



An
Bord
Pleanála

Inspector's Report ABP-305888-19.

Development	Retail off-licence.
Location	Block A1, Shanowen Square, Shanowen Road, Dublin 9.
Planning Authority	Dublin City Council.
Planning Authority Reg. Ref.	3893/19.
Applicant	Ronan O' Caoimhe and Roisin O' Boyle.
Type of Application	Permission.
Planning Authority Decision	Refuse.
Type of Appeal	First Party
Appellant	Ronan O' Caoimhe and Roisin O' Boyle.
Observer	P. Allen.
Date of Site Inspection	2 nd March 2020.
Inspector	Mairead Kenny.

1.0 Site Location and Description

- 1.1. The site is at Shanowen Square, Shanowen Road. This area is generally positioned between the Omni Centre at Santry and the campus of Dublin City University. It is within a few minutes' walk of DCU.
- 1.2. The subject appeal relates to the ground floor Spar shop which is within a student accommodation block and in an area otherwise dominated by two-storey housing. Collins Avenue a major arterial route separates the residential area in which the site is located from the university.
- 1.3. Block A1 in which the site is located is a four storey building. The Spar shop at the corner is of stated area of 250m². On inspection of the interior I noted that the shop is a modern and well stocked unit. In the corner opposite the entry point the main proposed off-licence area is laid out. The relevant areas is stocked with wine. That area also provides access to an ATM and to staff facilities. There is a steel frame in place marking the entry to the off licence area. To the rear of the counter a recessed area for the sale of spirits is in place.
- 1.4. The stated floor area of the existing shop is 250 m².

2.0 Proposed Development

- 2.1. Permission is sought for a change of use of an area within a Spar shop, which is stated to be of floor area of 5m². The development is described as a retailer's off-licence.

3.0 Planning Authority Decision

3.1. Decision

The planning authority decided to refuse permission for the reason summarised below.

- Use is not permissible in principle or open for consideration under the Z1 zoning objective. Proposed development would contravene materially a development objective indicated in the development plan.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The planner's comments include:

- The area behind the screen is in fact 17m².
- The applicant has presented information to comply with policy RD5 and section 16.28. There would not appear to be an over proliferation of off licences in the area.
- Compliance with these criteria and policies is not a replacement for compliance with the zoning, which has been residential since at least 2005.
- Consideration has been given to the permitted part-off licences in Z1 zonings between 2012 and 2018 which the applicant has referenced. Only one of these is in an outer suburban environment and it is adjacent the Northside Civic Centre. The others are in different areas of the city of different character.
- A number of refusals of permission for off-licences in Z1 areas are referenced.
- The site is in an areas which h is zoned residential and is of emerging residential character and the part-off licence would materially contravene the zoning.

3.2.2. Other Technical Reports

Drainage Division – no objection subject to conditions.

3.3. Prescribed Bodies

No reports.

3.4. Third Party Observations

The observations include the following points:

- There is no change in the circumstances since the previous refusals and no real attempt to address the issues. The uses are not permissible in Z1 zones.
- The previous refusal did not relate to the scale of the off-licence hence the reduction from 18 to 5m² is immaterial.

- There are already sufficient off licences in the area including at Centra. The requirement under RD5 to avoid over concentration of such uses is not met.
- There are already problems with broken bottles and other antisocial behaviour including in association with the student accommodation attached.
- Deliveries will result in noise and traffic obstruction.
- Procedural issues.

4.0 Planning History

Under ABP 302911-18 the Board upheld the decision of the planning authority to refuse permission for a change of use of part of a convenience to include part off-licence use. The stated gross floor area was given as 18m². The Board upheld the decision of the planning authority to refuse permission on the basis that the use materially contravened the Z1 zoning objective.

In its Direction the Board referred to section 37(2)(b)(iv). The Inspector had recommended that permission be granted on the basis of that provision and had recommended permission. The Board was not satisfied that section 37(2)(b)(iv) was applicable in that instance having regard to the recent planning history and the objectives of the current development plan.

The Inspector's report refers in detail also to the planning history and in particular the stages in evolution of the original 'tuck shop' of 72m² and the applications which lead to the existing convenience shop.

5.0 Policy Context

5.1. Development Plan

5.2. The site is zoned "Z1" where the objective is *"to protect, provide and improve residential amenities."* Off-licences and part off-licences are not listed as being a 'permissible use' or 'open for consideration' under this zoning objective.

5.3. Development standards for off-licences and part off-licences are set out in Section 16.28 of the Development Plan. Requirements include to ensure that there is no proliferation of such uses.

6.0 The Appeal

6.1. Grounds of Appeal

The main points of the first party appeal are:

- The Board is not bound by the zoning objective. Permission should be granted having regard to the previous commercial use in relation to which the site zoning is incongruous.
- The small off-licence will not have a significant impact on the residential amenities of the area. There is already an off licence use in the form of wine sales.
- The development would not seriously impact on amenities or be prejudicial to public health or result in traffic hazard.
- The development is very modest and will allow the retailer to supply the same services as other retailers in the area.

6.2. Planning Authority Response

No substantive comment received.

6.3. Observation

The key issues raised by the observer are:

- The Board previously determined that such use is a material contravention. The Board also decided that section 37(2)(b)(iv) or other criteria are not applicable. The Board is precluded from granting permission in the circumstances.
- The previous decision of the Board is the key precedent case.
- The issues raised in the appeal including in relation to planning precedents have already been presented and rejected by the planning authority.
- The previous or historic use of the premises is not relevant.

- The off licence is a separate use to a shop and is deliberately excluded from the zoning.
- The impact on residential amenity would be unacceptable and would exacerbate existing problems.
- The map shows 14 premises within the 1km radius where alcohol can be sourced. Wine sale are permitted within the shop already in addition.
- The grant of permission for the commercial units at DCU has disadvantaged this shop.
- The reduction in size of the off licence is significant.
- The planning authority accepted that there is not an abundance of off-license in the area, that the location and size of the use is appropriate.
- We have made a compelling case for the small off-licence.
- There will be no increase in deliveries as all will be from the same supplier.
- A number of other precedent cases are noted.

7.0 Assessment

Having regard to the planning history and in particular ABP-302911, which relates to a similar proposal and in view of the submissions under the current application and appeal I consider that the following are the main issues in this case:

- Whether the proposed development would materially contravene the zoning objective.
- Whether there are changes in circumstances since the recent appeal.
- Whether the proposed development contravenes other planning policies.
- Whether it is open to the Board to grant permission.
- Traffic hazard.

Regarding the **zoning objective** my position is as follows:

- The site is in an area which is overwhelmingly residential in use and the Spar shop is a discrete and isolated exception.

- The development plan objective Z1 does not list off-licence uses as being either permissible or open for consideration.
- The development plan clearly states that uses not listed under the permissible or open for consideration categories shall be deemed not to be permissible uses in principle in a number of zones including Z1.
- It is therefore abundantly clear that the use is a material contravention of the zoning objective.
- I conclude that the zoning objective for this site is reasonable and that an off-licence component is clearly not permissible.

In relation to whether there are **changes in circumstances** since the previous appeal I note as follows:

- There is no development plan policy change.
- The pattern of development has altered only through the provision of a Londis on the DCU campus which contains an off-licence element.
- The proposed off-licence is not materially different to that considered under ABP-302911. The stated area of the off-licence use of 5m² is in my opinion a gross understatement of the area. I agree with the planning authority that the area calculable is in the order of 17m². In the latter case the stated area of off-licence sales was 18m².
- I conclude that there is no substantive change in the proposed development and that the planning policy is unchanged.

Regarding the **other policies** which are relevant to this appeal I note:

- The Board previously considered whether a development of a similar nature would contravene other policies of the development plan including objective RD5 which relates to overconcentration and section 16.28 which relates to scale and layout of off-licences. I am satisfied that a reason for refusal related to these policies is not appropriate.

Subject to compliance with the **criteria under section 39(2)(b)** the Board may grant permission for this development notwithstanding the development plan zoning

objective. The Board has previously determined that none of the criteria under section 39(2)(b) of the Act apply.

The development would not constitute a **traffic hazard** as no additional deliveries would result.

8.0 Recommendation

- 8.1. I recommend that the Board uphold the decision of the planning authority for the reasons and considerations below.

9.0 Reasons and Considerations

The site is located in an area zoned Z1 under the Dublin City Development Plan 2016-2022, where the objective is 'to protect and improve residential amenities'. This objective is considered reasonable. Off-licences and part off-licences are not listed as permissible uses or uses that are open for consideration under this zoning objective and are therefore deemed to be not permissible in principle. The proposed development would, therefore, contravene materially an objective of the development plan and would be contrary to the proper planning and sustainable development of the area.

Mairead Kenny
Senior Planning Inspector

3rd March 2020