in 11/292 illustrate the FFL for the house at 9.85m and 9.75m for the patio and it is estimated the boundary wall is 1.8m. The patio extends further back about 3m (not included in the illustration).
- The existing wall is between 2.1m and 3.3m in height along the boundary.
- Concern is raised that by lowering the wall there will be overlooking on the adjoining property as it will only be 1.2m above the patio.
- It is requested that the permission is either refused and pulled back to that grant in 11/292 and the wall moved closer to the patio.
- The structural stability of the wall should be ensured.

### 6.2. Applicant Response

An agent on behalf of the applicant has responded which may be summarised as follows:

- The applicants built the side wall for reasons of privacy for adjoining neighbours and safety for the perimeter of the patio.
- The wall is required to meet Part K of the Building Regulations and ensure health and safety.
- Conditions on previous permissions did not remove any of the exempt development under the Regulations.
- The site is located in the “Outer Suburbs area” of the development and zoned residential.
- The extent of patio permitted under 11/85 is larger than that currently built on site.
- There is no objection to the conditions imposed by the planning authority.
- The application has been prepared by reputable engineers who advised the wall is a structurally designed retaining wall.
- The applicant is prepared to plaster the side wall towards No 21 with the permission of the neighbour.

### 6.3. **Planning Authority Response**

None received.

### 6.4. **Observations**

None received.

## 7.0 **Assessment**

7.1. The main issues of the appeal can be dealt with under the following headings:

- Impact on Visual and Residential Amenity
- Other Matters
- Appropriate Assessment

## Impact on Visual and Residential Amenity

- 7.2. The subject site contains a large detached dwelling located at the end of a row of 6 large detached dwellings, along the east of The Orchard. The finished floor level of the rear gardens of the dwellings (96.41 at No 21) are significantly lower than the front (99.65 at No 21) and other dwellings along this section of The Orchard have included a basement level. The subject site has a two storey dwelling with no basement and the patio has been built at a higher level than the rear garden in line with the ground floor of the dwelling.
- 7.3. The existing wall is a 17.23m long block wall along the boundary between No 20 and No 21 The Orchard. The existing wall runs alongside the patio of No 20 and extends over the existing 1.8m high boundary wall along No 21 by c. 1.6m. The proposed development includes alterations to the existing wall where part of the wall will be removed (4.6m from the rear) and part will be lowered (0.87m) c. 3.7m from the rear building line of No 20. In addition to the reduction in height it is also proposed to plaster the wall which faces onto No 20 with the agreement of the landowners. The grounds of appeal have raised the concern over the impact of the wall on the visual amenity and do not consider the reduction in the wall will cause overlooking.
- 7.4. Overbearing: The proposed development includes a reduction in the height of the wall by c 0.87m. I consider the reduction in height is in line with the current 1.8m high block wall as boundary treatment between No 20 and No 21, therefore will not have a significant negative impact on the adjoining residential amenity. The wall is not plastered on the side facing onto No 20, to the south. The applicants submit they are prepared to finish the wall with plaster following the agreement of the adjoining landowners. Condition No 3 states that the wall shall not be plastered unless subject to a private agreement permitting access by the adjoining landowners. Drawing No 1711-03 states *“existing wall to be plastered on side facing No 20 with the agreement of land owner”*. I consider the onus on the applicant to enter into an agreement with the adjoining landowner and I consider it reasonable to require the applicants to investigate the possibly of plastering the wall along the south.
- 7.5. Overlooking: The existing wall is c. 1.8m high, from the patio at No 21 and prevents overlooking into the adjoining property. The grounds of appeal argue the reduction in the height of the wall will allow overlooking into the rear garden. I note the layout of

the sites along the east of The Orchard, where the finished floor levels of the rear garden are lower and the design of the dwellings raised to the rear. The majority of those dwellings along this row have high level patios extending from the first floors and although this may cause overlooking into the rear gardens, there is no overlooking into the dwellings. Condition No 2 of the grant of permission requires the inclusion of a raised planter along the section of the wall abutting the patio which is to include a semi-mature hedge which is a minimum of 1.6m high (c. the same height as the existing wall). I consider the inclusion of a similar condition reasonable to prevent any significant overlooking from the patio of No 20 onto adjoining properties. Having regard to the location of the patio and a condition for mature planting, I do not consider the proposed development will have a significant negative impact on the residential amenity of these dwellings.

- 7.6. Overshadowing: The wall is located to the north of No 21 along the boundary with the subject site. Based on the location of the wall, do not consider there will be any overshadowing from the proposed development on the adjoining property.
- 7.7. Based on the location of the wall, the reduction in height and the inclusion of mature planting, I do not consider the proposed development would have a significant negative impact on the visual or residential amenity of the residents of the adjoining property.

### **Other Matters**

- 7.8. The grounds of appeal have raised concerns over the stability of the wall. The applicant states that the reduction in the height of the wall is required in order to meet the health and safety requirements of the building regulations. This is confirmed in an engineer's report from S. Hanniffy & Associated Consulting Engineers which also states that the block retaining wall was constructed separately from the boundary wall along No 20. I consider the report reasonable and as stated above, I consider the reduction in the height of the wall acceptable.

### **Appropriate Assessment**

- 7.9. Having regard to the nature and scale of the proposed development within a serviced urban area and separation distance 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 the conservation objectives of any European site.

## 8.0 Recommendation

- 8.1. I recommend that planning permission should be granted, subject to conditions, as set out below.

## 9.0 Reasons and Considerations

Having regard to the residential zoning objective for the area, the policies and objectives of the Galway City Development Plan 2017-2023, the location of the site, the design of the dwelling and the pattern of development in the vicinity, subject to compliance with conditions below, the proposed development would not seriously injure the residential amenities of the area or of property in the vicinity. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 10.0 Conditions

1. The development shall be carried out and 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 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. Within 3 months of the grant of permission the applicant shall submit photographic and/or documentary evidence in relation to the following:



- the reduction in the height of the wall as per drawing no 17111-03,
- inclusion of a planter abutting the patio at No 21 which shall include a semi-mature hedge with a minimum height of 1.6m which shall be maintained in perpetuity,
- evidence of a plaster finish along the southern elevation of the wall and/or agreement with the adjoining land owner to undertake the same,

for the written approval of the planning authority.

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

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Karen Hamilton  
Planning Inspector

26<sup>th</sup> of September 2017