



An  
Bord  
Pleanála

## Inspector's Report 310635-21

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<b>Development</b>	Provision for Part Off-licence at Existing Retail Unit
<b>Location</b>	Xtramart, 1 St. David's Terrace, Dublin 7, D07 W562
<b>Planning Authority</b>	Dublin City Council
<b>Planning Authority Reg. Ref.</b>	2535/21
<b>Applicant(s)</b>	Binoy Jose
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse Permission
<b>Type of Appeal</b>	First Party Appeal
<b>Appellant(s)</b>	Binoy Jose
<b>Observer(s)</b>	Catherine O'Flynn
<b>Date of Site Inspection</b>	19 <sup>th</sup> August 2021
<b>Inspector</b>	Susan Clarke

## **1.0 Site Location and Description**

- 1.1. The site has a stated area of 105 sq m and is located at No. 1 St. David's Terrace, Dublin 7, D07 W562. The site is an existing end-of-terrace period building located on the junction of Blackhorse Avenue and St. David's Terrace in an inner suburban area. The site abuts residential dwellings to the west, Blackhorse Avenue to the north with residential dwellings beyond (Phoenix Manor and Phoenix Court), St. David's Terrace to the east, and a service laneway running parallel to Blackhorse Avenue to the south.
- 1.2. The Ground Floor Level retail unit (67 sq m) is accessed via Blackhorse Avenue. A separate entrance off Blackhorse Avenue provides access to accommodation at First Floor Level.

## **2.0 Proposed Development**

- 2.1. The proposed development consists of the provision of a part off-licence within an existing retail unit and all associated site and development works.
- 2.2. The proposed off-licence area occupies a floorspace of 2.9 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. A Notification of the Decision to Refuse Permission was issued on 28<sup>th</sup> May 2021 for one 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 City Development Plan (CDP) 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 the Planning Officer considered that the proposal generally complied with the CDP's Policy RD5 and Section 16.28 relating to off-licences, 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**

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. Two Third Party observations were made in respect of the application from:

1. Mr Pat Coyne of No. 7 Arran Street East, Inns Quay, Dublin 7; and
2. Ms Catherine O'Flynn of No. 111 North Circular Road, Dublin 7.

The points made in the observations can be summarised as follows:

- The proposal will result in increased antisocial behaviour and negatively impact the area's residential amenity, and as such would be of no benefit to the community.
- There is no requirement/need for an off-licence in the area.
- Questions if Z1 zoning allows off-licences.
- Concerns raised in relation to the publication of the statutory notices in the Dublin Gazette.
- Planning application fails to provide revenue numbers, licensees' names or licenced premises' addresses with the application.
- Having regard to recent Circuit Court decisions, queries whether or not public houses should be included as premises that sell alcohol for consumption off the premises.

## 4.0 Planning History

- 4.1. **Planning Authority Reg. Ref. 3921/16:** Permission sought to demolish existing covered yard, and to build a new one bedroom two storey house to side/rear, together with new garden wall (900mm high) with new security railings (1100 mm high on 900 mm high wall) together with new pedestrian access gate. Permission was refused on 6<sup>th</sup> December 2016 for reasons relating to overdevelopment and failure to comply with residential development management standards.

## 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 “Z1” (Sustainable Residential Neighbourhoods), which has the objective “to protect, provide and improve residential amenities”. A part off-licence use is not “permissible” nor “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 CDP.
- 5.2.2. Section 14.4 of the CDP 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 1km 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 Green Design Build on behalf of Binoy Jose of No. 1 St. David's Terrace, Dublin 7. The grounds of which can be summarised as follows:

- Dublin City Council has permitted small off-licences in areas zoned Z1 (DCC Reg. Refs. 3315/12, 2555/13, 2823/13, 3143/14, 3532/14, and 4381/18).
- The application is for a very modest change of use 2.9 sq m and the use will remain subsidiary to the main shop.
- The development complies with recent changes to legislation.
- The planning application demonstrates complies with Section 16.28 and Policy RD5. There is not an over-proliferation of off-licences in the area.
- The subject unit has a wine licence for the past nine years.
- There has been no residents association complaints or Gardaí complaints or convictions throughout the last nine years of Mr Binoy Jose's ownership.
- There is a need for the development having regard to the fact several off-licences and public houses have been closed due to the Covid crisis. Customers have confirmed this demand.
- There is a need to level the playing pitch and allow smaller retail units compete equally with larger corporate run multinational based retail units, albeit in this case, on a smaller scale.
- The Gardaí have confirmed to the operator of the shop that they have no objection to the proposed development.

### **6.2. Planning Authority Response**

6.2.1. None received.

### 6.3. Observations

An observation in respect of the First Party Appeal was made by Ms Catherine O'Flynn of No. 111 North Circular Road to An Bord Pleanála on 13<sup>th</sup> July 2021. The key points from the Observation can be summarised as follows:

- The presence of an off-licence will damage the area.
- Anti-social behaviour will increase should the development be permitted.
- The development is not in keeping with the Z1 designation.
- The Gardaí visited the premises when they became aware of the proposed application.
- The development of new housing in the area should encourage the Board to reject the proposal.

## 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, Third-Party Appeal and Observation, 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, and
- Appropriate Assessment.

Each of these issues is addressed in turn below.

### 7.2. Principle of the Development

7.2.1. The Local Authority refused planning permission for the proposed development for one 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 CDP for the zoning of land.

7.2.2. In considering the foregoing, I note that part off-licence uses are permissible under other land use zoning categories of the CDP. Furthermore, I note that Section 14.4 of

the CDP 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. I consider that the precedent cases for off-licences in Z1 zoned areas referenced in the First Party Appeal are not directly applicable, as the particular circumstances of same, including the location of the developments in proximity to business districts and the established need for off-licences, differ to that of the subject development. I note the lands surrounding the site are similarly zoned Z1 (Sustainable Residential Neighbourhoods) or Z2 (Residential Neighbourhoods (Conservation Areas)). As such, the area is not within a transitional zone, but is instead a predominantly residential area. I noted that there are 11 No. off-licences located within a 1km radius of the subject site, with a number of others located in close proximity to the circumference of the radius. Notwithstanding the restrictions of the Z1 zoning objective, I do not consider that a propelling case has been made that there is a need or requirement in the area for additional off-licence.

- 7.2.3. The appellant’s agent submits that the off-licence will enhance the amenities of the area, allow a small independent retailer to compete with larger supermarkets, and is in keeping with the proper planning and sustainable development of the city despite the ‘zoning anomaly’. However, in my opinion, these arguments only warrant consideration where a development has been confirmed to be either permissible or open for consideration under the land use zoning objective. I consider that the arguments made in relation to competition between small retailers and larger corporate multinational based retailers runs contrary to Government policy to reduce alcohol consumption by reversing a pattern whereby the purchase of alcohol is seen as part of normal convenience shopping.
- 7.2.4. Notwithstanding that the proposed development may comply with certain sections of the CDP in relation to the development of off-licences (i.e. the location of the off-licence to the rear of the retail unit in an unobtrusive position, and less than 10% of the total retail floor space being assigned to the off-licence), the CDP clearly confirms that part-off licence uses are not permissible in principle on Z1 zoned lands. Therefore, I concur with the Local Authority that planning permission be refused as the development materially contravenes the CDP.
- 7.2.5. Section 37(2)(b) of the Planning 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.

In my opinion, the proposed development does not satisfy any of the criteria as set out above; the development is not of strategic or national importance, there are no conflicting or unclear objectives in the CDP, there are no relevant Section 28 Guidelines, and the proposal is not consistent with the pattern of development in the area since the making of the CDP.

In conclusion, I recommend that planning permission be refused in this instance.

### **7.3. Appropriate Assessment**

- 7.3.1. 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 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 City Development Plan not to be permissible in principle. The proposed development would, therefore, materially contravene an objective indicated in the City Development Plan in relation to the zoning of land and would be contrary to the proper planning and sustainable development of the area.

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Susan Clarke  
Planning Inspector

20<sup>th</sup> August 2021