



An
Bord
Pleanála

Inspector's Report

ABP-317894-23

Development	Retention of roof over back door adjoining toilet facilities
Location	Crowe's Bar, 90 Bohermore, Galway
Planning Authority	Galway City Council
Planning Authority Reg. Ref.	22267
Applicant	Bohermore Ventures Limited
Type of Application	Retention Permission
Planning Authority Decision	Grant Retention Permission
Type of Appeal	Third Party
Appellant	Kenneth & Magdalena McDonagh
Observers	None
Date of Site Inspection	9 th April 2024
Inspector	Ian Campbell

1.0 Site Location and Description

- 1.1. The appeal property is located at 90 Bohermore, c. 300 metres north-east of Eyre Square, Galway.
- 1.2. The appeal site has a stated area of 0.0353 Ha. and comprises a long narrow plot accommodating a public house known as 'Crowe's bar'. The entire plot of 90 Bohermore is taken up by the public house which has been extended to the rear.
- 1.3. The public house is essentially comprised of three elements, the main public house fronting Bohermore, an enclosed area¹ referred to as a beer garden to the rear of the plot extending to the rear boundary of the site (described by the Planning Authority as being unauthorised/statute barred), and an central area between the main public house and the beer garden, the roof over which is the subject of this retention application/appeal. The central element has a stated area of 33 sqm, is enclosed to the sides, save for the upper section of the northern boundary, and is covered by a Perspex roof. During my site inspection I observed this area being used as a smoking area and for the consumption of drinks. Tables and chairs were also set out within this area.
- 1.4. The rear gardens of dwellings within Forster Court adjoin the appeal site to the east/rear. There are also a number of dwellings in the vicinity of the appeal site along Bohermore, including the adjoining property to the south.

2.0 Proposed Development

- 2.1. The proposed development comprises retention permission for a Perspex roof. The roof covers an area (stated as measuring 33 sqm) situated between the main body of the public house and the structure to the rear of the plot, described as a beer garden.
- 2.2. The particulars submitted with the planning application note that the covered area will allow patrons accessing toilet facilities, which are situated off this central area, to do so without being exposed to the elements. The applicant's submission in response to the appeal also refers to this area as providing access to the beer garden.

¹ This area is annotated on Drawing No. P-002 as 'outdoor area' but it is fully enclosed and roofed.

3.0 Planning Authority Decision

3.1. Request for Further Information

Prior to the decision of the Planning Authority to GRANT retention permission for the proposed development, the Planning Authority requested Further Information.

3.1.1. Further Information was requested on the 2nd of December 2022 as follows:

Item 1: confirm extent of proposed development, in particular the use of the area indicated as 'outdoor area'.

Item 2: submit operational/management plan to address issues including operating hours, music, disposal of waste and mitigation measures.

Item 3: clarify planning status of fire escape and demonstrate compliance with Fire Regulations.

3.1.2. Further information submitted on 14th of July 2023:

Item 1: The area concerned is an independent structure, is not physically joined to the beer garden, and provides a sheltered cover over the outdoor area for people to pass through to get access to the toilet area of the beer garden. Reference to 'outdoor area' relates to a patio area from PA Ref. 97/60. On occasion, and depending on the weather, tables may be left at this location.

Item 2: Management Plan submitted, the following is noted;

- The maximum occupancy of the garden area is 84 people.
- Opening hours are Monday - Thursday 5pm to 11.30pm, Friday 5pm to 12.30pm, Saturdays 12.30pm to 12.30am and Sundays 12.30pm to 11pm.
- The emergency door and surrounding areas are to be kept clear at all times.
- The area is to be checked at no less than ten-minute intervals when occupied by ten people or more.
- All empty glasses and bottles are to be brought into the main bar.
- The sound system is on a noise limiter, cannot be increased and this must be maintained.

- Any person or group that is causing a disturbance or creating excessive noise should be asked to quieten down. If the problem continues they will be asked to leave the premises.
- On nights where there are no patrons in the area all lights etc. should be switched off.
- The door leading from the garden into the toilets should be unlocked and the area around there free from any obstacles.

Item 3: The building is in compliance with Fire Safety Regulations. A right of way exists in relation to the fire exit.

3.2. **Decision**

The Planning Authority issued a Notification of Decision to **GRANT** retention permission on the 4th of August 2023 subject to 4 no. conditions.

The following conditions are of note;

C2 *The external area under the roof structure hereby permitted shall only be used for the purposes of an outdoor smoking area and to allow customers access toilets at the rear of the premises. No seating, tables, bar equipment, amplified music, external heaters or other such facilities, which would promote the lingering or congregation of patrons, shall be erected/used in this area.*
REASON: In the interest of the protection of residential amenities.

C3 *A revised Operation and Management Plan for the area referenced in Condition No. 3 shall be submitted to the Planning Authority for written agreement, within 4 weeks of the final grant of retention planning permission. The revised plan shall include for the restrictions outlined in Condition No. 3.*
REASON: In the interest of the protection of residential amenities.

3.3. **Planning Authority Reports**

3.3.1. Planning Reports

3.3.2. The initial report of the Planning Officer notes;

- The proposed development is a non-conforming use and the principle of a beer garden/smoking area at the rear of the public house is open for consideration subject to it not being injurious on the amenity of the area.
- The covered structure to the rear of the public house is considered to be statute barred.
- Notwithstanding the unauthorised status of the covered structure to the rear of the public house, consideration of the proposal can be undertaken on its own merits. The area for which retention is sought could operate independently of the covered structure to the rear of the site.
- The proposal comprises retention of a 33 sqm outdoor area, referred to by the P as a beer garden.
- Under PA. Ref. 97/60 the area corresponding to the area under the roof was annotated as a patio area.
- Confirmation of the use of the area which it is proposed to cover with a roof is required.
- Information in relation to the operation/management of the public house is required, e.g. hours of operation, music, disposal of waste etc.
- Confirmation in relation to fire safety is required.
- Confirmation of the planning status of a fire escape door is required.

Further Information recommended.

3.3.3. The second report of the Planning Officer notes;

- The proposal is acceptable subject to conditions to safeguard the residential amenities of the area.
- Subject to conditions, the proposal would not result in any significant increase in noise.
- Some elements of the operation/management plan submitted should be conditioned where relevant to the proposal.
- Development contributions do not apply.

The report of the Planning Officer recommends a GRANT of retention permission consistent with the Notification of Decision which issued.

3.3.4. Other Technical Reports

Heritage Officer – report notes no objection.

Drainage Section – report notes no objection.

3.4. **Prescribed Bodies**

None received.

3.5. **Third Party Observations**

The report of the Planning Officer refers to 1 no. third party observation having been made to the Planning Authority in respect of the planning application. The issues in the observation are summarised by the Planning Authority as follows;

- Impacts on residential amenity.
- The application does not include the rear extension built without permission.
- Granting permission would set an undesirable precedent.

The observation was accompanied by a noise report, noise complaints and an overview of noise levels recorded in March/April 2022.

The second report of the Planning Officer refers to 1 no. third party observation having been made to the Planning Authority in respect of the Further Information submitted by the applicant. The observation states that the proposal facilitates the full use of the rear unauthorised extension.

4.0 **Planning History**

Appeal Site:

PA. Ref. 82/186 – Permission GRANTED for extension to dwelling and licenced premises.

PA. Ref. 97/60 – Permission GRANTED to refurbish and extend existing public bar facilities to include construction of basement and extension, change of shop front,

change of use of existing dwelling area at ground and first floor to bar and ancillary public bar facilities.

PA. Ref 98/369 – Permission GRANTED for retention of ancillary bar store, dumb waiter and inner elevational revisions to approved development

5.0 Policy Context

5.1. Development Plan

5.1.1. The Galway City Development Plan 2023-2029 is the relevant development plan. The appeal site is zoned 'Residential' (R), the zoning objective of which is '*to provide for residential development and to protect residential amenities and to provide for limited associated uses*'.

5.2. Natural Heritage Designations

- Lough Corrib SAC (Site Code 000297) – c. 0.35 km north-west (at closest point).
- Inner Galway Bay SPA (Site Code 004031) – c. 0.45 km south-east.
- Galway Bay Complex pNHA (Site Code 000268) – c. 0.45 km south-east.

5.3. EIA Screening

(See Form 1 attached to this report) The proposed development does not fall within a class of development set out in Part 1 or Part 2 of Schedule 5 of the Planning and Development Regulations, 2001, (as amended) and therefore is not subject to EIA requirements.

6.0 The Appeal

6.1. Grounds of Appeal

This is a third-party appeal on behalf of Kenneth and Magdalena McDonagh, 29 Forster Court, against the decision to grant retention permission.

The grounds for appeal can be summarised as follows;

- The development is not described accurately. The roof is covering an area which is used as an integral part of the pub, additionally the area concerned is part of a larger area of unauthorised development. The area which the roof is covering is a de-facto extension to the pub. It is inaccurate to describe this area, as the applicant has in response to the Further Information request as a 'covered walkway'. The Planning Authority refer to this area as having comprised a patio (with reference to a 1997 planning application) however this patio was likely associated with the residential element of the pub.
- The proposed development will seriously injure the residential amenity of property in the area, and is contrary to the Residential zoning objective of the area. 4 no. dwellings adjoin the site and there are c. 100 dwellings within 100 metres of the pub.
- A noise impact report commissioned by the appellant found that significant noise attenuation is required, and that detailed acoustic input into the overall design and construction would be needed. The report also noted that the noise from the extension is at a decibel level which is audible internally in surrounding properties.
- The proposed development facilitates an unauthorised use, by providing a means of access to part of the pub which requires planning permission.
- The grant of permission issued by Galway City Council is unenforceable. Condition no. 2 stipulates that the area is used as a smoking area however the HSE has already indicated the unsuitability of this area as a smoking area. A smoking area is provided elsewhere. It is unrealistic to expect pub patrons to only congregate in permitted areas. Condition no. 3 is incomprehensible.
- The appeal is accompanied by correspondence from the Management Company of Forster Court (Phase 2) which states that the operation of the pub and the unauthorised extensions, which shares a common boundary with Forster Court, has seriously impacted the amenity and value of the adjacent property, and that the pub has effectively become a 'super pub'.

6.2. Applicant Response

The applicant has submitted a response in respect of the third party appeal submission.

- The area concerned is an independent structure and is not joined to the beer garden. The main function of the area is as a covered walkway. The roof allows people to pass through the outdoor area to gain access to the toilets and the beer garden. On occasion tables are left in this area depending on the weather. The area where the roof meets the boundary wall is open to the elements.
- The applicant has commissioned their own noise report. Works were carried out to address noise levels. 13 no. measures are detailed, including limiters for speakers, the repositioning of speakers, an acoustic ceiling, an acoustic wall, and a noise management plan.
- The unauthorised area to the rear is outside the scope of this development and is statute barred.
- The proposal is a non-conforming use.
- The applicant intends to comply with the conditions stipulated to the grant of retention permission issued by the Planning Authority.

6.3. Planning Authority

None received.

6.4. Observations

None received.

7.0 Assessment

- 7.1. Having examined the application details and all other documentation on file, including the appeal, the applicant's response to the appeal, and having inspected the site, and having regard to the relevant local policy and guidance, I consider the main issues in relation to this appeal are as follows:

- Principle of Proposed Development
- Impact on Residential Amenity
- Issues Arising

7.2. Principle of Proposed Development

- 7.2.1. The development description as per the public notices refers to the proposed development as comprising retention permission of a roof over a door and toilet facilities. I note that the proposed roof will provide for the enclosure² of a 33 sqm area located between the main public house and the beer garden. Permission/retention for the use of the area beneath the roof has not been sought in this application. The Planning Authority's position in relation to the use of this area appears to be based on a historic permission, PA. Ref. 97/60, where an area corresponding with the area under the proposed roof was indicated as a patio. I note however that this area was not covered. In my opinion the roof structure cannot be considered in isolation from the use of the area below. Based on the planning history applicable to the site, it appears that this area was never permitted to operate as part of the public house. The enclosure of this area with a roof would in my view facilitate this area to operate as an extension to/part of the main public house, permission for which has not been sought.
- 7.2.2. The particulars submitted with the application refer to the area between the main body of the public house and the unauthorised structure/beer garden as being used to provide a passageway to the toilets. In the applicant's response to the appeal submission this area is also described as providing access to the beer garden. From reviewing the floor plans I note that the toilets can be accessed internally from the main public house, and therefore I note that the proposed roof will be of greater use to patrons using the unauthorised structure/beer garden, who prior to the provision of the roof were exposed to the elements when accessing the toilets. I also note that the proposed roof provides for a continuous covered connection between the unauthorised structure/beer garden and the main public house, allowing patrons to pass freely from one area to another.

² Save for a small section of the upper section of the northern boundary wall where the wall meets the Perspex roof.

- 7.2.3. On the basis of the forgoing, I submit to the Board that retention permission should be refused as it would facilitate the consolidation and intensification of an unauthorised use/structure, specifically as the proposed roof would provide a covered connection to toilet facilities for patrons using the beer garden, and the creation of a connection between the unauthorised structure/beer garden and the main public house.

7.3. Impact on Residential Amenity

- 7.3.1. The appeal site is located in proximity to a residential area and there are residences immediately adjoining the appeal site. The crux of the appeal is that the proposed development will result in impacts on neighbouring property arising from noise and disturbance caused from the operation of the public house, including the unauthorised structure to the rear of the site, and that the proposal to retain the roof over the central area will facilitate an intensification of use within the site.
- 7.3.2. As addressed above, in my opinion the proposal to provide a roof over the central area will facilitate its use as an extension to the public house. I note that the area will be used by patrons to go between the main body of the public house and the unauthorised beer garden. Additionally, I note that the design of the area which the applicant seeks to enclose with the roof is such that noise will not be contained and will spill into the adjoining area. I also note that part of the northern boundary of this area is open, thereby significantly reducing the efficacy of noise abatement measures proposed by the applicant. Additionally, I am not satisfied that the conditions attached to the Notification of Decision to Grant Retention Permission would be practical in terms of their implementation, in particular restricting the use of the area concerned. Notwithstanding the measures outlined by the applicant, given the design of the centrally located part of the public house, and the relationship and proximity to adjoining residences, I consider that the proposed development would facilitate the use of the area concerned in a manner which would cause serious injury to the residential amenity of the area.
- 7.3.3. I note that the appeal site is zoned 'Residential' in the Galway City Development Plan 2023 – 2029, the objective of which is *to provide for residential development and to protect residential amenities and to provide for limited associated uses*'. The public house is established on the site and I note that the Planning Authority have considered

the proposal to be a 'non-conforming' use. The Galway City Development Plan 2023 – 2029 provides that *'extensions to or improvements of premises accommodating these non-conforming uses may be granted, where the proposed development would not be injurious to the amenities of the area, and would not prejudice the proper planning and sustainable development of the area'*. The proposed roof will facilitate the use on the site to operate at a greater intensity, and noting the design of the area concerned and the proclivity for noise generated within this area to extend beyond the confines of the site and significantly impact neighbouring residences I am not satisfied that the proposed development could be positively considered under the criteria for non-conforming uses. Having regard to the forgoing, I submit to the Board that retention permission is refused.

7.4. Issues Arising

7.4.1. Development Contribution – the Galway City Council Development Contribution Scheme 2020 - 2026 provides that no reductions in whole or in part shall apply to permissions for retention of development. In the event that the Board grant retention permission for the proposed development a condition requiring the payment of a financial contribution is required in my opinion.

7.4.2. Planning Authority Conditions - the Notification of Decision to Grant Retention Permission issued by Galway City Council includes a number of specific planning conditions, specifically -

C2 – the use of the area under the roof shall be used for smoking and accessing toilets only. No seating, bar equipment, amplified music, heaters etc. shall be erected in this area.

Should the Board be minded to permit the proposed development I recommend that this condition is not included noting the practicality of enforcing such a condition.

C3 – revised operation and management plan to be submitted.

Should the Board be minded to permit the proposed development I recommend that this condition is included.

8.0 Appropriate Assessment Screening

- 8.1. I have considered the proposed development at 90 Bohermore, Galway in light of the requirements S177U of the Planning and Development Act, 2000, as amended.
- 8.2. The subject site is located c. 0.35 km south-east of Lough Corrib SAC (Site Code 000297) and c. 0.45 km north-west of Inner Galway Bay SPA (Site Code 004031). The proposed development comprises retention permission of a roof over part of a public house. No Appropriate Assessment issues are raised in the appeal.
- 8.3. Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment because there is no conceivable risk to any European Site. The reason for this conclusion is as follows;
- The nature and scale of the development.
 - The location of the development site and distance from nearest European site(s), and the lack of connections between the development site and European sites.
- 8.4. I conclude that on the basis of objective information, that the proposed development would not have a likely significant effect on any European Site either alone or in combination with other plans or projects. Likely significant effects are excluded and therefore Appropriate Assessment (stage 2) (under Section 177V of the Planning and Development Act, 2000) is not required.

9.0 Recommendation

- 9.1. I recommend that retention permission for the proposed development should be refused for the reasons and considerations set out below.

10.0 Reasons and Considerations

1. On the basis of the submissions made in connection with the planning application and appeal, it appears to the Board that the proposed development relates to a site, part of the use of which is unauthorised as a public house, and that the proposed development would facilitate the consolidation and intensification of this unauthorised use. Accordingly, it is considered that it

would be inappropriate for the Board to consider granting retention permission for the proposed development in such circumstances.

2. It is considered that the proposed development, comprising the provision of a roof over an area to the rear of the public house, would facilitate an intensification in the use of this area, and noting the design of this area and its proximity to adjacent residences, the proposed development would give rise to excessive noise that is likely to cause significant nuisance to residences in the vicinity, and therefore, seriously injure the amenities of the area and of property in the vicinity. The proposal would be contrary to the proper planning and sustainable development of the area.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Ian Campbell
Planning Inspector

27th September 2024

Appendix 1 - Form 1

EIA Pre-Screening

[EIAR not submitted]

An Bord Pleanála Case Reference	ABP-317894-23			
Proposed Development Summary	Retention of roof over back door adjoining toilet facilities.			
Development Address	Crowe's Bar, 90 Bohermore, Galway			
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)		Yes	X	
		No	No further action required	
2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?				
Yes			EIA Mandatory EIAR required	
No		X	Proceed to Q.3	
3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?				
		Threshold	Comment (if relevant)	Conclusion
No		X		No EIAR or Preliminary Examination required
Yes				Proceed to Q.4

4. Has Schedule 7A information been submitted?

No		Preliminary Examination required
Yes		Screening Determination required

Inspector: Ian Campbell**Date: 27th September 2024**