



An  
Bord  
Pleanála

## Inspector's Report ABP-302218-18

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<b>Development</b>	Planning permission for part off-licence in existing ground floor retail unit.
<b>Location</b>	Unit 1, The Timber Mill, Kilmore Road, Artane, Dublin 5
<b>Planning Authority</b>	Dublin City Council North
<b>Planning Authority Reg. Ref.</b>	2965/18
<b>Applicant(s)</b>	Polo Stores Limited
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse Permission
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Polo Stores Limited
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	10 <sup>th</sup> October 2018
<b>Inspector</b>	Donal Donnelly

## 1.0 Site Location and Description

- 1.1. The appeal site is located off Kilmore Road in Artane approximately 5km north-east of Dublin city centre. Kilmore Road provides access off Malahide Road (R107) to Artane Castle Shopping Centre and Booterly Business Park. To the south of the business park and to the east of the shopping centre on the opposite side of Kilmore Road is the Timber Mill mixed use development. The appeal site comprises a ground floor retail unit within this development.
- 1.2. The retail unit is one of approximately six units at the ground level of a 4-storey block facing Kilmore Road, most of which were vacant at the time of my site visit. The subject unit comprises an ethnic food and convenience store occupying the south-eastern ground floor corner of the block. There are apartments on the upper floors of the block. The stated site area of the unit is 257 sq.m.

## 2.0 Proposed Development

- 2.1. Planning permission is sought for a part off-licence within the existing ground floor retail unit. The area of the proposed works is given as 7 sq.m.

## 3.0 Planning Authority Decision

### 3.1. Decision

- 3.1.1. Dublin City Council issued notification of decision to refuse permission for the following reason:

*“The application site is located within an area zoned Z1 ‘Sustainable Residential Neighbourhoods’ with the objective – ‘to protect and improve residential amenities’ as indicated on Map B of the Dublin City Development Plan 2016-2022, this objective is considered reasonable. The proposed part off-licence use is not permissible in principle under the ‘Z1’ zoning objective. The proposed development would, therefore, contravene materially a development objective indicated in the development plan for the zoning of land and be contrary to the proper planning and sustainable development of the area.”*

### 3.2. Planning Authority Reports

- 3.2.1. The recommendation to refuse permission in the Planner's Report reflects the decision of the Planning Authority.
- 3.2.2. The main points raised under the assessment of the proposal are as follows:
- Site and complex zoned Z6 under the previous Development Plan.
  - Off-licence floor area at under 5% is below Development Plan's 10% maximum total floor area.
  - Subject locations for off-sales are set back from the main doorway and are not placed up against any window.
  - Survey of off-licences within 1km includes Tesco at Artane Castle and Lidl within the Butterly Business Park.

### 4.0 Planning History

Dublin City Council Reg. Ref: 3829/99 (PL29N.119711)

- 4.1. Permission granted for 140 no. residential units and a call centre.

Dublin City Council Reg. Ref: 1140/02

- 4.2. Permission granted for revisions to the above development to include erection of 2, 3 and 4 storey blocks containing 193 no. apartments, 3 no. enterprise units, a crèche and community centre.

Dublin City Council Reg. Ref: 2062/04

- 4.3. Permission granted for revisions to the above permission to include replacement of 3 no. enterprise units and community centre with retail units comprising a convenience store, restaurant, dry cleaners and pharmacy.

Dublin City Council Reg. Ref: 2619/13

- 4.4. Permission granted for change of use of ground floor units from 4 no. live work units to 2 no. neighbourhood shop units (west of appeal site).

- 4.5. Permission granted for amalgamation of two ground floor units to create a single unit to be used as a hardware store (immediately west of appeal site).

## 5.0 Policy Context

### 5.1. Dublin City Development Plan, 2016-2022

- 5.1.1. The appeal site is zoned “Z1” where the objective is “*to protect, provide and improve residential amenities.*” Off-licences and part off-licences are not listed as being a ‘permissible use’ or ‘open for consideration’ under this zoning objective.
- 5.1.2. Development standards for off-licences and part off-licences are set out in Section 16.28 of the Development Plan.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

- 6.1.1. The grounds of appeal and main points raised in the first party appeal are summarised as follows:
- Polo Stores specifically caters for ethnic minorities, mainly from European origin.
  - Majority of customers travel to Polo Store outlets from further afield and very few are from the local housing community.
  - Applicants propose to expand their product range by also selling ethnic alcohol beverages.
  - Proposed use is ancillary to main supermarket use - this use is ‘open for consideration’ under the zoning objective (*sic*).
  - There is only one off-licence and four part off-licences within 1km of the site. There are no premises serving ethnic alcohol. Only the off-licence openly promotes the sale of alcohol.
  - Development Plan does not indicate the number of off-licences allowed.

- Number of off-licences in the area is actually quite low considering the location within area of high commercial activity.
- Amenities of nearby residents will be unaffected.
- Floor area represent 5% of total floor area and no alcohol will be visible through shop windows.
- Spirits and wines will be sold from behind the counter to reduce potential for shoplifting.
- Applicant happy to be conditioned to limit display area and to not advertise on the façade/ frontage or near windows.
- Proposal will conform with the Code of Practice of the Responsible Retailers of Alcohol in Ireland.

## 6.2. Planning Authority Response

6.2.1. No response.

## 7.0 Assessment

7.1. The appeal site is zoned “Z1” where the objective is *“to protect and improve residential amenities.”* Dublin City Council stated in its reason for refusal that the proposed part off-licence is not permissible in principle under this zoning objective and would therefore materially contravene a development objective indicated in the Development Plan.

7.2. The appeal relates to an area of 7 sq.m. which represents 5% of the total floor area of the convenience shop. This shop already sells wine in compliance with the definition of a “shop” within the Planning and Development Regulations, 2001 (as amended), which *inter alia* allows *“for the sale 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”*. Planning permission, however, is required for the sale of beers and spirits notwithstanding the existing presence of alcohol sales and the size of the proposed off-sales area in question.

- 7.3. The convenience store subject of this appeal sells products mainly of eastern European origin. It is submitted within the first party appeal that the applicant proposes to expand their product range by also selling ethnic alcohol beverages. The majority of customers travel to this shop from further afield and it is stated that very few are from the local housing community. Therefore, it is considered that the proposed development will not affect the amenities of nearby residents.
- 7.4. Criteria for assessing the acceptability of otherwise of a proposed off-licence or part off-licence development are set out in Section 16.28 of the Development Plan. In addition, 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.”*
- 7.5. The applicant submits that there is only one off-licence and four part off-licences within 1km of the site, none of which sell ethnic alcohol. In this case, however, the zoning for the site does not allow for off-licences or part offices. It is stated in the Development Plan that uses not listed under the ‘permissible’ or ‘open for consideration’ categories will be deemed not to be permissible uses in principle in zones Z1 and other named zones.
- 7.6. Having regard to the above, I would be in agreement with the Planning Authority that the proposed use contravenes the “Z1” zoning objective for this site.

## 8.0 Recommendation

- 8.1. I recommend that planning permission should be refused for the reasons and considerations as set out below.

## 9.0 Reasons and Considerations

The appeal site is located in an area zoned “Z1” in the Dublin City Development Plan 2016-2022, where the objective is *“to protect and improve residential amenities”*.

This objective is considered reasonable. Off-licences and part off-licence are not listed as permissible uses or uses that are open for consideration under this zoning objective. Such uses not listed under these categories are deemed in the Development Plan to be not permissible in principle in Z1 zones. The proposed development would, therefore, contravene an objective of the Development Plan and would be contrary to the proper planning and sustainable development of the area.

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Donal Donnelly  
Planning Inspector

2<sup>nd</sup> November 2018