

An Bord Pleanála



Inspector's Report

Appeal Reference No: PL 09.245984

Development: Change of use of permitted retail unit no. 1 and ancillary store to provide restaurant use. Unit no. 1 of Tesco store, Old Cork Road, Kildare Town, Co. Kildare.

Planning Application

Planning Authority: Kildare County Council

Planning Authority Reg. Ref.: 15/451

Applicant: Tesco Ireland Ltd.

Planning Authority Decision: Refuse Permission

Planning Appeal

Appellant(s): Tesco Ireland Ltd.

Type of Appeal: First v Refusal

Observers: None on file

Date of Site Inspection: 25th April 2016

Inspector: Sarah Moran

1.0 SITE LOCATION AND DESCRIPTION

- 1.1 The subject site is an existing retail unit located within a large Tesco store on the southern side of Kildare Town, adjacent to Kildare Village outlet shopping centre. The store is accessed via the R445 (old N7 Cork road) and is close to M7 junction 13. The Tesco store fronts onto the R445, with a vehicular access to the side, leading to a large surface car park at the rear. The subject site retail unit is located at the rear of the Tesco store, facing the car park. There is a mix of uses in the surrounding area. There are 2 no. major employment centres to the immediate south, i.e. the Modus Link office building and the Kildare Village centre, which adjoins the southern site boundary. The area to the north of the R445 is primarily residential and the centre of Kildare town, i.e. Market Square, lies c. 0.5km to the east. Kildare railway station is situated c. 1km to the northwest. Abbey Villa House, and its associated grounds to the immediate west of the site is listed on the National Inventory of Architectural Heritage, ref. 11817076 and 11817077.
- 1.2 The existing retail unit was previously a butchers shop but is currently unoccupied. It has a stated total floor area of 207 sq.m. It is one of 3 individual units located at the rear / southern end of the Tesco building, facing the car park. The subject site is currently vacant and the other units are occupied by a pharmacy and a Costa coffee outlet. The subject site and the adjoining pharmacy are accessed from the car park only, with no public access from within the Tesco store. The Costa unit has internal and external access. The building is split level as site levels fall to the south, away from the R445, and the entire first floor is occupied by the Tesco store.

2.0 PROPOSED DEVELOPMENT

- 2.1.1 Permission is sought to change the use of the existing retail unit and ancillary store area to a restaurant. Services as existing. A layout of the scheme and signage details were submitted to the PA as further information on 5th November 2015.

3.0 PLANNING HISTORY

3.1 05/1471 PL09.226590

- 3.1.1 Permission sought for a supermarket, signs and all ancillary site works, the erection of a store of 4,654 sq.m. GFA; net retail area 3099.6 sq.m. (food 1,528 sq.m. and non-food 1,127 sq.m.) providing for food, non-food and alcohol sales, associated car parking, access provision and signage. The PA refused permission for 3 no. reasons generally relating to the location of the development within Action Area Plan 3, Town Centre Action Area Plan, as identified in Kildare Local Area Plan 2002. The development was considered premature pending the preparation and adoption of the Action Area Plan, as required in the Kildare Town Plan LAP 2002. In particular, the proposed

layout and design were considered to be contrary to the future development of a coherent and strategic urban structure plan for the entire site of the proposed Action Area Plan 3. The Board refused permission for the following reasons:

1. Having regard to the location of the site in an area zoned town centre with the objective of providing for multi-use, two to three-storey development with a strong urban form, it is considered that the proposed single storey, monofunctional development, with extensive surface car parking as a dominant feature of the layout, would conflict with the zoning objective for the area and would, therefore, be contrary to the proper planning and sustainable development of the area.

2. The proposed development is located in a central area, where it is the policy of the planning authority not to permit development except in accordance with an approved detailed planning framework. As such a framework does not currently exist, the proposed development would conflict with the policy of the planning authority and would, therefore, be contrary to the proper planning and sustainable development of the area.

3.2 10/528 PL.09.237802

3.2.1 This is the original permission for the existing Tesco store at the site. Permission was sought to demolish all existing structures on site and to construct a retail development total gross area c. 5,333 sq.m., including a retail anchor c. 4,483 sq.m. GFA with ancillary alcohol sales and 3 no. retail units (one of which is the subject site). The development included 324 no. car parking spaces and works to the R445 to facilitate right turn lanes and a signalised junction to access the site. The PA granted permission subject to 49 no. conditions. Condition no. 9 limited the use of the permitted retail units (including the subject site) to uses specified in Article 5 of the Planning and Development Regulations 2001 (as amended) and Class 2 of Part 4 of the Schedule 2 of those Regulations, with the stated reason to limit the use of the development to uses considered acceptable within the area, and to avoid traffic hazard from obstruction of vehicles.

3.2.2 The PA decision was the subject of 2 no. third party appeals and a first party appeal. I note that the Planning Inspector's report on file recommended refusal for 3 no. reasons relating to (1) lack of AA or an environmental report of possible impacts on Pollardstown Fen SAC or other sites in the Natura 2000 network (2) the location of the site in an area zoned Town Centre with the objective of providing for multi-use 2-3 storey development with a strong urban form, it was considered that the proposed single storey, monofunctional development, with extensive surface car parking as a dominant feature of the layout, would conflict with this zoning objective (3) the location of the development in a central area, where it is the policy of the PA not to permit development except in accordance with an approved detailed planning

framework, such a framework did not currently exist. The Board decided to grant permission. The relevant Order states:

“In deciding not to accept the Inspector’s recommendation to refuse permission, the Board had particular regard to the Town Centre zoning objective for the site and its location in relation to the historic core of the town. With respect to the planning authority policy objective to make an Action Area Plan for the lands encompassing the site, the Board noted that this objective had not been met since set out in the Local Area Plan of 2002. The Board did not consider it reasonable to require the land owner to further await the making of such plan on some unknown future date. The Board considered that the design of the building now proposed is superior to that refused per PL09.226590, notwithstanding certain similarities, and is acceptable in terms of the planning authority zoning objective. In relation to the provisions of the Habitats Directive, the Board was satisfied that the proposed development, having regard to its nature, scale and location, would not have a significant impact on any Natura 2000 site, including Pollardstown Fen. It would not, therefore, be necessary to require an appropriate assessment.”

Condition no. 11 limited the use of the permitted retail units as stated in condition no. 9 of 10/528, for the same stated reason.

3.3 12/625

3.3.1 Permission granted for a new shop front sign to the adjacent café.

4.0 PLANNING AUTHORITY DECISION

4.1 Planning and Technical Reports

4.1.1 Kildare County Council Water Services 15th June 2015. Recommend conditions. Note that the applicant already has a watermain and sewerage connection.

4.1.2 Kildare County Council Transportation Department 15th June 2016. No objection.

4.1.3 Kildare County Council Compliance / Unauthorised Development Section 26th June 2015. No objection.

4.1.4 Kildare County Council Newbridge Area Office 1st July 2015. No objection subject to conditions.

4.1.5 Kildare County Fire Service 6th July 2016. No objection subject to 1 no. condition.

- 4.1.6 Kildare County Council Environment Section 10th July 2015. No objection subject to conditions.
- 4.1.7 Kildare County Council Environmental Health Officer 13th July 2015. Requires further information. Additional comment on the further information submission, 24th November 2015, states no objection.
- 4.1.8 Kildare County Council planning report 22nd July 2015, recommends further information request for issues raised by EHO, also applicant to demonstrate compliance with Kildare Town LAP policy objective TCO1 and with County Development Plan car parking standards; applicant to demonstrate need for a restaurant at this location; signage details. Attached Appropriate Assessment (AA) screening report indicates that a Natura Impact Statement (NIS) is not required. Second planning report on the further information response, 1st December 2015, considers the response insufficient and recommends refusal.

4.2 Planning Authority Decision

- 4.2.1 The PA requested further information on 23rd July 2015, in accordance with the recommendations of the planning report dated 22nd July 2015. The PA issued a notification of a decision to refuse permission on 2nd December 2015, for 1 no. reason relating to:
- Material contravention of condition no. 9 of Reg. Ref. 10/528.
 - Contravention of Kildare Town LAP policy objective TCO1.

5.0 GROUNDS OF FIRST PARTY APPEAL

- 5.1 The appeal is submitted by GVA Planning on behalf of the applicant. The main points made may be summarised as follows:
- The stated refusal reason refers to condition no. 9 of Reg. Ref. 10/528. However, this was superseded by ABP decision PL09.237802. The relevant condition of that decision was condition no. 11, which is largely similar.
 - There is no basis for the concept that a condition can be 'materially contravened', ref. section 34 of the Planning and Development Act 2000 (as amended), the concept of 'material contravention' only relates to the contravention of a Development Plan or Local Area Plan. It is submitted that no material contravention would occur as a result of permitting the proposed development.
 - It is submitted that the purpose of condition no. 11 of PL 09.237802 is to remove exempted development rights so that any future amendment to the use is subject to an assessment as part of the planning application process. This would ensure that the appropriateness of the use can be assessed having regard to the existing surrounding context and the provisions of the statutory plan in place at the time of the application. It is a

central principle of the administration of the planning system that developments are considered on their individual merits. It is not the purpose of conditions to prevent future planning applications being made or granted. The Board is thus free to consider the application on its merits.

- The proposed restaurant use is permissible in principle under the current Kildare LAP 2012-2018, which was adopted since the unit was permitted.
- The site is also located in the LAP designated Town Centre Expansion Area. The Tesco development was important to the delivery of the Expansion Area. The addition of 3 no. smaller units, including the subject unit, was viewed favourably by the Council in permitted 10/528. The impact of a commercial unit at this location on the historic town centre was considered by the PA and the Board in their assessment of that application.
- The LAP does not clearly define the historic centre of Kildare Town, however this is generally understood to be the area around Market Square, which is mainly made up of 19th century buildings and is historically the primary retail area. The town centre has expanded beyond this area into the designated expansion lands.
- The proposed use is in accordance with the town centre zoning objective of the site and it is therefore unclear how it contravenes policy objective TCO1. Objective TCO1 does not distinguish between different commercial uses. There is nothing in the LAP to indicate that a similar commercial unit, such as a restaurant, would have a negative impact on the vitality and viability of the historic core of Kildare Town.
- The existing unit has been unoccupied for some time and the proposed development would facilitate the reuse of a vacant unit, in accordance with LAP policy objective TCO4. The use would also provide the opportunity for linked trips. Due to the location adjacent to a foodstore, the unit is unlikely to compete with higher value restaurant operations within the historic core of Kildare town.

6.0 RESPONSE OF PLANNING AUTHORITY TO FIRST PARTY APPEAL

6.1 The PA response states no further comment.

7.0 POLICY CONTEXT

7.1 Retail Planning Guidelines for Planning Authorities 2012

7.1.1 These guidelines update and replace the 2005 RPG. They state an overarching objective to enhance the vitality and viability of city and town centres in all their functions through sequential development. They include a range of caps on the size of convenience and retail warehouse stores with the aims of ensuring both competitiveness in the retail sector and strong city and town centres. The following key policy objectives are identified:

- Ensuring that retail development is plan-led;

- Promoting city / town centre vitality through a sequential approach to development;
- Securing competitiveness in the retail sector by actively enabling good quality development proposals to come forward in suitable locations;
- Facilitating a shift towards increased access to retailing by public transport, cycling and walking in accordance with the Smarter Travel strategy; and
- Delivering quality urban design outcomes.

7.1.2 Section 2.3 of the RPG notes that the development of major shopping centres within city and town centre areas has contributed very positively to the vitality of these areas and has been a major success of previous planning policy. Retailing within the environs of major cities and towns can also perform important functions, for example as part of the district centres identified in the relevant development plan and serving social, cultural and retailing needs of their local catchments. However, retailing in district centres should not be promoted to a scale of development such that they begin to act as retailing destinations in their own right or where this would undermine the vitality of the central area of the city or town in the environs of which the district centre is located.

7.1.3 Section 4.11.1 deals with large convenience goods stores. It states that such stores are now an accepted element of retailing in cities and large towns. Large convenience goods stores should be located in city or town centres or in district centres or on the edge of these centres and be of a size which accords with the general floorspace requirements set out in the development plan/retail strategy to support and add variety and vitality to existing shopping areas and also to facilitate access by public transport for shoppers.

7.2 Regional Retail Strategy for the Greater Dublin Area 2008-2016

7.2.1 The Regional Retail Strategy for the Greater Dublin Area 2008-2016 (RSGDA) set out a retail hierarchy for the GDA. The RSGDA reviews changes in expenditure, economic growth and retail markets since the previous retail strategy in 2001. Kildare town is listed as a Level 3 sub-county town centre, along with Celbridge, Kilcock, Maynooth, Kilcullen, Athy, Monasterevin and Clane in Co. Kildare. Both 'supermarket' and 'superstore' retail formats are expected at this level of the retail hierarchy. Policy guidance for specific Council areas, as set out in section 6.33, states:

“To continue to promote key local towns including, inter alia, Kildare, Kilcullen, Clane and Monasterevin as attractive locations for convenience and local comparison shopping to meet the needs of these growing towns and surrounding rural communities on a day-to-day level.”

7.3 Kildare County Development Plan 2011-2017 (Incorporating Co. Kildare Retail Strategy)

7.3.1 The Core Strategy set out in Chapter 2 of the plan identifies Kildare as a ‘Moderate Sustainable Growth Town’. Such towns are at sub-county town level, with lesser levels of economic activity beyond that required to service the local population. Due to its location in the Hinterland area of the county, it is to serve its rural hinterland as market town. The plan identifies Kildare as a secondary economic growth town providing an important and complementary role in developing economic growth and sectoral interests in tandem with primary economic growth towns. Section 5.6.3 states in relation to general commercial development:

“In general, where a proposal involves the provision of goods or services to a significant number of visiting members of the public it will clearly be appropriate for it to be located within a town centre.”

7.3.2 Chapter 9 of the plan sets out retail policy, based on a review of the 2008–2016 Kildare County Retail Strategy. The adjacent Kildare Village Outlet Centre is noted as having mass appeal beyond Kildare and the Greater Dublin Area boundary. The County Retail Hierarchy identifies Kildare as a ‘Tier 1 Level 3 Sub County Town Centre’ in the Hinterland area of the county. Policy R23 states:

“To confirm in the emerging Kildare Town Local Area Plan the priority of strengthening the retail core of the town through identifying appropriate and effective linkages with the Kildare Village Outlet Centre. The LAP shall identify key town and edge of centre sites as the locations for the consolidation and expansion of the retail and town centre functions for Kildare Town Centre and the inappropriateness of out of centre locations for new main convenience and mainstream comparison floorspace.”

7.3.3 Chapter 19 sets out development management standards including car parking standards in section 19.6.6. Section 19.10.3 deals with shopping centres. I note that the guidance provided promotes activities and uses that keep the centre alive both during the day and evening e.g. cafes and restaurants.

7.4 Kildare Town Local Area Plan 2012-2018

7.4.1 The site is within the development boundary of Kildare town and located on lands zoned ‘A’, ‘Town Centre’. The stated key objectives as set out in LAP section 6 ‘Development Strategy’, include enhancing the historic town centre and planning for town centre expansion on lands to the southwest of the

town centre, including the development site. The LAP includes the following retail policies.

Policy R1 states:

To encourage the development of the retail and service role of Kildare as a self sustaining centre in accordance with the policies contained in the County Development Plan, the Retail Planning Guidelines 2012 and any future Retail Planning Guidelines or strategy that may be issued during the life of this plan.

Policy R2 states:

To facilitate the consolidation/expansion of the historic core of Kildare Town Centre through infill development and the redevelopment/regeneration of derelict/ under-utilised sites and buildings in and around the Core Retail Area.

Policy R3 states:

To facilitate the development of lands to the south west of the historic town centre as the priority area for retail led mixed use expansion of the town centre in accordance with the Design Brief set out in Section 7.6 of this plan. Any proposed scheme shall provide a mix of uses and an overall design and layout that provides vitality and generates viability and strong linkages to the historic town centre. Development of these lands will be subject to Appropriate Assessment screening.

7.4.3 The site is located within an area to the south west of Kildare town centre that is designated as the 'South Western Expansion Area' within the LAP. The area includes the adjacent Kildare Village centre. Section 7.5.4.1 sets out an indicative framework for the development of lands within this area.

8.0 ASSESSMENT

8.1 The following are the issues considered relevant in this case:

- Principle of development with regard to Kildare LAP and County Development Plan retail policy;
- Contravention of conditions of permission of 10/528 PL.09.237802;
- Traffic and parking issues;
- Appropriate Assessment;
- Conclusion

Each of these issues may be considered separately as follows:

8.2 Principle of Development

8.2.1 The site is located within an area between the original town centre of Kildare at Market Square to the east and the Kildare Village outlet development off the M7 motorway, to the south. These lands were designated as an 'expansion area' for the town centre, to be developed according to an Action Area Plan under the Kildare Local Area Plan (LAP) 2002. As discussed in the planning history outlined above, permission was granted for the Tesco store associated retail units under 10/528 PL.09.237802, pending the adoption of a new LAP. The Tesco site now has the zoning objective 'A' 'Town Centre' under the current Kildare LAP 2012-2018, see enclosed map. The LAP describes the objective as follows:

"To provide for the development and improvement of appropriate town centre uses including retail, commercial, office, residential, amenity and civic use. The purpose of this zone is to protect and enhance the special character of Kildare town centre and to provide for and improve retailing, residential, commercial, office, cultural and other uses appropriate to the centre of a developing town. It will be an objective of the Council to encourage the full use of buildings, backlands and especially upper floors. Warehousing and other industrial uses will not be permitted in the town centre."

The use 'restaurant' is 'permitted in principle' under this zoning objective, which is defined as follows:

"The Council will seek to ensure the development of lands and properties in accordance with the Zoning Objectives (set out in Table 15 of this Plan). Land uses designated under each zoning objective as 'Permitted in Principle' are generally acceptable, subject to compliance with those objectives set out in other chapters of the CDP."

Section 7.6.1 of the LAP relates to the south west expansion area, in which the development site is situated. The stated vision for the area is as follows:

"To create a new and vibrant urban expansion area to the west side of Kildare's historic town centre that connects to Kildare Retail Outlet and Tesco supermarket by using a well designed public realm to integrate a mix of new buildings and uses which are respectful of the towns existing historic fabric."

Given that the site is within the town centre area and that the restaurant use is 'permitted in principle' under this zoning objective, I consider that the proposed use is acceptable in principle at this location and should be considered on its merits.

8.2.2 The refusal reason states that the development would contravene LAP objective TCO1:

“To preserve the historic core of the town as the principal retail and commercial area of the town and encourage an appropriate mix of uses, whilst safeguarding the vitality and viability of the area.”

Section 6.0 of the LAP states in relation to the expansion of the town centre into lands to the south west, including the development site:

“A careful balance between retail, commercial and residential development should be achieved which seek to establish a distinct new area that connects to and enhances the historic town centre. In order to protect the vitality of the town centre only a limited hot food offering as a proportion of the overall development will be considered. Any application for any additional food offering in the South West Expansion Area shall be accompanied by a detailed study prepared by a suitably qualified consultant. The study shall demonstrate potential impacts on any existing established businesses in the town centre. Permission will only be considered where it is adequately demonstrated that the proposal will not displace or affect the viability of existing businesses in the town centre.”

- 8.2.3 The proposed development is described in the application as a restaurant use. The applicant’s response to the PA further information request indicates that it would be a ‘Bistro’ type operation with seating for 50 people. It is submitted that the existing unit is currently vacant and that this development would result in an occupied unit, thus ensuring the vitality and viability of the shopping centre in which it is situated. The offering would differ from that in the adjacent ‘Costa’ coffee outlet as it would involve a wider range and choice of meals including lunches and evening meals. The grounds of appeal comment that the proposed unit is not intended to be a destination in its own right and would therefore not be of a scale that could significantly impact on the viability and vitality of the historic town centre. The appeal also submits that the development would promote LAP town centre objective TCO4, which states:

“To improve the attractiveness of the Town Centre’s built fabric, through the encouragement of appropriate redevelopment and renewal of vacant and derelict sites or buildings, and to ensure high quality in all new developments.”

- 8.2.4 The proposed restaurant use is acceptable in principle under the relevant zoning objective. In addition, large scale retail development has already been permitted at this location under 10/528 PL.09.237802. I note that the application is not accompanied by a study of impacts on town centre businesses, as required by the LAP for developments within the ‘town centre expansion’ area. Therefore no detailed sequential analysis has been carried out. In addition, given that the unit is currently ‘to let’, full details of any likely restaurant operation are unavailable. However, given the limited scale of the proposed unit and its location within the Tesco complex, I consider that it is likely to have local impact only and to be used by customers and employees

of the Tesco store and the other retail units in the immediate vicinity. On balance, I consider that the development is unlikely to make a significant material impact on the vitality or viability of Kildare town centre. On this basis, it is considered that the development would not contravene LAP policy TC01. I also note that the development management standards for shopping centres as set out in section 19.10.3 of the Kildare County Development Plan 2011-2017 promote:

“Activities and uses that keep the centre alive both during the day and evening e.g. cafes and restaurants;”

8.3 Contravention of Conditions of Previous Permission

8.3.1 The refusal reason states that the development would materially contravene condition no. 9 of 10/528, which stated:

“The use of the retail units shall be restricted to uses specified in Article 5 of the Planning and Development Regulations 2001 (as amended) and Class 2 of Part 4 of the Schedule 2 of those Regulations.

Reason: To limit the use of the development to uses considered acceptable within the area, and to avoid traffic hazard from obstruction of vehicles.”

The grounds of appeal comment that the above condition is superseded by condition no. 11 of the Board decision PL.09.237802, which limited the use of the permitted retail units as stated in condition no. 9 of 10/528, for the same stated reason.

8.3.2 Part 2, Article 5 of the Regulations deals with exempted development. Article 5(i) defines a “shop” as follows:

‘shop’ means a structure used for any or all of the following purposes, where the sale, display or service is principally to visiting members of the public –

(a) for the retail sale of goods,

(b) as a post office,

(c) for the sale of tickets or as a travel agency,

(d) for the sale of sandwiches or other food or of wine for consumption off the premises, where the sale of such food or wine is subsidiary to the main retail use, and “wine” is defined as any intoxicating liquor which may be sold under a wine retailer’s off-licence (within the meaning of the Finance (1909-1910) Act, 1910),

(e) for hairdressing,

(f) for the display of goods for sale,

(g) for the hiring out of domestic or personal goods or articles,

(h) as a launderette or dry cleaners,

(i) for the reception of goods to be washed, cleaned or repaired,

but does not include any use associated with the provision of funeral services or as a funeral home, or as a hotel, a restaurant or a public house, or for the sale of hot food or intoxicating liquor for consumption off the premises except under paragraph (d), or any use to which class 2 or 3 of Part 4 of Schedule 2 applies;

Schedule 2 of the Regulations specifies exempted development. Part 4 of same sets out classes of use. Class 1 is use as a shop. Class 2 relates to the following:

“Use for the provision of—

(a) financial services,

(b) professional services (other than health or medical services),

(c) any other services (including use as a betting office),

where the services are provided principally to visiting members of the public.”

Class 3 relates to:

“Use as an office, other than a use to which class 2 of this Part of this Schedule applies.”

8.3.3 The proposed restaurant use is specifically excluded from the definition of a shop as set out in the Regulations. It therefore does not comply with the requirements of condition no. 9 of 10/528 or condition no. 11 of PL.09.237802. I note that there is an existing ‘Costa’ coffee outlet in the adjacent retail unit, this appears to also contravene the above conditions. However, as noted above, the restaurant use is acceptable in principle under the relevant zoning objective of the Kildare town LAP 2012-2018, which was adopted subsequent to the above decision. I am satisfied that it would not have any significant adverse impact on local amenities or on traffic circulation in the area given its location within the Tesco store and the lack of third party comments on file. With regard to the grounds of appeal and to my site inspection, I am satisfied that the development would not seriously damage the vitality or viability of retail development in Kildare town centre or mitigate against development plan objectives to improve same. Accordingly, I consider that permission can be granted in this case notwithstanding the previous condition of permission limiting the use of the retail outlet.

8.4 Traffic and Parking Issues

8.4.1 Table 19.9 of the County Development Plan sets out car parking standards, which may be applied to the proposed development as follows:

Land Use	CDP Parking Standard	Floor Area	Parking Requirement
Retail < 250 sq.m. GFA	1 space / 24 sq.m. GFA	207 sq.m.	7 no. spaces
Restaurant	1 space / 4.5 sq.m. of public floorspace	Estimated c. 104 sq.m.	23 no. spaces

The development would therefore require c. 16 no. additional spaces than the existing retail use. The applicant submits that it would involve complementary / shared use of car parking spaces. In addition, the applicant states that car surveys of customer parking have confirmed that the car park does not reach capacity and therefore, there is sufficient capacity within the car park to meet the needs of the existing Tesco supermarket and associated retail units and the proposed development. Full details of the car parking surveys are not supplied. I note that extensive car parking is available at this location, both at the existing surface car park serving the Tesco store and within the adjacent Kildare Village development. Given the limited scale of the development and the possibility for linked trips / complementary parking space usage, I do not consider that it would result in a substantial parking demand that could not be met locally, such as would warrant a refusal of permission. I also note that the report on file of the Transportation Department of Kildare County Council states no objection to the development.

8.5 Appropriate Assessment

8.5.1 Having regard to the nature and scale of the development within a fully serviced suburban location, no AA 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.

8.6 Conclusion

8.6.1 I note that the proposed development would contravene condition no. 11 of PL.09.237802. However, the development is acceptable in principle at this location under the Kildare LAP 2012-2018. I am satisfied that it would not have any significant adverse impact on residential or visual amenities or on traffic circulation in the area. With regard to the above assessment and to my site inspection, I am satisfied that the development would not seriously damage the vitality or viability of retail or restaurant development in the centre of Kildare town, or mitigate against development plan objectives to improve same. Accordingly, I consider that permission can be granted in this case notwithstanding the previous condition of permission limiting the use of the retail outlet.

9.0 RECOMMENDATION

9.1 Having regard to the foregoing, I recommend that permission be granted for this development for the reasons and considerations set out below.

REASONS AND CONSIDERATIONS

Having regard to the zoning for the site, to the quantum of development proposed, to the pattern of development in the area, to the planning history of

the site and to the location and accessibility of the site, the Board considered that, subject to compliance with the conditions set out below, the proposal would be acceptable in terms of traffic safety and convenience, would not detract from the vitality of the town centre, would not seriously injure the visual amenity of the area and 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 on the 29th day of May, 2015, 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 to such details in writing with the planning authority prior to the 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. Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

3. The use of the restaurant shall be restricted between the hours of 07.00 and 23.00 hours.

Reason: To protect the amenities of the adjoining properties.

4. No additional signs, symbols, nameplates or advertisements shall be erected on the proposed site without a prior approval of the planning authority whether or not such development would otherwise constitute exempted development.

Reason: In the interest of visual amenity.

5. 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 the 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.

Sarah Moran,
Senior Planning Inspector
26th April 2016