



An  
Bord  
Pleanála

## Inspector's Report

### ABP-313132-22

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<b>Development</b>	Construction of a single-storey extension to a single-storey discount food store (permitted under reg. ref. 05/82 and amended under reg. ref. 06/286), including off-licence use and all associated site works.
<b>Location</b>	Aldi Discount Foodstore, Dublin Road, Tullow, Co. Carlow
<b>Planning Authority</b>	Carlow County Council
<b>Planning Authority Reg. Ref.</b>	21248
<b>Applicant(s)</b>	Aldi Stores.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Tommy Hickson. Ray Flynn
<b>Observer(s)</b>	None.

**Date of Site Inspection**

28<sup>th</sup> June 2023.

**Inspector**

Peter Nelson

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## 1.0 Site Location and Description

1.1. The site is located on the Dublin Road in Tullow. The site contains an existing single-storey Aldi food store with parking to the front. To the northeast of the site is a petrol filling station, a Spar Express and Supermac's fast-food restaurant and Flynn's Garage. There is also parking at the rear of this building. An access road separates the subject site from the service station building. To the rear of the site is open land, and to the southwest of the site is a dwelling, an additional building and the church and graveyard beyond. The site has an existing totem sign on the road boundary. The stated site size is 0.45 hectares.

## 2.0 Proposed Development

2.1. The proposed development consists of a single-storey extension to an existing single-storey discount food store, including an off-licence. The proposed extension has a stated floor area of c.240sqm. The gross floor area of the store will increase from 1,348 sqm (net retail area of 970sqm.) to 1,588 sqm. (Net retail area of 1,147 sqm). The proposed development also includes the reconfiguration of the carpark and a reduction of 23no. spaces. A new canopy and entrance lobby within the extension is proposed. It is proposed to replace the existing pole and entrance signs with a new one.

## 3.0 Planning Authority Decision

### 3.1. Decision

Carlow County Council issued a decision to grant permission on the 28<sup>th</sup> of February 2022, subject to fifteen conditions.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

- The first planning report dated 5th August 2021 considered that given that the existing Aldi Store was operational for a number of years and the relatively small scale of the proposed extension, the proposed development was

acceptable in principle. It was considered that the additional floor space of 240 sqm would not generate a significant retail impact over and above the existing retail activity at the site. The planner recommended that the applicant be requested to submit Further Information relating to carparking availability within the applicant's control, including any agreements/licences.

- On foot of the submission of Further Information, the second planning report dated 22nd February 2022 states that the Planning Authority cannot adjudicate on the property dispute relating to Aldi's right to use the car parking spaces. It is stated that the allocation of 103no. carparking spaces available to Aldi customers exceeds the Development Plan requirements. The planning report recommended permission be granted.

### 3.2.2. Other Technical Reports

- Transportation Section Report received on 4<sup>th</sup> August 2021 has no objection to the proposed development stating that the provision of car parking is adequate, that the existing access arrangements have not presented a problem to road users and that the surface water management is satisfactory.
- Tullow Municipal District Area Engineer 27<sup>th</sup> July 2021 has no objection to the proposed development.

### 3.3. Prescribed Bodies

In the report dated the 21st July 2021, Irish Water has no objection to the proposed development.

Transportation Infrastructure Ireland's report dated 19<sup>th</sup> July 2021 has no observations.

### 3.4. Third Party Observations

There were four observations received on the original planning application. The issues raised can be summarised as follows:

- The proposed development is not within the Town Centre Core Retail Area and will lead to its further demise.
- The application does not include a Retail Impact Statement.
- Overprovision of convenience stores in Tullow
- The impact of the development on "2 Town Centre Opportunity sites."
- The negative residential impact arising from nighttime deliveries and the refrigeration plant.
- Existing anti-social behaviour at the rear of the store.
- Continuous boundary wall is required along Castle Lane.
- The revitalisation of the town core should be prioritised before any additional edge-of-town or out-of-town retail space is approved.
- The development constitutes a change of use of the original 'discount foodstore' status. A Town Centre Health Check is required before any additional convenience floorspace is considered at the edge or out-of-town locations.
- Aldi does not currently have a reciprocal parking agreement with Flynn's Garage.
- This would leave Aldi with insufficient car parking.
- The parking report is inaccurate and misleading.
- Aldi has not demonstrated that they can safely restock the store.
- The proposed development is in excess of the Development Plan discount food store floor area cap.
- The negative impact on the development as granted under planning permission ref:10/296.

There were four submissions received on the Further Information submitted. The additional issues raised can be summarised as follows:

- The development is a substantial and significant expansion.
- The proposed development is a 20% increase and now breaches the retail planning guidelines.
- Issues of parking and movement of delivery vehicles have not been addressed.
- Development is contrary to the development plan, and a material contravention is required to grant permission.

## 4.0 Planning History

**P.A. Ref.: 06/286** Permission granted on the 7<sup>th</sup> June 2006 for modification to previously approved Aldi Discount Foodstore granted permission under Reg. Ref: 05/82. The permitted development consists of a single-storey discount foodstore (with a maximum height of 6.7m) with a split roof design (gross floor area 1,345 sq.m; net retail area 850 sq. m). The development includes 1no. internally illuminated free-standing double-sided pole sign adjacent to the Dublin Road, 1no. wall mounted internally illuminated gable sign, 144no. car parking spaces to be shared with Flynn's Nissan Garage with minor revisions to the existing vehicular access onto the Dublin Road, all associated landscaping & site development works.

**P.A. Ref.: 05/82** Permission granted on the 15<sup>th</sup> August 2005 for development on a 0.6925 ha. (1.71 acres) site that is part of Flynn's Nissan Garage. The development will consist of the construction of a split roof design, single-storey Aldi Discount Foodstore (with a max. height of 7.75m) with a gross floor area of 1,345 sq m (net retail area 850 sq. m). The development includes 1no. internally illuminated free-standing double-sided pole sign adjacent to the Dublin Road, 1no. wall mounted internally illuminated gable sign, 144no. car parking spaces to be shared with Flynn's Nissan Garage with minor revisions to the existing vehicular access onto the Dublin Road, all associated landscaping & site development works.

Adjoining site

**P.A. Reg.: 10/296** Permission granted on the 2<sup>nd</sup> November 2010 for the change of use of an existing building for, namely; (a) 114.3 sq.m of industrial use and 247.0 sq.m of retail ancillary use to accommodate a new extension and off-licence to the existing spar shop (b) 201.7 sq.m of retail use to food use to accommodate a new extension to the existing Supermac's express facility complete with fixed seating accommodation, new kitchen, toilet facilities and all ancillary service areas (c) conversion of existing retail use to 2 no. retail units over two floors comprising of retail unit no. 1 consisting of a gross floor area of 132.2 sq.m and retail unit no. 2 consisting of a gross floor area of 79.0 sq.m (d) 461.7 sq.m of industrial use to retail use to accommodate 5 no. retail units over two floors consisting of retail units no. 3, 4, 5, 6 consisting of a gross floor area of 89.0 sq.m and retail unit no. 7 consisting of a gross floor area of 93.7 sq.m (e) 568.0sq.m of industrial use, 51.3 sq.m of retail use and 3.0sq.m of retail ancillary to recreational use and 1.5 sq.m of industrial use to retail ancillary use to accommodate a new play barn activity centre. Planning permission was also sought for associated alterations to the building's existing front and side elevations, new signage, 20 no. new car parking spaces and all associated site works.

## 5.0 Policy Context

### 5.1. Development Plan

The Carlow County Development 2022-2028 is the operative Development Plan for the area. This plan came into effect on 4<sup>th</sup> of July 2022.

In the Core Strategy, Tullow is classified as a District Town.

**CSP.6:** Promote consolidation in District Towns along with targeted investment to improve local employment, services and sustainable transport options, building on existing assets.

**ED.P13:** Maximise the opportunities offered by existing businesses, and to utilise it as a platform to attract new small and medium enterprises to the town.

**RT.P1:** Facilitate a competitive and healthy retail environment by ensuring that future growth in retail floorspace responds to the identified retail hierarchy for the County.



**RT.P2:** Support and reinforce the role and function of the core retail areas through the application of the sequential approach in consideration of retail proposals in line with the provisions of the Retail Planning Guidelines for Planning Authorities, 2012.

**RT.P5:** Maintain and enhance the competitiveness of Carlow's main towns (Carlow Tullow and Muine Bheag) by facilitating the development of additional retail floorspace where such development will deliver improvements to the retail offering of the County.

**RT.P8:** Ensure that applications for new retail development shall accord with the retail policies of the Development Plan and are assessed in accordance with the provisions of the Retail Planning Guidelines for Planning Authorities, 2012.

## 5.2. **Tullow Local Area Plan 2017-2023 (extended)**

**SO 2:** To create a thriving town which contributes to the natural and built heritage amenities of the town and provides a vibrant and vital mixed-use environment.

**SO 3:** To facilitate the creation of a sustainable vibrant economy which maximises the unique attributes of the town.

**E.C. 16:** To encourage the development of the retail and service role of Tullow as a self-sustaining centre in accordance with the policies contained in the Carlow County Development Plan 2015-2021 and the Retail Planning Guidelines 2012.

**E.C. 17:** To protect the retail function of the Core Shopping Area.

**E.C. 19:** To adhere to the provisions of the Sequential Approach in the consideration of retail applications located outside of Core Retail Area.

The site is located in an area zoned for 'Town Centre Activities'. The Objective of this zoning is: 'To provide for the development and improvement of appropriate town centre uses including retail, residential, commercial, office and civic uses.'

## 5.3. **National Guidelines**

Retail Planning: Guidelines for Planning Authorities, 2012 (RPGs)

2.4.1 Convenience retail floorspace caps:

3,000 sqm. in the remainder of the State (i.e., those areas outside of the four Dublin local authority areas, and the cities of Cork, Limerick/Shannon, Galway and Waterford. These floorspace caps apply to new retail stores or extensions to existing stores which will result in an aggregate increase in the net retail floorspace of the convenience element of such retail stores.

#### 5.4. **Natural Heritage Designations**

Slaney River Valley Special Area of Conservation is approximately 0.3 km from the appeal site.

#### 5.5. **EIA Screening**

Having regard to the nature of the development comprising of an extension to an existing food store in built-up urban area, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

### 6.0 **The Appeal**

#### 6.1. **Grounds of Appeal**

##### 6.1.1. Grounds of Appeal from Tommy Hickson

- The proposed extension to an existing foodstore is not within the Town Centre Core Retail area of Tullow and, therefore, will further demise the retail core.
- The floor area of the Aldi store with the proposed extension is 1,588 sqm which is over the 1,500sqm allowed in the Retail Guidelines.
- The proposed development is a 20% increase in the existing floor area, which now breaches the Retail Planning Guidelines.
- Aldi should not be allowed to have nighttime deliveries.

##### 6.1.2. Grounds of Appeal from Ray Flynn

- Issues with parking agreements and access arrangements have not been resolved.
- Shocked that the Planning Authority had granted permission without dealing with the substantive problems.

## 6.2. Applicant Response

The main comments received from the applicant can be summarised as follows:

- The total net retail sales area is 1,147 sqm, substantially below the floor space cap of 3,000 sqm as set out in the Retail Planning Guidelines.
- A change of uses of the existing Aldi store is not proposed or required.
- The legal agreement with Flynn's Garage (Tullo) Limited remains in force on the site.
- Aldi continues to have the right to the car parking spaces in accordance with the agreement.
- The submitted TPS M Moran and Associates response document notes that while just 64 no. customer parking spaces are required, 103no. spaces are available and considered appropriate.
- The existing access and deliveries arrangement have operated successfully since the store opened in 2007.
- The submitted observations on planning application Reg. Ref.: 18/83 are not considered relevant as the application was withdrawn.
- The proposed development is consistent with the development plan approach to retail development and will support the secondary retail core identified within Tullow.
- The proposed development will not have a detrimental impact on the amenity of the existing Flynn's Garage.
- The development would comply with the scale and type of retailing identified for the lands as set out in the applicable planning policy for the area.

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

None. Response received outside the statutory period.

### 6.4. **Observations**

None

### 6.5. **Further Responses**

None

## 7.0 **Assessment**

7.1. The Planning Authority considered this proposal under the Carlow County Development Plan 2015-2021. As noted in section 5, the Carlow County Development 2022-2028 is the operative Development Plan for the area. This plan came into effect on 4<sup>th</sup> of July 2022. The Tullow Local Area Plan 2017-2023 has been extended until 2024.

Having examined the application details and all other documentation on file, carried out a site inspection, and having regard to the relevant local/regional/national policies and guidance, I consider that the key issues on this appeal are as follows:

- Retail Impact on Town Core.
- Car Parking and Access
- Appropriate Assessment

### 7.2. **Retail Impact on Town Core.**

7.2.1. The site is within an area zoned for 'Town Centre Activities'. The objective of this zoning is to: 'To provide for the development and improvement of appropriate town centre uses including retail, residential, commercial, office and civic uses.' A convenience shop is permitted in principle in this zoning.

- 7.2.2. The proposed extension will increase the net floor area by 240 sqm. The total net floor area of the foodstore will be 1,147 sqm. This represents a 26% increase in the retail area. This floor area is within the Retail Planning Guidelines convenience retail floorspace cap of 3,000 sqm for towns such as Tullow. Given the scale of the extension I do not consider that a retail impact assessment is required.
- 7.2.3. The Tullow Local Area Plan highlights that the Tullow is the main retail centre for the east of County Carlow and serves an extensive retail catchment area that includes the adjoining area in County Wicklow. It is a Carlow County Council policy to protect and strengthen the retail primacy of Tullow with the County.
- 7.2.4. It is recognised that the Aldi site is just outside the Tullow Retail Core Area as defined in the Tullow Local Area Plan. It is the policy of the Council to protect the retail function of the core shopping area. I note that in the Retail Strategy for Carlow County, Aldi, Tesco and Lidl sites have been identified as a secondary retail area with Tullow. The Retail Strategy also recommends that both Tullow and Muine Bheag should be prioritised for new and improved convenience retailing. While the site is c.70m outside the designated Tullow Core Retail Area, the site is zoned for 'Town Centre Activities' with an objective to provide for appropriate town centre uses, including retail. The location of the established foodstore has already been assessed through the planning process and considered acceptable. I consider that the scale of the increase in convenience retail floor space to the existing foodstore will not be harmful to the retail function of the core shopping area.

### **7.3. Car Parking and Access**

- 7.3.1. The applicant has stated that they have a legal agreement for using 53 no. car parking spaces outside the applicant's site and in the ownership of the appellant: Flynn's Garage (Tullow) Ltd. These spaces are in addition to 47 no. spaces within the red line boundary and 3 no. on an Aldi right of way. Flynn's Garage states that it is a false contention that a reciprocal parking arrangement is in place. In their observation to the planning authority, they state that Aldi unilaterally withdrew from the agreement and commenced clamping Flynn's customers and staff when they parked on spaces which are part of the reciprocal parking arrangement. They also state in the observation that if the proposal proceeds, the existing access and

parking arrangements will be null and void. The applicant has submitted a solicitor's letter which states that Flynn's Garage (Tullow) Limited granted a license on the 21<sup>st</sup> December 2005, allowing Aldi customers to park on its lands and that the licence has not been terminated. It is stated that Aldi continues to have a right to the car parking spaces per the license. With regard to the legality of the agreement, I consider this to be a civil matter to be resolved between the parties, having regard to the provisions of s.34(13) of the 2000 Planning and Development Act.

7.3.2. The Carlow Development Plan car parking standards for food retail is a maximum of one car parking space per every 20 sqm of gross floor area for food retail. I note that this is a maximum figure. This would equate to a maximum of 79 no. spaces for the proposed extended food store. With the agreement in place, 103 no. spaces would be provided, which is in excess of this figure. Without the agreement 56 no. spaces would be provided.

7.3.3. I have noted the contents of the Car Parking Survey submitted with the planning application. I also note the observation in the survey, that an element of dual usage occurs with Aldi Customers combining a shopping trip with a linked trip to the nearby town core. Given that this site is in an area zoned for town centre activities and its proximity to the designated town centre core, I consider the reduced figure, without the agreement, to be acceptable and will not lead to significant traffic congestion.

7.3.4. The issue of access and timing for deliveries has been included as grounds for appeal. I note that the Tullow Municipal District Area Engineer and County Council's Transportation Engineer have no objection to the proposed extension. As stated above, the use, location and entrance have already been assessed through the planning process and considered acceptable. I consider that the proposed extension does not alter the existing entrance arrangement for delivery access. I also consider that the proposed increase in the net retail floor area will not significantly increase the number of deliveries and therefore not place undue additional pressure on the existing entrance and access arrangements.

#### **7.4. Appropriate Assessment**

7.4.1. Having regard to the nature and scale of the proposed development, which consists of an extension to an existing food store 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.

## 8.0 Recommendation

8.1. Having regard to the information submitted in support of the appeal, together with all other matters and details on the file, I recommend that permission be granted for the development subject to the following conditions.

## 9.0 Reasons and Considerations

9.1. Having regard to the provisions of the Carlow County Development Plan 2022-2028 and the Tullow Local Area Plan 2017-2023 (extended), the established foodstore use of the site and the scale of the development as proposed, it is considered that the proposed development works, and subject to compliance with the conditions set out below, would not seriously injure the amenities of the area or of property in the vicinity. The proposed development would not, therefore, be contrary to the proper planning and sustainable development of the area.

## 10.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p>Reason: In the interest of clarity.</p>
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2.	<p>Notwithstanding the provisions of the Planning and Development Regulations 2001, or any statutory provision amending or replacing them, no additional advertisement signs (including any signs installed to be visible through the windows), advertisement structures, banners, canopies, flags, or other projecting elements shall be displayed or erected on the buildings or within the curtilage of the site, unless authorised by a further grant of planning permission.</p> <p>Reason: To protect the visual amenities of the area.</p>
3.	<p>The noise level shall not exceed 55 dB(A) rated sound level, as measured at the nearest dwelling. Procedures for the purpose of determining compliance with this limit shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p>Reason: To protect the residential amenities of property in the vicinity of the site.</p>
4.	<p>Site development and building works shall be carried out only between the hours of 0800 to 1900, Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.</p> <p>Reason: In order to safeguard the residential amenities of property in the vicinity.</p>
5.	<p>No additional development shall take place above roof parapet level, including lift motor enclosures, air handling equipment, storage tanks, ducts or other external plant, telecommunication aerials, antennas or equipment, unless authorised by a further grant of planning permission.</p> <p>Reason: To protect the residential amenities of property in the vicinity and the visual amenities of the area.</p>
6.	<p>Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of</p>



	<p>the planning authority for such works and services.</p> <p>Reason: In the interest of public health and to ensure a satisfactory standard of development.</p>
7.	<p>The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.</p> <p>Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.</p>

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

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.Peter Nelson  
Planning Inspector

13th July 2023