



An
Bord
Pleanála

Inspector's Report PL29N.249317

Development	Change of use of part of supermarket ancillary storage space to retail floorspace / bakery reheat area
Location	Aldi, Unit 6/7, 35-41 King's Court, Parnell Street, Dublin 1
Planning Authority	Dublin City Council
Planning Authority Reg. Ref.	3355/17
Applicant(s)	Aldi Stores (Ireland) Limited
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third-Party
Appellant(s)	Pat Coyne
Observer(s)	Transport Infrastructure Ireland Moore Street Traders' Committee
Date of Site Inspection	19 th December 2017
Inspector	Colm McLoughlin

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1.0 Site Location and Description

- 1.1. The appeal site occupies the ground and ground-floor mezzanine floor of a 6 to 7-storey mixed-use building, known as King's Court, located on the northside of Dublin city centre, adjacent to the Ilac Shopping Centre and fronting onto Parnell Street.
- 1.2. It contains a ground-floor supermarket with double-height shopfront, adjoining ancillary storage, staff and plant areas and with customer access only off Parnell Street. Service access to the ancillary storage area is available from Chapel Lane, a service laneway to the west side of the King's Court building.
- 1.3. The upper floors directly above the appeal site are used as apartments. Adjacent to the west occupying a corner unit is an entrance to the upper-floor King's Court apartments and this adjoins a café restaurant, Café Cucina. The surrounding area is characterised by uses typical of an inner-urban setting, including a range of supermarkets and convenience stores, and various commercial, retail and residential uses.

2.0 Proposed Development

- 2.1. The proposed development comprises the following:
 - Change of use of ancillary storage area with a stated gross floor area of 67sq.m, to retail floor space with a stated net floor area of 50sq.m and bakery reheat area with a stated net floor area of 24sq.m;
 - Associated internal alterations.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The Planning Authority decided to grant permission subject to five conditions, the majority of which are generally of a standard nature, but also including the following requirements:

C.2 No increase in the area for the sale or display of alcohol products.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report of the Planning Officer (August 2017) noted the following:

- No objection to the principle of the development;
- A condition can be attached to restrict the sale and display of alcohol goods;
- Bakery reheat area does not raise significant concerns regarding fumes or odours.

3.2.2. Other Technical Reports

- Engineering Department (Drainage Division) - no objection subject to conditions;
- Roads & Traffic Section (Planning Division) – no response.

3.3. Prescribed Bodies

- Transport Infrastructure Ireland (TII) – site is within a Section 49 Levy area;
- National Transport Authority (NTA) – no response;
- Irish Water – no response.

3.4. Third-Party Submissions

- 3.4.1. One submission was received during consideration of the application and the issues raised are covered in the grounds of appeal.

4.0 Planning History

4.1. Appeal Site

- 4.1.1. The following planning applications relate to the appeal site:

- Ref. 2339/11 – Permission **granted** (September 2011) for revisions to shopfront and reconfiguration of entrance/exit;

- Ref. 3637/05 – Permission **granted** (September 2006) for revisions to shopfront and reconfiguration of entrance/exit;
- Ref. 0101/01 – Retention permission **granted** (June 2001) for a double-sided internally-illuminated sign;
- Ref. 2904/00 – Permission **granted** (December 2000) for revisions to shopfront;
- ABP Ref. PL29N.096304 (DCC Ref. 0512/95) - Permission **granted** (October 1995) for retail and residential development.

4.2. Surrounding Sites

- 4.2.1. There have been extensive recent planning applications for development on neighbouring properties, but none of these are directly relevant to the subject appeal.

5.0 Policy Context

5.1. Development Plan

- 5.1.1. The appeal site has a zoning objective 'Z5 – City Centre' within the Dublin City Development Plan 2016-2022 with a stated objective 'to consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity'.
- 5.1.2. District, neighbourhood and major comparison retail uses are 'permissible' on lands zoned 'Z5'. The city centre retail core occupies the highest level of the retail hierarchy for Dublin city and Section 7.6.1 notes that it is important to continue to develop the city centre as the primary retail destination in the city. Chapter 7 of Volume 1 the Development Plan and Appendix 3 of Volume 2 to the Development Plan, comprising the city Retail Strategy, contain relevant planning policy and guidance regarding retail development, including:
- Policy RD11 - 'To promote and facilitate the provision of accessible good quality convenience shopping that will engender competition and service all areas of the city, particularly with regard to the inner city'.

- 5.1.3. Section 14.8.5 of the Plan states that the primary purpose of the Z5 zoning is ‘to sustain life within the centre of the city through intensive mixed use development’ and ‘to provide a dynamic mix of uses, which interact with each other, help create a sense of community and which sustain the vitality of the inner city both by day and night’. It is stated that, ideally, the mix of uses should occur both vertically through the floors of the building and horizontally along the street frontage. A general mix of uses including residential is desirable; however, retail should be the predominant use at ground floor level on principal shopping streets.
- 5.1.4. Policy RD5 of the Plan supports the restriction of an overconcentration of off-licences in any one area of the city. Section 16.28 of the Plan refers to criteria to be applied when considering applications for ‘off-licenses’ and ‘part off-licenses’, while also setting out criteria to be applied in proposals involving off-licenses. The Plan also recommends conditions as part of permissions for off-licenses.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. The appellant, Pat Coyne, states their address as No.7 Arran Street East, Dublin 7, which is approximately 500m to the southwest of the appeal site. The principal grounds of appeal to the proposed development can be summarised as follows:
- The area for sale and display of alcohol products should be established;
 - The Applicant holds a liquor license for 35-41 Parnell Street, which is different to the application address 38-41 Parnell Street;
 - Concerns raised regarding the sale of alcohol products, implications for the area and customers;
 - Condition (2) restricting use of the new net retail area from the sale and display of alcohol products, should also restrict changing the location of the off-license area;
 - The Board should use the appeal as an opportunity to improve the streetscape, by requiring the removal of corporate logos and signage on the site;

- Advertising of alcohol products along the shopfront should be restricted;
- Reference is made to Section 16.28 of the Development Plan referring to application details and development standards for off-licenses.

6.2. Applicant's Response

6.2.1. A response to the grounds of appeal was received on behalf of the first party from O'Connor Whelan Planning Consultants, which also included an opinion from Jarlath Fitzsimons, Senior Counsel, which may be summarised as follows:

- Appeal should be dismissed under the terms of Section 138 of the Planning & Development Act 2000, as amended;
- 'Once planning permission to sell intoxicating liquor for consumption off the premises has been obtained, issues in relation to intoxicating liquor licensing for off-licensed premises is not within the purview of planning authorities of the Board in determining a planning application';
- 'the Board is entitled to assume that an owner or occupier of lands to which planning permission is attached, would act legally and in conformity with the requirements of the Licensing Acts';
- Applicant is aware of the appellant having been involved in four other applications in the central Dublin area that involved the provision of off-licenses and their motives for the appeal are questioned;
- Grounds of appeal focus on off-license provision while the proposed development does not relate to alterations to the permitted part off-license on site;
- Correct address is used in the application;
- Applicant is committed to adhering to laws relating to alcohol product sales;
- An increase in gross floor area is not proposed.

6.3. Planning Authority Response

6.3.1. The Planning Authority did not respond to the grounds of appeal.

6.4. Observations

- 6.4.1. Two observations to the grounds of appeal have been submitted. TII request that the Board consider all matters raised in their original submission to the Planning Authority. Moore Street Traders' Committee suggest provisions should be made regarding alcohol product sales.

7.0 Assessment

7.1. Introduction

- 7.1.1. I have read the entire contents of the file, visited the site and premises in question and have had particular regard to the issues raised in the third-party appeal. In determining the application before the Board I consider a key consideration is that the proposal in this instance represents an extension and alterations to an existing established city-centre supermarket. Therefore, the primary issue is whether or not the replacement of the ancillary storage area (67sq.m)¹ to the supermarket with retail floorspace amounting to a net increase of 50sq.m and a bakery reheat area amounting to 24sq.m, would be in accordance with the proper planning and sustainable development of the area and would accord with retail planning policy.

7.2. Validity of Issues Raised

- 7.2.1. The first party questions the motives of the appellant, given their involvement in other central Dublin appeals relating to the provision of off-licenses. It is requested that the Board consider the appeal as being vexatious, frivolous and without substance or foundation and that the appeal is made with the sole intention of delaying the development and with the intention of securing the payment of money, gifts, consideration or other inducement, and should otherwise be dismissed. As planning permission to sell and display alcohol products for consumption of premises has already been established on the appeal site and there is no intention to extend this, it is the applicant's opinion that matters relating to the sale and display of alcohol products is not a matter for the Board. I recognise that the appeal largely focusses

¹ It is noted that the stated existing and proposed net and gross figures referenced by the applicant in relation to the development floor area, do not tally up, but this is not significant in my assessment of the appeal.

on matters pertaining to the operation of an off-license and that the applicant has clarified during the appeal stage that the new retail area would not be used for the sale and display of alcohol products. However, in my opinion the bona fides of the appellant cannot be questioned, as the internal layout, including the off-license display area, of the supermarket would be amended and relocated as part of the overall proposed development based on the drawings submitted with the planning application. Furthermore, valid issues have been raised regarding the impact of the proposed development on the amenity of the city centre commercial area, including whether or not the proposed development is in accordance with specific guidance contained in Section 16.28 of the Dublin City Development Plan 2016-2022. In conclusion, I have considered Section 138 (1)(a) of the Planning & Development Act 2000, as amended, and I am satisfied that the points raised in the appeal are not without substance or foundation. Accordingly, I intend to assess the appeal on its merits, including relevant Development Plan policy and guidance.

7.3. Planning Policy

- 7.3.1. The appeal site is located in Dublin city centre retail core, and according to the Development Plan, this retail core occupies the highest level on the retail hierarchy for the city. District, neighbourhood and major comparison shops are 'permissible' on lands zoned 'Z5'. The proposed development would extend the supermarket by a stated net area of 67sq.m to approximately 700sq.m. With regard to the size and nature of the supermarket, I am satisfied that given the city centre location and appeal site zoning, the principle of extending the existing supermarket at the scale proposed is acceptable. Section 7.6.1 of the Development Plan notes that it is important to continue to develop the city centre as the primary retail destination in the city, and I consider that the subject proposals would be in keeping with this overarching approach and would support Policy RD11 of the Development Plan, which seeks to promote and facilitate quality convenience shopping particularly in the inner city.
- 7.3.2. As mentioned above, the grounds of appeal largely focus on concerns relating to the operation of an off-license from the supermarket and the appellant requests that the Board take the opportunity to clarify the off-license area, restrict revising the location of the off-license area and address advertising signage along the streetscape. The

applicant has stated that the new retail area would not be used as a display area for alcohol products. The existing alcohol-product display area occupies the end of the aisle in the northwest corner of the supermarket (i.e. adjacent to the 'access core to the apartments above'), as shown on Drawing No. PL W201-1 Revision B'. The plans submitted with the application illustrate that this part of the supermarket would be revised as part of the overall development and the off-license area would be relocated. Consequently, planning guidance contained in Section 16.28 of the statutory Development Plan is of relevance, in particular the requirement for 'the location of the display area of alcohol products to be in an unobtrusive position, not near the entrance or windows of the shop and preferably to the rear of the premises'. I am satisfied that the criteria outlined in Section 16.28 of the Development Plan can be adhered to, and that if the Board is minded to grant planning permission, I recommend the attachment of a condition to address same.

- 7.3.3. In conclusion, I am satisfied that the principle of extending the subject supermarket facility on the appeal site in this city centre location and at the scale proposed, is acceptable in principle, subject to conditions addressing the part off-license area.

7.4. Other Matters

- 7.4.1. The submission from TII at planning application stage noted that the site is within the area covered by the 'Luas Cross City – Supplementary Contribution Scheme' (Section 49). I note that the Supplementary Contribution Scheme and the 'Dublin City Council Development Contribution Scheme 2016 to 2020' (Section 48) both state that 'permissions for a change of use from one commercial / retail use to another are exempt' and that only the 'net additional floorspace' should be charged. Accordingly, I do not consider development contributions are applicable in this case.

8.0 Appropriate Assessment

Having regard to the minor nature of the proposed development and the location of the site in a serviced urban area and the separation distance to the nearest European site, no Appropriate Assessment issues arise, and it is not considered that the development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

9.0 Recommendation

I recommend that planning permission should be granted, subject to conditions, as set out below.

10.0 Reasons and Considerations

10.1. Having regard to the 'Z5 – City Centre' zoning objective and the city centre core retail location of the site, to the existing pattern of development in the area, to the nature and scale of the existing established supermarket and the proposed development on site, and to Policy RD11, which seeks to promote and facilitate quality convenience shopping particularly in the inner city and Section 16.28 of the Dublin City Development Plan 2016-2022, which sets out guidance for development involving off-license, the Board considers that, subject to compliance with the conditions set out below, the proposed development would be in accordance with planning policy and guidance contained in the Dublin City Development Plan 2016-2022 and would not seriously injure the character and amenities of the area or of property in the vicinity. 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. 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. A plan containing details of the part off-license area within the supermarket

in accordance with the following, shall be submitted to, and agreed in writing, with the Planning Authority prior to commencement of the development.

- (a) The floor area used for the display of alcohol products shall be subsidiary to the main use of the supermarket and the area shall be no more than 10% of the total floor area of the supermarket;
- (b) The location of the display area of alcohol products shall be in an unobtrusive position, not near the entrance or windows of the supermarket and preferably to the rear of the premises;
- (c) 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;
- (d) The area for the display of alcohol products shall be secure and monitored.

Reason: In order to comply with Development Plan guidelines.

- 3. No advertising of the sale of alcohol products shall occur on the front elevation of the supermarket and no advertising or display of alcohol products shall occur in the supermarket window or adjacent to the public entrance to the supermarket.

Reason: In order to comply with Development Plan guidelines.

- 4. Site development and building works shall be carried out between the hours of 0700 to 1800 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays or public holidays. Deviation from these times shall only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In order to safeguard the residential amenities of property in the vicinity.

Colm McLoughlin
Planning Inspector

10th January 2018