



An
Bord
Pleanála

Inspector's Report

ABP-311706-21

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| Development | Alterations to internal layout and facade and provision of Off licence subsidiary to the main retail use. |
| Location | Go, Kylemore Road, Dublin 12. D12 EV76 |
| Planning Authority | Dublin City Council South |
| Planning Authority Reg. Ref. | 3299/21 |
| Applicant(s) | Bernard Byrne |
| Type of Application | Permission |
| Planning Authority Decision | Refuse |
| Type of Appeal | First Party |
| Appellant(s) | Bernard Byrne |
| Observer(s) | None |
| Date of Site Inspection | 28 th January 2022 |
| Inspector | Mary Crowley |

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1.0 Site Location and Description

- 1.1. The appeal site with a stated area of 222sqm consists of an existing service station called 'GO' located on the west side of Kylemore Road. The Camac River forms the boundary of the site to the north and west with an existing motor sales outlet located beyond this to the north and City Link Business Park to the west. The site is bounded by a single storey dwelling unit to the south. The site is opposite the Sheldon Park Hotel and a multi storey residential development currently under construction. A set of photographs of the site and its environs taken during the course of my site inspection is attached. These serve to describe the site and location in further detail.

2.0 Proposed Development

- 2.1. Permission is sought for alterations to the internal layout and facade and provision of off licence subsidiary to the main retail use (area 6.5sqm).

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. Dublin City Council issued a notification of decision to refuse planning permission for the following reason:

1. *The proposal to provide an off-licence subsidiary to the main service station within a Z6 zoning which is 'to provide for the creation and protection of enterprise, and facilitate opportunities for employment creation', would be contrary to the zoning for the area as the use is neither a permissible nor an open for consideration use. The development would contravene materially a development objective indicated in the development plan for the zoning of land for the use solely or primarily of particular areas for particular purposes and as such would be contrary to the proper planning and sustainable development of the area.*

3.2. Planning Authority Reports

- 3.2.1. Planning Reports

- The **Case Planner** recommended that permission be refused for a single reason relating to the proposed off-license use at this location would be contrary to the Z6 Zoning as the use is neither permissible nor open for consideration. The notification of decision to refuse permission issued by Dublin City Council reflects this recommendation.

3.2.2. Other Technical Reports

- **Drainage Report** - No objection to this development, subject to the developer complying with the Greater Dublin Regional Code of Practice for Drainage Works Version 6.0 (available from www.dublincity.ie Forms and Downloads).

3.3. Prescribed Bodies

3.3.1. None

3.4. Third Party Observations

3.4.1. None

4.0 Planning History

4.1. No planning history has been provided with the appeal file. The following history is noted from the Case Planners report:

- **RL3495 (Reg Ref 0173/16)** – Dublin City Council refused an exemption certification for “ Whether the use of 1.16m² of shop area at Go Kylemore Service Station for sale of hot food is or is not development and is or is not exempted development.” Following a Section 5 Referral to the Board determined that the said change of use of 1.16 square metres of shop area for the sale of hot food at GO Kylemore Road Service Station, Kylemore Road, Dublin is not development.
- **Reg Ref 4117/15** - Planning permission granted at the GO station for an extension to the opening hours permitted under Reg. Ref. 2685/14 to allow for 24 hour opening of the service station. The 24 - hour operation of the premises shall relate solely to the use of the filling pumps in the forecourt area and the sale of fuel and other goods via a sales hatch in the service station building.

- **Reg Ref 2660/15** - Permission granted for retention of development at Kylemore Road Service Station (permitted under Reg. Ref. 2685/14) consisting of service station signage incorporating three internally illuminated canopy signs on existing forecourt canopy structure (c.1.05m in height along canopy), one perspex dome sign (c.1.4m in height) on front elevation of forecourt building, one internally illuminated double sided freestanding totem entrance sign with three lightbox display panels (c.6.5m in height overall); two freestanding illuminated directional signs (c.1.3m in height) and two wall signs (c.750mm in height).
- **Reg Ref 2685/14** - Permission granted for construction of single storey service station building (c. 100m² retail sales area), forecourt and canopy (c. 5.4m in height), illuminated totem sign (c.5.5m in height), ancillary non illuminated signage, four fuel dispensing pump stands, three underground storage tanks, service area, 11 customer parking spaces and six bicycle parking spaces, together with a single storey motor service unit (c. 97.5m² area) and all associated site development, landscaping and boundary treatment works including reinstatement of two access/egress points onto Kylemore Road (overall GFA of 256m²)
- **Reg Ref 3129/12** - Permission refused for construction of single storey (maximum height 6.6m), 80 seater drive-through restaurant (294.7sq.m gross floor area) to consist of an 80- customer seating area, preparation, service and storage areas, staff facilities, and customer toilets, provision of a drive-through with vehicular circulation, signage on east and south elevations as well as associated vehicular signage, 30 car parking spaces, bicycle parking, external seating, paving, plant and lighting and all ancillary site development works and site services

5.0 Policy Context

5.1. Development Plan

- 5.1.1. The operative plan for the area is the **Dublin City Development Plan 2016-2022**. The site is **Zoned Z6 Employment/Enterprise Zones** where the objective is “to provide for the creation and protection of enterprise and facilitate opportunities for employment creation”. Within the Z6 zoning, it is noted that off-licence and part off-

licence is neither a permissible use nor an use open for consideration. Policies and objectives relative to the appeal are set out as follows:

- **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.*

5.1.2. **Section 16.28 Off-Licence and Part Off-Licence** sets out the criteria in considering planning applications for off-licence premises or extensions to existing off-licence premises, the following criteria shall be applied

- *The number and frequency of such facilities within a 1 km radius of the proposed development*
- *The context and character of the street where the aim is to maintain and improve the vitality of the shopping experience by encouraging a range of convenience and/or comparison retail shops*
- *The range of uses at ground floor in an area where the aim is to strengthen the retail character and ensure the proposal will not result in a proliferation of similar retail service outlets such as, internet cafés, call centres, bookmakers, takeaways, amusement arcades and car rentals resulting in a predominance of similar non-shop frontages*
- *The size of the proposed off-licence in the context of the size of premises in the area.*

In considering planning applications for a part off-licence in a shop, the following criteria shall be applied:

- *The number and frequency of such facilities within a 1 km radius of the proposed development*
- *The amenities of properties in the nearby residential areas*
- *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*

- *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*
- *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*
- *The area for the display of alcohol products should be secure and monitored.*

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:

- *Limiting the display area of alcohol products to that area of the shop only as detailed on the plans*
- *No advertising of the sale of alcohol products on the façade/frontage of the premises*
- *No display of alcohol products or advertising of the sale of alcohol products on or near both the entrance and the windows*

5.2. Natural Heritage Designations

5.2.1. The site is not located within a designated Natura 2000 site.

5.3. EIA Screening

5.3.1. Having regard to the nature and scale of the proposed development, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environment impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. The first party appeal against the decision to refuse permission may be summarised as follows:

- DCC focused on the off license aspect of this development and has not considered

- In addition to the investment in the modernisation refurbishment and improvements to the interior and exterior the application seeks to respond to the requests of the existing customer base to provide for the sale of beer, wine and spirits with a small retailers off license subsidiary to the main retail area as follows in a well established garage / filling station.
- Noted that a local shop is a permissible use while a stand a lone off-license is not permitted under. Under normal zoning circumstance for a retail unit / supermarket / convenience store a small “part off license” as part of a retail unit would be normally permissible. The proposed “part off license subsidiary to the main retail use” is less than 4% of the total retail use (6.5sqm) and is described as a “micro-off-licence”.
- Precedent of grant of permission for part off licence under non permissible anomalous zonings e.g Z1 and Z6 Zoning. Copy of Case Planners report pertaining to Reg Ref 3315/12 attached (Z1 Zoning). This decision was appealed; PL29S.241379 refers. In addition DCC have recently granted 3 year temporary permission on trail basis for retail off licences in instances where there is a zoning anomaly / non-conforming use. Reg ref 4381/18 refers.
- Policy RD11 aims to promote good quality accessible convenience shopping in all areas of the site to engender competition and enhance services. This development engenders competition as other retailers in the Z6 zoning have off licence services, to the customers of this unit should have equal access of the same services.
- There is a very low frequency of off licences in the vicinity (1km). Map attached. There are only 7 off license units within 1 km radius compared with similar uses in the city centre with over 40 units. The development complies with Section 16.28 of the Development Plan.

6.2. Planning Authority Response

6.2.1. None

6.3. Observations

6.3.1. None

6.4. Further Responses

6.4.1. None

7.0 Assessment

7.1. Having regard to the information presented by the parties to the appeal and in the course of the planning application and my inspection of the appeal site, I consider the key planning issues relating to the assessment of the appeal can be considered under the following general headings:

- Principle
- Appropriate Assessment
- Other Issues

7.2. Principle

7.2.1. Dublin City Council issued a notification of decision to refuse permission as the proposed off-licence use at this location would be contrary to the Z6 Zoning as the use is neither permissible nor open for consideration.

7.2.2. The proposal is for alterations to the internal layout and facade and provision of an off licence subsidiary to the main retail use (Area 6.5sqm). As noted on day of site inspection (site photos refer) the existing service station is undergoing internal alterations whereby the existing retail element is expanding. It is proposed to provide a part off-licence within the extended service station shop.

7.2.3. The appeal site is within an area Zoned Z6 Employment/Enterprise Zones where the objective is *“to provide for the creation and protection of enterprise and facilitate opportunities for employment creation”*. Within the Z6 zoning, it is noted that off-licence and part off-licence is neither a permissible use nor a use open for consideration.

7.2.4. The Z6 Employment/Enterprise Zoning attached to the proposed site reflects the wider land use zoning of the area and aligns with the zoning objective for adjoining lands to the west that are zoned EE Enterprise and Employment. It is noted that lands to the south are zoned Zone Z14: Strategic Development and Regeneration Areas (off

licence use permitted and open for consideration) and lands further east are zoned Z1: Sustainable Residential Neighbourhoods (off licence use not permitted and not open for consideration). Given the location and zoning objective for the site taken together with reference to the map submitted indicating the off licenses within 1km of the appeal site I am satisfied that the area is adequately served given the land use zoning of the site and adjoining lands. Refusal recommended.

7.3. **Appropriate Assessment**

- 7.3.1. Having regard to the nature and scale of the development in a serviced urban area and its distance to the nearest European site, 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.

7.4. **Other Issues**

- 7.4.1. **Development Contributions** – I refer to the Dublin City Council Development Contribution Scheme 2020-2023. Should the Board be minded to grant permission it is recommended that a standard Section 48 Development Contribution Condition be attached

8.0 **Recommendation**

- 8.1. I have read the submissions on file and visited the site. Having due regard to the provisions of the Development Plan, together with all other issues arising, I recommended that permission be **REFUSED** for the following reasons and considerations.

9.0 **Reasons and Considerations**

1. Having regard to the Zoned Z6 Employment/Enterprise Zones for the site where the objective is "to provide for the creation and protection of enterprise and facilitate opportunities for employment creation", it is considered that the proposal to provide an off-licence subsidiary to the main service station, would

contravene the said zoning objective for the area as the use is neither a permissible nor an open for consideration use. The development would contravene materially a development objective indicated in the development plan for the zoning of land for the use solely or primarily of particular areas for particular purposes and as such would be contrary to the proper planning and sustainable development of the area.

Mary Crowley

Senior Planning Inspector

31st January 2022