



An  
Bord  
Pleanála

## Inspector's Report ABP 308698-20.

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<b>Development</b>	Demolition of existing dwelling and construction of a new dwelling.
<b>Location</b>	Averarde, Taylors Hill. Galway.
<b>Planning Authority</b>	Galway City Council.
<b>P. A. Reg. Ref.</b>	20/167
<b>Applicant</b>	Frank and Margaret Kinsella
<b>Type of Application</b>	Permission
<b>Decision</b>	Grant Permission.
<b>Type of Appeal</b>	Third Party
<b>Appellant</b>	Conor and Anna Costelloe
<b>Observer</b>	
<b>Date of Site Inspection</b>	13 <sup>th</sup> March, 2021
<b>Inspector</b>	Jane Dennehy

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## 1.0 Site Location and Description

1.1. The site which is located on the north side of Taylor's Hill in Galway has a stated area of 1,520 square metres and is that of one of two detached houses with a shared access off an access road shared with a third property to the rear from the public road. The house is located behind deep front gardens enclosed by hedgerow and has a stated floor area of 275 square metres and a height of 8.46 metres to the parapet. To the east side is a detached house which is the property of the appellant party which also has a deep rear garden and a hedgerow is located along the party boundary between the two front gardens. The ground level is sloped from north to south. To both the west and east sides of the application and appellant site properties there are separate shared entrances off Taylor's Hill to clusters of individual detached houses on relatively large plots.

## 2.0 Proposed Development

2.1. The application lodged with the planning authority indicates proposals for demolition in entirety of the existing detached house and construction of a replacement detached house with habitable accommodation over three floors, the third floor being confined to a small area towards the rear and set back from the front and sides. The stated floor area is 392 square metres and stated height to the parapet is 9.4 metres. A request for additional information was issued on 13<sup>th</sup> August, 2020 in relation to the proposed footprint, overlooking and overshadowing and the flat roof terrace and balcony. A response was received by the planning authority on 11<sup>th</sup> September, 2020 indicating revisions to the footprint to address concerns about the front building line, separation distances from boundaries, potential overshadowing and overlooking and the flat roof section which was relocated toward the east side. the relocation of the flat roof section.

## 3.0 Planning Authority Decision

### 3.1. Decision

By order dated, 22<sup>nd</sup> October, 2020, the planning authority decided to grant permission further to review of the further information submission subject to conditions which include:

Restriction to "family recreational use" for the roof terraced area under Condition 2.

Permanent obscure glazing and top hung pivot openings only for the first-floor east elevation and stairwell fenestration under Condition 3.

Retention of existing boundary walls under Condition 4.

A compliance submission for stone finish to the front façade and omission of use of timber under Condition 7.

### 3.2. Planning Authority Reports

- 3.2.1. The **Planning officer** indicated satisfaction with the proposed development in the supplementary report further to review of the submissions in connection with the original application and the further information. A grant of permission was recommended, subject to conditions of a standard nature and the additional specific requirements outlined under para. 3.1 above.
- 3.2.2. The reports of the **Drainage and Environment Sections and Irish Water** indicated no objection subject to conditions of a standard nature.

### 3.3. Third Party Observations

- 3.3.1. A submission was lodged by the appellant party, in which concerns area raised about the size of the dwelling and as to overbearing impact, overshadowing, overlooking and impact on residential amenities associated with use of the flat roof section.

## 4.0 Planning History

**P. A. Reg. Ref. 19/216:** Permission was granted for demolition for the single storey extension to the rear and for construction of a new single and two storey extension to the rear along with refurbishment and minor alterations and changes. The grant of permission was not taken up.

**P. A. Reg. Ref.02/735:** Permission was granted for a ground floor conservatory to the front.

## 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 the “*Inner Residential Area*” for which there is a requirement for compatibility with the scale, proportions, character and amenities of existing development.
- 5.1.2. According to section 11.3.2 the plot ratio of 0.46:1 should not be exceeded in Inner ‘Residential Areas/Established Suburbs’.
- 5.1.3. 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.
- 5.1.4. 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 lodged by Brendan McGrath on behalf of the appellant party, Conor and Anna Costelloe on 17<sup>th</sup> November, 2020. According to the appeal the proposed development would result in serious adverse impact on the amenities of the appellant party’s property and, fails to ensure the protection of residential amenities

as provided for under the zoning objective for the area in the CDP based on the grounds outlined below:

- The current proposal is for a much bigger house than the existing dwelling including the permitted extensions for which permission was granted under P. A. Reg. Ref. 19/216. but not implemented. The net floor area is increased to 387 square metres from 275.7 square metres and, inclusive of the living areas (net floor areas and first and second floors and balcony and patio areas.) there is a seventy-one per cent increase to 472 square metres from 275 square metres.
- Positioning the proposed dwelling within the footprint of the existing house is inappropriate given the increase in size and height. It is excessive for the site and fails to respect surrounding development. A minimum separation distance of eleven metres is required under section 11.3.1 of the CDP. The footprint (in the further information submission) is forward of the front building line and closer to the appellant party's property and incorporates outdoor and indoor spaces at first and second floor levels including a large balcony and a (separate) outdoor terrace entertainment space at first floor level.
- The separation distance from the party boundary at 1.7 metres and from the appellant party's house at four metres contributes to overbearing impact dominating the front, (the main, south facing external amenity space) and rear gardens and overlooking from two and three storey elements of the proposed house.
- The decking area and conservatory at the rear of the appellant's house would be overshadowed in evening time. The submitted shadow analysis is unreliable.

## 6.2. Applicant Response

A submission was received from the applicant's agent, 14<sup>th</sup> December, 2020 and attached is set of drawings. According to the submission:

- With regard to the two external amenity areas: The first-floor area is setback beyond the stair core on the south east, preventing overlooking of the

appellant property. There is less potential for overlooking from the proposed development than there is than there is from the existing dwelling. The second-floor external area with its setbacks is small and located to ensure no overlooking or overshadowing.

- The ground floor footprint (which was reduced by 500 mm in the further information submission) is offset 1700 from the common boundary and is further west than the existing dwelling.
- The possibility of overlooking from the proposed dwelling is removed at first floor level where the front windows are recessed and the side elevation windows are obscure glazed and have a brise soleil screen. These measures accord with section 11.3.1. (d) of the CDP and increase rather than reduce the privacy of the appellant's property. (Drawing 3044 refers)
- The front and rear amenity areas of the appellant party's property are not affected by overlooking or overshadowing and the suggestion that the rear garden would be dominated by the three-storey element with windows overlooking it is inaccurate. The three storey element is located to the rear. There are no habitable first floor rooms with windows overlooking the private amenity spaces of the appellant's property.
- The shadow analysis which was accepted by the planning authority establishes that there is no increase in overshadowing as it clearly demonstrates the shadow cast from the existing and proposed dwelling through the four seasons, including the spring equinox for 8 am, 12p, 3pm and 6 pm.
- The contention as to the positioning of the proposed dwelling within the footprint of the existing dwelling being overdevelopment is rejected and the design for the footprint is not out of character with surrounding development in the area. Section 11.3.1 (d) of the CDP is misinterpreted in the appeal as the separation distance of eleven metres does not refer to the gable end distances but a rear overlooking perspective. The recesses at first floor level prevent overlooking of the private open space at the appellant party's property.
- It is requested that the decision of the planning authority be upheld.

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

There is no submission from the planning authority on file.

## 7.0 **Assessment**

### 8.0 **The assessment is based on the modified proposal provided in the further information submission.**

#### 8.1. **The appellant party property is a detached house with a conservatory and decking in the rear garden area to the north side and deep front garden which is south facing to the front**

It is the appellant party's claim that the proposed development is overdevelopment that would seriously injure the residential amenities of their property, which adjoins the application site property and the issues central to the determination of the decision can be considered under the following subcategories.

Overdevelopment – Footprint, Form, Scale, Height and Mass

#### 8.2. **Overdevelopment – Footprint, Form, Scale, Height and Mass.**

8.2.1. The appellant party refers to the extant grant of permission for extensions (under P. A. Reg. Ref. 19/216) to the existing dwelling on the application site which provides for enlargement of the existing house to support the contention that the current proposal for a much larger dwelling is overdevelopment for the site and that would seriously affect the amenities of their property. Notwithstanding this prior grant of permission, the current proposal is considered on its own merits with regard to the capacity of the site having regard to the appeal grounds.

8.2.2. The application site and appellant site properties benefit from large front gardens facing south. The ground floor element of the proposed new dwelling incorporates an entrance lobby forward of the front building line of the adjoining property with a



raised area to the front on its west side being laid out as a front courtyard overlooking the front garden.

8.2.3. The form of the proposed dwelling which is well proportioned and which incorporates a second-floor element is compact, and not excessive in mass in views from the front. The site configuration and size are such that it has the capacity to accept the depth of the footprint from front to rear which is not significantly dissimilar to that of the original dwelling. The selection of materials and finishes are appropriate and the requirement for substitution of stone facing for timber on the front façade, by condition is considered reasonable.

8.2.4. While the proposed dwelling has a height to the parapet of approx. seven metres at the 1.7 metres offset from the party boundary, the second-floor element being circa nine metres from the party boundary. The projection forward of the rear building line of the appellant party's property in the proposed dwelling is not setback from the party boundary as is the case with most of the projection into the rear of the existing dwelling. However, having regard to the height, separation from the party boundary, and the size of sites of both the application and appellant party properties, it is considered that the site has the capacity to accept the proposed dwelling having regard to the footprint, form, scale, height and mass without cause for undue overbearing impact from the perspective of the amenities of the adjoining property.

8.2.5. **Overlooking.**

The first-floor balcony and second floor terraced area as shown in the modified proposals lodged with the further information submission are removed from and screened off from the east by the mass of the dwelling. These external spaces provide for direct visual access to the west and the south and the angle of vision is restricted to the lower, western end of the adjoining property's front garden. These elements if confined to use associated with the residential use of the house would not adversely affect the residential amenities of the adjoining property. In addition, opaque glazing and restriction to top pivot hung windows for the first elevation east facing windows and stairwell eliminate any potential for overlooking of the appellant party's property.

#### 8.2.6. **Overshadowing**

With regard to overshadowing of the appellant property to the east, the forward projecting element over the front building line of the appellant property is minimal and at a separation distance sufficient to ameliorate any potential for significant overshadowing of the adjoining front façade and garden. The contention in the appeal as to overshadowing of a decking area and conservatory to the rear are noted but it is not accepted that the shadow analysis is unreliable. The shadow analysis diagrams show marginal variation in shadowing to the rear north side of the adjoining dwelling, mainly evening time at the Summer Equinox at the rear/north side by the existing dwelling and the modified dwelling as proposed in the further information submission. The shadow analysis is considered satisfactory and the planning officer's view that the proposed development is acceptable in this regard is supported.

#### 8.3. **Environmental Impact Assessment Screening.**

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.

#### 8.4. **Appropriate Assessment.**

Having regard to the planning history for the site, the zoning objective, the location of the site is on serviced land, and, 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.

### 9.0 **Recommendation**

In view of the foregoing, it is recommended that the planning authority decision to grant permission be upheld, and that permission be granted based on the reasons and considerations and subject to the conditions overleaf:

## 10.0 Reasons and Considerations

10.1. Having regard to the established pattern of development in the area, the site size and configuration and the footprint, scale, form, height and design of the proposed development, it is considered that subject to compliance with the conditions set out below, the proposed development can would accommodated within the site and would not seriously injure the visual amenities of the area or the residential amenities of the adjoining property by reason of overdevelopment, visual obtrusiveness and overbearing impact, overshadowing or overlooking and would be in accordance with the proper planning and sustainable development of the area.

## 11.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars lodged on 11<sup>th</sup> September, 2020 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 following requirement shall be provided for and adhered to in the development:

The dwelling shall be used as a single dwelling unit only.

The external terrace/balcony spaces at first and second floor level terrace shall be confined to use ancillary to the residential use of the dwelling.

The garage/shed shall not be used for human habitation or any purposes other than use incidental to the residential use of the main dwelling.

**Reason:** In the interest of clarity and the residential amenities of the area.

3. Details of the materials, colours and textures of all the external finishes to the proposed development, shall be submitted to, and agreed in writing with, the

planning authority prior to commencement of development. The use of timber on the front façade shall be omitted and replaced with natural stone facing.

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

4. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including construction traffic routing and management, construction parking, materials storage, noise management measures and off-site disposal of construction/demolition waste.

**Reason:** In the interests of public safety and residential amenity.

5. Site development and building works shall be carried only out between the hours of 0700 to 1800 Mondays to Fridays inclusive, between 0800 hours 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:** In order to safeguard the residential amenities of property in the vicinity.

6. Landscaping shall be carried out in accordance with an agreed scheme and shall be completed within the first planting season following the substantial completion of external construction works. All existing party boundary walls and hedgerow shall be retained. 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 residential and visual amenities.

7. Water supply and drainage arrangements, including the attenuation and disposal of surface water and mitigation measures against flood risk including

in the basement area, shall comply with the requirements of the planning authority for such works and services.

**Reason:** In the interest of public health.

8. The developer shall enter into water supply and wastewater connection agreements with Irish Water, prior to commencement of development.

**Reason:** In the interest of public health.

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.

**Jane Dennehy,**  
Senior Planning Inspector  
April 2021.