



An
Bord
Pleanála

Inspector's Report PL61.246536

Development	Permission sought for change of use of 305m ² office space to use as medical consulting rooms and ancillary facilities on second floor, including revised vehicular access point and parking arrangements.
Planning Authority	Galway City Council
Planning Authority Reg. Ref.	16/42
Applicant(s)	MESD Ventures Ltd
Type of Application	Permission
Planning Authority Decision	REFUSAL
Appellant(s)	MESD Ventures Ltd.
Observer(s)	J&B Cormican
Date of Site Inspection	1 st July 2016
Inspector	John Desmond

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1.0 Site Location and Description

- 1.1. The application site is located in west Galway City, c.1.6km west of Eyre Square and c.1.4km north of the centre Salthill.
- 1.2. The site fronts onto Seamus Quirke Road (R338) to the north, which forms part of the inner by-pass / ring road surrounding the city's historic core and which serves a wide area of suburban style commercial development (e.g. such as the Westside Shopping Centre).
- 1.3. To the east the site fronts onto Old Seamus Quirke Road, a local access road onto which the site has vehicular access. The access is shared with the Westside Business Centre adjacent the southwest of the site and a small commercial block to the south (which possibly has residential on second floor).
- 1.4. The site has a stated gross area of 0.1787ha. The application concerns the second floor level (305-sq.m stated area) of a 3-storey, detached mixed use commercial building (office above, with retail at ground floor level) of recent construction, with a gross floor area stated at 935-sq.m.
- 1.5. There is a one-way vehicular circulation route running clockwise around the existing building, providing access to 27no. off-street parking spaces. There is a small area of grass and tree planting adjacent the junction of the R338 and the local road at the northeast corner of the site and along the eastern site boundary, where there is also a screened, external bin storage area.

2.0 Proposed Development

- Change the use of the second floor level (305-sq.m) from commercial office to use as two medical consulting rooms;
- Revised vehicular access and parking arrangements to that previously permitted under reg.ref.05/420.

3.0 **Planning Authority Decision**

3.1. **Decision**

Decision to **REFUSE** permission for three reasons which may be summarised as follows:

1. Would generate a traffic hazard, be injurious to public safety and generate illegal parking due to non-compliance with car parking standards under the City Council Development Plan 2011-2017.
2. Would facilitate the unauthorised reduction in car parking provision in contravention of condition no.11 of PL.Ref.No.05/420.
3. Sufficient legal interest in land not demonstrated.

3.2. **Planning Authority Reports**

The report of the area planner can be summarised as follows:

The report of 07/04/16 is consistent with the decision of the Planning Authority. The issues of concern related to car parking provision on site, both in relation to the proposed change of use to medical and in respect of the existing uses having regard to the full extent of original car parking spaces permitted under reg.ref.No.05/420 no longer being available (a reduction of 16no. spaces); and the extent of the applicant's legal interest in the site, including right of way to the public road, and, hence, whether the applicant has sufficient legal interest to make this application.

3.3. **Other Technical Reports**

Drainage Section – The report of the Executive Engineer (09/03/16) raises no objection.

Planning and Transport – The report of the Executive Engineer (11/03/16) recommends that further information be sought regarding:

1. Details of new junction radii and swept path analysis.

2. Details of delivery arrangements having regard to omission of delivery bay forming part of permission PL.Ref.No.05/420.
3. Provision of disabled persons parking spaces.
4. Provision of bicycle parking layout in accordance with development plan standards.
5. Provision of 38no. car parking spaces, or clarification of existence of legal agreement for use of car parking spaces at surface car at other surface car parks in vicinity (Westside Shopping Centre and West City Centre) referred to by applicant.
6. Substantiation of argument that shortfall of car parking is justified on basis of dual use parking provisions due to non-coincident peak demand.

CFO – The report of the CFO (07/04/16) raises no objection subject to standard fire safety requirement conditions.

4.0 **Planning History**

4.1. **On site –**

Reg.ref.05/420: Permission **GRANTED** by Galway City Council (13/04/06) to James Cormican for mixed use development consisting of two retail units at ground floor level and office accommodation at first and second floor levels, together with car parking and associated services on portion of lands previously granted under planning reference 59/92 at no.72 Seamus Quirke Road, subject to 18no. conditions.

Reg.ref.08/750: Permission **GRANTED** by Galway City Council (07/05/09) to James Cormican for change of use of existing approved retail unit (reference in planning register 05/420) to use as bookmakers premises and for signage at no.72 Seamus Quirke Road.

Reg.ref.08/739: Permission **GRANTED** by Galway City Council (29/10/08) to Fine Wines for a change of use of the existing approved retail unit, (Reference in planning register 05/420) to retail and off-licence use and for signage at no.72 Seamus Quirke Road.

Reg.ref.13/290: Permission **GRANTED** by Galway City Council (23/12/13) to Cancer Care West for four new signs at Cancer Care Support Centre, no.72 Seamus Quirke Road.

5.0 **Third Party Observation**

Observations were received from James Cormican of J & B Cormican (18/04/16). The main points raised are repeated and/or elaborated on in observations on the appeal.

6.0 **Policy Context**

6.1. **Development Plan**

Galway City Development Plan 2011-2017

Land use zone CI - To provide for enterprise, light industry and commercial uses other than those reserved to the CC zone.

CI zoned lands south of Seamus Quirke Road and north of Ragoon Road. These lands are designated as a District Centre.

Specific objective – QBC and road improvements identified for New Seamus Quirke Road.

Chapter 3 Transport

Chapter 5 Enterprise and Employment

Chapter 11 Land use zoning objectives and development plan standards and guidelines

5.1 Reference documents

‘Retail Planning Guidelines for Planning Authorities’ (DoECLG, 2012)

‘Retail Design Manual: A companion document to the Retail Planning Guidelines for Planning Authorities’ (DAHG, 2012)

‘Smarter Travel: A Sustainable Transport Future. A New Transport Policy for Ireland 2009 – 2020’ (DoT, 2009)

‘Development Management Guidelines for Planning Authorities’ (DoEHLG, 2007)

‘Retail Planning Guidelines’ (2005)

7.0 Natural Heritage Designations

None on site. Lough Corrib SAC (site ref.000297) is c.1km to the east. Galway Bay SAC (site ref.000268) is c.1.4km to the southeast. Galway Bay SPA (site ref.004031) is c.2km to the southeast.

8.0 The Appeal

8.1. Grounds of Appeal

The grounds of appeal from MESD Ventures Ltd c/o McCarthy Keville O’Sullivan (04/05/16) can be summarised as follows:

Addressing refusal reason no.1

- The proposed medical use requires four parking spaces.

- Total parking demand is 37no., but only 27no. are available on site as 16no. spaces conditioned under PL.Ref.No.05/420 are no longer available and there are no additional spaces available offsite.
- Reduced parking is justified based on:
 - o the site's high accessibility within a designated district centre adjacent a high quality public transport corridor;
 - o dual use of parking provision due to peak demand between uses not coinciding
 - o the limited flexibility of the development plan in parking provision, in the interest of sustainable transport and avoidance of over-parking provision.
- Accessibility –
 - o 2km of Seamus Quirke Road / Bishop O'Donnell Road upgraded to include provision for bus priority, Urban Traffic Management Control System for signalised junctions and dedicated cycle tracks to National Cycle Manual standard.
 - o Section 3.5 'Integrated Sustainable Transportation Plan' under the City Development Plan identifies the limiting car parking as critical element to reduce the number of trips by car. A reduced standard may be acceptable along strategic public transport corridors in accordance with Smarter Travel.
 - o Bus routes nos.404, 405, 411 and 412 along Seamus Quirke Road.

- Dual use parking –
 - o The retail element (331-sq.m) permitted under PL.Ref.No.05/420 is of a specific form of shopping which is primarily short-stay with higher throughput than other retail, such as shopping centres.
 - o There is a large number of surface car parking spaces in the vicinity (Westside SC and West City Centre).
 - o The Retail Design Manual advises that the challenge is to strike a balance between providing sufficient car access and parking to underpin the vitality and viability of places, while ensuring traffic and parking does not result in a car dominated environment, an approach supported by section 13.5 Integrated Sustainable Transportation Plan, of the Galway City Development Plan.
 - o In view of the proximity to surrounding surface car parks and potential for shared / dual use of spaces on site and on adjoining lands, a reduced number of car parking spaces is justified.
- Current capacity / usage
 - o Car parking survey carried out 27/04/16 demonstrates car parking capacity not an issue (occupancy 12.00pm 74%, 3pm 67%, 6pm 44%).
 - o On average there is 37% spare capacity.
 - o Parking demand is spread over four different land uses in the building – off-license, electronic retail, office, office/service (i.e. proposed medical use) – with use spread over 14-hour period (8am -10pm).
 - o Due to the specific nature of the uses means visits are short duration, and much higher than at a shopping centre

- o The site is in close proximity to QBC, cycleways and within easy walking distance of largescale residential development and it is reasonable to assume that significant numbers of visitors will arrive at the site via a mode of transport other than car, thus reducing demand for parking spaces.
- o Longer duration parking by staff is not significant as the scale and nature of the businesses is small in terms of staff numbers.
- o As there is spare capacity throughout the day, the proposed development will not generate a traffic hazard or encourage illegal parking and will not be injurious to public safety or contrary to proper planning and sustainable development.

Addressing refusal reason no.2

- Purpose of condition 11 of reg.ref.05/420 was to ensure adequate parking provision for the proposed development comprising 43no. car parking spaces, including 16no. on adjoining site within the same ownership at time of permission.
- The total parking demand with the proposed development is 37no. based on Galway CDP standards, resulting in a shortfall of 10no. spaces on site, with none of the 16no. off-site spaces available.
- The existing building is operating at present without the 16no. off-site spaces.
- Legality of condition –
 - o Condition 11 of reg.ref.05/420 applied to lands outside the redline boundary of the application site, beyond the standard remit of planning control in terms of planning conditions.
 - o Without a section 47 legal agreement, condition no.11 is not enforceable and is invalid and should be disregarded.

- o The condition does not accord with the provisions of the Development Management Guidelines as it is not enforceable and it therefore should not form the basis for a refusal on a subsequent planning application.
- o The proposed development will reduce the parking deficit from 16no. to 10no., which is a net planning gain and will regularise the situation.

Addressing refusal reason no.3

- A letter from Geraghty McCourt Solicitors (28/04/16), along with a copy of Folio and File Plan (Refg:GY7980L), purports to clarify the applicant's legal interest in the application site as well as the right of way associated with no.723 Seamus Quirke Road.
- This issue was not subject of a further information request.

8.2. Planning Authority Response

The main points raised in the response (03/06/16) to the appeal may be summarised as follows:

- The previous application (reg.ref.05/420) was permitted on the basis of 46no. spaces, 16no. of which were indicated as available on the adjoining land then owned by the original applicant in a letter of consent included with the application and reinforced as further information and which were subject of condition no.11 of the permission.
- The 16no. spaces are no longer available.
- The reduced parking provision is not adequate given the significant shortfall, with the omission of the 16no. spaces and the difficulties with parking monitoring and enforcement in the area.
- Parking in the Westside car park or the adjoining Westside Business Centre is not easily accessible or freely available to users of the proposed facility.

- A one-day parking survey is not reflective of the overall potential demand.
- Regarding sufficiency of legal interest, the provisions of section 34(13) of the Planning and Development Act 2000, as amended, apply and matters pertaining to title of property and legal rights of way are not for the Planning Authority or An Bord Pleanála to determine.
- Requests that the Board uphold the decision to refuse permission.

8.3. Observations

J & B Cormican (25/05/16) – the main points raised may be summarised as follows:

- Significant discrepancies exist in Main Map (Appendix 1) submitted for planning and in the appeal.
 - o Southern boundary line approximates to the inside of the footpath not the outside and northeast boundary is shown too far to northeast (lands in ownership of Bernadette Cormican). Right of way is not shown correctly (see maps 1(A), etc., appended to observation) and does not extend to rear of no.74 Seamus Quirke Road.
- The applicant does not own / have right of way over sufficient property to operate existing or altered operations at that location having regard to neighbour's property and public safety.
 - o Operations at the premises, including delivery trucks, have continually trespassed onto the observer's property and interfered with traffic onto the premises in order to access the applicant's premises (photos appended to observation).
 - o Delivery trucks to the premises have operated such as prevented access to onsite car parking (spaces 1, 2).

- o The paved area needs to be reduced in size and altered to accommodate two medium sized delivery vehicles, the two parking spaces removed for practicality and a proper drawings submitted with turning sweep to show what can be accommodated and how access can be gained.
- o The existing loading bay cannot be accessed without trespass.
- o No vehicle cannot drive around and exit the site as the applicant does not have a right of way or ownership over the egress point onto the access road (it's in the ownership of Bernadette Cormican – see map appendix 1(A) of observation).
- o The main map submitted on appeal concerning this issue is incorrect, does not show how the applicants can operate within the confines of their property or show the swept path.
- Under provision of car parking would encourage illegal parking and be contrary to proper planning and sustainable development of the area.
 - o Only 24 of 27 indicated parking spaces are available - parking spaces 1 and 2 will be lost when essential alteration is made to paved area to enable safe and workable goods delivery/unloading and turning within the property, and parking space 3 cannot be used without reversing and trespass onto neighbouring property.
 - o 6 of the remaining spaces are reserved (nos.9-14).
 - o 46no. spaces were required under reg.ref.05/420 but 44no. were accepted (16no. off-site).
 - o 305-sq.m is to change use from office (never completed or occupied) to 2no. medical consulting rooms – it is hardly credible that this huge area would only accommodate 2no.

- o Suggests future subdivision to create numerous medical practitioners and facilities is likely and the use would likely result in a much greater requirement for car parking that office use.
- o Suggests that ‘the application is more likely a ‘ruse’ to regularise...the “non-compliance with Planning” situation which currently exists for the rest of the property’.
- o Parking survey - top floor office unoccupied and ground floor tenant only recently occupied, and Wednesday is normally a quieter day. In Galway it takes a few years to build up established trade, after which parking shortage becomes the norm.
- o There is severe under provision of parking in such locations.
- o Parking on surrounding sites is limited to customers only.
- The premises is not currently in compliance of permission reg.ref.05/420 and therefore cannot seek ‘change of use’ or ‘revisions’ without first dealing with the non-compliance.

8.4. Further Responses

MESD Ventures Ltd c/o McCarthy Keville O’Sullivan (07/07/16) – The main points of the response may be summarised as follows:

Discrepancies on site map -

- Letter from O’Mara Geraghty McCourt Solicitors dated 28/06/16 and correspondence of 30/06/16, with associated Folio and File Plans, clarifies the applicant’s legal interest in the site and the right of way associated with no.72 Seamus Quirke Road.

- Rejects Mr Cormican's claim that the submitted maps contain errors and submits that the boundaries to the applicant's property are clearly set out on File Plan and Folio GY7980L.
- Mr Cormican is completely mistaken in his claim that a section of the north-eastern boundary of the site is on his wife's Folio GY1324L and a certified copy of the said Folio, printed by the Land Registry 22/06/16, is attached. All Mr Cormican's land is to the south west, with the land to the north east registered to Galway County Council Folio GY9320L.

Lack of sufficient land or right of way -

- Letter from O'Mara Geraghty McCourt Solicitors 28/06/16 clarifies that the applicant has a right of way to access its property from the old Seamus Quirke Road, indicated in yellow on File Plan GY1324L.
- Vehicular access across lands in the control of the adjacent Business Park is no longer available and a revised vehicular access point to that previously permitted under reg.ref.05/420.
- The position of the proposed vehicular access to the car park has been revised to remain within legal right of way zone, the edge of the access is to be delineated by a new kerb recessed into paving and no changes are proposed to the existing egress.

Under provision of parking

- The response generally repeats points already made, referring to national and development plan policy, but a point of note includes reference to the Retail Design Manual, which notes "the quantum of car parking provided in new development should be limited to discourage unnecessary use"; and it should be designed to serve not only the development itself, but also other uses in its locality, thus encouraging multipurpose shopping, business and leisure trips in line with the Governments Smarter Travel strategy.

- Galway County Council's Roads Department requested a number of items relating to access and parking be clarified by way of further information request, but permission was refused outright citing parking and traffic issues as one of the reasons.
- The first party appeal report included an amended site layout drawings showing a loading bay, disabled parking and a bicycle stand, having regard to the said Roads Department report.

Non-compliance with condition no.11 of reg.ref.05/420

- The response generally repeats points already made, regarding the basic criteria for planning conditions under the DM Guidelines, including enforceability, and the absence of a section 47 agreement concerning access to the 16no. off-site parking spaces, which makes the condition unenforceable and therefore contrary to guidance.

9.0 **Assessment**

9.1. **Introduction**

9.1.1 This appeal concerns a proposed change of use of a second floor level office of 305-sq.m (stated GFA) to use for medical services comprising 2no. consultation room, and for revised vehicular access points and parking arrangements to that permitted under reg.ref.05/420.

9.1.2 In general, the main issues in this appeal are generally those raised in the grounds of appeal, however additional relevant related issues were raised in the report of the Council's Planning and Transport Section. Accordingly, the issues can be dealt with under the following headings:

- Policy
- Parking shortfall

- Contravention of condition 11 of reg.ref.05/420
- Access, egress and circulation
- Appropriate Assessment

9.2. **Policy:**

9.2.1 The site is zoned CL 'to provide for enterprise, light industry and commercial uses other than those reserved to the CC zone'. The subject site is also designated as a District Centre. The range of uses permitted in principle or open for consideration are set out under table 11.2.6 'Commercial / Industrial CI Land Use Zoning Objective' are under the development. Medical services or uses are not referred to under the table or the caveats there below, however Section 5.2.1 'Employment Strategy' provides that 'specialist medical services can be accommodated within district, neighbourhood and local centres and the city centre'. The proposed medical use can therefore be considered consistent with the provisions of the development plan.

9.3. **Parking shortfall:**

9.3.1 According to the Planning Statement submitted with the application, one of the purposes of the application was to regularise the planning status of the development, having regard to the altered parking and access context of the site, with the application to include a reasoned justification for reduced car parking provision.

9.3.2 Under the parent permission reg.ref.05/420 (applicant James Cormican) 26no. spaces were proposed on site (FI drawing no.405-03 received 22/02/06). In addition, 16no. spaces on the adjoining lands to the west (parallel parking spaces adjacent the boundary to new Seamus Quirke Road to the north) which were indicated as 'additional parking space which can be provided if required in future' (drawing no.405-03, inter alia other plans). A letter from Bernadette Cormican (dated 21/02/16 and submitted with FI to that application) referred to her lands,

known as 'Westside Business Centre', stating 'I have agreed to give right of way over our entrance and along the front of our site at Old Seamus Quirke Road as shown in yellow on attached site plan, to James Cormican in order to facilitate combined parking for both existing and proposed retail and commercial premises'. Condition no.11 of the permission reg.ref.05/420 stated:

'The proposed car parking spaces provided for in the development including the additional 16 spaces on the adjoining site as referred to in the letter dated 21/2/06, shall be reserved for exclusive use associated with the development'.

In total, 44no. car parking spaces were to be provided under the terms of the permission, two less than was required under the then development plan.

- 9.3.3 The applicant's Planning Statement clarifies that the 16no. spaces are no longer available as the provision of same was not subject to formal legal agreement and the application site has subsequently been acquired by a new owner. The report of the Council's Planning Offices notes that the existing building is currently operating contrary to the car parking requirements of the said permission and is unauthorised.
- 9.3.4 The application submits that the proposed change of use to two medical consulting rooms will reduce the car parking demand. A total of four parking spaces are required for the proposed change of use (two per consulting room) compared to 12no. spaces for 305-sq.m office floor area, leading to a reduction in parking demand of eight spaces. Based on current standards the applicant submits that a total of 37no. spaces are required but only 27no. can be provided on site, which is c.27% below the required standard.
- 9.3.5 James Cormican (observer) submits that it hardly credible that the second floor space would only accommodate two consultation rooms and suggests that future subdivision is likely. The consultation rooms are substantial, but I am not aware of any standard limit on the size of floor areas per consultation room. Should the Board

decide to grant permission, it may consider it appropriate to prohibit any subdivision of the areas into additional consultation rooms without a prior grant of permission.

9.3.6 The applicant submits that, having section 3.5 Integrated Sustainable Transportation of the development plan, Government transport policy (Smarter Travel) and the Retail Design Manual concerning, reduced parking is justified based on the site's high accessibility within a designated district centre adjacent a high quality public transport corridor and based on the potential for dual-use of parking spaces due to non-coincidence of peak parking demand between the different use on site. The applicant submitted details of a parking demand survey of the site which purports to show, on average, 37% spare capacity on site, to support its case.

9.3.7 It is Government policy under Smarter Travel (2009, Action 2, p.33) that future policy guidelines would include a '*Specification of a maximum permitted level of car parking for commercial sites, which have suitable public transport facilities and are within walking/cycling distance to amenities*'. The Retail Planning Guidelines (2012, p.31) suggests the relaxation of minimum parking requirement is another option where a good choice of public transport links is available, in the context of facilitating retail development in town centres (this would also apply to district centres) in applying the sequential approach. The applicant also notes that the Retail Design Manual advises that the challenge is to strike a balance between providing sufficient car parking to underpin the vitality and viability of places, whilst ensuring traffic and parking does not result in a car dominated environment. I am satisfied that there is a shift in Government policy towards the implementation of maximum car parking standards, although this is not strongly reflected in the Retail Planning Guidelines.

9.3.8 The car parking standards under the development plan are minimum standards, but with maximum standards applicable in limited circumstances within particular land use zones or on particular sites specified in the development plan. The application site is not identified for maximum car parking standards. Section 3.5 (and policy 3.5) of the development plan anticipates the preparation of the Integrated Sustainable

Transportation Plan – it does not comprise such a plan. However, the wording of the subsection on ‘parking’ may be accepted as setting out the Council’s approach to car parking in the city. It indicates that a reduced standard may be acceptable for new development located along strategic public transport corridors and that consideration will be given to dual use parking provision where peak demands do not coincide, and each case will be treated on its own merits based on traffic management and modelling assessment and subject to overriding presumption in favour of sustainable transport (a financial contribution may be required by condition). It does not provide any indication of the level of reduction that may be appropriate in different contexts.

9.3.9 The draft Galway Transport Strategy (June, 2016) advises that one of the guiding land use principles for all future development should be that all non-residential parking standards should be maximum standards, varying depending on centrality of location and the level of public transport available. Neither the report of the Council’s Planning Officer, nor that of the its Transport section, refer to the aforementioned provisions of the development plan or transport strategy.

9.3.10 The site is located on a public transport corridor identified under the development plan, which includes designated bus lanes and cycle lands and one lane for private motor vehicles in each direction. Along such routes it is reasonable to accept reduced parking standards in order to encourage trips to be carried out on sustainable modes rather than by car. The site is also identified as being within a District Centre (albeit poorly defined under the development plan) and the existing development on-site is mixed-use, including retail at ground floor, office use on first and the proposed medical consultancy use at second floor. In mixed-use centres it is reasonable to accept dual use of car parking spaces, as there will be a higher proportion of multi-purpose trips, in order to reduce the dominance of car parking in centres. The Council’s Transportation section’s report (11/03/16) considered the applicant not to have substantiated their argument regarding justification of parking shortfall on grounds of dual use. In its response to the appeal the Planning Authority (Director of Planning and Transportation) considers the shortfall in parking to be

unacceptable, notwithstanding the site's location on a transport corridor, having regard to the difficulties with parking monitoring and enforcement in the area.

9.3.11 The Planning Authority considers the appellant's one-day car parking survey to not be reflective of the overall demand. James Cormican, observer, correctly points out that at the time of the survey the second floor office was neither fitted out nor occupied (this is confirmed in the application 'Planning Statement'). I would agree that the current parking situation, as presented, is somewhat misleading and is not reflective of the parking demand potential of the existing development when operating at capacity. Whilst a random one-day is insufficient, on inspecting the site (mid-morning 01/07/16) I found that only nine of the spaces were occupied which would lend some support the applicant's position.

9.3.12 The surrounding lands are strongly dominated by surface car parking. Although the applicant would appear to have no rights to access parking on lands outside the site, in practical day to day operations people accessing the facilities on this site may on occasion use vacant parking elsewhere, quite probably carrying out other activities at those premises on the same trip. Vice versa will also apply. I do not agree with the Planning Authority's response to the appeal that the surrounding parking is not easily accessible (it may not be freely available). The policing of access to private car parks is a matter for the relevant landowner.

9.3.13 Given the zoning of the area and its designation as part of a district centre adjacent a public transport corridor, within 2km walking distance of Eyre Square (1km from the defined city centre area in Fig.9.1 of the development plan), I consider a reduction in car parking standard (by a little over 25%) to be reasonable and consistent with an approach to engender a change in modal split in favour of public transport in accordance with Government policy. Whilst the development plan suggests a financial contribution may be required (by condition) for a shortfall in parking, it is my reading of the Development Contribution Scheme (2014) that such a contribution (€2,500 '*transportation charge*' per unit) only applies in the city centre, and only in

any additional areas specified in the development plan. As neither the development nor the DCS are clear in this regard, I do not consider the attaching of a financial contribution in lieu of parking to be reasonable.

9.4. **Contravention of condition no.11 of reg.ref.05/420**

9.4.1 In response to refusal reason no.2, that the proposed development would facilitate the unauthorised reduction in car parking provision in contravention of condition no.11 of reg.ref.05/420, the applicant submits that the condition no.11 of reg.ref.05/420 is not enforceable as the parking spaces were not subject of a section 47 agreement and therefore the condition does not comply with the basic criteria for conditions as set out under the Development Management Guidelines (2007).

9.4.2 The observer, James Cormican submits that permission cannot be granted for change of use as the existing development is unauthorised due to non-compliance with the parent permission regarding parking.

9.4.3 Section 34(4) of the Planning and Development Act 2000 provided that conditions allowed to be attached under subsection (1) may include:

'conditions for regulating the development or use of any land which adjoins, abuts or is adjacent to the land to be developed and which is under the control of the applicant, so far as appears to the planning authority to be expedient for the purposes of or in connection with the development authorised by the permission;' (underlining is my emphasis).

9.4.4 Based on commitment of the adjoining land owner, Bernadette Cormican, given in the letter of 21/02/06, the Planning Authority would appear to have been entitled to attach a condition imposing on the said lands. Whether the wording of condition no.11 is sufficient, without requiring the entering into a section 47 agreement, to be enforceable is an issue for the Planning Authority to pursue (should it so wish to do so) and is ultimately a legal question that only the courts can decide definitively. Despite the Planning Officer's statement that the existing development 'is

unauthorised', there are no details of any Warning Letter or Enforcement Notice provided on file. I am, therefore, not satisfied that the development on site is unauthorised.

9.4.5 I would point out that any decision of the Board in this case can only relate to the application site as outlined in red, as there are no other lands in the applicant's control. In my professional opinion, a decision of the Board would not alter the requirements of condition no.11 of reg.ref.05/420.

9.5. Access, Egress and circulation

9.4.1 The proposed amendments include relatively minor alterations to the existing vehicular circulation route through the relocation of the existing entrance at the southwest end of the site to accommodate access within the indicated legal right of way. It would appear that the amendments are required to ensure that access can be achieved within the confines of the right of way.

9.4.2 I note that the area of proposed works, which includes the removal of existing pedestrian pavement and instating of vehicular carriageway, falls outside the redline boundary of the application site. Although the applicant has indicated that the works are contained within the right of way, that the lands are clearly indicated by the applicant as being outside the application site boundary and outside land ownership of the applicant (and are not otherwise within the applicant's control) and therefore, in my opinion, the Board is not entitled to grant permission for the said works. That the applicant may not have sufficient legal entitlement to carry out the works proposed in the said area also arises, but any decision to grant permission would necessarily be limited by the provisions of section 34(13) of the Planning and Development Act, 2000, as amended.

9.4.3 The observer, James Cormican, submits that the applicant cannot access the site with deliveries without encroaching on lands outside the applicant's control (i.e. onto the Westside Business Centre). He has suggested that the paved [pedestrian] area

needs to be reduced in size and altered to accommodate two medium sized delivery vehicles, the two parking spaces (nos.1 and 2) removed for practicality and proper drawings submitted with swept path analysis to show how delivery access can be attained. Concerns about delivery access were also raised in the report of the Council's Transportation Section, which requested further information regarding details of new junction radii and swept path analysis and of delivery arrangements having regard to omission of delivery bay forming part of permission reg.ref.05/420. The refusal reasons attaching to the Planning Authority's decision did not include reference to issues relating to the servicing of the site with deliveries. The delivery access arrangements permitted under reg.ref.05/420 provided for a loading bay within the pedestrian paved area at the southwest corner of the building, adjacent parking spaces 1 and 2. Whilst no loading bay is demarcated on the ground, the said area is accessible by a dished pavement and the absence of bollards and, based on photographs attached to the observations of James Cormican, it is evident that the said loading arrangements authorised under reg.ref.05/420 have been implemented.

9.4.4 The initial application drawings did not make provision for deliveries. The applicant submitted a revised site layout plan (not to scale) with the appeal (04/05/16) showing the provision of a truck delivery bay at the southwest corner of the site, but no details of the junction radii or swept path analysis or other practical details of delivery truck arrangements / procedures have been included. I fail to see how the proposed (or, indeed the existing) delivery bay can be accessed and /or egressed without encroachment on neighbouring lands, over which the applicant has no rights, and I therefore would advise that the proposed amendments to the layout are unacceptable.

9.4.5 It is also difficult to see what alternative options for deliveries might be accommodated within the site given the confines of same. It is not clear whether it would be possible for a large delivery truck to circumnavigate the proposed altered (one-way, clockwise) circulation route around the building, particularly when the

parking spaces are occupied. Even if it is possible, a truck egressing onto the right-of-way access road (excepting any legal dispute over same) would clearly have to encroach on the entrance lane from old Seamus Quirke Road at the junction, obstructing on-coming traffic from the public road and endangering public safety by reason. It is difficult to see how delivery trucks would be able to safely access and egress the site within the alleged legal and existing physical constraints applicable to the development site.

9.4.6 Conclusion – Despite concerns raised by observers and in the report of the Council’s Planning and Transport Section (11/03/16) in this regard, the applicant has not demonstrated that the proposed amendments to the vehicular circulation and delivery access layout authorised under permission reg.reg.05/420 can safely accommodate delivery traffic within the physical and legal confines applicable to the development site. I would therefore advise the Board that the proposed alterations to the vehicular access arrangements be refused, or be omitted by condition in the event of a decision to grant permission for the proposed change of use.

9.6. **Appropriate Assessment**

9.5.1 Having regard to the small scale of the proposed development, comprising change of use from office to medical consultants over 305-sq.m and revised vehicular access and parking arrangements on a site located within the existing built up area of Galway City, 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.

10.0 **Recommendation**

10.1. I recommend that planning permission should be **GRANTED**, subject to conditions, for the reasons and considerations as set out below.

11.0 Reasons and Considerations

Having regard to the zoning of the site 'To provide for enterprise, light industry and commercial uses other than those reserved to the CC zone' and its designation as part of a District Centre under the Galway City Development Plan 2011-2017, to the site's location adjacent to an existing upgraded public transport corridor and to its proximity to the city centre, and to the provisions of the development plan regarding car parking, it is considered that the proposed change of use is consistent with the proper planning and sustainable development of the area, subject to the conditions below.

12.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars received by An Bord Pleanála on the 4th day of May, 2016, except as may otherwise be required in order to comply with the following conditions.

Reason: In the interest of clarity

2. (a) This decision to grant permission shall be in respect of the proposed change of use of the second floor area from office use to use as two medical consulting rooms, only.

(b) Nothing in this decision shall be taken to authorise the proposed alterations to the vehicular access arrangements and circulation, including access and egress arrangements for delivery vehicles, which shall be omitted from the proposed development.

Reason: To define the extent of this permission in the interest of clarity, in

the interest of traffic safety.

- 3 No more than two medical consultancy offices shall be provided at second floor level and no subdivision of the proposed second floor area shall take place without a prior grant of permission.

Reason: In the interest of clarity.

John Desmond
Senior Planning Inspector
26th August 2016