



An
Bord
Pleanála

Inspector's Report ABP-319845-24

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| Development | Change of use from retail use to retail use with ancillary off licence use. |
| Location | Applegreen Ballymount, M50 Business Park, Kilnamanagh, Dublin 24. |
| Planning Authority | South Dublin County Council |
| Planning Authority Reg. Ref. | SD24A/0045 |
| Applicant(s) | Petrogas Group Ltd. |
| Type of Application | Permission. |
| Planning Authority Decision | Refuse |
| Type of Appeal | First Party |
| Appellant(s) | Petrogas Group Ltd |
| Observer(s) | None. |
| Date of Site Inspection | 27/08/2024. |
| Inspector | Alan Di Lucia |

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1.0 Site Location and Description

- 1.1. The subject site is located within the M50 Business Park at Kilnamanagh, Dublin. The subject site is located on the southern side of the Calmount Road on a corner site of the junction Ballymount Road Upper. Junction 10 of the M50 is located approximately 190m to the southwest of the subject site. The subject site consists of an existing Applegreen Petrol Filling Station with covered forecourt area, forecourt including retail area (100m²), coffee shop and food outlet with drive-thru and parking facilities.

2.0 Proposed Development

- 2.1. The proposed development consists of permission to change the use of 5.7m² of the existing buildings retail use to retail use with ancillary off-license use.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The Planning Authority issued a notification of the decision to refuse planning permission for the following reason:

The proposed change of use from retail use to retail use with ancillary off-license use would be contrary to the 'EE' zoning provisions of the South Dublin County Development Plan 2022-2028 [SDCDP] for the area, which seeks to provide for enterprise and employment related uses and therefore would be contrary to the proper planning and sustainable development of the area.

The decision issued does not clearly state the proposed development would materially contravene the zoning objective.

3.2. Planning Authority Reports

- 3.2.1. Planning Reports

The Planner's Report had regard to the following planning issues. (Note: No further Information was requested by the Planning Authority)

- Outlines the provisions of zoning objective 'EE' of the SDCDP which seeks '*to provide for enterprise and employment related uses.*' The report references Table 12.10 of the SDCDP which details the uses 'Permitted in Principle,' 'Open for Consideration' and 'Not Permitted' under the 'EE' land use zoning objective. Off License is a use not permitted under the 'EE' land use zoning objective. The SDCDP defines an Off License as '*A building, or part of a building, which is licensed and used for the sale of intoxicating liquor for consumption off the premises, including wines, beers, and spirits.*'
- Notwithstanding the scale of the proposed development, the Planning Authority considered that the development would materially contravene the 'EE' zoning objective of the SDCDP and cannot be considered favourably.
- Is satisfied that the proposed development within an existing retail unit will not result in the over-proliferation of such uses in the area.
- Is satisfied that the quantum of Off-licenses is not disproportionate to the overall size and character of the area. It notes that the area is mainly characterised by Industrial/Commercial units, with little residential uses in the area.

assesses the proposal with regard to the overall Motor Fuel Station policies of the SDCDP and concludes no issues as its' an internal alteration to an existing retail unit.

- The Planner's Report did not consider that either Appropriate Assessment or Environmental Impact Assessment was required.

3.2.2. Other Technical Reports

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|--------------------------------|-------------------------------------|
| • Roads Department | No objection |
| • Environmental Health Officer | No objection subject to conditions. |

3.3. Prescribed Bodies

No Submissions

3.4. Third Party Observations

No Third-Party Submissions / Observations

4.0 Planning History

On Subject Site

PA Ref: SD16/0212

Petrol filling station with forecourt and retail / dining options (Permission Granted)

PA Ref: SD18A/0002

Petrol filling station with forecourt and retail / dining options amending previous permitted development (Permission Granted)

PA Ref: SD19A/0290

Amend height of two internally lit totem signs (grant retention permission)

Adjacent Sites

PA Ref:SD22A/0460 ABP Ref 317918-23

Change use of existing commercial building to data centre, application currently on appeal.

5.0 Policy Context

5.1. Development Plan

5.1.1. South Dublin County Development Plan 2022-2028 [SDCDP] is the relevant statutory plan for the Area.

5.1.2. Section 12.2 relates to Land-Use Zoning Objectives.

The subject site is zoned Objective EE for which it is an objective “*To provide for enterprise and employment related uses*”.

Table 12.10 of the SDCDP states that Off-License is a use Not Permitted under zoning objective EE.

The SDCDP states that *“Land uses that are listed as ‘not permitted’ under each of the zoning objectives are considered not to be acceptable. Each use listed under this category would not, therefore, be favourably considered by the Planning Authority.”*

- 5.1.3. Section 12.9.5 relates to retail development proposals. In relation to restrictions on uses, the plan states that an over concentration of certain uses will be discouraged in urban centres, due to an overriding need to maintain the integrity, quality, and vibrancy of centres.

The quantum of off-license uses particularly within smaller centres, is not disproportionate to the overall size and character of the area and the provision of a small section of a convenience shop for an ancillary off-licence use is generally acceptable.

- 5.1.4. Appendix 6 of the SDCDP defines Off-License as *“a building, or part of a building, which is licensed and used for the sale of intoxicating liquor for consumption off the premises, including wines, beers and spirits.”*

5.2. Natural Heritage Designations

The following European site is located within the vicinity of the appeal site.

Glenasmole Valley SAC 5.7km

5.3. EIA Screening

The subject development does not fall within a class for which EIAR is required.

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of the appeal can be summarised as follows:

- That the Planning authority did not have an issue with the proposed development, except that Off-License use is not permitted under the EE zoning objective.

- That the Planning Authority refused permission on the grounds that the proposed development would be contrary to zoning objective 'EE' of the SDCDP and have not stated in the refusal that the proposed development would materially contravene the zoning objective. Therefore, the Board is not restricted by 37(2)(b) of the Planning and Development Act 2000, (as amended) in terms of assessing the appeal.
- No material planning implications arise due to the minor nature of the change of use, and the only issues from the Planning Authority related to the zoning provision at this location.
- Notes a precedent case in Dublin City Council (ABP Ref PL29N.309701) in that permission was refused for Off License as it materially contravened zoning objective of the Development Plan. The Board granted permission noting that the development would be justified under Section 37(2)(b)(iii) of the Planning and Development Act 2000 (as amended). That both cases are not the same but highlights the Board have previously overturned a decision to refuse by a Planning Authority which materially contravened the zoning objective of a Development Plan.

6.2. **Planning Authority Response**

None

6.3. **Observations**

None

7.0 **Assessment**

7.1. Having examined the application details and all documentation on file, including the submission received in relation to the appeal, and inspected the site and having regard to local/regional/national policies and guidance, I consider that the key issues are as follows:

- Principle of the Development
- Material Contravention
- Other Matters

7.2. Principle of Development

- 7.2.1. The subject site is zoned EE under the South Dublin County Development Plan 2022-2028 [SDCPD]. The zoning objective is to provide for enterprise and employment uses.
- 7.2.2. The existing use on the subject site is for a petrol filling station with a small retail use, both of which are permitted uses under the EE zoning objective of the SDCDP.
- 7.2.3. Food offerings in the form of cafes and restaurants are open for consideration under the EE zoning objective of the SDCDP.
- 7.2.4. Off Licenses are not a permitted use under the EE zoning objective of the SDCDP. Lands that are listed as Not permitted are not considered acceptable and would therefore not be favourably considered by the Planning Authority.
- 7.2.5. The SDCDP defines an Off Licence as *“a building, or part of a building, which is licensed and used for the sale of intoxicating liquor for consumption off the premises, including wines, beers and spirits.”*
- 7.2.6. I am therefore satisfied based on a site inspection that the proposed change of use would not give rise to an overconcentration of Off-license uses at this location and that the change of use of 5.7m² of internal retail use to retail use as an off license will not be disproportionate to the overall size or character of the existing petrol filling station. I am satisfied that development as proposed would comply with the provisions of the SDCDP, except that the use is not a permitted use under the zoning objective.
- 7.2.7. I consider that the proposed change of use from retail use to retail use with ancillary off license use is not in accordance with the provisions of zoning objective EE of the SDCDP.

7.3. Material Contravention

- 7.3.1. The reason to refuse from the Planning Authority is based on the proposal being contrary to the zoning objective of the SDCDP. It is noted that in the planning report that the planner considers that the proposal would materially contravene the EE zoning objective of the subject site and cannot be favourably considered by the Planning Authority. This is not however reflected in the reason to refuse.

- 7.3.2. Notwithstanding the scale of the development proposed, the existing uses on site and the provisions of the SDCP as outlined above I consider that the proposed development would materially contravene zoning objective EE of the South Dublin County Development Plan 2022-2028.
- 7.3.3. I consider that Section 37(2)(b) of the Planning and Development Act 2000, as amended, is not applicable in this instance as the Planning Authority did not refuse planning permission on the grounds that the proposed development materially contravenes the development plan.
- 7.3.4. Nevertheless, for clarity I have assessed the proposal under the provisions of Section 37(2)(b). In this regard I submit that:
- (a) The proposed development is not of strategic or national importance,
 - (b) The objectives of the development plan are quite clear insofar as the proposed development is concerned.
 - (c) There are no specific requirements set out in policy directives, relevant policies of the government nor regional planning guidelines which would support such a proposal.
 - (d) The pattern of development and permissions granted in the area since the making of the development plan do not suggest a predisposition to such type of development.
- 7.3.5. I note the reference made in the grounds of appeal to Bord Pleanála Case reference PL29N.309701. In this instance the proposal removed the alcohol sales entirely from the local convenience shop, which would tend to reduce the extent to which the purchase of alcohol was part of routine convenience shopping and the frequency of impulsive purchases of alcohol by customers who came into the shop for other reasons. This case differs from the current planning appeal as the proposal was to remove the alcohol sales from the existing retail unit and to provide a standalone off-license unit as opposed to incorporating it into the existing retail unit as per the current appeal. This was considered to be in keeping with government policy to control the sale of alcohol and reduce its consumption. This was considered to comply with provisions of Section 37(2)(b)(iii) of the Planning and Development Act, 2000, as amended.

7.3.6. In conclusion, I consider, based on the above, that the development as proposed would materially contravene zoning objective EE of the SDCDP and therefore permission should be refused.

7.4. Other Matters

7.4.1. On the date I inspected the site, I noted that the off-licence was currently operational in the premises at this location.

8.0 AA Screening

8.1. The proposed development is for a change of use and alterations to an existing property. There are currently no pathways between the site and any European Sites and having regard to the scale of the proposal I do not consider there is any potential for any significant effects on any European Site.

8.2. Having regard to the nature, scale, and location of the proposed development, it is concluded that no Appropriate Assessment issues arise as the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

9.0 Recommendation

Having considered the contents of the application, the provisions of the South Dublin County Development Plan 2022-2028, the grounds of appeal, my site inspection, and my assessment of the planning issues. I recommend that planning permission be refused for the reasons and considerations set out below.

10.0 Reasons and Considerations

Having regard to the provisions of the South Dublin County Development Plan 2022-2028 which defines an Off License, as "*a building or part of a building, which is licensed and used for the sale of intoxicating liquor for the consumption off the premises*", is a use not permitted within areas subject to land use zoning 'EE', which applies to the subject site. It is considered that the proposed change of use from retail use to retail use with ancillary off license would materially contravene zoning objective 'EE' of the South Dublin County Development Plan 2022-2028 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.

Alan Di Lucia
Senior Planning Inspector

October 2024

Appendix 1 - Form 1

EIA Pre-Screening

[EIAR not submitted]

| | | | |
|---|---|----------------------|---|
| An Bord Pleanála Case Reference | | | |
| Proposed Development Summary | Change of use from retail use to retail use with ancillary off licence use. | | |
| Development Address | Applegreen Ballymount, M50 Business Park, Kilnamanagh, Dublin 24. | | |
| 1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings) | | Yes | |
| | | No | No further action required |
| 2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class? | | | |
| Yes | | Class..... | EIA Mandatory EIAR required |
| No | | | Proceed to Q.3 |
| 3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]? | | | |
| | | Threshold | Comment (if relevant) |
| No | | N/A | No EIAR or Preliminary Examination required |
| Yes | | Class/Threshold..... | Proceed to Q.4 |

4. Has Schedule 7A information been submitted?

| | | |
|------------|--|---|
| No | | Preliminary Examination required |
| Yes | | Screening Determination required |

Inspector: _____ **Date:** _____