
An Bord Pleanála



Inspector's Report

Ref.: PL08.247423

Development: Modification to the recently permitted development (Ref. No. 15/406) for the change of use of part of Supermarket Retail Area to Off-Licence Retail Area.

Horgans' Filling Station, Gortaspiddale, Tralee Road, Ardfert, Co. Kerry.

PLANNING APPLICATION

Planning Authority: Kerry County Council

Planning Authority Ref.: 16/757

Applicant: Brendan & Norrie Horgan

Type of Application: Permission

Planning Authority Decision: Grant subject to conditions

APPEAL

Type of Appeal: Third Party v. Decision

Appellant(s): Michael & Tracey O'Flaherty
Dan Joe Nagle

Observers: None.

INSPECTOR: Robert Speer

Date of Site Inspection: 29th December, 2016

1.0 SITE LOCATION AND DESCRIPTION

1.1 The proposed development site is located in the village of Ardfert, Co. Kerry, approximately 7.8km northwest of Tralee town and 8.2km southeast of Ballyheigue, where it occupies a corner plot at the junction of the R551 Regional Road to the west with a minor local roadway to the immediate north. It has a stated site area of 0.4035 hectares, is irregularly shaped and is presently occupied by a service station which includes a substantial retail component and an ancillary off-sales area.

2.0 DESCRIPTION OF PROPOSED DEVELOPMENT

2.1 The subject proposal involves the modification of the development previously approved on site under PA Ref. No. 15/406 to provide for the change of use of part of the permitted retail floor area to use as an off-licence. The extent of the proposed change of use will be restricted to that part of the shop floor shown in red hatching on Drg. No. PL09 received by the Planning Authority on 5th August, 2016 which equates to a floor area of 70m² and encompasses a display area, service counter and part of the staff area / circulation aisle behind the sales counter.

3.0 RELEVANT PLANNING HISTORY

3.1 On Site:

PA Ref. No. 15406. Was granted on 10th November, 2015 permitting Brendan and Norrie Horgan permission for (A) Demolition of (i) the existing supermarket building with ancillary stores and office, (ii) the existing canopy over the fuel pumps, (iii) the existing feature sign and (B) For the construction of (i) a new supermarket building comprising of convenience shop (Retail Area = 370m²), stores area (Area = 102m²) and staff facilities (Area = 125m²), (ii) new canopy over the fuel pumps, (iii) and alterations to the layout of the fuel pumps / islands, (iv) new feature sign and all associated site works.

4.0 PLANNING AUTHORITY CONSIDERATIONS AND DECISION

4.1 Decision:

On 29th September, 2016 the Planning Authority issued a notification of a decision to grant permission for the proposed development subject to 1 No. condition which can be summarised as follows:

Condition No. 1 – Refers to the submitted plans and particulars.

4.2 Objections / Observations:

A total of 3 No. submissions were received from interested parties and the principle grounds of objection contained therein can be summarised as follows:

- The proposed development will have a detrimental impact on the viability of existing businesses offering off-sales in the village.
- The current land use zoning of the application site is not suitable for the development proposed.
- The surrounding residential area is already adequately served in terms of off sales.
- Inadequate parking provision.
- Traffic hazard.
- Detrimental impact on residential amenity.
- There is no need for another off-licence in the area.
- The proposal is contrary to the proper planning and development of the area.

4.3 Internal Reports:

Fire Authority / Building Control Officer: No objection subject to conditions.

4.4 Prescribed Bodies / Other Consultees:

None.

5.0 GROUNDS OF APPEAL

The grounds of appeal are summarised as follows:

5.1 Michael & Tracey O'Flaherty:

- The village of Ardfert has a population of 800 No. people and is already adequately served by 2 No. wine licences, 4 No. public houses and an off-licence. Accordingly, it is submitted that the village does not need another outlet offering alcohol sales.
- The appellants are the owners of a stand-alone off-licence in the village which is solely dependent on alcohol sales and, therefore, there are concerns that a grant of permission for the proposed development would ultimately force the closure of this business.
- The proposed development will be located adjacent to the local school and alongside a very busy traffic junction.

5.2 Dan Joe Nagle:

- The proposed development will be located at an extremely busy junction and is likely to give rise to further traffic congestion.
- The proposed off-licence will be located very close to the local national school. In this regard it is further submitted that the shop in question is popular with schoolchildren and that no segregation of alcohol has been proposed in the subject application.
- There is already an off-licence in the village which provides local employment whilst the existing shop unit, which is the subject of this application, has successfully traded for 20 No. years and is not dependent on alcohol sales. Therefore, there are concerns that a grant of permission for the proposed development would have a detrimental impact on the existing off-licence business.
- The village of Ardfert has a population of 600 No. people over the age of 18 No. years and is already served by 2 No. wine licences, 4 No. public houses and an off-licence. Accordingly, it is submitted that the village is sufficiently well serviced in terms of alcohol sales.

6.0 RESPONSE TO GROUNDS OF APPEAL

6.1 Response of the Planning Authority:

None.

6.2 Response of the Applicant to the Third Party Appeal of Michael & Tracey O'Flaherty:

- The applicants are a franchisee of Musgrave Retail Partners Ireland and due to increased competition in the retailing sector in nearby Tralee, particularly with the arrival of discount operators, it is proposed to carry out modifications to the development recently permitted under PA Ref. No. 15/406 for the change of use of part of the supermarket retail floorspace to an off-licence retail area in order to sustain the existing business.
- The proposed off-licence will provide a wider range of products and will enhance the offering to customers thereby sustaining and growing the existing retail business.
- The existing supermarket plays an important role in serving the residents of Ardfert and it is felt that the proposed development will benefit the area significantly and will also generate employment.

-
- It is the applicants' intention to offer their customers a complete convenience experience at their existing shop and the inclusion of an off-licence element is an important part of same.
 - The number and proximity of off-licences in the vicinity of the site should have no bearing on the subject application.
 - The proposed development will have no material impact on traffic in the area. In this respect it is submitted that the provision of the proposed off-licence will not result in any additional deliveries to the supermarket as all alcoholic products will be delivered by the Musgrave Central Distribution System which delivers the majority of stock currently available in the supermarket. Furthermore, there is adequate spare capacity in the Musgraves' delivery vehicles to accommodate the levels of stock required for this small off-licence without the requirement for any additional deliveries.
 - The extent of the proposed off-licence sales area is very limited and is not considered to be substantial enough to generate any significant amount of additional footfall.
 - There is adequate existing car parking available on site and the inclusion of the proposed off-licence will not have any impact on existing traffic flows or pedestrian amenity in Ardfert.
 - The opening hours of the proposed off-licence will be directly linked to the trading hours of the convenience shop.
 - The addition of the proposed off-licence to the existing shop will contribute to the range of services offered by the premises and will cater fully for the needs of customers who live in the vicinity and will provide a complete retail experience.
 - The proposed development will not result in an over-supply of such uses in the area nor will it create any traffic issues.
 - It is considered that the appellants' concerns are unfounded and primarily relate to issues which will not be affected materially by the proposed development.

6.3 Response of the Applicant to the Third Party Appeal of Dan Joe Nagle:

- The applicants are a franchisee of Musgrave Retail Partners Ireland and due to increased competition in the retailing sector in nearby Tralee, particularly with the arrival of discount operators, it is proposed to carry out modifications to the development recently permitted under PA Ref. No. 15/406 for the change of use of part of the supermarket retail floorspace to an off-licence retail area in order to sustain the existing business.

-
- The proposed off-licence will provide a wider range of products and will enhance the offering to customers thereby sustaining and growing the existing retail business.
 - The existing supermarket plays an important role in serving the residents of Ardfert and it is felt that the proposed development will benefit the area significantly and will also generate employment.
 - The proposed development will have no material impact on traffic in the area. In this respect it is submitted that the provision of the proposed off-licence will not result in any additional deliveries to the supermarket as all alcoholic products will be delivered by the Musgrave Central Distribution System which delivers the majority of stock currently available in the supermarket. Furthermore, there is adequate spare capacity in the Musgraves' delivery vehicles to accommodate the levels of stock required for this small off-licence without the requirement for any additional deliveries.
 - The extent of the proposed off-licence sales area is very limited and is not considered to be substantial enough to generate any significant amount of additional footfall.
 - The opening hours of the proposed off-licence will be directly linked to the trading hours of the convenience shop.
 - In relation to the appellants' concerns as regards the potential impact of the subject proposal on the local school, it can be confirmed that the proposed off-licence element of the supermarket will not trade in isolation from the remainder of the premises and will operate in accordance with all relevant legislative requirements in order to ensure that all steps within the control of the applicants are taken to prevent underage drinking and anti-social behaviour.
 - It should be noted that the supermarket is existing and that the proposed off-licence element will merely serve to supplement the retail provision currently on offer.
 - There will be no negative repercussions on the amenity of the area as a result of the proposed development.
 - It is not a function of the Planning Authority to regulate the licensing of alcohol sales or matters which pertain to underage drinking / anti-social behaviour as the control / management of same is subject to a separate statutory code.
 - There is adequate existing car parking available on site and the inclusion of the proposed off-licence will not have any impact on existing traffic flows or pedestrian amenity in Ardfert.

-
- It is the applicants' intention to offer their customers a complete convenience experience at their existing shop and the inclusion of an off-licence element is an important part of same.
 - The number and proximity of off-licences in the vicinity of the site should have no bearing on the subject application.
 - The addition of the proposed off-licence to the existing shop will contribute to the range of services offered by the premises and will cater fully for the needs of customers who live in the vicinity and will provide a complete retail experience.
 - The proposed development will not result in an over-supply of such uses in the area nor will it create any traffic issues.
 - It is considered that the appellants' concerns are unfounded and primarily relate to issues which will not be affected materially by the proposed development.

7.0 DEVELOPMENT PLAN

Kerry County Development Plan, 2015-2021:-

Relevant Sections / Polices:

Chapter 6: Retail Strategy:

Section 6.7: Villages and Small Villages:

Villages and small villages act as local service centres providing retailing shops which serve the immediate daily needs of their resident population and in many cases consist of a local grocery store. They have a small sphere of influence and do not compete with higher order retail locations. It would not be appropriate for these centres to undergo significant growth in retail and shopping functions given their relative inaccessibility and nature of their existing population catchments. The challenge will be to ensure that convenience shopping is maintained at an appropriate level.

Chapter 13: Development Management – Standards & Guidelines

Tralee / Killarney Hub Functional Area Local Area Plan, 2013-2019:-

Land Use Zoning:

The proposed development site is located in an area zoned as 'Mixed Use'.

Other Relevant Sections / Polices:

Section 4b: Villages: Ardfert Local Area Plan.

8.0 ASSESSMENT

From my reading of the file, inspection of the site and assessment of the relevant local, regional and national policies, I conclude that the key issues raised by the appeals are:

- The principle of the proposed development
- Appropriate assessment
- Other issues

These are assessed as follows:

8.1 The Principle of the Proposed Development:

8.1.1 By way of background I would advise the Board that up until 2005 it was accepted that the definition of a shop extended to include the sale of alcohol for consumption off the premises i.e. use as an off-licence, however, 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. Consequently, a change in the use of a shop to an off-licence would no longer be considered to be exempted development and would therefore require planning permission. In effect, the sale of alcohol for consumption off the premises (other than in accordance with the amended Regulations) was deemed to constitute development within the meaning of the Act. Since such 'off-sales' are not reliant on physical works it is apparent that they constitute development by reason of there being a material change in the use of the premises.

8.1.2 The subject proposal involves the modification of the development previously approved on site under PA Ref. No. 15/406 to provide for the change of use of part of the permitted retail floor area to use as an off-licence, however, it must be emphasised that the extent of the proposed change of use will be restricted to that part of the shop floor shown in red hatching on Drg. No. PL09 received by the Planning Authority on 5th August, 2016 which equates to a floor area of 70m² and encompasses a display area, service counter and part of the staff area / circulation aisle behind the sales counter. In this respect it is of particular relevance to note that the development approved under PA Ref. No. 15/406 included a net retail sales area of 370m² and thus the extent of the proposed change of use is relatively minor when taken in context. Accordingly,

the overall scale of the proposed development and its potential to impact on the amenities of the wider area would seem to be somewhat limited. Furthermore, it should also be noted that the existing retail unit already offers some limited ancillary off-sales pursuant to a wine retailer's off-licence.

8.1.3 In addition to the foregoing, the proposed development site is located in an area zoned as '*Mixed Use*' in the Tralee / Killarney Hub Functional Area Local Area Plan, 2013-2019 (which encompasses the Ardfert Local Area Plan) on lands which are intended '*to cater for a mix of uses outside of the town centre including local shops, petrol stations, offices, visitor accommodation and other commercial uses*'. In this respect, I am inclined to concur with the Planning Authority that although off-sales are not specifically identified in the land use zoning matrix contained in Section 1.6 of the Local Area Plan, the likelihood is that any such use would comprise either '*General retail shopping*' or a '*Shop*' use which are both considered to be '*Permitted in Principle*' within a '*Mixed Use*' land use zoning.

8.1.4 Accordingly, having regard to the land use zoning and planning history of the site, the established use of the site for retail purposes (including some ancillary off-sales in accordance with a wine retailer's off-licence), and the relatively minor scale of the proposed development, in my opinion, the proposal to expand the 'off-sales' offering through the introduction of the sale of beer and alcoholic spirits would seem to represent a complementary and ancillary extension of overall retail use on site and thus is acceptable in principle.

8.1.5 With regard to the assertion in the grounds of appeal that the village of Ardfert is already adequately served in terms of premises offering off-sales, in addition to the suggestion that the introduction of another outlet for alcohol sales could potentially have a detrimental impact on existing / established competing business interests in the village, I would refer the Board to Paragraph 23 of *the 'Retail Planning, Guidelines for Planning Authorities, 2005'* which specifically states the following:

'It is not the purpose of the planning system to inhibit competition, preserve existing commercial interests or prevent innovation. In interpreting these guidelines local authorities should avoid taking actions which would adversely affect competition in the retail market.'

8.1.6 Therefore, on the basis of the foregoing, it is clearly not within the remit of the planning system to interfere with competition in the retail sector or to seek to

preserve established commercial interests and thus I do not propose to comment further on the appellants' concerns in this regard. Furthermore, in relation to the suggestion that the village is already adequately served in terms of the number of individual premises offering off-sales, whilst I would accept that there are several such premises in the wider area, I am inclined to suggest that the proposed development will not result in an excessive proliferation of such uses and that the overall impact of the proposed development on the wider amenity of the area will be somewhat limited.

8.2 Appropriate Assessment:

8.2.1 Having regard to the nature and scale of the proposed development, the nature of the receiving environment, and the proximity of the lands in question to the nearest European site, it is my opinion that no appropriate assessment issues arise and that the proposed development would not be likely to have a significant effect, either individually or in combination with other plans or projects, on any Natura 2000 site.

8.3 Other Issues:

8.3.1 In relation to concerns as regards the potential impact of the proposed development on the general amenity of the surrounding area, including the local school, in my opinion, given the established nature of the existing retail development on site, the grant of permission issued under PA Ref. No. 15/406, and the limited scale of the development proposed, the subject proposal is unlikely to give rise to any significant adverse impacts in terms of noise, general disturbance, litter or traffic generation etc.

8.3.2 Finally, concerns with regard to the licensing and regulation of the proposed development, with specific reference to the sale of alcohol to minors, are beyond the remit of this appeal and are subject to other legislative provisions.

9.0 RECOMMENDATION

Having regard to the foregoing, I recommend that the decision of the Planning Authority be upheld in this instance and that permission be granted for the proposed development for the reasons and considerations set out below:

Reasons and Considerations:

Having regard to the existing and permitted retail development, to the zoning objectives for the site as set out in the current Development Plan for the area,

and to the nature and limited scale of the proposed development, 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 of property in the vicinity, would be acceptable in terms of traffic safety and convenience and would, therefore, be in accordance with the proper planning and sustainable development of the area.

CONDITIONS

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

Reason: In the interest of clarity.

2. The area and extent of the proposed alcohol off-sales area / off-licence, shall be restricted to the area outlined in the plans and particulars lodged with the application on the 5th day of August, 2016 and no expansion of same shall occur without a prior grant of planning permission.

Reason: To regulate the use of the development in the interest of the proper planning and sustainable development of the area.

Signed: _____

Robert Speer
Inspectorate

Date: _____