



An  
Bord  
Pleanála

## Inspector's Report PL06F.248075

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<b>Development</b>	Amend opening hours to supermarket
<b>Location</b>	Aldi Store, Navan Road, Mulhuddart, Dublin 15
<b>Planning Authority</b>	Fingal County Council
<b>Planning Authority Reg. Ref.</b>	FW16A/0039
<b>Applicant(s)</b>	Aldi Stores (Ireland) Ltd.
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	Third-Party
<b>Appellant(s)</b>	Nathan Higgins
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	22 <sup>nd</sup> May 2017
<b>Inspector</b>	Colm McLoughlin

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## 1.0 Site Location and Description

- 1.1. The site is located within Mulhuddart village on the western fringes of Dublin city. Vehicular access to the site is from the southwest off the old Navan Road and it is approximately 90 metres northeast of the N3 national road. It accommodates an Aldi supermarket with associated car parking to the side and loading bay with plant and refuse facilities to the rear.
- 1.2. The site is adjoined to the north by local centres uses including fuel service station, crèche and a saddlery shop. Residential properties adjoin the southwestern and southeastern boundaries. Lands to the north on the opposite side of the old Navan Road are undeveloped and form part of River Tolka valley park. Flightpaths from Dublin airport pass through the area.

## 2.0 Proposed Development

The proposed development comprises the following:

- Variation of Condition 3 to planning permission FW11A/0122, as previously varied by planning permission FW13A/0114 providing for amendments to supermarket opening times to allow for trading from 09:00 hours to 22:00 hours on Monday to Friday and from 09:00 hours to 21:00 hours on Saturdays and Sundays.

## 3.0 Planning Authority Decision

### 3.1. Decision

The Planning Authority decided to grant permission subject to 5 conditions, including the following:

3. i) Within four weeks from the final grant of planning permission the applicants shall:
  - Install fridge compressor noise jacket/s.
  - Change the pallet truck wheels from hard to soft pneumatic type wheels.

- The alarm from reversing trucks shall be replaced with a Flag man and appropriate signage.

Unless otherwise agreed in writing with the Planning Authority.

ii) Within four weeks from the final grant of planning permission the applicants shall submit for the written agreement of the Planning Authority details of a sound absorptive barrier or roofed enclosure around the loading area and a date for installation.

Reason: In the interests of residential amenity.

4. Noise due to the normal operation of the development shall not cause a noise nuisance to nearby noise sensitive locations and shall not exceed the background level by 10dB(A) or more or exceed NG4 limits whichever is lesser.

Daytime (7am-7pm) – 55dB

Evening (7pm-11pm) – 50dB

Night time (11pm-7am) – 45dB

(measured from the nearest noise sensitive locations)

Clearly audible and impulsive tones at noise sensitive location during evening and night shall be avoided irrespective of the noise level.

Reason: In the interests of residential amenity.

5. The development shall be so operated that there will be no emissions of malodours, gas, dust, fumes or other deleterious materials, no noise vibrations on site as would give reasonable cause for annoyance to any person in any residence, adjoining unit or public place in the vicinity.

Reason: In the interests of residential amenity.

### 3.2. **Planning Authority Reports**

#### 3.2.1. Planning Reports

The report of the Planning Officer reflects the decision of the Planning Authority. The Planning Officer initially noted their concerns that the proposals would have an adverse impact on the residential amenities of the adjoining residential units.

Further information was requested by the Planning Authority solely seeking revised proposals to address the impacts on residential amenity. The Planning Authority considered that the response received, including the Noise survey report and the suggested noise mitigation measures, to be reasonable and recommended a grant of permission subject to conditions.

### 3.2.2. Other Technical Reports

- **Water Services Section** - no objection;
- **Transportation Section** – no objection;
- **Air Pollution & Noise Control Unit** – no objection subject to conditions.

### 3.3. Prescribed Bodies

- None.

### 3.4. Third-Party Submissions

- Submissions were received from 5 no. third-parties and the issues raised are covered in the grounds of appeal listed below.

## 4.0 Planning History

### 4.1. Subject Site

4.1.1. Historical applications relating to the subject site decided by Fingal County Council include:

- FW10A/0041 – Permission **refused** for demolition of two-storey building containing childcare facility and construction of two-storey building containing retail unit at ground floor and offices at first floor;

- FW10A/0110 – Permission **granted** for demolition of two-storey building containing childcare facility and construction of two-storey building containing retail unit at ground floor and offices at first floor.

4.1.2. Applications relating to the development on site:

- FW11A/0122 - Permission **granted** by the Planning Authority for demolition of building and construction of single-storey licensed convenience foodstore with off-license, 71 car parking spaces, vehicular access off Main Street and all site development works. Conditions of note include:

**Condition 3:** The **trading hours** of the facility shall be between: - 08.00hrs to 21.00hrs Monday to Saturday and - 10.30hrs to 19.00hrs on Sundays.

Deliveries to the facility shall only occur between 7am and 9am Monday - Friday and after 9am -11am on weekends and Bank Holidays.

REASON: In the interests of clarity and in order to protect the residential amenities of the area.

**Condition 9:** relates to revised **landscaping** plan.

**Condition 14:** relates to control of **lighting** on site.

**Condition 15:** relates to control of **noise** levels off-site.

- FW13A/0050 – permission **refused** for advertisement signage under An Bord Pleanála reference PL 06F.242269;
- FW13A/0114 - Permission **granted** by the Planning Authority for advertisement signage and for extended opening hours and delivery times. The following condition is of note:

**Condition 3:** The **trading hours** of the facility shall be between: - 08.00hrs to 21.00hrs Monday to Saturday and - 10.00hrs to 19.00hrs on Sundays.

Deliveries to the facility shall only occur between 7am and 11am Monday - Friday and after 9am -12pm on weekends and Bank Holidays.

REASON: In the interests of clarity and in order to protect the residential amenities of the area.

- FW14A/0003 – permission **refused** for advertisement signage.

## 4.2. Surrounding Sites

Permissions in the area are reflective of the edge of village centre transition from commercial and retail uses to residential uses. The following applications for permission are considered pertinent to the appeal:

- Topaz Service Station adjacent to the North – FW16A/0122 – Retention Permission **granted** for car wash and associated works including Condition 5 limiting opening hours for the car wash to between 7am and 10pm daily;
- Topaz Service Station adjacent to the North – FW16A/0189 – Permission **granted** for new underground fuel storage tanks and associated works;
- Residential site adjacent to Southeast - FW17A/0048 – Application **lodged** for demolition of four houses and construct 17 two-storey houses.

## 5.0 Policy Context

### 5.1. Development Plan

- 5.1.1. The appeal site has a zoning objective 'LC – Local Centre' within the Fingal County Development Plan 2017-2023 with a stated objective to 'protect, provide for and/or improve local centre facilities'. The Plan recognises that Local Centres, such as Mulhuddart village contain a range of community, recreational and retail facilities. The site is not located within an Airport Noise Zone.
- 5.1.2. Mulhuddart is identified as a 'Level 4: Small Towns and Village Centre' in the Plan, where the retail format is for lower order comparison (limited to a small number of shops meeting local needs). This level of centre should meet the everyday needs of the local population and surrounding catchment. The Plan recognises Mulhuddart Village is an important commercial, retail and local services centre for the surrounding community.
- 5.1.3. With regards to development proposals in transition zones, Objective Z04 of the Plan requires the Planning Authority to 'have regard to development in adjoining zones, in particular more environmentally sensitive zones, in assessing development proposals for lands in the vicinity of zoning boundaries'.



## 6.0 The Appeal

### 6.1. Grounds of Appeal

The principle grounds of appeal can be summarised as follows:

- Extended opening hours will result in increased noise and light disturbance to neighbouring residents at night time;
- Any further loss of respite due to extended opening hours needs to be resisted to protect the residential amenities of neighbouring properties;
- Noise Impact Assessment submitted at Further Information stage was not valid given its restricted assessment and particularly as it only addresses loading bay activity in the morning time and therefore did not directly address the concerns relating to noise impacts at other times, including late evening;
- Proposals to extend the opening hours are in direct conflict with the restrictions set out by the Planning Authority in their original decision to grant planning permission for the supermarket;
- Previous conditions of planning permission have not been formally addressed for the development with significant limitations in the landscaping proposals, which were intended to serve as a screen to the residential properties.

### 6.2. Applicant's Response

- Revised hours are standard for Aldi stores and are based on observed shopping patterns;
- Condition 3 of the permission is overly onerous and represents duplication of noise mitigation;
- The actual increase in opening hours per week will be a single hour over the previously permitted time;
- Operational management measures restrain on site activity after trading hours;

- The site is zoned for Local Centre uses and therefore is supportive of this commercial use;
- There are other significant noise transmitters in the area, including air traffic from Dublin airport;
- Reference is made to Planning Application (Ref. FW14A/0144) for a mixed-use development that was refused by An Bord Pleanála under Ref. PL06F.245446 and which proposed an supermarket with opening times from 08:00 hours to 22:00 hours on weekdays at Clonsilla, Dublin 15;
- The Noise Impact Assessment only addresses the loading bay at morning times, as activity in this area is minimal outside this period and therefore the worst-case scenario is used;
- The parent permission hours were not requested specifically by Aldi, as they were not party to the original application;
- Landscaping details have been submitted to the Planning Authority, as required under the parent planning permission and the Applicant awaits a formal decision;
- Proposals provide for only minimal alteration in opening hours and will have limited impact on residential amenities of neighbouring property.

### **6.3. Planning Authority Response**

- Conditions were attached to the permission to ameliorate noise and ensure undue noise nuisance does not occur over a 24-hour timeframe;
- A roof enclosure will reduce light pollution from the delivery bay;
- Fingal County Council Environmental Health Officers are satisfied with the Noise Impact Assessment submitted at Additional Information stage and this has informed their decision, including conditions 2, 3 and 4;
- The Planning Authority note that compliance submissions regarding landscaping under the parent permission (Condition 9 of FW11A/0122) have been submitted and formal sign-off has not occurred to date.

#### 6.4. Appellant's Response

- Other Aldi stores operate different trading times, including Aldi Glanmire;
- A loading bay sound barrier will do nothing to restrict noise to neighbouring residences from reversing delivery vehicles;
- The actual extension in opening hours will be 3 hours and not 1 hour as set out by the first-party and the extended night time opening time has greatest potential to impact on the amenities of neighbouring residents;
- Neighbouring residents continue to experience noise disturbance outside of store opening hours via staff vacating the site and via delivery vehicles waiting to enter the site prior to the conditioned morning delivery times;
- Additional opening hours are likely to extend afterhours activity later into the night and increase disturbance to neighbours;
- Excessive light spillage continues to cause disturbance to local residents;
- The applicant and their representatives and the Planning Authority have failed to address comprehensively the landscaping requirements of the original permission and the landscaping is not likely to significant screening overtime;
- Granting the permission will have an adverse impact on the amenities of the local residents and the applicant was aware of the opening time restrictions prior to operating from the store.

#### 7.0 Assessment

##### 7.1. Introduction

7.1.1. This appeal is a third-party appeal against the decision to grant permission for the amendment of opening times only. The current permitted opening times for the supermarket are:

- 08.00 hours to 21.00 hours Monday to Saturday and 10.00 hours to 19.00 hours on Sundays.

The proposed opening times for the supermarket are:

- 09.00 hours to 22.00 hours Monday to Saturday and 09.00 hours to 21.00 hours on Sundays.

7.1.2. The applicant has outlined that the primary reason for modifying the opening hours relates to shopper demand and to bring the opening times in line with other similar stores. The appellant's primary concern is that by extending the opening hours by one hour into the evening, this will have further negative impact on the residential amenities of his property and property in the vicinity, primarily by reason of noise and general disturbance. I consider the key issues in determining this appeal are as follows:

- Character of the Area;
- Impact on Residential Amenity.

## 7.2. Character of the Area

7.2.1. The site is zoned objective 'LC – Local Centre' 'to protect, provide for and/or improve local centre facilities'. When assessing retail development applications in Local Centres, Section 12.9 of the Development Plan requires consideration of changing shopping trends, the social and economic circumstances of the area and the retail strategy. Under Objective Z04 of the Plan due regard is required when considering proposals in sensitive transitional zones. While recognising the transitional nature of the area and the established character of the area, the appeal site is located in a local centre where commercial and retail uses are common and where a certain level of late evening activity would be expected, but this level should not be to the detriment of neighbouring properties.

7.2.2. It is acknowledged that background noise levels are relatively high on site and within the immediate area, with passing traffic along the old Navan Road, the N3 National Road and overhead air traffic contributing substantially to this situation. Ambient noise levels are accentuated by the fact that the car park to the supermarket is largely enclosed, thereby amplifying noise within this space. As the dwellings to the rear are situated above the supermarket level, this creates additional scope for these dwellings to be impacted by noise from the car park.

7.2.3. Further to this, it is acknowledged that there is evidence from the applicant's noise survey report (refers to plant noise and the truck unloading procedure) and

supported by the grounds of appeal and third-party submissions, that the existing use operating from the premises could introduce measures to address noise levels. It is noted that the parent permission included conditions limiting noise levels and requiring landscaping for noise mitigation. While I accept that the ambient noise environment would not be considered 'low' and the concerns of local residents are valid and reasonable, I do consider the issue of current noise emissions from the premises to be primarily a matter of enforcement by the Planning Authority.

### **7.3. Impact on Residential Amenity**

- 7.3.1. The grounds of appeal highlight concerns regarding noise and disturbance, which it is contended occurs at present late at night within the supermarket car park and that this has serious negative impact on the residential amenities of their property adjoining the rear of the car park and other properties in the area. It is apparent that noise associated with extended opening times into the late evening would be primarily associated with customers and vehicles entering and exiting the facility and staff tidying the external areas and exiting the facility.
- 7.3.2. It is noted that the parent permission included, inter alia, conditions restricting lighting, delivery times, noise and requiring landscaping, and the grounds of appeal and appellant's response assert that various conditions of the parent permission have not been complied with and that deliveries to the supermarket cause ongoing noise and disturbance. Breach of planning conditions associated with the development would be an enforcement matter for the Planning Authority. Further to this, it is accepted that the arrival/departure of delivery trucks has the potential to impact on the amenity of neighbouring residences arising from noise, light and general disturbance. However, it is noted that the subject proposals do not seek to alter delivery times. Consequently, considering the existing planning conditions relating to the site, including the restriction of deliveries to morning times only, the subject proposals to amend opening times only will have limited potential to further impact on residential amenities.
- 7.3.3. The items listed in Condition 3(i) of the Planning Authority decision, in my opinion do not relate to the development for which planning permission is sought in this application. I consider that a general condition restricting noise levels will address this matter.

7.3.4. In conclusion, having regard to the zoning of the site for 'local centre' uses, I consider that it would be reasonable to extend the opening hours of the supermarket to 22.00 hours on weekdays and to 21:00 hours on Sundays and public holidays. While it is accepted that some concerns arise relating to noise, the opening times for the supermarket do not appear to be the main factor in this. In conclusion, having regard to the urban location, the existing character of the area and the fact that the supermarket is situated within a local centre and within zoned land for such purposes, I would not consider it unreasonable that opening hours could be amended as proposed.

## 8.0 **Appropriate Assessment**

Having regard to the nature and scale of the proposed development and the location of the site in a serviced urban area and the separation distance to the nearest European site, no Appropriate Assessment issues arise and it is not considered that the development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

## 9.0 **Recommendation**

I recommend that planning permission be **GRANTED** for the proposed development having regard to the reasons and considerations and subject to conditions as set out below.

## 10.0 **Reasons and Considerations**

Having regard to the local centre zoning of the site in the Fingal County Development Plan 2017-2023, the established retail use of the site and to the existing pattern of development in the vicinity, it is considered that subject to compliance with the conditions below, the proposed development would not be out of character with development within the area and would not seriously injure the residential amenities of the area or of property in the vicinity. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 11.0 Conditions

1. The supermarket opening times shall only be between 09:00 to 22:00 hours Monday to Saturday inclusive (excluding public holidays) and only between 09:00 to 21:00 hours on Sundays and public holidays.

**Reason:** In the interest of clarity and in order to protect the residential amenities of the area.

2. (a) During the operational phase of the proposed development, the noise level arising from the development, as measured at the nearest dwelling shall not exceed:-
  - (i) An Leq,1h value of 55 dB(A) during the period 0800 to 2200 hours from Monday to Saturday inclusive.
  - (ii) An Leq,15 min value of 45 dB(A) at any other time. The noise at such time shall not contain a tonal component.

At no time shall the noise generated on site result in an increase in noise level of more than 10 dB(A) above background levels at the boundary of the site.

(b) All sound measurement shall be carried out in accordance with ISO Recommendation 1996:2007: Acoustics - Description and Measurement of Environmental Noise.

**Reason:** To protect the residential amenities of property in the vicinity of the site.

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Colm McLoughlin  
Planning Inspector

26<sup>th</sup> May 2017