



An
Bord
Pleanála

Inspector's Report ABP-309107-21

Question

Whether the (a) subdivision of unit no.12 into three units & development of new doors (b) the subdivision of unit 12 into two units is or is not development or is or is not exempted development

Location

Unit no.12 Limerick One, Childers Road, Limerick

Declaration

Planning Authority

Limerick City and County Council

Planning Authority Reg. Ref.

EC56/20

Applicant for Declaration

Irish Life Assurance PLC.

Planning Authority Decision

Is not exempted development

Referral

Referred by

Irish Life Assurance PLC.

Owner/ Occupier

Irish Life Assurance PLC.

Observer(s)

None.

Date of Site Inspection

13th April 2021

Inspector

Bríd Maxwell

1.0 Site Location and Description

- 1.1 This referral relates to unit 12 of an established retail park “*Limerick One*” located at Childer’s Road, within the eastern suburbs of Limerick City. The retail park is accessed by way of a signal-controlled junction off Childers Road (R509) from the west with a secondary left in access only on Bloodmill Road along the northern boundary. Servicing access is also from Bloodmill Road. The retail park has a shared car-parking facility and has 12 no retail units and 3 no food and beverage pods. Units operating within the retail park (pre covid 19) included Dunnes Stores, Smyths Toy Store, Boots Chemist, Lifestyle Sports, Argos, Maplin, The Range, Sports Direct, Heatons, Sports World, Planet Health Club, Costa Coffee and Pizza Hut.
- 1.1. The unit which is subject of the referral is located at the north eastern end of the retail park and has a stated area of 1512sq.m. It is permitted as a retail unit with two entrances on its southern elevation to the shopping centre car park. The unit is currently occupied by Arcadia Group Multiples (Ireland) Limited selling four separate brands namely Wallis, Burton, Evans and Dorothy Perkins.

2.0 The Question

- 2.1 The question posed is whether the (1) subdivision of unit no.12 into three units & development of new doors (2) the subdivision of unit 12 into two units is or is not development or is or is not exempted development

- 2.2 The two possible scenarios/proposals are as follows:

Scenario 1 - Subdivision of unit no 12 (1512sq/m) into three retail units (Unit 12A 432sq.m, Unit 12b 426sq.m and Unit 12C 640sq.m.) This to be achieved by constructing internal walls within unit 12 and would require the development of new doors at the southern and northern elevations. The new doors would mirror the form character and use the same materials as the existing doors.

Scenario 2 is subdivision of unit no 12 (1512sq.m) into two units 12A 647sq.m and a 12b 857sq.m. The new units 12A and 12 B would be subdivided by an internal block

wall and would be accessed via the existing entrances. No external doors are required.

3.0 Planning Authority Declaration

3.1. Declaration

By order dated 2 December 2020 Limerick City and County Council issued notification of decision that (a) the subdivision of unit no 12 into three units and development of new doors (b) the subdivision of unit 12 into two units at unit 12 is development and is not exempt development.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Report of Planning Officer considers that the development can be considered to be exempt under Section 4(1)h as the proposed alterations involve interior alterations for the most part and possible provision of new doors. External works do not materially affect the external appearance of the structure so as to render it inconsistent with the character of the structure or of neighbouring structures. However, the physical subdivision of the retail area into two or three smaller retail areas would give rise to increased commercial activity and would be an intensification of use. Subdivision will have a potential impact on parking and traffic movements in the existing retail park, which is at or near capacity.

3.2.2. Other Technical Reports

None

4.0 Planning History

03/770181 Permission granted in 2003 for a retail park development comprising convenience and comparison goods store (gross floor area 8,302sq,m) 6 no retail warehouse units and 2 no ancillary garden centre with a combined gross floor area of 10,423 sq.m, 2 no comparison goods outlets (gross floor area of 3,716 sq.m) 1 no leisure and fitness centre incorporating leisure and ancillary uses at ground floor (2,090sq.m) and retail sports goods at first floor (2,090sqm) 2 no restaurants (not drive thru) 1 no petrol filling station and associated forecourt shop vehicular access from Childers road 1090 no car parking spaces, landscaping and all associated development and site works on site of 7.69ha. Condition No 17 stated as follows: Prior to occupation of any unit the applicant shall submit full layout plans including details of signage for the written agreement of the planning authority. In this respect the applicant shall have regard to the retail planning guidelines and any other national guidelines.”

04/770572 Alteration to approved retail park comprising replacement of 4 no approved units no 11-14 inclusive comprising of a total gross floor space of 2355 sq.m to create 1 no retail unit comprising of a total gross floor space of 2470 sq.m which includes a mezzanine floor to be used for storage purposes only comprising of a total gross floor space of 620 sq.m and 1 no retail unit comprising of a total gross floor space of 2950 sq.m which includes a mezzanine floor to be used for sales floor space comprising of a total gross floor space of 1475 sq.m.

5.0 Policy Context

5.1. Development Plan

The Limerick City Development Plan 2010-2016 as extended refers. The site is within an area zoned ZO.5(A) General mixed-use development.

5.2. Natural Heritage Designations

None

6.0 The Referral

6.1. Referrer's Case

6.1.1 The referral submission is by Sheehan Planning on behalf of Irish Life PLC. The submission is accompanied by a report by Bannon Property Consultants and Chartered Valuation Surveyors and a report by Transport Insights. The referrer's case is summarised as follows:

- Agree that the works come within the scope of Section 4(1)(h)
- Disagree with conclusions regarding intensification of use
- Expert reports attached by Transport Insights and Bannons confirm that the development will not give rise to increased traffic generation or to increased commercial activity and accordingly an intensification of use does not arise.
- Transport Insights Report concludes that the subdivision would not give rise to increased traffic generation or parking demand.
- Trip Rate Information Computer System (TRICS) has been referred to as the basis for determining the potential traffic impact of the proposed development.
- The existing unit is occupied by Acadia Group Multiples Ireland selling 4 unique brands namely Wallis, Burton, Evans and Dorothy Perkins. The retail offer within the subdivided unit is likely to be comparable to that currently on offer in the larger unit.
- A development's traffic generation characteristics and parking requirements are a function of land use - type of development, site location and scale and are independent of the potential subdivision of a unit.
- It has been demonstrated via survey data and related analysis that the car park has capacity to accommodate additional demand. Retail offer within the subdivided unit would be comparable to that offered at present.
- Bannon Property Consultants and Chartered Valuation Surveyors report confirms that the subdivision would not be an intensification of use due to the overall reduction in retail space to which customers will have access. In the event of subdivision, each store will have to make independent provision for

customer payment zone, staff facilities, stock room, fitting rooms, waste management area leading to a reduction in total floorspace available for retail sales. This in addition to the need to create internal dividing walls between the occupiers will lead to reduction in overall space for customers.

- The Board previously concluded that the subdivision of retail and or office units was exempted development in several Section 5 referrals including RL2308, RL3420 RL3582.
- No evidence provided to support the Council's contention that the development will result in a material intensification of use.

6.2. Planning Authority Response

The planning authority did not respond to the referral.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

S.3(1) – In this Act, “development” means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structure or other land

Section 2(1) of the Act provides the following definitions:

“works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal. .

“alteration” includes –

(a) plastering or painting or the removal of plaster or stucco, or

(b) the replacement of a door, window or roof,

That materially alters the external appearance of a structure so as to render the appearance inconsistent with the character of the structure or neighbouring structures;

Section 4(1) of the Act states that the following shall be exempted development for the purposes of this Act:

“(h) development consisting of the use of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures;

Section 4 (2)(a) of the Act enables certain classes of development to be deemed exempted development by way of regulation.

7.2. **Planning and Development Regulations, 2001**

A.5(1) In this Part-

‘shop’ means a structure used for any or all of the following purposes, where the sale, display or service is principally to visiting members of the public-

(a) for the retail sale of goods,

Article 9 (1) of PDR sets out various restrictions on works that would otherwise be exempted development under Article 6. These restrictions include, *inter alia*, if the carrying out of any development that would contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act.

7.3. **Previous decisions of the Board – Board Orders appended to this report**

RL3582 Unit 4 Burton Hall Avenue, Sandyford. On the question of whether the vertical subdivision of units 3 and 4 by the closure of two internal door openings in the party wall between the units at ground and first floor level is or is not development or is or is not exempted development. The Board decided that this is development and is exempted development.

RL3418 130-133 St Stephen’s Green West Dublin 2 whether the proposed subdivision of existing restaurant and bar including associated works and removal of part of basement level is or is not development or is or is not exempted

development. The Board decision was that it is development and is exempted development.

RL3420 Unit 16 Cherry Orchard Industrial Estate Ballyfermot. Whether the subdivision into two separate units is or is not development or is or is not exempted development and whether a material change of use has occurred. The subdivision of unit 16 is development and is exempted development. The change of use of the building as detailed in the documentation would constitute a material change of use which is development and is not exempted development.

PL52.RL.2241 Whether the change of use of the former Bank of Ireland premises into a shop and subdivision into two shop units at 78-78 O' Connell Street, Clonmel, County Tipperary is or is not development and is or is not exempted development. The Board determined that the change of use from bank to shop use is development and is exempted development and (2) the subdivision of the bank into two shops units is development and is not exempted development.

RL2308 In relation to Block K The River Centre, Rathborne Place Pelletstown Dublin 15 that the subdivision of a retail unit (c.426 sq m) into two smaller retail units (c.298 sq m and c.94 sq.m respectively) with a shared lobby / service area of 28 sq m is development and is exempted development. The Board decided that in the particular circumstances of that case the proposed subdivision of an existing anchor retail unit, to create two new retail units plus an internal shared lobby service area, does not constitute a material change in the use of any structure or other land. The works only affect the interior of the structure with no appreciable material effect on its external appearance. Therefore, it came within the scope of exempted development provisions of S. 4(1)(h) of PDA, 2000.

8.0 Assessment

8.1. Is or is not development

8.1.1 Section 3(1) of the Planning and Development Act, 2000, defines 'development' as meaning, except where the context otherwise requires, '*the carrying out of any works*

on, in, over or under land or the making of any material change in the use of any structure or other land’.

8.1.2 ‘Works’ are defined under Section 2 of the Act as including ‘any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal...’.

8.1.3 There is no dispute between the parties that in relation to both possible proposals : Scenario 1 involving subdivision of unit 12 into three retail units by way of construction of internal walls and provision of four new doors to the southern and one new door to northern elevation and in Scenario 2 - subdivision of unit 12 into two units by way of construction of internal block walls constitute “ works” and “development” within the meaning of sections 2.1 and 3.1 of the Act.

8.2 Is or is not exempted Development

8.2.1 There is also a consensus between the parties that the proposed development comes within the definition of exempted development under Section 4 (1)(h) of the Planning and Development Act 2000 of *‘development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance with the character of the structure or of neighbouring structures’.* I would agree with this view that the development as outlined in both Scenario 1 and Scenario 2 can be considered to be exempt under Section 4(1)(h) as the proposed alterations involve interior alterations only for scenario 2 and in relation to scenario 1 relate to interior alterations for the most part and the provision of six doors instead of two externally to the southern elevation and four doors instead of three to the northern elevation externally. The external works as proposed are in keeping with the existing pattern of fenestration and design and in my view do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or neighbouring structure.

8.2.2 The main issue in contention relates to the question of intensification of use. As regards subdivision of the unit the parties disagree in relation to whether the impacts of the physical subdivision of one retail area into three or two smaller retail areas in scenarios 1 and 2 respectively would result in an intensification of use. The Planning Authority view as expounded within the Development Inspector's report argues that the subdivision would have a potential impact on parking and traffic movements in the existing retail park which is at or near capacity in terms of movements from the Childer's Road and would therefore be an intensification of use of the land. The first party case to the contrary is that the proposal will not give rise to increased traffic generation or to increased commercial activity and accordingly that an intensification of use does not arise. This is supported within the referral grounds by a report by Transport Insights and Bannon Property Consultants and Chartered Valuation Surveyors. The submission by Transport Insights set out on a point of interest that in relation to car parking occupancy characteristics and traffic movements via Childer's Road, based on results of a 48-hour classified count junction surveys and occupancy count carried out pre Covid 19 and with full occupancy of the retail park there is a sufficient reserve capacity throughout the year within the retail park.

8.2.3 In relation to traffic and parking demand characteristics the Transport Insight's report refers to the Industry Standard - Trip Rate Information Computer System (TRICS) database in consideration of the determination of potential traffic impact. It is argued that development type, site location and floor area determine a development's traffic generation characteristics. It is also noted that the existing unit is occupied by Arcadia Group serving 4 unique brands, namely Wallis, Burton, Evans and Dorothy Perkins. As such it is asserted that the retail offer within the subdivided units is likely to be comparable to that currently on offer. Bannon Property Consultants and Chartered Valuation Surveyors report notes that in the event of subdivision each store will have to make independent provision for customer payment zone, staff facilities, stock room fitting room and waste management leading to a reduction in the total floorspace available for retail sales. On this basis it is argued that there may be a consequential reduction in intensity of retail use.

8.2.4 I consider that the first party has made a compelling case. As regards traffic generation the aforementioned Industry Standard TRICS database relies on three key variables (development type, site location and floor area) which would not be altered in scenario 1 or 2. Furthermore I note that by reference to Table 16.1 General Parking Standards Limerick City Development Plan 2010-2016 as extended the calculation of parking requirement relates to floor area and would not increase. I note the specific circumstances of the current appeal case where the existing unit is occupied by the Arcadia Group selling four unique brands namely Wallis, Burton, Evans and Dorothy Perkins. I note that no details are provided in terms of the intended future occupancy of the potential two or three units arising from the subdivision. It is my considered view that the subdivision of an existing unit into a possible two or three units in this case will not in itself lead to additional traffic or pressure on car parking spaces. I am of the view that while the creation of an additional one or two shops will potentially lead to additional or altered pattern of deliveries this is not likely to be material. Given that the subdivision of the single retail unit into two or three units will not result in an increase of floor area (net retail floor will be likely to decrease) I conclude that the proposal will not result in an intensity of development that would have material planning impacts.

Restrictions on exempted development

8.2.5 I note that in terms of restriction on exemption there are no specific restrictions on use in the governing permission on the site 03/181. Condition 17 requires that "Prior to the occupation of any unit the applicant shall submit full layout plans including details of all signage for the written agreement of the planning authority, In this respect the applicant shall have regard to the retail planning guidelines and any other national guidelines."

8.2.6 I conclude that the works necessary to subdivide an existing retail unit to create 2 or three new retail units does come within the scope of Section 4(1)(h) of the Planning and Development Act 2000, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance with the character of the structure or of neighbouring structures. I consider that in the circumstances of the current case and based on the details submitted the subdivision of one shop into two or three individual shops

would not have material consequences in terms of increased commercial activity and would not therefore be an intensification of the use of the land.

9 Recommendation

I recommend that the Board should decide this referral in accordance with the following draft order.

WHEREAS a question has arisen as to whether (a) subdivision of unit no 12, Limerick One, Childer's Road, Limerick into three units and provision of new doors to northern and southern elevation and (b) Subdivision of unit 12 into two units is or is not development or is or is not exempted development:

AND WHEREAS Irish Life Assurance PLC requested a declaration on this question from Limerick City and County Council and the Council issued a declaration on the 2nd day of December, 2020 stating that the matter was development and was not exempted development:

AND WHEREAS Irish Life Assurance PLC referred this declaration for review to An Bord Pleanála on the 7th day of January, 2021:

AND WHEREAS An Bord Pleanála, in considering this referral, had regard particularly to –

- (a) Section 2(1) of the Planning and Development Act, 2000, as amended,
- (b) Section 3(1) of the Planning and Development Act, 2000,
- (c) Section 4(1)(a) of the Planning and Development Act, 2000, as amended,
- (d) the planning history of the site,

AND WHEREAS An Bord Pleanála has concluded that:

- (a) the proposed internal works comprising the construction of internal walls within unit 12 would constitute “works” that are “development” under Section 3 of the Planning and Development Act, as amended.
- (b) the works necessary to subdivide the unit into two or three retail units come within the scope of Section 4(1)(h) of the Planning and Development Act, 2000, as amended, being works which affect only the interior of the structure and are, therefore, exempted development, and
- (c) the subdivision of the retail unit into three retail units in scenario 1 and the subdivision of the retail unit into two retail units in scenario 2 would not give rise to increased traffic movements or any other activity that would have material consequences in terms of the proper planning and sustainable development of the area, and, therefore, would not constitute a material change of use.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3)(a) of the 2000 Act, hereby decides that the subdivision of unit no 12, Limerick One, Childer’s Road, Limerick into three units and provision of new doors to northern and southern elevation and (b) Subdivision of unit 12 into two units and provision of one new doors to the northern elevation and provision of 4 new doors to southern elevation and (b) subdivision of unit 12 into two units is development and is exempted development.

Bríd Maxwell
Planning Inspector
20th May 2021