



An
Bord
Pleanála

Inspector's Report

ABP-313879-22

Development	Provision of Off-Licence (10sq.m) subsidiary to the main retail use.
Location	35, Abbey Street Lower, Dublin 1.
Planning Authority	Dublin City Council North
Planning Authority Reg. Ref.	3541/22
Applicant(s)	Triode Newhill Management Services Ltd.
Type of Application	Permission
Planning Authority Decision	Refuse permission
Type of Appeal	1 st Party
Appellant(s)	Triode Newhill Management Services Ltd.
Observer(s)	Paul Hand
Date of Site Inspection	22 nd May 2023
Inspector	Michael Dillon

1.0 Site Location and Description

- 1.1. The site, with a stated area of 10sq.m, is located within the ground floor of a convenience store, on the south side of Abbey Street Lower, Dublin 1. There is a Red Line Luas platform immediately in front of the shop. Services and deliveries to the shop are from Harbour Court, a laneway to the rear. The area for wine & beer sales is located to the rear of the shop; whilst the area for spirit sales is located behind the cash desks at the front of the shop. Internally, the convenience retail unit comprises a coffee/barista, deli area, bakery and convenience retailing.
- 1.2. Wynn's Hotel adjoins the site to the west and there is a vacant unit at ground level to the east.

2.0 Proposed Development

- 2.1. Permission sought on 16th March 2022, for change-of-use of 10sq.m of retail floor area, within a convenience store, to off-licence sales. The wine/beer sales area, to the rear of the store, will be gated. The spirit sales area behind the cash-desks will be under the control of staff.
- 2.2. The application was accompanied by a Conservation Report – undated.

3.0 Planning Authority Decision

3.1. Decision

By order dated 25th May 2022, Dublin City Council issued a Notification of decision to refuse permission for one reason as follows:

“Having regard to the existing number of off-licence facilities in the immediate 1km catchment area, together with the location of the unit on a Category 2 Shopping Street and within the O’Connell Street Architectural Conservation Area, it is considered that the proposed development would be contrary to Policy RD5 and Section 16.28 Off-Licence and Part-Off-Licence of the Dublin City Council Development Plan 2016-2022 and to the proper planning and sustainable development of the area”.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Report, dated 25th May 2022, includes a summary of objections received; incorporates all internal reports; and concludes that permission should be refused. The report includes a planning history.

3.2.2. Other Technical Reports

Archaeology Conservation & Heritage

Correspondence, of 30th March 2022, indicates that no conservation report is required for this application.

Engineering Department – Drainage Division

Report, of 11th April 2022, indicates that there is no objection to the proposal.

3.3. Prescribed Bodies

Transport Infrastructure Ireland

Report, of 7th April 2022, indicates that the site falls within an area for an adopted Section 49 Supplementary Development Contribution Scheme – Luas Cross City (St. Stephen's Green to Broombridge Line).

3.4. Third Party Observations

3rd party observations to DCC have been summarised in the Planner's Report.

4.0 Planning History

Ref. 3583/11: Permission refused by DCC for change-of-use from, a CIE Travel Centre, to convenience store/deli-sandwich bar. On appeal by the 1st Party to the Board (**PL 29N.240188**), permission was granted. The permission was implemented. Condition 3 stated that "No permission is granted for the sale of alcohol" – in the interests of the amenities of the area.

Ref. 3176/10: Permission refused by DCC for off-licence (10.5sq.m) within the convenience store at this location. On appeal to the Board by the first party (**PL 29N.237617**), permission was refused for one reason as follows-

Having regard to the scale of the proposed part off-licence use, its location within the central shopping area and within the area covered by the O'Connell Street Architectural Conservation Area and Area of Special Planning Control, to the number of similar off-licence and part off-licence uses in the general area and to the evidence of anti-social activity and on street drinking in close proximity to the site, it is considered that the proposed development would result in permission for an additional off-licence use in an area that has a preponderance of such uses thereby consolidating the preponderance of non-higher order retail uses in the identified central retail area and would not result in the protection and conservation of the special interest and character of the Architectural Conservation Area. The proposed development would, therefore, be contrary to the provisions of Policy FC41 of the Dublin City Development Plan which seeks the protection and conservation of Architectural Conservation Areas and to the provisions of Policy RD10 of the Dublin City Development Plan as it relates to the prohibition of further expansion of off-licences or part off-licences, would have an overall negative impact on the environment and civic character of the O'Connell Street Architectural Conservation Area and the central shopping area and would be contrary to the proper planning and sustainable development of the area.

Ref. 3950/15: Permission refused by DCC for off-licence (7.1sq.m) within the convenience store at this location. On appeal to the Board by the 1st Party (**PL 29N.246058**), permission was refused in 2016, for one reason as follows-

Having regard to the location of the proposed part off-licence on a Category 2 city centre shopping street and within the O'Connell Street and Environs Architectural Conservation Area, together with the number of similar off-licence/part off-licence uses within 1 kilometre and to the evidence of anti-social activity in the immediate vicinity of the site, it is considered that the proposal would be contrary to Dublin City Development Plan Policy RD10 which seeks "to prohibit the further expansion of off-licences or part off-licences except in areas where a compelling case can be made...". The

proposal would have an overall negative impact on the environment and civic character of the O'Connell Street and Environs Architectural Conservation Area and the central shopping area, and would, therefore, be contrary to the proper planning and sustainable development of the area.

5.0 Policy Context

5.1. Development Plan

The relevant document is the Dublin City Development Plan 2022-2028.

- The site is zoned 'Z5' City Centre – 'To consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity'. Off-Licence (part) is a 'Permissible Use' within this zoning.
- The shop unit occupies the ground floor of a Protected Structure – RPS No. 7, at 35 Abbey Street Lower, 'CIE Offices'.
- The site is within the O'Connell Street & Environs Architectural Conservation Area (ACA). A Scheme of Special Planning Control has been created for O'Connell Street & Environs – "O'Connell Street & Environs Scheme of Special Planning Control, 2022". The designation of this Scheme of Special Planning Control allows Dublin City Council to specify development objectives for the preservation or enhancement of the area, that would further strengthen its designation as an ACA. Recent survey notes slight increase in vacant ground-floor units. Section 1.2 lists the uses which are 'not permitted' at ground level within the ACA; and it is extensive– 'Amusement arcade; bookmakers; catalogue shop; collect store; discount shop/supermarket/end of lines/closing down/euro store; estate agent; fast food outlet; launderette/dry cleaners; mobile phone shop and related goods; mortgage store/financial institution; newsagents/convenience store; off-licence/wine shop [my emphasis]; outlet selling hot food for consumption off the premises (i.e. take-away); personal care and grooming services; phone call centre/internet café; travel agents/sale of tickets; seasonal shop; adult entertainment shop; supermarket; souvenir/gift shop; tourist information centre/tourist services and

sale of tickets'. I note that the current uses within the unit the subject of this appeal, would not be permitted under this Special Planning Control Scheme. The use as 'off-licence/wine shop' is included in the list. Appendix 1 lists definitions of uses, and includes 'Off-licence' – "A retail outlet or part of a retail outlet that sells intoxicating liquor for consumption off the premises, including wines, spirits and beers".

- Abbey Street Lower is within the City Centre Retail Core, but is neither a Category 1 nor Category 2 Street.
- Appendix 2 of the Plan contains the Retail Strategy – and does not contain any policies which specifically relate to this type of use in this area. Section 8.14 states- "Special Planning Control Schemes (SPCS) apply to areas within Grafton Street and Environs, designated in 2013, renewed in 2019, and O'Connell Street and Environs, designated in 2003 and renewed in 2009 and again in 2016. These SPCS follow the boundaries of the ACAs. The Special Planning Control Schemes give the planning authority greater control in maintaining a balance in the mix of uses on the street and were prepared to address the predominance of certain uses inappropriate to the city's two principal streets which also serve an important civic function. The land-use policy set out in these schemes shall apply to all applications within the designated areas of Special Planning Control. The policy includes protection of existing uses that contribute to the special interest or character of a protected structure; the promotion of an appropriate mix and balance of uses with an emphasis on higher order comparison retail and the control of new uses; the control of changes within use classes and the control of changes to lower order retail and non-retail uses. The policy on maximising the use of buildings shall also apply to applications within the designated areas of the schemes".
- Appendix 15 defines different land uses. Off-Licence (Part) states- "A part off-licence is 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".

- Section 15.14.8 states in relation to Off-Licences, [but not specifically referencing Off-Licences (Part)]-

“In considering planning applications for off licence premises or extensions to existing off-licence premises, the following criteria shall be applied:

- 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.
- Where a part off licence is proposed as part of a convenience unit, that the floor area used for the display of alcohol products is subsidiary to the main use of the shop and that area in general 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**

The proposed development is located within an established urban area on zoned lands that are suitably-serviced. The proposed development is for change-of-use only – from one retail form to another. It is reasonable to conclude, on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects, would not be likely to have a significant effect on any Natura 2000 sites. A Stage 2 Appropriate Assessment is, therefore, not required.

5.3. **EIA Screening**

Having regard to the nature of the proposed development, comprising change-of-use from one retail form to another, in an established urban area, where infrastructural services are available, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental 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**

The appeal from Tom Duffy Architects, agent on behalf of the applicant, received by the Board on 21st June 2022, can be summarised as follows-

- The off-licence sales will be strictly subsidiary to the main retail use of this unit.
- There will be no advertising of alcohol visible from the street.

- The nature of this area and its large footfall differentiate from the normal catchment of a neighbourhood retail facility.
- The alcohol sales will complement the main food offering of the store.
- There will be barrier control to the area for beer & wine sales.
- The unit will offer a premium alcohol characteristic, and will not utilise low-cost selling.
- Demand for alcoholic products is predicted to grow in Dublin. Alcohol sales are a large part of the total food & beverage market. Change in consumer behaviour towards more home entertainment has resulted in increased sales in alcohol. There has been a large growth in the number of off-licences since 2003, particularly with the decline in the number of public house licences in the country. The off-licence share of total alcohol consumption volume has increased substantially over the past number of years.
- Licensing courts consider the adequacy of demand in the neighbourhood, in granting or refusing a licence. Court licensing hearings have taken a more flexible definition to the demand area.
- There are an estimated 42 off-licences within 1,000m of the appeal site. Their size varies considerably. The daytime population of this area is swelled by workers and visitors, and with these increased numbers the rate of population per off-licence is similar the remainder of the state.
- Low level of car-ownership in the area, results in different shopping needs and patterns.
- An Bord Pleanála has recently granted permission for off-licences within convenience stores, within a 1,000m radius of this site in particular on the corner of Marlborough Street/Sean McDermott Street Upper – within a Centra convenience store. This permission has been implemented – ref. 4359/19 (ABP-306559-20).
- There is no other off-licence on Abbey Street Lower at present – although permission for a very small one (2.6sq.m) was granted for the Gala convenience store at 10 Abbey Street Lower (ref. 3665/21).

- The neighbourhood to the west of O'Connell Street has 12 off-licence units.
- The recent pandemic has resulted in difficult trading conditions for convenience stores in the city centre, and a number have closed down.
- Dublin City Council recently granted permission for a 150sq.m off-licence area within the Dunnes Stores unit in the ILAC.

6.1.1. The appeal is accompanied by the following documentation of note-

- A4 annotated map of retail units within 500m and 1,000m radius of the appeal site, which contain alcohol sales.
- Dublin Economic Monitor Quarterly on-line.
- Planner's Report (dated 12th June 2019) in relation to application for off-licence sales at Dunnes Stores in the ILAC Shopping Centre.
- Details of Board decision in relation to appeal ref. ABP-306559-20 – Centra Store at junction of Marlborough Street and Sean McDermott Street Upper.
- Planner's Report (dated 2nd December 2021) relating to off-licence sales at Gala convenience store, 10 Abbey Street Lower.
- FAQ Document relating to Public Health (Alcohol) Act, 2018 – source not stated.

6.2. **Planning Authority Response**

There is no response from DCC, to the grounds of appeal submitted.

6.3. **Observations**

There is one observation from Paul Hand, 166 Glasnevin Avenue, Dublin 11, which can be summarised in bullet point format as follows-

- There is an over-supply of off-licences in the area.
- There is a serious problem with anti-social behaviour in the area caused by on-street drinkers.
- There are hostels in the vicinity which house people with alcohol and drug addictions.

- Consequences of on-street drinking include rubbish, urine, vomit – creating an hostile environment.
- At weekends, teenagers congregate to drink in the street – making the area feel unsafe for tourists and commuters.
- The situation in the city centre would be exacerbated by yet another off-licence.

7.0 Assessment

7.1. Development Plan Considerations

- 7.1.1. The planning application was assessed under the old development plan. The 1st Party appeal quotes the old development plan. Since the decision to refuse planning permission was made, a new development plan has come into effect – the Dublin City Development Plan 2022-2028. There is an extensive planning history on this site – not all of it dealing with off-licence (part) applications. There are two previous applications and refusals of permission for off-licence sales at this retail unit – both of which were refused on appeal to the Board. These decisions were based on policies in force in the development plans of the relevant periods – and that the current appeal needs to be considered in the light of the Dublin City Development Plan 2022-2028, and not strictly on precedent decisions of the Board.
- 7.1.2. The appeal site is zoned ‘Z5’, where the objective is “To consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity.” Off-licences and off-licences (part) are ‘permissible’ uses under this zoning category; and on this basis, the principle, *per se*, is acceptable.
- 7.1.3. Under the old development plan, this part of Abbey Street Lower was a Category 2 street within the Retail Core. However, that is now altered, and the street is no longer a Category 2 street in the new development plan.
- 7.1.4. The shop is located within a Protected Structure. This designation has not changed between the old and new development plans. The proposed off-licence (part) will not have any impact on the Protected Structure status of this building.

- 7.1.5. Appendix 2 of the Plan contains a Retail Strategy – and does not include any policies which specifically relate to this type of use in this area. The old development plan did contain a policy (RD5) which specifically sought to prohibit the further expansion of off licences and part off-licences, unless a compelling case could be made that there was not an over-concentration of such uses in any one area. For this reason, the application was accompanied by a diagram showing all off-licence and part off-licence premises within 500m and 1,000m of the appeal site. I note that the application was lodged on 16th March 2022 – and so the situation may have altered somewhat since that date.
- 7.1.6. The appeal site is within the O’Connell Street & Environs Architectural Conservation Area (ACA). A Scheme of Special Planning Control has been made for O’Connell Street & Environs – the “O’Connell Street & Environs Scheme of Special Planning Control, 2022”. This Scheme is a recent update of an earlier one. The designation of this Scheme of Special Planning Control allows Dublin City Council to specify development objectives for the preservation or enhancement of the area, that would further strengthen its designation as an ACA. Uses which are ‘not permitted’ at ground level within the ACA include, *inter alia*, ‘off-licence/wine shop’. Appendix 1 of the Scheme of Special Planning Control lists definitions of uses; and includes ‘Off-licence’ – “A retail outlet or part of a retail outlet that sells intoxicating liquor for consumption off the premises, including wines, spirits and beers”. On the basis of this inclusion in the list of uses which are not permitted at ground level within the ACA, the proposed development would materially contravene a requirement of the Scheme of Special Planning Control for the O’Connell Street & Environs Architectural Conservation Area – which forms part of the current Development Plan. On this basis, permission should be refused.
- 7.1.7. Under the old development plan, section 16.28 referred to the considerations taken into account when considering planning applications and permissions for off-licence facilities, specifically referenced Off-Licence and Part Off-Licence. In the new development plan, section 15.14.8 refers to the considerations taken into account when considering planning applications and permissions for Off-Licence facilities, but this time does not specifically reference Off-Licence (Part). I note that Appendix 15 of the Plan retains the distinction between Off-Licence and Off-Licence (Part) in the definitions of uses. However, one of the 7 bullet points relating to considerations to

be taken into account when assessing planning applications (section 15.4.8), does mention 'part off licence'. This bullet point states- 'Where a part off licence is proposed as part of a convenience unit, that the floor area used for the display of alcohol products is subsidiary to the main use of the shop and that area in general should be no more than 10% of the total floor area'. The proposed 10sq.m area represents only 2.4% of the floor area of the retail unit (although this does not account for circulation aisles – just display shelving or refrigerators). The proposed change-of-use would, therefore, be in accordance with this bullet point requirement.

7.1.8. I also note that the appellant quotes a recent decision of the Board (ABP-306559-20) relating to a grant of permission for off-licence (part) within a convenience store at the junction of Marlborough Street and Sean McDermott Street Upper – which permission has been implemented. The appellant also refers to permission granted for an off-licence (part) at a convenience store at 10 Abbey Street Lower (ref. 3665/21). The area involved is 2.6sq.m, and this permission has been implemented. The retail unit is located at the junction of Marlborough Street and Abbey Street Lower – some 70m to the east of the appeal site, on the opposite side of the street. I would note that both of these referenced convenience stores (with off-licence (part)), are located immediately outside the boundary of the O'Connell Street & Environs Architectural Conservation Area.

7.2. **Design & Layout**

7.2.1. The proposed development will involve change-of-use of existing retail floor area within the retail unit. The change-of-use will not result in any increase in retail floor area of the unit. The proposed development will not have any impact on the visual appearance of the unit.

7.3. **Other Issues**

7.3.1. Development Contributions

The proposed development will not result in any increase in retail floor area, and so would not attract a requirement to pay a development contribution. The application was referred to Transport Infrastructure Ireland for comment. TII noted that the site falls within an area for an adopted Section 49 Supplementary Development

Contribution Scheme – Luas Cross City (St. Stephen’s Green to Broombridge Line). As the development does not involve any increase in retail floor area, I do not believe that a grant of permission would attract a requirement to pay a Supplementary Development Contribution under section 49 of the Act.

7.3.2. Water Supply & Drainage

The Engineering Department – Drainage Division of DCC had no objection to the proposed development. The development will not have any impact on water supply or effluent disposal within the retail unit

7.3.3. Licensing

The granting of planning permission does not indicate that the development will be capable of being carried out. Prior to that, a licence would have to be obtained from the courts for a development such as this one. This is a matter outside of planning consideration.

7.3.4. Anti-Social Behaviour

The observer to the appeal objects to the development on grounds that it would promote anti-social behaviour in the street outside this premises – caused by on-street alcohol consumption – and points to the immediate proximity of a Luas stop. The control of anti-social behaviour in any area is a matter for the Garda.

8.0 **Recommendation**

I recommend that permission be refused, for the Reasons and Considerations set out below.

9.0 **Reasons and Considerations**

The appeal site is located within the O’Connell Street and Environs Architectural Conservation Area, for which the recently-approved “O’Connell Street and Environs Scheme of Special Planning Control 2022” is of relevance. Section 1.2 of this Scheme of Special Planning Control, relating to promotion of an appropriate mix and balance of uses, indicates that off-licence use is not permitted at ground level within the Architectural Conservation Area. When considered in conjunction with the

number of similar off-licence/part off-licence uses within 1 kilometre of the appeal site, the proposal would materially contravene the specific land-use controls for ground floor uses within the Scheme area, would have an overall negative impact on the environment and civic character of the O'Connell Street and Environs Architectural Conservation Area and would, therefore, be contrary to the proper planning and sustainable development of the area.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

**Michael Dillon,
Planning Inspectorate**

26th May 2023.