



An
Bord
Pleanála

Inspector's Report PL29N.249332

Development	Alterations to off licence including relocation of display area, in association with the permitted reconfiguration of the store layout
Location	Moore Street, Dublin 1
Planning Authority	Dublin City Council
Planning Authority Reg. Ref.	3387/17
Applicant(s)	Lidl Ireland
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Micheal MacDonnchadha
Observer(s)	Transport Infrastructure Ireland; Moore Street Traders Association
Date of Site Inspection	16 January 2018
Inspector	Una O'Neill

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1.0 Site Location and Description

- 1.1. The subject site, which has a stated area of 1585sqm is located on the eastern side of Moore Street, in proximity to the junction with Parnell Street, in Dublin City Centre.
- 1.2. The site comprises a modern mixed use block, accommodating at ground level and part basement level a Lidl food store/supermarket.

2.0 Proposed Development

- 2.1. The proposed development comprises the following:
 - Relocation of existing off licence use and display area, in association with permitted reconfiguration of internal layout (reg ref 2513/17).
 - The off-licence is to be repositioned from the northern side of the shop to the southern side, part of which is located in a recessed area off the main aisle with a section also located along the main aisle.

3.0 Planning Authority Decision

3.1. Decision

GRANTED, subject to 4 conditions, including the following:

C2 - The applicant and developer shall comply with the following-

- (a) The display area for alcohol products shall be limited to the area indicated on the submitted drawings.
- (b) Notwithstanding exempted development provisions of the Planning and Development Regulations 2001-17 (as amended) there shall be no advertising of the sale of alcohol products on the façade/frontage of the premises.
- (c) There shall be no display of alcohol products or advertising of the sale of alcohol products on or near both the entrance and/or windows.

Reason: In the interest of visual amenity and proper planning.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planning Officer's report generally reflects the decision of the Planning Authority. The report notes that the applicants state the existing off licence was in place prior to 2005 Planning and Development Regulations when it first became a requirement for off licences to apply for planning permission i.e. no longer within definition of shop. As such a shop could sell alcohol without planning permission as long as the necessary retailers off licence were granted by the courts. As such it was not necessary to acquire planning permission at that time. The Planner's Report furthermore states that as this is an application for alterations to location of area for sale of alcohol, that is subsidiary to main retail use of Lidl but is now necessary as per recent grant of permission 2513/17, it would not be reasonable to apply full development plan criteria.

3.2.2. Other Technical Reports

- Drainage Division - No objection subject to condition.

3.3. Prescribed Bodies

- Transport Infrastructure Ireland - No observations.

3.4. Third Party Observations

The issues raised are addressed in the grounds of appeal.

4.0 Planning History

2513/17 – Permission GRANTED for reconfiguration of layout, entrance, shopfront façade and design.

C2: Any alterations to the size and/or location of the existing part off licence area within the premises shall be the subject of a separate application for permission.

C3: The external signage above the entrance shall consist of individual lettering attached to the glazing. The lettering shall consist of a high quality

material, such as stainless steel, and shall not exceed 0.4m in height. Any illumination shall consist of backlighting only.

2095/17 – Permission REFUSED for alucobond panel strip and logo sign to façade, for reasons relating to bulk, design, and its projection over the existing footpath.

5.0 Policy Context

Dublin City Development Plan 2016-2022

5.1. The application site is located within land use zoning objective Z5, the objective for which 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.

5.2. Policy RD5:

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.

5.3. Section 16.28: Criteria to be applied when considering applications for off-licence premises or extensions to existing off-licence premises.

5.4. Moore Street is a Category 2 Shopping Street, where applications for retail service outlets, such as off-licences, will be assessed on their merits and may only be permitted where such development would not result in a predominance of such similar non-retail frontages on the street.

5.5. Natural Heritage Designations

The site is not located within or adjacent to a Natura 2000 site.

6.0 The Appeal

6.1. Grounds of Appeal

One third party appeal was received from Micheal Mac Donnchadha of Convent Avenue Dublin 3, which is summarised as follows:

- Dublin City Council failed to attach conditions to the permission in relation to the existing signage and unauthorised signage.
- Further conditions should have been attached by DCC to address the segregation of the off-licence from the rest of the store and a prohibition on the use of the self-service till for the sale of alcohol, as are in place in Aldi Parnell Street and Centra North King Street.
- There is a concentration of public drinking on the street around the Lidl premises. The applicant should be required to submit a proposal on how it plans to deal with the issue of its products being sold for consumption directly outside its premises which has an impact on the amenity of the area.
- The relocation of the entrance doors has not been proposed in consultation with the market trader whose stall is at the entrance.

6.2. Applicant Response

- The applicant highlights the development is for the relocation of the existing display area of the part off-licence, is not a new off-licence and they are not seeking to extend the existing off-licence. The alterations relate to relocation as a consequence of the permitted reconfiguration of the sales area, permitted under a separate application.
- Should this application not be permitted, it is noted that Lidl will continue to operate the part off-licence where it is currently located.
- The proposed location of the part off-licence is an improvement on the existing location and will be at a distance from the proposed entrance.
- Issues raised by the appellant in relation to signage and the entrance door are outside the scope of the permission and cannot be meaningfully considered

by An Bord Pleanala. These matters were addressed/permitted under Dublin City Planning Ref 2513/17.

- The issue of public drinking, self service till availability and segregation of off-licence area, are outside the scope of the permission and/or the planning system and cannot be meaningfully considered by the Board.
- The Board is requested to dismiss the appeal.

6.3. **Planning Authority Response**

- No further comment.

6.4. **Observations**

- Moore Street Traders Association comment that the application should be required to submit a proposal on how it plans to deal with its products being sold for consumption directly outside its premises and the immediate neighbourhood, which has a marked impact on the amenity of the Moore Street Market and the area, given anti-social behaviour of street drinkers, who are attracted to cheap alcohol in Aldi and Lidl. An Bord Pleanala to consider opening hours for sale of alcohol; alcohol should not be sold to persons under the influence of alcohol; staff must explain alcohol cannot be consumed within a certain metre area.
- Transport Infrastructure Ireland has no observations to make.

6.5. **Further Responses**

None.

7.0 **Assessment**

- 7.1. The application site is located within land use zoning objective Z5, the objective for which 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.

- 7.2. The applicant is applying for permission for alterations to existing ancillary off licence use including relocation of display area. This application is required by condition 2 of permission reg ref 2513/17, which states ‘any alterations to the size and/or location of the existing part off licence area within the premises shall be the subject of a separate application for permission’.
- 7.3. Following a site inspection, I note that the proposed relocation of the off-licence area, which is subject of this permission, has already been undertaken.
- 7.4. The primary issues for assessment include:
- Development Plan Policy
 - Impact on the Amenities of the Area

Development Plan Policy

- 7.5. 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.”
- 7.6. The applicant in their original submission to Dublin City Council stated that the applicants are not applying to increase the floor area of the off-licence but to relocate the existing permitted off-licence, therefore policies of the development plan are not applicable. It is stated the alcohol display area will remain at 79.3sqm, as illustrated in the enclosed drawings. In addition, it is stated that the actual area containing alcohol products, ie the shelving excluding aisle space, is smaller at 25.3sqm, compared to 20sqm existing. In addition, the part off-licence is/will be subject to a liquor licence. The applicant further notes, that while they do not consider the development policies are applicable to this application, the applicant is committed to responsible alcohol trading and has no objection to adhering to development plan standards in this regard relating to the advertising of alcohol and positioning of such off-licence areas away from the main windows/entrance to the shop, and note that the floor area for this use is less than 10% of the total floor area.

- 7.7. I note that the Planner's Report from Dublin City Council stated that this is an application for alterations to location of area for sale of alcohol, that is subsidiary to main retail use, and that as this application is required to comply with a condition of the recent grant of permission 2513/17, it would not be reasonable to apply full development plan criteria.
- 7.8. The description of development is for alterations to existing ancillary off-licence. I have measured the area of the existing and proposed sales area of the off-licence. The proposed area of floor space is stated by the applicant to be 79.3 sqm. I have measured the existing floor space as equating to c.49 sqm. The shelving area proposed is stated to be 25.3 sqm and the existing is stated to be 20sqm. The actual shelving area is increasing by 5sqm, while the floor area is increasing by 30sqm. It is clear that the display area will be increasing as a result of the alterations to existing ancillary off-licence and that Policy RD5, which relates to expansion of part off-licences, and section 16.28 of the development plan, do apply.
- 7.9. While the policy of the development plan has not been specifically adhered to in that a map of the existing off-licences in the area has not been provided, I have examined the proposal in relation to the existing location and context of the site within Dublin city centre and note the modest increase in floor area involved. I note that this is a long established use at this location, with the original supermarket use permitted in 2003/2004, and that such an ancillary use is an accepted offering within a supermarket. It is my opinion that the amenities of properties in the nearby residential areas will not be adversely affected given the long established nature of this ancillary use and given the modest floor area involved, and overall the proposal would not amount to an over-concentration of off-licence uses in the area.
- 7.10. I note the floor area of the part off-licence remains subsidiary to the main use of the shop, being less than 10% of the floor area. The relocated off-licence area will in my view be less visible from the revised entrance to the shop (reg ref 2513/17), being in an unobtrusive location away from the shop windows, and the relocation is overall considered acceptable. I note the applicant has no objection to the application of development plan standards in relation to advertising of alcohol on shop windows/entrance and I consider that a condition in accordance with the criteria set out in section 16.28 of the development plan, relating to grants of permission for off-licences, should be applied.

Impact on the Amenities of the Area

- 7.11. The appellant and observer have raised issues in relation to anti-social behaviour of on street drinkers who are attracted to cheap alcohol being sold in the off-licence. Additional conditions should have been attached by DCC to address the segregation of the off-licence from the rest of the store and a prohibition on the use of the self-service till for the sale of alcohol.
- 7.12. Issues relating to consumption of alcohol on Moore Street in proximity to the supermarket, and the permitted hours for sale of alcohol are outside the scope of An Bord Pleanala and are governed by separate legislation. I note the applicant has indicated that the self service tills cannot be used for the sale of alcohol without the assistant of a staff member.
- 7.13. I note the application is for the relocation of an existing part off-licence which is a permitted use within the existing supermarket and is ancillary to the main supermarket use. The increase in size of the display area is modest and will not in my opinion seriously impact in a significant way on the amenities of the area and will not result in an over concentration of such uses in the area to warrant a refusal.

Other Matters

- 7.14. The appellant has raised an issue in relation to the signage on the building and the location of the entrance door. I note that the applicant has not applied for permission in relation to signage or the entrance door as part of this application. Any unauthorised issues in relation to the existing signage are a matter for the Planning Authority and not An Bord Pleanala.

Appropriate Assessment

- 7.15. Having regard to the minor nature of the development, its location in a serviced urban area, and the separation distance to any 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.

8.0 Recommendation

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

9.0 Reasons and Considerations

- 9.1. Having regard to the Z5 zoning objective applicable to the site, to the existing pattern of development in the area and to the limited scale of the relocated part 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. The proposed development would, therefore, 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. (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.

Una O'Neill
Senior Planning Inspector

1st February 2018