



An
Bord
Pleanála

Inspector's Report ABP300682-18

Development	The development of an ancillary Off-Licence at an existing supermarket.
Location	Polonez Supermarket, Navan Town Centre, Navan, County Meath.
Planning Authority	Meath County Council.
Planning Authority Reg. Ref.	NA17/064.
Applicant	Tempside Limited.
Type of Application	Permission.
Planning Authority Decision	Refuse.
Type of Appeal	First Party -v- Refusal.
Appellant	Tempside Limited.
Observers	None.
Date of Site Inspection	2 nd May, 2018.
Inspector	Paul Caprani.

Contents

1.0 Introduction	3
2.0 Site Location and Description	3
3.0 Proposed Development	4
4.0 Planning Authority's Decision	4
4.1. Decision	4
4.2. Planning Authority's Assessment	5
5.0 Planning History.....	6
6.0 Grounds of Appeal.....	6
7.0 Appeal Responses.....	8
8.0 Development Plan Provision.....	8
9.0 Planning Assessment	8
9.3. Reason No. 1	9
9.4. Reason No. 2	11
10.0 Conclusions and Recommendation.....	12
11.0 Appropriate Assessment	12
12.0 Decision	12
13.0 Reasons and Considerations	12
14.0 Conditions	13

1.0 Introduction

Meath County Council issued notification to refuse planning permission for the development of a part off-licence use, ancillary to the main retail use at an existing supermarket premises located at the Navan Town Shopping Centre. Permission was refused on the grounds that the development would constitute proliferation of off-sales premises in the area, would be injurious to the vitality and viability of the town centre and would result in a degree of haphazard and illegal street parking.

2.0 Site Location and Description

- 2.1. The proposed off-licence is located within a small ethnic supermarket “Polonez” at ground floor adjacent to the main entrance and concourse leading to Navan Town Shopping Centre. The shopping centre is located in the northern environs of Navan Town Centre and is bounded by Abbey Road, Kennedy Road and Watergate Street. Access is provided off the Inner Relief Road (R147) which runs along the eastern and northern side of Navan town centre. The shopping centre accommodates over 50 retail units and commercial outlets with underground car parking.
- 2.2. The subject site is located at the north-western end of the shopping centre to the immediate west side of one of the main forecourt pedestrian entrances into the shopping centre. The supermarket is located in close proximity to the junction between Abbey Road and the R147 Inner Relief Road to the north. Other retail units in close proximity to the supermarket include Heatons Homeware and Argos.
- 2.3. The supermarket occupies an area of 238.4 square metres. It sells typical supermarket convenience goods including frozen food, fruit and veg and dairy products. It also sells a number of domestic household products including many ethnic and foreign brands. I noted during my site inspection that notwithstanding the fact that planning permission is sought for an off-licence counter within the supermarket that wine is currently for sale at this counter. Under the 2005 Planning and Development Regulations, the sale of wine for consumption off the premises is permitted as part of the use of a premises as a shop (Class 1). The off-licence counter is located to the rear of the supermarket directly opposite the entrance.

3.0 Proposed Development

The planning application form submitted with the application indicates that planning permission is sought for an off-licence use, incorporating the sale of beer and alcoholic spirits within the main retail use at the existing Polonez retail premises. The proposed off-licence facility is to be located where the current wine display is located, directly facing the store entrance. It occupies an area of 4 square metres according to the planning application form together with a counter area and till.

4.0 Planning Authority's Decision

4.1. Decision

Meath County Council issued notification to refuse planning permission for two reasons which are set out in full below:

- 1. Having regard to the proposed development in Navan Town Centre in close proximity to residential developments and the previous refusal on site for a take-away development and the introduction of this use to an existing retail premises which would be out of character with the pattern of development in the area, it is considered that to grant the proposed development planning permission would result in a proliferation of off-sales premises in the area, would depreciate the value of existing residential property and hence be inconsistent with policies and objectives in the Navan Development Plan 2009 – 2015 which seeks to encourage residential development in the town centre. Therefore, the proposed development would be injurious to the vitality and viability of the town centre area, would seriously injure the residential amenities of residents in the vicinity, would set an undesirable precedent for future development of this nature in the area and would be therefore contrary to the proper planning and sustainable development of the area.*
- 2. Having regard to the degree of haphazard illegal on-street parking in the area where double yellow lines exist and the nature of the proposed use allied to the significant shortfall of on-street car parking spaces to serve the area, it is considered that the proposed development would result in further on-street car parking as a result of car based journeys to the premises. The proposed*

development if permitted would therefore further exacerbate haphazard illegal on-street car parking interfering with the safety and free flow of traffic on the adjoining busy urban road and would endanger public safety by reason of a traffic hazard and be contrary to the proper planning and sustainable development of the area.

4.2. Planning Authority's Assessment

- 4.2.1. The planning application was lodged on 12th June, 2017. The proposal is being made under the terms of the Planning and Development Regulations 2005 which altered the definition of shops to preclude the sale of intoxicating liquor, except wine, without the benefit of a specific planning permission.
- 4.2.2. A third party observation was received, it objected to the proposed development on residential amenity grounds and also argued that the proposal is contrary to many of the policies and objectives contained in the Meath County Council Development Plan.
- 4.2.3. The initial planner's report requested additional information in relation to the following:
- It is noted following a site inspection that the subject site is being used for the display and sale of alcohol and it is considered that it might be more appropriate that an application of retention of planning permission be sought in this regard.
 - The applicant is also requested to address the concerns raised in the third - party submission.

Additional information was submitted on 15th August, 2017. Details of the history of the ownership is set out in the response. It is stated that the applicant has a bona fide interest in the property and has the consent of the landlord to make the application.

- 4.2.4. In relation to the existing alcohol display, it is stated that this display is for wines only as permitted under the Planning and Development Regulations 2005 and is therefore exempt within the retail use. The application is in respect of the sale of other alcoholic beverages (beer and spirits) as an ancillary activity to the retail use. There

is no requirement for retention in this instance. In relation to the issues raised in the third party observation, it is stated that there is a precedent for off-licence sales in Navan Town Centre and it is noted that several pubs also conduct off-licence sales. It is stated that the proposal will not constitute a late-night activity as off-sales cannot be made after 10 p.m. The proposal will not result in any noise nor result in any anti-social behaviour and the proposal will not alter the vitality and viability of the shopping centre.

4.2.5. A further planner's report dated 11th November, 2017 recommends that planning permission be granted subject to two conditions. However, a handwritten report at the end of planning report states that planning permission should be refused for reasons relating to:

- The planning history of the site inclusive of a previous refusal for a take-away.
- Concerns expressed by the Roads Design Section that the subject site is located on a section of road incorporating double yellow lines and therefore there is a potential for traffic hazard due to the likelihood of car based journeys to the premises and that the introduction of the use to the existing retail premises would be out of character with the pattern of development in the area and would impact on residential amenities. It is therefore considered that the proposal would be contrary to the Navan Development Plan which seeks to encourage residential development in the town centre.

4.2.6. Meath County Council issued notification to refuse planning permission on this basis for the reasons set out above.

5.0 Planning History

No history files are attached. The planner's report merely states that there are a number of invalid applications on this site relating to the proposed development.

6.0 Grounds of Appeal

6.1. The decision of Meath County Council to issue notification to refuse planning permission was the subject of a first party appeal by Simon Clear and Associates, Planning and Development Consultants, on behalf of the applicant.

- 6.2. It states that the premises is located in the central business district of Navan Town Centre and it's location is relatively remote from any residential development.
- 6.3. It is reiterated that the selling of wine comes within the definition of shop under the Planning and Development Regulations and as such is exempt from requiring planning permission. The applicant in this instance is to permit the applicant to display and sell spirits and beers.
- 6.4. The applicants will be ensuring that there will be full compliance with the display restrictions set out in the Public Health (Alcohol) Act 2014. It is noted that both the Executive and Senior Planner dealing with the application considered the proposed development to be acceptable in the context of the Meath County Development Plan and it would not negatively impact on the visual or residential amenities of the area.
- 6.5. The hand written note at the end of the Planning Report incorrectly referred to "the retention of change of use" of off-licence facilities.
- 6.6. Any reference to a previous refusal for a take-away facility on the site has no bearing on the current application. Take-away facilities are a different land use which would result in late night activity. The sale of alcohol from off-licences is restricted to 10p.m.
- 6.7. While concerns were expressed by the Roads Design Section of Meath County Council, it is queried whether the Road Engineers realised the nature and very limited extent of the proposed development which it is argued, could have no significant impact in terms of intensification of traffic and parking.
- 6.8. The proposed development is located in a purpose built new town centre area and as such the proposal would be fully in character with the pattern of development as it relates to an existing supermarket. The proposal will in no way make any alterations whatsoever to external features within the premises. There are no houses in the vicinity that could suffer depreciation due to the location of the development.
- 6.9. It is argued that the proposal will not change the nature and intensity of the existing development, would not affect residential amenities and would not discourage more people to live in the town centre as suggested in the reasons for refusal. There is no evidence that the sale of spirits and beer from a confined location from which wine products are already sold would generate any additional vehicular traffic. The application has been made to a Court at licensing for licencing purposes that planning permission exists for a non-wine retailing of alcohol from the premises. The

use would be clearly ancillary to the operation of the supermarket and would involve a very confined area. It is noted that other supermarkets within the town centre have off-licence facilities and there are numerous off-licence shops and premises within public houses that offer similar services.

- 6.10. Finally, it is stated that it is not the function of the planning system to interfere with normal commercial competition or to seek to regulate legitimate operations where those operations are controlled by other legislative codes.

7.0 Appeal Responses

A response from Meath County Council merely states that it is considered that the Board should confirm the refusal of planning permission and uphold the decision of the Planning Authority to refuse planning permission for the stated reasons.

8.0 Development Plan Provision

- 8.1. The subject site is governed by the policies and provisions contained in the Meath County Development Plan 2013 – 2019 and the Navan Development Plan 2009 – 2015 as amended. The subject site is located in an area zoned B1 for 'commercial/town centre uses' which seeks to protect, provide for and/or improve town centre facilities and uses.
- 8.2. The plan states that it is intended to accommodate the majority of new commercial and retail uses within lands identified for the B1 land use zoning objective. Convenience outlet, supermarket/superstore and shop are all permitted uses under the B1 land-use zoning objective.

9.0 Planning Assessment

- 9.1. I have read the entire contents of the file, visited the site and its surroundings and have had particular regard to both the Planning Authority's reasons for refusal and the grounds of appeal addressing these reasons. As part of my assessment I propose to evaluate the issues raised in each of the reasons set out in the Planning Authority's notification to refuse planning permission.
- 9.2. The first reason for refusal made reference to the following issues:

9.3. Reason No. 1

The Board will note from the section above in relation to site location and description that the small-scale convenience store to which the application relates is located in Navan Town Centre. Furthermore, it is located within a purpose built large retail shopping centre which accommodates no residential development. The nearest residential development in the vicinity is located a considerable distance away. The nearest residential development to the north is located on the opposite side of the inner relief route and the River Boyne approximately 600 metres away. The nearest dwellings to the east, face southwards onto the shopping centre at Abbey Road and are located in excess of 100 metres away. The nearest dwellinghouse to the south-west are located in excess of 300 metres away. I do not accept that the proposed development, having regard to a town centre location, and the nature and scale of the proposed development, will in no way have an adverse impact on residential development in the surrounding area.

The first reason for refusal also refers to the planning history of the appeal site and specifically that a planning application was refused planning permission for a take-away facility on the subject site. While no details of this planning application are contained on file, and no reference to any such application is made in the planner's report, I agree with the appellant that a take-away facility for the consumption of hot food off the premises is a very different land use proposal than what is proposed in this instance. A take-away facility would constitute a land use which could give rise to a number of issues in relation to amenity including noise and odour emissions and could also give rise to late night activity as most take-away premises operate until and beyond pub opening hours. The proposal in this instance seeks to incorporate a modest change of use in a small portion of the supermarket to facilitate the selling of beer and spirits in addition to the existing wine sales established within the premises. No changes are proposed to the opening hours of the existing supermarket.

Therefore, the planning authority's inference that the refusal of planning permission for a take-away facility forms an appropriate basis to refuse planning permission for the current application, is in my view without foundation as planning permission is sought for two very different developments.

The first reason for refusal also suggested the proposed development is out of character with the existing area. What is proposed in this instance is a change of use in a small portion of the existing supermarket to enable the selling of beer and spirits in addition to the selling of other convenience products including wine. The proposal represents a retail activity which is located within a purpose-built shopping centre which in turn is located within a town centre area where such retail including shops and supermarket are normally permitted under the town centre zoning objective. The proposal before the Board does not seek any alteration to the retail aspect of the proposed development but merely seeks to sell additional alcoholic products. The supermarket is located within a large retail shopping centre and the retail activity proposed is in my opinion no way inappropriate or out of character with the prevailing town centre uses in the area.

The grounds of appeal also state the proposed development is contrary to provisions in the development plan in that it will discourage residential development to locate in the town centre. Related to a point made above, the supermarket in question is incorporated in a small unit within an existing large town shopping centre. It is not in my view proposed nor is it appropriate that such a shopping centre would accommodate or facilitate residential use. I consider that there is no scope to provide residential development in any closer proximity to that which already exists in the surrounding area. As already noted there is no residential development within 100 metres of the existing supermarket and as such I do not consider will in any way impact or diminish the potential to encourage residential development within the wider area of Navan Town. In my view the selling of beer and other alcoholic beverages in addition to established wines sales, in no way exacerbates or accentuate any form of anti-social behaviour which would discourage or reduce the potential for residential development in the wider town area. I reiterate that the current supermarket sells wine and closes at 10 p.m. No changes to the opening times are proposed under the current application.

Rather than adversely impacting on the vitality and viability of the town centre, I consider the provision of additional products for sale within the existing supermarket will strengthen the retail base and will, if anything, add to the vitality and viability of the town centre in providing a wider range of products available for sale within the supermarket.

Finally, the first reason for refusal makes reference to the issue of undesirable precedent. The Board will note that public houses, restaurants and retail units are permitted uses under the city centre zoning objective. There already exists a large number of off-licenses in the town centre including off-licence facilities in supermarkets and pubs. In fact, the existing shopping centre accommodates a large Tesco where similar alcoholic beverages are for sale. In this regard I do not consider that it can be reasonably argued that the proposed development will set a precedent for similar type facilities.

9.4. **Reason No. 2**

9.5. With regard to the parking and traffic issues cited as a reason for refusal in Condition No. 2, I acknowledge that Abbey Street is a relatively busy street accommodating heavy volumes of traffic. Abbey Street provides access to approximately 1,500 underground car parking spaces associated with Navan Town Shopping Centre and also provides access to a large number of surface car parking spaces at the eastern end of Abbey Street. Double yellow lines are also incorporated along the alignment of Abbey Street prohibiting all customer parking. Having regard to the modest nature of the proposed development, I do not consider that it is reasonable to conclude that the proposed development will give rise to a material intensification in terms of trips to and from the supermarket. Furthermore, I consider that any trips made to the supermarket may not solely be for the purchase of additional alcoholic products but would be made to avail of a wider range of products within the supermarket. Therefore, it cannot be reasonably argued that the minor nature of the proposal will result in an intensification of use which is likely to generate significant levels of traffic which would in turn generate illegal on-street parking outside the site nor in my view would it accentuate or increase car based journeys specifically associated with the site. Parking is currently prohibited on the street in the vicinity of the site and this need to be strictly enforced. I therefore do not consider that the second reason for refusal is appropriate in this instance.

10.0 Conclusions and Recommendation

Arising from my assessment above I consider the proposed development to be acceptable and in accordance with the proper planning and sustainable development of the area. I consider the proposed development will strengthen the retail base within the town centre, will not give rise to any adverse impact on surrounding residential amenity nor will it exacerbate traffic and parking problems in the vicinity of the site. I therefore recommend that the decision of Meath County Council be overturned and planning permission be granted for the proposed development.

11.0 Appropriate Assessment

Having regard to the nature and scale of the proposed development and 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.

12.0 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.

13.0 Reasons and Considerations

Having regard to the B1 zoning objective in the current Navan Development Plan which seeks to protect and provide for and improve town centres facilities and uses, it is considered that the size and scale of the proposed off-licence use which is ancillary to the main retail use within the existing supermarket, that the proposed development 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.

14.0 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 plans and particulars received on 12th day of June, 2017 and on the 15th day of August 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. No advertisement or advertisement structure shall be erected or displayed on the building 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. No alteration to the opening hours of the existing supermarket on site shall occur without a prior grant of planning permission.

Reason: In the interest of orderly development.

Paul Caprani,
Senior Planning Inspector.

5th June, 2018.