



An
Bord
Pleanála

Inspector's Report ABP 302476-18.

Development	Change of use to an Off-license.
Location	Kilmacduane West, Cooraclare, Co. Clare.
Planning Authority	Clare County Council
P. A. Reg. Ref.	18/494
Applicant	Lamikado Ltd..
Type of Application	Permission
Decision	Grant Permission
Type of Appeal	Third Party
Appellant	Anne Tubridy.
Date of Site Inspection	23 rd October, 2018.
Inspector	Jane Dennehy

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1.0 Site Location and Description

The site of the proposed development is that of an existing filling station and convenience store with a forecourt located at the northern end of the village of Cooraclare which is on the R 483 and to the north east of Kilrush.

2.0 Proposed Development

The application lodged with the planning authority indicates proposals for change of use of interior sales space within the retail unit to use as an off-license development. The stated floor area for the proposed change of use is 9.91 square meters.

It is stated on the application form that the hours of operation are to be 10-30 am to 10.00 pm Mondays to Saturday inclusive and 12.30 pm to 10.00 pm Sundays.

3.0 Planning Authority Decision

3.1. Decision

By order dated, 10th August, 2018 the planning authority decided to grant permission subject to two conditions. Condition No 2 restricts access solely to the sales area to a route through the internal retailing space within the existing shop, restricts the hours of operation to the hours of operation and the sales areas indicated to those indicated in the application form and accompanying plans and does not permit advertising displays on the forecourt.

3.2. Planning Authority Reports

Planning Reports

The planning officer indicated satisfaction with the proposed development subject to conditions which include the requirements of Condition No 2 attached to the decision to grant permission. The planning officer notes that the existing development is “long established” and considers the proposal in the context of the existing filling station and associated retail services. He remarks that the proposed off-license use is not a

stand-alone office license use and considers the proposal to be appropriate in scale for the existing retail outlet and that there are no implications for traffic convenience and safety.

3.3. Third Party Observations

The appellant and two other parties submitted observations to the planning authority indicating concerns as to potential for the proposed development to cause anti-social behaviour in the village.

4.0 Planning History

According to the planning officer report, permission was originally granted for a building subdivided into four shop units, a fast food outlet, filling station (with canopy) septic tank and change of use of a shed to a hardware centre at the site location in the village under P. A. Reg. Ref. 95/392.

5.0 Policy Context

5.1. Development Plan

The operative development plan is the Clare County Development Plan, 2017-2023 according to which Cooraclare is designed as a “Large Village” within the settlement hierarchy. For Large Villages the policy objective is to maintain existing population levels and services and to ensure future growth which is balanced and sustainable and appropriate to the scale size and character of the settlement.

According to the Cooraclare Settlement Plan, the site location is subject to the zoning objective: “existing residential: *“to conserve and enhance the quality and character of areas, protect residential amenity, and allow for appropriate small-scale infill development”*”.

6.0 The Appeal

6.1. Grounds of Appeal

An appeal was received from Anne Tubridy of Cooraclare village on her own behalf on 30th August, 2018. According to the appeal:

- There are discrepancies in relation to the site notices which was displayed at the supermarket's front wall rather than the roadside position as specified on the site layout plan. The notice was not visible from the public road.
- The proposed location for the off license, within the supermarket is adjacent the rear entrance from the carpark. This is in violation of the Code of Practice for Responsible Retailing of Alcohol. According to which alcohol products should be displayed as far as possible in a part of the premises through which customers have to pass to access beverages of food. It is also in breach of the provisions in the Public Health Alcohol Bill before the Oireachtas. This bill provides for separation of areas in mixed trading outlets in which alcohol can be sold.
- There are three off license premises serving Cooraclare which are a more than capable of servicing the village. There has so far been no anti-social behaviour in the village whereas the proposed development which increases the presence of off licenses could change this.

6.2. Applicant Response

A submission was received from McCarthy, Keville O'Sullivan on behalf of the applicant on 3rd October, 2018 according to which:

- Contrary to the contention of the appellant, the public notice which was deemed satisfactory by the planning officer, was visible from the public road.
- The proposed off-license with the floor area of 9.9 square metres is not a stand-alone development but is ancillary and subsidiary to the long-established use as a shop and it will be enclosed by partitions and delineated

and confined to the space which will have a door indicated on the plans, at the rear of the shop floor. The proposed development is of a nature and scale complementing the existing retail sales. The Code of Practice for Responsible Retailing of Alcohol will not be violated and there is no conflict with the Public Health Alcohol Bill.

- There is no documentary evidence in the appeal to support the claim that the proposed development has potential to cause consumption of alcohol on the street and anti-social behaviour in Cooraclare.
- The location is appropriate for the proposed development. The planning officer indicated satisfaction that the proposal accords with the planning policies and objectives for the area and that it would not adversely affect amenities of property or traffic safety and convenience.
- It is requested that the decision to grant permission be upheld.

6.3. Planning Authority Response

In a letter received from the planning authority on 3rd October, 2018, it is confirmed that the planning authority was satisfied with the display of the public notice having regard to Article 19 of the Planning and Development Regulations, 2001 as amended (PDR) and it is requested the decision to grant permission be upheld.

7.0 Assessment

- 7.1. The appellant has stated that she considers that the display of the public notices did not satisfy the requirements of Article 19 of the PDR. but both the applicant and planning officer reject this claim. However, it is a matter to be resolved with the planning authority should the appellant consider the validity of the application to questionable in this regard.

- 7.2. In the appeal it is also contended that the proposed development would be in breach of the *Code of Practice for Responsible Retailing of Alcohol* and the provisions in the *Public Health Alcohol Bill 2017* which is before the Houses of the Oireachtas. However, it is not a matter for the planning authority or An Bord Pleanala, following appeal to adjudicate on compliance with separate legislative codes.
- 7.3. The appellant considers that the village has sufficient off license facilities and that the proposed development is unwarranted. She also considers that the proposed development would cause anti-social behaviour in the village and there would be a separate entrance via the rear entrance to the existing retail unit.
- 8.0 The proposed off license use, which is to comprise part of the retail offer in the existing retail unit is to be confined to a small dedicated space at the rear of the existing shop. An internal door to this dedicated space for the off license is to be installed according to the applicant' s submissions.
- 9.0 The convenience store building has a rear entrance door and a full-length window on the south side elevation towards the rear corner of the building. The internal space at the back of the store adjacent to these entrances is in ancillary use and is not accessible to the public. The lodged plans show the proposed dedicated space for the off license in an area to which there is no potential direct external access.
- 10.0 It is considered that the statement in the appeal that the proposed development, if permitted would cause significant anti-social behaviour within the village which would affect the amenities of the village environment is not persuasive.

10.1. **Environmental Impact Assessment Screening.**

Having regard to the minor nature of the proposed development and its location in a serviced urban area, removed from any sensitive locations or features, there is no real likelihood of significant effects on the environment. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

10.2. **Appropriate Assessment.**

10.2.1. Having regard to the minor scale and nature of the proposed development and the location within an existing serviced building within the village no Appropriate Assessment issues arise. The proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

11.0 **Recommendation**

11.1. In view of the foregoing, it is recommended that the planning authority decision to grant permission be upheld and that the appeal be rejected. Draft reasons and considerations and conditions follow:

12.0 **Reasons and Considerations**

Having regard to the limited size of space within the interior of the existing convenience store which is to be allocated to the proposed office license use and to the site location within the village of Cooraclare, it is considered that subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area and would be in accordance with the proper planning and sustainable development of the area.

13.0 **Conditions**

1. The development shall be carried out and completed in accordance with the plans and lodged with the application except as may otherwise be required 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. The off-license use which shall not exceed ten square metres in total floor area shall be confined to the dedicated space within the interior of the existing convenience store, shown on the floor plan lodged with the planning authority. The off-license use shall not be operated separately or independently from or, outside the hours of opening of the main convenience store use and not after 10.00 pm at night.

Reason: In the interest of clarity, and the amenities of the area.

Jane Dennehy
Senior Planning Inspector
28th November, 2018.