

2015-11-22

Can't Buy, Don't Want to Rent? The Catalans have a Third Option

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Recommended Citation

Sirr, L. (2015) Can't buy, don't want to rent? The Catalans have a third option. *The Sunday Times* 22.11.2015. doi:10.21427/7htx-s445

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Agents on the move with the market

LINDA DALY
MARKET WATCH



It's not just Ireland's homes that are being shifted; there has been lots of traffic flowing among estate agents too. Earlier this month, JLL, the commercial real estate company, announced its intention to enter the residential property market — with its acquisition of Guardian Property Asset Management (GPAM). This is JLL's first foray into the residential side of things. The move was also a win for GPAM's founders Conor O'Gallagher and Colm Byrne who set up the firm in 2009 when the property market was in the doldrums. The pair — who both previously worked at Sherry Fitzgerald — have built a strong presence in the new homes market. They transacted €500m of property in 2015 alone. GPAM's staff of 10 is moving to JLL's Hatch Street headquarters — just in time for the Christmas party. For existing players, JLL's entry will intensify competition as it plans to manage development land services, from planning to fit out and sales.

Agents are seeing the benefits of affiliations. The latest Irish firm to form an alliance is Ganly Walters, which has teamed up with UK property consultancy Carter Jonas. With British buyers showing a lot of interest in Ireland, this makes a lot of sense. There are also new brands popping up, with the Institute of Professional Auctioneers and Valuers up to more than 1,000 members. Among the new entrants — though she has years of experience — is Blackrock estate agent Janet Carroll. The former Savills employee set up her firm in June and opened an office at Main Street. Meanwhile, David Ashmore, Sherry Fitzgerald's former director of fine homes and estates, is taking time out before he starts a new chapter, reportedly, as a franchisee of Sotheby's. He isn't saying much for now — but watch this space.

Price watch: Co Tipperary

Property	2010 Price	2015 Price	Change
Powerstown Way Clonmel 4-bed detached	€230,000	€255,000	Up 11%
Coille Bheithe Nenagh 2-bed apartment	€94,500	€46,500	Down 51%
Ballygraigue Road Nenagh 4-bed detached	€185,000	€240,000	Up 30%
The Coachyard Cloughjordan 4-bed semi	€110,000	€75,000	Down 32%

Source: propertyregister.ie

Celebrities can afford a legal row, but the rest of us should consult neighbours about planned works. By Grainne Rothery

Michelle Rocca's recent legal battle to hang on to her Dalkey home's sea views did not end well. Last month, after four days in the High Court, Rocca decided not to proceed with her case against her Sorrento Road neighbours Conor and Eileen Kavanagh, who she claimed had gone back on an agreement to keep their trees at a level below the boundary wall between the properties.

Judge David Keane ordered Rocca to pay costs for both sides. She and the Kavanaghs, meanwhile, still live next door to each other and share a private driveway with two other houses.

It's a salutary tale for anyone considering going down the legal route because of a dispute with their neighbours. "We would recommend if at all possible to keep disputes between neighbours away from solicitors and to try communication," says Yvonne Kelly, of Piers Fitzgibbon Solicitors. "Don't consider doing any significant work — be it an extension or planting trees or cutting them down — without having a chat with next door."

If you do consult the neighbours, be prepared to take on board what they say. "It's not just a PR exercise," says Ann Mulcrone, principal at planning consultancy Reid Associates. "It's about understanding their issues and seeing if they can be accommodated in revisions to the design."

According to surveyor Patrick Shine, while there are plenty of instances of property disputes between neighbours, few end up court. "But there is a lot of unhappiness between neighbours over extensions," Shine says.

The problems often relate to boundaries between properties. "One party — usually the person building the extension — assumes that the wall between the houses is theirs and they can build on it. Or they may take out a hedge and put in the wall of their extension without consulting their neighbour."

Broadcaster Pat Kenny and his wife, Kathy, famously fell out with their neighbours over a strip of land close to their home in Dalkey. The case ended up in the High Court in 2008, after the Kennys' neighbours, Gerard and Maeve Charlton, initiated the legal action over ownership of the 0.2 acre strip. The Charltons claimed that they owned the land, while the Kennys said that they had established entitlement to it through squatters' rights since 1991. The case was eventually settled out of court.

If there is a wall between two houses or any sort of a fence it's considered to be a party wall, unless you have a good deed map that says otherwise, says Shine. "Strictly speaking, the boundary goes through the middle of it and each owns one half, but you can't touch the other half. You should consult your neighbour if you want to do anything with it."

Kelly recommends carrying out a proper survey when buying a property to avoid any future boundary disputes.

"Have the engineer or architect who's doing the survey check that the boundary on your folio or deed matches up with the way things are on the ground. Also have your engineer check to see if any sunrooms or extensions are planning compliant," says Kelly.

Another issue can arise when part of an extension's roof overhangs the neighbour's property. "It means that if your neighbour wants to build an extension, you've pushed them back well into their own property," says Shine. "Your property line extends vertically upwards."

Blocking of light or the feeling of being overlooked by a new extension are also common areas of concern. "You don't



Next door can be too close for comfort

have any right to sunlight in your garden," Shine says. "You have rights to light in through your windows, but you would have to show a fair bit of technical evidence to demonstrate that you had lost light in your rooms because of a neighbour's extension."

In general, there is no right to privacy, either. "However, when they give permission for an extension, planners will normally not allow you to have windows that look straight in on somebody's back door or windows, when the properties are in close proximity. But it varies from site to site and situation to situation."

From a planning point of view, the aim is to find a balance between enabling somebody to extend their home and protecting the amenity of the neighbouring dwellings, according to Mulcrone. "It's a fine balance that needs to be accommodated."

It is critical, she says, to always go on site and to inspect it from both the applicant's and the neighbour's sides. "In a lot of circumstances that doesn't happen and I think that's a failure of the system

and of the planning authorities not to go in and look at it from the other side."

She recommends that applicants liaise with neighbours beforehand and provide them with a copy of the plans. "It's wise to identify any issues of concern and to see if they can be accommodated," she says. "I think that's absolutely critical. It's more than a matter of square feet; it's a matter of reconciling accommodation needs with surrounding amenity and also good neighbourliness."



Page, above left, and Williams, above right, famously fell out over building works in west London, while Kenny, left, and Rocca both ended up in court over lengthy property disputes in Dalkey

"And I think an essential part of good neighbourliness is that you would communicate what you are trying to achieve and respond to your neighbours in terms of any issues that might arise."

Sometimes going down the litigation route may be necessary. "Obviously if you're living side by side with somebody it's going to make it very awkward on a human level," says Kelly.

"But if you have two people side by side and they're at loggerheads and there is an issue and it needs to go to court, then so be it. But there can be no coming back from that in terms of neighbourly relations."

Sometimes neighbours fall out from the get-go. Robbie Williams got into a planning dispute with Led Zeppelin's Jimmy Page soon after the singer bought the late film director Michael Winner's £17.5m (£24.5m) home in Holland Park, west London, in 2013. Williams withdrew two sets of plans after Page's objections, ditching a large basement.

Williams was granted permission to refurbish his house, with conditions — including making sure the vibration caused by works was kept below agreed limits. Page had claimed any work would damage his listed 1870s Tower House. He also criticised Williams' plans to add a garage as "extremely unfortunate in architectural terms".

If you are unhappy with your neighbour's plans for an extension or other work you can object to their planning application by writing to the relevant planning authority within five weeks of their application being lodged.

If your objection is turned down, you can appeal to An Bord Pleanala. This must be received by the board within four weeks of the planning authority decision.

The silent treatment

In 2006, Killiney resident James Bourke objected to his neighbour's proposed extension, saying that it overlooked his property and devalued his house. The neighbour had moved in shortly before putting in the planning application and he and Bourke had met only once or twice. There was no consultation at all

about the proposed work, according to Bourke. "He just made the application. No aspect of it was ever discussed with us."

The two parties never spoke to each other about Bourke's later objection either. "I employed a planning consultant, he employed a planning consultant and our 'gunslingers'

fought it out with An Bord Pleanala."

Bourke's objection was rejected and his neighbour was granted planning permission. The work never got started, however, as the recession hit. Planning permission has now expired. "But he'll be back and I have new grounds to object that I am hopeful of," says Bourke.

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Housing policymakers should look for fresh answers — such as the ancient idea of temporal ownership

Creativity is generally lacking in Irish policy-making, and this is as evident in housing, as it is in other areas. There is a reversion to the mean in times of crisis, where the usual methods, which have often failed, otherwise we wouldn't have a crisis, are returned to. Einstein had something to say about this, and it wasn't complimentary. We're seeing it once again in efforts to get the building industry off its hind by using taxpayers' money as an incentive, as if it's 1996 all over again. Before you know it, we'll all be buying apartments in Bulgaria.

for buyers. They highlight a gap in the Irish housing system: what do you do if you can't afford to buy your home, but can't live with the lack of security of tenure that renting offers? There are no options in Ireland, but if we look to our European neighbours, we might find an answer. We need new options because their absence is retarding the development of a fully functioning housing system. I spent the first half of this year as a visiting professor of housing in a faculty of law in Tarragona, Spain, where the energetic Professor Dr Sergio Nasarre-Aznar and his research team have been working on legislation to provide a new form of tenure between renting and owning. The professor went back to

LORCAN SIRR ON THE HOME FRONT



Greek legal roots to a concept called emphyteusis, an old Greek form of lease that was granted to people on condition that they improved the property, and worked on adapting it for a 21st-century housing system.

The result is known as "proprietary temporal" in Catalan; we would call it temporal ownership. Here's how it works. Temporal ownership is where a property is transferred from one owner to another for a specified period of time — usually years — for a sum of money, after which it passes back to the original owner. The purchase price for the property can be any sum agreed between the seller and new, temporal, owner, but is usually a multiple of the annual rental value of the property. The new owner takes responsibility for all bills and taxes for the property.

In essence, therefore, the new owner is buying a home for a set number of years by effectively paying all the rent up front. This sum is taken out as a mortgage (with the normal 20% deposit requirement) and the new owner

simply repays the mortgage over the time of the ownership instead of rent.

This has several advantages. We can take the example of a Dublin property that normally rents at €1,360 per month and is bought for 10 years. The monthly repayment on a mortgage, even at a high rate of 6%, is about €300 cheaper than the rent.

This adds greatly to the affordability aspect of temporal ownership and, as monthly repayments cost less than rent, the banks' lending risk is also reduced. Also, there are no annual rent reviews — there is only the mortgage to repay, plus there is total security of tenure.

In addition, the cost of buying a property for 10 years at average Dublin prices is about €120,000, which means a deposit of €24,000. This is notably different from one bought at €300,000, which requires a deposit of €60,000.

As there are monthly savings it also allows the new owners the chance to save, perhaps for a deposit on a home of their own



THE NEW OWNER IS BUYING A HOME FOR A SET NUMBER OF YEARS BY PAYING THE RENT UP FRONT

when this one is returned to its original owner.

There are no rights of reversion for temporal owners. At the end of the ownership period, it goes back to the original owner. In between, though, the property can be sublet by the temporal owner, or left in a will by the original owner — but not transferred until the temporal ownership has ended their term. Temporal ownership especially suits those starting out in the

housing system and those looking to change or reduce their property footprint later in life. I can see this being attractive to homeowners, especially those who want to downsize but not sell their homes, or for buy-to-let landlords who are in financial trouble.

A lump sum for temporary disposal of their property might let them get back on their financial feet, and yet still retain ownership. It also means vacant homes might find a new life.

I suspect it'd also be attractive to foreign workers coming to Ireland who don't want to sample our expensive rental market.

Professor Nasarre-Aznar convinced a cautious cabinet in Spain and legislation to establish temporal ownership was passed in July in the Catalan parliament. It is already seeing considerable uptake because of its affordable entry costs and secure tenure.

This is just a flavour of the type of options not even on the table here. There's an appetite for new things, but we're still eating bacon and cabbage when we should be sampling the paella.