



An
Bord
Pleanála

Inspector's Report ABP 313659-22

Development

Retention of single storey ground floor extension with overhead private amenity space, conversion of garage to habitable room, raised ridge height, removal of garage door and installation of landscape window on, alterations to fenestration to front and side and access egress via sliding doors to first floor balcony.

Location

No 4 Atlantic Terrace, Salthill, Galway

Planning Authority

Galway City Council

P. A. Reg. Ref.

22/52.

Applicant

Seams Conneally

Type of Application

Permission for retention.

Decision

Grant Permission for retention

Type of Appeal

Third Party

Appellant

Paul Daly

Date of Site Inspection

12th September, 2022

Inspector

Jane Dennehy.

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1.0 Site Location and Description

- 1.1. The application site is that of a two-storey house on the east side of Atlantic Terrace at its southern end close to Salthill Road Upper on a shallow site. There is a single storey extension, subject of the application, infilling a space, possibly an access, former yard or outdoor storage area between the original dwelling and an adjoining narrow, gable fronted dwelling at No 5 Atlantic Terrace, the appellant party's property. The extension subject of the application is single storey and has a flat roof with a terrace with balustrading around the perimeter and access via sliding doors from the main dwelling.
- 1.2. There are two storey houses to either side on both sides of the narrow street and at the corner sies on Salthill Road Upper there is a public house and tourist accommodation. A blank wall has been erected at the frontage to the north side as far as the boundary with No 5 Atlantic Terrace, the Appellant party's property.

2.0 Proposed Development

- 2.1. The application lodged with the planning authority is for permission for retention of:

The single storey ground floor extension within the space to the north side of the original dwelling. The plans show the original internal open plan living space is extended into this space

The balcony/terrace private amenity space overhead at first floor level and an access/egress from an ensuite bedroom via sliding doors (2000 mm high x 1000 mm wide) to the first-floor private amenity space/balcony.

Removal of the garage door and installation of a landscape window to the front.

Fenestration changes to the front and side elevations

- 2.2. The application submission includes pre development drawings which show a narrow private gated pedestrian access/egress along the side of the dwelling adjacent to the boundary with No 3 Atlantic Terrace and a wider gated vehicular access along the side of the dwelling as far as the boundry with No 5 Atlantic Terrace.

3.0 Planning Authority Decision

3.1. Decision

The planning authority decided to grant permission for retention subject to conditions by order dated, 5th May, 2022. Under Condition No 2 there is a requirement for obscure glazing to a height of 1.6 metres above floor level for the west and east sides of the balcony, with a compliance submission being required, for reasons of protection of privacy and amenity of adjoining properties. The use of the balcony is confined to residential purposes incidental to the use of the dwelling under Condition No 3. Exempt development entitlements are removed under Condition No 5.

3.2. Planning Authority Reports

- 3.2.1. The Planning Officer in his report notes the limited private open space provision and, due to the insertion of the extension within the original external space. He considers the loss of private open space insignificant because of poor quality due to overshadowing. He considers that the balcony can be considered as a form of mitigation for the loss of private open space, but that screening is required and a grant of permission for retention with a condition to address same was recommended. The site coverage and footprint were considered acceptable having regard to adjoining properties and the established character of development in the area.

3.3. Third Party Observations

- 3.3.1. A submission was lodged by the appellant party in which issues of objection raised are as to encroachment on his property, diminution of property value, adverse impact on visual and residential amenities, and deficient private open space provision.

4.0 Planning History

- 4.1.1. Permission was originally granted for a two-storey house under P. A. Reg. Ref. 80/196 and subsequently for replacement of a wall and gate with a double gate under P. A. 90/477. Under P. A. Reg. Ref 05/225 for demolition and replacement

with a block of two, two bed and two, one bed apartments but a subsequent application for demolition and replacement with two, two bed and two one bed apartments was subsequently granted under P. A. Reg.Ref.06/16.

5.0 Policy Context

5.1. Development Plan

- 5.1.1. The operative development plan is the Galway City Development Plan, 2017-2023 according to which the site is 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.”*
- 5.1.2. According to section 11.3.1 (l) Extensions should be of a design and form to complement the character of the existing building and the context of adjacent residential amenities.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. An appeal was lodged with the Board on 27th May, 2022 by Cyril Kelly and Associates on behalf of the Appellant Party, owner of No. 5 Atlantic Terrace which adjoins the north side of the application site. According to the appeal:
- The ground floor extension was constructed over a gated alley which had always existed between the two properties. The structure was built up to and tied into the wall at No 5 Atlantic Terrace. The appellant does not consent to these works. The applicant’s agent incorrectly states that the development is structurally independent of the neighbouring properties. It is impossible to remove the ties into the wall and lead flashing fixed to the wall at No 5 is visible.
 - The details of the balcony, private open space, finishes, storm drainage arrangements, construction methodology, weatherproofing as well as impact on privacy are not adequate.

- No 5 Atlantic Terrace has been devalued because: -

The development has changed the dwelling from a detached to a semi-detached dwelling.

The development adversely affects the visual amenities of No 5 Atlantic Terrace and the streetscape: - A poor-quality extension with a blank wall has replaced a gated alleyway, the height of the two-storey dwelling, and its front façade have been substantially increased and it has excessive bulk and massing and the balcony is unsuitable and the front elevation is poor in design.

- Private open space provision is not consistent with the CDP standards. There should be provision for an equivalent of a minimum of fifty percent of the total floor. With there is an increase by 81 percent, the total floor area, at 163 square metres there is a reduction in private open space to the are at fifty-two square metres.
- There is potential for noise disturbance due to the use of the balcony which would affect residential amenities at No 5.

6.2. Applicant Response

A submission was received from the applicant's agent on 23rd June, 2022 according to which: -

- There are some deficiencies in the appeal submission in that the name of the owners of No 5 Atlantic Terrace is not included and a company address only is provided. It should be determined as to whether this is a *de minimis* breach of section 127 (1) (b) of the Planning and Development Act 2000 as amended.
- As regards contentions as to unauthorised works, a prior application as lodged under P. A. Reg. Ref. 21/358 which was invalidated and a new detailed application for permission for retention was lodged under P. A. Reg. Ref. 22/52. It is genuinely intended to rectify any unintentional breach of the planning code.
- The "gated alley" referred to in the appeal was a gated driveway which was not shared and was solely for No 4 Atlantic Terrace.

- The development is not built up and tied into No 5. It is structurally independent of any adjoining property. Ties used during construction are standard temporary and, do not bind a structure to an adjoining property. Certificates attesting to the flashing and soffit materials are available. There is no record of damage to any buildings.
- It is no clear as to whether there is any potential for property value loss in the absence of any independent valuation. A reasoned determination with regard to same can be made in the assessment of the appeal.
- The application submission and the planning authority assessment and determination were comprehensive and fully in accordance with section 34 (3) (b) of the Act.
- With regard to noise, the development has been constructed to standard and specifications with accord with Part E TGD – E - Sound Building Regulations, 2014.) and with regard to section 34 (4) (c) (ii) of the Act with regard to potential intrusiveness of noise and vibration. The conditions attached to the decision to grant permission mandate mitigation of noise.
- It is also stated that the proposed development future proofs the dwelling rendering it compliant with Part L, Building Regulations, 2021 and, Part M TGD Building Regulations, 2010.

6.3. **Planning Authority Response**

There is no submission from the planning authority on file.

7.0 **Assessment**

- 7.1. The extension subject of the application for permission for retention fully infills the space to the side of the dwelling as far as the party boundary with the Appellant party's property. It is understood from review of the application submission that the applicant' claims sole ownership of this space and that formerly it was a gated side entrance or alleyway which has been used as an off-street parking. As has been pointed out by the planning officer in his report, the contentions as to encroachment onto, for purposes of tie-ins to the appellant party's property, to structural support

and integrity, do not come within the planning remit and can be resolved through recourse to the legal process, if required. The parties' attention is drawn to section 34 (13) of the Planning and Development Act, 2000 as amended whereby a person shall not be entitled solely by reason of a grant of permission to carry out any development. For the building itself, it is noted that the applicant's agent in the response to the appeal, states that the development is compliant with Parts E and L TGD standards for noise and vibration and Building Regulation 2010 as amended

- 7.2. There is no objection in principle to the insertion of the single storey extension in this space which according to the plans provides for an enlarged open plan living area at ground floor level.
- 7.3. There is also no objection to the alterations to the front facade providing for installation of a window instead of a garage door and the ridge height increase which is considered visually acceptable within the streetscape.
- 7.4. It is agreed with the appellant that private open space provision is deficient having regard to CDP standards. However, it is also with the planning officer that the shortfall can be accepted given the limited utility value, particularly with regard to the extent of overshadowing, the the location within an established are built up area and the availability at higher quality elevated private open space at the roof terrace. However, in order to ensure that it does give rise to undue overlooking or perceptions overlooking, to the appellant property in particular, screening along the perimeter by way of increased height to the balustrading and installation of opaque glazing as was recommended by the planning officer and required by condition attached to the decision to grant permission.
- 7.5. The terrace which is accessed off the main first floor bedroom is of relatively small at 5650 mm x 2848 mm and as such appropriate for a modest sized dwelling. It is considered that when in use by the occupants it would be unlikely to give rise to undue noise and disturbance, bearing in in mind the ambient levels that can be anticipated in an inner urban location that would lead to significant adverse impact on residential amenities of adjoining properties. If permission is to be granted, inclusion of a condition similar to Condition No 3 attached to the planning authority decision confining the use of the terrace to that associated with the residential use of the dwelling and excluding any commercial use.

7.6. There is no evidence or professional opinion included with the appeal that would substantiate the claim that the devaluation of the property at No 5 Atlantic Terrace is attributable to the proposed development as contended in the appeal. It is not evident that infilling of an underutilised alleyway space at the side of No 4 Atlantic Terrace with habitable accommodation devalues the property at No 5 Atlantic Terrace. The appellant's claim is not accepted. It is potentially arguable that the impact could o the property value might be neutral or indeed positive.

7.7. There is no objection to the changes to the front façade proposed in the application.

7.8. **Environmental Impact Assessment.**

7.8.1. 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.

7.9. **Appropriate Assessment.**

7.9.1. 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 upheld and that permission for retention be granted based on the reasons and considerations and subject to the conditions which follow

9.0 **Reasons and Considerations**

9.1.1. Having regard to the established pattern and character of the area and to the Galway City Development Plan, 2017-2023 according to which the site 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.”* It is considered that subject to

compliance with the conditions set out below, the proposed development is not seriously injurious to the residential amenities of adjoining properties by reason of overlooking or noise and nuisance, does not seriously injure the visual amenities of the area, provides a satisfactory standard of residential amenity for the occupants and, is in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be 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. Balustrading along the east and west es of the first-floor terrace shall be fitted with obscure glazing to a height of 1.6 metres above the floor level. The works shall be completed within six months of the date of this order and shall be certified by a suitably qualified engineer with a report and photographic evidence lodged with the planning authority for written agreement. Prior to the commencement of these works the applicant shall submit and agree revised plan, section and elevation drawings in writing with the planning authority.

Reason: In the interest of clarity and the protection of residential amenities of adjoining properties.

3. The dwelling shall be used as a single dwelling only and the first-floor terrace shall be used solely for purposes ancillary to the residential use of the dwelling and shall not be used for commercial purposes or human habitation, sublet, sold separately, otherwise transferred or conveyed, except in combination with the dwelling.

Reason: In the interest of clarity, the amenities of the area and the proper planning and sustainable development of the area.

4. The developer shall submit to, and agree in writing with, the planning authority details of all the materials, textures and colours for the external facades including fenestration and shall implement the agreed works within six months of the date of this order.

Reason: In the interest of residential amenities.

5. 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.

6. 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
19th September, 2022.