



An  
Bord  
Pleanála

## Inspector's Report

### ABP-308350-20

---

<b>Development</b>	Retention and completion of a projected/pop-out window at rear of dwelling. Also retention of as built minor amendments to permitted pl. ref. no. 18/417
<b>Location</b>	No. 15 Lenaboy Park, Salthill, Galway
<b>Planning Authority</b>	Galway City Council
<b>Planning Authority Reg. Ref.</b>	20192
<b>Applicant(s)</b>	Robert & Patricia Staunton
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	First and Third Party
<b>Appellant(s)</b>	(1) Robert & Patricia Staunton. (2) Mary Iona Belov & Others
<b>Date of Site Inspection</b>	09 <sup>th</sup> December 2020
<b>Inspector</b>	Colin McBride

## 1.0 Site Location and Description

1.1. The appeal site, which has a stated area of 0.0542 hectares, is located to the west of Salthill and to the south west of Galway city centre. The appeal site is occupied by no. 15 Lenaboy Gardens, which is a two-storey dwelling that has recently been extended. To the north of the site is no. 14, which is a detached two-storey dwelling and to the south is no. 16, which is also a two-storey detached dwelling. To the west and rear of the site is a green area with frontage along Dr. Mannix Road and Oaklands.

## 2.0 Proposed Development

2.1. Permission is sought for retention and completion of projected/pop out window at the rear of existing dwelling at no. 15 Lenaboy Park. The permission is to include retention of as build minor amendments to permitted ref no. 18/417.

## 3.0 Planning Authority Decision

### 3.1. Decision

Permission granted subject to 6 no. conditions. Of note is the following conditions...

Condition no. 1: Development to be carried out as per plans submitted on the 17<sup>th</sup> July 2020.

Condition no. 2: Alterations required including setback of first floor wall a minimum of 1.5m from the boundary with no. 16, setback of the ground floor and first floor extension 2.66m from the original rear wall, master bedroom window to incorporate 1.5m obscure glazed/timber screen adjacent no. 16, first floor landing window to be fitted with obscure glass, side windows of pop out windows to be maintained in obscure glazing, first floor high level window to master bedroom to be a minimum 1.75m above internal floor level and fitted with obscure glazing.

Condition no. 3: Other than the change required to condition no. 2 the permission shall be carried out in accordance with ref no. 18/417.

## 3.2. **Planning Authority Reports**

### 3.2.1. Planning Reports

Planning Report (10/09/20): It was considered that retention could be granted however such should be subject to a number of modifications. A grant of permission was recommended based on the conditions outlined above.

### 3.2.2. Other Technical Reports

Transport Department (24/08/20): No objection subject to conditions.

## 3.3. **Prescribed Bodies**

None.

## 3.4. **Third Party Observations**

### 3.4.1 Six submission were received. The issues raised included...

- Adverse impact on residential amenity through reduced privacy/overlooking, boundary issues, design out of keeping with existing dwellings in the area, issues with planning status of development on site.

## 4.0 **Planning History**

4.1 18/417: Permission granted to extend the existing dwelling, the permission is to include two storey and single storey extensions to side and front of existing house, it is also to include amendments to all existing associated services & landscaping and front access driveway and parking including demolition of a single storey garage, porch and kitchen annex.

## **5.0 Policy Context**

### **5.1. Development Plan**

The relevant development plan is the Galway City Development Plan 2017-2023 with the site zoned Residential (R) with a stated objective ‘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’.

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

None in the vicinity.

### **5.3. EIA Screening**

5.3.1 Having regard to nature and scale of the development, which is amendments to a permitted development and the built-up location 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**

6.1.1 A first party appeal has been lodged by Robert & Patricia Staunton. The grounds of appeal are as follows...

- The first party appellant outlines the planning history of the site including details of plans submitted and agreed with the Planning Authority to comply with condition no. 6 of ref no. 18/417.
- The appeal concerns the application of condition no.s 1, 2 and 3. It is noted that condition no. 1 and 3 are in conflict and that condition no. 2 seeks to address matters beyond the scope of the permission sought.

- The applicants/appellants consider that the conditions imposed seek to address matters already agreed under permission ref no. 18/417 and is beyond the confines of the development sought under ref no. 20/192.
- It is noted that the conditions applied do not comply with the Development Management Guidelines in that conditions must relate to the development sought and conditions that radically alter the nature of the development would usually be unacceptable.
- It is consider that the planning conditions relate to a development that has been permitted and constructed under a separate application, ref no. 18/417 and such issues should be set aside with the conditions seeking to alter a permitted development. Condition no.s 1, 2 and 3 should be omitted.

6.1.2 A third party appeal has been lodged by Mary & Iona Belov and others (13, 13A, 14, 16, 1, 20 Lenaboy Park, Galway and 89 Seacrest, Barna Road). The grounds of appeal are as follows...

- The appellants outline the planning history of the site and the nature of works that have been carried out. The appellants note that work has continued on site despite an enforcement notice and the pop out window and other windows have been installed after submission of the application.
- The appellants note that the increased depth of the extension that has been built and part of compliance drawings for condition no. 6 of ref no. 18/417 are unsolicited alterations not incorporated into the original grant of permission and should not be allowed planning permission by default.
- It is noted that the side extension as constructed has inadequate regard to adjoining amenity, and is physically overbearing relative to no.s 16 and 17, out of character with the streetscape and detrimental to the visual amenities of the area, is unauthorised development and should be demolished.
- The design and scale of the proposal would be contrary Development Plan policy.
- The appellants note that development is ongoing and such works should cease for the duration of the planning process.

- The drawings submitted are incomplete with issues determining the height or size of roof lights.
- The windows in the master bedrooms result in overlooking of no. 16 and would be contrary Development Plan policy.
- In relation to the pop out windows concerns are expressed regarding impact in terms of overlooking and the fact they project further than beyond the rear building line than indicated and that despite the proposal to install opaque glass clear glazing has already been installed. If permitted these should be reduced to a projection of 675mm from the rear building line.
- The front corner window at first floor level would result in overlooking of no. 14. The 2 no. roof lights on the southern face of the southern slope of the roof present a potential overlooking issue. Conditions should be applied restricting use of the attic space and the flat roof sections from being a balcony/roof terrace.
- The owners/occupier of no. 16 raise concerns regarding the proximity of the extension to their property and note that the side extension is less than 1.5m from the side boundary despite the provision of condition no. 6 of permission ref no. 18/417. The issues concerning the side extension has not been dealt with in appropriate manner.
- The site layout is inaccurate with the site in this case smaller than the development approve under ref no. 18/417 with a portion of the rear garden smaller in depth. There is failure to comply with condition no. 7 of permission ref no. 18/417 in relation to boundary fencing.
- The issues regarding the side extension may set a precedent.
- The appellants also raise concerns regarding location of a vent relative to parking, a mature tree that has been cut and the provision of car parking taking up the entire front garden contrary to Development Plan policy.

## 6.2. Applicant Response

### 6.2.1 Response by the applicants, Robert & Patricia Staunton.

- The applicant has complied with condition no. 6 or permission ref no. 18/417 with a compliance drawing signed off and the development subject to such constructed. This is not matter for debate under this application.
- The drawings submitted are complete and sufficient to assess the proposal.
- It is noted that the third party appellants are seeking to reopen issues that have been assessed and previously and have resulted in a grant of permission under ref no. 18/417.

## 6.3. Planning Authority Response

### 6.3.1 Response by Galway County Council

- The Planning Authority note that condition no. 6 of ref no. 18/417 required amended drawings showing a 1.5m separation distance from the side boundary with no. 16. Its I noted that the revised drawings submitted by the applicant which in addition to this setback also included an increase in the floor area of the development at ground and first floor level were not solicited and are not covered in the terms of the original condition. The condition imposed (Condition no. 2 required that these additional elements be removed).

## 6.4. Further Responses

### 6.4.1 Response by Mary & Iona Belov and others (13, 13A, 14, 16, 1, 20 Lenaboy Park, Galway and 89 Seacrest, Barna Road).

- The appellants outline the background to the development and not that there is a requirement under permission ref no. 18/417 for a1.5m separation distance from the boundary with no 16. It is noted that the as built development on site does not comply with such in addition to such included

unsolicited development carried out increasing the size of the permitted development.

- The third part appellants disagree that the as built development on site is permitted and it is noted that elements such as the pop out window project further than stated and the separation distance between the side of the extension and the boundary with no. 16 is less than 1.5m. The development should be refused in order to let the enforcement section deal with the development on site.
- The unsolicited alterations carried out on foot with compliance with condition 6 result in the provision of elements (windows) to which there were no opportunities for public scrutiny.
- The third party appellants consider that condition no. 2 is necessary in the event that permission is granted.
- The third party appellants how permission can be granted for retention and completion when development on site has already been completed.

## 7.0 **Assessment**

7.1 Having inspected the site and the associated documents the main issues can be assessed under the following headings.

Development description/planning history

Physical impact/adjoining amenity

Other issues

7.2 Development description/planning history:

7.2.1 The development description is the retention and completion of a projected/pop out window at the rear of an existing dwelling at no. 15 Lenaboy Park. The description also notes that the proposal is for retention of as built minor amendments and such



are identified on the drawings submitted. The elements subject to this permission as described in the public notices and drawings are as follows...

Retention of a pop out window at first floor level on the rear elevation.

Retention of a pop out window at first floor level on the rear elevation, which was formerly permitted as a full height feature at ground and first floor level and is now a cantilevered structure at first floor level only.

2 no. roof lights on southern roof plane.

2 no. roof lights on the roof plane of the single-storey element to the front of dwelling.

This property was the subject of a previous application granted under ref no. 18/417 for permission to extend the existing dwelling, the permission is to include two storey and single storey extensions to the side and front of existing house, it is also to include amendments to all existing associated services & landscaping and front access driveway and parking including demolition of a single storey garage, porch and kitchen annex.

7.2.2 There are a number of issues raised on this case concerning the planning status of existing works carried out and are raised by both the first party appellants and the third party appellants. The issue stems back to condition no. 6 of permission ref no. 18/417, which required that prior to the commencement of development revised drawings were to be submitted and agreed showing the first floor cantilevered section set back a minimum of 1.5m from the boundary with no. 16. The applicants submitted revised drawings to comply with this condition to the Planning Authority and such were deemed to be compliant and signed off by the Planning Authority. It appears that these drawings although providing for the required setback also provided for an increased level of development at ground and first floor level with the extension having an increased depth and width where the boundary steps south. (with no. 16).

7.2.3 There appears to be a dispute regarding the status of these works with the applicant claiming that such were signed off and subsequently constructed and that the Planning Authority in applying conditions no.s 1,2 and 3 are trying to retrospectively alter the approved development due the fact the increased depth/width of the extension was signed off inadvertently. The third party appellants' raises concerns regarding the nature and scale of the development constructed on site, its adverse impact on adjoining amenities and the fact that there is unauthorised development.

7.2.4 The first thing I would note is the development description relates only to the items identified in the public notices and on the drawings submitted (listed under section 7.2.1). This does not include disputed alterations in the form the extension to the side and rear. Despite the description of the development there are a number of issues concerning the planning status of development on site that need to be addressed and I do not consider that the elements described should be dealt with in isolation of such. There are a number points that need to be made in relation to this case. Firstly the drawing submitted for compliance with condition no. 6 of ref no. 18/417 lead to the provision of additional floor area/extension of the development that would have under the normal course of events required permission under Section 34 of the Planning and Development Act, 2000 (as amended). The compliance drawing was accepted to be compliant with no. 6 and such was confirmed by email and subsequently constructed on site.

7.2.5 In seeking permission for retention and completion of alterations the Planning Authority have imposed a number of conditions to reduce the scale of extension to the side and rear to deal with the issue created by signing off the compliance drawing. The first party appellants' are appealing such conditions on the basis that the development constructed is authorised. There is a third party appeal, which raises issues concerning the compliance drawings and the fact that such have allowed for additional development that has not be subject to the normal procedure under Section 34 of the Planning Act including adequate public scrutiny. Despite the Planning Authority signing off the compliance drawing, I am off the view that such gave rise to additional development that would normally be subject to the provisions of Section 34 of the Planning and Development Act and a number requirements in

regard public notices and development description under Part 4 of the Planning and Development Regulations, 2001 (as amended) regarding the control of development. I would note the recommendations of the Development Management Guidelines in regard to compliance conditions and the situations where compliance conditions would not be appropriate including such as “where compliance with the condition might affect the amenities of a third party, without that party having the right to comment on the compliance submission”.

7.2.6 What is required is application for retention of the development constructed on site to deal with the issues that have arisen including the additional development constructed on foot of the compliance submission for condition no. 6 of ref no. 18/417. I am to a degree sympathetic to the applicants as they did submit a compliance drawing and such was signed off by the Planning Authority. I do however consider that such included additional development in excess of what the condition permitted and development, which would under normal circumstances be subject to the provisions of Section 34 of the Planning and Development Act, 2000 (as amended). The consequences of handling of the compliance issue is a matter for the applicants to take up with the Planning Authority. In the context of what is proposed under this application I am of the view that the proposal entails retention and completion of minor amendments to permitted ref no. 18/17. Notwithstanding the development description there is a clear dispute regarding the planning status with development that would normally be subject to the provisions of Section 34 of the Planning Act carried out on site and is not covered by an appropriate grant of permission. To permit the proposed development would consolidate unauthorised development and be contrary to Section 34 of the Planning and Development Act (as amended). The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

7.2.7 In relation to the first party appeal I would note that given that the issues concerning the development on site outlined above, it is not appropriate to apply conditions that retrospectively attempt to address the disputed planning status of development carried out on foot of ref no. 18/417. An appropriate permission clearly describing

the nature of the works proposed is required to deal with the planning status of development on the appeal site.

7.2.8 In relation to the issues raised regarding unauthorised development, enforcement and the carrying on of works, I would note that the issue of planning status of development carried out under ref no. 18/417 is disputed. In regards to enforcement action and the carrying out of works on site, the Board has no function or powers in relation to enforcement. The Planning Authority have ample power to deal with the issue of enforcement and such falls under their remit.

7.3 Physical impact/adjoining amenity:

7.3.1 An isolated assessment of the element described in public notices relates to the following elements...

Retention of a pop out window at first floor level on the rear elevation.

Retention of a pop out window at first floor level on the rear elevation, which was formerly permitted as a full height feature at ground and first floor level and is now a cantilevered structure at first floor level only.

2 no. roof lights on southern roof plane.

2 no. roof lights on the roof plane of the single-storey element to the front of dwelling.

In regards to impact on adjoining properties the proposal for retention of the roof lights on the southern roof plane and on the roof plane of the single-storey element to front of the dwelling, would be satisfactory. Such are high level roof lights that do not facilitate overlooking and would have a negligible impact in terms of visual amenity.

7.3.2 The pop out windows at first floor level are mainly orientated as per the prevailing pattern of development and extend 0.675m from the rear elevation. In granting permission a condition was attached requiring provision of opaque glazing in the size panels of such. I would be of the view that the scale and orientation of the pop out windows would not be out of keeping with the existing pattern of development and would not facilitate a significantly increased level of overlooking than windows

flush to this elevation subject to applying a condition requiring opaque glazing in the side panels. I would consider that the level of projection of the windows is not excessive and that such would not result in a significant degree of unacceptable overlooking of adjoining properties.

7.3.3 The third party appellants raise a number of issue regard incomplete plans, inaccurate drawings, altered site layouts etc. I am satisfied that the information submitted is sufficient to assess the proposed development, which are minor amendments.

## **8.0 Appropriate Assessment**

8.1 Having regard to the nature and scale of the proposed development and its proximity 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 a European site.

## **9.0 Recommendation**

9.1. I recommend a refusal based on the following reason.

## **10.0 Reasons and Considerations**

1. The proposal entails retention and completion of minor amendments to permitted ref no. 18/17. Notwithstanding the development description there is a clear dispute regarding the planning status with development that would normally be subject to the provisions of Section 34 of the Planning Act carried out on site and is not covered by an appropriate grant of permission. To permit the proposed development would consolidate unauthorised development and be contrary to section 34 of the Planning and Development Act (as amended). The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

---

Colin McBride  
Planning Inspector

13<sup>th</sup> January 2021