



An
Bord
Pleanála

Inspector's Report

ABP-320681-24

Development	Permission for development which consists of retention of a dwelling house, including all associated site works on revised site boundaries.
Location	66 College Road, Galway.
Planning Authority	Galway City Council.
Planning Authority Reg. Ref.	24/60116.
Applicant(s)	Fidelma & Colette Duggan.
Type of Application	Retention Permission.
Planning Authority Decision	Grant Retention Permission.
Type of Appeal	Third Party.
Appellant(s)	Tony Faherty.
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.0.022ha, refers to 66 College Road, Co. Galway. The subject site is located c.2.1km to the north-east of Galway City Centre and c.200m to the west of Lough Atalia. The Connaught Rugby Showgrounds/Greyhound track are across the road to the north of the subject site.
- 1.2. The site comprises of a two-storey over basement detached dwelling which is finished with a pitched roof with the open gable addressing College Road. The subject dwelling is set back from the established building line of College Road and is served with a small hard scaped garden area to the front. It is finished with a painted render with the main access being located along the side (north-west) elevation.

2.0 Proposed Development

- 2.1. Retention permission is sought for of a two storey over basement dwelling which has a stated area of 160.12sq.m. The cover letter submitted with the planning application to the Planning Authority states that this planning application is being submitted to regularize the planning permission for the dwelling and the existing site boundaries.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority, following a request for further information, granted retention permission on the 12th August 2024 subject to 5 no. conditions.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The first report of the Planning Authority noted the location of the site, details of the development, the planning history of the site, comments of third party submission received, and all relevant planning policy. Concerns were raised with regard to landscaping, surface water disposal, changes relating to site area and site ownership. The following further information was requested:

Item 1

- Revised site layout map showing the location of the soakaway system and design details of same.

Item 2

- A landscaping scheme for the front and rear garden area.
- Clarify the quantum of open spaces within the confines of the site.

Item 3

- Clarify and clearly document the difference between the area of the site and the design of the dwelling permitted under PA Ref. No. 73/297 and the proposal for retention.
- Justify the requirement for the external stairs to the rear of the property given that there is an existing door to the rear garden area at the basement level of the dwelling.
- Show the separation distance from the rear elevation of the dwelling to the rear elevation of the dwelling on the adjoining site to the south.

Item 4

- Confirm whether the existing dwelling (south-west elevation of dwelling) has been constructed within the confines of the site in the ownership of this applicant.

The applicant submitted a response to the Planning Authority on the 24th April 2024. The response can be summarised as follows:

Item 1

- No new soakaway system is proposed for the existing dwelling – the existing dwelling / site is connected to the public sewer for surface / storm water disposal, as indicated on the application form / planning submission.

Item 2

- (i) dwelling always had a hard surface area at the front since construction - finish minimises maintenance. Not proposed to change the existing landscaping.

- (ii) area of open space:

Front of dwelling: 42.6m²

Rear of Dwelling: 84.9m²

Item 3

- (i) Subject application is to regularise planning permission for the dwelling which was originally constructed in 1974 / 1975 which has revised site boundaries. Refers to additional drawings showing the differences between the existing dwelling and the original dwelling permitted under Reg Ref 73/297.
- (ii) Rear stairs was permitted under PA Ref 73/297 and is required for access to rear garden. Window to the southwest elevation at basement level is small with obscure glazing and located at a high level (over 2m high), which restricts direct overlooking from the dwelling onto the neighbouring property.
- (iii) separate distance indicated on drawing submitted – c.13.605m.

Item 4

- It is stated that the dwelling as it exists on site has been the same in terms of overall size, bulk and positioning since its original construction in 1974 / 1975.

The second report from the Planning Officer considered the response submission under the request for Further Information acceptable and concluded that the retention of the subject dwelling would be acceptable and in accordance with the proper planning and sustainable development of the area and with the provisions of the Galway City Development Plan 2023-2029.

3.2.2. Other Technical Reports

Active Travel – No objection subject to condition.

3.3. Prescribed Bodies

None received.

3.4. Third Party Observations

The Planning Authority received 2 no. submissions which raise the following concerns:

- Window at basement level on south-west elevation will restrict future potential development of lands at 62/64 College Road.
- Negative impact on amenity.
- Overlooking – loss of privacy.
- Loss of privacy contravene Article 8 of the Convention of Human Rights.
- Noise levels.
- Concerns over the unit being used for multi-unit purpose.
- Property may pose a threat to Natura 2000 sites in the area.
- EIA and AA screening required.
- Concern over impact of an exempted extension at this location.

The Planning Authority received a further submission relating to the response for additional information which notes the following:

- Storage area/bathroom which forms part of this application was not included on PA Ref 73/297.
- Storage area in the basement which includes a window is currently in use as a bedroom.
- Response does not consider the concerns raised in previous submission.
- No response relating to issues of ownership raised by the Planning Authority.
- Boundary wall is indicated on plan as being constructed along the line of the common boundary wall with no consent having been obtained.

4.0 Planning History

PA Ref 73/297: Permission granted for a 2 -Storey dwelling (over basement) on a larger site including the subject site and the adjoining site to the south which extends to Lough Atalia road.

Adjoining site to the south

PA Ref 21/120: Extension of Duration refused relating to PA Ref 16/43. Reason for refusal was having regard to the location of the subject site proximate to the Galway Bay SPA and the Galway Bay SAC it is considered that an appropriate assessment or screening for appropriate assessment is required for the development permitted under Pa Ref 16/43 – no such assessments were carried out as part of Pa Ref 16/43.

PA Ref 16/43 Permission Granted for alterations and extensions to existing two storey over partial garage/storage area at street level, four bedroom detached dwelling resulting in an increase in habitable floor area from 136.9sq.m. to 223.7sq.m. while maintaining 4 no. bedrooms and an increase in non-habitable (garage/storage area) floor area from 43.5sq.m. to 48.5sq.m.

Adjoining site to the east

PA Ref 04/694 Permission GRANTED to retain existing metal security gate and other minor changes to front elevation at No. 68 College Road on the 01/12/04. Ref. No. 104/02 – Permission granted to demolish existing house and construct 2 no. apartments at 68 College Road and construct 1 no. apartment on adjoining site at 10 Lough Atalia Road including on site parking and services.

Adjoining site to the west

PA Ref 94/242 Planning permission GRANTED for demolition of existing dwelling and construction of 2 no. residential units at 62 College Road. Originally applied for 3 units.

PA Ref 93/124 Retention permission GRANTED extension and granny flat to rear of NO. 62 College Road.

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 which 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’.

Policy 3.6 Sustainable Neighbourhoods:

Inner Residential Areas- 1. Protect the quality of inner residential areas including Claddagh, Shantalla and Newcastle (to Quincentenary Bridge) by ensuring that new development through consolidation, infill and redevelopment does not adversely affect their character and has regard to the prevailing pattern, form and density of these areas

5.2. Natural Heritage Designations

The subject site is not located within or does not adjoin any Nature 2000 sites. The subject site is located c.68m to the west of the Galway Bay Complex SAC (site code 000268) and the Inner Galway Bay SPA (site code 004031). In addition, the site is located c.889.5m to the east of the Lough Corrib SAC (site code 000297).

5.3. EIA Screening

The development does 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), but does not exceed the prescribed threshold and therefore is not subject to EIA requirements (See Form 1 Appendix 1 and Form 2).

6.0 The Appeal

6.1. Grounds of Appeal

A third-party appeal has been received from Mr. Tony Faherty of no. 7 Forster park, Salthill, Galway, owner of the dwelling located to the north-west of the subject site.

The appellant submits that retention permission should not have been granted for the following reasons:

- Concerns outlined in submission to Galway County Council were not adequately addressed,
- The window located along the side elevation overlooks adjoining property.
- Consent was not sought for the construction of the wall to the south-west boundary formed with no. 62 and 64 College Road.
- A shed located within the site boundary of no 64 College Road previously block any light into the window along the side elevation of no. 66 (subject to this application).
- Requesting that this ope be removed and blocked up.

6.2. Applicant Response

A response from the 1st Party was received on the 26th September 2024. Points of note include:

- The window on the side elevation has been in existence since 1975 – no previous objection to such.
- The window is at high ceiling level when viewed internally.
- The level of the window and the position in the gable does not allow for overlooking.
- No objection was raised to the window when the shed was removed.
- The boundary wall has been in place since if not before the dwelling was constructed.
- The boundary is included on the land registry map – no objection was raised to the registration of the folio.
- Nothing has changed in the footprint of the building since its construction in 1975.
- No objection to the boundary has ever been raised.

The 1st Party response has been accompanied by a copy of the original grant of permission (PA Ref 297/73).

6.3. Planning Authority Response

None received.

7.0 Assessment

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

- Principle of Development
- Location of side window ope; and
- Site boundary.

7.1. Principle of Development

This is an application for the retention of a dwelling and amended site boundaries on a site located at 66 College Road, Galway. The subject site is zoned under objective Residential (R) in the Galway City Council Development Plan 2023 – 2029 which 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’. As such it is considered that the principle of development is acceptable, subject to compliance with the relevant development management standards, local and national objectives.

7.2. Location of side window ope

- 7.2.1. The appellant contends that the widow ope located at basement level along the side, south-west, elevation of the dwelling, gives rise to issues of overlooking of the adjoining property. It is submitted that an unsatisfactory response was provided from the applicant to the Planning Authority with regard to the additional information request made. The appellant has requested that the window be removed and the ope blocked up.

- 7.2.2. Under item 4 of the request for additional information the applicant was requested to confirm whether the existing dwelling (south-west elevation of dwelling) has been constructed within the confines of the site in the ownership of this applicant. The applicant in their response stated that *"it is critical to note that the dwelling as it exists on site has been the same in terms of overall size, bulk and positioning since its original construction in 1974/1975 - no significant alterations, extensions or modifications have been undertaken to the dwelling since it was originally constructed to cause any encroachment beyond its original size in terms of its construction."*
- 7.2.3. In response to item 3(ii) of the further information request the applicant also stated that the window to the southwest elevation at basement level is small with obscure glazing and located at a high level (over 2m high) and has been in position since the construction of the original dwelling in 1974 / 1975. This response was considered to be acceptable to the Planning Authority.
- 7.2.4. The side elevation of no. 66 College Road forms the boundary between the subject site and the adjoining property and as such the subject ope is readily visible from the rear amenity space serving the appellants property. The window ope has a width of 1.19m, a height of 0.41m and is set 2.16m from the finished ground level of the dwelling. The window serves a storage room which is located within the basement of the dwelling. The glazing within the ope is finished with obscure glazing.
- 7.2.5. Having regard to the scale of the window ope, its positioning on the gable relative to the location internal to the room, and the stated use of the room it serves being as storage, I do not consider that the subject window would give rise to undue issues of overlooking of the adjoining property.

7.3. Site boundary

- 7.3.1. The 3rd party appellant contends that the applicant has not received their consent for the construction of the wall to the southwest elevation which is a common boundary.
- 7.3.2. The applicant in their response contends that this boundary was constructed at the same time as the dwelling in 1975 and is registered as part of the folio and that the boundary has not been amended since that time.
- 7.3.1. It is clear in this instance that the ownership, or legal interest in the wall in question is in dispute. While the applicants have provided photographs of the relevant Land Registry maps for the site and other associated Land Registry documentation, this

information does not clarify the ownership of the subject boundary. On the basis of the site inspection and the report of the appellant's Architect, it appears likely that the subject wall is a party wall, effectively in joint ownership. However, it is not possible, based on the available documentation to be definitive. Notwithstanding, I note that Section 5.13 of the Development Management Guidelines for Planning Authorities (DEHLG, 2007), states "the planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution in the courts." While the guidance envisages that some enquiry be made where a dispute arises it goes on to advise that "only where it is clear.... that the applicant does not have sufficient legal interest should permission be refused on that basis."

- 7.3.2. In conclusion, it is not clear who the disputed wall is registered with, including whether or not the wall is solely registered with the applicant, however this is not a matter that needs to be resolved as part of this appeal. Disputes with respect to party boundaries are addressed under the Land and Conveyancing Law Reform Act 2009 and not the Planning and Development Act 2000, as amended. I am satisfied that, as per the Development Management Guidelines, it would not be reasonable to refuse planning permission in this case for reasons relating to a lack of sufficient legal interest on the part of the applicants.

8.0 AA Screening

- 8.1. I have considered the proposed development in light of the requirements of S.177U the Planning and Development Act 2000 as amended. The subject site is not located within or adjacent to any European Site. The subject site is located c.68m to the west of the Galway Bay Complex SAC (site code 000268) and the Inner Galway Bay SPA (site code 004031). In addition, the site is located c.889.5m to the east of the Lough Corrib SAC (site code 000297).
- 8.2. The proposed development is seeking retention permission for a dwelling and revised boundaries. Having considered the nature, scale and location of the proposed development 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:

- The proposed works are limited in scale.
- Due to the distance of the site and intervening land uses from any SAC and SPA, no impacts/ effects are predicted in this regard.
- There are no identifiable hydrological/ecological connector pathways between the application and the SAC or SPA.

8.3. 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. 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 dwelling and alterations to site boundaries 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.	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 24 th April 2024, and on the 18 th July 2024 except as may otherwise be required in order to comply with the following conditions. Where such conditions require
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	<p>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>The property shall be used as a single dwelling unit only.</p> <p>REASON: To prevent excessive building density and protect the residential amenities of the area</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 - Form 1

EIA Pre-Screening

[EIAR not submitted]

An Bord Pleanála Case Reference	ABP-320618-24		
Proposed Development Summary	The proposed development comprises of retention of a dwelling and amended site boundaries.		
Development Address	66 College Rod, 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	
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	X	S. 5 P.2 10(b)(ii) construction of more than 500 dwelling units.	Proceed to Q3.
No			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	X	S. 5 P.2 10(b)(ii) construction of more than 500 dwelling units.	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

Inspector: _____ **Date:** _____

Form 2
EIA Preliminary Examination

An Bord Pleanála Case Reference Number	ABP-320618-24
Proposed Development Summary	The proposed development comprises of retention of a dwelling and amended site boundaries.
Development Address	66 College Rod, Galway
<p>The Board carried out a preliminary examination [ref. Art. 109(2)(a), Planning and Development regulations 2001, as amended] of at least the nature, size or location of the proposed development, having regard to the criteria set out in Schedule 7 of the Regulations.</p> <p>This preliminary examination should be read with, and in the light of, the rest of the Inspector's Report attached herewith.</p>	
Characteristics of proposed development	<p>This is an application for retention of a dwelling and amended boundaries on zoned lands which are serviced.</p> <p>The development, by virtue of its type, does not pose a risk of major accident and/or disaster, or is vulnerable to climate change. It presents no risks to human health.</p>
Location of development	<p>The subject site is located within the development boundary of Galway city. The site constitutes an existing dwelling which is located within a urban context and forms part of a row of dwellings similar in scale.</p> <p>The subject site is located c.68m to the west of the Galway Bay Complex SAC (site code 000268) and the Inner Galway Bay SPA (site code 004031). In addition, the site is located c.889.5m to the east of the Lough Corrib SAC (site code 000297).</p> <p>There are no hydrological connection present such as would give rise to significant impact on nearby water courses (whether linked to any European site or other sensitive receptors). The proposed development would not give rise to waste, pollution or nuisances that differ significantly from that arising from other rural developments.</p>
Types and characteristics of potential impacts	There would be no significant cumulative considerations.

(Likely significant effects on environmental parameters, magnitude and spatial extent, nature of impact, transboundary, intensity and complexity, duration, cumulative effects and opportunities for mitigation).		
Conclusion		
Likelihood of Significant Effects	Conclusion in respect of EIA	Yes or No
There is no real likelihood of significant effects on the environment.	EIA is not required.	NO
There is significant and realistic doubt regarding the likelihood of significant effects on the environment.	Schedule 7A Information required to enable a Screening Determination to be carried out.	NO
There is a real likelihood of significant effects on the environment.	EIAR required.	NO

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.68m to the west of the Galway Bay Complex SAC (site code 000268) and the Inner Galway Bay SPA (site code 004031). In addition, the site is located c.889.5m to the east of the Lough Corrib SAC (site code 000297).

The proposed development is seeking permission for retention permission for a dwelling and revised boundaries.

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:

- The proposed works are limited in scale and located with Residential zoned lands within Galway City Centre. There are existing connections into the public sewer available to serve the subject site. There are no impacts/effects predicted in this regard.
- Due to the distance of the site and intervening land uses from any SAC and SPA, no impacts/ effects are predicted in this regard.
- There are no identifiable hydrological/ecological connector pathways between the application and the SAC or SPA.

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:** _____