

An
Bord
Pleanála

Board Order
ABP-316029-23

Planning and Development Acts 2000 to 2022

Planning Authority: Clare County Council

Planning Register Reference Number: P22/33

Appeal by RGDATA of Ground Floor, 71 Lower Baggot Street, Dublin and by Lidl Ireland GmbH care of MKO of Tuam Road, Galway against the decision made on the 15th day of February, 2023 by Clare County Council to grant subject to conditions a permission to the said Lidl Ireland GmbH in accordance with plans and particulars lodged with the said Council.

Proposed Development: The proposed development will consist of Building A: the provision of a 2,214 square metres single storey discount foodstore including off licence use as well as roof mounted plant and solar panels (net retail area: 1,200 square metres); Building B: three number storey building comprising two number retail units at ground floor (Retail Unit 1 - 167.5 square metres, Retail Unit 2 - 246 square metres), plant and boiler rooms, residents and retail bin store and apartment entrance lobby. 14 number apartments over first and second floor comprising six number one bed apartments, six number two bed apartments and two number three bed apartments; Building C: three number storey building comprising 168.9 square metres café and external seating area (including associated changing, WC and office), plant room, 65.5 square metres residents' communal area at ground floor as well as residents entrance lobby. Six number apartments over

first and second floor comprising two number one bed apartments and four number two bed apartments; provision of signage for Buildings A, B and C (91.65 square metres); provision of public realm area, pedestrian and vehicular access, residents' communal open space, landscaping and boundary treatments, street furniture, ESB substation (24 square metres), playground, 142 number car parking spaces including six number disabled bays and six number family bays, 89 number cycle spaces, bin stores and all other site development works and services ancillary to the proposed development and demolition of existing structures on site including three residential units, office block and ancillary buildings (gross floor area of demolition: 1,817 square metres) at the junction of the Clare Road (R458) and Toberteascain Road, Ennis, County Clare, as amended by the further public notices received by the planning authority on the 23rd day of September, 2023.

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 the policies and objectives of the Clare County Development Plan 2023-2029, the mixed-use land use zoning and the MU6A Tobartescain principal development objective for the site which seeks to provide for a landmark building appropriate to its landmark location on the entrance to the town and provide for a neighbourhood centre with a mix of uses, it is considered that the proposal for a neighbourhood centre including new public realm, pedestrian linkages and cycleway provision meets the applicable development objective and complies with the zoning for the site. Furthermore, having regard to the wider provisions of the Clare County Development Plan 2023-2029, including Volume 7 Clare Retail Strategy which identifies the retail floorspace potential for convenience goods for the plan period, to the Retail Planning Guidelines for Planning Authorities issued by the Department of the Environment, Community and Local Government in April, 2012, and to the site characteristics which comprises vacant buildings that is fully serviced and located in an accessible location for the local population, to the pattern of development of existing and permitted development and the submissions on file, it is considered that, subject to compliance with the conditions set out below, the proposed development would not unduly affect the viability and vitality of Ennis Town centre, would not seriously injure the residential amenities of future occupants in the scheme, or of property in the vicinity, and would be acceptable in terms of flood risk, traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

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 received by the planning authority on the 9th day of September, 2022 and the 14th day of December 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 development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The mitigation measures contained in the submitted updated Natura Impact Statement received on the 9th day of September 2022, shall be implemented.

Reason: To protect the integrity of European Sites.

3. The proposed development shall be amended as follows:
 - (a) The proposed car parking layout shall be revised with the proposed playground increased in size from that indicated in the plans and particulars submitted with the application and repositioned into a more centrally located position within an enlarged civic space/park area and the proposed shared communal open space serving Building B and Building C shall be reconfigured and extended to the north. These amendments shall be facilitated by the relocation of the residential car parking and, if required, the reduction of commercial/retail car parking provision.

- (b) 20% of the car parking spaces assigned to the neighbourhood centre uses shall be equipped with an EV charging point. 20 number spaces shall be assigned to the proposed 20 number apartments within a minimum of four number spaces equipped with an EV charging point and the remainder of the parking spaces constructed so as to be capable of accommodating future charging points.
- (c) Additional secure and covered bicycle parking spaces to be provided at accessible locations.
- (d) Internal roads and footpaths close to adjoining lands shall be revised to ensure that future connectivity can be facilitated. The access road and footpaths shall be continued right up to the boundary with adjoining land.
- (e) Revised landscaping proposals incorporating nature-based solutions for surface water storage and full details of the proposed playground equipment and boundary details taking into account items a-d above.

Revised drawings, 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 visual and residential amenity.

- 4. Prior to commencement of development, full design details shall be submitted to the planning authority for written agreement in relation to:
 - (a) A right-hand turning lane from the Tobartescain Road into the proposed vehicular entrance of the site.

- (b) A cycle lane from the Clare Road/Tobartescain roundabout along the southern side of Tobartescain Road to the proposed vehicular entrance.
- (c) VMS signage and ramped crossing of the proposed pedestrian crossing on the Tobartescain Road.

The agreed and approved works along with all required associated works to the exiting/proposed roadways, footpaths, cycle lanes shall be constructed by the developer at their own expense.

Reason: In the interests of traffic safety and orderly development and to define the scope of the permission.

- 5. (a) All entrance doors in the external envelope of the proposed residential blocks (Buildings B and C) shall be tightly fitting and self-closing.
- (b) All windows and roof lights shall be double-glazed and tightly fitting.
- (c) Noise attenuators shall be fitted to any openings required for ventilation or air conditioning purposes.

Details indicating the proposed methods of compliance with the above requirements and/or alternative noise mitigation measures to the above (a-c) shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: To protect the residential amenity of future residents.

6. (a) The internal road network serving the proposed development including turning bays, junctions, parking areas, footpaths, and kerbs and access road to the delivery/service area shall comply with the detailed construction standards of the planning authority for such works and design standards outlined in the Design Manual for Urban Roads and Streets (DMURS).
- (b) Footpaths shall be dished at road junctions in accordance with the requirements of the planning authority. Details of all locations and materials to be used shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of development.

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

7. Prior to the commencement of development, the developer shall submit details in relation to the location and provision of road drainage gullies for the L4636 (Tobartescain Road) along the new footpath line to the planning authority for their written agreement. These works shall be undertaken by the developer to the satisfaction of the planning authority prior to the occupation of development.

Reason: In the interest of flood prevention.

8. Prior to commencement of works, the developer shall submit to, and agree in writing with the planning authority, a final Construction Environmental Management Plan (CEMP), which shall be adhered to during construction. This plan shall provide details of intended construction practice for the development, including noise and dust management measures and off-site disposal of construction/demolition waste.

Reason: In the interests of public safety and amenity.

9. Prior to the commencement of development, the developer shall enter into a Connection Agreement (s) with Uisce Éireann (Irish Water) to provide for a service connection(s) to the public water supply and/or wastewater collection network.

Reason: In the interest of public health and to ensure adequate water/wastewater facilities.

10. The development in its entirety shall be constructed in one single phase. In this regard, the retail unit as permitted in Building A shall not be occupied unless and until the entire development (including Building B and C, all required works on the public road, playground, hard and soft landscaping and boundary treatments) have been constructed and completed to the written satisfaction of the planning authority.

Reason: In the interests of clarity and orderly development having regard to the 'Mixed Use MU6A' zoning of the site.

11. Litter in the vicinity of the premises shall be controlled in accordance with a scheme of litter control which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This scheme shall include the provision of litter bins and refuse storage facilities.

Reason: In the interests of public health and visual amenity.

12. (a) A plan containing details for the management of waste 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 shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, the waste shall be managed in accordance with the agreed plan.

- (b) This plan shall provide for screened communal bin stores, the locations and designs of which shall be included in the details to be submitted.

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

13. The disposal of surface water shall comply with the requirements of the planning authority for such works and services. Prior to the commencement of development, the developer shall submit details for the disposal of surface water from the site for the written agreement of the planning authority.

Reason: To prevent flooding and in the interest of sustainable drainage.

14. Proposals for an apartment name, apartment numbering scheme and associated signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, all street signs, and apartment numbers, shall be provided in accordance with the agreed scheme. The proposed name(s) shall be based on local historical or topographical features, or other alternatives acceptable to the planning authority. No advertisements/marketing signage relating to the name(s) of the development shall be erected until the developer has obtained the planning authority's written agreement to the proposed name(s).

Reason: In the interest of urban legibility and to ensure the use of locally appropriate placenames for new residential areas.

15. Prior to commencement of development, the applicant or other person with an interest in the land to which the application relates shall enter into an agreement in writing with the planning authority in relation to the transfer of a percentage of the land, to be agreed with the planning authority, in accordance with the requirements of section 94(4) and section 96(2) and 96(3)(a), (Part V) of the Planning and Development Act 2000, as amended, and/or the provision of housing on lands in accordance with the requirements of section 94(4) and section 96(2) and 96(3) (b), (Part V) of the Planning and Development Act 2000, as amended], unless an exemption certificate has been granted under section 97 of the Act, as amended. Where such an agreement cannot be reached between the parties, the matter in dispute (other than a matter to which section 96(7) applies) shall be referred by the planning authority or any other prospective party to the agreement, to An Bord Pleanála for determination.

Reason: To comply with the requirements of Part V of the Planning and Development Act 2000, as amended, and of the housing strategy in the development plan for the area.

16. The management and maintenance of the proposed development, following completion, shall be the responsibility of a legally constituted management company, which shall be established by the developer. A management scheme, providing adequate measures for the future maintenance of the development, including the external fabric of the buildings, internal common areas (residential and commercial), 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 any of the residential or commercial units are made available for occupation.

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

17. Site development and building works shall be carried out between the hours of 0700 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 on Saturdays and not at all on Sundays and public holidays.

Deviation from these times shall only be allowed in exceptional circumstances where prior written agreement has been received from the planning authority.

Reason: To safeguard the amenity of property in the vicinity.

18. The developer shall engage a suitably qualified (licensed eligible) archaeologist to monitor (licensed under the National Monuments Acts) all site clearance works, topsoil stripping, groundworks, dredging and/or the implementation of agreed preservation in-situ measures associated with the development following consultation with the Local Authority Archaeologist or the National Monument Service (NMS). Prior to the commencement of such works, the archaeologist shall consult with and forward to the Local Authority archaeologist or the National Monument Service as appropriate a method statement for written agreement. The use of appropriate tools and/or machinery to ensure the preservation and recording of any surviving archaeological remains shall be necessary. Should archaeological remains be identified during the course of archaeological monitoring, all works shall cease in the area of archaeological interest pending a decision of the planning authority, in consultation with the National Monuments Service, regarding appropriate mitigation [preservation in-situ/excavation]. The developer shall facilitate the archaeologist in recording any remains identified. Any further archaeological mitigation requirements specified by the planning authority, following consultation with the National Monuments Service, shall be complied with by the developer. Following the completion of all archaeological work on site and any necessary post-excavation specialist analysis, the planning authority and the National Monuments Service shall be furnished with a final archaeological report describing the results of the monitoring and any subsequent required archaeological investigative work/excavation required. All resulting and

associated archaeological costs shall be borne by the developer.

Reason: To ensure the continued preservation either in situ or by record of places, caves, sites, features or other objects of archaeological interest.

19. The external wall finishes of the structure shall be in accordance with the plans and particulars submitted with the application, unless otherwise agreed in writing with the planning authority. For clarity Building B and C shall be finished as detailed in elevational treatment Option 1 brick finish to all elevations.

Reason: In the interest of visual amenity.

20. No external security shutters shall be erected on any of the commercial premises, unless authorised by a further grant of planning permission. Details of all internal shutters, which shall be of an open lattice design and shall not contain any form of advertising, shall be submitted for the written agreement of the planning authority prior to the commencement of development, and all internal shutters shall conform to that written agreement.

Reason: In the interest of visual amenity.

21. All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development.

Reason: In the interests of visual and residential amenity.

22. No advertisement or advertisement structure (other than those shown on the drawings submitted with the application) shall be erected or displayed on the building (or within the curtilage of the site) in such a manner as to be visible from outside the building, unless authorised by a further grant of planning permission.

Reason: In the interest of visual amenity.

23. Prior to the opening/occupation of the development, a Mobility Management Plan (MMP), taking into account the recommendations contained within the Workplace Travel Plan Statement of the Traffic and Transportation Assessment (TTA), shall be submitted to, and agreed in writing with, the planning authority. This shall provide for incentives to encourage the use of public transport, cycling and walking by residents/occupants/staff employed in the development. The mobility strategy shall be prepared and implemented by the management company for all units within the neighbourhood centre.

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

24. Opening hours of the proposed food store shall be restricted to between 0800 hours to 2200 hours Monday to Sunday. Delivery shall not take place before 0700 hours Monday to Saturday or before 0800 hours on Sundays or public holidays. Delivery shall not take place after 2200 hours on any day.

Reason: In the interest of residential amenity.

25. The proposed two number retail units and café unit shall not be used as a takeaway/fast food outlet.

Reason: In the interests of residential amenities, orderly development and visual amenities.

26. 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.

27. The developer shall pay a financial contribution of €19,000 (Nineteen thousand euro) 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 additional traffic calming works on the L4636 Toberteascain Road to the east of the subject site, which benefits the proposed development. 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.

28. 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 of roads, footpaths, watermains, drains, 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 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.

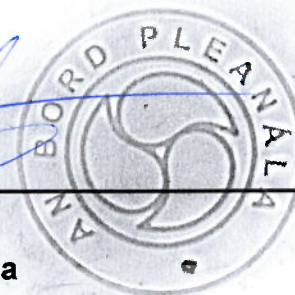
Reason: To ensure the satisfactory completion of the development.



Tom Rabbette

Member of An Bord Pleanála

**duly authorised to authenticate
the seal of the Board.**



Dated this 27th day of Feb. 2025.