



An
Bord
Pleanála

Inspector's Report ABP 303867-19

Development	(a) Retention of works to existing house (b) Erection of a house in side garden
Location	25 Greenfields, Newcastle, Galway
Planning Authority	Galway City Council
Planning Authority Reg. Ref.	18/344
Applicant(s)	Michael Mullaney
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	First Party V Conditions 2, 6,7 and 8 & Third-Party V Decision
Appellant(s)	Michael Mullaney (First Party) Susan Thornton (Third Party)
Observer(s)	Declan O'Callaghan & Mary Devine O'Callaghan
Date of Site Inspection	9th May 2019
Inspector	Irené McCormack

1.0 Site Location and Description

1.1. The site, with a stated area of 0.0198ha, comprises a two-storey semi-detached house, with pitched, brown tile roof and a large side garden to the east. Access to no. 25 Greenfields is from Greenfields Road. The front garden boundary wall is 0.75m high. The rear garden boundary wall is 2.2-2.4m in height; and is capped and partially rendered. The area is provided with footpaths and forms part of a larger suburban residential estate.

2.0 Proposed Development

2.1. The planning application which is the subject of this appeal was divided into two elements. Part (a) relates to retention works associated with the existing house no. 25 Greenfields to include, demolition of single storey flat roof side extension, construction of single storey extension to rear and construction of a porch to front of dwelling, and (b) permission to construct a new two and half storey dwelling house including new entrance and all associated works in the side garden of no. 25 Greenfields.

2.2. This proposed dwelling is a two-storey with third floor attic accommodation, four-bedrooms, detached house of 138sqm, with pitched roof. Provision is made for a car parking space to serve both the existing and proposed dwelling to the front of the site confined to each individual site, with access from Greenfields Road. Ancillary site landscaping and boundary works are proposed. It is proposed to connect to the existing public watermain and foul sewer. Surface water is to be discharged to the public system.

3.0 Planning Authority Decision

3.1. Decision

The planning authority decided to grant planning permission subject to 12 conditions. The following are considered of relevance:

- Condition no.2 stipulated:

Prior to the commencement of development, the developer shall submit revised plans showing the following for the written agreement of the Planning Authority:

(a) Revised floor plans and elevations showing the omission of the accommodation at attic level, including the proposed gable windows, the rear dormer extension and the proposed staircase from first to second floor level. The attic used for non-habitable purposes only.

(b) Bedrooms 1 and 2 at first floor level to the rear should be amalgamated to form one rear bedroom with a single rear facing window, finishing not more than 4.0m from the boundary with No. 23A Greenfields.

Reason: In the interest of residential amenity and privacy.

- Condition no. 6 stipulated:

No additional windows shall be inserted in any elevation of the development hereby approved and the development shall be constructed and maintained in accordance with the drawings hereby approved.

Reason: In the interest of residential amenity and privacy.

- Condition no. 7 stipulated:

Construction and demolition work shall be carried out only between the hours of 08.00 to 18.00 Mondays to Fridays and 08.00 and 13.00 on Saturdays and not at all on Sundays and public holidays. Prior to the commencement of development including demolition work, the developer shall submit a formal Project Construction and Demolition Waste Management Plan to the Planning Authority for written agreement. The plan shall be prepared in accordance with Best Practice Guidelines on the preparation of Waste Management Plans for Construction and Demolition Projects published by the DEHLG, July 2006.

Reason: In the interest of proper planning and sustainable development and to protect the amenities of the area.

- Condition no. 8 stipulated:

Notwithstanding the exempted development provisions of the Planning and Development Regulations, 2001, as amended, no extension, shed, store, garage

or other free-standing structure shall be erected within the curtilage of the dwelling house without a prior grant of planning permission.

Reason: To prevent excessive building density and protect the visual amenities of the area.

- Condition no. 10 refers to site landscaping.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Initial Planning Officer's report notes the zoning provisions of the area and that the principle of the proposed residential development is acceptable. Further information was requested in relation to scale and height, overlooking and Section 97 Exemption Certificate. It was concluded following receipt of further information that subject to certain conditions the development was acceptable and in accordance with the proper planning and sustainable development of the area.

3.2.2. Other Technical Reports:

None

3.2.3. Third Party Observations:

A total of three submissions were made in relation to the development. A brief summary of the issues raised in the submission to the Planning Authority are set out below:

- Scale and height of the new dwelling and the inclusion of a second floor roof extension element and the associated overlooking and overbearing impact.
- Concern was expressed regarding the depth of the new house and the associated impact on garden depth having regard to the established garden depths at this location.
- The works represent overdevelopment of the site.

4.0 Planning History

4.1. Site

None

5.0 Policy Context

5.1. Development Plan

The relevant document is the Galway City Council Development Plan 2017-2023. The site is zoned 'R' Residential – *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.*

Relevant policies and standards of the Galway City Development Plan 2017-2023 include:

Policy 2.6 Established Suburbs

Infill development will have regard to the existing pattern of development, plots, blocks, streets and spaces. Such development will also have regard to the scale and proportion of existing buildings, building lines, massing and height of buildings in relation to the street.

Policy 2.6 Established Suburbs states: Ensure a balance between the reasonable protection of the residential amenities and the character of the established suburbs and the need to provide for sustainable residential development.

Encourage additional community and local services and residential infill development in the established suburbs at appropriate locations

Section 11.3 Residential Development

- Section 11.3.1 Residential Development – Outer Suburbs
- 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 11 metres 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 (l) Residential Extensions “The design and layout of extensions to houses should complement the character and form of the existing building, having regard to its context and adjacent residential amenities.”

5.2. National Policy and Guidelines

- Sustainable Residential Development in Urban Areas, Guidelines for Planning Authorities (2009)

Section 5.9 (ii) Sub-division of dwellings - Many inner suburbs contain large houses on relatively extensive sites whose conversion to multiple dwellings without a dramatic alteration in the public character of the area is achievable. In such areas, particularly those of falling population but which are well served by public transport, their conversion to multiple occupancy should be promoted subject to safeguards regarding internal space standards, private open space and maintenance of the public character of the area. Standards of off-street car parking might be relaxed to encourage the occupation of the dwellings by households owning fewer cars. Special care will be required to protect the integrity of protected buildings

- Quality Housing for Sustainable Communities, Best Practice Guidelines (2007).

Section 4.3.5 *Private Space*

Section 4.7.2 *Parking*

5.3. Natural Heritage Designations

Lough Corrib SAC (site code 000297) is located 0.5km to the east of the site.

5.4. EIA Screening

- 5.4.1. Having regard to the nature and scale of the proposed development, the receiving environment, and to the nature, extent, characteristics and likely duration of potential impacts, I conclude that the proposed development is not likely to have significant effects on the environment and that the submission of an Environmental Impact Statement is not required. The need for environmental impact assessment can, therefore, be excluded at preliminary examination. An EIA - Preliminary Examination form has been completed and a screening determination is not required.

6.0 The Appeal

6.1. First Party Grounds of Appeal

The first party appeal is against conditions 2, 6, 7 and 8 of the decision of Galway City Council dated 20/2/2019. The principle grounds of appeal can be summarised as follows:

- Condition no. 2 is unworkable and substantially alters the infill dwelling as proposed. It is set out that the window of the rear of no. 23A adjoining the site have similar rear first floor windows and that this is typical if such residential schemes. The submission is accompanied by revised drawings retaining the two first floor rear bedroom windows and provides for revision to the second floor bedroom window to comply with the 11m separation distance as per Policy 11.3.1 of the Development Plan. The ridge height has been amended to match that of the adjoining no. 25 Greenfields.
- The submission sets out the 11m garden depth is maintained over the majority of the rear boundary and that over 22m between opposing first floor windows is maintained throughout. It is set to that due consideration was not given to similar precedents in the area including the adjoining No. 23A.
- The floor area of the infill dwelling meets all required standards and the use of the attic space reduces the physical and carbon footprint of the development.
- There is no material overshadowing as a consequence of the development due to the site aspect.
- It is set out the front building line is maintained and that it is the rear building line that is not consistent with the established pattern.
- Condition no. 6 and condition no. 8 are overly restrictive as the applicant may over time wish to insert of roof light /window which may otherwise be exempt. It is set out that the planning authority acknowledges that private open space requirements are exceeded in each dwelling and as such there is ample room for future development without compromising residential amenity.
- In relation to condition no. 7 it is set out the development is minor and does not meet the threshold for a formal Project Construction and Demolition Waste Management Plan.

6.1.1. **Third Party Grounds of Appeal**

The third party appeal was made by Susan Thornton, No. 12 Sylvan Avenue, Fairlands, Newcastle, Galway. No. 12 Sylvan Avenue is located to the rear southeast of the site. The principal grounds of appeal can be summarised as follows:

- It is set out that there is an anomaly between the planning report and the condition no. 2 regarding rear windows which by condition permit overlooking of private amenity space and is contrary to the Development Plan standards.
- The inclusion of condition no. 2 and no.10 does not afford the appellant the right to examine and consider the changes and associated impact on residential amenity.
- It is noted that the principle of the development is in accordance with the Galway City Development Plan and the National Planning Framework and that the omission of the attic for non-habitable use does not represent efficient and sustainable use of land.
- It is set out that the building line of the new dwelling is not consistent with the established building line and that a revised design approach should be considered as part of the new planning application.
- It is noted that the planning authority's concerns were not fully addressed in the response to further information and yet the planning authority decided to grant planning subject to conditions, which will result in loss of amenity for the surrounding properties and adversely affect the street scene, including Sylvan Avenue.

6.2. **Planning Authority Response**

The response of Galway City Council, received by An Board Pleanála on 17th April, 2019, sets out the following:

- The specific requirement of conditions no. 2 and no. 6 were imposed to prevent overlooking of adjoining gardens to the rear having regard to policy 11.3.1 (d) of the Development Plan

- In relation to condition no. 7 the planning authority have set out that they have no objection to the removal of the second part of the condition providing the developer undertook to apply for a road opening licence and undertook to prevent any dirt being transferred from the site to the public roadway.
- In relation to condition no. 8 the planning authority request that this condition be retained having regard to the limited remaining garden size and the impact of any additional development on adjoining residential amenity.

6.3. Observations

One no. observation was received from Declan O’Callaghan and Mary Devine O’Callaghan, no. 23A Greenfields, Newcastle, Galway. No 23 A Greenfield is located to the immediate east of the site. A brief summary of the issues raised in the submission to the Planning Authority are set out below:

- It is set out the at the development is not in accordance with infill policy objectives of the Development Plan
- The proposed dwelling overlooks no. 23A and will represent loss of amenity, light and privacy.
- Insufficient car parking has been provided and no account taken of existing traffic congestion and lack of available parking on Greenfields Road.
- Concern is expressed regarding the applicant’s appeal of conditions no. 6,7 and 8.

6.4. Further Responses

A further response from the applicant (first party) was received by An Board Pleanála on 1st May, 2019, sets out the following:

- The development reinforces the streetscape and maintains the building line, height and character of the area. It is stated that the rear building line extends only 1.5m beyond the established rear building line.
- The development is in compliance with national policy to deliver c. 40% of new builds within the existing built up urban areas.

- The revised design presented to the Board ensures no direct overlooking and the gable windows serve utility and bathrooms only and will be obscure glazing.
- It is set out that parking has been provided on site.

7.0 Assessment

7.1. Introduction

7.1.1. The development is the subject of a first party appeal in relation to conditions no. 2, 6, 7 and 8 of the decision of Galway City Council dated 20/2/2019 and a third party appeal in relation to the design and layout of the proposed development, namely the proposed infill dwelling. The first party has submitted revised plans for the consideration of the Board. The following assessment is based on the original plans submitted by the applicant on 1st November 2018.

7.1.2. The assessment covers the points made in the appeal submissions, and also encapsulates my de novo consideration of the application. The main issues in the assessment of the proposed development are as follows:

- Principle of Development
- Design and Layout
- Residential Amenity
- Planning Conditions
- Appropriate Assessment

7.2. Principle of Development

7.2.1. The site is zoned 'R' Residential – 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. Residential is a permissible use within this zoning category. The proposed development provides for the retention of works carried out to no. 25 Greenfields and for the construction of an infill dwelling house in the side garden of no. 25 Greenfields. Therefore, subject to complying with other planning requirements as addressed in the following sections, the principle of the proposal is acceptable.

7.3. Design and Layout

- 7.3.1. As regards the principle of the retention works carried out to no. 25 Greenfields, which is intended to provide for improved residential accommodation, it is supported in terms of national, regional and local planning policies. The proposed porch and rear extension in terms of its design, scale and materials takes its reference from the established dwelling on the site and in visual terms integrates appropriately with the existing dwelling.
- 7.3.2. With respect to the proposed infill dwelling Policy 2.6 Established Suburbs of the Galway City Development Plan 2017-2023 deals with Infill development in corner/side gardens – allowing for houses having regard to the existing pattern of development, plots, blocks, streets and spaces. Such development shall have regard to the scale and proportion of existing buildings, building lines, massing and height of buildings in relation to the street.
- 7.3.3. The third party grounds of appeal and the observers assert that the design approach including building line will result in loss of amenity for the surrounding properties and adversely affect the street scene. Site inspection indicated that the general character of the area has been altered over time with amendments and additions to existing houses and the insertion of other infill dwellings. In my opinion the **design** of the proposed dwelling reflects the general character of the area in terms of scale and mass, front building line and height. Whilst, the rear building line extends 1.5m beyond the established **building line**, I do not consider this to be significant, and I note the rear building lines along Greenfields road are somewhat staggered in line with the alignment of the Road. Furthermore, I note the site is north facing and I am satisfied that there is no **loss of light** to the adjoining no. 23A as a result of the development. I consider the principle of the development is in line with Policy 2.6 of the Development Plan.
- 7.3.4. The minimum requirement for **private open space** provision as set out in Section 11.3.3 (c) of the Galway City Development Plan 2017-2023 is not less than 50% of the gross floor area of the residential unit. A similar quantum of rear garden space would be required for the existing house. The development is in compliance with these standards with private open space for each site in excess of 70sqm.

7.3.5. In conclusion, I am satisfied that the **design and layout** of the development will not detract from the character of the area and is in accordance with the proper planning and sustainable development of the area.

7.4. Residential Amenity

7.4.1. The third party grounds of appeal assert that the proposal will detrimentally impact on the residential amenities of neighbouring properties, as a result of potential **overlooking** of the adjoining dwellings.

7.4.2. **Condition no. 2** of the Planning Authority's decision requires the applicant to amend the design to omit the habitable attic accommodation and associated rear dormer window and to amalgamate bedrooms 1 and 2 at first floor level to the rear to form one rear bedroom with a single rear facing window, finishing not more than 4.0m from the boundary with No. 23A Greenfields, in the interest of residential amenity and privacy. In this regard, I note the suburban site context and the existence of rear first floor windows as an established norm in the residential estate. I consider the rear windows acceptable subject to compliance with standard separation distances.

7.4.3. The 'Sustainable Residential Development in Urban Areas - Guidelines for Planning Authorities' and its accompanying 'Urban Design Manual' does not set rigid minimum separation distances but does require that habitable rooms and private amenity space should not be directly excessively overlooked by neighbouring residents. Section 11.3.1 (d) *Overlooking* of the Development Plan sets out that residential units shall not directly overlook private open space from above ground floor level by less than 11 metres 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. I note the rear gardens of both no. 25 Greenfields and the proposed infill dwelling have 11m garden depths. It is generally acknowledged that a 22m separation distance between opposing first floor windows is acceptable. In this instance the separation distance of 22m will be adhered to and I am satisfied that in a suburban context the proposed first floor rear bedroom windows and the dormer attic window are acceptable. The applicant has indicated that all windows in the side elevations facing no. 23A will be obscure glazing.

7.4.4. Having regard to the foregoing, I consider the proposed development would be in keeping with the character of the area and would not seriously injure the amenities of

the neighbouring properties by reason of overlooking, overshadowing, overbearing or otherwise. Accordingly, I consider condition no. 2 be unnecessary.

7.5. **Planning Conditions**

Condition no. 6 of the Planning Authority's decision states that no additional windows shall be inserted in any elevation and the development shall be constructed and maintained in accordance with the drawings submitted. **Condition no. 8** removes all exempted development rights in accordance with *Exempted Development- General Schedule 2 Part 1* of the Planning and Development Regulations 2001 (as amended). The first party appellant contends that condition no. 6 and condition no. 8 are overly restrictive as the applicant may over time wish to insert a roof light /window or carry other development works which may otherwise be exempt. In this regard, I note the planning authority acknowledges that private open space requirements are exceeded in each dwelling and, therefore are consistent with adjoining development where such restrictions do not apply. Furthermore, Exempted Development is subject to specific conditions and limitations which the applicant will still be required to adhere to. In this regard, I consider condition no. 6 and condition no. 8 unreasonable.

Condition no. 7 sets out construction hours but also requires the applicant to submit a formal Project Construction and Demolition Waste Management Plan for written agreement. The first party appellant contends that the development is minor and does not meet the threshold for a formal Project Construction and Demolition Waste Management Plan. In their submission of 17th April 2019 the planning authority have set out that they have no objection to the removal of the second part of the condition providing the developer undertook to apply for a road opening licence and undertook to prevent any dirt being transferred from the site to the public roadway. I note a road opening licence is a requirement under the Roads Act and not the Planning Act and therefore a separate process. However, I do consider it appropriate to attach a condition regarding appropriate site maintenance and management.

7.6. **Other Issues**

- 7.6.1. The observers have raised concerns about the lack of **car parking** proposed. Greenfields is a long-established residential estate mainly consisting of dwellings within a uniform suburban layout with defined boundary walls and standard domestic

vehicular access. The layout provides for onsite vehicular parking on both sites for one car. The development is a suburban site accessible to public transport and accordingly, I am satisfied that adequate car parking has been provided in line with the Sustainable Residential Development in Urban Areas, Guidelines for Planning Authorities (2009). Furthermore, I note the planning authority raised no issues with car parking provision in site.

7.7. Appropriate Assessment

Having regard to the nature of the development, its location in a serviced urban area, and the separation distance to any 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

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

9.0 Reasons and Considerations

Having regard to the zoning objective, the policies and objectives of the Galway City Development Plan 2017-2023, in particular Policy 2.6 *Established Suburbs* Section and Section 11.3 *Residential Development*, the design and layout of the proposed development and the pattern of development in the area, it is considered that, subject to compliance with conditions below, the proposed development would not seriously injure the visual amenities of the area or residential amenity 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 on 1st November 2018, 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 out in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The public footpath at the entrance to both sites shall be appropriately dished to the satisfaction of the planning authority.

Reason: In the interest of proper planning and orderly development.

3. The developer shall ensure that the site is appropriately maintained and the public road and footpath remain free of any dirt and debris during the construction phase of development.

Reason: In the interest of proper planning and orderly development.

4. Details, including samples, of the materials, colours and textures of all the external finishes to the proposed dwelling shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.

5. Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health

6. The number of the proposed dwelling shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of urban legibility.

7. Site development and building works shall be carried out only between the hours of 0800 to 1800 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: To protect the residential amenities of property in the vicinity of the site.

8. Prior to the commencement of development, the developer shall secure an Exemption Certificate under Section 97 of the Planning Act 2000 (As amended).

Reason: To comply with the requirements of Part V of the Planning and Development Act 2000 (As amended) and the Planning and Development Amendment Act 2002.

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.

Irené McCormack
Planning Inspector

13th June 2019