



**An Bord Pleanála**

**Inspector's Report**

**Development:** **Demolition of existing buildings on site and construction of a single storey discount foodstore including off licence, and associated site works at The Mart, Church Hill and Circular Road, Ennistymon, Co. Clare**

**Planning Application**

Planning Authority: Clare County Council

Planning Authority Reg. Ref.: 15/20

Applicant: Aldi Stores Ireland Ltd

Type of Application: Permission

Planning Authority Decision: Grant

**Planning Appeal**

Appellant(s): Save Ennistymon Mart Committee

Jacqui Hersey, Kevin O'Connor, Brendan Garrihy and Others

Flan Garvey

Type of Appeal: 3<sup>rd</sup> Party

Observers: Development Applications Units  
James Devitt & Rosemary Foley  
Fergal Smyth  
Pat Haugh  
Steven Kinch

Date of Site Inspection: 19/10/2015

**Inspector: L. Dockery**

## **1.0 SITE LOCATION AND DESCRIPTION**

- 1.1 The subject site, which has a stated area of 0.58 hectares, is located to the south-east of the retail core of Ennistymon, Co. Clare. The site is roughly triangular in shape and currently accommodates a mart complex. Vehicular access is currently provided to the site along Church Hill, while there is also pedestrian access from Circular Road via steps. The site is bound to the east by Circular Road, to the south by Church Hill, to the west by residential properties and to the north by a community centre and derelict cottage. The subject residential properties to the west are generally single storey, back-to-back cottages. To the south of the site lies green fields, with a ruined Church and graveyard located further south, which are designated as Recorded Monuments. The fire station is located opposite the site to the east, with frontage onto Circular Road.
- 1.2 The south-western portion of the site is quite elevated relative to the remainder and the ground levels rise substantially in a westerly direction. The south-western portion of the site, which is currently under hard core and is presumably currently used for parking associated with the mart, has had a Recorded Monument designation applied to it since August 2015, for a children's burial ground.
- 1.3 The site is elevated relative to Circular Road and the eastern boundary of the site comprises a stone wall with high coniferous trees behind. These trees provide screening to the existing mart building, which is an unattractive complex of development at this location. A pedestrian access is provided along this boundary. The southern boundary comprises a low metal railing and the site is very exposed from this location.

## 2.0 PROPOSED DEVELOPMENT

2.1 The proposed development, as per the public notices, comprises permission for

- (i) Demolition of existing buildings on site and
- (ii) The construction of a single storey, discount foodstore (to include off-licence use) with a gross floor area of 1590 square metres gross floor space with a net retail area of 1140 square metres
- (iii) Erection of one free standing, double sided internally illuminated sign, 1 no. internally illuminated gable sign and entrance glass signage
- (iv) Provision of 82 no. car parking spaces and 4 no. bicycle stands
- (v) Vehicular access to the site will be provided from Church Hill, pedestrian access is proposed from Church Hill and Circular Road
- (vi) Proposal also includes for construction of an ESB substation, all landscaping and site development works

The site area is stated as being 0.58 hectares.

2.2 The following were submitted as part of the original application:

- A Retail Impact Statement
- Design Statement
- Traffic Impact Assessment
- Environmental Noise Impact Assessment
- Archaeology desk top study and
- Appropriate Assessment Screening Report

### **3.0 PLANNING AUTHORITY'S DECISION**

- 3.1 Permission was GRANTED by the planning authority subject to 21 no. conditions
- 3.2 Condition No. 2 relates to development contribution; Condition No. 3 relates to finished floor level; Condition No. 4 relates to noise; Condition No. 5 relates to ground works and archaeological issues; Condition 6 relates to elevation and roof finishes; Condition 7 relates to boundary treatment; Condition 8 relates to removal of any asbestos materials on site; Condition No. 9 relates to hours of operation; Condition No.10 relates to delivery hours; Condition No. 11 relates to roads issues; Condition No.12 relates to parking; Condition 13 relates to surface water; Condition 14 relates to construction hours; Condition No. 15 relates to Construction Management Plan; Condition 16 relates to Construction Waste and Demolition Management Plan; Condition No. 17 relates to shutters; Condition No. 18 relates to signage; Condition No. 19 relates to undergrounding of service cables; Condition No. 20 relates to management of waste within development and Condition No. 21 relates to lighting scheme.
- 3.3 Further Information was requested by the planning authority in relation to 6 points. These included entrance traffic issues, particularly relating to information contained with the TIA; revised pedestrian route and crossing point; alterations to car parking and internal road arrangement; autotrack analysis demonstrating that the site can accommodate the inbound and outbound manoeuvres of delivery and emergency service vehicles; additional cross-sections; together with details of how and where it is intended to dispose of all excavated material that will arise.
- 3.4 The submission of the further information response necessitated new public notices, which were duly received by the planning authority.

## 4.0 TECHNICAL REPORTS

### Planner's Report

The report of the planning officer generally reflects the decision of the Planning Authority.

### Road Design Planning Report (report dated 23/06/15)

No further comment/objection to make

### Assistant Engineer, Roads Design Office (06/07/15)

- Recommended that a condition be attached to a grant of permission that all deliveries to the site occur outside of store opening hours
- Adding the proposed Aldi development to existing N85/N67 Blakes Corner junction does not make the situation worse according to the results within the TIA- junction can accommodate the associated Aldi development

### Conservation Officer (report dated 27/01/15)

- Site is not within ACA; no Protected Structures or Recorded Monuments within the site- due to its extent, there is a requirements under the National monuments Acts to have the site archaeologically investigated
- Recommends that an Archaeological Impact Assessment of the proposed development site be submitted as part of a Further Information request

Stated in Planner's Report that further to the above report the Conservation Officer states that that he concurs with the recommendations of the Development Applications Unit of the DoAHG, dated 24/02/2015. No further report appears on file.

## Clare County Council Fire Authority

No objections, providing it complies with Building Regulations 1997 and latest amendments

### ***Prescribed bodies***

#### NRA

The Authority will rely on the planning authority to abide by official policy in relation to development on/affecting national roads, as outlined in the DoECLG Spatial Planning and National Roads Guidelines for Planning Authorities (2012) subject to the following:

- The proposed development shall be undertaken strictly in accordance with the recommendations of the Transport (Traffic Impact) Assessment. Any recommendations arising should be incorporated as conditions on the permission, if granted. The developer should be advised that any additional works required as a result of the Assessment should be funded by the developer

#### An Taisce

Outline the following concerns:

- Design- located in an historic part of Ennistymon and not on outskirts- style of the Aldi store and streetscape are not complimentary at this high elevation- acknowledges that it needs a recognised brand in its design
- North Clare LAP 2011 indicates that the mart site offers an opportunity to introduce a mix of retail, commercial, office, tourism and residential uses. However that proposed development is for retail only and does not provide for the mix envisaged in the plan

- Derelict cottage area could be incorporated into any development; greenery could incorporate a small office or tourist office
- Archaeology- recommend condition as per DoAHG report
- SAC- the Inagh River should not be impacted on in any significant way
- Waste disposal systems should be within framework for surface and groundwater protection- use of existing; public water management systems should be investigated

Department of Arts, Heritage and the Gaeltacht (report dated 24/02/2015)

- Noted that the proposed development is large in scale and lies in proximity to Recorded Monuments CL015-103001 Church and CL015-103002 Graveyard, which are subject to statutory protection in the Record of Monuments and Places, established under Section 12 of the National Monuments (Amendment) Act 1994. Given the extent and location of the proposed development it could impact on subsurface archaeological remains
- Have reviewed the archaeological impact assessment report submitted with the application and concur with the findings
- Recommend that archaeological monitoring, as described below be carried out at this site and included as a condition in any grant of permission
- Conditions attached

## 5.0 APPEAL GROUNDS

5.1 The grounds of the appeal submitted by Stephen Dowds Associates on behalf of Flan Garvey may be summarised as follows:

- Outlines site description; planning background; planning history and details of proposed development
- Contends that application should be invalidated due to address given
- Contends that site is too constricted for the proposal- too close to boundaries resulting in impacts on amenities of adjoining properties, amenities of fair green and public roads
- Slope of site makes it unsuitable for a development of this type- concerns at levels of excavation and retaining walls
- Concerns regarding heights of retaining walls; proximity to cottages- visual intrusion, overshadowing and infilling
- Undermining of houses and their gardens, together with safety issues
- Removal of trees which would otherwise help screen development
- Oppressive and dominating impact of proposed development, especially on Circular Road
- Ruin character and ambience of old Fairgreen Road
- Concerns regarding alterations to natural site contours
- Limited possibilities for landscaping; dominated by hard surfaces
- Major impact on character and amenities of what is an elevated, exposed and very attractive location

- Hoped that redevelopment of site would not be justified purely on grounds of poor quality of the existing Mart
- Ennistymon is a heritage town, known for its shopfronts- this is a standard discount supermarket- does nothing to enhance the amenities of the town- location is such that a good standard design would be appropriate
- Concerns regarding impacts on setting of old Church and graveyard- their amenities will be interfered with
- Contended that proposal responds very poorly to Retail Design Manual 2012
- In terms of traffic, contends that there is inadequate parking provision, as per Development Plan standards
- Road network leading to site is not good, connections to retail core are poor
- Acknowledges that there exists mart generated traffic, but this was open only once a month with most traffic coming from Circular Road, from direction of Ennis
- Serious traffic issues at Blake's Corner, junction with Lahinch road
- Development is premature pending decision on alternative mart site
- Condition No. 10 is highly restrictive- questions practicality of this not realistic to expect a major retail unit to organise that every delivery truck arrives in a relatively remote town within such restricted hours
- Outlines concerns with access and capacity of adjoining road network to accommodate development- no timeframes for inner relief road or improvements to N67/N85 junction

- In terms of retail impacts, site is not in the core retail area of the town, neither is it at the edge of the core retail area- say this because approaches are so steep- shoppers will not climb steep hill
- Significant level of vacancy in town
- In terms of archaeology, local tradition states that part of the site was used as a children's burial ground- not featured in application
- Noise measures are unconvincing- enforcement would be difficult
- Submits photomontages in support of the appeal, together with sunlight shadow study

5.2 The grounds of the third party appeal submitted by Jacqui Hersey and Others may be summarised as follows:

- Loss of privacy due to building height; loss of natural light; devaluation of property values; destruction of established right of way to No.s 2,4,6,8 Church Hill
- Increased noise pollution; risk of anti-social behaviour; lack of safety for elderly and disabled and difficulty for accessing graveyard
- Increase in traffic volume- delays in operation of fire service; no footpath from Kilcornan Estate to Circular Road
- Concerns regarding flooding and structural damage to properties on Circular Road; drainage concerns and subsequent health issues
- Visual impacts
- Questions accuracy of traffic figures

- Inappropriate location as site is located on a picturesque historical site in this heritage town
- Demolition of existing asbestos is a potential severe health hazard
- Contends that planning authority have shown disregard for their concerns
- Submits photomontages and extract from local newspaper in support of their submission

5.3 The grounds of the third party appeal submitted by Brendan McGrath and Associates on behalf of the 'Save Ennistymon Mart Committee' may be summarised as follows:

- Serious adverse impact on viability and vitality of Ennistymon town centre; architectural heritage and residential amenity and is considered not to be compatible with adopted statutory plans
- Proposal not satisfactorily described
- Retail case for development has not been adequately made
- Site may not be suitable as may have been used as a burial ground
- Site too small and too steep
- In terms impacts on vitality and viability of town, contends that size of proposal is equivalent to 44% of existing net retail floorspace of the town- damage economic viability
- Relatively large number of vacant commercial properties; many buildings are in poor condition- long term decline of town centre- 18 vacant properties within defined core area in July 2015 compared with 8 in 2009

- Mart is not in town centre- boundary of designated 'core retail area' does border subject site- discrepancy between map and reality- core area extends from beside the bridge to Supervalu to north, the length of Main and Church Streets- Retail Strategy defines the retail core as approximately to the historic pattern and not the present day pattern
- Having regard to the actual extent of the retail core, the subject site is neither in nor adjacent to the core- suggests that site should not be considered as an edge-of-centre site- unrealistic to imagine the Aldi store as an integrated element of the existing shopping core
- 41 Protected Structures within Ennistymon; all but 8 are within the town centre ACA
- The 26 shops selling convenience or comparison goods situated within ACA would be directly and adversely affected by the proposed development, together with other businesses
- Contends that the CDP policy, with policies for the protection and enhancement of the town centre and protection of architectural heritage, does not support the proposal
- In terms of North Clare LAP 2011, although shop is a 'permitted in principle' use in a mixed use zone, the brief of the mart site anticipates a 'mix of retail, commercial, office, tourism and residential uses' on the subject site
- Considers that the LAP is not supportive of the proposal
- Planning application states that Aldi owns the site- contends that this is incorrect and that site is owned by Clare Marts Ltd- entered into a contract to purchase the site, that being conditional on a grant of permission

- Submits that case for retail project has not been adequately made- do not challenge the professional competence of the RIS but believe that various assumptions in the assessment are open to question- suspect that future retail demand in the catchment and the robustness of the existing town centre to withstand the impact of a large retail development have been exaggerated
- Outlines a number of factors which conclude that the demand for additional convenience retailing in the catchment is exaggerated; where the robustness of the existing retailing in town is exaggerated; where the impact of a discount store on existing stores is under estimated and where the new store would not be in direct competition with the existing supermarket in Ennistymon (outlined in Table 2, pg 10 of submission)
- Considers that insufficient thought was given to the application of the sequential test
- Considers that the proposed layout is unsuitable; does not make a positive contribution to the streetscape – new development would read from Circular Road as a large surface car park
- Site may have been used as a burial ground- strong likelihood that south western corner used for burial of non-baptised babies- an affidavit from Mr. Tom Clair has been submitted with the appeal
- Contends that the site is unsuitable because it is too small and too steep- unacceptable amount of excavation
- Removal of existing trees along Circular Road, which together with stone wall presently provide an unobtrusive visual screen
- Retaining wall up to 3 metres in heights

- Site remodelling means that site would be physically detached from remainder of Fairgreen, by virtue of difference in levels
- Insufficient car parking provided, nearly all customers will travel by car- shortfall of 29 spaces or 38 paces depending on standards used
- 4500m<sup>3</sup> of material will have to be removed from the site- equivalent of 565 wagon movements- represents a degree of environmental nuisance
- Subject site has made a lively contribution to the life of town over the past 50 years- before then site was part of the Fairgreen- proposals fall short
- Does not satisfy basic criteria as set out in Retail Planning Guideline (Section 4.9)
- New store would not benefit existing town centre; likely that proposal would have serious adverse impact on centre
- If planning authority wish to accommodate a second sizeable supermarket in Ennistymon, outside the town centre, then should explicitly adopt a policy to that effect
- A sworn affidavit has been submitted with the appeal, signed by Tom Clair, Maghera, Lahinch stating that a woman who resided in the town told him that she had arranged for a priest to bless a part of the Fairgreen, in which the bodies of small unbaptised children were buried

## 6.0 OBSERVERS

### Department of Arts, Heritage and the Gaeltacht

The Department was informed on August 25<sup>th</sup> 2015 of the presence of a burial ground for un-baptised children within the footprint of the

proposed development site. The information for the burial ground consists of local knowledge and tradition.

On the basis of the information received, it has been decided that a new record will be entered into the Sites and Monuments Record for County Clare. The reference number for this new record is CL015-144- map attached to observation.

The Department would request that this information is given material consideration in relation to the current appeal case.

James Devitt & Rosemary Foley

- Local business people who raised concerns regarding impacts on local businesses within the town if proposed development were permitted

Fergal Smyth

- Raised concerns regarding impacts of proposed development on existing farmers markets- cited example of impacts on famers market in Westport when Aldi was opened there

Pat Haugh

- Representing the staff of Supervalu
- Raised concerns regarding impacts on livelihoods of the staff if proposed development were permitted

Steven Kinch

- Outlines problems for fire service and impacts that problem development may have on this station
- Outlines problems for pedestrians and cyclist along Circular Road

## 7.0 RESPONSES

A response was submitted by Tom Spain and Associates on 01/09/2015, on behalf of the applicant, which may be summarised as follows:

- Subject site is zoned for town centre/mixed use purposes within the North Clare LAP 2011 and located adjacent to the retail core of the town as identified in the Mid-West Retail Strategy- this is a plan led development
- Outlines description of site and its location; description of proposed development and planning authority decision
- Proposed development would be classified as a small supermarket within the context of the Retail Planning Guidelines- limited convenience on offer in the town other than Supervalu- proposed use will be complementary to the retail offer of the town- Supervalu has a net retail floor area of 1300 square metres- proposal would add much needed consumer choice and competition
- Ennistymon designated as a Tier 3, Level 2 centre within the Mid-West Retail Strategy- such centres should be self-sufficient in terms of convenience retail floorspace provision- policies of operative plans and strategies support the provision of additional convenience floorspace in such centres
- Significant levels of leakage of convenience expenditure for the area which Ennistymon serves, less than 40% of respondents to a survey conducted by the Retail Strategy for the Mid-West region carry out their main shopping at this location
- Provides list of similar sized towns where Aldi are provided as part of wider convenience retail mix
- 'Anchor' tenants needed to bring shoppers to the town

- Proposal will enhance the overall attractiveness of Ennistymon as a retail destination and improve level of facilities available- complementary second ‘anchor’ to the town- comprises a format that is appropriate for Ennistymon- represents an opportunity to enhance the overall vitality and viability of the town centre
- Will more likely result in reduction in vacancy levels- making positive contribution to architectural heritage of town centre
- The occurrence of vacancy along Parliament St is acknowledged within the health check assessment undertaken in the RIS- Given the proximity of the proposed site to the retail core, the proposal has the potential to increase shopper footfall along Parliament St- potential to accrue spin off benefits for this area of the town with consequent reduction in vacancies
- Submits that extracts cited from Mid-West Retail Strategy do not provide a definition of the retail core of Ennistymon- retail core is identified as ‘Core Shopping Centre Boundary’ within Retail Strategy
- Application lies directly adjacent to ‘town centre boundary’ as identified in zoning map- Parliament St treated as part of town centre retail core in this map- subject site is only site outside of the town centre retail core boundary as defined in the LAP which is zoned for town centre/mixed use purposes- vision for site as set out in North Clare LAP specifically identifies the potential of the site to accommodate retail development
- Proposal if permitted would provide a focus of activity in the south eastern extent of the town centre
- Submitted that the subject site would clearly fall within the term of classification of an “edge of centre” site within the context of the Retail Planning Guidelines

- Proposal has potential to enhance rather than detract from the vitality and viability of the town centre- proposed development would benefit local residents within the surrounding area providing competition with regard to convenience retailing
- Clare Co Co. have accepted that the proposal is fully in accordance with the policies and objectives of the County Development Plan and North Clare LAP in issuing its decision to grant permission
- Submits that proposed development is fully in compliance with the service town objectives as set out in CDP
- Site is located outside of Architectural Conservation Area – proposed development seeks to introduce a retail use to the existing brownfield portion of the overall mart site- a wider mix of uses in accordance with the LAP specific objectives can be provided as part of future phases of development
- Proposal has been carefully designed to respect the existing character of the town- existing agricultural buildings contribute little to the public realm of the area- also considered in light of its proximity to ruined church- views of the site from the hill are an important consideration- proposal includes for a green roof which seeks to blend the proposal into the surrounding landscape
- Already a good mix of uses within the vicinity of the site- proposal will add to this diversity
- Cites previous Bord decisions with regard to development on 'mixed use' sites
- Amenity of adjoining residential properties has been a key consideration in layout and design of proposed scheme- Condition No. 7 relating to boundary treatments aims to negate impacts on residential properties

- Aldi Stores (Ireland) Ltd has the necessary beneficial legal interest and ownership interest for the purposes of this application by virtue of a contract for sale which was entered into on 22/10/2014 between Clare Marts Ltd and Aldi- confirmed in letter attached from applicant's solicitors
- In the event that no population growth is assumed for the catchment area between 2011-2017, there is still sufficient capacity within the catchment area to accommodate the proposal- identified catchment area is based on a primarily 15 minute drive from Ennistymon- drive time reduced in the direction of Ennis and Galway having regard to the retail role and function of these centres
- Data on expenditure per capita is the most up to date source for expenditure per capita and is therefore considered appropriate for use as part of the retail assessment
- Retail Sales Index illustrates that the volume of sales in the food business category has increased by 4.9% since 2014
- Considered that the health check assessment represented a true reflection of the health of the town centre
- Turnover figure is derived from the operation of similar discount stores throughout the country- turnover figure of €8,000 per square metres has been accepted as appropriate previously- turnover assumptions set out within the retail impact statement are robust
- Proposal will enhance the overall attractiveness of the town centre as a retail destination
- Sequential test submitted demonstrates that there are no sites within the retail core which are suitable, viable and available to accommodate the proposed development- the confines of the ACA and the traditional town centre to accommodate the

modern requirements of a convenience supermarket is illustrated by the fact that Supervalu moved from their previous site in Parliament St to a purpose built facility

- Design of the store uses a simple palette of good quality materials to create a building that is contemporary and functional- similar formats have been considered acceptable to An Bord Pleanala
- Generous landscape proposals will shield the development from the road and will not create a negative impact on adjoining properties
- With regards issue of site being used as burial ground, states that there does not appear to be a sustainable basis for this assertion having regard to the information submitted by the appellant- issue was not raised within previous submissions on file nor was there any evidence from either the archaeological assessment or from the onsite soil investigations undertaken- main extent of the site is brownfield and used as a mart- site never formed part of the graveyard- Clare Mart have operated the site for over 50 years and are unaware of any former burials on the site and have not uncovered any evidence of burials- affidavit makes no specific reference to location of the burials- happy to accept a condition requiring archaeological monitoring of ground works as proposed in the archaeological report submitted with application
- Site constraints identified by appellant have been addressed within the design proposal- replacement planting is proposed along Circular Road to replace that removed; existing stone boundary wall along Circular Road is proposed for retention
- Topography of this area does not allow for connections to the site from all directions

- Parking provision of 82 spaces is fully in accordance with town centre requirements as set out on CDP- recently completed stores provide a similar number of parking spaces
- Duration of construction phase will be temporary in nature with 20 to 25 week timeframe- Construction Management Plan will be submitted

7.2 A further response was submitted by Tom Spain and Associates on 07/09/2015, on behalf of the applicant. This response reiterates many of the points made in the original response. Additional points, not previously made in the submission received on 01/09/2015h may be summarised as follows:

- Subject application deemed valid by planning authority- written confirmation from Roads Dept of Co. Co. that road bounding south of site is known as Church Hill (L5134)- Ordnance Survey map includes label Church Hill on this road to the west of the site-name Fairgreen does not appear on OS map- no reference to Fairgreen on any existing mapping sources- site is now known as the mart site- clear that appellant was fully aware of the application and the site location
- Careful consideration given to layout of the proposed development- proposed retail store occupies a similar position on site to existing mart building- access is in proximity to existing access points and proposed building floor level is similar to the site level of existing buildings on site
- Outlines landscaping proposal- some excavation to southwest will allow building to nestle into the landscape- minimise impact on surrounding properties
- Proposed development will not impact in any significant way on residential amenities- side gable of the closest dwelling within the Church Hill estate is located at a distance of 4.3m from the

proposed ALDI store- difference in site levels mitigate against impacts on nearest residential properties- FFL of existing residential unit is at 30.77 metres and the FFL of proposed store is at 29.6 metres- maximum height of proposed development at 5.9 meters is less than that of the existing two-storey mart building which rises to 7.59 metres- proposed store is similar in height to existing residential properties at 1 and 2 Church Hill

- Proposal will visually represent a significant improvement to the site when viewed from these dwellings compared to the existing agricultural buildings on site
- Impact of proposed retaining wall on properties at Church Hill is reduced as a result in the difference between the levels of the application site and that of the existing residential properties.- located at a distance of 2.6 metres from nearest residential property
- Existing stone wall at end of cul de sac at No. 1 Church Hill will be retained- this wall is higher than the proposed retaining wall within the ALDI site- will not be visible at the end of the cul de sac and will have no impact on visual amenity
- All works to be carried out such that existing structures that are to be retained shall be fully protected during the course of the works- proposed retaining wall shown on Section X-X has been introduced specifically to avoid any potential undermining of the existing boundary wall and/or adjacent properties
- Appellants photomontage presents a misrepresentation of the proposed scheme with clear inaccuracies in the image- site sections attached to response pertain to illustrate true relationship of the view of the proposed development to the cul-de-sac road.

- In order to alleviate fears it is proposed to reduce height of paladin fence from 2 metres to 1.6 metres and landscaping can be provided along the north western site boundary between existing stone wall and proposed lower retaining wall
- Limited potential for proposed development to impact on access to light at existing properties at Church Hill having regard to the presence of existing buildings on site and the difference in levels between the subject site and these properties
- Submitted that the proposed development will improve the amenity of existing properties along Circular Road
- Level of excavation proposed to accommodate the proposal seeks to sensitively incorporate the proposal within the local context of the site
- Appendix 2 of report is response prepared by Transportation Planning Services—states that it would be clear that 127 parking spaces would be an over provision to cater for the demand at this site-site is well served in terms of vehicular and pedestrian connections from the site to the town centre
- Delivery restrictions as per Condition No. 10 of grant of permission are commonplace in existing Aldi stores, particularly where located close to residential properties
- Applicant is happy to operate within terms of Conditions No. 9 and 10 in terms of opening hours and delivery restrictions
- No loss of privacy due to building height- building designed to sit into landscape to minimise any impact on adjoining dwellings- no significant impacts on property values
- No physical or legal evidence that an established right of way from the neighbouring dwellings is being used as an access

route to the town or to supply fuel to dwellings- unbroken stone wall along entirety of boundary

- Providing an active use on site that will deter anti-social behaviour
- Not envisaged to impact on access to graveyard
- Confirmed that no particular construction related issues on Circular Road during construction of the Ard Donagh development were raised as a concern by the County Council
- No concerns expressed at pre planning stage by Water Services Dept as to the condition or capacity of the existing foul sewer network- no net intensification of foul water loading to the public sewer compared to the existing use of the site as a mart
- Figures set out in TIA are robust and accurate
- Potential for asbestos on the roof of the mart building is acknowledged- Condition No. 8 deals with this issue

## **8.0 PLANNING HISTORY**

None

## **9.0 DEVELOPMENT PLAN AND OTHER POLICY DOCUMENTS**

The operative Development Plan is the Clare County Development Plan 2011-2017

Chapter 2 outlines overall strategy including core strategy for future development in Clare.

## Population Target Zones

Ennistymon is located within Zone 3, Clare North West- envisaged to accommodate an additional population of 2,440 between 2006 and 2017.

### Chapter 7 Retail

Ennistymon/Lahinch are identified as Service Towns

The strategy for these settlements is to ensure that their existing role is maintained and strengthened and this can be achieved through adequate zoning of lands and a facilitatory approach towards appropriately scaled and designed urban development. The expansion of these towns should be sympathetic with a focus on developing brownfield sites and developing from the centre out. Every effort should be made to improve the public realm in order to make these attractive places to live, work and visit.

#### Section 7.4.4 Town Centres: Ennistymon, Scarriff and Killaloe

##### ***It is an objective of the Development Plan (Objective 7.5):***

- a. To support these towns as important centres for the provision of convenience goods and retail services;
- b. To encourage the provision (where not already provided) of good quality convenience outlets capable of supporting a main food shopping trip in or on the edge of the town centre;
- c. To support the provision of non-bulky and bulky comparison goods outlets in the town centres where these are aimed at meeting the needs of the local catchment population.

## North Clare Local Area Plan 2011-2017

### Zoning Objective- 'Mixed Use'

'Shop' is 'permitted in principle' under this zoning objective

### Specific Objective for Mart site

'The site of the mart offers an opportunity to introduce a mix of retail, commercial, office, tourism and residential uses. The site is bounded to the south by the Ennistymon cemetery and an access road intersects the site. The site is situated in an elevated area and the building designs shall have regard to its prominent elevation'.

### Retail Planning Guidelines, DoECLG (2012)

- current guidance document in setting a policy framework for retail development and for the assessment of individual proposals for development. In essence the guidelines have an overriding policy that retail development should be plan led and part of an overall wider strategic approach in cohesion with other development.

### Retail Design Manual A Companion Document to the Retail Planning Guidelines DoAHG (April 2012).

This is a companion document to the Retail Guidelines which emphasizes the need for high quality design that is appropriate to the character location and configuration of the site and its environs improving the urban grain, pedestrian permeability and using high quality design/finishes is emphasised with various case study examples clearly set out. The manual utilises 10 principles of urban design as a benchmark for suitable development.

### Retail Strategy for the Mid-West Region 2010-2016

The guidelines in essence aim to ensure that adequate provision is made for new retail development in the most appropriate locations and that excessive provision of retail space is avoided.

Ennistymon identified as a Tier 3, Level 2 centre in the retail hierarchy of the region.

The Strategy states that ‘ The primary objective for these centres is to enhance the quality of their convenience goods provision enabling the construction of modern food store outlets, such as has already been provided in Ennistymon (Supervalu) and Killaloe (again Super Valu).

## **10.0 ORAL HEARING:**

10.0.1 An oral hearing was held on these appeals on 3<sup>rd</sup> and 4<sup>th</sup> of November, 2015. The applicants, the planning authority and three 3<sup>rd</sup> party appellants attended some, or all of the hearing. One prescribed body and five observers attended.

10.0.2 A recording of the hearing is attached on file. The main issues raised at the hearing are addressed in my assessment.

## **11.0 ASSESSMENT**

11.01 This application is assessed in terms of Development Plan policy and all other relevant Government Guidelines. I consider that the following are the main issues pertaining to this appeal:

1. Principle of proposed development
2. Impacts on vitality/viability of the town
3. Architectural Heritage Issues
4. Archaeological Issues
5. Traffic and parking issues
6. Other issues

## 11.1 PRINCIPLE OF PROPOSED DEVELOPMENT

11.1.1 Ennistymon is identified as a Tier 3, Level 2 town within the Retail Strategy for the Mid-West Region 2010 and it is designated as a 'service town' within the operative County Development Plan. Objective 7.5 of the Plan seeks to support these towns as important centres for the provision of convenience goods and retail services and to encourage the provision (where not already provided) of good quality convenience outlets capable of supporting a main food shopping trip in or on the edge of the town centre.

11.1.2 The subject site is zoned for 'Mixed Use' within the North Clare Local Area Plan 2011-2017. A 'shop' is 'permitted in principle' under this zoning objective. I note the Specific Objective for Mart site, contained within the LAP which states that 'The site of the mart offers an opportunity to introduce a mix of retail, commercial, office, tourism and residential uses. The site is bounded to the south by the Ennistymon cemetery and an access road intersects the site. The site is situated in an elevated area and the building designs shall have regard to its prominent elevation'. This objective is considered reasonable.

11.1.3 I note the location of the site immediately adjacent to the core retail area for Ennistymon, as identified within the Mid-West Retail Strategy 2010-2016. Much discussion took place during the course of the oral hearing into the location of the site and its appropriateness for such a development, in terms of its position relative to the traditional town centre. It is now my considered opinion that the site is not within the traditional core, but it is located immediately adjacent to it in an area that forms a natural continuum to the traditional town centre. The north-western portion of the site immediately abounds the delineated retail core, as set out in the Mid-West Retail Strategy 2010 and I consider this to be an edge-of-centre site, within the context of the Retail Planning Guidelines 2012. It is a brownfield site, with good linkages to the traditional core.

11.1.4 I note the issues raised in relation to the fact that the site is zoned for 'mixed use' and should accommodate a variety of uses as per the 'Special Objective' but only retail is being provided in this current application. While I note this argument, I also acknowledge that the site the subject of this appeal, forms only part of the overall 'mixed use' zoning of the North Clare LAP 2011. Lands immediately to the south are also zoned as such and therefore they may, subject to appropriate grants of planning permission, be able to accommodate further diverse uses in time.

11.1.5 Having regard to all of the above, I therefore consider that, in principle the proposed development is in accordance with the zoning objective for the site.

## **11.2 IMPACTS ON VITALITY/VIABILITY OF TOWN CENTRE**

11.2.1 This was one of the topics of interest conveyed to the parties prior to the commencement of the hearing. I consider that an assessment of the impacts of the proposed development on the vitality and viability of the existing town centre is necessary in this instance. As has been stated, the subject site is located to the south-east of the retail core and it is argued by the applicants that given the proximity of the site to this centre, together with connections available, that an opportunity exists to further enhance the existing town centre. I would concur with this assertion. The proposal is for a supermarket with net retail floor area of 1140 square metres, which is considered not to be inordinately large by supermarket standards. The applicants argued that this is a planned development, with the site being zoned for mixed use development, with a special objective attached for development of a mix of uses, including retail on the lands. In addition to this, the town is designated as a Level 3, Tier 2 centre within the Mid-West Retail Strategy, which is the highest designated retail centre within the North Clare area. It is acknowledged that such centres should be self-sufficient in terms of convenience retail floorspace. An objective of the North Clare LAP

2011 seeks to support the town as an important centre for the provision of convenience goods and retail services and to encourage the provision of good quality convenience outlets. At the present time, there is one 'anchor' supermarket in the town, Supervalu, which moved from its original location on Circular Road to a new purpose built facility a number of years ago on the northern edge of the town.

11.2.2 The catchment area was identified in the submitted Retail Impact Assessment and much discussion was undertaken during the oral hearing as to the size of this catchment area. It is widely acknowledged that this information is often subject to dispute as issues such as catchment area, population, existing net floor space and expenditure figures can exhibit a wide variety of calculation. Retailing is a complex and dynamic process. In recent years the former discount stores have gained a considerable market share. I note that the current Retail Planning Guidelines make no distinction between types of convenience retailing. Therefore the specific reference to 'discount foodstore' in the public notices is not relevant in terms of retail impact assessment. The RIA does use up to date figures regarding population figures and expected growth together with expenditure figures from the CSO. The most recent economic forecasts envisage economic growth after several years of stagnation with interest rates remaining relatively low and unemployment declining.

11.2.3 It is stated in the submitted Retail Impact Statement that the turnover of the proposed Aldi store is estimated for 2017 to be €9,120,000 and that the proposed development would account for 14.5% of the total available convenience expenditure within the catchment area in 2017. It is also stated that there will be an available surplus of €21,744,268 in 2017 when existing retail floorspace within the catchment area is taken into consideration. Therefore, even when the proposed store is open and operating there would still be a surplus of expenditure of €12,624,268, when a turnover of the proposed store is taken as being €9,120,000. The Retail Impact Statement further states that there is currently leakage of approximately 30% from the catchment area with

over 20% leakage to existing discount stores outside of the catchment area, namely in Ennis. The town is currently considered to be underperforming in terms of its role as the highest order retail centre within the identified catchment area and the proposed development is considered to offer an opportunity to claw back some of this expenditure leakage. While any RIA figures can be subject to dispute, the information submitted appears to be reasonable notwithstanding the relatively restricted catchment area. I consider that the proposed development would provide additional consumer choice within the town and it is hoped that it would act as a draw to the town, enticing people to the town who may otherwise have shopped elsewhere, thereby increasing revenues for existing retail outlets in the town. I would concur with the assertion that the proposed development would possibly enhance the vitality and viability of Ennistymon. I also consider that the development of the site for retail use would assist and facilitate in meeting the overall objectives of the county development and local area plan by providing convenience retail development in towns of this size in the hierarchy. The Retail Planning Guidelines place a strong emphasis on a plan led approach, the use of high quality design, and utilising central locations where good access can be achieved. I consider that the proposal generally accords with this ethos.

### **11.3 ARCHITECTURAL HERITAGE**

11.3.1 This formed quite a contentious issue during the course of the oral hearing. The special character of Ennistymon was acknowledged during the course of the hearing, a market town renowned for its traditional shopfronts. It was stated that the town contains 42 Protected Structures and there are three site included in the Record of Monuments and Places within the town centre. The town is designated as an Architectural Conservation Area, which comprises primarily the Main Street and historical streets off that and it was acknowledged that this ACA has considerable significance, both locally and nationally. The town has generally maintained its overall appearance and

character and commercial vacancy levels are low. It was recognised that the survival of the town is dependent on the continuing occupation of commercial ground floors.

11.3.2 The subject site is located outside of the ACA, approximately 80 metres to its east. Aside from the Recorded Monument designation in the far south-western corner of the site, no special designations pertain to the site. This is a brownfield site, containing mart buildings that add little to the character of the area. In fact, the existing structures are such that they may be described as detracting from that character, they have no architectural merit so their demolition and removal would be acceptable in this instance.

11.3.3 It is my opinion that the distance of the proposed development from the ACA is such that it is expected have no impact on the character of the Architectural Conservation Area. The distance from the nearest Protected Structure is such that same applies. I consider that the proposal if permitted would not detract from the character or setting of any Protected Structure in the area. It was stated at the hearing that the development of mid to larger scale developments within the historic core of Ennistymon would inevitably lead to the amalgamation of historic plots and buildings, a practice which should be discouraged. Larger sites at the periphery of the core have however the capacity to assume such developmental requirements without impacting on the historic fabric. I would concur with this assertion and consider that this subject site could be described as one such appropriate location.

11.3.4 The nearest Recorded Monument which may have the potential to be impacted upon in visual terms, by the proposed development is the Church and graveyard, located to the south of the subject site. This monument, on its elevated site forms one of the highest points within Ennistymon and enjoys views of the town and beyond. The existing mart buildings are visible from the site of this Recorded Monument. The proposal to replace these buildings with a smaller structure, which is dug into the site is acceptable in this instance in terms of impacts on

the Recorded Monument and I concur with the applicant that the proposal will present no adverse impact when compared with what currently exists. I consider that the proposed green roof will help assimilate the proposed development into the landscape, when viewed from this location.

11.3.5 The proposal as described above provides for the provision of a single storey foodstore of stated gross floor area of 1590 square metres and net retail area of 1140 square metres, together with 82 no. surface car parking spaces. The contours of the site are such that deep excavation is required in order to nestle the proposed development into the surroundings. The positioning of the proposed structure into the site is such that it will not be unduly dominant on the landscape at this location. The issue of the use of retaining walls and their impact on the visual amenity of the area formed a component of the oral hearing. Concerns were raised with regards the negative impact that high retaining walls would have on the amenity of the site and its surrounding area. I acknowledge these concerns. However, having examined the documentation before me, I am of the opinion that they will not be unduly dominant at this location. The finish of these proposed walls is of paramount importance and I consider that the proposed cladding in a stone finish is acceptable from the visual viewpoint. I concur with the opinion of the planning authority that the proposed retaining wall along Circular should be clad in a natural stone finish. I also consider that the cladding of the retaining wall along the boundary with properties on Church Hill with a natural stone finish should also be considered. I recommend that if the Bord is disposed towards a grant of permission, that these issues be dealt with by means of condition.

10.3.6 The proposed signage details are generally acceptable comprising a standard corporate format and if the Bord is disposed towards a grant of permission, I recommend that a condition be attached in this regard.

11.3.7 The removal of the existing trees along Circular Road was raised within the oral hearing, in the context primarily of the screening that they currently provide. These are coniferous trees, which are not native to the area. I would concur that they do presently provide good screening. However, it must be acknowledged that this screening is to an agricultural mart building that is in poor condition and which adds nothing to the streetscape at this location. The proposed development, of a high quality, does not need screening to the same degree. Good quality landscaping proposals are required along this roadway but screening not so much. I note that a comprehensive landscaping plan was submitted with the application. It was stated at the oral hearing that any damage done to the existing stone wall along Circular Road would be repaired by the applicant. This is considered reasonable.

11.3.8 To conclude this point, I consider that the proposed development incorporates an attractive variety of finishes, with landscaped areas and green roof, together with large amounts of glazing to front and I consider that the proposed design and layout complies with the Retail Design Manual. It is also considered that due to the distance involved, the proposal is expected not to detract from the character or setting of the Architectural Conservation Area; any Protected Structures in the vicinity or any other features of architectural heritage within the town.

#### **11.4 ARCHAEOLOGICAL MATTERS**

11.4.1 This is a matter of concern which arose during the initial assessment of the appeal and which was dealt with extensively during the course of the oral hearing. To summarise, during the course of the appeal process it came to the attention of An Bord Pleanála and the DoAH&G that there was a possible burial ground for unbaptised babies within the site boundary. This information came in the form of an affidavit from a Mr. Tom Clair, who made a statement at the hearing. It was thought that the burial ground was possibly located in the south-western portion of the site but the exact location is stated not to be known nor was it identified. At the time of making the application the nearest Recorded

Monument was the ruins of the Church and graveyard, approximately 70m to the south of the site and the archaeological potential of the site was considered low. In their report of 24/02/15 the Department of Arts, Heritage and the Gaeltacht stated that they concurred with the findings of the archaeological impact assessment and recommended a condition relating to archaeological monitoring in any grant of permission. On foot of the information contained within the affidavit, namely local knowledge and tradition, the DoA,H&G decided that a new record would be entered into the Site and Monuments Record for Co. Clare (Ref. CL015-144 Children's Burial Ground) and this entry was made on August 25<sup>th</sup> 2015. The location of the site is shown as being in the far south-western corner of the site and this area is currently covered with a hard core material.

11.4.2 The archaeological brief of evidence, prepared by Siobhan Deery and presented at the oral hearing, stated that children's burial grounds are consecrated grounds for the burial of unbaptised babies where their burial was not permitted in official graveyards. These burial grounds are generally unrecorded and only very few have any physical markers. Of the 137 examples recorded in Co. Clare, none are located within urban environments. The report continues by stating that typically the location for such a burial ground would be in an area outside of and adjacent to a church graveyard, which in the present context would be the greenfields immediately adjacent to the graveyard. This information is considered reasonable. A series of recommendations were made at the hearing with regards compliance with national monuments legislation and best practice. These recommendations included an archaeological assessment, in the form of archaeological testing be carried out in the open space area in the south-western corner of the subject site, the purpose of which is to determine the presence of a burial ground at this location and if it is found to be present to establish its nature and extent. An example was given during the course of questioning as to how this issue was dealt with previously in other situations. The example related to skeletal remains

found in Kilkenny during the course of construction of the McDonagh shopping centre. These remains were dated and reinterred during a ceremony which was attended by many locals.

11.4.3 This is acknowledged to be a sensitive issue, one which became emotive during the course of the hearing. There are many unknowns. I acknowledge the designation by the Department of the site as a children's burial ground. I also acknowledge the information given at the hearing regarding the possibility that the burial ground may not be at this location and may instead be elsewhere in the vicinity, possibly on the green fields immediately adjacent to the ruined Church and graveyard. I note that Ms. Christine Grant from the DoA, H&G did not contest this opinion. It was stated during the hearing that the Department would be happy to accept a pre-construction condition for archaeological testing, with all work to be carried out in consultation with their Department. This is a sensitive issue which must be dealt with appropriately. I consider that if it transpires that a burial ground is found at this location, then the appropriate internment of the remains to a marked plot, where people can pay their respects is a more appropriate solution than what currently exists, namely the area covered over with hard core with no markings or no acknowledgement to their existence. If it transpires that remains are found at this location, then it may alternatively be appropriate to remove the proposed overflow car parking and substation from this location and replace it with a landscaped area. In any event, the first thing which needs to be determined in this instance is the presence or otherwise of a burial ground at this location. Thereafter, any works must then be carried out in consultation with, and with the approval of the Department of Arts, heritage and the Gaeltacht. I therefore recommend that if the Bord is disposed towards a grant of permission, that an appropriately worded condition be attached to any such grant.

## **10.5 TRAFFIC AND PARKING PROVISION**

10.5.1 This issue formed a large component of the oral hearing, with concerns expressed by the third parties regarding proposed parking provision, access arrangements in particular for deliveries and further traffic congestion resulting from the proposed development. With regards the issue of increased traffic congestion, I note that the Traffic Impact Assessment submitted on behalf of the first parties concluded that the level of traffic associated with the proposed development can be accommodated within the existing road network. Considering the scale of the proposed development, I consider this to be reasonable. The issue of the timing/date of the traffic survey conducted on behalf of the first party was raised at the hearing. The first party stated that the survey was conducted on the Friday of the August bank holiday weekend 2014. The appellants raised the issue that there would be no school traffic at the time of the survey and as a result, queried the accuracy of the results. The applicants stated that they conducted the survey on this weekend so as to take account of increased tourist traffic in the immediate vicinity. While I acknowledge the appellants concerns in this regard, I consider that the applicants response is reasonable.

10.5.2 The appellants raise the issue of congestion and unauthorised parking on public footpaths in the vicinity of the site. I consider that issues of unauthorised parking are an enforcement matter for An Garda Siochana, outside the remit of this planning appeal. I noted that the time of my site visit on a Monday morning in October that there was little/no congestion surrounding the subject site or on the immediately adjoining roads. This time was however outside of school drop-off/collection times. I note that it was stated at the hearing that the mart currently processes about 1500 animals annually and that approximately 220 farmers from the area sell at the mart, which is held 12 times throughout the year. I did not witness a mart being held but can only anticipate the traffic levels associated with such. I note that it was stated that approximately 70% of the anticipated traffic to the

proposed store would be on the road network already and would simply divert into the proposed Aldi store. I note the results of the Traffic Impact Assessment, together with the fact that the subject site is located within an area zoned for mixed use development, adjacent to the historic town centre. I note the proposal to prevent right turns onto Church Hill and consider this to be acceptable. I note that the applicants have stated that there will be no barriers on the car park and that they would anticipate a combined visit to Aldi with other shopping in the town centre and are agreeable to cars being parked in their car park during this time. I also note that while it was clearly stated at the hearing that this would not be a public car park, the applicants were agreeable to allowing mourners attending services in the graveyard opposite to park in their car park for the duration of the service. This is considered reasonable. I also note that it was proposed during the hearing to provide a pedestrian crossing along Circular Road, close to the proposed pedestrian access to allow crossing, in particular school children, at this point. This is again considered reasonable and if the Bord is disposed towards a grant of permission, I recommend that this issue be dealt with by means of condition.

11.5.3 The issue of deliveries was raised during the course of the oral hearing, both from a traffic/safety perspective and from a noise perspective. It was stated that it is general policy that Aldi stores take 1 to 2 deliveries in a 24 hour period and it is anticipated that this would be the set-up for the proposed store. Condition No. 10 attached to the grant of planning permission stipulated that these deliveries take place outside of opening times and do not occur between the hours of 23.00hrs and 07.00am each day. Essentially, deliveries are required to take place between 7.00am and 09.00am. In terms of traffic safety, I would anticipate that there would be little traffic movements on the site at that time, considering the store would be shut and do not anticipate safety issues. In terms of the issues raised in relation to truck movements and the trucks accessing both access lanes when entering/exiting the site, I consider this to be acceptable in this instance

considering the volume of traffic involved (1/2 deliveries in a 24hour period) and the fact that the car park is anticipated to be almost empty at this time considering the store would be closed. In terms of noise from deliveries, I consider that it would not be so great as to warrant a refusal of permission. I note that the beepers on the reversing trucks would be only on for the duration of reversing. Considering this duration, together with the hours of delivery, I consider that this noise would not be excessive or have significant impacts on residential amenity.

11.5.4 I note the issues raised during the course of the hearing relating to access and car parking for traffic associated with the fire station. I acknowledge the issues raised but consider that the issue of firemen having to park along the adjoining roads due to lack of on-site parking is not a matter for this appeal and is instead a matter for the fire service to examine and provide adequate parking for its staff. Again issues relating to unauthorised parking along Circular Road, blocking the path of firemen, is a matter for An Garda Siochana, outside the remit of this appeal. Considering the intensive use of the site presently as a mart, with its associated heavy vehicles, I do not consider that the proposed Aldi store would have any greater impact on the fire station than currently exists. In fact, I consider that the road markings associated with the proposed pedestrian crossing would prevent people from parking along this stretch of Circular Road thus making the roadway clearer for fire vehicles. In addition, it is anticipated that people using the proposed Aldi store would utilise their car park as opposed to parking on the surrounding road network.

11.5.5 The proposal includes for 82 no surface car parking spaces, with cycle parking also provided. Vehicular access is being provided from Church Hill while there is also a pedestrian access from Circular Road. As is stated above, the gross floor area of the proposed development is 1590 square metres while the stated net sales area is 1140 square metres. Development Plan standards require 5-7 parking space per 100 square metres gross floor area for large retail stores (>1000 sq

metres) within a town centre. I consider that the provision of 82 no. spaces acceptable in this instance.

11.5.6 Having regard to all of the above, I consider the parking and access provision to be acceptable in this instance. Having regard to all of the information before me, I am satisfied that the proposed development is acceptable from a roads and traffic viewpoint and consider that the proposal if permitted would not lead to the obstruction of road users or the creation of a traffic hazard.

## **10.6 OTHER ISSUES**

10.6.1 An issue of concern related to the impact of the proposed development on the nearby residential properties, namely Church Hill cottages which are located to the west and north-west of the subject site. It was stated during the hearing that these are back-to-back cottages with only single aspect. I note the separation distances involved, together with the scale of the proposed development relative to these residential properties. However, having examined all of the documentation before me, including the submitted cross-sections, I am of the opinion that the impacts of the proposed development on the residential amenity of the area would not be so great as to warrant a refusal of permission. As have been noted elsewhere, the proposed store is to be dug into the site and the submitted cross-sections, in particular Section X-X received by the planning authority on 11/06/2015 show that it will not be unduly visible relative to the height of the subject dwellings. I consider that the proposed development will not result in undue overlooking, overshadowing or loss of sunlight. An issue raised at the oral hearing concerned the proposed boundary between the subject site and the existing cottages. A 2m high palisade railing was initially proposed for the boundary between the subject site and the dwellings to the west, however this railing is now proposed to be reduced to 1.6 metres and be of a decorative finish in response to the appeal. This is considered reasonable. I have no information before me to believe that

the proposed development, if permitted would lead to the devaluation of property values in the vicinity.

10.6.2 A Noise Impact Assessment Report was lodged with the application and noise during construction was dealt with under Condition No. 4 and 14 of the decision to grant permission which issued from the planning authority. In my view, this is appropriate. Any construction noise will be short-lived in extent and the nature of the proposed development is such that I do not anticipate noise levels to be excessive. The issue of noise associated with deliveries has been dealt with above.

11.6.3 The issue of a right of way over the lands was raised at the hearing by the third party appellants. Pictures of an existing stile between the subject site and the properties to the north-west at Church Hill were shown during the hearing. The applicant stated that there are no public right of ways over the land and this was confirmed by the planning authority. I consider this to be a legal matter, outside the remit of this planning appeal.

11.6.4 The issue of the applicant having sufficient legal interest to make the application was raised. I note that the Bord determines an appeal as if it had been made to it in the first instance. I also note that a letter from Vincent & Beatty Solicitors, dated 27<sup>th</sup> day of August 2015, was included in the applicants response to the appeal. This letter confirms that their client Aldi Stores (Ireland) Limited has signed and exchanged contracts with Clare Marts Limited, dated 22/10/2014, for the sale in respect of the Mart site in Ennistymon. It continues by stating that accordingly, their client has the necessary legal interest to both make the planning application and implement the permission if granted. This is considered acceptable.

11.6.5 Issues were raised as per the correct address of the subject site, in particular the names of the surrounding roads. The issue related primarily to local references to the Church Hill/Fairgreen area. The planning authority accepted the applicants description of the roads as set out in the public notices and it was stated that they were in

accordance with the names on OS mapping. I consider this to be acceptable particularly considering there is only one mart in Ennistymon, which reduces any possible confusion significantly.

11.6.6 The Inagh River Estuary SAC and proposed NHA is located approximately 150 metres to the west of the subject site. The subject site is located outside of this designation. Significant development has taken place on lands in the vicinity of the appeal site and the site is surrounded by a network of roads. Having regard to the nature and scale of the proposed development and/or the nature of the receiving environment and/or proximity to the nearest European site, no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on this European site.

## **12.0 CONCLUSION**

12.1 Having addressed the matters arising, I am satisfied that the proposal is an acceptable form of development at this location. The proposed development accords with both the development and local area plan objectives and in my view follows the key points set out in the Retail Planning Guidelines regarding a plan led approach. It is my opinion that a development of the nature and scale proposed would add to the facilities being provided within the area. It is a good quality development that would increase competitiveness in the retail sector without being detrimental to the town centre in terms of vitality and viability, especially having regard to its location and scale. I consider the proposal to be consistent with the proper planning and sustainable development of the area.

### **13.0 RECOMMENDATION**

In light of the above assessment, I recommend that the decision of the planning authority be UPHeld and that permission be GRANTED for the following reasons and considerations.

#### **REASONS AND CONSIDERATIONS**

Having regard to the provisions of the current Clare County Development Plan 2011-2017, to the North Clare LAP 2010 and to the Retail Planning Guidelines for Planning Authorities issued by the Department of the Environment, Community and Local Government in April, 2012 and to the location, scale and design of the proposed development in an area zoned for 'mixed use' within the Local Area Plan, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area or of property in the vicinity, and would be acceptable in terms of traffic safety and convenience. 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 and by the further plans and particulars received by the planning authority on the 1<sup>th</sup> day of June 2015 and by An Bord Pleanala on the 3<sup>rd</sup> day of November 2015 and 4<sup>th</sup> day of November 2015, except as may otherwise be required in order to comply with the following conditions. Where such conditions require points of detail to be agreed with the planning authority, these matters shall be the subject of written agreement and shall be implemented in accordance with the agreed particulars.

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

2. Details of the materials, colours and textures of all external finishes to the proposed development shall be submitted to the planning authority for written agreement and where it is considered necessary, the developer shall erect on-site samples for the agreement of the planning authority. In this regard, the north-western elevation of the proposed store shall have a natural stone finish.

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

3. Water supply and drainage arrangements, including the 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.

4. No additional signage, advertising structures/advertisements, security shutters, or other projecting elements, including flagpoles, shall be erected within the site unless authorised by a further grant of planning permission.

**REASON:** In order to prevent the visual amenities of the area.

5. 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, entrance or equipment, unless authorised by a further grant of planning permission.

**REASON:** In the interest of orderly development and visual amenity.

6. The applicant shall ascertain and comply with all requirements of the planning authority in relation to parking and access arrangements, prior to the commencement of any works on site including details of the proposed pedestrian crossing along Circular Road. All works shall be at the developers expense.

**REASON:** In the interest of traffic safety and visual amenity

7. The internal road network serving the proposed development including loading bay, junctions, parking area, footpaths and kerbs, plus surface finishes and markings, shall comply with detailed standard of the planning authority for such works.

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

8. All service cables associated with the proposed development (such as electrical and telecommunications) shall be located underground.

**REASON:** In the interest of visual and residential amenity.

9. Public lighting shall be provided in accordance with a scheme, details of which shall be submitted to the planning authority for agreement prior to commencement of development.

**REASON:** In the interest of amenity and public safety.

10. No display or storage of goods, produce, waste, plant, packaging or crates, machinery or equipment shall be stacked or stored on this site at any time except within such buildings or storage areas as may be agreed in advance in writing with the planning authority.

**REASON:** In the interest of residential and visual amenity.

11. (a) External roller shutters shall not be erected. Any internal shutters shall be only of the perforated type, coloured to match the shopfront colour. Details of all internal shutters shall be submitted to, and agreed in writing with the planning authority prior to commencement of development.
- (b) No adhesive material shall be affixed to the windows of the shopfront

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

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 hours of working, noise management measures and off-site disposal of construction/demolition waste.

**REASON:** In the interest of public safety and residential amenity.

13. Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. The plan shall be prepared in accordance with the “Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects”, published by the Department of the Environment, Heritage and Local Government in July 2006. The plan shall include details of waste to be generated during site clearance and construction phases, and details of the methods and locations to be employed for the prevention, minimisation, recovery and disposal of this material in accordance with the provision of the Waste Management Plan for the Region.

**REASON:** In the interest of sustainable waste management.

14. The applicant shall ascertain and comply with all requirements of the Planning Authority in relation to proposed landscaping and boundary treatments, prior to the commencement of any works on site. All retaining walls shall be finished in a natural local stone. All proposed boundary fencing shall be decorative in nature.

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

15. The proposed unit shall not be open to the public outside the hours 0900 to 2200 Monday to Saturday inclusive, nor outside the hours 1000 to 1900 on Sundays or public holidays. Deliveries shall not take place before the hour of 0700 Monday to Saturday inclusive, nor before the hour of 0800 on Sundays and public holidays, nor after 2200hrs on any day.

**REASON:** To protect the amenities of the area.

16. 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 and assess all site investigations and other excavation works. This assessment shall address the following issues:-

(i) the nature and location of archaeological material on site and

(ii) the impact of the proposed development on such archaeological material

and

(c) Prior to the commencement of development, a report containing the results of the assessment including trial trenches and test pits shall be submitted to the planning authority. Arising from this assessment, the developer shall agree with the planning authority details regarding any further archaeological requirements (including if necessary archaeological excavation), prior to the commencement of any development works.

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.

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. 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

**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.

**L. Dockery**

**Planning Inspector**

23<sup>rd</sup> November 2015