



An  
Bord  
Pleanála

## Board Order PL 10.248151

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**Planning and Development Acts 2000 to 2017**

**Planning Authority: Kilkenny County Council**

**Planning Register Reference Number: 16/369**

**Appeal** by RGDATA of Rock House, Main Street, Blackrock, County Dublin and by Michael Doran care of Brock McClure of 63 York Road, Dun Laoghaire, County Dublin against the decision made on the 15<sup>th</sup> day of February, 2017 by Kilkenny County Council to grant subject to conditions a permission to Aldi Stores (Ireland) Limited care of John Spain Associates of 39 Fitzwilliam Place, Dublin in accordance with plans and particulars lodged with the said Council:

**Proposed Development:** Demolition of the existing buildings on site with a floor area of 1,367 square metres and the construction of a single storey discount foodstore, to include off-licence use, with a gross floor area of 1,608 square metres (net retail area of 1,140 square metres); associated signage including the erection of one free-standing double sided internal illuminated sign, an electricity sub-station, associated landscaping, boundary treatments, upgrade works to existing bridge and all ancillary site development works. The development will be served by 95 number surface level car parking spaces with vehicular access from upper Main Street (R703). The subject site has an area of 1.612 hectares and the proposed access from Upper Main Street (R703) is within the curtilage of a protected structure (reference D150). A Natura impact statement is submitted with the application. All at former Cullen Steel site situated to the west of Upper Main Street (R703) and south-

east of the Graiguenamanagh Outer Relief Road (R705), Graiguenamanagh, County Kilkenny.

## **Decision**

**GRANT permission for the above proposed development in accordance with the said plans and particulars based on the reasons and considerations under and subject to the conditions set out below.**

## **Matters Considered**

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

## **Reasons and Considerations**

Having regard to the nature and scale of the proposed retail unit, to the zoning of the site for Mixed Use in the Graiguenamanagh Local Area Plan 2009-2020, to the good pedestrian links between the site and Main Street, Graiguenamanagh and to the limited existing retail provision within the town, it is considered that the proposed development, subject to compliance with the conditions set out below, would be in accordance with national guidance on retailing and on development plan retail strategy, would not seriously detract from the architectural character or setting of the protected structure on the site, would not be prejudicial to public health or pose an unacceptable risk of environmental pollution or an unacceptable risk to public safety, would not seriously injure the amenities of the area, would be acceptable in terms of traffic safety and convenience to road users, and would accord with the provisions of the Graiguenamanagh Local Area Plan 2009-2020. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## **Appropriate Assessment**

The Board agreed with the screening analysis that the only Natura 2000 Site within the zone of influence of the proposed development is the River Barrow and River Nore Special Area of Conservation (Site Code 2162) and this site is, therefore, the only European Sites in respect of which the proposed development has the potential to have a significant effect.

The Board considered the Natura impact statement and associated documentation submitted with the application for approval, the mitigation measures contained therein, the submissions and observations on file and the Inspector's assessment. The Board considered that the information before it was adequate to allow the carrying out of an appropriate assessment. The Board completed an appropriate assessment of the implications of the proposed development for the River Barrow and River Nore Special Area of Conservation (Site Code 2162) in view of the site's conservation objectives. In completing the appropriate assessment, the Board considered the likely direct and indirect impacts arising from the proposed development both individually or in combination with other plans or projects.

The Board accepted and adopted the appropriate assessment carried out in the Inspector's report in respect of the potential effects of the proposed development on the aforementioned European Site and concluded that the proposed development, either individually or in combination with other plans or projects, would not adversely affect the integrity of the European Site Number 2162.

## 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 20<sup>th</sup> day of January 2017, 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.

**Reason:** In the interest of clarity.

2. The proposed development shall be amended as follows:
  - (a) Disabled parking space number 9 shall be relocated and shall replace spaces 10 and 11. A covered cycle parking area shall be provided on space number 9.
  - (b) The proposed one-metre cycle lane shall be deleted. The footpath shall be widened to a minimum of 2.5 metres, incorporating the cycle lane in line with standards set out in the National Cycle Manual for mixed use paths.
  - (c) The pedestrian crossing at the access road adjacent to the Creamery building shall be replaced by a Zebra Crossing, the design of which shall be in line with TII Guidance.

- (d) The illuminated sign adjacent to the Creamery is not permitted at that location. A replacement sign shall be erected on the southern side of the road or closer to the bridge at the bottom of the access entrance in accordance with the requirements of the planning authority.

Revised drawings showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** In the interest of traffic and cyclist/pedestrian safety and visual amenity.

3. Details, including samples of the materials, colours and textures of all the external finishes to the proposed building and related structures shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** In the interest of the visual amenities of the area.

4. All works to Well Lane and Back Lane, as set out in further information received by the planning authority on the 20<sup>th</sup> day of January, 2017, and any other works to the public highway shall be carried out and completed to the written satisfaction of the planning authority before the opening of the retail unit.

**Reason:** In the interest of clarity and ensuring appropriate connectivity of the site with the Graiguenamanagh town centre in accordance with the Graiguenamanagh Local Area Plan 2009-2020.

5. No advertisement or advertisement structure (other than those shown on the drawings submitted with the application and as modified by condition number 2 (d) above) shall be erected or displayed on the building (or within the curtilage of the site) in such a manner as to be visible from outside the building, unless authorised by a further grant of planning permission.

**Reason:** In the interest of visual amenity.

6. Security roller shutters, if installed, shall be recessed behind the perimeter glazing and shall be factory finished in a single colour to match the colour scheme of the building. Such shutters shall be of the 'open lattice' type and shall not be used for any form of advertising, unless authorised by a further grant of planning permission.

**Reason:** In the interest of visual amenity.

7. The internal road network serving the proposed development, including turning bays, junctions, parking areas, footpaths and kerbs shall comply with the detailed standards of the planning authority for such road works.

**Reason:** In the interest of amenity and of traffic and pedestrian safety.

8. A comprehensive boundary treatment and landscaping scheme shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This scheme shall include the following:-
  - (a) details of all proposed hard surface finishes, including samples of proposed paving slabs/materials for footpaths, kerbing and road surfaces within the development;
  - (b) proposed locations of trees and other landscape planting in the development, including details of proposed species and settings;

- (c) details of proposed street furniture, including bollards, lighting fixtures and seating;
- (d) details of proposed boundary treatments at the perimeter of the site, including heights, materials and finishes.

The boundary treatment and landscaping shall be carried out in accordance with the agreed scheme.

**Reason:** In the interest of visual amenity.

9. The developer shall facilitate the preservation, recording and protection of archaeological materials or features that may exist within the site. In this regard, the developer shall –
- (a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development,
  - (b) employ a suitably-qualified archaeologist who shall monitor all site investigations and other excavation works, and
  - (c) provide arrangements, acceptable to the planning authority, for the recording and for the removal of any archaeological material which the authority considers appropriate to remove.

In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.

**Reason:** In order to conserve the archaeological heritage of the site and to secure the preservation and protection of any remains that may exist within the site.

10. An ecological management scheme for the proposed development, with an objective of maintaining habitats and controlling invasive species present within the site with particular regard to the boundary close to the Duiske River, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. The site shall be managed in accordance with the agreed scheme.

**Reason:** To ensure the preservation and protection of flora and fauna within the site.

11. (a) All works to the protected structure shall be carried out under the supervision of a qualified professional with specialised conservation expertise.
- (b) The works to secure and weather proof the protected structure shall be undertaken immediately following the final grant of permission and shall be completed to the written satisfaction of the planning authority prior to the opening of the retail unit.

**Reason:** To secure the authentic preservation of this protected structure and to ensure that the proposed works are carried out in accordance with best conservation practice.



12. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including:
- (a) Location of the site and materials compound(s) including area(s) identified for the storage of construction refuse;
  - (b) Location of areas for construction site offices and staff facilities;
  - (c) Details of site security fencing and hoardings;
  - (d) Details of on-site car parking facilities for site workers during the course of construction;
  - (e) Details of the timing and routing of construction traffic to and from the construction site and associated directional signage, to include proposals to facilitate the delivery of abnormal loads to the site;
  - (f) Measures to obviate queuing of construction traffic on the adjoining road network;
  - (g) Measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network;
  - (h) Alternative arrangements to be put in place for pedestrians and vehicles in the case of the closure of any public road or footpath during the course of site development works;
  - (i) Details of appropriate mitigation measures for noise, dust and vibration, and monitoring of such levels;
  - (j) Containment of all construction-related fuel and oil within specially constructed bunds to ensure that fuel spillages are fully contained. Such bunds shall be roofed to exclude rainwater;
  - (k) Off-site disposal of construction/demolition waste (including excavated soil with rhizomes of Japanese Knotweed) and details of how it is proposed to manage excavated soil (including contaminated soils);

- (l) Means to ensure that surface water run-off is controlled such that no silt or other pollutants enter local surface water sewers or drains;
- (m) All other methods required to ensure no impacts on adjoining lands and watercourses;
- (n) All hours of work;
- (o) Provisions for the management of any protected species for which removal/protection requires a license from the National Parks and Wildlife Service and the protection of nesting birds;
- (p) Details of all works to the mill race to ensure no interference with downstream users;
- (q) All details to works to bridges and other structures over the Duiske River and mill race;
- (r) Details of any agreement with the planning authority for related works required to Well Lane/Back Lane and other public areas outside the site boundary;
- (s) Protocols for the implementation of all works in accordance with the management plans and other particulars submitted with the planning application and appeal.

A record of daily checks that the works are being undertaken in accordance with the Construction Management Plan shall be kept for inspection by the planning authority.

**Reason:** In the interest of amenities, public health and safety.

13. Public access through the site on the pedestrian walkway shall be maintained during retail unit opening hours.

**Reason:** In the interest of clarity and to fulfil the objectives of the Graiguenamanagh Local Area Plan 2009-2020.

14. (a) Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.
- (b) The developer shall submit a revised surface water management plan that implements further and more beneficial forms of sustainable urban drainage systems such as swales, permeable paving and infiltration trenches and surface water features.

**Reason:** In the interest of public health and environmental protection.

15. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion of roads, footpaths, watermains, drains, open space and other services required in connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

**Reason:** To ensure the satisfactory completion of the development.

16. 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, as amended. The contribution shall be paid prior to 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 An Bord Pleanála to determine the proper application of the terms of the Scheme.

**Reason:** It is a requirement of the Planning and Development Act 2000, as amended, 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.

17. The developer shall pay to the planning authority a financial contribution as a special contribution under section 48(2) (c) of the Planning and Development Act 2000 in respect of works on Well Lane and Black Lane to improve the attractiveness and the safety of pedestrians and cyclists between the town centre and the development site generally in accordance with the information submitted with the application and further information received by the planning authority on the 20<sup>th</sup> day of January 2017. The amount of the contribution shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála for determination. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be updated at the time of payment in accordance with changes in the Wholesale Price Index – Building and Construction (Capital Goods), published by the Central Statistics Office.

