



An
Bord
Pleanála

Inspector's Report ABP-309701-21

Development	Change vacant shop to off licence and cease alcohol sales in local shop.
Location	177-180 & 193-195 Hampton Wood Road, Meakstown, Dublin 11
Planning Authority	Dublin City Council
Planning Authority Reg. Ref.	3914/20
Applicant	Arney Retail Ltd.
Type of Application	Permission.
Planning Authority Decision	Refuse permission
Type of Appeal	First Party vs. Refusal
Appellants	Arney Retail Ltd.
Observer	Mary Carroll
Date of Site Inspection	8 th May 2021
Inspector	Stephen J. O'Sullivan

1.0 Site Location and Description

1.1. The site is in the northern suburbs of Dublin, c7km from the city centre. The area is predominantly residential and is characterised by apartment buildings and terraced houses from the 21st century. The site itself consists of most of the ground floor of a 4 storey building, comprised of an existing convenience store at Nos. 177-180 and a vacant shop unit (last used as a hairdressers) and storage area at Nos 193-194 Hampton Wood Road. The two parts of the site are separated by another vacant shop unit and the lobby serving the apartments on the upper floors of the building. The stated area of the site is 120m². That of the vacant unit is given as 59m², while the area in the existing shop given over to alcohol sales is 24m².

2.0 Proposed Development

2.1. It is proposed to use the vacant shop unit as an off licence and to stop selling alcohol in the main shop. New signage would be displayed at the front of the off licence.

3.0 Planning Authority Decision

3.1. Decision

The planning authority refused permission for one reason which stated that the proposed off licence would materially contravened the Z1 residential zoning of the site.

3.2. Planning Report

Off licences are not permissible or open for consideration under the Z1 zoning of the site and so are deemed not to be permissible in principle. The previous grant of permission for alcohol sales in the main shop ceased in January 2014. The applicant's submission that the zoning objective, policy RD5 and section 16.28 of the development plan are not applicable to the movement of the off licence into an empty hairdressers is not reasonable. The proposed off licence would occupy more floor space than that occupied by alcohol sales in the main shop. Insufficient information has been submitted to demonstrate compliance with policy RD5 or

section 16.28 of the development plan. It was recommended that permission be refused.

3.3. Third Party Observations

A submission was received that objected to the proposed development on grounds similar to those set out in the subsequent observation on the appeal.

4.0 Planning History

Reg. Ref. 4581/08 – Permission was granted by the council for ancillary sale of alcohol from the convenience shop on the site for a period of 5 years.

5.0 Policy Context

5.1. Development Plan

The Dublin City Development Plan 2016-2022 applies. The site is zoned under objective Z1 to protect, provide and improve residential amenities. Policy RD5 of the plan is to prohibit the further expansion of off licences or parts therefore unless a compelling case is made that there is not an over concentration of such uses in any one area. Section 16.28 of the plan sets out criteria for new or extended off licences, including those which form part of shops. They include the number of such uses within 1km, the amenities of residential areas and the extent and location of the floor area used to display alcoholic drinks.

5.2. Natural Heritage Designations

None

6.0 The Appeal

6.1. Grounds of Appeal

- The current situation is unique in that the off licence use is actually established on the site. The proposed development would move the use from the main shop unit into a vacant unit in the same building. Both units are on the site. The proposed separation is in keeping with the requirements on recent licensing legislation. Because the proposed development does not introduce a new use onto the site, it should be not be prohibited by the residential zoning objective or by policy RD5 of the development plan. The proposed development would not raise other material concerns regarding residential amenity.
- Section 16.28 of the development relates to new off licences and so is not applicable in this instance. However the development would comply with its restrictions on advertising and the display of alcoholic drinks. It would also meet the criteria in that section in relation to the amenities of adjacent homes.
- The council planner's report did not acknowledge that new regulations on the sale of alcohol and its separation from other products establish the rationale for the proposed development. The proposed development would also increase the floor area available for general retail in the existing shop by "500sqft" *sic* . It would also avoid impulse purchases of alcohol by those visiting the shop for other reasons. A similar separation of sales in another shop owned by the applicants in Poppintree has been popular with local residents.
- If the board considers that the proposed development is a material contravention of the development plan, it could still grant permission by virtue of section 37(2)(b)(iv) of the act having regard to the pattern of development and permissions granted which has resulted in a much bigger residential population and demand for local services. There is no other off licence that would serve the homes within walking distance of the site. A map is included which shows the off licences in the area, with the closest being 685m away. There are 3 others within 1km, which would demonstrate that the proposed development would not contravene policy RD5, if the board considers that it applies.

- Concerns regarding underage sales or misuse of alcohol are governed by a specific and separate regulatory code.

6.2. Planning Authority Response

None received

6.3. Observations

The observation from Mary Carroll objects to the proposed development on the following grounds-

- The land is zoned for residential use. The existing space for alcohol sales in the Centra store is adequate in a residential area.
- There are 3 stand alone off licences in the area at Finglas Village, Charlestown Shopping Centre and Poppintree Parade. 8 supermarkets also sell alcohol and there are numerous public houses. The 800 homes in Hampton Wood are well served by alcohol retailers.
- The estate is 14 years old and many teenagers live there who are vulnerable to alcohol misuse. Having more alcohol sold in the area would exacerbate anti-social behaviour. There have been cases of drunk people begging and intimidating customers using the Centra. Another off licence will lead to inevitable social and addiction problems for the local population.

7.0 Assessment

- 7.1. The area is predominantly in residential use, with apartments on the upper floors of the building on the site. The area is zoned for residential use. The sale of alcohol for consumption off the premises is not permitted under that zoning. The proposed development would introduce alcohol sales into an empty shop unit that was previously used as a hairdresser's. The floor area of that shop is 49m². This is larger than the part of the applicants' convenience shop that is used for the display of alcohol which is 24m². I therefore agree with the council's conclusion that the proposed development is a material contravention of the zoning of the site.

- 7.2. There are valid planning reasons why a restrictive approach to alcohol sales would be adopted for residential areas. Alcohol reduces inhibitions on behaviour and is more likely to be bought and consumed at night. So its sale would be more likely to impinge on the amenities of nearby homes than the hairdresser's and food sales which are the main established uses of the two premises that comprise the site. The objections raised by the observation on the appeal are well grounded.
- 7.3. The concentration of off licences and the proximity of other places where alcohol can be bought is not relevant to the current case. The site is zoned residential and there is a general public policy to control the sale of alcohol. The fact that people would have to travel to higher order service centres in the surrounding suburbs to buy drink if it were not available on the site would not provide planning grounds to permit alcohol sales on the site in contravention of its Z1 residential zoning. The policy on the location of off licences set out in RD 5 and section 16.28 of the development plan would not support a grant of permission in this case. Neither would the pattern of development in the area since the making of the development cited in the appeal in relation to section 37(2)(b)(iv) of the act.
- 7.4. It would therefore be reasonable to refuse permission for the proposed development on grounds similar to those set out in the council's decision. However specific exceptional circumstances arise in this case which would justify a grant of permission based on the government policies cited in the appeal.
- 7.5. Government policy, including policy which addresses matters beyond those directly concerned with the planning system, are relevant to the board's consideration of applications generally under section 143 of the planning act. As the council refused permission on the basis of a material contravention of the development plan, it is also relevant in the case under section 37(2)(b)(iii) of the act. Government policy is currently to reduce alcohol consumption. To contribute to this aim, there is a policy to reverse a pattern whereby the purchase of alcohol is seen as part of normal convenience shopping. This policy can be inferred from the government's introduction of section 22 of the Public Health (Alcohol) Act 2018 and the making of regulations under that section by a minister of the government, the specific intent of which is to physically separate the sale of alcohol from that of other goods.

7.6. The proposed development in this case would remove alcohol sales entirely from the local convenience shop serving this residential area. This would tend to reduce the extent to which the purchase of alcohol was part of routine convenience shopping and the frequency of impulsive purchases of alcohol by customers who came into the shop for other reasons. This would be in keeping with government policy to control the sale of alcohol and reduce its consumption. The removal of alcohol sales from the local shop would have consequent benefits by increasing the floor area available for the sale of other goods in what is a rather small premises serving a densely populated area. It would also reduce the potential for nuisance to convenience customers arising from the behaviour of purchasers of alcohol, as can sometimes occur near the end of the period in which alcohol sales are allowed. These ancillary benefits would justify the larger overall floor area that would be given over the alcohol sales in the two premises if the proposed development were carried out.

7.7. There is some doubt over the status of alcohol sales in the existing convenience shop, in that it was the subject to a permission with a temporary period that expired in 2014. It is not clear whether the sales in the shop are explicitly authorised, otherwise permitted or are beyond enforcement action due to the lapse of time. My advice to the board in this case is based on the premise that the sale of alcohol in the convenience shop will cease if the proposed development is carried out, and that it may not cease if the proposed development is not carried out.

8.0 Recommendation

8.1. I recommend that permission be granted subject to the conditions set below.

9.0 Reasons and Considerations

Notwithstanding its contravention of the Z1 residential zoning objective that applies to the site under the Dublin City Development Plan 2016-2022, it is considered that the proposed development would be justified under section 37(2)(b)(iii) of the Planning and Development Act 2000, as amended, because it would be in keeping with government policy to diminish the extent to which the purchase of alcohol occurs as part of shopping for other goods and to physically separate the sale of

alcohol from the sale of other goods. The proposed development would also increase the floorspace available in the existing local shop for the sale of goods other than alcohol. It is therefore considered that, subject to the conditions below, the proposed development would not seriously injure the character or residential amenities of the area and would be in keeping with its proper planning and sustainable development.

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 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 sale of alcohol shall cease in the existing shop in units 177-180 Hampton Wood Road, as shown on drawing P3738-A001 submitted with the application, before the sale of alcohol occurs in unit 193. Once the sale of alcohol occurs from unit 193, this permission shall be deemed to have been implemented. There shall be no further sale of alcohol in units 177-180 unless authorised by a separate, prior grant of permission by the planning authority or the board on appeal regardless of whether or not the sale of alcohol from unit 193 continues.

Reason: To give effect to the residential zoning of the site and in the interests of residential amenity

3. Prior to the commencement of development the developer shall submit for the written agreement of the planning authority details of all external signage

and window displays. No other signage, shutters or similar such fixtures shall be attached or displayed to the exterior of the premises on the site whether or not they would otherwise constitute exempted development unless the prior written consent of the planning authority for same has been obtained.

Reason: In the interests of visual amenity

4. 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. The contribution shall be paid prior to the 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 the Board to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000 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.

Stephen J. O'Sullivan

Planning Inspector

9th May 2021