



An
Bord
Pleanála

Inspector's Report PL06S.248480

Development	Part off-licence use at shop.
Location	Unit 4, Russell Square Shopping Centre, Sundale Park/Fortunestown Lane, Jobstown, Dublin 24.
Planning Authority	South Dublin County Council.
Planning Authority Reg. Ref.	SD17A/0051.
Applicant(s)	Russel Square Shopping Limited.
Type of Application	Permission.
Planning Authority Decision	Grant with conditions.
Type of Appeal	Third Party
Appellant	Karl Smith Retail Limited.
Observer	None.
Date of Site Inspection	23 rd August 2017.
Inspector	Philip Davis.

Contents

1.0 Site Location and Description	3
2.0 Proposed Development	3
3.0 Planning Authority Decision	3
3.1. Decision	3
3.2. Planning Authority Reports	4
3.3. Prescribed Bodies	4
3.4. Third Party Observations	4
4.0 Planning History.....	4
5.0 Policy Context.....	4
5.1. Development Plan.....	4
5.2. Natural Heritage Designations	5
6.0 The Appeal	5
6.1. Grounds of Appeal	5
6.2. Applicant Response	5
6.3. Planning Authority Response.....	6
7.0 Assessment.....	6
8.0 Recommendation.....	9
9.0 Reasons and Considerations.....	9
10.0 Conditions	9

1.0 Site Location and Description

This appeal is by a retail company against the decision of the planning authority to grant permission for the change of use of part of a small convenience/food Mace outlet to off-licence use. The grounds of appeal relate mostly to policy and amenity issues.

2.0 Proposed Development

- 2.1. The proposed development is in a small neighbourhood shopping centre in Jobstown, Dublin, between CityWest, Saggart and Tallaght. The area is part of the suburban expansion west of Tallaght in an area which mostly developed from the 1970's onward. Fortunestown Lane is the original road running east to west through the area, now upgraded as an urban trunk road. The shopping centre is located at a roundabout junction where Fortunestown Lane meets Sundale Park and Brookfield Road. The shopping centre is a 2-storey development of relatively recent construction, with two buildings served with extensive parking. One building is a large 2-storey pub/restaurant which is empty and for sale. The second building is a 2 storey retail block with a small Mace foodstore, a pharmacy, a fish and chip shop, a Chinese takeaway and a barbers at ground floor level, with an estate agent and hair stylist at first floor level.
- 2.2. The appeal site, with a site area given as 0.8718 hectares (this seems to relate to the entire shopping centre site, not the red lined area on the application documents), is a Mace foodstore, the westernmost ground floor unit in the shopping centre. This shop has a floorspace given as 273 square metre and is a foodstore with a hot food counter at the rear. The application relates to a 12 square metre rectangle at the rear of the store, currently used as a preparation area for the hot food counter.

3.0 Planning Authority Decision

3.1. Decision

The planning authority decided to grant permission, subject to 7 standard conditions.

3.2. Planning Authority Reports

3.2.1. Planning Reports

It is considered that the main issues for assessment are zoning and Council policy, car parking, services, ancillary information and AA. It is concluded that considering the 'LC' (local centre) zoning and the relatively minor nature and scale of the proposed change of use, it would be in accordance with development plan policy.

3.2.2. Other Technical Reports

None

3.3. Prescribed Bodies

None

3.4. Third Party Observations

The appellant submitted a detailed objection, the grounds of which are similar to the appeal before the Board.

4.0 Planning History

The planning report on file outlines the basic planning history of the site. The overall Neighbourhood centre was granted permission under **SD06A/0767**. Permission was refused, with this refusal upheld by ABP (**PL06S.233635**) for a ground floor extension to the foodstore to the west of the existing units and the provision of a bookmakers office (**SD09A/0071**). Permission was granted by the planning authority for the retention of an extension to the first floor above Unit no. 4 (**S00A/0343**).

5.0 Policy Context

5.1. Development Plan

The appeal site is in an area zoned 'LC' – '*To protect, improve and provide for the future development of Local Centres*'. In such areas, off-licence use is 'permitted in principle'. A number of specific policies relate to off-licences, specifically to reduce

the quantum in smaller centres to ensure there is not a disproportionate concentration.

5.2. **Natural Heritage Designations**

None in the area.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

The appeal is on behalf of **Karl Smith Retail Limited**, trading as Centra Jobstown.

- It is argued that it will have an unacceptable impact on residential amenity by way of noise, disturbance and litter.
- It is argued that it fails to comply with the requirements of Sections 5.9.0 and 11.3.6 of the South Dublin Development Plan.
- It is argued that it represents an unacceptable concentration of off-licences in the area (the appellant lists out the existing off-licences within various radii of the site and provides a map showing their locations).
- It is argued that it would fail to contribute to the vitality of the area and so is contrary to the zoning objective.

6.2. **Applicant Response**

- It is noted that it is the intention to transfer the existing licence from the existing Brady's Public House to the site. It is noted that this is subject to a license application and the Gardaí will be a Notice party.
- It is stated that there is no evidentiary basis for arguing that the proposed use could result in anti-social behaviour or nuisance.
- It is submitted that it is in line with the zoning designation of the area.
- It is noted that there would be no net increase in the number of off-licences in the area.

6.3. Planning Authority Response

The planning authority confirms its decision and refers the Board to the planner's report.

7.0 Assessment

7.1. Principle of Development

The appeal site is within an existing permitted local shopping centre zoned 'LC' '**To protect, improve and provide for the future development of Local Centres**' (Table 11.9 of the 2006 Development Plan). In such areas off-licences are 'permitted in principle'.

Policy 5.9.0 of the Development Plan 'Off-Licence/Betting Office' states:

It is the policy of the Council to manage the provision of off-licences and betting offices and to prevent an excessive concentration of these land uses.

R11 Objective 1: To prevent an excessive concentration of off-licence and betting offices.

Policy 11.3.6 'Retail Development' states that applications for new developments shall accord with requirements with a number of criteria, including supporting the vitality and viability of the retail centre. 11.3.6(ii) states that:

Restrictions on Uses

An over-concentration of certain uses will be discouraged in urban centres, due to an overriding need to maintain the integrity, quality and vibrancy of centres.

The Planning Authority will seek to ensure that the quantum of off-licence and betting offices, particularly within smaller centres, is not disproportionate to the overall size and character of the area and that the development would not have a negative impact on the amenity of the area due to noise, general

disturbance, hours of operation and litter. The provision of a small section of a convenience shop for an ancillary off-licence use is generally acceptable. The Planning Authority will seek to ensure that the quantum of amusement and gaming arcades, bookmakers, public houses, off-licences and fast food outlets is not disproportionate to the overall size and character of the area.

The proposed development is intended (subject to the authorisation of the District Court) to operate under a licence transferred from the former Off-Licence attached to the now empty public house in the shopping centre. On the basis of stated policy and the zoning objective, I would consider that there would be a general presumption in favour of this type of development within an LC zoned area subject to the application not interfering with the vitality of the shopping area and not resulting in an over-concentration in the general area.

7.2. Concentration of such uses in the area

The appeal site is within a small local shopping centre in the suburb of Jobstown. This urban area sprawls between Tallaght, Saggart and CityWest, and has a variety of differently scaled, mostly purpose built, shopping areas, accessible by road, bus, and the Luas line. The Russell Square Shopping Centre is free standing, with no other shops in the immediate vicinity. It would seem to be designed to mostly serve passing motorists on Fortunestown Lane, in addition to local residents in the surrounding estates by foot and bike. The shopping centre is somewhat isolated from other buildings, being surrounded by c. 90 parking spaces. The Units in the main shopping centre appear to be mostly occupied and represent a reasonable range for a local shopping area – two takeaway restaurants, a pharmacy, the Mace foodstore and an estate agent with hair stylist and barbers shop. The large freestanding public house is empty and seems to have been for some time. The associated off-licence is closed – it is not clear for how long.

The proposed development is for a small off-licence within the shop. It is not displacing any food shopping as this part of the shop seems to be used for ancillary food service for the hot food counter at the rear. I would consider this to be an entirely reasonable addition to the existing foodstore, which should not displace

existing services provided by the shop or by the other retail units within the shopping centre and the environs.

As the appellant has outlined, there is a range of other off-licence facilities in the wider area, but having regard to the high population in this part of the city, I don't see any evidence of over-concentration, certainly not in the immediate area of the shopping centre.

I consider the proposed development to be consistent with providing a reasonable range of retail uses within this small shopping centre and its local service hinterland. I do not consider that it will impact on the vitality and viability of the centre, and it is not resulting in over-concentration as it is replacing an existing (seemingly larger) off-licence. I therefore consider it to be in accordance with development plan policy.

7.3. Residential Amenity

The appellant has raised the issue of noise and nuisance and litter. I concur with the applicant that this is largely an issue for the District Court when it decides on the licence application. Although there is a significant amount of litter in the area, I would consider that there are other causes for this, and I don't see how a small off-licence outlet within an existing shop could significantly exacerbate this situation having regard to its location within an existing foodstore, and its modest size. The issue of access by under aged drinkers is a matter for the licencing authority.

7.4. Other issues

I do not consider that there are any other significant planning issues raised in this appeal. There are no protected structures in the vicinity and no other sites of sensitivity. The site is not indicated in any sources as being subject to flooding. No alterations to parking or access provision is required. The proposed development would be subject to a standard S.48 Development Contribution.

7.5. Appropriate Assessment

There are no Natura 2000 sites within 5 km of the site. Due to the modest scale of the development I do not consider that the issue of Appropriate Assessment (or EIA) arises. Having regard to the nature and scale of the proposed development and the absence of designed sites in the area, no Appropriate Assessment issues arise and I do not consider 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.

8.0 Recommendation

I recommend that subject to the conditions set out below, the proposed development should be granted permission for the following reasons and considerations.

9.0 Reasons and Considerations

Having regard to the 'LC' zoning designation for the area and the nature and small scale of the proposed development, and its location within a significantly larger food store, it is considered that the proposed change of use of part of the existing shop to off-licence is in accordance with the zoning objective and policies of the planning authority as set out in the South Dublin County Council Development Plan 2016-2022, would not interfere with the vitality and viability of this shopping area, would not seriously injure residential amenities, and would otherwise be in accordance with the proper planning and sustainable development of the area.

10.0 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. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the

development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. No advertisement or advertisement structure (other than those shown on the drawings submitted with the application) shall be erected or displayed on the building (or within the curtilage of the site) in such a manner as to be visible from outside the building, unless authorised by a further grant of planning permission.

Reason: In the interest of visual amenity.

3. Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

4. 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, as amended. The contribution shall be paid prior to 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 An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, 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.

Philip Davis
Planning Inspector

24th August 2017