



An  
Bord  
Pleanála

## Inspector's Report ABP 313726-22.

<b>Development</b>	Removal of Condition No 12 (a) of grant of permission under P. A. Reg. Ref. 21/59 relating to use and number of bedrooms.
<b>Location</b>	No 23 Fairhill Road Lower. The Claddagh, Galway.
<b>Planning Authority</b>	Galway City Council
<b>P. A. Reg. Ref.</b>	22/58
<b>Applicant.</b>	Pat Larkin
<b>Type of Application</b>	Permission
<b>Decision</b>	Grant Permission.
<b>Type of Appeal</b>	First Party
<b>Appellant.</b>	Pat Larkin
<b>.</b>	9th August, 2022.
<b>Date of Inspection</b>	
<b>Inspector</b>	Jane Dennehy.

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## 1.0 Site Location and Description

- 1.1. The site location is within the Claddagh in Galway and is that of No 23 Fairhill originally a two-storey dwelling which, along with its plot were subdivided into two independent dwelling units with separate front and rear gardens and entrances. No 23 Fairhill which is subject of the current application was extended at single storey level to the rear with a separate entrance off an access route along the side of the original dwelling off the public road in addition to a front entrance. To the north side of No 23a is an apartment building dating from the 1990s. To the south side is a two-storey dwelling and the surrounding development is mainly characterised by two storey terraced houses and associated development such as a school and community facilities.

## 2.0 Planning History.

- 2.1. The property subject of the application, No 23, and the adjoining property No 23a have extensive planning history, full details of which are available in the planning officer's report. With regard to the background to the current proposal, Permission was granted for retention of the subdivision of the original dwelling providing for two dwellings at No 23 and for No 23a Fairhill as independent dwelling units within individual boundaries along with for a new entrance for No 23a at the front under P. A. Reg. Ref. 17/250. Condition No 3 limits the number of bedrooms at No 23 to a total of three rooms. Subsequently, under P. A. Reg. Ref. 19/55 Permission was granted for the rear extension and under P. A. Reg. Ref. 21/59 Permission was granted for retention of minor changes to the previously permitted development. Condition No 12a is the appealed condition allows for a maximum of four bedrooms within the dwelling, including the extension.

## 3.0 Development Plan.

- 3.1.1. The operative development plan is the Galway City Development Plan, 2017-2023 according to which the site is subject to the zoning objective R: *"To provide for residential development and for associated support development which ensures protection of existing residential amenity and contribute to sustainable residential*

*neighbourhoods.”. The location is within the “inner residential neighbourhood area of The Claddagh.”*

## **4.0 The Current Proposal**

- 4.1. The application lodged with the planning authority indicates proposals for removal of Condition No 12 (a) attached to a grant of permission for retention under P. A. Reg. Ref. 21/59 of alterations to a permitted development, under P. A. Reg. Ref. 19/55 for semi detached two and one storey extensions at both No 23 and No 23a Fairhill, namely the property subject of the current proposal and the adjoining property to the north side.
- 4.2. According to Condition No 12(a) of the grant of permission under P. A. Reg. Ref. 21/59, it is a requirement that, *“Within two months of the final grant of permission the developer shall submit the following revised floor plans showing the rear ground floor bedroom of No 23 Fairhill reverting to communal living space and No 23 not accommodating no more than 4 bedrooms”*. A compliance submission was lodged with the planning authority on 16<sup>th</sup> November, 2021 which was deemed satisfactory.
- 4.2.1. The planning officer in his report noted that two of the four first floor bedrooms on the first floor are substandard in size. He states that the applicant’s stated requirement for a ground floor accessible bedroom, (which would be reinstated) subject to a restriction to three bedrooms at first floor level, would be acceptable
- 4.3. **Decision**
- 4.4. By order dated, 10<sup>th</sup> May, 2022 the planning authority decided to grant permission subject to four conditions.

Condition No 2 has a requirement that the dwelling not be used for any form of short-term letting without a prior grant of planning permission.

Condition No 3 has a requirement that Rooms 1, 2 and 4 at first floor level and Room 5 at ground floor level only may used as bedrooms.

Condition No 4 has a requirement that within two months of the final grant of permission, revised floor plans indicating Bedroom 5 shown on the lodged floor plan at ground floor level with the ensuite increased in size to a universal

accessible toilet and shower, in accordance with TGD M of the Building Regulations, 2010.

## **5.0 The Appeal**

### **5.1. Grounds of Appeal**

- 5.1.1. An appeal was lodged by the applicant on his own behalf on 3<sup>rd</sup> June, 2022. Included with the submission is a photocopy of a photograph.
- 5.1.2. According to the appeal,
- The planning authority incorrectly refers to 23 Fairhill Road Upper instead of 23 Fairhill Road Lower, which is the property subject of the application. He also points out that a prior application or minor changes to the footprint of No 23 Fairhill Road was made on order to ensure consistency with application. The planning authority's errors and decision undermines the applicant's efforts to ensure consistency between planning permission and Title documents.
  - Condition No 3 should be omitted because it does not apply to the applicant's property. It is unacceptable to remove a bedroom (bedroom 3). This room was a bedroom at the time of the purchase of the property and has always been a bedroom. It is unacceptable to remove a bedroom which described as such in previous planning applications. Whether the room is a bedroom or living space has no bearing on the status of the dwelling.
  - The planning officer statement that the room is substandard should have been made in the reports on the three previous applications. The omission of the bedroom results in there being no scope for guest bedroom at the dwelling. Bedrooms under the minimum size have previously been permitted at 6 Grattan Terrace, Fr, Burke Road and Claddagh. The omission would be unenforceable in any lease agreement and limits the market value if the dwelling.

- There is more than double the requirement for open recreational space for the house which is 171 square metres in floor area whereas there are inner city houses with six bedrooms
- The extension to the rear and wheelchair access were built to cater for the applicant's future needs or those of any other person with similar needs.

## **5.2. Planning Authority Response**

5.2.1. A submission from the planning authority was received on 27<sup>th</sup> June, 2022 according to which:

- The planning authority apologises for the error with regard to the reference to Fairhill "Upper" in the documentation issued in connection with the application but is confirmed and it is noted that the correct address was used in the public and newspaper notices.
- Reference is made to the prior subdivisions allowed for in prior grant of planning permission and the undertakings on the part of the applicant not to make the property available for short-term letting. Given the applicant's stated requirement for a ground floor accessible bedroom, a four-bedroom dwelling providing for three larger sized rooms (instead of four rooms) at first floor level was considered reasonable. However subject to the revisions and the inclusion of condition Nos 2 having regard to the location within a rent pressure zone, and 12 (a) to which the applicant objects, the planning authority is satisfied that the objectives of the CDP would not be undermined.
- It is also the view of the planning authority that the appeal should be dismissed and that otherwise, the conditions could be amended to address the error with the address.

## **5.3. Further submission of the applicant.**

5.3.1. A submission was lodged by Brandon O'Brien on behalf of the applicant on 2<sup>nd</sup> August, 2022 according to which:

5.3.2. Condition No 3 is contrary to planning legislation in controlling the use of the rooms. The planning authority in imposing the condition is acting contrary to Section 4 of

the Planning and Development Act, 2000 provides for exempt development for works to the interior.

- 5.3.3. The condition adversely affects the room on the first floor which has always functioned as a bedroom as part of the original property and the planning authority did not raise concerns in considering the prior applications.
- 5.3.4. A minimum floor area of 7.1 square metres is recommended in a design manual for quality housing in 2018 which is for guidance only and only applies to new house and apartments. It is not unusual for older houses to have a smaller size, bedroom 3 in the existing house being 5.8 square metres in floor area.
- 5.3.5. Considerable investment and effort has been put into improving the quality of the dwelling and the area by the applicant and this is consistent with the stated objectives of revitalisation of towns and cities as provide for in the Department's 2018 publication on bringing back homes for the reuse of existing buildings. The planning authority in its decision is seeking to limit the potential of the dwelling.

## **6.0 Assessment**

- 6.1. The appeal in effect, notwithstanding the development description in the public and newspaper notices is against the limitations under Condition No 3 attached to the decision to grant permission. Under this condition, the bedrooms at No 23 is confined to three bedrooms at first floor level, Nos 1, 2 and 4 and, bedroom 5, the which is room in the ground floor extension to the rear which the applicant seeks to use as an accessible bedroom (owing to mobility impairment) shown on the drawing No 22/522/01 lodged with the current application.
- 6.2. At the outset, the contention in the appeal that the planning authority considered that application as relating to a different property at No 23 Fairhill Road Upper as opposed to the application site at No 23 Fairhill Road Lower is not accepted. However, there is a clerical error in Condition No 3 which was attached by way of the reference to 23 Fairhill Road Upper instead of No 23 Fairhill Road Lower, the application site property. It is clearly apparent that this error, which is acknowledged in the planning authority response to the appeal, has had no material effect on the consideration of the application and the determination of the decision.

- 6.3. The parent grant of permission under P. A. Reg. Ref. 17/250 authorised retention of the subdivision of the original dwelling into two dwellings, now known as No 23 (subject of the current application) and No 23A. It is a requirement under condition No 4 that No 23 be confined to a three-bedroom dwelling and No 23 A to be confined to a two-bedroom dwelling. This condition is considered reasonable in order to ensure a satisfactory residential qualitative standard primarily, given the substandard size of the first-floor rooms and to a lesser extent, density of development notwithstanding third-party objections over contentions as to potential intended uses.
- 6.4. The current proposal which would allow for an increase to five authorised bedrooms, is clearly in material contravention of the condition attached to the parent grant of permission under P. A. Reg. Ref. 17/250. There is clearly no scope under the planning code which would allow for this condition to be disregarded in consideration of the current proposal.
- 6.5. It is noted that subsequently permission was granted for the single storey extension to the rear of No 23 under P.A. Reg. Ref. 19/55 further to which permission was granted under P.A. Reg. Ref. 21/59 for retention of minor amendments. Under Condition No 12 (a) of the grant of permission under P.A. Reg. Ref. 21/59 the applicant was required to lodge revised plans showing the ground floor extension room reverted to communal living providing for a maximum of four bedrooms within the entirety of the dwelling. The applicant subsequently lodged a compliance submission which was agreed in writing by the planning authority. It is noted that this grant of permission, having regard to Condition No 12 (a) is contradictory to Condition No 4 attached to the parent grant of permission under P. A. Reg. Ref. 17/250 in that it allows for a total of four bedrooms at No 23 a while simultaneously excluding the room in the ground floor extension from bedroom use.
- 6.6. It is considered that the omission of Condition No 12 (a) as sought in the appeal which would allow for a total of five bedroom at No 23, (four in the main dwelling and one in the extension) would be in material contravention of Condition No 4 attached to the parent grant of permission under P.A. Reg. Ref. 17/250. Nevertheless, the grant of permission for the extension under P.A. Reg. Ref. 19/55 provided for a material change in the development at No 23 as permitted under P.A. Reg. Ref. 17/250. This in turn allows for consideration in the current proposal for use of the ground floor room (room 5) in the rear extension as an a universally accessible



room, consistent with and provided for Part M TGD of the Building Regulations, 2010 even though as stated in the appeal, there is no current special need for this accommodation.

- 6.7. This would allow for a four-bedroom dwelling, in use as a single dwelling unit in which the total number of bedrooms at upper floor in main building to three bedrooms is limited to three bedrooms none of which are substandard. Given that favourable consideration would be based on the applicant's requirement for an accessible bedroom and bathroom, while taking the requirements of Condition No 4 attached to the grant of permission under P.A. Reg. Ref. 17/250 into consideration, it is appropriate that the applicant be required to fully implement the necessary works for conversion of Room 5 to Part M TGD Building Regulations 2010 standards within a limited further to a final grant of permission. This could be addressed by condition.
- 6.8. In summary, the grant of permission under P. A. Reg. Ref. 21/59 having regard to Condition No 12 (a) which allows for four bedrooms in the main dwelling, is not consistent with the parent grant of permission under P. A. Reg. Ref 17/250 in that Condition No 4 which was attached limits the number of bedrooms at first floor level to three. Both P. A. Reg. Ref. 21/59, inclusive of Condition No 12 (a) and the current proposal allow for a four-bedroom dwelling at No 23.
- 6.9. Given the foregoing, the planning authority decision to grant permission for the current proposal to omit condition 12 (a) attached to the grant of permission under P. A. Reg. Ref. 21/59 subject to inclusion of a condition in which the maximum number of bedrooms in the original dwelling at upper floor level is limited to three, (namely, No 1, 2 and 4 as shown on the lodged plans) and Bedroom No 5 within the single storey extension subject to it being Part M compliant is supported. It is therefore recommended that the planning authority decision to grant permission be upheld, based on the reasons and considerations and subject to conditions, inclusive of the requirement of Condition No 12 (a) attached to the grant of permission under P. A. Reg. Ref. 21/59 which follow.
- 6.10. **Environmental Impact Assessment.**
- 6.10.1. Having regard to the nature of the proposed development and its location removed from any sensitive locations or features, there is no real likelihood of significant adverse effects on the environment. The need for environmental impact assessment

can therefore be excluded at preliminary examination and a screening determination is not required.

#### **6.11. Appropriate Assessment.**

- 6.11.1. Having regard to the scale and nature of the proposed development and to the location removed from any European Sites 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.

### **7.0 Reasons and Considerations**

Having regard to the planning history, to the established pattern and character of development in the area and to the Galway City Development Plan, 2017 -2023 according to which the location is within an area subject to the zoning objective, R: *“To provide for residential development and for associated support development which ensures protection of existing residential amenity and contribute to sustainable residential neighbourhoods”* it is considered that subject to compliance with the conditions below, the proposed development would not seriously injure the residential amenities of properties in the vicinity, would provide for a satisfactory standard of attainable residential amenity for the future occupants and, would be in accordance with the proper planning and sustainable development of the area.

### **8.0 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 16<sup>th</sup> March, 2022 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. Condition No 12a attached to the prior grant of permission under P. A. Reg. Ref. 21/59 shall be amended to accord with the following requirements:

- (a) Within two months of the date of this order, the applicant shall submit and agree in writing with the planning authority showing the Room 5 with the ensuite bathroom consistent in size and layout with Part M TGD Building Regulations, 2010 as amended.
- (b) The works shall be implemented with certification, as to satisfactory completion by a suitably competent person being submitted to and agreed with the planning authority within fourteen months of the date of this order.

**Reason:** In the interest of clarity.

3. The maximum number of bedrooms within. No 23 Fairhill Road Lower at first floor level is four comprising Room Nos 1, 2, and 4 at first floor level within the main dwelling and one universally accessible bedroom, Room 5 at ground floor level (shown on Drawing No 22/522-01) which shall be compliant in design with Part M TGD Building Regulations 2001 as amended.

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

4. The dwelling in entirety shall be occupied as a single dwelling unit only and shall not be subdivided with no part being sublet or sold separately. Short-term letting is not permitted unless a prior grant of permission has been obtained.

**Reason.** In the interest of clarity, residential amenity and the proper planning and sustainable development of the area.

**Jane Dennehy**  
Senior Planning Inspector  
6<sup>th</sup> September, 2022.