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**Planning and Development Acts 2000 to 2018**

**Planning Authority: Kerry County Council**

**Planning Register Reference Number: 18/337**

**Appeal** by Michael Hegarty care of HRA Planning Limited of 3 Hartstonge Street, Limerick against the decision made on the 16<sup>th</sup> day of October, 2018 by Kerry County Council to grant subject to conditions a permission to Aldi Stores (Ireland) Limited care of Coakley O'Neill Town Planning Limited of NSC Campus, Mahon, Cork in accordance with plans and particulars lodged with the said Council.

**Proposed Development:** The construction of a single storey discount foodstore (1,725 square metres gross (1,254 square metres net) including the sale of alcohol for consumption off the premises, two number single storey retail units (247 square metres gross), loading bay, external plant enclosure, substation and switch room, 113 number car parking spaces, bicycle stands, signage (one number illuminated double sided sign, one number illuminated single sided sign, three number gable signs and one number entrance sign), all landscaping and boundary treatments, including plaza, site development and drainage works, including attenuation area, on a site of 0.972 hectares at Arbutus Drive and Park Road, Ardshanavooly, Killarney, County Kerry. The proposed development will also include new vehicular and pedestrian access from Arbutus Drive, as well as new pedestrian access from Park Road.

## **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 development, to the zoning of the site for District/Neighbourhood Centre uses and to the existing pattern of development in the vicinity, 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 with the provisions of the retail strategy of the Killarney Town Development Plan 2009-2015 and the Kerry County Development Plan 2015-2021, would not seriously injure the amenity of the area, would not have an adverse impact upon the vitality and viability of the Town Centre, and would be generally be acceptable in terms of pedestrian and traffic safety. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 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 19<sup>th</sup> day of September 2018, 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. Details, including samples of the materials, colours and textures of all the external finishes to the proposed buildings 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.

3. 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.

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

4. Details of all signage on the proposed buildings and within the site, including the exact location of the double-sided sign (having regard to condition number 11(e) of this Order), shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. All signage shall not be internally illuminated, but may be spot-lit in a manner that does not involve light spillage onto adjoining roads or nearby residential areas.

**Reason:** In the interest of controlling the level of advertisements in the area, to clarify the signage permitted on this site and in the interests of visual amenity, residential amenity and public safety.

5. Apart from the signage agreed in writing with the planning authority under condition 4 of this permission, and notwithstanding the provisions of the Planning and Development Regulations 2001, or any statutory provision amending or replacing them, no further advertisement signs (including any signs installed to be visible through the windows), advertisement structures, banners, canopies, flags, or other projecting elements shall be displayed or erected on the building or within the curtilage of the site, unless authorised by a further grant of planning permission.

**Reason:** To protect the visual amenities of the area, and to allow the planning authority to assess any such further signage or advertisements through the statutory planning process.

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 only, 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, and to allow the planning authority to assess any such development through the statutory planning process.

7. No additional development shall take place above roof parapet level, including lift motor enclosures, air handling equipment, storage tanks, ducts or other external plant, telecommunication aerials, antennas or equipment, unless authorised by a further grant of planning permission.

**Reason:** In the interest of visual amenity, and to allow the planning authority to assess any such development through the statutory planning process.

8. The proposed single storey retail units shall be used as shops, strictly in accordance with the definition of "shop" set out in the Planning and Development Regulations, 2001, as amended. They shall not be used as cafés, restaurants or premises for the sale of hot food for consumption off the premises (takeaways) except where the sale of hot foods for consumption off the premises of the retail area is ancillary to the shop use.

**Reason:** In the interests of clarity, and to delimit the uses permitted in these units.

9. No amalgamation of units or subdivision of any unit shall take place without a prior grant of planning permission.

**Reason:** To control the layout and scale of the development in the interest of protecting the vitality and viability of the town centre.

10. The proposed development shall not be open to the public outside the hours of 0800 to 2100 Monday to Saturday inclusive, nor outside the hours of 1000 to 1900 on Sundays and public holidays. No deliveries shall be taken at, or dispatched from, the premises outside the hours of 0700 to 2200 from Monday to Saturday inclusive, nor outside the hours of 0900 to 1900 on Sundays and public holidays.

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

11. (a) The internal road network serving the proposed development, including turning bays, junctions, parking areas, footpaths and kerbs shall comply with details submitted to the planning authority on the 19<sup>th</sup> day of September, 2018 and the detailed standards of the planning authority for such road works. These works shall be in place prior to the first opening of the development.
- (b) All the recommendations of the stage 1/2 Road Safety Audit shall be implemented in full. A stage 3 Safety Audit shall be carried out at the completion of the proposed development with the recommendations acted upon.
- (c) All works shall be carried out in accordance with Design Manual for Urban Roads and Streets (DMURS). All footpaths and pedestrian facilities shall facilitate disabled and universal access.

- (d) Traffic calming measures in the form of a 'table - top' at the junction of the proposed development with Arbutus Drive Road shall be carried out by the developer in accordance with the drawings submitted. Precise details shall be submitted to, and agreed in writing with, the planning authority prior to commencement of works.
  
- (e) The existing stone wall which bounds the site and the public footpath along Park Road and Arbutus Drive Road shall be set back where required, to provide a minimum set back of three metres from the kerbline to allow for a cycleway/footpath. The developer shall provide and/or upgrade the footpath/cycleway. The design of the cycleway shall be in compliance with the National Cycle Manual and shall be agreed with the planning authority prior to commencement of development and shall be in place prior to the first opening of the development. The stonework of the new parts of the boundary wall shall be in keeping with the stonework of the existing wall.

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

- 12. The site shall be landscaped in accordance with the landscaping scheme submitted to the planning authority on the 19<sup>th</sup> day of September, 2018. All landscaping shall be in place prior to the first opening of the development.

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

13. The 19<sup>th</sup> century large grave ledger encountered as part of the pre-development archaeological testing on site shall be fully recorded and researched. Measures for the interpretation and presentation of the ledger within the proposed development shall be agreed in writing with the planning authority prior to commencement of development.

**Reason:** In order to conserve the archaeological heritage of the site.

14. 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, and
- (l) all hours of work.

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.

15. Comprehensive details of the proposed public lighting system to serve the development shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. The agreed lighting system shall be fully implemented and operational be in place prior to the first opening of the development.

**Reason:** In the interest of public safety and visual amenity.

16. 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, 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.

17. 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.

18. The developer shall pay the sum of €62,500 (sixty two thousand and five hundred euro) (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), to the planning authority as a special contribution under section 48 (2)(c) of the Planning and Development Act 2000, as amended, in respect of works to the Park Road, Arbutus Drive Road and Pinewood areas, specifically:
- (a) contribution towards implementation of traffic lights,
  - (b) contribution towards the costs of the overlay of this junction with HRA, and
  - (c) contribution towards the upgrade of the pedestrian crossing.

This contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate.

**Reason:** It is considered reasonable that the developer should contribute towards the specific exceptional costs which are incurred by the planning authority which are not covered in the Development Contribution Scheme and which will benefit the proposed development.

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**Philip Jones**  
**Member of An Bord Pleanála**  
**duly authorised to authenticate**  
**the seal of the Board.**

**Dated this            day of            2019.**