

An  
Bord  
Pleanála

**Board Direction**  
**ABP-317414-23**

The submissions on this file and the Inspector's report were considered at a Board meeting held on 09/10/2024.

The Board decided, as set out in the following Order, that

Board Order as follows:-

**WHEREAS** a question has arisen as to whether the removal of three number (high/eaves level) refrigeration units to eastern elevation, the installation of one number dry cooler unit within the loading bay area, the erection of green mesh fence surrounding the dry cooler unit within the loading bay area, the removal of green mesh fence surrounding the dry cooler unit within the loading bay area, the installation of four number (low/ground level) air conditioning units to the northern elevation, the removal and relocation of four number (low/ground level) air conditioning units to within the loading bay area, the provision of a fifth (low/ground level) air conditioning unit to within the loading bay area, the installation of two number (low/ground level) air conditioning units to the eastern elevation, the provision of a screen/enclosure surrounding air conditioning units and existing dry cooler refrigeration unit within the loading bay area, and landscaping and all associated and ancillary works, all at Lidl, Johnswell Road, Kilkenny is or is not development or is or is not exempted development,

**AND WHEREAS** Lidl (Ireland) GmbH care of The Planning Partnership of McHale Retail Park, Castlebar, County Mayo requested a declaration on this matter from Kilkenny County Council and the Council issued a declaration on the 26<sup>th</sup> day of May, 2023 stating that the matter is development and is not exempted development,

**AND WHEREAS** Lidl (Ireland) GmbH care of The Planning Partnership of McHale Retail Park, Castlebar, County Mayo referred this declaration for review to An Bord Pleanála on the 20<sup>th</sup> day of June, 2023,

**AND WHEREAS** An Bord Pleanála, in considering this referral, had regard particularly to:

- (a) Section 2(1) of the Planning and Development Act 2000, as amended,
- (b) Section 3(1) of the Planning and Development Act 2000, as amended,
- (c) Section 4(1)(h) of the Planning and Development Act 2000, as amended,
- (d) the planning history of the site,
- (e) the pattern of development in the area, and
- (f) the report and recommendation of the Inspector,
- (g) the Board's own deliberations.

**AND WHEREAS** An Bord Pleanála has concluded that:

- (a) the removal of three number (high/eaves level) refrigeration units to eastern elevation, the installation of one number dry cooler unit within the loading bay area, the erection of green mesh fence surrounding the dry cooler unit within the loading bay area, the removal of green mesh fence surrounding the dry cooler unit within the loading bay area, the installation of four number (low/ground level) air conditioning units to the northern elevation, the removal and relocation of four number (low/ground level) air conditioning units to within

the loading bay area, the provision of a fifth (low/ground level) air conditioning unit to within the loading bay area, the installation of two number (low/ground level) air conditioning units to the eastern elevation, the provision of a screen/enclosure surrounding proposed air conditioning units and existing dry cooler refrigeration unit within the loading bay area and landscaping is works in accordance with Section 2(1) and therefore development in accordance with Section 3(1), of the Planning and Development Act 2000 as amended,

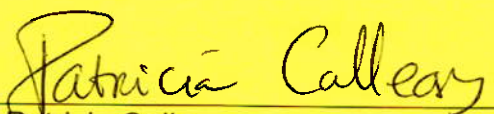
- (b) the development referred to at (a) above fall within the scope of Section 4(1)(h) of the Planning and Development Act 2000, as amended, as the development consists of the carrying out of works for the maintenance, improvement or other alteration of the structure (Lidl), being works which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures,
- (c) the development the subject matter of the referral is not a class of development that requires environmental impact assessment,
- (d) No appropriate assessment is required,

**NOW THEREFORE** An Bord Pleanála, in exercise of the powers conferred on it by section 5(3)(a) of the Planning and Development Act 2000, as amended, hereby decides that the removal of three number (high/eaves level) refrigeration units to eastern elevation, the installation of one number dry cooler unit within the loading bay area, the erection of green mesh fence surrounding the dry cooler unit within the loading bay area, the removal of green mesh fence surrounding the dry cooler unit within the loading bay area, the installation of four number (low/ground level) air conditioning units to the northern elevation, the removal and relocation of four number (low/ground level) air conditioning units to within the loading bay area, the provision of a fifth (low/ground level) air conditioning unit to within the loading bay area, the installation of two number (low/ground level) air conditioning units to the eastern elevation, the provision of a screen/enclosure surrounding air conditioning units and existing dry cooler refrigeration unit within the loading bay area, and landscaping and all associated and ancillary works, all at Lidl, Johnswell Road, Kilkenny is development and is exempted development.

**Note:**

In disagreeing with the inspector (in part), the Board did not share the view of the inspector that certain elements set out in the question referred, [consisting of the installation of 1 no. Dry Cooler unit within the Loading Bay area, the erection of a green mesh fence surrounding the Dry Cooler unit within the Loading Bay Area, the installation of 4 no. (low/ground level) Air Conditioning units to the Northern Elevation, the relocation of 4 no. (low/ground level) Air conditioning units to within the Loading Bay Area, the provision of a fifth (low/ground level) Air conditioning unit to within the Loading Bay Area and the installation of 2 no. (low/ground level) air conditioning units to the Eastern elevation], comprise development that is not exempted development. The inspector concluded that the carrying out of these elements would comprise the carrying out of works for the maintenance, improvement or other alteration of the structure, a finding which the Board agreed with, but that these works would materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures. The Board, in noting the nature of the listed works and the context, the separation distances involved between the structure and neighbouring properties and available screening, did not share this view, and concluded otherwise that these elements do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures. Accordingly the Board concluded that all of the elements set out in the referral question comprise works and development within the meaning of Section 2(1) and 3(1) of the Planning and Development Act 2000, as amended, and that the said development comprising all of the works set out in the referral question is exempted development within the meaning of Section 4(1)(h) of the of the Act.

**Board Member:**

  
Patricia Calleary

**Date:** 09/10/2024