



An
Bord
Pleanála

Inspector's Report 310580-21

Development	Change of use from retail to retail with ancillary off-licence.
Location	Circle K Service Station, Donaghmede Shopping Centre, Grange Road, Dublin 13, D13 H2K2
Planning Authority	Dublin City Council
Planning Authority Reg. Ref.	2511/21
Applicant(s)	Ard Services Limited
Type of Application	Permission
Planning Authority Decision	Grant Permission
Type of Appeal	Third Party Appeal
Appellant(s)	Donaghmede Estate Residents Association
Observer(s)	None
Date of Site Inspection	19 th August 2021
Inspector	Susan Clarke

1.0 Site Location and Description

- 1.1. The site has a stated area of 121.7 sq m and is located at the Circle K Service Station, Donaghmede Shopping Centre, Grange Road, Dublin 13, D13 H2K2. The unit is a single storey retail unit and has a canopy over four fuel pumps. There is a car wash to the north of the unit.
- 1.2. The site is bounded by Newbrook Road to the north, surface car parking associated with Donaghmede Shopping Centre to the east and south, and a McDonalds restaurant and drive-thru to the west. The site is accessed via the surface car park and Newbrook 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 and all associated site and development works.
- 2.2. The proposed off-licence area occupies a floorspace of 6 sq m and is located to the rear of the retail unit. The off-licence will be ancillary to the primary retail use of the unit.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. Planning permission was granted on 25th May 2021 subject to 8 No. conditions.
- 3.1.2. Condition No. 6 restricts the size and location of the off-licence to that for which permission was sought and Condition No. 7 restricts advertising or signage associated with the off-licence.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- 3.2.2. Basis of Planning Authority's decision.
- 3.2.3. The Planning Officer considered the development was acceptable in principle and that there was not a proliferation of off-licences in the vicinity. Furthermore, it was

considered that the development was consistent with the City Development Plan (CDP) and would not have an unacceptable impact on the residential amenities of the wider area.

3.2.4. Other Technical Reports

Engineering Department Drainage Division: No objection subject to conditions.

3.3. Prescribed Bodies

Irish Water: None received.

Irish Rail: None received.

3.4. Third Party Observations

3.4.1. One third party observation was made on the application by the Donaghmede Estate Residents Association.

3.4.2. The points that were raised can be summarised as follows: (1) there is no requirement/need for an off-licence in the area, (2) the sale of alcohol can lead to anti-social behaviour, (3) requests that the Sale of Alcohol Bill be considered in the assessment of the planning application.

4.0 Planning History

4.1. **Planning Authority Reg. Ref. 3098/98:** Redevelop existing filling station incorporating demolition of existing sales building and canopy, a new convenience store building of 108 sq m, a new 4.5m high canopy, relocate existing carwash facility, new corporate signs and insignia and any ancillary contingent works. Granted permission on 28th January 1999.

4.2. **Planning Authority Reg. Ref. 2139/00:** To redevelop existing filling station incorporation: demolition of existing Sales Building and canopy, a new convenience store building of 114 sq.m., a new 4.5m high canopy, a new brush wash to replace existing car wash facility, a 5m high company sign, 4 no. 20,000 litre underground storage tanks to replace existing tanks, new corporate signs and insignia and any ancillary contingent works. Granted permission on 3rd October 2000.

4.3. **Planning Authority Reg. Ref. 3451/08:** Permission sought for (a) Demolition and removal of the existing (114 Sq.m) single storey prefabricated sales building (b)

Construction of a new two storey (224 Sq.m) sales building incorporating a retail sales area of 90 Sqm and any ancillary contingent site works. Granted permission on 2nd October 2008.

5.0 Policy and Context

5.1. Dublin City Development Plan 2016-2022

- 5.1.1. Appendix 21 of the CDP 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 “Z4” (District Centre), which has the objective *“To provide for and improve mixed-services facilities”*. ‘Off-licence’ is listed as a “permissible” use on Z4 zoned lands. ‘Permissible’ is defined in the CDP as *“A permissible use is one which is generally acceptable in principle in the relevant zone, but which is subject to normal planning consideration, including policies and objectives outlined in the plan”*.
- 5.2.2. **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.
- 5.2.3. **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.

5.2.4. 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. A Third Party Appeal has been lodged by Donaghmede Estate Residents Association, the grounds of which can be summarised as follows:

- The Local Authority's decision does not address the potential impact the development will have on the community and does not contain any conditions

or clauses that take account of the concerns expressed in an earlier observation made by the Residents Association.

- There is no requirement for the development and it will result in anti-social behaviour.
- It is a contradiction that a petrol station would sell alcohol with all the potential hazards it entails.
- Requests the Board to consider the Sale of Alcohol Bill 2021 and public health issues in determining this Appeal.

6.2. Planning Authority Response

6.2.1. None received.

6.3. First Party Response to Third Party Appeal

6.3.1. Coakley O'Neill Town Planning prepared a First Party Response to the Third Party Appeal on behalf of the Applicant, Ard Services Limited. The Response provides a rebuttal to each of the points made by the Appellant. The points can be summarised as follows:

- Matters raised in relation to anti-social behaviour are not planning matters and are not the basis for a planning refusal.
- The majority of Circle K service stations sell alcohol. The subject store already sells wine and as such the proposal will not result in the development of a new use on the site. The principle use of the site will remain retail and the off-licence will be subsidiary to the main use.
- The company have robust and comprehensive management practices in place to ensure staff safety and the amenity of the area.
- The proposal meets all of the CDP's requirements for off-licences and is consistent with the site's land use zoning objective and Section 16.28 of the CDP.

- Planning permission has been granted by the Board for similar type developments (Reg. Refs. PL29N.306559, PL29N.248336, and PL29S.247565).

7.0 **Assessment**

7.1.1. Having examined the application details and all other documentation on file, including the submissions received in relation to the planning application and Third-Party Appeal, and inspection of the site, and having regard to relevant local/regional/policies and guidance, I consider that the main issues on this appeal are as follows:

- Principle of the Development
- Impact on Amenities of the Area
- Appropriate Assessment

Each of these issues is addressed in turn below.

7.2. **Principle of the Development**

As stated above, the subject site is zoned Z4 (District Centre) in the CDP and under this zoning objective off-licence is listed as a 'permissible use'. As such, I consider the principle of the development to be acceptable subject to normal planning consideration.

In relation to planning policy outlined above, Policy RD5 seeks to prohibit the further expansion of off-licences and part off-licences unless a compelling case can be made that there is not an over-concentration of such uses in any one area. The Applicant provided mapping of off-licences and part off-licences within a 1km radius of the site. Having regard to the number of off-licences and their dispersion throughout the wider built-up area, I do not consider that there is a proliferation in the vicinity. Furthermore, the display area for alcohol sales will be located to the rear of the unit in an unobtrusive position and does not exceed 10% of the total floor area, and as such complies with Section 16.28 of the CDP.

7.3. Impact on Amenities of the Area

The Appellant raises concerns regarding anti-social behaviour in relation to the proposal. It is submitted that there is anti-social behaviour already in the area and that the proposal will further exasperate the situation. I note the Sale of Alcohol Bill referenced by the Appellant. However, this Bill has not been adopted nor enacted and as such is not relevant at this time. I consider that the control of antisocial behaviour is not within the ambit of planning and is more a matter for other authorities such as the Garda Siochana.

Notwithstanding this, having regard to the limited scale of the proposal (i.e. 6 sq m or 5% of the total retail area) and the existing mix of land uses in the area, I do not consider that the development will significantly alter the character of the area or result in a significant rise in antisocial behaviour. The sales will be ancillary to the primary usage of the convenience retail unit, which already has a wine licence. Furthermore, the sale of alcohol will not operate as a separate entity. The Applicant highlights that the vast majority of Circle K service stations are in residential areas and the majority sell alcohol either by way of a wine licence or full part off licence within the store. In this regard, I do not concur with the Appellant that a contradiction exists for a petrol station to sell alcohol.

The First Party Response provides that the company have robust and comprehensive management practices in place to ensure the safety of staff and the amenity of the immediate neighbours. No public seating is proposed on the site and the station is served by CCTV and passive surveillance. It is submitted that the necessary procedures to ensure anti-social is minimised will be undertaken.

Whilst I note there are two schools located north of the site, I do not consider that the proposal will negatively impact students as the off-licence will not be visible from the school grounds. I note Condition No. 7 attached to the Local Authority's decision prohibits any advertising or signage for the off-licence on the exterior or behind the glazing of the retail unit.

Overall, I would be satisfied that a small scale ancillary off-licence, which is well concealed at the rear of the unit, is acceptable at this location and will not adversely impact on the amenities of the area.

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

I recommend that planning permission be granted, subject to the conditions outlined below.

9.0 Reasons and Considerations

Having regard to the location of the proposed development next to Donaghmore Shopping Centre, the site's District Centre land use zoning, and to the limited scale of the use for the purposes of an off-licence within the overall footprint of the retail unit, it is considered that, subject to compliance with the conditions set out below, the proposed development would be in accordance with the provisions of the City Development Plan, would not seriously injure the residential amenities of the area, and would not lead to an over-concentration of off-licence uses. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area 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. Reason: In the interest of clarity
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2.	<p>(a) The display area for alcohol products shall be limited to the area indicated on the submitted drawings.</p> <p>(b) Notwithstanding exempted development provisions of the Planning and Development Regulations 2001, as amended, there shall be no advertising of the sale of alcohol products on the façade/frontage of the premises.</p> <p>(c) There shall be no display of alcohol products or advertising of the sale of alcohol products on or near both the entrance and/or windows.</p> <p>Reason: In the interests of visual amenity and proper planning and sustainable development.</p>
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Susan Clarke
Planning Inspector

19th August 2021