



An
Bord
Pleanála

Inspector's Report PL03.249148

Development	Permission to extend opening hours of existing Aldi Store.
Location	Circular Road, Ennistymon, County Clare.
Planning Authority	Clare County Council.
Planning Authority Reg. Ref.	P17/463.
Applicant	Aldi Stores.
Type of Application	Permission.
Planning Authority Decision	Grant.
Type of Appeal	Third Party -v- Grant.
Appellant	Brendan Garrihy.
Observers	None.
Date of Site Inspection	8 th November, 2017.
Inspector	Paul Caprani.

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1.0 Introduction

PL03.249148 relates to a third party appeal against the decision of Clare County Council to issue notification to permit an extension to the opening hours of an existing Aldi store located on the Circular Road in Ennistymon, County Clare. Permission is sought to extend the existing hours which restrict opening times on Sundays and Public/Bank Holidays from 10 a.m. to 7 p.m. to new opening hours on the above days from 9 a.m. to 9 p.m. The grounds of appeal argue that the planning application should be invalidated as it incorrectly describes the location of the site and that the extended opening hours would adversely impact on the appellant's amenity.

2.0 Site Location and Description

2.1. The existing Aldi store is located on the eastern environs of the small town of Ennistymon in west Clare. The subject site is triangular in shape and is bounded by Church Hill along its southern boundary and the Circular Road along its eastern boundary. The north-eastern boundary of the site is located contiguous to the community hall and the western boundary of the site is located adjacent to a line of single-storey – cottage type dwellings which are set out in a crescent shape. The Aldi Store is located on elevated lands which slope down towards the cottages along the western boundary and on towards Main Street further west. A large retaining stone wall (c.3 metres in height) which appears to have been constructed as part of the supermarket, separates the western boundary of the Aldi store from the dwellinghouses adjacent to the western boundary. The Aldi store comprises of a single-storey structure surrounded by a surface car park. Store and retaining wall backs onto the cottages further west.

3.0 Proposed Development

3.1. Under Reg. Ref. PL03.245262 (see file attached), An Bord Pleanála granted planning permission for the demolition of existing buildings on site (former agricultural mart) and the construction of single-storey discount foodstore on the

subject site. Planning permission was granted by the Board on the 22nd February, 2016. Permission was granted subject to 17 conditions. Condition No. 14 stated the following:

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

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

- 3.2. Permission is sought under the current application to adjust the hours of operation on Sunday and Public/Bank Holidays from 0900 hours until 2100 hours.

4.0 Planning Authority's Decision

4.1. Decision

Clare County Council issued notification to grant planning permission for the extension of opening hours on Sundays and Bank Holidays subject to two conditions.

Condition No. 1 required that the development be carried out in accordance with the plans and particulars lodged with the application.

Condition No. 2 required that the development shall not be open to the public outside the hours of 0900 to 2200 hours Monday to Saturday inclusive nor outside the hours of 0900 to 2100 hours on Sundays and Public Holidays. Deliveries shall not take place before the hours of 0700 Monday to Saturday inclusive nor before the hour of 0800 on Sundays and Bank Holidays nor after 2200 on any day.

4.2. Planning Authority's Assessment

- 4.2.1. The planning application was received on 12th June, 2017.
- 4.2.2. A planning report was submitted with the application outlining the background to the proposal including details of the parent permission relating to the site. The report

also sets out the justification for the proposed extension and notes that it is not proposed to change the delivery hours as part of the application.

- 4.2.3. It is noted that the parent permission included a noise impact assessment report where it was concluded that the proposed store will not cause a significant noise impact or noise nuisance. It is noted that other supermarkets in the area (Spar and Supervalu) do not incorporate such restricted hours opening hours.
- 4.2.4. The planner's report sets out details of the site description and notes the planning policy context as it relates to the site and also sets out the planning history. It is noted that no technical reports have been received in respect of the current application and there is no planning enforcement history.
- 4.2.5. In terms of the overall assessment, it is noted that there is an established retail facility at the site. The report also notes the opening times of other Aldi facilities in Clare (Ennis and Killaloe) and also the opening times of the Supervalu and Spar in Ennistymon. It is noted that the permission as it relates to the subject site is more restrictive than the opening hours of comparable outlets in Ennistymon and in the case of the Aldi and Ennis. It is also noted that there is limited potential for excessive noise and general disturbance resulting from the proposed alterations. It is therefore considered that the proposal would not have an adverse impact on the amenities of the area. The principle therefore in extending the opening hours is deemed to be acceptable. In its decision Clare County Council therefore recommended that planning permission be granted for the extension of opening hours on Sundays and Public Holidays.

4.3. **Observations**

Two observations were submitted, the contents which have been read and noted.

5.0 **Planning History**

- 5.1. Reference has already been made to the relevant planning history above. Under Reg. Ref. PL245262 (see attached) planning permission was granted for the construction of a single-storey discount foodstore on the subject site (Clare Ref. 15/20).

5.2. Condition No. 14 restricted the hours of operation on Sundays and Bank Holidays to between 10 a.m. and 7 p.m.

6.0 Grounds of Appeal

- 6.1.1. The decision was appealed on behalf of Mr. Brendan Garrihy of 4 Churchill, Ennistymon by Stephen Dowds and Associates. The grounds of appeal are set out below.
- 6.1.2. The grounds of appeal set out details of the site and the planning background as it relates to the current application and appeal.
- 6.1.3. The specific grounds of appeal argue that the planning application should be invalidated on the grounds that the planning notice describes the location of this site as the Aldi store, Circular Road, Ennistymon, County Clare V95 A337. Under the previous planning application, the location was described as "Churchill Road". It is stated that site is accessed off Fair Green and not off Circular Road. While the proposal does have frontage onto Circular Road it is not where the access is. As such it is contended that the application is invalid.
- 6.1.4. In relation to the opening hours it is stated that Condition No. 9 of Clare County Council's original grant of planning permission was more restrictive than the Board's in that the condition prohibited the retail development from operating outside the hours of 9 a.m. to 8 p.m. Monday to Saturday inclusive nor outside the hours of 10 a.m. to 7p.m. on Sundays or Public Holidays. It is also suggested that Condition No. 14 attached by the Board specifically makes reference as justification for the condition to "protect the amenities of the area". It is argued that late night activities generate outdoor noise associated with traffic, delivery vehicles and general disturbance. It is argued that the subject site is very close to houses. It is stated that the appellant and his neighbours have been greatly impacted upon by the development. The appellant's dwelling faces towards the supermarket. The extension of opening hours will further corrode residential amenities in the area. Concerns are reiterated in respect of the delivery vehicles in and out of the site and the contention that they infringe on counter flow traffic on the opposite side of the entrance road. It is stated that this issue a significant issue raised in respect of the parent application and led to very restrictive conditions in respect of deliveries in the

decision issued by the Board. The inspector's report noted that customer traffic would be quiet at the time of deliveries and for this reason the delivery arrangements were deemed to be acceptable. The extension of opening hours would exacerbate this serious access problem on a restricted site with an inadequate entrance.

- 6.1.5. In conclusion the Board are requested to invalidate the application on the grounds that the public notices are misleading. If the Board decides otherwise it is nevertheless recommended that the Board overturn the decision of Clare County Council and refuse permission for the extension of opening hours.

7.0 Appeal Responses

7.1. Applicant's Response to the Grounds of Appeal

A response was received on behalf of the applicant by John Spain and Associates, Planning Consultants.

In terms of the impact on residential amenity it is noted that between the car park serving the Aldi store and the appellant's property there is a large concrete wall. A noise report submitted with the parent application estimated the noise impact arising from the proposal. As the store is now operational the applicant has taken out an additional noise monitoring survey which is attached as Appendix 2 of the response to the grounds of appeal. It notes that the main sound audible from the Aldi store during both opening and closing times is the fixed plant with a continuous sound pressure level of 30 dB(A) regardless of whether the store is open or closed. Car parking activity was not audible. It can therefore be concluded that the extension to the existing opening hours on Sundays and Public/Bank Holidays will have no impact on the existing ambient noise environment at the nearest noise sensitive location.

With regard to access arrangements for deliveries, it is noted that the access was deemed to be sufficient by both Clare County Council and An Bord Pleanála in its assessment of the application. Although extended hours are sought, they are unlikely to be busy trading times in comparison to the remainder of the day. No restrictions on deliveries taking place during store opening hours were posed by the Board in the granting of the parent permission. It is respectfully submitted that there

is no material negative impact in terms of access to the store arising from the proposed extended opening hours on Sundays and Bank/Public Holidays.

The appellant also refers to the difference between the address on the parent application and the current application the subject of appeal. The address provided in the public notice for the subject application provides the address and Eircode as per the Eircode website. There was no Eircode prior to the construction of the store for the parent permission. An extract of the Eircode website is included as Appendix 3.

Clare County Council validated the application as it deemed the application met the legislative requirements. It is respectfully submitted that there is no ambiguity about the location of the subject site nor do the public notice in any way mislead. The appellant was clearly aware of the application and made a submission on the application. It is respectfully submitted therefore that the Board uphold the decision of Clare County Council and grand amendments for the opening hours as sought.

7.2. Planning Authority's Response to the Grounds of Appeal

In relation to the validity of the application, it is stated that the site notice was present on the date of the site inspection and were in accordance with the requirements of Article 19 of the Planning and Development Regulations, 2001. The Planning Authority consider that the proposal is fully in accordance with Part 4 (18) and (19) of the Planning and Development Regulations, 2001, as amended.

In relation to opening hours, reference is made to the opening times of comparable retail units in Ennistymon and also the Aldi store in Ennis. It is noted that the hours outlined in the permission granted for the Aldi in Ennistymon is more restrictive than the opening hours of comparable outlets in Ennistymon and also the Aldi store in Ennis. With regard to the Aldi store in Killaloe, it is noted that at the time of this assessment, this proposed development was subject of an appeal (see current live case 248755 – the Board will note that this application relates to planning permission for the construction of a discount store as opposed to extension of opening hours). Having regard to the established retail use on site the on-site, commercial zoning and the limited nature of the proposed development, it is considered that the proposed development would not seriously impact on the amenities of the area.

With regard to the traffic issues outlined in the third party appeal, the Planning Authority consider that these issues were adequately addressed in the parent permission and the additional hours of operation would have limited impact on traffic and access issues in the area.

7.3. Further Submission on behalf of the Appellant

A further submission was received on behalf of the appellant on 25th October, 2017. It is stated that in the time available it is not possible to conduct a review of the noise report submitted by the applicants. The appellant's concerns in relation to the issue of noise remains. A limit on the opening hours were imposed to "protect the amenities of the area". With regard to site address, it is contended that an Eircode cannot be accepted as an adequate description of the site location. The purpose of the public notice is to inform the public. Nobody can know the location on foot of an Eircode. This on its own is an entirely meaningless description. It is suggested anybody wishing to check on a planning application would have to go through all the planning notices and research their Eircodes. This would be an horrendous precedent to follow in terms of site descriptions.

7.4. Further Submission from the Planning Authority

It reiterates that having regard to the established use, the commercial zoning on the site, the Section 28 Ministerial Guidelines, the Current Development Plan and the pattern of development in the area the proposed extension of hours is acceptable and that the decision of the Planning Authority be upheld.

8.0 Development Plan Provision

- 8.1. The subject site is governed by the policies and provisions contained in the Clare County Development Plan 2017 – 2023. The subject site is zoned for commercial purposes. There is no specific local area plan for the town of Ennistymon.
- 8.2. In relation to service towns, Section 7.6 of the Plan states that it is an objective of the development plan to:

- Support service towns as important centres for the provision of convenience goods and retail services.
- The encourage the provision of good quality convenience outlets capable to supporting a main food shopping trip.

9.0 **Assessment**

I have read the entire contents of the file, have had particular regard to the issues raised in the grounds of appeal and visited the site and its surroundings. I consider the Board in this instance can restrict its deliberations to the two issues raised in the grounds of appeal namely:

(a)The Validity of the Application having particular regard to the contents of the site notice and

(b) the impact of the proposed extension of opening hours on the residential amenities of the area.

9.1. **Validity of the Application**

The requirements in relation to public notices are set out in Article 18(1)(b) of the Planning and Development Regulations, 2001, (as amended). It requires that the public notice set out the location, townland or postal address of the land or structure to which the application relates (as maybe appropriate). The public notice in this instance has in my opinion adequately fulfilled the requirements set out in the legislation. The public notice quite clearly states that the Aldi store is located at the Circular Road, Ennistymon, County Clare. The subject site lies contiguous to the Circular Road in Ennistymon and does not in my view give rise to any ambiguity as the location of the existing store. Furthermore, the applicant in this instance has provided an Eircode which again specifically identifies the location of the subject site. I note that when the Eircode as entered on the public notice is entered into the postcode system on the Eircode website, the subject site is identified. The appellant suggests that the use of Eircodes in identifying subject sites for the purposes of planning permission is inappropriate. However, this statement appears to ignore the fact that the applicant, in addition to providing the Eircode, also included in the site description, the road which forms the north-eastern boundary of the subject site. The

fact that the access is not located on the Circular Road would not constitute reasonable justification for invalidating the application in my opinion.

Furthermore, the fact that the parent application on the subject site made reference to Churchill, a road that runs along the southern boundary of the site likewise does not constitute reasonable grounds for invalidating the application. There is no requirement under the legislation that in describing the location of the subject site that the applicant or developer must slavishly adhere to previous descriptions of locations. I have argued above that the location of the Aldi store is clearly identifiable from the description of the location of the subject site as set out in the site notices and therefore I do not consider that the application should be invalidated for this reason.

If the Board disagree with the above conclusion it is my view that the Board could consider requesting the applicant to readvertise the public notices in order to provide more detail as to the site's exact location by way of a more detailed description rather than invalidating the entire application. However, I do not consider that this is necessary as I consider the description of the location of the proposed development to be clear, unambiguous and is unlikely to give rise to any confusion. Thus, I do not consider that third party rights have in any way been prejudiced or impacted upon as a result of the description of the location of the development.

9.2. Impact on Residential Amenities

The appellant's site is located to the rear of the existing Aldi store. It is located approximately 20 metres from the common boundary and 25 metres from the rear of the store. The applicant has submitted a comprehensive noise monitoring report which clearly concludes that the dominant noise source associated with the existing store relates to the operation of extractor fans on the elevation of the building. The report indicates that these fans emit a consistent ambient noise level in the regions of 30 dB(A). It further states that the impact arising from vehicles accessing the store and manoeuvring within the car park of the site has a negligible impact in terms of the overall noise environment. Having inspected the site and having observed the site from the front boundary of No. 4, I would generally agree that traffic associated with the Aldi store is inaudible over and above ambient noise levels associated with the town. The fact that a large retaining wall together with the Aldi store is located

between the appellant's dwelling and the surface car parking associated with the site provides an additional buffer or attenuation barrier to ensure that the noise impact is minimised.

What is proposed in this instance is the extension of the store operation times on one day, and on an infrequent basis, 2 days a week for a period of an additional 3 hours. I do not consider that it can be reasonably argued, having regard to the negligible impact arising from traffic noise associated with the subject site, together with the relatively modest extension of opening hours which is confined to 1 or possibly 2 days a week, will have any appreciable or material impact on residential amenities in terms of noise and disturbance. The fact that the subject site and the appellant's dwelling is located within the existing town centre of Ennistymon would lend weight to the conclusion that the impact on amenities arising from the expansion of opening times on Sundays and Bank Holidays would be immaterial.

The applicant has pointed out that the proposed extension of opening times will have no impact on the deliveries to the store in question. Furthermore, I do not consider that any extension on opening times, which relates to an additional hour on Sunday and Bank Holiday mornings, and an additional two hours on Sundays and Bank Holiday evenings, would have any material impact on access arrangements and the delivery of goods to and from the store.

Finally, in relation to this issue I would consider it reasonable that the Board should consider granting planning permission for the extension of hours as proposed having regard to the fact that there are other stores within the town that can avail of longer opening hours than the applicant. I do consider that the applicant in this instance has made a reasonable case in demonstrating that the proposed extension of hours would have no material impact on the amenity of the area and therefore there is in my opinion, no evident reason to refuse a grant of planning permission in this instance.

Arising from my assessment above, therefore I consider that the Board should uphold the decision of the Planning Authority and grant planning permission for the proposed development.

10.0 Appropriate Assessment

Having regard to the nature and scale of the proposed development and the nature of the receiving environment together with the proximity to the nearest European 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 a European site.

11.0 Decision

Grant planning permission for the proposed development based on the reasons and considerations set out below.

12.0 Reasons and Considerations

It is considered that the proposed extension of opening times at the subject site, subject to conditions set out below would not seriously injure the amenities of the area or of property in the vicinity and would generally be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

13.0 Conditions

1. The proposed unit shall not be open to the public outside the hours of 0900 to 2200 Monday to Saturday inclusive nor outside the hours of 0900 to 2100 on Sundays or Public Holidays. Deliveries shall not take place before the hour of 0700 Monday to Saturday inclusive or before the hours 0800 on Sundays and Public Holidays nor after 2200 hours on any day.

Reason: To protect the residential amenities of the area.

Paul Caprani,
Senior Planning Inspector

4th December, 2017.