



An
Bord
Pleanála

Inspector's Report 306168-19

Development	Change of use from retail to retail with ancillary off-licence and associated alterations
Location	Circle K Glasnevin Service Station, Finglas Road, Glasnevin, Dublin 11
Planning Authority	Dublin City Council
Planning Authority Reg. Ref.	4085/19
Applicant(s)	Ard Services Limited
Type of Application	Permission
Planning Authority Decision	Refuse Permission
Type of Appeal	First Party
Appellant(s)	Ard Services Limited
Observer(s)	None
Date of Site Inspection	16 th March 2020
Inspector	Louise Treacy

1.0 Site Location and Description

- 1.1. The subject site has a stated area of 3,865 m² and is located at the Circle K Glasnevin Service Station, Finglas Road, Glasnevin, Dublin 11. The site is accessed directly off the Finglas Road and accommodates a filling station, retail unit with deli and seating area, car wash, customer parking area and associated services. The retail building has a stated floor area of 260 m².
- 1.2. The site is bounded by residential developments to the south, west and north-west at Claremont Court, Claremont Crescent and The Willows. Glasnevin Cemetery is located to the east of the site on the opposite side of the Finglas Road.

2.0 Proposed Development

- 2.1. The proposed development consists of a change of use from retail use to retail use with ancillary off-licence use, associated alteration of existing retail unit and all associated site and development works.
- 2.2. The proposed off-licence area occupies a floorspace of 10 m² and is located to the rear of the retail unit.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. Notification of the Decision to Refuse Permission issued on 20th November 2019 for 1 no. reason, on the basis that the proposed ancillary off-licence use is not permissible in principle or open for consideration under the site's Z1 zoning objective. As such, the proposed development would contravene materially a development objective indicated in the development plan for the zoning of land.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- 3.2.2. Basis of Planning Authority's decision.

3.2.3. While Dublin City Council's Planning Officer considered the location and size of the ancillary off-licence to be generally appropriate, it was recommended that permission be refused as the proposed use is not permissible or open for consideration under the Z1 land use zoning objective which applies to the site.

3.2.4. **Other Technical Reports**

3.2.5. None.

3.3. **Prescribed Bodies**

3.3.1. **Irish Water:** None received.

3.3.2. **Irish Rail:** None received.

3.4. **National Transport Authority:** None received.

3.5. **Transport Infrastructure Ireland:** A S. 49 Contribution Scheme levy should be attached to a grant of planning permission (if applicable).

3.6. **Third Party Observations**

3.6.1. None.

4.0 **Planning History**

4.1. **Planning Authority Reg. Ref. 3179/07; ABP Ref. PL29N.224751:** Permission granted on 4th February 2008 for the demolition of an existing retail shop building, decommissioning of an existing truck refuelling and car wash facility and the removal of an existing forecourt canopy and the construction of a replacement retail building, new car wash facility, truck refuelling facility and all associated development.

4.2. **Planning Authority Reg. Ref. 5892/06:** Permission granted on 4th January 2007 for new automatic rollover carwash to replace the existing jet wash and ancillary works.

5.0 **Policy and Context**

5.1. **Dublin City Development Plan 2016-2022**

5.1.1. Appendix 21 of the development plan defines a part off-licence as "a building where the main use is the sale of convenience retail goods to members of the public and contains a subsidiary area of the premises which is licensed and used for the display

and sale of intoxicating liquor, including wines, beers and spirits, for consumption off the premises”.

5.2. Zoning

- 5.2.1. The site is subject to land use zoning “Z1” (Sustainable Residential Neighbourhoods), which has the objective “to protect, provide and improve residential amenities”. A part off-licence use is not “permissible” or “open for consideration” on Z1 zoned lands. I note that this use is permissible and open for consideration under other land use zoning objectives of the plan.
- 5.2.2. Section 14.4 of the development plan provides further clarification in relation to this matter and states that uses which are not listed under the “permissible” or “open for consideration” categories will be deemed not to be permissible uses in principle in zones Z1, Z2, Z8, Z9, Z11 and Z15.
- 5.2.3. **General Retail Policy RD5:** 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.
- 5.2.4. **Section 16.28 Development Standards:** In considering planning applications for a part off-licence in a shop, the following criteria shall be applied:
- (1) The number and frequency of such facilities within a 1 km radius of the proposed development;
 - (2) The amenities of properties in the nearby residential areas;
 - (3) The floor area used for the display of alcohol products is subsidiary to the main use of the shop and that area should be no more than 10% of the total floor area;
 - (4) The location of the display area of alcohol products shall be in an unobtrusive position, not near the entrance or windows of the shop and preferably to the rear of the premises;

(5) The area for the display of alcohol products shall be detailed on the floor plans and the display of alcohol products shall be limited to this area only;

(6) The area for the display of alcohol products should be secure and monitored.

5.2.5. In the case where a grant of planning permission is considered, the provision will be strictly regulated, and regard shall be given to the need to impose the following conditions:

(1) Limiting the display area of alcohol products to that area of the shop only as detailed on the plans;

(2) No advertising of the sale of alcohol products on the façade/frontage of the premises;

(3) No display of alcohol products or advertising of the sale of alcohol products on or near both the entrance and the windows.

5.3. Natural Heritage Designations

5.3.1. None.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. An appeal has been lodged by Coakley O'Neill Town Planning Ltd., the grounds of which can be summarised as follows:

- The correct interpretation of Section 14.4 of the development plan in relation to uses which are deemed not to be permissible under a particular land use zoning objective, is that they are not generally acceptable in principle, but may become so with reference to specific policies or objectives regulating the development and its overall impact on the relevant zoning objective;
- The planning authority's conclusion that the proposed development materially contravenes the development plan is flawed;

- An Bord Pleanála has granted planning permission for off-licence uses on Z1 zoned lands, including ABP Ref. Nos. PL29N.229148; PL29S.241379; PL29N.242804, PL29N.244678; PL29S.244453; PL29S.247935;
- An Bord Pleanála has also recently refused permission for off-licence uses based on the Z1 zoning objective of the lands under ABP Ref. Nos. 302218-18 and 302911-18, which reflects an inconsistency in interpretation of the zoning;
- Dublin City Council and An Bord Pleanála have also recently granted permission for off-licence uses on Z15 zoned lands where such uses are not permissible – ABP Ref. 302867-18 refers;
- Several Dublin City Council refusal reasons also indicate a different interpretation of off-licence uses on Z1 zoned lands, which is that applicants must demonstrate a compelling case to secure such development on Z1 lands;
- There has been a series of entirely different interpretations of the policy for this land use. It cannot be the case that some off-licence proposals are refused permission solely on the basis of their Z1 zoning designation, while others are granted notwithstanding the very same designation;
- Policy RD5 allows a compelling case for such development to be made and the discretion required to either grant or refuse permission. The proposed development complies with this policy and with Section 16.28 of the development plan regarding the assessment criteria for such developments;
- The proposed development does not materially contravene the development plan and as such, the Board does not need to reply on the provisions of S. 37(2)(b) of the Planning and Development Act, 2000 (as amended);
- In the event An Bord Pleanála disagrees with this position, the provisions of S. 37(2)(b) (iv) apply in this case as the service station has been in commercial use for an extended period of time and has sold wine in accordance with the statutory definition of a shop;
- The proposed development will have no negative impact on the residential amenity of the area. There has been no history of anti-social behaviour at the

petrol station, despite the sale of wine for an extended period and no public submissions were made objecting to the proposal.

6.2. **Planning Authority Response**

6.2.1. None received.

6.3. **Observations**

6.3.1. None.

7.0 **Assessment**

7.1. I am satisfied that the main issues for consideration in this case include:

- Principle of the Development
- Appropriate Assessment

7.2. Each of these issues is addressed in turn below.

7.3. **Principle of the Development**

7.3.1. Dublin City Council refused planning permission for the proposed development for 1 no. reason based on the site's Z1 land use zoning objective, under which a part off-licence use is not "permissible" or "open for consideration". On this basis, it was considered that the proposed development would materially contravene a development objective indicated in the development plan for the zoning of land.

7.3.2. In considering the foregoing, I note that part off-licence uses are permissible under other land use zoning categories of the development plan. I also note the clarification which is provided by Section 14.4 of the development plan, which states that uses which are not listed under the "permissible" or "open for consideration" categories will be deemed not to be permissible uses in principle in zones Z1, Z2, Z8, Z9, Z11 and Z15. While the precedent cases for part off-licence use on Z1 lands which have been identified by the applicant's agent are acknowledged, in my opinion, the development plan clearly confirms that part off-licence uses are not permissible in this instance. I further note that no flexibility is provided in the plan which may allow

such developments to be assessed on a case-by-case basis, notwithstanding the zoning of the application site.

- 7.3.3. The appellant's agent submits that the proposed development complies with the Z1 land use zoning objective by way of its compliance with policy RD5 of the plan and the assessment criteria for such developments as per Section 16.28 of the plan. However, in my opinion, these development plan provisions only warrant consideration where a development has been confirmed to be either permissible or open for consideration under the land use zoning objective.
- 7.3.4. The applicant's agent submits that the proposed development does not materially contravene the development plan and as such, the provisions of S. 37(2)(b) of the Planning and Development Act, 2000 do not apply. However, in the event the Board does not agree with this opinion, the applicant's agent submits that S. 37(2)(b)(iv) is a relevant consideration in this case.
- 7.3.5. Section 37(2)(b) of the Act states that where a planning authority has decided to refuse planning permission for a development on the grounds that it materially contravenes the development plan, the Board can only grant permission where it considers 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 should be granted having regard to the regional spatial and economic strategy for the area, guidelines under section 28, policy directive under section 29, the statutory obligations under 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.
- 7.3.6. In my opinion, the proposed development does not satisfy criteria (i), (ii) or (iii) as set out above. While the applicant's agent submits that criterion (iv) applies in this case, I do not agree given that the existing service station pre-dates the current

development plan. I further note the different interpretations of the policy in relation to such uses on Z1 zoned lands as identified by the applicant's agent.

- 7.3.7. In conclusion, in my opinion, the development plan clearly confirms that part-off licence uses are not permissible in principle on Z1 zoned lands. As such, it is recommended that planning permission be refused in this instance.

7.4. Appropriate Assessment

- 7.4.1. Given the nature and scale of the development and the location of the site relative to Natura 2000 sites, no appropriate assessment issues arise, and it is not considered that the development would be likely to have a significant effect, either individually or in combination with other plans or projects, on a European site.

8.0 Recommendation

- 8.1. I recommend that planning permission be refused for the proposed development based on the reasons and considerations set out below.

9.0 Reasons and Considerations

- 9.1. The appeal site is subject to land use zoning Z1 (Sustainable Residential Neighbourhoods) under the Dublin City Development Plan 2016-2022 which has the objective "to protect, provide and improve residential amenities". This objective is considered reasonable. Off-licences and part off-licences are not listed as uses which are either permissible or open for consideration in Z1 zones and are thus deemed in the development plan not to be permissible in principle. The proposed development would, therefore, materially contravene an objective indicated in the development plan in relation to the zoning of land and would be contrary to the proper planning and sustainable development of the area.

Louise Treacy
Planning Inspector

27th March 2020