



An
Bord
Pleanála

Inspector's Report ABP 314150-22.

Development	Retention of amendment to opening hours to: 0900 to 2200 Monday to Friday and 0900 to 2100 on Saturdays, Sundays and Public Holidays and to no restrictions on delivery hours.
Location	Ardshanavooly, Killarney, Co. Kerry.
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	22454
Applicant	Aldi Stores (Ireland) Limited
Type of Application	Permission
Planning Authority Decision	Grant permission
Type of Appeal	Third Party
Appellants	Michael Hegarty
Observers	None
Date of Site Inspection	4 th of May 2023
Inspector	Siobhan Carroll

Contents

1.0 Site Location and Description	4
2.0 Proposed Development	4
3.0 Planning Authority Decision	4
3.1. Decision	4
3.2. Planning Authority Reports	5
3.3. Prescribed Bodies	5
3.4. Third Party Observations	5
4.0 Planning History.....	5
5.0 Policy Context.....	6
5.1. Kerry County Development Plan 2022 – 2028	6
5.2. Natural Heritage Designations	6
5.3. EIA Screening	6
6.0 The Appeal	7
6.1. Grounds of Appeal	7
6.2. Applicant Response	8
6.3. Planning Authority Response.....	12
7.0 Assessment.....	12
7.1. Principle of Development	12
7.2. Impact on residential amenity	13
7.3. Traffic Impact	15
7.4. Other issues.....	16
7.5. Appropriate Assessment.....	16

8.0 Recommendation..... 17

9.0 Reasons and Considerations..... 17

10.0 Conditions 17

1.0 Site Location and Description

- 1.1. The existing Aldi store is located immediately to the north-west of the junction of Park Road (R876) and Arbutus Drive. It is situated circa 1km to eastern side of the town centre of Killarney in County Kerry.
- 1.2. The store site is bounded to the west by Ardshnavooley housing estate, and to the north by the former Aldi store which is currently vacant. The southern site boundary adjoins two residential properties with frontage onto Park Road with the main section of this boundary directly adjoining the public footpath along Park Road.
- 1.3. To the east of the site on the opposite side of Arbutus Drive there are two buildings which contains retail and commercial premises. The vehicular entrance serving the Aldi store is located off Arbutus Drive. There are detached two-storey dwellings located along Arbutus Drive opposite the vehicular entrance.
- 1.4. The Aldi store is served by a surface car parking area located to the west of the store. The loading area is located immediately to the north of the store. There is a building on site 10m to the west of the Aldi store. The building contains vacant retail units.

2.0 Proposed Development

- 2.1. Permission is sought for the retention of amendment to opening hours to: 0900 to 2200 Monday to Friday and 0900 to 2100 on Saturdays, Sundays and Public Holidays and to no restrictions on delivery hours.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority granted retention permission subject to two conditions. Condition no. 2 states,

2. The proposed development shall not be open to the public outside the hours of 0900 to 2200 Monday to Friday inclusive, nor outside the

hours of 0900 to 2100 hours on Saturdays, Sundays and public holidays.

Reason: In the interests of residential amenity.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The report stated that having regard to the location of the retail unit, the location of the delivery bay at the rear away from the public road the location of the car parking area between the loading bay and development in Ardshanavooley and the distance to these dwellings (c. 90m) it was considered that restrictions to delivery hours were not necessary. It was concluded that the proposed retention of the opening hours would not give rise to a seriously negative impact upon the residential amenities of adjoining properties or impact negatively upon traffic in the area.

3.2.2. Other Technical Reports

- None

3.3. Prescribed Bodies

3.3.1. Irish Water – No objections

3.4. Third Party Observations

3.4.1. The Planning Authority received one submission/observation in relation to the application. The issues raised are similar to those set out in the appeal.

4.0 Planning History

Reg. Ref. 18/337 & ABP 302971-18 – Permission was granted for the construction of a single storey discount foodstore. The permission was subject to 17 no. conditions. Condition no. 10 states,

10. The proposed development shall not be open to the public outside the hours of 0800 to 2100 Monday to Saturday inclusive, nor outside the hours of 1000

to 1900 on Sundays and public holidays. No deliveries shall be taken at, or dispatched from, the premises outside the hours of 0700 to 2200 from Monday to Saturday inclusive, nor outside the hours of 0900 to 1900 on Sundays and public holidays.

Reason: In the interest of residential amenity.

5.0 Policy Context

5.1. Kerry County Development Plan 2022 – 2028

- 5.1.1. The Killarney Town Development Plan 2009-2015 (as extended and varied) is incorporated into the Kerry County Development Plan 2022-2028.
- 5.1.2. The site is located on lands zoned objective 'M3 District / Neighbourhood Centre'. The M3 District / Neighbourhood Centre objective seeks to facilitate: 'uses appropriate to the town centre in areas zoned mixed use. Proposed developments should improve the vitality and viability of the town centre and shall meet the needs of the town.'
- 5.1.3. Section 4.4 of the County Development Plan refers to Retail
- 5.1.4. Objective KCDP 4-51 – Have regard to the Retail Planning Guidelines for Planning Authorities and associated Retail Design Manual (2012) in the assessment of planning applications for all retail developments.

5.2. Natural Heritage Designations

- 5.2.1. Killarney National Park, Macgillycuddy Reeks and Caragh River Catchment SAC (Site code 000365) and Killarney National Park SPA (Site code 004038) are located within 1km of the appeal site.

5.3. EIA Screening

- 5.3.1. As the proposal refers to the proposed retention of amended operating hours and delivery hours only at a supermarket, EIA provisions are not applicable.

6.0 The Appeal

6.1. Grounds of Appeal

A third party appeal has been submitted by Reeks Consulting Engineers on behalf of Michael Hegarty. The issues raised are as follows;

- It is submitted that the nature of the application is unclear as to whether it relates to exclusively to the retention of the opening hours or whether it is retaining other items which are not in compliance with the permission which was granted.
- Condition no. 10 of the permission granted by the Board under ABP – 203971-18 stated, “The proposed development shall not be open to the public outside the hours of 08.00 to 21.00 Monday to Saturday inclusive, nor outside the hours of 10.00 to 19.00 on Sundays and public holidays. No deliveries shall be taken at, or dispatched from, the premises outside the hours of 07.00 to 22.00 from Monday to Saturday inclusive, nor outside the hours of 09.00 to 19.00 on Sundays and public holidays.”
- The letter to Kerry County Council dated 21st December 2020 from Deady Gahan Architects stated on behalf of their clients Aldi Ireland that ‘we wish to confirm this condition is noted and will be adhered to fully.’
- It is stated that the opening times as advertised in the signage as shown on a photograph submitted with the appeal state that the opening hours are Mon-Fri 9am to 9pm (1 hour earlier than the permitted time of 10am and 2 hours later than the permitted time of 7pm on Sundays) and Bank Holidays 9am to 9pm (1 hour earlier than the permitted time of 10am and 2 hours later than the permitted time of 7pm).
- The area contains a lot of residential development, particularly apartments across the road to the east of the existing supermarket.
- The Council and the Board attached the conditions including condition no. 10 to protect the residential amenities of the area.
- It is submitted that there are very good reasons for imposing such a condition, particularly in a residentially sensitive area.

- The correspondence from Coakley O'Neill provided with the application which references Tesco opening hours is noted. The hours are 07.00 – 10.00. They stated in the correspondence that 'we are not aware of there being any negative impacts on residential amenities in the area.'
- It is highlighted in the appeal that the Tesco in Killarney is located well off the public road. Whereas the subject Aldi supermarket is located much closer to the neighbouring residential units.
- It is stated that noise, traffic movements and light pollution all impact on the amenities of the residences owned by the appellant Mr. Hegarty. It is stated that the appellant has received complaints from his tenants in relation to these issues specifically arising from customers and delivery vehicles entering and exiting the premises in the early morning and late at night.
- It is submitted that the granting of retention of the amended operating hours would set an undesirable precedent.
- The appeal refers to the location of a pedestrian entrance onto to the public footpath on Park Road. The appellant states that they reviewed the Site Layout of the permitted development and that there were no details of openings as pedestrian entrances/exits for the development. They refer to the gated entrance on the Park Road as 'Entrance A.' The second entrance on the Park Road as 'Entrance B' and the gated opening on the Deer Park Road side as 'Entrance C.'
- It is stated that they understand that the pedestrian entrances did not form part of the scheme as was permitted under the parent permission.
- The appellant queries whether the pedestrian entrances are part of the retention application. They expressed concern at the number of pedestrian entrances serving the development and considered that they will result in conflict between pedestrians and traffic.

6.2. Applicant Response

A response to the appeal was submitted by Coakley O'Neill Town Planning on behalf of the applicant Aldi Stores (Ireland) Limited. The issues raised are as follows.

- It is stated that the appellant is the owner of the Countess Shopping Centre which is located directly across Park Road to the south of the Aldi store.
- It is raised in the appeal that the nature of the application is unclear. The appellant questioned if the application relates exclusively to opening hours and to other items they claim are not in compliance with the application as granted permission.
- The second point put forward by the appellant was that condition no. 10 of the original grant of permission regarding the opening hours has not been adhered to.
- It is stated in the appeal that the condition relating to opening times is needed to protect the residential amenities of the area as the area is considered by the third party to be a residentially sensitive area. It is stated in the appeal that there were numerous complaints from residents in relation to traffic movements as well as noise and light pollution due to customers and delivery activity in regard to existing retail developments in the area. The third party concluded that the decision of Kerry County Council would set a precedent for businesses to proceed with the opening hours which suits businesses and then apply to retain the revised hours at a later date.
- The third point was raised in relation to one entrance to Aldi site. It was claimed that entrance B was never present in past applications and that entrance A and C were granted access to the original field and were not referenced as pedestrian access. It is highlighted that the third party made the same point of objection in the original submission to the Council and that the Council did not raise any issues with the existing pedestrian entrances.
- Regarding the matter of the nature and extent of the development as applied for, the first party state that there is no need to further clarify this. The public notices and the notification of the decision of Kerry County Council clearly identify the retention of the current operating hours and delivery times and no other development or words are identified to be retained or are proposed.
- The application before the Board on appeal seeks retention permission to retain development consisting of an amendment to the opening hours (0800 to 2100 Monday to Saturday inclusive and 1000 to 1900 hours on Sundays

and public holidays) permitted under condition no. 10 of ABP ref: 302971-18 to the opening hours of 0900 to 2200 Monday to Friday and 0900 to 2100 on Saturdays, Sundays and Public Holidays.

- The proposed development specifically seeks the retention of the current opening hours and delivery times.
- In relation to the potential impacts raised by the third party in the appeal it is considered that these have been addressed to the satisfaction of Kerry County Council in the application prior to the application being appealed.
- The report of the Planning Officer states that it is noted that there was no reference made to operating hours and delivery times in the report of the Board's Inspector in respect of ABP – 302971-18. The report of the Planning Officer noted that the current unauthorised operating hours are a relatively small deviation from those set by condition no. 10 attached to the permission granted by the Board under reference ABP 302971-18.
- The report of the Planning Officer concludes that it is considered that the proposed retention of the opening hours would not give rise to a seriously negative impact upon the residential amenities of adjoining properties or impact negatively upon traffic in the area.
- It is highlighted that in relation to the appellant's claims that they have received a number of noise complaints from residents, that no evidence regarding these complaints has been provided with the appeal or with the application.
- The first party accept that the third party is correct in stating that these restrictions on opening hours were attached as a condition by the Board to safeguard the residential amenity of the area.
- They respectfully request that the Board share the view of the Planning Authority that the retention of the opening hours and delivery times currently proposed is a relatively small deviation from that permitted and that it would not give rise to any negative impacts on amenities in the area.
- It is submitted that the proposed operating hours to be retained are the standard trading hours.

- The TTA submitted with the original application was already premised on the standard trading hours of a typical Aldi store. The TTA also identified that the evening peak traffic period, the worst case scenario occurs between 1700 and 1800. It is noted that the proposed amended opening hours are outside this PM peak period.
- The TTA also noted that the morning peak period is 0700 to 0800 during which time the Aldi store is closed. It is stated that the traffic associated with the proposed operating hours to be retained will not impact on traffic during the AM peak period. It is stated that these are key considerations in determining whether the operating hours have a negative impact on the residential amenities of this area.
- The first party do not accept the contention that a positive decision would set a precedent for businesses to “proceed with the opening hours which suits your business and apply to retain the revised hours at a later date” as cited by the third party.
- It is noted that the Board has previously granted permission for the retention of a change in operating hours under Reference ABP 304130-19. In that case permission was granted by the Board for the retention of an amendment to operating hours for a depot.
- The appeal raised queries in relation to the number of pedestrian accesses and it contends that entrance B was never present in past applications and that entrance A and C were gated access to the original field and were not referenced as pedestrian access. In response to the matter, the first party state that the permitted Site Layout Plan for the Aldi store as constructed indicated 5 no. pedestrian connections from the Aldi site to the footpath on Park Road. These connections are indicated on figure 1 in the appeal.
- During the construction of the permitted Aldi development, pedestrian accesses, no’s 1,2,3 and 5 were constructed. The permitted access no. 4 was omitted due to level differences. It is stated that pedestrian access no. 3 and no. 5 would adequately serve customers and have full disabled access. This is considered to be a minor non material change to the permitted development.

- In conclusion it is submitted that the retention of permission regarding opening times will not result in significant negative impact and will not adversely affect the residential amenity of adjoining properties. It will not adversely impact on the character of the area.
- It is respectfully submitted that the decision of the Planning Authority be upheld in this instance and that permission be granted by the Board for the proposed development.

6.3. **Planning Authority Response**

- None received.

7.0 **Assessment**

I consider that the issues arising in the appeal can be addressed under the following headings:

- Principle of Development
- Impact on residential amenity
- Traffic Impact
- Other issues
- Appropriate Assessment

7.1. **Principle of Development**

- 7.1.1. The appeal site is located on lands zoned objective 'M3 District / Neighbourhood Centre'. The M3 District / Neighbourhood Centre objective seeks to facilitate: 'uses appropriate to the town centre in areas zoned mixed use. Proposed developments should improve the vitality and viability of the town centre and shall meet the needs of the town.'
- 7.1.2. The proposal to retain the extended the operational hours and delivery hours of the existing discount food store is considered to be acceptable in principle having regard to the zoning objective, the established retail use of the site and the pattern of existing development in the area.

7.2. Impact on residential amenity

- 7.2.1. The grounds of appeal refer to impacts upon residential amenity in terms of noise, traffic movements and light pollution arising from customers and delivery vehicles entering and exiting the premises in the early morning and late at night. The appeal refers to a number of complaints which the appellant received from their tenants in the area.
- 7.2.2. In response to this the first party stated that they noted the matter. However, that no evidence regarding these complaints has been provided with the appeal or with the application.
- 7.2.3. Under Reference ABP 302971-18 & Reg. Ref. 18/337 the Board granted permission for the construction of the subject Aldi store. Condition no. 10 attached to the permission referred specifically to the opening hours of store and also the delivery times.
- 7.2.4. Condition 10 states;

The proposed development shall not be open to the public outside the hours of 0800 to 2100 Monday to Saturday inclusive, nor outside the hours of 1000 to 1900 on Sundays and public holidays. No deliveries shall be taken at, or dispatched from, the premises outside the hours of 0700 to 2200 from Monday to Saturday inclusive, nor outside the hours of 0900 to 1900 on Sundays and public holidays.

Reason: In the interest of residential amenity.

- 7.2.5. Accordingly, condition no. 10 restricts opening hours between 8am and 9pm Monday-Saturday and between 10am and 7pm on Sundays and Bank Holidays. It also restricts deliveries to between 7am and 10pm Monday-Saturday and between 9am to 7pm on Sundays and Bank Holidays. The reason cited for this condition was "In the interests of residential amenity."
- 7.2.6. The first party set out their case for the proposed retention of the opening hours and delivery hours. They submit that the proposed revised opening hours and delivery times are standard trading hours. They consider that they are a relatively small deviation from that permitted and that it would not give rise to any negative impacts on amenities in the area.

- 7.2.7. The development as permitted and constructed provides for the Aldi store located to the eastern side of the site addressing Arbutus Drive to the east and Park Road to the south. The customer car parking area is surface car parking located to the west of the building. The loading area is located immediately to the north of the store.
- 7.2.8. The car parking area is situated over 80m from the closest residential properties to the east and I note that the rear gardens of 3no. dwellings directly adjoin the western site boundary, and the southern site boundary directly adjoins the rear gardens of two residential properties on Park Road. I would note that the site context relative to existing surrounding development has been fully assessed under the parent permission particularly in relation to the location of the car park.
- 7.2.9. Under the current proposal the applicant seeks to retain the opening hours of 9am to 10pm Monday to Friday and 9am to 9pm on Saturdays, Sundays and Public Holidays. This revision results in a later opening time on weekdays at 9am rather than 8am and later closer time of 10pm rather than 9pm. Therefore, this does not result in additional opening hours but rather a later opening and closing time by one hour. In relation to this I would concur with the first party that this represents a relatively small deviation from that permitted and that it would not give rise to any negative impacts on amenities in the area.
- 7.2.10. Regarding the proposed opening hours at the weekend on Saturdays, Sundays and Public Holidays, the applicant seeks to retain the opening hours of 9am to 9pm. This revision results in an earlier opening time from 10am to 9am and a later closing time on weekends and Public Holidays of 9pm which provide three additional trading hours per day. While I would note that the proposal would result in these additional trading hours, I would take into account the point made by the first party that these hours are standard trading hours and I would accept this as the case. Accordingly, in relation to the proposed retention of the revised opening hours I would concur with the assessment of the Planning Authority that it would not give rise to a seriously negative impact upon the residential amenities of adjoining properties.
- 7.2.11. In relation delivery hours, I note that the under condition no. 10 of the parent permission the delivery times were restricted to between 0700 to 2200 from Monday to Saturday inclusive, nor outside the hours of 0900 to 1900 on Sundays and public holidays. The applicant seeks the retention of no restrictions on delivery hours. They

submit that it would represent a relatively small deviation from that permitted and that it would not give rise to any negative impacts on amenities in the area.

- 7.2.12. In report of the Planning Officer, in respect of the application, it was determined that having regard to the location of the retail unit, the location of the delivery bay at the rear away from the public road, the location of the car parking area between the loading bay and development in Ardshnavooley and the distance to these dwellings of approximately 90m that restrictions to delivery hours were not necessary.
- 7.2.13. The loading area is located immediately to the north of the store. It comprises a ramped loading bay into which trucks reverse for deliveries to be made into the storage/warehouse area to the rear of the store. The closest residential property to the east on Arbutus Drive is located 45m away. The design of the loading bay means once HGVs access it, they do not directly address the front of dwellings along Arbutus Drive. Therefore, any potential impacts arising from lights from vehicular deliveries will be temporary in terms of the vehicles entering and exiting the premises. In relation to the housing to the west of the site, I note that the separation distance between the loading area and the closest dwelling in the Ardshnavooley housing estate is circa 90m and location of the car parking area between them. In relation to the siting and design of the loading bay, I note that vehicles would face west once they have entered it. While vehicles in the loading bay would face west towards the rear of the properties at Ardshnavooley, I would concur with the Planning Authority that having regard to the separation distance between the loading bay and the closest property in the Ardshnavooley housing estate that the removal of restrictions on the delivery hours would be acceptable and would not have any undue impact on the existing residential amenity of the properties.
- 7.2.14. Accordingly, on the basis of the above I have no objection to the proposed retention to opening hours to: 0900 to 2200 Monday to Friday and 0900 to 2100 on Saturdays, Sundays and Public Holidays and with no restrictions on delivery hours in order to facilitate more flexible trading and delivery arrangements.

7.3. Traffic Impact

- 7.3.1. The impact of the development on the wider road network was considered and accepted under the parent permission reference ABP-302971-18/ Reg. Ref. 18/337.

It is considered that the proposal to retain the extended the trading hours and delivery hours would not have a significant impact on traffic generation.

7.4. Other issues

- 7.4.1. The grounds of appeal refer to the requirement for clarity in relation to what is proposed to be retained under the application. In response to this matter the first party confirmed that the public notices and the notification of the decision of Kerry County Council clearly identify the retention of the current operating hours and delivery times and no other development is identified to be retained or is proposed.
- 7.4.2. The grounds of appeal raised queries in relation to the number of pedestrian accesses serving the Aldi store. It is contended in the appeal that entrance B was never present in past applications and that entrance A and C were gated access to the original field and were not referenced as pedestrian accesses. In response to the matter the first party stated that the store has been constructed in accordance with the permitted layout and that the scheme as permitted contained 5 no. pedestrian connections from the Aldi site to the footpath on Park Road. The first party confirmed that the pedestrian accesses, no's 1,2,3 and 5 were constructed and that the permitted access no. 4 was omitted due to differences in ground levels. The first party submit that the omission of pedestrian access no. 4 is considered to be a minor non material change to the permitted development. In relation to this matter, I would note that the current application for retention refers solely to the amendment to opening hours to: 0900 to 2200 Monday to Friday and 0900 to 2100 on Saturdays, Sundays and Public Holidays and to no restrictions on delivery hours. Therefore, if permission were granted by the Board then any other material revisions to the permitted development would be subject a further application.

7.5. Appropriate Assessment

- 7.5.1. Having regard to the minor nature of the development and its location in a serviced urban area, 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. I recommend that permission is granted for the retention of the proposed development.

9.0 Reasons and Considerations

- 9.1.1. Having regard to the location of the site on lands zoned objective M3 – District/Neighbourhood Centre in the Killarney Town Development Plan 2009-2015 (as extended and varied) as incorporated into the Kerry County Development Plan 2022-2028, the existing permission on the site and the pattern of development in the area, it is considered that the proposed development, 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, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be retained, 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.

Reason: In the interest of clarity.

2. The proposed development shall not be open to the public outside the hours of 09.00 to 22.00 Monday to Friday or 09.00 to 21.00 on Saturdays, Sundays and public holidays.

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

3. The permission hereby granted shall solely relate to the hours of operation and delivery hours 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 An Bord Pleanála appeal reference ABP-302971-18 which governs the overall development of the lands of which the site forms part, unless amended by a grant of planning permission.

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

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.

Siobhan Carroll
Planning Inspector

9th of November 2023