



An
Bord
Pleanála

Inspector's Report ABP 313911-22.

Development	Construction of a two and a half storey dwelling and associated site works.
Location	12 Canal Road Upper, Galway.
Planning Authority	Galway City Council.
P. A. Reg. Ref.	22/5
Applicant	Kendra Glynn
Type of Application	Permission
Decision	Grant Permission
Type of Appeal	Third Party x Grant
Appellant	Maureen and Fiona Lawless.
Observer	Elizabeth and Eithne Fitzpatrick
Date of Site Inspection	9 th August, 2022.
Inspector	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 incorporating attic level accommodation along with associated ancillary site works. The dwelling which is in a contemporary design similar to that of the previously permitted dwelling has a stated floor area of 379 square metres, and a plot ratio of 0.47:1.
- 2.2. The main living accommodation is to be located at ground floor level, with three ensuite bedrooms at first floor level and an ensuite bedroom and an office at attic/second floor level. The requirements of Condition No 2 attached to the previous grant of permission under Reg. Ref. 20/175 (PL 308716) are incorporated in the current proposal in that the attic level has a five metres' setback from the rear façade and there are no balconies at attic level. The depth of the proposed dwelling from front to rear is circa twenty metres with the rear building line of a single storey

element being the same as that of the garage to the rear side of the adjoining property at No 11 Canal Road Upper.

- 2.3. There is a two-storey projecting element to the front façade and in contrast to the previous permitted development in which the main entrance is at the front, a porch incorporating an east facing main entrance door and a south facing window for the proposed dwelling is to be located at the side.
- 2.4. A further information request was issued on 21st March 2022 to which a response was lodged on 12th May, 2022 along with revised drawings. According to the submission the separation distance is 1.61 metres from the boundary with No 13 at the nearest point and the porch (which is forward of the side elevation) and in which the south facing window is omitted is marginally increased in separation distance to 0.83 metres from this boundary. It is stated in the written submission that the two metres high hedge creates privacy and softness between the application and adjoining sites.

3.0 Planning Authority Decision

3.1. Decision

By order dated, 31st May, 2022, 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 to the proposed development.
- 3.2.4. The report of the Recreation and Amenity Department indicated recommendations for an additional information request. It is requested that it be demonstrated that the development is consistent with Policy 4.4.1 of the CDP on woodland and trees, Policy 9.11 on Light pollution and the Biodiversity Action Plan. It is recommended for a tree survey and tree constraints plan and for a landscape plan to be prepared by appropriately qualified persons and submitted for assessment.

3.3. **Third Party Observations**

- 3.3.1. Objections were lodged by the occupants neighbouring properties at No 11 and 13 Upper Canal Road indicating concerns as to the scale, height, mass, design and, lack of integration with the existing dwellings and the streetscape character and on grounds of overlooking and overshadowing potential.

4.0 **Planning History**

- 4.1.1. **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 subsequently demolished, but the permitted new dwelling was not constructed
- 4.1.2. **P. A. Reg. Ref. 20/175 PL308716:** A decision to grant Permission for a one and a half storey dwelling and associated site works was upheld following appeal. Under Condition No 2 (a) an attic level and dormer window were to be omitted and that the roof profile be modified to omit a half hip flat section and eaves and ridge height with the height being reduced by a metre. Under Condition 2 (b) a projection to the side and rear facing towards No 11 was to be omitted and the footprint at the side revised so that the footprint is continuous at a minimum separation distance of 2.3 metres from the party boundary.

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 (f) distance between side gables and side boundaries should normally be at a minimum of 1.5 metres.
- 5.1.5. Policy 9.1 provides for minimisation of external lighting pollution glare and spillage.

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 24th July. 2022 according to which the current proposal is very similar to the proposal, (which was revised in a further information submission) for which permission was granted under P. A. Reg Ref. 20/175. It is stated that in principle the appellant party has no objection to the development of a dwelling on the site but that the current proposal would adversely affect the residential amenities of the appellant’s property within that the proposals in both the original application and further submissions being unsatisfactory.
- 6.1.2. The appeal includes a description of the original dwelling which was demolished in 2009 which it is stated was similar in eaves and ridge height to the adjoining

dwellings, shared the same building line and did not extend to the rear as far as the adjoining houses. It also includes a detailed account of and comments on the assessments at application and appeal stages of the two previously permitted developments for the site.

6.1.3. It is requested that the applicant be required to revise the proposed development to address the objections to the current proposal. The modifications requested are: -

Inclusion of a condition similar to conditions Nos 2 (a) and (b) of the prior grant of permission under P. A. Reg. Ref. 20/175.

Reductions to the height, width and scale.

Increase in the separation distance from No 11 Upper Canal Road.

Reductions in the level of fenestration on the north east elevation.

6.1.4. According to the appeal:

- The gable end would be 0.8 metres from the party boundary with No 11 which is closer than the distance for the permitted dwelling, is a significant shortfall from 1.2 metres and in turn is a shortfall from 1.5 metre provided for in section 11.3.1 (f) of the CDP. The planning officer considered the separation distance insufficient and there is no justification for the reduced setback. (An extract from the inspector report on the previous proposal is included.) The separation distance of the original, demolished dwelling from the boundary was 2.4 metres. The applicant in the further information made no attempt to address this issue and ignores the requirements of the planning authority regarding setbacks from the boundary Condition no 2 attached to the prior grant of permission.
- Upper Canal Road is not a designated Inner Residential Area as provided for in section 2.7 but is stated that infill should not represent a major addition to the existing urban fabric and that it should have regard to the existing scale and proportions. The bulk, mass and scale proposed are contrary to these provisions. It would adversely affect the character of the prevailing pattern form and density in the area.
- The current proposal retains the attic bedroom and dormer window which were to be omitted under Condition No 2 attached to the prior grant of

permission due to overshadowing and overbearing impact. The requirements of this condition permission should be included attached if permission is granted for the current proposal. The ridge and eaves heights are higher than those of No 11 and No 13 and exceeds the reduced heights required for the prior proposal by condition and out of keeping with the streetscape and the visual amenities of the adjoining dwellings.

- The proposed development would overshadow the rear garden at No 11 especially the area closest to the rear of the house affecting its amenities.
- The current proposal reinstates and increases fenestration which was omitted in revised proposals within the from the previous proposal. The fenestration on the north east elevation is excessive, causes overlooking and should be considerably reduced.
- The two-storey bay window feature at the front is a significant projection forward of the building line. It is excessive in size and scale and is out of keeping with and will cause overlooking of the adjoining dwelling at No 11.
- There are insufficient separation distances, excessive size, inappropriate design for the location, visual dominance, overlooking and overshadowing and undesirable precedent would be set by the proposed development.

6.2. Applicant Response

6.2.1. A submission was received from HRA Planning on 25th July, 2022 on behalf of the applicant and it includes a development description, an account of the background and context and copies of drawings and details of the differences between the current proposal and the previous proposal for which permission was granted.

According to the submission:

- With regard to the dispute over the separation distance from the boundary, there are narrow plot widths and deep rear gardens, but the proposed development is responsive to the urban location, the streetscape and established characteristic of variation separation distances between dwellings and building lines, with, in the case of the appellant property, the acceptability of a garage built up to the boundary.

- It is reasonable to maximise use of the width in an infill on a narrow plot within an established area, as opposed to a greenfield site. The 0.87 metres separation distance from the boundary is greater than the separation distance established on adjoining sites. The proposed change from the original dwelling and the site layout is negligible in terms of proximity to the boundary so the footprint in this context is not a new feature. The character of the inner-city residential area will not be affected and standards for new residential development, and specifically multiple units does not apply in that the original dwelling was removed.
- Should it be determined that a wider separation distance is required, a proposal is shown on drawing 20-04-02 Rev A included with the submission provides for a one metre separation distance from the boundary. The applicant would be willing to accept a condition to provide for the modification if required.
- There is no obligation on the applicant to abide by the terms of the previous grant of permission in a new application, but the applicant is satisfied that the design of the current proposal has addressed the issues raised in the appeal against the previous proposal.
- The revised drawings included in the appeal show a revised fenestration arrangement with no windows serving 'amenity' rooms on north west elevation and in which the massing and number of windows are reduced. The applicant is willing to accept a condition for these design revisions to be implemented if required.
- The appellant has included no technical evidence to demonstrate the potential for overshadowing of the rear garden.
- The proposed development accords with the established height, mass and scale of development in the area. Also, the height of the current proposal and massing at the rear where the proposed dwelling is closest to the appellant party property has been reduced. The conclusion in the assessment on the previous proposal that the increased effect if any would be negligible applies equally to the current proposal.

6.3. Planning Authority Response.

A submission was received from the planning authority on 17th August, 2022 in which it is stated that the planning authority has no further comments.

6.4. Observations

A submission was received from James Roche on behalf of the Observer party of No 13 Canal Road Upper on 21st July 2022 and it includes photographs and drawings.

According to the submission:

- It is evident in photographs that it is incorrect for it be claimed by the applicant that the original house, "*was against the boundary of no 13*". The setback from the boundary with No 13 is 0.84 metres is less than that of the previously permitted development.
- approved developments, following appeal in 2020 and 2005. (P. A. Reg. Ref. 05/736 PL 217228 and P. A. Reg. Ref. 20/175/PL 308716 refer.)
- The size and location of the porch proposed is 0.84 metres from the boundary and it significantly impacts on No 13. The statement as to a distance of "*1.61 metres from the boundary in the closest spot*" is incorrect. The porch would also be directly opposite three windows.
- The proposed development, in view of the large mass, scale and height and the fenestration and setback adversely affects the occupants' privacy and visual amenities at No 13.
- It is incorrect for the applicant to claim that the acceptance of the site location for the previously (permitted) dwelling is justification to accept the setback distance. The planning officer assertion as to a distance of 0.8 metre being too close to the boundary should stand.
- There are no south facing windows on the gable end of No 12 which was built at a later date than No 13 which has three windows at ground level at No 13. The proposed door and clear glazed window will adversely affect the amenities of the property at No 13. The proposed two metres' high hedge would be inadequate as a means of privacy because the setback for the door and window limits the potential privacy provided by the hedge.

6.5. Further Submission of the Appellant.

A further submission was received from on 18th August, 2022. In the submission, the appellant's agent reiterates and elaborates on the objections -in the appeal with regard to: -

- The scale, height, and size and separation distance from the party boundary with reference also being made to Section 11. 3.1. (f) of the CDP regarding minimum separation distances between dwellings. It is also stated that the garage and at the appellant party's property and single storey elements at the rear of No 11 are not a reasonable justification for the proposed development in that the garage is not built up to the party boundary and the applicant has not acknowledged that it is single storey and constructed at the rear of the main dwelling
- The view that the requirements of Condition No 2 are not sufficient or satisfactory.
- Overlooking and overshadowing,

Inclusion of a condition similar to conditions Nos 2 (a) and (b) of the prior grant of permission under P. A. Reg. Ref. 20/175 if permission is granted is requested.

6.6. Further Submission of the Observer party.

- 6.6.1. A further submission was received from James Roche on behalf of the Observer party of No 13 Canal Road Upper on 22nd August, 2022 in which it is stated that the issues of concern are not fully addressed. According to the submission only the single storey extension at the rear and not the main dwelling at No 13 was built up to the party boundary. It is requested that the changes by way of removal of a window and an increase in separation distance from the party boundary with No 11 were to be reciprocated on the side facing No 13 would be effective in reducing the loss of privacy and amenity.

7.0 Assessment

- 7.1. The application site is that of an original dwelling constructed in the early to mid-twentieth century for which permission for demolition and construction a replacement dwelling was granted in 2005. (P. A. Reg. Ref. 05/736 PL 217228 refers.) The original dwelling was subsequently demolished, but the replacement dwelling was not constructed and at present there is an extant grant of permission for a dwelling on the site. (P. A. Reg. Ref. 20/175/ PL308716 refers.) The current proposal is for a dwelling which is relatively similar to the dwelling for which there is an extant grant of permission.
- 7.2. There is an appeal by the occupants of the adjoining property at No 11 Upper Canal Road and an observer submission by the occupants of the adjoining property at No 11 Upper Canal Road. The issues central to the determination of a decision can be considered under the following subheadings.

Impact on residential amenities of adjoining properties

Impact on natural and visual amenities and established character of the area

Environmental Impact Assessment Screening

Appropriate assessment Screening,

7.3. Impact on residential amenities of adjoining properties

- 7.3.1. Although the plot width is relatively narrow it is the site of an original (now demolished) dwelling within the streetscape and there is no dispute among the parties that it has the capacity to accept a dwelling. The current proposal is very similar to the dwelling, for which there is the extant grant of permission, as modified by the condition No 2 (a) and (b) which was attached.
- 7.3.2. With regard to separation distance from boundaries, further review of the proposed footprint, internal layout and design of the dwelling it is considered reasonable for there to be a requirement for a minimum separation distance from the side boundaries with both of the adjoining properties of 1.5 metres to be provided for in the development.
- 7.3.3. As a result, the dwelling would have a slightly smaller footprint but will be fully consistent with section. 11.3.1 (f) of the CDP. However, the incorporation of the

single storey porch element at the side which would be forward of the gable end and eroding the 1.5 metres separation distance between the gable and the party boundary is considered acceptable given its limited depth, setback position, lack of fenestration and entrance door facing toward the road frontage. It is of note that elements of both of the adjoining properties at No 11 and No 13, as has been pointed out in the planning officer report and applicant's submissions adjoin the party boundaries.

- 7.3.4. The applicant has indicated a willingness to accept a condition for omission of windows in the northwest elevation facing the appellant property at No 11. However, this modification is considered to be unnecessary from a planning perspective. It is considered that potential for overlooking, or perceptions of overlooking would be satisfactorily addressed by a requirement for installation of opaque glazing with top hung pivot openings only, for the north west facing fenestration for a dressing room bathroom and landing. A condition to this end can be included if permission is granted.
- 7.3.5. The overlooking potential from the fenestration of the projecting element on the front facade is limited to partial views over the adjoining front gardens, Canal Road and the amenity area alongside the canal and there is no scope for viewing to the interior of the side or rear of the adjoining properties.
- 7.3.6. There is no objection to the attic level element providing for habitable accommodation as proposed in the current application which substantively incorporates the requirements of Condition No 2 attached to the prior grant of permission with regard to the setbacks from eaves, the roof profile and dwelling mass from the perspective of the residential amenities of the adjoining properties.
- 7.3.7. It was established in the assessment of the previous proposal that no undue overshadowing of adjoining properties attributable to the proposed development would arise. Similarly, the current proposal would not result in undue overshadowing of adjoining properties.

7.4. Visual Amenities and established character of the area.

- 7.4.1. The Upper Canal Road streetscape 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 with some variation in

design features 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.

- 7.4.2. With regard the height and form, it is considered, as was the case with the prior proposal, that the site and streetscape have capacity to accommodate a variation in ridge an eaves height and roof profile. The current proposal which has a ridge height which is stated to be 0.66 m lower than that of the previous proposal for which permission was granted is acceptable in terms of visual impact, integration into the streetscape and the residential amenities of adjoining properties.
- 7.4.3. The double height element on the front façade, given its limited width relative to that of the front façade, is considered acceptable. There are similar features at the front facades of other dwellings along Upper Canal Road.
- 7.4.4. Given the limited scale of the proposed development, being that of a replacement dwelling it is considered that the issues raised in the Recreation and Amenity Department's report can be satisfactorily addressed by way of compliance with an appropriate landscaping condition, similar to condition No 2 attached to the planning authority's decision, for a scheme incorporating tree planting to be implemented under the direction of a suitably qualified person.

7.5. 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.

7.6. 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 planning history and 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 12th May, 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. The development shall be modified to provide for the ground floor side elevations to be at a minimum separation distance of 1.5 metres from the side boundaries with the exception of the proposed porch.

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 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 a scheme to be submitted and agreed in writing with the planning authority and which shall be prepared

by and implemented under the direction of a suitably qualified professional within the first planting season following the substantial completion of external construction works. The scheme shall include planting of two semi-mature/mature oak trees and all existing party boundary walls, trees and hedgerow shall be retained and protected with fencing to the extent of the branch spread throughout the construction period. 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. A certificate of completion issued by suitably qualified person shall be submitted to 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
16th August, 2022