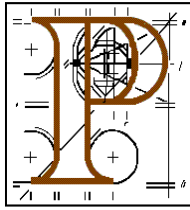


## An Bord Pleanála



## Inspector's Report

**Appeal Reference No:** PL03.245531

**Development:** Discount Foodstore to include off-licence, signage, carparking, bus parking, vehicular access, ESB Substation and ancillary works at Abbey Street, Killaloe, Co.Clare.

### Planning Application

Planning Authority: Clare County Council  
Planning Authority Reg. Ref.: P15/465  
Applicant: Aldi Stores (Ireland) Ltd  
Planning Authority Decision: Permission

### Planning Appeal

Appellant(s): Bill & Maureen Kenny  
John Daly  
Type of Appeal: Third Party  
Observers: None  
Date of Site Inspection: 25<sup>th</sup> of November 2015

**Inspector:** Angela Brereton

## **1.0 SITE LOCATION AND DESCRIPTION**

Killaloe is situated on the southern bank of the River Shannon at the southern end of Lough Derg, about 14 miles north east of Limerick. It has good accessibility being situated to the north of the R463 Limerick to Killaloe Road and c.8kms from junction 27 of the M7. Whilst the settlement spreads across the river, which forms the County boundary with North Tipperary, that part within County Tipperary is known as Ballina and is treated as a separate settlement. The historic bridge across the river is attractive but single track which leads to congestion, particularly during the summer months as this area is a tourist destination.

The site is located on Abbey Street, Killaloe and is opposite the existing Convent Hill shopping centre anchored by Supervalu. It is bounded to the west by the Covent Hill Road leading into the Millstream estate which is an area of housing to the south and west of the site. This is a greenfield undulating site and would appear as land that may have been originally associated with a Protected Structure to the east i.e The Deanway (RPS 445). There are hedgerows and some mature trees along the site boundaries and the latter are also prominent within the site. The site is also somewhat visible from the lower road the R463. Currently The Deanery can be seen on a higher level up from this road and the entrance to this P.S is from Abbey Street (L3076). It's setting appears as a green area within the edge of the town, although the lands are in private use and not accessible to the public. There is a locked gated access along Abbey Street into the site. The site is currently enclosed by a stone wall boundary to the north and west and there is a high steel fence along the boundary with the Millstream estate. There are footpaths along all of the site frontages with the public roads.

There is marked out on street parking along the Abbey Road frontage. There is a large carpark for the Convent Hill shopping centre and the entrance to this is on the opposite side of the road. This does not have vehicular access to the town centre. The anchor Supervalu is a sizable premises. Heaney's Crosscutters is a smaller mini-supermarket located in the town centre on The Green. The centre of Killaloe i.e the retail core contains Convent Hill Shopping Centre at the southern edge and the narrow roads leading up to an including the Main Street. This is characterised by small more compact retail premises including craft shops, cafes and restaurants. There did not appear to be much opportunity to site an Aldi and its associated carparking within this medieval core. It is noted that Ballina, Co. Tipperary is on the opposite side of the river. This is a smaller centre and contains the local business McKeogh's commercial centre which includes a small supermarket, bakery, off-licence and hardware store.

## **2.0 PROPOSED DEVELOPMENT**

Aldi Stores (Ireland) Limited have applied for planning permission for the construction of a single storey discount foodstore (to include off licence use) with a g.f.a of 1,655sq.m (net retail area of 1,140sq.m). The proposed development also includes the following:

- The erection of 1 no. free standing double sided internally illuminated sign, 2no. internally illuminated gable signs, 1no. poster sign and entrance glass signage;
- The provision of 122no. car parking spaces and 1no. bus parking space. The proposed parking is to serve the discount foodstore and accommodate public parking provision;
- Vehicular access to the site is to be provided from Abbey Street;
- The construction of an ESB substation;
- All landscaping, boundary treatment and site development works on the 1.0ha site.

The Public Notices include that the Deanery, a Protected Structure, is located on the adjacent site to the east of the application site.

The application is accompanied by a number of maps and drawings showing the site location, site layout plan, floor plans, sections and elevations. Plans include an existing site survey and proposed drainage and infrastructural details. A Soft Landscape Plan & Planting Plan is also included.

This application is accompanied by the following documents:

- A Retail Impact Assessment July 2015 prepared by John Spain Associates, Chartered Town Planners;
- Retail Design Statement in respect of the Proposed Aldi Discount Foodstore prepared by Deady Gahan Architects etc;
- Photomontages and Methodology Statement – Object Previews;
- Screening Report for Appropriate Assessment compiled by Pádraic Fogarty Openfield Ecological Services June 2015;
- A Tree Survey and Plan of Preservation and Impact Assessment prepared by Michael Garry, Arbor Care etc;
- Landscape Design Strategy – Stephen Diamond Associates, Chartered Landscape Architects;
- Engineering Planning Submission Report to Water Services Department, Clare County Council – Downes Associates, Consulting Structural and Civil Engineers;
- A Traffic Impact Assessment – TPS Ltd prepared for John Spain Associates;
- An Archaeological and Architectural Heritage Assessment – John Cronin & Associates.

### **3.0 PLANNING HISTORY**

#### On-site history

- 13/8003 – Part 8 application by Clare County Council for the development of a 42 space public car park. This relates to the northern portion of the site and was granted but never implemented. A drawing showing this parking area is included in the documentation submitted.

#### In the vicinity

- P00/2156 – Permission granted by the Council to construct a supermarket, 7no. shop units, associated office space, storage and site development works and car parking. This was subsequently upheld on appeal to the Board (Ref. PL03/130806 refers) and granted subject to 23no. conditions. This is the grant of permission for the Convent Hill shopping centre on the opposite side of the road to the subject greenfield site.
- A number of other applications relative to mixed use development within this centre are noted in the RIA submitted.  
A copy of the Board decision is included in the Appendix to this Report.

## 4.0 PLANNING AUTHORITY APPLICATION

### Planning and Technical reports

#### Internal Reports

**Road Design Planning** are concerned that visibility splays have not been indicated on the Site Layout Plan. Deliveries should be made prior to the opening of the store to avoid possibility of conflict. They also note a number of concerns regarding parking issues and lack of pedestrian facilities. They consider that a development contribution should be sought regarding the latter.

**Area Engineer - Roads** suggested €10,000 as a contribution for the pedestrian crossing. They also recommended that the applicant investigate the surface water network on the ground and establish the level of capacity/integrity and possible upgrade required.

**Architectural Conservation Officer** is concerned that the visual impact on The Deanery, which is a P.S. be addressed and recommends conditions regarding the provision of a screen boundary wall and archaeological monitoring.

#### External Reports

The **NRA** provides that they rely on the PA 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).

The **Department of Arts, Heritage and the Gaeltacht** provide that the Council needs to be satisfied that they have adequate ecological information to screen the proposed development for Appropriate Assessment. They have some concerns about the impact on the setting and extent of curtilage of The Deanery a P.S. They recommended that in order to comply with the Planning and Development Regulations 2001 (as amended) that further information and design revisions be requested. This would include photomontages of The Deanery and garden and inclusion of views, also that a reduction be made to car parking along the eastern edge of the site. In the event of a grant they recommend some conditions relative to nature conservation, Archaeological investigations and monitoring. They noted if the proposal is to be deemed invalid i.e if the site is considered to be partly within the curtilage of the P.S, the need to notify the Department and refer any future valid

proposal as usual including any submitted Section 57 declaration indicating the extent of the curtilage of The Deanery.

**Irish Water** has no objections and recommends conditions.

**Submissions** received include the following concerns:

- Traffic Impact and Road Safety issues.
- Retail Impact on long established businesses including two supermarkets in the area.
- Car-parking issues.

### **Planner's Report**

This has regard to the locational context of the site, planning history and policy and to the technical reports and the submissions made. The Planner noted the land-use zoning of the site and had regard to the documentation including the RIA and TIA submitted. Regard was also had to the proposed design and layout, boundary treatment and landscaping, issues of traffic safety/access and parking provision, pedestrian permeability, deliveries, archaeological considerations and architectural heritage, services, signage etc. The Planner concluded that the principle of development is acceptable in accordance with the objectives of the County Retail Strategy, Clare County DP and the East Clare LAP and that the proposal is consistent with the specific objectives of these plans which seek to improve shopping facilities in the town. Also, that the proposed development would contribute to the vitality and viability of the town of Killaloe and is in accordance with the proper planning and development of the area. They recommended that a specific condition be placed on the grant of permission to deal with the outstanding issue of surface water connection to the public system, and additional conditions having regard to boundary treatment along the western boundary and to obtain a footpath within the site along the eastern side.

## **5.0 PLANNING AUTHORITY DECISION**

Clare County Council granted permission for the proposed development on the 27<sup>th</sup> of August 2015 subject to 19no. conditions. Some of these relate to infrastructural and construction related issues and they include the following:

- Condition no.2 – revised proposals for disposal of surface water to be submitted.
- Condition no.3 – refers to a development contribution in respect of public infrastructure and facilities benefitting the proposal.
- Condition no.4 –refers to a special contribution for the provision of a pedestrian crossing.
- Condition no.5 – revised site layout plan to show visibility splays at the entrance, pedestrian linkage/footpaths, boundary treatment.
- Condition no.6 – construction of a mortared masonry wall of not less than 2.4m high between the development site and The Deanery grounds.
- Condition no.7 – archaeological pre-development testing and monitoring.
- Condition no.8 – restriction on hours of opening.

- Condition nos. 9 -13 – relate to details regarding infrastructural (roads and drainage) and construction matters.
- Condition no.14 – relates to security roller shutters.
- Condition no.15 – restriction on signage and operations of such.
- Condition no.16 – undergrounding of services.
- Condition no.17 – plan for management of waste.
- Condition no.18 – comprehensive details of the lighting system to be submitted.
- Condition no.19 – relative to tree protection during construction works.

## 6.0 GROUNDS OF APPEAL

Two separate Third Party appeals have been submitted and their grounds of appeal are summarised separately below:

### 6.1 Bill & Maureen Kenny

McElligott Consulting Civil & Structural Engineers have submitted a Third Party Appeal on behalf of Bill & Maureen Kenny. Their grounds of appeal include the following:

- They are concerned about inconsistencies relating to Traffic Impact as presented in the traffic related reports. Taking into account the omission of the central 'school time' AM traffic volume from the TIA and the uncertainty/delay with the new bridge and by-pass the proposed development is seriously premature for Killaloe.
- They consider that it may not be possible to comply with Condition no.10 (relative to surface water disposal) of the Council's permission based on the lack of permeable surfaces and the site conditions post development.
- There is no guarantee that the car park serving the proposed development will not be submerged in storm water at certain times of the year.
- Only the front part of the site contains the appropriate zoning, the rear of the site is zoned low density residential.
- A supermarket is clearly not a 'shop' which is open for consideration in this latter zoning, it is clearly a 'supermarket'.
- The Council's grant of permission is highly questionable given that two major pieces of required infrastructure pertaining to Roads and Stormwater infrastructure are not in place at present to service the proposed development.
- They request the Board to reverse the Council's decision and refuse permission.

### 6.2 John Daly

Stephen Ward Town Planning and Development Consultants Ltd have submitted a Third Party appeal on behalf of John Daly. The grounds of appeal include the following:

- There are administrative shortcomings meaning that the planning application as submitted is invalid and they provide a discussion relative to these issues.
- This land is shown as a wayleave but should have been included within the red line as without this connection the development cannot be built.

- The site location map submitted with the application has failed to include the land necessary to the development for the purposes of laying new pipework to the public sewer on the R463.
- The site is within the curtilage of a P.S (The Deanery) and that public notices are defective in this regard. The Archaeological and Architectural Heritage Assessment submitted is not thorough and should be considered inadequate.
- The proposed development would fundamentally and adversely impact upon the setting of that structure. The drop in land levels between the sites will highlight the inappropriateness of the development.
- They understand that the site is being sold to Aldi subject to planning and that they are not the owners at this stage. They request that the Board investigates this and requests that the applicant provides details of his legal interest in the lands.
- In many respects the PA has erred in its assessment of the proposal is a material contravention of the land use zoning of the site, which is commercial and low density residential.
- The proposed development would not present a natural extension of the town core of Killaloe and this type of extension was not envisaged by the LAP.
- There is a significant shortfall of carparking spaces and this would lead to endangerment of public safety and interference with the free flow of traffic in the area.
- The proposed development will necessitate the removal of a number of on-street parking spaces. To attach a condition requiring a percentage of on-site spaces to be reserved for public parking is not enforceable.
- The DoAHG raised a number of concerns and requested further information in terms of the extent and curtilage of the Deanery building which was not requested by the PA.
- The proposed development is at variance with a number of policies and objectives contained within the East Clare LAP and the Clare CDP and associated Retail Strategy. A detailed assessment is had relative to these policies and the impact of the proposed development.
- The Retail Impact Assessment is considered deficient in many respects and details are provided of this including failure to include a sequential test.
- There is no capacity in Killaloe for the net increase in convenience floor area proposed. They include a Table to demonstrate the RIA and revised assumptions.
- The Traffic Impact Assessment is considered to be deficient as the traffic survey undertaken is not adequate. The AM peak is not included in the analysis. They are concerned about the impact on traffic of the early hours of opening.
- The development is lacking in design and layout quality. There are serious concerns about this and it is considered that a higher quality design that addresses the street frontages is merited.
- They set out the key principles of urban design relative to retail development (as per DoAHG 2012 Guidance) and include an appraisal as to how the current scheme is lacking in design quality.

- Clarification is needed in respect to wastewater treatment plant capacity. They refer to Section 3 of the East Clare LAP in this respect.
- Given the number of shortcomings and concerns set out there is no justification for the development as proposed. They are concerned that it will be difficult to implement some of the conditions and provide details of these.
- The proposed development is in material contravention with the land use zonings and specific objectives of the CCDP and the LAP, it would endanger public safety by reason of traffic hazard and cause a serious negative effect on a PS 'The Deanery' its setting and character. It would not therefore be in the interests of the proper planning and sustainable development of the area and they ask the Board that permission be refused.

## 7.0 RESPONSES TO GROUNDS OF APPEAL

### 7.1 Clare County Council

This includes regard to the locational context of the site and planning history. Their response to the grounds of appeal includes the following:

- The front part of the site is zoned commercial, the rear low density housing.
- They have regard to Table 5 Indicative Land Use Zoning Map and note that retailing comes under the category of 'shop'. They consider that the proposal is acceptable in principle on the designated zoning on this edge of centre site and is consistent with planning policy.
- They note that the Deanery a P.S is to the east of the application site and this was identified within the development title and the newspaper notice.
- Consideration was given to the assessment of the Deanery. The use as car parking in closest proximity provides little in the way of visual disorder.
- The development requires an upper figure of 116 spaces. Provision has been made for 122 spaces including 8 spaces dedicated to people with disability. The parking provision can also be used by the public. Cycle stands have also been provided close to the entrance which is considered acceptable.
- The proposed development is acceptable in principle on this site proximate to and will provide a natural extension to the town centre core. The proposal is consistent with planning policy and objectives.
- The RPG 2012 sets out: *the planning system should not be used to inhibit competition, preserve existing commercial interests or prevent innovation.*
- The RIA submitted identifies the catchment area/population, expenditure available and assesses the performance of retail centres within the catchment. It has identified that there is a serious leakage of convenience expenditure in this area, and this proposal will help address same.
- They request the Board to uphold this permission.

### 7.2 First Party

John Spain Associates has provided a response on behalf of the First Party to the Third Party grounds of appeal. This includes the following:

- The subject site is primarily zoned for commercial and low density purposes within the East Clare LAP 2011-2017 and located directly adjacent to the retail core of the town as identified within the Mid-West Retail Strategy.



- It is located directly adjacent to the town centre and is linked to the Main Street core via Carrig's Lane.
- It will expand the retail offer in the town and clawback trade from the catchment area.
- The proposal is plan led and is in accordance with planning policies and guidelines and the proper planning and sustainable development of the area.
- The nature of these appeals is anti-competitive from other commercial retailers in the town. No submissions have been made by local residents. The RPG does not seek to prevent competition.
- Their client is willing to comply with the requirements of the conditions in the Council's decision.
- They have regard to site boundaries and provide no change is shown in the red line boundary but that the revised plans show the boundary with more clarity.
- They provide details on the proposed infrastructural arrangements for connection to services.
- They note that as part of the legal contract of sale of the application site to the applicant, the applicant maintains a wayleave for connection to services along the R463 Regional Road.
- The proposals for connection to the surface water drainage are still subject to the agreement of Clare Co.Co. They have regard to Condition no.2 of the Council's permission and provide that the applicant is willing to comply.
- They have regard to the Development Management Guidelines which enables conditions to state points of detail and to Section 34(4) of the P & D Act 2000 (as amended) in this respect.
- They provide that they have the necessary legal interest in the site for the purposes of making this application and implementing this permission, and they include correspondence to this effect in Appendix 2 of their response.
- The description of development in the public notices in respect of the application clearly identifies that the application site lies to the west of a P.S The Deanery. Clare County Council has deemed the application to be valid.
- The subject site does not form part of the existing curtilage of the P.S. and they provide details to support this.
- They note the dual land-use zoning in the East Clare LAP for this site. The store is to be sited in the commercial zone of the site.
- They have regard to the use as 'shop' and the use as 'supermarket' relative to the land-uses and consider that the proposed development is fully in accordance with the zoning objectives for the site and that the issue of material contravention relative to this or to the ancillary parking area does not occur. They note the entire application site is zoned for future development.
- They submit that the proposal would not result in a disproportionate 'pull' of the town centre, rather it would result in a natural extension to and consolidate the proximate retail core.
- Accessibility will be further enhanced by the provision of a pedestrian crossing on Abbey Street and the note Condition no.4 of the Council's permission.

- The site was specifically identified by Clare Co.Co. as an appropriate location to accommodate retail development of the format proposed.
- It is important to reserve these lands for possible commercial and/or business uses and redirect other uses where it is considered that such uses would be more appropriately sited within other land zoning categories.
- They have regard to carparking and note the public parking area is to be located within the commercial zoning.
- The application site presents a unique opportunity to facilitate additional convenience floorspace within the town at a location adjacent to the retail core. It is fully in compliance with policies and objectives.
- The proposed development will help revitalise the town centre and provide an anchor retailer to assist small retailers and bring more shoppers to Killaloe. It is an appropriate scale of development for the town and will enhance the overall attractiveness of Killaloe as a retail destination.
- The site is the only site which is zoned or part zoned for commercial development adjacent to the town centre.
- As the site is located proximate to the town centre, those parking standards are applicable. They provide that the level of parking proposed is in compliance with the Clare Co.Co. Parking Standards.
- Based on recent and existing Aldi stores the number of parking spaces proposed is sufficient. A justification proposed is set out in the TIA and attached as Appendix 4 of their response to the appeal.
- Visibility splays have been shown on the revised drawings. The 122 parking spaces to be provided on site include the provision of public parking.
- In response to the comments of the DoAHLG they have included a Report by John Cronin Associates as Appendix 3 to this appeal response.
- They consider that archaeological testing is addressed by Condition no.7 of the Council's permission.
- This Report also has regard to Architectural Heritage and they note Condition no.6 relative to the screen boundary wall between the site and P.S. They consider that views to and from the Deanery are limited.
- The proposal is consistent with the specific objectives of the Clare CDP and the East Clare LAP and seeks to improve convenience shopping in Killaloe.
- As shown on the Land use zoning Map a significant proportion of land is zoned for housing within the town.
- They provide a detailed discussion regarding the impact of the proposal on the retail provision in the town and consider that it is compliant with retail planning policies and objectives.
- They also provide that no other suitable sites are available in the town centre area having regard to the sequential test. The proposed development is planned and fully compliant with the sequential test.
- Table 1 provides a list of similar towns in Ireland where Aldi Stores are provided as part of a wider convenience retail mix.
- In accordance with the RPG 2012 it is not necessary to demonstrate capacity where a development is in accordance with the policies and objectives of the relevant Development Plan and Retail Strategy. They have regard to the RIA

and consider that in view of location additional retail impact studies are not required.

- There is sufficient capacity in the area as noted on Table 5.1 of their response to accommodate the proposed development.
- They have regard to the appellant's assumptions concerning a deficit in capacity for the proposed development and consider that the relevant test is diversion from the town centre as a whole.
- They provide that the provision of additional retail floorspace at this location offers the potential to enhance rather than detract from the vitality of the town.
- A detailed response prepared by Transportation Planning Services is attached as Appendix 4 of the appeal response. The impact of the proposal on the existing road infrastructure at Abbey Street is considered in detail within the TIA submitted in conjunction with the planning application.
- Appendix 5 provides a detailed response relative to the design and layout quality. The proposed design is site specific and is similar to other such stores that have recently been permitted by ABP.
- Downes Associates Consulting response to the issues regarding the wastewater plant capacity is included in Appendix 6. A detailed response regarding stormwater disposal is also included.
- In response to concerns about the Council not requesting further information at application stage they have regard to pre-application consultations and the detailed information submitted at application stage. They consider the P.A had sufficient information to make a decision in this case. They also note that no First Party appeal was submitted and that the applicant is happy to comply with the terms of the Council's decision.
- They conclude that the proposed development is sustainable, plan led and fully compliant with planning policy and the proper planning and sustainable development of the area.

### **7.3 Third Party Responses to First Party:**

#### **7.3.1 Bill and Maureen Kenny**

A response has been submitted by Liam Mc Elligott on their behalf and this includes the following:

- It is not the case that there is a direct connection from Carrig's Lane to Main Street, Killaloe. It is in the main used by a small group of property owners and there is only very limited capacity for traffic. They include photographs showing the lane and having regard to access to private property.
- It is their view that in view of the existing traffic congestion experienced in the town that until such time as the proposed new bridge and bypass are operational the proposed development is premature for Killaloe.

#### **7.3.2 John Daly**

A response has been submitted by Stephen Ward on behalf of John Daly and this includes the following:

- Killaloe is already adequately catered for by a good quality mixed use shopping centre at the Convent Hill centre.
- The County Retail Strategy concludes there is no requirement for additional convenience retail in the county and specifically refers (Section 6.47 – noted in the Policy Section below) to Killaloe.
- It is impossible to rationally justify an additional 1,140sq.m net additional convenience retail floorspace in a small market town such as Killaloe.
- There is a shortfall in parking provision through the proposed foodstore in itself and there is no possibility of provision of public parking spaces.
- It is without foundation to justify the development on this land use zoning as plan-led on a land use zoning that was never intended to accommodate the proposed development.
- They query the validity of the application. This also has regard to the wayleave shown in yellow. They consider that it should have been shown in red as it is necessary to the development for the purposes of laying pipework to the public sewer on the R463.
- The applicant has not sought explicit permission as part of the development description to carry out works that are shown as wayleave. These are private lands outside of the development.
- They are concerned that the site forms part of the curtilage of the P.S and that the approach adopted by the applicant is 'project-splitting'. They have regard to the Architectural Heritage Guidelines relative to the issue of the curtilage and P.S. They understand that the Deanery and the application site are under the same ownership.
- They are concerned that the proposed carparking is in material contravention of the zoning objective for 'low density housing'.
- They submit that in contrast to the Convent Hill Shopping Centre, this is a standard design.
- There is no intent in the LAP, the Retail Strategy and Clare CDP to provide a supermarket use on this site, there is no zoning to support this.
- There is a carparking deficit and it should be assessed as being outside the town centre core. On-street parking lost (16no. spaces) due to the visibility splays have not been provided for.
- They are concerned about the impact on the P.S and consider that the photomontages submitted have not been verified and should be discounted as part of the assessment of this proposal.
- Planning policy does not support a second supermarket in a town of this size. Larger supermarket developments can be better accommodated in Tier 1 and Tier 2 towns within the regions hierarchy.
- They reiterate their view that an assessment of trade diversion should have been a fundamental part of the retail assessment. They consider that the RIA is deficient by not containing a sequential test.
- In addition to administrative and procedural deficiencies with the application they remain strongly of the view that the proposed development is in material contravention of the zoning objectives and retail policies of the Development Plan as they affect the application site and the town of Killaloe, would

negatively impact on the P.S, including the character and setting and would by reason of inadequate on-site car parking provision and loss of public on-street parking endanger public safety by reason of traffic hazard and interfere with the free flow of traffic in the area.

## **8.0 Further Submission from Prescribed Body**

### **The Department of Arts, Heritage and Local Government**

They have regard to their previous submission and they are concerned that it has not been ascertained by way of a Further Information request by the P.A as to what is the extent of the curtilage of the Protected Structure. A Section 57 declaration has not been sought. If the development site is indeed within the protected curtilage the application is invalid. They are concerned that the visual assessment which took place including photomontages did not adequately assess the situation and that the visual impact needs to be better assessed by conservation professionals. They are also concerned that the impact of the 2.4m boundary wall to be provided (Condition no.6 of the Council's permission) has not been properly assessed. They note that they recommended a reduction in carparking along the eastern boundary having regard to landscaping and the setting of the P.S. They also refer to Condition no.18 (lighting) and consider that the visual impact of this needs to be assessed. They provide that such detail needs to be worked out in co-ordination with the landscape architect and conservation advisor.

## **9.0 POLICY CONTEXT**

### **9.1 National Policy**

The Planning and Development Act 2000 (as amended) requires the Core Strategy to demonstrate that in setting out objectives regarding retail development in the plan, the Planning Authority has had regard to any Ministerial guidelines that relate to retail.

### **9.2 Retail Planning Guidelines for Planning Authorities (April 2012)**

- The government's Retail Planning Guidelines (DECLG, 2012) require retail development to be appropriate to the scale and function of the settlement or part of the settlement in which it is located; be plan led; and promote city/town centre viability through a sequential approach to development, with the overall preferred location for new retail development within city and town centres.
- The aim of the Guidelines is to ensure that the planning system continues to play a key role in supporting competitiveness in the retail sector for the benefit of the consumer in accordance with proper planning and sustainable development. In addition, the planning system must promote and support the vitality and viability of city and town centres thereby contributing to a high standard of urban design and encouraging a greater use of sustainable transport.

- Previous additions of these guidelines in 1998 and 2005 have made a positive contribution to planning and urban development in Ireland by establishing and progressively developing a policy framework that enabled the expansion of the retail sector while also encouraging a new focus on managing city and town centres and driving their proper planning and sustainable development. As a result, many city and town centres have witnessed renewal and investment in their retailing functions in recent years but more needs to be done to consolidate this process.
- **Section 4.11 refers to - Assessment of Specific Categories of Retail Development**

[Note: The distinction between ‘discount stores’ and other convenience goods stores which was contained in the 2005 Retail Planning Guidelines will no longer apply].

### 9.3 Retail Planning Design Manual (April 2012)

- The *Retail Planning Guidelines 2012*, and the *Retail Design Manual*, are intended to provide a planning framework for future development of the retail sector in a way which meets the needs of modern shopping formats while contributing to protecting, supporting and promoting the attractiveness and competitiveness of city and town centres as places to live, work, shop and visit.
- This *Retail Design Manual* therefore sets out key principles of urban design which might form the framework for policies to promote quality design in development

### 9.4 Regional Planning Guidelines – Mid-West Region 2010-2022

These refer to the Retail Strategy for the Mid-West Region, which identifies the main strategic retail centres within the region, recommending where major retailing development should take place.

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.

Killaloe is 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).*

## 9.5 Clare County Development Plan 2011-2017

The core strategy for the county is set out within Chapter 2 of the CDP. Section 2.44 refers to Retail Planning - Table 2.11 provides the Retail Hierarchy for the County. This includes Killaloe as a Tier 3 Level 2 small town.

Section 3.4 contains the objectives for small towns. Section 6.12 provides: *It is an objective of Clare County Council to harness the economic potential of retail development at appropriate locations throughout the County.*

Chapter 7 refers to Retail Development and provides for a holistic approach to the vitality and viability of retail provision in the County.

Section 7.3.2 refers to Core Shopping Areas and it is noted these are shown on their respective LAP's.

Section 7.4.4 has regard to town centres including Killaloe where their primary objective is to improve the supply of convenience goods provision and to enhance their provision in town centres i.e: *The primary objective for these centres is to enhance the quality of their convenience goods provision where necessary, by the construction of modern food store outlets which in turn reduces the propensity for local shoppers to travel to larger supermarkets for weekly/monthly shopping trips.* Section 7.5 refers to the Development Plan Objectives for retail in these areas. Section 7.6 is concerned not to have an over concentration of one type of retail unit within the town.

Chapter 18 refers to Architectural and Archaeological Heritage.

Volume 4 includes the Record of Protected Structures.

Chapter 21 refers to Land Use Zoning and S. 21.4 provides a description of the Nature of the Zonings including Commercial and Low Density Residential.

- 9.5.1 Volume 6 of the Clare CDP contains the Retail Strategy for the Mid-West Region 2010-2016. As per S1.10 it is noted that this Retail Strategy primarily provides a strategic assessment of retailing throughout the Mid-West and does not directly address individual sites and/or development proposals. While Ennis and Shannon are promoted as the main towns for larger scale retail development, it is provided that: *As Clare is predominantly a rural county, the Strategy stated that it is important that the policy framework encourages retail development and enhancement across the County in accordance with the settlement hierarchy.* Tables 2.7/6.1 provides the Mid-West Shopping Hierarchy and it is noted that Killaloe/Ballina is described as a tier 3 level 2 town centre.

Section 3.32 relates to Other Small Towns in the Mid-West and provides: *The small towns in the Mid-West do not have big enough catchment areas to sustain higher order comparison goods shopping and have to re-invent themselves as 'daily shopping' venues encompassing uses such as convenience, speciality and retail services.* S.3.33 provides: *Many of the town centres have retained their architectural and historical integrity and it is only a short step to improving the retail offer, by*

*gearing it more to 'daily shopping', focused on the local market, which is essentially where the spend will come from.*

Section 6.47 refers to Killaloe relative to the Retail Hierarchy and notes: *Adare, Ennistymon and Killaloe offer the best range of convenience products, and also benefit from their tourist and visitor attraction, which allows them to support a wider range of comparison goods than would be justified by their local catchment population.... 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 Killaloe (Supervalu).* Section 6.48 provides the Retail Strategy for town such as Killaloe and regard to this is included in the Assessment below.

Section 6 provides further details relative to the attributes and facilities of the town. This includes: *The town provides a more expansive range of comparison shops than would be expected from its size, especially in comparison with other centres in County Clare. Many of the outlets are pitched quite upmarket. Apart from the Super Valu, there is limited other convenience provision, and the service provision is also largely aimed at the local market. Given its location and function, the provision of food and drink outlets also seems limited and again aimed at the local market.*

Of note is Para. 7 of the Executive Summary which includes: *Given the adverse economic conditions, it is estimated that many of the retailers across the Mid-West are currently under-trading, and therefore must capture some of the future growth in spend in order for them to return to previous levels of trading viability.*

Para.14 provides: *Due to the Mid-West already being over-shopped, the huge scale of the retail development pipeline and the limited forecast growth in consumer retail expenditure per head through to 2016, the quantitative assessment indicates that there is no need for any further retail floorspace provision in the region as a whole through to 2016 (the end date of the new Retail Strategy).*

## **9.6 East Clare Local Area Plan 2011-2017**

Section 1.10 refers to Land Use Zonings. Having regard to the Commercial zone it is provided: *Retailing is open for consideration in this area, provided that an appropriate sequential test is carried out and that the lands are demonstrably the optimum location for the proposed development. The development must not detract from the vibrancy and vitality of the identified town centre and the development must be in accordance with the Retail Strategy for the Mid West Region 2010-2016 (Clare County Development Plan 2011-2017 – Volume 6), or any subsequent strategy.*

The Low Density Housing Objective provides: *The use of land to accommodate a low-density pattern of residential development, primarily detached dwellings. The underlying priority shall be to ensure that the existing character of the settlement/area is maintained and further reinforced by a high standard of design. Proposed development must also be appropriate in scale and nature for the area in which they propose to locate.*

Table 5 provides the Indicative Land use zoning matrix.



Section 3.1 refers to small towns and this includes the town of Killaloe. This includes regard to the Heritage, Tourism and Retail Objectives for the town. The latter objectives are provided in accordance with the provisions of Retail Strategy for the Mid West Region 2010-2021.

Having regard to Housing it is noted: *Housing Lands have been identified within the town of Killaloe as being suitable for residential use. There is limited scope for further residential development within the town until such time as the waste water treatment plant serving the area is upgraded.*

#### **9.7 Design Manual for Urban Roads and Streets 2013**

The DMURS document must be taken into consideration in examining planning applications. Within the DMURS document the application of the principles to existing streets must require a flexible approach. The document calls for a safer more attractive and vibrant street and the creation of a permeable network from a multi-layered process. The process should begin with a site analysis that identifies any constraints the proposal may have on the existing network, including points of access, major destinations and strategic connection (existing and proposed). The street hierarchy in terms of trips generated, access etc.

#### **9.8 Architectural Heritage Protection Guidelines for Planning Authorities issued by the DoEHLG in 2004/2011 –**

Section 1.3.1 (f) provides: *Where a structure is protected, the protection includes the structure, its interior and the land within its curtilage and other structures within that curtilage (including their interiors) and all fixtures and features which form part of the interior or exterior of all these structures. All works which would materially affect the character of a protected structure, or a proposed protected structure, will require planning permission.*

Section 2.2.2 refers to a P.S and land within its curtilage. S.2.9.1(c) relates to whether the curtilage of a P.S has been determined.

S.4.2.1 notes the Role of ABP i.e: *Under Section 13 of the Planning and Development (Amendment) Act 2002, any person to whom a declaration has issued under Section 57 (3), or a declaration reviewed under Section 57 (7) of the 2000 Act, may refer the declaration to An Bord Pleanála for review.*

Chapter 13 deals specifically with the Curtilage and Its Attendant Grounds and includes:

Section 13.1 refers to Determining the Curtilage i.e: *The notion of curtilage is not defined by legislation, but for the purposes of these guidelines it can be taken to be the parcel of land immediately associated with that structure and which is (or was) in use for the purposes of the structure. It should be noted that the meaning of 'curtilage' is influenced by other legal considerations besides protection of the architectural heritage and may be revised in accordance with emerging case law. Also S.13.1.4 provides: Where the curtilage has not previously been identified, a planning authority should take the opportunity to identify its extent at the time of making a declaration in respect of the protected structure.*

Section 13.2.1 provides: *The attendant grounds of a structure are lands outside the curtilage of the structure but which are associated with the structure and are intrinsic to its function, setting and/or appreciation. In many cases, the attendant grounds will incorporate a designed landscape deliberately laid out to complement the design of the building or to assist in its function.*

Section 13.7.1 provides: *It is essential to understand the character of a site before development proposals can be considered. Section 13.7.2 has regard to the issues to be*

considered including (b) *Would the proposed works affect the relationship of the protected structure to its surroundings and attendant grounds?*

Section 13.7.7 refers to carparking and provides: *Careful consideration should be given to the location of the car park to avoid damage to the character of the structure or its attendant grounds.*

Section 13.8.3 provides: *Large buildings, sometimes at a considerable distance, can alter views to or from the protected structure or ACA and thus affect their character. Proposals should not have an adverse effect on the special interest of the protected structure or the character of an ACA.*

## **10.0 ASSESSMENT**

### **10.1 Principle of Development**

The Retail Strategy for the Mid West Region 2010-2016 as incorporated in the Clare CDP 2011-2017 identifies Killaloe as a Tier 3 level 2 town in the retail hierarchy of the region. Section 3 of the East Meath Local Area Plan has regard to the policies and objective for the heritage town of Killaloe. These include in accordance with the provisions of Retail Strategy for the Mid West Region 2010-2016 (Section 6.48), the following relevant strategy for retail development in Killaloe:

- *To support the town as an important centre for the provision of convenience goods and retail services.*
- *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 town centre.*

These objectives relative to retail provision are reiterated in Section 7.5 of the Clare CDP 2011-2017 and Section 3 of the East Clare LAP 2011-2017 which refers specifically to Killaloe. This includes the land use zoning map showing the Core Shopping Area of Killaloe. It is submitted that Killaloe is already adequately catered for by good quality mixed use shopping in the town and by the centre at Convent Hill on the opposite side of the road to the subject site. In this instance the site while outside and to the south of the core area is immediately adjacent to the town centre with the compact and historic town core area located on the opposite side of Abbey Street. The front portion of the site along Abbey Street is zoned for commercial development, while the southern/rear portion is zoned low density residential development. There is concern having regard to the zoning as to whether an Aldi discount foodstore should be considered in the same way as a retail shop. The RIA provides that the discount foodstore is primarily located within that portion of the site which is zoned for commercial purposes within the East Clare LAP. This submits that the proposed development allows for direct connectivity with the core retail area of Killaloe.

Therefore it needs to be considered whether the proposed 'Aldi' discount store is not out of context having regard to the land-use zoning issues or would materially contravene the zoning designations of the LAP. The Third Party consider that the large scale commercial building and associated car parking would not comply with the zoning objectives particularly relative to low density housing and would constitute a material contravention of the LAP. The First Party provide that the zoning objectives are intentional to ensure that low intensity development is proximate to the

Deanery so as not to impact adversely on its character and setting. The other significant issue is the impact of the scale and layout of the proposed retail development and associated parking on the setting, curtilage and attendant landscaped grounds of The Deanway P.S. which is located on the southern approach to the town.

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. It is further provided that these lands would be more suitable for a Masterplan led approach that would have to respect the character and setting of the P.S, the Deanery rather than a more piecemeal approach as shown in the current land use zoning. Regard is had to these issues and relative to the design and layout further in this Assessment below.

## 10.2 Land use zoning and Material Contravention

There is concern that to allow a supermarket development and large-scale surface car parking on lands zoned low-density residential is a clear material contravention of the zoning objective of the East Clare LAP as it affects this site. It is noted that the LAP provides for two distinct land uses across the site, yet only one land use is proposed. There is concern that this will reduce the availability of residentially zoned land in the town. It is also provided that the commercial zoned part of the site is the only such type of land-use proximate to the town centre core and was originally intended to accommodate the public carpark (Ref.13/8003 – Part 8 refers).

The Third Party notes that the low density residential zoning allows for a ‘shop’ but does not reference a ‘supermarket’ as a use either permitted or open for consideration. They consider that the proposal breaches a number of LAP policies and objectives concerning the balanced and sustainable growth of retail in the town of Killaloe. Appendix 6 of the Clare CDP and Table 5 of the East Clare Plan 2011-2017 sets out the Indicative Land Use Zoning Matrix. Retailing comes under shop (there is no distinction made here as to the type of retailing) which is normally permitted within the commercial land use zoning and open to consideration in the low density residential development area. However, it is noted that while a car-park is permissible in the commercial zoning, it is not normally permissible in a low density residential development area. They consider that the two zonings referring to this site are distinct and cannot be deemed to be interconnecting and mutually reinforcing.

Regard is had to interpretations and definitions. Shop is defined in the Part 2 Article 5 of the Planning and Development Regulations 2001(as amended) i.e. ‘shop’ means a structure used for any or all of the following purposes, where the sale, display or service is principally to visiting members of the public.. Supermarket is defined separately i.e. “supermarket” means a self-service shop selling mainly food. Annex 1 of the Retail Planning Guidelines provides a Glossary of Terms these include Types of Retail Floorspace. Section A1.3 refers to Types of Retailing and this includes: **Supermarket** Single level, self service store selling mainly food, with a net

*retail floorspace of less than 2,500 m<sup>2</sup>.* The Aldi store would fall into this category. It is noted that the distinction that occurred between 'discount stores' and other convenience goods stores which was contained in the 2005 Retail Planning Guidelines no longer applies. Section A1.2 refers to the types of retail goods i.e. comparison and convenience.

Section 4.11.5 of the RPG refers to *Retailing in Small Towns and Villages* and notes the need to retain a variety of shops in these locations. This provides: *In general there should be a clear presumption stated in favour of central or edge-of-centre locations for new developments.* Section 4.11.6 refers to *Local Retail units* i.e. *corner shops or shops located in local or neighbourhood centres serving local residential districts perform an important function in urban areas.* Thus the RPG draws a distinction between local retail units and the larger supermarket premises.

The First Party provides that the proposed commercial development is in accordance with the land-use zonings and notes that the area of the site where it is proposed to site the supermarket is zoned commercial and that a 'shop is open to consideration in the low density housing area. The entire application site is zoned for future development in the LAP. They submit that the proposal is fully in accordance with the zoning objectives pertaining to the site and is the only area which has the potential to accommodate the expansion of town centre uses. The parking area is part of/ancillary to the commercial proposal and should thus not be considered as a separate entity. They consider that the provision of parking in conjunction with the main retail use is not a material contravention of the LAP.

Section 34(6) of the Planning and Development Act 2000 sets out the procedure under which a planning authority may decide to grant permission for such a development. Section 37(2) of the 2000 Act provides the constrained circumstances in which the Board may grant permission for a material contravention. These include whether the development is of strategic or national importance, where the development should have been granted having regard to regional planning guidelines and policy for the area etc, where there are conflicting objectives in the Development Plan or they are not clearly stated, or permission should be granted having regard to the pattern of development and permissions granted in the area since the making of the Plan.

In this instance the proposed development is clearly not of strategic or national importance, there is no policy or guidelines advising that such a development should be permitted in this area. The Third Party submit that the proposal clearly does not comply with the land-use zoning objectives of East Clare LAP for Killaloe i.e. having regard to the low density residential element of this site. They consider that there are no grounds either statutorily or otherwise that would justify a material contravention of the LAP in this instance. Having regard to the above I would be concerned that

there may be an issue relative to material contravention relative to the provision of this commercial use and associated the parking area on that part of the land zoned for 'low density' housing. Also having regard to this it is noted that a material contravention has not been passed by the Council or advertised as such. In such cases a decision to grant permission cannot be made unless a resolution is passed by members requiring that such a decision be made in accordance with Section 34(6) of the 2000 Planning Act as amended.

### **10.3 Validity of the Planning Authority decision**

The Third Party have raised concerns about the validity of the application and regard is had to the Planning and Development Regulations 2001-2015. They have raised a number of issues in this regard, and relative to incomplete ambiguous information being submitted and inadequate description of development on the public notices and in the assessment by the Planning Authority. They consider the details submitted relative to the description of the development are flawed and question the validity of the application. They query that the wayleave is shown in yellow and provide that it should have been included in red as part of the application site. They consider that the application has failed to include the land necessary for the development for the purposes of laying new pipework to the public sewer on the R463. These concerns have been noted and I am of the opinion that this is a procedural matter for the P.A. to address, a determination on whether the P.A decision is valid or not, would not be appropriate to make here. However it must be noted that this application is now being considered on its merits de novo by the Board. Regard is being had to the documentation submitted.

### **10.4 Ownership issues**

The issue of ownership of the lands has been raised by the Third Party. They request ABP investigates this and requests the applicant to provide details of his legal interest in these lands. They provide that in the event the applicant is purchasing the site subject to planning permission then the applicant must be declared invalid. Regard is had to Article 22(2)(g) of the Planning and Development Regulations as amended i.e: *where the applicant is not the legal owner of the land or structure concerned, the written consent of the owner is required to make the application.* They provide that in the event of a grant of planning permission the applicant cannot implement this without owner of the land's consent.

The First Party response to the appeal provides that Aldi Stores (Ireland) Limited 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 between them and Representative Body of the Church of Ireland in May 2015. Documentation in Appendix 2 of their response provides details stating that the client has the necessary legal interest to both make the planning application and implement the permission if granted.

It is of note that the issue of ownership is a civil matter and I do not propose to adjudicate on this issue. I note here the provisions of S.34(13) of the Planning and

Development Act: “A person shall not be entitled solely by reason of a permission under this section to carry out any development”. Under Chapter 5.13 ‘Issues relating to title of land’ of the ‘Development Management - Guidelines for Planning Authorities’ (DoECLG June 2007) it states, inter alia, the following: “The planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution in the Courts...”

## 10.5 Regard to Retail Impact Assessment

The aim of the Report is to assess the proposed development in the context of the planning policy framework for Killaloe and the likely retail impact of the proposed development on the vitality and viability of the town centre. As shown on Fig.6.1 the subject site is adjacent to and south of the retail core of the town. It would be characterised as an ‘edge of centre’ site within the context of the RPG 2012. An Edge-of Town location is described as: *A location within easy walking distance (usually not more than 300 – 400 metres) of the primary retail area of a town centre, and providing parking facilities that serve the centre as well as the new development thus enabling one trip to serve several purposes.* Carrig’s Lane at the opposite side of Abbey Street provides a direct pedestrian connection to Main Street. The RIA provides that it is envisaged that if the site is developed that it will form part of the retail core. Fig.2.1 includes an aerial photograph showing the site in the context of the mixed use commercial area of the town centre to the north and the residential to the west and south. The Deanery P.S is located on lands adjoining to the east.

It is submitted that the RIA is deficient and fails to provide a sequential test, much of the data is insufficient and there is no assessment of trade diversion. The RPG 2012 refers to large convenience goods stores and their preferred location in the town centre and the need for the sequential test to be carried out to find the most preferable sites. The order of priority for the sequential approach is to locate retail development in edge of centre or out of centre locations where all other options have been exhausted. There is a need to protect and enhance the vibrancy and vitality of town centres. Where suitable sites do not exist within the town centre areas, edge of town centres within easy walking distance of the town may be considered. It is provided that other lands zoned for commercial and mixed use development in the LAP are located further away from the centre of the town, therefore this site is sequentially preferable.

The RIA provides that Aldi has been seeking suitable sites for years. No sites which are suitable, available or viable to accommodate the proposed development were identified within the retail core of the town to accommodate the format of retail floorspace proposed within the subject application form Aldi searches or consultation with Clare Co.Co. It is noted that the historic town centre is compact and is defined by narrow plots which give the town its distinctive character. The streets are narrow and congested. They also provide that the acquisition of a property substantial enough to accommodate the proposed development within the area would be extremely difficult. The RIA concludes that the application site is the most suitable to accommodate the proposed development. It considers that the proposed

development is plan led and fully in compliance with the sequential test. This is refuted by the Third Party who considers that having regard to the dual land-use zoning that this site was never intended to accommodate a convenience retail store of this scale and parking area.

The RIA provides that the proposed development seeks to address the lack of retail floorspace in Killaloe through the diversification of the retail offer of the town. They provide an analysis of convenience shopping trends. The survey results (based on 2009 figures) show that leakage occurs i.e only 37.1% of respondents who live in the catchment area carry out their main convenience shopping in that zone. They note the importance to the local community of shopping near home and consider these figures remain relevant as little by way of additional convenience retail floorspace has been provided within Killaloe in the interm period. They provide that the proposed development seeks to accommodate an additional convenience retail unit within Killaloe directly adjacent to the retail core of the town and is fully in accordance with the retail policies and objective of the Development Plan. It is submitted that this proposal will diversify the retail offer of the town and assist in clawing back existing convenience expenditure leakage from the catchment area as identified within the Retail Strategy for the Mid-West Region. Also, that the proposed development will increase overall competitiveness and strengthen the commercial core of the town centre, improving the retail destination of the town.

#### **10.6 Regard to Retail Impact on Vitality and Viability of the Town Centre**

The traditional provision along Main Street/Church Street has been supplemented by the development of the Convent Hill shopping centre to the rear of properties fronting the south side of Main Street. The Third Parties are concerned about the retail impact on established businesses in the area and consider that town is at present adequately served by two supermarkets (Supervalu on Abbey Street, the anchor store for the Convent Hill Shopping Centre opposite the site and Heaney's Costcutter 'The Green'. Reference is also made to McKeogh's commercial development which includes a retail element in close proximity on the opposite side of the river in Ballina, Co. Tipperary and to other smaller retail outlets in the commercial core of Killaloe.

Section 7.3 of the Clare CDP notes: *The potential of retail outlets for generating footfall means that their location is critical. They have a major bearing on the health of town centres and the health of town centres have, in turn, a major impact on the vitality of their hinterland region.. Oversupply can result in negative returns and consequently higher vacancies.* The Third Party consider that this development would result in an over concentration of convenience retail to the south of the town centre and a disproportionate pull to this area of Killaloe and take the focus away from the main street. They also consider that the applicant has failed to demonstrate that the proposal which will result in a significant increase in convenience floor space in the town would not impact adversely on the vitality and viability of the existing town centre. They provide that the RIA is essentially a retail capacity assessment and makes no reference to trade diversion. They also consider that the RIA significantly overestimates the available expenditure for convenience goods. They submit that there is no spare capacity in Killaloe for a retail store of the size and type

envisaged and their figures show (in the Table in S.6.6.11) that the proposal would result in a deficit. It would considerably increase the net convenience floor area available in Killaloe and this is unwarranted and unjustified. Also, that the LAP planning policies are geared towards small scale retail developments in the town core and do not support additional convenience outlets when good quality ones already exist. The County Retail Strategy confirms that Killaloe is already provided by a good quality convenience retail outlet.

The First Party considers that the proposal would not result in a disproportionate 'pull' of the town centre rather a natural extension to and a consolidation of the town centre core. They submit that the existing character of development in the vicinity of the site is primarily commercial and the development of the site for retail purposes would form a natural extension to the retail core. The proposed development will enhance and strengthen the retail role and function of Killaloe town centre, while improving convenience shopping within the town. It will provide for a second anchor store (along with Supervalu) to assist small retailers and add to and increase the vitality and viability of the retail function of the town centre. They also submit that it will decrease leakage of retail expenditure from the town. In their detailed response to the grounds of appeal relative to retail impact they have regard to catchment area in Table 5.1. and consider that the population of this area is more than sufficient capacity to accommodate the proposed development. They provide that the provision of additional retail floorspace at this location offers the potential to enhance rather than detract from the vitality of the retail core.

Section 8.0 of the RIA provides a Qualitative Assessment having regard to the RPG 2012 to include a health check of the impact of the proposed development on the vitality and viability of Killaloe town centre. This notes the diversity of uses and the range of retail in the town. Comparison retailing in the town is primarily defined by independent retailers. The Mid-West Retail Strategy identifies a total of 1,006sq.m net of comparison floorspace within the town in March 2009. The RIA also notes that convenience floorspace is provided by the Supervalu and a range of local small scale retailers. Little by way of additional retail space has been added to the town since the arrival of Supervalu in 2005. Regard is had to vacant units within the town centre on Fig.8.1. It is provided that no significant large scale or derelict or vacant sites were identified within the town centre core. Also that the proposed development will strengthen the role and function of the town centre and will form part of the retail core when developed. They also include a Health Check Assessment for the connecting town of Ballina on the opposite side of the river in Co. Tipperary. This notes that existing convenience within Ballina includes McKeogh's Supermarket, a convenience store and newsagents.

A Quantitative Assessment is provided in Section 9.0 and Fig.9.1 provides a Catchment Area Map. In Table 9.7 the turnover of the proposed development is compared with the available expenditure on convenience goods in the catchment area in 2018. The proposed development would account for 22% of the total available convenience in the catchment area in 2018. It is provided that the total convenience net floorspace in the catchment area is 2,200sq.m. The RIA concludes



that there is more than adequate capacity in 2018 for the proposed development and that it will not have an impact of any significance on the existing retail provision in the catchment area. It concludes that there will be no adverse impact on the vitality and viability of Killaloe or any other centres within the catchment and thus it complies with the RPG 2012.

It is considered that the proposal will result in a significant increase in convenience floor space in an 'edge of town' location south of and adjacent to the town centre core. Having regard to the figures submitted it will also have an impact on the convenience retail provision in the catchment area. While a detailed sequential test has not been submitted it is noted that this is the closest 'commercially zoned' site to the town centre as shown on the East Clare LAP. However it is also noted that this site is currently greenfield and while adjacent to a P.S is also proximate to commercial development on the opposite side of Abbey Street. It is not located in the town centre commercial core, therefore the sequential test would apply. It is also noted that the retail core currently excludes this area and that there is no particular objective within the current LAP to specify such an expansion.

## **10.7 Design and Layout**

The application site has an area of approx.1ha. The proposed building is to be sited in the north western corner of the site. The gross floor area is given as 1,655sq.m. as shown on the Site Layout Plan this includes the warehouse storage area, staff facilities, bin storage area and ESB substation at the rear and the net retail floor area is 1,140sq.m. The main retail area of the store is shown as a rectangular building 50m in length and 22.8m in width. The layout shows that the access is to be provided from Abbey Street, and includes 122no. parking spaces to be provided to the east and south of the proposed store. Regard is had to access and parking issues in the relevant section below.

A Retail Design Statement which sets out to comply with the criteria set out within the Retail Design Manual 2012 has been submitted with the application. It has been prepared having regard to the 10 Design Principles set out in the Retail Design Manual and provides details under each of these headings and includes photomontages. It is provided that the layout of the proposed discount store comprises a non-standard retail unit which aims to address the site context. The building is located at the front of the site towards Abbey Street in order to provide strong linkages with the retail core of Killaloe and enhance connection between the site and Carrig's Lane which links to Main Street.

The proposed northern elevation provides the interface with Abby Street and includes a glazed area. The proposed entrance is from the north eastern corner of the building and will also be seen from Abbey Street and faces the carparking area. The building fenestration is broken up with a series of panels some cladded in natural stone and some painted smooth concrete panels. The building is single storey and c.6m in height. The panels vary in height to break up the long elevation and step back again to reduce the visual length of the building. The full height glazing to the front and part of the side elevation help open view into the store to give

a sense of life and public realm. The buildings position also helps screen the parking area to the rear. The loading bay and building services are also positioned to the rear to screen the activities of loading/unloading. It is provided that the proposed development has a contemporary design that is appropriate to this location and reflects the existing pattern of development in the vicinity of the site. Also, that the proposal incorporates elements of the existing stone boundary along the northern and western boundaries of the site.

The Third Parties consider that the development is lacking in design and layout quality and there are serious concerns with respect to the scale, massing and design of the development. It fails to present an active street frontage and its side elevations are overbearing. It is considered that a higher design quality is merited. This is in contrast to the Convent Hill Shopping Centre on the opposite side of the road where a number of the units address the Abbey Street frontage. They address each of the headings provided by the First Party relevant to the Retail Design Statement and consider that an objective analysis of the proposal's design and layout merits has not been provided. They do not consider that the provision of the retail development on this site will be a contextual addition to the town. The development imposes itself on the town rather than seeking to adapt to the context. It is lacking in contribution to its very sensitive setting adjacent to the Deanery P.S. and will present a dominant mono-use nature to the town and will not contribute to the vitality and vibrancy of the town centre. They are concerned that there is a lack of pedestrian permeability provided and there are no pedestrian links with the residential developments to the west and south. They contend that the development is lacking in civic design and adversely dominates and detracts from Abbey Street which is predominantly a residential street, but also with a fine urban grain of sensitively designed local shops. The height and massing of the proposed store on this elevated site, would be at odds with the surrounding built form.

Regard needs also to be had to associated signage and to its impact on the character and visual amenities of the area. Details of signage are included on the drawings submitted. A standard ALDI freestanding sign shown 5.4m high and 2.0m wide and 2.4m high is shown located close to the entrance to the store and will be seen from the Abbey Street entrance. It is noted that as shown on the elevations an internally illuminated sign is proposed on the south-eastern corner of the building, facing across the zoned open space area towards the junction between Abbey Street and the Limerick Road. Internally illuminated signage is also shown on the northern and eastern elevations so that the building can be seen from the surrounding area. It is considered important that a proliferation of signage is avoided. It is noted that as the building is on a higher level it will be seen from the Limerick Road and it is recommended that taking into account the sensitive siting relative to the protected structure, that if the Board decide to permit that it be conditioned that the proposed signage on the eastern elevation be omitted i.e. there be no signage on the eastern elevation facing the R463 Limerick Road.

Appendix 5 of the First Party response to the grounds of appeal provides a response by Deady Gahan Architects relative to design and layout issues raised. This provides

that the proposed Aldi design is based on a modern form and together with the proposed materials will create a contemporary building that will contrast with the vernacular traditional architecture of the area. They provide that the approach to new development is in accordance with the objectives set out in the Retail Design Manual 2012 and will add to the vitality and diversion relative to the built form of the more traditional buildings in Killaloe. Having regard to these issues it is considered that the proposed building is functional and designed to relate to its use. While relatively standard, the proposed design is of a higher quality than some of the more functional stores that are situated on less sensitive sites. It is recommended that if the Board decide to permit that it be conditioned that details of external finishes be submitted.

## **10.8 Impact on Architecture and Archaeology**

Killaloe is designated as a Heritage Town due to the extent of important historical buildings preserved within the town. The centre of the town of Killaloe has been designated as an Architectural Conservation Area (ACA). The town is distinguished by its attractive compact townscape, the quality, quantity and diversity of its historic buildings and by its riverside setting. The First Party provide that while the application site is not located within the ACA, the development has been carefully designed having regard to its proximity to the ACA. A number of photomontages have been submitted to illustrate the visual effect of the proposed development. They provide that the proposal has been sensitively designed in order to respond to the architectural designations pertaining to the area through the design and siting of the proposal and the incorporation of the existing stone wall as a part of the proposal.

An Archaeological and Architectural Heritage Assessment has been submitted with the application. This provides a history of the town of Killaloe and notes historic mapping relative to the lands in the vicinity. It also provides details of the relevant heritage legislation and policies. Volume 4 of the Clare CDP provides - The Record of Protected Structures. The site adjoins the grounds of a Protected Structure (no.445 in the RPS). The Deanery is described as a: *detached, three-bay, two-storey, sandstone built deanery built c.1825 on an L-shaped plan with round-headed door opening to centre, with timber pilaster door case, fanlight central over front door. There is a three bay, two-storey return to the rear.* The NIAH Records describe The Deanery (Ref. no.20404508) as being of regional interest and as a: *Detached L-plan three-bay two-storey deanery, built c. 1825, with three-bay two-storey return. Hipped slate roof with cut-stone chimneystacks. Rubble sandstone walls with cut-stone quoins. Round-headed door opening having timber pilaster doorcase, radial fanlight and timber panelled door. Dressed stone voussoirs and brick dressings to timber sliding sash windows. Retaining interior features. Wrought-iron gate set in rebuilt stone piers.* The Deanery is the vestry of St. Flannan's Cathedral which is an important historic building in the town located on the banks of the River Shannon.

The house is located on the southern boundary of the town and is surrounded by green fields and partially screened from view by vegetation. The Report finds that the proposed development will not impact on the Deanery or any associated curtilage features. It provides that the Deanery faces east towards St. Flannan's Cathedral and views from the Deanery towards the subject site are limited and incidental and will be

mitigated by landscaping. It also provides that the development will not have a negative visual impact on the adjoining ACA or on monuments of note such as Killaloe Bridge and St. Flannin's Cathedral. No architectural heritage mitigation measures are proposed.

The DoAHG submission notes that no information has been submitted to clarify if the L.A has given its opinion through a Section 57 declaration as to the extent of the curtilage of the P.S. and they recommend that such a declaration should be sought. They consider that it maybe the case that the historical mapping suggests that the site is part of the lands within the curtilage of The Deanery. They also note the way the mature trees are set out on site to suggest a design of stands and to form shelter belts. They accept that the proposal is for a non-standard discount supermarket building with a higher order of external finishes than is usual. However they question its appropriateness or any other development within the grounds of The Deanery and consider this requires to be more carefully scrutinised and that in addition the extent of the site given over to car parking should be questioned. They provide that it may be possible to reduce the amount of carparking to the east side in order to provide for a greater set back with appropriately chosen and sited tree coverage, which should provide for visual coverage during the winter months.

The Third Party have expressed concern regarding this issue and consider that these lands are part of the curtilage of the Deanery and that the proposed development will fundamentally and adversely impact upon the setting and the character of the Deanery. They are concerned that this proposal could set a dangerous precedent for other P.S. Regard is had to the Architectural Heritage Protection Guidelines for Planning Authorities, which provide that a P.S *includes the land lying within the curtilage of the structure* (Section 2.2.2 (b) refers). Having regard to the aerial photography the lands appear to surround the Deanery house which is located in a central position. Abbey Street is to the north, the Limerick Road (R463 –from where the wayleave is to be taken) is to the east and the Millstream residential area is to the west and south west. While there is a limited garden area around the Deanery, other than the remains of an old wall along the part of the eastern site boundary adjacent to this P.S, there is a wire fence and there is no clear demarcation of the site from the greenfield area. They are also concerned that there is no assessment of the loss of mature trees on the site and that in view of contours that the proposed commercial development will be on a higher level than the Deanery (at least 2.5m to F.F.L of the proposed supermarket) and thereby be more imposing and further impact on its setting. There is also concern that an expanse of the stone wall along Abbey Street in proximity to the P.S will have to be removed to provide access and the lowering of some sections and that the impact of this on the character and setting of the P.S has not been assessed. They submit that the Heritage Assessment that accompanied the application should be considered inadequate.

The First Party response provides that the description of development in the public notices in respect of the application clearly identifies that the application site lies to the west of a P.S The Deanery. They provide that there is no P.S on the site and that

no works are proposed to any P.S and that the public notices are deemed appropriate in this regard. They also submit that the subject site does not form part of the curtilage of a P.S. and have regard to historic mapping and the Heritage Assessment submitted. They include Fig.2 in their response to the grounds of appeal showing the proposed development site in context of the boundary of The Deanery. They also note that the application site is zoned for commercial and low density residential purposes and that there is a Part 8 applicable to the front part of the site for use as public carpark. It is submitted that the proposal has been sited a distance from the Deanery and that existing/proposed landscaping will aid in screening the P.S. They also note that they are prepared to comply with condition no.6 of the P.A decision regarding the construction of a boundary wall.

The Council's Architectural Conservation Officer notes that the site adjoins the grounds of The Deanery and recommends that the visual impact of the development on the P.S should be addressed by the provision of appropriate screening in the form of a mortared masonry wall in order to preserve the character of the early 19<sup>th</sup> century building. Also that it is essential that such works preserve the privacy, security and visual amenity of the P.S. They recommend in the interests of the preservation of the character of the P.S that a condition be included in any permission to construct a mortared masonry wall of not less than 2.4m high between the development site and the Deanery grounds. Also, that a condition be included to determine archaeological impact and provide monitoring.

A subsequent Report in response to the DoAHG and other submissions has been included by John Cronin Associates in Appendix 3 of the First Party response. Photomontages showing views in the vicinity of and to/from the Deanery are noted. These include the outline of the proposed boundary wall between the Deanery and the application site as requested by Condition no.6 of the Council's permission. It is noted that limited views are provided to/from the Deanery of the application site which is partially screened by the stable building and existing planting including mature trees and will be further screened by the proposed 2.4m boundary wall. They consider that this provides appropriate boundary treatment and that key views of the Deanery from the east will not be changed. The Report considers that the provision of a stone wall along the boundary between the subject site and the grounds of the P.S will satisfactorily deal with concerns in relation to visual amenity, site security and privacy for the occupants of the Deanery.

In response to the issue raised by the DoAHG regarding the extent of curtilage of the P.S they are of the opinion that the morphology of the wider landholding (outside of the house, its yard and immediate garden) has undergone significant changes and have regard to historic mapping, Fig. 2 refers. They confirm that no Section 57 declaration has been issued or requested in relation to the Deanery. They consider that there will only be minor and occasional glimpses of the proposed stone wall along this boundary. They provide that it is clear that the views towards the Deanery from the west will be subject to change as a result of the proposed development. They have regard to the photomontages submitted relative to views. The siting of the store along the western boundary provides adequate separation distance so as not

to impact on the sensitive setting of the Deanery P.S. and in view of landscaping views are limited to this site. They also provide that the main views to the Deanery are from the east and that the views from the west are of very limited or contextual relevance to the house. The Report concludes that the proposed building and associated landscaping are of high quality design and the potential for impacts on archaeological and build resources will be fully mitigated.

The Council's response to the grounds of appeal notes that the site is greenfield and would appear to have been land originally associated with the P.S. Also, that the site is somewhat visible from the lower road the R463. They also consider that the Deanery has been considered carefully in this application.

The subsequent response from the DoAHG has been noted in the Observations Section above. They are concerned that a Section 57 Declaration has not been sought and note that if the development site is indeed within the protected curtilage, then the planning proposal is invalid. They also consider that the photomontages and visual assessment made relative to views to/from the Deanery are inadequate to gauge the visual impact. They note the boundary wall to be erected (Condition no.6 of the Council's permission) and are concerned that this would impact on the curtilage, noting that the heritage impact report does not suggest any division in the plot between the deanery/glebe and the local road to the west. They are also concerned that revised plans have not been submitted to show carparking reduced along the eastern boundary so the site could be landscaped with planting to include tree coverage during the early spring months. They note that the lighting of the development will have a visual impact and are concerned that such detail be worked out in co-ordination with the landscape architect and the conservation advisor.

## 10.9 Archaeology

The historic core of Killaloe is identified as a recorded monument. The Architectural and Architectural Heritage Assessment submitted identifies that there are no recorded archaeological monuments within the subject site but outlines a former millrace shown on historic maps. The report recommends a pre-development programme of test trenching on the site: *to determine if any unrecorded sites exist within the proposed development area including the mill race in the south end of the site.*

The DoAHG provide that they have reviewed the archaeological impact assessment that accompanied the application and concur with the findings of the report. Given the scale, extent and location of the proposed development it is possible that subsurface remains could be encountered during the construction phase that involve ground disturbance. They recommend that further archaeological investigation should be undertaken to assess the impact if any, on potential such remains and recommend a condition to provide for archaeological investigations.

The First Party provides that a detailed response is included in Appendix 3 in the Report prepared by John Cronin Associates. They also note that Condition no.7 of the Council's permission requires pre-development testing to be carried out. The

Report concludes that the applicant is committed to undertaking a programme of licenced archaeological investigations well-in advance of the proposed site development works.

If the Board decides to permit it is recommended that an archaeological monitoring condition to include pre-development test trenching be included.

#### **10.10 Landscaping and Boundary Treatment**

The site affords good views over the low lying area of Killaloe to the east and is partially obscured by some mature trees in the ground of The Deanery. The subject site is currently greenfield, is undulating and is divided into two by a line of mature trees running from west to east. There is concern that there is no assessment of the impact of the loss of mature trees within the site and on the boundaries of the site. In this respect it is noted that a Tree Survey, an arboricultural impact assessment and a plan of preservation for the trees contained within the grounds of the site has been submitted by Arbor-Care Professional Consulting. This notes that there are a few significant trees contained within the site and that this report is based on the updated standard *BS5837:2005 Trees in relation to construction*. It is noted that a number of mature trees will have to be removed from the centre of the site to facilitate the proposed development and a Tree Inventory is provided. This includes the three mature Scots Pines located within a view to Abbey Street which the Report states have a high amenity value and should be retained but as they are located within the footprint of the development area will be directly impacted and will have to be removed.

A Landscaping Scheme has been prepared for the site and drawings showing existing and proposed landscaping have been submitted. The project design will see the removal of internal trees, scrub and hedgerows. External boundaries will be retained and reinforced with appropriate new planting. It is provided that the soft landscape layout is informed by vegetation that currently exists on the site and where possible existing vegetation will be retained, particularly along the south western boundary. New tree planting will be laid out in a structured along the building elevation and within the carpark and in a random way along the southern boundaries where the screen planting is more plentiful.

The DoAHG recommends that the roots, trunks and canopies of all retained trees be fully protected during construction. They also recommend that all proposed lighting should be discreet with minimum light spillage so as to avoid the displacement of bat species. Lighting of trees and hedgerow should be avoided.

The northern side of the site runs to Abbey Street and the southern side runs to the rear of the residential properties to the south. It is delimited to the north by a stone and concrete modern stone walling c.1.5m high. A modern steel fence defines the site to the west, while a temporary post and wire fence mark the eastern boundary of the site (photographs are included showing this). This is to be replaced by a stone wall in keeping with the northern boundary and associated Deanery walls.

The contextual setting of the Deanery is discussed in the Report in Appendix 3 of the First Party response to the appeal. This includes that the detailed landscaping scheme will reinforce the visual setting of the new building which will sit into its landscaped setting. The Comments of the DoAHG relative to the reduction of carparking along the eastern boundary to facilitate additional landscaping to further screen the setting of the Deanery P.S has been noted above and it is recommended that if the Board decide to permit that this be conditioned.

Regard is had to boundary treatment and it is considered that the stone wall along the northern and part of the western boundary should be retained except where it is necessary to facilitate the access. The 2.4m boundary wall to be constructed along the boundary with the Deanery should also be conditioned should the Board decide to permit – regard is had to Condition no.6 of the Council’s permission in this respect. It is noted that the plans show a new 1.2m high timber and rail fence to be erected along part of the south western and to retain the higher boundary fence and planting along southern boundaries. This will lower the existing boundary which adjoins the footpath in Millstream estate which will make the site more accessible to the public. It is recommended that if the Board decide to permit that, details of boundary treatment be included along with a landscaping condition.

#### **10.11 Access and Traffic**

A Traffic Impact Assessment has been submitted with the application. This aims to identify the existing roads and traffic conditions and relative level of impact the proposed development is likely to have on the local road network. It provides that the basis for proposals within the proposed site access, are based upon the guidelines set out in DMURS. The TIA assumes that the proposed discount store will be fully operational in 2017.

The site is bounded to the north by Abbey Street, which functions as a local distributor road within this area of the Killaloe road hierarchy. This road which is within the 50kph speed limits of the town provides a road link between the R463 regional road to the east of the site as well as other road links and junctions in the vicinity of the site. It accommodates a length of parallel parking at intervals on either side of the road. The access to the existing Convent Hill Shopping Centre is on the opposite side to the development site.

The TIA includes traffic surveys taken in a number of locations relative to the site. While they included the evening peak period (i.e.1700 to 1800 hrs), it is provided that the AM peak is not included as the store would not open until 0900hrs, which is outside the typical AM peak on the adjacent road network. They consider that the assessment under the PM peak has regard to ‘worst case’ traffic situation.

There is concern that the AM peak is not included in the figures in the TIA. The traffic in the area is very heavy especially in the mornings and at school pickup times. There are 3no. schools in the area, 2no. primary and St. Anne’s Community College within 200m of the site. The R494 connects to Ballina via the Killaloe bridge and can become congested at peak times. Third Parties are concerned that traffic reports



have not addressed the impact the traffic associated with the proposed development will have on the existing road network at Abbey Street and Royal Parade that leads onto 'Killaloe Bridge' which as a one way system is at capacity, inadequate and not fit for purpose. There is concern that the existing road infrastructure at Abbey Street and Royal Parade that leads onto 'Killaloe Bridge' is presently at capacity at school time AM traffic volume. There is uncertainty/delay with the new bridge and by-pass and they consider that in view of existing traffic congestion in the town that the proposed development is premature for Killaloe. This is based on the existing traffic congestion that is experienced on a daily basis due to the existing confined/one way layout of the streets of the town.

The response to the appeal prepared by Transportation Planning Services Ltd provides that it is reasonable to suggest that all existing car borne trips associated with the schools are on the road network prior to the Aldi opening hours at 0900hrs and that some of these established trips may divert to Aldi on the way home or to a linked town centre trip. As such it provides that the Aldi proposal cannot be regarded as having any material traffic impact on the adjacent road network during the AM peak hour.

The TIA provides that the confirmed Killaloe Bypass indicates that 40% of the traffic using the existing Killaloe Bridge will be removed when the bypass is complete. In this respect the East Clare LAP provides: *Killaloe and Ballina suffer from traffic congestion on the old bridge. Plans are well-progressed to construct a relief road around Killaloe and a new Shannon River crossing to alleviate this problem. It is a general objective: To secure the provision of a Shannon Bridge crossing and the Killaloe western relief road. Map no.2 of the TIA shows the proposed Killaloe Bypass route. While the principle has been accepted it is noted that a date for the provision of this Bypass has not been given on the documentation submitted.*

In order to assess the likely traffic associated with the proposed Aldi store they have reviewed the TRICS 2015 rate database. The trips attracted during the PM peak for both the Aldi store and the public carpark therein are summarised in Table 2. It is provided that the traffic associated with the Aldi site would not be considered entirely new and that elements of this traffic will be already on the local road network and will divert to the development site. They provide that 30% of these would be new trips and that 70% exist and are already on the adjacent road network and be passing the development site in any event. They provide details relative to the existing PM peak and traffic growth to 2017 and 2032. They note that the TIA refers to the existing traffic situation and that no allowance is made within this 15year period for the opening of the Killaloe Bypass so their assessment is based on worst case scenario.

Access to the subject site is provided via Abbey Street to the north east of the site via a 'priority 'T' junction'. It is provided that the access will serve the Aldi carpark as well as the public carpark. Also, that the proposed access has been designed to take account of the use by buses and service vehicles. The TIA provides that the access including safe movement for pedestrian access to the site is in accordance with DMURS. It provides that the access has the capacity to accommodate the traffic

associated with the proposed use. The Council's Road Design Section are concerned that the applicant has not illustrated the visibility splays at the proposed entrance to the site. They recommend that visibility splays as proposed in the TIA of 3.0m x 45m in accordance with DMURS should be illustrated on the Site Layout Plan. In order to ensure the visibility splays are not obscured the existing public parking present to the east, lying within the proposed access should be removed. This has been shown on the revised plans submitted.

The TIA concludes that there is sufficient capacity at the proposed junction to accommodate the traffic associated with this development proposal. Also, the proposed junction arrangement can operate satisfactorily in accommodating the levels and types of traffic likely to be generated by the development in terms of traffic capacity. The Report submitted in Appendix 4 of the First Party response to the appeal reiterates these issues. They provide that for the purposes of their traffic capacity assessments they treat all of the Aldi development traffic as wholly new to the road network to enable the L.A to consider the development under a worst case scenario. Regard is also had to the need for a Road Safety Audit and if the Board decide to permit it is recommended that this be conditioned.

#### **10.12 Parking and Permeability**

It is noted that there is a Part 8 approved by Clare County Council (Ref.13/8003 refers) for the provision of a public carpark to be constructed at Convent Hill, Killaloe, for the development of a 42 space public car park. This relates to the northern portion of the site and was granted but never implemented. A drawing showing this parking area is included in the documentation submitted and shown on Fig.3.1 of the RIA. This is within the area opposite the existing shopping centre where the proposed Aldi is now to be constructed. Therefore a breakup of the lands adjacent to the Deanery to provide additional parking was also envisaged at that time.

There is concern that the proposed development which necessitates the removal of a number of on-street parking spaces, in order to allow for visibility splays will lead to a deficit of public parking in the area. There is concern that at least 16no. on-street carparking spaces will be lost in provision of the access and visibility splays and these are not provided for in addition to the 42 public parking spaces. In response it is provided that any loss of street parking to accommodate site lines for the proposal will be compensated within the site in the public carparking area, and regard is had to the previously approved Part 8 in this respect.

Regard is had to the Clare CDP 2011-2017, Appendix 1 A1.7.3 and to the Table which provides the parking standards. For a Shopping Centre or Large Retail Store (>1000 sq.m gross floorspace) that is outside of the Town Centre this is 8 spaces per 100 sq.m. i.e based on the 1655sq.m g.f.a of the proposed retail store is 207 spaces. If the net retail floor space were to be used i.e. 1,140sq.m this would imply 142 spaces. It is noted that it is proposed to provide 122 car parking spaces and 1 no. bus space. Therefore there would be a parking shortfall on the site. It is noted that a justification for the proposed parking provision is set out within the TIA statement submitted. This includes that 42no. of the spaces within the site will be for public

carpark usage with a bus parking area for 1no. bus towards the rear of the site. However it is noted that in view of the proximity of the site to the town centre, Section 7 of the TIA uses the latter standard i.e 5-7 spaces per 100sq.m and provides that this would require between 83 or 116 car parking spaces to be provided. This is reiterated in the First Party response to the appeal, where it is also provided that the parking to be provided reflects that provided at other Aldi stores. It would appear that having regard to the parking standards that there would appear to be a parking deficit, particularly also taking into account the level of public parking to be provided. It is noted that the Council response appears to accept this level of parking as being adequate.

It is provided that the proposed parking will serve the discount foodstore and accommodate public parking provision. There is concern as per the documentation submitted that the parking will be used both for the Aldi store and the public and that it has not been shown or conditioned how this can be done. The First Party provide that the element of public parking is to be located within that part of the site which is zoned for commercial purposes i.e the site frontage wherein the use as carpark is 'permitted in principle'. It is also noted that there is some on-street parking and a large parking area for the Convent Hill Shopping Centre on the opposite side of the road.

Bicycle parking is to be provided in front of the eastern elevation of the store. Section A1.7.3 of the Clare CDP recommends for bicycle parking this is 1 space per 8 employees i.e 24 spaces per 1000 sq.m.

The DoAHG recommendations for a reduction in parking along the eastern boundary to facilitate landscaping have also been noted above. In this respect if the Board decide to permit it is recommended that space nos. 31,32,35,38,43 and 46 along this eastern boundary be omitted to facilitate a wider landscaped strip along this eastern boundary adjacent to the P.S. This would further reduce the number of carparking spaces for both public and Aldi associated parking to 116. There is concern that stand alone supermarkets such as Aldi are very car dependent and that such a shortfall would result in congestion and endangerment of public safety, exacerbated by access to and from schools in the area.

It is envisaged that the Aldi store would be serviced on a daily basis by 1-2 articulated vehicles, and access for these vehicles would be through the customer carpark to the back of the store. They provide that Aldi generally have a standard practice to service their stores via the customer carpark. The Council's Road Section also recommends that in order to avoid conflict between patrons and delivery vehicles that deliveries be made prior to the opening hours of the store. It is recommended that this be conditioned should the Board decide to grant permission.

Permeability is an important consideration in a scheme of this size which is for public usage. The Retail Design Statement provides that internally the development will benefit from a high quality pedestrian environment with clearly defined and well-lit

paths, pedestrian walkways and crossings and a range of level surfaces that will benefit all users of the site.

It is noted that there are concerns about permeability and pedestrian linkages throughout the site in particular the workability of the Council' Condition no.5(b) which provides for: *The provision of pedestrian linkage/footpath to facilitate the eastern portion of the site, from the road entrance through to the bus parking area.* To comply with this condition it will be necessary to remove/omit the landscaping along the eastern boundary of the site and there is concern that this will leave the P.S more exposed which would show up the contrasts between the landscaped Deanery site and the more utilitarian car parking area of that proposed. They also note condition no.6 regarding the construction of a 2.4m boundary wall between the development site and the Deanery grounds. If the Board is mindful to grant it is requested that an alternative location for the walkway could be facilitated. An alternative pedestrian footpath providing access from the site entrance to the bus parking space has been shown on the drawings submitted with their response to the grounds of appeal. This traverses through the centre of the site. In this case regard must also be had to the DoAHG concerns to provide additional landscaping along the eastern site boundary. Therefore it is considered that if the Board are mindful to permit that an alternative pedestrian route through the site would be preferable.

The First Party response provides that pedestrian accessibility between the site and Carrig Lane to the town centre will furthermore be enhanced through the provision of a pedestrian crossing on Abbey Street in the vicinity of the site for which a special contribution is applied under Condition no.4 of the Council's permission. The Council consider that a development contribution should be sought to provide a pedestrian crossing. This would serve to link the Aldi store with the Convent Hill Shopping Centre on the opposite side of the road. It is recommended that if the Board decide to permit that this be conditioned.

While there is a link via Carrig Lane to the town centre it is noted that at present this does not appear to be a much used through route and is for pedestrian rather than vehicular use. The Third Party provide that this lane is used in the main by a small group of adjoining property owners and has only very limited capacity to act as a link for traffic. They provide that there has been little investment in the infrastructure of this lane for a number of years and enclose photographs of the lane. The provision of this pedestrian crossing will also decrease the on-street parking available. If the Board decides to permit it is recommended that it be conditioned in the interests of permeability that details of further pedestrian linkages to and from the site be provided.

#### **10.13 Infrastructural issues including regard to wayleave**

It is submitted that clarification is needed with respect to wastewater treatment plant capacity. Section 3 of the East Clare LAP states the following: *The existing waste water treatment plant is currently operating at capacity and cannot accommodate any further significant development. Plans to upgrade the facility are underway and it is estimated that the works will be completed in the lifetime of the local area plan.*

Having regard to water supply it is provided: *There is a public water supply in the area but the water supply serving the settlements may need to be upgraded in order to accommodate a large-scale development.*

An Engineering Planning Report has been included with the application. This includes details of calculation of foul outflow from the proposed development and provides that there is adequate capacity within the existing foul sewer network to cater for the proposed development. It is noted that foul wastewater from the site will connect to the mains sewer and will be treated in the Ballina municipal wastewater treatment plant. The proposed development is seeking to connect to the existing foul water drainage at network on the adjoining lands. This notes that it has been agreed with the Council that foul sewerage discharges from the proposed development can be discharged to the existing public water foul sewer to the east of the site through Vestry lands. Aldi has secured a permanent wayleave from the adjacent land owner to maintain the existing foul sewer. The area for the proposed wayleave is from the R463 Tuamgraney Road and the land slopes upwards towards the Deanery and the application site. There is a gate along this entrance to the greenfield site adjacent to the adjoining commercial building.

This Report notes that Aldi has secured a permanent wayleave from the adjacent land owner to the east to install and maintain a surface water sewer through these lands to the existing surface water sewer on the R463 road approx. 120m south of the Royal Parade junction with Abbey Street (they include a map). They therefore propose to connect the new surface water pipework to the public sewer on the R463 Regional Road. The surface water drainage system within the proposed development is shown separate to the foul water system. Having regard to the drawings submitted it is not clear as to whether this will be discharged into a separate sewer on the R463. It is noted that Section 3.0 of the Report provides: *It is therefore proposed to connect the new surface water pipework to the public sewer on the R463 via this wayleave.*

Drawings showing the proposed Site Layout and Water Services have been submitted. Concern has been noted regarding disposal of surface water on site and regarding the route of the surface water line relative to the site. Also, that Condition no.10 (concerning disposal of surface water within the site) of the Council's permission cannot be implemented, and that this could lead to problems with run-off and flooding. It is provided that there is an absence of any definitive or quantitative information as regards the status of the upgrade and whether there is sufficient capacity to cater for the development.

Regard is had to the Council's condition no.2 concerning revised proposals for the disposal of surface water. The details for appropriate connection to surface water drainage to serve the proposed development are subject to agreement and approval of the Council. The First Party provide that they are willing to comply with this condition and it is recommended that a similar type condition be included should the Board decide to permit. It is also recommended that any services be underground.

Details are provided of the watermain design and of water conservation. It is provided that there is adequate capacity to cater for the proposed development. It is proposed that the water supply for the proposed development be taken from the public main on Abbey Street and details are given of projected daily demand and of minimum 24 hour storage capacity. Water Conservation proposals are also considered.

The DoAHG recommends that the site should have abounded area for storage of any fuels or potential pollutants during construction. It is recommended this be conditioned should permission be granted.

A response is provided by Downes Associates Consulting Engineers in Appendix 6. They provide that in summary surface water from the development shall be attenuated on site (regard is had to incorporation of SuDS) in an underground attenuation system and discharged to the existing public surface water sewer on the R463 regional road to the south east of the site. They provide that as set out by Condition no.2 the applicant undertakes to carry out upgrade works to the adjoining surface sewer network as considered necessary by the L.A. Further to the Third Party appeals they consulted with Irish Water regarding waste water capacity who confirmed: *Irish Water do not consider this 5PE to be significant. The proposed connection will not affect the performance of the wastewater treatment plant which is due for upgrade.*

Having regard to the issues raised and to the Council's condition nos. 2 and 6 it is considered that there are a number of issues to be resolved regarding surface water disposal and it may be considered that the proposed development is premature prior to the resolution of such issues. However, if the Board is mindful to permit it is recommended that similar type conditions be included.

#### **10.14 Flood Risk Appraisal**

There are no natural watercourses traversing or immediately adjacent to the proposed development site. The closest significant watercourse to the site is the Shannon River which passes through Killaloe and is approx 300m to the southeast of the site. The Engineering Planning Submission Report provides details of the flood risk analysis that has been carried out in accordance with the OPW/DoEHLG publication 'The Planning system and Flood Risk Management – Guidelines for Planning Authorities' November 2009. The FRM Guidelines promote a sequential approach to flood risk assessment based on flood zone and vulnerability class. Examination of the OPW Flood Maps website revealed that there is no record of flooding in the immediate vicinity of the site. The site is far removed and elevated above the nearest river and is therefore considered to be in flood Zone C –where the probability of flooding is low. Detailed proposals for surface water and attenuation have been provided in the documentation submitted. In view of these issues it is not considered that this site is at any significant risk of flooding.

#### **10.15 Appropriate Assessment**

Section 17.3 of the CDP relates to Natura 2000 sites. A Habitats Directive Project Screening Assessment Report has also been carried out by the Council. This notes that the site itself is not within a Natura 2000 site but the Lower River Shannon SAC

sits approx. 250m to the east, and the Lough Derg SPA, lies approx 1.7m to the north.

An AA screening report prepared by Openfield Ecological services has been submitted in conjunction with the East Clare LAP. This has regard to Natura sites in proximity, i.e. the Lower River Shannon SAC and Lough Derg SPA. This provides a description of the site, and it is noted that there are no watercourses on the site and that there is no pathway to the Natura sites. While currently greenfield, if permitted, it is intended to connect the proposed development to existing services. This found that significant effects were unlikely to arise, either alone or in combination with other plans or projects that will result in significant effects on the integrity of the Natura 2000 sites.

Having regard to the nature and scale of the proposed development including proposed connection to public services 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.

## 10.16 OTHER ISSUES

**Opening Hours:** The RIA provides that the opening hours of existing Aldi discount foodstores are from 8am to 10pm Monday to Saturday and 10am to 10pm on Sundays. It is noted condition no.8 of the Council's permission restricts opening hours. However there are concerns about traffic congestion relative to school opening hours. It is also noted that the Transportation response provided in Appendix 4 of the First Party response provides: *It is reasonable to suggest that all of these existing car borne trips associated with these school are on the road network prior to the Aldi opening at 0900hrs.* Therefore if the Board decides to permit it is recommended that it be conditioned that the opening hours be 0900 to 2200 Monday to Saturday inclusive, and 1000 to 2100 on Sundays or Public Holidays. In view of the proximity of residential development to the south west, Part b) of this condition relative to deliveries should also be modified i.e.: *All deliveries taken to or dispatched from the premises shall not occur during store opening hours and shall not occur between 2300 and 0700 each day.*

**Construction Works:** The main impact that would arise to the amenities of this area would result from the demolition and construction phase. During this phase these works would inevitably result in noise, dust, building debris and so forth. There is also potential for obstruction of traffic movements and good practice needs to be followed including using the proposed access from Abbey Street during construction works and deliveries. Notwithstanding, such nuisances would be of a temporary nature and would be required to be carried out in compliance with standard codes of practice. It is also standard planning practice to include conditions that seek to minimise such impacts in the event of a grant of permission. Therefore should the

Board decide to permit it is recommended that a construction management condition should be included.

**Development Contributions:** Regard is had to the Clare County Development Contributions Scheme 2013 -2017 and to the general contributions that apply under S48 of the Planning and Development Act 2000 (as amended). Condition no.3 of the Council's permission is noted in this respect. The Scheme also includes regard to Special Contributions which are not covered by the General Contributions Scheme. Note is also had of Condition no.4 which refers to a Special Contributions of €10,000 to be paid: *towards the provision of a pedestrian crossing at this location, which is necessary to facilitate the development of the site and the overall area.* S48(2)(c) allows for the payment of a special contribution in such cases and it is recommended that if the Board decide to permit that this condition be included.

## **11.0 CONCLUSION AND RECOMMENDATION**

Regard has been had to the documentation submitted, to the Third Party appeals and to the responses and observations made. Having visited the site and had regard to the observations of the DoAHG, I am concerned that there is an issue regarding whether this greenfield landscaped edge-of-town site forms part of the original curtilage of the Protected Structure, The Deanery. As requested by the DoAHG in this case it is my opinion that a Section 57 Declaration of the Planning and Development Act 2000 (as amended) should have been sought. I would be concerned that the siting of the proposed development on this more elevated site, that includes the loss of significant mature landscaping would impact adversely on the Deanery and its setting and would detract from this location close to the historic and medieval character of Killaloe town centre and ACA.

I also have concerns regarding the issue of material contravention and consider that it may arise taking into consideration that this large scale convenience store, and associated parking area is to be partly sited in the low density residential land-use zoning as shown on the East Clare LAP. This has been discussed in the Assessment above and it is noted that the Council have not advertised/passed this as a material contravention.

Other issues of concern including regard to amount of parking required relative to public and associated retail parking, issues to be resolved relative to surface water drainage etc have been noted in this Assessment above. Therefore having regard to the RIA and the retail assessment above, while not at variance with the principle of the provision of a larger convenience store for Killaloe, I am concerned about the proposed siting of the store. I would consider that it has not been thoroughly assessed as to whether there are other more suitable sites that would be available.

In view of these issues, I recommend that this proposal be refused for the reasons and considerations below.



## 12.0 REASONS AND CONSIDERATIONS

1. Having regard to the siting of the proposed large scale retail store on this elevated greenfield site adjacent to The Deanery it is considered that it would have a detrimental visual impact on the character and landscaped setting of this Protected Structure (RPS 445) and would result in the loss of mature trees and set an undesirable precedent for further such development. It is also considered that it would have an adverse visual impact on this southern approach to the historic and medieval Heritage town of Killaloe and proximate Architectural Conservation Area as included in Section 3 of the East Clare Local Area Plan 2011-2017 and as such would be contrary to the proper planning and sustainable development of the area.
2. The land use zoning pertaining to the site is for two distinct uses i.e commercial and low-density residential. Having regard to the proposed usage for the construction of a single storey discount foodstore and associated parking including public parking, it is noted that while acceptable in the commercial zoning, it is more questionable in the low-density residential zoning. Having regard to Annex 1, Section A1.3 of the Retail Planning Guidelines 2012 which provides a definition of 'supermarket' and to the Land Use Matrix as provided in Appendix 6 of the Clare County Development Plan 2011-2017 and Section 1 of the East Clare Local Area Plan 2011-2017 it is considered that the provision of a 'shop' while 'open to consideration' in a low-density housing area pertains more to a local shop rather than a supermarket, and it is noted car parking in this zoning is 'not normally permitted'. Therefore it is considered that the provision of the proposed development would not be in compliance with the objectives for this low density residential land use zoning as noted in Section 21.4.10 of the Clare County Development Plan 2011-2017 and Section 1.10.1 of the East Clare Local Area Plan 2011-2017 and materially contravenes this zoning.

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Angela Brereton,  
Planning Inspector,  
Date: 24<sup>th</sup> of December 2015