



An  
Bord  
Pleanála

## Inspector's Report ABP 310590-21

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<b>Development</b>	Change of use from retail use to retail use including off licence.
<b>Location</b>	Circle K, Kilnamanagh Service Station, Mayberrry Road, Tallaght, Dublin 24.
<b>Planning Authority</b>	South Dublin County Council
<b>Planning Authority Reg. Ref.</b>	SD12A/0078
<b>Applicant</b>	Ard Services Ltd.
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse
<b>Type of Appeal</b>	1 <sup>st</sup> Party v. refusal
<b>Appellant</b>	Ard Services Ltd.
<b>Observer(s)</b>	St.Kevin's conference of St.Vincent de Paul
<b>Date of Site Inspection</b>	30/07/21
<b>Inspector</b>	Pauline Fitzpatrick

## 1.0 Site Location and Description

The Circle K service station is accessed from Mayberry Road in Kilnamanagh, Tallaght. It comprises of 3 no. fuel islands on the forecourt with a canopy over in addition to a car wash and other ancillary services, a laundry mat and a building containing retail and back of house areas. The building has a stated floor area of 116 sq.m.

The site is bounded by the Broomhill Business Complex to the south, the small residential scheme of Mayberry Park to the west and the Redwood housing estate to the north on the opposite side of the road. An undeveloped stretch of ground, landscaped with trees to the road, bounds the site to the east. The Kilnamanagh Shopping Centre is c.250 metres to the east.

## 2.0 Proposed Development

Permission is sought to change 8 sq.m. of the existing retail floorspace to use as an off-licence.

The application is accompanied by a Planning Statement.

## 3.0 Planning Authority Decision

### 3.1. Decision

Refuse permission for the above described development for two reasons which can be summarised as follows:

1. The layout of the immediate area provides opportunities for anti-social behaviour. The proposal would fail to protect residential amenity and would be contrary to Policy R1, Objective 9 of the County Development Plan which provides for local convenience in residential areas, subject to protection of residential amenity. The development does not meet the test under section 11.1.1 (ii) for an open for consideration use as it would have a detrimental impact at local level and would contravene the local RES land use zoning objective.

2. The proposal would contribute to an overconcentration of off-licences in the area.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

The Area Planner's report in the Record of Executive Business and Chief Executive's Order can be summarised as follows:

- The proposal seeks to introduce a new retail-related use on a site which is not in an urban centre and is in close proximity to a district centre. Development Plan policies R1, R2 and R6 when considered together require that the development does not detract from the retail hierarchy of the county and protects residential amenity.
- The layout of open spaces in the area provide opportunity for anti-social behaviour.
- There are no standard measures for determining an over-concentration of off-licences in the area. An assessment must be based on the local context. The residential area to be served by the development is currently served by Dunnes Stores and other supermarkets on Old Belgard Road.
- It is considered that the proposal would not be justified under Policy R1, Objective 9, as it would not protect residential amenity.
- It would not be acceptable under section 11.1.1 (ii) of the County Development Plan as an 'open for consideration' use due to its potential impact at a local level and its potential to detract from the land use zoning to improve and/or protect residential amenity.
- Given the local context and urban hierarchy of spaces and facilities in the area, it is considered that the proposal within 250 metres of the district centre would be an over concentration of that use in breach of policy R11.
- The proposal would detract from the retail hierarchy established in the South Dublin County Development Plan and would undermine the principle of sequential development as per Policy R2.

A refusal of permission for 2 reasons recommended.

### 3.2.2. Other Technical Reports

Roads Department has no objection.

Water Services has no objection.

Environmental Health Department has no objection subject to conditions.

### 3.3. Prescribed Bodies

Irish Water has no objection.

### 3.4. Third Party Observations

Objections to the proposal received by the planning authority are on file for the Board's information. The issues raised relate to anti-social behaviour, impact on residential amenities and number of off licences in area

## 4.0 Planning History

The planning history on the site is set out in the Planning Statement by Coakley O'Neill Town Planning Ltd. accompanying the application.

## 5.0 Policy Context

### 5.1. Development Plan

#### **South Dublin County Development Plan, 2016**

The site is within an area zoned RES the objective for which is to protect and/or improve residential amenity. An office-licence is open for consideration.

#### *Section 11.1.1 – Open for Consideration*

Land uses that are listed for 'open for consideration' in the land use zoning may be acceptable to the Planning Authority subject to detailed assessment against the principles of proper planning and sustainable development, and the relevant policies, objectives and standards set out in this Plan.

Proposed uses in this category will be subject to full assessment on their own merits and particularly in relation to their impact on the development of the County at a strategic level and a local level. Such uses may only be permitted where they do not materially conflict with other aspects of the County Development Plan.

*Retail Policy 11* – manage the provision of off-licences and betting shops to prevent an excessive concentration of land uses.

*R11 Objective 1* – to prevent an excessive concentration of off licences and betting offices.

*Policy R1 (Overarching)* - to seek to ensure adequate retail provision at suitable locations in the County and to protect the vitality and viability of existing centres in accordance with the retail framework provided by the Retail Planning Guidelines for Planning Authorities (2012) and the Retail Strategy for the Greater Dublin Area 2008-2016. Given the changing economic circumstances since the adoption of the Retail Strategy for the Greater Dublin Area a cautionary approach will be adopted in relation to future quantitative retail floor space requirements.

*R1 Objective 9*

To encourage and facilitate the provisions of local convenience shops (Shop-Local) in existing residential areas where there is a deficiency of retail provision in the catchment, subject to protecting residential amenity.

*Section 11.3.6 – retail development*

(ii) Restrictions 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 Coakley O'Neill Town Planning Ltd. on behalf of the 1<sup>st</sup> party against the planning authority's notification of decision to refuse permission can be summarised as follows:

- That a negative impact upon residential amenity would arise has not been demonstrated and there is no evidential basis for concluding so.
- A conclusion that 2 no. part off licences within a 1km area would lead to an overconcentration cannot be sustained. It entirely contradicts decisions reached elsewhere by the planning authority and An Bord Pleanala.
- The only off licences within 1km of the site are subsidiary off licences at Dunnes Stores and Aldi. There are no standalone off licences in the vicinity.
- The decision ignores the provisions set out in section 11.3.6 (ii) which states that the objective seeking to control the overprovision of off licence use states that the provision of a small section of a convenience shop for an ancillary off licence is generally acceptable.
- Precedent set by SD17A/0284, SD18A/0415, SD18A/006, SD17A/0393 and SD17A/0351. Reference made to planner's reports on SD14A/0233, SD10A/0096 and SD08/0132.
- The filling station has a wine licence for an extended period of time.
- Underage drinking and anti-social behaviour are not planning matters.
- The area is not primarily residential. There is a strong commercial presence in the vicinity.

## 6.2. Planning Authority Response

None

## 6.3. Observations

St. Kevin's Conference St. Vincent de Paul:

There have been incidents of anti-social behaviour in the area involving under-age drinking. There are enough off licences in the area. A further one would exacerbate the situation. The outlet would not have the necessary supervision controlling the sale of alcohol to minors.

## 7.0 Assessment

The existing Circle K filling station is long established and is served by a small retail component. The proposal is seeking permission to change the use of 8 sq.m. of the existing retail to off licence to facilitate the selling of beer and spirits. This is in addition to the existing wine sales established within the premises.

Whilst the filling station is within an area zoned RES in the current South Dublin County Development Plan with the Mayberry Park housing scheme immediately to the east and the Redwood Housing estate to the north of the opposite side of the road, I submit that the area is characterised by a mix of uses including the Broomhill Business Park immediately to the south and the Kilnamanagh Shopping Centre c. 250 metres to the east. Mayberry Road from which the site is accessed is well trafficked connecting Greenhills Road and Old Belgard Road.

Within RES zoning an off licence is open for consideration. Section 11.1.1 of the current County Development Plan states that land uses that are listed for 'open for consideration' may be acceptable subject to detailed assessment against the principles of proper planning and sustainable development, and the relevant policies, objectives and standards set out in this Plan.

The commercial use of the site is long established by way of the filling station. The proposed change of use of 8 sq.m. of the retail component to off licence, which would not operate as a separate entity, would be subordinate to the primary function of the site as a filling station with ancillary retail provision. I do not consider that the

proposal would adversely impact on the residential amenities of the area and on this basis is it considered that it would accord with the zoning provisions for the area.

R11 Objective 1 of the current County Development Plan seeks to prevent an excessive concentration of off licences and betting offices. Section 11.3.6 of the plan expands on restrictions in that the planning authority will seek to ensure that the quantum of 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 provision of a small section of a convenience shop for an ancillary off-licence use is generally acceptable.

I submit that in the view of the size and character of the area with the mix of uses and the fact 2 no. ancillary off licence facilities within 1km of the site, only, have been identified, the proposal would not lead to an over concentration of such facilities. I would also submit that the allowance in section 11.3.6 for a small section of a convenience store for an ancillary off licence use would be applicable in the instant case.

Issues in terms of anti-social behaviour experienced in the area and selling of alcohol to under age persons are not planning considerations and are more appropriately addressed to the appropriate authorities.

I note the precedent cited by the agent for the applicant. Notwithstanding the fact that the cases cited are not directly comparable each case is assessed on its merits.

#### *Appropriate Assessment*

Having regard to the nature and extent of the development it is concluded that no appropriate assessment issues arise as the proposed development would not 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.

## 9.0 Reasons and Considerations

Having regard to the RES land use zoning objective for the site within which off licence is open for consideration, the established fuel filling station use on the site, the pattern of development in the vicinity 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 current development plan for the area, would not seriously injure the residential amenities of the area, and would not lead to an over-concentration of off-licence uses in the area. 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 condition. Where such condition requires 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.
  - (a) No advertising of the sale of alcohol products shall occur on the front elevation of the shop or within or on the boundaries of the filling station forecourt.
  - (b) The alcohol sales area shall be limited to the area shown on the Proposed Floor Layout Plan submitted with the planning application.

**Reason:** In the interest of clarity and the visual amenities of the area.

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**Pauline Fitzpatrick**  
**Senior Planning Inspector**

**August, 2021**