



An
Bord
Pleanála

Inspector's Report ABP-307826-20.

Development	Permission for retention of works comprising of rear ground floor kitchen extension, storage semi basement and patio timber deck structure and fencing.
Location	Adrigoolle House, 186 Upper Salthill, Galway H91 K7PH.
Planning Authority	Galway City Council.
Planning Authority Reg. Ref.	20/109.
Applicant(s)	Ms. Trudy Kelliher.
Type of Application	Retention permission.
Planning Authority Decision	Refuse.
Type of Appeal	First Party
Appellant(s)	Ms. Trudy Kelliher.
Observer(s)	Frank & Mary D'Arcy Alan Cantrell.
Date of Site Inspection	13 th October 2020.
Inspector	A. Considine.

1.0 Site Location and Description

- 1.1. The subject site is located to the north west side of Upper Salthill and within the main street in Salthill, to the west of Galway City. The wider area includes a variety of uses including residential and commercial and the site is in close proximity to the Salthill Promenade.
- 1.2. The site has a stated area of 0.019ha (note incorrect area on application form – 0.19ha) and comprises an end of terrace, two bay two storey house. The total floor area of the original house is indicated at 64m² and it included 2 bedrooms. The site levels fall significantly from Salthill Road Upper to the north west (rear) of site at Lenaboy Gardens. The site wraps to the rear of the adjacent house to the south approximately 5.7m from the back wall of the building.

2.0 Proposed Development

- 2.1. Permission is sought, as per the public notices for retention of works comprising of rear ground floor kitchen extension, storage semi basement and patio timber deck structure and fencing, all at Adrigoole House, 186 Upper Salthill, Galway H91 K7PH.
- 2.2. The application submitted included the relevant plans, particulars and completed planning application form.
- 2.3. The proposed development seeks the retention of an extension to the property which has a stated floor area of 55m². The extension comprises a semi-basement storage area of 18m² and a ground floor (at Salthill Road Upper level) kitchen extension of 37m². In addition to the extension, the applicant constructed an extensive timber deck, above ground level at the rear of the property, and fencing.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to refuse planning permission for the proposed development for four reasons, summarised as follows:

1. Visual impact of the raised patio timber deck and timber fencing.

2. Overlooking of adjacent properties and non-compliance with Section 11.3.1(d) of the City development Plan 2017-2023.
3. Impact of basement and extension in terms of overshadowing and overbearing on adjacent properties.
4. Sufficient legal interest not provided.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planning report considered the proposed development in the context of the details submitted with the application, internal technical reports, third party submissions and the City Development Plan policies and objectives. The report makes no reference to Appropriate Assessment Screening.

The Planning Report concludes that the proposed development is not acceptable, and the Planning Officer recommends that permission be refused for the proposed development, for reasons described above

This Planning Report formed the basis of the Planning Authority's decision to refuse planning permission.

3.2.2. Other Technical Reports

Transportation Department: No objection subject to compliance with conditions.

3.2.3. Prescribed Bodies

None.

3.2.4. Third Party Submissions

There are 4 no. third party objections/submissions noted on the planning authority file. The issues raised are summarised as follows:

- The development has encroached onto third party land.
- Overlooking and loss of privacy
- Noise impacts and impacts on existing residential amenity.
- Bulk and scale of the development, including the fence and deck.

- Loss of daylight / sunlight due to the scale of the extension.
- Impact on existing neighbours' fence which had been standing for 20 years.
- Impacts on right of way.
- Issues with the description of the development and quality of plans submitted.
- The proposed development is out of keeping with existing character in the area.
- Builders have entered third party property without permission and have damaged private property.
- The development has resulted in erosion of third-party property.

It is requested that retention permission be refused.

4.0 Planning History

There is no relevant planning history pertaining to the subject site.

The following planning history relates to sites immediately adjacent to the subject site:

ABP ref PL61.223669 (PA ref: 07/202): Permission granted on appeal for part conversion and rear extension to dwelling house to create a residential unit and hairdressing studio at 184 Upper Salthill Galway.

This site lies to the north of the current appeal site

ABP ref PL61.245041 (PA ref: 15/18): The Board granted permission for demolition of existing single storey flat roof building and the construction of one number detached dwelling house with associated basement and all ancillary site works, boundary treatments, new access from Lenaboy Gardens Road, connection to public sewer, watermains surface water system and all associated site works and landscaping.

This site is located to the rear and north of the current appeal site.

ABP ref PL61.248081 (PA ref: 16/160): Outline permission refused for construction of detached two storey over basement dwelling on a site which formed by part of rear gardens of No 188 Upper Salthill, for the following reason:

“On the basis of the submissions made in connection with the application and the appeal, the Board is not satisfied that the proposed development would not endanger public safety by reason of traffic hazard due to interference with the safe and free flow of traffic and pedestrians. It has not been demonstrated that the additional vehicular turning movements that would be generated on the cul-de-sac, along the opposite side of which there is parallel parking, and which is narrow in width and close to a junction, can be safely accommodated”.

This site lies to the rear of the current appeal site.

ABP-304559-19 (PA ref: 18/392): Permission sought for demolition of an existing building and the construction of a four and a half storey residential block comprising of 6 two bed and 6 three bed duplex units with surface parking to be accessed from Lenaboy Gardens along with all associated site works and service connections. Following a response to a FI request, the development was amended to provide 9 units in a scheme of part 2 (onto Lenaboy Gardens street level) and part 3 storey (rear elevation) 3 bed terraced houses, 2 no. 2 bed duplex and 2 no. 1 bed apartments.

This site comprises the site of ABP ref PL61.245041 (PA ref: 15/18).

ABP-305738-19 (PA ref: 19/224): Permission granted for a dwelling house and all associated site works on the site to the rear of the current appeal site.

5.0 Policy and Context

5.1. Development Plan

- 5.1.1. The Galway City Development Plan 2017 – 2023, is the relevant policy document relating to the subject site. The site is located on essentially the main street in Salthill and on lands zoned R1 Residential where it is the stated objective ‘To protect residential amenity and to provide for limited associated uses’.
- 5.1.2. The site is within an area defined as “Established Suburbs” and Section 2.6 of the Development Plan notes:

“It is recognised that these areas are dynamic, and that potential still exists for some additional residential development which can avail of existing public transport routes, social and physical infrastructure. It is the priority of the Council to ensure that new development will not adversely affect the character of these areas”.

5.1.3. Section 8.7 provides for reinforcement of the distinctive character of the city by way of a high standard in the built environment through urban design good place making ensuring a high-quality built environment and creation of sustainable neighbourhoods.

5.1.4. Section 11.3 Standards for residential development.

5.2. **Natural Heritage Designations**

The site is not located within any designated site. The closest Natura 2000 site is the Galway Bay Complex SAC (& pNHA)(Site Code: 000268) and the Inner Galway Bay Complex SPA (Site Code: 004031) which is located approximately 120m to the east of the site.

Other sites in the vicinity:

- Lough Corrib SAC (Site Code: 000297) 1.5km to the north east
- Connemara Bog Complex SAC (& pNHA) (Site Code: 002034) 12.5km to the north west.

5.3. **EIA Screening**

Having regard to nature and scale of the development, together with the brownfield nature of the site, 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 at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

This is a first-party appeal against the decision of the Planning Authority to refuse planning permission for the proposed development. The issues raised are summarised as follows:

- The application was not given an opportunity to address the issues raised in the reasons for refusal.
- It is considered that the description as a 'raised timber deck area' is misleading as part of it was constructed on existing ground level. The area to the rear of no. 188 has not functioned as an amenity area / private open space for some time and the deck is located below window level. Minor amendments are proposed to address the concerns of the PA and adjoining residents.
- It is considered that the timber fence along the rear side boundary with No. 190 can remain as it is located to the north-east of the property and does not generate any overshadowing.
- It is not considered that the proposed mono-pitch single storey contemporary extension would be out of character with the rear-built environment of the area.
- A number of planning permissions, including a 4-storey residential block, have been granted in the rear area – the Board will note that this is not the case and permission was granted for a part 2 and part 3 under ABP-304559-19.
- The development does not overlook private open space and given the site levels the development is not located above ground level.
- A Shadow study was prepared and demonstrates partial overshadowing of No. 184 – Grafton Hair & Beauty at ground floor with residential at first floor level. There is no overshadowing of Nos. 188 or 190.
- Issues in relation to sufficient legal interest are a civil matter. The applicant is satisfied that the subject site is located entirely within their ownership.

The appeal includes the following amendments to the development for retention:

- Removal of existing timber patio deck, railing and stairs
- Replacement stairs to link existing balcony to lower garden
- Convert timber patio deck area for form an extended part of the lower garden
- Lower the timber fence to rear of No. 188 by 0.3m
- Plant native trees between the converted lower garden area and the rear of No. 188.
- Install a 1.8m high opaque glass privacy screen to south west and north eastern edges of the balcony.

It is requested that permission be granted.

6.2. Planning Authority Response

None.

6.3. Observations

There are two observes noted in relation to this appeal as follows:

1. Alan Cantrell, No. 188 Upper Salthill. His comments are summarised as follows:
 - Agrees with the decision of Galway City Council to refuse.
 - The manner in which the development has been carried out has had an impact on health and wellbeing.
 - In terms of the applicants' statement that she was given no opportunity to address concerns, it is submitted that as she built an unauthorised development, this application to retain is to regularise the matter. An application for permission should have been made before works started.
 - The information submitted in Section 5.2 of the appeal is incorrect. A deck has been constructed on a steel platform and another at ground level. No deck was constructed on natural levels as there is a sheer drop from observers' courtyard.

- The observers' amenity space is not just a rough surface as indicated. It is a private residential amenity space. The boundary and clothesline were damaged and dismantled by the works carried out on the appeal site.
- The applicant gave incorrect information to the observer when questioned and the works to the appeal site have resulted in subsidence to the observers site. A retaining wall should be constructed.
- Issues raised in terms of tapping into sewer line from No. 188.
- Most of the proposed minor modifications are agreeable.
- Concerns that trees proposed to be planted may have an impact in terms of overshadowing and root ingress.

It is requested that permission be refused.

2. Mr. & Mrs. Frank D'Arcy. No. 190 Upper Salthill Road. Comments are summarised as follows:

- Refers to the original grounds of objections to Galway City Council.
- No objection in principle to development but the proposed development encroaches observers' property, will overlook and is out of scale and will have a negative impact on the amenity and enjoyment of their property.
- The development does not ensure the protection of residential amenity.
- The developer entered private property during the development of the unauthorised works and damaged property (boundary fence) and encroached on the observers' property.
- The proposed modifications will not reduce the impact of the development.
- The shadow study does not present the existing situation and is difficult to read.

It is requested that permission be refused.

7.0 Assessment

Having undertaken a site visit and having regard to the relevant policies pertaining to the subject site, the nature of existing uses on and in the vicinity of the site, the nature and scale of the proposed development and the nature of existing and permitted development in the immediate vicinity of the site, I consider that the main issues pertaining to the proposed development can be assessed under the following headings:

1. Principle of the development
2. Residential Amenity
3. Modifications proposed
4. Other Issues
5. Appropriate Assessment

7.1. Principle of the development

- 7.1.1. At the outset, I would advise the Board that the scales provided on the submitted drawings are not correct in places. For example, the original site layout plan is not scale 1:500, rather it is 1:200. The same is true for the drawings submitted in support of the first party appeal.
- 7.1.2. The proposed development seeks to retain a residential extension to the rear of a house. There are two elements to the development including retention of the kitchen extension with semi-basement storage and the patio timber deck structure and fencing. The site is zoned for residential purposes and in principle, the development can be considered as acceptable.

7.2. Residential Amenity:

- 7.2.1. The third-party submission in relation to the proposed retention of the works all cite impacts on residential amenity as an issue. Indeed, the Planning Authority include impacts on existing dwellings and residential amenity in 3 of the reasons for refusal.
- 7.2.2. The proposed extension extends 9m from the original rear wall of the house and is 5m in width. The property to the north of the subject appeal site was extended under

permission ABP ref PL61.223669 (PA ref: 07/202) which included part conversion of the ground floor for commercial use while the rear extension incorporated bedrooms to serve the residential element of the site. As part of this development, a large patio was included.

- 7.2.3. The as built kitchen extension is large and extends beyond the rear wall of the property to the north. Given the orientation of the site, this has the potential to overshadow the private residential amenity space of the property to the north. I note the comments of the appellant suggesting that if any 'exempted' or more modest rear extension had been constructed on the site it would invariably cause some extent of overshadowing to the property to the north. In support of the proposed development, the appellant submitted a shadow study which is advised as demonstrating partial overshadowing of No. 184. It is further submitted that as No. 184 is a mixed use commercial and residential premises, it has a reduced amenity/open space requirement.
- 7.2.4. In terms of the above comments, I would suggest that the development constructed is unauthorised and not within the exempted development limitations and therefore, the argument is irrelevant. In addition, I would not accept the comment that as No. 184 is a mixed-use development, the amenity/open space requirement is in any way reduced. The rear and upper floors of the property are in residential use with the patio developed as part of the permitted development which serves as a residential amenity space. I find no logic for this argument and only serves to exacerbate the perception of impacts on existing residential amenity in my opinion.
- 7.2.5. In terms of the shadow study submitted, as the applicant failed to produce a pre-development shadow study, there is nothing to compare the submitted details with. While the submitted information shows that the development clearly overshadows the adjoining property to the north, the extent to which the unauthorised extension impacts on this overshadowing cannot be determined.
- 7.2.6. With regards to impacts on houses to the south, I note the proposed amendments to the development, discussed further below in section 7.3 of this report, which include the removal of the large timber deck directly to the rear of the private amenity space of No. 188 Upper Salthill Road. Certainly. The original proposal would have a significant impact on this private amenity space and the residential amenities of the

adjoining property. I would note that the issues raised in the PAs decision to refuse permission for the development relate to the deck area primarily.

7.2.7. In the context of my comments above, and having undertaken a site inspection, and having regard to the urban context of the site, together with the overall design of the kitchen extension as built, I am satisfied that this element of the development is acceptable. I am satisfied, notwithstanding the potential impact of the building on the patio area to the rear of no. 184 Upper Salthill Road most likely in the mornings and early afternoons, adequate amenity is retained to this residential amenity space in the evenings, given its western orientation.

7.3. **Modifications Proposed**

7.3.1. The Board will note that the appellant has submitted modifications to the development in order to address the Planning Authority concerns as detailed in the reasons for refusal of permission. The modifications are indicated as follows:

- Removal of existing timber patio deck, railing and stairs
- Replacement stairs to link existing balcony to lower garden
- Convert timber patio deck area for form an extended part of the lower garden
- Lower the timber fence to rear of No. 188 by 0.3m
- Plant native trees between the converted lower garden area and the rear of No. 188.
- Install a 1.8m high opaque glass privacy screen to south west and north eastern edges of the balcony.

7.3.2. In terms of the above, and should the Board be minded to grant permission in this instance, I recommend that all of the above modifications be conditioned. Certainly the omission of the extensive deck and the replacement of the timer railings as originally proposed with opaque glass privacy screens, will reduce the visual impacts of the development and will secure the maintenance of existing residential amenity and privacy associated with the houses to the south of the site, ie, Nos. 188 and 190 Upper Salthill Road. It will further remove the concern of non-compliance with Section 11.3.1 of the City Development Plan as indicated in Reason no. 2 of the Planning Authority's decision to refuse permission.

7.3.3. Any proposed planting in the newly incorporated lower garden area adjacent to the rear boundary of No. 188 should be submitted for the written agreement of the Planning Authority and the landscaping plan should be prepared by a suitably qualified professional to ensure the protection of adjoining properties.

7.4. **Other Issues**

7.4.1. **Site Boundary Issue**

The Board will note that the pertinent issue arising in one of the third-party observations relates to a disagreement on the boundary of the site, which is a civil matter. In addition, the Board will note the concerns of third parties as they relate to evidence of subsidence and erosion within their property as a result of the ground works undertaken as part of the development the subject of this retention application.

I would be satisfied that the provision of Section 34(13) of the Planning & Development Act, 2000 as amended, which states 'A person shall not be entitled solely by reason of a permission under this section to carry out any development' is sufficient to ensure that the civil issues are rectified prior to the commencement of development on the site.

7.4.1. **Water Services**

I note the third-party concern that the developer has connected to a sewer which serves the adjoining property. I note no comments were received from Irish Water or the Water Services section of Galway City Council. I would note, however, that any alterations to public services should be agreed with the relevant section in advance of development works being carried out. As there was no objection to the proposed development in terms of water services, I am satisfied that there is capacity to accommodate the residential extension.

7.4.2. **Development Contribution**

The subject development is liable to pay development contribution, a condition to this effect should be included in any grant of planning permission.

7.4.3. **Appropriate Assessment**

The site is not located within any designated site. The closest Natura 2000 site is the Galway Bay Complex SAC (& pNHA) (Site Code: 000268) and the Inner Galway Bay Complex SPA (Site Code: 004031) which is located approximately 120m to the east of the site.

Overall, I consider it is reasonable to conclude on the basis of the information available that the proposal individually or in combination with other plans or projects, would not adversely affect the integrity of a Natura 2000 site having regard to the nature and scale of the proposed development and separation distances involved to adjoining Natura 2000 sites. It is also not considered that the development would be likely to have a significant effect individually or in combination with other plans or projects on a European Site.

8.0 **Recommendation**

I recommend that planning permission be granted for the proposed development for the following stated reason and subject to the following stated conditions.

9.0 **Reasons and Considerations**

Having regard to the pattern of permitted development in the area, to the provisions of the Galway City Development Plan 2017-2023, and to the layout and design as submitted, the Board considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential or visual amenities of adjoining properties, would not seriously injure the residential amenities of future occupants and would be acceptable in terms of traffic safety and convenience. 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, as amended by the further plans and particulars submitted to An Bord Pleanála on the 5th day of August

2020, 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. The proposed development shall be amended in accordance with the details as submitted to An Bord Pleanála on the 5th day of August 2020 as follows:
 - (a) Removal of existing timber patio deck, railing and stairs
 - (b) Replacement stairs to link existing balcony to lower garden
 - (c) Convert timber patio deck area for form an extended part of the lower garden
 - (d) Lower the timber fence to rear of No. 188 by 0.3m
 - (e) Plant native trees between the converted lower garden area and the rear of No. 188.
 - (f) Install a 1.8m high opaque glass privacy screen to south west and north eastern edges of the balcony.

All of the above works shall be carried out within 6 months of this grant of planning permission and photographic evidence showing the completed works shall be submitted to the Planning Authority within this timeframe.

Full details of the proposed planting scheme, prepared by a suitably qualified person, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of clarity, residential amenity and proper planning and sustainable development.

3. The existing dwelling and proposed extension shall be jointly occupied as a single residential unit and the extension shall not be sold, let or otherwise transferred or conveyed, save as part of the dwelling.

Reason: To restrict the use of the extension in the interest of residential amenity.

4. 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 take place within the curtilage of the house, [ALT shall be erected on the site/within the rear garden area], without a prior grant of planning permission.

Reason: In order to ensure that a reasonable amount of rear garden space is retained for the benefit of the occupants of the extended dwelling and in the interest of the amenities of the area.

A. Considine

Planning Inspector

19th October 2020