



An  
Bord  
Pleanála

## Inspector's Report ABP-321570-25

<b>Development</b>	Retention and completion of modifications to previously approved PL Ref. 22/120 with all associated site works.
<b>Location</b>	30 Kingston Road, Galway, H91 AD7H.
<b>Planning Authority</b>	Galway City Council.
<b>Planning Authority Reg. Ref.</b>	2460322.
<b>Applicant(s)</b>	Eva Quaid.
<b>Type of Application</b>	Permission for Retention and Permission for Completion.
<b>Planning Authority Decision</b>	Grant Permission/Retention.
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Mark Hanley and Mary Hanley.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	27 <sup>th</sup> February 2024.

**Inspector**

**Ciarán Daly**

## **1.0 Site Location and Description**

- 1.1. The subject site, 0.165ha in area, is located in the former rear curtilage of an existing dwelling two storey detached dwelling at no. 30 Kingston Road in the outer western suburbs of Galway. It also consists of a linear area to the side of the existing dwelling that links the site to the local laneway access which joins with the public road to the south. The site is occupied by a partially constructed two storey dwelling.
- 1.2. The site is adjacent to a grass field to the north, is behind a line of 5 no. houses to the south and is adjacent to the rear garden of a house to the west. The adjacent houses to the south are a mix of single storey, dormer and two storey dwellings. A two storey house, no. 36 Kingston Road, and a bungalow, no. 35, are the two houses on Kingston Road that directly back on to the location of the existing dwelling under construction.
- 1.3. The Kingston Road is a regional road, R337, that leads to Galway city centre to the east which is c.3.5km away.

## **2.0 Proposed Development**

- 2.1. The proposed development, in summary, consists of the following:
  - Retention and completion of the dwelling permitted under reg. ref. 22/120.
  - Revisions include reduced site area from 2,000sqm to 1,650sqm, omission of the garage, increased floor area to 280sqm from 226sqm at ground floor level, alterations to house elevations including access door to the upper flat roof area.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

- 3.1.1. Galway City Council decided to grant retention permission for the development subjection to 4 no. conditions. Conditions of note include:
  - Condition no. 2 for no access to flat roof areas and a revised elevation required in which no doorway to the upper roof level is provided.

- Condition no. 3 provided that the attic area be for storage purposes only with no internal partitions allowed.

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

3.2.2. The Council's Planner's Report noted that the reduced site area more than meets CDP requirements, no issues in relation to the increased floor area and lower floor level and no issues in relation to elevation changes other than in relation to the door access to the flat roof which should not be used as a terrace. It was recommended that permission be granted subject to conditions.

#### **3.2.3. Other Technical Reports**

- Active Travel: No objections.

### **3.3. Third Party Observations**

3.3.1. Two no. third party observations were received by the P.A. and the main points can be summarised as follows:

- Overlooking concerns from the flat roof and access door to this area should be omitted.
- There should be screening of all side areas.
- Concerns regarding attic windows which will overlook adjacent properties.

## **4.0 Planning History**

**22/120:** Permission granted by the P.A. for the subdivision of a family site to construct a dwelling house and detached garage at no. 30 Kingston Road.

**99/714:** Permission granted by the P.A. for a dormer bungalow to rear of property. Permission not implemented at no. 30 Kingston Road.

**94/389:** Permission granted by the P.A. for a dormer bungalow to the rear. Permission not implemented at no. 30 Kingston Road.

## 5.0 Policy Context

### 5.1. Galway City Development Plan 2023 – 2029

The subject site, and adjacent sites, is zoned under Objective 'R' (Residential) which is *"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"*.

Under this zoning 'residential' is listed as *"uses which are compatible with and contribute to the zoning objective"*.

The development plan zoning map marks the area of Kingston Road to the south of the site for its views and prospects.

The appeal site is located within the 'Outer Suburbs' area classification.

Chapter 3 relates to Housing and Sustainable Neighbourhoods.

Section 3.4 Sustainable Neighbourhood Concept: Outer Suburbs

Urban Context

*New residential development in both existing and new neighbourhoods will need to have regard to the surrounding context. In certain cases, residential development by virtue of scale or location, may be able to create its own character. In cases of infill, new residential development will need to have regard to the wider context including the existing pattern of development, plots, blocks, streets and spaces and not adversely affect the character of the area.*

Section 3.5 Sustainable Neighbourhoods: Outer Suburbs

Chapter 11 relates to Land Use Zoning Objectives and Development Standards and Guidelines.

Section 11.3.1 Outer Suburbs

Section 11.3.1 (d) Overlooking

- *Residential units shall generally not directly overlook private open space or land with development potential from above ground floor level by less than 11 metres minimum.*

- *In the case of developments exceeding 2 storeys in height a greater distance than 11 metres may be required, depending on the specific site characteristics.*
- *With regard to domestic extensions, architectural resolutions to prevent overlooking may be considered, where the linear 11m standard is marginally less, and the overlooking impact is reduced through design.*

## **5.2. Natural Heritage Designations**

5.2.1. In relation to designated sites, the subject site is located:

- 0.7km north-east of the Galway Bay Complex Special Area of Conservation (SAC) and Proposed Natural Heritage Area (PNHA) (site code 000268).
- 0.87km north-north-east of the Inner Galway Bay Special Protection Area (SPA) (site code 004031).

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

6.1.1. Mark Hanley and Mary Hanley of 12 Kingston Gardens, Taylor's Hill, Galway, have submitted a third party appeal against the Council's decision to grant permission.

The grounds of appeal can be summarised as follows:

- Concerns in relation to the timing of works given that permission had not been granted for the changes to the permission.
- The decision is not stated in clear terms and is ambiguous with particular concerns in relation to Condition no. 2.
- Condition no. 2 should be expanded to clarify that access doors at both first floor and second floor levels be omitted.

### **6.2. Applicant Response**

6.2.1. The applicant's architect has submitted a response including drawings in relation to compliance with Condition no.s 2 and 3 of the decision to grant permission.

### 6.3. Appellant Response

The third party appellants have responded to the applicant's response. Their response can be summarised as follows:

- In relation to Condition no. 1, the submitted drawing fails to demonstrate compliance and disregards it by including a new window at top floor level.
- No such window featured in the 'Storage Attic Plan' under reg. ref. 22/120 and the section drawings show limited high level glazing.
- The attic and roof plans stated that all windows at 2<sup>nd</sup> floor level would be at 1.8m high to prevent overlooking and a door is now replacing a window.
- Differences noted between the amended south-west elevation and that under reg. ref. 22/120 and the amended elevation fails to comply with condition no. 1.
- Condition no. 2 refers to the upper roof level which clearly means the second floor level with scope for selective misinterpretation of the condition wording.
- The construction observed on site suggests a structure with load bearing design far in excess of that required for a domestic property.
- It is difficult to understand the justification for access to flat roof areas at any level and request that all doors or other access points to the flat roof areas be eliminated.

## 7.0 Assessment

7.1. I consider that the main issues in determining this appeal to be:

- Scope of Assessment.
- Residential Amenity.
- Other Issues.

### 7.2. Scope of Assessment

7.2.1. I note the concerns outlined in relation to the timing of works which allegedly differed from that provided for in the previous grant of permission and in relation to submitted drawings. I note the subject application is for retention as well as completion and

was assessed as such. I note no significant planning issues arise in relation to this matter given that the planning merits of the proposed development were considered by the P.A. and noting that no significant planning issues have been identified in the appeal in relation to this concern. I also note general concern is expressed in relation to a lack of clarity in relation to the permission but no specific planning issue is raised in this regard other than in relation to Condition no. 2. Therefore I will only consider the planning issues raised and will assess the development by reference to the Development Plan.

- 7.2.2. I have reviewed the application and I am satisfied the development is consistent with the land-use zoning objective (R – Residential) for the site, in relation to the standard of the residential accommodation proposed, services, access and parking, residential and visual amenities other than directly in relation to the flat roof elements of the development and associated elevations subject to the appeal. I consider the changes to the permitted development are generally acceptable other than in relation to the residential amenity matters assessed below.

### **7.3. Residential Amenity**

- 7.3.1. Section 11.3.1(d) of the CDP outlines policy on overlooking for this area of the city. This notes a requirement to avoid direct overlooking of private open space by less than 11 metres and a greater distance may be required for development over two storeys.
- 7.3.2. I note the provisions of Condition no. 2 require “*no access to the flat roof areas shall be permitted and a revised elevation shall be submitted to the Planning Authority, for written agreement, in which the doorway to the upper roof level is omitted*”. The Planner’s Report noted concerns in relation to the access door to the upper flat roof area which “*may impact upon the adjacent residential amenities if the roof is used as a terrace*”.
- 7.3.3. I note the appellant’s property, no. 12 Kingston Gardens, is located to the rear/ west of the subject site. I have reviewed the application drawings and note the rear of the dwelling faces the appellant property at a south-west or diagonal direction/angle. The dwelling would be c.12.1m from the south-western subject site boundary at its closest point, with a similar distance to the south-east boundary and this would be the distance from the flat roof element above ground floor level. The flat roof at

second floor level would be c.19.4m from the south-west boundary at its closest point. Per the 'Proposed Site Layout' plan drawing, I note a distance of c.21m across the rear garden of no.37 to the rear garden boundary of no. 12 Kingston Gardens. Nevertheless, the adjacent property to the south-west appears to function as private open space for either no. 12 Kingston Gardens or no. 37 accessed from Kingston Road/Gardens. I was unable to establish which on my site visit.

- 7.3.4. I note that overlooking from flat roof, balconies or terraces or equivalent gives rise to at least a greater perception of overlooking than overlooking from an equivalent distance from indoors via a window. Given the design of the flat roofs in this instance, if access was afforded to them, the perception of overlooking from the equivalent first floor level to the south-west would be significant in my view and I concur that the P.A.'s assessment is reasonable in this regard. I note policy provisions in relation to separation distances generally deal with windows / rooms and not balconies or terraces where I would normally expect a requirement for greater separation distances.
- 7.3.5. Condition no. 2 also refers to "the flat roof areas" which, in my view, includes *all* flat roof areas including the flat roof at second floor level. This element would be c. 7.2m from the boundary to the north-east with the adjacent rear garden and would be c. 15.32m from the south-west boundary with the adjacent rear garden. I consider that this would give rise to significant overlooking if accessed as a balcony or terrace and would result in undue loss of privacy for the adjacent rear gardens to the north-east and south-east.
- 7.3.6. The development potential of the adjacent site to the north, with the same residential zoning objective, must also be considered in relation to the operation of condition no.2 as it seeks to protect residential amenity. The close proximity of the equivalent second floor level flat roof element is noted, at c.6.1m, in this regard. In this context, this may also result in significant overlooking of adjacent property to the north from the flat roof at equivalent second floor level. Noting these considerations, for the avoidance of any possible doubt, I recommend, should permission be granted, a condition to ensure no possible use of both of the flat roofs for open space, terrace or balcony functions is possible such that no access provision shall be made. This condition should state that there shall be no doorways above ground floor level at either roof level. This should clarify the matter such that there can be no doubt as to

the enforceability of the condition. I note that this addresses all the relevant planning matters in this case.

#### **7.4. Other Issues**

- 7.4.1. I note reference is made to Condition no.1 in the appellants' response to the first party appeal response and that the first party submitted drawings purporting to show compliance with condition no.s 2 and 3. I note the appellants raised planning matters in relation to condition no. 2 and that condition no. 1 is to confirm that only the proposed development applied for can alter the permission granted under reg. ref. 22/120. In this regard, I confirm that I have disregarded the drawings submitted in response to the appeal in my assessment and have relied on the application drawings. I also note that matters relating to compliance with conditions are for the P.A. to address and are not matters for the Board. For the avoidance of doubt in relation to this matter I also recommend that the condition in relation to overlooking and the flat roofs provide a requirement for the submission of drawings for agreement with the P.A. confirming the requirements of same are met.
- 7.4.2. I note condition no. 3 of the P.A. decision required the attic to be used for storage purposes only consistent with the room use specified on the floor plans and I recommend such a condition be included should permission be granted.

#### **8.0 EIA Screening**

- 8.1. See Forms 1 and 2 appended to this report. The proposed development is located within an urban area on serviced land that is zoned for residential development. Having regard to the nature and scale of the proposed development, to the criteria set out in Schedule 7 of the Planning and Development Regulations 2001 (as amended) and the potential connectivity to a sensitive location, 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.

## 9.0 AA Screening

- 9.1. I have considered the proposed development in light of the requirements of S177U of the Planning and Development Act 2000 as amended. The subject site is located 0.7km north-east of the Galway Bay Complex Special Area of Conservation (SAC) (site code 000268) and 0.87km north-north-east of the Galway Bay Special Protection Area (SPA) (site code 004031).
- 9.2. The proposed development comprises a new two storey dwelling and entrance. Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment because it could not have any appreciable effect on a European Site. The reason for this conclusion is as follows:
- The relatively small scale and domestic nature of the development.
  - The location of the development in a serviced urban area and the urban nature of intervening habitats.
  - Taking into account the screening determination carried out by the Planning Authority.
- 9.3. I consider that the proposed development would not be likely to have a significant effect individually, or in-combination with other plans and projects, on a European Site and appropriate assessment is therefore not required.

## 10.0 Recommendation

I recommend that planning permission be granted for the proposed development for the reasons and considerations set out below.

## 11.0 Reasons and Considerations

- 11.1. Having regard to the location of the subject site within an urban area, the provisions of the Galway City Development Plan 2023 – 2029, the nature, scale and form of the proposed revisions to the permitted development, and pattern of development in the surrounding area, it is considered that subject to compliance with the conditions set out below, the proposed development would be acceptable, would not seriously injure the visual or residential amenities of the area or of property in the vicinity, and

would constitute an appropriate use of this urban location. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## **12.0 Conditions**

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, 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. Apart from any departures specifically authorised by this permission, the development shall comply with the conditions of the parent permission Register Reference 22/120 unless the conditions set out hereunder specify otherwise. This permission shall expire on the same date as the parent permission.

Reason: In the interest of clarity and to ensure that the overall development is carried out in accordance with the previous permission.

3. No access, including via the provision of doorways, to either of the flat roof areas (both above ground floor level and above first floor level) shall be provided and such flat roofs shall be accessed for maintenance purposes only. The applicant shall submit for the written agreement of the Planning Authority elevation drawings to scale 1:100 or 1:200 confirming this and clearly showing no external doorways above ground floor level. The drawings submitted shall be consistent with the drawings submitted at application stage except insofar as is required to comply with this condition.

Reason: To prevent overlooking and to protect residential amenity.

4. Notwithstanding the exempted development provisions of the Planning and Development Regulations, 2001 (as amended), and any statutory provision amending or replacing them, the use of the attic area shall be restricted to storage purposes only (as specified in the lodged documentation), unless otherwise authorised by a prior grant of planning permission.

Reason: In the interest of clarity and to ensure that the overall development is carried out in accordance with the permission.

5. 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.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

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Ciarán Daly

Planning Inspector

1<sup>st</sup> April 2025

# Appendix 1 – Form 1

## EIA Pre-Screening

<b>An Bord Pleanála</b> <b>Case Reference</b>	ABP-321570-25		
<b>Proposed Development Summary</b>	Retention and completion of modifications to previously approved PL Ref. 22/120 (subdivision of dwelling site for new dwelling and garage) with all associated site works.		
<b>Development Address</b>	30 Kingston Road, Galway, H91 AD7H.		
<b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b> (that is involving construction works, demolition, or interventions in the natural surroundings)		<b>Yes</b>	X
		<b>No</b>	
<b>2. Is the proposed development of a CLASS specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended)?</b>			
<b>Yes</b>	X	Part 2, Class (b)(i).	Proceed to Q3.
<b>No</b>			Tick if relevant. No further action required
<b>3. Does the proposed development equal or exceed any relevant THRESHOLD set out in the relevant Class?</b>			
<b>Yes</b>			EIA Mandatory EIAR required
<b>No</b>	X	Threshold: Construction of more than 500 dwelling units and urban development which would involve	Proceed to Q4

		an area greater than 10 hectares in the case of other parts of a built-up area.	
<b>4. Is the proposed development below the relevant threshold for the Class of development [sub-threshold development]?</b>			
<b>Yes</b>	X	New dwelling and garage is below the 500 dwelling threshold on a site area of 0.165ha below the 10ha. Threshold.	Preliminary examination required (Form 2)

<b>5. Has Schedule 7A information been submitted?</b>		
<b>No</b>	X	<b>Pre-screening determination conclusion remains as above (Q1 to Q4)</b>
<b>Yes</b>		<b>Screening Determination required</b>

Inspector: \_\_\_\_\_

Date: \_\_\_\_\_

## Appendix 2 – Form 2

### EIA Preliminary Examination

<b>An Bord Pleanála Case Reference</b>	<b>ABP-321570-25</b>
<b>Proposed Development Summary</b>	Retention and completion of modifications to previously approved PL Ref. 22/120 (subdivision of dwelling site for new dwelling and garage) with all associated site works.
<b>Development Address</b>	30 Kingston Road, Galway, H91 AD7H.
<p><b>The Board carried out a preliminary examination [ref. Art. 109(2)(a), Planning and Development regulations 2001, as amended] of at least the nature, size or location of the proposed development, having regard to the criteria set out in Schedule 7 of the Regulations.</b></p> <p><b>This preliminary examination should be read with, and in the light of, the rest of the Inspector's Report attached herewith.</b></p>	
<b>Characteristics of proposed development</b> (In particular, the size, design, cumulation with existing/proposed development, nature of demolition works, use of natural resources, production of waste, pollution and nuisance, risk of accidents/disasters and to human health).	Two storey dwelling and garage within an urban area, vehicular access and connection to public water and wastewater network.  The proposed development will not give rise to the production of significant waste, emissions or pollutants.
<b>Location of development</b> (The environmental sensitivity of geographical areas likely to be affected by the development in particular existing and approved land use, abundance/capacity of natural resources, absorption capacity of natural environment e.g. wetland, coastal zones, nature reserves, European sites, densely populated areas, landscapes, sites of historic, cultural or archaeological significance).	The urban location of the development is located at a significant remove from sensitive environmental receptors such as the Galway Bay Complex Special Area of Conservation (SAC) and the Inner Galway Bay Special Protection Area (SPA) (site code 004031).  It is also located at a remove from sensitive cultural and heritage areas.

<b>Types and characteristics of potential impacts</b> (Likely significant effects on environmental parameters, magnitude and spatial extent, nature of impact, transboundary, intensity and complexity, duration, cumulative effects and opportunities for mitigation).		Impacts will be contained within the partly walled site with any water based run-off to the local waste water treatment network.  The site is not suitable for wintering birds.
<b>Conclusion</b>		
<b>Likelihood of Significant Effects</b>	<b>Conclusion in respect of EIA</b>	<b>Yes or No</b>
There is no real likelihood of significant effects on the environment.	EIA is not required.	<b>Yes</b>
There is significant and realistic doubt regarding the likelihood of significant effects on the environment.	Schedule 7A Information required to enable a Screening Determination to be carried out.	<b>No</b>
There is a real likelihood of significant effects on the environment.	EIAR required.	<b>No</b>

**Inspector:**

**Date:**

**DP/ADP:** \_\_\_\_\_

**Date:** \_\_\_\_\_

(only where Schedule 7A information or EIAR required)