

Planning and Development Acts 2000 to 2022

Planning Authority: Cork County Council

Planning Register Reference Number: 21/07462

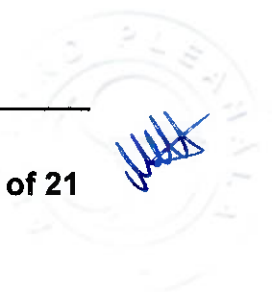
Appeal by Michael Riordan care of Brock McClure of 63 York Road, Dún Laoghaire, County Dublin against the decision made on the 13th day of July, 2022 by Cork County Council to grant subject to conditions a permission to Tesco Ireland Limited care of Avison Young of 4th Floor, 2 to 4 Merrion Row, Dublin in accordance with plans and particulars lodged with the said Council:

Proposed Development: The development will consist of the construction of (i) a single storey retail unit of circa 3,739 square metres gross floor area (circa 1,626 square metres convenience net sales area and circa 775 square metres comparison net sales area) including a licensed alcohol sales area, bulk store, ancillary offices, staff facilities, cage marshalling area, recycling area, bin storage, service yard, and associated directional signage; (ii) one number café/restaurant with take-away facilities and external seating (circa 323 square metres gross floor area) and one number retail unit (circa 259 square metres gross floor area) all contained in a single storey building fronting Courthouse Road; (iii) internally illuminated elevation signage on the northern and southern elevations, and wall mount signage at the vehicular entrance; (iv) 150 number car parking spaces (including parent and toddler,

disabled and electric parking spaces), 72 number cycle parking spaces and set down/loading bay areas; (v) click and collect set down area with canopy structure and associated signage; (vi) upgraded signalized junction at the vehicular access off Mill Road and set down/loading bay along Courthouse Road; (vii) landscaping features including a public plaza linking Courthouse Road and Mill Road; (viii) pedestrian access points off Mill Road and through a landscaped urban space along Courthouse Road frontage linking with a new toucan crossing, and (ix) ESB substation and switch room, attenuation tank, feature and street lighting, plant, trolley shelter/bays and all ancillary site development works, landscaping, enabling works and site services. An Environmental Impact Assessment Report (EIAR) and Natura Impact Statement (NIS) are submitted with the application. All on a site of circa 2,607 hectares, located north of Courthouse Road and east of Mill Road, Fermoy, County Cork.

Decision

GRANT permission for the above proposed development in accordance with the said plans and particulars based on the reasons and considerations under and subject to the conditions set out below.



Reasons and Considerations

Having regard to:

1. The following provisions of the Cork County Development Plan 2022 – 2028:
 - (a) the 'Town Centre/Neighbourhood Centres' zoning objective, where retail and restaurant/cafes are considered appropriate uses for the site;
 - (b) Objective ZU 18-17 which seeks to 'promote development of town centres and neighbourhood centres as the primary locations for retail and other uses that provide goods or services principally to visiting members of the public';
 - (c) the identified regeneration status 'FY-RA-02' for much of this brownfield and underutilised site, and
 - (d) specific Objectives FY-T-03 and FY-T-04 which seek to facilitate and cater for the sequential expansion of existing town centres to comprise a balanced and appropriate mix of town centre uses and to provide for adequate connectivity and permeability with other town centres zones.

2. The provisions of:
 - (a) the National Planning Framework 2018 which promotes the principle of Compact Growth as a National Strategic Outcome and National Policy Objective 11 which details there will be a presumption in favour of development that can encourage more people and generate more jobs and activity within existing towns; and

(b) the Regional Spatial and Economic Strategy for the Southern Region 2020 in which Regional Policy Objective 55 seeks to ensure that retail development is focussed on urban and village centres.

3. The provisions of the 'Future Site Development Capacity Study', as submitted at Further Information stage,

it is considered that the development, as proposed, is an acceptable use in principle for the site, represents an appropriate mix of use for the site's zoning objective, is consistent with Objective ZU 18-17 and Specific Objectives FY-T-03 and FY-T-04, would represent appropriate redevelopment of a designated regeneration site FY-RA-02 and would, therefore, be consistent with the provisions of the County Development Plan 2022 - 2028.

Furthermore, it is considered that the proposed development would be consistent with the provisions of the "Retail Planning Guidelines for Planning Authorities", issued by the Department of the Environment, Community and Local Government in April 2012, where the order of priority is to locate retail development in town centres. In this regard the County Development Plan identifies the Retail Hierarchy for the County with Fermoy as a 'Ring Town' where such towns can include some of the major retailing chains, particularly convenience. Objective TCR 9-8 seeks to support the vitality and viability of the Ring Towns and to ensure an appropriate range of retail and non-retail functions to serve the needs of the community and respective catchment areas. The proposed development would be consistent with these retail provisions.

Subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area or of property in the vicinity, would not lead to unacceptable traffic congestion, would not endanger public safety and would not have unacceptable impacts upon the environment including designated European Sites. The proposed



development would, therefore, be in accordance with the proper planning and sustainable development of the area.

Appropriate Assessment Screening

The Board agreed with the screening assessment and conclusion carried out in the Inspector's report that the Blackwater River (Cork/Waterford) Special Area of Conservation (Site Code: 002170) and the Blackwater Callows Special Protection Area (Site Code: 004094) were the only European Sites in respect of which the proposed development has the potential to have significant effects.

Appropriate Assessment

The Board considered the Natura Impact Statement and associated documentation submitted with the application for approval, the mitigation measures contained therein, the submissions and observations on file, and the Inspector's assessment.

The Board completed an appropriate assessment of the implications of the proposed development on the above mentioned European Sites, in view of the Sites' conservation objectives.

The Board considered that the information before it was adequate to allow the carrying out of an appropriate assessment. In completing the appropriate assessment, the Board considered, in particular, the following:

- (i) the likely direct and indirect impacts arising from the proposed development both individually or in combination with other plans or projects,
- (ii) the mitigation measures which are included as part of the current proposal, and
- (iii) the conservation objectives for the European Sites.

In completing the appropriate assessment, the Board accepted and adopted the screening and the appropriate assessment carried out in the Inspector's Report in respect of the potential effects of the proposed development on the aforementioned European Sites, having regard to the Sites' conservation objectives.

In overall conclusion, the Board was satisfied that the proposed development, either by itself, or in combination with other plans or projects, would not adversely affect the integrity of the European Sites, in view of the Sites' conservation objectives.

Environmental Impact Assessment

The Board completed an Environmental Impact Assessment of the proposed development, taking into account:

- (a) the nature, scale and extent of the proposed development;
- (b) the Environmental Impact Assessment Report and associated documentation submitted in support of the application;
- (c) the submissions from the planning authority, observers and prescribed bodies during the course of the application; and
- (d) the Inspector's Report.

The Board considered that the Environmental Impact Assessment Report, supported by the documentation submitted by the applicant, identifies and describes adequately the direct, indirect and cumulative effects of the proposed development on the environment. The Board is satisfied that the information contained in the Environmental Impact Assessment Report complies with the provisions of EU Directive 2014/52/EU amending Directive 2011/92/EU.

The Board agreed with the summary and examination, as set out in the Inspector's Report, of the information contained in the Environmental Impact Assessment Report and associated documentation submitted by the applicant and submissions made in the course of the application. The Board is satisfied that the Inspector's Report sets out how these were addressed in the assessment and recommendation (including environmental conditions) and are incorporated into the Board's decision.

Reasoned Conclusions on the Significant Effects

The Board considered that the Environmental Impact Assessment Report, supported by the documentation submitted by the applicant, provided information which is reasonable and sufficient to allow the Board to reach a reasoned conclusion on the significant effects of the proposed development on the environment, taking into account current knowledge and methods of assessment and the results of the examination set out in the Inspector's Report. The Board is satisfied that the information contained in the Environmental Impact Assessment Report is up to date and complies with the provisions of EU Directive 2014/52/EU amending Directive 2011/92/EU. The Board considered that the main significant direct and indirect effects of the proposed development on the environment are those arising from the impacts listed below. A Construction and Environmental Management Plan is the overarching general mitigation relevant to the project design and delivery for the construction stage.

The Board considered that the main significant direct and indirect effects of the proposed development on the environment are, and will be mitigated as follows:

1. Construction stage effects on;
 - (a) 'Population and Human Health' and 'Air' and 'Climate' as a result of dust, noise, traffic, and waste emissions. These effects would be mitigated through a Construction Environmental Management Plan,

a Construction and Demolition Waste Management Plan, and the application of other best practice construction management measures, which would not result in any unacceptable residual effects.

- (b) 'Biodiversity with particular attention to species and habitats protected under Directive 92/43/EEC and Directive 2009/147/EC' and 'Water' as a result of adverse pollutants from contaminated sources, leaks and spills, silt and sediment, noise disturbance, etc. These effects would be mitigated through the measures set out in the submitted Natura Impact Statement, the Construction Environmental Management Plan, the Construction and Demolition Waste Management Plan, and the application of other best practice construction management measures, which would not result in any unacceptable residual effects.
- (c) 'Built Heritage' of the area most notably Protected Structure RPS Number 02277- Limestone Kerbing located on O'Rahilly Row/Patrick Street to the southern side of the site boundary. Through appropriate conditions, the Board is satisfied that any adverse or negative effects would be mitigated and would result in only neutral or positive residual effects.

- 2. Operational stage effects on the local landscape including the visual impact upon nearby Protected Structures, the Fermoy Architectural Conservation Area and the character of the area. These effects would be mitigated through design measures, proposed landscaping and appropriate conditions, which would not result in any unacceptable residual effects.

Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 20th day of May, 2022, 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 proposed development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. All mitigation measures set out in the Natura Impact Statement, the Environmental Impact Assessment Report and the Site-Specific Flood Risk Assessment and associated documentation submitted with the application and by way of the submitted Further Information shall be implemented in full, except as may otherwise be required in order to comply with the conditions attached to this permission.

Reason: In the interests of clarity, the protection of European sites, the protection of the environment and public safety during the construction and operational phases of the development

3. The proposed development shall be amended as follows:
- (a) The main front elevation of the proposed development facing Court House Road shall be refined by the removal of the proposed Fibre Cement Cladding - Swisspearl Range identified as 1A and 1D on the submitted drawings and replacement with Limestone Cladding identified as 1C.
 - (b) The height of the external limestone cladding on the proposed café and proposed retail unit are to be of the same height.
 - (c) The location of the Louvres for plant areas shall be re-located from main south facing elevation facing Courthouse Road to the side eastern elevation.
 - (d) All externally located steps to facilitate escape routes are to be re-located internally.
 - (e) Recessed escape doors located on southern facing/Courthouse Road elevation shall be flush with main line of elevation.
 - (f) Details and location of disabled compliant/people friendly external seating throughout shall be provided.

Revised drawings and details showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interests of residential amenity and clarity.

4. Details of the materials, colours and textures of all the external finishes including surface materials to the proposed development shall be as submitted with the application, unless otherwise agreed in writing with the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.



5. A Method Statement shall be prepared by a suitably qualified professional with specialised conservation expertise detailing the following:
- (a) the full extent of works to the historic boundaries between the application site and protected structures on Lisneaux Terrace, including a justification for replacement over repair where required;
 - (b) protection/removal reinstatement of the stone kerbing along the N72 (RPS Number 02277); and
 - (c) relocation of the historic 'J. Barry & Sons Ltd' signage.

The Method Statement shall include recordings on site by means of architectural drawings, coloured photographs, or as otherwise required by the planning authority. It shall detail protection, removal, storage and reinstatement measures where considered necessary. It shall include supervision of the works by a qualified professional with specialised conservation expertise. The Method Statement including justification for replacement where necessary shall be submitted to, and agreed in writing with, the planning authority prior to commencement of any works on site.

Reason: To secure the authentic preservation of the protected structure and a feature of cultural significance and to ensure that the proposed works are carried out in accordance with best conservation practice.

6. The developer shall facilitate the preservation, recording and protection of archaeological materials or features that may exist within the site. In this regard, the developer shall:
- (a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development;
 - (b) employ a suitably qualified archaeologist who shall monitor all site investigations and other excavation works; and
 - (c) provide arrangements acceptable to the planning authority for the recording and for the removal of any archaeological material which the authority considers appropriate to remove.

In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.

Reason: In order to conserve the archaeological heritage of the site and to secure the preservation and protection of any remains that may exist within the site.

7. Public lighting of heritage type design shall be provided in accordance with a scheme, which shall include lighting along pedestrian routes through the communal open spaces, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development/installation of lighting. The lighting scheme shall incorporate EIA mitigation measure for biodiversity. Such lighting shall be provided prior to commencement of operations.

Reason: In the interests of amenity, public safety, and nature conservation.



8. All service cables associated with the proposed development (such as electrical and telecommunications) shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development. Any existing overground cables shall be relocated underground as part of the site development works.

Reason: In the interests of visual and residential amenity.

9. A minimum of 10% of all car parking spaces shall be provided with functioning electric vehicle charging stations/points, and ducting shall be provided for all remaining car parking spaces, including in-curtilage spaces, facilitating the installation of electric vehicle charging points/stations at a later date. Where proposals relating to the installation of electric vehicle ducting and charging stations/points has not been submitted with the application, in accordance with the above noted requirements, such proposals shall be submitted to, and agreed in writing with, the planning authority prior to commencement of operations of the development.

Reason: To provide for and/or future proof the development such as would facilitate the use of Electric Vehicles.

10. Prior to the commencement of operations of the development, a finalised Mobility Management Plan and Travel Plan shall be submitted to, and agreed in writing with, the planning authority. This plan shall include modal shift targets and shall provide for incentives to encourage the use of public transport, cycling, walking and carpooling by staff and customers. The mobility strategy shall be prepared and implemented in perpetuity by the operators of the development.

Reason: In the interest of encouraging the use of sustainable modes of transport.

11. A management scheme, providing adequate measures for the future maintenance of the development; including the external fabric of the buildings, external areas, open spaces, landscaping, roads, paths, parking areas, public lighting, waste storage facilities and sanitary services, shall be submitted to, and agreed in writing with, the planning authority before the commercial units are made available for occupation.

Reason: To provide for the future maintenance of this development in the interest of proper planning and orderly development.

12. (a) Drainage arrangements including the attenuation and disposal of surface water, and the provision of Sustainable Urban Drainage Systems, shall comply with the requirements of the planning authority for such works and services.
- (b) The management company shall install, operate and maintain an adequate flood warning system including preparing and regularly updating a Flood Awareness Plan and a Flood Emergency plan.

All details shall be agreed in writing with the planning authority prior to commencement of development.

Reason: In the interests of public health and surface water management.

13. The developer shall enter into water and/or wastewater connection agreement(s) with Uisce Éireann, prior to commencement of development.

Reason: In the interest of public health.

14. All plant, including extract ventilation systems, shall be sited in a manner so as not to cause nuisance at sensitive locations due to emissions. All mechanical plant and ventilation inlets and outlets shall be sound insulated and/or fitted with sound attenuators to ensure that noise levels do not pose a nuisance at noise sensitive locations.

Reason: In the interests of visual and residential amenity.

15. A comprehensive boundary treatment, landscaping scheme and planting schedule shall be submitted to, and agreed in writing with, the planning authority, prior to commencement of development. This scheme shall include the following:-

- (a) details of all proposed hard surface finishes, including samples of proposed paving slabs/materials for footpaths, kerbing and road surfaces within the development;
- (b) proposed locations of trees and other landscape planting in the development, including details of proposed species and settings;
- (c) details of proposed street furniture, including bollards, lighting fixtures and seating; and
- (d) details of proposed boundary treatments at the perimeter of the site, including heights, materials and finishes.

The boundary treatment and landscaping shall be carried out in accordance with the agreed scheme.

Reason: In the interest of visual amenity.

16. A plan containing details for the management of waste (and, in particular, recyclable materials) within the development, including the provision of facilities for the storage, separation and collection of the waste and, in particular, recyclable materials and for the ongoing operation of these facilities for each unit shall be submitted to, and agreed in writing with, the planning authority prior to commencement of the development. Thereafter, the waste shall be managed in accordance with the agreed plan.

Reason: To provide for the appropriate management of waste and, in particular recyclable materials, in the interest of protecting the environment.

17. Prior to the commencement of development, the developer or any agent acting on their behalf, shall prepare a Resource Waste Management Plan (RWMP), as set out in the EPA's "Best Practice Guidelines for the Preparation of Resource and Waste Management Plans for Construction and Demolition Projects" (2021), including demonstration of proposals to adhere to best practice and protocols. The RWMP shall include specific proposals as to how the RWMP will be measured and monitored for effectiveness and these details shall be placed on the file and retained as part of the public record. The RWMP shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of development. All records (including for waste and all resources) pursuant to the agreed RWMP shall be made available for inspection at the site office at all times.

Reason: In the interest of sustainable waste management.

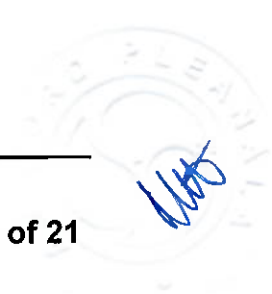
18. The construction of the development shall be managed in accordance with an updated Construction Environmental Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development with measures to reflect mitigation described in the submitted EIAR and NIS for the application, in addition to the following:
- (a) Location of the site and materials compound(s) including area(s) identified for the storage of construction refuse;
 - (b) Location of access points to the site for any construction related activity;
 - (c) Location of areas for construction site offices and staff facilities;
 - (d) Details of site security fencing and hoardings;
 - (e) Details of on-site car parking facilities for site workers during the course of construction;
 - (f) Details of the timing and routing of construction traffic to and from the construction site and associated directional signage, to include proposals to facilitate the delivery of abnormal loads to the site;
 - (g) Measures to obviate queuing of construction traffic on the adjoining road network;
 - (h) Measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network and for the cleaning of the same;
 - (i) Alternative arrangements to be put in place for pedestrians and vehicles in the case of the closure of any public road or footpath during the course of site development works;

- (j) Details of appropriate mitigation and monitoring measures for noise, dust and vibration, and monitoring of such levels;
- (k) Containment of all construction-related fuel and oil within specially constructed bunds to ensure that fuel spillages are fully contained. Such bunds shall be roofed to exclude rainwater;
- (l) Off-site disposal of construction/demolition waste and details of how it is proposed to manage excavated soil;
- (m) Means to ensure that surface water run-off is controlled such that no silt or other pollutants enter local surface water sewers or drains;
- (n) A record of daily checks that the works are being undertaken in accordance with the Construction Management Plan shall be kept for inspection by the planning authority.

Reason: In the interests of amenities, public health and safety.

19. Site development and building works shall be carried out only between the hours of 0800 and 1900 from Mondays to Fridays inclusive, between 0800 and 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.

Reason: In order to safeguard the amenities of property in the vicinity.



20. (a) Details of all external shopfronts and signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.
- (b) No other signage, advertising structures/advertisements, security shutters, or other projecting elements, including flagpoles, shall be erected within the site and adjoining lands under the control of the applicant unless authorised by a further grant of planning permission.
- (c) The windows to the proposed units shall not be obscured by adhesive material or otherwise, unless otherwise agreed in writing with the planning authority.

Reason: In the interest of visual amenity.

21. The internal road network serving the proposed development including turning bays, junctions, parking areas, footpaths and kerbs shall comply with the detailed standards of the planning authority for such road works and shall comply with all relevant aspects of DMURS.

Reason: In the interests of amenity and of traffic and pedestrian safety.

22. The opening hours for all commercial units shall be submitted to, and agreed in writing with, the planning authority prior to commencement of any operations in each respective unit.

Reason: In the interest of residential amenity.

23. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion and maintenance until taken in charge by the local authority of roads, footpaths, watermains, drains, public open space and other services required in connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion or maintenance of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

Reason: To ensure the satisfactory completion and maintenance of the development until taken in charge.

24. 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.

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.

25. The developer shall pay a financial contribution to the planning authority as a special contribution under Section 48(2)(c) of the Planning and Development Act 2000, as amended, in respect of works proposed to be carried out which benefit the proposed development, including the provision of a new pedestrian crossing on Mill Road, cycling lane infrastructure and footpaths on Mill Road, upgrades to the existing traffic light systems at Pearse Square and a new toucan crossing on Courthouse Road to the south of the site. The amount of the contribution 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 for determination. The contribution shall be paid prior to commencement of development or in such phased payments as may be agreed prior to the commencement of the development and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the terms of payment of this financial contribution shall be agreed in writing between the planning authority and the developer.

Reason: It is considered reasonable that the developer should contribute towards the specific exceptional costs which are incurred by the planning authority in respect of public services, which are not covered in the Development Contribution Scheme or the Supplementary Development Contribution Scheme and which will benefit the proposed development.



Martina Hennessy

Member of An Bord Pleanála

duly authorised to authenticate

the seal of the Board.

Dated this *21st* day of *November* 2023.

