

An Bord Pleanála

64 Marlborough Street

Dublin 1

D01 V902

REF: Galway City Council Planning (GCC) File Ref P/DC/3/25/21

17 January 2022

To Whom it May Concern,

Further to the refusal of GCC to grant a declaration of Exemption, on behalf of Cormac and Rosemary SMALL of 63 Threadneedle Road, Galway, respectfully we wish to appeal this refusal to An Bord Pleanála.

1.0 Summary

This letter summarises some of the issues specific to the project and restate our contention that the changes that we understand to be at issue for GCC, do not materially affect the external appearance of the structure, so as to render the appearance inconsistent with the character of the granted PP.

2.0 Planning File and Correspondence

2.1 Parent Planning File

23/03/2013 GCC Planning File: 1394

Planning Permission Application Reg Ref 1394 lodged on 23/03/2013, decision to grant was made on 01/08/2013. PP was for a replacement L-plan dwelling on the site.

2.2 Extension of Duration of Planning Permission

06/06/2018 GCC Planning File: 18178

This application was lodged on 06/06/2018 with an unconditional decision to grant made on 24/7/2018. This application simply concerned a request for an extension of the duration of the original planning permission 1394.

2.3 Compliance with Planning Conditions

AN BORD PLEANÁLA	
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08/10/2018 Pre-Construction Letter from Feeney McMahon Architects to GCC with various planning condition compliance issues. Attached to this letter was Drawing PP Con 2&3 (also attached here), the GCC requested revised west (roadside) elevation, showing elevation materials (grey and white acrylic render), fenestration (GCC had conditioned the modification of the west elevation to allow for additional windows at the top floor) etc. Acknowledged as evidence of Compliance by GCC at that time.

3.0 House Construction

Construction of the dwelling on site started in November 2018. The building contractor set up site fencing to enclose the works. The site fencing extended to include portions of the sites of the houses to the north and the south of 63 Threadneedle Road, with the co-operation of those neighbours.

The boundary wall/ retaining wall to the south was removed entirely as it required wholesale remediation.

in early 2019, after construction work had started on rebuilding the south retaining wall and boundary, co-operation was effectively withdrawn by the neighbours of this shared boundary.

In an effort to resolve this situation the applicants are engaged in a legal mediation process with those neighbours, but no final agreement has yet been reached on how to complete the south boundary wall. The applicants remain actively engaged in legal correspondence to resolve this situation.

After the boundary wall became an issue, GCC were prompted to review aspects of PP compliance of the house itself. A link is presumed between the GCC action and the ongoing issue of the boundary construction.

Simply put, the boundary situation has severely delayed the completion and curtailed the enjoyment of the house. It has also prevented the landscaping and screen planting to the south boundary as the construction of the boundary is incomplete.

NB The south boundary wall does NOT form part of the declaration of Exemption. It is simply noted here to give context to the project and issues at play at the south boundary specifically.

3.1 Minor Deviations (see Drawing DoE 03 attached for reference)

3.1.1 North Elevation (to North Boundary):

At entry level +18.8, Upper Ground Floor 1 x window 'B' is narrowed. Window B is a fixed casement, opal glass infill window. It lights a WC on the Upper Ground Floor and a WC on the Lower Ground Floor.

At the top floor, 1 x window 'C' is omitted from the gable. Window C was intended to light the upper floor corridor. As 2 x windows were added to the west elevation to comply with PP13/94 planning conditions this window was rendered superfluous and omitted at site stage.

3.1.2 West Elevation (to Road):

Elevation is Per PP 13/94 and the PP Con 2+3 submitted to GCC in 2019.

3.1.3 South Elevation (to South Boundary):

At gable, 1 x window 'A' is modified. Initially per PP 1394, window 'A' at entry level/ upper ground floor level +18.8, lit a double-height living space on the lower ground floor. This window is now narrowed and slides away from the double height and instead lights a WC, not a living area. The window is a fixed casement, with opal glass infill. Also Misc. adjustment of window proportions.

3.1.4 East Elevation (Rear garden):

Main House; Upper Ground floor, (level +18.8), Minor adjustment (omission) of landing window adjacent to return and also misc. adjustment of window proportions.

4.0 Ongoing Correspondence with GCC

At various stages in the course of project, pre and post-construction, GCC have requested and received regular written, telephonic and in-person engagement at the site.

GCC have requested a formal regularisation of all outstanding planning issues. In light of the unresolved south boundary the applicants had been hoping to deal with all planning matters comprehensively when this was resolved. However given the recent concerns expressed by GCC, the applicants sought a declaration of exemption on the minor elevational changes to the house, only.

Of concern to GCC in previous communication was the south facing window on the gable closest to south boundary, that coincidentally faces the problematic boundary subject to ongoing mediation.

5.0 Grounds for Appeal

The grounds for such a declaration as follows:

5.1

The principal of 'de minimis' the changes are too minor to be relevant. The house benefits from planning permission, the footprint, area, massing, finish, height, fenestration are consistent with the granted PP for a replacement dwelling, and the submissions made in 2018 (see 2.3 above) to comply with planning conditions.

5.2

- There is no planning impact from any of the minor changes noted on the elevations.

5.3

- The planning impact, if any, is to the benefit of the neighbouring dwellings with less fenestration, with opal glass infill, fixed, non-opening sections, facing the boundaries.

5.4

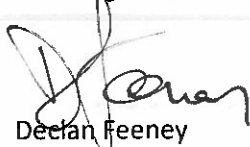
We refer to the legislation below and note that the changes do not materially affect the appearance of the structure.

- *Planning and Development Act 2000, Part 1 4. Exempted Development*

- 4(1) The following shall be exempted developments for the purposes of this Act:
- (h) development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures

In summary we contend that the elevational changes are minor and anticipate a favourable response from the Board in due course.

Kind Regards,



Declan Feeney
Feeney McMahon Architects (AGENT for Cormac and Rosemary Small)
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Bishop St
King's Island
Limerick
086 8155 832

Encl. Fee €220
Drawing DoE 03
Drawing PP Con 2&3
Refusal Letter Galway City Council Planning (GCC) File Ref P/DC/3/25/21



Comhairle Cathrach na Gaillimhe
Galway City Council

Halla na Cathrach
Bóthar an Choláiste
Gaillimh
H91 X4K8

City Hall
College Road
Galway
H91 X4K8

Our Ref: P/DC/3/25/21
Cormac Small & Rosemary Casey,
C/o Feeney McMahon Architects,
The Old School House, Bishop Street,
Kings Island,
Limerick.

14 December, 2021

Planning Declaration under Section 5 of the Planning & Development Act, 2000 (as amended) & the Planning & Development Regulations, 2001, (as amended).

Re: Declaration of exempted development is requested to confirm that the attached drawing no. DoE 3, elevations / fenestration pattern is materially consistent with the granted planning PP 13/94 (& 18/178 Extension of Duration) at: 63 Threadneedle Road, Salthill, Galway.

A Chara,

I refer to your recent application received 30th November, 2021 for a declaration of exemption under the provisions of to the above and I wish to inform you that the proposed development is not an exempted development for the following reasons:

Planning and Development Regulations, 2001, as amended, under Article 9, 1 (a) (i) states "Development to which article 6 relates shall not be exempted development for the purposes of the Act - if the carrying out of such development would - contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act". It is considered that the alterations would not be an exempted development as they would contravene and would be materially inconsistent with the original grant of permission, Pl.Ref.No. 13/94 and the conditions attached to that permission which specified the drawings which were to be implemented.

However, it must be emphasised that this opinion is given without prejudice to the provisions of Section 5(3) of the Planning & Development Act 2000 (as amended). "Where a declaration is issued under this section, any person issued with a declaration may, on payment to the Board of such a fee as may be prescribed, refer a declaration for review by the Board within 4 weeks of the date of the issuing of the declaration".

Mise le Meas,

Director of Services,
Planning, Housing, Economic Development & Culture,
Galway City Council.

Failltear roimh chomhfhreagras i nGaeilge / Correspondence in Irish is welcome

