



An
Bord
Pleanála

Inspector's Report

ABP-320612-24

Development	Retention of minor alterations.
Location	28 Forster Court, Galway.
Planning Authority	Galway City Council.
Planning Authority Reg. Ref.	23/235.
Applicant(s)	Kenneth McDonagh.
Type of Application	Retention Permission.
Planning Authority Decision	Grant Retention Permission.
Type of Appeal	First Party & Third Party
Appellant(s)	1. Kenneth McDonagh (1 st Party) 2. MJ Crowe (3 rd Party)
Observer(s)	None.
Date of Site Inspection	10 th December 2024
Inspector	Kathy Tuck

1.0 Site Location and Description

- 1.1. The subject site, which has a stated area of c.0.019ha, is located at 28 Fosters Court, Co. Galway. Fosters Court is located approximately 1.5km to the north-east of Galway City Centre.
- 1.2. Foster Court is an established residential estate which comprises of a number of dwelling types. The dwelling subject to this appeal is a dormer bungalow dwelling which has a stated area of c.161sq.m. The property has been previously extended to the rear.

2.0 Proposed Development

- 2.1. This is an application for the retention of a number of amendments to the elevations of the existing dwelling which include for the following:
 - 1 no. additional roof light along the rear elevation.
 - 1 no. window at ground floor level along the rear elevation.
 - 1 no. window at ground floor level along the southern elevation.
 - 1 no. window at ground floor level along the northern elevation.
 - A new side entrance door along the northern elevation.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority granted retention permission subject to 4 no. conditions.
Condition no. 2:

Within six months of the date of issue of this retention permission, the applicant shall submit a revised floor plan and drawings showing the following changes in line with the development permitted under Ref. No. 08/709.

- i. The removal of the side entrance door to the northern elevation (as per drawings 73.08.04A dated the 3rd of December 2008).

- ii. The floor area of Bedrooms 02, 03 and the office on the ground floor to the rear/ western part of the dwelling shall be reinstated as two bedrooms only (as per drawings 73.08.04A dated the 3rd of December 2008).
- iii. The utility room on the ground floor shall be reinstated as a bedroom and the windows opening reduced in line with the dimensions permitted under Ref. No. 08/709 (as per drawings 73.08.04A dated the 3rd of December 2008)
- iv. Bedrooms 01 on the ground floor shall be incorporated into the Livingroom area (as per drawings 73.08.04A dated the 3rd of December 2008).
- v. The storage area to the south of Bedroom 4 on the first floor shall be incorporated into bedroom 04(as per drawings 73.08.04A dated the 3rd of December 2008). (vi) The two storage areas on the first floor to the rear of the dwelling shall for one area (as per drawings 73.08.04A dated the 3rd of December 2008).

REASON: In the interests of orderly development and to clarify the plans and particulars for which

3.2. Planning Authority Reports

3.2.1. Planning Reports

The first report of the Planning Officer noted the location of the subject site, the proposed development, the observations received, the planning history of the site and the relevant planning context.

The report notes concerns over the ongoing enforcement issues and the use of the property for a multi-unit purpose. As such the Planning Officer sought the following further information:

Item 1

Arranging a site visit.

Item 2

Confirmation whether the property has been subdivided into two separate units and demonstrate that the internal layout complies with condition No. 2 and condition no. 3

of Planning Ref. No. 08/709. (dwelling to be used as a single unit and attic to remain as storage).

Item 3

Justify the additional fenestration and doors which have the potential to injure the residential amenity of adjoining properties. Show how the new opening would not compromise future development potential of adjoining properties.

Item 4

Demonstrate that the proposals as submitted would comply with the current Fire Safety Requirements for such a development with regards to the means of escape. Required liaison with the Chief Fire Officer and submit revised plans.

The applicant submitted a response to the further information request as follows:

Response to Item 1

A site inspection was undertaken on Monday the 15th of July 2024.

Response to Item 2

Applicant states that property has not been subdivided into separate residential units as alleged and submitted statutory declarations from the four current tenants renting the property No. 28 Foster Court - demonstrates that dwelling being rented as one unit. Also submitted letter of support in the form of a signed statutory declaration from the owner of Property at No.30 Foster Court and No.27 Foster Court.

Response to Item 3

The applicants have stated that door to the side of the property and the additional windows were added to allow light into the property. A letter in the form of a signed statutory declaration from the contractor and widow providers was submitted.

Applicants stated in the statutory declaration that the works as proposed for retention were carried out more than 7 years ago and consider that the property is exempt from prosecution pursuant to Section 157 (4) of the Planning and Development Act 2000. The cover letter has also noted that it appears that Galway City Council cannot apply enforcement action as the development for which no planning permission was granted commenced more than 7 years ago.

Response to Item 4

No details submitted.

The second report of the Planning Officer noted concern that the applicant within the response to the further information did not revert the property back to a single property in line with that permitted under PA Ref 08/709. It was considered that the additional side entrance and new windows are unacceptable to the Planning Authority as the works have resulted in the subdivision of this residential dwelling to multiple units including an apartment and a separate self-contained residential unit which is contrary to the Galway City Council Development Plan, in particular Section 11.3.1 (j) & (k).

It was further considered that the additional fenestration and doors shall injure the residential amenity of adjoining properties and shall compromise the future development of adjoining properties and again depreciating their value as a result of overlooking. The report concluded recommending that permission for retention be refused.

However, there is a note on the report from the Senior Executive Planner which is dated on the 25th July 2024 which states the following:

"I discussed the above report with the Executive Planner and also with the Acting Senior Planner. Based on the response to the Further Information and from an examination of the drawings it is considered that the development should be permitted retention permission. It is considered appropriate to include conditions that the unit shall be used solely as a single residential unit and that a condition should be included to remove the new side entrance door and that this should be replaced with blockwork in the interest of orderly development and adjoining residential amenity."

As such, a recommendation to grant permission was issued.

3.2.2. Other Technical Reports

No other reports are on file.

3.3. Third Party Observations

The Planning Authority received 2 no. observations. Concerns raised can be summarised as follows:

- Plans and documentation submitted are misleading.

- No dimensions shown on site plan between subject building and adjoining properties.
- The window not in compliance with the required 11m separation distance.
- If permission granted would establish an undesirable precedent.
- current applicant is objecting to a pending planning application for a publican licence at Crowes Bar because of noise. If the applicant has the recommended 11m separation distance, there would be no need to make a formal noise complaint.
- the full extent of the planning history has not been outlined - specific conditions were attached to the grant of planning under Ref. No. 08/709.
- Attic space is being utilised as a bedroom – intensification of use.
- This is the third retention planning application on this site and can be construed as seeking to overcome the conditions attached to previous planning on site.
- important that the Planning Authority reiterate that the attic space be used for storage only and concerns outlined as to the need for an additional window if attic space restricted to storage only.
- 2008 planning application was granted on the basis that the habitable area was less than 100 square metres where this application has a floor area of 160 square metres.
- Concerns that this retention application as per features of the site layout could be construed as providing for use in multiple occupancy.
- Retention of this application could result in the property being used for Airbnb short-term letting.
- not in compliance with Condition No. 2 of Ref. No. 08/709.

4.0 Planning History.

PA Ref. 08/709: Retention permission GRANTED for a) single storey rear extension with attic over. b) internal alterations to previously approved permission c) ground floor window to side of dwelling.

PA Ref. 08/259 Retention permission REFUSED for a) single storey rear extension with attic over b) internal alterations to previously approved permission c) ground floor window to side of dwelling. Reason for refusal was as follows:

Whilst the scale of the extension is relatively moderate, the curtilage to the property and the restricted rear garden in particular, significantly constrains the scale of development that can be achieved on this site. The extension raises issues in respect of amenity open space provision, and in respect of the privacy and amenity of the adjoining properties. There is only some 33m² of recreational amenity space left available to the rear of the property. This equates to only 26% of the floor area of the extended property, which is considerably less than the minimum required 50%. Furthermore, the scale of the projection of the extension, together with its height and profile, serve to significantly affect the light into and shadowing of the adjoining gardens. Finally, the windows at attic level of the extension are at a height which affords views over the adjoining gardens, comprising the privacy of the residents of these properties. For all these reasons, it is considered that the development compromises the amenity of residents living on site and adjoining the site, and therefore the Galway City Council Development Plan objectives for residential areas and the proper planning and sustainable development of the area.

5.0 Policy Context

5.1. Galway City Development Plan 2023-2029

The site is zoned as Residential (R) in the Galway City Council Development Plan 2023 – 2029. The zoning objective seeks 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.

Other relevant section include:

- Chapter 2: Climate Action
- Chapter 3: Housing and Sustainable Neighbourhoods
- Chapter 6: Economy, Enterprise and Retail
- Chapter 7: Community and Culture
- Chapter 8: Built Heritage, Placemaking and Urban Design
- Chapter 10: Compact Growth and Regeneration
- Chapter 11: Land Use Zoning Objectives and Development Management Standards

Guidelines:

- Part A – Land Use Zoning Policies and Objectives
- Part B Development Management Standards.

5.2. Natural Heritage Designations

The subject site is not located within or adjacent to any natura 2000 sites. The subject site is located c.407 m to the north-west of the Galway Bay Complex SAC (site code: 000268) and the Inner Galway Bay SPA (site code: 004031). The site is also located c. 545.45m to the east of the Lough Corrib SAC (site code: 000297).

5.3. EIA Screening

The 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 (See Appendix 1).

6.0 The Appeal

6.1. Grounds 1st Party Appeal

A 1st party appeal was received against condition no. 2 of the grant of permission. The grounds can be summaries as follows:

Condition 2:

- Condition no. 2 bars retention of all the modification, with the exception of 2, that were subject to the retention permission.
- Condition no. 2 disregards the floor plans submitted.
- The condition facilitates enforcement proceeding on modifications which are statute barred.
- Improvements were required to meet fire safety building regulations to allow tenant a modern standard of living – sizable part of dwelling was permitted for storage.
- Improvements were aimed to aid working from home.
- Scale of works does not unduly affect the primary use as a dwelling or amenity of adjoining properties.
- Appellant, wife and 4 long standing tenants have all submitted affidavits to state not a multi habitable unit.
- Staff of the Planning Authority noted that the internal doorway – without a physical door- led to bedroom 2 and 3 and office – it is submitted that property can't be physically separated in two units.
- Reference to Section 11.3.1 (j) & (k) & (i) of the City Plan is misconceived – appellant did not sub-divide; extend or erect a self-contained unit.
- Dwelling is the same as per development permitted under Reg Ref 08/709 with minor elevation alterations which are now sought to be regularised.
- Submitted that improvement to residential amenities is the cornerstone of the Development plan. Thus, requirements of condition 2 is unwarranted for following reasoning:

- Side Door

Installed to allow light into rear of property.

Additional means of access to bedroom 2 and 3 and office.

To appease council willing to replace with fixed glass.

No impact on neighbouring – lived in by appellant and family.

- Reinstate bedroom 2 and 3 and office as two bedrooms only

Council has no issue with the window ope.

Removal of office hinders working from home.

- Utility room to bedroom – window ope reduced in line with previously permitted.

Council disregarded that this utility room has modernised property.

Original window did not comply with building regs (fire safety)

No concern over impact on amenities – looking at a blank wall.

- Bedroom 1 incorporated into living room.

Council has disregarded simple internal modernisation.

improved layout of property.

Increases dwelling to a 4 bed unit in line with most dwellings in Fosters Court.

- Storage area and bedroom 4 incorporated into 1 room

Council disregarded simple internal modernisation of layout.

Adjoining storage are for clothes.

- Two storage areas to be retained as one

Patriation allows for dual use by owner and tenants.

- Appellant welcomes grant of retention permission -impositions of condition 2 unwarranted.
- Omission of this condition has no adverse impact on scale and character of the dwelling the amenity of the streetscape, its character or the residential amenity of the area.
- Planning Authority have disregarded abundance of evidence on file.

6.2. Grounds 3rd Party Appeal

A 3rd party appeal was received from Micheal Crowe, the owner of the public house which adjoins the subject site to the west. Ground of the appeal are as follows:

- Property has been divided into multiple units contrary to Galway City Development Plan.
- Property currently has a number of unauthorised openings – rear window at roof floor level gives rise to overlooking.
- Applicant has no regard for planning process and proper planning and sustainable development of the area.
- Applicant has no regard to amenities of the surrounding area.
- Planning Officer outline unease with the lack of detail within statutory notices.
- Further information response relies on 7-year rule – timeline of application means 7 year rule not applicable.
- Item 3 of the further information response not adequately addressed.
- The applicant is a director of the management company so letter of concern is a conflict of interest.
- Planner report recommended a refusal – was removed from public web page. The assessment highlighted a number of breaches of planning legislation.
- Conditions are unrealistic.

6.3. Planning Authority Response

None received

6.4. Observations

None received

7.0 Assessment

Having examined the application details and all other documentation on file, including the reports of the local authority, and having inspected the site, and having regard to the relevant local and national policies and guidance, I consider that the substantive issues in this appeal to be considered are as follows:

- Principle of Development.
- First Party V Condition No. 2.
- Impact on residential amenities.
- Matters Arising.

7.1. Principle of Development

- 7.1.1. The subject site is zoned under Objective Residential (R) in the Galway City Council Development Plan 2023 – 2029. The zoning objective seeks 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. It is therefore considered that the works seeking retention permission on this site are acceptable in principle.

7.2. First Party V Condition No. 2

- 7.2.1. The 1st party appellant has raised concerns regarding Condition no. 2 which was included within the grant of permission. It is contended that the inclusion of this condition restricts all aspects of the retention permission, bar 2 items, has disregarded the floor plans submitted and will facilitate enforcement proceeding on modifications which are considered to be statute barred.
- 7.2.2. It is further stated that the amendments made were required in order to comply with fire safety building regulations; to allow for working from home for tenants; and to provide for a modern standard of living for tenants. The 1st party appellant has concluded that in their opinion the works do not impede upon the residential amenities of the surrounding area.
- 7.2.3. Condition Number 2 of the decision states:

Within six months of the date of issue of this retention permission, the applicant shall submit a revised floor plan and drawings showing the following changes in line with the development permitted under Ref. No. 08/709.

- i. The removal of the side entrance door to the northern elevation (as per drawings 73.08.04A dated the 3rd of December 2008).*

- ii. *The floor area of Bedrooms 02, 03 and the office on the ground floor to the rear/ western part of the dwelling shall be reinstated as two bedrooms only (as per drawings 73.08.04A dated the 3rd of December 2008).*
- iii. *The utility room on the ground floor shall be reinstated as a bedroom and the windows opening reduced in line with the dimensions permitted under Ref. No. 08/709 (as per drawings 73.08.04A dated the 3rd of December 2008)*
- iv. *Bedrooms 01 on the ground floor shall be incorporated into the Livingroom area (as per drawings 73.08.04A dated the 3rd of December 2008).*
- v. *The storage area to the south of Bedroom 4 on the first floor shall be incorporated into bedroom 04(as per drawings 73.08.04A dated the 3rd of December 2008).* (vi) *The two storage areas on the first floor to the rear of the dwelling shall for one area (as per drawings 73.08.04A dated the 3rd of December 2008).*

REASON: In the interests of orderly development and to clarify the plans and particulars for which

- 7.2.4. I note that the 1st party appeal has been accompanied by a number of statutory declarations from the landowners and the current tenants which all state that the subject property is a single dwelling and not subdivided in any way.
- 7.2.5. Both the Planning Officer and 3rd Party Appellant refer to the ongoing enforcement proceedings which are subject to this application. I note from the onset of my assessment that the matter of enforcement falls under the jurisdiction of the planning authority to be pursued accordingly where required.
- 7.2.6. Condition no. 2 of the grant of permission requires the appellant to submit revised floor plans and drawings to ensure that the dwelling is in line with the development permitted under PA Ref. No. 08/709. The premise behind this condition appears to be the overriding concern of the Planning Officer that the subject dwelling used as a multi-habitable dwelling. In their assessment, the Planning Officer considered that the proposal would not comply with Section 11.3(j) & (k) of the Galway City Development Plan 2023-2029 and that locking of the door to the eastern wall of the utility in

conjunction with the new windows and door and revised layout has resulted in the allowance of the subdivision of this property and an intensification of use.

- 7.2.7. Section 11.3(j) of the City Plan relates to the conversion and subdivision of dwellings while section (k) relates to Self-Contained Residential Units. The assessment further notes that the proposal would not comply with condition no. 2 or condition no. 3 of PA Ref 08/709. Condition no. 2 required that the property be used as a single unit while condition no. 3 required that the attic space to the extension shall be used for storage purposes only and not habitable accommodation.
- 7.2.8. From examination of the plans submitted, with specific reference to floor plan drawing no. KM 001, I consider that the amended layout of the property could allow for the subdivision of the dwelling. Furthermore, having regard to the floor areas of the bedrooms, with particular reference to bedroom 2 and 3, I have concerns relating to the level of amenity that these rooms would provide for the tenants in that they would fall short of the required room sizes as prescribed by Section 5.3 of the Quality Housing for Sustainable Communities document, 2007.
- 7.2.9. I consider that the inclusion of condition no. 2 would overcome these concerns ensuring that the unit remain solely as a single residential unit which should provide for an appropriate level of amenity for any residents. Therefore, I recommend that in the event that the Board are minded to grant permission that this condition be retained.

7.3. Impact on Residential Amenities

- 7.3.1. The 3rd Party Appellant raised concerns that the subject property currently has a number of unauthorised openings. Of main concern is the inclusion of a rear window at roof level which is considered to give rise to issues of overlooking of the property to the rear which is in the ownership of the 3rd Party Appellant – Crowes Public House which is located along Bohermore, Co. Galway.
- 7.3.2. The 3rd Party Appellant further contends that the applicant failed to adequately address the concerns raised by the Planning Authority within the request for Further Information, with particular reference to Item no. 3. It is stated that the applicant fails to reference, within the response, the rear window at first floor which gives rise to direct issues of overlooking. Item no. 3 of the said request required the applicant to justify

the additional fenestration and doors which have the potential to injure the residential amenity of adjoining properties and demonstrate how the new opening would not compromise future development potential of adjoining properties.

- 7.3.3. I note the response to item 3 of the Further Information request was lacking and that no reference was made to the development potential of the adjoining property. However, the subject window ope is a roof light which is located along the rear elevation and serves a room which is designated on the floor plans to be utilised for storage. Furthermore, on inspection of the site I note that the property subject to this appeal is at a lower level than the adjoining commercial property to the rear and that the boundary treatment which has been erected would not allow for any levels of overlooking. On balance, I do not consider that the subject window would give rise to issues of overlooking having regard to the use of the room. Furthermore, I do not consider that the ope would impact the future development potential of the adjacent commercial property.

7.4. Matters Arising

Conditions

I am satisfied that the conditions attached by the planning authority in its decision to grant permission for the proposed development are generally appropriate insofar as they relate to domestic/residential development and the Planning Authority included a specific condition. The 1st party appellant is seeking to have this condition omitted. I consider, having regard to my assessment above, set out within Section 7.4, that in the event that the Board are minded to grant permission that this condition be retained.

8.0 AA Screening

- 8.1. Having regard to the modest scale of the proposed development, its location within an appropriately zoned area and the foreseeable emissions therefrom, I am satisfied that no appropriate assessment issues arise, and it is not considered that the proposed 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

Having regard to the above, I recommend that retention permission be granted for the development based on the following reasons and considerations.

10.0 Reasons and Considerations

The development which is seeking retention permission for a number of amendments to the external facade of the existing dwelling complies with the provisions of the Galway City Development Plan 2023-2029. It is considered that, subject to compliance with the conditions set out below, the proposed development would not be out of character with the surrounding area, would not be visually detrimental to the area, would not impact negatively upon the current levels of residential amenity enjoyed at this location and is in keeping with the proper and sustainable development of the area.

11.0 Conditions

1.	<p>The development shall be retained and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars received by the planning authority on the 3rd November 2023 and the 2nd July 2024, 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.</p> <p>Reason: In the interest of clarity</p>
2.	<p>Within six months of the date of issue of this retention permission, the applicant shall submit a revised floor plans and drawings showing the following changes in line with the development permitted under Ref. No. 08/709.</p>

	<p>i. The removal of the side entrance door to the northern elevation(as per drawings 73.08.04A dated the 3rd of December 2008).</p> <p>ii. The floor area of Bedrooms 02, 03 and the office on the ground floor to the rear/ western part of the dwelling shall be reinstated as two bedrooms only(as per drawings 73.08.04A dated the 3rd of December 2008).</p> <p>iii. The utility room on the ground floor shall be reinstated as a bedroom and the windows opening reduced in line with the dimensions permitted under Ref. No. 08/709 (as per drawings 73.08.04A dated the 3rd of December 2008).</p> <p>iv. Bedrooms 01 on the ground floor shall be incorporated into the Livingroom area (as per drawings 73.08.04A dated the 3rd of December 2008).</p> <p>v. The storage area to the south of Bedroom 4 on the first floor shall be incorporated into bedroom 04(as per drawings 73.08.04A dated the 3rd of December 2008).</p> <p>vi. The two storage areas on the first floor to the rear of the dwelling shall for one area(as per drawings 73.08.04A dated the 3rd of December 2008).</p> <p>REASON: In the interests of orderly development and to clarify the plans and particulars for which retention permission is granted</p>
3.	<p>The property shall be used as a single dwelling unit only.</p> <p>REASON: In the interest of residential amenity</p>

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.

Kathy Tuck
Planning Inspector

15th January 2025

Appendix 1

EIA Pre-Screening

An Bord Pleanála Case Reference	ABP-320621-24		
Proposed Development Summary	Retention permission of minor alterations.		
Development Address	28 Forster Court, 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	
		No	X
2. Is the proposed development of a CLASS specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended)?			
Yes			Proceed to Q3.
No	X		Tick if relevant. No further action required
3. Does the proposed development equal or exceed any relevant THRESHOLD set out in the relevant Class?			
Yes			EIA Mandatory EIAR required
No	X		Proceed to Q4
4. Is the proposed development below the relevant threshold for the Class of development [sub-threshold development]?			
Yes			Preliminary examination required (Form 2)
5. Has Schedule 7A information been submitted?			
No	X	Screening determination remains as above (Q1 to Q4)	

Yes		Screening Determination required
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Inspector: _____ Date: _____

Appendix 2
Appropriate Assessment Screening

I have considered the proposed development in light of the requirements S177U of the Planning and Development Act 2000 as amended. The subject site is located c.407 m to the north-west of the Galway Bay Complex SAC (site code: 000268) and the Inner Galway Bay SPA (site code: 004031). The site is also located c. 545.45m to the east of the Lough Corrib SAC (site code: 000297).

This application is seeking retention permission for amendments to the façade of an existing dwelling. Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment because it could not have any appreciable effect on a European Site. The reason for this conclusion is as follows:

- Nature of works and the limited scale of what is being proposed.
- The location of the site from nearest European site and lack of connections.

I consider that the proposed development would not be likely to have a significant effect individually, or in-combination with other plans and projects, on a European Site and appropriate assessment is therefore not required.

Inspector: _____ **Date:** 15th January 2025