



An
Bord
Pleanála

Inspector's Report ABP 306216-19

Development	Off-licence use in existing retail unit.
Location	Unit 2, Elmfield Court, Ninth Lock Road, Clondalkin, Dublin 22.
Planning Authority	South Dublin County Council
Planning Authority Reg. Ref.	SD19A/0305
Applicant	The Moldovan Retail Store Ltd.
Type of Application	Permission
Planning Authority Decision	Grant subject to conditions
Type of Appeal	3 rd Party v. Grant
Appellant	Tempside Ltd.
Observer(s)	None
Date of Site Inspection	13/03/20
Inspector	Pauline Fitzpatrick

1.0 Site Location and Description

The unit to which the appeal refers is within a three storey mixed use development located on Ninth Lock Road in Clondalkin near its junction with Nangor Road. The unit is one of three in use as convenience stores, with a 4th in use as an off-licence. The remaining 3 ground floor units are currently vacant. The two upper floors are in residential use. The footpath along the frontage of the complex is wide with on street parking available. There is a filling station to the south of the development with a hotel further south again. The lands opposite are undeveloped. A cul-de-sac road bounds the complex to the north. The Mill Shopping Centre is to the south-west.

2.0 Proposed Development

Permission is sought off change of use of part of a convenience retail unit to off-licence use. The area involved is 42 sq.m. The existing retail unit has a stated area of 341 sq.m. The off-licence area will include the existing wine display in the premises.

The application is accompanied by details of premises within 1km radius of the subject site which are licensed to sell alcohol.

3.0 Planning Authority Decision

3.1. Decision

Grant permission for the above described development subject to 4 conditions including:

Condition 2: Advertising and signage restrictions.

Condition 3: Section 48 financial contribution requirements

Condition 4: Supplementary contribution in respect of upgrade of the Irish Rail Kildare Route Project.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planner's report in the Record of Executive Business and Chief Executive's Order considers the ancillary off-licence use to be acceptable in principle given the scale compared to the existing retail use. It is not considered that it will have an adverse impact on the residential amenities of the area. The applicant should note that no signage relating to the off licence is permitted under this application. The Council considers the application to be valid. It is not apparent that the address is spelt incorrectly in the newspaper notice. A grant of permission subject to conditions recommended.

3.2.2. Other Technical Reports

Water Services note that the application has been referred to Irish Water.

3.3. Prescribed Bodies

Irish Water has no objection subject to conditions.

3.4. Third Party Observations

An objection to the proposal received by the planning authority is on file for the Board's information. The issues raised are comparable to those set out in the 3rd party appeal summarised in section 6 below.

4.0 Planning History

Details as given in the Council Planner's report refer to both the subject site and adjoining sites. Of note:

SD19A/0100 – permission granted in May 2019 on adjacent site for change of use of part of an existing retail to off-licence sales area.

5.0 Policy Context

5.1. South Dublin County Development Plan

The site is within an area zoned TC the objective for which is to protect, improve and provide for the future development of Town Centres.

Off-licence is permitted in principle in the zone.

Retail Policy 11 – Office Licences and Betting Offices

It is policy to manage the provision of off-licences and betting offices and to prevent an excessive concentration of these land uses.

R11 Objective 1 – to prevent an excessive concentration of off-licence and betting offices.

In terms of Implementation **Section 11.3.6** refers

(ii) Restriction on Uses:

An over-concentration of certain uses will be discouraged in urban centres, due to an overriding need to maintain the integrity, quality and vibrancy of centres.

The Planning Authority will seek to ensure that the quantum of off-licence and betting offices, particularly within smaller centres, is not disproportionate to the overall size and character of the area and that the development would not have a negative impact on the amenity of the area due to noise, general disturbance, hours of operation and litter. The provision of a small section of a convenience shop for an ancillary off-licence use is generally acceptable

5.2. Natural Heritage Designations

None in the vicinity

6.0 The Appeal

6.1. Grounds of Appeal

The submission by Future Analytics Consulting Ltd. on behalf of the 3rd party appeal against the planning authority's notification of decision to grant permission can be summarised as follows:

- The application does not provide any justification as to how the proposal complements the criteria set out in retail policy 5 pertaining to Clondalkin Town Centre.
- The application is silent on how the proposal complies with policy R11. No analysis is provided with the map which shows off-licences in the area.
- The proposal would give rise to an excessive concentration of off-licences in the area and would be contrary to development plan policy R11. The Council has refused permission in other locations on the basis of this policy. Its assessment in this regard is flawed. The scale of the floorspace is not relevant.
- The proposal would result in three off-licences in 6 units in the scheme. It would have an adverse impact on the amenity of the area. The urban environment is currently substandard and is not resilient enough to absorb activity or uses that can have a negative impact in terms of noise, general disturbance, hours of operation and litter. It would have a negative impact on residential amenity.
- The off-licence, due to its position at the front entrance to the shop with prime window frontage onto Ninth Lock Road, cannot be considered ancillary to the existing shop use. It is not a discreet part of the food store. The planning authority has refused permission in other locations on such a basis.
- The Council's conditions are inadequate and do not preclude the display and advertising of alcohol in the window.
- A condition allowing for the monitoring and review of the operation of the off-licence use has not been attached.

- The description of the development is misleading and does not reflect the fact that the planning use of the entire shop effectively changes under the Intoxicating Liquor Act.
- The planning authority's decision to allow the location of the off licence on a prominent corner subject only to normal planning restrictions on shop window advertising would, in effect, de-exempt advertising alcohol under the Public Health (Alcohol) Act 2018 at this location. There is a clear inconsistency between planning regulation and Public Health legislation which will require the planning procedure to comply with the primary legislation. So long as this legal loophole exists any planning permission for a licenced premises should have full regard to the Public Health (Alcohol) Act 2018.
- Change of use is not cited in the public notices.

6.2. Applicant Response

None received.

6.3. Planning Authority Response

It is considered that the issues raised in the appeal have been covered in the planner's report.

6.4. Observations

None

7.0 Assessment

I consider that the issues arising in the case can be assessed under the following headings:

- Compliance with Development Plan Provisions
- Amenities of Adjoining Property
- Other Issues

7.1. Compliance with Development Plan Provisions

The existing convenience store is within an area zoned TC, the objective for which is to protect, improve and provide for the future development of town centres. Within such a zone an off-licence is permitted in principle.

The current South Dublin County Development Plan in its retail policies and objectives specifically references concerns regarding concentration of specific uses, notably policy R11 and R11 Objective 1, whereby the Council intends to manage the off licences so as to prevent an excessive concentration of such uses due to an overriding need to maintain the integrity, quality and vibrancy of centres. Section 11.3.6(ii) of the plan further states that the planning authority will seek to ensure that the quantum of specific uses, including off-licences, is not disproportionate to the overall size and character of the area and that the development would not have a negative impact on the amenity of the area due to noise, general disturbance, hours of operation and litter.

The agent for the appellant considers that the planning authority's assessment of the proposal is flawed in that it did not have due regard to the above provisions.

However, the appeal submission does not appear to note that section 11.3.6(ii) states that *the provision of a small section of a convenience shop for an ancillary off-licence use is generally acceptable*. As to what constitutes a 'small section' is not stipulated. As a consequence, I consider that it is reasonable for the planning authority and the Board at this juncture, to have regard to the floorspace to be used for such purposes, relative to that to remain in convenience use.

The off-licence area is to entail 42 sq.m. of a 341 sq.m. unit. This equates to approx. 12.3% of the floorspace. I submit that this can be considered to come within what would reasonably be interpreted as a 'small section' of the convenience shop.

The appeal site is within a small complex of retail units with residential over with a variety of uses including a filling station, hotel and religious buildings in the vicinity. Three convenience stores dominate in terms of occupants, one of which has an off-licence area (Polonez immediately adjoining). In addition, there is a stand-alone off licence. The other ground floor units are vacant. As noted in the documentation accompanying the application and referenced by the agent for the appellant there is

a range of other off-licence facilities in the wider area but having regard to the population in this part of the city, I don't see any evidence of over-concentration.

In view of the continuing dominance of the convenience retail within the unit and having regard to the uses and occupants of the adjoining units, I do not consider that the proposal would have an adverse impact on the integrity, quality and vibrancy of the centre nor would give rise to concerns in terms of quantum of off-licences being disproportionate to the overall size and character of the area.

I would not concur with the agent for the appellant's concerns as to the positioning of the off-licence element at a visually prominent location on a corner. As noted on day of inspection it is currently not possible to view into the store due to the opaque façade treatment. Any advertising can be appropriately addressed by way of condition.

On this basis I consider that the proposal would be in accordance with the development plan provisions as set out section 11.3.6 and specifically policy R11 and related objective R1.

7.2. Amenities of Adjoining Property

The vicinity of the site is characterised by a variety of uses including residential, retail, filling station and hotel with frontage onto a well trafficked road. I do not consider that the proposal, which will be subservient to the main convenience retail use within the unit, will have any material impact on the residential amenities currently enjoyed by the apartment units over.

In terms of the recommendation that the proposed development be subject to monitoring by way of a condition limiting the duration of the permission I submit that in view of the limited floor area of the off-licence remaining ancillary to the convenience store I do not consider that a temporary permission is necessary in this case. I note that the planning authority did not attach a condition to this effect on a similar change of use in the immediately adjoining convenience use under ref. SD19A/0100.

7.3. Other Issues

With regard to the planning precedent cited by the agent for the appellant, each application and appeal should be assessed on its own merits as each present a

differing set of circumstances. I also note that the cases cited as precedent appear to predate the current County Development Plan and as such would have been assessed in the context of the previous plan's policies and objectives.

Whilst I note the absence of the phrase 'change of use' in the nature and extent of the proposed development as given in the public notices I consider that the wording is sufficient and the intent of the proposal is clear. I note that the planning authority in validating the application, considered it to meet the legislative requirements as set out in the Planning and Development Regulations, 2001, as amended.

Whilst I note the agent for the appellants comments with respect to the requirements of the Public Health (Alcohol) and Intoxicating Liquor Acts this is not a matter for comment in this appeal. A grant of permission in this instance does not exonerate the applicant from meeting the requirements and complying with the provisions of other legislation.

The Board is advised that the site is within the area covered by the Kildare Route Project Supplementary Development Contributions Scheme.

Appropriate Assessment

Having regard to the nature and scale of the proposed development, to the nature of the receiving environment and to proximity to the nearest European sites, 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

8.0 Recommendation

Having regard to the foregoing I recommend that permission for the above described development be granted for the following reasons and considerations subject to conditions.

9.0 Reasons and Considerations

Having regard to the 'TC' zoning designation for the area, the nature and small scale of the proposed development, and its location within a significantly larger food store, it is considered that, subject to compliance with the conditions set out below, the proposed change of use of part of the existing shop to off-licence is in accordance with the zoning objective and policies of the planning authority as set out in the South Dublin County Council Development Plan 2016-2022, would not detract from the vitality and viability of this shopping area and would not seriously injure residential amenities of property in the vicinity. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area

10.0 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 with the planning authority prior to commencement of development and the development shall be completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. No advertisement or advertisement structure shall be erected or displayed on the building in such a manner as to be visible from outside the building, unless authorised by a further grant of planning permission.

Reason: In the interest of visual amenity.

3. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

4. The developer shall pay to the planning authority a financial contribution in respect of the Kildare Route Project in accordance with the terms of the Supplementary Development Contribution Scheme made by the planning authority under section 49 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the

Supplementary Development Contribution Scheme made under section 49 of the Act be applied to the permission.

Pauline Fitzpatrick
Senior Planning Inspector

March, 2020