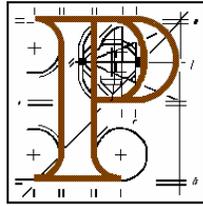


An Bord Pleanála



Inspector's Report On Section 48 Appeal

Development: Extension to licensed discount foodstore, plant area and all associated works

Location: Straffan Road, Maynooth, Co Kildare

Planning Application

Planning Authority: Kildare County Council

Planning Authority Reg. Ref.: 10/1093

Applicant: Lidl Ireland GmbH

Planning Appeal First party against condition number 11

Appellant: Lidl Ireland GmbH

Date of Inspection: Inspection not required

Inspector: Dolores McCague

1 THE APPLICATION

- 1.1 The application lodged with the planning authority 2nd November 2010 is for planning permission to extend a licensed discount foodstore, and provide a plant area and all associated works at Maynooth Road, Leixlip, Co Kildare. The proposed extension is a single storey building with a flat roof and an enclosed external plant area adjoining the proposed extension.
- 1.2 The extension is 104m², gross floor area.
- 1.3 The site, given as 0.7505ha, is located at Straffan Road, which is a regional road, R 406, at Maynooth, Co Kildare, with access from a cul-de-sac road (proposed distributor road).
- 1.4 A request for further information, issued on the 20th December 2010, in relation to the floor area exceeding the limits set in the Retail Planning Guidelines; inaccuracy of the drawings in respect of signage; and requesting proposals regarding car parking provision in relation to the standards in the Maynooth Development Plan.
- 1.5 The response includes details of current overprovision of car parking based on Development Plan standards, and under provision in the amount of 8 no. space when the proposed development is taken into account and therefore substantially in line with the standards.
- 1.6 The existing parking provision is 143 no. spaces, a surplus of 6 no. spaces per Maynooth Development Plan standards. The proposed development would require 146 no. required per Development Plan standards. The proposed provision is 138 no. spaces, (some spaces lost to development). Although some spaces short the provision of 138 no. spaces is substantially in line with the CDP standards.

2 THE DECISION

- 2.1 The planning authority decided to grant permission for the development on 8th February, 2011. Condition 11, subject of the Appeal, states:

Before development commences the applicant/developer shall pay to Kildare County Council the sum of €48,000 being the appropriate contribution for the shortfall 8 car parking space to be applied to this development in accordance with the Development Contributions Scheme adopted by Kildare County Council on the 23rd February 2004 in accordance with Section 48 of the Planning and Development Act 2000. The amount payable under this condition shall be fully index-linked from the date of grant of permission.

Reason: It is considered reasonable that the developer should make a contribution in respect of public infrastructure and facilities benefitting development in the area of the Planning Authority.

3 THE APPEAL

- 3.1 An Appeal, under the provision of Section 48 (10 (b) of the Act, was received from Tom Phillips & Associates, on behalf of the first party, on 4th March 2011.
- 3.2 The case made on behalf of the applicant in the Appeal can be summarised as follows:
- The Development Plan standards are not absolute but flexible.
 - There is no actual need for an additional parking space
 - The Board have previously omitted car parking levy's in relation to Discount Foodstore development in Kildare.
 - There is no increase in net retail area and the Board have previously removed levies on non-net retail area.
 - The proposed development is *sui generis* and the categories listed in the Development Plan Standards are unlike the proposed development which should not be required to have the same level of parking as 'large store'. The Board have previously established this principle in relation to retail warehousing vs general retailing.
 - Should the Board (inappropriately and inconsistently in their opinion) be minded to retain the contribution in whole or in part, the first party requests that they be given the opportunity to provide the parking space in question on site, through a revised wording of the condition.
- 3.3 The Development Plan is cited in relation to the purpose of the standards in table 15.2.
- 3.4 The Board's decision in ref. no. PL07.216756 is cited; as is PL01.228557; and PI 75.229675; in relation to removing a contribution in respect of car parking shortfall where the Board considered that the number of spaces proposed did not represent a shortfall.
- 3.5 There is no requirement to automatically apply a levy in respect of a shortfall in car parking, based on Development Plan standards. The Board's decision in ref. no. PI 09.227809 is cited.
- 3.6 There is no actual shortfall of spaces. The actual need for car parking has been verified by comprehensive analysis prepared by specialist transportation engineering consultants, JB Barry & Partners Ltd. That analysis, is attached as Appendix B, to the grounds. It confirms that the actual maximum usage of the car park is 43 no. spaces during peak periods, and extrapolating this to

take the proposed extension into account, usage would increase to 46 no. spaces.

- 3.7 The principle has been established that a contribution in respect of a shortfall in parking provision, is only appropriate for net retail area. The Board's decision in ref. no. PL17.225103 is cited; the Board determined that it was not reasonable to levy for shortfall in respect of first floor ancillary office accommodation.
- 3.8 The principle has been established: that the Board can re-interpret car parking categories. The Board's decision in ref. no. PL01.212701, and PL01.215571 are cited; where a car parking standard for retail was used, and no car parking standard for retail warehousing was set in the Plan. Quoting from PL01.212701, the Board considered that the car parking requirements for the proposed development, as estimated by the planning authority were excessive, and that, having regard to the fact that part of the development involves solely retail warehousing and not conventional retail use, a lower requirement was more reasonable.
- 3.9 J B Barry & Partners have conducted further analysis to that in Appendix B in relation to discount Foodstore, TRICS parking rates (RETAIL /C – DISCOUNT FOOD STORES) vs. other foodstore, TRICS parking rates (RETAIL /A – FOOD SUPERSTORE). This analysis shows that on average in the UK and Ireland (excluding London), discount foodstores generate a requirement for parking at approximately only 56.1% of the rate of larger stores, or 43.9% less than larger stores. Using Irish data, the proportions are 76.1% of the rate of larger stores, or 23.9% less than larger stores. Applying the Irish only rates (conservative approach) the parking rate would be 1 space per 16 sq m for discount foodstores which would result in a requirement of 106 spaces in the current case. A comparison of parking requirements in Kildare and adjoining counties is given in table 1, which the first party considers highlights that the standards in Kildare are excessive by reference to adjoining counties.
- 3.10 The first party requests, should the Board be minded to attach a contribution for shortfall in parking, that they be given an opportunity to provide the requisite space on site and in this regard cites previous Board decisions ref. no. PL 07.214606, and PL 30.212827.
- 3.11 This appeal is one of a number of concurrent appeals (and potentially further appeals). Were the first party required to pay the amounts levied to date, as potentially increased in other cases currently in the planning process, the cumulative effect would be relatively punitive and could jeopardise the feasibility of the proposed extension.
- 3.12 The J B Barry report, referred to in the grounds is attached to the grounds. The proposed development will result in the removal of 5 no. spaces. In terms of the Development Plan requirements the proposed extension also generates an additional requirement for 9 no. parking spaces; current surplus per

Development Plan standards of 6 no. spaces post development under provision per Development Plan standards of 8 no. spaces.

- 3.13 It includes at table 2.3 an estimation of the parking demand for the existing development based on TRICS. This includes columns of data for: the hour, the gross floor area, the number of trips in, the number of trips out and parking demand. Parking demand for any given hour equals the parking demand for the previous hour plus the number of trips in, less the number of trips out. Based on these figures the peak parking demand is stated to be 47 spaces leaving 96 spaces free of the 143 spaces available. Following the proposed extension the estimated peak parking demand is 50 spaces.
- 3.14 A site specific parking occupancy survey was carried out on Friday the 25th February 2011 between 2pm and 5pm. The count period was carefully selected to shadow the peak shopping period established using Lidl's historical hourly sales data and also to match the anticipated peak parking period as established using the TRICS database. The results are presented in table 2.5 and give a maximum of 43 spaces occupied, or 30% occupancy. Based on the site survey the post development parking demand would be 46 spaces.
- 3.15 A comparison between the TRICS analysis and the parking survey is made. It was anticipated that the existing development would generate a peak parking demand of 47 spaces and the proposed development would result in an increased parking demand of 3 spaces. The parking surveys established that the actual peak parking demand for the existing development is in the order of 43 spaces. The increase resulting from the proposed development using TRICS is anticipated to be in the order of 3 spaces. The total anticipated peak demand is therefore estimated to be $47 + 3 = 50$ spaces, leaving a surplus of 88 or 63%.

4 RESPONSES

4.1 The Planning Authority

- 4.1.1 The planning authority has responded to the grounds of appeal including:
- 4.1.2 The shortfall is levied in accordance with Kildare County Council's Development Contribution Scheme.
- 4.1.3 The information provided in support of the appeal by J B Barry using TRICS is misleading method for using TRICS to calculate the car parking demand.
- 4.1.4 A table presenting an alternative method to calculate the car parking demand is included. It includes columns of data for: the hour, the number of trips in, the maximum car parking demand, the number of trips out, and the minimum parking demand. Maximum parking demand for any given hour equals the parking demand for the previous hour plus the number of trips in. Minimum parking demand for any given hour equals maximum parking demand (as

calculated above) less the number of trips out. Based on these figures they suggest that maximum peak parking demand would be 135 no. spaces.

- 4.1.5 The method used in the appeal documentation gives the impression that the car parking requirement is grossly over loaded based on the requirements of the Kildare County Development Plan. They state that their table provides a more accurate indication of the likely car parking requirements of the store as it takes into account the likely build up of car parking being generated.
- 4.1.6 Car parking required per CDO 146 spaces, provision for 138, shortfall of 8 no. spaces.

4.2 The First Party

- 4.2.1 The first party has responded to the planning authority's response to the grounds of appeal including:
- 4.2.2 Contrary to the Kildare Transportation Department's assertion that J. B. Barry & Partners are implying that the Kildare County Development Plan's parking requirements are 'grossly over loaded', they are instead stating that the parking requirements therein does not make specific allowance for discount food stores. 'Large stores' generate a higher parking demand than discount food stores.
- 4.2.3 They have not used the TRICS database for calculating parking demand; instead the TRICS database has been employed to provide a strategic insight into parking demand for a suite of other similar stores. It has also allowed the peak parking demand times to be identified.
- 4.2.4 To supplement the findings of the TRICS database surveys, a short site specific parking survey has been undertaken to coincide with peak parking demand times.
- 4.2.5 Kildare County Council have provided an alternative calculation method using the TRICS data which calculated maximum car parking demand figures far in excess of their calculations. In response they refer to their on-site survey which was to establish existing parking demand.
- 4.2.6 The method used by Kildare County Council to derive the maximum parking demand using the TRICs database assumes that for a specific period all trips into the site will occur before any cars exit the site. For example for the period 1400 hrs to 1500 hrs the maximum car parking demand has been calculated by adding the 85 trips in to the parking demand for the previous period (49) to derive a total maximum parking demand of 134 spaces, without allowing for any cars to exit (trips out). This is an incorrect assumption as in reality cars are likely to both enter and leave the development on a largely random but in general on an evenly distributed basis over a given period i.e. as cars enter the development other cars leave.

- 4.2.7** To illustrate this they provide a further breakdown of the on-site survey carried out, taken at 15 minute intervals. The parking demand based on 15 minute intervals are shown on a graph which illustrates that the parking occupancy over a given hour is relatively constant due to the fact that cars enter and leave at roughly the same rate.
- 4.2.8** They provide a further graph of surveys carried out at Lidl stores in Kildare (Newbridge, Leixlip, Naas, Maynooth, Sallins, and Athy), at 15 minute intervals, to illustrate the principle that cars enter and leave the site at roughly the same rate.
- 4.2.9** The County Council assumption that the ‘maximum’ parking they derived is a more accurate indication of the likely car parking requirements, is therefore incorrect and misrepresentative of the actual parking demand pattern at the site.
- 4.2.10** They also provide a comparison of: the parking survey, their estimate and Kildare County Council’s estimate to illustrate that their estimate is much closer to the actual parking demand; and they reiterate that the parking demand survey provides the necessary evidence as to the low parking space demand for the existing development during the peak periods.

5 Kildare County Development Plan 2011 - 2017

- 5.1** The Kildare County Development Plan 2011 - 2017 is the current Plan.
- 5.1.1** This Plan, it came into effect on the 2nd May 2011.
- 5.1.2** Table 19.9 Car Parking Standards includes *Large stores (> 1,000 sq. m. gross) 1 car space per 12 sq.m. of gross floorspace.*

5.2 Maynooth Local Area Plan 2002

- 5.2.1** The site is within the area of the Maynooth Local Area Plan 2002.
- 5.2.2** The site is zoned ‘G’ General Development.
- 5.2.3** Table 4.1 Car Parking Standards includes *Large stores (> 1,000 sq. m. gross) 1 car space per 12 sq.m. of gross floorspace.*

5.3 Kildare County Council Naas Town Council Athy Town Council Development Contributions Scheme 2011

- 5.3.1** The Development Contributions Scheme 2011 is the appropriate scheme.

- 5.3.2 In relation to car parking the scheme states that where carparking cannot be provided in accordance with the relevant Development Plan or Local Area Plan the following contribution shall be payable for the shortfall.
- 5.3.3 Car-parking - €6,000 per space in towns of Leixlip, Maynooth, Celbridge, Kilcock, Clane, Sallins, Straffan, Kill, Naas and Newbridge and €4,500 in all other towns/settlements.

6 ASSESSMENT

- 6.1 In accordance with Section 48 (10) (b) of the 2000 Act, the remit of the Board is confined to the determination of whether the terms of the Development Contributions Scheme, as adopted, were properly applied.
- 6.2 The main issue to be determined is whether the combined development, existing and proposed, is likely to generate a demand for car parking which cannot be accommodated within the parking area available on site.
- 6.3 The County Development Plan 2011 - 2017 and Maynooth Local Area Plan 2002 provide standards to be applied to different forms of development in relation to the required car parking provision. A notable difference, between the two is that in the recently adopted County Development Plan the standards (in the case of non domestic uses) are given as maximum car parking standards. The Plans require that car parking provision should be based on the extent to which the development is likely to generate demand for additional parking spaces.
- 6.4 The existing development on site was developed in accordance with these standards and according to the submissions made by the first party, this has resulted in over provision of car parking spaces.
- 6.5 The first party states that there is no appropriate category within those listed in the Development Plan standards, which fits well with the development. They state that the category 'large store' which has been applied to the existing development and the proposed development, is inappropriate and overstates the demand for parking.
- 6.6 It would be unreasonable to expect that every type of development would be listed in the Development Plan standards. It is therefore reasonable that what appears to be the closest category, should be used to estimate demand, until better information becomes available.
- 6.7 Information which has been made available with this appeal includes a survey of existing car park use, which indicates that the actual peak occupancy of the car park (43 spaces) is 30% of the available spaces.
- 6.8 TRICS database information has also been presented, based on 16 discount foodstores in the UK and Ireland. Information using the TRICS database has been used in previous appeals and will be familiar to the Board. The

information from the TRICS database estimates a peak parking demand, generated by the existing development, of 47 spaces.

- 6.9 There is a difference of opinion between the first party and the planning authority in relation to the manner in which the database information is presented and interpreted. The difference revolves around whether, in calculating the parking demand for any given period, the number of vehicles exiting the car park should be deducted from the combined figure for vehicles already in the car park at the beginning of the period and vehicles arriving during the period.
- 6.10 The planning authority states that 'maximum parking demand' is derived by adding the number of vehicles entering to the number already there. They consider that deducting the number of vehicles exiting during the period gives the minimum number of spaces required during the period.
- 6.11 The first party states that this assumes that no vehicles will exit until the end of the period, whereas in fact vehicles will arrive and leave throughout the period. Their findings based on TRICS is presented in units of one hour. To illustrate the point that vehicles exit and enter a car park throughout the period they present their site survey findings using quarter hour intervals as well as hour intervals; and compare the results with the estimates based on their use of TRICS and Kildare County Council's interpretation of the TRICS figures.
- 6.12 The site survey shows that the flow of vehicles in and out is continuous; that the maximum number of vehicle spaces occupied, as recorded at any quarter hour period is 43 no spaces compared to the theoretical maximum of 134 estimated by the planning authority. They also show that the differences between the first party's estimates based on the TRICS database and the site survey, ranges from 17% to 63%; and by comparison, the planning authority's estimates differ from the site survey by between 228% and 336%.
- 6.13 It is considered that the methodology employed by the first party is an acceptable use of the TRICS database.
- 6.14 It is worth noting that the TRICS data is mainly derived from UK experience, (15 stores in England, Wales and Scotland are listed, 2 - Northern Ireland and 1 Republic of Ireland, Dublin) and therefore may not be a completely accurate reflection of Irish conditions. Given the different competitive environment, discount foodstores may be more popular with Irish customers. The speed at which discount foodstores have spread throughout this country suggests that the format has been very successful. The economic downturn is likely to favour discount foodstores more than other format foodstores. The expansion into freshly baked produce, as now proposed, may generate more activity at the store, with a higher consequent demand for car parking space, than the increased floor area would suggest. However based on the site survey there is considerable excess capacity currently available.
- 6.15 It is considered that there is adequate on site car parking to cater for the existing and proposed development and that condition no 11 should be removed.

- 6.16 Should the Board consider that further car parking will be required, the first party have requested that condition no 11 be amended to allow for the further on site provision to the extent possible, or payment in lieu for any remaining shortfall. This alternative condition is considered reasonable.

7 RECOMMENDATION

- 7.1 Arising from the above assessment it is considered that Kildare County Council should be directed to REMOVE condition number 11, based on the reasons and considerations set out below.

REASONS AND CONSIDERATIONS

The Board considers that the terms of the Kildare County Council's Development Contributions Scheme 2011, as adopted on the 14th February 2011 were incorrectly interpreted and applied by the planning authority in requiring that further car parking was required to serve the proposed development, in light of the adequate car parking provision on site.

DECISION

The Board considered that the terms of the Development Contributions Scheme for the area had not been properly applied in respect of Condition Number 11 and directs the said Council, under subsection 10(6) of Section 48 of the Planning and Development Act, 2000, to REMOVE the said condition and the reason therefor.

Dolores McCague
Inspectorate

Date

- Appendix 1 Extracts from Kildare County Council Development Contribution Scheme 2011.
- Appendix 2 Extracts from Kildare County Development Plan 2011 - 2017.
- Appendix 3 Extracts from Maynooth Local Area Plan 2010.