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Pleanála

## Inspector's Report ABP-303147-18

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<b>Development</b>	Retention of external fire escape corridor through enclosed car park and onto the rear access roadway to the rear of the property known as "Bridgewater Court".
<b>Location</b>	Lower Fairhill Road, Galway.
<b>Planning Authority</b>	Galway City Council
<b>Planning Authority Reg. Ref.</b>	18296
<b>Applicant(s)</b>	John Monroe.
<b>Type of Application</b>	Retention.
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Downtown Property Management Company.
<b>Observer(s)</b>	Patrick Nolan.
<b>Date of Site Inspection</b>	20 <sup>th</sup> of February 2019
<b>Inspector</b>	Karen Hamilton

## 1.0 Site Location and Description

- 1.1. The site is located at Lower Fairhill Road on the west side of Galway City Centre and the surrounding area is characterised by a mix of residential, retail and entertainment uses.
- 1.2. The appeal site is a small internal alleyway within the existing 4-storey building which provides access to the rear of a public house (Monroes's Tavern), located on the north corner of Dominic Street Upper and flows through to Burkes Lane.
- 1.3. Pedestrian and vehicular access is provided from Burkes Lane to both the rear of the public house and the ground level of Bridgewater Court a 4-storey apartment building over the appeal site.

## 2.0 Proposed Development

- 2.1. The proposed development would comprise of the following:
  - Retention of a fire escape corridor (c. 56m<sup>2</sup>).

## 3.0 Planning Authority Decision

### 3.1. Decision

Decision to grant permission subject to 2 no. conditions.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

The report of the area planner reflects the decision to grant permission and refers to the following:

- The planning history on the subject site for residential development and those nearby sites for commercial.
- Clarification from the applicant there is a need for an additional fire escape corridor, as requested by the Chief Fire Officer.

- A revised location for a bin storage area for the ground floor commercial units which complies with Reg Ref 13/179 and Reg Ref 15/173.
- The bin storage area, as granted in Reg Ref 96/63, is accessible for the residents from a staircase from the upper floor.

#### 3.2.2. Other Technical Reports

Building Control officer- No reference has been provided to a previously granted Fire Safety Certificate (FSC) for these works.

#### 3.3. Prescribed Bodies

None received.

#### 3.4. Third Party Observations

Four observations were submitted from residents and the management company of Bridgewater Court, located over the appeal site, and many of the issues raised are reiterated in the grounds of appeal and others are summarised below:

- The proposal will block an official fire exit for the residential properties above granted under Reg Ref 96/63.
- In addition to the proposed development other unauthorised works have been undertaken in the car park area and the bin storage.
- There is a current legal dispute between the building management and the applicant.

### 4.0 Planning History

#### **Reg Ref 96/63**

Permission granted to construct residential/ commercial development for 4 no ground floor commercial units & 35 apartments/ townhouses above.

## Adjoining Site

### **PL61.246912 (Reg Ref No 15/173)**

Permission granted for a change of use from a retail unit to a sit down restaurant and associated signage.

Condition No 2 restricted the sale of food on the premises to cold food and other food which only required reheating, in order to remove the need for fan extracts and ventilation.

## **5.0 Policy Context**

### **5.1. Galway City Development Plan 2017-2023**

The site is located on lands zoned City Centre (CC) where it is an objective *“To provide for city centre activities and particularly those, which preserve the city centre as the dominant commercial area of the city.”*

### **5.2. Natural Heritage Designations**

None relevant.

### **5.3. Environmental Impact Assessment (EIA)**

The proposed development does not fall within a class of development set out in Part 1 or Part 2 of Schedule 5 of the Planning and Development Regulations and therefore is not subject to EIA requirements

## **6.0 The Appeal**

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

The grounds of appeal are submitted by the resident’s management company of Bridgewater Court, located over the appeal site, and the issues raised are summarised below:

#### Background

- The appellant leases a large part of the applicant's lands as per granted permission Reg Ref 96/63.
- The appeal relates to the approved car park to which the residents of the Bridgewater Court had access via two doorways.
- The car park was converted in 2011 without consent of the Management Company or planning permission to accommodate the escape corridor for Monroe's Tavern.
- The corridor involved the blocking up of the doorway and fire exit connecting the apartments to the car park and bin storage area.
- This application is on foot of enforcement action.

#### Contravention of Reg Ref 63/96.

- The parent permission for the apartments and commercial development is 63/96.
- Drawing No 203a-44 and 203-1c are submitted to indicate the area permitted for car parking.
- The grant of permission included three conditions 5, 7 and 12.
- Condition No 1 supports the use of the fire exit for residents.
- Condition No 5 required the submission of a contribution in lieu of the shortfall of car parking spaces provided (21).
- Condition No 12 required that no car parking spaces were to be sub-divided by means of sale or lease or made available to members of the public.
- Subsequent permissions on the site (Reg Ref 13/179 and PL61.246912 (15/173) show the fire escape as an existing feature and provide for segregated storage areas beside the fire escape door, which may represent a breach of condition no 12 of the parent permission.

#### Residential Amenity

- There is only 14 car parking spaces available and the residents are not permitted to use these spaces.
- The car park is used for commercial use.

- The area functions as a rear service access for Monroe's Tavern.

#### Other

- The applicant has a legal interest and should have been consulted.
- The reference for the parent permission was not included in the public notices.
- The site is part of the ground floor of Bridgewater Court.

## 6.2. Applicant Response

The applicant has responded to the grounds of appeal as summarised below:

#### Fire escape requirement

- Monroe's Tavern/ restaurant is a long established business since 1964, employing over 40 persons and is a landmark.
- An inspection by the fire officer in 2008 deemed the access through the car park as non-compliant and the rear door was identified as the most direct route.
- In addition to the above, the fire officer required an existing doorway from the Bridgewater Court Apartment/commercial block into the car park to be closed up so it would not interfere with the Monroe's Tavern access. This door was originally designed for the commercial units.
- Subsequent permissions to the 4 no. commercial units (Reg Ref 13/179 and PL61.246912, Reg Ref 15/173) required the closing up of all 4 service doorways under the directive of the Fire Office. Each development has its own bin storage area which is accessed externally.
- A letter from Galway City Council, referring to the necessity for the fire escape is submitted, which also states that the works require planning permission, hence the application.

#### Bin Storage

- The applicant is the full and legal owner of the fire escape corridor and the adjacent carpark (as indicated in blue).

- No bin storage was removed to facilitate the fire escape as there was no bin store in existence at this location.
- The application illustrates the location of the bin storage area which is exclusively for the Bridgewater Court Residents.

#### Existing car park

- Condition no. 5 of Reg Ref 96/63 states that 21 spaces would be provided and a levy in lieu of the remaining paid to the Council for the provision of additional car parking.
- Other similar developments required the same provision for a shortfall in car parking and car parks where to be provided for the overall general use of the public.
- In addition, a new access road and link road was to be provided, endorsed by the applicant although this was never undertaken.
- All car parks remain in private ownership.
- No other car parks have been made available to their residents or general public except Monroe's which provided 21 car parking spaces.

### **6.3. Planning Authority Response**

A response from the planning authority has been received in relation to the grounds of appeal as summarised below:

- In relation to the material contravention of the previous permission (63/96) the application is for a retention permission.
- The Chief Fire Officer requested this fire escape onto Burkes Lane and the resident's access to the bin store from the ground to upper floor required blocking up.
- The applicant has indicated that the existing car park on the ground floor has never been available to the Bridgewater Court Residents.
- Section 34 (13) of the Act states that a person shall not have legal rights by sole reason of permission.

- Other concerns by the Fire Officer are a matter for separate codes and the applicant was advised they may be required to apply for a FSC.

#### 6.4. **Observations**

One observation was received from a resident of an apartment in Bridgewater Court and the issues raised are summarised below:

- The fire exit has deliberately blocked off an official fire exit at the end of the entrance hall for the residents of Bridge water Court (32 apartments and 6 townhouses).
- A map has been enclosed to illustrate the approved fire exits for the complex and the proposal is much more than a door.
- The proposal is for a fire exit for Monroe's nightclub which is through the Bridgewater Court complex.
- Extracts from a lease between the applicant and appellant is submitted referring to the restrictions on the sale or leasing of any car parks.
- Condition No 12 of the original permission 63/96 restricts any alterations to the car park.
- Extracts from the Multi Unit Development Act 2011 are submitted to support the definition of common areas as those hall, staircases, passages etc.
- The fire exit is sealed by a padlock.

#### 7.0 **Assessment**

7.1. The main issues of the appeal can be dealt with under the following headings:

- Planning History
- Impact on Residential Amenity
- Other
- Appropriate Assessment



## Planning History

- 7.2. The proposed development is for the retention of an internal alleyway for use as a fire escape associated with Monroe's Tavern public bar and restaurant, located in Galway City Centre. The public house is located along the north of the site, connecting to the fire escape to the rear along Burkes Lane and within the applicant's control. The remainder of the ground floor, including the car park and commercial units are also within the control of the applicant. The grounds of appeal consider the use of this section of the ground floor materially contravenes previous planning permissions on the site. Those permissions which I consider are relevant for assessing the proposal include the parent permission (Reg Ref No 63/96) for the adjoining commercial units and residential units above and a recent Board decision (PL61.246912, Reg ref No. 15/173) relating to the change of use of a commercial unit, located along the east of the overall complex, each are detailed below.
- 7.3. Parent Permission Reg Ref No. 63/96: The grounds of appeal consider the proposal materially contravenes condition No 1 (plans and particulars), No 5 (development contribution in lieu of shortfall in car parking spaces) and No 12 (restriction of the sale or lease of car parking spaces). The ground floor plans of the parent permission accompanied the grounds of appeal to illustrate the original layout including four commercial units and car parking spaces. Alterations to the original permission include the removal of c. 3 car parking spaces and a wheelie bin area to accommodate the fire escape. I note the conditions of the Reg Ref. No 63/96 which I do not consider prevents the submission of subsequent permissions to alter or extend the building. In addition, it is of note the proposal relates to a retention permission, which I consider reasonable to address any planning concerns.
- 7.4. Change of use of Unit 1, PL61.246912 (Reg Ref No. 15/173) - Permission was granted for a change of use in commercial Unit No 1 from retail to sit down restaurant which the grounds of appeal state has never been carried out. The existing ground floor layout, including the fire escape was illustrated on these plans, which the Board considered acceptable. The report of the Inspector referenced the location of a proposed ventilation shaft and having regard to the location of the residential units above required the restriction of these ventilation ducts. Condition no 2 restricted the sale of cold food or other foods which only required reheating, which I consider reasonable. The submitted plans for the proposed development

include a new ventilation shaft extending from the kitchen associated with a restaurant to the east, through the fire escape and existing to the rear of the site on lands also within the applicant's ownership. The development description relates only to the retention of the fire escape although having regard to the Boards previous determination and the applicant's ownership of the surrounding area, I consider a condition restricting any additional ventilation shafts not already permitted, reasonable to protect the residential amenity of existing residents, further detailed below.

- 7.5. Therefore, having regard to the conditions of the parent permission (Reg Ref 63/96) and the plans and particulars submitted with PL61.246912 (Reg ref No. 15/173) and the scale and nature of the fire escape to be retained, I do not consider the proposed development would have a material contravention on any previous planning permissions.

#### **Impact on Residential Amenity**

- 7.6. The proposed development relates to the retention of a fire escape route associated with a public house and associated business, in order to comply with the requirements of the Fire Safety Officer. The grounds of appeal are submitted by the resident's association of the Bridgewater Court Complex, over the appeal site, who consider the proposal will have a negative impact on the on their residential amenity. I have addressed the issues raised separately below.
- 7.7. Fire Escape- The grounds of appeal have raised the validity of the fire escape considering the alterations to the original mixed use scheme and fire escape access for the residential units. Submissions made by the Planning Authority and the applicant state that the fire escape is a necessity. The applicant also states that other works have been undertaken to ensure fire safety compliance for the residential units. However, Fire Safety matters are the subject of a separate code. The planning authority included a separate note to inform the applicant of their obligations.
- 7.8. Car parking- As stated above the car parking on the ground floor was permitted in Reg Ref no 63/96. Condition No 12 required that car parking spaces should not be subdivided by means of sale or lease and shall be made available to the members of public, staff or residents of the premises at such short term (daily or hourly) charges,

if any, that the operator of the car park may make for the use of the said car park. Therefore, I do not consider there are any restrictions on any proposed alteration of the car parking space provision.

- 7.9. Bin Storage- The report of the area planner referred to the issues raised in the submissions by the residents and the need for access to bin storage as the fire escape appeared to block the resident's access. The submitted plans illustrate a revised location for the bin storage area for ground floor commercial units as per Reg Ref 13/179 and PL61.246912 (Reg Ref 15/173) and details of bin storage area for the Bridgewater Court residents. It is noted that the bin storage areas are located outside the appeal site although within the control of the applicant. Having regard to the appropriate provision of waste facilities for the entire development I consider a condition requiring access to and retention of these waste areas for both commercial and residential uses is reasonable.
- 7.10. Having regard to the modest scale and nature of the fire escape and the provision of waste facilities for the Bridgewater Court residents, I do not consider the proposed development would have a significant negative impact on the residential amenity of the existing residents.

#### **Other**

- 7.11. The appellant contends they have a legal interest in the building, as a lessee, and therefore should have been consulted on the proposal. The Development Management Guidelines for Planning Authorities advise that the planning system is not designed as a mechanism for resolving disputes about title to land or rights over land and these are ultimately matters for resolution in the Courts. As section 34(13) of the Planning and Development Act 2000, as amended, states, a person is not entitled solely by reason of a permission to carry out any development, placing the onus on the applicant to be certain under civil law that they have all necessary rights in the land to exercise the grant of permission and retention permission.

#### **Appropriate Assessment**

- 7.12. Having regard to the nature and scale of the proposed development within a serviced area and separation distance to the nearest European site, no Appropriate Assessment issues arise and it is not considered that the proposed development

would be likely to have a significant effect individually or in combination with other plans or projects on the conservation objectives of any European site.

## **8.0 Recommendation**

- 8.1. I recommend that planning permission should be granted, subject to conditions, for the reasons and considerations as set out below.

## **9.0 Reasons and Considerations**

Having regard to the planning history on the site, the pattern of development in the vicinity, the nature and scale of the proposed development and compliance with the provisions of the Galway City Development Plan 2017-2023, it is considered that subject to compliance with the conditions set out below, the proposed development would not adversely affect the residential amenity of the area. The proposed development would, therefore, 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, 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. Within 3 month of this order receptacles for waste for both the commercial units and the Bridgewater Court residents shall be provided and available for use at all times on the premises in accordance with details on Drawing

18/539-01.

**Reason:** In the interest of the amenities of the area and to provide for a satisfactory standard of development.

3. This order shall not be construed as granting permission for any additional works to the commercial units or ventilation ducts. No ventilation ducts are permissible for the adjoining restaurants without a further grant of planning permission.

**Reason:** In the interest of clarity and in order to permit the planning authority to assess the impact of any such works on the residential amenity.

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Karen Hamilton  
Planning Inspector

13<sup>th</sup> of March 2019