



An
Bord
Pleanála

Inspector's Report ABP-305755-19

Development

Permission for (1) the removal of the existing shop front and the installation of a new aluminium framed, glazed shop front including the relocation of the entrance doors, (2) the removal of the existing entrance to the upper floors and the installation of new aluminium framed, glazed doorset, (3) the installation of steel rear halo illuminated fascia logo to the shopfront, (4) the installation of a projecting signage box to the front, (5) the removal of the existing signage and installation of internally illuminated fascia '3' logo sign between the first and second floors and (6) all associated site works.

Location

110 Saint Patrick Street, Cork.

Planning Authority

Cork City Council.

Planning Authority Reg. Ref.

19/38460.

Applicant(s)

Three Ireland Services (Hutchison) Limited.

Type of Application

Permission.

Planning Authority Decision

To Grant Permission

Type of Appeal	First Party V. Condition No.3.
Appellant(s)	Three Ireland Services (Hutchison) Limited.
Observer(s)	None.
Date of Site Inspection	6 th December 2019
Inspector	Daire McDevitt.

1.0 Site Location and Description

- 1.1. The site the subject (110 Patrick Street) is located on the western side of St. Patricks Street in Cork City Centre. St. Patricks Street is one of the primary shopping streets in Cork and the subject site is located on the western side of the street. The building is currently vacant. The Three Store (applicant) is located at No.109, immediately adjacent with the Savoy building adjacent again. The immediate area is characterized by a mixture of shopfronts and retail/commercial uses. The immediate vicinity is predominantly retail uses at ground floor with a number of vacant units.
- 1.2. No. 110 is a four storey building. The application form refers to a floor area of 127.73 m² and a state site area of 0.0127ha.

2.0 Proposed Development

Permission for:

- (1) the removal of the existing shop front and the installation of a new aluminium framed, glazed shop front including the relocation of the entrance doors,
- (2) the removal of the existing entrance to the upper floors and the installation of new aluminium framed, glazed doorset,
- (3) the installation of steel rear halo illuminated fascia logo to the shopfront,
- (4) the installation of a projecting signage box to the front,
- (5) the removal of the existing signage and installation of internally illuminated fascia '3' logo sign between the first and second floors and
- (6) all associated site works.

Further Information (2nd September 2019)

A detailed response was submitted including drawing, montages and clarification on detailing and materials. The response included the following response to item no. 1

- Correspondence from Three Ireland setting out that it is intended to use No.110 Patrick Street as a temporary pilot store and not a trading store. It will not be open to the public, however the branding and look will be in-line with Three's future plans.
- Three will use 110 to test store layouts and systems and the whole 'look and feel' of the store of the future. During this period 109 will continue to trade as normal.
- Should the trial be successful, then the decision to trade 110 Patrick Street in the new format will be taken and the current trading store will close thereafter, it is envisaged that this would be May 2020.

3.0 Decision

To Grant Permission subject to 7 no. conditions. This includes condition No.3:

The use of the proposed unit is restricted to that of a test or 'pilot' unit only with no access to members of the public. No permission is granted for use as a trading mobile phone shop. Any change of use to a mobile phone shop would require a further planning application for change of use to same.

Reason: *To define the scope of the permission in the interest of orderly development.*

3.1 Planning Authority Reports

Planning Report (7th August & 25th September 2019)

The main concerns highlighted by the case planner relates to the potential for two mobile phone shops (109 and 110) which would be contrary to objective 13.4 of the City Development Plan which seeks to reduce such uses.

No objection to the proposed new shopfront subject to high quality finishes and materials.

Further Information was requested relating to:

- 1) Use and compliance with Objective 13.4; 2) Finished floor levels; 3) Coloured and contiguous elevations; 4) 3D colour photomontages; 5) Details of the proposed armourcoat polished finish; 6) Clarification of details relating to

neighbouring access doors and 7) Internal illumination and omission of upper floor logo to the front façade.

Following the submission of further information a recommendation to grant permission was made, this included condition No. 3 restricting the use of the unit and condition No 7 relating to noise associated with activities associated with the development.

3.2 Other Technical Reports

Roads Design. No objection subject to conditions.

Drainage Section. No objection

3.3 Third Party Observations

None.

4.0 Planning History

Previous permission on the site related to shopfronts.

Recent planning history:

Section 5 Referral (R421/16) relating to *'whether the proposed amalgamation of the existing retail premises A and existing retail premises B which incorporate a pure retail use is or is not exempted development. Whether internal works to the structure A and B which would include associated works comprising removal of staircase and insertion of new staircase, internal shop layout reconfiguration and works to regularise and comply with building and fire regulations is development or is not development and is or is not exempted development'*. Decision that issued for both instances set out that they constituted 'development' and were not 'exempted development'.

PA Reference No. 17/37441 (An Bord Pleanála Reference No.

PL.28.240077) refers to a 2018 decision to refuse Caffé Nero Ireland Ltd permission for change of use from retail use to use as a coffee shop, works to include renovation of the shop front, new fascia and associated works for the following reason:

The development objectives of the Cork City Development Plan 2015-2021, and in particular objective 13.4, as it relates to the Protection of Prime and Key Secondary Retail Frontage, which includes property on St. Patricks Street and the subject site, seeks to support and strengthen the higher order retail function of the City Centre and the concentration of shops within the City Centre Retail Area. Having regard to the nature and scale of the proposed non retail use, in particular at ground floor level in this prime retail frontage, it is considered that the proposed development, if permitted, would contravene the objective of the Plan and would, therefore, be contrary to the proper planning and sustainable development of the area.

5.0 Policy Context

National policy and guidance applies. In the context of this assessment the most relevant documentation is the current City Development Plan.

5.1 Development Plan

The Cork City Development Plan 2015 – 2021 is the statutory Development Plan for the city of Cork.

The subject site is zoned **ZO 1 City Centre Retail Area (CCRA)** where it is the stated objective ‘to provide for the protection, upgrading and expansion of retailing, in particular higher order comparison retailing, as well as a range of other supporting uses in the City Centre retail area.’

The supporting text in the plan notes that the Council is committed to the reinforcement of the City Centre’s role in the retail hierarchy by supporting exiting retailing and facilitating the development new floor-space to meet projected demand. Retailing is prioritised in this area but not to the exclusion of other land use types. Other uses such as residential, hotel, office and cultural and leisure facilities etc which compliment the retail function of the CCRA and promote vibrancy in the City Centre are also permitted, subject to the policies to promote City Centre retailing in Chapter 13.’

Objective 13.4 of the Plan deals with the Protection of Prime and Key Secondary Retail Frontage and states that it is the objective of the Council ‘to restrict retail offices, general offices, hot food takeaways, general convenience

stores, public houses, night clubs, mobile phone shops, bookmakers/betting shops and restaurant uses from locating at ground floor level on prime retail frontages, and restrict retail offices, general offices, hot food takeaways, bookmakers/betting shops at ground floor level on secondary retail frontages (as defined in Map 2, Volume 2).'

Chapter 16 of the Plan deals with Development Management where section Part F deals with Shop Fronts and Commercial Facades

Chapter 4 of the Plan sets out the Retail Strategy for the City Centre. The following objectives are of particular relevance:

Objective 4.3 City Centre: *To protect and enhance the role of Cork City Centre as the primary retail centre in the south west region by facilitating the continued regeneration and modernisation of existing and the development of new retail building stock, coupled with a range of complimentary leisure, recreational and cultural uses and investment in public realm improvements.*

Objective 4.16 Vacant Floorspace: *To seek to reduce the level of vacant floorspace within the Core Retail Area by 50%, half of which should be occupied by retail use and the remainder by non retail uses or retail services.*

5.2 Metropolitan Cork Joint Retail Study 2012

This sets out guidance and policies for retail development at a strategic level for the Metropolitan area and notes that there is a need to continue to enhance and reinforce the function of the retail core. It states that Cork City Centre should be the prime focus for future development and Policy 2 of the strategy states:

Policy 2: Cork City Centre

“To recognise Cork City Centre as the primary retail centre, particularly for higher order-comparison goods, and to promote and enhance Cork City Centre in order to sustain its competitiveness in line with its designation as a ‘Gateway’ City within the National Spatial Strategy.”

5.3 Cork City Centre Strategy 2014

This sets out a strategy for the renewal and regeneration of Cork City Centre. It notes that the retail sector is fundamental to the economic and social vitality of

the City Centre. Chapter 4.1.3 Modernising the St. Patrick Street and Surrounding Retail Offer states:

“The strategy must, therefore, be to make the City Centre retail area an excellent leisure experience.”

5.4 Retail Planning Guidelines 2012

Notes the importance of enhancing the vitality and viability of City Centres and the important role that retail development plays in this regard. It states:

“The centres of cities and towns are the most suitable locations for the higher order fashion and comparison goods and are the most accessible location for the majority of the catchment population. They should be supported in maintaining and expanding their retail offer to serve the population in a sustainable way which will also help to reduce the need to travel.”

5.5 Natural Heritage Designations

The site is not located within any designated site. The closest Natura 2000 sites are the Cork Harbour SPA (site code 004030) and the Great Island Chanel cSAC (site code 001058).

6.0 The Appeal

A first party appeal has been lodged against condition No. 3 attached the Planning Authority’s Schedule of conditions.

6.1 Grounds of Appeal

The grounds of appeal are summarised as follows:

- The sole purpose of the planning application was for modifications to the shop front and signage. The application (including further information submission) never sought or proposed to change the use of the store or to restrict the future use of the store.
- The established and authorised use of 110 Patrick Street is for retail use or ‘shop’. The use as a mobile phone shop (regardless of whether it be on an indefinite, temporary or pilot basis complies with the definition of ‘shop’ under Article 5 (1) of the Planning and Development Regulations 2001 (as amended).

- The only element that should have been considered by the Planning Authority in their assessment was the development as described in the public notices.
- Reference to case law relating to the imposition of planning conditions on exempted development.
- 110 Patrick Street could be used by the applicant as a mobile phone shop as this is consistent with the authorised use ‘shop’ of 110 without the need to apply for planning permission.
- The basis of the planning authority’s reason for refusal relates to compliance with Objective 13.4 which relates to ‘proposed’ development, it should not be used to restrict authorised uses. It cannot be used to restrict change of uses which would not otherwise constitute development or be exempted development. Any condition which seek to impose such restrictions is ultra vires and should be omitted.
- Any condition should be necessary and relevant as set out in the Development Management Guidelines (2007). In this instance the application was for shopfront modifications, therefore conditions relating to use are not relevant. Furthermore, it alters the nature of the development and leaves uncertainty as to what the authorised use of 110 is.

6.2 Planning Authority Response

The Planning Authority maintains that it has carried out its duties accordingly in terms of the provisions of the Planning and Development Acts 2000 (as amended) and the Planning and Development Regulations (as amended) and that its decision to grant planning permission for TP 19/38460 is consistent with the provisions of the Cork City Development Plan 2015-2021 and the proper planning and sustainable development of the area. The Planning Authority has no further comments to make on this application.

6.3 Observations

No observations.

7.0 Assessment

Having regard to the nature and scale of the development and the specific issue arising, that being a first party appeal against Condition number 3 of the planning authority decision, I am of the opinion that the determination of the application as if it had been made to the Board in the first instance is not warranted. In that regard I note the provisions of section 139 of the Planning & Development Act 2000 (as amended). This assessment will therefore be confined to the specific appeal of Condition Number 3 of the planning authority decision. The issue of appropriate assessment screening also needs to be addressed.

The issues can be dealt with under the following headings:

- Appropriateness of Condition no. 3.
- Appropriate Assessment.

7.1 Appropriateness of Condition No. 3

7.1.1 No. 110 is a vacant unit that was last used as retail unit with a photographer on the first floor. The subject site is located within the Prime Retail Area of Cork City, on St. Patricks Street, which is zoned ZO 1 City Centre Retail Area (CCRA) where it is the stated objective 'to provide for the protection, upgrading and expansion of retailing, in particular higher order comparison retailing, as well as a range of other supporting uses in the City Centre retail area.' Retailing is prioritised in this area, and other uses such as residential, hotel, office and cultural and leisure facilities uses are also acceptable in this zone.

7.1.2 I have examined the documentation on file and the two planner's reports which formed the basis of the Planning Authority's decision and I note that the rationale behind attaching condition No. 3 relates to compliance with Objective 13.4 of the current Plan.

7.1.3 Objective 13.4 of the Plan deals with the Protection of Prime and Key Secondary Retail Frontage and states that it is the objective of the Council ‘to restrict retail offices, general offices, hot food takeaways, general convenience stores, public houses, night clubs, mobile phone shops, bookmakers/betting shops and restaurant uses from locating at ground floor level on prime retail frontages, and restrict retail offices, general offices, hot food takeaways, bookmakers/betting shops at ground floor level on secondary retail frontages (as defined in Map 2, Volume 2).’

7.1.4 Condition No. 3
The use of the proposed unit is restricted to that of a test or ‘pilot’ unit only with no access to members of the public. No permission is granted for use as a trading mobile phone shop. Any change of use to a mobile phone shop would require a further planning application for change of use to same.

Reason: *To define the scope of the permission in the interest of orderly development.*

- 7.1.5 The concerns of the planning authority are noted on file and in particular the concerns regarding compliance with Objective 13.4 of the current Cork City Development Plan. This application as per the public notices pertains to (1) the removal of the existing shop front and the installation of a new aluminium framed, glazed shop front including the relocation of the entrance doors; (2) the removal of the existing entrance to the upper floors and the installation of a new aluminium framed, glazed doorset; (3) the installation of steel rear halo illuminated fascia logo to the shop front; (4) the installation of a projecting signage box to the shop front, (5) the removal of the existing signage and installation of internally illuminated fascia '3' logo sign between the first and second floors and (6) all associated site works. It is therefore considered that the remit of the planning considerations in this instance should be confined solely to the works set out in the public notices. It is considered that it is matter for the Planning Authority to pursue the applicant for any non-compliance with any previous permission or for any unauthorised works, if such exist. Therefore the considerations of the application should be confined only to description of works outlined in the public notices.
- 7.1.6 I, therefore, do not consider that a condition restricting the use of the unit is appropriate as this was not the subject of the application. In terms of potential uses and compliance with policy and objectives. Any proposed use should comply with the requirements of the City Council and the City Council should pursue noncompliance through the appropriate channels. Any use that is not considered authorised should be the subject of an application for a change of use.
- 7.1.7 If the event that the Board consider the use should be addressed further I would draw the Boards attention to the planning history associated with 110 Patrick Street and ABP Ref. No. PL.249077 which related to a proposed change of use of a retail unit to cafe/restaurant was refused on the basis the nature and scale of the proposed non retail use, in particular at ground floor level in this prime retail frontage would contravene objective 34.
- 7.1.8 I also note that No. 110 is a vacant retail unit and the use of a 'shop' as a mobile phone shop accords with the definition of shop as defined in Article 5(1).

7.2 Appropriate Assessment

7.2.1 Having regard to the nature and scale of the proposed development, comprising shopfront modifications within an established urban area on zoned and serviced land, and the distance to the nearest European site, 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.

8.0 Recommendation

I recommend that the Board consider the appeal in the context of section 139 of the Planning & Development Act 2000 (as amended). I further recommend that the Board direct the planning authority to remove Condition No. 3.

9.0 Reasons and Considerations

Having regard the proposed development described in the public notices, the planning history and established use of the site a condition relating to the use of the structure is not appropriate. In the interest of clarity any potential uses should be assessed on its own merits and a separate application for permission lodged, if required.

Dáire McDevitt

Planning Inspector

8th December 2019