



An
Bord
Pleanála

Inspector's Report PL 07.247751

Development	To permit extended delivery times between 7am and 11pm daily
Location	Lidl, Galway Road (Tullyvoheen, Clifden. Co Galway)
Planning Authority	Galway County Council
Planning Authority Reg. Ref.	16/1335
Applicant(s)	Lidl Ireland GmbH
Type of Application	Permission.
Planning Authority Decision	To grant permission subject to conditions.
Type of Appeal	First Party
Appellant(s)	Lidl Ireland GmbH
Observer(s)	None
Date of Site Inspection	February 28 th , 2017.
Inspector	Breda Gannon

1.0 Site Location and Description

- 1.1. The site is located in Tullyvoheen on the eastern side of Clifden town in Co. Galway. The site is abutted to the north by the N59 (Galway Road) and to the west by the L-5127). It accommodates a Lidl supermarket with associated car parking and loading bay. Vehicular access to the site is via the local road to the west.
- 1.2. The site is adjoined to the south/south by residential property, to the east by an ESB depot and to the west by commercial properties located on the opposite side of the local road and fronting onto the N59.

2.0 Proposed Development

- 2.1. The proposal seeks permission for extended delivery times between 7am and 11pm daily at the existing Lidl Store, Galway Road. Clifden.

3.0 Planning Authority Decision

3.1. Decision

The planning authority decided to grant permission for the development subject to 1 no. condition which reads as follows:

The loading and unloading delivery times to the existing Clifden Lidl retail store shall be limited to between 08.00 hours and 21.00 hours Monday to Saturdays, and 10.30 hours to 19.00 hours on Sundays only.

Reason: In the interest of residential amenity and orderly development.

3.2. Planning Authority Reports

The Planning Officer's report of 22nd November, 2016 notes the proximity of a number of private houses immediately south of the delivery area (loading/unloading dock) on the Lidl store. It noted that Condition No 2 of the Reg Ref No 16/318 restricted the delivery hours from 8 am to 8 pm. It was considered that it was reasonable to extend the delivery times to match the hours of operation of the store i.e. 9pm. It was considered that extending the delivery hours beyond 9pm would

result in a significant adverse effect on the residential amenities of adjoining properties by reason of noise and nuisance.

3.3. Prescribed Bodies

Transport Infrastructure Ireland (TII) in their submission of 17th October 2016 stated that they had no observations to make on the subject application.

3.4. Third Party Observations

An observation was submitted on the planning application from local residents. It notes that when Lidl applied for the original planning permission they were aware that it was a residential area and agreed with the delivery times that were put in place. It took issue with the suggestions made in the application regarding noise levels associated with deliveries and the suggestion that the impacts on residential amenity will not arise. It notes that the noise management procedures for truck deliveries are still in place and are not working (photographs attached). The delivery trucks are within a few feet of residential property and will impact on property values.

4.0 Planning History

- **08/1369** – Permission granted for a discount food store incorporating an off-licence and ancillary works.
- **10/1743** – Permission granted for a single-storey extension to the existing store.
- **13/457** – Permission granted for the development of a delivery bay enclosure comprising a 4m high acoustic barrier and for extended delivery times allowing deliveries at any time of the day or night for a period of 18 months.
- **15/1071** – Permission granted for the development of a pedestrian entrance to the site and associated and ancillary works.
- **16/318** – Permission granted for modifications to existing loading bay acoustic barrier on site and permission refused for extended delivery times (allowing deliveries at any time of the day or night).

5.0 Policy Context

5.1. Development Plan

The operative development plan is the **Clifden Local Area Plan 2009-2020**. The site is located in an area zoned C1 'Town Centre/Commercial'. The Plan encourages a mix of retail, commercial, office, tourism and residential uses within this zone.

5.2. Natural Heritage Designations

None.

6.0.The Appeal

6.1. Grounds of Appeal

The grounds of appeal may be summarised as follows:

Condition No 1 is based on inaccurate (and changeable) information

- Requests the Board to remove Condition No. 1 which limits delivery times to (incorrect) opening hours. The store operates between 08.00 and 21.00 hours Monday to Saturday and 09.00 o 21.00 hours on Sunday. Delivery hours should not be linked to opening/trading hours as the store operates outside trading hours.
- Opening hours are not analogous with operating hours. The store operates outside opening/trading hours. Staff are in the store restocking, cleaning baking etc., before the store opens and remain after the store ceases trading each day, preparing for the following day. There is no merit or planning rationale for linking delivery and opening/trading hours. Such a link ignores the logistics of convenience retailing i.e. that the food being delivered is on the shelves by the time the store opens, not mid-morning or early afternoon.
- Linking delivery and trading hours is flawed given that the opening hours are subject to change at the discretion of the applicant. The store is not subject to

any limitations/conditions on opening/trading hours and the applicant can therefore modify the opening hours from time to time.

Condition No 1 is logistically unworkable

- The existing and conditioned delivery times are logistically unworkable and have significant impacts on the operation of the store and the provision of fresh produce. It would place the Lidl store at a distinct disadvantage to its competitors and undermine its reputation.
- Like the majority of convenience retailers, the applicant operates a centralised distribution system. The Clifden store is currently serviced from Charleville, Co. Cork. Fresh produce arrives and is processed from the distribution centre between 6am and 1.30pm, with delivery vehicles leaving the distribution centre at approximately 4pm each day. The vehicles serving the store has an optimum journey time of approximately 4 hours but due to traffic delays, weather etc, the journey can take over 5 hours and provision must be made for such delays. In terms of logistical planning, it must be assumed that deliveries cannot arrive in Clifden until at least 9pm each day. The loading/unloading process takes approx. 1 hour and the delivery process cannot therefore be expected to be completed until at least 10.00 pm daily. The proposed 'cut-off' of 11pm is to allow for unforeseen or exceptional delays (i.e. receiving fresh stock due to weather conditions at sea, traffic delays, road accidents, rest periods for drivers etc.)
- As a result of the above issues, deliveries would in many instances occur the following morning. This requires the delivery truck to arrive no earlier than 8am, which typically necessitates overnight parking along the route if the delivery is abandoned due to missing the 9pm window. The unloading process would take up to 9am at which point the restocking of shelves begins. The process results in overlapping of customer and delivery traffic movements which is suboptimal. The time limits and modified hours under Condition No. 1 impose a significant burden on the applicant and undermines the shopping experience of customers.

- The applicant fully accepts that limits should be placed on delivery hours and these should be 'industry norms' rather than the somewhat arbitrary limits that have been imposed to date.

Condition No. 1 impinges on existing development rights

- Condition No. 1 limits deliveries on Sunday mornings to after 10.30 am, rather than the present 8am. This is a significant interference with existing development rights. The issue of existing development rights also arises in respect of linking delivery hours to trading hours, which are subject to change from time to time.

Condition No. 1 is unwarranted

- Condition No. 1 suggests that the delivery hours sought would not be acceptable due to impacts on the amenity of adjoining residential property. The planning application documentation clearly shows that the deliveries would not result in significant adverse impact by reference to relevant 'industry standards' and also having regard to existing non Lidl background noise in the area. The rationale of the planning authority cannot be justifiably upheld.
- Typical noise limits for day, evening and nighttime are 55, 50 and 45 dB respectively. No deliveries are proposed during the nighttime period as defined by EPA guidance. Accordingly, the lowest strictest relevant limit is 50 dB. The noise surveys show that noise levels arising from deliveries have reduced significantly as a result of the mitigation measures carried out to date i.e. provision and extension of acoustic screen. There is no justification, therefore, for not allowing deliveries over the entirety of the day/evening periods.
- The EPA guidance state that 'restrictions on times of operation needs to be balanced with the economic and/or logistic impact'. The delivery hours imposed under Condition No. 1 do not achieve an appropriate or fair balance.
- The Galway County Development Plan 2015-2021 refers to noise limits in the context of industrial development, imposing a limit of 55 dB(A) Leq, similar to the upper day time limit of the EPA standard. The latest survey on the site,

decibel levels of 45.4 and 43.5 were recorded, significantly below the EPA limits and the limit of the development plan.

- The existing context is a relevant factor, insofar as the subject site and environs are not in a low noise environment. The noise assessment demonstrates that the proposal to deliver between the hours of 7am and 11pm will not have any material impact on residential or other amenities due to existing background noise and compliance with EPA parameters. It is submitted that permitting the development as proposed would not have any material or discernible impact on the amenities of the area, and that the single daily delivery would be no more disruptive than passing traffic.

Comments on Third Party observation

- The full breakdown of the noise levels of the delivery survey carried out in August 2016 was omitted in order to provide a non-technical conclusion. A full breakdown is included in Figures 3 and 4, which include non-delivery/extraneous noise. The 'specific delivery noise' was below EPA parameters. The figures used in the submitted Noise Assessment are valid and robust.
- It is stated that the noise management procedures are not working and photographs demonstrate that on at least one occasion this correct procedure was not followed. During the noise assessment the correct procedures were adhered to in terms of truck movements and in terms of the trailer refrigeration unit being shut down in advance of the delivery to the site and the trailer doors being opened off site, prior to entering the car park.
- It is accepted that there may be occasions when the procedure was not correctly followed. The applicant therefore proposes 'hard' measures to ensure that the procedure is correctly adopted at all times. It is proposed to install a kerbed island which will physically restrict/ block truck movements from turning right towards observer's dwelling. This will force drivers to turn left as illustrated in the autotrack manoeuvre (Figure 5).
- The additional measure which will not interfere with customer parking etc is a relatively simple addition which will provide tangible enforcement of truck delivery procedures.

6.2. Planning Authority Response

No response to the grounds of appeal were submitted by the planning authority.

7.0 Assessment

Planning permission was granted for the original store under Reg Ref 08/ 1369. Condition No 17 restricted loading/unloading operations between 08.00-20.00 Monday to Friday and between 08.00 and 16.00 on Saturdays, unless otherwise agreed in writing with the planning authority.

Under Reg Ref No. 13/457, Lidl was permitted to operate with unrestricted delivery times for a period of 18 months (Condition No 3). To mitigate potential noise impacts on adjacent residential properties, an acoustic barrier was erected along the length of the loading bay and ramp. At the end of the 18 month period Lidl applied for permission (16/318) to modify the acoustic barrier and the existing dock leveller and to retain the unrestricted delivery times. Whilst recognising that the noise barrier and new docking shelter would help to reduce noise, the planning authority concluded that a 24 hour delivery service was not acceptable due to the proximity of residential property. It was however considered reasonable to extend the weekend delivery times. The permitted delivery hours were restricted to 08.00-20.00 hours Monday to Sunday. Lidl now seeks to extend the opening hours from 07.00-23.00 hours, to allow for flexibility of deliveries.

The loading bay is located at the southern end of the discount store and there is an acoustic barrier in place. There are three residential properties abutting the south/south boundary of the subject site. I accept that the arrival/departure of delivery trucks has the potential to impact on the amenity of these dwellings arising from noise, light and general disturbance. The house with the greatest potential to be negatively impacted is the house to the south facing the local road, which has a side elevation window facing towards the site. The noise measurements taken by the applicant suggest that deliveries can be conducted within acceptable noise limits.

The site is located in an edge of town location where commercial/retail uses predominate and where a certain level of night time activity would be expected. I accept that the ambient noise environment would not be considered 'low' being

influenced by the traffic on the N59 and associated with other commercial activity in the vicinity. I note that there is only one delivery a day associated with the store. Having regard to the location of the site in an area zoned for town centre/commercial uses and the mitigation proposed by the applicant, I consider that the extended delivery times should be permitted. I consider that restricting the delivery periods to day/evening time will provide sufficient protection to the more sensitive residential uses.

8.0 Appropriate Assessment

Having regard to the nature of the development proposed involving the extension of existing delivery hours, the proposed development either alone, or, in combination with other plans or projects does not have the potential to adversely impact on the qualifying interests of any Natura 2000 site. Appropriate Assessment is not therefore required.

9.0 Recommendation

9.1. Having considered the contents of the planning application, the decision of the planning authority, the provisions of the development plan, the grounds of appeal and the responses thereto, my inspection of the site and my assessment of the planning issues, I recommend that permission be granted for the development for the reasons and considerations set out below.

10.0 Reasons and Considerations

Having regard to the location of the site within the urban area of Clifden in an area zoned for Town Centre/Commercial use, it is considered that subject to the conditions set out below, the proposed development would not seriously injure the residential amenity of adjoining property and would, therefore, be in accordance with the proper planning and sustainable development of the area.

11.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 30th day of September 2016, 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 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 interests of clarity.

2. Delivery times shall be restricted to 07.00 to 23.00 hours Monday to Sunday. No delivery activity of any kind shall take place outside these hours.

Reason: In the interests of residential amenity.

3. Details of the proposed traffic island including details of paving finish and planting arrangements shall be submitted to and agreed in writing with the planning authority within one month of the date of this order. The proposed paved traffic island shall be completed prior to implementation of new delivery times.

Reason: In the interests of visual and residential amenity

Breda Gannon
Planning Inspector

20th March 2017.