



An
Bord
Pleanála

Inspector's Report PL28.246672

Development	Licensed Discount Food Store at Bishopstown Road, Wilton, Cork
Planning Authority	Cork City Council
Planning Authority Reg. Ref.	15/36664
Applicant(s)	Lidl Ireland GMBH
Type of Application	Permission
Planning Authority Decision	Grant subject to 16 Conditions
Appellant(s)	<ol style="list-style-type: none">1. Wilton Avenue, Upper Bishopstown and Merlyn Lawn Residents Association2. John MacCarthy & Valerie Fenton MacCarthy3. Brian Herlihy of Herlihys Centra Bishopstown4. Lower Bishopscourt Residents Association5. Lidl Ireland GMBH
Observer(s)	None
Date of Site Inspection	19 th August 2016
Inspector	Mary Crowley

1.0 SITE LOCATION AND DESCRIPTION

- 1.1 The appeal site with a stated area of 0.4 ha is located in the Cork suburb of Wilton fronting onto the Bishopstown Road, adjacent to the Cork University Hospital (CUH) campus and c 4.5km west of Cork city centre. The site levels rise in a northerly direction and the difference in levels across the site from south to north is approximately 4m.
- 1.2 The site is proximate to the hospital access and the Wilton Roundabout to the east. The site contains a disused petrol filling station and two vacant single storey dwellings with roadside hoarding along the length of the site that effectively screen the entire site. To the west are the rear gardens (22-23m in length) of 2-storey semi-detached houses on Wilton Avenue, a residential road. To the south west is a pair of 2-storey houses facing onto Bishopstown Road. There is substantial tree and shrub screening along the western, eastern and northern boundaries of the site. There is some tree and shrub screening along the western boundary of the site. The extensive Wilton Shopping Centre is located to the south east. The southern boundary is the road frontage and on the opposite side of the dual carriageway there is recently constructed Aldi store and adjoining retail block.
- 1.3 Bishopstown Road is a very heavily trafficked dual-carriageway with 4 lanes in each direction from the Wilton Roundabout to beyond the hospital entrance, thereafter reducing to a single carriage way with right turning lane in the immediate vicinity of the access to the appeal site. The central reserve is also replaced by a tapering area hatched with road markings at this point.
- 1.4 A set of photographs of the site and its environs taken during the course of the site inspection is attached. I would also refer the Board to the photographs available to view throughout the appeal file.

2.0 PROPOSED DEVELOPMENT

- 2.1 This is an application for permission for development comprising the demolition of 2 no. single storey habitable dwellings with associated outbuildings/structures (totalling 225.83 sqm gross floor area) and a single storey commercial building with associated outbuilding/structures (totalling 118.85sqm gross floor area), and the construction of a licenced Discount Foodstore (2,225.83 sqm gross floor area) in a building of 3 story height equivalent with under croft and surface vehicular parking at ground floor level, retail sales area with ancillary off-licence and bakery areas, at a site of approximately 0.3638 hectares.
- 2.2 The planning application was lodged with the Planning Authority on the 17th December 2015 and was accompanied by a Planning Report, Lighting Impact Assessment Report, Stage 1 Road Safety Audit, Noise Impact Assessment, Site

Investigation Report, Site Closure Report for Carberry Service Station, Site Infrastructure Design Report and Transport Assessment Report.

2.3 **Further information** was requested on the 19th February 2016 on a range of matters relating to road design issues summarised as follows:

- Entrance / exit to be redesigned as pedestrian priority, redesign footpath, central dividing line to be extended, signage & road markings and street lighting.

2.4 The **further information was submitted** on 8th April 2016 and was accompanied by a Lighting Impact Assessment Report. The response may be summarised as follows:

- The response does not involve any amendments or alterations to the buildings footprint, gross floor area or the description of the development as submitted to the Planning Authority on 23rd December 2015
- The junction which is proposed to serve the subject site has been redesigned to be a pedestrian priority junction
- The footpath on what is currently unused carriageway on the Bishopstown Road has been redesigned to facilitate enhanced traffic flows into the proposed development, having regard to localised drainage infrastructure
- A design for the extension of the central dividing island on the Bishopstown Road has been provided
- Details of all signage and road markings which are proposed have been provided
- The proposed lighting scheme, encompassing public street lighting and site lighting has been designed and assessed with reference to the relevant lighting standards and will see the replacement of 3 no public lighting columns

3.0 TECHNICAL REPORTS

3.1 **Environment Waste Management & Control** (1st February 2016) has no objection subject to conditions. **Drainage Division** (26th January 2016) has no objections subject to conditions.

3.2 **Transport & Mobility Division** (17th February 2016) had no objection to the proposed development subject to conditions relating to the entrance / exit to / from Bishopstown Road shall be a “left in – left out only” arrangement, entrance to be designed in accordance with DMURS, road improvements to be agree, Road Safety

Audit, car parking and public lighting. **Transport & Mobility Division** (18th February 2016) required that the street lighting be upgraded to comply with current standards and that a special contribution be applied.

- 3.3 **Transportation & Mobility Division (4th May 2016)** is satisfied with the further information provided in Drg No C-000-008 with respect to the proposed entrance / exit arrangement, lining and extension of splitter island. Recommended that a condition be attached requiring that *“the proposed footpath paving material and soft landscaping shall be agreed with the Planning Authority prior to commencement of construction.”*
- 3.4 **Irish Water** (1st February 2016) has no objection to the scheme.
- 3.5 The **Local Authority Planner** in their first report requested **further information** on a range of matters summarised as follows:
- Entrance / exit to be redesigned as pedestrian priority, redesign footpath, central dividing line to be extended, signage & road markings and street lighting.
- 3.6 The **Planner** in their second and final report of 5th May 2016 recommended the planning permission be granted subject to conditions. The notification of decision to grant planning permission issued by Cork City Council reflects this recommendation.

4.0 OBJECTIONS / OBSERVATIONS TO THE PLANNING AUTHORITY

- 4.1 There are numerous objections / observations recorded on the planning file including (1) Maria & Martin Galvin, (2) Brian Herlihy of Herlihys Centra Bishopstown, (3) Conor O’Sullivan, (4) Monica & Cormac Shinnick, (5) Stephen & Joan O’Shea, (6) Arthur & Noeline Harvey, (7) Christine & Francis Deeney, (8) Donal Hurley, (9) Finola Donovan, (10) Hugh & Myra O’Neill, (11) Margaret Moloney, (12) Frank Martin, (13) Muhammad Saud Qureshi, (14) Michael Collins, (15) Stephen Fuller, (16) Wilton Avenue, Upper Bishopstown and Merlyn Lawn Residents Association, (17) Xavier Llinares & Sara Harvey, (18) David & Mary Twomey, (19) Dr Nessa Hegarty, (20) Helen O’Reilly, (21) John MacCarthy & Valerie Fenton MacCarthy, (22) Kevin O’Mahony, (23) Lower Bishopstown Residents Association, (24) Michael Prendiville, (25) T.F. Kiely, (26) Stephen & Joan O’Shea, Noel O’Donovan & Muriel Collins and (27) Tesco Ireland Ltd.
- 4.2 The issues raised relate to traffic impact, congestion and safety, access, safety of pedestrians and cyclists, loss of residential amenity and privacy, disruption due to noise, dirt and dust, need for this development, remote from District Centre, poor urban streetscape, sites planning history and previous refusal by An Bord Pleanála, design of the proposed building, height, mass, bulk, scale and siting of the scheme,

overshadowing, depreciation of property values, intensification of site usage, underutilisation of the site, inadequate surface water drainage, encouraging anti-social behaviour and separation for the rest of the District Zone. Further submitted that the scheme conflicts with the Cork City Development Plan 2015 – 2021, Bishopstown Wilton Area Action Plan 2007, DoEHLG Urban Design Manual.

5.0 PLANNING AUTHORITY DECISION

5.1 Cork City Council issued notification of decision to **grant** planning permission subject to 16 conditions. Conditions of note and relevant to this appeal are summarised as follows:

Condition No 3	Hours of operation
Condition No 4	Location and area of off license to be agreed
Condition No 7	Drainage
Condition No 8	Construction environmental and waste management plan
Condition No 10 & 11	Noise control
Condition No 12	Entrance / exit to / from Bishopstown Road shall be a “left in – left out only” arrangement, entrance to be designed in accordance with DMURS, road improvements to be agree, Road Safety Audit and public lighting.
Condition No 13	No more than 75 car parking spaces shall be provided on site and provision of a functional EV charging point
Condition No 14	24 cycle parking spaces together with 8 motorcycle parking spaces
Condition No 16	General Development Contribution

6.0 PLANNING HISTORY

6.1 There were several previous applications and subsequent appeals on this site that may be summarised as follows:

1) **Reg Ref T.P.06/31385** – permission refused by the planning authority (9th January 2007) for demolition of existing buildings, construction of a 5-storey mixed use building (11,052 sqm) over 3 basement levels (289 parking spaces). In summary, the reasons for refusal were:

- The development would curtail the safe and efficient movement of traffic, would give rise to traffic hazard and would prejudice the properly planned orderly development of the area.
- Scale, height, bulk, massing, lack of street frontage and design would be excessively dominant and out of context with adjoining developments, incongruous and detracting from the visual amenity of the area.
- Scale, bulk, massing and proximity to boundaries would give rise to overlooking, would be overbearing and would result in visual intrusion. The development would be injurious to residential amenities and depreciate the value of adjoining residential properties.

2) **Reg Ref TP 06/31385** - Demolition of existing structures and construction of a new 5-storey mixed use building over 3 basement levels of car parking (289 spaces). Refused for 3 reasons relating to traffic hazard; scale, design and layout incongruous in the area; loss of residential amenity by reason of overlooking, overbearing and visual intrusion.

3) **PL28.223998 (Reg Ref TP 07/31819)** - Construction of a five-storey mixed use building (11,423 sqm. gross floor area) over three basement levels providing 237 number car parking spaces with new access onto Bishopstown Road and car park access ramp. The scheme was refused for a single reason relating to vehicular access and sufficient legal estate or interest in the adjoining lands to the east to enable future access to the site to be provided from that direction in order to comply with the draft proposal of the planning authority for the relocation of the existing access to Cork University Hospital.

4) **PL28.229550 (Reg Ref TP08/32962)** - Cork City Council granted permission for the demolition of existing structures, construction of new access, car park, mixed use building (medical/health services, retail, childcare) and all associated works. The Board refused permission for a single reason relating to traffic safety.

6.2 Under **PL28.228620** the Board granted permission for the co-location hospital on CUH lands. Under **PL28.238279** the Board granted permission the redevelopment of Wilton Shopping Centre. Under **PL28.243314** the Board granted permission for the development of Aldi Sites on a site directly across the road from the appeal site.

7.0 POLICY CONTEXT

- 7.1 The operative plan for the area is the **Cork City Development Plan 2015 – 2021**. The site is zoned **ZO8 District Centre** where the objective is *to provide for and / or improve District Centres as mixed use centre with a primary retail function which also act as a focus for a range of services*.
- 7.2 The **Bishopstown Wilton Area Action Plan 2007** is a non-statutory policy document that amplified the existing policy framework of the City Plan. Policy *S25 B Wilton District Centre & Related Lands* of the Plan mirrors the key objectives of *Policy 14.1 Wilton District* of the City Plan. Development objectives affecting the proposed development site include indicative building lines / block layouts (street frontage alongside Bishopstown Road is indicated in Fig 3.4). The Plan (para 2.4.36 to 2.4.39) contains some information of the airport safety zone and proposed public safety zone. The site appears to be affected by the zone.
- 7.3 The **Retail Planning Guidelines (2012)** and accompanying **Retail Design Manual** provide a comprehensive framework for planning and development of retail floor space that should be appropriate to the scale and function of the settlement or part of the settlement in which it is located as designated by the NSS. The Guidelines seek to enhance the vitality and viability of city and town centres in all their functions; 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 and facilitating a shift towards increased access to retailing by public transport, cycling and walking in accordance with the Smarter Travel strategy. There is a general presumption against large out-of-town retail centres.
- 7.4 The **DoEHLG Guidelines on ‘Sustainable Residential Development in Urban Areas’ (2009)** outline sustainable approaches to the development of urban areas. These set out national policy of encouraging more sustainable urban development by the avoidance of excessive suburbanisation and the promotion of higher residential densities in appropriate locations.

8.0 GROUNDS OF APPEAL

- 8.1 There are four **Third Party Appeals** on the file from (1) Wilton Avenue, Upper Bishopstown and Merlyn Lawn Residents Association, (2) John MacCarthy & Valerie Fenton MacCarthy and (3) Brian Herlihy of Herlihys Centra Bishopstown and (4) Lower Bishopscourt Residents Association. The main issues raised in the appeals relate to:
- Public notices are considered inaccurate and misleading in referring to the store as a “discount food store” as the term has no basis in Irish planning

guidance. Submitted that the scheme should be described as a supermarket. Further the appellants not afforded opportunity to communicate their observations in relation to further information process. Inadequate planning assessment by Cork City Council. No adequate consideration of site history and refusal precedent.

- Site not suitable for stand-alone retailing. The Retail Impact Assessment provides no adequate justification for the proposed development. Absurd technicality in the Retail Guidelines that a “discount store” like Lidl is note in direct competition with “other supermarkets”. The City’s Retail Strategy does not call for further food and grocery floor space within the Wilton District Centre. Rather it calls for a wider range of retail services, community and social facilities. Within a 650m radius of the site there are already three large grocery multiples including Tesco, Aldi and Dunne’s Stores.
- There is an oversupply of off licenses in the area and there is potential for anti-social behaviour
- Traffic hazard and congestion. Data collection in the traffic surveys is meaningless. The scheme will impact on the operation of Wilton Road roundabout. Transport Infrastructure Ireland (TIA) was not consulted
- Intensification of use of the site. Insensitive design, building height, mass, bulk, scale and siting that are unrelenting and inappropriate at this location. Negative visual impact. Impact on built heritage. No Design statement submitted with the application (Obj 16.1 of the City Plan refers).
- Inadequate car parking provision. Basement car parking required. Illogical approach to car parking at ground floor with supermarket overhead.
- Overshadowing and loss of residential amenity to adjoining homes. Diminution in the value of adjoining homes
- Surface Water Drainage is inadequate. Detrimental impact to public water supply and particularly the hospital
- No Appropriate Assessment Screening Report accompanied the application despite being within 5km of an SPA.
- Development conflicts with the Cork City Development Plan 2015 – 2021, Bishopstown and Wilton Action Area Plan 2007 and DoEHLG Guidelines for Planning Authorities and supporting Urban Design Manual
- Development is contrary to the proper and orderly planning and sustainable development of the area

8.2 Further Wilton Avenue, Upper Bishopstown and Merlyn Lawn Residents Association requested an **oral hearing**. The Board decided to determine the appeal without an oral hearing. Letter of 11th August 2016 refers.

8.3 There is also a **First Party Appeal** against Condition No 3 (hours of operation), No 4 (location and area of off license to be agreed), No 7(drainage), No 8 (construction environmental and waste management plan) and No 13 (functional EV charging point) *as the majority of these details conditioned, are presented within the relevant planning application associated with the case.*

9.0 RESPONSE OF THE PLANNING AUTHORITY

9.1 There is no response to the matters raised in the appeal(s) from **Cork City Council** recorded on file.

10.0 FIRST PARTY RESPONSE TO THE APPEAL

10.1 The first party response to the appeal may be summarised as follows:

- Boba fides of the appeal queried and concern raised that the third party appeal comprises unfounded statements and defamation. Board asked to invite the appellants to clarify their bona fide interest and reasoning or dismiss the appeal.
- Extensive and comprehensive written submission does not need to be supplemented by oral evidence
- Proposed development is considered to be a be-spoke design creating edge along Bishopstown Road.
- The scheme is considered acceptable having regard to
 - a) the location of the site within the Wilton District Centre, the land use zoning objective for the site and the established commercial use of the site
 - b) the pattern of development in the area, the nature and scale of the proposed development
 - c) the proposed development, will not have an undue increase in perceived impact on the residential amenities of Wilton Avenue
 - d) the location of the proposed development to serve as an effective barrier, screening these residential properties from the noise which is generated by the commercial land uses to the east as well as the noise generated by traffic on Bishopstown Road to the south
 - e) the development is consistent with the Cork City Development Plan 2009 – 2015 Policies and Objectives and is considered appropriate to the proper planning and sustainable development of the area.
- Upholding the City Councils decision to grant permission would be in accordance with the proper planning and sustainable development of the area.

11.0 OBSERVATIONS / SECTION 131 RESPONSES

11.1 There is an **observation** recorded on the appeal file (Section 131 response) from the Residents for the Lower Bishopscourt Estate. Additional comments may be summarised as follows:

- Condition No 3 - Cork City Council has consistently failed to recognise the traffic problems at this portion of Bishopstown Road. Opening hours to be restricted to 9am.
- Condition No 4 – No objection to the granting of an off-license. Condition should remain as proposed.
- Condition No 7 – Condition should not be amended.
- Condition No 8 - Condition should not be amended.

11.2 Further concern is raised with regard to traffic, residential amenities and character of the area. An Oral Hearing is requested. As outlined previously the Board decided to determine the appeal without an oral hearing. Letter of 11th August 2016 refers.

12.0 ASSESSMENT

12.1 Concern is raised in the appeal regarding the public notices, procedural matters and the assessment of the scheme by the Planning Authority. In this regard I would set out the following.

12.2 The appellants raise concern that the public notices are misleading in referring to the development as a “discount food store” as this has no basis in Irish Planning Law. The Board will be aware that purpose of the public notices is to inform the public of the proposed development and alert them to its nature and extent. Third parties may then examine the files in detail at the planning office or on the authority’s website. In this case I am satisfied that the public notices give “a brief description” of the nature and extent of a proposed development and that they adequately inform the public of the proposed development and alert them as to its nature and extent therefore allowing third parties the opportunity to examine the application details further should they wish. Further I agree with the applicant that the term “discount Foodstore” appears to be widely used to provide a description to the nature and operator model used by the applicant, Lidl in this instance.

12.3 The concerns raised by the appellants that they were not afforded the opportunity to communicate their observations in relation to further information, that there was an inadequate planning assessment by Cork City Council and that there was no adequate consideration of site history and refusal precedent are noted. However, it is not for An Bord Pleanála in this instance to determine whether or not the

application was in breach of the Planning and Development Regulations. Further I would point out for the purpose of clarity that the current development before the Board represents a separate and distinct application which is considered “de novo”. That is to say that the Board considers the proposal having regard to the same planning matters to which a planning authority is required to have regard when making a decision on a planning application in the first instance and this includes consideration of all submissions and inter departmental reports on file together with the relevant development plan and statutory guidelines, any revised details accompanying appeal submissions and any relevant planning history relating to the application.

2.1 Having regard to the information presented by the parties to the appeal and in the course of the planning application and to my site inspection of the appeal site, I consider the key planning issues relating to the assessment of the appeal can be addressed under the following general headings:

- Principle / Policy Considerations
- Retail Impact
- Residential Amenity
- Design
- Vehicular Access & Traffic Impact
- Car Parking
- First Party Appeal Against Conditions
- Appropriate Assessment Screening
- Other Issues
 - (a) Flood Risk Assessment
 - (b) Lighting
 - (c) Development Contribution

13.0 PRINCIPLE / POLICY CONSIDERATIONS

13.1 This is an application for permission for development comprising the demolition of 2 no. single storey habitable dwellings with associated outbuildings/structures (totalling 225.83 sqm gross floor area) and a single storey commercial building with associated outbuilding/structures (totalling 118.85sqm gross floor area), and the construction of a licenced Discount Foodstore (2,225,83 sqm gross floor area) in a

building of 3 story height equivalent with undercroft and surface vehicular parking at ground floor level, retail sales area with ancillary off-licence and bakery areas, at a site of approximately 0.3638 hectares.

- 13.2 As stated above the proposed development includes the demolition of the existing structures on the site comprising two bungalows (both disused and of deteriorating quality) and a disused commercial premises, formerly a petrol filling station. The buildings are not protected structures and are not located within an Architectural Conservation Area. I consider the buildings are of little architectural merit either in their own right or in terms of their contribution to the visual amenity of the area, and I have no objection to the proposed demolition of same.
- 13.3 The site is located within the designated Wilton District Centre and as such is subject to the Mixed Use zoning objectives which has been applied to the area by the Cork City Development Plan 2015 – 2021. The surrounding area offers a diverse mix of uses, including retail, residential, institutional and open space. The southern side of the Bishopstown Road has traditionally been the focus of commercial and retail development including the recently opened Aldi store opposite the appeal site. Having regard to the location of the site on the northern side of Bishopstown Road, its proximity to CUH and Wilton Shopping Centre and the zoning objectives for the site I considered that the development proposed is an appropriate use.
- 13.4 Overall I am satisfied that the proposed uses accord with the policies for the area as set out in the City Development Plan. I consider the proposed scheme at this location to be acceptable in principle subject to the acceptance or otherwise of site specifics / other policies within the development plan and government guidance.

14.0 RETAIL IMPACT

- 14.1 Cork City Centre is the principal retail centre of the South West Region and forms the first tier within the retail hierarchy. Wilton is identified within the second tier of the hierarchy along with another three existing “key suburban district centres (Blackpool, Douglas, Mahon and Wilton) and a further three planned district centres (Ballyvolane, Dockland and Hollyhill). These District Centres are a key aspect of the overall retail strategy for Cork City and are comprehensively dealt with in the Retail Strategy of the Development Plan.
- 14.2 A Retail Impact Assessment (RIA) was submitted with this application. The total net floor space is stated as 1,387 sqm with 80% convenience and 20% comparison. The catchment area identified is that for the Wilton District Centre (as opposed to the proposed development site on its own) and is established by previous planning applications on this site (PL28.238279 & PL28.243314 refers).

- 14.3 The applicant submits that the 2007 proposal (Reg Ref 07/31819) was for a mixed use, multi-story development of 11,423 sqm and that this was revised in 2008 (Reg Ref 08/32962), but the scale was similar in nature. However, the current proposal is smaller in scale with a stated area of 2,225 sqm.
- 14.4 The population for the catchment as identified is 49,789 (2011 Census). The RIA identifies the major existing convenience retail floor space in the catchment, including zoned district and neighborhood centres in the area. The RIA estimates that the proposed development will account for 5.14% of convenience and 0.78% of Comparison Capacity. It is considered that there is significant capacity within the catchment for additional floor space without impact on the viability of existing floor space and that here will be negligible trade diversion. Based upon projections of the available spend within the Catchment Area and the total quantum of floorspace (existing and extant), Table 4.11 of the Planning Report accompanying the planning application demonstrates an additional convenience and comparison floorspace capacity of 3,885 sqm and 9,986 sqm respectively for the Design Year of 2020. Table 4.11 also demonstrates that following the construction of the proposed development, there will remain a residual requirement of 2,775 sqm convenience floorspace and 9,709 sqm comparison floorspace in the Design Year of 2020.
- 14.5 Having regard to the RIA and the City Development Plan (including the retail strategy) there are no objections to the proposed development from a planning perspective on the grounds of the quantum of retail floor space proposed. I am satisfied that the objectives of the Development Plan support the development proposed and that it accords with its position in the retail hierarchy and the relevant zoning objectives for the site.

15.0 RESIDENTIAL AMENITY

- 15.1 The appellants in their submission refer to the impact of the proposed development on the amenities enjoyed by occupiers of adjoining residential properties, particularly along Wilton Avenue.
- 15.2 The applicant submits that taken with the contextual elevations as detailed on ARUP Architectural Drawing No A200 which accompanied the Planning Application, the relationship in terms of height with neighboring residences along Wilton Avenue clearly demonstrates the non-overbearing nature of the proposed development. Overall I agree that the scheme respects the surrounding prevailing heights in the area, represents a non-overbearing presence at this location and that taken together with the existing mature vegetation and trees on site that would further soften this elevation as viewed from Wilton Avenue and its residents is an acceptable scheme.
- 15.3 The Shadow Cast Analysis that accompanied the planning application illustrates a series of shadow casts presentations associated with the proposed development on

site vis a vis the shadow cast as experienced within the adjacent residential properties which occur on the western boundary of the subject site, taken at various daily times and dates of the year. It is evident that some residents rear gardens along Wilton Avenue would be affected, primarily during the early mornings and most especially during the winter months. However, in the main the shadows do not extend to reach the rear gable of the adjacent properties being largely restricted to the garden areas. I am satisfied that the shadow casts presentation demonstrate that the proposed development does not unduly detract from the current impact on residences along Wilton Avenue from a Shadow Cast perspective and that the scheme will not therefore reduce the residential amenity of the adjacent properties.

15.4 Overall I agree with the Local Authority Planner that having regard to the reports on file and the separation between the site and residential uses that the proposal is within the acceptable relevant parameters and will not have an unacceptable undue negative impact on residential amenity by reference to noise and traffic impacts. In conclusion I consider therefore that the development would not result in a significant impact on the residential amenity of any other property that would justify refusing permission on these grounds.

16.0 DESIGN

16.1 The issue raised in the appeal in relation to design and urban design are noted. While it is accepted that the design has been specifically formulated to make the best use of the available space, resulting in the creation of a new façade onto the Bishopstown Road this is not a “landmark building”.

16.2 This is a licensed discount foodstore that is instantly recognisable as such and does not, in my view, pretend to be anything else. This is a functional structure that while respecting the basic design criteria for the site and using high quality materials provides limited contribution to the streetscape or overall architectural portfolio of the area. However, I do not consider this to be a “bad thing” or a reason for refusal. This site is almost akin to an urban island that is bounded by a busy road, a large car park, a busy city hospital and rear gardens of adjoining residential properties. The scheme before the board represents an appropriate development of an underutilized serviced urban site and the proposed site layout is considered to be acceptable from a planning perspective.

16.3 Overall I agree with the Local Authority Planner that the *proposal is appropriate for the character of the area which includes a significant amount of institutional and commercial / retail uses and that the development provides a transition between the residential area and CUH – in this regard the design is appropriate to the zoning of the site.* I consider therefore that the development would not result in a significant impact on the visual amenity that would justify refusing permission on these grounds.

17.0 VEHICULAR ACCESS & TRAFFIC IMPACT

- 17.1 A separate pedestrian and vehicular entrance is provided for in the proposed development. The vehicular entrance is a left in / left out only arrangement with Bishopstown Road.
- 17.2 The Transport Assessment submitted as part of the Lidl application sets out the impact analysis of the proposed development. A Road Safety Audit of the site access junction on Bishopstown Road was carried out which highlighted road safety problems and provides outline recommendations for solving these problems. It is stated that the applicant's designers liaised with Cork City Council Roads and Transportation Departments. They have allowed for pedestrian movement across the proposed entrance / exit as well as the proposed BRT in their assessment. Cork City Council have conditioned a left in / left out access / egress arrangements and this has been adopted by Lidl in their proposed planning drawings.
- 17.3 The applicant also points out that the co-location hospital on CUH lands permitted under PL28.228620 appears to have expired and as such the permitted new access arrangement to the CUH Hospital as referenced as precedence by third parties does not benefit from any planning permission. Proximity and associated relationships between proposed historical development which has been refused on the subject lands and the CUH Co-location permitted entrance, is as such not considered to be a key factor in this instance due to the expiration of the planning permission.
- 17.4 With regard to the traffic survey carried out over the June Bank Holiday weekend it is submitted that the June bank holiday weekend attracts many extra visitors to Cork and so the traffic counts are likely to be higher than normal conditions. Further states that the traffic movement was also greater than usual due to the influx of visitors for the City Marathon which took place on the Bank Holiday Monday. Further stated that traffic surveys were carried out before June to ensure all school traffic were included for Friday peak hour.
- 17.5 Illegal right turn manoeuvres currently being made by patrons existing Aldi and illegal u-turns across the central ghost hatching on Bishopstown Road to gain access to Lidl are matters for An Garda Síochána and Cork City Council (compliance with conditions). Mitigation measures conditioned for Aldi and Lidl (left in / left out only, bollards, extended median) will prevent illegal right turns across the centre line.
- 17.6 As pointed out by the Transport & Mobility Division the impact of additional traffic associated with the proposed development on the road network and at key junctions in the vicinity of the scheme was analysed using Linsig traffic modelling package for a proposed opening year of 2016 as well as 2021 and 2031. The analysis assumed that no right turn movements would be permitted into and out of the development i.e. left in left out movements only. The TIA concluded that the projected trip generation

associated with the proposed development will not adversely impact on the network and that the adjacent junctions of CUH / Bishopstown Road and that of Wilton Avenue / Bishopstown Road will continue to operate within capacity with minor increase in congestion. The Transport Assessment details various measures which have been included within the scheme to reduce the potential impact on the transport environment in the vicinity of the proposed development. The proposed mitigation measures include:

- Construction Traffic Management Plan
- Stock Deliveries Arrival / Departure of staff outside the local key traffic periods
- Entry Treatment to ensure pedestrian priority
- Eastern access / egress point to ensure sight lines are maximised
- Left-turn pocket to proposed development to mitigate any potential backlog behind left turners to proposed development

17.8 Based on the information provided, the Transportation Division had no objection to the proposed development subject to conditions. Having regard to the information available with the appeal file I am satisfied that the that the projected trip generation will not have a significant impact and that the adjacent road network has the capacity to accommodate the proposed development. In conclusion I do not consider that the proposed development will give rise to a traffic hazard.

18.0 CAR PARKING

18.1 According to the Transport & Mobility Division the proposed site is situated within Cork City Development Plan 2015 – 2021 Car Parking Zone 3. The car parking allocation of the proposed LIDL is outlined in Section 4.5 of the Transport Assessment submitted as part of the planning application. The Cork City Development Plan stipulates that a maximum allocation of 1 car parking space per 20 sqm of GFA be provided at a retail development. This would equate to a maximum of 111 car parking spaces.

18.2 The applicant submits that the inclusion of the requisite parking requirements on the subject site through a combination of surface and enclosed ground floor parking with retail overhead at first floor level is achieved due to the topographical attributes of the subject lands, raising sharply from Bishopstown Road to the elevated CUH/HSE access road to car parking, and ultimately the extensive staff surface car parking area to the north of the site. It is proposed that 75 car parking spaces are provided as part of the proposed development, which complies with the Cork City Development Plan maximum standards, as outlined in Section 4.5.1 of the Transport Assessment, especially having regard to the public transport routes, surrounding development and associated residential pedestrian catchment.

- 18.3 It is further submitted by the applicant that the recently opened Aldi store across the road proposed 80 spaces for 2,763 sqm of development where the parking provision has been observed to satisfy demand. Further stated that stores such as Lidl have a quick turnaround time of cars parked in their car park, were most patrons spend on average less than 30 minutes in the store. Finally, the store is located in an area with a strong resident, student and workforce presence, and it is anticipated that this will result in a significant proportion of customers walking to the store.
- 18.4 In relation to the suggestion that patrons and visitors of CUH will park in Lidl, the applicant points out that Lidl have experience of having to deal with the risk of indiscriminate parking by non-customers and have effectively managed parking in their other stores which has similar concerns to that of the adjacent CUH. Lidl proposes to deal with the CUH risk with a similar parking management strategy. Anyone familiar with Lidl will be aware of their car park management protocols and therefore I accept the applicant's response in this instance and I do not therefore see this as a matter of concern that would justify refusing permission on these grounds.

19.0 FIRST PARTY APPEAL AGAINST CONDITIONS

- 19.1 There First Party has appealed against Condition No 3 (hours of operation), No 4 (location and area of off license to be agreed), No 7(drainage), No 8 (construction environmental and waste management plan) and No 13 (functional EV charging point) *as the majority of these details conditioned, are presented within the relevant planning application associated with the case.* I will deal with each condition separately.
- 19.2 **Condition No 3** (hours of operation) - The applicant requests that the hours of operation be amended from 09.00 – 21.00 Monday to Saturday and 10.00 – 19.00 Sundays to 08.00 – 22.00 Monday to Sunday inclusive. The Board in its decision on the Aldi store across the road (PL28.243314 refers) restricted the opening to the public outside the hours 09.00 to 21.00 Monday to Saturday inclusive, nor outside the hours 10.00 to 19.00 on Sundays or public holidays. I recommend that a similar condition be attached in this case.
- 19.3 **Condition No 4** (location and area of off license to be agreed) – The applicant requests that this condition be deleted in its entirety. I am satisfied that such a use is a normal component of such supermarkets to have off license provision. Secondly I agree with the applicant that *“80% of the net retail floorspace (1,109.6 sqm) is designated for the purposes of convenience goods which can facilitate the area for off-license / sale of alcohol use, as best directed by the Lidl’s operation model as implemented in all existing Lidl Foodstores throughout Ireland”.* I recommended that this condition be omitted.

- 19.5 **Condition No 7** (drainage) - The applicant requests that this condition be amended to reflect that all storm sewers have sufficient capacity to convey all flows arising within a 5-year period as per ARUP details submitted with the application. I recommend that Condition No 7 be omitted in its entirety and that the Boards standard water and drainage condition be attached requiring that water supply and drainage arrangements, comply with the requirements of the planning authority.
- 19.6 **Condition No 8** (construction environmental and waste management plan) - The applicant requests that this condition be amended to reflect ARUPS Construction Environmental and Waste Management Plan submitted with the applications. I recommend that Condition No 8 be omitted in its entirety and that the Boards standard construction waste and demolition management plan be attached requiring agreement with the planning authority prior to commencement of development.
- 19.7 **Condition No 13** (functional EV charging point) - The applicant requests that this condition be amended as the existing condition is ultra vires as it requires the applicant / developer to enter into agreement outside the applicants control. I recommend that this condition is omitted in its entirety.

20.1 APPROPRIATE ASSESSMENT SCREENING

- 20.1 The relevant European sites are the Cork Harbour SPA (site code 004030) and the Great Island Channel cSAC (site code 001058). Taking into consideration the nature of the development as proposed, the absence of any direct pathway via a watercourse and the separation between the sites, it is reasonable to conclude on the basis of the information available, which I consider adequate in order to issue a screening determination, that the proposed development, individually and in combination with other plans or projects would not be likely to have a significant effect on any European site and in particular specific site number 004030 and 001058 in view of the site's conservation objectives. An appropriate assessment (and submission of a NIS) is not therefore required.

21.0 OTHER ISSUES

- 21.1 **Flood Risk Assessment** – The proposed development site is not located within Flood zones A or B as specified in the Flood Risk Management Guidelines for Planning Authorities 2009.
- 21.2 **Lighting** – It is noted that the Transport & Mobility Division require that a check of the adequacy of the public lighting in the vicinity of the development will be required to cater for the increased vehicle conflict movements to / from Bishopstown Road and that a proposal for external lighting within the site boundary, as well how it integrates with the existing public lighting on the Bishopstown Road is needed as

lighting requirements need to be cross boundary. It is recommended that should the Board be minded to grant permission that a similar condition be attached.

- 21.3 **Development Contribution** – Condition No 16 of the notification of decision to grant permission issued by Cork City Council requested the payment of a Development Contribution Scheme in the amount of €119,861.97. This condition has not been appealed. The Local Authority Planner in their report set out the following development contribution calculation:

Scheme	Rate / sqm	sqm	Contribution
General	€53.8628	2,225.32	€119,861.97

- 21.4 The Planner while noting that the proposal included 344.68 sqm of demolition (225.83 sqm (house) and 118.85 sqm (former garage)) also noted that there was no evidence that development contribution was previously levied and therefore did not discount for this area. I agree with this approach and recommend that should the Board be minded to grant permission that a similar condition be attached.
- 21.5 Condition No 12 of the notification of the decision to grant permission required the details of road markings, signage and footpaths to be agreed prior to commencement of development. This is a reasonable, clear and enforceable condition which allows the planning authority substantial control of the details of the site's access to the public road and which I consider adequately deals with the issues raised in the Road Safety Audit and is sufficient to protect public safety. Similar to the condition attached by the Board to the granting of permission for the Aldi scheme across the road (PL28.243314 refers) this condition is reworded as draft Condition 5 below. The planning authority has included in Condition No 12 of their notification the requirement that the costs of works outside the site should be borne by the applicant. In line with PL28.243314 I consider that such costs be more appropriately dealt with by a condition under Section 48 2(c) allowing for the agreement of cost or reference back to the Board in the event of disagreement. Draft Condition 14 below deals with this matter.
- 21.6 It is further noted the Transport & Mobility Division requested *a special contribution is required toward the provision of ITS services at the two signalised junctions on Bishopstown Road, namely, CUH and Wilton Avenue junctions with a view to upgrading traffic signals to LED signals heads and to supporting the cost of SCOOT UTC, UTC Communication and MOVA operations to cater for increased traffic generated by the development.* The Local Authority Planner noted the recommendation in their report however, they did not consider this appropriate given the nature of the development and the requirements of the Act in relation to contributions. I do not consider that a special development contribution as requested by the Transport & Mobility Division be applied in this instance.

22.0 RECOMMENDATION

22.1 Having considered the contents of the application, the provision of the Cork City Development Plan 2015 - 2021, the provisions of government guidance, the grounds of appeal and the responses thereto, my site inspection and my assessment of the planning issues, I recommend that permission be **GRANTED** for the reasons and considerations set out below.

23.0 REASONS AND CONSIDERATIONS

23.1 Having regard to the location of the site within the Wilton District Centre, the land use zoning objective for the site, the established commercial use of the site, the pattern of development in the area, the nature and scale of the proposed development, and the policy considerations set out in the Cork City Development Plan 2015 - 2021, it is considered that, 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 constitute an appropriate form of development at this location, would be acceptable in terms of traffic safety and convenience and would, therefore, be in accordance with the proper planning and sustainable development of the area.

24.0 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 7th day of December 2015 and by the further plans and particulars received on the 8th day of April 2016, 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 proposed development shall not be open to the public outside the hours 09.00 to 21.00 Monday to Saturday inclusive, nor outside the hours 10.00 to 19.00 on Sundays or public holidays. Deliveries shall not take place before the hour of 07.30, Monday to Saturday inclusive, nor before the hour of 08.00 on Sundays and public holidays, nor after 22.00 on any day.

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

3. The proposed free standing sign (“totempole sign”) located on south eastern corner of the site adjoining the footpath at the entrance to the car park shall be modified so that it does not exceed three metres in height and one square metre in area. It shall not be internally illuminated, but may be spot lit. Revised details of this sign shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of development.

Reason: In the interest of the visual amenity of the area.

4. The vehicular entrance/exit to and from Bishopstown Road shall be designed on the basis of a left-in/left-out arrangement only. Details of this arrangement, including the provision of directional signage, footpath layout and materials, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Any works to facilitate this, which have to be carried out on the public road, shall be carried out by the local authority and the costs of such works shall be included in the development contribution payable by the developer under condition 13 of this permission.

Reason: In the interest of traffic safety.

5. Comprehensive details of the proposed public lighting system to serve the development shall be submitted to and agreed in writing with the planning authority, prior to commencement of development. The agreed lighting system shall be fully implemented and operational, before the proposed development is made available for occupation.

Reason: In the interest of public safety and visual amenity

6. Notwithstanding the provisions of the Planning and Development Regulations 2001, or any statutory provision amending or replacing them, no advertisement signs other than those specifically authorised by this permission (including any signs installed to be visible through the windows), advertisement structures, banners, canopies, flags, or other projecting elements shall be displayed or erected on the buildings or within the curtilage of the site, unless authorised by a further grant of planning permission.

Reason: In the interest of the visual amenities of the area.

7. Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the “Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects”, published by the Department of the Environment, Heritage and Local Government in July 2006. The plan shall include details of waste to be generated during demolition and site clearance and construction phases, and details of the methods and locations to be employed for the prevention, minimisation, recovery and disposal of this material in accordance with the provision of the Waste Management Plan for the Region in which the site is situated.

Reason: In the interest of sustainable waste management.

8. Security roller shutters, if installed, shall be recessed behind the perimeter glazing and shall be factory finished in a single colour to match the colour scheme of the building. Such shutters shall be of the ‘open lattice’ type and shall not be used for any form of advertising, unless authorised by a further grant of planning permission.

Reason: In the interest of visual amenity.

9. 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. A suitably sized and sited grease interceptor trap to the specifications of the planning authority shall be installed either inside or on the sewer outlet from all cooking quarters.

Reason: In the interest of public health.

10. 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 interest of visual amenity.

11. 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 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.

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

12. The noise level, following construction of the development, shall not exceed 55 dB(A) rated sound level, as measured at the nearest dwelling, at any time, including during deliveries. Procedures for the purpose of determining compliance with this limit shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. All of the mitigation measures set out in Sections 6.1 and 6.2 of the 'Noise Impact Assessment' report, as submitted to the planning authority on the 17th day of September 2013, shall be implemented to the written satisfaction of the planning authority.

Reason: To protect the residential amenities of property in the vicinity of the site.

13. The developer shall pay to the planning authority a financial contribution as a special contribution under section 48(2)(c) of the Planning and Development Act 2000 in respect of road works, works to the footpath or the provision of signage outside the application site including any works outside the site required to facilitate the access under the terms of condition number 4 of this permission. 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 the Board for determination. The contribution shall be paid prior to the commencement of the development or in such phased payments as the planning authority may facilitate and shall be updated at the time of payment in accordance with changes in the Wholesale Price Index – Building and Construction (Capital Goods), published by the Central Statistics Office.

Reason: It is considered reasonable that the developer should contribute towards the specific exceptional costs which are incurred by the planning

authority which are not covered in the Development Contribution Scheme and which will benefit the proposed development.

14. The developer shall pay to the planning authority a financial contribution of €119,861.97 (one hundred and nineteen thousand, eight hundred and sixty one euro and ninety seven cent) 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. The application of any indexation required by this condition 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.

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.

Mary Crowley
Senior Planning Inspector
26th September 2016