



An
Bord
Pleanála

Inspector's Report

ABP-320220-24

Development

Permission for development which consists of retention of rear extension and elevation changes to dwelling house under construction and all associated site works and services.

Location

Ballagh, Bushypark, Galway

Planning Authority

Galway City Council

Planning Authority Reg. Ref.

24/25

Applicant(s)

Limekin Construction

Type of Application

Retention Permission

Planning Authority Decision

Grant Retention Permission

Type of Appeal

Third Party

Appellant(s)

Peadar and Mary Canavan

Observer(s)

None

Date of Site Inspection

10th December 2024.

Inspector

Kathy Tuck

1.0 Site Location and Description

- 1.1. The subject site, which has a stated area of c.0.1103ha, is located at Ballagh, Bushy Park, Co. Galway. The Bushy Park area is located c.4.3km to the north-west of Galway City. The subject site is located along the south-western side of the N59.
- 1.2. The site rises significantly to the west from the N59. There is currently on-going works on site with the dwelling subject to this application almost nearing completion.

2.0 Proposed Development

- 2.1. This is an application for the retention of the rear extension and elevation changes to a dwelling which is currently under construction and was permitted under PA Ref 21/317. The extension projects c.5.025m from the south-western (rear) elevation, has a width of c.5.24m and is finished with a flat roof profile with a ridge level of c.3.1m. A balcony is indicated above the extension.
- 2.2. The amendments further include for the omission of first floor windows along the side (both the west and east) elevations and alterations to the dimension of ground floor window along the rear elevation.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority granted retention permission subject to 4 no. conditions. Condition no. 2 of the decision states:

With regards to the balcony the following shall be applicable:

- a) Side screens to the side edges, east and west, of the balcony shall be erected to a height of 1.8 metres taken from the floor of the balcony, these shall be permanently glazed in obscured glass.
- b) The erection of the side glazed panels shall occur within 4 months of the issuing of the final grant of permission and shall be supervised by a qualified bonded engineer, qualifications and insurance details to be included, who shall submit

a report and photographs, to the planning authority, certifying their erection, this report shall be to the written agreement of the Planning Authority

REASON: In the interest of residential and visual amenity and 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 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 that having regard to the provisions of the City Development Plan it is considered that, the proposed development would be in accordance with the development plan and the proper planning and sustainable development of the area.

3.2.2. Other Technical Reports

No reports on file.

3.3. Prescribed Bodies

No reports on file.

3.4. Third Party Observations

The Planning Authority receive 2 no. submission the concerns of which can be summarised as follows:

- Impact enjoyment of private amenity space.
- Overshadowing.
- Overlooking.
- Set an undesirable precedent for balconies.
- Ground floor level as constructed is higher than that permitted.
- combination of additional height, size, proximity to the boundary is visually obtrusive.

- Sound transmission from activity and entertainment on the balcony will be considerable and disruptive.
- Devaluation of property.

4.0 Planning History

Subject Site

PA Ref 21/317	Permission GRANTED for change of house design (from previously granted outline permission Ref. 19/191 and consequent permission Ref 21/47) of new dwelling house (206m ²) and shed (32m ²), new wastewater treatment system and associated polishing filter bed, including new access road and all associated site services and landscaping works, includes minor façade and fenestration revisions to front, side and rear elevations, replacing roof with mono-pitch roof solution, addition of 3m ² to rear service block.
PA Ref 21/47	Permission Consequent on the of outline permission (PA Ref19/191) for development which will consist of a new Dwelling house (203sqm) and Shed (32sqm)
PA Ref 19/191	Outline Permission GRANTED for a single storey over basement dwelling house and shed, and wastewater treatment system and associated polishing filter bed, including new access road and all associated site services and landscaping works, to lands.

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: Land Use Zoning Objectives and 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 678m to the south-west of the Lough Corrib SAC (site code 000297) and the Lough Corrib SPA (site code 004042).

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

A 3rd party appeal was received from Peadar & Mary Canavan, Bushy Park, Galway, the immediate neighbour to the west of the subject site. The grounds are as follows:

- Planning Authority failed to give due consideration to their submission.
- The balcony will give rise to noise and disturbance as it will become an ancillary space to the main living area of the house and used to support the living space on a daily basis – give rise to a negative impact of privacy of adjoining property.
- The scale of the balcony and its proximity to adjoining boundary will be visually intrusive and contrary to Galway City Development Plan.
- Will give rise to undesirable precedent.
- Reference to Article 8 of Human Rights Charter.
- Right to light has been lost and reduced.
- No consideration given that the dwelling is being constructed 900mm from the boundary – significantly different than the originally permitted dwelling.
- Overshadowing.
- Enforcement notice is being ignored.

- Due to impact on privacy and overshadowing value of adjoining property is negatively impacted.
- Balcony is only 1.4m from common boundary and sits above the level of the existing trees.
- The area of garden most affected is used for outdoor dining during the summer months – unauthorised balcony impacts upon visual amenity and peaceful enjoyment of garden.
- Raised screens not an appropriate response to overcome issues of overlooking – overlooking can still occur from the rear section.
- Sound transmission will be considerable and disruptive – due to elevated nature of the balcony. Sound will not be absorbed by planting.
- Construction of this balcony shows total disregard for private amenity space of neighbours.
- Roof level is 1.5m higher than that shown.

6.2. Applicant Response to Third Party Appeal

A response was received from the applicant on the 19th August 2024. Appendix 2 of the 1st party response includes for elevation drawings of the proposed dwellings which include for an alternative design. The alternative design does not amend the footprint of the building but proposes some alterations to the façade treatment which include for:

- The inclusion of a zinc acoustic and privacy baffle along the western elevation of the proposed balcony area which would be 3.4m in height.
- Render panels on the side (western) elevation between the window opes at ground floor level and to the side of the window ope at first floor level.
- Render panels on the front (northern) elevation between the window opes at ground floor level and to the side of the window ope at first floor level.
- The inclusion of a zinc clad panel at first floor level along the front (northern) elevation.
- The inclusion of a zinc clad frame around the main entrance door to the dwelling.

- render panels on the side (eastern) elevation between the window ope at ground floor level and to the side of the window ope at first floor level.

The submission notes the following:

1. Impact on residential amenities

- 3rd Party submission fails to acknowledge the inclusion of a privacy screen along the entire western length of balcony.
- Not a duty or requirement/obligation of Planning Authority to concern themselves with impact on monetary value of properties – evidence that bespoke contemporary well-designed houses increase value of houses.
- The use of 1.8m privacy screens is acceptable to the Planning Authority all over the city.
- Development management should not consider people leaning over privacy screens.
- Height – the verticality of the scheme has been addressed by the introduction of horizontal forward panels which has assisted with the proportions of the building form and the scale has been significantly diminished.
- Window proportions at ground floor have been greatly assisted by low relief render panels acting as suggested spandrels.
- No quantitative support of concerns relating to overshadowing submitted.
- The use of the term ‘visually obtrusive’ is entirely unreasonable given that architecture and aesthetics are subjective and are best separated from the functional criteria of Planning.

2. Noise Impact

- No technical foundation for assumption of noise transmission – BER238 justifies that 100 linear meters of vegetation would be required to achieve a paltry reduction of a mere 3 decibels where as 1.8m privacy screen has both reflecting sound properties as well as reduced properties as high as 28dB(A).
- Suggestion of outdoor dining area is not supported by documentation or evidence and appears to be incredulous when sun path analysis is applied.

- North-west window was wrongly supplied and will be replaced with obscure glazing.
- South-west window is proposed to be omitted by way of addressing concerns.

3. Precedent

- The assumption that this permission will set a precedent is unfounded – all application are assessed on their own merits.
- Subject site represents established and sustainable development patterns along Busy Park Residential Corridor.
- Adjacent properties assume full width of the site which is entirely consistent with this application.
- Prevailing built form are not individual one-off dwellings but rather moderately large suburban plots.

4. Discrepancies

- As built dimensions submitted to the Planning Authority under PA Ref 24/25 are correct.
- Built form dimensions on site fully correspond with data submitted to Planning Authority under PA Ref 24/25. Assumption that a 900m separation distance is provided is not borne out of fact.
- The assertion that the roof being higher and of a different form than that granted is egregious in the context of the purpose of Planning Application PA Ref 24/25.

5. Other issues

- Reference to Article 8 of Human Rights Charter is wholly inappropriate in the context of planning applications. Right to privacy under Article 8 must be balanced against conflicting rights and interests. It is beyond jurisdiction of Galway City Council to conduct legal assessment of competing rights.
- Applicant is working legitimately within the confines of permission granted under PA Ref 21/317 and where variation have occurred - these were duly submitted for approval under PA Ref 24/25.
- Enforcement proceeding have not been served.

- The rear shed is not being constructed as a second dwelling – to suggest without any evidence is opportunistic and misleading.

6.3. Planning Authority Response

None received.

6.4. Observations

An Bord Pleanála received 1 no. observation from Orla Stewart of 12 Kilbarrack Grove, Raheny, Dublin 5. Concerns raised can be summarised as follows:

- Overlooking.
- Amendments reflect considerable changes to approved plans.
- Other non-compliance /deviations from permitted development include:
 - shed shown on plans now looks like an additional residential unit.
 - House is only 900m from boundary where it was shown as being 1.3m.
 - Ceiling and roof height – additional 2m increase in height due to raised roof and elevated floor level.
 - North/west window – a clear floor to ceiling window has been included which should be obscure glazing.
- Balcony together with non-obscure windows will give rise to significant overlooking.
- Proximity to boundary and increased height – intrusive on neighbours' property.
- Planning guidelines require a 11m separation distance.
- Approval of the retention permission would undermine the whole planning process.
- Negative impact on value of property.

6.5. Further Responses

Further responses was received from both the 3rd party appellant and the observer on foot of the response from the 1st Party applicant both of which reiterate same issues raised. Points of note include:

3rd Party Appellant (19th September 2024)

- ABP should not grant permission for anything that would devalue property price unless the development is of an overriding public interest - value of property will be negatively impacted.
- Right to peaceful enjoyment of their private amenity space - all works overlook neighbouring property.
- Pattern of development is utilised in the design process – the developers claim there is no such thing as precedent is incorrect and contrary to many decisions set down by ABP.
- Height of the dwelling – clearly higher than that granted permission and closer to boundary.
- Amendments to side (west) elevation is more visually obtrusive - now proposing a two-storey wall to the entire west elevation which will cause additional overshadowing and will have a worse impact.
- When a new development will reduce light for more than a period of two hours per day to a utilised area of private amenity space it cannot be in keeping with the proper pattern of development - proposal is extremely oppressive and overshadowing.
- Evidence attached of images of how eastern area of private amenity space is used.
- Developer is not building in accordance with permission granted – no retention sought for the revised house location or the rear building which do not accord with any permission granted.

Observer (20th September 2024)

- The retention plan proposes an increased height of 2m.
- The proposed alternative design to the eastern elevation is now approximately 160% of the total is of the original granted design.
- From appendix 2 of the 1st party submission – the proposed amendments along the eastern¹ elevation reads as a two-storey extension.
- Real concern neighbour will be eclipsed by new now much larger development – undoubtedly impact value of property.

¹ Misinterpretation by the observer – actually referring to western elevation.

- The 1st party response states on 3 occasions that “*as built dimensions on site fully correspond with the data submitted in planning application 24/25*”. Dispute this statement.
- Reference to sun path –it is the intrusion and lack of privacy that will result from the addition of a first-floor balcony that is of concern.
- Balcony would also provide a direct line of sight into a number of habitable rooms of the adjoining property. Images have been included to demonstrate such.
- Mitigation proposed would allow for overlooking.
- Window in place on northwest elevation is absent from plans submitted.
- Agree that all applications should be assessed individually but there was ample opportunity to seek permission for amendments.
- Cladding proposed while subjectively improves the aesthetics does not address the additional height.
- Size and scale of the dwelling far exceeds what was originally permitted in both height and scale.

7.0 **Assessment**

Having examined the application details and all other documentation on file, including the reports of the local authority, 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.
- Impact on amenity.
- Amended plans.

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. This is an application for the retention of a single storey extension

and balcony above and as such is considered to be acceptable in terms of the land use zoning.

7.2. Impact on Amenity

- 7.2.1. The appellant (property to the west) together with the observer have both raised concerns over the impact the works will have upon the current level of residential amenities enjoyed at this location. Concern has been raised with regard to overlooking, noise disturbance, loss of light, overshadowing and overbearance.
- 7.2.2. The appellant contends that having regard to the height of the balcony that sits above the existing tree line and the proximity to the common boundary that it will give rise to noise and disturbance, will be visually intrusive and will overlook part of the garden which is used for outdoor eating during the summer months. It is further asserted that the height of the dwelling is 1.5m higher than that indicated on plans submitted.
- 7.2.3. The Planning Authority in their assessment noted no concern over the single storey extension to the rear and made reference to the scale of the rear garden and how the proposal would be easily accommodated. The assessment further notes with regard to the use of the extension as a balcony that the provision of an obscured screen to a height of 1.80 m to the west would resolve any overlooking issues. In addition one of a similar height should also be provided to the eastern edge of the balcony and condition no. 2 of the grant of retention permission required the provision of such.
- 7.2.4. The applicant in their response notes that the use of privacy screens as proposed are acceptable to the Planning Authority across the city and that the appellant has failed to consider the inclusion of privacy screens. The applicant has also included amended plans which I have considered within the next section, Section 7.3, of this report.
- 7.2.5. I consider that the single storey extension is minor in nature and will not negatively impact upon the adjoining property to the west. However, I do consider that the main concern relates to the use of the roof of this extension as a balcony. The proposed balcony is indicated as being set c.1.4m from the western boundary of the site which is shared with the appellant property. The appellant's dwelling is set a further c.13m from this boundary.
- 7.2.6. With regard to the concern raised relating to overshadowing, having regard to the orientation of the subject site relative to the path of the sun and the separation distance

provided from the western boundary of the site I do not anticipate that the proposed extension or privacy screen will give rise to any undue levels of overshadowing.

- 7.2.7. The appellant has also raised concerns with regard to increased noise levels due to the elevated nature of the balcony. It is further contended that increased noise levels will not be absorbed by planting. The applicant in response has stated that they appellant has not provide any technical foundation for assumption of noise transmission.
- 7.2.8. While the concern raised is noted, I consider that most new development will give rise to some level of additional noise having regard to the sub-urban location of the site and this is to be expected. However, I do not consider that in this instance the level of noise generated would be continuous or constant and as such it would not impinge upon the appellants enjoyment of their amenity space or impact negatively upon the current level of amenities enjoyed at this location.
- 7.2.9. The appellant has raised concerns with regard to overlooking into habitable rooms of their dwelling from the balcony located at first floor level above the rear extension. While I note that the Galway City Development Plan 2023-2029 remains silent on separation distance to be provided from extension or balconies, I consider that the separation distance provided in this instance of c.13m. I do not anticipate that overlooking into habitable accommodation to be an issue in this instance.
- 7.2.10. The appellant's property is set on a significantly larger plot than that of the dwelling subject to this appeal. The area of the private amenity space most affected would be that to the east of the appellants dwelling. I note that evidence has been submitted as part of the response to the comments of the applicant with regard to imagery of the use of this section of the garden by the appellant.
- 7.2.11. The applicant has included the use of privacy screens which are 1.8m in height to mitigate against any issue of overlooking to the neighbouring property. I consider that the inclusion of privacy screens will reduce issues of overlooking. However having regard to the proximity of the balcony to the common boundary of the site, I further consider that the use of these privacy screen will be visual dominant and would therefore be detrimental to the enjoyment of the private amenity space serve the appellants property and would therefore negatively impact upon the amenities of the Appellant.

- 7.2.12. In light of the above, I recommend that a condition be included to omit the balcony proposed at the roof level of the ground floor extension in the event that the Board are minded to grant permission for the remaining alterations.

7.3. Amended Plans

- 7.3.1. The 1st party appellant has submitted as part of their response to the 3rd party appeal, amended plans for the dwelling. The amendments relate to the elevation treatment and include for the use of render and zinc panels to the side of window opens at first floor and ground floor level on all elevations and the use of a zinc acoustic and privacy baffle along the western elevation of the balcony area which would be 3.4m in height.
- 7.3.2. While the 3rd party Appellant welcomed the amendment to the front elevation, they considered that the western elevation would be even more visually obtrusive. It was contended that the applicant was now proposing a two-storey wall to the entire west elevation which will cause additional overshadowing and will have a worse visual impact.
- 7.3.3. In considering the amended proposals I note the absence of any floor plans or section drawings. In the absence of such I consider it is not possible to undertake a robust assessment of the amended proposals. While I consider that the amendments to the front elevations are acceptable, my concerns remain with regard to the western elevation and the provision of a balcony at first floor level.
- 7.3.4. I consider that the amended plans submitted would constitute a material amendment to the plans submitted to the Planning Authority. I consider that the use of the zinc acoustic and privacy baffle reads as an elongated western elevation. While the inclusion of such may overcome issues of overlooking, I consider that it would have a detrimental effect on the open space serving the dwelling to the west and as such impact negatively upon the residential amenities of the appellant. As such, I am therefore not consider the amended plans submitted as part of my assessment.

7.4. Other Issues

- 7.4.1. Discrepancies

I note from undertaking a site visit that there is a discrepancy between what has been constructed on site and what has been indicated on the plans submitted to both the Planning Authority and the amended plans submitted to An Bord Pleanála as part of the 1st party response. An additional window opening has been constructed at first floor level along the western elevation in close proximity to the balcony. This has also been raised by the 3rd party appellant and within the observation received.

My assessment has been limited to the plans submitted to the Planning Authority on the 16th May 2024, to An Board Pleanála on the 19th August 2024 and the development as described in the statutory notices describing the works seeking retention. The onus is on the applicant to regularise any works which have not been included or permitted as part of this application.

I note that non compliance with planning permission is a matter for the Planning Authority to pursue through the appropriate channels.

7.4.2. Devaluation of Property.

Both the 3rd Party Appellant and Observer have raised concerns with regard to the impact the works would have upon the value of the neighbouring property. I note that no evidence was submitted to demonstrate the impact the work would have upon the value of the adjoining property.

7.4.3. Right to light

The 3rd party appellant has raised concern over the loss of light and their legal entitlement to such. As the issue of determining rights to light is a matter for the Courts,

7.4.4. Enforcement

The 3rd Party Appellant has noted that the subject site is subject to on-going enforcement proceedings. Enforcement is a matter for the Planning Authority to pursue through the appropriate channels.

7.4.5. Conditions

The Planning Authority in issuing their grant of retention permission included for a specific bespoke condition which required the provision of 1.8m privacy screens along the western and eastern elevations of the balcony, which were to be erected 6 months from the date of the decision.

Having regard to my assessment above, Section 7.2.9, I consider this condition should be removed and replaced with a condition ensuring that the roof level above the rear single storey extension should not be used as a balcony to overcome issues of overbearance upon the private amenity space serving the adjoining property to the west.

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 single storey rear extension, a balcony and elevation changes to a dwelling currently under construction (permitted under PA Ref 21/47) 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 16 th May
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	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. Reason: In the interest of clarity
2.	The non-amenity roof area above the rear extension shall not be accessible except for maintenance purposes only. Reason: To protect the residential amenities of property in the vicinity and the visual amenities of the area.
3.	The developer shall pay to the planning authority a financial contribution of in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. The application of any indexation required by this condition shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine. Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission

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

5th February 2025

Appendix 1 - Form 1

EIA Pre-Screening

[EIAR not submitted]

An Bord Pleanála Case Reference			
Proposed Development Summary			
Development Address			
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			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	Tick/or leave blank		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

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 not located within or adjacent to any natura 2000 sites. The subject site is located 678m to the south-west of the Lough Corrib SAC (site code 000297) and the Lough Corrib SPA (site code 004042).

This application is seeking retention of rear extension and elevation changes to dwelling house under construction and all associated site works and services. 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:** 5th February 2025