

An
Bord
Pleanála

Inspector's Report ABP319041-24

Development

The development will consist of the provision of an ancillary off-licence sales area.

Location

Former Iceland Unit, Mountainview Shopping Centre, Mountainview Road, Dublin 15.

Planning Authority

Fingal County Council.

Planning Authority Reg. Ref.

FW23A/0370.

Applicant(s)

Morgan Crowe, Brid Large & Faolon Crowe.

Type of Application

Permission.

Planning Authority Decision

Grant permission with conditions.

Type of Appeal

Third Party

Appellant(s)

Tom Salmon.

Observer(s)

None.

Date of Site Inspection

18/10/24.

Inspector

Anthony Abbott King.

1.0 Site Location and Description

- 1.1. The applicant site comprises a large commercial unit located within a purpose built neighbourhood centre known as Mountainview Shopping Centre on the south side of Monutainview Road, Dublin 15.
- 1.2. The Monutainview Road Shopping Centre comprises an L-shaped single storey streetscape of conjoined commercial units within a landscaped parking area accessed from Monutainview Road to the north.
- 1.3. The unit accommodates a Tesco Express format supermarket. The Tesco unit (former Iceland unit) is the largest of the commercial units in the centre.
- 1.4. There are a number of service and retail units within the shopping centre including a Polonez supermarket, which has a an off-licence area ancillary to its specialist food offering.
- 1.5. The Salmon Public House and a Paddy Power premises are located in a detached block to the west of the Tesco supermarket.
- 1.6. The hinterland of the Mountainview Shopping Centre is characterised by a network of suburban medium-low density residential avenues and cul-de-sacs.
- 1.7. Site area is given as 0.1138 hectares.

2.0 Proposed Development

- 2.1. The development will consist of the provision of an ancillary off-licence sales area.

3.0 Planning Authority Decision

3.1. Decision

Grant permission subject to 4 conditions.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The decision of the CEO of Fingal County Council reflects the recommendation of the planning case officer.

3.2.2. Other Technical Reports

The application for change of use was not referred to other sections for comment.

4.0 Planning History

The following planning history is relevant:

- Under Register Reference FW17A/0233 planning permission was granted *inter alia* for a single-storey retail unit of 1058 sqm gross floor area (net 765 sqm.) with associated signage. The following condition is relevant.

The proposed retail unit shall be used for retail purposes only. Notwithstanding the provisions of the Planning and Development Regulations 2001-2018 and the Planning and Development Acts 2001-2017, there shall be no change of use within the curtilage of the site without a prior grant of planning permission. ii) Any subdivision, amalgamation or change of use the proposed development, whether or not such change, subdivision or amalgamation would otherwise constitute exempted development, under the Planning and Development Regulations 2001-2018 shall not be undertaken without the prior grant of planning permission.

REASON: (1) to avoid any misunderstanding as to the proper construction of this permission. (2) to ensure proper planning control is maintained.

Unit 5,6, 7 Mountainview Shopping Centre (Polonez supermarket)

- Under Register Reference FW18A/0106 planning permission subject to condition was granted in 2018 for the change of use existing retail unit to a retail unit and part off-licence sales area.

5.0 Policy and Context

5.1. Development Plan

The local policy framework is provided by the Fingal Development Plan 2023-2029. The relevant policies and objectives are set-out below:

- **Zoning**

The relevant land-use zoning objective is “LC” (Sheet 13 – Blanchardstown South):
Protect, provide and / or improve local service facilities.

Chapter 13 (Land use Zoning) states the vision for the objective is provide a mix of local community and commercial facilities for the existing and developing communities of the County. The aim is to ensure local centres contain a range of community, recreational and retail facilities, including medical/ dental surgeries and childcare facilities, at a scale to cater for both existing residential development and zoned undeveloped lands, as appropriate, at locations which minimise the need for use of the private car and encourage pedestrians, cyclists and the use of public transport. The development will strengthen local retail provision in accordance with the County Retail Strategy.

Retail convenience store 500 sqm. (net floor area) is permitted in principle.

- **Chapter 7 (Employment & Economy) is relevant.**

Section 7.5.5 (Retail Hierarchy) sets out a 5 tier retail hierarchy.

Table 7.2 defines the Mountainview Shopping centre as a Level 5 (corner shops / small villages) designation. The following policies are relevant to Level 5 centres:

Objective EE099 (Level 5 Centres):

Ensure the development of Level 5 Centres as sustainable, vibrant and prosperous local shops and small villages performing at a level within the Fingal Retail Hierarchy to meet the retailing needs of immediate local populations and catchment populations

Objective EEO 100 (Retail Provision in Level 5 Centres):

Where a gap in the retail provision of a Level 5 Centre is identified and established, facilitate appropriately scaled improvements to the retail offer and function of Level 5 Centres and ensure their sustainable development by enhancing the existing Centre for each and directing new retail opportunities into the Centres.

Non-Retail Uses, Fast Food Outlets, Takeaways, Off Licences and Betting Offices

In order to protect and enhance the vitality and viability of the County's urban and rural centres, the occurrence of non-retail uses (such as amusement centres and arcades), fast food outlets, off licences and betting offices needs to be monitored. An over-supply or dominance of these types of uses within the main streets, shopping centres and local centres of Fingal's centres can have negative impacts on the amenities of these centres and their ability to perform their retailing functions in accordance with their classification in the Fingal Retail Hierarchy.

Objective EEO105 (Prevent Over-Supply of Specific Uses / Outlets):

Prevent an over-supply or dominance of fast food outlets, takeaways, off licences, adult shops, gaming arcades and betting offices in the main streets of towns and villages, shopping centres and local centres to ensure that injury is not caused to the amenities of these streets and centres through the loss of retail opportunities.

5.2. EIA Screening

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

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of appeal, prepared by MacCabe Durney Barnes planning consultants, are summarised below:

- Mr. Tom Salmon of Salmon's Public House, Mountainview Road, Coolmine, Dublin 15 is the appellant. The grounds of appeal are as follows: over-concentration of off-licences within an urban centre; the proposed development would contravene Fingal County Council's retail policy Table 7.2; the statutory notices require advertisement in the matter of Condition 2 of a previous permission granted under register reference FW17A/0233, which

the subject application is an amendment and; the planning authority cannot grant permission to the operation of an ancillary use to a vacant premises.

- The appellant claims the planning case officer misinterpreted Policy Objective EO105 of the development plan inferring incorrectly that the motivation of the objective is to prevent the loss of retail opportunities. Rather the policy objective must be contextualised within the text of the development plan, which clearly expresses *inter alia* that an oversupply of off-licenses can have a negative impact on the amenities of local centres.
- It is claimed that the objective EO105 is in place in order to monitor and control over-supply of off licences (and other uses).
- The case officer highlighted that the unit is vacant in the context of the loss of retail opportunity inferring the retail unit is not viable without the incorporation of an off-licence. This is contrary to the local zoning objective.
- There are 10 off-licences located within 1 km of the subject site. There are a further 4 off-licences just outside the 1km catchment. There are 2 existing off-licences within the Mountainview Shopping centre. The proposed development would result in 3 off-licences within circa. 50m. A diagram is incorporated within the appeal statement illustrating the 1km radius and pinpointing the location of off-licences within and outside the 1km catchment.
- The appellant claims that by reason of spatial analysis presented there is an over concentration of off-licences in the vicinity.
- The Mountainview Shopping Centre is designated a Level 5 centre in Table 7.2 (hierarchy of retail centres) in the county development. Level 5 centres require a maximum of one or two small convenience stores, newsagents and potentially other supporting services. The appellant claims that Mountainview Shopping Centre already has 2 off-licences operating from Salmon's public house and the Polonez supermarket, respectively. Therefore another off-licence is not allowable.
- It is claimed the statutory notices for the proposed development are inadequate. Condition 2 of FW/&A/0233 requires the making of a new planning application any subdivision, amalgamation or change of use.

Therefore, any material change to the unit is a variation of the parent permission. It is claimed the statutory notice should refer to the parent permission.

- The framing of a development as an ancillary use to an intended use is not sufficient for the planning authority to make a decision. It is claimed that there is no primary use in existence therefore how can the ancillary use be considered subservient. The appellant requests the Board to overturn the decision of the planning authority on the basis of the lack of clarity in the composition of the application.

6.2. Applicant Response

The applicant response, prepared by RMLA Planning Consultants, is summarised below:

- The response demonstrates that the concerns of the third-party have been considered by both the planning authority in determining the planning application and the applicant. It is claimed the appeal does not raise any new substantive matters not already comprehensively addressed in the assessment of Fingal County Council.
- The applicant questions the nature of the appeal claiming that it is grounded in anti-competition concerns rather than motivated by planning issues.
- In the matter of Objective EEO105, the applicant asserts that the planning authority is best placed to interpret the development plan policy and objectives. Furthermore, it must be recognised that there is a distinction between a full off-licence and a part off-licence. Where the display and sale of alcohol products for consumption off the premises is subsidiary to the main use for the sale of convenience goods.
- The proposed alcohol sales area is 6.8 % of the gross floor area of the unit rather than being a destination alcohol only sales outlet. The ancillary off-licence area is an attracter to a convenience operator to locate in the subject vacant unit.

- An enclosed Alcohol Sale Study (Appendix 2) is appended to the appeal statement. There are a total of 11 number premises within a 1km catchment of the subject unit with various ranges of alcohol sales. This consists of 2 number locations within the immediate local catchment area of 250m, none within the 250-500m catchment and 9 within the wider 500m -1 Km catchment.
- There are only 3 comparable premises (Lidl (Blakestown), Dunnes Stores Blanchardstown Shopping Centre and, Eurospar (Hartstown) within the entire catchment which are considered to be directly comparable to the proposed local convenience retail unit in terms of overall convenience product range including alcohol sales and hours of operation. However, these shops located in the broader catchment are approximately an 11 minutes, 16 minutes and 18 minute walk from the subject site.
- It has previously been determined by An Board Pleanála that decisions regarding the number of off-licence in an area is the responsibility of the District Court.
- The subject alcohol sales area will be located within a secure and monitored location within the store. Security staff will be employment in the store to deter and intervene in any anti-social behaviour associated with the retail unit.
- The Alcohol Sale Study (Appendix 2) appended includes a profile of the area demographics. The 1 km catchment population is 14,489 persons aged 20 years and above. The 500 km catchment has an approximate 4,248 persons aged 20 years and above.

6.3. Planning Authority Response

The planning authority has no further comment and respectfully requests that the decision be upheld.

6.4. Observations

None.

7.0 Assessment

- 7.1. The following assessment covers the points made in the appeal submission, the applicant response and the observations resulting from my site visit. There are no new substantive matters for consideration.
- 7.2. The applicant proposed to change the use of part of the authorised retail floor area to off-licence sales of 77.76 sqm. (as given on the application form). The overall gross floor area of the premises is given as approximately 1,138 sqm. The dedicated enclosed ancillary off-licence area would be regulated by control gates and would be located at the back of the store. The proposed alcohol sales area is approximately 6.7% of the gross floor area of the unit.
- 7.3. I note the enclosed gate controlled off-licence aisle was in situ on the day of my site visit. I further note that there was a dedicated security guard at the entrance to the supermarket store monitoring access to and egress from the premises.

Level 5 Centre Designation

- 7.4. The Mountainview Shopping Centre is zoned "LC" (Sheet 13 – Blanchardstown South) to protect, provide and / or improve local service facilities. It is designated a Level 5 centre in Table 7.2 (hierarchy of retail centres) of the Fingal Development Plan 2023-2029. Level 5 centres are the lowest order level in the development plan retail hierarchy. Retail convenience stores with a net floor area of 500 sqm are permissible under the subject zoning within Level 5 centres.
- 7.5. The vision for Level 5 centres as provided for under the zoning objective *inter alia* is to ensure local centres contain a range of community, recreational and retail facilities, including medical/ dental surgeries and childcare facilities, at a scale to cater for both existing residential development and zoned undeveloped lands, as appropriate, at locations which minimise the need for use of the private car and encourage pedestrians, cyclists and the use of public transport.
- 7.6. The appellant documents in the appeal statement that there are 10 off-licences within a 1 km radius of the subject site. There are a further 4 off-licences just outside the 1km catchment. It is claimed that if the change of use to off-licence is authorised by reason of the spatial analysis presented there would be an excessive over concentration of off-licences in the vicinity.

- 7.7. The appellant claims that Mountainview Shopping Centre already has 2 off-licences operating from Salmon's Public House and the Polonez supermarket, respectively. The proposed additional off-licence would result in 3 off-licences within the Mountainview Shopping Centre, which is excessive for a Level 5 centre. Furthermore, the local authority planning assessment mis-interpreted Objective EEO105, which *inter alia* it is claimed prohibits an oversupply of certain uses including off-licences.

Objective EEO105

- 7.8. Objective EEO105 (Prevent Over-Supply of Specific Uses / Outlets) states to prevent an over-supply or dominance of fast food outlets, takeaways, off licences, adult shops, gaming arcades and betting offices *inter alia* within local centres to ensure that injury is not caused to the amenities of these centres through the loss of retail opportunities. I concur with the appellant on balance that when Objective EEO105 is read in the context of the development plan text, the regulation of land use within local centres is to ensure that both an over concentration and displacement does not negatively impact on the attraction of Level 5 centres in terms of retail / service mix.
- 7.9. However, I do not agree with the argument of the appellant that the proposed development would represent and contribute to an oversupply of off-licence use in the vicinity. I consider that the proposal would not be inconsistent with Objective EEO105 given that it would not displace the substantive retail use on site. Furthermore, the off-licence floor area would be ancillary in nature and modest in extent (78 sqm within a gross floor area given as 1,138 sqm.).
- 7.10. It is considered that the proposal is for a limited off-licence floor area within a convenience store format and ancillary to the substantive retail use (approximately 7% of total gross floor area). The existing off-licence provision within the Polonez supermarket is similarly configured and clearly ancillary to the substantive retail use as a specialist food store. I do not consider that both the subject Tesco supermarket and the Polonez supermarket constitute an off-licence premises per se. I note the co-location of the Salmon's public house and associated off-licence.
- 7.11. Therefore, I do not consider that there is an oversupply of off-licence use within the Mountainview Shopping Centre given the limited floor area dedicated to off-licence

sales and the ancillary nature of the off-licence use within the Polonez Store and the subject Tesco supermarket.

Range of retail / service provision and ancillary off-licence use

- 7.12. The zoning objective provides that local centres contain a range of community, recreational and retail facilities at a scale to cater for both existing residential development and zoned undeveloped lands, as appropriate, at locations which minimise the need for use of the private car and encourage pedestrians, cyclists and the use of public transport.
- 7.13. I note the low-medium density suburban residential hinterland of the subject site and the deficiency highlighted by the applicant in off-licence provision evidenced in the Alcohol Sale Study, appended to the appeals statement, within the 250-500m catchment. The appeal statement documents that the 500 km catchment has an approximate 4,248 persons aged 20 years and above (Appendix 2). I consider that the proposed development would in part compensate for the deficiency within the 250-500m catchment.

Procedural matters

- 7.14. The appellant claims that planning permission cannot be granted for an ancillary use to a vacant use that is not in operation. The nature of the substantive retail use and ancillary off-licence use is now self-evident, as the subject commercial unit is operating as a Tesco supermarket. The off-licence area is fully integrated within the supermarket internal layout albeit that it is distinguished from the other aisles by control gates at either end of the off-licence aisle. The operation relationship between the off-licence area as a use ancillary to the substantive retail use is clearly evident, is controlled by physical demarcation and operation procedure, and is acceptable in principle and in detail.
- 7.15. Finally, the appellant claims that the statutory notices do not make it clear that the development seeks to amend the previous permission FW17A/0233 where any subdivision, amalgamation or change of use is regulated under Condition 2 of that permission. I do not understand the relevance of this concern, as both paragraph (i) and (ii) of Condition 2 FW17A/0233 require a prior grant of planning permission for a change of use within the curtilage of the site. The applicant has made a planning application for change of use as directed.

- 7.16. In the matter of inadequate statutory notices, the nature, extent and scope of the change of use with reference to the overall retail floor area is transparent in the public notice (*ancillary off-licence sales area of circ. 77.76 sqm in the ground floor retail unit*) and is clearly demarcated on the submitted drawings.

Conclusion

- 7.17. I conclude that the proposed development representing an ancillary off-licence use to the substantive convenience store retail use is acceptable in principle and in detail, is consistent with the “LC” zoning objective and the policy framework of the Fingal Development Plan 2023-2029 and, as such, is consistent with the proper planning and sustainable development of the area.

7.18. Appropriate Assessment Screening

The proposed development comprises a change of use of authorised retail floor area within an established urban area.

- 7.19. 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 for the reasons and considerations set-out below.

9.0 Reasons and Considerations

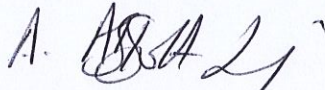
Having regard to the grounds of appeal, the applicant response, the “LC” (Local Centre) zoning, and the relevant policy framework provided by the Fingal Development Plan 2023-2029, it is considered that the change of use of part of the retail floor area (approximately 78 sqm) to off-licence use subject to condition would not represent an over supply of off-licence floor area within this Level 5 centre, would in terms of the operation of off-licence sales demonstrate appropriate controls and operation procedures, would be consistent with Section 7.5.5 (retail hierarchy including provision for Level 5 centres), including Objective EE105 of the Fingal

Development Plan 2023-2029 and, as such, would be consistent 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 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 matter shall be referred to the Board to determine the proper application of the terms of the Scheme.</p> <p>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.</p>

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.

A handwritten signature in black ink, appearing to read 'A. ABBOTT KING', written over a horizontal line.

Anthony Abbott King
Planning Inspector

21 October 2024