



An  
Bord  
Pleanála

## Inspector's Report ABP-301022-18

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### Question

Whether the sale of 2%-6% proof liquor in an existing Retailers Off-Licence premises instead of and/or as well as 10%-14.5% proof liquor is or is not development or is or is not exempted development.

### Location

Knock, Lanesboro, Co. Longford.

### Declaration

Planning Authority

Longford County Council

Planning Authority Reg. Ref.

DC18/3

Applicant for Declaration

Michael Casserly.

Planning Authority Decision

Is not exempted development.

### Referral

Referred by

Michael Casserly.

Owner/ Occupier

Michael Casserly.

Observer(s)

None.

Date of Site Inspection

30<sup>th</sup> May 2018

Inspector

Patricia Calleary

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## 1.0 Site Location and Description

- 1.1. The referral site comprises a fuel station, forecourt and convenience shop and an agri-food premises at Knock in Lanesboro, County Longford. It fronts onto the R392, regional road to its southwest, opposite Lanesboro Community College. The shop operates under the Spar brand and retails convenience goods, including food and wine along with having a hot food deli.
- 1.2. The site is located within the existing development envelope of the town and is served by existing public infrastructure and facilities. It is bounded to the rear by a housing development, Church View, and by houses on either side (to the northwest and southeast).

## 2.0 The Question

- 2.1. The question that has been submitted in the referral is as follows:
  - Whether the sale of 2%-6% proof liquor in an existing Retailers Off-Licence premises instead of and/or as well as 10%-14.5% proof liquor is or is not development or is or is not exempted development.
- 2.2. For reasons of clarity, I recommend that the question is reworded as follows:
  - Whether the use of a shop for retail purposes including the sale of intoxicating liquor with an alcohol content of between 2% and 6%, other than wine, for consumption off the premises at Knock, Lanesboro, Co. Longford is or is not development or is or is not exempted development.

## 3.0 Planning Authority Declaration

### 3.1 Declaration

- 3.1.1. On 11<sup>th</sup> January 2018, a request for a declaration on the above question was received by Longford County Council from Liam Madden of Vitruvius Hibernicus, representing Michael Casserly, the stated owner of the premises and referrer in this

case. The request was accompanied by an A4 map showing an extract of the premises with the retail area coloured yellow and marked as 'existing off-licence in yellow'. The request was also accompanied by an extract from the Finance (1909-10) Act, 1910, which contains various definitions including definitions for 'wine' and 'beer'.

3.1.2. The declaration case stated that the referrer has in mind the intention to sell lighter ciders and ales on foot of his retailer's off-licence. It is the referrer's case that no works would be undertaken and that no change of use, material or otherwise would occur and accordingly that the proposal would not constitute development. Relying on the definition of wine contained in the Finance Act, the referrer stated their view that wine and beer are interchangeable.

3.1.3. On 6<sup>th</sup> February 2018, the Planning Authority issued their declaration under the Chief Executive's Order No. 27979. They decided that the proposed development is not exempted development as it would result in the expansion of the use of the existing shop beyond the definition set out in Article 5(1) of the Planning and Development Regulations 2001-2018.

### **3.2. Planning Authority Reports**

3.2.1. A summary of the contents of the Planning Officer's report is set out below.

- No evidence has been furnished by the individual seeking the declaration (the referrer in this case) that the referenced retailer's off-licence meets the criteria set out in Article 5(1) of the Planning and Development Regulations 2001-2018.
- It is therefore the opinion of the Planning Authority that the proposed sale of intoxicating liquor at the premises lies outside of the activity defined by Article 5(1) and therefore requires planning permission.
- Recommends that a declaration is issued clarifying that the proposal is therefore not exempted development.

## **4.0 Referral and Planning History**

### **4.1. Planning History**

4.1.1. The planning history for the development on the referral site is set out in the Planning Officer's report. The development was the subject matter of various planning applications, the earliest of these which sought permission for the redevelopment of an existing service station under Planning Register Ref: 99/715. The more recent planning applications which are relevant include the following:

- 11/62 – Planning application lodged (2011) by Mac Cass Ltd. for the partial change of use of existing shop as an off-licence, proposed canopy over existing fuel pumps, retention of front façade. This application was subsequently deemed withdrawn.
- 14/47 – Planning permission granted (2014) for the proposed construction of a canopy to service existing fuel dispensing pumps and ancillary siteworks.
- UNA 867 – As referenced in the Planning Officer's report, a warning letter was issued to the referrer, Michael Casserly of Mac Cass Ltd. requiring him to cease works on the site consisting of the unauthorised moving/replacing of petrol pumps and unauthorised works to the shop front / signage. The date of the warning letter is not stated.

## 4.2. Referral History

4.2.1. Based on a review of referrals decided by An Bord Pleanála, the following are considered to be of relevance to the Board in considering the current referral question.

- PL22.RL.2906 - An Bord Pleanála decided (2011) that the change of use of a premises from the use as a supermarket to include the sale of intoxicating liquor other than wine at east of Main Street, Roscrea, County Tipperary is development and is not exempted development.
- PL29S.RL2794 - An Bord Pleanála decided (2011) that the change of use of a premises from its permitted use as a public house and off-licence to use as a shop and to include the sale of intoxicating liquor other than wine at 130 Pearse Street, Dublin, is development and is not exempted development.

## 5.0 Policy Context

### 5.1. Development Plan

- 5.1.1. Longford County Development Plan 2015-2021 is the statutory development plan for the area. The site is currently within an area with a land use zoning 'Existing Residential'. Longford County Council prepared a variation (Proposed Variation No.4) which proposed a change of the land use zoning to 'Commercial/Residential'. At the time of finalising this inspectors report (22<sup>nd</sup> June 2018), the Council's website contains a note under this variation stating that the map is awaiting an update by the IT system to reflect amended adopted zoning.

## 6.0 The Referral

### 6.1. Referrer's Case

- 6.1.1. The declaration, which was in the first instance considered by Longford County Council, was referred to the Board for review by Liam Madden of Vitruvius Hibernicus, representing the owner and referrer in this case. The following points are put forward:

- Shop enjoys the benefit of a wine licence, which permits the sale of wine for consumption off the premises and provides details about the licence.
- Provides a definition of wine from the Finance (1909-10) Act, 1910, i.e. 'wine' means 'wine imported into Great Britain or Ireland'.
- States that as defined in the Finance (1909-10) Act, 1910, 'wine' can be a 'beer' and 'beer' can be a 'wine'.
- No change of use or intensification of use would occur, as there is no restriction on the volume, amount or strength of the alcohol which the referrer can sell.
- The sale of 5% proof alcohol (e.g. 5% proof Cider) does not constitute development.

- Should the Board consider the proposal constitutes development, then it is exempted development.

## 6.2. Planning Authority Response

- No response

## 7.0 Statutory Provisions

### 7.1. Planning and Development Act 2000, as amended.

#### 7.1.1. Section 2(1)

- “use”, in relation to land, does not include the use of the land by the carrying out of any works thereon.
- “works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.

#### 7.1.2. Section 3(1)

- “development” means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or **the making of any material change in the use** of any structures or other land. (Note: Inspectors emphasis in bold.)

#### 7.1.3. Section 4(2)(a)

- ‘The Minister may by regulations provide for any class of development to be exempted development for the purposes of this Act’ (summarised).

#### 7.1.4. Section 4(4)

- sets out that development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required.

## 7.2. Planning and Development Regulations 2001-2018

### 7.2.1. Article 5(1) includes a definition for a shop as follows:

7.2.2. “shop” means a structure used for any or all of the following purposes, where the sale, display or service is principally to visiting members of the public -

- (a) for the retail sale of goods,
  - (b) as a post office,
  - (c) for the sale of tickets or as a travel agency,
  - (d) for the sales of sandwiches or other food or **of wine for consumption off the premises, where the sale of such food or wine is subsidiary to the main retail use, and “wine” is defined as any intoxicating liquor which may be sold under a wine retailer’s off-licence (within the meaning of the Finance (1909-1910 Act, 1910), 10 Edw. 7. & 1 Geo. 5, c.8,**
  - (e) for hairdressing,
  - (f) for the display of goods for sale,
  - (g) for the hiring out of domestic or personal goods or articles,
  - (h) as a launderette or dry cleaners,
  - (i) for the reception of goods to be washed, cleaned or repaired,
- but does not include any use associated with the provision of funeral services or as a funeral home, or as a hotel, a restaurant or a public house, or for the sale of hot food or intoxicating liquor for consumption off the premises except under paragraph (d), or any use to which Class 2 or 3 of Part 4 of Schedule 2 applies’.
- (Note: Inspectors emphasis in bold).

### 7.2.3. Article 6 – Exempted Development

- Article 6(1) of the Regulations provides that subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.



#### 7.2.4. Article 9 – Restriction on Exemption

- Article 9(1) of the Regulations provides that exempted development under article 6 of Regulations shall not be exempted development in certain specified circumstances.

### 7.3. **Finance Acts**

#### 7.3.1. Finance (1909-10) Act, 1910

This Act is referenced in Article 5(1) of the Planning and Development Regulations in providing a definition of a “shop”. Section 52 provides definitions including the following:

- The expression “beer” includes ale, porter, spruce beer, black beer, and any other description of beer, and any liquor which is made or sold as a description of beer or as a substitute for beer, and which on analysis of a sample thereof at any time is found to contain more than two per cent of proof spirit;
- The expression “wine” means wine imported into Great Britain or Ireland

#### 7.3.2. Finance Act 2003

Section 73 provides definitions including for beer and wine as follows:

- “beer”, subject to section 74, means— (a) beer made from malt, and (b) any beverage containing a mixture of such beer with any non-alcoholic beverage, in either case exceeding 0.5% vol;
- “wine”, subject to section 74, means any beverage exceeding 1.2% vol the alcoholic content of which is entirely of fermented origin:
  - (a) obtained from the total or partial fermentation of grapes or the must of fresh grapes,
  - (b) not exceeding 15% vol, or in the case of still wine produced without enrichment, not exceeding 18% vol, and includes such wine flavoured with plants or aromatic extracts and grape must in fermentation or with fermentation prevented or arrested otherwise than by the addition of spirits.

Section 74 of the Finance Act 2003 provides qualification to meanings given to certain alcohol products including:

- Only a produce which is classified -
  - (a) under CN Code 2203, or which is a mixture of such product with any non-alcoholic drink covered by CN Code 2206, is beer,
  - (b) under CN Code 2204 or 2205, is wine,
  - (c) under CN Code 2204, 2205 or 2206, is an other fermented beverage or intermediate beverage.

## 8.0 Assessment

### 8.1. Is or is not development

8.1.1. The question that has arisen in the referral (as reworded) is as follows:

- Whether the use of a shop for retail purposes including the sale of intoxicating liquor with an alcohol content of between 2% and 6%, other than wine, for consumption off the premises at Knock, Lanesboro, Co. Longford is or is not development or is or is not exempted development.

8.1.2. Based on a review of the planning history, there is no reference to the sale of wine or any other intoxicating liquor on any planning permission granted. On the day of my site inspection, I noted that the only intoxicating liquor currently being sold from the store was wine.

8.1.3. The definition of a 'shop', as set out in Article 5(1) the Planning and Development Regulations 2001-2018, refers specifically to the sale, display or service which is principally to visiting members of the public. It is this definition which is considered of most relevance in deciding this referral. It is of note that the Regulations were amended under SI:364/2005 – Planning and Development Regulations 2005 to provide that a shop changing its use to an off-licence would require planning permission. Under paragraph (d) of Article 5(1), the definition of a 'shop' includes the sale of wine where it is subsidiary to the main retail use but not the sale of any intoxicating liquor other than wine. Under paragraph (i), the definition of a 'shop' also

sets out that it does not include the sale of intoxicating liquor for consumption off the premises except under paragraph (d).

- 8.1.4. Having regard to the foregoing, it can be concluded that the only alcohol that is permitted to be sold within a shop as is defined under Article 5(1) of the Regulations is that which can be sold under a wine retailer's off-license. Wine is defined in the Finance Acts, which I have detailed under Section 7.3 of my assessment above. Any other intoxicating liquor to be sold is considered to represent a material departure from the provisions in Article 5(1) of the Regulations resulting in a change of use which is material and which is therefore development within the meaning of the Planning and Development Act 2000, as amended.

## **8.2. Is or is not exempted development**

- 8.2.1. Following on from my conclusion that the proposal would constitute 'development' by virtue of it resulting in a change of use, it is necessary to consider the question as to whether or not the development would constitute exempted development within the meaning of the planning legislation. There is no exemption for this change of use, as the alcohol which would be sold would include intoxicating liquor which falls outside the terms of the use class set out under Article 5(1) of the Planning and Development Regulations 2001-2018 included in the definition for a shop under the same Article. Neither is the change of use afforded any other exemption in planning legislation. As it stands, the definition of a 'shop' allows for the sale of wine, but not for the sale of other intoxicating liquor. The change of use proposed such as would result in the use of a shop for retail purposes including the sale of intoxicating liquor with an alcohol content of between 2% and 6%, other than wine, for consumption off the premises cannot be considered 'exempted development' within the meaning of the Act.

## **8.3. Restrictions on exempted development**

- 8.3.1. As I have considered that the proposal constitutes development which is not exempted development, consideration of restrictions on exempted development is not relevant.

#### 8.4. Environmental Impact Assessment and Appropriate Assessment

- 8.4.1. Section 4(4) of the Act sets out that development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required.
- 8.4.2. Notwithstanding that the change of use would not constitute exempted development, I am satisfied that the development (change of use) would not give rise to any significant environmental effects and would not therefore require Environmental Impact Assessment. I am equally satisfied that 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.

#### 9.0 Recommendation

- 9.1. I recommend that the Board should decide this referral in accordance with the following draft order.

**WHEREAS** a question has arisen as to whether the use of a shop for retail purposes including the sale of intoxicating liquor with an alcohol content of between 2% and 6%, other than wine, for consumption off the premises at Knock, Lanesboro, Co. Longford is or is not development or is or is not exempted development.

**AND WHEREAS** Michael Casserly requested a declaration on this question from Longford County Council and the Council issued a declaration on the 6<sup>th</sup> day of February 2018 stating that the matter is development and is not exempted development:

**AND WHEREAS** Michael Casserly referred this declaration for review to An Bord Pleanála on the 23<sup>rd</sup> day of February 2018:

**AND WHEREAS** An Bord Pleanála, in considering this referral, had regard

particularly to –

- (a) Section 2, 3 and 4 of the Planning and Development Act 2000, as amended,
- (b) Articles 5, 6 and 9 of the Planning and Development Regulations 2001-2018,
- (c) the submissions made in connection with the referral and
- (d) the planning history of the site:

**AND WHEREAS** An Bord Pleanála has concluded that:

- (a) the use of a shop for retail purposes including the sale of intoxicating liquor with an alcohol content of between 2% and 6% (other than wine), for consumption off the premises constitutes a change of use which is considered to be a material change of use and is, therefore, development,
- (b) The definition of ‘shop’ as set out in Article 5(1) of the Planning and Development Regulations 2001-2018, does not include a use associated with the sale of intoxicating liquor other than wine, and,
- (c) therefore, the change of use including the sale of intoxicating liquor with an alcohol content of between 2% and 6% (other than wine) for consumption off the premises is not exempted development, as the use does not come within the scope of any of the uses allowed within the definition of a ‘shop’ under the Planning and Development Regulations 2001-2018 and is not afforded any other exemption in planning legislation.

**NOW THEREFORE** An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3) (a) of the Planning and Development Act 2000, as amended, hereby decides that the use of a shop for retail purposes including the sale of intoxicating liquor with an alcohol content of between

2% and 6%, other than wine, for consumption off the premises at Knock, Lanesboro, Co. Longford is development and is not exempted development.

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Patricia Calleary  
Senior Planning Inspector

19<sup>th</sup> June 2018