



An
Bord
Pleanála

Inspector's Report ABP 310091-21

Development	Two Storey House and all associated services.
Location	Clybaun Road, Galway.
Planning Authority	Galway City Council
P. A. Reg. Ref.	20/180.
Applicant	David McLaughlin.
Type of Application	Permission.
Decision	Grant Permission
Type of Appeal	Third Party
Appellant	Patrick Meagher
Observers	Cluain Airne Residents Association. Tom Crotty
Date of Site Inspection	23 rd June 2021.
Inspector	Jane Dennehy.

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1.0 Site Location and Description

- 1.1. The application site has a stated area of 640 square metres, is rectangular in shape at circa sixty metres x ten metres. It is located in a residential area on the east side of Clybaun Road on a corner site at the entrance to and opposite Cluain Airne to the north and Gairdini Phairc Na Gaoithe to the west. Clybaun Surgery, a detached house, the appellant party property is on the adjoining site to the south. Vehicular access is direct to Clybaun Road. There is dense vegetation within the site and along the south boundary, (with the appellant property) there are trees and hedgerow. Timber post and rail fencing is along the northern boundary with the entrance to Cluain Airne where there is a grass verge along which there are trees.
- 1.2. To the rear, west side of the site, there is a two-storey detached dwelling on elevated land. This site and the application site were subdivided from a combined parcel of land (Details of the planning history for development on this site have been included under section 4.2 below.) According to the planning officer report a path was to be constructed over the application site for the current proposal.

2.0 Proposed Development

- 2.1. The application lodged with the planning authority indicates proposal for construction of a dwelling and associated services on the site with access onto Clybaun Road.
- 2.2. The site layout indicates a dwelling positioned centrally within the site with rear private open space to the west side and front curtilage parking off a vehicular entrance from the Clybaun Road frontage to the east. Along the southern, west and northern boundaries there are proposals for a timber fence to be erected.
- 2.3. The stated site coverage is 21 per cent, the dwelling footprint is stated to be 135 square metres, the total floor area being 267 square metres. The stated plot ratio is 0.42, The stated private open space to the rear is 218 square metres or 81 per cent of site area.
- 2.4. The application was subject to additional and clarification of additional information requests, to which responses were lodged, in respect of dwelling design, footpath construction, tree survey, arboriculture methodology and protection, and boundary treatment.

3.0 Planning Authority Decision

3.1. Decision.

By order dated, the planning authority decided to grant permission subject to conditions which include to following requirements in addition to conditions of a standard nature.

Under condition No 2 there is a requirement for

Appointment of an arborist,

Protective measures, (outlined in an arborist report) to be in place for trees prior to commencement of development,

Excavation, installation of protective measures and monitoring to be under the direction of the Arborist who shall be present on site.

Under condition No 3 there is a requirement for first floor bathroom windows to be restricted to a top hung pivot and to be glazed with obscure glass.

Arborist to certify works with a report to be prepared and submitted for agreement with the planning authority

Under Condition No 6 there is a requirement for boundary treatment to be as follows:

Along northern boundary – timber post and rail design fencing to 0.9 metres height at the front and 1.8 metres at the rear of the front building line maximum with details to be agreed with the planning authority.

Along Southern boundary timber composite screens to a hight of two metres. Timber post and rail fencing to be substituted instead if there is potential impact on trees.

Fencing or walling forward of the front building line not to exceed 1.2m

Relevant consents to be sought for works to boundaries and party walls outside the control the applicant

The reasoning is based on the interest of residential amenity.

Under Condition No 7, exempt development entitlements are removed.

3.2. Planning Authority Reports

- 3.2.1. The planning officer, having considered the original application and the submissions made in response to the additional information and clarification of additional information requests indicated a recommendation for a grant of permission subject to conditions.
- 3.2.2. The final report of the Recreation and Amenity department indicated concurrence with the observations and recommendations of the Arborist's submission lodged with the planning authority in the further information submission. In which use of hot dipped zinc coated structural steel panels would be a durable solution for boundary treatment ensuring root protection, block wall being unsuitable.
- 3.2.3. Recommendations in the final report also include a requirement for a detailed landscape plan to be prepared to include boundary treatment and paving pathways and a hedge specification. The department's own Recreation and Amenity Technical Guidance Note is referred to with regard to requirements for detail and compliance stages.
- 3.2.4. The final report the Transportation Planning Division (part only available) indicates standard recommendations.
- 3.2.5. The report of the Climate Change and Environment Section indicate a recommendation for standard conditions with regard to waste management

3.3. Third Party Observations

- 3.3.1. Observations were lodged by four parties. Three parties, including the appellant and observer party indicate objections. Issues of concern indicated relate to the nature and adequacy of the proposed boundary treatment impact on existing trees and measures for protection, dwelling depth, height, form and design and impact on traffic.
- 3.3.2. The fourth party indicates support for the proposed development and indicate satisfaction with the proposed development on grounds that the site should be

developed and the entrance arrangements, footprint, design and separation distances from boundaries are all satisfactory.

4.0 Planning History

- 4.1. There is no record of a prior planning history for the application site according to the planning officer report.
- 4.2. However, for the lands adjacent to the site of the current proposal, Permission was granted for a two-storey house under P. A. Reg. Ref. 14/56. Permission was subsequently granted for a height increase for the permitted dwelling under P. A. Reg. Ref.15/550 For this site there was a prior grant of outline permission in 2007 under P. A. Reg. Ref. 06/27 which was not taken up. The planning officer's report also contains details of planning history for surrounding lands dating to the early 1990s.

5.0 Policy Context

5.1. Development Plan

5.2. Development Plan

- 5.2.1. The operative development plan is the Galway City Development Plan 2017 – 2023 (CDP) according to which the site 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"*.
- 5.2.2. The location is within "Outer suburbs" and according to section 2.5, the objective for Infill development is to which is to ensure regard for existing patterns of development and that the proposed development does not adversely affect the character of an area.
- 5.2.3. Section 8.7 provides for good urban design reinforcing distinctive characteristics of the city by ensuring high quality development, balance between the reasonable

protection of residential amenities and the character of established suburbs and the need to provide for a sustainable residential development.

- 5.2.4. Development management standards are in Chapter 11. There is requirement that vehicular entrances be not in excess of three metres in width and for maximum of existing boundary and hedgerows to be retained.

5.3. **Section 28 Statutory Guidelines.**

The policies and standards within the following statutory guidelines are applicable.

Sustainable Residential Development in Urban Areas, Guidelines for Planning Authorities, 2009 (and accompanying, 'Urban Design Manual: A Best Practice Guide')

"Sustainable Urban Housing: Design Standards for New Apartments" (2018)

6.0 **The Appeal**

6.1. **Grounds of Appeal**

- 6.1.1. An appeal was lodged by Dr. Patrick Meagher of Clybaun Surgery where he also resides on 29th April, 2021. The property is a detached house with front and rear gardens and front curtilage parking is to the south side of the application site. He states that he is in support of development for the site but that his concerns are about as to compatibility with development in the area and with use of quality boundary treatment in boundary walls. According to the appeal:

- The south facing windows of which there would be four, (two metres height and one metre wide) would directly overlook Clybaun Surgery. A "failing escallonia" hedge on the appellant property will not screen the surgery from the overlooking potential. Wooden panel fencing which is unsatisfactory to be replaced by a rail and post fence, as required by the planning authority would also be unsatisfactory and would give rise to unmitigated views to the appellant property including a kitchen. Photographs are attached.

- The appellant suggests that solid permanent opaque and masonry walling at a height above the ground level window height constructed and erected in a way that does not interfere with the tree rooting system would be a solution. If this screening can be successfully implemented there would be no objection to the proposed south elevation windows. Some photographs of dressed limestone and mortar walls at a property opposite the site and along the boundary between the two properties are provided and stated to be very acceptable as a boundary treatment.

6.2. **Applicant Response**

- 6.3. A submission was received from the applicant's agent on 21st May in response to the appeal in which reference is made to consultations with the appellant prior to lodgement of the application and to the requirements for appointment of an arboriculturist and for protection of the root systems on the south boundary by the planning authority a boundary wall not being feasible. It is stated that it is intended to use high quality materials for the proposed fence a full description of which is provided in the submission and in the application submission. In addition, the accuracy of some photographs and image included with the appeal are queried.
- 6.4. It is stated that it is considered that the solutions sought by the planning authority with regard to the boundary, overlooking and tree protection are good and it is requested that the appeal be rejected.

6.5. **Planning Authority Response**

- 6.6. There is no submission on file from the planning authority.

6.7. **Observations**

- 6.7.1. A submission was received from Cluain Airne Residents' Association. On 3rd August, 2021. Issues raised are outlined below.
- The application may be invalid. The subject site has been subject to legal disputes in the past and no reference has been made in the application submission to these issues. The layout drawing is misleading.

- The dwelling is excessive in size and height and form and is overbearing and it will detract from the amenities and aspects enjoyed by residents. The dwelling also could easily be extended especially for constrained site due to the configuration and width, the entrance and access road. The development will also affect the viability of trees, some of which have incorrect symbols.
- The boundary treatment of post and rail fencing on the northern boundary and low-quality timber panelling is at the expense of an open environment with trees and it is inappropriate opposite and may encroach on Cluain Airne.
- The development results in three vehicular access points on a narrow road instead of two and there is insufficient visibility which is a particular hazard risk to the safety of pedestrians and cyclists.
- The proposed development is contrary to several policies and development management standards in the CDP, especially Section. 2.1, (residential amenity), 2.4, (urban design) 2.5, (open space) 8.8.7 (urban design) and 11.3.1. (Access)

6.7.2. A submission was received from Tom Crotty of No 16 Cluainaire on 25th May, 2021.

According to the submission:

- The design, footprint length, two storey elements and site coverage of the proposed dwelling are excessive and are not compatible with the surrounding development and the narrow site.
- The proposed development is overbearing on the access road and detracts from visual amenity at this location which is contrary to the CDP (Section 2)
- The applicant allowed the site to become overgrown with untreated Japanese Knotweed
- The site at the rear would be more suitable for the development
- The attic windows will overlook and reduce the development potential at the adjoining property (Dr. Meagher's surgery) to the south
- It is not agreed that a boundary wall cannot be constructed due to the presence of the roots of the trees. Support for stone walls can be achieved

with off beamed foundations supported on minipiles which would minimise root disturbance.

- A footpath two metres wide should have been included, (as required under the grant of permission under P. A. Reg. Ref. 06/27) for the benefit of residents and it would not affect the root systems. The site has been used by residents for access and the footpath across the site should be a requirement.
- The existing entrance to the estate has insufficient sight lines and the additional exit will create additional traffic hazard there being three exits within twenty metres.
- The ownership of the northern western boundary at the entrance and the post and rail fence may not be in the ownership of the applicant and should be confirmed by the planning authority.

7.0 **Assessment**

7.1. The issues central to the determination of a decision and considered under the subheadings below are:

Dwelling design.

Overlooking

Trees and Boundary Treatment.

Vehicular Access and Entrance Arrangements.

Development Management

Validity of the Application.

Environmental Impact Assessment Screening

Appropriate Assessment Screening.

7.2. **Dwelling design.**

7.3. The dwelling design, form and height as shown in the clarification of additional information submissions are considered acceptable and appropriate for the site. The footprint depth, which has given rise to concerns as to length is appropriate for

the site configuration. The dwelling design and form whereby the dwelling form is in three stepped sections is acceptable in views from the public realm along entrance route to Cluain Airne and integrates satisfactorily into the streetscape along Clybaun Road.

7.4. Overlooking.

- 7.4.1. The south side elevation has a separation distance of 1600 m from the party boundary with the appellant party's property on the south side. It is noted that the south elevation windows are for a hall and corridor at ground level, a wc and a kitchen and that all, with the exception of the kitchen window are fitted.
- 7.4.2. It is recommended, in the event that permission is granted, a requirement for obscure glazing should be included, by condition which will ensure daylight and sunlight access to the interior of the dwelling. It is also recommended that south facing kitchen window be top hung pivot only and fitted with obscure glazing allowing for sunlight penetration. It is noted that windows and patio doors are proposed for the east/rear elevation with ample scope for ventilation and daylight and sunlight. Condition No 2 attached to the decision to grant permission which has a requirement for top hung pivot and obscure glazing for the upper floor south window windows is considered appropriate. With the arrangements as discussed above in place, it is considered that potential for undue overlooking of the adjoining property would arise.

7.5. Trees and Boundary Treatment

- 7.5.1. It is considered that resolution of the issues of concern have been satisfactorily provided for, further to review of the arborist's comprehensive tree survey report and method statement included in the clarification of additional information submission and the observations and recommendations in the reports of the Recreation and Amenity Department. In the event that permission is granted, requirements similar to those within the conditions attached to the decision to grant permission which include comprehensive protective measures during construction, on site monitoring and submission of a report on completion for agreement with the planning authority.

7.5.2. It is noted that timber post and wire fencing is located along the boundaries of the site at present on the north side and similar fencing is to be erected at 0.9 m in height forward of the front building line and 1.8 m to the rear. With the southern boundary, it is considered that the arrangements proposed in the arborist report and agreed by the recreational and amenity department whereby, subject to the trees and root systems being undisturbed or damaged composite screens can be used at two metres height beyond the front building line but otherwise are to be substituted with timber post and rail fencing., Along the southern boundary. This is considered acceptable. While it is noted that the appellant suggests a screen wall in view of his concerns as to overlooking from the south elevation windows, it is considered that as the windows are fitted, and subject to obscure glazing as advised in section 7.4.2 above, potential for overlooking would be eliminated.

7.5.3. There is no evidence in the application as to possible encroachment on or damage to third party property. Encroachment on third party property is not authorised by way of a grant of permission in the absence of the third party's consent as provided for under section 34 (13) of the Planning and Development Act, 2000 as amended.

7.6. Vehicular Access and Entrance Arrangements

7.6.1. At present there is an entrance, on the site frontage which is the location for the proposed entrance to the dwelling. These proposed arrangements are considered acceptable subject to standard requirements by condition.

7.6.2. There is a second entrance on the rear boundary onto the internal road at the entrance for the adjoining property to the rear which potentially can be used for an entrance to the development. It is noted that it is the applicant's intention to retain the gate on the rear boundary. The existing gate is an agricultural gate.

7.6.3. In the event that this second entrance is to be retained, whereas it might be more appropriate in the interests of visual and amenity for it to be closed up it is recommended that the applicant be required to replace the gate with an inward opening timber gate of high quality not in excess of two metres in height This could be addressed by compliance with a condition.

7.6.4. It is not apparent that there is or would be three site entrances as contended in the observer submission.

7.7. Development Management Standards.

7.7.1. It is agreed with the planning officer that the proposed development is consistent with the standards for private open space, separation distances, overlooking, subject to the recommended requirements in 7.4.2 above to the south elevation and internal accommodation as provided for in the CDP.

7.8. Validity of the application.

7.8.1. The observer party has stated that the lands have been subject to legal disputes in the past and that the site layout drawing is misleading. There is no evidence available to support this claim that would suggest that the application could be assessed and determined. If the validity is disputed in this regard, it is open to the parties to have the matter resolved through the legal system and it is noted that a grant of permission does not include entitlement to implement a grant of permission as provided for in section 34 (13) of the Planning and Development Act, 2000 as amended.

7.9. Environmental Impact Assessment Screening.

7.9.1. Having regard to the nature and scale of the development there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

7.10. Appropriate Assessment.

7.10.1. Having regard to the scale and nature of the proposed development and to the serviced inner suburban location, 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. In view of the foregoing, it is recommended that the planning authority decision be upheld and that permission be granted based on the reasons and considerations and conditions set out below.

9.0 Reasons and Considerations

- 9.1. Having regard to the location of the site in the outer suburbs of the city, 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 would not seriously injure the visual and natural amenities of the area or the residential amenities of the adjoining property by reason of overdevelopment, visual obtrusiveness and overbearing impact, or overlooking would be acceptable in terms of traffic safety and convenience and would be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions.

1. The development shall be and shall be carried out in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars lodged with the planning authority on 27th November, 2020 and 22nd February, 2021 except as may otherwise be required in order to comply with the following conditions Where such conditions require points of detail to be agreed with the planning authority, these matters shall be the subject of written agreement and shall be implemented in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The applicant shall provide for and adhere to the following requirements to the satisfaction of the planning authority:

- A suitably qualified arborist shall be appointed for the duration of the construction period details of whom shall be notified to the planning authority in writing prior to the commencement of the development.
- The tree protection measures specified in the arboriculture method statement submitted to the planning authority on 22nd February, 2021 shall be fully implemented and full details of the proposed monitoring system to include provision for supervision throughout the duration of the excavation works by the appointed arborist shall be submitted to and agreed in writing with the planning authority prior to the commencement of development.

Reason: In the interest of clarity and the protection of the existing trees, natural amenities within and in the immediate vicinity of the site.

3. The following modifications shall be provided for and adhered to in the development:

- The first-floor south elevation windows shall be top hung pivot only and fitted with obscure glazing.
- The ground floor south elevation windows which shall be unopenable shall be fitted with obscure glazing.

Prior to the commencement of development revised elevation drawings shall be submitted to and agreed in writing with the planning authority prior to the commencement of development.

Reason. In the interest of the protection of the residential amenities of the adjoining property.

4. The existing gate in the rear boundary of the site shall be replaced with a hardwood timber gate opening inwards only prior to the occupation of the dwelling. Full details in plan, elevation and section shall be submitted to and agreed in writing with the planning authority prior to the commencement of development.

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

5. 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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
25th June, 2021.