



An
Bord
Pleanála

Inspector's Report ABP317377-23

Development	Provision of off licence subsidiary to main retail use.
Location	Unit 2, Castle Way, Golden Lane, Dublin 8 / D08T8F2.
Planning Authority	Dublin City Council.
Planning Authority Reg. Ref.	WEB 1270/23.
Applicant(s)	MS Food Retail Ltd.
Type of Application	Permission.
Planning Authority Decision	Grant subject to condition.
Type of Appeal	Third Party x 2
Appellant(s)	(1) Edmund Kavanagh Ltd. (2) Daybreak
Observer(s)	Mannix Flynn. Steven Killalea, Brockvale Ltd.
Date of Site Inspection	21/08/23.
Inspector	Anthony Abbott King.

1.0 Site Location and Description

- 1.1. The applicant site forms part of a mixed-use predominantly 6-storey residential building, known as “Castleway”, comprising ground floor commercial uses with apartments located on the floors above.
- 1.2. The site comprises a ground floor retail unit occupying the prominent corner unit at the junction of Golden Lane and Chancery Lane. The retail unit accommodates a Londis convenience store.
- 1.3. The site area is given as 212 sqm.

2.0 Proposed Development

- 2.1. Change of use of part of floor area of an existing convenience store for the provision of an off licence are subsidiary to main retail use.

3.0 Planning Authority Decision

3.1. Decision

Grant of planning permission subject to 5 conditions.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The decision of the CEO of Dublin City Council reflected the recommendation of the planning case officer

3.2.2. Other Technical Reports

No objections recorded.

4.0 Planning History

The following planning history is relevant:

- Under register reference 5067/22 planning permission was granted for change of use from restaurant to retail with a retail area of approximately 216 sqm. at Unit 2 Golden Lane.
- Under register reference 3823/18 retention permission was granted for continuation of office use of the ground floor premises currently zoned for commercial or retail use.
- Under register reference 826/03 planning permission was granted for the demolition of existing single-storey canteen / office building on a site at 46-52 Golden Lane and the construction of 77 apartments and 4 retail units at ground floor level in a 4-5, 5-6 and 7-storey building over basement car parking. This permission was modified under planning register references 4793/04, 4866/04, 4793/04, 4701/05, 1612/06 and retention for amendments sought under 3195/10.

5.0 Policy and Context

5.1. Development Plan

The following *inter alia* policy objectives of the Dublin City Development Plan 2022-2028 are relevant:

- The zoning objective is Z5 'City Centre' (Map E):

To consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity.

Office Licence is a permissible use.

- The city centre zoning 'Z5' objective is clarified as stated below:

The primary purpose of this use zone is to sustain life within the centre of the city through intensive mixed-use development (see also Chapters 6, 7, and 15 for policies, objectives and standards). The strategy is to provide a dynamic mix of uses which interact with each other, help create a sense of community,

and which sustain the vitality of the inner city both by day and night. As a balance, and in recognition of the growing residential communities in the city centre, adequate noise reduction measures must be incorporated into development, especially mixed-use development, and regard should be given to the hours of operation (see also Chapter 15: Development Standards).

- Chapter 15, Section 15.14 (Commercial Development / Miscellaneous) in specific Section 15.14.8 (Off Licences) is relevant were a number of criteria must be applied in consideration of applications for off license use including rationale for conditioning of permission.

5.2. EIA Screening

5.3. The proposed development is not within a class where EIA applies.

6.0 The Appeal

6.1. Grounds of Appeal

There are two number appeals, the grounds of appeal are summarised below:

Edmund Kavanagh Ltd

- The information provided with the application in regard to the existing off licences within 1km is incorrect;
- There is no reference to the appellant's Costcutter Store at no. 70 Aungier Street where an off licence was granted in 2016;. The appellant 's family has been trading from this premises since 1925;
- There are a number of other proximate off licences not mentioned in the submitted documentation;
- Other major European cities protect existing indigenous traders in order to retain the character of the city. A number of new stores have been granted

permission in recent years saturating the convenience store offering in the area;

- There is a challenging trading environment since covid with many office workers working from home 2/3 days a week and college students attending lectures remotely combined with excessive commercial rates;

Daybreak

- The applicant has failed to provide full disclosure of the existing number of off-licences trading in the immediate area;
- The applicant has failed to mention "Daybreak" on Patrick Street 500m away, Cost Cutter on Angier Street 200m away, Spar Patrick Street 500m away to mention a few;
- The area is already saturated by off licences and allowing another will threaten the viability of existing family operated convenience stores;
- A lot of off licences have been granted to larger supermarkets in the last few years without consideration of their impact on the smaller family operated convenience stores.

6.2. Applicant Response

Tom Duffy Architects has prepared a response on behalf of the applicant. The applicant response is summarised below:

- The proposed development would enable this small local family operated convenience store to complete with other larger shops in the area;
- The appeals submitted are commercially motivated and anti-competition in nature as such they are vexatious;
- The relevant floor area of the subject store is 212 sqm. The proposed off-license floor area would comprise a modest 7.7 sqm. of the ground floor area of the shop. The off-licence area will be restricted to less than 4% of the total retail area. It will be subsidiary to the main retail use in compliance with the

requirement for off-licence floor area within larger retail floor spaces not to exceed 10% of the overall floor area;

- The licenced goods area will be located to the rear of the customer area behind the cash area and is proposed to be gated as shown on Drawing WEB1270/23. The off-licence area will not be visible from outside the shop (windows will be screened);
- A list of off-licences and off-licence floor areas within 1 km of the proposed development and beyond is appended in order to clarify the precise distance of existing retail units with off-licence floor areas from the subject Londis premises;
- The residential population post pandemic of the electoral wards in the south city has increased. There has also been an increase in hotel rooms and student accommodation. The broader area is well served by off-licenses, however, there are relatively few in the vicinity of Golden Lane;
- The convenience store trading environment is challenging with closures of stores in the immediate area, which have not been replaced. An Bord Pleanála decision for a similar development at Gresham House a Centra store located at Sean MacDermott Street Upper and Marlborough Street (register reference 4359/19, ABP306559-20) supports convenience trading in the city centre. The Board decision is cited in support of the subject application with reference to a medium sized convenience store, where a subsidiary off-licence floor area within a larger retail offering, was granted planning permission by reason of its limited scale and discrete position to the rear of the shop, which it was considered would not contribute to an over concentration of off-licence use in the area;
- The planning authority has recently granted planning permission for large-scale off-licence floor area attached to supermarket stores in the immediate vicinity and across the Liffey in the north city including Lidl (granted 2016) 240m away and Dunnes in the Ilac centre (recently approved);
- The applicant confirms that the display of alcohol products and advertising sale of same will not be facilitated to the shop frontage or close to the entrance / windows and will be restricted to the area shown as off licence on

the floor plans. The Bord is invited to impose conditions to regulate restrictions on alcohol display and advertising.

6.3. Planning Authority Response

- Standard response letter.

6.4. Observations

There are two observations on this appeal.

Mannix Flynn

- There is already an adequate provision of licensed premises in the area and the proposed development should be refused. There is a requirement for a managed approach to off-license sales in the city core to avoid an over concentration, which should be determined through public order and safety prioritisation;
- There is a concentration of addiction services in the immediate area including alcoholism. The Planning Authority should limit licensed premises not to locate within 100 metres of each other in the interests of public order especially in public spaces;
- The map submitted by the applicant of off-licenses selling takeaway alcohol in the immediate area is incomplete and inaccurate.

Steven Killalea, Brockvale Ltd.

- The proposed off-license will contribute to ant-social behaviour in the area especially in St. Patrick's Park where there is a problem with illegal alcohol consumption;
- Street drinking has increased since the Covid pandemic. The proposed development could lead to potential disturbances within a residential area where there are also offices and a hotel;
- The number of homeless people is at an all-time high and the proposed development will provide higher propensity to self-harm putting further

pressure on medical services. There are many homeless shelters in the area like the Salvation Army, YMCA, Outreach and CAP (care after prison);

- There are a number of existing off-licenses in the immediate area adjacent to the Park;
- St. Enda's national school, Dublin 8 is located 50 metres away from the proposed development.

7.0 Assessment

7.1. The following assessment covers the points made in the appeal submissions, the applicant response, observations and encapsulates my *de novo* consideration of the application.

7.2. The appellants and observers state that the applicant has failed to give full disclosure of the number of off licenses in the immediate area and that there is an over concentration of off licence use in this part of the city. The applicant response from Tom Duffy Architects, dated 28th June 2023 (received by ABP 10th July 2023), provides a full list of off licenses and part off licenses within 1km and greater of the subject Londis convenience store and provides precision on distance from the proposed development. It is considered that the applicant has sufficiently clarified the current off license situation in the immediate area and in the broader city core.

7.3. It is noted that the proposed development is for the change of use of part of the floor area of an existing convenience store to off-licence use rather than an application for a stand-alone off licence. The relevant section of the Dublin City Development Plan 2022-2028 sets out criteria for the approval of off licences, including as part of a larger premises and subsidiary to convenience store use. Section 15.14.8 (off licenses) *inter alia* requires the following:

- The size of the proposed off-licence will be assessed 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 in general should not exceed 10% of the total floor area;

- The location of the display area of alcohol products shall be in an unobtrusive position and 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.

7.4. The applicant has submitted and reiterated in his appeal response that the proposed off licenced floor area is 4% of the overall authorised retail floor space comprising 7.7 sqm. of the overall 212 sqm. retail area of the ground floor shop unit. However, on examination of the submitted drawings the floor area identified solely represents the area dedicated to display cabinets. The planning case officer observes that the effective floor area of the combined beers/wines and spirits offering is approximately 25 sqm.

The planning authority considers the entirety of the area sectioned off for the off licence as the relevant floor area not just the floor area dedicated to the display of alcohol. Therefore, the off licence floor area would represent approximately 12% of the overall retail space given the overall retail floor area of 212 sqm. The planning case officer restricted the floor area by way of condition citing Section 15.14. 8 (Off Licences), which requires off licence floor areas not to exceed in general 10% of the overall retail floor area.

7.5. I would concur with the planning case officer in that the effective floor area of the proposed off-license element of the convenience store would be in excess of 10% of the overall retail floor area. However, the location of the off-licence floor area in the south-west corner of the store, positioned between a partition wall dividing the staff / office area from the open retail floor space, and the service counter provides an optimum location for a corralled floor area with restricted access.

The proposed positioning of the off licence would provide supervised restricted access allowing a barrier and gate to be installed beside the main service counter that would control access and egress to the beer / wine area. It is considered given the strategic location chosen based on the operational requirements to locate the off licence in an unobtrusive position, with supervision / monitoring and controlled access, that the floor area in this instance is determined by the existing internal

configuration of the store and albeit in excess of 10% of the overall retail floor area is acceptable.

- 7.6. The office licence area will be located behind the customer service area and behind the cash area in a restricted space controlled by an access gate as discussed above. The off-licence would not be visible from outside the premises on street, as the elevation windows in the location of the off-licence will be blanked out. It is considered that the area of screening visible on street is limited. It is further considered it would not detract from the overall shop frontage and the open relationship of the frontage with the street.

The position of the off-licence area within the store is discrete. The applicant response details that the display of alcohol products would be limited to the area shown on the floor plans as the off-licence floor area. I would concur with the applicant that the modest scale and secondary positioning of the off-licence floor area within the premises would clearly represent a use subsidiary to the principal use of the premises as a convenience store.

- 7.7. Section 15.14.8 (Off licences) provides where a grant of planning permission is considered regard will be given to the need to impose the conditions restricting the display and advertising of alcohol products within and external to the premises. The applicant response to appeal has confirmed that these restrictions will be enforced if a grant of planning permission is forthcoming. However, it is considered in the interests of clarity that the display and advertising of alcohol products within and external to the premises can be dealt with by way of condition.

- 7.8. In conclusion, the appellants and observers have highlighted the concentration of office-licenses, the clustering of homeless and addiction support services and the existing culture of public drinking in this part of the city with consequent negative impacts on public amenity. However, on balance the principle of the development is acceptable given the small scale of the off licence floor area within an overall larger retail footprint, the subsidiary nature of the off license use, which would complement the existing convenience store offering, and the location of the off licence area in an unobtrusive position within the store, positioned behind the customer and cash area, and only accessible through a control gate.

It is considered that the qualitative merits of the proposal including the position of the off licence floor area and its configuration, in a controlled monitored unobtrusive location within the convenience store, would balance the quantitative criterion in the instance of the proposed development, which in general requires the off licence floor area not to exceed 10% of the overall retail floor area. Therefore, on balance the proposed development would be acceptable, would in general be consistent with Section 15.14.8 (Off-Licenses) of the Dublin City Development Plan 2022-2028 and would be in accordance with the proper planning and sustainable development of the area.

7.9. Appropriate Assessment Screening

The proposed development comprises a change of use of part of an existing retail premises in an established urban area.

Having regard to the nature and scale of the proposed development it is possible to screen out the requirement for the submission of an NIS

8.0 Recommendation

8.1. I recommend a grant of planning permission subject to condition.

9.0 Reasons and Considerations

Having regard to the grounds of appeal, the observations of third parties, the city centre zoning objective, where off-licence is a permissible use, the small scale of the proposed development within the overall larger retail footprint of the shop, the subsidiary nature of the use complementing the existing convenience store offering and the situation of the off licence area behind the customer and cash area in an unobtrusive position within a control access location, it is considered that the proposed development would in general be consistent with Section 15.14.8 (Off-Licenses) of the Dublin City Development Plan 2022-2028 and would be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1.	<p>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.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>The following restrictions shall apply to the operation of the convenience store and the subsidiary off-licence floor area.</p> <p>(a) The area for the display of alcohol products shall be the licenced floor area shown on the submitted drawings;</p> <p>(b) There shall be no external display and no advertising of alcohol products for sale on the shop frontage.</p> <p>Reason: In the interest of clarity and in accordance with the provisions of Section 15.14.8 (Off Licences) of the Dublin City Development Plan 2022-2028.</p>
3.	<p>The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the</p>

matter shall be referred to the Board to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000 that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

“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”.



Anthony Abbott King
Planning Inspector

25 August 2023