



An
Bord
Pleanála

Inspector's Report ABP 312779-22.

Development	Permission for retention of first floor decking to rear incorporating raised side screens and Permission for replacement of an unauthorised landing window with a unopenable, obscured glazed window, double doors at rear to first floor decking and associated site works.
Location	Valhalla, Barna Road, Galway.
Planning Authority	Galway City Council
P. A. Reg. Ref.	21 380.
Applicant	Edwina Moloney
Type of Application	Permission and Permission for Retention
Decision	Grant Permission and Permission for Retention. Third Party
Type of Appeal	
Appellant	Emer Kearns.
Observer	Elizabeth and Clodagh Connolly.
Date of Inspection	5 th July, 2022
Inspector	Jane Dennehy

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1.0 Site Location and Description

- 1.1. The application site has a stated area of 670 square metres, is 'L' shaped and is located on the north side of the R336 to the west of Salthill and to the east of Barna. It is that of a detached house, detached garage, rear garden and the front curtilage is divided into an area for parking at the front with access by steps to a paved area at the front of the dwelling. The front curtilage is enclosed by gates and railings along the front and west side boundaries and there is gated vehicular and pedestrian access on the west front boundary which is accessed via a shared entrance with the adjoining property off the R 366.
- 1.2. The bedrooms are located at ground floor level and the main living accommodation is located at first floor level within the dwelling. The living room is at the front at first floor level and it has a balcony facing south and west at the front. At first floor level to the rear there is large kitchen dining room overlooking the first floor decking area at first floor level. There is a glazed screen at the eastern side of the deck adjoining the appellant party's property and some trees and shrubs on the inner side of the eastern boundary and there is also an unauthorised first floor landing window, the proposed replacement of which is included in the application.
- 1.3. The Appellant party's property, a detached one and two storey house with front and rear gardens, is located to the east side. There are front and rear gardens the rear and west adjoining the application site of which is enclosed by block walling on the inner side of which there are trees and shrubs. The Observer party's property, a detached two storey house with front and rear gardens is located at the rear of the application site. The rear of this dwelling is directly opposite the elevated decking area across the rear gardens separated by the boundary.
- 1.4. This site to the east and the application site were originally a single plot for an original dwelling which was subdivided to provide for two separate properties one on this site and the other on the application site. (P. A. Reg. Ref. 04/1049 refers.)

2.0 Proposed Development

- 2.1. The application lodged with the planning authority indicates proposals for permission and permission for retention for:

Replacement of an unauthorised first floor landing window in the east elevation with a unopenable, obscure glazed window 770 mm x 1750 mm.

Retention of a first-floor decking at the rear of the dwelling and for incorporation of raised side screens.

(A full description is available in para 1.2 above.) Also included are proposals for replacement- of one of the rear elevation windows with double doors opening onto the first-floor deck.

All associated site works.

3.0 Planning Authority Decision

3.1. Decision

By order dated, 21st January, 2022 the planning authority decided to grant permission and permission for retention subject to conditions.

Under Condition No 2 there is a requirement for the side screens to be erected to a height of, two metres from the floor level and permanently glazed in obscure glazing within four months of the date of the final grant of permission. Certification of erection is required.

Under Condition No 3 there is a requirement for the landing window which is to be unopenable and in obscure glazing to be implemented within four months of the date of the final grant of permission. Certification of installation is required.

Under Condition No 4 the use of the decking is restricted to use associated with the residential use of the main dwelling.

3.2. Planning Authority Reports

In his report the planning officer states that side screens at the deck to two metres would be more appropriate than a height of 1.8 metres in order to ensure no potential for overlooking of the adjoining property. He states that noise generation would not be an issue as the use is not of a commercial nature and that a condition restricting use to occupants of the dwelling would be sufficient to address any

concerns. The planning officer does not indicate any objections to the proposals for the landing window or patio doors at first floor level to the terrace are

3.3. **Third Party Observations**

Objections were lodged by the Appellant Party and the Observer Party to the appeal and their concerns are outlined under para 6.3 below.

4.0 **Planning History**

P. A. Reg. Ref. 03/964: Permission was refused following appeal for a development of five apartments in one block.

P. A. Reg. Ref. 04/1049: Permission was granted, following appeal for two, two storey detached houses on the site

5.0 **Policy Context**

5.1. **Development Plan**

The operative development plan is the Galway City Development Plan, 2017-2023 according to which the site location is within an area subject to the zoning objective R: *“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.”*

According to section 11.3.2 the plot ratio of 0.46:1 should not be exceeded in Inner ‘Residential Areas/Established Suburbs’.

According to section 11.3.1 (c) the total area of private open space should not be less than fifty percent of the gross floor area of a residential development.

According to section 11.3.1 (d) overlooking from residential units within eleven metres of private open space of land with development potential from above ground level is not acceptable.

6.0 The Appeal

6.1. Grounds of Appeal

An appeal was lodged by N. J. Kearns on behalf of the appellant, the owner of the adjoining property to the east side of the application site on 17th February, 2022. Some photographs are included in the submission and attached which include some photographs of wildlife, (copies of which were provided to the National Biodiversity Centre), a copy of drawings and a copy of land registry details. According to the appeal:

- It is possible to see into the rear gardens of adjoining properties to the sides and rear from the deck. It is two metres from the boundary with the appellant property and the area adjoining the boundary is used for vegetable growing and relaxing in a hammock hung from trees adjacent to the boundary. The deck is visible from the rear door of the appellant party's dwelling, and it has a negative visual impact
- The proposed screens would not overcome overlooking potential and it would be easy to look over the screens.
- Considerable noise from the terrace would affect the amenities of the appellant party's property, including noise from within the dwelling if doors are open.
- Overshadowing from the deck occurs and raising the sixes to two metres in height would block out more light from the west especially in the evenings. It would be similar to a four metres' height barrier as would be the case with a two-storey extension. This impact would also be oppressive.
- The application package should have included contiguous elevations accurate sections of levels for adjoining lands. An assessment of lighting and impact on wildlife especially bats should have been included in the application. There is also no proof of ownership within the submission. It should not have been validated.
- The proposed development would devalue the appellant party's property, overshadowing of the rear garden being noted in this regard.

- The deck is north facing and poorly designed whereas there are unobstructed views over Rusheen Bay and Galway Bay from the balcony to the front of the at first floor level, so the property already has existing outdoor are at the front, side and rear. The external staircase for the deck would not comply with Part B TGD as a suitable escape route. It was omitted in the revised design proposals lodged in connection with the original application for the two houses under P. A. Reg. Ref. 04/1049. Various extracts from third party submissions in connection with the original application are included in the submission.
- The design for the dwelling is poor, with the living areas being at first floor level which is not a validation for intrusiveness on adjoining properties. The north facing bedrooms have poor light due to the decking and this is contrary to section 11.3.1.(e) of the CDP on adequate daylight and sunlight.
- The proposed development would set undesirable precedent for similar development in the area.
- The location is very close to the Galway Bay SPA (004031) and Galway Bay Complex SAC (0002680) and a bird sanctuary at Rusheen Bay. The propped development has been constructed with no regard for impact on the wildlife, there being and having been high numbers of fatalities among birds. Consideration of their protection in connection with the proposed development is an obligation
- The submission also includes some comments relating to railings erected at the front of the property.

6.2. Applicant' Response

A submission was received from James Roche on behalf of the Applicant on 15th March, 2022 attached to which is a copy of a site map indicating the site area at 0.16 hectares and photographs and a letter of support from a neighbouring property owner. According to the submission: -

- Ms Kearns property is considerably larger than surrounding site and her dwelling constructed a long time ago and the area is now within the City Council's administrative area which took additional lands. There is

overhanging bushes from Ms Kearns property. The applicant has mounted railings on a stone wall on the site frontage which has been objected to by the Appellant, but which is at a lower level than the boundary of the Appellant's property.

- The appellant is raising objections which relate to the planning application under P. A. Reg. Ref. 04/1049 of sixteen years ago. Part of the current application is to rectify an issue over a window which has been subject of dispute by the Appellant.
- It is not agreed that the decking is visible from the Appellant's dwelling. The inclusion of side screens was the outcome of a discussion with Ms Kearns daughter. Visual amenities at the appellant property are unaffected by the proposal in that there are no protected views and there is no entitlement to a view from a private property. Objections as to noise from the decking is rejected and it is pointed out that the location is along an artery route within the city.
- The lower glass panels are to be replaced with two metres' permanent obscure glazing to two metres height addressing any concerns as to perceptions of overlooking. However obscure glazing is not required for windows serving halls and landings according to statutory guidance. The applicant also agrees to installing a non-openable window and to accept the requirements of condition No 3 attached to the planning authority decision.
- It is not agreed that lawn was removed from the garden and was to be replaced by artificial grass. Artificial grass was installed over paving stones as a paving area during the lockdown.
- It is not agreed that overshadowing would occur due to the extent of heavy mature planting at the rear of the appellant property. Due to the installation of the two metres' high screen overlooking to the east would be negligible. Overshadowing from a balcony screen would be less than that from a first-floor extension.
- There will be no impact on adjoining property values and amenities given the mitigation and the requirements of condition Nos 2 and 3. There is no reason why the balcony should be to the front of the dwelling – it is usual for first floor

balconies to be at the rear of properties and work well as private open space with suitable mitigation measures in place.

- Bedroom windows at ground floor level, to which the appellant objects, obtain good light, the smaller ones to the rear as well as the main bedrooms facing south.
- The development would not lead to undesirable precedent given the protection offered in the proposal and under Conditions Nos 2 and 3.
- The decking will not be lit externally and there are no issues for wildlife habitats given the location in an urban area along a well-lit public road. The location is to the north of the R336 and there is no ecological connection between the decking and the European Sites

6.3. Planning Authority Response

There is no submission from the planning authority on file.

6.4. Observations

An observation was lodged by Elizabeth and Clodagh Connolly of No 16 Seacrest on 17th February 2022. Their property adjoins the northern/rear boundary of the application site and is a detached house with front and rear gardens within a cul de sac of similar properties. According to the submission:

- The external decking area brings the dwelling closer to the Seacrest properties with serious implications having regard to its elevated level. Intrusion on privacy at adjoining properties could occur due to use of smart phones and cameras
- The proposed development would be intrusive, dominant visually and obtrusive. It and would have serious negative impact on privacy and the amenities of their property due to overlooking from the first-floor deck irrespective of the required side screens. There would be a direct and unobstructed view into the rear garden and rear elevation windows for the kitchen and bedrooms at their property.

- The proposed development, owing to the first-floor level position, and double patio door opening off the kitchen would be a source of noise and nuisance also affecting residential amenities at adjoining properties.
- The proposed development could also lead to devaluation of the observer party's property.
- The proposed development would set precedent for similar development with implications for amenities at Seacrest properties.

7.0 Assessment

7.1. The issues central to the determination of a decision can be considered below under the following subheadings:

Replacement of unauthorised landing window.

First. floor decking to rear incorporating raised side screens and double doors at rear of dwelling to first floor decking and associated site works

Impact on Residential Amenities.

Wildlife

Validity of the application

Environmental Impact Assessment Screening

Appropriate Assessment

7.2. Replacement of unauthorised landing window.

7.2.1. There is no objection to the proposals for the replacement of the unauthorised first floor landing window in the east elevation subject to incorporation of obscure glazing and it being fitted with a single unopenable panel. - There is no question of undue overlooking of the adjoining property. A. condition, should permission be granted, with a requirement for implementation within four months, as was included in the conditions attached to the planning authority decision to grant permission is recommended.

7.3. First. floor decking to rear incorporating raised side screens and double doors at rear of dwelling to first floor decking and associated site works.

Impact on Residential Amenities.

- 7.3.1. The dwelling design provides for an internal layout whereby the living room and dining/kitchen accommodation is on the first floor and the bedroom accommodation on the ground floor. As such the internal layout provided for the living accommodation to benefit from the best quality access to sunlight and natural daylight and outlook, particularly towards the south from the front living room and adjoining balcony towards Galway Bay.
- 7.3.2. The first-floor level decking area to the rear is considerable in size being almost forty square metres in floor area and extending 4.5 metres beyond the rear building line of the house into the rear garden. It extends across the entire width of the house and is estimated to be offset from the west side boundary by approximately 1.4 metres and approximately two metres from the east side boundary with the appellant party's property. The separation distance from the rear boundary with the observer party's property in Seacrest is reduced to circa eleven metres.
- 7.3.3. Even without the proposed substitution of double doors for one of the windows of the kitchen/dining room within the dwelling providing direct access whereby access would be confined to the external staircase, and substitution of two metres high obscured screens to the sides for the existing screens (as required by condition attached to the planning authority decision) it is considered that the. proposed decking is considered unacceptable.
- 7.3.4. The large elevated external decking itself, when in use is a major potential source of significant noise and disturbance adversely impacting on the residential amenities of adjoining properties. This negative intrusive impact on adjoining properties' amenities by noise and disturbance would be exacerbated and increased by the proposed substitution of patio doors for one of the rear elevation windows for the kitchen living room area at first floor level. The interconnectivity via these doors would lead to increased circulation between the first-floor internal kitchen dining area and the elevated external decking area from which there is also access to and from the rear garden via the external staircase.

- 7.3.5. From the rear garden area of the appellant party's property, the existing glazed screen on the east side of the first-floor decking is clearly visible above the party boundary wall. A two metres high screen along the four metres' depth along the east side, notwithstanding the two metres separation distance from the party boundary would be somewhat visually obtrusive and could result in some obstruction of evening light to the appellant party's garden from the west. However, it would appear that it is unlikely that the effect would be such as reduce the sunlight access to the rear garden to levels below minimum standards for sunlight to private open space having regard to BRE guidance.
- 7.3.6. It is agreed with the applicant's agent that direct overlooking potential to either side can be restricted by two metres' obscure glazed or solid screens but potential overlooking toward the property to the north at No 16 Seacrest is not eliminated, notwithstanding the presence of fencing and trees and shrubs. There is also some potential for overlooking of the property at No 15 Seabury across the lower section of the adjoining property to the west. Given the large size of the elevated decking, perceived overlooking as experienced by occupants of the adjoining properties would be considerable and significant.
- 7.3.7. It is also not agreed that favourable consideration of the proposal, with inclusion of a condition, prohibiting use of the decking area that is associated with commercial use is practicable, appropriate or effective as a means of protection of residential amenities and ensuring consistency with the zoning objective which provides for protection of existing residential amenities and residential neighbourhoods.
- 7.3.8. In effect, having regard to the layout and configuration of the application site and the proximity of surrounding residential development an elevated decking area of circa forty square metres in floor area interconnected with the main living accommodation of the dwelling if permitted, would be seriously injurious to the residential amenities of adjoining properties, and consequently the additional claims in the appeal and observer submission as to resultant devaluation of their properties are reasonable.

Wildlife.

- 7.3.9. Given the urban characteristics of the site location and its environs, it is considered that undue or significant adverse impact on wildlife could not be deemed directly

attributable to the proposed development, notwithstanding the proximity to European sites, that is, Galway Bay SPA (004031) and Galway Bay Complex SAC (0002680) and a bird sanctuary at Rusheen Bay.

7.4. Validity of the application.

- 7.4.1. Issues as to the applicant' details and as to deficiencies in the application drawings by way of lack of section and contiguous plan and elevation drawings raised in the appeal have been noted. It is noted that the planning authority validated the application, and it is considered that the proposed development can be adequately assessed, and a decision determined based on the information that is available in connection with the application and appeal. The objections in this regard could be addressed through the legal system, should it be considered necessary by any of the parties.

7.5. Environmental Impact Assessment Screening.

- 7.5.1. Having regard to the nature of the proposed development and its location in a serviced urban area, removed from any sensitive locations or features, there is no real likelihood of significant effects on the environment. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

7.6. Appropriate Assessment

- 7.6.1. Having regard to the planning history for the site, the zoning objective, the location of the site is on serviced land, and, to the nature and scale of the proposed development, no appropriate assessment issues arise, 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.

8.0 Recommendation

In view of the foregoing, a split decision is recommended as follows: -

Decision (1).

Grant permission for the replacement of an unauthorised landing window with a unopenable, obscured glazed window.

Reasons and Considerations

The proposed development subject to the compliance with the conditions below would not seriously injure the amenities of adjoining residential property by reason of undue overlooking and would be in accordance with the proper planning and sustainable development of the area.

Conditions.

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application 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 replacement east elevation first floor landing window shall be installed within four months of the date of the order and shall be retained as an unopenable, obscured glazed window on an indefinite basis.

Reason: in the interest of clarity and the residential amenities of adjoining property.

Decision (2).

Refuse Permission and permission for retention of the first-floor decking area to the rear, raised side screens and double doors to the decking from the rear of the dwelling.

Reasons and Considerations.

Having regard to the established pattern and layout of residential development in the area and to the relatively restrictive size and configuration of the application site and that of surrounding residential development, it is considered the proposed first floor decking area, seriously injures and, would seriously injure the residential amenities of adjoining properties due to obtrusiveness, noise and disturbance associated with the use of the decking including noise overspilling outwards from the internal living accommodation at the first floor level within the dwelling and, due to overlooking and perceived overlooking from the elevated decking area. Furthermore, if permitted, the proposed development would set undesirable precedent for further similar development resulting in negative impact on the residential amenities of the area. As a result, the proposed development would be contrary to the zoning objective R: *“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.”* as set out in the Galway City Development Plan, 2017-2023 and to the proper planning and sustainable development of the area.

Jane Dennehy

Senior Planning Inspector
12th July, 2022.