



An
Bord
Pleanála

Inspector's Report ABP 312902-22.

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| Development | Change of Use from light industrial Self-contained Unit to self-contained Apartment. |
| Location | Shantalla Road, Galway. |
| Planning Authority | Galway City Council |
| P. A. Reg. Ref. | 21/426. |
| Applicant | John Lawless. |
| Type of Application | Permission |
| Decision | Refuse Permission. |
| Type of Appeal | First Party x Refusal |
| Appellant | John Lawless |
| Date of Inspection | 5 th July, 2022 |
| Inspector | Jane Dennehy. |

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1.0 Site Location and Description

- 1.1. The site of the proposed development has a stated area of 310 square metres, is that of No 31 Shantalla Road a two-storey end of terrace house with a single storey extension at the rear with frontage onto the north side of Shantalla Road. A laneway over which the applicant has a right of way according to the application is located to the west side extending along the side boundary to an area used for parking which adjoins a grassed mounded space which is fenced off and the rear of properties along Bothar Phadraic Ui Chonnaire to the north. St Mary's College is located on the south side of Shantalla Road opposite the main dwelling.
- 1.2. At the rear of the existing dwelling, with direct access off the laneway to the west side there is a single storey flat roof workshop building facing towards the rear of the main dwelling across a gravelled surface and it is fully connected to existing services.
- 1.3. At the rear of the existing dwelling, with direct access off the laneway to the west side there is a single storey flat roof building facing towards the rear of the main dwelling across a gravelled surface,

2.0 Proposed Development

- 2.1. The application lodged with the planning authority indicates proposals for the change of use of the single storey structure stated to be sixty square metres in gross floor area and to have been in light industrial use to use as an independent self-contained two bed dwelling unit. Photovoltaic panels are to be mounted on the roof.
- 2.2. The site is to be subdivided with a glass wall, pedestrian gate and paving over an area of ten square metres enclosing the site. The space between the glass boundary and the rear of the existing dwelling which is stated to be fifty square metres in area and to be covered in Astro turf is to be designated as private open space for the existing dwelling.
- 2.3. According to the application submissions it is the intention of the applicant's mother to reside in the self-contained unit
- 2.4. The application lodged with the planning authority indicates proposals for the change of use of the single storey structure stated to be sixty square metres in gross floor

area and to have been in light industrial use to use as an independent self-contained two bed dwelling unit. Photovoltaic panels are to be mounted on the roof. The site is to be subdivided with a glass wall, pedestrian gate and paving over an area of ten square metres enclosing the site. The space between the glass boundary and the rear of the existing dwelling which is stated to be fifty square metres in area and to be covered in Astro turf is to be designated as private open space for the existing dwelling.

3.0 Planning Authority Decision

3.1. Decision

By order dated, 22nd February, 2022, the planning authority decided to refuse permission based on the two reasons which in brief can be outlined as follows:

- (1) Serious injury to residential amenities and devaluation of property due to deficiencies in private open space provision having regard to CDP standards along with undesirable precedent for similar development.
- (2) Contravention of the CDP (Section 11.1.1 (k) for self-contained dwelling unit development, whereby the main dwelling or self-contained unit is resided in by the owners, the unit is positioned to the side of the main dwelling with a floor area and, in floor area, not exceed and equivalent of twenty five percent of the floor area of the main dwelling. The unit would be independent, not integrated to the main dwelling or capable of reintegration into the dwelling along with undesirable precedent for similar development and serious injury to residential amenities of property in the area.

3.2. Planning Authority Reports

- 3.2.1. The planning officer recommended the decision to refuse permission. With reference to section 11.3.1.(k) of the CDP states the floor area at 83 square metres would equate to fifty three percent of the floor area of the main dwelling which is stated to be 154 square metres. He states that the proposed dwelling, by being located in the rear garden area would not be capable of reintegration with the main dwelling and

that the private open space is minimal and falls considerably short of CDP standards.

4.0 Planning History

Permission was originally granted for the structure for use as a printing workshop and store under P. A. Ref. 71/250. There have been two prior unsuccessful applications for change from commercial to resident use along with addition of an upper floor:

Under P. A. Reg. Ref. 17/21 Permission was refused for change of use from commercial to use ancillary to the main dwelling house along with an increase in the height to provide for an additional floor for residential use, associated changes to elevations

Under P. A. Reg. Ref. 18/52 Permission was refused for change of use to a residential unit along with an increase in the height to provide for an additional floor for residential use, associated changes to elevations and site works and, permission for retention was refused for alterations to the boundary treatments to the side and rear of the main dwelling, a vehicular entrance gate and all works.

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 ensures protection of existing residential amenity and contribute to sustainable Residential neighbourhoods.”* The location is within an “Inner Residential Area.”

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 (k) a self-contained dwelling unit must be suitable for assimilation the main dwelling with a grant of planning permission required for future subdivision of a site which is generally discouraged on amenity grounds; it should be

located to the side of the existing house as opposed to the rear garden; in floor area, not exceed the equivalent of twenty five percent of the floor area of the main dwelling and, is considered so long as the owner resides in the unit or the main residence. area and, in floor area, not exceed and equivalent of twenty five percent of the floor area of the main dwelling.

6.0 The Appeal

6.1. Grounds of Appeal

An appeal was lodged with the Board on 2nd March, 2022 by the applicant on his own behalf along with several attachments which include a statement from the applicant's mother's GP practice and photomontages. It is submitted that it is regrettable that permission was refused both for the change of use and for the addition of the solar panels on the roof. According to the appeal:

- The location within the Inner Residential Area can be regarded as infill development as provided for in section 2.7 of the CDP as the building is long established, but non-viable for commercial use, is not out of character and the only change to it would be the addition of the solar panels. Precedent can be taken from 23 St Mary's Road by way of grant of permission for a self-contained unit at a long-established garage fronting onto a laneway over which there is a right of way which like the current proposal has unique characteristics (P.A. Reg. Ref. 18/342 refers.) A second example at the same site location in respect of a grant of permission for alterations to the house and self-contained unit resulting in a reduction in private amenity space from 25 to 21 square metres. (P.A. Reg. Ref. 20/149 refers.)
- It is not agreed that the proposal would seriously injure residential amenities and depreciate property value. The existing use is a non-conforming use but light use is problematic, given the constraints to the site for vehicular transport, turning and parking and it is a potential source of detrimental impact on the main dwelling and surrounding residential development.
- The proposal aligns more closely with the plot ratio for residential development than it does for commercial development having regard to

section 11.3.1 (a) CDP standards (Maximum of 1:1 for commercial and 0.46:1 for residential. A recently permitted change of use from commercial creche to residential is noted as having reduced intensity and demand for services in the planner report. P. A. Reg. Ref. 21/364 refers.) Reference is also made to Referrals relating to change of use from commercial to residential on the basis it is contended if the structure is considered as Class 1 or 2 instead of Class 4 and that residential status has already been achieved for the subject building. (PL 303154 and 308258 refer)

- With regard to private open space provisions under section 11.3.1 (c) of the CDP the current amenity considerations of the site whereby the space is used for parking should be taken into consideration. The proposed development results in an enhancement with the glass block wall enclosure being provided allowing for private open space of ten square metres, at 23.5% which is acknowledged to be a shortfall of the 50% required. The allocation is sufficient in view of the various parks and amenities in proximity and Section 11.3.2 (b) of the CDP allowing for flexibility and the minimum standard for seven square metres in *Sustainable Urban Development – Design Standards for New Apartments, 2020*. A grant of permission under P A. Reg. Ref. 21/24 for a two, two bed apartments at No 36 Lower Salthill Road is comparable although the current proposal benefits from a setback from the public road. Relocation of the main entrance to the west elevation away from the rear elevation of the existing dwelling and provision for a sliding door to the amenity space would enhance the quality of the development.
- The proposed development is consistent with development management standards in section 11.3 the CDP in location in the inner urban area, layout, plot ratio at 0.57:1 especially relative to other similar permitted developments, open space and amenity, daylight and sunlight and sustainable energy performance, and although at the rear of the site having regard to section 11.3.1 (k) has several benefits and is a long established structure on the site and on parking provision has been addressed and it can be supplemented by available on street residential parking permits.
- The proposed development is consistent with Sustainable Residential Development in Urban Areas 2009) SRD Several extracts and with policies

and objectives for Sustainable Residential Neighbourhoods as provided for in the CDP (extracts from page 28 are provided and a table to indicate compliance with minimum floor area sizes and dimensions is provided.) the site is redundant industrial lands which SRD promotes for residential development in inner areas with transport links.

- The proposed development is consistent with the NPF in respect of policy for compact growth in allowing for reuse of a unit vacated in 2016 which is on residential zoned lands and close to service and facilities.

6.2. **Planning Authority Response**

There is no submission from the planning authority on file.

7.0 **Assessment.**

7.1. The issues central to the determination of the decision are considered below under the follow subheadings:

Proposed change of use in Principle

Precedent.

Solar panels.

Environmental Impact Assessment Screening

Appropriate Assessment Screening

7.2. **Proposed Change of use in Principle**

7.2.1. Although it is noted that the building has been vacant since 2016 it is not agreed outright that the existing structure is no longer suitable for a viable commercial/light industrial use which is the authorised use but non-conforming use without undue negative impact on residential amenities. Some light industrial uses which are not necessarily detrimental to residential amenities and whereby some mitigation by way of screening and or involving minimal traffic and parking may be feasible. As such there is some limitation to the justification for the proposed change of use on the basis of incompatible authorised non-conforming use which can be borne in mind in consideration of the proposed change of use.

- 7.2.2. According to the application submission it is intended that the applicant's mother would reside in the building if the change of use is permitted. The application submission includes a written statement of support from the applicant's mother's GP practice. In principle, there is no objection to this but the proposed site layout and building relative to the main dwelling is not consistent with the development plan standards for such accommodation, specifically in relation to section 11.3.1.(k) of the CDP as the building is a detached structure located in the garden at the rear, and with no direct interconnectivity with the main dwelling,
- 7.2.3. While taking into consideration the detached self-contained nature of the structure the proposed private amenity space is seriously deficient in quantum. The proposed change of use would therefore be seriously substandard if considered as a separate independent dwelling unit on a subdivided site formed from the overall original site of the main dwelling which, potentially, could be transferred to a third party.
- 7.2.4. However, it is considered that a reasonable design solution has been proposed and that favourable consideration, subject to the proposed change of use being confined to use as a residential unit that is not separated from or subdivided from the site of the main dwelling. As such, in so far as the change of use is confined to use by a relative of the applicant, as indicated in the application, and provided that the applicant is resident the main dwelling, it is considered that the proposed change of use is reasonable, but solely subject to restrictions. If a grant of permission for the change of use, which is recommended, is considered, a restriction on the occupancy and commercial letting is considered necessary with a requirement for a further application for retention of the change of use in the event of future intentions for possible future change in the nature of occupancy such as commercial letting.

7.3. **Precedent.**

- 7.3.1. The proposed development was determined by the planning authority to be substandard and not in accordance with some development plan standards provided for in section 11.2.1 of the CDP. However, a strong case for precedent to justify the proposed change of use with reference to relatively recent prior grants of permission for residential occupation of detached buildings at the sites of residential dwellings in

Galway city on grounds that the current CDP development management standards have been interpreted and applied with flexibility.

- 7.4. The permitted developments with reference to which the applicant in the appeal claims that precedent can be taken are limited in comparability to the current proposal for change use from commercial light industry to a self-contained residential unit. However, these grants of permission demonstrate planning authority's flexibility with regard to application of the provisions of section 11.3.1 (k) in particular regarding position relative to that of the existing dwelling and with regard to integration with and reassimilation into the existing dwelling. However, adequacy in private open space provision which is central to the reasoning attached to the decision to refuse permission was not at issue in the assessment of the applications.
- 7.5. With regard to the permitted development at No 20 St. Mary's Road, under P. A. Reg. Ref. 18/342 it is of note that the site of the main dwelling is of considerable size and depth even to the extent that subdivision for development of a separate independent dwelling may be feasible according to the planning officer in his report. With the converted garage in residential use there are no issues as to ease of access or as to insufficient private open space provision having regard to the CDP standards are also of note. The setting aside of strict application of the requirement of section 11.3.1. (k) for such a building to be integrated with and suitable for reassimilation into the main dwelling and the limited duration of the grant of permission to a five year a period only is of note.
- 7.6. With regard to the permitted refurbishment of a self-contained unit (a garage conversion) which had been place for several years at a building at the rear of No 23 St. Mary's Road under P. A. Reg. Ref 20/149 it is noted that the development description did not include a proposal for permission for retention of the use. The planning officer indicated a requirement for the owner to be resident on site so as to overcome issues as to inappropriate intensification of use.
- 7.7. With regard to the permitted change of use from a commercial creche at a single storey detached building to a residential dwelling under P.A. Reg. Ref. 21/364 at No 17 Shantalla Road the planning officer notes the reduced intensity of use involved and compatibility with the zoning objective in his report.

7.8. Solar Panels.

While the proposed installation of solar panels on the roof of the building is included in the application and is to be encouraged and is supported in the light of national policy. As such the proposed installation of solar panels is supported but it is not accepted that this element of the proposed development is material to consideration of the proposed change of use from light industrial use to use as a self-contained residential unit.

7.9. Environmental Impact Assessment.

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

7.10. Appropriate Assessment.

7.10.1. Having regard to the scale and nature of the proposed development and to the location removed from any European Sites 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

8.1. Given the foregoing, it is recommended that the planning authority decision be overturned, and that permission be granted based on the following reasons and consideration and subject to the conditions which follow

9.0 Reasons and Considerations

Having regard to the Galway City Development Plan, 2017-2023 according to which the site is subject to the zoning objective which is to provide for residential development and to the scale and nature of the proposed change of use to use as

self-contained residential unit from use for light industry, it is considered that subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential amenities and visual amenities of the area and would be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The proposed change of use to use as a self-contained residential unit shall be occupied by a relative of the occupants of the main dwelling. It shall not be sold separately or rented out commercially as an independent dwelling unit without a prior grant of planning permission from the planning authority or An Bord Pleanála following appeal and, if and when it is no longer required for such occupancy, the use shall be confined to use associated with the residential use of the main dwelling.

Reason. In the interest of clarity, consistency with zoning objective for the area and the protection of the residential amenities of the area.

3. The landscaping scheme and boundary treatment shown on the site layout plan drawing, 50-17 and dated, 19.11.21 shall be fully implemented within six months of the date of this order.

Reason. In the interest of residential and visual amenity, clarity and orderly development.

4. Water supply and drainage arrangements, including the attenuation and disposal of surface water and mitigation measures against flood risk including in the basement area, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

5. The developer shall enter into water supply and wastewater connection agreements with Irish Water, prior to commencement of development.

Reason: In the interest of public health.

Jane Dennehy
Senior Planning Inspector.
4th August, 2022