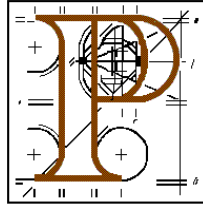


An Bord Pleanála



Inspectors Report

Development: Retention of changes in ground level of garden and shed, 46 Fr. Burke Road, The Claddagh, Galway, Co. Galway.

Planning Application

Planning Authority: Galway City Council
Planning Authority Reg. Ref. 15/313
Applicant: Martha & Ronald Sayers
Type of Application: Retention Permission
Planning Authority Decision: Refuse

Planning Appeal

Appellant(s): Martha & Ronald Sayers

Observers: Robert Walsh
Amalee Meehan
Kevin Mooney

Type of Appeal: First Party

Date of Site Inspection: 16/05/2016

Inspector: Gillian Kane

1.0.0 SITE LOCATION AND DESCRIPTION

1.0.1 The subject site is located on the eastern side of Fr. Burke Road, a narrow residential road in the inner suburbs of Galway City. Currently on site is a two storey mid-terrace house that has been extended to the rear. Following the natural topography of the wider area, the gardens along Fr. Burke Road fall from east to west. This results in a significant drop in ground levels from the rear of the houses to the rear boundary walls. The housing estate to the west Grattan Park is at a lower level again.

1.0.2 The garden of the subject site, no. 46, has been raised as part of a wider development of the house. A patio to the immediate rear of the dwelling steps down to a raised garden with gravel. A decorative stone path leads to a single storey garden shed along the western boundary. To the north of the subject dwelling, No. 45 Fr Burke Road has a stepped deck extending into the garden. To the south of the subject dwelling, no. 47 Fr Burke Road has a single storey conservatory with surrounding patio. The garden of no. 47 falls steeply to the west.

1.0.3 Photographs and maps in Appendix 1 serve to describe the site and location in further detail.

2.0.0 PROPOSED DEVELOPMENT

2.0.1 Permission was sought for the retention of changes in grounds level of the garden and new garden shed (7sq.m.) on a site of 0.0225ha.

2.0.2 Two objections to the proposed development were submitted to the City Council.

2.1.0 Reports on File following submission of application

2.1.1 **Engineering Report:** No objection subject to 4 no. conditions.

2.1.2 **Surface Water Drainage Report:** No objection

2.1.3 **Planning Report:** Properties on Fr. Burke Road have a significant ground level change to the rear of the dwellings. Drawings submitted with previous application indicate the original ground level was 4m in comparison to neighbouring gardens of 3.44m (south) and 4.73 (north). Current application shows ground level raised to 4.9m. Proposed ground level change is not exempt as it would contravene condition no. 1 of the previous application which showed a ground level of 4m. Ground level changes result in the shed having an overall height of 4.08m above the adjoining garden

level at no. 47 Fr. Burke Road, resulting in significant loss of privacy and amenity. Permission should be refused.

3.0.0 PLANNING AUTHORITY DECISION

3.0.1 By order dated 14/01/16 a notification of decision to **REFUSE** permission for the following three reasons:

1. Having regard to its nature, scale, appearance and location, it is considered that the retention of the garden shed structure and raised ground levels would result in an overbearing impact and loss of residential amenity and privacy for the adjoining properties. Hence the development would compromise the policy objectives for the area as set out in the Galway City Council Development Plan 2011- 2017, in particular chapter 2 and would be contrary to the proper planning and sustainable development of the area.

2. The garden shed to be retained has been built on the boundary walls at the side and rear and it therefore results in the boundary walls exceeding the limit of 2.0m above the immediately adjacent ground level. The applicant has failed to provide evidence of sufficient legal interest or consent to have carried out these works and the development would therefore be contrary to the proper planning and sustainable development

3. The increase in height in garden level to 4.90 conflicts with the 4.0m level shown on the approved drawing 1301-101 date received 4th March 2013 and the proposed retention of raised garden level would therefore materially contravene condition 1 of the permission planning reference 13/55 dated 28th May 2013.

4.0.0 PLANNING HISTORY

4.0.1 **Planning Register Reference No 13/55** planning permission granted for demolition of existing extension and construction of new two storey extension to rear.

4.0.2 **Planning Register Reference No 92/75** Planning permission granted for enlargement of front elevation windows and alteration of door and window to rear.

5.0.0 LOCAL POLICY

5.1.0 Galway City Development Plan 2011-2017

5.1.1 The subject site is zoned R Residential in the Galway City Development Plan. The zoning objective for such areas is “to provide for residential development and associated support

development which will ensure the protection of existing residential amenity and will contribute to sustainable residential neighbourhoods". Residential use is permitted in principle in such areas

6.0.0 GROUNDS OF APPEAL

6.0.1 A first party appeal has been lodged by an agent. The Board is requested to grant permission. The grounds of the First party appeal can be summarised as follows:

- The existing dwelling was extended as per the previous planning permission reg. ref. 13/55. The conditions of the permission did not prohibit the provision of a garden shed, nor did they curtail future exempted development rights. The conditions did not expressly stipulate a finished ground level. The planning report for the application did not raise a concern about ground levels. During the course of the construction, a garden shed of 7sq.m. was constructed. Material from the demolition was used to raise the ground level. The original ground level varied from 4.0m to 3.55m. In response to neighbour concerns the shed was constructed entirely within the subject site, off the party wall. The existing party wall was already reinforced at sub surface level. (photographs submitted).
- The proposed garden shed is modest in scale, compared to others structures in the area. The floor area is 7sq.m and overall height of the flat roofed/ mono pitched structure is 2.7m. The shed falls under class 3 of Schedule 2, Part 1, of the Planning and Development Regulations.
- To the north of the subject site, in the garden of no. 45 Fr. Burke Road, there are two garden sheds, one large one small. The shed on the subject appeal site is 2m from the rear garden of no. 45 and 18m from the rear elevation of no. 45. The subject shed has one window which faces east. The rear garden of the subject site at no. 46 is 0.17m higher than the rear garden of no. 45. A revised drawing 'Site Section B-B' shows the relationship between the gardens of no. 45 and 46. The proposed development will not have an overbearing impact / loss of residential amenity or loss of privacy for the residents of no. 45.
- The dwelling to the west of the subject site no. 102 Grattan Park, has an amenity area of 110sq.m. to the rear. This area is estimated to be 0.29m higher than the garden of the subject site. Drawing 'Section AA' submitted, shows the FGL of the subject shed at 4.61m and a finished roof level (FRL) of 7.6. The FGL of the shed in the garden of no. 102 is also 4.61 and the FRL is

7.10, so approx. 0.5m lower than the subject shed. No loss of privacy or overlooking issues arise from the proposed development.

- No. 47 Fr Burke Road to the south of the subject site has a patio with a FGL of 5.95m, a second patio at 4.19m, and a third patio at 3.89m. The garden level drops from 4.9m to 3.44m at the lowest point. The front of the subject shed is estimated to be approx. 18m from the upper floor windows of no. 47. An existing mature tree gives significant cover. The proposed development will not result in a loss of residential amenity or privacy.
- The Council's assertion that the garden shed is built on boundary walls is incorrect. A new wall was constructed on the southern elevation, entirely within the site and the western boundary of the shed does not use or rely on any party wall. There is no merit in the reason for refusal based on having sufficient legal interest.
- The Council's third reason for refusal relates to the proposed development being a material contravention of condition no. 1 of the previous planning permission 13/55. Drawing no. 1301-101 submitted with the application showed a garden level of 4.0m. It is noted that the conditions attached to the permission do not expressly state or specify a garden level. The applicants are entirely within their rights to propose a development which differs from a previous proposal. The proposed development to retain a small garden shed does not materially contravene condition 1 of the previous permission.
- The subject shed was chosen to minimise all potential negative impacts on surrounding residential properties. Changes in the garden level were carried out to bring the subject site more in line with levels of surrounding properties. The proposed development is appropriate in terms of the proper planning and sustainable development of the area.
- Photographs and drawings submitted.

7.0.0 RESPONSES

7.1.0 Planning Authority Response

7.1.1 The Planning Authority have responded to the first party appeal as follows:

- Properties on Fr Burke Road exhibit a considerable drop to the rear. The drawings submitted with the previous application showed a garden level of 4m compared to 3.44 for no. 47 to the south and 4.73m for no. 45 to the north. The subject application

shows the garden raised to 4.9m, 1.46m higher than no. 47 to the south and 0.17m higher than no. 45 to the north.

- Given the height differential and the distance of 2.6m from the boundary with no. 45, it was not considered that the subject shed would have an overbearing impact on no. 45. As a result of the change in ground levels the subject shed is 4.08m above the garden level of no. 47 and has an overbearing impact on the amenity of no. 47 and also no. 102 Grattan Park.
- The Planning Authority accept that consent is not needed as the subject shed is built entirely within the subject site. They state that such works are not exempted development as the boundary walls exceed 2m above the immediately adjacent ground level. It is noted that the Board used this reasoning in PL651.RL2913.
- It is submitted that the increase in garden level of 0.9m is not exempted development as it contravenes condition no. 1 of the permission dated 28.05.2015.
- It is stated that as part of compliance with planning reg. ref. 13/55 the first party showed a rear garden level of 4m on a drawing submitted to the Council in March 2013 and a level of 5.5m on the drawing submitted in July 2013.

7.2.0 Response of First Party

7.2.1 The First party response can be summarised as follows:

- The stated levels of heights presented in the Councils letter are not disputed.
- The first party are not aware of exempt development limitation regarding distance from party walls. The garden shed is not built on, nor does not use the party walls.
- The shed has a height of 4.08m above the garden level of no. 47. The Board is requested to note that this is measured from the lowest point of the garden and that the remainder of the garden rises in an easterly direction. The FFL of no. 47 is 6.1m. Drawing Section BB shows how low the western end of the garden of no. 47 is relative to its surroundings. The ground level of no. 102 Grattan Park is 4.61m, i.e. 1.17m higher than the rear garden of no. 47.
- The rear garden of no. 47 is long and narrow with a mature tree with a significant canopy at the western end. The low lying end of the garden is not widely used.
- The subject shed is built entirely within the subject site and does not require the consent of neighbouring properties.
- The board is requested to note the ground levels of surrounding properties relative to the shed: no.102 Grattan Park is 4.61m,

no. 45 Fr Burke Road is 4.73m and no. 47 Fr Burke road has a ground level of 3.44m rising to 6.10m.

- The subject development forms part of a mature residential site with a recently renovated and extended dwelling. The rear garden is approx. 85sq.m. The conditions attached to the previous planning application did not stipulate garden levels nor curtail future development rights. The proposed development is consistent with the proper planning and sustainable development of the area.

8.0.0 OBSERVATIONS

8.1.0 An agent for **Robert Walsh, 45 Fr. Burke Road**, submits that the level of the rear garden was raised by 1.2m. This has resulted in the garden of no. 46 being 250mm higher than no. 45 and 1.3m higher than no. 47. It is submitted that this increase in height will result in a reduction in privacy and cause overlooking of no. 45. The boundary wall between no. 45 and 46 is 1.4m in height and any increase to protect privacy would greatly decrease sunlight entering the garden. The level of the garden of no. 46 must be reduced. It is stated that when measured from the garden of no. 45, the boundary wall varies from 2.38m to 2.66m in height. It is stated that this is in excess of the 2m wall shown on the submitted drawings. It is submitted that the patio extends 1m beyond what was permitted under the previous planning application. This patio, being at a raised level, will further reduce the privacy of the garden of no. 45. It is submitted that surface water runoff from the roof of no. 46 runs via downpipes to a perforated land drain adjoining the boundary wall between no. 45 and 46. It is submitted that this unrestricted ingress of water into no. 45 could undermine the garden walls. The Board is requested to refuse permission.

8.2.0 An agent on behalf of Amalee Meehan the owner of no. **47 Fr Burke Road** submits that the level of the rear garden was raised by 1.2m. It is submitted that the increase in the lateral load from retained soil will compromise the structural integrity of what was intended to be a free standing wall. The garden of no. 46 is 1.35m higher than the garden of no. 47 and the increase in height will result in a reduction in privacy and cause overlooking of no. 47. It is submitted that surface water run-off from no. 46 is being directed to the dividing rear garden wall between the two properties and will discharge into no. 47. This will be aesthetically unpleasant and will impact on the structural integrity of the wall.

8.3.0 An agent on behalf of **Kevin Mooney**, owner of no. **102 Grattan Park** submits that the level of the rear garden was raised by 1.2m. It is submitted that the increase in the lateral load from retained soil will compromise the structural integrity of what was intended to be a free standing wall. It is submitted that the garden shed to be retained is 3m above and overshadows the garden of no. 102. It is stated that the tree in the rear of no. 47 will be removed in the near future. It is submitted that the slope of the garden shed roof which overhangs no. 102 will lead to surface water discharging into the garden of no. 102 Grattan Park.

9.0.0 ASSESSMENT

9.0.1 On reading of all documentation submitted with the appeal, I consider the issues to be:

- Principle of the Proposed Development
- Garden Level
- Garden Shed
- Other
- Appropriate Assessment

9.1.0 Principle of the Proposed Development

9.1.1 Permission is sought to retain a garden shed of 7sq.m. and retain changes to the garden level to bring it to a height of 4.9mOD .

9.1.2 As noted above, and in the submission of the first party, under pa. reg. ref. 13/55 the existing dwelling was extended. This development included a raised patio to address the ground level change of 2.1m between the garden and the FFL of the house. During construction, the patio was lowered by 580mm and the garden was raised by 900m. The first party state that the ground level difference between the patio and the garden is now 620mm and is comparable to surrounding garden levels.

9.1.3 The Council's second reason for refusal was that the proposed development is a material contravention of the previous permission. An applicant is permitted to seek permission for a development that differs from a previous permission and the Board is obliged to assess the application before it on its own merits. The subject development is not considered to be a material contravention of the previous permission.

- 9.1.4 Drawings submitted with the previous application show an original garden level of 4mOD. According to the first party, photographs submitted in appendix 3 of the appeal show the changes in ground level before, during and after the development. Photo B shows 11no. blocks of the rear (western) boundary wall exposed before works were undertaken. Photograph D showing the garden during work shows 9no. blocks exposed to the rear and between 7 and 9 blocks exposed on the northern boundary which was at the time a yellow wall. The final photograph (photo F) with the finished garden level and constructed shed shows 6no. blocks of both the rear/western and northern/yellow boundary wall exposed. In the grounds of the appeal the agent for the first party states that each block is 225mm in height and that the before and after photos show that the western end of the garden was 450mm lower than the stated 4m of the rest of the garden.
- 9.1.5 I note that the three observers claim that the garden level has been raised by 1.2m. It is not clear from the observations whether the original ground level of 4m is in dispute or if they allege that the current 4.9m level is incorrect. If one uses the blocks as a guide, the difference in ground level is approx. 1.35m. at the western boundary and 225-675mm at the northern boundary wall. It would appear from the above rough calculations that both the first party and the observers are correct. The ground level has been raised at variable levels.
- 9.1.6 Notwithstanding this, the fact remains that the Board must assess the application as it is currently before it. The ground level of the garden is currently a flat 4.9mOD. As noted in section 1 above, the garden of no. 45 no has not been raised and sits at a lower level than the subject site. On the date of my site inspection, the boundary wall between the two sites measured 1.6m on the side of no. 45 and 1.4m on the side of no. 46 (see photos no. 5). This correlates with the observation of the owner of no. 45 that there is approx. 200mm difference in ground level between the two sites. There is a relatively large raised deck to the rear of no. 45 resulting in the amenity space of both dwellings being at almost the same level. I am satisfied that the raised garden level of no. 46 is not such that it would unduly or negatively impact the amenity space of no. 45 through overlooking, overshadowing or a reduction in amenity.
- 9.1.7 The garden of no. 47 to the south of the subject dwelling sits approx. 2.8m below the top of the new wall constructed along the

southern boundary of no. 46. (see photos 4 & 7) This equates to a difference in ground levels of approx. 1.8m by my calculations but it must be noted that this level was taken from the subject site as there was no access to the garden of no. 47. I note that photo K submitted with the first party appeal appears to correlate to this measurement. It was not verified on-site inspection, but from a visual inspection the garden of no. 47 appeared to be significantly lower than its neighbouring garden to the south no. 48 Fr Burke Road.

9.1.8 The western end of the garden of no. 47 was heavily overgrown, with a large mature tree dominating the space. The area did not appear heavily used. I note that one of the observers state that the tree will be removed. It is considered that works to make the area suitable for amenity may well involve raising the level of the garden to compensate for the steep slope. I am satisfied that the impact of the ground level change, although significant at the south-western most corner of the site, is not such that it would unduly or negatively impact the amenity space of no. 47 through overlooking, overshadowing or a reduction in amenity.

9.2.0 Garden Shed

9.2.1 The garden shed proposed to be retained is 7sq.m. GFA with an overall height of 2.7m. The ground level difference between the subject site and the adjoining property to the west 102 Grattan place is approx. 0.5m so the shed has an overall height of approx. 3m measured from Grattan Place. I am satisfied that this is not such that it would create any undue overshadowing of the rear garden or indeed the rear elevation of no. 102. As can be seen from the appended photos taken on the date of my site inspection and as verified by me during my site inspection, the subject shed is entirely within the boundary wall of the subject site. I am satisfied that the subject shed will not cause any undue impacts on the residential amenity of no. 102 Grattan Park.

9.2.2 As noted above, the ground level difference between the subject garden at no. 46 and the adjoining garden to the south no. 47, is approx. 1.5m. This results in the southern wall of the subject shed being approx. 4m high when viewed from the lowest point of the garden of no. 47. The 3m long southern elevation of the shed is a blank plastered wall. I am satisfied that the height of the shed is not such that it would cause any undue impact on the residential amenity of no. 47.

9.2.3 Section 3.3 of the first party appeal states that on the southern boundary, a new wall was built entirely within the subject site. Photos submitted by the first party show a block wall prior to any construction work and a new lower level retaining wall on the subject site side. I can verify from my site inspection that both the original boundary wall and the new wall within the site of no. 46 are visible and present on site. I am satisfied that the subject shed is built entirely within the subject site. I note that the Planning Authority have indicated that they accept this fact.

9.3.0 Other

9.3.1 Exempted development rights are not germane to the subject application. Permission to retain the development has been sought and must be adjudicated by the Board.

9.3.2 The boundary walls between the subject site and the neighbouring properties remain as were before the development: stand-alone boundary walls with no load bearing development. No impacts on the structural integrity of the walls should arise from the proposed development.

9.3.0 Appropriate Assessment

9.3.1 Having regard to the nature and scale of the proposed development, the nature of the receiving environment, and or proximity to the nearest European site, no appropriate assessment issues arise and it is considered that 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.

10.0.0 RECOMMENDATION

10.0.1 I have read the submissions on file, visited the site, and have had due regard to the provisions of the Galway City Development Plan, and the planning history of the site. It is considered that, subject to compliance with the conditions set out below, the proposed development would be in accordance with the development plan, would not injure the amenities of the area and would be in accordance with the proper planning and sustainable development of the area. I recommend permission be GRANTED subject to the following conditions:

REASONS AND CONSIDERATIONS

Having regard to the zoning objectives for the area and pattern of development in area, it is considered that subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area or property in the vicinity and would be acceptable in terms of traffic safety, public health and convenience. The proposed development would therefore be in accordance with the proper planning and sustainable development of the area.

- 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. Notwithstanding the exempted development provisions of the Planning and Development Regulations, 2001, and any statutory provision replacing or amending them, no development falling within Class 1 or Class 3 of Schedule 2, Part 1 of those Regulations shall be erected within the rear garden area, without a prior grant of planning permission.

Reason: In the interest of the amenities of the area.

- 3 Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

Gillian Kane
Planning Inspector
20/05/16