



An  
Bord  
Pleanála

## Inspector's Report

**ABP-320956-24**

<b>Development</b>	Retention of gated pedestrian access to public green area at the rear of the house and the front driveway access width.
<b>Location</b>	10 Forster Park, Salthill, Galway
<b>Planning Authority</b>	Galway City Council
<b>Planning Authority Reg. Ref.</b>	24/60238
<b>Applicant(s)</b>	Trudy Keliher.
<b>Type of Application</b>	Retention Permission.
<b>Planning Authority Decision</b>	Refuse Retention permission
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Trudy Keliher
<b>Observer(s)</b>	Eileen Ourfali.  Residents of Dr Manix Drive and Dr Manix Avenue.
<b>Date of Site Inspection</b>	10 <sup>th</sup> December 2024.
<b>Inspector</b>	Kathy Tuck

## **1.0 Site Location and Description**

- 1.1. The subject site, which has a stated area of c.0.038ha, is located at 10 Foster Park, Salthill, Co. Galway. Foster Park is a residential street which is located approximately 3km to the west of Galway City Centre and c. 1km to the North of Salthill Promenade.
- 1.2. Foster Park comprises of a number of dwelling types with bungalow dwellings being located along the northern side and two storey dwellings located along the southern side.
- 1.3. The subject site comprises of a modern bungalow dwelling which has been extended and modified in recent years. The subject dwelling has a southern orientation and addresses an area of public open space to the rear.

## **2.0 Proposed Development**

- 2.1. This is an application for retention permission for the provision of a pedestrian gate located on the rear boundary of the site and the width of the front driveway.
- 2.2. The pedestrian gate provides access from the existing dwelling to an area of public open space which is located in the Dr. Manix Estate. The subject gate has a width of 800mm and is served with a timber gate which has a height of c. 1.193m.
- 2.3. The vehicular driveway has a width of c.5.977m and addresses Foster Park.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

The Planning Authority issued a notification to refuse permission on the 9<sup>th</sup> September 2024. The reasons for refusal were as follows:

1. The retention of the front vehicular entrance gateway would, if permitted, contravene Condition No.2 attached to Pl. Ref. No. 18/235 requiring the reduction in width of the proposed entrance and would be contrary to the Galway City Development Plan 2023- 2029 Section 11.3.1 (g), which requires that –“The vehicular entrance shall not normally exceed 3m in width, or where the local context and pattern of development allows, not wider than 50 per cent

of the width of the front boundary”, as it exceeds the width permitted, would be out of character with the local context.

2. The retention of a rear pedestrian gate opening onto the Dr. Manix Drive public green area would, if permitted, result in the facilitation of an unplanned access point to an area of land and would encourage the traversing and subsequent creation of pathways over the communal space, which would adversely impact upon the coherence and use of this area for which no legal consent or sufficient legal interest has been demonstrated and would be contrary to the proper planning and sustainable development of the area.

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

The report of the Planning Officer notes the site location, planning history, observations received, details of the works and the relevant planning policy. The report makes specific reference to Section 11.3.1 (g) of the Galway City Council Development Plan which restricts the width of vehicular entrances to 3m.

The assessment notes that the predominate character of this area is entrances not exceeding 3 metres where the front boundary walls are retained, and in this instance the permission/development sought to be retained in contrary to the development plan policy outlined above.

Concern is further raised with regard to the access of gateways onto public open spaces, not designed for such access, is unacceptable and can be detrimental to the usability and functionality of such spaces and as such retention of this gate is unacceptable and contrary to the development plan policies.

The report recommends that retention permission be refused in line with the reasons for refusal issued.

#### **3.2.2. Other Technical Reports**

None received.

### **3.3. Prescribed Bodies**

None received.

### 3.4. Third Party Observations

The Planning Authority received 5 no. submissions relating to the subject application. Concerns raised can be summarised as follows:

- Unauthorised alteration sets a concerning precedent.
- Redirect surface water runoff from private property onto the communal green space, causing waterlogging, erosion, and potentially long-term damage to the landscape, not to mention potential pollutants and consequent safety concerns.
- New gated access point directly compromises the privacy of neighbouring properties.
- The communal green space was designed as a shared area for visual and recreational enjoyment, not for direct access from individual properties.
- Unauthorised gate creates a direct line of sight into the properties of Dr Mannix Drive, infringing privacy and peace of mind.
- Unrestricted access creates a significant danger to children's safety by creating a potential exit point from neighbourhood.
- Represents a blatant disregard for the established planning process and community rules.
- No consent is in place for the unauthorised access point.
- The area in question was granted as a communal open space for a residential development, not as a public green area or public park.
- Will create an insurance risk for Galway City Council.
- Unauthorised development has been undertaken and enforcement proceedings ongoing.
- A subsequent gate has now been erected at another property.
- Gate is not exempt from planning.

### 4.0 Planning History

Subject site

PA Ref 23/202      RETENTION PERMISSION REFUSED for the retention of gated pedestrian access to Dr. Mannix Drive public green area at the rear of the house, together with alterations to driveway access. The reasons for refusal were as follows:

- The retention, if permitted, would contravene Section 11.3.1(g) of the County Development plan 2023-2029;
- retention of a rear pedestrian gate opening onto the Dr. Manix Drive public green area would, if permitted, result in the facilitation of an unplanned access point to an area of land and would encourage the traversing and subsequent creation of pathways over the communal space, which would adversely impact upon the coherence and use of this area for which no legal consent or sufficient legal interest has been demonstrated.

PA Ref 18/235      RETENTION PERMISSION GRANTED for modifications which comprise a front and rear extension, modifications to roof, front elevation and driveway access with all enabling internal and external works.

Relevant conditions:

*Condition no. 2* – Within 6 months of the issuing of the final grant of permission, the vehicular entrance shall be reduced in width to 3m, a report shall be prepared and certified by bonded/insured engineer which shall be submitted to the Planning Authority for written agreement .

Reason: In the interest of residential amenity 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 11.3.1:

- (g) *The vehicular entrance shall not normally exceed 3m in width, or where the local context and pattern of development allows, not wider than 50 per cent of the width of the front boundary.*

### 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.575 m to the north of the Galway Bay Complex SAC (site code: 000268) and the Inner Galway Bay SPA (site code: 004031).

### 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 of Appeal

This is a 1<sup>st</sup> Party Appeal against the decision of the Planning Authority. The grounds of the appeal are as follows:

- The rear gate is a narrow access point for domestic pedestrian use only.

- The widening of the vehicular entrance is for convenience of Charging EV vehicles while leaving a free carpark space without complicated manoeuvres to access and exit.
- There are ample precedents for wider driveways in the immediate surrounds.

The appeal has been accompanied by the cover letter which was submitted as part of the planning application to the Planning Authority which notes:

#### 1. Vehicular Entrance

- The local context shows that the average vehicular entrance width of dwellings within the surrounding area is c.5.27m – this is also demonstrated by photographic evidence.
- Both cars need to be parked in the driveway for EV charging – cannot be safely parked on the road as charging cable would then be running over the public footpath.
- Road finishes are not finished to the watermark on the kerb line. Kerb heights should be a max of 1255mm. The height on Foster Park is 175-185mm. This is not in keeping with standard design and make for hazardous parking on the roads.
- Front entrance at no. 10 is 24% of the front boundary – much less than 50% noted in the current development plan.
- Included extract of Section 4.4.8 of Design Manual for Urban Roads and Streets.

#### 2. Rear pedestrian gate

- Public green to the rear has been utilised since appellant has moved into dwelling.
- Consider this is undeniably exempt from requiring planning permission – Schedule 2 Class 5 of the Planning and Development Regulations 2001 (as amended).
- Gateway facilitates safe access to a publicly owned area without encroaching on roadways or infringing upon any other access points.

- Proactive step to improve the gateway and the green space itself enhancing communities' enjoyment of this shared resource.
- Majority of neighbours are elderly who do not utilise the green space.

## 6.2. Planning Authority Response

None received.

## 6.3. Observations

The Board received 2 no. observations pertaining to the subject appeal. They can be summarised as follows:

### Eileen ourfali

- No consent in place to authorise the access which leads to land in separate ownership.
- Access appears to be unlawful.
- Area was granted as a communal open space to serve the residents of Dr Mannix Drive and Dr Mannix Avenue.
- The provision of this access is a material change to the permission granted on the subject site.
- The pedestrian gate would create an undesirable precedent for similar development.
- Redirect surface water runoff from private property onto the communal green space, causing waterlogging, erosion, and potentially long-term damage to the landscape, not to mention potential pollutants and consequent safety concerns.
- Site is subject to enforcement proceedings.

### Residents of Dr Mannix Drive and Dr Mannix Avenue

- This is an entirely new development and was not an upgrade to a pre-existing gateway or wall – this was originally continuous wall with no access.
- Concerns raised in submission to Local Authority remain.



## 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.
- Vehicular entrance.
- Pedestrian Access gate.
- Other issues.

### 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. Vehicular Entrance

- 7.2.1. The appellant states that the vehicular entrance has been widened for convenience of charging EV vehicles while leaving a free carpark space and also potentially removes the need to undertake complicated manoeuvres to access and exit the site. It is further contended that there is ample precedent along Foster Park for driveways which have been altered in a similar matter.
- 7.2.2. The Planning Authority in their assessment makes reference to a previous identical application which was refused retention permission on the subject site and notes that no further justification for the retention of the altered driveway has been provided. While the report of the Planning Officer notes that there is no issue with regards to the provision of off-street car parking, which was originally existing within this site, and there was no issue with regards to the closing of the original entrance and the

widening/provision of a new entrance, there was a restriction permitted of 3 metres in width for such an entrance.

- 7.2.3. The Planning Officer further states that “....*there are a number of widened entrances in the vicinity which do not appear to have sought permission. In this case, the predominate character of this area is entrances not exceeding 3 metres where the front boundary walls are retained, and in this instance the permission/development sought to be retained in contrary to the development plan policy.*”
- 7.2.4. I note that Section 11.3.1(g) of the Galway City Development Plan 2023-2209 states that ‘*The vehicular entrance shall not normally exceed 3m in width, or where the local context and pattern of development allows, not wider than 50 per cent of the width of the front boundary*’. The entire length of the southern (front) boundary of the site is c.15.96m. The vehicular entrance subject to this retention permission has a width of c.5.97m and would equate to 37.4% of the entire boundary.
- 7.2.5. I concur with the assessment set out by the Planning Authority and from having undertaken a planning search of the surrounding areas note that the wider driveways referenced by the appellant do not have the benefit of permission and therefore cannot be relied upon as an established precedent.
- 7.2.6. Retention permission was granted under PA Ref 18/235 for a number of works to the subject property which included for amendments to the vehicular entrance to the site. Plans submitted indicated the widening of the driveway so that it was c.5.8m. Condition no. 2 of the grant of permission stated that “*Within 6 months of the issuing of the final grant of permission, the vehicular entrance shall be reduced in width to 3m, a report shall be prepared and certified by a bonded/insured engineer which shall be submitted to the Planning Authority for written agreement. Reason: In the interest of residential amenity and the proper planning and sustainable development of the area.*”
- 7.2.7. I consider that the Planning Authority were correct in their assessment of this element of the retention permission. Section 11.3.1(g) of the Galway City Development Plan 2023-2209 allows for a relaxation of the width of driveways where the local context and pattern of development allows for such. Having undertaken a site visit I consider that this would not be the case at this location and the predominate pattern of driveways along Fosters Park are mainly 3m in width. While I note some vehicular accesses do exceed the 3m width, they do not benefit from planning permission and

therefore cannot be relied upon to justify a deviation at this location. Furthermore, I note that each case is assessed and determined on their own merits having regard to the sensitivity of the receiving environment and the specifics of the proposed development.

- 7.2.8. Overall, I conclude that to permit retention permission for the vehicular entrance would not be consistent with Section 11.3.1(g) of the Galway City Development Plan 2023-2029. I therefore consider that the decision to refuse retention permission should be upheld.

### **7.3. Pedestrian Access Gate**

- 7.3.1. The appellant contends that the provision of the rear pedestrian access gate is a narrow access point for domestic pedestrian use only. The appellant further states that the proposal should be considered as exempt from requiring planning permission under Schedule 2 Class 5 of the Planning and Development Regulations 2001 (as amended). The use of the gate facilitates safe access to a publicly owned area without encroaching on roadways or infringing upon any other access points.
- 7.3.2. The Planning Authority in their assessment stated that there is no pathway from this gate to either the public footpath or the roadway and that the application was not accompanied by a letter of consent. Furthermore, no right of way has been indicated on plans submitted.
- 7.3.3. The Planning Authority concluded that the applicant had not demonstrated that they had sufficient legal interest to provide access from their property onto lands not in their ownership. It was considered that the access was unacceptable and detrimental to the usability and functionality of the open space and as such retention of this gate is contrary to the development plan policies.
- 7.3.4. Concern has also been raised within the observations received by the Board with regard to the lack of legal interest demonstrated by the 1<sup>st</sup> party Appellant with regard to the provision of the access gate. The appellant is seeking to provide for a pedestrian access from their landholding onto an area of public open space where they have not demonstrated sufficient legal interest.
- 7.3.5. I consider that a letter of consent from the landowner of the public open space should have accompanied the application for retention permission. There is no evidence

provided on file or within the assessment of the Planning Authority as to who the legal owner of this area of open space is. Furthermore, I do not consider that the provision of a single ad-hoc pedestrian access to this area of public open space would be appropriate. In the event that the application had been accompanied by a letter of consent from whoever the landowner may be, consideration may be given to a comprehensive approach to obtaining such so that other dwellings along Foster Park who also share their boundary with the area of public open space could do similar.

- 7.3.6. I therefore recommend that the decision of the Planning Authority be upheld and that the Board would be precluded from granting retention permission for this pedestrian access in light of the lack of legal interest demonstrated by the 1<sup>st</sup> party appellant in this instance.

#### **7.4. Other Issues**

##### **Enforcement**

An observation received has noted that the site subject to this appeal is subject to on-going enforcement proceedings in that a warning letter was issued. I note that the matter of enforcement falls under the jurisdiction of the planning authority to be pursued accordingly where required.

#### **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**

I recommend that retention permission be refused for the following reasons and considerations set out below:

## 10.0 Reasons and Considerations

1. To permit retention permission for the vehicular entrance would not be consistent with Section 11.3.1(g) of the Galway City Development Plan 2023-2029 and would therefore not be in keeping with the proper planning and sustainable development of the area.
2. The retention of a rear pedestrian gate opening onto the Dr. Manix Drive public green area would, if permitted, result in the facilitation of an unplanned access point to an area of land and would encourage the traversing and subsequent creation of pathways over the communal space, which would adversely impact upon the coherence and use of this area for which no legal consent or sufficient legal interest has been demonstrated and 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.

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Kathy Tuck  
Planning Inspector

22<sup>nd</sup> January 2025

## Appendix 1

### EIA Pre-Screening

<b>An Bord Pleanála Case Reference</b>	ABP-320956-24		
<b>Proposed Development Summary</b>	Retention of gated pedestrian access to public green area at the rear of the house and the front driveway access width.		
<b>Development Address</b>	10 Forster Park, Salthill, Galway		
<b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b> (that is involving construction works, demolition, or interventions in the natural surroundings)		<b>Yes</b>	
		<b>No</b>	X
<b>2. Is the proposed development of a CLASS specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended)?</b>			
<b>Yes</b>			Proceed to Q3.
<b>No</b>	X		Tick if relevant. No further action required
<b>3. Does the proposed development equal or exceed any relevant THRESHOLD set out in the relevant Class?</b>			
<b>Yes</b>			EIA Mandatory EIAR required
<b>No</b>	X		Proceed to Q4
<b>4. Is the proposed development below the relevant threshold for the Class of development [sub-threshold development]?</b>			
<b>Yes</b>			Preliminary examination required (Form 2)
<b>5. Has Schedule 7A information been submitted?</b>			
<b>No</b>	X		

Yes		
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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.575 m to the north of the Galway Bay Complex SAC (site code: 000268) and the Inner Galway Bay SPA (site code: 004031).

This application is seeking retention permission of gated pedestrian access to public green area at the rear of the house and the front driveway access width. 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:** \_\_\_\_\_