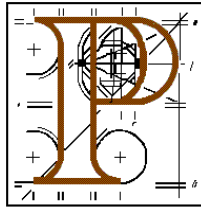


# An Bord Pleanála



## Inspector's Report

**PL06F.245446**

### **DEVELOPMENT:**

Description: Construction of a mixed use residential and retail development including foodstore, off-licence, crèche and 20 houses (reduced to 19 by additional information submission) with all associated site works at Weaver's Row, Clonsilla, Dublin 15.

### **PLANNING APPLICATION**

Planning Authority: Fingal County Council  
Planning Authority Reg. No: FW14A/0144  
Applicant: Aldi Stores (Ireland) Ltd.  
Application Type: Permission  
Planning Authority Decision: Grant

### **APPEAL**

Appellant(s): Anne O'Neill (ii) Portersgate Residents Association (iii) Darren Boothman (iv) Aldi Store (Ireland) Limited.  
Type of Appeal: Third Party –v- Grant and First Party –v- Conditions  
Observers: None  
Date of Site Inspection: 25/11/2015

**INSPECTOR: Paul Caprani**

## **1.0 INTRODUCTION**

PL06F.245446 relates to a number of third party appeals against the decision of Fingal County Council to issue notification to grant planning permission for the construction of a retail Aldi foodstore with off licence, crèche and associated site works together with 20 houses to the rear at a site at Weaver's Row, Clonsilla, Dublin 15. A number of third parties object to the decision on the grounds that it is not in accordance with the provisions of the County Development Plan, the Clonsilla Urban Centre Strategy, would give rise to traffic congestion and safety issues, visual and residential amenity issues and that there are a number of precedent decisions on site which are relevant to the current application before the Board. A separate third party appeal from an adjoining landowner requests the Board to reword a condition in respect of access from adjoining lands to the appeal site.

The decision was also the subject of a first party appeal against a number of conditions including the omission of advertising poles, the trading hours and financial contribution conditions.

## **2.0 SITE LOCATION AND DESCRIPTION**

The subject site is located in Clonsilla village to the south of Blanchardstown in west Dublin. The site is located on a strip of land between the Clonsilla Road (referred as Weaver's Row in the vicinity of the subject site) and the Royal Canal which runs in close proximity to the boundary of the site. The site covers an area of 1.46 hectares. The site is approximately 220 metres in length and between 55 and 70 metres in width. Lands to the immediate west of the site are undeveloped at present with an old derelict single-storey shed type structure located to the front of the site. Lands to the rear of this shed are undeveloped. Further west a recently constructed Morman Church/ Meeting Hall is located fronting directly onto the Clonsilla Road (R121). Lands to the east of the site accommodate a number of late 19<sup>th</sup> century/early 20<sup>th</sup> century single-storey rural type cottages together with outbuildings fronting directly onto the Clonsilla Road. Lands to the rear of these cottages and adjacent to the eastern boundary of the site accommodate newer suburban residential development called "The Village". Lands directly opposite the site comprise of a public open space associated with the suburban residential development of Castlefields Woods. This estate comprises mainly of semi-detached dwellinghouses.

The subject site is currently undeveloped and not currently in use. Parts of the site accommodate hardstanding areas while the remainder of the site comprises of an overgrown field traversed by palisade fencing. A 2 metre high steel fence runs along the front boundary of the site.

The Clonsilla Road comprises of a relatively narrow single carriageway with footpaths on both sides of the road. It links up with the Blanchardstown Road via a roundabout further east of the site. The Blanchardstown Road runs northwards towards the Blanchardstown town centre and the N3 further on. The Clonsilla Road to the west of the site runs towards Clonsilla Station and on southwards onto Lucan. A level crossing is located between the junction of Clonsilla Road and Clonsilla rail station. The Royal Canal runs to the rear of the site and a linear strip of public open space approximately 40 metres in width separates the canal from the rear of the site. Much of this open space is overgrown and not readily available for public access.

The main commercial centre associated with Clonsilla is located on the southern side of the road to the east of the site between the subject site and Porterstown Road which runs southwards from the Clonsilla Road approximately 350 metres further east of the site. The commercial activity centres on a local Spar shop, post office, public house and takeaway restaurant. This neighbourhood commercial centre is located approximately 150 metres east of the site. St. Mochta's school is located further east of the neighbourhood centre adjacent to the Porterstown Road.

### **3.0 PROPOSED DEVELOPMENT**

Planning permission is sought to construct the following on site.

The construction of a two-storey commercial block to the north of the site fronting onto the Clonsilla Road (Weaver's Row). This block is to incorporate an Aldi foodstore at ground floor level with a gross floor area of 1740 square metres (1254 square metres net). An ancillary off licence sales area is to be provided within the foodstore.

To the front of the building facing towards the public road, it is proposed to provide a crèche facility at ground and first floor level. The crèche will have a total area of 609 square metres. Entrance to the Aldi store is to be provided to the rear of the building and not adjacent to the crèche area. The building is to be set back approximately 13 metres from the

front boundary of the site and the area to the front of the building is to be paved and landscaped in order to provide a public plaza. Access to the crèche area will be provided to the front of the building. The warehouse and delivery area associated with the retail unit is to be located along the southern side of the building. 100 car parking spaces are to be provided to the rear of the building.

The building itself is to arise to a height of 8.2 metres with a two-storey element confined to the northern portion of the building adjacent to the Clonsilla Road. The building is to incorporate a flat roof with extensive glazing and precast concrete insulated panels on the elevations. A number of Aldi signs are to be incorporated on the elevation, particularly the southern elevation, where the main entrance is to be provided. It is also proposed to provide a double sided internally illuminated stand-alone sign rising to a height of 6 metres adjacent to the Clonsilla Road. Access to the car parking area to the rear of the site is to be provided via the construction of a new internal access road along the western boundary of the site. This access road is to serve both the commercial foodstore and the proposed housing to the rear.

The proposed housing is to comprise of two rows of terraced housing to the rear of the site. Each row of terraced housing is to accommodate 10 no. houses. The northern row is to face northwards onto a linear area of open space between the Aldi car park and the internal access road serving the houses. The southern row of 10 houses is to face southwards towards the southern boundary of the site and the Royal Canal beyond. 11 metre long rear gardens are to separate the two rows of terraced dwellings. The above layout was altered on foot of a further information request where housing was set out in an L-shape to the rear of the site (see further details below). Grouped car parking is to be provided to the front of the dwellings. The houses themselves comprise of 2½ storey structures accommodating living accommodation on ground floor, two bedrooms and a study at first floor and a master bedroom within the roof pitch at second floor level. The buildings incorporate a pitched roof and rise to a height of 9.9 metres. The internal layout of all dwellings are identical. The dwellings are to incorporate a brick finish in the front façade with a render finish on the rear elevation. A dormer window is to be incorporated at roof level on the front elevation. The area of open space which is located centrally within the site between the housing and the car parking associated with the Aldi store is approximately 50 metres in length and 11 metres in width and is also to accommodate an engineered attenuation pond.

## **4.0 PLANNING AUTHORITY'S DECISION**

### **4.1 Original Documentation Submitted**

The planning application was lodged at Fingal County Council on 19<sup>th</sup> November 2014. The application was accompanied by the following documentation.

#### *The Planning Report*

The planning report sets out the proposed development including the planning history and the key planning considerations as they relate to the site. The planning report also sets out the policy context and reference is made to the National Spatial Strategy, the Regional Planning Guidelines, the Retail Planning Guidelines, the County Development Plan and the Development Strategy for Clonsilla Village.

#### *Retail Impact Statement.*

The retail impact assessment sets out a sequential assessment in terms of site suitability as well as setting out details of the existing retail provision in the area. It is noted that there are no existing convenience outlets within 2 kilometres of the site however there are nine outlets between 2 kilometres and 3.2 kilometres of the subject site. It is concluded that the existing convenience foodstores in the immediate catchment are limited by the range and amount of products they produce and are not suitable for a weekly shop. The nearest mainstream outlet is circa 2 kilometres from the site and therefore people in the Clonsilla area have to have to travel outside the local village in order to undertake the basic weekly food shop. There is no convenience stores within walking distance of the site. The proposed development is modest in size and it is considered to be fully compliant with the proper planning and sustainable development of the area.

#### *Appropriate Assessment*

Finally the report carries out an Appropriate Assessment Screening Report and it is concluded that appropriate assessment issues do not arise in this instance due to the separation distances to the nearest Natura 2000 sites and the nature of the development to be undertaken.

### *Traffic Impact*

A Traffic Impact Assessment was also submitted with the application. The anticipated trip generation from the proposed development is shown on Table 4.0. It is estimated that pm peak arrivals will be 75 vehicles where pm peak departures from the site would be 84 vehicles. The capacity for the proposed site access was also assessed. The maximum ratio flow to capacity (RFC) is estimated at 0.274 which indicates that the junction would have a practical reserve capacity in excess of 75%. It is concluded therefore that the anticipated trip generation from the development together with the proposed junction arrangements and capacity of the road network, indicates that the proposed development can operate satisfactorily and can be accommodated on the road network.

### *Engineering Assessment*

An Engineering Assessment Report was also submitted prepared by Waterman Moylan Consulting Engineers. It assesses the proposed development in terms of foul water drainage, surface water drainage and water supply. In terms of storm water it is stated that the quantity of storm water discharge on the proposed development to the existing system will be restricted to 3.1l/s/ha in accordance with the recommendations of the GSDSDS. No significant issues arise in respect of water supply and foul drainage.

### *Flood Risk Assessment*

Finally a flood risk assessment report was submitted. It concludes that the residual risk arising from the propose development would be low. Flood risk management measures are set out to address potential impacts from pluvial flooding, groundwater flooding or human/mechanical errors.

## **4.2 Initial Request for Additional Information**

A number of letters of objection were received from third parties and the surrounding area. A report from the Department of Arts, Heritage and the Gaeltacht requested that archaeological monitoring be carried out in respect of any works undertaken on site. Reports were received from Fingal County Council's Parks Department, Transportation Department and Environmental Health Officer.

A detailed planning report was prepared which assesses the proposed development in the context of the Development Plan context.

- The local plan context.
- The principle of the development.
- Integration with adjoining lands.
- Design layout density.
- Development Management Guidelines.
- Government Guidelines in relation to Childcare and Retailing.
- Traffic considerations
- Services and appropriate assessment

It is recommended that additional information be requested in respect of the following issues.

- Further details in relation to proposed integration with adjoining sites.
- Further information in respect to compliance with the Clonsilla Urban Centre Strategy.
- A revised layout addressing the issue of segregation of uses within the site.
- Revised details addressing the potential for overlooking from the north facing dwellings on the eastern boundary of the site.
- Further details in relation to signage.
- Further details in relation to landscaping.
- Further details in relation to roads traffic and access including compliance with DMURS.

#### **4.2 Additional Information Response**

Further information was submitted March 18<sup>th</sup> 2015. The response is set out below.

In respect of the issue of adjoining lands, it is stated that Aldi is not the owner of lands outside the boundary of the site and is not in a position to provide a pedestrian and cycle routes to the canal lands to the south. Aldi will however facilitate access across their lands and is willing to accept a condition requiring them to do so. Similarly Aldi does not own the lands to the east and legally cannot provide a pedestrian/cycle route through these lands, however likewise the applicant is willing to accept a condition in relation to same.

With regard to a level of integration with adjoining sites, under the Clonsilla Urban Centre Strategy, it is stated that Aldi met with representatives of the owners of the lands to the west and it was agreed that Aldi would prepare a master plan for the lands to the west, showing an indicative layout which could be developed for the site (see drawing no. 12-50/201 submitted with the additional information).

With regard to the segregation of uses on site, the applicant's response states that the site is long and narrow which makes it difficult to design a scheme that does not involve the segregation of uses without compromising existing residential amenities. Various layouts in respect of car parking were considered, including deck parking and surface car parking beneath the proposed Aldi store. Underground car parking is not deemed to be economically viable and is most suitable to city centre sites. It is contended therefore that the current approach appears to be the most appropriate design. Small alterations to the existing layout are set out in the response.

With regard to the issue of overlooking, it is stated that the three north facing houses nearest the eastern boundary of the site have been redesigned so that the windows are orientated away from the boundary (see drawing no. 12-50/221).

With regard to public car parking, it is stated that the car park and bicycle parking serving the application site would be managed by Aldi and this includes security and maintenance. The car park and bicycle parking will be open to the public and their use will be free of charge. There is no issue with the car park being used as a short term car parking area for the village.

With regard to advertising signs, it is stated that signage for the crèche would be the subject of a future planning application however drawings 12-50-207 indicate the proposed location and extent of crèche signing.

With regard to the total pole sign, Aldi would be anxious that this be retained within the scheme even for a temporary period of 18 months.

Details of landscaping proposals are submitted and alterations to the drainage layout which include two sub-catchments within the site for stormwater attenuation are provided.

With regard to traffic transport and compliance with DEMURS, further details are submitted in respect of the following:

Further details in relation to junction design and pedestrian facility to comply with DEMURS. A revised parking layout showing how set



down/drop off points for children can be incorporated into the layout are submitted.

Further details of future traffic figures including traffic growth figures for 2016-2021 and 2031 which indicate that the junction in question would still have the practical reserve capacity to deal with the projected traffic growth.

With regard to the provision of a right turning lane on the Clonsilla Road into the proposed site, this is not considered necessary to accommodate the traffic, having regard to the traffic flows on the road and the width of the existing carriageway. However a right turning pocket can be provided subject to local authority approval. Further details are provided in relation to cycle parking provision and it is stated that any requirement for a bus stop could be implemented by way of planning condition.

#### **4.3 Request for Clarification of Further Information**

The application was further assessed by Fingal County Council and the Planner's Report concluded that there are a number of outstanding issues which need to be addressed by way of clarification of further information.

It is considered that the applicants have not sufficiently addressed item no. 3 of the additional information request in respect of integration of uses. The applicant is requested to revise the overall design so as surface parking was not the dominant element.

Clarity is also requested on whether or not the proposed car park is to be closed at night and if so details of the opening and closing of barriers etc. should be submitted.

Finally further information is required in respect of access arrangements for cyclists/wheelchair users, junction design, and proposed access to the adjoining lands to the east and further traffic calming considerations.

#### **4.4 Response to Request for Clarification of Additional Information**

Further information was submitted on 9<sup>th</sup> July 2015.

In response to the first item regarding the overall layout and integration of uses on site, the characteristics and inherent constraints of the site are reiterated in the response. It is stated that the proposed configuration on site has gone through many iterations since the project was recommenced on foot of a previous decisions to refuse planning permission by An Bord Pleanála (see section below). The various design iterations are set out in the response submitted. A total of 11

options are set out. The most appropriate options now put forward for the Planning Authority's consideration on foot of a meeting with it in May 2015 include:

Option 1 lowering the level of the car parking and providing a berm and other landscaping planting along the open space which would ensure that car parking was largely invisible from the proposed residences.

Option 2 involve moving some of the houses so that they were no longer back to back and instead introducing a new row of west facing dwellings which results in the loss of one dwelling.

The latter option is deemed to be the preferred option and the dwellings effectively screen the revised surface car parking associated with the Aldi store while creating a more urban street along the access road adjoining the western boundary of the site. Two new house types have also been introduced. The revised layout required changes to the drainage layout and details of the drainage layout and stormwater flow calculations are provided.

In relation to the night time use of the proposed car park, it is stated that originally it was intended that the car park would not be gated. However following changes to the layout and the need for increased security, it is proposed to provide a gate at the car park which would open from 0800 hours to 2100 hours Monday to Saturday and 1000 to 1900 hours on Sunday.

Details of cyclists and wheelchair access are indicated on drawing P008 which gives details of the proposed pedestrian bridge over the Royal Canal and railway line to the south of the site.

Details of proposed junction design are indicated on drawings attached (see drawing LP01). Further details are also provided in respect of road calming measures on the access road, the crèche drop off/set down area and the proposed right turn pocket from the Clonsilla Road into the site.

#### **4.5 Further Assessment by the Planning Authority**

A report from Irish Water states that there is no objection to the proposed development subject to five conditions. A report from the Water Services Department stated that there was no objection to the proposal subject to four conditions.

A report from the Parks Department states that the subject landscape plan is acceptable in principle subject to a number of conditions. It is noted however no public open space has been provided in association

with the above development. What space is provided is considered to be semi private with the majority of it functioning as a SUDS area. The applicant should therefore be conditioned to provide a financial contribution in lieu of public open space.

A report from the Transportation Planning Section states that it is not satisfied that all issues have been fully addressed as part of the clarification of additional information. In particular items no. 3(iv)(v)(vi) have not been satisfactorily addressed. However in spite of the above, if a planning permission is to be issued seven conditions should be attached.

A further planning report notes that the applicant has addressed the issues raised at clarification of further information stage. The proposed development is consistent with the town centre zoning and the Clonsilla Urban Centre Strategy will not unduly impact on the amenity of the area and accords with the development standards set out in the Development Plan. Therefore it is recommended that planning permission be granted for the proposed development. In its decision dated 11<sup>th</sup> August 2015 Fingal County Council issued notification to grant planning permission for the proposed development subject to 33 conditions.

## **5.0 PLANNING HISTORY**

Two history files are attached both of which are particularly relevant to the current application before the Board.

Under PL06F.217020 planning permission was sought for a mixed use residential and retail scheme comprising of a foodstore, three retail units, signage, 100 apartments and parking and all associated landscaping on the subject site. Fingal County Council issued notification to refuse planning permission for seven reasons and this decision was upheld by An Bord Pleanála where planning permission was refused for four reasons. The overall layout incorporated an Aldi store to the front of the site with a large apartment block to the rear and parking in between. An Bord Pleanála refused planning permission for reasons relating to:

- Design and layout
- Impact on residential amenity due to the deficiencies in quality and extent of open space.
- Height, scale and mass of the residential block on site and

- Significant deficiencies in the level of residential parking provision on site.

The decision was dated 8<sup>th</sup> August 2006.

Under PL06F.226486 Fingal County Council issued notification to refuse planning permission for the demolition of three houses and the construction of a mixed use residential and retail scheme comprising a discount foodstore, four retail units and 60 apartments on the subject site. Again the overall layout involved a large retail store to the front of the subject site and six apartment blocks to the rear.

Fingal County Council issued notification to refuse planning permission on numerous grounds including:

- Disorderly development which would fail to comply with the policies and objectives of the Development Plan.
- The size, scale and height of the proposal would be incongruous with the prevailing suburban village form of the development and
- The proposal is deemed to be premature pending the production of a strategy and future objectives for the development of Clonsilla.

This decision was the subject of a first party appeal. The planning inspector recommended the decision of Fingal County Council be upheld and cited six reasons for refusal.

The Board direction noted the layout of the access road and that adjoining lands to the west are zoned for suburban centre. In this regard the applicant is invited to submit a revised layout to take into consideration these adjoining zoned lands. Further submissions were invited on foot of this Board direction.

In its decision dated 25<sup>th</sup> September 2008 the Board refused planning permission on the grounds that:

*“It is the objective of the current Fingal County Development Plan to enhance and develop the urban fabric of the village centre of Clonsilla to the preparation of an urban centre strategy centre for Clonsilla. The site of the proposed development forms a significant portion of undeveloped land within the boundary of Clonsilla village. It is considered that the*

*proposed development fails to meet the objectives of the strategy to create a new village centre at this location, to create a civic area adjoining the canal and allow for the future connection to lands at Kellystown on the opposite side of the canal. These objectives are considered to be reasonable. The proposed development, by reason of lack of integration with adjoining areas would result in disorderly form of development on this important site in the village, would set a precedent for similar non-integrated development in this centrally located site and would therefore fail to comply with the policies and objectives of the Development Plan. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.*

## **6.0 GROUNDS OF APPEAL**

The decision of Fingal County Council to issue notification to grant planning permission for the proposed development was the subject of four appeals, three third party appeals and a first party appeal against a number of conditions. The grounds of appeal are outlined below.

### **6.1 Third Party Appeals**

#### **6.1.1 Appeal by Anne O'Neill by Tom Philips and Associates**

The primary concerns of this appeal relates to the appellant, as owner of the adjoining lands, seeks to ensure safe vehicular access can be afforded to the adjoining lands from the subject development. It is stated that the development of the appellant's lands as envisaged under the Clonsilla Urban Centre Strategy is wholly dependent on access through the application site and therefore wholly reliant on securing the agreement and consent of the adjoining landowner (current applicant) to facilitate access.

Condition no. 8 which states:

“The site entrance off the Clonsilla Road and the main access road along the western boundary of the application site shall be made available to provide future access to lands to the west (remaining lands forming part of Opportunity Area no. 3 in the Clonsilla Urban Centre Strategy).

Reason: In the interest of orderly development.

While the above condition is welcomed yet it is suggested that it does not provide sufficient comfort or certainty that the appellant's lands can be developed in the future. In the event the Board is minded to grant planning permission, the Board are invited to attach an appropriately worded condition and such condition may include the use of a section 47 agreement and the rewording of the condition as follows:

- (a) The prior grant by the applicant (Aldi) to the adjoining landowners to benefit their adjoining lands of a right of way to pass and repass in cars and on foot over the roadways and paths on the appellant lands together with the right to carry out such works as are necessary to connect into such roadway and paths and
- (b) The prior grant by the applicant to the adjoining landowners to the benefit of their adjoining lands of a wayleave for utilities together with the right to carry out such works as necessary to connect with such utilities.

It is contended that the attachment of such conditions is within the remit of the Board and are required in the specific circumstances of the site which are subject to a Master Plan and particular access arrangements. Otherwise the proper planning and sustainable development of the area may be severely compromised.

### **6.1.2 Appeal by Darren Boothman**

This appeal places major emphasis on the planning history associated with the site and notes that there were very strong refusals issued by both the Planning Authority and An Bord Pleanála in respect of previous applications on site. The reasons for refusal are set out in the grounds of appeal. Reference is also made to the Inspector's assessments in relation to both previous applications. It is noted that the Inspector, in the case of both reports, had concerns in relation to residential amenity, public open space provision, roads and traffic and overall layout. It is concluded therefore that the proposed development has failed to address the previous reasons for refusal issued by both the Planning Authority and An Bord Pleanála and that the development continues to fail to deliver on an attractive layout for a key opportunity site under the Clonsilla Urban Structure Plan. The proposed design and layout is deemed to be insufficient in its ability to create a sense of place and the development fails to provide for quality open space for residents and will have an overbearing impact on residential dwellings to the east of the site.

While the principle of this form of development is generally acceptable on the site there are serious concerns with regard to the overall design concept.

### **6.1.3 Appeal by Porterstown Residents Association**

It is argued that the planning permission issued by Fingal County Council contravenes their own Urban Centre Strategy Plan for Clonsilla dated May 2008. Reference is made to the Development Plan provision which sets out a number of specific objectives for Clonsilla including the requirement to prepare an urban strategy which involves the creation of an identifiable village core. The subject site presents the best opportunity to integrate and consolidate the village core thereby enhancing and protecting the character of the village. The development does not meet the objectives set out in Opportunity Area no. 3, as set out in the Urban Strategy - the creation of a new village centre. The proposal effectively eliminates the village core. The configuration of the entire site provides only a token civic space adjacent to the Clonsilla Road.

It is also argued that the proposed development would endanger public safety by creating a serious traffic hazard. Fingal County Council have previously identified serious issues with the Clonsilla area particularly with regard to the width of the road. The village experienced very heavy traffic at peak times and it is exacerbated by the location of Clonsilla Railway Station and level crossing to the west of the site and heavy traffic volumes generated by schools in the vicinity. The fact that the Clonsilla Road is an important bus route makes traffic calming measures virtually impossible. There is no scope to provide a right hand turning box as suggested in the drawings submitted to the Planning Authority.

There are a number of local schools in the area catering for more than 2000 children and the area lacks pedestrian crossings and facilities for cyclists. HGV traffic delivering to the Aldi store will exacerbate safety hazards for pedestrians and cyclists alike. Long tail backs at rush hour are already experienced in the village as a result of a new signalised junction at Luttrellstown Community College.

The Clonsilla Urban Strategy provides an opportunity for the Royal Canal, as an unused amenity, to be interlinked with new development to provide an attractive feature for the village. The Royal Canal waterway and towpath is a potential and significant amenity source. The

proposed development turns its back on the canal and this was not envisaged in the Clonsilla Urban Centre Strategy. The proposal turns its back on users of the amenity and does not lend itself as a destination where cyclists and walkers could stop and call into the village. The poor nature of this development will only be obvious when the Royal Canal Greenway Castleknock-Clonsilla collection is complete.

It is also argued that the proposed development does not respect existing building lines, will adversely affect existing village life and business and does not provide any residential street frontage. The development offers only token civic space and will lead to anti-social behaviour. The design of the residential units are deemed to be of poor quality and the size and scale of the retail unit is inappropriate for this village location. It is also noted that there are similar sized convenience retail units within easy reach of the site.

## **6.2.1 GROUNDS OF FIRST PARTY APPEAL**

A first party appeal against a number of conditions was submitted by O'Connor Whelan Planning Consultants. The grounds of appeal are outlined below.

### **Condition 2(ii)**

This condition requires that the proposed double sided internally illuminated pole advertisement on the roadside shall be omitted from the proposed development in the interest of visual amenity.

It is argued that the proposed sign will not reduce the visual amenities of the area to any extent and is a well-designed sign located within the commercial area of Clonsilla. The proposal is important to advertise the presence of the Aldi store but also to advertise the location of the entrance to the store where customers arrive by car. As such the sign provides important directional function. References are made to other Aldi stores which have been completed which incorporate similar type signs and it is stated that An Bord Pleanála have granted planning permission for the retention of two poster signs and a flag pole under reg. ref. PL03 231567. Reference is also made to the Retail Planning Guidelines which states the Planning Authorities and An Bord Pleanála should avoid taking actions which would adversely affect the competition in the retail market.



References (including pictures) are made to other totem pole type developments in the local area some of which are considerably larger in scale and extent than the proposal as part of the current application. Such advertisement is appropriate for a commercial area.

### **Condition No. 9**

Condition no. 9 requires the trading hours of the foodstore to be between 08.00 to 21.00 hours Monday to Saturday and 10.00 hours to 19.00 hours on Sundays and bank holidays. Deliveries to the facility shall only occur between the hours 7.00a.m. to 11.00am Monday to Saturday and 9.00a.m and 12.00a.m. on Sundays and bank holidays.

It is requested that the trading hours of the foodstore shall be extended as follows:

- 08.00 hours to 22.00 hours Monday to Saturday.
- 09.00 hours to 21.00 hours on Sunday and bank holidays
- Deliveries to the facility shall only occur between 6.00a.m. and 11.00a.m Monday to Friday and between 7.00a.m. and 12.00a.m. on Saturdays, Sundays and bank holidays.

Due to demand most Aldi stores and the majority of supermarkets in Ireland trade until 10p.m. on a weeknight. While it is noted that there are residential properties in the vicinity, the Board are asked to note that the site in question is zoned for commercial purposes. It is further noted that an Applegreen petrol station further to the east opens on a 24 hour basis.

It is stated that earlier delivery hours are also required on a Sunday to ensure that there is no clash of customers and delivery times. Aldi operates on a single delivery truck once a day with a dedicated loading bay. Noise is minimised and there will be no impact on residential amenities.

### **Financial Contribution Conditions**

Conditions Nos. 31 and 33 both relate to financial contributions. Under condition no. 31 a financial contribution of €97,594 is required in lieu of open space provision towards the cost of amenity works in the area.

Under condition no. 33 the developer is required to pay a sum of €337,309 as a contribution in respect of public infrastructure and facilities benefiting the development.

It is argued that the imposition of both contributions represents a double levy. The section 48 contribution scheme adopted for the County provides financial contributions for three classes of infrastructure, class 3 of which is community parks facilities and amenities. Despite this, the Council is seeking additional contribution towards the cost of amenity works. The applicant is effectively being asked to pay €141,832 towards parks and amenities for a residential development of 19 dwellings which is exceptionally onerous. The contributions have also failed to take into account the civic space provided to the front of the building which is public open space not currently provided in Clonsilla village.

Furthermore and notwithstanding the arguments as set out above it is stated that the contribution required under condition 31 which relates to public open space has been incorrectly calculated. The public open space requirement for the proposed development as per the development plan standards is 1,663 square metres. Fingal, in calculating the open space levy, failed to take into account the open space provided in the scheme which is 538 square metres. In addition Fingal County Council applied a levy of €237,000 per acre for any shortfall of public open space. However the development contribution scheme, states that the contribution in lieu of open space would be levied at €100,000 per acre to purchase land based on the value of amenity land plus €100,000 per acre for development costs giving a total of €200,000 per acre. If one accepts that there should be an effective double charge for amenities the actual amount payable under condition no. 31 should be €56,000.

### **Condition No. 32**

Condition No. 32 requires that the developer pays a sum of €432,759 in respect of the proposed Clonsilla to Dunboyne Pace Railway Line. It is stated that the site is located approximately 800 metres east of Clonsilla Station. This rail line caters for intercity routes from Sligo and the midlands and commuter trains from Maynooth. The benefit that the redevelopment that this site would have for a new rail link to Dunboyne and Pace would be little, if any.

The benefit that redevelopment of the site might have would be increased to some extent if the Dunboyne to Navan proposed rail extension was to open. However this has been deferred by the Government, if not abandoned altogether. The grounds of appeal suggest that indications are that projects such as the rail to Navan, Luas to Lucan and Bray and the Metro West are permanently cancelled and that long-term capital infrastructure investment in public transport will concentrate on Dart Underground in the first instance and possibly Metro North. In this regard it is noted that South Dublin County Council has suspended the Section 49 Metro West Supplementary Development Contribution Scheme. It is believed that the deferment of the Navan Rail Extension will also result in the suspension of the Section 49 Clonsilla to Dunboyne Supplementary Development Contribution Scheme and as such Condition No. 32 should be cancelled.

## **7.0 APPEAL RESPONSES**

### **7.1 Fingal County Council's Response to First and Third Party Appeals**

In response to the first party appeal the following is stated:

- Condition No. 2(ii) - Reference is made to Section 7.3 of the Plan, Objective UC19 and Objective TO65 of the Plan all of which support the conclusions that the proposed pole sign will significantly detract from the civic space and reduce the visual amenity and public realm of the area. The proposal would also contravene the above objectives set out in the Development Plan.
- Condition No. 9 – Trading Hours: It is stated that the opening hours conditioned are consistent with similar permitted uses in similar urban locations and the opening hours were conditioned in order to respect residential amenity on adjoining sites.
- With regard to Conditions Nos. 31, 32 and 33 it is stated that the Planning Authority submits that the Development Contribution Scheme has been correctly applied. A double contribution has not been calculated. The Section 48 Scheme applies to public infrastructure and facilities in general. The specific open space financial contribution is for the shortfall of public open space for this particular development. The open space area identified is principally used as a SUDS measure and therefore the entire area of the open space has been calculated. It is not reasonable to argue that civic

space to the front of the retail outlet will be of use to residents to the rear. The applicant's assessment of the open space calculation fails to consider the Class 2 open space elements or Objective OSO2B of the Fingal Development Plan 2011-2017.

- With regard to the Section 49 financial contribution the site is located within the Scheme area.

With regard to third party appeals the following is stated:

Condition No. 8 which requires access onto the adjoining road were considered in determining the application. The recommended condition set out by Tom Phillips and Associates were considered as part the Planning Authority's assessment however Condition No. 8 was considered appropriate.

With regard to other issues raised by third parties particularly in relation to the Development Plan, the Urban Centre Strategy and layout; it is stated that the layout included for the subject site is indicative only. It is considered that the retail element with the civic space onto the Clonsilla Road would help create a vibrant centre to the Clonsilla area. Additional residential development addressing the Royal Canal would create an active space with a high level of passive surveillance which would add to the value of the Royal Canal. The impact on residential amenities was also carefully considered. The development provides for a mix of uses on the subject site consistent with both the Fingal Development Plan and the Clonsilla Urban Centre Strategy. It should be noted that the application site only forms part of Opportunity Area No. 3 as set out in the Clonsilla Urban Centre Strategy.

With regard to canal amenity it is stated that the proposed development does not turn its back on the canal. A large portion of the residential units directly address the canal - overlooking the canal towpath. With regard to traffic congestion, there was no objection from the Transportation Section of Fingal County Council subject to conditions regarding traffic management.

With regard to previous refusals on site it is stated that the proposal addresses previous refusals on site. With regard to open space it is stated that the public open space area has a high level of passive surveillance. This was a key consideration in terms of layout. The open space area to the south of the site is relatively private for the residents of the area and also helps achieve an active edge within the canal area.

## 7.2 First Party Response to Third Party Appeals

With regard to compliance with the Development Plan and the Clonsilla Urban Centre Strategy, it is stated that the proposed uses combined with the civic area to the front of the site and car parking to the rear which can be used by all visitors' means that the site will become a focal point for the area. The proposal also provides a civic space of high quality, a crèche and a mixed use development as envisaged under the Urban Centre Strategy. The response points out however that there is no market for restaurants in the area and that an underground car park as envisaged under this Strategy is not economically viable. As the applicant does not own the lands to the south of the site and pedestrian bridge link at access to the Royal Canal cannot be provided as part of the planning application. However the layout does allow for such a connection to take place.

With regard to transport issues it is stated that a Traffic Impact Assessment carried out in accordance with appropriate guidelines was submitted with the application. The proposed development is considerably scaled back from the previous developments which were refused on the subject site. Only 19 residential units and 142 car parking spaces are proposed under the current application. The Aldi retail development does not open before 09.00 hours (*sic*) and therefore will not impact on the a.m. peak hour traffic. It should also be noted that the proposed Aldi development, as in the case of all other foodstores, is a traffic attractor in that trips to the store already exist on the road network and only 30% of food related trips would be new to the network during the p.m. peak. The TIA submitted also clearly indicates that there is ample reserved capacity on the road network and the proposed junction to cater for the proposed development.

With regard to the presence of the railway station and schools in the vicinity it is suggested that few, if any, Aldi car borne customers would venture into the Clonsilla area during times of potential congestion unless already on the road network returning from a school related linked trip. Furthermore it is not proposed to provide a designated right turning box at the site of access.

With regard to the impact on canal amenity it is stated that the applicant does not own any lands outside the red line and thus has no legal right to carry out works to enhance the canal amenities. The layout does

facilitate future links through the site and the residential layout has been designed to ensure that there is overlooking of the canal area.

With regard to building lines it is stated that there is no discernible building lines at this location and the civic plaza will create a focal point within the village. The proposed development will enhance, as opposed to adversely affect, the existing village and business life in Clonsilla. Residential street frontage is provided on the internal access road which is appropriate and appropriate civic space of 780 square metres is framed by the Aldi store and the proposed crèche.

The development of the site will address any problems in respect of anti-social behaviour.

With regard to the design of the residential units it is stated that the house blocks are of a contemporary design and comply with all standards set out in the Development Plan. With regard to the size and scale of the retail unit it is stated that the unit complies with the Development Plan zoning objectives for town centre and the retail impact statement submitted with the application indicates that the size and scale of the retail unit is appropriate for the catchment area.

The submission goes on to argue that the proposed development fully addresses the previous reasons for refusal on site.

It is argued that the proposed development would not have an overbearing impact on residents in the adjoining residential estate known as 'The Village'.

Finally the response addresses the access concerns raised by the owner of the adjoining site. It is stated that the applicant has always maintained that they have no issue in providing access to lands to the west to secure the future development. A Master Plan has been prepared for the entire site and the layout is indicative subject to a future planning application. The layout indicates a number of access points from the main access road to the lands to the west. Aldi has furnished the adjoining landowner with a solicitor's letter in this regard. However there are a number of concerns to the rewording of Condition No. 8 as suggested in the grounds of appeal. In particular the following is noted.

Any right of way shall be specific and referenced by way of a delineation on a map.

The suggested rewording would provide effectively a right of way without any regulation in relation to the right of way or connection into the right of way. Furthermore the right to connect into utilities and services without regulation would adversely affect Aldi's business and would effectively mean that any person could connect into utilities which could prevent Aldi from trading. The whole question of funding for maintenance of the road and utilities if they were to be used by third parties would not be addressed in such a condition and would need to be dealt with by way of legal agreement. It is also considered that a Section 47 Agreement would be inappropriate as this provides for an agreement with the Planning Authority for the purposes of restricting or regulating the development or use of the land and not an agreement between two landowners with respect of access.

### **7.3 Submission on behalf of Anne O'Neill in respect of First and Third Party Appeals**

In respect of the first party appeal, it is stated that there is no objection to the proposed development in principle including the inclusion of a totem sign to the front of the site and the proposed longer opening hours assuming there is no impact on traffic safety. No comment is provided in respect of calculations of development contributions.

With regard to the third party appeals, reference is specifically made to the compliance with the Clonsilla Urban Centre Strategy. It is stated that concerns expressed in this regard are valid as there is no certainty that access will be provided via the proposed development to adjoining undeveloped sites. The Clonsilla Urban Centre Strategy promotes the comprehensive development of opportunity areas and the current wording of Fingal County Council's Condition No. 8 does not guarantee integrated development of opportunity sites. The concerns regarding access to the site may undermine the realisation of the Clonsilla Urban Centre Strategy. It is concluded that the integrated development of Opportunity Area No. 3 is critical to the realisation of the Clonsilla Urban Centre Strategy. The current wording of Condition No.8 does not secure this objective.

### **7.4 First Party Response to the Submission of Fingal County Council**

In respect of Condition No. 2(ii) it is reiterated that the proposed totem pole is of critical importance to the overall development and acceptable for a commercial area and promotes road safety rather than detracting

from the area. With regard to opening hours, it is noted that there does not appear to be any other restriction on other commercial premises in the vicinity. Earlier delivery hours would not affect residential amenities. With regard to the financial contribution conditions, the applicant stands over the original calculations set out in the first party appeal and the additional contributions for open space represents a double charge. With regard to the supplementary contribution under Section 49 it is reiterated that the Navan Rail Extension was not included in the recently announced Public Infrastructure Plans by Government which indicates that it will not proceed.

#### **7.5 Response from Portersgate Residents Association to the First Party Appeal**

The proposed development will not become an identifiable village core but rather a typical 'one size fits all' Aldi store development. It ignores many of the objectives in the Clonsilla Urban Centre Strategy and the Development Plan. Concerns regarding traffic congestion are reiterated and no plans are being provided how traffic calming measures will be implemented or how the proposal will deal with high volumes of pedestrians, many of whom are children, during peak traffic times.

The Urban Strategy clearly sees the Royal Canal as being central to the future development of the village. As such it should form a major part of any village design as set out in the Urban Strategy.

The proposal will not benefit the local smaller shops which simply cannot compete with this bigger type of retail development. The civic space proposed is a token civic space and will not provide any significant community benefit.

#### **7.6 Portersgate Residents Association Response to Fingal County Council's Submission**

It is acknowledged that some plan layouts in the Clonsilla Urban Centre Strategy are indicative but very clear objectives are set out regarding the overall layout and very few of these objectives have taken on board in the current proposal. These objectives are outlined in the submission. Objectives in respect of canal amenity are reiterated, as are concerns in respect of traffic congestion. Concerns in respect of the impact on the existing village and the quality of the civic space proposed are reiterated.



## **7.7 Further Submission on behalf of Anne O'Neill to issues raised in Further Submissions from First and Third Parties**

This submission comprises of a letter from Donal Reilly and Collins, Solicitors which outlines the history regarding seeking a legal agreement with regard to the grant of a right of way across the subject lands.

The submission goes onto address the first party's response to the proposed alteration to Condition No. 8. In the response it states that the concerns expressed by the applicant are equally applicable to Condition No. 8 as worded in the Planning Authority's decision. Finally it is stated that a Section 47 Agreement is an entirely appropriate way to deal with the issue.

## **7.8 Further Submission from Fingal County Council**

In a response dated 4<sup>th</sup> November, 2015 Fingal County Council state that they are satisfied that all the issues raised within the appeal to An Bord Pleanála have been sufficiently addressed in previous correspondence.

## **8.0 PLANNING POLICY CONTEXT**

### **8.1 Development Plan Provision**

The site is governed by the policies and provisions contained in the Fingal Development Plan 2011-2017. The subject site is zoned TC *“to protect and enhance the special physical and social character of the town and district centres and provide and/or improve urban facilities”*.

The vision for this zoning objective is as follows: *“Maintain and build on the accessibility, vitality and viability of existing urban centres in the county. Develop and consolidate these centres with an appropriate mix of commercial, recreational, cultural, leisure and residential uses and to enhance and develop the urban fabric of these centres in accordance with the principles of urban design, conservation and sustainable development. Retail provision will be in accordance with the County Retail Strategy, enhance and develop the existing urban fabric emphasis on urban conservation and ensure priority for public transport, pedestrians and cyclists while minimising the impact on private car based traffic. In order to deliver this vision and to provide a framework*

*for sustainable development urban centre strategies will be prepared for centres in accordance with the Urban Fingal Chapter Objectives”.*

Clonsilla is identified in the Plan as a town and district centre. These town and district centres offer a range of services, facilities and retail for the remedial hinterland. Objective UC09 seeks to implement the Urban Centre Strategies prepared for Castleknock, Clonsilla, Portmarnock, Donabate, Howth and Rush. The following specific objectives relate to Clonsilla.

Objective Clonsilla 1 – implement an urban centre strategy for Clonsilla.

Objective Clonsilla 2 – require that new development in the village includes an appropriate buffer zone along the Royal Canal and optimise the Royal Canal as a local heritage resource and public amenity while protecting its character and biodiversity as a waterway.

Objective Clonsilla 3 – develop key sites within the village for mixed use and employment which maximise the potential for local transport infrastructure.

Objective Clonsilla 4 – secure lands adjacent to the Royal Canal for environmentally friendly and sustainable public access and public open space.

Objective Clonsilla 5 – create a network of pedestrian and cycle routes between Clonsilla and the adjacent railway stations.

Objective Clonsilla 6 – protect the historic character of Clonsilla Village by conserving old houses and cottages and only permitting sensitive developments.

In terms of advertising signage Objective UC19 seeks to evaluate signage proposals in relation to the surroundings and features of the buildings and structures on which the signs are to be displayed, the number and size of signs in the area (both existing and proposed) and the potential for the creation of undesirable visual clutter.

Objective UC21 seeks to resist new billboard and other large advertising structures and displays.

The overall development strategy for Clonsilla seeks to enhance the village character while securing suitable retail, commercial and residential uses in accordance with the Urban Strategy for Clonsilla.

## **8.2 Clonsilla Urban Centre Strategy**

The above Strategy was prepared in May, 2008 and has been incorporated into the current Development Plan via 'Objective - Clonsilla 1'. The Urban Centre Strategy sets out and analyses the characteristics of Clonsilla in terms of movement, community, strengths, weaknesses, opportunities, threats, consolidation, enhancement and land use.

Section 7 relates to consolidation and enhancement. It states Area No. 3 (which includes the subject site) is the largest landbank and includes those lands to the east of the Mormon Meeting Hall. These lands are in two ownerships which may be combined to facilitate and integrate a mixed use development of retail, general business use, restaurants, crèche, underground parking, pedestrian links to canal and a new civic space. The area presents the best development opportunity and is the appropriate location to integrate and consolidate the village core thereby enhancing and protecting the character of the village.

A more prescriptive layout is indicated on page 31 of the document (a copy of the document is attached to the Portersgate Residents Association submission). Although it should be borne in mind that this layout is merely indicative. It states that storey heights will vary between 1, 2 and 3 storey. Single storey will be located to the north-east of the site behind the existing cottages. The three-storey development is located around the new civic space (which is located to the rear of the set as opposed to adjacent to Clonsilla Road) to emphasise the importance of the space and to contain it with a good height to width ratio. A further set back storey could be considered if it can be demonstrated that it contributes to the urban design qualities of the square. The entrance to the new development should also be signalled by a new three-storey corner building on Clonsilla Road.

In addition to the new civic space, other key focal space will be the landing area of the pedestrian bridge where a restaurant is critical with mandatory outdoor dining overlooking the canal. The bridge will be designed to signal the new village centre when seen from the south. It will also assist the passive policing of the Royal Canal towpath.

The area zoned for open space to the south will be the linking element for existing development to the new civic space.

## 9.0 PLANNING ASSESSMENT

I have read the entire contents of the file, visited the site in question, have had particular regard to the issues raised in both the third party and first party appeals. I have also had particular regard to the planning history associated with the site. I consider the most importance issues in determining the application and appeal before the Board are as follows:

- Compliance with Planning Policy.
- Traffic Congestion.
- Other Third Party Issues.
- Issues raised in the First Party Appeal.

### 9.1 Compliance with Planning Policy

The overall goal as set out in the Development Plan in relation to the village of Clonsilla is to *“enhance the village character while encouraging suitable retail, commercial and residential uses in accordance with the urban strategy for Clonsilla”*. The first objective listed in the Development Plan in respect of Clonsilla is to implement the Urban Strategy for Clonsilla. As referred to in my previous section above, the Clonsilla Strategy was prepared in May, 2008 and it is an objective as set out in the current Development Plan to implement this Strategy. The Strategy is a detailed and prescriptive document dealing with various planning and land use aspects associated with the village. The subject site is identified as “an Opportunity Area” within the Strategy. The Strategy notes that it is the largest landbank and includes lands that are in two ownerships which may be combined to facilitate an integrated mixed use development of retail, general business use, restaurants, crèche, underground parking, pedestrian links to the canal and a new civic space (my emphasis). The key issue in the above statement in my view is the reference to combining the lands in two ownerships to facilitate the uses identified in the Urban Strategy. The fact that the two parcels of land are to be developed separately is a key consideration in addressing both the initial concerns of the Planning Authority and the concerns raised in the third party appeals submitted. It also appears to be a pertinent issue in the Boards previous deliberations as they related to the site. In fact the applicant

acknowledges the inherent constraints of the appeal site in the response to additional information request in that the first paragraph in Section 3.1 of the response (page 4) states *“the characteristics of the site, in particular, the fact that it is long and narrow, makes it difficult to design a scheme that does not involve a segregation of uses, without compromising existing residential amenities to the east and future residential amenities both on the site and on the undeveloped lands to the west”*. This is, in my view, a tacit acknowledgement that the site dimensions makes it difficult to create an integrated town centre scheme. The overall lands as designated (Opportunity Area No. 3) provides in my opinion a once-off opportunity to develop a comprehensive, integrated and defined village core. Amalgamating the sites in order to provide an integrated Master Plan to realise the objectives set out for Opportunity Area No. 3, including providing a mix of retail, general business, restaurants, pedestrian links to the canal and perhaps most importantly a new civic space represents a key and perhaps once-off opportunity. The Strategy goes on to state that the site in question *“presents the best development opportunity and is the most appropriate location to integrate and consolidate the village core, thereby enhancing and protecting the character of the village”*.

While the applicant has provided a Master Plan incorporating the adjoining lands to the west I do not consider that this Master Plan was conceived in the context of providing a unified and integrated design approach to both landholdings. It is clear that the applicant provided an original proposal and then on foot of a request for additional information provided an indicative layout for the adjoining lands to the west. The fact that the Master Plan did not involve any material or significant changes to the proposed development on the subject site, suggests that no real attempt to was made, in designing the Master Plan to rethink the overall design approach and layout in order to provide a village centre and core and associated civic space as envisaged under the Urban Design Strategy.

The incorporation of the adjoining site to the west provides a larger site with sufficient dimensions to allow opportunities to provide a more coherent village core and civic space within the layout as opposed to providing a single supermarket and crèche facility with surface car parking to the rear.

The fact that the adjoining landowner of lands to the west saw fit to lodge a third party appeal against the decision on the grounds that details of the access, rights of way and wayleaves across the subject

site has not been tied down in the Planning Authority's notification to grant planning permission, demonstrates in my view the importance of developing the overall landholding as a single integrated entity.

Concerns in relation to the segregation of uses on site and the lack of integration in design terms between the subject site and the adjoining lands to the west formed a significant concern in the Planning Authority's request for additional information and clarification of additional information. Notwithstanding the decision of Fingal County Council it is my opinion that the applicant has not adequately addressed the local authority's concerns in this regard. The Urban Design Strategy identifies Opportunity Area No. 3 as the best development opportunity and is the most appropriate location to integrate and consolidate the village core. For this reason the overall landholding should be developed in an integrated and comprehensive fashion. It provides a once off opportunity to consolidate and redefine the existing village in urban design terms.

With the above arguments in mind, I consider the previous decision by An Bord Pleanála to refuse planning permission under Reg. Ref. 06F.226486 is relevant in that it states that the *"site of the proposed development forms a significant portion of undeveloped land within the boundary of Clonsilla village. It is considered that the proposed development fails to meet the objectives of the Strategy to create a new village centre at this location, to create a new civic area adjoining the canal and to allow for future connections to lands at Kellystown on the opposite side of the canal. These objectives are considered to be reasonable. The proposed development, by reason of lack of integration with adjoining areas would result in a disorderly form of development on this important site in the village, would set a precedent for similar non-integrated development at this centrally located site and would, therefore, fail to comply with the policies and objectives of the Development Plan"*.

While the proposed development in this instance represents a less intensive development than those previously refused by both Fingal County Council and An Bord Pleanála, the continued development of the subject site in isolation fails to adequately address the reason for refusal set out above.

With regard to the Royal Canal it is clear from the policies contained in the Development Plan that securing lands adjacent to the Royal Canal for public access and public open space purposes is an important

objective for the Planning Authority. The proposed development incorporates a layout whereby houses to the rear front towards the canal. However again I would highlight the fact that if the overall landholding was developed comprehensively, the site frontage onto the canal would be doubled in size and would provide greater opportunities to develop the area adjacent to the canal as a public amenity with greater public access. Developing individual plots adjacent to the canal in a haphazard and piecemeal manner may undermine the objectives set out in the Development Plan which seek to optimise the Royal Canal as a local heritage resource and public amenity.

Finally with regard to the proposed pedestrian bridge and walkway over the canal I consider that the proposed layout facilitates this link and I acknowledge that the lands in question are outside the applicant's ownership and as such the applicant is not in a position or would be required to provide such infrastructure.

## **9.2 Traffic and Transport Considerations**

Two of the three third party appeals argue that the proposed development would generate an unacceptable level of traffic which would exacerbate and accentuate traffic congestion in the area. The grounds of appeal argue that the Clonsilla Road is already a very busy road and the situation is made worse by the fact that there are a large number of schools in the vicinity. It is also pointed out that Clonsilla Railway Station to the west of the site incorporates a level crossing which creates traffic to back up along the Clonsilla Road. The proposed development will undoubtedly contribute to traffic generation along this section of the Clonsilla Road. However the grounds of appeal point out that much of the traffic associated with the proposed supermarket is already on the road network and that under a worst case scenario an additional 30% of trips will be generated specifically as a result of the development. Of more importance in my opinion the traffic impact assessment submitted with the planning application it clearly indicates that the road capacity and the proposed junction serving the Aldi car park will operate considerably below capacity. A copy of the full Picady analysis carried out for the p.m. peak traffic for 2031 is attached as Appendix 2 of the applicant's response to the Planning Authority's additional information request. It indicates that during the p.m. peak period even under a worst case scenario the ratio of flow to capacity would be less than 0.5 which indicates that the junction would operate efficiently.

My site inspection which took place at mid-morning indicated that the Clonsilla Road accommodates relatively high volumes of traffic. However traffic tailbacks and congestion were not observed in the vicinity of the site or along the wider area of Clonsilla Road during my inspection. I am satisfied based on the analysis carried out as part of the TIA that sufficient capacity exists to facilitate the proposed development.

In terms of safety I note that there are no schools in the immediate vicinity of the subject site. The closest school is St. Mochta's School which is located almost 500 metres to the east of the site on the southside of the Clonsilla Road. The new junction and traffic turning movements associated with the proposed development will have little impact on pedestrian flow and safety associated with this school.

Finally in relation to traffic and transport, the Board should have regard to the zoning objective for the subject site which seeks to facilitate a range of mixed uses including commercial and residential uses. Such land uses by the very nature will give rise to traffic generation. Thus have regard to the zoning objective for the site together with the requirement to develop the site at requisite densities befitting of a town centre facility, it is inevitable that increased traffic generation will result. The level of traffic generated by the quantum of the development proposed in this instance is acceptable in my view. The Board will also note that the previous decision by An Bord Pleanála relating to the subject site under PL06F.226486 sought planning permission for a similar size retail scheme together with four retail units and 60 apartments. The previous development will be more likely to give rise to traffic generation greater than the current application before the Board. Notwithstanding this, the Board did not refuse planning permission for the proposed development on traffic grounds.

Arising from my assessment above therefore I consider the transport and traffic generation arising from the proposed development to be acceptable in this instance.

### **9.3 Other Issues raised by Third Parties**

#### **9.3.1 *Impact of the Proposed Development on Local Business and Viability of the Existing Village.***

Concerns were raised by one of the third party appeals that the proposed development will have an unacceptable impact on the viability



of the existing village. The Board will note that the site in question is zoned for town centre facilities with the specific aim of incorporating mixed use developments including supermarkets, retail and other uses. The proposed development therefore accords with the zoning objectives associated with the site. It could also be reasonably be argued in my view that the increased quantum of retail development including the provision of a discount foodstore is likely to attract more trips to Clonsilla village which could be of greater benefit to the economic profile and viability of existing businesses within the village.

### *9.3.2 Compliance with Retail Planning Guidelines*

With regard to compliance with the Retail Planning Guidelines I note that the applicant has submitted a Retail Impact Statement as part of the original proposal and it concluded that the proposed development would have no adverse impact on existing outlets in the catchment area. Perhaps more importantly in my view, is the fact that the site is zoned as a neighbourhood centre for Clonsilla village and therefore a retail development, including that proposed under the current application, should be deemed to be acceptable in my view. As pointed out in the Local Authority Planner's Report, the uses proposed are permitted in principle under the land use zoning objective relating to the site. And the uses are consistent with the local objective (574) which seeks to provide for 'mixed use employment and residential development'. I would agree with the conclusions of the Planning Authority that the proposed development is acceptable in principle.

The Retail Strategy for the Greater Dublin Area (2008 – 2016) notes that in the case of neighbourhood/small town/village centre retail developments within the retail hierarchy, that such centres should generally provide for one supermarket or discount foodstore ranging in size from 1,000 to 2,500 square metres with a limited range of supporting shops and retail services. The proposed development fully accords with these criteria set out, and therefore accords with the Retail Strategy for the Greater Dublin Area.

### *9.3.3 Anti-Social Behaviour*

With regard to the issue of anti-social behaviour I am satisfied that with proper management surveillance and lighting, the proposed development will not give rise to anti-social behaviour.

#### 9.3.4 Residential Development and Amenity

Concerns were expressed in the grounds of appeal that the proposed residential element to the rear of the site offers a poor quality design. Concerns in this regard are not elaborated upon in the grounds of appeal. I have assessed the proposed units and consider that they generally comply with the requirements set out in Section 7.4 of the Development Plan with regard to unit sizes and room sizes. I do note however that the public open space provision incorporates very little passive surveillance. With regard to the issue of overlooking, no significant issues arise in respect of the existing houses at “The Village” to the east of the subject site. The separation distances between the westward facing houses and the boundary of the site are in excess of 15 metres which is probably acceptable in terms of maintaining residential amenity although much will depend on the development proposed on the adjoining site to the west.

#### 9.3.5 Condition No.8

The final issue raised by the third party appellants relates to Condition No. 8 which requires:

*The site entrance off the Clonsilla Road and the main access road along the western boundary of the application site shall be made available to provide future access to lands to the west (remaining lands forming part of Opportunity Area No. 3 in the Clonsilla Urban Centre Strategy).*

**Reason:** *In the interest of orderly development.*

The third party appeal requests that the condition be reworded to ensure that a more binding obligation exists to provide sufficient comfort or certainty with regard to access, right of way and wayleave arrangements.

In many respects the requirement for such a condition is symptomatic of the wider problems associated with developing the overall landholding of Opportunity Site No. 3 in a haphazard and piecemeal way. An overall integrated Master Plan combining both sites in question and being the subject of a single planning application would obviate the need for such a condition.

With regard to any rewording of Condition No. 8 I do not consider that it is a requirement of the Board in granting planning permission for any such development to stipulate detailed legal agreements between third parties in respect of rights of ways and wayleaves over lands. However if the Board are minded to grant planning permission in this instance it may be appropriate to reword any such condition requiring the applicant to make available future access arrangements to lands to the west of the site and that any such access arrangements shall be the subject of a legal agreement between the parties concerned prior to the commencement of development.

#### **9.4 Grounds of First Party Appeal**

Arising from my assessment thus far, I would recommend that the Board consider refusing planning permission for the proposed development on similar grounds to that set out under PL06F.2226486. However if the Board come to a different conclusion and consider that the development should proceed, I propose to deal briefly with the issues raised in the first party appeal.

##### *9.4.1 Condition 2(ii)*

This condition requires that the one double sided internally illuminated pole sign be omitted from the proposed development in the interest of visual amenity.

The Planning Authority omitted the pole sign on the grounds that it contravened a number of policy statements contained in the Development Plan in relation to advertising signage. In particular Objective UC19 which seeks to evaluate signage proposals in relation to the surroundings and features of the buildings and structures on which the sign are to be displayed, the number and size of signs in the area (both existing and proposed) and the potential for the creation of undesirable visual clutter. Objective TO65 seeks to restrict non-essential advertising structures or any advertising which would impact injuriously on amenity, the built environment or road safety, and have unauthorised signs removed. The Planning Authority also consider that the sign in question would detract from the civic space in front of the proposed buildings.

I do not consider it unreasonable that a single internally illuminated pole sign 6 metres in height would be provided along the roadside to advertise the premises. Entrance to the shop is located to the rear of the

building and therefore it would be reasonable in my view that the applicant would be afforded some flexibility with regard to placing signage along the roadside to advertise the presence of the supermarket. Furthermore I think the applicant has, in the grounds of appeal provided numerous examples where precedents for such signs have been permitted in the area. It could be reasonably argued, having regard to the layout and the location of the entrance of the store to the rear of the building, that the advertising structure is essential to notify passers-by of the presence of the building and therefore the proposal would not be contrary to Objective TO65. Furthermore the Board will note from the photographs attached that currently there is no such advertising signage in the immediate vicinity of the site and therefore the provision of a single pole sign at this location would not contribute to visual clutter.

Therefore of the Board are minded to grant planning permission for the proposed development I recommend that this condition could be deleted or at the very least a sign could be permitted for a period of 18 months as submitted in the grounds of the 1<sup>st</sup> party appeal.

#### *9.4.2 Opening Hours*

In relation to the issue of opening hours, I consider having regard to the zoning of the site for town centre activities, it would not be unreasonable in my view to extend the opening hours of the Aldi store to 22.00 hours on weekdays. The store itself gives rise to very little noise generation. Any noise which could potentially impact on residential amenity would relate to traffic exiting the car park at this time. However having regard to the urban location and the fact that the site is situated within the town centre and within zoned land for such purposes, I would not consider it unreasonable that retail hours could be extended to 10.00. Many other Aldi stores which have received the benefit of planning authority are permitted to open until 22.00 hours.

With regard to delivery times I consider it reasonable that deliveries to the facility should occur between the hours stipulated by the Planning Authority. To permit the commencement of deliveries at 6.00 a.m. on a weekday and 7.00 a.m. on a weekend day and Bank Holidays could significantly impact on residential amenities in the vicinity. The manoeuvring of HGV vehicles (including reversing sirens etc.) and the delivery of goods can give rise to tonal and impulsive noises which could adversely impact on residential amenities, particularly during the

early morning time. I therefore recommend that the stipulation set out under Condition No. 9 in respect of deliveries remains unaltered.

#### 9.4.3 Condition No. 31 and No. 33

Condition No. 31 requires that a financial contribution in the sum of €97,594 be paid by the applicant to Fingal County Council in lieu of open space provision towards the cost of amenity works in the area. Condition No. 33 requires the developer to pay a sum of €337,309 to the Planning Authority in respect of expenditure that was and/or is proposed to be incurred by the Planning Authority in respect of public infrastructure and facilities benefitting the development as provided for in the Development Contribution Scheme for Fingal County Council. The applicant argues that the inclusion of both conditions represents a double contribution.

It is clear from the Planning Authority's response to the grounds of appeal that Condition No. 33 relates to the normal financial contribution levied under the provisions of Section 48 of the Act and in accordance with the adopted Development Contribution Scheme.

Condition No. 31 is a financial contribution specifically levied as a result of a shortfall of public open space for the particular development. This contribution in lieu is similar to that which would normally be applied in the case where insufficient car parking has been provided at a particular development and the Planning Authority seek to make up for such a shortfall by requiring a financial contribution towards the facilitation of parking elsewhere. Section 9(b) of the Fingal Development Plan provides a discretion to the Council to determine a financial contribution in lieu of all or part of the open space requirement for a particular development. This contribution in lieu of open space will be levied at the following rates:

1. Class 1 Open Space - €100,000 per acre to purchase land based on the value of amenity land, plus €100,000 per acre for development costs.
2. Class 2 Open Space - €250,000 per acre to purchase land in residential areas plus €100,000 per acre for development costs.

Fingal County Council set out a hierarchy of public open spaces in its Development Plan. The overall standard for public open space is a minimum of 2.5 hectares per 1,000 population and at an absolute

minimum 10% of the site development area. Based on an occupancy rate of 3.5 persons in the case of dwellings with 3 or more bedrooms (as per Objective OS02) the amount of public open space required in this instance would be 1,662 square metres. The applicant in this instance has provided approximately 550 square metres which is a shortfall of approximately 0.11 hectares. The applicant has however provided the minimum 10% requirement in terms of open space standards. The Planning Authority also argued that the open space provided is of little recreational use as it will be primarily used for surface water attenuation. The revised drawings do not indicate that the primary role of the open space will be for surface water attenuation (as in the case of the original drawings submitted to the Planning Authority).

It appears to be therefore that while the applicant has achieved the minimum open space requirements of 10% under Objective OS2A the open space requirements based on the provision of 2.5 hectares per 1,000 population has not been achieved. In this regard it could be reasonably argued that the planning authority would look for financial compensation on foot of the shortfall in open space provided. The subject site can be classed as Class 2 Open Space which requires €250,000 per acre to purchase land in residential areas plus €100,000 per acre for development costs. If the Board accept that the shortfall as per the above calculation amounts to 0.11 hectare or .0265 acres; the financial contribution required in this instance would amount to €92,939 which is very similar to that amount levied by Fingal County Council. The discrepancies in this above figures may relate to slight variation in the calculations of open space areas. However I consider that if the Board are minded to grant planning permission for the proposed development in this instance, that a separate financial levy in lieu of public open space provided should be applied as per Condition No. 31.

#### *9.4.4 Condition No. 32*

The grounds of appeal argue that Condition No. 32 which relates to a supplementary contribution under the provisions of Section 49 for the upgrade of the proposed Clonsilla to Dunboyne Railway line should not be levied in this instance. The grounds of appeal argue that all the indications are that the projects involving a heavy rail line to Navan will be permanently cancelled and for this reason any Section 49 Development Contribution should be suspended. The Supplementary Contribution Scheme adopted by Fingal County Council is still in place. And the site is located within the catchment area to which the Supplementary Development Contribution Scheme relates. As the

adoption of the Supplementary Contribution Scheme is a reserved function, the Board has no discretion as to whether or not to apply the Supplementary Contribution Scheme. Furthermore I refer the Board to Section 14 of the adopted Scheme which states “if the construction of the project does not proceed, the contributions received under the Scheme will be returned to those who paid them. The agreement with Iarnrod Eireann will have provision for repayment in this event”. An appropriate reimbursement of the contribution will therefore be implemented should the development not proceed.

## **10.0 Appropriate Assessment**

The nearest Natura 2000 sites are the Rye Water Valley SAC at Leixlip which is approximately 5.5 kilometres to the south-west of the subject site, the North Dublin Bay SAC and SPA which is in excess of 12 kilometres to the east of the subject site and the South Dublin Bay SAC and SPA which is approximately 11 kilometres to the east of the subject site. Having regard to the nature and scale of the proposed development and the nature of the receiving environment together with the proximity to the nearest European sites listed above, 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 and projects on a European site.

## **11.0 CONCLUSIONS AND RECOMMENDATIONS**

Arising from my assessment above, I consider that the Board should overturn the decision of the Planning Authority and refuse planning permission for the proposed development on the grounds that size constraints associated with the proposed development do not lend themselves to meeting the objectives set out in the Urban Strategy for Clonsilla namely to create a new village centre at within Clonsilla including the provision of a new civic area. The proposed development fails to provide an integrated and comprehensive design embracing the entire site area earmarked as an Opportunity Area in the Urban Centre Strategy for Clonsilla. The proposed development fails to meet the objective set out in the Urban Centre Strategy for Clonsilla and in particular for Opportunity Area No. 3 which according to the Strategy presents the best development opportunity and is the appropriate location to integrate and consolidate the village core thereby enhancing and protecting the character of the village.

## **12.0 DECISION**

Refuse planning permission for the proposed development in accordance with the reasons and considerations set out below.

### **REASONS AND CONSIDERATIONS**

It is an objective in the current Fingal County Development Plan 2011-2017 to implement the Urban Centre Strategy for Clonsilla. The site of the proposed development forms a significant portion of undeveloped lands within the Urban Centre Strategy which are identified as Opportunity Area No. 3. The Strategy recognises that this area presents the best development opportunity and is the appropriate location to integrate and consolidate the village core thereby enhancing and protecting the character of the village. The proposed development, by reason of lack of integration with adjoining areas would result in a disorderly form of development on this important site within the village and would set a precedent for similar non-integrated development in this centrally located site and would therefore fail to comply with the policies and objectives set out in the Urban Centre Strategy for Clonsilla and the current Fingal County Development Plan. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

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**Paul Caprani,  
Senior Planning Inspector.**

**15th December, 2015**

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