

## An Bord Pleanála



### INSPECTOR'S REPORT

**DEVELOPMENT:** Provide full off-licence to supermarket

**LOCATION:** Gortroe, Fossa, Killarney, Co Kerry

#### PLANNING APPLICATION

**Planning Authority:** Kerry County Council

**Planning Authority Reg. Ref.:** 15/1121

**Applicant:** Norman Foley

**Type of Application:** Permission

**Planning Authority Decision:** Grant Permission

#### PLANNING APPEAL

**Appellant:** Mike Spillane

**Type of Appeal:** Third Party

**Observers:** None

**DATE OF SITE INSPECTION:** 10<sup>th</sup> June 2016

**INSPECTOR:** Mary Crowley

## 1.0 SITE LOCATION AND DESCRIPTION

- 1.1 The appeal site which has a stated area of 154 sq.m is located c 3.5kms west of Killarney town centre in County Kerry on the northern side of the N72 and close to Fossa village. The site hosts a petrol station, associated supermarket (270 sq.m) and surface car parking. The area is characterised by extensive ribbon development, a golf course and commercial uses with the Leibherr factory to the rear. A set of photographs of the site and its environs taken during the course of the site inspection is attached. I also refer the Board to the photos available to view on the appeal file.

## 2.0 PROPOSED DEVELOPMENT

- 2.1 This is an application for use of the existing supermarket premises for part off-licence facility with display area for alcohol products which is subsidiary to the main use of the supermarket. The stated area of floor space to be allocated to the off license use is 3 square metres.

## 3.0 TECHNICAL REPORTS

- 3.1 **Transport Infrastructure Ireland (TII)** states that they will rely on the Planning Authority to abide by official policy in relation to the development on / affecting national roads as outlined in the DoECLG Spatial Planning and National Roads Guidelines for Planning Authorities (2012).
- 3.2 The **Local Authority Planner** was satisfied that the proposed use was acceptable within the “rural general” zoning for the area, it would not give rise to any issues regarding traffic safety, would not have a significant effect on the overall streetscape and that the proposed use is limited in scale. The Planners recommended that planning permission be granted subject to 2 conditions. The notification of decision to grant planning permission issued by Kerry County Council reflects this recommendation.

## 4.0 OBJECTIONS / OBSERVATIONS TO THE PLANNING AUTHORITY

- 4.1 There was one letter of objection on the planning file from Mike Spillane, Dunrinc, Killarney. The issues raised relate to the number of existing off licenses serving that area and concern that the premises will not adhere to the voluntary code of conduct for the sale of alcohol

## 5.0 PLANNING AUTHORITY DECISION

- 5.1 Kerry County Council issued notification of decision to **grant** planning permission subject to **2 generally standard conditions** relating to (1)

compliance with plans and particulars submitted and a (2) requirement that no additional signage shall be put on site or the approach roads.

## **6.0 PLANNING HISTORY**

6.1 There is no evidence of any previous planning appeal on this site.

## **7.0 POLICY CONTEXT**

7.1 The operative plan for the area is the **Kerry County Development Plan 2015 – 2021**.

## **8.0 GROUNDS OF APPEAL**

8.1 The third party appeal has been prepared and submitted by Mike Spillane, Dunrine, Killarney. The grounds of appeal are similar to the issues raised in the appellants submission to Kerry County Council (see Section 4.0 above). The appeal may be summarised as follows:

- There are several outlets that sell alcohol for consumption within a short distance of the proposed site; Centra, The Reeks, Tralee Road; Carryout off license, Tralee Road, Lidl, Hans Liebber road, Centra, The Rock, Tralee Road and the Golden Nugget, Fossa, Killarney.
- As there has been no increase in population in this area of Killarney submitted that the locality is well served.
- Neighbouring estates consist of many young families.
- Concern that the applicant will erect positive alcohol messages and associated advertising on the outside wall as well as throughout.
- Concern that the applicant could not realistically adhere to the voluntary code of conduct for the sale of alcohol which requires alcohol products to be displayed where customers do not have to pass in order to obtain access to other beverages and food products.
- Should the structural separation provision of Section 9 of the Intoxicating Liquor Act 2008 commence, which would make the separation mandatory the site would require significant building work.

## **9.0 PLANNING AUTHORITY RESPONSE TO THE THIRD PARTY APPEAL**

9.1 No response is recorded on file.

## **10.0 FIRST PARTY RESPONSE TO THE THIRD PARTY APPEAL**

10.1 The first party response to the appeal has been prepared and submitted by Frank Curran, Consulting Engineers Ltd on behalf of the applicant Norman Foley and can be summarised as follows:

10.1 **Development Plan** – The proposed development complies with the Development Plan in that the premises is an existing supermarket with a wine off license; there is adequate car parking provided; all the services for water, sewerage and storm water are existing and the loadings will not increase and there are no changes to the elevation to the building, as the development is internally only.

10.2 **Objection** – Applicant conforms that he is aware of the management responsibilities for the off-license and that up to date there have been no complaints from the local Gardaí or the local people in connection with his wine license.

10.3 **Conclusion** – Submitted that the appeal has nothing to do with contravening the Development Plan or any planning issues. Submitted that the appeal is a delaying tactic and asked that the Board invalidate the appeal.

10.4 **Norman Foley** – The response was accompanied by a letter from the applicant Norman Foley who sets out the distance from named off licenses to the appeal property and notes that round trip to other off license can take 30 to 40 minutes round trip. The applicant states they are a strong advocate of the voluntary code of practise and that all staff received mandatory training on the responsible selling of alcohol and cigarettes. Further stated that the appellant is incorrect in his description of the layout of the store as the off license could be easily sectioned off if required.

## **11.0 OBSERVATION TO AN BORD PLEANALA**

11.1 There are no observations recorded on the appeal file.

## **12.0 ASSESSMENT**

12.1 I note the concerns raised that the appeal is invalid. However any person, body or interested group etc. who made submissions or observations in writing to the planning authority in relation to the planning application in accordance with permission regulations may appeal a decision of a local authority. I am satisfied that the appellant satisfies this requirement. I have noted the non-planning related comments in the appeal such as compliance with the voluntary code of conduct for the sale of alcohol but these cannot be

taken into consideration in determining this appeal. However having regard to other information presented by the parties to the appeal relating to the need for the proposed development and future advertising I consider that the substantive issue arising in the case relates to the suitability of the use of part of the existing retail unit as an off licence at this location and this issue is a planning consideration.

- 12.2 According to the local authority Planners report the appeal site is located within an area zoned “Rural General” in the current Development Plan where the proposed change of use would be acceptable in principle. Having regard to the scale and location of the proposed use I consider that the development as proposed will have no adverse impact on the residential amenities of the area or on the proper planning and sustainable development of the area. It is considered that the proposed development shall not have a negative impact on the amenities of the area; the development is consistent with Kerry County Development Plan and with the proper planning and sustainable development of the area. The issues of control of underage drinking and of the social problems arising there from are issues that are subject to more specific controls under other legislation and are not therefore matters to be considered in the assessment of this appeal.
- 12.3 With regard to the number and frequency of such facilities in the locality I have noted the concerns raised by the appellant. However this is not an application for a stand-alone off license but rather the use of an area within an existing retail unit; a retail unit that already sell wines (site photos refer). Taking into consideration the existing off license facilities in the wider area it is considered that the current proposal is acceptable having regard to the scale and location of the scheme.
- 12.4 While noting the location of the existing petrol station and retail unit on the N72 proximate to Fossa I am satisfied that the vehicular movements generated by the proposed use would not have a significant material impact on the existing traffic movements associated with current use or the capacity of the road network in the vicinity of the area, particularly taking into account the location and scale of the development.
- 12.5 **Development Contributions** – Kerry County Council adopted a Development Contribution scheme under **Section 48** of the Planning and Development Act 2000 (as amended) on 21<sup>st</sup> March 2011. The proposed development does not fall under the exemptions listed in the “Exemptions from Payment of Development Contributions” Section of the scheme and it is therefore recommended that should the Board be minded to grant permission that a suitably worded condition be attached requiring the payment of a Section 48

Development Contribution in accordance with the Planning and Development Act 2000.

12.6 **NOTE:** I would draw the Boards attention to foregoing assessment of the Development Contribution scheme and point out that this is a “**new issue**” that was not raised in the appeal. Kerry County Council in its notification of decision to grant permission did not attach a Development Contribution condition. In the interests of justice the Board may wish to request submissions or observations from any party to the appeal, any person who has made submissions to the appeal or any other person or body under section 131 of the Planning and Development Act 2001 prior to the determination of this appeal.

12.7 **Appropriate Assessment** – Having regard to the nature and scale of the proposed development, nature of the receiving environment and proximity to the nearest European site, no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

### 13.0 CONCLUSION & RECOMMENDATION

13.1 I am satisfied that the proposal to allow the development of a new off licence within an existing retail unit such as that proposed will not adversely impact on the amenities of property in the area, would be acceptable in terms of traffic safety and convenience and is an appropriate use at this location. Arising from my assessment above, I consider the development to be in accordance with the proper planning and sustainable development of the area and I therefore recommend that planning permission be **GRANTED** for the proposed development subject to conditions set out below.

### 14.0 REASONS AND CONSIDERATIONS

14.1 Having regard to the nature and scale of the proposed development, the location of the appeal site and the established pattern of development in the area it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area or property in the vicinity and would be acceptable in terms of traffic safety and convenience. The proposed development would be an acceptable form of development in this location and would therefore be in accordance with the proper planning and sustainable development of the area.

### 15.0 CONDITIONS

1. The development shall be carried out in accordance with the plans and particulars lodged with the application except, as may otherwise be required in order to comply with the following condition.

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

2. (b) There shall be no advertising of the sale of alcohol products on the facade/frontage of the premises

(c) There shall be no display of alcohol products or advertising of the sale of alcohol products on or near both the entrance and the windows.

**Reason:** In the interest of 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.

---

**Mary Crowley**  
**Senior Planning Inspector**  
**22<sup>nd</sup> June 2016**