



An
Bord
Pleanála

Inspector's Report ABP-300450-17

Development

To amend the permitted hours of opening to the public of supermarket from 09:00 until 21:00 to 08:00 until 21:00 on Monday to Saturday and from 10:00 until 19:00 to 09:00 until 19:00 on Sundays and Public Holidays.

Location

Reenrour West, Bantry, Co. Cork

Planning Authority

Cork County Council

Planning Authority Reg. Ref.

17/636

Applicant(s)

G. W. Biggs & Co.

Type of Application

Permission

Planning Authority Decision

Grant, subject to conditions

Type of Appeal

Third party -v- Decision

Appellant(s)

Donal Hunt

Observer(s)

None

Date of Site Inspection

23rd March 2018

Inspector

Hugh D. Morrison

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1.0 Site Location and Description

- 1.1. The site is located off Harbour Road (L-4327), which connects Wolfe Tone Square to the former northern pier of Bantry Harbour, which has been laid out as an amenity area in conjunction with the adjacent coastal section of the Beacin Loop Walk. This site is situated between a public car park, to the east, and a variety of uses to the west, which comprise a travellers' site, the harbour master's office and the boat house for Bantry Inshore Search and Rescue Association.
- 1.2. The site is of roughly regular shape and it extends over an area of 0.498 hectares. This site accommodates a recently constructed and now operational O'Keeffe's SuperValu supermarket. This supermarket is on the ground floor of a modern building, the design of which incorporates traditional quayside warehouse forms. It is accompanied by a covered car park on the first floor.

2.0 Proposed Development

- 2.1. To vary condition 3 attached to permitted application 16/333 to allow an opening time of 08:00 on Monday to Saturday instead of 09:00 and 09:00 on Sundays and public holidays instead of 10:00.

3.0 Planning Authority Decision

3.1. Decision

Permission was granted, as proposed, to vary the hours of opening cited in condition 3 of the parent permission. The following third condition was attached to this permission:

The permission hereby granted shall relate to the hours of operation of the subject premises only and for no other component of the development of the site and the proposed development shall comply with the terms and conditions of the planning permission PL88.247100 which governs the overall development of the lands of which the site forms part, save where amended by the terms and conditions herein, with the single exception of condition 3 of the appeal decision PL88.247100.

Reason: For the avoidance of doubt and to ensure that the development, other than these approved variations to the hours of operation, is built in accordance with the approved plans, particulars and conditions.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Comparable supermarkets in surrounding towns are cited as having less restrictive hours of opening and so there is no apparent justification for condition 3's shorter hours.

3.2.2. Other Technical Reports:

- TII: No observations.
- Area Engineer: No objection: Contends that the additional hour would disperse traffic over a longer period with a beneficial effect upon parking.

4.0 Planning History

The relevant parent permission to the current application is **16/333**: Demolish workshop/office and construct supermarket and ancillary works: Permitted at appeal **PL88.247100**, subject to conditions including the following one:

- 3. The proposed development shall not be open to the public outside the hours of 09:00 to 21:00 on Monday to Saturday, or 10:00 to 19:00 on Sundays and bank holidays. Deliveries shall not take place before 07:30 on Monday to Saturday, or before 08:00 on Sundays and public holidays. Deliveries shall not take place after 22:00 on any day.*

Reason: In the interest of residential amenity and traffic safety.

D/42/17: The Planning Authority declared that certain departures from the parent permission were not exempted development, i.e. items listed as (b) to (d) (inclusive) under 18/40 below.

18/40: Permission for retention of changes to supermarket as granted permission by An Board Pleanala (PL88.247100 and 16/333) consisting of:

- (a) Internal alterations to ground floor layout, including an increase in retail space (granted as storage space), reconfiguration of the storage area, and the construction of a recycling compactor area at ground floor level;
- (b) Alterations to the first-floor layout, including the provision of toilets, staff facilities, and revisions to the plant areas, changes to the parking area to provide 65 parking spaces (74 granted);
- (c) Elevational changes namely:
 - (i) Addition of 2 doorways on the south elevation and cladding and render finish to gables (in lieu of circular features as granted),
 - (ii) Relocation of 3 doorways and minor finish treatments on the north elevation,
 - (iii) Addition of a ventilation louver and increase in parapet height on the east elevation,
 - (iv) Addition of a doorway on the west elevation and cladding finish (in-lieu of ventilation louvers as granted),
 - (v) Change from frameless glazing to curtain walling in respect of the shop front glazing;
- (d) Modification and realignment of retaining wall to the rear of the building, including grading and change of levels of the hillside to the rear of the site; and
- (e) Location of an emergency generator behind the retaining wall at the rear of the site.

This application remains to be determined.

5.0 Policy Context

5.1. Development Plan

Operative plans are the Cork County Development Plan 2014 – 2020 (CDP) and the West Cork Municipal District Local Plan 2017 (DLP). Policies T-01 and TCR2-1 of the former Plan promote the role of town centres for retail and mixed-use

development. The Map comprised in the latter Plan shows the site as lying within the town centre zoning for Bantry. Objective BT T-01 reiterates the aforementioned policies of the CDP.

5.2. **Natural Heritage Designations**

Glengarriff Harbour and Woodland SAC & NHA (site code for both 000090)

6.0 **The Appeal**

6.1. **Grounds of Appeal**

Attention is drawn to certain unauthorised works, which the appellant considers to be significant and an integral part of the supermarket development. To grant the current proposal would represent an acceptance of these works, which should be the subject of an application for retention permission. These works are as follows:

- An embankment on the site, which was to remain “as existing” under the parent permission, has been re-worked. Thus, tree cover has been removed, levels have been altered, and a road has been introduced.

The Planning Authority’s view that these works are “minor” is contested, as the loss of trees, especially, has a significant visual impact on the area.

- An appendage to the building has been added to its north-western corner.

The appellant draws attention to a legal agreement from 2014, under which the adjoining public car park was to operate as an ancillary one to the supermarket’s own car park. To this end works were to be undertaken to it. However, as the legal owner of this car park are Trustees rather than Cork County Council, the said agreement, which was made between the applicant and the County Council, may not be capable of delivering the necessary works to the public car park.

The appellant also draws attention to the omission of an internal wall from the submitted plans, which divides retail floorspace from storage floorspace. This wall was shown under the permitted parent application and its omission now runs the risk of an increase in the retail floorspace. At the very least a condition is needed to ensure that the permitted dividing wall continues to be recognised.

6.2. Applicant Response

While the applicant concurs with the Planning Authority's view that the cited works are minor, an application 18/40 has been made to retain the same.

The agreement in question was a Section 47 agreement attached to application 14/0007, which, as it was refused by the Board (PL88.243290), is now null and void.

Notwithstanding the foregoing, the applicant never intended to purchase the public car park, but simply to contribute to the funding of works of improvement to it. The County Council, as lessee of this car park, is obliged to undertake these works.

6.3. Planning Authority Response

- Attention is drawn to the case planner's report and the Planning Authority's declaration (D/42/17), which addressed many of the unauthorised works identified by the appellant.
- Attention is also drawn to the absence of reference to the trees in either the report on or order for PL88.247100. (Photographs of the embankment in question from March 2010 and December 2017 are submitted, which show only a few trees on this embankment). Furthermore, the current appellant was the third-party appellant to this earlier application/appeal, but he did not raise the matter of trees in his submission then.
- The legal agreement cited is separate from the planning process.
- The Lidl supermarket, which has recently opened in Bantry, was the subject of PL88.246729 and 16/20. Under the permission thus granted the hours of operation conditioned are 08:00 to 20:00 Monday to Wednesday, 08:00 to 21:00 Thursday to Saturday, and 10:00 to 18:00 on Sundays. However, these hours have been revised under a draft permission granted to 18/23 on 12th March 2018, i.e. 08:00 to 22:00 Monday to Saturday and 09:00 to 21:00 on Sundays and Public Holidays. (Deliveries occur between 07:30 on Monday to Saturday and 08:00 on Sunday and 22.00 on any day).

6.4. **Observations**

None

6.5. **Further Responses**

None

7.0 **Assessment**

7.1. I have reviewed the proposal in the light of the CDP, relevant planning history, the submissions of the parties, and my own site visit. Accordingly, I consider that this application/appeal should be assessed under the following headings:

- (i) Planning history,
- (ii) Traffic and amenity, and
- (iv) AA.

(i) Planning history

7.2. The parent permission for the subject site was granted at appeal PL88.247100 to application 16/333. The appellant advises that departures from this permission have occurred. The majority of these departures were the subject of a declaration (D/12/17), which established that they did not constitute exempted development, and so the applicant has made an application for their retention, along with other matters, which is the subject of application 18/40, a decision on which remains outstanding.

7.3. I note that the said majority of these departures relate to physical works. I note, too, that the other matters relate to internal physical works and the location of an emergency generator. Of these latter works, the realignment of an internal dividing wall between the net retail floorspace and associated storage space has had the effect of increasing the net retail floorspace comprised in the supermarket. At present, this additional net retail floorspace is unauthorised, although it is the subject of application 18/40.

7.4. The current proposal seeks a relaxation by one hour in the opening time of the supermarket to the public. Thus, on Monday to Saturday the opening time would be

08:00 instead of 09:00 and on Sundays and Public Holidays it would be 09:00 instead of 10:00.

7.5. The Planning Authority draws attention to the opening times of the Lidl supermarket in Bantry, which, as conditioned under PL88.246729, are 08:00 on Monday to Saturday and 10:00 on Sundays. Under a draft permission granted to 18/23, the Sunday opening time has been relaxed by one hour to 09:00.

7.6. I note from the chronology of the parent permission that the condition in question was one that the Board attached and that the Planning Authority's draft permission did not have an equivalent condition. The reason for this condition is stated as being "In the interest of residential amenity and traffic safety."

- During my site visit, I observed that any permanent dwellings are at some remove, to the east of the site. (The case planner stated in his report that the mobile homes to the west of the site are unauthorised for planning purposes). I, therefore, take the view that there is not an especially strong relationship between the operation of the site and residential amenity.
- Turning to traffic safety, condition 3 permits deliveries to occur before and after opening times to the public, thereby facilitating their physical separation. Access to the delivery area and the ramp to the first-floor car park are laid out side by side. The use of this area by HGVs entails reversing manoeuvres forward of this ramp and so their aforementioned separation in time is of importance from a traffic safety perspective.

7.7. I note, too, that elsewhere in Bantry the Lidl supermarket was permitted with an opening time of 08:00 on Monday to Saturday and that, under a draft permission granted to 18/23, its 10:00 opening time on Sundays would, if this permission is the subject of a final grant, be relaxed to 09:00. Accordingly, precedent exists for the earlier opening times that the current applicant proposes.

7.8. The appellant draws attention to the above cited departures from the parent permission. While these departures are the subject of a current application, their presence means that the supermarket is not fully authorised at present. Normally, further proposals would be considered premature until such times as the planning status of a development has been regularised as fully authorised. In this case, the Planning Authority has taken the view that the proposal in question can be isolated

from the said departures. The third condition attached to the draft permission makes this clear. The question, therefore, arises as to whether or not, in the present circumstances, this is a reasonable approach to adopt.

- 7.9. Clearly, the current proposal relates only to the opening times of the use of the supermarket. It is therefore distinguishable from most, but not all, of the physical works that are addressed by the current application for their retention, i.e. 18/40. Overlap occurs insofar as the net retail floorspace in use at present is greater than that which was permitted and so the dividing wall between this floorspace and the storage area has been realigned to reflect this fact. Although I can see no explicit quantification of this increase on the Planning Authority's website (accessed on 11th April 2018), drawing no. 4000-P-101 revision C indicates that it is significant.
- 7.10. (I do not anticipate that the increase in net retail floorspace would lead to the need for additional car parking spaces as the need for such spaces is normally calculated on the basis of gross retail floorspace, which has not changed appreciably under the "as built" scenario addressed by 18/40).
- 7.11. Thus, while I concur with the Planning Authority's approach in the main, I consider that it would be premature to permit a relaxation in the opening times of the supermarket, insofar as it comprises a significant proportion of net retail floorspace that is unauthorised. To permit such a relaxation for the authorised proportion of this floorspace only would make no sense, as the overall floorspace is fully integrated and indistinguishable "on the ground".
- 7.12. I, therefore, conclude that to accede to the proposal would be premature until such times as the net retail floorspace of the supermarket is fully authorised. It is conceivable that any decision on the current application to, amongst other things, regularise this floorspace situation maybe the subject of an appeal and so, in such circumstances, the Board could consider the current application/appeal in conjunction with such an appeal.

(ii) Traffic and amenity

- 7.13. The proposal would generate traffic movements by the public to the site at earlier times than occur at present. The Planning Authority's Area Engineer anticipates that within such a scenario these movements would be spread out more during the

course of the day, thereby ensuring that the parking situation is eased. I consider this to be plausible.

- 7.14. As discussed under my first heading, the use of the site and residential amenity concerns are not especially to the fore. Similarly, the environmental impact of traffic in attendance at this site at the earlier times envisaged by the proposal would not have a significant bearing on such amenity.
- 7.15. As also discussed under my first heading, the earlier times envisaged would lead to a scenario where the window of opportunity for deliveries to occur before the public is in attendance would contract from one and a half hours to half an hour on Monday to Saturday and from two hours to one hour on Sundays and public holidays. The applicant has not commented on whether or not such contraction would lead to potential conflict between delivery vehicles and car borne members of the public. I consider that where there would be only half an hour's separation such conflict may be a risk and so at least an hour's separation should be insisted upon, i.e. the window of opportunity for deliveries should open at 07:00 on Monday to Saturday and remain at 08:00 on Sundays.
- 7.16. I, therefore, conclude that the proposal would be compatible with the residential amenities of the area and that, provided deliveries were to be permitted from 07:00 on Monday to Saturday, it would be consistent with traffic safety.

(iii) AA

- 7.17. The site is neither in or beside a Natura 2000 site. The nearest such site, the Glengarriff Harbour and Woodland SAC, is at some considerable remove. As the proposal is for a relaxation in the hours of opening of an existing supermarket, no Appropriate Assessment issues would arise.
- 7.18. Having regard to the nature of the proposal and the proximity of the nearest European site, no Appropriate Assessment issues arise and it is not considered that the proposal would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

- 8.1. That this proposal be refused.

9.0 Reasons and Considerations

The single and continuous area of net retail floorspace comprised within the supermarket on the site is not fully authorised for planning purposes. Accordingly, in these circumstances, to accede to the proposed relaxation in the daily opening times of this supermarket would be premature and, as such, contrary to the proper planning and sustainable development of the area.

Hugh D. Morrison
Planning Inspector

11th April 2018