



An
Bord
Pleanála

Inspector's Report ABP-302911-18

Development	Change of use of part of supermarket retail floorspace to off-licence
Location	Spar, Block A1, Shanowen Square, Shanowen Road, Dublin 9
Planning Authority	Dublin City Council
Planning Authority Reg. Ref.	3714/18
Applicant(s)	Ronan O'Caoimh & Roisin O'Boyle
Type of Application	Permission
Planning Authority Decision	Refuse
Type of Appeal	Third-Party
Appellant(s)	Ronan O'Caoimh & Roisin O'Boyle
Observer(s)	None
Date of Site Inspection	8 th January 2019
Inspector	Colm McLoughlin

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1.0 Site Location and Description

- 1.1. The appeal site occupies part of the ground floor of a three-storey building (Block A1) on the northern side of Shanowen Square, a gated-student residence in Santry, approximately 4.5km north of Dublin city centre. The site is accessed off Collins Avenue, close to the entrance to Dublin City University (DCU).
- 1.2. It contains a ground-floor convenience shop, with a stated gross floor area (GFA) of 250sq.m, including ancillary storage and staff areas to the rear. Service access to the ancillary rear storage area is available via a staffed and gated entrance along the west side of Block A1. On-street car parking is available to the front along Shanowen Road, where cycle parking stands are also available on a paved area.
- 1.3. The two upper floors directly above the appeal site are used as residential accommodation for students and there is a self-service laundry facility adjoining the store to the rear. The immediate area is characterised by residential uses, including student residences at Shanowen Halls to the east and two-storey semi-detached housing fronting onto Collins Avenue, Shanowen Avenue and Shanowen Road to the south, west and north respectively.

2.0 Proposed Development

- 2.1. The proposed development comprises the following:
 - part change of use of existing convenience shop floor area, measuring a stated net floor area of 18sq.m, to off-licence area and associated internal alterations. The off-licence sales area would be in two separate areas within the shop, one area would comprise part of the aisle furthest (11m) from the main entrance doors and the other area would be to the rear of the checkout tills.
- 2.2. In addition to the standard planning application documentation and drawings, the application was accompanied by a Planning Report and a map identifying licenced alcohol vendors within approximately 1km of the site.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. The Planning Authority decided to refuse permission for the following reason only:

- ‘The subject site is located in an area with the zoning objective Z1 ‘Sustainable Residential Neighbourhoods’ with the landuse objective ‘to protect, provide and improve residential amenities’ under the Dublin City Development Plan 2016 – 2022. The proposed part off-licence use is not permissible in principle or open for consideration under the Z1 zoning objective. The proposed development would contravene materially a development objective indicated in the development plan for the zoning of land and would, therefore, be contrary to the proper planning and sustainable development of the area’.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report of the Planning Officer (September 2018) noted the following:

- an over-concentration of off-licences in the surrounding area has not occurred;
- off-licences less than 10% the total store area are generally acceptable;
- an off-licence use is not a compatible land-use on ‘Z1 - Sustainable Residential Neighbourhoods’.

3.2.2. Other Technical Reports

- Engineering Department (Drainage Division) - no objection subject to conditions.

3.3. Prescribed Bodies

- Irish Water – no response.

3.4. Third-Party Submissions

3.4.1. Four submissions were received during consideration of the application, two each from local residents and local-elected representatives, and the issues raised can be summarised as follows:

- increased traffic and littering in the area;
- potential for increased anti-social behaviour associated with students residing in Shanowen Square;
- sufficient provision of off-licences existing in the area.

4.0 Planning History

4.1. Appeal Site

4.1.1. The following planning applications relate to the appeal site:

- Dublin City Council (DCC) Ref. 2841/17 – Permission granted (August 2017) for a single-storey front extension (46sq.m) and a revised shopfront along Shanowen Road;
- DCC Ref. 3557/04 – Permission granted (September 2005) for an extension measuring c.115sq.m to the permitted tuck shop unit (c.72sq.m) to provide a GFA of 187sq.m, a set down bay and four additional car parking spaces;
- DCC Ref. 5940/04 – Permission granted (March 2005) for revisions to the shopfront;
- DCC Ref. 4734/03 – Permission granted (February 2004) for the demolition of industrial warehouses and construction of a student residential development consisting of 88 apartments arranged in four blocks of three to four storeys with 107 number surface car parking spaces, a security / management office (13sq.m), a caretaker's apartment (50sqm), a communal laundry facility (21sq.m), a tuck shop (72sq.m), a seminar room (21sq.m), bicycle storage areas, recycle centre (85sq.m), electricity substation (21sq.m) and all associated site and landscaping works. Leave to appeal the Planning Authority's decision was refused under ABP Ref. PL29N.LV.2181.

4.2. Surrounding Sites

4.2.1. Reflective of the suburban residential location, there have been numerous recent planning applications for development on neighbouring residential properties. The following neighbouring off-licence application is also before the Board for a decision:

- DCC Ref. 2922/18 – Application for the provision of an off-licence area to a convenience store c.400m to the south within DCU campus that was permitted by the Planning Authority in October 2018 and subsequently appealed to the Board (under Ref. ABP-302867-18).

5.0 Policy & Context

5.1. Development Plan

5.1.1. The appeal site is situated in an area identified within the Dublin City Development Plan 2016-2022 as having a land-use zoning objective 'Z1 - Sustainable Residential Neighbourhoods', with a stated objective 'to protect, provide and improve residential amenities'. An off-licence use is not listed in the Development Plan as a use that is 'permissible' or 'open for consideration' on lands zoned 'Z1'. Section 14.4 of the Development Plan sets out that uses not listed as being 'permissible' or 'open for consideration' in zones Z1, Z2, Z8, Z9, Z11 and Z15, will be deemed 'not to be permissible' uses in principle.

5.1.2. Policy RD5 of the Development Plan prohibits an overconcentration of off-licences in any one area of the city. Section 16.28 of the Development Plan refers to the criteria to be applied when considering applications for off-licences and part off-licences, while also setting out signage and display restrictions to be applied when permitting off-licences and part off-licences. The Development Plan also recommends conditions limiting display and advertising of alcohol products as part of permissions for off-licences.

5.2. Environmental Impact Assessment - Preliminary Examination

5.2.1. Having regard to the existing development on site, the nature and scale of the proposed development and the location of the site, there is no real likelihood of

significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. The principal grounds of the first-party appeal can be summarised as follows:

- correspondence is attached from the current store operator addressing concerns raised regarding anti-social behaviour and setting out that the decision to apply for an off-licence element to the shop was undertaken following customer feedback and other detailed considerations;
- proposals would not impact on surrounding residential amenities;
- the sale of wine for consumption off the premises from the existing shop has taken place since 2006 and no issues of sales to minors has arisen;
- a convenience store is a permissible use in a Z1 zoning, while an off-licence is not explicitly addressed as being a permissible or an open for consideration use in a Z1 zoning;
- the previously permitted extension (46sq.m) extending the convenience store to 210sq.m, would be undertaken prior to introducing the off-licence facility (18sq.m). The proposed off-licence would therefore only occupy 9% of the floor area and would be subsidiary to the convenience retail use;
- there are ten off-licences operating within 1km of the site, none of which are within 650m of the appeal site. Two of these off-licences are in supermarkets (Tesco and M&S), four are part of convenience stores, three are part of public houses and one is a dedicated off-licence;
- the Planning Authority considered that an overconcentration of off-licences does not exist in the area and this highlights the demand for an off-licence service in the area serving a sizeable population;

- the location and display of alcohol would not be obtrusive and the applicant would be agreeable to conditions restricting advertising and display of alcohol products.

6.2. Planning Authority Response

6.2.1. The Planning Authority did not respond to the grounds of appeal.

6.3. Observations

6.3.1. None received.

7.0 Assessment

7.1. Introduction

7.1.1. The proposed development would entail the introduction of a part off-licence use (18sq.m) to an existing convenience shop (210sq.m). Based on the information provided by the applicant and my review of the area, which identifies that the closest existing off-licence in the area is over 650m from the appeal site, I am satisfied that the proposed development would not be contrary to Objective RD5 of the Development Plan, which aims to prohibit an overconcentration of off-licence facilities in any part of the city. Furthermore, I am satisfied that the part off-licence would be in compliance with development standards outlined in the Dublin City Development Plan 2016-2022, including the 10% floor area restriction and the proposed internal layout of the facility. Concerns raised in submissions to the Planning Authority relating to anti-social behaviour are problems that are required to be addressed outside of the planning system, as part of licencing. Consequently, I consider the substantive issues arising from the grounds of appeal and in the assessment of the application and appeal relate to planning policy.

7.2. Planning Policy

7.2.1. The appeal site is situated in an area identified within the Development Plan as having a land-use zoning objective 'Z1 - Sustainable Residential Neighbourhoods', with a stated objective 'to protect, provide and improve residential amenities'. The grounds of appeal assert that an off-licence is not explicitly addressed as being

permissible or open for consideration on Z1 lands, while noting that a convenience shop is generally considered acceptable. An off-licence use is not listed as a use that is either permissible or open for consideration on lands zoned 'Z1'. Section 14.4 of the Development Plan sets out that uses not listed as being permissible or open for consideration in zone Z1, will be deemed 'not to be permissible' uses in principle. The surrounding area also forms part of the 'Z1' zoned lands. The Planning Authority decided to refuse planning permission for the part off-licence use, as it is not permissible or open for consideration under the Z1 zoning objective and, therefore, would not be permissible in principle. Consequently, the proposed development would materially contravene the zoning objectives for such lands.

- 7.2.2. Where a Planning Authority has decided to refuse permission on the grounds that a proposed development would materially contravene the Development Plan, Section 37(2)(b) of the Planning and Development Act 2000, as amended (hereinafter 'the Act'), states that the Board may only grant permission where it is considered that:
- i. The proposed development is of strategic or national importance,
 - ii. There are conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned, or
 - iii. Permission for the proposed development should be granted having regard to regional planning guidelines for the area, guidelines under section 28, policy directives under section 29, the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government, or
 - iv. Permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan.
- 7.2.3. The grounds of appeal do not specifically assert that there is specific rationale for permitting the proposed development under any of the points (i - iv) above. I am satisfied that the proposed development could not be reasonably considered to be of national importance and a grant of permission would not be justified under item (i) above. I am also satisfied that item (ii) above, relating to 'conflicting objectives of the Development Plan', would not apply in this case, following on from my assessment of the land-use zoning objectives above (see Section 7.2.1). With regard to item (iii)

above, I am not aware of guidelines, policy directives, statutory obligations or Government policy that would reasonably justify permission for the proposed development. Accordingly, the proposed development should not be permitted on the basis of item (iii) above.

- 7.2.4. The Development Plan for this area was adopted in October 2016. Both Shanowen Square and Shanowen Halls to the east are purpose-built student residences, while the immediately surrounding streets comprise established housing and commercial uses, such as business and community uses within Shanowen House (100m to the east) and shops along Shanard Road neighbourhood centre (200m to the north). DCU campus is located approximately 200m to the south. Surrounding land uses are therefore not solely residential.
- 7.2.5. A 72sq.m 'tuck shop' serving Shanowen Square, an 88-apartment student residence (DCC Ref. 4734/03), was permitted in 2004. In 2005, the Planning Authority permitted an extension of 115sq.m to the tuck shop to increase the GFA of the facility to 187sq.m. An additional 46sq.m extension to the front of the shop was permitted by the Planning Authority in 2017 and this has been completed. The 'tuck shop' originally envisaged to serve the local student population in 2004 (72sq.m) has clearly evolved into a convenience store (250sq.m) serving a more extensive local catchment. As such, there is an established convenience shop on the subject site and this is a material consideration in determining the current application and appeal before the Board. The grounds of appeal state that the sale of wine for consumption off the premises from the existing shop has taken place since 2006 and this is not contested by parties to the application or appeal. The proposed development currently before the Board seeks to expand the retail offering within the convenience store by including an off-licence area. I do not consider that the arrangement proposed would significantly materially affect the retail operation currently undertaken on the site.
- 7.2.6. The Planning Authority did not refuse permission on the basis of the impact on local amenities and I am satisfied that the designation of a small portion (18sq.m) of the overall shop (250sq.m) specifically for off-sales would not impact on the residential amenity of the surrounding area, nor would it be incompatible with the existing use of the site as a convenience shop. The proposed land use is therefore acceptable based on the pattern of development in the area and permissions granted since

adoption of the Development Plan. While the Board has to have regard to the provisions of the Development Plan, I consider an exception could be made on planning grounds to override the zoning provisions set out in the Development Plan in this instance.

- 7.2.7. In conclusion, having considered the proposed development under the terms of Section 37(2)(b) of the Act, I am satisfied that the proposed development is justified under the terms of item (iv), given that there is an existing recently extended convenience shop use already established on the subject site and the proposed designation of a portion of the convenience retail floor area specifically for off-licence sales, expanding on the sale of wine for consumption off the premises as already taking place on the subject site, would not have any material impact on the residential amenity of surrounding area. The proposed development would therefore be in accordance with the proper planning and sustainable development of the area.

8.0 Appropriate Assessment

- 8.1. Having regard to the minor nature of the proposed development and the location of the site in a serviced urban area and the separation distance to the nearest European site, no Appropriate Assessment issues arise, and it is not considered that the 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 planning permission should be granted, subject to conditions, for the reasons and considerations as set out below.

10.0 Reasons and Considerations

- 10.1. Having regard to the existing established convenience shop located on site, to the planning history of the subject site, to the pattern of development in the area and Policy RD5 of the Dublin City Development Plan 2016-2022, which seeks to prohibit an overconcentration of off-licences in any one area of the city and Section 16.28, which sets out guidance for development involving an off-licence use,

notwithstanding the zoning provisions of the Development Plan, 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 or of property in the vicinity. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

11.0 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. Any increase in the area for the sale or display of alcohol products shall be subject to a separate application for planning permission.

Reason: In the interest of clarity, having regard to the stated nature and extent of the proposed development, and in order to comply with Development Plan guidelines.

3. 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.

Reason: In order to comply with Development Plan guidelines.

4. Site development and building works shall be carried out between the hours of 0800 to 1800 Mondays to Fridays inclusive, between 0800 to 1400

hours on Saturdays and not at all on Sundays or public holidays. Deviation from these times shall only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In order to safeguard the residential amenities of property in the vicinity.

Colm McLoughlin
Planning Inspector

24th January 2019