



An
Bord
Pleanála

Inspector's Report PL88.247100

Development	Demolish workshop/office and construct supermarket and all ancillary works
Location	Reenrou West, Bantry, Co. Cork
Planning Authority	Cork City Council
Planning Authority Reg. Ref.	16/333
Applicant(s)	G.W. Biggs and Co
Type of Application	Permission
Planning Authority Decision	Grant with Conditions
Type of Appeal	First & Third Party
Appellant(s)	(1) Donal Hunt (Third Party) (2) G.W. Biggs and Co (First Party)
Observer(s)	(1) Peter Sweetman & Associates (2) An Taisce
Date of Site Inspection	3 rd November 2016
Inspector	Mary Crowley

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1.0 Site Location and Description

- 1.1. The town of Bantry in West Cork has a population of around 3,300 and is an important local centre for tourism, industry and fishing and is also a traditional market town for its rural hinterland of west Cork. The commercial heart of the town centre is west of the town square (Wolfe Tone Square) consisting of the narrow High Street, with Main Street, Barrack Street, New Street and Bridge Street the main streets for retail and commercial uses. There are few large retail outlets in the town – food shopping is dominated by a c.1000 m² Supervalu on New Street, with a number of smaller grocery shops including a Mace convenience store on Main Street.
- 1.2. The appeal site is located in the townland of Reenrour West which occupies the ridge forming the northern boundary of the town. This ridge extends partly into Bantry Bay. At the southern edge there is some partly reclaimed land which was originally constructed as a terminus of the long abandoned Cork-Bantry railway line. A cul de sac road (Harbour Road) along the quay serves the area, with an apparently popular walk extending out along the coast, around Reenrour West. Between the road and the scarp slope are a number of land uses, including a small oil distribution site, a large public carpark, a halting site, and some buildings associated with the ESB (now in use by BAM Civil Ltd) and the harbourmaster.
- 1.3. The appeal site, with a stated area of 0.498 ha, is a mostly flat rectangular area of land on the former railway sidings extending out from the town centre in Reenrour West. The site is paved, with one small building on the eastern boundary, formerly used as offices by the ESB. The site is currently used by BAM Civil Engineering Ltd who are responsible for phase one of the Bantry inner harbour development. The site is surrounded on three sides by a high stone wall, with the scarp slope to the north.
- 1.4. The harbour at this point is very tidal and only used by small leisure craft. Across the Inner Harbour further south is the N71 as it enters the town – facing the site is a line of tall modern buildings including a hotel use. Behind the hotel is the demesne of Bantry House. To the east of the appeal site is a small residential halting site and an office building associated with the harbour master. Beyond this is a small pier, and the start of a leisure walkway along the sea edge. West of the site is a carpark and a

fuel distribution centre. The main town centre is further west, about 500 metres from the site.

- 1.5. 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 (submitted 27th May 2016) for permission to demolish the existing single storey workshop/office building, boundary walls and fences and to construct a supermarket (net retail sales area of 1,672 sq./m) with ancillary office, delivery area and storage at ground floor level; ancillary offices, car parking and plant at first floor level including all associated site works.

- 2.2. The application was accompanied by the following:

- Schedule of External Facing Materials
- Planning Statement prepared by McCutcheon Halley Walsh
- Retail Impact Assessment prepared by McCutcheon Halley Walsh
- Waste Management Plan prepared by DOSA
- Flood Risk Assessment prepared by DOSA
- Traffic & Transport Assessment prepared by Malachy Walsh & Partners
- Infrastructure Report prepared by DOSA
- Outdoor Lighting Report prepared by Thorn Lighting Limited

3.0 Planning Authority Decision

- 3.1. Cork City Council issued a notification of decision to grant permission subject to 20 Conditions. Conditions of note are as follows:

- **Condition No 2** - Design of the building to be amended
- **Condition No 11** - Shortfall of 26 spaces will be met by way of special contribution

- **Condition No 19** – Development Contribution in the amount of €86,432.05
- **Condition No 20** – Special Development Contribution in the amount of €452,457.00

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The **Area Planners report** (19th July 2016) recommended that planning permission be granted subject to conditions.
- The **Senior Planners Report** (19^h July 2016) recommended that permission be granted in line with the recommendation of the area planner.
- In an email from the **Divisional Manager** (21st July 2016) it states that the application was discussed at the West Cork Planning Team meeting and that the Director of Services Planning requested that a Special Development Contribution in the amount of €400,457 be applied.
- In a further report the **Senior Planner** (21st July 2016) stated that *further to instruction from Divisional Manager West today (email correspondence on file) I have attached additional condition.*

3.3. Other Technical Reports

- 3.3.1. **Area Engineer (23rd June 2016)** states that there are no engineering issues following this application, therefore, recommends that permission be granted in accordance with conditions set out in their report relating to adequate provision of water supply, damage to adjoining public roads, surface water, demolition materials, agreement with Irish Water and that the shortfall of 26 spaces will be met by way of special contribution.
- 3.3.2. The **Estates Primary Report** (20th June 2016) has no stated objection to the proposed development from a roads perspective or a flooding perspective. It is recommended that surface water conditions be attached as outlined in the report.
- 3.3.3. The **Environment Officer Report x 2** (6th July 2016 & 19th July 2016) has no objection to a grant of permission on environmental grounds subject to condition(s) set out in their report relating to site operations, waste, noise, contaminated waste,

surface water, external finish to be agreed, roof detail, brise soleil to be lowered, reduce overhang and detail where the roof meets the side cladding will require approval.

3.3.4. The **Fire Officer** has no stated objection subject to a condition requiring that adequate water for fire-fighting is provided.

3.3.5. The **Environmental Health Department** (HSE) (23rd June 2016) has no stated objection subject to conditions relating to design and layout of the food premises in compliance with EU Regulations, provision of a cleaning store room, refuse storage and pest control.

3.4. **Prescribed Bodies**

3.4.1. **Transport Infrastructure Ireland** has no stated objection to the scheme subject to the proposed development been undertaken strictly in accordance with the recommendations of the Traffic Impact Assessment and advised that any works required as a result shall be funded by the developer.

3.4.2. **Irish Water** has no stated objections to the scheme.

3.5. **Third Party Observations**

3.5.1. There are two observations recorded on the planning file from (1) PLM Architects on behalf of Sean O'Sullivan and (2) DM Planning Consultants on behalf of Mr Donal Hunt. The issues raised relate to asking to be informed of the decision, isolated out of town location, leapfrogging, negative impact on the town centre, poor design, large volumes of traffic generated along a sensitive harbour location, inadequate car parking, inadequate TTIA, no assessment has been carried out in terms of how the proposed development will operate at construction phase and operation phase of the marina application and that the scheme is premature pending an urban design masterplan for the area.

4.0 **Planning History**

4.1. **PL 88.243290 (Reg Ref 14/00007)** – Cork County Council granted permission in 2014 for the demolition of an existing single storey workshop/office building and

boundary walls and fences and construction of a new building comprising supermarket (1,500 sqm net retail floorspace) to include food, non-food and alcohol sales, ancillary offices, storage, access roadway, service yard and car parking at ground floor, ancillary offices, car parking and plant at first floor, and offices at second floor at Reenrour West, Bantry, Cork. The decision was appealed by two third parties; (1) Donal Hunt c/o David Mulcahy of 67 The Old Mill Race, Athgarvan, County Kildare and by An Taisce of Tailors Hall, Back Lane, Dublin. The Board refused permission for the following two reasons:

- 1) *The proposed development is located on a site contained within an area zoned objective T-02 'To facilitate mixed use development including marine and marine related activities, leisure tourism uses, offices, residential, specialist and small to medium sized retail development. It is considered that the proposed development, in conjunction with the existing constraints on developing lands within the T-02 area, does not represent the type of 'specialist and small to medium size retail development' envisaged and would essentially preclude the type of mixed use and marine related development described in the current Bantry Electoral Area Local Area Plan. It is therefore considered that a convenience store of the size and scale proposed would represent a material contravention of the zoning objectives set out in the development plan and would be contrary to the proper planning and sustainable development of the area.*
- 2) *The site of the proposed development occupies a visually prominent location within an area characterised by open water frontage in the town of Bantry. It is considered that the proposed development by reason of its excessive scale, mass, bulk, design and use of materials together with the extent and scale of excavation works necessary to facilitate the development would constitute a visually intrusive feature in the landscape when viewed from a number of local vantage points. Furthermore, it is considered that the proposed development fails to reflect the advice and guidelines of the planning authority contained in the Design Brief for the Bantry Inner Harbour dated July 2013. Accordingly, it is considered that the proposed development would seriously injure the visual amenities of the area and would be contrary to the proper planning and sustainable development of the area.*

4.2. There have been a number of other applications and appeals in recent years for retail developments in and around Bantry. The following are key decisions:

- In December 2012, the Board decided (PL88.239840) to uphold the decision of the planning authority (10/239) to grant permission for a supermarket of net floor space 2776 m² retail development (comparison and convenience) on lands east of the town on the N71. Condition 2 of this permission reduced the floorspace by 25%.
- In July 2010, the Board, on appeal, upheld the decision of the planning authority (09/946) to grant permission for a 1,125 m² (net) discount foodstore just off Bridge Street (next to the Town Library) in the town centre (PL88.235175).
- In 2009 the Board on appeal (PL88.231779) upheld the decision of the planning authority (07/2380) to refuse permission for a discount foodstore and 4 no. retail stores at Cappanaloha East, Bantry, for three reasons – two relating to Development Plan policy, one relating to traffic.
- In July 2010, the Board on appeal (PL88.234109) overturned the decision of the planning authority (09/265) to grant permission for a retail development with a gross floor area of 5,000 m² on the GAA playing fields on the west side of town – the reason given related to both national and development plan guidance and objectives.
- In May 2009 the Board on appeal (PL88.232025) upheld the decision of the planning authority (08/595) to refuse permission for a supermarket with a net sales area of 2776 m² at Newtown, Bantry, for reasons relating to the Retail Planning Guidelines and the Development Plan/LAP. This appeal had been subject to an oral hearing.

4.3. Although there are no details on file, it is noted that in July 2013 the Planning Authority granted permission to the Bantry Harbour Commissioners for a 230 berth with land reclamation and associated works to the quays and piers and parking provision around the harbour (12/00735). According to the Irish Maritime Development Office website, BAM Civil Ltd was appointed main contractor for phase one of the inner harbour development. It involves the creation of a 20-berth marina on quayside pontoons, plus dredging to a depth of 4m, which will allow vessels

access the inner harbour in all tidal conditions. The main pier is to be widened and extended while a 4,000sq m public recreational amenity will be created from reclaiming land adjacent to the railway pier (proximate to the appeal site), also in the inner harbour. In addition, further land reclamation of 2,300sq m will be used to build a new car park in the area. Site photos from day of site inspection refer.

5.0 Policy Context

5.1. Development Plan

- 5.1.1. The operative plan for the area is the Cork County Development Plan 2014 and the Bantry Electoral Area Local Area Plan 2011 (Second Edition January 2015). Under the LAP the appeal site is zoned T02 Town Centre / Neighbourhood Centre. Since the previous appeal being determined the Bantry LAP was formally amended on 14th December 2015. This amendment has altered and changed the wording of the T-02 Site Specific Objective. The amended objective states as follows:

To provide for the natural extension of Bantry town centre on this opportunity site including a mix of uses for the overall site such as convenience retail, specialist marine and marine related activities, leisure tourism uses, restaurants, offices, and residential development. The Council will encourage the incremental development of the site over time. Any development proposal should have regard to the existing and proposed marine related activities. The development of the lands shall provide for buildings of a high architectural standard which have regard to the setting of the town and the sites location overlooking Bantry Bay. Parts of this site are at risk of flooding. Any development proposals on this site will normally be accompanied by a flood risk assessment that complies with Chapter 5 of the Ministerial Guidelines 'The Planning System and Flood Risk Management' as described in objectives FD 1-4, 1-5 and 1-6 in Section 1 of this plan.

- 5.1.2. The **Retail Planning Guidelines** (2005) provide a comprehensive framework for planning and development of retail floor space. The guidelines recommend that the sequential approach is adopted to identify the most appropriate location for a retail development and Section 59 states that there is a presumption in favour of town /

neighbourhood centre sites and secondly on the edge centre site and that alternative out of centre sites should be considered only where it can be demonstrated that there are no town / neighbourhood centre or edge of centre sites which are suitable, viable and available.

5.2. Natural Heritage Designations

- 5.2.1. The appeal site is not located within or proximate to any designated Natura 2000 Sites.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. There are two appeals on file from (1) G.W. Biggs and Co (First Party) and (2) Donal Hunt (Third Party). The appeals may be summarised as follows:

6.2. First Party Appeal

- 6.2.1. The first party appeal is against the special development contribution levied by Condition 20 only.
- 6.2.2. Condition 20 of the Planning Authority's decision specifies the payment of €452,457 as a special contribution for the provision of 26 no. car parking spaces and for other exceptional costs, i.e. improvements to the local area as specified in the condition, which will benefit the proposed development. The applicant has provided a detailed submission which is referred to further in the assessment section of this report. The detailed appeal may be summarised as follows:
- 6.2.3. The applicants are willing to pay for the reasonable cost of providing 26 no. parking spaces and other infrastructural improvements required to serve the immediate needs of the proposed development. However, the Board have determined that infrastructure upgrades which are identified as being required to serve the wider needs of a settlement by way of a specific objective or otherwise, cannot be deemed to be exceptional costs and that the provision of same should be funded through the General Development Contribution Scheme. The upgrade of the inner harbour area is specified by Objective X-02 and T-01 of the LAP and Objective U-01 makes

provision for the development of a pedestrian walking route. Therefore, these general public realm improvements cannot be considered to be exceptional costs.

6.2.4. Submitted that the special development contribution of €452,457 is onerous and unjustified having regard to the scale and nature of the development which is materially different to that proposed on the site previously. The subject site is the equivalent of 14% of the total 3.4 hectares' area of the zoned T-02 lands. Based on the cost methodology put forward by the Council, the applicants are being asked to fund the full suite of improvement works identified locally, which very obviously precludes the benefits of such works which would accrue to other existing and future developments.

6.2.5. In light of the above, requested that the Board amend Condition 20 attached to the decision to grant permission to require the payment of €168,697 as a payment to contribute to the specific exceptional costs not covered by the General Scheme, being the improvement of the existing Harbour View car park that will be incurred by the local authority and which will benefit the proposed development.

6.3. **Third Party Appeal**

6.3.1. The third party appeal is against the decision of Cork County Council to grant permission in the first instance. The detailed appeal may be summarised as follows:

6.3.2. ***Planning Assessment***

6.3.3. It is submitted to the Board that the Council have not taken on board the critical planning issues raised in Mr. Hunt's submission to the Planning Authority. Considered that a very shrift planning assessment was undertaken based on the lightweight nature of the Planning Reports. Submitted that it is highly unusual for a development of this size to be granted without any request for further information request.

6.3.4. ***Isolated, Out of Centre Location***

6.3.5. Despite the efforts of the Council to change the zoning in order to facilitate the proposed development in light of the Board's previous refusal the core reasons for refusal relating to the location of the development have not been addressed. The subject site remains situated in an isolated, out of centre site, removed from the core

town centre and the proposed development is promoting leapfrogging over orderly development from the town centre outwards.

6.3.6. Leapfrogging

6.3.7. The idea of relocating an established town centre supermarket to an isolated out of centre site and adding yet another sizable vacant site in the town due to the loss of the existing Supervalu directly conflicts with retail planning guidelines and will negatively impact on the town centre. Agreed with the An Bord Pleanála inspector that the loss of the existing Supervalu will have a catastrophic impact on the existing town centre and undermine any benefits from the proposed new development. The idea that this supermarket development will encourage future development of the lands between it and the town centre are considered to run contrary to the principles of good planning whereby the town extends outwards on an incremental basis.

6.3.8. Mixed-Use

6.3.9. There is real opportunity on the T02 lands to provide an attractive harbour edge with a mix of uses including marine, bars, restaurants, retail, cafes etc. in a similar manner to Howth. The proposed development consisting of a standalone, mono-use supermarket development runs directly contrary to this vision.

6.3.10. Design

6.3.11. Whilst the size and scale of the development have been reduced from the previous proposal the proposed development is still for the same development i.e. an isolated supermarket and there fundamental design flaw in terms of lack of active edge treatment, large vehicular entrance points which dominant the public façade and lack of uses at first floor level which could provide light after dark.

6.3.12. Traffic Impact & Car Parking

6.3.13. The problems concerning car parking shortfalls, significant increase in traffic along what is a relatively minor road and the relationship with the marina development simply have not been properly thought through. Given the distance of the site from the town centre and the nature of the development whereby customers will require cars to transport multiple shopping purchases it is submitted that this shortfall is unacceptable and could lead to on street car parking. It is submitted that the traffic volumes generated by the proposed development on this relatively narrow

carriageway along the north harbour are excessive. The reality is that this route is only designed to carry very light traffic volumes and is intended to become a pedestrian orientated promenade. The traffic volumes generated by the proposed development will destroy the amenity of the area and are totally counterproductive to the overall aim to enhance the amenity value of the area.

6.3.14. Marina Application

6.3.15. No assessment has been carried out by the applicant nor the Council in terms of how the proposed development will operate at construction phase and operation phase in respect of the marina application. It is not even clear how the two applicants sit side by side as no contiguous layout has been provided with the application, particularly in relation to the operation of the public road to the front of the proposed development which runs along the north harbour. It is also submitted to the Board that the traffic generated by the new marina has not been factored into the traffic analysis by the applicant. There was a detailed EIS submitted with the traffic marina application and yet there is no reference to same in the current application which seems to be glaring omission.

6.3.16. Masterplan

6.3.17. The development is premature pending an urban design masterplan for the area. It is submitted that a detailed urban design masterplan should be prepared for this harbour area complete with a proper phasing plan which shows development moving from the town centre outwards.

6.3.18. Conclusion

6.3.19. In view of the above it is submitted to the Board that the proposed development does not accord with the proper planning and sustainable development of the area and should be refused.

6.4. Applicant Response

6.4.1. The first party response to the third party appeal has been prepared and submitted by McCutcheon Halley Walsh on behalf of the applicant and may be summarised under the following general headings:

6.4.2. Previous Reasons for Refusal

6.4.3. Since the determination of the last application the Bantry LAP has been subject to formal variation recognising ongoing issues with respect to a pronounced shortfall in convenience floorspace provision in Bantry Town. It provided for revised policy wording supporting retail development generally and specifically in relation to Town Centre Objective T-02 amendments which (1) recognise convenience retail as a central tenant in the development of these lands and (2) remove reference to perceived scale restrictions in the development of a convenience supermarket at this location. The proposal has been subject to significant redesign to better respect and reflect its traditional harbour setting and Bantry's local maritime heritage. The reworked design better explores aesthetic interrelationships with the Bantry Inner Harbour area which is the subject to ongoing redevelopment works as well as potential linkages and connectivity to Wolfe Tone Square and other parts of Bantry town centre. A suggested strategy for targeted public realm improvements is also put forward.

6.4.4. **Location of Proposed Development**

6.4.5. The subject site benefits from a town centre zoning which includes a specific objective to provide for much needed convenience floorspace at this location. The decision of the Council to formally vary the LAP in relation to Town Centre Objective T-02 provides important certainty in this regard, dispelling any ambiguity that the subject lands form part of targeted plan-led policy measures to positively address issues relating to the non-provision of convenience floorspace in Bantry. As such the proposal fully complies with governing policy as contained in the LAP.

6.4.6. **Retail**

6.4.7. The subject application was accompanied by a detailed RIA which included sequential testing, the site specific findings of which have not been challenged by the appellant. Despite this the appellant has tried to suggest that the contents of this brief indicate that there are more appropriate sites to the east of the T-0 lands for retail development. It is confirmed that the two pieces of identified lands are in separate ownership, and despite suggestions to the contrary, neither of these sites are in the control of the applicant. The largest of these parcels, the sewage pumping station, is in the ownership of the Council and both this and the adjacent oil depot have significant contaminated land issues which would render the delivery of a new

supermarket here unviable in the short term. Having regard to the sequential tests contained in the Retail Planning Guidelines 2012, the site is not suitable, available or viable for the development of a convenience retail store. There is a strong consensus on these issues locally as evidenced by a cursory review of previously undertaken sequential tests for other convenience retail developments in the town.

6.4.8. Suitability of Proposed Development on Zoned T-02 Lands

6.4.9. The T-02 designation is a “town centre” zoning objective and the amendment clarifies that the rationale in expanding the town centre zoning was that it included a choice of brownfield sites with the potential to accommodate new retail development. The wording intentionally removes reference to accommodating new “small to medium sized” retail development and as such revokes applicable scale restrictions. The revised wording of the T-02 objective itself places “convenience retail” at the beginning of the list of suitable uses on the T-02 lands, in contrast to the previous wording which was interpreted to be heavily weighted towards marine uses. Policy Objective TCR-5-1 of the CDP states that LAPs will identify the “primary” areas of town centres which will be the focus of future retail developments. It goes on to say that “in addition” they will be proactive in providing localised guidance for individual settlements where appropriate”.

6.4.10. Benefit to Town

6.4.11. The existing SuperValu site is not fit for modern commercial retailing needs. The feasibility of expanding the existing store has been explored in detail and is unviable owing to a number of active site constraints. It is not the purpose of the Retail Planning Guidelines 2012 unduly inhibit retail development, rather, their overarching role is to support a strong, vibrant and competitive retail environment commensurate with the vitality and viability of centres. The prepared RIA has evidenced the critical need for a new approach to the provision of retail floorspace in Bantry. This is supported in policy terms and contrary to the assertions of the appellant, the subject proposal will promote the health of the town and contribute substantially to the vitality, vibrancy and vitality of the local retail economy.

6.4.12. Traffic and Parking Considerations

6.4.13. All matters relating to traffic and parking were addressed comprehensively during the assessment of the planning application. The suggestion that the development will be

served by a “relatively narrow carriageway” are untrue and unsubstantiated. The L-4727 route (Harbour Road) is a two lane carriageway route which benefits from a 50kph speed limit, accessed off Wolfe Tone Square a one-way circulatory road system which forms part of the N71 route. It does not present traffic safety issues. A full Traffic and Transport Assessment (TTA) has been proposed in relation to the proposed development. Detailed geometric modelling of relevant local junctions together with traffic flows and turning movements has been undertaken.

6.4.14. Separate conclusion was drawn by both the Council Estates and Area engineers that the findings of the TTA area acceptable and that the development will not give rise to any adverse traffic or parking impacts. The site is suitably self-contained in terms of parking provision and safe access and egress will be achieved by way of a new entrance in the north east corner of the site, the design of which has been appropriately splayed, taking account of gradient and achievement of required sightlines.

6.4.15. **Design** - The design concerns expressed are more functional in nature and specifically point to the proposed vehicular entrance. A key aspect of the design ethos for the project is the facilitation of improved pedestrian orientated urban space and connectivity between areas espoused in the LAP. The approach complies in full with the provisions contained within Policy TCR-12-1 of the CPD and the aspirations of the Bantry Electoral Area LAP which requires a high quality design approach on the T-02 lands.

6.5. Planning Authority Response

6.5.1. **Cork County Council** submitted the following response as summarised. The submission only deals with Condition No 20:

- The works and estimated costs included in the condition are in line with the estimate prepared by the Area Engineer (details attached) in respect of the previous application Reg Ref 14/07 (PL88.243290) and was included in the Section 47 Agreement prepared by the Planning Authority in anticipation of a positive outcome to the appeal
- It is considered reasonable that the applicant contributes to the Councils costs of works to the public realm, roads, footpaths, car parking and public lighting

which are necessary to facilitate the proposed development. They are the same works as those envisaged when the application in 2014 Reg Ref 14/07, was being considered.

6.6. Observations

6.6.1. There are two observations recorded on the appeal file from (1) Peter Sweetman & Associates and (2) An Taisce. The issues raised may be summarised as follows:

- Flawed Traffic Impact Assessment and Junction Analysis submitted as they were based on estimated figures and not actual traffic counts
- The adjoining recently permitted marina development required an EIS. The applicant has made no reference to that permitted development nor has the applicant carried out any cumulative screening assessment for EIA.
- The Masterplan for this area in conjunction with the permission granted for the marina development envisage that this promenade shall include for the provision of a 7-metre-wide tree-lined promenade in accordance with the overall Masterplan for the harbour area. This application ignores these proposals.
- The proposed development is clearly an “out of town” centre retail development and is in breach of the Retail Planning Guidelines.
- The “sequential test” has ignored a number of sites which are closer to the Town Centre and which should have been considered
- Notwithstanding the re-wording of Objective T-02 the site remains unsuitable for the proposed development and would contravene the fundamental of sustainable planning practice.
- The subject site cannot be said to be adjacent to the town centre zoning as the subject site is approx. over 650 metres from the town centre and based on the 300-400-meter limit within the Retail Planning Guidelines 2012, this is an out of centre location.
- The sequential test accompanying this application is inadequate.

- It has been emphasised that the site is located in visually sensitive area within an attractive setting of Bantry Harbour. The proposed development with significant bulk and scale is incongruous with the location of the site in a maritime setting.

6.7. Further Responses

6.7.1. None recorded on the appeal file.

7.0 Assessment

7.1. I note the concerns raised by the appellants that the Council did not taken on board the critical planning issues raised by the appellants in their submission to the Planning Authority. However, for the purposes of clarity I would point that the development proposed 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 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. I further note the concerns raised in the observations regarding the adequacy of the information submitted with the application. However, I would make the comment that together with my site visit I am satisfied that there is adequate information available on the appeal file to consider the issues raised in the appeal and to determine this application.

7.2. Having regard to the information presented by the parties to the appeal and in the course of the planning application, the planning history pertaining to the site 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
- Design & Visual Amenity

- Traffic Impact
- Development Contribution(s)
- Screening for Appropriate Assessment
- Environmental Impact Assessment
- Flooding
- Construction Impact & Methods

7.3. Principle / Policy Considerations

- 7.3.1. The Board in its first reason for refusal in its previous decision considered that the proposed development, in conjunction with the existing constraints on developing lands within the T-02 area, does not represent the type of 'specialist and small to medium size retail development' envisaged and that a convenience store of the size and scale proposed would represent a material contravention of the zoning objectives for the site.
- 7.3.2. Under the provisions of the Bantry Electoral Local Area Plan 2011 the appeal site is wholly contained within an area zoned T02 Town Centre / Neighbourhood Centre. The plan outlines that the town centre and adjoining areas continue to be the most appropriate location for future retail development, with the expanded town centre encompassing the zoned T-02 lands, a key enabler in meeting future convenience needs.
- 7.3.3. The LAP notes that the town centre has historically focused on the area around the town square, the heart of Bantry, where much of the existing retailing still occurs. The LAP continues that the rationale in the expansion of the town centre zoning was that it included a choice of brownfield sites with the potential to accommodate new small to medium sized retail development. Constraints in relation to topography dictated that further expansion was inappropriate to the north and south of the square however lands to the west (fronting onto the harbour) provide potential opportunity site with the advantage of direct proximity to the Wolfe Tone Square and as the only generally level area of land within or adjoining the town centre it would be a logical place to facilitate the natural extension of the town centre.
- 7.3.4. Since the determination of the previous appeal by the Board the Bantry LAP was formally amended on 14th December 2015. This amendment has altered and

changed the wording of the T-02 Site Specific Objective removing reference to the accommodation of new “small to medium sized” retail development. The amendment now identifies *convenience retail* as an appropriate use at this location. The amended objective states as follows:

To provide for the natural extension of Bantry town centre on this opportunity site including a mix of uses for the overall site such as convenience retail, specialist marine and marine related activities, leisure tourism uses, restaurants, offices, and residential development. The Council will encourage the incremental development of the site over time. Any development proposal should have regard to the existing and proposed marine related activities. The development of the lands shall provide for buildings of a high architectural standard which have regard to the setting of the town and the sites location overlooking Bantry Bay. Parts of this site are at risk of flooding. Any development proposals on this site will normally be accompanied by a flood risk assessment that complies with Chapter 5 of the Ministerial Guidelines ‘The Planning System and Flood Risk Management’ as described in objectives FD 1-4, 1-5 and 1-6 in Section 1 of this plan.

7.3.5. It is evident from the previous refusal (Section 4.0 above refers) that the suitability of the designated T-02 lands for a supermarket was a critical consideration and that this was based on a strict interpretation of the then zoning objective for the T-02 lands where it was determined that the proposal did not constitute the type of “*specialist and small to medium size retail development*” envisaged in the zoning for the site. As stated the amendment of the Bantry Electoral Area LAP in December 2015 removed reference to accommodating new “small to medium sized” retail development. The T-02 designation as a “town centre” has given rise to changed policy content which in my view is now disposed to the provision of a supermarket on the zoned T-02 lands.

7.3.6. The applicant points out that the revised wording of the T-02 objective itself places “convenience retail” at the beginning of the list of suitable uses on the T-02 lands, in contrast to the previous wording which was interpreted to be heavily weighted towards marine uses. Further it is stated that the subject site extends to approximately 0.49ha or the equivalent of 14% of the total 3.4ha are of the zoned T-02 lands. I agree that the provision of a supermarket here cannot be reasonably

construed to preclude the development of other specified uses, as part of the wider mixed-use objective. However, it is also my view and in light of the amendments to the policy objective for the site that the overall lands zoned T-02 would benefit from a development design brief to both guide future developments for these lands but to all assist the Local Authority in delivering the stated zoning objectives for the site as set out in Objective T-02.

- 7.3.7. Overall land uses comprising a supermarket (net retail sales area of 1,672 sq./m) with ancillary off-licence, delivery area and storage at ground floor level; ancillary offices, car parking and plant at first floor level including all associated site works to be acceptable in principle subject to the acceptance or otherwise of site specifics / other policies within the development plan and government guidance.

7.4. **Retail Impact**

- 7.4.1. The appellant in their appeal submission raises concerns that the scheme is an isolated, out of centre location; that the previous reasons for refusal have not been addressed and that the proposed development is promoting leapfrogging over orderly development from the town centre outwards and that the loss of the existing Supervalu will have a catastrophic impact on the existing town centre. It is submitted that the proposed development consisting of a standalone, mono-use supermarket development runs directly contrary to the objective for the site.
- 7.4.2. The Cork County Development Plan identifies Bantry as a Large County Town which generally performs important sub county retailing functions and includes some major retail chains, particularly convenience. During the preparation of the County Development Plan, a Non-Metropolitan Retail Background Retail Paper and Town Centre Study was undertaken for 12 of the Non-Metropolitan Towns in the County, including Bantry. The study concluded that Bantry town functioned as an important market town providing commercial, retail and tourist facilities to an extensive coastal and inland catchment. The study notes that the existing Supervalu is the primary convenience supermarket offer in the town. The other convenience stores in the town centre are Centra and Mace. There is no other significant convenience retailing located in the town, although permission was granted for a supermarket of net floor space 2,082 m² retail development (comparison and convenience) on lands north of the town on the N71 Bantry-Glengarriff Road. In addition, permission was also

granted in the town centre for a discount food store just off Bridge Street (next to the town library). It is stated that to date, construction has not commenced on either site.

- 7.4.3. The Bantry Electoral LAP (as amended) states that Bantry town has a significant convenience floorspace shortfall which has led to substantial retail leakage to other centres. The LAP states that the town centre and adjoining areas continue to remain the most appropriate location for future retail development and it is important that its vitality and viability is maintained. The rationale in the expansion of the town centre zoning was that it included a choice of brownfield sites with the potential to accommodate new small to medium sized retail development but that the design and scale of proposed retail developments should have regard to the size of existing town centre and edge of centre sites.
- 7.4.4. The subject application was accompanied by a detailed Retail Impact Assessment which included sequential testing of all relevant sites in Bantry based on a range of criteria, including planning policy, commercial and environmental conditions. The sites that were sequentially tested included Bridge Street; Chapel Street; The Boys Club Site; the existing SuperValu Site and the appeal site. The RIA returned the appeal site as the most sequentially acceptable location for the development of a supermarket. It has been demonstrated that the proposal will not give rise to potential impacts of the existing town centre or other retailers, rather it will strengthen local trading and help address traffic congestion issues, underpinning the vibrancy, vitality and viability of the defined town centre. There is no anticipated impact on the existing town centre or other retailers within the catchment or wider Bantry town area.
- 7.4.5. The RIA states that opportunities to develop supermarkets in the town centre are very much constrained by the non-availability of sites of suitable scale, access and traffic congestion issues. Notwithstanding this, it is recognised that Bantry needs and has the capacity to accommodate additional convenience retail floorspace, and the most sustainable and achievable means for this is by supporting viable development proposals within an extended town centre on the T-02 lands, an identified “opportunity site”. The RIA states that the construction of the proposed development coupled with the implementation of all identified extant planning permission for convenience retail will not meet estimated expenditure level, with a

surplus of €11.1 million identified in such scenario. As such, it is stated that the proposal will not give rise to trade diversion from existing shops, rather it will contribute to reduced level of convenience leakage from the area.

- 7.4.6. The application is for what in reality is the relocation of a 1,100 sqm (net) floorspace existing convenience retail unit within an existing town centre to a new site allowing for 1,672 sqm (net) floorspace. It is submitted that SuperValu is overtrading at its current location with no scope to expand to try to arrest these trends and that the existing SuperValu site is not fit for modern commercial retailing needs. The feasibility of expanding the existing store has been explored in detail and is unviable owing to a number of active site constraints. The appeal site benefits from a town centre zoning which includes a specific objective to provide for convenience retail at this location. As such the proposal fully complies with governing policy as contained in the LAP. Having regard to the RIA and the sequential testing, the County Development Plan and the Bantry Electoral LAP there are no objections to the proposed development from a planning perspective. 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.

7.5. Design & Visual Amenity

- 7.5.1. The Board in their second reason for refusal on the previous decision stated that the proposed development by reason of its excessive scale, mass, bulk, design and use of materials together with the extent and scale of excavation works necessary to facilitate the development would constitute a visually intrusive feature in the landscape when viewed from a number of local vantage points and that the development fails to reflect the advice and guidelines of the planning authority contained in the Design Brief for the Bantry Inner Harbour dated July 2013.
- 7.5.2. The applicant submits that following consultation with the Council, that the *Design Brief for the Bantry Inner Harbour dated July 2013* has been stood down, in effect superseded by the adopted amendment No 2 of the Bantry Electoral Area LAP. This is reflected in the Local Authority Planners reports on file.
- 7.5.3. The proposed new building differs in design to the previous application and is in my opinion a significant improvement on the previous scheme. I agree with the Planning

Authority that the revised design now reflects a more traditional harbour warehousing style. It is also evident that there has been a long process of engagement between the applicant and the Local Authority in agreeing the design of the current proposal. The Planner states that the scheme has largely followed through with that quayside interpretation in terms of its form but not in terms of its detail and material. However, the County Architect is satisfied that this can be conditioned in a Planning approval. I agree with this approach and recommend that should Board be minded to grant permission that a condition be attached similar to Condition No 2 of the notification of decision to grant issued by Cork County Council that requires a revision to the street side (south) elevation.

- 7.5.4. The scheme before the board represents an appropriate development of an underutilized serviced urban site and overall I am satisfied that the proposal is appropriate for the character of the area and that the design is appropriate to the zoning of the site. I consider that the scale, mass, bulk and use of material (subject to condition) are acceptable and that the scheme would not result in a significant impact on the visual amenity of the area or otherwise that would justify refusing permission on these grounds.

7.6. **Traffic Impact**

- 7.6.1. It is submitted that the traffic volumes generated by the proposed development on this relatively narrow carriageway along the north harbour are excessive and that the traffic volumes generated by the proposed development will destroy the amenity of the area.
- 7.6.2. The site is served by the L-4727 route (Harbour Road); a two lane carriageway route which benefits from a 50kph speed limit, accessed off Wolfe Tone Square a one-way circulatory road system which forms part of the N71 route. proposed development includes the following:
- Ramped access to 74 off-street car parking spaces at first floor level, via a dedicated access junction on Harbour Road
 - Separate access to the delivery area / service yard at ground floor level
 - Internal building access to the retail ground floor from the first floor car park and

- Direct pedestrian access to the retail ground floor from Harbour Road, via a dedicated pedestrian entrance at the eastern (town centre) end of the proposed building

7.6.3. A full Traffic and Transport Assessment (TTA) has been submitted in relation to the proposed development together with detailed geometric modelling of relevant local junctions together with traffic flows and turning movements. For the purposes of the TTIA it is envisaged that the proposed N71 Bantry relief Road would not be in place by the proposed development plan year 2032 for the opening year plus 15-year scenario. The following conclusions were presented:

- The proposed development includes a total of 74 car parking spaces within the site at first floor level. It is envisaged that typical peak on-site car parking demand at the development would not exceed the total proposed car parking supply;
- Once operational, Wolfe Tone Square would operate at up to 66.7% of its link capacity, in the vicinity of its junction with Harbour Road, during the predicted 2017, 2022 and 2032 summer peak hours, with the proposed development in place, compared to 61.2%, without the proposed development
- The existing Harbour Road / Wolfe Tone Square junction would operate well within practical capacity, without any significant traffic queuing or delays, during the predicted 2017, 2022, 2032 peak hours, with the proposed development in place. The existing Harbour Road / Wolfe Tone Square junction would operate with a highest RFC of 0.352, with the proposed development in place
- The Wolfe Tone Square one-way clockwise traffic system enhances traffic capacity within the town centre by reducing conflicting right-turn traffic movements at junctions
- The proposed supermarket will generate one daily articulated delivery vehicle, during the early morning period, prior to store opening hours. A full swept path analysis has been undertaken which illustrates that this can be safely accommodated as part of the proposed layout. Smaller delivery vans etc. would generate 3 to 4 deliveries per day with minimal impact on the road network

- 7.6.4. The proposed development includes a total of 74 car parking spaces at first floor level, including 5% disabled parking and 10% parent and child parking. It is envisaged that typical peak on-site car parking demand at the proposed development would not exceed the total car parking supply. However, the Cork County Council Development Plan Maximum Standards requires the provision of 105 spaces. Notwithstanding the assessment findings that the development will be self-contained in parking terms, the Board will note from the First Party appeal submitted that the applicants are willing to contribute towards the reasonable cost of providing 26no parking spaces and other infrastructural improvements to serve the immediate needs of the proposed development (discussed in Section 7.7 below). It is also noted that the plans for the development of the Marina include significant land reclamation for the purposes of providing parking to serve future harbour activities. It is submitted that parking demand in the area is seasonal and infrequent with general informal practises of parking on the roadside arising from convenience only at the expense of using the public car park further west. I am satisfied that car parking provision (subject to condition) has been satisfactorily addressed and will not give rise to parking impact.
- 7.6.5. Separate conclusions were drawn by both the Council Estates and Area engineers that the findings of the TTA area acceptable and that the development will not give rise to any adverse traffic or parking impacts. The site is suitably self-contained in terms of parking provision and safe access and egress. Overall I am satisfied that the proposed SuperValu retail development would not have any significant adverse traffic impact on the existing local town centre road network.
- 7.6.6. Given the location of the appeal site together with the layout of the proposed scheme I am satisfied that the vehicular movements generated by the scheme would not have a significant material impact on the current capacity of the road network in the vicinity of the site or conflict with traffic or pedestrian movements in the immediate area. Overall consider the proposal for parking and access to be acceptable and I am satisfied that the proposed development will not result in the creation of a traffic hazard

7.6.7.

7.6.8.

7.7. Development Contribution(s)

7.7.1. Cork County Council adopted a Development Contribution Scheme (DCS) in accordance with Section 48 of the Planning and Development Act 2000 (as amended) on 23rd February, 2004. In accordance with Section 48 of the Planning and Development Act 2000 Condition 19 of the Planning Authority's decision requires the payment of €86,432.05 as a contribution to the cost of public infrastructure and facilities benefiting development in the area and as provided for in the Council's Development Contribution Scheme. The Local Authority Senior Planners Report (19th July 2016) set out the following development contribution calculations:

Net Retail floor space: 1672 sq./m ground floor + Ancillary associated office space 318sq/m at first floor = 1990.0 minus existing demolition floor space 225sq/m = 1765sq/m to be levied

Total floor space retail & office at first floor: 1765m X €48.97 = €86432.05

7.7.2. It is noted that in its previous decision Cork County Council (PL 88.243290 (Reg Ref 14/00007) attached a Development Contribution Condition in the amount of €179,670.93. It is noted that this appeal site is reduced in size from the previous application. The applicants state that they have no objection to the payment of this contribution. Therefore, it is recommended that should the Board be minded to grant permission that a suitably worded condition be attached requiring the payment of a Section 48 Development Contribution in the amount of €86432.05 in accordance with the Planning and Development Act 2000 be attached.

7.7.3. Notwithstanding the general acceptance of the foregoing Development Contribution condition the first party has appealed Condition No 20, Special Development Contribution, of the Planning Authority's decision. The first party appeal centres on the contention that Condition No. 20 does not have regard to the reduced nature of the proposed development (relative to that proposed previously) or to the fact that the revised design is no longer dependant on land in the ownership of the Council for access. In addition, it is submitted that the contribution as levied by the Planning Authority in this case is disproportional to the benefits which will accrue to that proposed and appears to levy for the entire cost of enhancement works at Reenrour

West, without any regard to benefits which will accrue to other existing and future developments. The applicant does however, state that they are willing to contribute to the costs of upgrades in the area from which the proposed development will benefit and reiterate that the submitted planning application contained a suggested landscaping strategy for targeted public realm improvements to the inner harbour area and a statement that the applicants were willing to contribute to same.

7.7.4. Condition No 20 states as follows:

At least one month before commencing development or at the discretion of the Planning Authority within such further period or periods of time as it may nominate in writing, the developer shall pay a special contribution of €452,457.00 to Cork County Council, updated monthly in accordance with the Consumer Price Index from the date of grant of permission to the date of payment, in respect of specific exceptional costs not covered in the Council's General Contributions Scheme, in respect of works proposed to be carried out, for the provision of:

- i. Acquisition and improvement works to adjacent Harbour View carpark.*
- ii. Programme of public realm works (including the provision of public lighting) for the entire length of the road/walkway/promenade which fronts the site from the Diesel distribution depot east of the site.*
- iii. Improvement works and resurfacing the Slob car park in the vicinity of the site.*
- iv. Lighting improvements to Slob car par in the vicinity of the site.*
- v. Contribution to other public lighting improvements in the T-O2 site.*

In lieu of the payment of all or some of the monies to the Council specified in paragraphs (i) – (iv), the Developer may elect to carry out those works directly, to the design and standard required by the Council, subject to prior written agreement with the Council and subject to the completion of the works executed under the terms of this condition to the satisfaction of the Council. (€400,457.00).

Provision of car parking

(€52,000.00).

The payment of the said contribution shall be subject to the following:

(a) where the works in question

(i) are not commenced within 5 years of the date of payment of the contribution (or final instalment if paid by phased payment),

(ii) have commenced but have not been completed within 7 years of the date of payment of the contribution (or final instalment if paid by phased payment),
or

(iii) where the Council has decided not to proceed with the proposed works or part thereof, the contribution shall, subject to paragraph (b) below, be refunded to the applicant together with any interest which may have accrued over the period while held by the Council.

(b) Where under sub-paragraphs (ii) or (iii) of paragraph (a) above, any local authority has incurred expenditure within the required period in respect of a proportion of the works proposed to be carried out, any refund shall be in proportion to those proposed works which have not been carried out.

(c) payment of interest at the prevailing interest rate payable by the Council's Treasurer on the Council's General Account on the contribution or any instalments thereof that have been paid, so long and in so far as it is or they are retained unexpended by the Council.

Reason: *It is considered appropriate that the developer should contribute towards these specific exceptional costs, for works which will benefit the proposed development.*

7.7.5. Section 48(2)(c) of the Planning and Development Act 2000 states that a Planning Authority may, in addition to the terms of a scheme, require the payment of a special contribution in respect of a particular development where specific exceptional costs not covered by the General Development Contribution Scheme are incurred by any local authority in respect of public infrastructure and facilities which benefit the proposed development. Only developments that will benefit from the public infrastructure or facility in question should be liable to pay the development contribution.

- 7.7.6. In an email recorded on the appeal file from the Divisional Manager (21st July 2016) it states that the application was discussed at the West Cork Planning Team meeting and that as a result the Director of Services Planning requested that a Special Development Contribution in the amount of €400,457 be applied towards the works outlined in Section (i) to (v) of Condition No 20.
- 7.7.7. Overall I am satisfied that Condition No 20 is precise and clearly outlines the particular works to be carried out by the local authority to facilitate the development i.e. local road strengthening. Furthermore, the description of specific works in Condition No 20 mean that a clear determination can be made as to whether the Planning Authority has spent any of the money collected under this condition for the work described in this condition and whether or not the specific works have commenced within five years of the date of payment or if the works have been completed within 7 years of the payment to the authority of the contribution. However, the foregoing notwithstanding the fundamental question to be answered in this instance is whether or not the specific exceptional cost set out in Condition No 20 is over and above those, which were envisaged in the Cork County Council Development Contribution Scheme.
- 7.7.8. Condition No 20 is split into two parts: public realm works and car parking. With regard to car parking it is noted that Condition No 16 of the previous decision by Cork County Council to grant permission (PL88.243290 (Reg Ref 14/00007)) required the applicant to make good the shortfall of 62 parking spaces either by paying the special contribution identified in Condition No 17 of the same decision or put forward proposals to make alternative parking spaces available. Condition No 17 required the payment of special development contribution in the amount of €124,000.00 in respect of exceptional cost not covered in the Councils General Contribution Scheme in respect of car parking provision. As outlined previously, the applicants are willing to pay for the reasonable cost of providing 26 no. parking spaces. The breakdown for the development contribution for Condition No. 20 as provided by the Planning Authority is as follows:

26 no. car parking spaces @ €2,000 per space = €52,000

- 7.7.9. I agree with this approach and recommended that should the Board be minded to grant permission that a suitably worded condition be attached requiring the payment

of a Section 48(2)(c) Special Development Contribution in the amount of €52,000 in respect of car parking.

7.7.10. With regard to the remaining special development contribution the amount of €400,457.00 as set out in Condition No 20 I would set out the following. While the previous Inspectors Report is silent with regard to the matter of Development Contributions (matter not raised in the appeal) it is noted that the Inspectors Report Discharge Form indicates that a Section 48(2)(c) Special Development Contribution condition applies. No further details are provided. It is also noted from the previous application (PL88.243290 (Reg Ref 14/00007)) that with the exception of car parking there was no reference to any other requirement in the stated conditions for any other special development contribution payment toward any other public works or infrastructure that would benefit the scheme at that time.

7.7.11. However, Cork County Council in their response to the first party appeal pertaining to this current appeal submitted that the works and estimated costs included in Condition No 20 are in line with the estimate prepared by the Area Engineer (details attached to the submission) in respect of the previous application (PL88.243290 (Reg Ref 14/00007)) and was included in the Section 47 Agreement prepared by the Planning Authority in anticipation of a positive outcome to the appeal. I refer to the planning history file (PL 88.243290 (Reg Ref 14/00007)) and the signed Section 47 agreement between G.W. Biggs and Co (applicant to this appeal) and Cork County Council agreeing that “before any development in respect of the application for planning permission submitted by the company (14/00007) commences” G.W. Biggs and Co shall undertake inter alia the following:

- *Pay the Council a monetary contribution of €400,457.97 (in addition to any monies due to be paid under the terms of the Councils adopted scheme for the payment of development contributions) towards the costs of the following works that the parties to the agreement consider necessary to secure the proper planning and development of the T-02 site and its surroundings:*
 - (i) *Purchase / resurfacing / lighting of adjacent car park (Harbour view, coloured purple (parcel No 4) on the attached plan (€168,697.32)*

(ii) Programme of public realm works (including the provision of public lighting) to the road / walkway / promenade (shaded brown on attached plan) €118,944.50

(iii) Resurfacing the “slob” car park (coloured red and marked parcel No 5 on the attached plan) (€72,288.15)

(iv) Lighting improvements to “Slob” car park (€14,528.00)

(v) Contribution to other public lighting improvements in the T-02 site (€26,000.00)

7.7.12. As set out in the Senior Planners Supplementary Report of 28th February 2014 on the previous appeal the Section 47 agreement deals with the transfer of land from County Council ownership to the applicant; G.W. Biggs and Co. It also sets out a requirement and timescale for the relinquishment of interest by the applicant; G.W. Biggs and Co in adjacent lands owned by Cork City Council. The section 47 agreement also requires the applicant; G.W. Biggs and Co to pay a monetary contribution in excess of €400,000 in addition to the obligation to pay contributions in line with the Councils adopted planning contribution scheme. The Section 47 agreement set out a schedule of the works to be carried out; all of the works relate to purchase of, or improvements to, adjacent lands (cessation of the oil depot use which is not consistent with the LAP T-02 objective for the area); resurfacing of adjacent car parks (so that it can play an enhanced role in meeting the general parking needs of the T-02 sites as envisaged in the Design Brief) and improvements to the public realm in the vicinity (linking the site to the town centre and encouraging further development). All of the works involved are on lands outside the site. Condition No 2 of the notification of the previous decision (PL 88.243290 (Reg Ref 14/00007) to grant permission states that *no development shall commence on site until the applicants have agreed in writing with the Planning Authority the arrangements for the discharge of all their obligations arising from the Section 47 agreement entered into by the applicants and the Planning Authority on 27th February 2014.* As documented by cork City Council the Special Development Contribution attached to the current appeal is based on the Section 47 agreement prepared in respect of the previous application.

7.7.13. The applicants are willing to contribute to the costs of upgrades in the area from which the proposed development will benefit. However, Condition No. 20 of the

Planning Authority's decision does not have regard to the reduced nature of the proposed development (relative to that proposed previously) or to the fact that the revised design is no longer dependant on land in the ownership of the Council for access. In addition, the applicant submits that the contribution as levied by the Planning Authority is disproportional to the benefits which will accrue to that proposed and appears to levy for the entire cost of enhancement works at Reenrou West, without any regard to benefits which will accrue to other existing and future developments.

7.7.14. The breakdown for the development contribution for Condition No. 20 as provided by the Planning Authority is in line with the previous Section 47 agreement as follows:

- 26 no. car parking spaces @ €2,000 per space 52,000
- Acquisition and improvement works to adjacent Harbour View car park
168,697
- Programme of public realm works (including the provision of public lighting) for the entire length of the road/walkway/promenade which fronts the site from the Diesel distribution depot east of the site 118,944
- Improvement works and resurfacing the Slob car park in the vicinity of the site
72,288
- Lighting improvements to Slob car park in the vicinity of the site 14,528
- Contribution to other public improvements in the T-02 site 26,000
- Total €452,457

7.7.15. As previously stated the applicants have indicated a willingness to contribute to the infrastructure improvements proposed. However, it is submitted that where infrastructure upgrades which are identified as being required to serve the wider needs of a settlement by way of a specific objective or otherwise, cannot be deemed to be exceptional costs and that the provision of same should be funded through the General Development Contribution Scheme. The upgrade of the inner harbour area is specified by Objective X-02 and T-01 of the LAP, Objective U-01 makes provision for the development of a pedestrian walking route and DB-11 -promotes general improvements to the public realm. Therefore, it is submitted that these general public realm improvements cannot be considered to be exceptional costs. Further it is submitted that the subject site is the equivalent of 14% of the total 3.4 hectares'

area of the zoned T-02 lands. Based on this, and the precedent established by previous Board decisions, it is requested that the Board amend Condition 20 and reduce the specified contribution of €452,457 to a more appropriate and reasonable reduced sum, in order to pay for the specific exceptional costs associated with the improvement works to adjacent Harbour View car park only. In this regard the applicants consider it appropriate that they pay a development contribution of €168,697 only which would provide for the improvement of the existing Harbour View car park upon which the development will benefit from.

- 7.7.16. Having regard to the information in file I agree with the applicant that apart from the improvements to the Harbour View Car Park it is considered that the other works listed and for which a levy equating to 100% of the costs have been imposed, are not specific exceptional costs not covered by the General Contribution Scheme which are required to benefit the proposed development. Accordingly, it is recommended that Condition No 20 be amended to require payment of €220,697 in respect of the acquisition and improvement works to adjacent Harbour View carpark and provision of car parking.

7.8. Screening for Appropriate Assessment

- 7.8.1. There are no Natura 2000 sites in the vicinity of the site. As set out by the previous Inspector the closest would be upland SAC's and the Kenmare River SAC on the opposite side of the Beara Peninsula. Having regard to the nature and scale of the proposed development, the nature of the receiving environment and proximity to the nearest European site no appropriate assessment 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

7.8.2. Environmental Impact Assessment

- 7.8.3. I note the concerns raised in the observations to the Board that the adjoining recently permitted marina development required an EIS; that the applicant has made no reference to that permitted development nor has the applicant carried out any cumulative screening assessment for EIA.

- 7.8.4. Having regard to the nature and scale of the proposed development I consider the relevant classes from Schedule 5 are Part 10 Class 10(b)(iii) and (iv), Part 2 Class 14 and Part 2 Class 15. These are examined below.

- 7.8.5. Part 1 Part 10 Class 10(b)(iii) – Construction of a shopping centre with a gross floor space exceeding 10,000 square metres. The gross floor area of the proposed development is stated as 6247 sqm. I am satisfied that the proposal would not require EIA under this class. Part 10 Class 10(b)(iv) - Urban development which would involve an area greater than 2 hectares in the case of a business district, 10 hectares in the case of other parts of a built-up area and 20 hectares elsewhere. The area of site to which the application relates is 0.498 ha. I am satisfied that the proposal would not require EIA under this class.
- 7.8.6. Part 2 Class 14 - Works of demolition carried out in order to facilitate a project listed in Part 1 or Part 2 of this Schedule where such works would be likely to have significant effects on the environment, having regard to the criteria set out in Schedule 7. The product of demolition of the existing single storey workshop / office building in this instance are not a type requiring EIA under Part 1 or 2. I am satisfied that the proposal would not require EIA under this class. Part 2 Class 15 - Any project listed in this Part which does not exceed a quantity, area or other limit specified in this Part in respect of the relevant class of development but which would be likely to have significant effects on the environment, having regard to the criteria set out in Schedule 7. As in the case of Part 2 Class 14 above the scheme is not of a type requiring EIA under Part 1 or 2 regardless of threshold. I am satisfied that the proposal would not require EIA under this class.
- 7.8.7. The nature and scale of the development in this urban area is limited and while there will be short term impacts during the demolition and construction phase these would not in my view be of a nature, scale or duration that would be considered significant in the long term. I am satisfied that the proposal would not require EIA under this class.
- 7.8.8. The proposed development falls below the threshold levels in Schedule 5 of the Regulations in relation to EIA, and does not involve potential impacts on any sites or areas of specific environmental sensitivity. Having regard to the limited size of the development, the absence of any nature conservation designation in the immediate area, the absence of any emission from the development and the absence of any connection to watercourses, it must be concluded that the development will not have a significant impact on the environment. Overall it is considered that the proposed development does not come within the scope of the classes of development

requiring the submission of an EIS as set out in Schedule 5 of the Planning and Development Regulations 2001-2011.

7.9. **Flooding**

- 7.9.1. As set out in the LAP, Bantry has a tidal problem in relation to flooding but there are also problems with the poor structural condition and flow capacity of culverts in the town. Some details are available on the flood events dating from 1981 – 1983. There were also recorded flood events in 2000 (tidal flooding in the Square, Bantry and Barrack Street) and 2005 at Lahadane, Bantry (fresh water flooding of commercial and domestic properties). The Site Specific Objective for this T-02 states *that parts of this site are at risk of flooding and that any development proposals on this site will normally be accompanied by a flood risk assessment.* Having examined the flood maps as illustrated in the current Bantry Electoral Area Local Area Plan (2011), it would appear that the site under consideration here is not located with Flood Zone A or B, but the public road adjoining the south of the site is located within these flood zones.
- 7.9.2. I refer to the Flood Risk Assessment that accompanied the application and that dealt primarily with the existing and projected tidal flooding levels for the inner harbour. The assessment stated that the development site would be classified as Flood Zone C (0.5% AEP Flood Event) under the 2009 Guidelines (i.e. very low risk). Having regard to the information available on file I am satisfied that the potential impacts of the proposed development in terms of flooding have been established and that the type of development proposed is appropriate for this flood zone. I do not consider that the proposed development would exacerbate the risk of flooding in the area.

7.10. **Construction Impact & Methods**

- 7.10.1. I note the concerns raised in the appeal file regarding the construction phase of the development. It is acknowledged that there are significant construction works required to facilitate this development and that there will be general disruption in the area in terms of construction related noise and general disturbance during the construction phase. However, while this impact is considered an inconvenience it is also considered to be short term in nature and therefore acceptable. In this regard should the Board be mindful to grant permission for the proposed development I consider that a construction management plan should be submitted to

commencement of development, in order to address construction management concerns. Further noise management measures and hours of construction should also be restricted. With the attachment of such a condition I do not consider that the construction phase of the development would give rise to an unreasonable impact on neighbouring properties or the wider area particularly as the construction phase is limited. The attachment of these conditions notwithstanding it falls to the relevant Planning Authority to ensure the developer complies with these conditions and that there is no unreasonable disturbance or loss of amenity associated with construction activities.

8.0 Recommendation

8.1. Having considered the contents of the application, the provision of the Development Plan and Local Area Plan, the grounds of appeal and the responses thereto, the planning history, my site inspection and my assessment of the planning issues, I recommend that permission be **GRANTED** for the reasons and considerations set out below.

9.0 Reasons and Considerations

9.1. Having regard to the amended T-02 Town Centre / Neighborhood Centre Zoning for the area as set out in the Bantry Electoral Area Local Area Plan 2011 (Second Edition January 2015) and the overall design and scale of the development proposed, it is considered that, subject to compliance with the conditions set out below, the proposed development represents a development that would not be contrary to the retail policy as set out in the County Development Plan or the Local Area Plan, would not seriously injure the character and amenities of the area or of property in the vicinity, 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.

10.0 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 27th May 2016, except as may otherwise be required in order to comply with the following conditions. Where such conditions require points of detail to be agreed with the planning authority, these matters shall be the subject of written agreement and shall be implemented in accordance with the agreed particulars. In default of agreement, the matter(s) in dispute shall be referred to An Bord Pleanála for determination

Reason: In the interest of clarity.

2. The design of the building shall be amended by way of the following and drawings representing these changes shall be submitted and agreed with the Planning Authority prior to construction:
 - 1) The external finish at first floor to the three centre gables forming the south elevation to the retail unit is to be changed from plaster to zinc.
 - 2) The overhanging roof verge detail to all gables on the south elevation except for the roof over the entrance foyer to be amended to provide a flush junction between roofs and walls.
 - 3) The roof pitch to all gables on the south and west elevations to be increased to at least 32.5 degrees. The roof pitch over the entrance foyer can remain at 30 degrees to avoid excessive height at this point.
 - 4) The brise soleil to be lowered to coincide with the head of the ground floor glazing.
 - 5) On the south elevation the narrow vertical features between the gabled elements are to be plastered rather than stone faced and are to be recessed rather than protruding.
 - 6) The overhang of the roof to the east side of the entrance foyer is to be reduced from 1000 mm to 300 mm.
 - 7) The zinc material for both the roof and the side cladding is to be such that it has a low folded standing seam of less than 50mm and is to have no ridges in

between seams. It is not to have raised boxed or other ridges so as to be less of an industrial aesthetic. The detail where the roof meets the side cladding is an important one and will require approval from the Planning Authority prior to commencement of construction. The membrane is to be metal and not PVC.

- 8) Detail and colour of the elements on the elevations will also require approval prior to commencement of construction. They include the colour of the standing seam membrane, the rainwater downpipes, the detail of the slatted timber over the entrance porch and office windows, the timber effect sliding doors, the glazed balcony, the signage, the bris soleil and the glazing to the shopfront.

Reason: In the Interests of visual amenity

3. The proposed development shall not be open to the public outside the hours of 0900 to 2100 Monday to Saturday inclusive, nor outside the hours of 1000 to 1900 on Sundays or public holidays. Deliveries shall not take place before the hour of 0730, from Monday to Saturday inclusive, nor before the hour of 0800 on Sundays and public holidays, nor after 2200 on any day.

Reason: In the interest of residential amenity and traffic safety

4. The proposed entrance shall be designed in accordance with the Design Manual for Urban Roads and Streets (DMURS). Exact details shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. The agreed entrance works shall be carried out and completed, to the written satisfaction of the planning authority, prior to the opening of the development to the public.

Reason: In the interest of pedestrian and vehicular safety, and of visual amenity.

5. Prior to commencement of development, the developer shall submit, and obtain the written agreement of the planning authority to, a plan containing details for the management and safe disposal of all waste (and, in particular, recyclable materials) within the development, including the provision of facilities for the storage, separation and collection of the waste and, in particular, recyclable materials, and for the ongoing operation of these facilities.

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

6. 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.

7. 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.

8. 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, as modified by condition number 5 of this order, (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: To protect the visual amenities of the area, and to allow the planning authority to assess any such development through the statutory planning process.

9. 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.

10. 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.

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. Upon commissioning of the structure, noise from activities associated with this development shall not give rise to noise levels exceeding 55 dB(A) Leq, 15 minutes during the hours of 0900 to 2200 and 45 dB (A), Leq, 15 minutes, at any other time, as measured at the nearest dwelling, including during deliveries. Procedures for the purpose of determining compliance with these limits shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. All of the mitigation measures set out the 'Noise Impact Assessment' report, as submitted to the planning authority on the 17th day of December, 2015, 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. Notwithstanding the provisions of the Planning and Development Regulations 2001, or any statutory provision amending or replacing them, no additional development shall take place above roof parapet level of the proposed building, including any solar panels, air handling equipment, storage tanks, ducts or other external plant, telecommunication aerials, antennas or equipment, unless authorised by a further grant of planning permission.

Reason: To protect the visual amenities of the area, and to allow the planning authority to assess any such development through the statutory planning process.

14. All service cables associated with the proposed development (such as electrical, telecommunications and public lighting cables) shall be run underground within the site. Any overhead cables crossing or bounding the subject site shall be undergrounded as part of the site development works.

Reason: In the interest of orderly development and the visual amenities of the area.

15. Site development and building works shall be carried out only between the hours of 07.00 to 19.00 Mondays to Fridays inclusive, between 08.00 to 16.00 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

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

development.

16. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion and maintenance until taken in charge by the local authority of roads, footpaths, sewers, watermains and public lighting required in connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion or maintenance of any part of the development. The form and amount of the security shall be as agreed between the planning authority and

the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

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

17. The developer shall pay to the planning authority a financial contribution of €86,432.05 (eighty-six thousand four hundred and thirty-two euro and five 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.

18. The developer shall pay the sum of €220,697 (two hundred and twenty thousand six hundred and ninety seven thousand euro) (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), to the planning authority as a special contribution under section 48 (2)(c) of the Planning and Development Act 2000, as amended, in respect of the acquisition and improvement works to adjacent Harbour View carpark and provision of car parking. (Specify the particular works of public infrastructure and facilities to which the specific exceptional costs relate.) This contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate. The application of 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 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.

19. 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 and provide the extended footpath and public lighting, under the terms of condition number 3 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.

Mary Crowley,
Senior Planning Inspector
30th November 2016