



An  
Bord  
Pleanála

## Inspector's Report ABP 308716-20.

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<b>Development</b>	Construction of a two and a half storey dwelling and all associated ancillary site works.
<b>Location</b>	12 Canal Road Upper, Galway.
<b>Planning Authority</b>	Galway City Council
<b>P. A. Reg. Ref.</b>	20/175
<b>Applicant</b>	Kendra Glynn
<b>Type of Application</b>	Permission.
<b>Decision</b>	Grant Permission.
<b>Type of Appeal</b>	Third Party
<b>Appellant</b>	Fiona and Maureen Lawless
<b>Observer</b>	Eithne and Elizabeth Fitzpatrick.
<b>Date of 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 application site has a stated area of circa 800 square metres and is that of No 12 Canal Road Upper overlooking the Eglinton Canal to the east a short distance to the south of the junction with University Road (R863) in Galway city. It is the plot of a former two-storey house which was demolished circa 2009. (A replacement dwelling permitted, along with the demolition of the original dwelling was not constructed. P. A. Reg. Ref. 05/736 – PL 217228 refers.) The width is circa ten metres and the rear garden depth is thirty-eight metres and the properties in the vicinity along Canal Road Upper are mainly established two storey houses dating from the 1930s located behind front gardens behind front boundary walls on narrow plots with deep rear gardens.
- 1.2. The houses on the adjoining sites to either side are two storey detached houses. At No 11 to the north side there is a detached garage structure which is located to the rear of and adjoins southern side party boundary with the application site.
- 1.3. At No 10 Canal Road the property adjoining the Observer Party's property the original 1930 dwelling was demolished and replaced with a contemporary dwelling. (P. A. Reg. Ref. 00/35 refers.)

## 2.0 Proposed Development

- 2.1. The application lodged with the planning authority indicates proposals for construction of a two and a half storey dwelling with a stated floor area of 407 square metres in a contemporary design on the site along with associated ancillary site works. The stated plot ratio is 0.54:1 and a gross floor area of 430 square metres is indicated. Additional information was requested in respect of building footprint, form, height and design and impact on adjoining properties and a shadow analysis was requested to which a response was lodged on 29<sup>th</sup> September 2020. Modifications were made in response to a request for additional information providing for a reduced footprint dwelling size (GFA reduced from 430 to 392 square metres), modified form and reduced height along with a shadow study.

## 3.0 Planning Authority Decision

### 3.1. Decision

By order dated, 23<sup>rd</sup> October, 2020, the planning authority, on the recommendation of the planning officer, decided to grant permission for the proposed development subject to conditions of a standard nature.

### 3.2. Planning Authority Reports

- 3.2.1. The planning officer in his final report, issued further to consideration of the response to an additional information request decided that the proposed development was acceptable. He had considered the height, scale, form and footprint along with potential for overshadowing having noted the planning history, streetscape character and the current vacant brownfield nature of the site. The proposed development was considered satisfactory with regard to the proposed footprint and design, including the projecting front bay window as appropriate for the location and consistent with the CDP policies, objectives and development management standards.
- 3.2.2. The reports of the Roads Section, the Environment Section of Galway City Council indicate no objection to the proposed development subject to conditions of a standard nature.
- 3.2.3. The report of Irish Water indicates no objection.

### 3.3. Third Party Observations

- 3.3.1. Objections were lodged by the occupants neighbouring properties indicating concerns as to the scale, height, mass, design and, lack of integration with the existing dwellings along Canal Road and the streetscape character and on grounds of overlooking and overshadowing potential.

## 4.0 Planning History

**P. A. Reg. Ref. 05/736 PL 217228:** Permission was granted for demolition of the original 1930s two storey dwelling on the site and for construction of a two-storey dwelling in a contemporary style with a stated area of 338 square metres. The

original dwelling was demolished but the permitted new dwelling was not constructed.

## 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 Policy 2.7 the quality of inner residential areas must be protected by ensuring that new development proposals do not affect their character and is consistent with the prevailing pattern, form and density.
- 5.1.3. According to section 11.3.2 the plot ratio of 0.46:1 should not be exceeded in ‘Inner Residential Areas/Established Suburbs’.
- 5.1.4. 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.
- 5.1.5. 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.
- 5.1.6. According to section 1.3.2 (b) amenity standards of the CDP should be in accordance with standards for outer suburbs but allows for a reduction in standards to be considered in certain circumstances having regard to form and layout.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

- 6.1.1. An appeal was received from Daniel Melia on behalf of the appellant party, Fiona and Maureen Lawless of No 11 Upper Canal Road, to the north side of the application site on 18<sup>th</sup> November, 2020 in which it is claimed that the proposed

development would adversely affect the residential amenities of the appellant's property with the proposals in both the original application and further submissions being unsatisfactory.

6.1.2. The appeal includes an account of and comments on the assessments at application and appeal stages of previously permitted development for the site and it is confirmed that there is no objection in principle to development of a dwelling.

According to the appeal:

- The proposed development is thirty per cent larger than the previously permitted development, under P. A. Ref. Ref. 05/736, and the scale and proportions would be disproportionate to existing development. It would be inappropriate, out of context with the surrounding area and it will dominate both it and adjoining properties. It would adversely affect the character, and pattern of development in the area and the amenities of the appellant party's adjoining property at No 11.
- The further information submission proposals for a ridge height of 9.18m which extends from the front to rear over 17.315 metres and is 1.15 m above the 8.03 m ridge height of No 11 Canal Road Upper. The previous permitted proposal as revised in the further information submission and as required, under condition no 2A which was attached to the grant of permission stepped down from the 9.3 metres ridge height and from the eaves to the rear. A similar condition could be attached for the current proposal. The 2.5 storey element would be much higher than the single storey extensions to the houses to either side.
- Bedroom 4 (attic) is in the space which was reduced under condition No 2 of the prior grant of permission under P. A. 05/736 and the roof (ridge and eaves) of the current proposal should be lowered at this location so that it is in line with the prior grant of permission and reduces overshadowing of No 11. The rear roof line should also be formed into a hip.
- The eaves height difference at 6.45 m over ground level is considerably higher than at Nos 11 and 13 to each side of the application site and the effect is increased by the 1.2 metres separation distance from the boundary. The

house therefore would be at odds with and will detract from the surrounding houses and streetscape.

- Canal Road Upper is not identified as an 'inner residential area' in the CDP but the proposed development in bulk, mass and scale would be contrary to section 2.7 of the CDP which seeks to ensure that new development does not adversely affect the character of the area referred to in Section 2.7. A separation distance of 1.5 metres between new residential developments is necessary according to section 11.3.1 (f) of the CDP whereas it should be greater for developments with a floor area is over 200 square metres. It appears that the planning authority sought to bring the development into consistency with the plot ratio standards 0.46:1 with the omission of Bedroom 4 but did not consider it necessary to impose the 1.5 metres separation distances. The revised separation distance of 1.23 metres in the further information submission is not sufficient and the minimum of 1.5 metres should be imposed. The separation distance for the original house from the boundary was 2.4 metres.
- The omission of the bedroom sought by the planning authority for the further information submission is not sufficient because the roof structure overhead could be retained. A condition would be necessary to clarify this. It is also necessary to address overshadowing potential. The rear section must be lowered to overcome the visual dominance in views form No 11 of the excessive mass.
- Overshadowing of the rear garden of No 11 especially the area close to the house would occur to a greater degree than the overshadowing from the original house. The shadow drawings appear to have anomalies and this was raised in the submission lodged at application stage.
- The projection forward of the building line by the proposed front elevation bay window is excessive, visually unsatisfactory and will give rise to overlooking of the adjoining front garden at No 11.
- The proposed development is too large for the site the width of which is almost entirely infilled with an attempt to shoehorn the house into it. The house is suited to a suburban area with a larger site. Examples included in the

original application in support of the proposed development were all for larger sites where the houses were not in close proximity.

- The proposed development would set undesirable precedent for similar development.

## 6.2. Applicant Response.

A submission was received from HRA Planning on behalf of the applicant on 16<sup>th</sup> December, 2020 according to which:

- A dwelling on the site was demolished to facilitate development of a dwelling permitted following appeal under PL 217228. (P. A. Reg. Ref. 05/736 refers.) The Board had formed the view that the site had the capacity to accept the contemporary style of building, a two-storey building with a gfa of 338 square metres, the original building having been 138 square metres in gfa. The site has the capacity to accept the current larger contemporary style dwelling and a reduction in size is unwarranted.
- The proposed development, as an infill or replacement dwelling complies with the CDP with regard to “Neighbourhoods – Established Suburbs” as provided for in Chapter 1, (Housing and Sustainable Neighbourhoods) and complies with the standards in section 11.3 with regard to scale, form, plot ratio and open space and the distance from boundaries.
- References in the appeal to the prior grant of permission and to condition No 2a thereof are not relevant to overshadowing and overlooking in that the scale, form and height of the current proposal are different whereas the design and length are similar. The design approach maximises the potential of the site without interfering with the amenity of the appellant party’s property and other dwellings in the vicinity.

The plot at no 12 is the same in width as the adjoining sites at No 11 and 13. Extensions have been constructed and structures have been erected at adjoining properties affecting the common boundaries and separation distances are included in the application which has a footprint not further beyond the established rear building lines. The two-



storey massing the common boundary corresponds to the lateral side of the appellant party's dwelling and garage and is off set from the boundary.

The proposed massing was by the original, (now demolished) dwelling. The primary amenity outlook for the houses which are on the narrow plots is to the front and/or the rear as is the case with the redevelopment at No 10 where the footprint is over the plot width and the outlook and established amenity, relative to the original house will not be affected.

A similar argument applies with regard to extending the two-storey element back into the site as the amenity outlook from the rear extension of the appellant party property is restricted by the appellant's adjoining garage. There is no overlooking potential or overbearing effect on amenity outlook from the adjoining house extensions.

The hipped roof design and its ridge height which is 400 mm lower than the previously permitted development reduces massing to each side but further alterations would materially affect the integrity and balance of the hip roof the internal accommodation. Bedroom 4 in the attic is required for the applicant's needs and the window's outlook is the same as for the windows for Bedrooms 2 and 3 at first floor level and they do not overlook the adjoining properties. The overall massing is commensurate to the overall carrying capacity of the application site which is deep and narrow in width with the dwelling assimilating into it and the streetscape character.

- The high-quality bay window proposed is suitable for the location and the contention that it overlooks the adjoining properties front gardens should be dismissed.
- The shadow analysis submitted with the application shows that overshadowing relative to the pre-development scenario whereas the previous dwelling now demolished which would have caused shadow for three hours from midday, on 21st December. This is the relevant baseline as a result of which the increase in shadow effect from the proposed development

on the adjoining property would be negligible and it is reasonable that there be an expectation of some shadow effect.

### 6.3. Planning Authority Response

There is no submission from the planning authority on file.

### 6.4. Observations

#### **Eithne an Elizabeth Fitzpatrick.**

6.4.1. A submission was received from James Roche on behalf of the observer party of No 13 Canal Road Upper on 11<sup>th</sup> December, 2020 in which it is requested that permission be refused. According to the submission:

- The proposed development is excessive in bulk, scale and layout. It is contrary to section 8.7 of the CDP and to the *Urban Design Manual – A Best Practice Guide* to which it refers. Nos 11 and 13 which are mirror images of each other were constructed circa 1930, No 11 having a bay window omitted in the drawing 20-0402 - Rev A.
- No 12 did not evolve naturally as part of the surrounds. The roof has a higher pitch and the eaves height is one metre above those of Nos 11 and 13 but should be the same and in keeping with a prior grant of permission. (PL 61 217228 refers.) The bay windows which are large project too much forward of the front building line and this is contrary to page 146 of the CDP. (Drawing 20-0402 - Rev A refers.)
- The large scale and bulk relative to the adjoining houses. It is unclear how the removal of bedroom 4 required under condition 3 of the grant of permission can be achieved. The massing would remain large and the amended design could result in overlooking to No 13.
- The three gable end windows of No 13 are not accurately reflected in the application which include six windows in the south west elevation overlooking No 13 (Drawing 20-04-05 refers.) The window on drawing 20-04-03 overlooks ground floor windows at No 13 whereas the north east elevation has one window at ground level with frosted glass. The three first floor windows with frosted glass can be opened and cause overlooking. The previous house at

No 12 had no gable end windows. There were no gable end windows in the previous demolished house.

- Separation distance of 1.5 metres from the boundary has not been provided.
- The removal of the front boundary wall with replacement by a green hedge is out of character as the on Upper Canal Road which have front walls.
- There is concern as to subsidence risk and structural damage at adjoining properties during excavation. There is a mature tree on the common boundary with the property at No 13.

## 7.0 Assessment

- 7.1. The current application is for a different replacement dwelling to the previously approved replacement dwelling but not constructed, along with the demolition of the original dwelling. There is emphasis on comparison with the original and previously permitted dwelling within the appeal but it is reasonable for the current proposal to be considered on its own merits.
- 7.2. The Upper Canal Road overlooking the canal and parklands to the east is characterised primarily by terraced houses dating from the 1930s and 1940s at the southern end and larger semi-detached/detached houses at the northern end. There are front gardens some of which have been adapted for front curtilage parking, gates and railings or boundary walls and rear gardens. The area is an important and popular pedestrian route with high quality visual and recreational amenities.
- 7.3. The proposed dwelling is larger than both the original and previously permitted dwelling. Although the plot width is relatively narrow it has the capacity to accept a dwelling as proposed in the further information submission with the exception of the attic level rear element owing to the dwelling depth and long side elevations facing the adjoining properties. It is agreed with the planning officer that the attic level Bedroom, (No 4) which incorporates a dormer should be omitted on grounds of excessive massing at the rear causing overshadowing and overbearing impact on the adjoining properties and, overlooking and perceptions of overlooking towards their rear gardens. Modifications to the roof profile are required to provide for the omission of the bedroom No 4 element and to achieve a lowering of the height to

ameliorate impact on the adjoining properties. Modifications do appear to be feasible and appropriate to resolution subject to a condition for agreement with the planning authority compliance prior to the commencement of the development.

- 7.4. Bearing the foregoing in mind, and further to review of the shadow analysis in which the pre-development and post development scenarios are shown, the shadow impact of the proposed development with the recommended modifications in place would not have significant adverse overshadowing effect on the rear garden of the adjoining property at No 11. Any increase in effect relative to the shadow impact of the previously permitted and original dwellings, would be negligible. There does not be any evidence or basis to support any argument that the submitted shadow analysis is unreliable
- 7.5. The footprint of the dwelling with one small exception is considered both appropriate for the site and compatible with the adjoining dwellings. The rear building line for the proposed dwelling is consistent with the of the detached structure/garage adjacent to the party boundary at No 11 and that of the rear of No 13. It is recommended that in order to provide for sufficient separation distance from the party boundary, with No 11, having regard to section 11.3.1. (f) of the CDP and access for maintenance purposes, the projecting element to side at the rear should be setback to the footprint of the remainder of north elevation of the dwelling. The separation distance along the entire side would then be acceptable notwithstanding the slight shortfall of the 1.5 metres provided for in section 11.3.1. (f) of the CDP. It is noted that this modification might necessitate some reconsideration of the arrangements for the gas flue. If permission is granted this matter could be addressed by condition.
- 7.6. The projecting bay element to the front façade is a similar feature to those of surrounding properties at the northern end of Upper Canal Road and is considered appropriate to the design of the proposed dwelling and to the streetscape character in views from the public realm. There is no question of undue overlooking of adjoining properties from the glazed sections of the bay windows at ground or first floor level, the range of visibility being partially across the front gardens, mainly that of No 13.
- 7.7. Otherwise, taking into account the recommended modifications discussed above, the dwelling form and roof profile is such that the height to eaves and ridge can be

accommodated on the site without overbearing impact on the adjoining properties on either side or adverse impact on the streetscape within views from the public realm.

#### **7.8. 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.

#### **7.9. 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.

### **8.0 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 below.

### **9.0 Reasons and Considerations**

- 9.1. 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 be 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.

## 10.0 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 29<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 development shall be modified to provide for the following:
  - (a) The attic level Bedroom, and dormer window (Bedroom 4) shall be omitted in entirety and the roof profile over the corresponding first floor accommodation modified to omit the half hip flat section and the overall height at eaves and ridge reduced by a minimum one metre.
  - (b) The projecting element to the side at the rear facing towards the adjoining party at No 11 shall be omitted. The setback of the footprint for the side elevation shall be continuous from front to rear at a minimum separation distance of 2.3 metres from the party boundary.

Prior to the commencement of the development the applicant shall submit and agree in writing with the planning authority, revised plan, section and elevation drawings

**Reason:** In the interest of clarity and the protection of the residential amenities of adjoining properties.

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 out only 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  
7<sup>th</sup> April 2021.