



An
Bord
Pleanála

Inspector's Report PL29N.248555

Development	Change of use from Part Lounge and Bar and ancillary stores to an Off-Licence Retail Unit and Signage.
Location	The Halfway House, Navan Road, Ashtown, Dublin 7.
Planning Authority	Dublin City Council.
Planning Authority Reg. Ref.	2392/17.
Applicant	Springdale Inns Limited.
Type of Application	Permission.
Planning Authority Decision	Refuse.
Type of Appeal	First Party -v- Refusal
Appellant	Springdale Inns Limited.
Observers	None.
Date of Site Inspection	17 th August, 2017.
Inspector	Paul Caprani.

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1.0 Introduction

PL29N.248555 relates to a first party appeal against the decision of Dublin City Council to issue notification to refuse planning permission for a change of use from a lounge and bar area in the Halfway House to use as an off-licence retail outlet together with ancillary signage and vehicular access. The Halfway House Public House is located on the Navan Road in Ashtown. Permission was refused for a single reason that the proposed development would contravene the zoning objectives set out in the development plan which seeks to protect, provide and improve residential amenities.

2.0 Site Location and Description

The Halfway House Public House is located in Ashtown, Dublin 7 approximately 6 kilometres north-west of the City Centre. The public house is located on the north-eastern side of a roundabout on the Navan Road. The roundabout opposite the site is located at the intersection of the Navan Road, Ashtown Road and Castleknock Road. The Halfway House is a relatively large part-single-storey, part-two-storey structure incorporating a series of bars, lounges and a restaurant together with smoking areas at ground floor level while the upper floor accommodates toilets, ancillary storage and a separate smoking area. The building is setback from the road and is surrounded by surface car parking. One vehicular entrance / exit is located near the north-western corner of the site with access from the Ashtown Road (referred to on the subject drawings as the River Road). The Ashbrook residential housing estate is located to the north and east of the subject site. A terrace of dwellings fronting directly onto the Navan Road is located adjacent to the south-eastern boundary of the site. Ashtown Gate, a three to six storey complex of office accommodation are located on lands directly opposite the site on the western side of the Ashtown Road immediately north of the roundabout. The roundabout adjacent to the Halfway House is a busy junction, accommodating traffic between the city centre and Blanchardstown and also providing direct access onto Junction 6 on the N3/M50 intersection.

3.0 Proposed Development

Planning permission is sought for a change of use from part lounge/ bar and ancillary stores to an off-licence retail unit amounting to 65 square metres in size. The change of use is to take place in a triangular portion of the building located at the north-western end of the building. Currently there is a dedicated access to this section of the building. The area currently incorporates a corridor which leads to the existing restaurant to the rear of the building. Currently, as one enters the building a store area is located on the left hand side of the corridor while a bar area is located on the right hand side. All of the store area and part of the bar area is to be converted into a proposed off-licence unit. Access to the off-licence will be provided via the existing entrance on the north-western elevation. A separate dedicated entrance to the restaurant is to be provided at the north-western corner of the building.

4.0 Planning Authority's Decision

4.1. Decision

- 4.1.1. Dublin City Council refused planning permission for the proposed change of use for single reason which is set out in full below.

The subject site is located in an area with the zoning objective Z1 "to protect, provide and improve residential amenities". The proposed use is not permitted in principle as off-licences are not permissible or open for consideration under the Z1 zoning objective. The proposal would therefore contravene the zoning objective set out in the Development Plan 2016 – 2022 and would be contrary to the proper planning and development of the area.

4.2. Planning Authority's Assessment

- 4.2.1. The planning application was lodged with the Planning Authority on the 3rd March, 2017. A report from the Engineering Department - Drainage Division states that there is no objection to this development subject to the developer complying with the Greater Dublin Regional Code of Practice for Drainage Works.

4.2.2. The planner's report sets out the site description, proposed development and planning history associated with the site. It also sets out development plan policy in relation to the proposal; making specific reference to Section 16.28. The report notes that a map was submitted with the application showing the location of three off-licences within a kilometre of the existing public house. The off-licences in question are all located within supermarkets or local convenience stores in the vicinity. The planner's report expresses concern that the proposed development is located on a heavily trafficked route. It is considered by reason of the scale and layout of the off-licence, that the proposed development is unlikely to have a significant impact on the residential and visual amenities of the area. However, reference is made to the development plan and particularly Section 14.4 which states that uses not listed under permissible or open to consideration will be deemed not to be permissible uses in principle under the Z1 zoning. The subject site is located in an area with a Z1 zoning objective to protect, provide and improve residential amenities. The proposed use is not permissible in principle nor is it open for consideration and would therefore contravene the zoning objective. It is therefore recommended that planning permission be refused for the reason set out above.

5.0 Planning History

No history files are attached. However, both the Local Authority planner's report and the grounds of appeal make reference to the site planning history. The relevant history is set out below.

Under Reg. Ref. 4207/10 planning permission was granted, subject to conditions for the change of use of part of the lounge bar and ancillary store to an off-licence retail unit.

Under Reg. Ref. 3268/08 planning permission was granted for the construction of two covered smoking areas to the front of the existing public house.

Under Reg. Ref. 0719/01 permission was granted for the alterations and amendments to the elevation of the building.

6.0 Grounds of Appeal

- 6.1. The decision was appealed on behalf of the applicants by Manahan Planners, Town Planning Consultants. The grounds of appeal are outlined below.
- 6.2. The grounds of appeal set out the site context, the development plan provision as it relates to the subject site and the planning history before setting out details in the grounds of appeal.
- 6.3. The grounds note that the same development was granted planning permission by Dublin City Council in April, 2010 (under Reg. Ref. 4207/10). However, due to the economic recession the permitted development was never carried out. Planning permission lapsed in 2016 and the applicant was unaware of the opportunity to apply for an extension of duration application. It is stated that currently, like most public houses, patrons have the ability to purchase alcohol for consumption off the premises. Under the current arrangements customers enter the public house to purchase the said produce from one of the internal counters within the bar. If permission is refused on appeal, this would continue to be the arrangement. The applicant is seeking to normalise arrangements with the provision of a separate off-licence facility. This will mean that customers will not have to enter the public house in order to make off-licence purchases. It is not expected that the proposal will increase traffic to the area or increase noise or activity as arrangements will not alter to any noticeable degree from that already occurring on site. It is suggested that the new shopfront and signage over the proposed off-sales area will improve the visual amenities of the area.
- 6.4. While it is acknowledged that the use is not permitted under the zoning objective, the Board are requested to take into consideration that the site forms part of a wider commercial area to the west rather than the residential areas to the rear. It is questionable whether the site is appropriately zoned for residential use. Reference is made to the previous planner's report (under Reg. Ref. 4207/10) where it is noted that the proposed off-licence will not give rise to any additional impact on neighbouring residential areas. The same holds true in the current application/appeal before the Board. The distance from the residential properties and the orientation of the building all ensure that the granting of planning permission for this proposal would not injure the residential amenities of the area. It is considered therefore that

the proposal is consistent with the proper planning and sustainable development of the area.

7.0 Appeal Responses

The Planning Authority stated the following in response to the grounds of appeal. The reasoning on which the Planning Authority decision on the application was based, is set out in the planning report. It is not proposed to respond in detail to the grounds of appeal as the Planning Authority considers that the comprehensive planner's report deals fully with the issues raised, and justifies its decision.

8.0 Development Plan Provision

8.1. The site is governed by the policies and provisions contained in the Dublin City Development Plan 2016 – 2022. The subject site is zoned Z1 which seeks to “protect, provide and improve residential amenities”. Section 16.28 of the development plan specifically relates to off-licenses and extensions to existing off-licence premises. It states that in considering planning applications for off-licence premises or extensions to existing off-licence premises, the following criteria shall be applied.

- The number and frequency of such facilities within a kilometre radius of the proposed development.
- The context and character of the street where the aim is to maintain and improve the vitality of the shopping experience by encouraging a range of convenience and/or comparison retail shops.
- The range of uses at ground floor in an area where the aim is to strengthen the retail character and ensure the proposal will not result in a proliferation of similar retail service outlets such as, internet cafes, call centres, bookmakers, take-aways, amusement arcades or car rentals resulting in a predominance of similar non-shop frontages.
- The size of the proposed off-licence in the context of the size of the premises in the area.

8.2. Policy RD5 seeks to prohibit the further expansion of off-licences and part off-licences unless a compelling case has been made that there is not an overconcentration 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 1 kilometre radius of the proposed development. In relation to standalone off-licenses, an audit of existing off-licence floorspace provision within a kilometre and an analysis of the need for the proposal in the locality shall be provided.

9.0 Planning Assessment

9.1. Dublin City Council refused planning permission for a single reason that the subject site is located in an area governed by the zoning objective Z1 “to protect, provide and improve residential amenities”. The reason for refusal states that the proposal would contravene the zoning objective set out in the development plan. It does not explicitly refer to the proposal “materially contravening” the development plan. As such the provisions of Section 37(2)(b) of the Planning and Development Act would not apply in this instance. While the Planning Authority are bound by the zoning objectives and the policies and provisions contained in the development plan in determining the application, the Board on the other hand, while having to have regard to the policies and provisions in the development plan, are not bound in the strictest sense by the provisions contained therein and can evaluate the proposed development in terms of its overall planning merits.

9.2. The subject site is governed by the zoning objective Z1 which seeks to protect, provide and improve residential amenities. Having regard to the established commercial nature on the subject site, it could be reasonably argued that the zoning objective relating to the site is somewhat incongruous and inappropriate, as the site accommodates, and has accommodated, a clear commercial use for many years. Lands directly opposite the site on the western side of the roundabout situated on the Navan Road are governed by the policies and provisions contained in the Fingal County Development Plan and form part of a strategic development zone designated for high technology uses. This reinforces the overall commercial/mixed use character of the lands in the wider area. Surrounding land uses are not solely residential.

- 9.3. In terms of permissible uses, I note that a public house is not a permissible use under zoning objective Z1. It is however a use which is open for consideration under the current development plan. I consider the fact that there is an established public house on the subject site is a material consideration in determining the current application and appeal before the Board. It is clear from the grounds of appeal that the public house in this instance de facto operates as an off-licence in that customers buy alcohol within the bar area for consumption off the premises. The proposed development currently before the Board seeks to regularise this by designating a specific area of the bar for use as an off-licence area. I do not consider that the arrangement proposed in any way materially affects the commercial enterprise currently undertaken on the subject site.
- 9.4. The designation of a small portion of the overall building specifically for off-sales will not in my view in any way impact on residential amenity of the surrounding area or will not in any way be incompatible with the existing use of the site as a public house. The land use proposed is therefore acceptable in my view and the principle of the use was already accepted by Dublin City Council under previous application granted planning permission in April, 2011 (Reg. Ref. 4207/10). I do acknowledge however under the previous Development Plan 2011 – 2017 off-licence use was permissible in the Z1 zoning. I further note that the planner's report in respect of the current application likewise acknowledges that the proposed development is unlikely to have a significant impact on the residential and visual amenities of the area. The report notes *"having regard to the location of the proposed development on a heavily trafficked route (Navan Road) and the limited size of the off-licence within an existing public house, it is considered that by reason of scale and layout of the off-licence that the proposed development is unlikely to have a significant impact on the residential and visual amenities of the area"*. The reason for refusal by the Planning Authority appears to be solely predicated on the fact that the land use contravenes the zoning objective set out in the development plan rather than any objection in principle. While the Board has to have regard to the provisions of the development plan, I consider an exception could be made on planning grounds to override the zoning provisions set out in the plan.

9.5. Arising from my assessment above therefore, I consider that the Board could overturn the decision of the Planning Authority on the grounds that a commercial use is already established on the subject site and the proposed designation of a portion of the pub specifically for off-licence sales which already take place on the subject site could result in the regularisation of off-licence sales within the premises and would not have any material impact on the residential amenity of surrounding suburban houses. The proposed development would therefore be in accordance with the proper planning and sustainable development of the area.

10.0 **Appropriate Assessment**

Having regard to the nature and scale of the proposed development which involves a change of use within an existing building and the nature of the receiving environment together with the 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.

11.0 **Decision**

Grant planning permission for the proposed development in accordance with the plans and particulars lodged based on the reasons and considerations set out below.

12.0 **Reasons and Considerations**

Having regard to the existing public house located on site, it is considered that the proposed development, subject to conditions set out below would not seriously injure the amenities of the area or of property in the vicinity, would not be prejudicial to public health and would generally be acceptable in terms of traffic safety and convenience. The proposed development would therefore be in accordance with the proper planning and sustainable development of the area.

13.0 Conditions

- 1 The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted to the planning authority on 3rd day of March 2017, 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 the 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 Water supply and drainage arrangements, including the attenuation and 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.

- 3 Details including samples of all materials, colours and textures of all external finishes to the proposed off-licence shall be submitted to and agreed in writing with the planning authority prior to the commencement of development.

Reason: In the interest of visual amenities of the area.

- 4 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 or authorised by a further grant of planning permission.

Reason: In the interest of visual amenity.

- 5 The off-licence facility shall operate between the hours of 11 a.m. to 10 p.m. Monday to Saturday and 11 a.m. to 9 p.m. on Sundays and Bank Holidays. The off-licence shall not operate outside these hours.

Reason: In the interest of residential amenity.

- 6 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.

Paul Caprani,
Senior Planning Inspector.

17th August, 2017.