



An
Bord
Pleanála

Inspector's Report

ABP-309578-21

Development	Subdivision of property with alterations to shopfronts
Location	40-42 Arundel Square, Waterford.
Planning Authority	Waterford City & County Council
Planning Authority Reg. Ref.	20/741
Applicant(s)	T & M Reid Ltd.
Type of Application	Permission
Planning Authority Decision	Grant Permission
Type of Appeal	First Party v Condition Nos. 1(a), 2(a) and (b), 7(a) and (b) and 10(a) and (b)
Appellant(s)	T & M Reid Ltd.
Observer(s)	None
Date of Site Inspection	08.06.2021
Inspector	Anthony Kelly

1.0 Site Location and Description

- 1.1. The site is located on Arundel Square in Waterford City Centre.
- 1.2. The site comprises a vacant three-storey commercial unit facing onto Arundel Square. The property adjoins City Square Shopping Centre. Its most recent use was sporting goods retail. There is a narrow laneway along the south side of the property.
- 1.3. The site has an area of 0.0154 hectares.

2.0 Proposed Development

- 2.1. Permission is sought to subdivide the property into two units, alter the shopfronts, relocate the door on the side elevation and change the use of proposed Unit A to café.
- 2.2. The building has an overall floor area of 317sqm and a height of approx. 11.5 metres.
- 2.3. Subsequent to a further information request the applicant stated, inter alia, that first floor uses are currently undefined and all possible uses are being considered, justified the proposed external façade, and stated that no detail design had been carried out for the proposed café in terms of extractor vents, bin storage etc. The applicant requested that consideration be given to permitting the option of the café use in the smaller Unit B as it had some enquiries from potential operators in relation to that unit.

3.0 Planning Authority Decision

3.1. Decision

Permission was granted by Waterford City & County Council subject to 11 no. conditions including specifying the use of Unit A as a café, submission of revised plans and particulars for the shopfronts, submission of signage detail, construction practices, Irish Water connection agreements, submission of a Waste Management Plan, access to the first floor and use of upper floors, restriction on the use of the café and detail of extractor fans etc.

3.2. Planning Authority Reports

3.2.1. Two Planning Reports form the basis of the planning authority's decision. The second report states that, having regard to the application details, the nature of the proposed development, zoning provisions and type of development in the vicinity, a grant of permission was recommended, subject to conditions, as the proposed development would be in accordance with the proper planning and sustainable development of the area.

3.2.2. Other Technical Reports

None.

3.3. Prescribed Bodies

None.

3.4. Third Party Observations

None.

4.0 Planning History

None relevant.

5.0 Policy Context

5.1. Waterford City Development Plan 2013-2019

5.1.1. Following the amalgamation of Waterford County Council and Waterford City Council in 2014, the lifetimes of the existing development plans within the amalgamated council area were extended. The 2013-2019 City Development Plan remains in effect until a new City & County Development Plan is prepared following the making of the Regional Spatial & Economic Strategy.

5.1.2. The site is in an area zoned 'City Centre Commercial; To protect, provide and improve City Centre Commercial Uses' and is part of an area identified as a Core Shopping Area Opportunity Site. It is also within a General Conservation Area.

5.2. **Natural Heritage Designations**

5.2.1. The closest heritage area is the Natura 2000 site Lower River Suir SAC (Site Code 002137) approx. 200 metres to the north.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

The main points made can be summarised as follows:

- While the grant of permission is welcome some conditions are considered inappropriate. A requested increase in the flexibility of use is not reflected in the decision. The premises have been vacant for four years. It was originally three individual retail units, later amalgamated into one. Arundel Square was pedestrianised to provide a more continental atmosphere. The application would address both vacancy and be in keeping with this culture aim. Proposals in the application relate to the ground floor. Part of the ground floor south retail unit is to be partitioned off to provide pedestrian access to the upper floors.
- The conditions subject of the appeal are 1(a), 2 (a) and (b), 7 (a) and (b) and 10 (a) and (b).
- Café use – During the application process commercial interest was shown in the smaller unit as a café with none expressed in the larger unit for either café or retail and this remains the case. It is proposed to subdivide a single planning unit. Notwithstanding the application description it is considered perfectly feasible and lawful for a grant of permission to issue which introduced a degree of flexibility in how the floor area is allocated. Flexibility will not change the use mix. There will be no impact on the vitality or viability of the city centre. There will be no material impact on neighbouring uses. The applicant is not asking for

a permission for a use different to that applied for. The applicant requests a condition that requires a café use is permitted in one of the units. Condition 10(b) can be amended to reflect this. Unit B is the only unit with a side external elevation to install external vents etc. Condition 1 (a) could be deleted.

- Shopfront detail – Condition 2 (a) should be deleted. The proposed shop front is unapologetically modern in design and is appropriate between contemporary designed retail units. The planning authority design is more akin to what exists, out of keeping with either side, notwithstanding the location in the General Conservation Area and close to more traditional shopfronts. It is requested Condition 2(b) be amended or replaced. The conditioned signage method does not suit the modern shop front design sought. A condition should require signage to be consistent and detail to be agreed.
- Revised floor plans – Condition 7 is unclear and unnecessarily restricts development potential of the upper floors. The side door from Unit B leading to the corridor and stairs is not required and was never intended to link Unit B with upper floors or provide ancillary storage or staff areas. The literal wording of Condition 7(b) is that all of the upper floor space is to be ancillary to Unit B. It also requires planning permission for any change of use of upper floors notwithstanding exempt development provisions. As the further information response stated the upper floors were not required for the proposed ground floor uses this effectively leaves the upper floor space without a planned use. The applicant requests a new Condition 7 requiring any future use of the upper floors to either be subject of a separate planning application or the type of residential accommodation exempt under the Planning & Development (Amendment) (No. 2) Regulations, 2018.
- Restriction on café use – Condition 10(a) prohibits use as a takeaway facility for the sale of hot food for consumption off the premises. Café use is not defined in planning legislation nor are commercial units for ‘the sale of hot food for consumption off the premises’. Units for ‘the sale of hot food for consumption off the premises’ are generally understood be fish and chip shops, Indian or Chinese takeaways, pizzerias, burger bars, kebab shops etc. where meals are purchased and not eaten on the premises. A café is defined as a small or

inexpensive restaurant serving light or easily prepared meals and refreshments. Since Covid-related amendments to the Planning & Development Regulations, almost every eatery bar and restaurant in the city that did not have a take away offer now has one. A take-away offer from the proposed café would be an acceptable use for a city centre location. A similar issue is considered to have arisen in ABP Reg. Ref. PL 23.212853 and the detail of that referral, which relates to café use, is set out. It is considered that, in granting permission for a café use, it was incorrect and unnecessary to condition out an element of takeaway from the use. By its nature, a takeaway use is acceptable and desirable.

6.2. Planning Authority Response

None.

6.3. Observations

None.

7.0 Assessment

This first party appeal relates specifically to Conditions 1, 2, 7 and 10 of Waterford City & County Council's decision to grant permission to subdivide the existing retail unit, alter the shopfronts, relocate the door on the side elevation and change the use of proposed Unit A to café use. These conditions relate to the use of Unit A as a café (Condition 1), revised plans and particulars for the shop fronts and signage (Condition 2), access to the first floor and use of upper floors (Condition 7) and restriction on the use of the café and detail of extractor fans etc. (Condition 10). I consider that, having regard to, inter alia, the nature and scale of the proposed development, the most recent use of the currently vacant unit as sporting goods retail, the 'City Centre Commercial' zoning, the commercial nature of Arundel Square and the wider area, the absence of third party observations and the absence of any impact on any Natura 2000 site as a result of the proposed development, individually or in combination with other plans or projects, the proposed development is acceptable.

Therefore, I intend to limit my consideration to the matters raised in relation to the conditions and not carry out a de novo assessment of the proposed development.

7.1. Condition No. 1(a)

7.1.1. Condition No. 1 states as follows.

1. The development shall be in accordance with plans and particulars submitted to the Planning Authority on 9th October 2020 and as amended on 12th January 2021 except where altered or amended by conditions in this permission.

(a) The development permitted herein relates to subdivision of 40-42 Arundel Square and for a change of use of Unit A as indicated on the submitted plans to a café use.

Reason: To clarify the documents to which the permission relates and for the proper planning and sustainable development of the area.

7.1.2. The grounds of appeal state that interest has been expressed in the smaller unit (Unit B; 45sqm) as a café but no interest has been shown in the larger unit, Unit A (92sqm) as a café or as a retail area. The public notices submitted with the application specify that Unit A is subject of a change of use to a café. The grounds of appeal considers that the planning unit is a single unit and it is perfectly feasible and lawful to issue a grant which has flexibility in terms of which unit is occupied by the café. The use mix will not be changed, the occupation of either unit by a café will not affect the vitality or viability of the city centre and there will be no material impact on neighbouring uses. The applicant notes that any extractor fans etc. would have to be on the front façade of the building if the café is restricted to Unit A and considers that the wording of Condition 10(b) could be amended to reflect this and Condition 1(a) deleted.

7.1.3. The applicant's response to the further information request stated, 'The applicant would ask the planning department, if possible within the current application, to issue a condition of planning permitting the option of café use within this unit' (Unit B). Notwithstanding the applicant's position that flexibility in the specific uses of the units can be introduced at decision stage, I consider that, as the public notices specifically identified Unit A as subject of the the café use, the decision must reflect the application as sought. While I would have no issue, generally speaking, in which unit is occupied by the café the fact remains the public notices specified Unit A. The planning authority

could have addressed this issue by requesting the applicant to readvertise as Further Information/Revised Plans. However, the response was considered 'Not Significant'. The 'Conclusion' of the second Planning Report states 'however a condition cannot be attached that the café use be interchangeable between the to (sic) units'.

7.1.4. Therefore, having regard to the fact that the café use was publicly advertised as being in Unit A and in the absence of any readvertised public notices, I do not consider the flexibility the applicant is seeking can be provided. To allow this flexibility would, in my opinion, comprise a significant alteration from the application as submitted and as publicly advertised.

7.1.5. Having regard to the foregoing, I recommend the attachment of Condition 1(a) of the planning authority decision.

7.2. **Condition No. 2 (a) and (b)**

7.2.1. Condition No. 2 states as follows.

2. (a) Prior to the commencement of development revised plans and particulars for shop fronts to the two units granted permission herein shall be submitted to, and agreed in writing with, the Planning Authority. The shop fronts shall comprise of a well-defined fascia panel, a strongly defined base (plinth/stallriser) and incorporate pilasters, unless otherwise agreed in writing with the Planning Authority. Full details of materials finishes including brochure samples shall be submitted prior to the commencement of development for the written agreement of the Planning Authority.

(b) Prior to the commencement of onsite development works details of signage including measurements, material finish and lighting shall be submitted for the written agreement of the Planning Authority. The fascia signage shall consist of individually mounted lettering or comprising hand painted lettering. No external projecting lighting shall be erected on the site, any external sign lighting shall be confined to the backlighting of the name sign/individual letters only unless otherwise agreed in writing with the planning authority.

Reason: Having regard to the sites location in the city centre, the nature of the proposed development and in the interest of the proper planning and sustainable development of the area.

- 7.2.2. The existing building is somewhat notable in the streetscape in that it is clearly from an earlier period than the buildings that surround it. The grounds of appeal state that 'It was developed as part of the original City Square shopping centre as three individual retail units which were later amalgamated into one' and is described as having 'non-descript 1960s facades'. The most striking feature of the building are the vertical columns which, presumably, denote the original three separate retail units. The exterior is primarily finished in white plaster with blue surrounds on the windows and doors, a line of red brick under the eave and a painted grey brick base under the ground floor windows. The south side of the building is finished in cream dash. The more contemporary unit to the north is occupied by River Island and the unit to the south has been vacant for three years, according to the grounds of appeal. It is proposed to alter and modernise the shopfront areas at ground floor level. Increased glazing, a reduced base under the windows (render rather than brick), revised signage detail and revisions to the doors including provision of a second door to access Unit B and a third door to access the upper floors are proposed.
- 7.2.3. In the first Planning Report it was considered that, having regard to the extent of works proposed to the existing shopfront, the nature of the development and the prominent location in a 'General Conservation Area', full detail of the shop front and associated signage, illustrating a more suitable design, was required. No change to the proposed shopfront was made in the further information response. The applicant justified this by noting it is a 'relatively new infill building', it is not a protected structure, its location between two very contemporary shopfronts, the design was informed by 'Feedback from the market for a more open shopfront', and a 'faux' traditional shopfront would look more out of place. The second Planning Report considered the shop front detailing to be 'an undesirable solution given the sites location'.
- 7.2.4. The applicant requests Condition 2(a) be deleted and 2(b) be amended or replaced.
- 7.2.5. The site is located within a 'General Conservation Area'. This area is outlined on 'Map B – City Centre' of the City Development Plan and contains a substantial area of the city centre. Section 10.2.1 (Architectural Conservation Areas) of the Plan states that a General Conservation Area designation 'requires a greater attention to the detail of development proposals in order to protect the character of this area'. Development proposals in a General Conservation Area shall have particular regard to effect on

protected structures and their settings, impact on the streetscape and urban layout and impact on amenities such as traffic, parking and utility of public and private spaces.

7.2.6. Condition 2(a) requires a revised shopfront design even though the proposed development was not amended after a similar further information request. Having regard to the nature of Arundel Square and the external design of the retail units immediately adjacent to the site, I consider that the proposed shopfront would be acceptable in the streetscape. I note that many of the main physical characteristics of the building e.g. the vertical columns, roof and upper floor fenestration, would remain in situ with the primary external alterations being changes to the ground floor windows and doors. No part of the proposed development would affect the General Conservation Area status of the area and I consider the alteration would have minimal impact on the environment of Arundel Square. While I consider the proposed shopfronts to be acceptable in terms of design, I consider it appropriate that external finishes should be submitted for the agreement of the planning authority.

7.2.7. Condition 2(b) details the specific nature of the signage required. While the use of individual mounted or hand painted letters is not ruled out in the grounds of appeal, the condition relates more to a traditional shopfront while the shopfront applied for is more modern. As with the external materials for Condition 2(a), I consider that the signage detail should be agreed with the planning authority as a compliance condition. I consider an amended condition, omitting specific reference to the exact nature of the signage required, which may suit a more contemporary signage solution, is appropriate given that I consider the more contemporary shopfront to be appropriate and acceptable.

7.2.8. Having regard to the foregoing, I recommend the amendment of Conditions 2(a) and (b) of the planning authority decision. These can be assimilated into a single condition.

7.3. **Condition No. 7 (a) and (b)**

7.3.1. Condition No. 7 states as follows.

7. (a) Prior to the commencement of development revised floor plans providing for access to the first floor above unit A shall be submitted to, and agreed in writing with, the Planning Authority.

(b) The upper floor storage and staff areas as identified on the submitted plans shall be used ancillary to the retail unit and shall not be used independent of same. A change of this use shall not take place without the prior grant of planning permission, notwithstanding the Exempted Development provisions of the Planning & Development Regulations 2001 (as amended).

Reason: To regulate the use of the premises in the interests of the proper planning and sustainable development of the area.

- 7.3.2. The existing floor plans show retail use at ground, first and second floor levels, all accessed by an internal stairway, and a store/staff area at second floor level. The proposed floor plans show the ground floor area divided into two separate units with no stairs, separate external doors, and a third door at the south end of the frontage accessing a corridor and stairs to the second floor. It is unclear, from the proposed floor plans, how the area on the first floor can be accessed and this was noted in the first Planning Report. This area is identified as a store on the proposed floor plan. Further information was requested, inter alia, on this issue.
- 7.3.3. The response stated that the first floor area uses 'are undefined currently'. All possibilities, including residential, are being considered. No response addressing access to the first floor was provided. The grounds of appeal note that the proposal involves dividing the ground floor commercial units from the upper floors but pedestrian access to upper floors is provided by way of the third door, corridor and stairs. The grounds of appeal consider it 'reasonable to suggest' that the application alters the ground floor and abandons the current use of the upper floors 'which will be the subject of separate applications for permission'. Condition 7 is considered to be vague and unclear and unnecessarily restricts the development potential of the upper floors. A new condition 7 is requested which requires any future use of the upper floors to be subject of a separate planning application or comprise exempt development.
- 7.3.4. Condition 7(a) requires submission of a floor plan providing for access to the first floor area. There is only a first floor area above Unit A as the first floor area above Unit B is a void. It appears as though the first floor area is effectively inaccessible. While I understand the rationale for the insertion of the condition the planning application itself is specifically for the subdivision of the ground floor, café use, new shopfronts etc. Use of the upper floors is not necessarily pertinent to the application as applied for.

Providing access to the first floor is likely to require alteration to the ground floor area or require a first floor area to be provided in lieu of the existing 'void' area above Unit B together with alterations to the proposed dedicated stairs area which would currently only access the second floor. The second floor area above Unit B has a lower finished floor level (104.70) than the second floor area above Unit A (105.60). I consider that Condition 7(a) would require an amendment that would alter the scope of the specific development being applied for in the planning application.

- 7.3.5. Condition 7(b) requires the upper floors to be ancillary to Unit B (the retail unit) despite there being no direct access between Unit B and the upper floors and despite the upper floors not being required for the unit. The grounds of appeal clarify that the door shown from Unit B to the corridor is not required and was not intended to link Unit B with the upper floors. The grounds of appeal consider the condition unduly restricts the development potential.
- 7.3.6. I agree with the applicant that Condition 7(b) is unduly restrictive. The condition restricts this substantial upper floor area (approx. 180sqm) to storage/staff area. According to the applicant the upper floor areas are not required for the purposes cited in subsection (b). Occupation and use of upper floors in a city centre building is desirable. The applicant requests that a new Condition 7 requires any future use of the upper floors to be subject of a separate planning application unless comprising exempt development and identifies residential use as a potential exempt use. This report makes no comment as to whether or not this use may or may not comprise exempt development. It is likely that any future use may require amendments to the stairs and/or first floor plate for accessibility purposes.
- 7.3.7. Permission was granted to subdivide the property into two units at ground floor level, alter the shopfronts, relocate the door on the side elevation and change the use of proposed Unit A to a café. I consider that permission for those specific works is reasonable. Condition 7(a) and (b) both relate to floor area outside the specific scope of the application. Unless any future use of the upper floors is exempt, any development may, on its own merits, require planning permission and access issues could be addressed under that application. The omission of such a condition from this permission would not affect any future requirement to obtain planning permission.

7.3.8. Therefore, I consider that Condition 7(a) and (b) should be removed from the planning authority decision.

7.4. **Condition No. 10 (a) and (b)**

7.4.1. Condition No. 10 states as follows.

10. (a) The proposed café shall not be used as a take-away facility for the sale of hot food for consumption off the premises.

(b) Prior to the commencement of onsite development works the developer shall submit a floor plan for unit A (café use) and full details of all extractor fans, vents, ducting etc. No external ducting or similar shall be placed to the front façade/external elevation of the building.

Reason: In the interest of visual amenities and the proper planning and sustainable development of the area.

7.4.2. Condition 10(a) appears to have been inserted to ensure the unit was not used for uses such as those set out in the grounds of appeal i.e. fish and chip shops, Indian or Chinese takeaways, pizzerias, burger bars, kebab shops etc. I do not consider that it was included to restrict the normal 'take-away' uses of a café for light or easily prepared meals or refreshments, as the grounds of appeal define a café. The permission is for a café and I consider the types of food prepared and sold within a café are materially different from a hot food take-away of the type it appears the planning authority was trying to condition out. While I understand the planning authority's rationale for including the condition, I consider the wording provides a degree of ambiguity and I consider it should be removed. The application itself and other conditions are sufficient to appropriately identify the permitted use of the unit.

7.4.3. In relation to Condition 10(b), I consider the requirement for a floor plan to be reasonable. While the café use is in Unit A, subsection (b) requires no external ducting or similar shall be placed to the front façade. As set out in Section 7.1 of this Assessment I consider the Board is restricted to granting permission for the café in Unit A. Imposing this wording of subsection (b) may result in the use not being capable of implementation. It may be possible to locate these services, if required, in an area other than the front façade, which would be preferable. I would note that Unit B also has no external façade other than the front elevation, given the dedicated stairs and

corridor area to access the second floor. It may be possible for services for Unit A to be provided through Unit B and the stairs/corridor to the external south/side elevation.

7.4.4. I consider that Condition 10(a) should be removed, and Condition 10(b) amended, from the planning authority decision.

8.0 Recommendation

8.1. Having regard to the nature of the conditions the subject of the appeal, the Board is satisfied that the determination by the Board of the relevant application as if it had been made to it in the first instance would not be warranted and, based on the reasons and considerations set out below, directs the said Council under subsection (1) of section 139 of the Planning & Development Act, 2000 (as amended) to:

- Attach Condition 1(a) and the reason therefore.
- Amend Condition 2(a) and 2 (b).
- Remove Condition 7(a) and 7(b) for the reasons and considerations set out below.
- Remove Condition 10(a) for the reasons and considerations set out below.
- Amend Condition 10(b).

9.0 Reasons and Considerations

(a) Attach Condition No. 1 (a).

The condition reflects the planning application as applied for in terms of the use of Unit A as a café.

(b) Amend Condition 2(a) and (b).

2. Details of the external shopfronts and signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of the amenities of the area/visual amenity.

(c) Remove Condition 7(a) and (b)

Having regard to the specific nature of the application i.e. permission to subdivide the property into two units, alter the shopfronts, relocate the door on the side elevation and change the use of proposed Unit A to café, Condition 7(a) is outside the scope of the application as specifically applied for. In relation to Condition 7(b), use of the upper floors is not necessary for the operation of Unit B and restricting exempted development uses would unduly restrict the development potential of the upper floors.

(d) Remove Condition 10(a)

The condition is open to interpretation and could be construed as restricting the ability of the café to sell some takeaway food as part of its normal operation.

(e) Amend Condition 10(b)

10. Prior to the commencement of development the developer shall submit a floor plan for Unit A (café use) and full details of all extractor fans, vents, ducting etc. If any of these services are located to the front façade the developer shall clarify why these services cannot be provided to another façade or otherwise be located away from the front façade.

Reason: In the interest of visual amenities and the proper planning and sustainable development of the area.

Anthony Kelly

Planning Inspector

05.07.2021