



An
Bord
Pleanála

Inspector's Report ABP 306344-20.

Development

Permission for Retention and completion of part constructed extension to rear, refurbishment of existing dwelling, relocation of front door from sunroom to front of dwelling in lieu of window.

Permission for lowering first floor window opes to front and new windows, removal of pitched roof over sunroom and replacement with flat roof and removal of front boundary to provide parking for residents.

Location

No. 12 Cookes Terrace, Bohermore Townspark. Galway.

Planning Authority

Galway City Council.

P. A. Reg. Ref.

19/139

Applicant

Micheal & Catherine Mullaney.

Type of Application

Permission & permission for retention.

Decision

Refusal.

First Party Appellant

Micheal & Catherine Mullaney.

Observers

1. Brendan & Maureen Connaughtan.
2. Fintan and Evelyn O'Connor.

Date of Inspection

5th March 2020.

Inspector

Jane Dennehy

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1.0 Site Location and Description

- 1.1. No 12 Cookes Terrace is a modest sized, mid terrace, double fronted two storey house with a front curtilage and rear garden, located in one of the older residential estates of Galway City, in Bohermore. A large-scale commercial development is located adjacent to the rear of the gardens of the terrace of houses in which the appeal site is located. Alterations and extensions have been developed at some of the properties including the properties at which the observer parties reside and which adjoining either side of the appeal site.
- 1.2. Deep into the rear garden of the existing house there is a part constructed rear extension, including block walling up to a height in excess of three metres across the width of the existing house. At the front, at the time of inspection, the entirety of the front boundary walling and entrance gates had been removed and the site was fenced off.

2.0 Proposed Development

- 2.1. The application lodged with the planning authority indicates proposals for:
 - Permission for Retention and completion of part constructed extension to rear, refurbishment of existing dwelling, relocation of front door from sunroom to front of dwelling in lieu of window
 - and
 - Permission for lowering first floor window opes to front and new windows, removal of pitched roof over sunroom and replacement with flat roof and removal of front boundary to provide parking for residents.

3.0 Planning Authority Decision

3.1. Decision

By order dated 6th Decwember,2020m the planning authority decided to refuse permission based on the reasons and considerations outlined in brief below:

1. Construction of a rear extension, on a party wall which is excessive in height, scale, massing and footprint resulting in detrimental impact on residential amenity and in undesirable precedent for similar development.
2. Insufficient remaining private open space at the rear, the area of which amounts to 24 percent of the gross floor area which is contrary to section 1.13.1. (c) of the CDP according to which private open space should not less than fifty per cent of the gross floor area of the dwelling.
3. Visual Dominance and obstruction of daylight access for the window for a habitable room at the front elevation at No 11 Cookes Terrace adjoining the site adversely affecting the residential amenities of that property.

3.2. Planning Authority Reports

- 3.2.1. The application was subject to requests for further information, issued on 11th July, 2019, in respect of several details relating to the structure and boundaries to which a response was lodged on 4th October, 2019. Revised notices were published and erected at the site in response to subsequent requests issued to the applicant.
- 3.2.2. The planning officer in his report noted the contents of an enforcement file relating to the development carried out on the site. Further to issue of a multiple item request for additional information and, receipt of a response and receipt of the further information it was concluded that the proposed development was unacceptable in several respects. Issues relating to Title to residual land and encroachment onto the party boundary walls which had not been consented to by the adjoining property owner are also noted. Refusal of permission was recommended based on the reasoning attached to the order issued by the planning authority.

3.3. Third Party Observations

- 3.3.1. Submissions made by the Observer parties include multiple signatures and the issues of concern raised relate to unauthorised works, overdevelopment and overlooking and overshadowing and adverse impact on the visual and residential amenities of the area.

4.0 Planning History

- 4.1.1. Permission was granted for the existing porch (subject to alterations in the current proposal) to the front of the dwelling in 1992 under P. A. Reg. Ref. 92/98.

5.0 Policy Context

5.1. Development Plan

- 5.1.1. The operative development plan is the Galway City Development Plan, 2017-2023 according to which the site location is within an area subject to the zoning objective R: *“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.”*
- 5.1.2. According to section 11.3.1 (c) the total area of private open space should not be less than fifty percent of the gross floor area of a residential development.
- 5.1.3. According to section 11.3.1 (d) overlooking from residential units within eleven metres of private open space of land with development potential from above ground level is not acceptable.
- 5.1.4. According to section 11.3.1 (g) vehicular entrances should not normally exceed three metres in width and where feasible the maximum extent of boundary wall and hedge should be retained.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. An appeal was received from Gaynor Architecture and Design on behalf of the applicant on 10th January, 2020 attached to which are photographs. According to the appeal:
- Extensions are a natural value add to existing housing stock which accord with the Increased densities on residential zoned lands encouraged and provided for in *‘Sustainable Residential Developments in Urban Areas:*

Guidelines for Planning Authorities, (2009) and the National Planning Framework.

- The construction on the party wall was undertaken with the full consent and cooperation of the landowner and a letter of consent, a copy of which is on file, was provided prior to commencement of works. This consent is stated to have been withdrawn when the boundary was constructed, and it is contended that the withdrawal was motivated by objection to the nature of the future occupancy.
- The height was reduced in the further information proposals and in spite of planning authority concerns it is contended that a mono pitch extension with a height of 2.85 metres and a floor area of 42 square metres is fully acceptable especially in the context of the area in which extensions have been developed at several properties including the two adjoining properties at Nos 11 and 13. The proposed extension does not have material adverse impact on residential amenities and would not set undesirable precedent.
- The standards for private open space provision in section 11.3.1.(c) of the CDP is at odds with national and strategic planning policy encouraging increased density. A fifty percent allocation which would result in a requirement for an area of 90 square metres private open space which is excessive for five-bedroom houses is impractical at the application site. The private open space allocation is in the area which has most access to sunlight. A redesign of the front garden was also proposed providing for a front south facing garden with an area of 38.5 square metres resulting on a total area of eighty square metres landscaped open space on the entire site.
 - A planning authority decision to refuse permission was overturned and development of an extension, following appeal was permitted at No 77 Newcastle Dangan Heights. It resulted in an allocation of twenty-nine square metres remaining private open space at the rear. (PL 305182 refers. (Extracts from the inspector's report are included in the submission.)

- A self-contained dwelling unit and first floor extension was permitted for No 45 Cookes Terrace under P A. Ref. Ref. 19/187. It results in an area of eleven square metres private open space.
- For the proposed porch extension to the sunroom, the revised, pitched roof profile across the entire width of the house, included in the further information proposals, replacing the initial proposal rejected by the planning authority, meets regulatory fire requirements, creates an attractive design response and is a simple construction with a glazed inner porch with is energy efficient. This revised proposal would not have negative impact on No 11 Cookes Terrace, and it is requested that it be permitted.

There are similar examples which include an example at No 13 Cookes Terrace. A revised drawing addresses an issue on original 3D images indicating an overhang at first floor level into No 13 Cookes Terrace.

6.2. Planning Authority Response

- 6.2.1. A submission was received from the planning authority on 5th February, 2020 in which it is stated that the planning authority considers that all the issues raised in the appeal issues along with those raised by third parties, have been addressed in its comprehensive assessment.

6.3. Observations

- 6.3.1. Two Submissions were lodged and the observations in them are outlined below:

6.3.2. **Brendan and Maureen Connaughton of No 13 Cookes Terrace.**

No 13 Cookes Terrace is to the north west side of the application site. In the submission received on 4th February, 2020 it is stated that.

- The planning authority decision is supported.
- The party boundary wall was built on and was increased in height without consent. This work is unauthorised development and it also has implications for safety, as confirmed in the engineer's report prepared by James Roach on the City Council File No DANG (13) refers and a copy is provided. It contains details and comments on works, damage and land transfer and it is concluded

that some of the works are substandard, have caused structural damage and/or are dangerous.

6.3.3. **Fintan and Evelyn O'Connor, No 11 Cookes Terrace.**

No 11 Cookes Terrace is to the south east side of the application site. In the submission received on 4th February, 2020 it is stated that.

- The planning authority decision is supported.
- The original party boundary wall was demolished to allow for construction of a small extension at No 12 but it was not built. No consent was given to building on the party wall and the work carried out on the site has damaged the property at No 11.
- The work is unacceptable in height, scale and massing and in its overall size. The design and layout of the private open space is substandard, and it has no amenity value.
- Ownership of the residual land has not been demonstrated.
- The porch is not acceptable, and it is too close to and will obstruct daylight access to the window at the front of No 11. The front extension should not be at a 45-degree angle of the centre point at two metres above ground level of the nearest main window at No 11.
- Clarification is necessary to establish if the proposed development complies with the CDP.

7.0 **Assessment**

7.1.1. The issues central to the determination of the decision and considered below area:

- Boundaries and Title.
- Site coverage, Footprint and private open space provision.
- Height, scale and massing – Rear Extension.
- Front extension.
- Environmental Impact Assessment.
- Appropriate Assessment.

7.2. Boundaries and Title.

- 7.2.1. The observer parties, occupants of both at Nos 11 and 13 Cookes Terrace, state that they do not consent to works to party boundary walls and construction onto the boundaries and, on party walls and it is noted that there are also claims as to damage and issues relating to safety. In the case of the owners of No 11 Cookes Terrace it is note that consent originally given for demolition of a boundary wall but that it was not given for construction on this wall. These matters can be addressed through the legal process. However, it is clear, with reference to Section 34.13 of the Planning and Development Act, 2000 as amended that there is no entitlement to implement development, if permitted, on third party lands.
- 7.2.2. The statement by the planning officer that some residual land that has been incorporated into the rear garden of the application site property does not come within the title to that property and that this would need to be addressed if it is to be taken into consideration as being within the application site area.

7.3. Site coverage, Footprint and private open space provision.

- 7.3.1. The footprint of the proposed rear extension is extensive in depth and, as a result, the depth of the footprint of the existing and proposed development is 19.5 metres leaving the front curtilage and space circa 3.5 metres in depth beyond the rear building line allocated to private open space. The depth of the proposed extension beyond the rear building line of the original house, excluding prior additions is 11.8 metres.
- 7.3.2. In the appeal it is submitted that landscaping in the front curtilage would also serve as an amenity space for occupants. This area does not come within the criteria and description under section 11.3.(c) of the CDP and therefore the total area at 15% falls very short of the requirement of 89 square metres which is fifty percent of total floor area of 177square metres. It also appears that while it is proposed in the application to provide on-site carparking in the front curtilage, there is conflict with this arrangement in that there is a supplementary proposal to allocate the front curtilage to private open space for use by the occupants.
- 7.3.3. As such, the proposed development is substandard overdevelopment regarding site coverage and private open space provision resulting in substandard attainable

residential amenity for the future occupants. The view of the planning officer is supported in this regard.

7.4. Height, scale and massing – Rear Extension

- 7.4.1. The ground levels across the rear gardens of the subject site and adjoining properties are dissimilar, the level in the application site being higher, thus adding to the height of the structure, (to 3.24 metres from 2.85 metres) as seen from the adjoining property at No 11 Cookes Terrace resulting in increased dominance and overbearing impact. As stated in the planning officer report, this impact is compounded by the considerable length of 11.8 metres beyond the rear building line of the original dwelling along the existing rear garden depth. This contrasts to the depths of the extensions, beyond the rear building lines of the original houses at Nos. 11 and 12 estimated to be no more than three or four metres. (Details are not available.) Even though single storey only, by reason of its depth, the proposed extension's dominance leads to sense of enclosure at the adjoining properties.

7.5. Front porch extension.

- 7.5.1. Permission is sought in the application to extend the existing front extension/sunroom to provide for a porch so that it infills the entire width of the house. This results in the two metres' forward projection being brought closer to No 11 Cookes Terrace giving rise to concerns about obstruction of daylight and sunlight to the front elevation window. There is some potential for obstruction of sunlight access given the position north west of No 11 Cookes Terrace. There is scope for obstruction of the range of an open daylight outlook from the front elevation window which it should be noted is relatively small, as are all the original openings in this older housing stock in the area. The objections of the observer party in this regard are reasonable and it is agreed with the planning officer that permission should be refused for this element of the proposed development.

7.6. Environmental Impact Assessment Screening.

- 7.6.1. Having regard to the nature of the proposed development and its location in a serviced urban area, removed from any sensitive locations or features, there is no real likelihood of significant effects on the environment. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

7.7. Appropriate Assessment.

- 7.7.1. Having regard to the nature and scale of the proposed development, no appropriate assessment issues arise, the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

- 8.1.1. In conclusion, it is agreed with the applicant's agent that extensions, alterations and upgrades to older housing stock positively increases its potential and quality in providing for improved and high contemporary living standards. However, the current proposals for retention and completion and, new development amounts to overdevelopment, that is substandard both in terms of attainable residential amenity for future occupants and in terms of negative impact on residential amenities of adjoining properties leading to devaluation of property and potential for undesirable precedent. The planning authority decision to refuse permission for retention and permission be upheld. Draft Reasons and Considerations follow.

9.0 Reasons and Considerations

1. It is considered by reason of:

- Excessive depth of the proposed rear extension at 11.8 metres beyond the rear building line of the original house which results in a total depth for the existing and proposed development of 19.5 metres;
- The building up to and, on the party wall at the adjoining property at No 11 Cookes Terrace and,
- The height of the proposed rear extension, having regard to the length along the rear garden and the lower ground level in the adjoining property.

The proposed retention and completion of the rear extension constitutes overdevelopment that would dominate and be overbearing and, result in

sense of enclosure of the properties at No 11 and 13 Cookes Terrace and would therefore seriously injure the residential amenities and value of these adjoining properties, would set precedent for further similar development at Cookes Terrace and, would be contrary to the proper planning and sustainable development of the area.

2. It is considered that by reason of lack of private open space provision which, is an area equivalent to 24 per cent of the total floor area which falls significantly short of the minimum requirement of an area equivalent to fifty percent of the total floor area of the dwelling as provided for in section 11.3.1 (c) of the Galway City Development Plan, 2017-2021. As a result, the proposed development constitutes substandard overdevelopment lacking in satisfactory quality and quantum of private open space provision which seriously injures the residential amenities of the future occupants, is contrary to the Galway City Development Plan, 2017-2021 and to the proper planning and sustainable development of the area.
3. It is considered that the proposed porch extension to the existing sunroom extension which has a projection of two metres forward of the front building line of the existing dwelling, would by reason of close proximity to the front elevation ground floor window of the adjoining property at No 11 Cookes Terrace, obstruct natural daylight access to the internal accommodation served by this window and, would dominate the views through the window from the interior. As a result, the proposed porch extension would seriously injure the residential amenities of the adjoining property and would be contrary to the proper planning and sustainable development of the area.

Jane Dennehy
Senior Planning Inspector
27th March, 2020.