



An
Bord
Pleanála

Inspector's Report PL29N.248336

Development

Part off-licence sales area within ground floor discount store granted under PL29N.247008 (Reg. Ref: 2858/16).

Location

Site at 3-7 & 9-11 Grangegorman Lower, and The Yard, North Brunswick Street, Dublin 7

Planning Authority

Dublin City Council

Planning Authority Reg. Ref.

2140/17

Applicant(s)

GSA Developments (Ireland) Ltd.

Type of Application

Permission

Planning Authority Decision

Grant permission

Type of Appeal

First and Third Parties

Appellant(s)

- (i) GSA Developments (Ireland) Ltd.
- (ii) Conor Egan
- (iii) Pat Coyne

Observer(s)

None

Date of Site Inspection

17th July 2017

Inspector

Donal Donnelly

1.0 Site Location and Description

- 1.1. The appeal site is located at the eastern corner of the junction of Brunswick Street North and Grangegorman Lower to the north-west of Dublin City Centre. The site is immediately south of the Grangegorman Strategic Development and Regeneration Area, which is being developed to accommodate Dublin Institute of Technology.
- 1.2. The area immediately surrounding the site is characterised by a mix of commercial, civic, community and residential uses. Building heights range from one to five storeys, with older buildings tending to be lower rise. The appeal site is one of a number of smaller development sites in the wider area, which together with the Grangegorman site, are contributing to its ongoing transformation.
- 1.3. The site essentially wraps around a number of 3 storey corner buildings to create to separate frontages onto Brunswick Street Lower to the south (42m) and Grangegorman Lower to the west (85m). Permission was recently granted on site (PL29N.247008) for a 4/5/6 storey mixed use building comprising a discount food store and other retail at ground level and student accommodation above. At the time of my site visit, construction works were taking place on site. The concrete frame of the building had been erected to second floor level onto Brunswick Street North.

2.0 Proposed Development

- 2.1. Planning permission is sought for the following:
 - Development of a part off-licence sales area within ground floor discount supermarket granted under PL29N.247008;
 - The permitted discount food store fronts onto Brunswick Street Lower;
 - The stated area of the proposed off sales is c. 86 sq.m. (including aisle);
 - The proposed off sales area will be situated along the western side of the store approximately 18m back from the front window.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. Dublin City Council issued notification of decision to grant permission for the proposed development subject to six conditions.
- 3.1.2. Condition 2 states that the proposed part off-licence shall be located to the rear of the retail unit. Under Condition 3, there shall be no advertising or display of alcohol products to the front or façade of the store.

3.2. Planning Authority Reports

- 3.2.1. Under the assessment of the application, it is noted that the proposed off-licence is permissible in principle under the Z5 zoning objective for this part of the site. However, reference is made to Policy RD5 relating to overconcentration of off-licences within 1km of a site. Other criteria are also set out in Section 16.2.8 of the Development Plan relating to off licences.
- 3.3. It is noted that the proposed off licence area is c. 22m from the entrance and 9m from the nearest checkout and therefore it would be preferable that it be relocated to the rear of the unit.
- 3.4. The applicant contends that a 1km radius is too large and that a 500m radius study area would be more appropriate in assessing overconcentration of off-licences. It is also submitted that there is a growing population and there are other demographic factors that point to a greater requirement for off-licences in the area.
- 3.5. A map has been submitted with the application showing a total of 25 no. off-licences within 1km of the site, including a cluster to the south of the river around Francis Street. The closest off-licences/ part off-licences are at Smithfield and Stoneybatter. It is estimated that there is a population of c. 30,000 within 1km and it is highlighted that this catchment would include consumers from outside the area.
- 3.6. In relation to residential amenity, it is submitted that the checkouts ensure that the alcohol sales area would not be visible from the street and no advertising of alcohol would take place on the façade of the building.

3.7. The Case Planner considers that the applicant has now demonstrated that there is a case for the provision of a part off-licence within the retail unit having regard to the demographic profile of the area, the small scale of the off licence, and the desirability for competition.

3.8. **Third Party Observations**

3.8.1. Two third party observations were received from local residents (appellants) and the issues raised are broadly covered in the grounds of appeal.

4.0 **Planning History**

Dublin City Council Reg. Ref: 2858/16 (PL29N.247008)

4.1. Permission was granted in December 2016 for a 4/5/6 storey mixed use building (20,999 sq.m.) to include a ground level discount food store (2,764 sq.m), separate retail units (624 sq.m.), student/community group recreational facility (265.99 sq.m.), gym (142.66 sq.m), student accommodation (571 bed spaces) and all associated site works.

4.2. Condition 2 attached by the Board to this permission states as follows:

“The proposed off-licence sales area shall be omitted from the proposed discount food store and the area indicated as off-licence sales area shall be used as general retail floor for convenience goods instead.

Reason: *The Board is not satisfied on the basis of the documentation submitted with the application and appeal that the applicant has demonstrated a compelling reason for an off-licence at this location (which is already well served by off-licences) in accordance with Development Plan policy as set out in Policy RD5 of the Dublin City Development Plan 2016-2022.”*

Dublin City Council Reg. Ref: 3163/16 (PL29N.247811)

4.3. Permission granted in May 2017 at No. 84 North King Street directly opposite the site for the removal of all buildings on site, construction of 31 no. apartments, a commercial unit and all associated site works.

- 4.4. Permission granted in May 2016 at no's. 13-18 Grangegorman Road Lower to the north of the site for demolition of existing structures and construction of a 7-storey student accommodation building and all associated ancillary works.

5.0 Policy Context

5.1. Development Plan

- 5.1.1. The majority of the appeal site is zoned "Z5 – City Centre" 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 within this zone.
- 5.1.2. Part of the site to the north is zoned "Z1 – residential" which reflects the use of the dwellings recently demolished to facilitate the construction of the parent permission (PL29N.247008).
- 5.1.3. General retail Policy RD5 relates to the overconcentration of off-licences in any one area.
- 5.1.4. Criteria to be applied when considering applications for off-licences are set out in Section 16.28.

6.0 The Appeals

6.1. First Party Grounds of Appeal

- 6.1.1. A first party appeal has been lodged on behalf of the applicant against Condition 2 only of the Council's notification of decision. The grounds of appeal and main points raised in this submission can be summarised as follows:
- Staff at checkouts within a Lidl store can oversee the alcohol sales area and this is an effective deterrent to theft and provides the ability to view the ages of customers using this sales space.

- Proposed location is much further back than that previously proposed in accordance with the condition imposed by the Council. The checkout area and wider store shelving will block any views from the external footpath.
- Location guidance only obligates that the licenced area shall be unobtrusive and not near the entrance or windows – locating off-licence at the rear of the store is merely a preference. Licenced area is a small space located well away from windows and entrance.

6.2. Third Party Grounds of Appeal

6.2.1. Two third party appeals have been submitted by residents of the area. The grounds of appeal can be summarised as follows:

Pat Coyne, 7 Arran Street East, St. Mary's Abbey, Dublin 7

- Demand analysis is inaccurate with regard to the amount of off-licences within the 1km area.
- Policies RD5 and QH31 are clearly restrictive and their intention is to address cumulative negative impacts that an overconcentration of services will have in any on area.
- Type of off-licence proposed is unsuitable for the residents of this particular neighbourhood where a large number of disadvantaged people are attracted to a hostel and food kitchen.
- A standalone off-licence is in a better position to know and monitor the behaviour of clients.
- Example of retailer at Moore Street mentioned as reason for refusing permission.
- Restriction on the amount of space or the location of the off-licence within the shop does not address problems.
- Present over-concentration of services for substance abusers and the homeless in the central area is undermining the local economy and by allowing a premises that specialises in discounted alcohol will further hinder the regeneration of this historic part of Dublin.

Conor Egan, 43 Kirwan Street, Dublin 7

- Nothing has changed from the original application that would provide grounds for granting permission for an off licence at this site.
- There are three schools located adjacent to the proposed site.
- The neighbourhood already has a chronic street drinking problem.
- This is a residential street with narrow one-way streets adjoining and it is an already heavily congested and dangerous traffic zone.
- The presence of an off-licence away from the high street can only lead to an upturn in anti-social behaviour.
- The area is already well served by the existing number of off-licences and public houses available.
- The Department of Health has repeatedly acknowledged the danger to health which discount off-licence sales of alcohol cause to society.
- The area is a growing tourist hub of the city centre yet many have reported their feeling unsafe.

6.3. Applicant Response

6.3.1. The applicant's agent responded to the third party appeals with the following comments:

- Reason for Board conditioning out the off-licence within the parent permission did not include any issues associated with public order or residential amenity – the condition implicitly allows for the submission of an application and additional compelling evidence.
- Reference to PL29N.244678 also appealed by Mr. Coyne, where the Inspector deduced that on the basis of a previous condition omitting an off licence that the issue was that a compelling case had not been made. Board granted permission with a condition relating to the size and advertising of the sales area, which the current applicant considers reasonable. Board confined its consideration to those matters set out in policy.

- Condition omitting off licence at East Wall (PL29N.242804) was also appealed and in granting permission, the Board confined itself to the merit of the part off-licence from the perspective of need and did not consider societal issues.
- Report prepared by economists sets out compelling argument in support of the proposed part off-licence – relevant area has a very different demographic profile to the wider Dublin City and national cohorts.
- National Guidelines seek to encourage competition and the planning system should not be used to inhibit competition – not allowing this off-licence will directly impact on competition in the local area.

6.4. **Planning Authority Response**

6.4.1. No response.

6.5. **Observations**

6.5.1. Transport Infrastructure Ireland highlight that the appeal site falls within the area set out within the Section 49 levy scheme Luas Cross City Contributions Scheme. It is stated that if the application is successful, and is not exempt, a Section 49 development contribution condition should be attached.

7.0 **Assessment**

7.1. In my opinion, the main issues to be addressed in this appeal are as follows:

- Development principle;
- Justification for the proposed off-licence;
- Impact on amenities of the area; and
- Appropriate Assessment.

7.2. **Development principle**

7.2.1. The bulk of the site is zoned “Z5 – City Centre”, 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.

- 7.2.2. A small section of the site to the north is zoned for residential use, reflecting the previous use of a terrace of dwellings at this location, which have since been demolished as part of the parent permission for a mixed use building to include a discount food store and other retail units. Off-licences/ part off-licences are not permissible within the residential zoning; however, the permitted discount food store, within which it is proposed to locate the part off-licence, is situated on the Brunswick Street North frontage and within the part of the site zoned Z5.
- 7.2.3. I would therefore be satisfied that the proposed development is appropriate in the context of the site zoning objective and that the impact of the proposed development on the surrounding area can be assessed having regard to the relevant policies of the Development Plan relating to off-licences/ part off-licences.

8.0 Justification for proposed off-licence

- 8.1.1. The Board attached a condition to the parent permission (PL29N.247008) omitting the off-licence sales area from the discount food store. The Board was not satisfied that the applicant had demonstrated a compelling reason for an off-licence at this location (which is already well served by off-licences) in accordance with Development Plan, as set out in Policy RD5 of the Dublin City Development Plan, 2016-2022.
- 8.1.2. Policy RD5 seeks *“to prohibit the further expansion of off-licences or 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 should include a map of all such establishments located within a 1km radius of the proposed development. In relation to stand alone off-licences an audit of the existing off-licence floor space provision within 1km and an analysis of the need for the proposal in the locality shall be provided.”*
- 8.1.3. Development standards for part off-licences are set out in Section 16.28 of the Development Plan, where it is stated that an assessment of the following criteria shall apply to planning applications for a part off-licence in a shop:

- The number and frequency of such facilities within a 1 km radius of the proposed development;
- The amenities of properties in the nearby residential areas;
- The floor area used for the display of alcohol products is subsidiary to the main use of the shop and that area should be no more than 10% of the total floor area;
- The location of the display area of alcohol products shall be in an unobtrusive position, not near the entrance or windows of the shop and preferably to the rear of the premises;
- The area for the display of alcohol products shall be detailed on the floor plans and the display of alcohol products shall be limited to this area only;
- The area for the display of alcohol products should be secure and monitored.

8.1.4. From the outset, I would have no objection to the proposed location of the off-sales area along the side aisle and set back a reasonable distance from the shop window. I accept the applicant's argument that this location is best suited for monitoring of the area by staff at checkouts. Discount retailers tend to have less staff on the floor and checkouts are staffed rather than self-service. The off-sales area is also concealed by back to back shelving and in my view it would be easier for shoppers to bypass this area at the end of a loop than any other part of the shop. I would also be satisfied that the floor area of the off-licence area, at approximately 86 sq.m., will remain subsidiary to the main retail use. The permitted gross floor area of the discount food store is 2,764 sq.m. and this represents only 3.11% of the total floor area devoted to off-sales. Having regard to the above, I consider that Condition 2 of the Planning Authority's decision should be omitted in the event that the Board decides to grant permission for the part off-licence.

8.1.5. With respect to the number and frequency of off-licences within 1km of the site, the Board considered previously that this area is already well served with such facilities. However, Policy RD5 allows for an applicant to make a compelling case that there is not an over-concentration of such uses in a particular area.

- 8.1.6. In addition to the previously submitted information that there are 25 off-licences¹ within 1km of the site, eight of which are supermarkets with a section devoted to the sale of alcohol, the applicant has included a demand analysis report with the current application. Essentially, this report examines the particular demographics and physical barriers within the 1km radius of the site to formulate an argument for the proposed development.
- 8.1.7. In terms of population profile, it is calculated that there is one off-licence per 1,250 persons within the study area, which is lower than the national and overall Dublin averages. It should be noted, however, that the 1km radius includes the Henry Street/ Jervis Street area, which forms part of the central shopping area and would not exclusively cater for a local population. There are other significant barriers within the 1km area such as the River Liffey and it is contended that off licences to the south of the river should not be seen as being within the vicinity of the site.
- 8.1.8. Having regard to the above factors, I would be of the opinion that Policy RD5 cannot be evenly applied throughout the City Council area, particularly when a core area of the city centre is included within the 1km study area. In my opinion, the affected area in terms of concentration of off-licences in this case would be Stoneybatter and Smithfield, where there are only four off-licences in total. The applicant's economist also points out that there is a population of about 9,000 within 500m of the site, which results in a ratio of as much as 2,250 persons per off-licence.
- 8.1.9. Having regard to the above, I would be of the view that there is capacity for the provision of an additional part off-licence to serve the wider area, particularly to the north of the site. Furthermore, the permitted Lidl discount food store will become a destination in its own right serving a passing or resident population utilising the new DIT campus. I am satisfied that a small off-sales area within the store is an appropriate and ancillary use that will not contribute to an over-concentration in the immediate or wider areas.
- 8.1.10. In addition to the above, the applicant's economist sets out the following demographic arguments that may be considered somewhat unique to the study area:
- A rate of population increase that is greater than the national and Dublin average;

¹ Now 24 - an off-licence at Centra, Manor Street has recently closed.

- A relatively high adult share of total population;
- Relatively high proportions within higher alcohol consuming age group;
- Above average proportion of males;
- High proportion of non-nationals;
- Higher proportion of those at work than national average;
- Very low car ownership rates.

8.1.11. I conclude from the above that the applicant has now presented a compelling argument that there is not an overconcentration of off-licences in this area. There are specific physical and exceptional demographic circumstances within the 1km study area that are unique to case. This is a higher density city centre area with the type demographic characteristics that point to the presence of a mainly adult working/ studying population capable of supporting a convenience store with ancillary off sales area.

8.2. **Impact on amenities of the area**

8.2.1. Two third party appeals have been received by nearby residents of the area. The main grounds of appeal are that the type of off-licence proposed is unsuitable for the residents of this particular area. It is submitted that there is an over-concentration of people with addiction problems and associated facilities in the neighbourhood and the proposed development will lead to an increase in public nuisance, crime and disorder. It is also noted that there are three schools nearby and the area is becoming a growing tourist hub of the city centre.

8.2.2. In response to the grounds of appeal, the applicant refers to a similar case where the Board confined its consideration to those matters set out in policy and the merits of a part off-licence from the perspective of need, rather than societal issues. Under PL29N.244678, permission was granted for the provision of an ancillary off-licence within a permitted retail unit at Ballybough Road, Dublin following a condition attached to a parent permission (PL29N.241568) that the off-licence be omitted on the grounds that the applicant had not presented a compelling case for such a facility.

- 8.2.3. Notwithstanding the above, I would also refer to a case for a proposed off-sales area within an existing convenience store on Lower Abbey Street, Dublin, which was refused permission by the Board (PL29N.246058). The Board made reference in its reason for refusal to the evidence of anti-social activity in the immediate vicinity of this site. The reason for refusal in this case also referred to the proposal having an overall negative impact on the environment and civic character of the O'Connell Street and Environs Architectural Conservation Area and the central shopping area.
- 8.2.4. When considering the potential impact of the proposed off-licence on the amenities of the area, I would have regard to the fact that this is a mixed use transitional area and unlike the Lower Abbey Street case, there is not an immediate focus of anti-social behaviour on the street outside. Furthermore, footfall would be much lower and this is not a Category 2 shopping street within the central shopping area.
- 8.2.5. The Board may consider that the most appropriate course of action would be to grant permission for the proposed off-licence for a temporary period of five years to allow for further assessment to take place of the conditions in the area following the opening of the off-licence for an established period. However, objections to the renewal of an off-licence for the sale of intoxicating liquor can be made through the District Court and to seek to address this matter through the planning system would lead to unnecessary duplication.
- 8.2.6. Overall, I would be satisfied that a small scale ancillary off-licence well concealed front the street frontage is acceptable at this location and will not adversely impact on the amenities of the area.

8.3. **Appropriate Assessment**

- 8.3.1. 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.

9.0 **Recommendation**

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

10.0 Reasons and Considerations

Having regard to the “Z5 – City Centre” zoning objective applicable to the site, to the existing pattern of development in the area and to the limited scale of the use for the purposes of an off-licence within the overall footprint of the retail unit, the Board considers that, subject to compliance with the conditions set out below, the proposed development would be in accordance with the provisions of the Development Plan, would not seriously injure the residential amenities of the area, and would not lead to an over-concentration of off-licence uses having regard to the demographic profile of the area and location of the site. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

11.0 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. (a) No advertising of the sale of alcohol products shall occur on the front elevation of the shop and no advertising or display of alcohol products shall occur in the shop window or adjacent to the public entrance to the shop.

(b) The subsidiary alcohol sales area shall be limited to the area shown on the Floor Plan Licence Area drawing submitted with the planning application.

Reason: In order to comply with Development Plan guidelines.

3. The development shall otherwise comply with the conditions granted by An Bord Pleanála under appeal reference number PL29N.247008, save as amended by this permission.

Reason: In the interest clarity.

Donal Donnelly
Planning Inspector

18th July 2017