



An
Bord
Pleanála

Inspector's Report

ABP-306559-20

Development	Permission for part off-licence at existing Centra Shop at ground floor.
Location	Ground floor of Units 1/3 Gresham House at northeast corner of Sean MacDermott Street Upper and Marlborough Street, Dublin 1.
Planning Authority	Dublin City Council North.
Planning Authority Reg. Ref.	4359/19
Applicant(s)	Mariya Limited.
Type of Application	Permission.
Planning Authority Decision	Refuse.
Type of Appeal	First Party.
Appellant(s)	Mariya Limited.
Observer(s)	Pat Coyne, TII.
Date of Site Inspection	10 th March 2020.
Inspector	Patricia Calleary

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1.0 Site Location and Description

- 1.1. The appeal site comprises a convenience store, with a stated 137 square metres gross floor area (GFA). It is situated at ground-floor level in a four-storey mixed-use development, Gresham House, at the junction of Marlborough Street and Seán MacDermott Street Upper in Dublin city centre. It is accessed off Marlborough Street and sides onto Seán MacDermott Street Upper. Directly adjoining the appeal site to the north, also in Gresham House, is a small commercial premises, currently occupied by a barbers premises. There is an eight-storey office/commercial building, occupied by EIR telecommunications, located directly to the north of Gresham House.
- 1.2. The Luas light rail line runs along Marlborough Street directly in front (west) of the site and convenience store. A church, a narrow laneway (Findlater Place), and the offices of An Bord Pleanála are located directly across the street from the site to the west. O'Connell Street is located approximately 150m to the west of the site via Cathal Brugha Street.

2.0 Proposed Development

- 2.1. Based on the plans submitted with the application, the proposed development would comprise a 'part off-licence' within the existing convenience store, measuring 15.6 square metres in floor area. It is indicated on the floor plans as occupying the north eastern corner of the shop in an area currently occupied by seating and retail display.
- 2.2. In addition to the standard planning application documentation and drawings, the application was accompanied by a cover letter setting out the applicant's case for the proposal, copies of a map identifying licenced alcohol vendors within approximately one kilometre of the site, copies of section 22 of the Public Health (Alcohol) Act 2018 and copies of census information relating to the area.
- 2.3. A revised plan/layout was submitted with the appeal with a proposed off-licence area shown to measure 10.2 square metres.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The Planning Authority issued a decision to **refuse permission** for one stated reason, which set out that the proposal was contrary to Policy RD5 and Section 16.29¹ of the current Development Plan for the Dublin city area and that it would have an overall negative impact on the amenities of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report of the Planning Officer (January 2020) reflects the decision of the Planning Authority to refuse permission. The following is set out:

- The site is located in the city centre at a location with a 'Z5' zoning objective;
- Off-licence use is permitted in principle under the land use zoning matrix;
- Under Planning ref: 2348/06, permission was granted for off-licence use within the existing store, however, the permission was not implemented and has since expired;
- The proposed development would be contrary to Policy RD5 of the Development Plan;
- The proposed development would lie contrary to guidance set out in Section 16.28 (off-licences and part off-licences) of the Development Plan, which outlines that the floor area used for display of alcohol products should not exceed 10% of the total floor area.

3.2.2. Other Technical Reports

- Drainage - No Objection.

¹ While Section 16.29 is set out in the reason for the decision, this would likely have been meant to read Section 16.28 (which deals with part off-licences and part off-licences)

3.3. Prescribed Bodies

- Transport Infrastructure Ireland (TII) – no objection subject to stated requirements as addressed under the observation section below.

3.4. Third Party Observations

- None

4.0 Planning History

4.1. Appeal Site

4.1.1. The following three planning applications, decided in 2006, relate to the appeal site:

- DCC Ref. 2348/06 – permission **granted** for a part off-licence use within the existing Centra store
- DCC Ref. 3602/06 – permission **refused** for retention of external shop signage
- DCC Ref. 5574/06 – permission **granted** for new external shop front signage and two projecting signs

4.2. Other

4.2.1. Reference is made by in an observation to the following:

- ABP Ref: PL 29N.246058 – permission **refused** for a part off-licence (7.1 square metres) in a convenience store at 34 Abbey Street Lower. (April 2016)

5.0 Policy Context

5.1. Dublin City Development Plan 2016-2022

5.1.1. The appeal site has a **zoning objective 'Z5'** – 'to consolidate and facilitate development of the central area and identify, reinforce, strengthen and protect its civic design character and dignity'. Off-licences and part off-licences are listed as permissible uses on 'Z5' zoned lands.

- 5.1.2. **Policy RD5** of the Development Plan prohibits further expansion of off-licences and part off-licences unless a compelling case can be made that there is not an over-concentration of such uses in any one area. In this respect, any application for an off-licence/part off-licence requires that a map of all such establishments located within a one kilometre radius of the proposed development is included.
- 5.1.3. **Section 16.28** of the Development Plan refers to the criteria to be applied when considering applications for off-licences and part off-licences, while also setting out signage and display restrictions to be applied when permitting off-licences and part off-licences. The Development Plan also recommends conditions limiting display and advertising of alcohol products as part of permissions for off-licences.
- 5.1.4. The site and store lie outside but adjacent to the O'Connell Street Architectural Conservation Area.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. The main points included in the grounds of the first-party appeal can be summarised as follows:
- the principle of the development was established in 2006 and since then the concentration of commerce, tourism and residential density in the city centre has increased dramatically;
 - the location and method of display of alcohol is controlled by the Public Health (Alcohol) Act 2018;
 - there are 34 off-licences or part off-licences within a one-kilometre radius of the shop, of which 30 are located within convenience stores or supermarkets;
 - there is a scarcity of off-licences and part off-licences in the north eastern sector of the area within the one kilometre radius, particularly when compared with the south eastern sector within this area;
 - the Planning Officer's assessment of over concentration is not supported by evidence and the proposal is not contrary to policy RD5 of the Dublin City Development Plan;

- if required by the Board, the off-licence area can be restricted to 10% of the shop floor area and revised plans are submitted for consideration by the Board.

6.2. Planning Authority Response

6.2.1. The Planning Authority did not respond to the grounds of appeal.

6.3. Observations

TII (Prescribed Body)

- Deliveries to the site during construction and operation should be made so as to limit interference with Luas operations;
- Servicing access arrangements shall be submitted to the planning authority for written agreement and for approval by TII;
- As development would be close to the Luas line, it shall be required to follow TII Code of practice for such works;
- Section 49 supplementary Development Contribution Scheme – ‘Luas Cross City’ is applicable in the event of a grant of permission;

Pat Coyne (Third Party)

- There are well-established concerns regarding anti-social behaviour in the O’Connell Street, Parnell Street and Moore Street area, with easy availability of alcohol for takeaway consumption being a contributing factor;
- Reference is made to previous appeal for a part off-licence in a convenience store (File PL 29N.246058) which was refused by An Bord Pleanála;
- States that the planning and licencing codes are governed by separate legislation.

7.0 Assessment

7.1. Land-use zoning

7.1.1. The appeal site is situated in an area identified within the Development Plan as having a land-use zoning objective '**Z5**' – 'consolidate and facilitate development of the central area and identify, reinforce, strengthen and protect its civic design character and dignity'. Off-licences and part off-licences are listed as permissible uses for Z5 lands and as such I am satisfied that the proposal would comply with the zoning objective.

7.1.2. Planning Policy

7.1.3. In relation to planning policy outlined, **Policy RD5** seeks to prohibit the further expansion of off-licences and part off-licences unless a compelling case can be made that there is not an over-concentration of such uses in any one area. **Section 16.28** sets out criteria to be applied when considering applications for off-licences and part off-licences. In relation to part off-licences, the criteria include the following:

- the number and frequency of such facilities within a one kilometre radius of the proposed development;
- amenities of properties in nearby residential areas;
- floor area to be subsidiary to the main use of the shop and to occupy no more than 10% of the total floor area;
- location of the display of alcohol products to be unobtrusive, not near the entrance of windows and preferably located to the rear of the premises;
- area of display of alcohol products shall be detailed on the floor plans and display shall be limited to this area;
- area of display shall be secure and monitored.

7.1.4. In relation to the **number and frequency of facilities within one kilometre**, and as is required under Policy RD5, the appellant provided a map identifying those off-licences and part off-licences within a one-kilometre radius. It is stated that there are 34 in total of which 30 are located within convenience stores or supermarkets. The area extends from Phibsborough in the north, Broadstone in the west, College Green to the south and East Wall to the east. It is submitted that the supply is concentrated

in the southern half of the one kilometre circle with only 11 in the top half of the circle and there are only three in the north eastern quadrant. Accordingly, it is submitted that there is not an over-concentration of supply and that the proposed development is not contrary to Policy RD5 of the Development plan.

- 7.1.5. The appellant supports their case by stating that the three Electoral Divisions (EDs) in the immediate vicinity of the premises (Mountjoy A, Mountjoy B and North City) saw a significant growth in population between 2011-2016 of 12%, and submits that this is significantly in excess of the national average for the same period (3.8%) and twice the average for Dublin City North (5.8%). An extract from the census data was attached to support this argument. These are reasonable points, however, they do not constitute a compelling case to justify a part off-licence at this location in accordance with the aforementioned policy and RD5 associated criteria. The criteria on which the concentration of off-licences/part-off-licences are to be assessed is a one kilometre radius and no criteria are based on smaller areas within this area. In conclusion on this matter, having regard to the current supply of off-licences and part off-licences within this one kilometre radius, and in the absence of a compelling case otherwise, it is considered that the proposed development would contribute to an over-concentration of off-licence uses which would be contrary to Policy RD5.
- 7.1.6. The observation received by the Board made reference to an appeal refused by the Board (PL 29N.246058) for an off-licence, subsidiary to the main retail use at a convenience store in Abbey Street Lower. Based on a review of this file, an area of 7.1 square meters was first proposed, however, the area was reduced to 4 square metres during the appeal stage. Part of the reason for the refusal of that application related to the number of similar off-licence/part off-licence uses (a stated 31) within one kilometre and to evidence of anti-social activity in the immediate vicinity of the site.
- 7.1.7. In relation to consideration of **amenities of properties in nearby residential areas**, is stated in the observation that there are concerns for anti-social behaviour in the area with the easy availability of alcohol for takeaway being a contributing factor. I also noted that there is evidence of anti-social behaviour in the area. I consider that the proliferation of off-licences / part off-licences can contribute to anti-social behaviour and therefore the development would contribute to negatively impact the amenities of properties in the nearby residential areas.

- 7.1.8. In relation to the criteria that the **floor area would be subsidiary** to the main use of the shop and that it would not occupy **more than 10% of the total floor area**, the initial proposal did not meet these criteria. The GFA of the retail unit is stated to be 137 square metres. As initially proposed, an area of 15.6 square metres would be occupied by the off-licence area, in an area currently occupied by seating and display area. In addition, reference was made in the cover letter that accompanied the application that a small shelf display of spirits would be located behind the counter.
- 7.1.9. At appeal stage, while asserting that the area proposed was not excessive, the appellant provided revised drawings (PP-01 and PP-02) which indicated a smaller GFA of 10.2 square metres as part off-licence space, for the Board's consideration. The revised proposal would bring the size of the proposed part off-licence in line with the criterion that no more than 10% of the total floor area would be occupied for the sale of alcohol products. I am satisfied that the revised proposal is acceptable in terms of meeting this requirement. If the Board are minded to grant permission, the revised proposal should be secured by condition.
- 7.1.10. In relation to the criterion concerning the **location of the display of alcohol products**, I am satisfied that given the rear of shop area for the proposed location of the alcohol display area, as shown on the drawings, is reasonably concealed and therefore acceptable. The **area of display of alcohol products** has been detailed on the floor plans. It is worth noting that the location and area of display and the security and monitoring are matters which are also highly regulated by the current licencing regime and these are also matters for store management. I am not recommending that these would be regulated further by any planning condition, in the event of a grant of permission.

7.2. **Planning history**

- 7.2.1. The planning history is noted. Under register ref 2348/06, permission was granted by Dublin City Council for an off-licence use within the retail unit, however, the permission was not implemented and has expired and therefore the appellant's contention that the principle of a part off-licence was established in 2006 cannot be sustained.

7.3. Conclusion

- 7.3.1. Having regard to all of the above, it is evident that the proposal would not be supported by Policy RD5 and the related criteria on the concentration of such uses in the area in which the proposed part-off licence would be located. In addition, in contributing to a proliferation of part-off licences and off-licence provision, the proposed development would also contribute negatively to the amenities of the area. Permission should be refused accordingly.

8.0 Appropriate Assessment

- 8.1. Having regard to the existing development on site and to the nature of the proposed development and to the location of the site in a serviced urban area and the separation distance to the nearest European site, no Appropriate Assessment issues arise, and it is not considered that the development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

9.0 Recommendation

- 9.1. I recommend that planning permission for the proposed development should be **refused** for the reasons and considerations, as set out below.

10.0 Reasons and Considerations

- 10.1.1. Having regard to Policy RD 5 of the Dublin City Development Plan 2016-2022, which seeks 'to prohibit the further expansion of off-licences and part off-licences, except in areas where a compelling case can be made that there is not an over-concentration of such uses in any one area' and having regard to the number of similar off-licence/part off-licence uses within a one kilometre radius of the site, it is considered that the proposed development would lie contrary to the stated policy and would not meet the supporting criteria set out in Section 16.28 of the Development Plan in respect of proposed part off-licences. In addition, in contributing to a proliferation of part-off licences and off-licence provision, the proposed development would also contribute negatively to the amenities of the area. The proposed development would,

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

Patricia Calleary
Senior Planning Inspector

15th March 2020