



An  
Bord  
Pleanála

## Inspector's Report ABP-312586-22.

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<b>Development</b>	Part off-licence use in existing retail unit.
<b>Location</b>	38 Capel Street, Dublin 1.
<b>Planning Authority</b>	Dublin City Council.
<b>Planning Authority Reg. Ref.</b>	5054/21.
<b>Applicant</b>	The Moldovan Retail Store Ltd.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Grant.
<b>Type of Appeal</b>	First Party and Third Party
<b>Appellants</b>	1. Patrick Coyne. 2. The Moldovan Retail Store Limited.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	5 March 2022.
<b>Inspector</b>	Mairead Kenny.

# Contents

1.0 Site Location and Description .....	3
2.0 Proposed Development .....	3
3.0 Planning Authority Decision .....	3
3.1. Decision .....	3
3.2. Planning Authority Reports .....	4
3.3. Prescribed Bodies .....	4
3.4. Third Party Observations .....	5
4.0 Planning History.....	5
5.0 Policy Context.....	5
5.1. Development Plan.....	5
6.0 The Appeals .....	6
6.1. First Party.....	6
6.2. Third party.....	6
6.3. Appellants' Responses.....	7
6.4. Planning Authority Response.....	7
6.5. Observations .....	7
7.0 Assessment.....	7
7.2. Principle .....	8
7.6. Temporary permission .....	9
7.10. The location and size of the off-licence.....	9
7.12. The ACA and signage.....	9
8.0 Recommendation.....	10
9.0 Reasons and Considerations.....	10
10.0 Conditions .....	11

## 1.0 Site Location and Description

- 1.1. The site is located at Capel Street, close to the junction with Mary Street. The site is of stated area of 195.9 m<sup>2</sup> and the existing unit on the site occupies the entire footprint. The shopfront is contemporary and mainly glazed. The name of the premise is on the fascia and there is a projecting sign at this level also.
- 1.2. The existing outfit is in use as a grocery/convenience store selling fresh food and products mainly from Eastern Europe. At the time of inspection, I noted that the products on display included many specialist foodstuffs and brands. There is a large fridge retailing delicatessen products including a very wide range of cheeses and two meat counters one trading smoked meat products and the other a fresh butcher counter. The premises retails a large range of fresh vegetables and herbs. Behind the cash till area there is a range of wines for sale.
- 1.3. The adjacent retail units are occupied by a well-known men's clothing outfitters to the north and by a bicycle shop to the south. The uses in the vicinity include a well-known public house and a musical instrument shop. This is a very vibrant retail area which retains a diverse range of uses.
- 1.4. Photographs which were taken by me at the time of inspection are attached.

## 2.0 Proposed Development

- 2.1. Permission is sought to develop an off-licence of stated area of 16.5 m<sup>2</sup>. The relevant area would be located between the cash till and the fridges / butchers. This is approximately 7m from the front façade.

## 3.0 Planning Authority Decision

### 3.1. Decision

The planning authority decided to grant permission subject to conditions including:

- Condition 2 - temporary permission for a period of three years.
- Condition 3 - the permission excludes the projecting sign to the front of the premises.

- Condition 4 - the area for display of alcohol products shall be relocated to an area close to the rear of the premises and not visible from the street and shall thereafter be retained at that location. The floor area for the display and sale of alcohol products shall not exceed 10% of the overall retail area of the unit. Revised details to be agreed.
- Conditions 5 and 6 - restriction on exempted development provisions relating to advertising, signage and related.

## 3.2. Planning Authority Reports

### 3.2.1. Planning Reports

The main points in the planner's report include:

- The proposed off-licence has a floor area of 16.5 m<sup>2</sup>. The premises already sells alcohol products. The preferred location would be towards the rear of the unit and a total area of no more than 10% of the net retail floor area.
- There is no objection in principle to the proposed part off-licence.
- The third-party submission refers to the crowds who currently gather on Capel Street which has been temporarily pedestrianised on weekend evenings to allow for dining and drinking during the pandemic. As there are other outlets selling alcohol in the vicinity it is not clear what impact any existing proposed sale of alcohol from the subject premises is or would be.
- The proposed use would be regulated by existing licensing laws.
- There appears to be no permission for the existing projecting sign to the front of the premises which is contrary to the provisions of the ACA and would need to be omitted from any grant of permission.

### 3.2.2. Other Technical Reports

Drainage Division – no objection.

## 3.3. Prescribed Bodies

TII – notes that the site is within the section 49 levy scheme for light rail and requests that a condition be attached unless exempt.

### **3.4. Third Party Observations**

The third-party observer described the premises as one of the finest establishments in the north inner city. He refers to the alcohol consumption on the public street during the pandemic and particularly at the junction of Capel Street and Great Strand Street and Little Strand Street. Until this activity ceases, he states that granting permission for another off-licence can only further diminish the residential amenities.

### **4.0 Planning History**

The most recent planning case of relevance to the subject site is described below. The planning report refers to another case which dates to 2003.

Reg ref 3587/18 relates to a permission granted for a change of use of number 37 and 38 Capel St from retail to restaurant use and other works.

### **5.0 Policy Context**

#### **5.1. Development Plan**

- 5.2. The site is within the Z5 city centre zone. Section 14.8.5 of the plan sets out the purpose of the Z5 zoning.
- 5.3. Section 16.2.8 of the plan sets out the policy relating to off-licences and part of licences and the requirements when making an application.
- 5.4. Section 8.2.6 of the Capel Street ACA document refers to signage and states that permission is required for all signs including projecting signs. Projecting signs at ground or upper floor levels will not normally be permitted.
- 5.5. Policy RD5 is to prohibit further expansion of off-licences or part of licences unless a compelling case can be made that there is not an overconcentration of such uses in any one area.
- 5.6. Criteria to be applied include consideration of the number and frequency of such facilities within a 1 km radius, the amenities of nearby residents, the floor area used for the display of alcohol which should be no more than 10%, the location of the

display area for alcohol products which should be unobtrusive and preferably to the rear of the premises and shall be identified on the floor plans.

## **6.0 The Appeals**

### **6.1. First Party**

The appeal is against condition 2 and includes the following points:

- The condition is injurious to the business interests of the applicant as it fails to recognise the legislative process which must be undertaken to enjoy the usage.
- The applicant must purchase a publican's licence, make an application to the court to have a transfer to the premises, entailing a cost of about €70,000. There will be a significant financial loss if the approved usage must cease after a period of two years.
- There is no provision in the development plan for imposition of the restricted time limit having regard to the assessment by the planner that the proposed development accords with the development plan and the proper planning and sustainable development area.

### **6.2. Third party**

The appeal is against the decision to grant permission and includes the following points:

- The sale of intoxicating liquor is not an ordinary product. If not controlled, it has many adverse effects on social and civic life. In this ACA only appropriate uses are permitted.
- The drawings submitted were not of sufficient detail and there was no customer demand analysis.
- The proposed development will exacerbate the neighbourhood's problem of street drinking and antisocial behaviour.

- A full permission would allow wine, spirits and beer to be sold. This product should be only sold in licensed premises like pharmacies or stand-alone off-licences. Alcohol and drugs have caused a number of problems in this area which are outlined.
- The use of outdoor areas including for on street drinking during the pandemic is described. The pedestrianisation which was undertaken is referenced.
- No compelling case was made for the premises to sell beer and spirits in this neighbourhood which has already enough existing premises of the same character. The planner's report clearly states that no justification has been provided. Photographs are enclosed of on street drinking in the area.
- Other comments are referenced relating to the shopfront and signage.

### 6.3. **Appellants' Responses**

None.

### 6.4. **Planning Authority Response**

The planning authority has not provided a substantive response.

### 6.5. **Observations**

None.

## 7.0 **Assessment**

7.1. I propose to assess this case under the following headings:

- principle of the proposed development
- temporary permission
- the location and size of the off-licence
- the Architectural Conservation Area and signage.

## 7.2. Principle

- 7.3. The development plan sets out clear criteria to be applied in the consideration of applications for off-licences or part of licences. There is a general presumption policy RD5 against further off licences or part off licences unless a compelling case can be made there is not an overconcentration of such uses in any area and in this regard a map should be included with the application. In this assessment of this application, I consider that the planning authority gave due consideration to the number of off-licences which are present in the area. I note the planner's report describes the concentration of off-licence facilities in the area to the east, which would include specialist outlets which are perhaps aimed at tourists as well as the retailing of alcohol in the major supermarkets. The planner's report describes the presence of two off-licence facilities on Capel Street and notes the absence of such uses in the area further west. I agree with the conclusion drawn that the development is acceptable in principle.
- 7.4. Regarding the third-party appeal which references the pandemic and the level of on street drinking and the changed nature of Capel Street in the interim, I consider that it is appropriate to have due regard to the amenities of this area including residential amenities notwithstanding that it is a city centre location. The Z5 objective clearly identifies the need for a balance between all uses. Capel Street has retained a very diverse mix of uses and functions as an active urban location by day and by night. The appellant's objections are focused on the junction further south than the subject premises, where there is a small cluster of popular public houses. I agree with the conclusion drawn by the planning authority that in the context where there are already two convenience stores retailing alcohol in the vicinity of the site of the proposed development, it is difficult to see how the proposed development would lead to an increase in the type of issues the third-party references. I note also and agree with the conclusion that it is relevant to note the specialist nature of the retail premises and it is likely that it will meet the market for a wider range of alcohol products for their customers.
- 7.5. With respect to the existing trading of wine to the front of the premises I note that this is not governed by the off-licence use proposed. There are no issues with respect to any unauthorised development in terms of this use.



**7.6. Temporary permission**

7.7. With respect to the restriction under condition 2, I note the comments made by the first party that there is a level of investment associated with the proposed change of use and that the limitation on duration poses significant financial implications.

7.8. I consider it appropriate that having determined that the development is acceptable in principle, there should be good reason to attach a condition restricting the duration of the permission to 3 years. I note that the planner's report references that the future use will be regulated including with respect to the opening hours. I find that there is no clear explanation as to the requirement for condition 2. The planner's report simply states that

In order to allow the impact of the proposal on a more long-term basis to be assessed, it is considered appropriate to grant a temporary permission for three years, following which the situation can be reviewed.

7.9. I do not consider that there is any reasonable basis for condition 2 and I recommend that it be omitted.

**7.10. The location and size of the off-licence**

7.11. I note the requirement under the development plan that the floor area used for the display of alcohol should be no more than 10% and that the location of the display area should be unobtrusive and preferably to the rear of the premises and shall be identified on the floor plans. I consider that these are reasonable requirements. I note that conditions of the decision of the planning authority have not been appealed by the first party. In these circumstances and given the clear policy provision in the development plan, I recommend that the condition restricting the floor area should be reiterated. I consider that the proposed location of the off-licence display area complies with the requirement to be unobtrusive, and I do not recommend any condition requiring that it be located further to the rear.

**7.12. The ACA and signage**

7.13. The third-party appellant notes the ACA and the requirement that uses complement the existing character. In my opinion the subject off-licence uses which will comprise

a minor part of a viable trading outlet which contributes to the vitality of the street is not contrary to the provisions of the ACA. In this respect I note that the proposed off-licence would not have any external manifestation when viewed from the public realm. In this respect I consider it reasonable to uphold the conditions of the planning authority relating to a restriction on exempted signage.

- 7.14. I also consider that condition 3 which excludes the projecting signage to the front of the premises is reasonable. If this condition was omitted there is a possibility that it might be inferred to be authorised as part of this planning application. The ACA detailed objectives generally preclude projecting signs and I consider that this is reasonable in view of the very narrow frontage of the premises. The existing projecting sign obscures the facial signage associated with the bicycle shop to the south.
- 7.15. With respect to the conditions attached by the planning authority I note that no condition was attached with respect to the supplementary contribution scheme. In those circumstances I do not recommend the attachment of a condition.
- 7.16. A number of other matters related to engineering/code of practice and given the nature of the proposed development, which is limited to a change of use I consider that they are of limited relevance.

## **8.0 Recommendation**

- 8.1. I recommend that permission be granted for the reasons and considerations and subject to the conditions below.

## **9.0 Reasons and Considerations**

Having regard to the nature and scale of the proposed off-licence which would be ancillary to an existing retail use and to the pattern of development in the area, it is considered that the proposed development would not give rise to an overconcentration of similar uses in this area, would not undermine the objectives of the Capel Street Architectural Conservation Area, would accord with the provisions of the Dublin City Development Plan 2016 – 2022 and 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 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. This permission excludes the existing projecting sign on the front elevation.

**Reason:** In the interest of clarity.

3. The off-licence area shall not exceed 10% of the trading area of the existing retail unit.

**Reason:** To comply with the provisions of the development plan.

4. Notwithstanding the provisions of the Planning and Development Regulations 2001, or any statutory provision amending or replacing them, no advertisement signs (including any signs installed to be visible through the windows), advertisement structures, banners, canopies, flags, or other projecting elements shall be displayed or erected on the buildings or within the curtilage of the site, unless authorised by a further grant of planning permission.

**Reason :** To protect the visual amenities of the area.

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Mairead Kenny  
Senior Planning Inspector

5 March 2022