



An
Bord
Pleanála

Inspector's Report ABP-309776-21.

Development	Retention of development comprising the erection of an external metal fire escape structure to the rear of existing dwelling.
Location	No.91 Sandyvale Lawn, Headford Road, Galway.
Planning Authority	Galway City Council.
Planning Authority Reg. Ref.	20/366
Applicant(s)	Paul Higgins
Type of Application	Retention Permission.
Planning Authority Decision	Refuse.
Type of Appeal	First Party v Refusal
Appellant(s)	Paul Higgins.
Date of Site Inspection	8 th May 2021.
Inspector	Patricia Calleary.

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1.0 Site Location and Description

- 1.1. The appeal site, with a stated area of 0.0158 hectares, comprises a semi-detached house and its curtilage and is located within an established housing estate, Sandyvale Lawn, in Terryland, in the east part of Galway city. The house and site are accessed off an internal residential road within the development which in turn connects directly with the N84, Headford road. Terryland Forest Park, a 50-hectare woodland and riverine park with walkways, is located to the rear (south) of the site.
- 1.2. The house is surrounded by similar house types and it directly adjoins semi-detached house number 92 to the east and is adjacent to houses numbers 89 and 90, a pair of semi-detached houses to the west. The house on site, No.91, has a two-storey flat roofed extension added to the rear (south) and the escape ladder structure that is proposed to be retained is attached to the flat roof and rear wall of this extension. The boundaries to the house site are marked by blockwork walls of varying heights. Ground levels at the site and in the surrounding Sandyvale Lawn area are generally flat.

2.0 Proposed Development

- 2.1. The proposed development for retention comprises an external metal fixed ladder and walkway structure, incorporating a safety cage and landing area at first floor level, to the rear of an existing dwelling. The metal walkway structure leads from a roof window in the original house and runs across the flat roof of the two-storey extension. It then continues vertically to ground level via a fixed ladder and there is landing structure provided at first floor level. The structure also includes a metal safety cage which extends above the flat roof section of the two-storey extension. The structure would serve to provide a means of emergency escape from the attic space of the original dwelling house structure. It is submitted by the appellant that the attic space is currently used for storage and this use would continue.
- 2.2. The application was accompanied by a cover letter which referred to a warning letter (ref: UD 97/077) received in relation to the structure, the subject matter of this appeal. It is submitted that the escape stairs would function to address non-compliance with the Building Regulations with respect to vertical means of escape.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The Planning Authority issued a decision to **refuse retention permission** for three stated reasons summarised as follows:

Reason 1: No permission exists for the use of the attic storage space as habitable accommodation and it is considered that a grant of permission would facilitate unauthorised development of the attic space for habitable use, which does not comply with the current building regulations and would therefore be prejudicial to public health and safety and contrary to proper planning and sustainable development.

Reason 2: The proposed development cannot meet standards for preventing overlooking and the development if permitted would give rise to undue overlooking of adjoining properties.

Reason 3: The development by itself or by the precedent it would create would be out of character with the dwelling and adjacent residential properties and would be visually obtrusive and injurious to the visual and residential amenities of the dwelling and adjoining residential properties.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The recommendation within the report of the Planning Officer (February 2021) reflects the decision of the Planning Authority to refuse permission and noted the following:

- while it is stated that the attic space is used as storage, the fire escape structure would facilitate the unauthorised use of the attic area for habitable space;
- the attic space has a low floor to ceiling height (2.1m) which is less than that required by the Building Regulations for habitable space, the room can therefore only be used as storage;
- the structure is a visually obtrusive and incongruous feature on the dwelling, albeit to the rear of the dwelling;

- the structure would not be in keeping with the character of the existing dwelling or other dwelling houses in the vicinity;
- the structure would not comply with the standards in the City Development Plan addressing overlooking (Section 11.3.1(d) – Overlooking) and would enable overlooking of adjacent properties, particularly from the flat roof and first-floor landing, thereby eroding the privacy of such properties.

3.2.2. Other Technical Reports

- Chief Fire Officer (04 March 2021): Proposals do not comply with the current Fire Safety Requirements (Means of Escape).

3.3. Prescribed Bodies

- None

3.4. Third-Party Observations

3.4.1. During consideration of the application by the Planning Authority, an observation was received from Mr. Brendan Smyth of No. 38 Sandyvale Lawn, objecting to the development. It is submitted that the escape structure is intrusive, unsightly and is out of context with the layout and design of the adjacent houses in the housing estate.

4.0 Planning History

4.1. Reference is made in the planning officer's report to Planning Ref: 96/83, which relates to a planning permission granted in 1996 to build an extension to the rear of the host dwelling house.

5.0 Policy and Context

5.1. Galway City Council Development Plan 2017-2023

- Policy 2.6 (Established Suburbs) seeks to 'Ensure a balance between the reasonable protection of the residential amenities and character of the

established suburbs and the need to provide for sustainable residential development’.

- Section 11.3.1 (d) requires that residential units do not overlook private open space or land with development potential from above ground floor level by less than 11 metres minimum and greater than 11 metres may be required in the case of developments exceeding two storeys in height.

5.2. European Designated Sites

5.2.1. The nearest designated European sites to the appeal site, including Special Areas of Conservation (SACs) and Special Protection Areas (SPAs), are listed in table 1 below.

Table 1. European sites proximate to appeal site

Site Code	European Site Name	Distance to closest point	Direction
000297	Lough Corrib SAC	0.98km	southeast
		0.97km	west
004031	Inner Galway Bay SPA	1.0km	southeast
000268	Galway Bay Complex SAC	1.0km	southeast
004042	Lough Corrib SPA	2.8km	northwest

5.3. Environmental Impact Assessment - Preliminary Examination

5.3.1. Having regard to the nature and scale of the existing development on site which is proposed to be retained and the absence of any connectivity to any sensitive location, there is no real likelihood of significant effects on the environment arising from the 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. The grounds of appeal can be summarised as follows:

- refers to having received a warning letter (ref: UD 97/077) relating to the attic space and states that the original attic space has been converted into attic storage space and such a development is exempted development and is not unauthorised;
- reason no.1 is wrongly and incorrectly included, as the development would not facilitate unauthorised development;
- the dwelling is two-storey in scale and height with only storage space provided at attic level;
- construction of the dwelling house was in 1979 with the two-storey extension and roof window added in 1996 to the rear of this dwelling house;
- the dwelling house backs onto public amenity zoned lands in the current Galway City Development Plan and the inclusion of Reason No.2 is not warranted as no overlooking of adjoining properties arises;
- the original house design did not meet modern day building regulations or related technical guidance set out in TGD:B (2006) for means of escape as the vertical escape route discharged into the kitchen, prior to exit;
- the external fire escape is provided to function as an alternative means of escape and is not designed or constructed for use as a balcony area;
- the structure is not visually obtrusive or injurious to the visual amenities of the dwelling and adjoining residential amenities.

6.2. Planning Authority Response

6.2.1. The Planning Authority's response to the grounds of appeal reaffirms their assessment of the proposed development for retention, as outlined in the planning officer's report and also states the following:

- a report from the fire officer received post the Planning Authority's decision is referenced;
- states that in addition to stated reasons for refusal, having regard to the fire officer's report, the proposed development for retention does not fulfil its intrinsic function and purpose in relation to fire safety requirements.

6.3. Observations

- none

7.0 Assessment

7.1. Introduction

7.1.1. The planning authority's reasons for refusal are set out above and broadly include that the proposal if granted, would facilitate the retention of unauthorised development of the attic for use as habitable space, which would be non-compliant with the building regulations, in addition to reasons of overlooking of adjoining houses and that it would be visually obtrusive and injurious to visual and residential amenities.

7.1.2. I consider the substantive planning issues arising from the grounds of appeal and in the assessment of the application and appeal, relate to the following:

- Fire Safety
- Residential Amenity (Overlooking)
- Character of the area and visual amenity

7.2. Fire Safety

7.2.1. At the outset, it is worth clarifying that the appeal before the Board relates to the refusal of retention permission for an external metal fire escape structure that has been erected to the rear of an extended semi-detached dwelling house. While reference is made to the status of the attic space and its stated use, the attic space is not the subject of the appeal before the Board.

7.2.2. The applicant has made the case that when they purchased the original house, vertical escape via the internal stairs required travelling through the kitchen, prior to discharging to the final exit and that this did not meet the compliance set out in Technical Guidance Document (TGD): Part B. It is submitted that this arrangement did not and does not meet current building regulations. It is also stated that the house was subsequently extended by the appellant, but the internal escape route continues to travel through the kitchen. It is stated that the attic was converted to use in connection with the house but that the current use is for storage only. It is further

stated that the metal escape structure was subsequently erected to provide an alternative escape route through the attic storage room, in the event of fire.

- 7.2.3. In the Planning Authority's response to the appeal, the Authority referenced an internal report received from the fire officer after the planning decision was made, which stated that the proposed development for retention would not meet fire safety requirements. At that point, the Planning Authority expressed its view that in addition to reasons for refusal attached to the decision, the structure would not fulfil its intrinsic function and purpose in relation to fire safety escape.
- 7.2.4. The applicant has stated that the original house as constructed does not meet current building regulations. While the requirement for compliance with Building Regulations fall within a separate code under the Building Control Act, it is of relevance to note that there is no requirement under the Building Control Act to retrospectively apply newly introduced Building Regulations to buildings that predated the coming into force of the regulations and therefore the appellant's argument for the retention of the structure is not justified on this ground.
- 7.2.5. The report of the fire officer states that the structure does not meet the requirements under the fire safety regulations, which I assume means it does not meet Part B (Fire Safety) of the Building Regulations. The reason for same was not set out in the fire officer's report. Again, I note that this is a matter to be dealt with under the Building Control Act and regulations made under that Act. However, the appellant has not indicated why an alternative escape had to be provided through a storage room at a higher level (attic level). Clearly a more practical alternative means of escape for a two-storey house could be provided to the front / or rear of the house at ground floor level and/or through escape window(s) at first-floor level, typical for any two-storey house. Where the rooms are 'inner rooms', as would seem to be the situation described because of the stairs discharging to the kitchen area, they can meet the requirement of an alternative escape via a window for escape or rescue in accordance with Section 1.3.2 and 1.3.7 of TGD:B (Volume 2 – Dwelling houses).
- 7.2.6. In the event of an emergency such as a fire occurrence, it would be counter intuitive to require occupants to move vertically via an internal stair and to enter a store room in the attic space and exit through a roof window before travelling across a walkway on a flat roof and thereafter climbing down a fixed ladder to reach ground level.

7.2.7. However, while I refer to certain points raised in relation to compliance with the Building Regulations, these are matters which fall outside of a planning assessment and therefore I do not recommend that the Board refuse permission on these grounds as is set out in the Planning Authority's reason no.1.

7.3. Residential Amenity (Overlooking)

7.3.1. In relation to concerns of overlooking and the requirements of Section 11.3.1 (d) (overlooking) of the Galway City Development Plan, having regard to the site context, there is no issue with direct overlooking onto private open space or land with development potential. The rear of the dwelling house is partially screened by a concrete wall and trees and beyond that it overlooks public lands in the adjoining Terryland forest park. There is, albeit, to a lesser extent, some potential for indirect overlooking to adjacent properties. This is limited however and would only occur during the use of the structure for emergency escape, which I expect would be rare and, in any event, should the Board be minded to grant retention permission, this can be addressed by the attachment of a planning condition restricting the use of the structure to emergency situations only. In this regard, I do not recommend that the Board would refuse permission based on issues of residential amenity, specifically overlooking onto adjoining properties.

7.4. Character of the area and visual amenity

7.4.1. The main concern I have is in relation to the structure being out of character with the dwelling and adjacent dwelling houses. It is a significant structure, comprising a fixed ladder and walkway structure incorporating a safety cage on top of the flat roof of the two-storey extension and a landing area at first floor level, all to the rear of an existing dwelling. The ladder sections and landing are bolted to the rear wall of the house extension. There is little doubt but that the structure detracts from the visual amenity associated with a private dwelling house and would be out of character with the house and adjoining properties in the area. The development would arguably be contrary to Policy 2.6 (Established Suburbs) which seeks to 'Ensure a balance between the reasonable protection of the residential amenities and **character of the established suburbs** and the need to provide for sustainable residential development'.

7.4.2. I would therefore largely agree with the Planning Authority's third reason for refusal based on the development being out of character with the dwelling and adjacent residential properties and that the development would be visually obtrusive and injurious to the visual amenities of the dwelling and adjoining residential properties. I would also share the Planning Authority's concern that the development could result in a precedent and if that were to arise, the situation would be exacerbated. I recommend that the Planning Authority refuse permission for this reason outlined.

8.0 Appropriate Assessment Screening

8.1. Having regard to the minor nature of the proposed development for retention and the location of the site in a serviced urban area and the separation distance to the nearest European site, no Appropriate Assessment issues arise, and it is 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.

9.0 Recommendation

9.1. I recommend that retention planning permission for the development should be refused for the reasons and considerations, as set out below.

10.0 Reasons and Considerations

1. Having regard to the nature and scale of the development proposed to be retained, to the pattern of development in the vicinity and to the provisions of the Galway City Council Development Plan 2017-2023, in particular Section 2.6 (Neighbourhoods: Established Suburbs) which states that it is a priority of the Council to ensure that new development will not adversely affect the character of those areas, it is considered that the development proposed to be retained, by itself or by the precedent it would create would be out of character with the host dwelling and the neighbouring residential properties and would also be visually obtrusive and injurious to the visual amenities of the host dwelling and the neighbouring residential properties.

The development proposed to be retained would, therefore, be contrary to the proper planning and sustainable development of the area.

Patricia Calleary
Senior Planning Inspector

9th May 2021