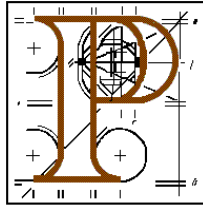


An Bord Pleanála



Inspector's Report

Appeal Reference No: PL29S.246058

Development: Provision of off-licence subsidiary to the main retail use at Spar retail unit, No. 35 Lower Abbey Street, Dublin 1.

Planning Application

Planning Authority: Dublin City Council

Planning Authority Reg. Ref.: 3950/15

Applicant: Triode Newhill Abbey Street Ltd.

Planning Authority Decision: Refuse permission

Planning Appeal

Appellant(s): Triode Newhill Abbey Street Ltd.

Type of Appeal: First party

Observers: Wynn's Hotel

Date of Site Inspection: 11th March 2016

Inspector: Donal Donnelly

1.0 SITE LOCATION AND DESCRIPTION

- 1.1 The appeal site is located on Lower Abbey Street in Dublin city centre. Abbey Street is laid out on an east-to-west axis parallel to the River Liffey from Beresford Place to Capel Street. Middle Abbey Street is on the western side of O'Connell Street and Lower Abbey Street is to the east. The Luas Red Line continues along the entire length of Abbey Street.
- 1.2 No. 35 Lower Abbey Street (protected structure) is on the southern side of the street approximately 60m from the junction with O'Connell Street. The site comprises a 3-storey over basement mid-terraced building with retail unit at ground level. The stated area of the site is 418 sq.m. The property has a frontage of c. 12.6m onto Abbey Street and a depth of c. 34m. There is access to the rear from a service laneway (Harbour Court).
- 1.3 Internally, the Spar retail unit comprises an "Insomnia" barista, a deli area, a bakery and convenience retailing. Wynn's Hotel adjoins the site to the west and there is a hearing centre at ground level to the east. There was a Spar shop opposite the site on the northern side of Lower Abbey Street, which has now closed down.

2.0 PROPOSED DEVELOPMENT

- 2.1 The proposed development comprises the following main elements:
- Office licence (7.1 sq.m.) subsidiary to the main retail use;
 - Licenced goods are proposed to be located to the rear of the customers' area and behind the cash area.
 - Existing licence held by Spar opposite will be transferred to the appeal site.

3.0 PLANNING HISTORY

Dublin City Council Reg. Ref: 3176/10 (PL29N.237617)

- 3.1 The Board upheld the Council's decision and refused permission on 1st February 2011 for provision of an off-licence (10.5sqm) subsidiary to the main retail use, at ground floor of No. 35 Abbey Street Lower. The reason for refusal stated as follows:

“Having regard to the scale of the proposed part off-licence use, its location within the central shopping area and within the area covered by the O’Connell Street Architectural Conservation Area and Area of Special Planning Control, to the number of similar off-licence and part off-licence uses in the general area and to the evidence of anti-social activity and on street drinking in close proximity to the site, it is considered that the proposed development would result in permission for an additional off-licence use in an area that has a preponderance of such uses thereby consolidating the preponderance of non-higher order retail uses in the identified central retail area and would not result in the protection and conservation of the special interest and character of the Architectural Conservation Area. The proposed development would, therefore, be contrary to the provisions of Policy FC41 of the Dublin City Development Plan which seeks the protection and conservation of Architectural Conservation Areas and to the provisions of Policy RD10 of the Dublin City Development Plan as it relates to the prohibition of further expansion of off-licences or part off-licences, would have an overall negative impact on the environment and civic character of the O’Connell Street Architectural Conservation Area and the central shopping area and would be contrary to the proper planning and sustainable development of the area.”

Dublin City Council Reg. Ref: 3583/11 (PL29N.240188)

- 3.2 The Board overturned the Council’s decision and granted permission on 19th September 2012 for use of the existing ground floor unit (previously CIE Travel Centre) as a shop incorporating a convenience retail outlet and deli/sandwich bar with associated seating area and all associated ancillary areas; alterations to the existing shop front and signage on Lower Abbey Street and alterations at Harbour Court comprising 2 no. service/escape doors; and all associated site and development works at Curzon House, 35 Lower Abbey Street (protected structure) and Harbour Court, Dublin.
- 3.3 Condition 3 stated that *“no permission is granted for the sale of alcohol”* in the interests of the amenities of the area.

Dublin City Council Reg. Ref: 3798/10

- 3.4 Permission refused for a new stainless steel fascia sign and 1 no. projecting sign for reasons relating to visual clutter to the detriment

of the character of the protected structure and to the detriment of the character and visual amenities of the wider conservation area.

Dublin City Council Reg. Ref: 6115/05

- 3.5 Permission granted on 19th June 2006 at unit 9A, Metro Abbey Street for provision of an off-licence subsidiary to the main retail use.

4.0 PLANNING AUTHORITY DECISION

4.1 Planning and technical reports

- 4.1.1 Under the assessment of the application, it is stated that the proposal is acceptable in principle within lands zoned Z5.
- 4.1.2 The Case Planner notes that the applicant has submitted a map illustrating that there are 32 no. off-licences within 1km of the site. However, it is considered that a compelling case has not been provided for an off-licence at this location.
- 4.1.3 The applicant states that the off-licence at the Spar unit on the opposite side of the street would be transferred to the new location, thereby not intensifying the number of off-licences in the area. Notwithstanding this, it is highlighted that Reg. Ref: 6115/05 was granted prior to the existing Development Plan provisions, and the licence system or transfer of licences for the sale of alcohol is not a planning matter.
- 4.1.4 It is concluded that the proposal is contrary to the provisions of Section 17.29 of the Development Plan having regard to the location of the retail unit on a Category 2 shopping street and within the O'Connell Street ACA, and to the number of existing off-licences within 1km of the appeal site.

4.2 Planning Authority Decision

- 4.2.1 Dublin City Council issued notification of decision to refuse permission for the following reason:

“Having regard to the existing number of off-licence facilities in the immediate catchment area, the location of the unit on a Category 2 Shopping Street and its location within the O'Connell Street Architectural Conservation

Area it is considered that the proposed development would be contrary to the objectives of the Dublin City Council Development Plan 2011-2017, in particular to policy RD10 and Section 17.29 and to the proper planning and sustainable development of the area.”

5.0 GROUNDS OF APPEAL

5.1 A first party appeal against the Council's decision has been lodged on behalf of the applicant. The grounds of appeal and main points raised in this submission can be summarised as follows:

- Validity of the reasons for refusal must be questioned given the closure of the Spar store and off-licence at no. 9A Lower Abbey Street. This was the only off-licence on Lower Abbey Street and there will be no intensification of off-licence use.
- Scale of the off-licence has now been reduced to 4 sq.m. in plans submitted with the appeal. Off-licence within no. 9A was 3.7 sq.m.
- There has been a change in the status of the street and pattern of development since the Board omitted a part off-licence under PL29N.240188 – opening of the convenience store has helped to reduce anti-social behaviour in the immediate area by increasing pedestrian traffic.
- Grant of an off-licence under the 2005-2011 Development Plan was made where the same policies for assessment of part off-licences were in place. Moreover, Lower Abbey Street was then a Category 1 street and it is now a Category 2 street.
- Small part off-licence will have no impact on the O'Connell Street ACA as it will not be visible from the street and will be located some 25m back from the front entrance (apart from spirits being sold from a small cabinet behind the till area).
- Due to the already existing wine element within the store, this application relates to a change of use of a smaller increase in floor area being available for alcohol sales.
- There is only one other off-licence within 260m of the site – there is significant demand for off-licences within the city centre from residents, workers and shoppers.

- Off-licence as amended on appeal would only occupy 1.2% of the floor area of the retail unit.
- There are no grounds for correlating anti-social behaviour in this part of the city with the sale of alcohol from this or the closed Spar on Lower Abbey Street.
- Abbey Street forms a primary link in connecting the city centre around O'Connell Street with the public transport hub of Connolly Station and Docklands to the east - there are no off-licences within this quadrant of the city.
- There are no immediate residential amenities to be preserved in this instance – opening hours will not be changed.
- Proposal more than fully complies with Section 17.29 of the Development Plan.

6.0 RESPONSES/OBSERVATIONS TO GROUNDS OF APPEAL

6.1 Planning Authority response

6.1.1 No further comments.

7.0 OBSERVATION

7.1 An observation on the appeal was submitted on behalf of Wynn's Hotel. The main points raised in this submission are as follows:

- Map submitted by applicant showing off-licences within 1km of the site is inaccurate and deficient – there are in excess of 40+ in the area including at least four others not mentioned within 500m.
- Harbour Court, a small mews lane to the rear of the site, has been the locus for anti-social behaviour for many years - increasing the concentration of off-licences in the immediate area could only exacerbate the current problems significantly.
- Provision of an off-licence immediately adjacent to a major public transport stop would raise the risk of increased drinking among people waiting for the Luas, and among passengers on the Luas.

- Observer concurs that the off-licence would contravene Policy RD10 and would not meet the criteria of S. 17.29 of the Development Plan.

8.0 POLICY CONTEXT

- 8.1 Within the Dublin City Council Development Plan, 2011-2017, the appeal site is zoned Z5, (city centre) *“to consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity.”* Off-licences and part off-licences are permissible uses under this zoning category.
- 8.2 The building on the appeal site is a protected structure (Ref: 7 described as CIE offices), and is within the O’Connell Street Architectural Conservation Area (ACA) and Special Planning Control Scheme, 2009.
- 8.3 Abbey Street Lower is a Category 2 shopping street where applications for other retail service outlets such as off-licences (other than those selling wine only) at ground floor level will be assessed on their merits and may only be permitted where such development would not result in a predominance of such similar non-retail frontages on the street.
- 8.4 Policies and Objectives relating to “general retail” are set out in Section 10.5.1. Policy RD10 seeks *“to prohibit the further expansion of off-licences or part off-licences except in areas where a compelling case can be made. Any application for an off-license should include a map of all off-licenses located within a 1km radius of the proposed development.”*

9.0 ASSESSMENT

- 9.1 In my opinion, the main issues to be addressed in this appeal are as follows:
- Development principle;
 - Planning precedent;
 - Impact on the character of the area; and
 - Impact on other designations.

Development principle

- 9.2 The appeal site is zoned Z5, where the objective is *“to consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity.”* Off-licences and part off-licences are permissible uses under this zoning category, and on this basis, the proposal would be acceptable in principle.

Planning precedent

- 9.3 In my opinion, the proposed development should also be assessed having regard to any previous decisions on site and relevant changes in circumstances that have taken place in the interim.
- 9.4 Permission was refused in February 2011 (PL29N.237617) for a 10.7 sq.m. off-licence that would have been ancillary to a new retail store. Under the Reasons and Considerations for refusing permission, the Board referred to the scale of the proposed part off-licence; its location within the central shopping area, ACA and Area of Special Planning Control; the number of off-licences in the area; and the evidence of anti-social activity and on-street drinking in the area. It was considered that the proposal would have allowed for the further expansion of off-licences/ part off-licences that would have had an overall negative impact on the environment and civic character of the ACA. At the time of this application, the applicant had argued that the proposal was essentially a replacement for an existing part off-licence within a Spar store on the opposite side of the street at No. 9a Lower Abbey Street (now closed down).
- 9.5 Permission was then granted by the Board in September 2012 (PL29N.240188) for use of the existing ground floor unit of No. 35 as a shop incorporating a convenience retail outlet and deli/sandwich bar with associated seating area and all associated ancillary areas. A condition attached to this decision stated that *“no permission is granted for the sale of alcohol”* in the interests of the amenities of the area. The proposal did not include any off-sales element and the Spar store opposite would have still been operating at the time of this decision.
- 9.6 The off-licence now proposed at No. 35 has an area of 7.1 sq.m. and the first party appellant has offered to reduce this area to 4 sq.m. This floor area would be similar in scale to the off-licence that operated at No. 9A opposite.
- 9.7 Notwithstanding the fact that the shop and ancillary off-licence opposite appears to have closed and an equivalent scale of off-

sales area is now proposed within the appeal site, the important point to note is that planning permission was granted at No. 9A under Ref. Ref: 6115/05 for an off-licence subsidiary to the main retail use. It is unlikely that this permission has been extinguished given the time that the shop has remained closed and therefore it would still be possible for that premises to recommence trading as a part off-licence.

- 9.8 Having regard to the above, I would be in agreement with the Planning Authority that any intention to transfer the licence from one premises to another for the purposes of off-sales is not a planning matter. An application is being made for planning permission for a part off-licence in addition to the part off-licence that was granted permission under Reg. Ref: 6115/05. The proposal should therefore be assessed as another off-licence at this location rather than a replacement for a non-extinguished pre-existing use in close proximity.

Impact on the character of the area

- 9.9 Lower Abbey Street is designated as a Category 2 Street within the Development Plan Retail Strategy where it is stated that applications for *“...retail services outlets such as internet cafés, call centres, bookmakers, takeaways, off-licences (other than those selling wine only), amusement arcades, car rental and financial institutions at ground floor level will be assessed on their merits and may only be permitted where such development would not result in a predominance of such similar non-retail frontages on the street.”*
- 9.10 Policy RD10 also seeks *“to prohibit the further expansion of off-licences or part off-licences except in areas where a compelling case can be made. Any application for an off-licence should include a map of all off-licenses located within a 1km radius of the proposed development.”*
- 9.11 The applicant has submitted a revised map with the appeal submission indicating that there are 31 no. off-licences within 1km of the appeal site, including 15 no. within 500m. An observer, however, submits that there are at least 10 more off-licences within 1km of the site. I am aware that some, if not all of these off-licences are operating and have been omitted from the survey, and there is at least one other off-licence at the corner of Parnell Street and Gardiner Street.
- 9.12 It is therefore clear that a full and accurate survey of all off-licences within 1km has not been carried out. The provision of off-licences within the immediate area of the site has been underestimated, and

for this reason alone, the proposal may fail to comply with Policy RD10 of the Development Plan. There is concern regarding the potential impact of the predominance of such uses along premier shopping streets and it is not obvious to me that the applicant has presented a compelling case for an additional off-licence in this area.

- 9.13 Furthermore, it has been highlighted within submissions and from previous assessments that this part of Lower Abbey Street in proximity to the Luas stop suffers from anti-social problems from a prevalence of highly intoxicated people. I consider that the proposed off-licence will exacerbate this situation, with the possibility that the problem will spread further afield via the Luas. This also has the potential to adversely impact on the primary retail function and civic character of the street. Section 17.29 of the Development Plan sets out criteria under which planning applications for part off-licences should be assessed. The proposal only fails to comply with the single criterion relating to the number and frequency of such facilities in the locality. However, this is particularly pertinent having regard to the issues of anti-social behaviour at this location.

Other designations

- 9.14 The site is a protected structure and is within the O'Connell Street & Environs ACA. ACA's are designated with the intention of preserving the special character of streetscapes that are of architectural, historical, archaeological, artistic, cultural, scientific, technical or social interest. The O'Connell Street ACA is also accompanied by a Special Area of Planning Control Scheme, whereby certain uses are controlled that would undermine the quality and vitality of the area.
- 9.15 I note that off-licences are not explicitly prevented from locating on Lower Abbey Street under the Special Area of Planning Control Scheme. Development Plan advice regarding development in Conservation Areas and ACA refers more to physical proposals that may give rise to visual impact. However, as noted above, a proposal that increases anti-social behaviour can render any ACA unattractive and intimidating, and this can also adversely impact on businesses and other users, and the overall civic design character and dignity of the area.

Appropriate Assessment

- 9.16 Having regard to the nature and scale of the development proposed and to the nature of the receiving environment, namely an urban and fully serviced location, no appropriate assessment issues arise.

10.0 CONCLUSIONS AND RECOMMENDATION

- 10.1 It is considered that the proposed development should be refused for the reasons and considerations hereunder.

REASONS AND CONSIDERATIONS

Having regard to the location of the proposed part off-licence on a Category 2 city centre shopping street and within the O'Connell Street & Environs Architectural Conservation Area, together with the number of similar off-licence/ part off-licence uses within 1km and to the evidence of anti-social activity in the immediate vicinity of the site, it is considered that the proposal would be contrary to Development Plan Policy RD10 which seeks *"to prohibit the further expansion of off-licences or part off-licences except in areas where a compelling case can be made..."*. The proposal would have an overall negative impact on the environment and civic character of the O'Connell Street & Environs Architectural Conservation Area and the central shopping area, and would therefore be contrary to the proper planning and sustainable development of the area.

Donal Donnelly
Inspector

21st March 2016