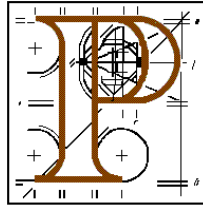


# An Bord Pleanála



## Inspector's Report

PL15.245699

**DEVELOPMENT:** Permission for proposed Off-Licence contained within the curtilage of previously approved forecourt shop. Forecourt Shop previously proposed under Planning Ref. No. 14/215

- at Southend Service Station, Dublin Road, Dundalk, County Louth.

### PLANNING APPLICATION

**Planning Authority:** Louth County Council

**Planning Authority Reg. No.:** 15/557

**Applicant:** Maxol Limited

**Application Type:** Permission

**Planning Authority Decision:** **REFUSE PERMISSION**  
for Reasons and Considerations (1)

### APPEAL

**Appellant:** Maxol Limited

**Type of Appeal:** **FIRST PARTY**

**Observer:** None

**DATE OF SITE INSPECTION:** 28<sup>th</sup> January 2016

**INSPECTOR:** Dermot Kelly

## 1. SITE LOCATION

The subject site (area 0.262 hectares) is located at Southend Service Station, Dublin Road, Dundalk, County Louth, as indicated on **APPENDIX A - LOCATION MAP**.

## 2. SITE DESCRIPTION

2.1 The subject site lands at Dublin Road, Dundalk, were described as follows in the Planning Report for the Planning Authority:

‘The subject site is located to the south of Dundalk town on the Dublin Road (R132). To the east of the site is the Dundalk Institute of Technology campus which includes part of the former Carroll’s factory building. To the north of the site, on the town side, is a dwelling also used as B&B. To the south of the site, towards the Xerox junction is a dwellinghouse with separate entrance onto the public road. The western side of the Dublin Road is generally characterised by individual dwellings with individual access onto the public road, with exception of Dromod Hire and a garden centre located to the north of the site.’

A Service Station development has been recently constructed on the subject site further to permission Ref. PL15.244191 and 14/215.

2.2 The attached Photographs in **APPENDIX B – PHOTOGRAPHS** (including Key Plan which indicates the approximate Photograph locations) illustrate the nature of the subject site and its context.

## 3. PROPOSED DEVELOPMENT

### Planning Application

- The proposed development comprises as specified in the Public Notices: Permission for proposed Off-Licence contained within the curtilage of previously approved forecourt shop. Forecourt Shop previously proposed under Planning Ref. No. 14/215 at Southend Service Station, Dublin Road, Dundalk, County Louth.
- The submitted Site Layout Plan drawing indicates the ‘Off-Licence Location’ (area 2 square metres) within the Forecourt Shop. The submitted Floor Plan drawings indicates the location of the proposed Off-Licence (area 2 square metres) in a corner area of

the Forecourt Shop where there is an existing Wine Sales Area, see Photographs 5 and 7 in Appendix B.

#### **4. NOTIFICATION OF DECISION OF PLANNING AUTHORITY - Submissions and Relevant Reports**

##### **4.1 Third Party Submission on Planning Application**

The Submissions received are noted from a resident in the Glenwood housing estate located off Dublin Road, Dundalk and included stating as follows:

'I have major concerns over the proposed planning application for another Off-Licence. The number of Off-Licences opened in close proximity over the last 12-18 months is extremely worrying, as it is encouraging our youth to drink, with the cheap drink being readily available in every local shop.

I live in the Glenwood housing estate and there is already a major issue with anti-social behaviour, with students from the DKIT drinking within the estate causing annoyance to a number of families, especially the elderly. They are drinking outside of their rented houses and on the streets causing noise and disturbance.'

##### **4.2 Planning Report for Planning Authority**

- The Planning Report dated 5<sup>th</sup> October, 2015 included documenting the Planning History of the subject site and the 'Residential' Zoning of the subject site under the Development Plan and noted the Third Party Submission received.
- Under 'Assessment – Principle of Development' was stated:  
'The subject proposal is located on lands zoned Residential 1. The proposed development is for an off-licence to be contained within the retail unit permitted under Planning Ref. 14/215.  
The subject proposal is located on lands zoned Residential 1. The development plan zoning matrix identifies that a petrol station and '*shop local*' are open for consideration within this zoning objective area. The PFS was granted at this location having regard to the site history and precedent for that use on this site under Planning Reg. Ref. 14/215. This proposal seeks to add an off-licence use to the petrol filling station. Whilst the development plan does not identify an off-licence as a use class, it is considered, in this instance that the introduction of an off-licence would provide an

additional use that would not be acceptable or permitted within Residential 1 areas. Therefore the use would be considered contrary to the underlying objective 'to protect and improve the existing residential amenities' of the area'.

- Under 'Impact on Adjoining Properties' was stated as follows:  
'One submission has been received on file raising concerns about anti-social behaviour which is already an issue in the area due to the number of students who reside there. The applicant site is bounded on three sides by residential and it is considered that the proposed part use of these premises as an off-licence would cause a negative impact on the residential amenities of adjoining properties.'  
Refusal of permission was recommended for the Reasons and Considerations (1) as stated in the notification of decision of the Planning Authority.

#### **4.3 Notification of Decision of Planning Authority**

The Planning Authority, Louth County Council, issued a notification of decision to **REFUSE PERMISSION** for the proposed development for Reasons and Considerations (1) as follows:

1. The application site is zoned as 'Residential 1' in the Dundalk and Environs Development Plan 2009 – 2015 which is the statutory development plan for the area. It is the strategic objective of the Planning Authority in relation to this zoning 'To protect and improve existing residential communities and to provide for infill and new residential developments'. As such it is considered the proposed part change of use being sought would materially contravene the zoning objective for these lands, would cause a negative impact on the residential amenity of the area and would be contrary to the proper planning and sustainable development of the area.

## **5. APPEAL GROUNDS**

### **First Party Appeal**

- The First Party Appeal Grounds included stating as follows:  
'The petrol station and forecourt use is an established use on the site, and is also a conforming use within the Statutory Development Plan for the area. The site is zoned 'RES 1' – Residential: *To protect and improve existing residential amenities and provide for*

*infill and new residential developments. Petrol stations with retail shops (100 square metres) open for consideration under the zoning objective for the area.'*

- The First Party Appeal under 'Legal Issues' included as follows:  
'Before dealing with the issues surrounding the location and appropriateness of the small off-licence area within the approved convenience shop, it is important to deal with the issue of Development Plan contravention, and in this case the purported material contravention of the Plan, as stated in the notification of decision to refuse planning permission, i.e. ...*As such it is considered the proposed part change of use being sought would materially contravene the zoning objective for these lands...*'
- 'We would submit that the provisions of this section of the Act are important, but in the present instance where it is clear that the planning authority refused permission on the grounds that the proposed development materially contravenes the development plan, *the Board may only grant permission in accordance with paragraph (a) where it considers that, in the present instance, as per (b)(iv) permission for the proposed development should be granted having regard to the pattern of development, and permissions granted in the area since the making of the development plan.*'
- 'Given that neither the size of the convenience shop nor the area given over for alcohol sales breach any policy, objective or Development Control Standards of the Development Plan, it is difficult to see how it could be conceived as a contravention of the Plan, let alone a material contravention of the statutory Development Plan. We would therefore conclude by submitting that the Board should not be constrained by section 37 of the Act, given the provisions set out in section 37(2)(b)(iv).'
- Under 'Specific Grounds of Appeal' was stated as follows:  
'By way of background it is important to note that up until 2005 it was accepted that the definition of a shop included the sale of alcohol for consumption off the premises i.e. use as an off-licence. The effect of the Planning and Development Regulations, 2005, was the introduction of a provision whereby a retail unit selling alcohol for consumption off the premises, other than in accordance with a wine retailer's off-licence, and where such sales were

subsidiary to the main retail use, would no longer accord with the definition of a shop within the meaning of the Regulations.’

- The First Party Appeal Grounds also stated as follows:  
‘The subject planning application proposes to extend the range of alcohol products in the same area (2 square metres) of the shop already approved for the sale of off-licence products i.e. wines.....’  
‘We would refer the Board to two earlier decisions made where small areas of convenience shops were given over to alcohol sales. PL28.243509 and PL31.238034.’

## **6. APPEAL RESPONSES**

### **6.1 Appeal Observation**

No Appeal Observation was received.

### **6.2 Planning Authority Appeal Response**

- This Appeal Response received 26<sup>th</sup> November, 2015 included:  
‘There is a duty on the assessment of the proposed use, albeit minor in scale, at this site to consider the impact that the proposed use will have on the amenities of the existing residential amenities. A submission was received on file outlining the issue experienced by residents of anti-social behaviour of students and it is considered that the concerns raised in the submission in relation to the proposed change of use can be substantiated in relation to the negative impact the proposed development could have on the residential amenities of the area.
- The Planning and Development Regulations 2001 were amended in 2005 to require that the use of an off-licence within a shop required a change of use permission as it was deemed that a material change of use was taking place. This amendment in the regulations was adopted for cases like this whereby the sales of alcohol in unsustainable locations required careful assessment in line with the land use zoning set out in the development plan. It is considered that the principle of the use being proposed within a residential zoning whereby the strategic objective set out is to protect the amenities of existing residents is contrary to proper planning of the area’.

## 7. PLANNING HISTORY

- The following Planning History file is attached: **PL15.244191 (Reg. Ref. 14/215)**:- An Bord Pleanála granted permission on 10<sup>th</sup> April, 2015 for a proposed development described as comprising ‘the erection of a new forecourt shop, including ATM, deli, ancillary stores and offices, internal and external seating areas, new forecourt canopy, rollover car wash, equipment store, five number 4.5 metre high poles with flood light and security cameras, rear compound area, underground fuel tanks, petrol interceptor, car wash interceptor, aluminium clad illuminated gantry sign and associated works and alterations to existing access to public road at Southend Services Station, Dublin Road, Dundalk, County Louth, as amended by the revised public notice received by the planning authority on the 10<sup>th</sup> day of October, 2014’.

subject to Conditions (18) including Conditions No. 3 as follows:

3. The retail and display of off-licence products shall be limited to the proposed retail floor area shown as off-licence and retail area (total 100 square metres) on drawing number 02-02 “Proposed Shop Plans and Elevations” submitted to the planning authority on the 10<sup>th</sup> day of October 2014.

Reason: To control development and in the interest of clarity.

- The Planning Report for the Planning Authority documented the extensive Planning History of the subject site including the long-established use of the subject site as a Petrol Filling Station (PFS).

## 8. DEVELOPMENT PLAN

The provisions of the 2009 – 2015 Dundalk and Environs Development Plan have been considered, and in particular the following provisions which are attached in **Appendix C – Development Plan**:-

- The ‘Residential 1’ land use zoning objective for the appeal site: “To protect and improve existing residential amenities and to provide for infill and new residential developments.”
- Section 2.5 – Zoning Matrix.

## 9. PLANNING ASSESSMENT – Issues and Evaluation

Having regard to the above and having inspected the site and having reviewed all documents on file, the following is my assessment of this case where the major planning issues for consideration are as follows:

### **Proposed Development and First Party Appeal Grounds**

- The subject site lands at Dublin Road, Dundalk, were described as follows in the Planning Report for the Planning Authority:  
‘The subject site is located to the south of Dundalk town on the Dublin Road (R132). To the east of the site is the Dundalk Institute of Technology campus which includes part of the former Carroll’s factory building. To the north of the site, on the town side, is a dwelling also used as B&B. To the south of the site, towards the Xerox junction is a dwellinghouse with separate entrance onto the public road. The western side of the Dublin Road is generally characterised by individual dwellings with individual access onto the public road, with exception of Dromod Hire and a garden centre located to the north of the site.’ A Service Station development has been recently constructed on the subject site further to permission (Ref. PL15.244191 and 14/215).
- The proposed development comprises as specified in the Public Notices: Permission for proposed Off-Licence contained within the curtilage of previously approved forecourt shop. Forecourt Shop previously proposed under Planning Ref. No. 14/215 at Southend Service Station, Dublin Road, Dundalk, County Louth.
- A Third Party Submission on the planning application from a resident in the Glenwood housing estate – which is located off the Dublin Road approximately 1 kilometre to the north of the subject site – stated concerns over the number of Off-Licences in the area and resultant anti-social behaviour by students in the area.
- The Planning Report for the Planning Authority included noting that the subject site was zoned ‘Residential 1’ under the provisions of the 2009-2015 Dundalk and Environs Development Plan – which provisions I note are still in effect – and that as stated:  
‘The development plan zoning matrix identifies that a petrol station and ‘*shop local*’ are open for consideration within this zoning objective area. The PFS was granted at this location having regard to the site history and precedent for that use on this site under Planning Reg. Ref. 14/215. This proposal seeks to add an off-



licence use to the petrol filling station. Whilst the development plan does not identify an off-licence as a use class, it is considered, in this instance that the introduction of an off-licence would provide an additional use that would not be acceptable or permitted within Residential 1 areas. Therefore the use would be considered contrary to the underlying objective 'to protect and improve the existing residential amenities' of the area.'

It was further considered that 'the proposed part use of these premises as an off-licence would cause a negative impact on the residential amenities of adjoining properties.'

- The Planning Authority, Louth County Council, issued a notification of decision to **REFUSE PERMISSION** for the proposed development for Reasons and Considerations (1) as follows:
  1. The application site is zoned as 'Residential 1' in the Dundalk and Environs Development Plan 2009 – 2015 which is the statutory development plan for the area. It is the strategic objective of the Planning Authority in relation to this zoning 'To protect and improve existing residential communities and to provide for infill and new residential developments'. As such it is considered the proposed part change of use being sought would materially contravene the zoning objective for these lands, would cause a negative impact on the residential amenity of the area and would be contrary to the proper planning and sustainable development of the area.
  
- The First Party Appeal under 'Legal Issues' included as follows:

'Before dealing with the issues surrounding the location and appropriateness of the small off-licence area within the approved convenience shop, it is important to deal with the issue of Development Plan contravention, and in this case the purported material contravention of the Plan, as stated in the notification of decision to refuse planning permission, i.e. ...*As such it is considered the proposed part change of use being sought would materially contravene the zoning objective for these lands...*
  
- 'Given that neither the size of the convenience shop nor the area given over for alcohol sales breach any policy, objective or Development Control Standards of the Development Plan it is difficult to see how it could be conceived as a contravention of the Plan, let alone a material contravention of the statutory Development Plan. We would therefore conclude by submitting that

the Board should not be constrained by section 37 of the Act, given the provisions set out in section 37(2)(b)(iv).'

- The Planning Authority Appeal Response included stating:  
'The Planning and Development Regulations 2001 were amended in 2005 to require that the use of an off-licence within a shop required a change of use permission as it was deemed that a material change of use was taking place. This amendment in the regulations was adopted for cases like this whereby the sales of alcohol in unsustainable locations required careful assessment in line with the land use zoning set out in the development plan. It is considered that the principle of the use being proposed within a residential zoning whereby the strategic objective set out is to protect the amenities of existing residents is contrary to proper planning of the area'.
- Having considered all the submissions on file including as set out above I note that the submitted Site Layout Plan drawing indicates the 'Off-Licence Location' (area 2 square metres) within the Forecourt Shop. The submitted Floor Plan drawing indicates the location of the proposed Off-Licence (area 2 square metres) in a corner area of the Forecourt Shop where there is an existing Wine Sales Area, see Photographs 5 and 6 in Appendix B.
- On site inspection I noted another Service Station at the junction of Dublin Road and Glenwood, see Photograph 7 in Appendix B, which includes an Off-Licence area within the Forecourt Shop which Off-Licence area is significantly larger than the proposed Off-Licence area (2 square metres) on the subject site.
- I note the First Party Appeal submitted as follows:  
'The planning application proposes to extend the range of alcohol products in the same area (2 square metres) of the shop already approved for the sale of off-licence products i.e. wines.....  
We would refer the Board to two earlier decisions made where small areas of convenience shops were given over to alcohol sales. PL28.243509 and PL31.238034.'
- I note in regard to the Board decision Ref. PL28.243509 to grant permission subject to Conditions (3) for a proposed development described as 'Change of use from retail use to ancillary off-licence use at Hollyhill Service Station, Harbour View Road, Hollyhill, Cork' that the Inspector's Report described the proposed development:

‘2.1 – The proposed development consists of the change of use of part of an existing retail unit to use for retail purposes with ancillary off-sales. The extent of the proposed change of use will be restricted to that part of the shop floor outlined in yellow on Drg. No. P2085-A002 as received by the Planning Authority on 16<sup>th</sup> April, 2014 which equates to a floor area of 5.5 square metres.’

- I note that the present proposed development comprises an ancillary off-licence to a specified lesser floor area of 2 square metres within the permitted forecourt shop than above and does not constitute a new stand-alone off-licence area.
- I note also the Inspector’s Report where stated that the First Party Appeal Grounds (Ref. PL28.243509) included as follows:  
‘.....under the provisions of the Planning and Development Regulations, 2005, which amended Article 5(1) of the Planning and Development Regulations, 2001, the definition of ‘shop’ is stated as including for the sale of sandwiches or other food or of wine for consumption off the premises where the sale of such food or wine is subsidiary to the main retail use. Therefore, it is asserted that the applicant could sell alcohol in the form of wine without the need to obtain planning permission and that it is only the sale of beer and spirits which distinguishes the proposed development from normal retail usage.’
- This is the case in regard to the present proposed development where the area in question (2 square metres) is presently in use as a wine sales area, again see Photographs 5 and 6 in Appendix B.
- While the present proposed development constitutes development by reason of a material change of use within the permitted forecourt shop premises, (Ref. PL15.244191 and Reg. Ref. 14/215), in my opinion in the context of the existing use as a wines sales area and its limited floor area of 2 square metres, the proposed change of use to include sale of other products such as beers and spirits, would not result in any significant impact on the amenities of the area.
- As such in the context of such existing ancillary wines sales area within the forecourt shop and the limited extent at 2 square metres of the floorspace proposed for use as an ancillary Off-Licence use in the forecourt shop, I consider that the proposed development is acceptable in principle and would not materially contravene the

'Residential 1' zoning objective for these lands or unduly detract from the residential amenities of the area.

- In relation to the notification of decision of the Planning Authority to refuse permission where stated: 'It is considered the proposed part change of use being sought would materially contravene the zoning objective for these lands', I note the submitted First Party Appeal Grounds in this regard.
- In my opinion the Board should not be constrained by Section 37 of the Planning and Development Act 2000 as amended by reason of the provisions as set out under Section 37(2)(b)(ii) of the Act in that the proposed development by reason of its nature and limited scale would not evidently result in a material contravention of the 'Residential 1' zoning objective for the area, and by reason of the provisions as set out in the Act under Section 37(2)(b)(iv) having regard to the pattern of development and permissions granted in the area including the permission (Ref. PL15.244191 and Reg. Ref. 14/215) for the Service Station development including a forecourt shop on the subject site on the site of a former Petrol Filling Station at Dublin Road, Dundalk within the 'Residential 1' zoning.

#### *Appropriate Assessment*

Having regard to the location of the subject site and to the nature and scale of the proposed development, I consider that no Appropriate Assessment issues arise in this case. It is not considered that the proposed development either individually or in combination with other plans or projects, would be likely to have a significant effect on a European Site.

## **10. CONCLUSIONS AND RECOMMENDATION**

In conclusion, further to the above assessment of matters pertaining to this appeal, including consideration of the submissions of each party to the appeal, and including the site inspection, I consider that the proposed development would be in accordance with the proper planning and sustainable development of the area having regard to the relevant provisions of the 2009-2015 Dundalk and Environs Development Plan which are still in effect and are considered reasonable, and I recommend that permission be granted for the proposed development for the stated Reasons and Considerations in

the First Schedule and subject to the Conditions as stated in the Second Schedule below.

## DECISION

GRANT permission for the proposed development in accordance with the said plans and particulars based on the Reasons and Considerations hereunder and subject to the Conditions set out below.

## REASONS AND CONSIDERATIONS

Having regard to the 'Residential 1' land use zoning objective for the area in the 2009-2015 Dundalk and Environs Development Plan and the pattern of development in the area, and having regard in particular to the existing permission Ref. No. PL15.244191 (Reg. Ref. 14/215) for development including a new forecourt shop on the subject site and to the nature and limited scale of the proposed development comprising an off-licence area within the forecourt shop to a specified floor area of 2 square metres which area is presently in use as a wines sales area, it is considered that, subject to compliance with the Conditions in the Second Schedule, the proposed development would not seriously injure the amenities of the area or of property in the vicinity. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## CONDITIONS

1. The development shall be undertaken and completed in accordance with the plans and particulars lodged with the application.

**Reason:** In the interest of clarity.

2. The area and extent of the proposed off-licence area within the permitted forecourt shop shall be restricted to the area and location as outlined on the plans and particulars lodged with the application on the 24<sup>th</sup> day of August, 2015 and shall not exceed the specified floor area of 2 square metres and no expansion of said area and extent shall occur without a prior grant of planning permission.

**Reason:** In the interest of clarity and orderly development.

3. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine the proper application of the terms of the Scheme.

**Reason:** It is a requirement of the Planning and Development Act 2000 that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

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**DERMOT KELLY**  
**SENIOR PLANNING INSPECTOR**

**February, 2016.**

**sg**

APPENDIX A - LOCATION MAP  
APPENDIX B - PHOTOGRAPHS (incl. KEY PLAN)  
APPENDIX C - DEVELOPMENT PLAN