



An
Bord
Pleanála

Inspector's Report ABP 308403 - 20

Development	Retention of Demolition of part of the part constructed extension; retention and completion of section of art constructed extension; construction of a first-floor extension to rear and, refurbishment and alterations to internal layout and elevations. Retention of front door and construction of new canopy overhead. and all site development works.
Location	12 Cookes Terrace, Bohermore, Townparks, Galway.
Planning Authority	Galway City Council
P. A. Reg. Ref.	20/171
Applicant	Michael & Catherine Mullaney
Type of Application	Permission / Permission for retention.
Decision	Refuse Permission
Type of Appeal	First Party x Refusal
Appellant	Michael & Catherine Mullaney
Observers	<ol style="list-style-type: none">1. Brendan &Maureen Connaughton.2. Fintan and Evelyn O'Connor3 Councillor Collette Connolly.
Date of Site Inspection	30 th November, 2020.
Inspector	Jane Dennehy.

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1.0 Site Location and Description

- 1.1. No 12 Cooke's 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 in 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:
 - Retention of demolition of part of the part constructed extension.
 - Retention and completion of section of art constructed extension.
 - Construction of a first-floor extension to rear and,
 - Refurbishment and alterations to internal layout and elevations.
 - Retention of front door and construction of new canopy overhead and,
 - all associated site development works.
- 2.2. A request for additional information was issued on 19th August, 2020 to which a response was received from the applicant's agent on 11th September, 2020 in which it is submitted:
 - With regard to "overdevelopment" the request to omit the first floor is unreasonable. There is precedent at Dangan Heights (ABP 305182, No 45 Cooke's terrace, P. A. Reg. Ref. 19/187 leaving a garden of 11 square metres. And 33 Greenfields Reg Ref 13/288 increasing the floor area from 111 square metres to 208 square metres At No 13 the Shadow analysis

shows the extension at the rear of No 12 is comparable to the proposed development. A setback first floor wall adjoining No 11.

With regard to the unauthorised block wall on the north west and west boundary adjoining No 13, a small section of the existing boundary wall is to be removed and the remainder retained to ensure correcting roof detail and rainwater management. (Drawings RSA 20-31-01-FI and RSA 20-31-02-FI refer.)

With regard to the boundary with No 11 the reduction to two metres in the curtilage of No 11, subject to owner consent is proposed. (Drawing RSA 20-31-01-FI refers.)

With regard to the flat roof it is not proposed to reduce the height of the single storey flat roof (at 3.32 metres) as the height has no impact on the adjoining properties and because 2.6 m floor to ceiling heights are suitable for good quality development.

There are only a few small discrepancies in the application drawings. The gross floor area of existing and proposed development and private open space are available. (Drawing RSA 20-31-01-FI refers.)

3.0 Planning Authority Decision

3.1. Decision

By order dated, 30th June,2020, the planning authority decided to refuse permission for retention and permission based on the reasons and considerations below:

“The proposed two storey rear extension is considered to be excessive in terms of height, scale, massing and if granted, would give rise to a detrimental residential amenity and set an undesirable precedent for similar developments. Hence is it considered that the development would be contrary to the Galway City Council Development Plan, 2017-2023 and to the proper planning and sustainable development of the area.”

3.2. **Planning Authority Reports**

- 3.2.1. The planning officer in his report notes the proposed modifications relative to the prior proposal which results in reduced footprint for the ground floor extension but that the first-floor extension is unacceptable. Private open space is increased but an area of sixty square metres is required. He concludes that the proposed development is overdevelopment with detrimental impact on residential amenities.
- 3.2.2. The reports of the Climate Change and Environment Section and Transportation Planning departments indicate no objection subject to conditions.
- 3.2.3. There also a memorandum from the Engineer of the **Building Control** section outlining correspondence with the applicant's agent. It is recommended that if permission is granted, it should be a condition that the two-storey section of the boundary wall be removed and that the boundary be reinstated at its original height.

3.3. **Third Party Observations**

- 3.3.1. Objections were lodged by the occupants of the adjoining properties at Nos 11 and 13 Cooke's Terrace, who have also submitted observations on the appeal. In the submissions in which overdevelopment, serious injury to residential and visual amenities and property value and concerns as to the condition of the constructed boundary walls are raised.

4.0 **Planning History**

P. A. Reg. Ref. 19/139 / PL 306344: The planning authority decision to refuse 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 ad removal of front boundary to provide parking for residents was upheld following appeal on grounds of (1) excessiveness in footprint, height, dept, scale and massing resulting in overdevelopment and serious injury to residential amenities of adjoining properties. (2) insufficient quantum and quality of private open space provision having regard to the provisions of section 11.3.1. (c) of the CDP and, (3)

excessiveness in the projection forward of the proposed extension resulting in overbearing impact and obstruction of access to natural light at the adjoining property (No 11 Cooke's Terrace.)

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

5.0 Policy Context

5.1. Development Plan

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."*

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.

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.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. An appeal was received from the applicant's agent on 8th October, 2020, attached to which are photographs. According to the appeal,

- Substantive changes to the previous proposal were made in the current proposal which, with the exception of the first-floor element are acknowledged as positive in the planning officer report:
- The applicant submitted in the response to the further information request that there are several other developments which demonstrate that omission of the first floor is unwarranted. The planning assessment makes no reference to

these developments and therefore precedent has been disregarded. The self-contained unit to the side of No 45 Cooke's Terrace has even metres private open space allocated to it. In contrast, the current proposal is hidden behind the terrace of houses. It is acknowledged that each development should be considered on its own merits.

- The first-floor extension (eighteen square metres) is designed so that impact on adjoining properties is minimised.
- The rear footprint is substantially reduced, private open space is increased, there is no overlooking potential and a shadow analysis shows the impact on north facing properties.
- A three metres extension beyond the rear building line of No 13 is not excessive given the 2.15 metres setback from the boundary wall which mitigates material impact.
- The height at 5.7 metres is modest and not excessive for two storey extensions.
- Many three and four storey houses in Cooke's Terrace have small footprints on large lots and a further extension results in a house of 157 square metres in floor area.

6.2. Planning Authority Response

6.2.1. A submission was received from the planning authority on 6th November, 2020 according to which the issues raised in the appeal were given due and comprehensive consideration in the assessment of the application and it is requested that the decision the planning authority be upheld. It is also stated that the applicant was also given the opportunity in the additional information request to address the planning authority's concerns. With regard to the contentions as to precedent it is submitted that the cited cases are not valid precedents:

- The permitted development at 77 Dangan Heights related to a ground/first floor extension not previously extended. (P. A. Reg. Ref. 18/101 refers.)
- The permitted development at 45 Cookes Terrace, as regards contentions about private open space, related to a corner with a large side and front with

potential for building to the side of the dwelling whereas this is not the case with the subject site at No 12. (P. A. Reg.Ref.19/187 refers.)

- The permitted development at No 35 Greenfields involved removal of a side annex and chimney and construction of a three-storey side extension and single storey extension to the rear and front. The side extension does not extend beyond the rear building line and the pitched roof is at the same ridge height and pitch as the original roof. Fifty per cent of the original gross floor area is retained as private open space. (104 square metres) The rationale for the applicant's case as to precedent is unclear.

6.3. Observations

6.3.1. Submissions were received from the occupants of the adjoining properties on both sides of the application site and from a public representative and the objections are outlined below.

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

It is requested that the planning authority decision be upheld. Reference is made to the statutory status of the CDP, that the objectives under section 2.7 specifically protect the residential amenities and the quality of existing residential areas as regards infill development and house extensions. According to the submission:

- The issues in the reasons for refusal of permission for the previous proposal are not addressed in the current proposal. The current proposal constitutes overdevelopment that dominates and is overbearing and adversely affects the adjoining properties on both sides. It would seriously injure the residential amenities due to height, scale and massing and would depreciate the property values.
- The current proposal would set precedent for similar development at Cooke's Terrace.
- The proposed extension is higher than the wall built adjacent to No 11. The width is to both boundary garden walls on both sides and is a two-storey proposal at the boundary with No 13. At the height of 5.7 metres and 3 metres beyond the building line of the street it over dominates and

overshadows habitable rooms including the conservatory at No 13 at the adjoining houses.

- There are serious concerns about the safety of the boundary wall which was increased in height without Consent and for which permission for the retention of which as previously refused. The extension and boundary wall are on the Dangerous Structure Register at the County Council and it is a requirement that it be demolished. The County Council has commenced proceedings in the Courts. (Case Number 2020/61002 refers.)
- The private open space provision remains short of the requirement provided for in Section 11.3.1 (c) of the CDP.
- The proposed development would cause increased demand for parking on the street.

6.3.3. Fintan and Evelyn O'Connor. No 11 Cooke's Terrace

It is requested that the planning authority decision be upheld:

- The ground levels in the garden of No 12 is higher than the level in the garden of No 13 which increases the overbearing effect of the proposed development.
- The current proposal constitutes overdevelopment that dominates and is overbearing and adversely affects the adjoining properties on both sides. It would seriously injure the residential amenities due to height, scale and massing and would depreciate the property values. The revised plans for the current application indicate a higher development than the development for which permission was refused.
- No consent will be forthcoming for building up to the boundary or for the proposed canopy of the front door which would overshadow their front room.
- There should be no overshadowing and no shadow analysis was submitted with the application.
- The current proposal would set precedent for similar development at Cooke's Terrace.

- With regard to the precedent the application site property is a terraced house whereas the extension at No 45 Cooke's Terrace does not incorporate boundary walls, is not two storey and, the house is semi-detached house and on a corner site. The porch is not built up to the boundary wall with the neighbouring property and the front door is not changed.

There has been no follow up from Building Control on the unauthorised works carried out which has affected the foundations of No 13. It is unreasonable for the applicant to submit an appeal instead of implementing the court order for demolition of the structure. (Case Number 2020/61002 refers.)

6.3.4. **Councillor Collette Connolly**

In a submission received on 11th November, 2020, Councillor Connolly states that she supports the decision of the planning authority and beliefs that it should be upheld.

7.0 **Assessment**

7.1. The issues central to the determination a decision on the current proposal is considered under the following sub-headings:

Boundaries with adjoining properties.

Site coverage, footprint and private open space provision.

First Floor extension

Ground floor extension

Front door and canopy

Precedent

Environmental Impact Assessment Screening

Appropriate Assessment Screening.

7.2. **Boundaries with adjoining properties.**

7.2.1. From a planning perspective, the works to the party boundary whereby the height were raised, (without consent from the adjoining property owner or the benefit of a

prior grant of planning permission) adversely impacts on the residential amenities at adjoining property irrespective of incorporation or otherwise within construction of an extension. It is noted that issues of dispute regarding possible damages to adjoining third party property are subject of legal proceedings at present.

7.2.2. However, in the current proposal, as shown in the further information submission, the matter is substantively addressed, by way of reinstatement to the original height except for a small section where it is proposed that a two-block high addition be retained to facilitate proposed roof construction and written consent from the adjoining property owner would be required in this regard. (Drawing RSA 20-31-01-F1 and 20-31-01-F2 refer.)

7.2.3. These plans lodged show the proposed construction within the application on the inner side of the party boundary. The recommendation by the Building Control Section for a condition to be attached for the removal of the unauthorised construction and reinstatement and making good of the party boundary, (in entirety) at the original height in the event that of a favourable decision is noted.

7.3. **Site coverage, footprint and private open space provision.**

7.3.1. The current modified proposal provides for a footprint that allows for private open space provision at the rear, which is considered reasonable in configuration and amenity potential although, at sixty square metres in area it would fall short of the minimum area required having regard to section 11. 3. 1. (c) of the CDP. which would amount to seventy-nine square metres for a total floor area of 157 square metres.

7.4. **First Floor extension**

7.4.1. Taken in conjunction with the existing first floor level extension, notwithstanding the setback of the proposed additional first floor extension from the party boundary with the adjoining property at No 11 the proposed additional first floor extension is excessive in mass and height and in proportion to the existing development. As a result, it would be visually obtrusive and overbearing in impact on the adjoining properties resulting in serious injury to residential amenities and property value. It is noted that it has been confirmed that the applicant does not intend address these concerns by considering any proposals for modifications in this regard.

7.5. Ground floor extension

- 7.5.1. The existing and proposed single storey extensions are considerable in depth relative to the original dwelling. It is agreed that the proposed height the additional extension which is to abut and exceed the height of the party wall with No 11 over a length of four metres would result a visually obtrusive impact and enclosure of the adjoining rear garden.
- 7.5.2. A height reduction for this element of the development would have some ameliorative effect on the adverse impact on the adjoining property and it is agreed with the planning officer, that it would be feasible for a reduction in the roof height to be achieved by modifying the floor to ceiling height. However, it has been confirmed that the applicant whose preference is for 2.6 metres' floor to ceiling height which is in excess of the minimum requirements provided for under Building Control legislation is not in agreement with incorporating a modification in this regard

7.6. Front door and canopy

- 7.6.1. The original features of the dwellings of Cooke's Terrace included a modest front entrance door at the centre of a wide front façade to shallow depth dwellings although many properties have been altered, including the subject property at which there is a front extension in which an entrance was provided in the side elevation facing towards the front side boundary with No 11.
- 7.6.2. It is considered that the proposed retention of the relatively large ope, providing for a new entrance door and the proposal for the canopy overhead would, as additional elements to the existing development to the front of the dwelling, have a cumulative obtrusive and negative visual impact in the streetscape character along Cooke's Terrace.

7.7. Precedent.

- 7.7.1. There is strong emphasis on an argument as to established precedent to support the applicant's case regarding rear extension development in the appeal, and further information submission. Although No 45 Cooke's Terrace a similar original dwelling in the same area the development permitted and constructed is not suitable for taking precedent. It is clearly explained in the planning authority submission hat it is an end of terrace dwelling with a different plot configuration than the mid terrace dwelling and plot. There is no comparability, in either of the other permitted

developments at the other two properties in other areas of the city from which precedent could be taken to support the current proposal, as has been pointed out in the planning authority submission. referred to in the appeal, have no relevance

7.8. Environmental Impact Assessment Screening

- 7.8.1. 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

7.9. Appropriate Assessment Screening.

- 7.9.1. 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

In view of the foregoing, it can be concluded that the decision of the planning authority should be upheld and that permission for retention and permission should be refused based on the reasons and considerations set out below. It is noted that there is no direct reference to the proposed retention of the front entrance door and proposed canopy overhead in the reasoning attached to the decision of the planning authority to refuse permission. If Reason No 2 which is recommended is to be included, prior circulation of the parties for comments would be warranted in that a new issue not raised in connection with the appeal would have arisen.

9.0 Reasons and Considerations

1. It is considered that the proposed two storey and single storey extensions, taking into account the existing two storey extension would be excessive in height, mass and proportion and have a dominant and overbearing impact and would create a sense of enclosure at the adjoining properties. As a result, the proposed development would seriously injure the residential

amenities of these properties, would depreciate their value and would set undesirable precedent for further development at similar properties at Cooke's Terrace. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

2. It is considered that the proposed retention of the ope, providing for a new entrance door which is relatively large and the proposed the canopy overhead would, as additional elements to the forward projecting existing sunroom extension to the front of the dwelling, have a cumulative incongruous and negative visual impact on the presentation of the dwelling in the established streetscape character along Cooke's Terrace. As a result, the proposed development would seriously injure the visual and residential amenities of the area.

Jane Dennehy

Senior Planning Inspector

29th January, 2021