



An
Bord
Pleanála

Inspector's Report

Development: Install a ramp and steps to front of premises for wheelchair access at Ballypheane Pharmacy, 66 Tory Top Road, Ballypheane, Cork.

Planning Application

Planning Authority: Cork City Council
Planning Authority Reg. Ref.: 16/36844
Applicant: Liberty Ireland Ltd.
Type of Application: Permission
Planning Authority Decision: Refuse Permission

Planning Appeal

Appellant(s): As above
Type of Appeal: First Party V Refusal
Observers: None
Date of Site Inspection: 14th September 2016
Inspector: Kenneth Moloney

1.0 SITE DESCRIPTION

- 1.1. The appeal site is located in the inner suburb of Ballyphehane which is south of Cork City Centre. The subject site is located within a neighbourhood parade of two-story retail units. The parade of retail units comprises of a convenience store, two fast food takeaways, café, beauty salon and pharmacy. The appeal site is occupied by a pharmacy and also includes some public footpath to the front.
- 1.2. The adjoining foot path is relatively wide with established provision for bins, bicycle parking and adequate space for pedestrians.
- 1.3. On the opposite side of the public road there is a community centre and there is on-street car parking provision on both sides of the public road.

2.0 PROPOSED DEVELOPMENT

- Planning permission is sought for the construction of steps and wheelchair access ramp to the front of an existing pharmacy.
- The depth of the proposed structure is approximately 1.5 metres and the length of the overall steps and access ramp is approximately 4 metres. The maximum height of the proposed structure is 1.3 metres high.

3.0 PLANNING AUTHORITY'S DECISION

3.1 Decision

The Planning Authority decided to refuse planning permission for the following reasons;

1. The proposed development by reason of its location on a public road / footpath would endanger public safety by reason of traffic hazard or obstruction of road users. It would therefore be contrary to the proper planning and sustainable development of the area.
2. The planning authority is not satisfied that the applicant has sufficient legal estate or interest in the land the subject of the application on which it is proposed to construct the ramp in order to enable the applicant to carry out the proposed development on land, or the written consent of the legal owner of the lands in question to make the application.

3.2 Planning Authority Reports

- Proposed ramp on the public footpath and therefore a matter separate to planning.

- Applicant should deal directly with road's division.
- Roads Design recommend refusal.

3.3 Other Technical Reports

Internal Reports: There are two internal reports on the file:

- Drainage Division; No objections.
- Roads Design; Refusal recommended as the steps and access ramp will impede the public road or footpath.

3.4 Third Party Observations

Objections: There are no third party objections on the planning file.

Submission: There is a submission from Irish Water who has no objections to the proposed development.

4.0 PLANNING HISTORY

- No recent relevant planning history.

5.0 DEVELOPMENT PLAN

The operational development plan is the Cork City Development Plan, 2015 – 2021.

The parade of commercial units is zoned 'Local Centres'. The objective of this zoning provision is 'to protect, provide for and/or improve the retail function of local centres and provides a focus for local centres'.

The footpath in which the ramp and steps are proposed is zoned ZO4-Residential, Local Services and Institutional Uses'. The objective of this land-use is 'to protect and provide for residential uses, local services, institutional uses, and civic uses, having regard to the employment policies outlined in Chapter 3.

6.0 GROUNDS OF APPEAL

Murphy McCarthy Consulting Engineering Ltd, lodged an appeal on behalf of the applicant Liberty Ireland Ltd. The main grounds of appeal are summarised as relating to the following; -

Background

- The existing entrance has a step entrance.
- The pharmacy has a lot of elderly customers.
- The current practice for elderly or wheelchair customers accessing the pharmacy requires a member of staff to assist with installing a temporary ramp.

- A submitted drawing outlines the construction of a ramp internally.
- It is contended given the scale of the proposed ramp and the relatively small scale of the shop floor that it is not realistic to operate a pharmacy with an internal ramp.
- The Pharmacy Regulator from the Pharmaceutical Society of Ireland, has written to the applicant several times in the last 5 years requesting that they install an access ramp which is required to comply with legislation.
- It is submitted that the applicant has been poorly treated by the local authority.

Refusal Reason no. 1

- The existing footpath is 6m wide and this footpath would be reduced to 4.3m if the proposed ramp were constructed.
- It is submitted that the width of a standard footpath is 1.8m.
- The existing step access to the pharmacy is a danger to pedestrians.
- The neighbouring premises has steps and a ramp. It appears unfair and inequitable that competing businesses can provide ramps for the public.
- The HSE was granted planning permission (L.A. 06/30648) for a change of use from office building to a mental Health Day Care Facility at no. 1 St. Patrick's Road and this site is a short distance from the appeal site.
- In relation to L.A. Ref. 06/30648 the total width from the building face to the edge of the footpath is 2.66m. The footpath is now reduced to 1.325m at the start of the ramp widening to 2.44m at the top of the ramp.
- In relation to L.A. Ref. 06/30648 the footpath widens to 1.75m just 2.5m away and this creates a serious pinch point resulting in pedestrians stepping onto the public road at this location. This premises is situated across the road from a secondary school and 16m from a major junction.

Refusal Reason no. 2

- The public footpath is owned by Cork City Council.
- The proposed development is situated on the public footpath.
- It is submitted that surely prior permission is not required.
- The proposed development is similar to a development that requires a connection to a public mains. A connection to a public mains is always acceptable without prior permission.
- Referring to L.A. Ref. 06/30648 the external ramp in this application is situated on the property of Cork City Council. In the planning application there was no mention of ownership or written consent.

Conclusion

- It is requested that should the Board refuse permission that they confirm that the proposed works represent 'road works'

- It is submitted that should the works be confirmed as road works that the proposed development could get prior approval from the road's engineer without the necessity of getting planning permission.
- It is also requested that the Board would also confirm that the proposed development would not endanger public safety by reason of traffic hazard or obstruction of road users.

7.0 RESPONSES

Second Party Response

The planning authority submitted a response stating that they had no further comments.

8.0 ASSESSMENT

The main issues to be considered in this case are: -

- Access
- Legal Interest
- Appropriate Assessment

8.1 Access

A significant consideration in this assessment is whether the proposed disability ramp to access the pharmacy building would obstruct or interfere with users of the public footpath.

The width of the public footpath, in front of the main entrance to the existing pharmacy, is approximately 6 metres. The proposed steps and access ramp is to run parallel to the front entrance of the pharmacy and its full width is approximately 1.5 metres wide and therefore the remaining width of the public footpath at the point of the proposed ramp is approximately 4.5 metres. I would consider, based on a visual observation of the area, that a footpath with a width of 4.5 metres is adequately wide to serve the local needs.

The report on the file from the Executive Engineer of the Roads Design Section recommends a refusal on the basis that the proposed ramp should be contained inside the premises so that the proposed development will not impede or obstruct the public road or footpath.

I noted from my site inspection that the local topography falls from a west to east direction and as such the footpath adjoining the commercial premises is sloped and many of the commercial units in this parade have stepped access including the appeal property. I would note from a visual observation of the area that an adjacent property, i.e. 'Centra' which is a retail convenience store has an access ramp and steps similar to those proposed in the current application before the Board.

I would acknowledge that ownership is a significant issue in considering the proposed development and I would will examine this below.

I would not concur with the Executive Engineer of the Local Authority that the proposed development would impede or obstruct the public road or footpath. On the contrary I would consider that the remainder of the public footpath would be sufficiently wide to accommodate pedestrians given the scale of the established parade of retail units. Furthermore as referred to above I would note that an established premises has an access ramp and steps and this is located adjacent to the proposed development. It is my view that this existing access ramp and steps to the front of the 'centra convenience store' operates without any adverse impact on pedestrians or public safety.

I would not concur with the local authority's first reason for refusal.

8.2 Legal Interest

The local authority, in their second refusal reason, considered that the applicant did not demonstrate sufficient legal interest to carry out the proposed works.

The submitted planning application form indicates that the applicant is the occupier of the land or structure in question. In the appeal submission the applicant acknowledges that Cork City Council is the owner of the public footpath.

I would therefore consider based on the information on the file that the applicant has not sufficient legal interest in the site in question of the proposed development and therefore I would concur with the local authority's view that the applicant does not have sufficiency of interest to carry out the proposed works.

The Board will be aware of Section 34(13) of the Planning and Development Act, 2006, which states '*A person shall not be entitled solely by reason of permission under this section to carry out any development*'. Therefore, if planning permission were obtained, the applicant must ensure that they would have legal title to complete the development or failing this consent from the owner would be required. In this instance the applicant has neither legal title or consent from the owner for the proposed development.

In relation to ownership I would refer the Board to a previous Board order, i.e. appeal ref. 231134. In this case the Board refused permission for an access ramp located on a public footpath situated to the front of a bank building in Thomastown, Co. Kilkenny. The second refusal reason effectively stated that the applicant has insufficient legal interest to carry out the proposed works.

Overall I would consider that the proposed development cannot proceed without the consent of the local authority and without this consent I would recommend refusal to the Board.

8.3 Appropriate Assessment

Having regard to the nature and scale of the development proposed and to the nature of the receiving environment, namely an inner suburban site, no appropriate assessment issues arise.

9.0 RECOMMENDATION

I have read the submissions on the file, visited the site, had due regard to the development plan and all other matters arising. I recommend that planning permission be refused for the reason set out below.

10.0 REASONS AND CONSIDERATIONS

1. On the basis of the submissions made in connection with the planning application and appeal, the Board is not satisfied that the application has been made by a person who has –
 - (a) sufficient legal interest in the land the subject of the application to enable the person to carry out the proposed works on the land, or
 - (b) the approval of the person who has such sufficient legal interest.

The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Kenneth Moloney
Planning Inspector
5th October 2016