



An  
Bord  
Pleanála

## Inspector's Report PL19.247229.

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<b>Development</b>	Demolish existing foodstore and office building, construct two storey licenced discount foodstore.
<b>Location</b>	Dublin Road, Edenderry, Co. Offaly.
<b>Planning Authority</b>	Offaly County Council.
<b>Planning Authority Reg. Ref.</b>	16/159.
<b>Applicant</b>	Lidl Ireland GmbH.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Grant subject to conditions.
<b>Type of Appeal</b>	First Party vs. Conditions and Third Party vs. Grant.
<b>Appellant</b>	1. Lidl Ireland GmbH. 2. Tesco Ireland Ltd.
<b>Observer</b>	None.
<b>Date of Site Inspection</b>	15th December 2016.
<b>Inspector</b>	Ciara Kellett.

## 1.0 Site Location and Description

- 1.1. The appeal site is located to the east of Edenderry town at the junction of the Dublin Road (R402) and the Clonmullen Industrial Estate Road. The site is on the northern side of the Dublin Road on the edge of the town centre within the 50km/hr speed limit. A Lidl store has operated on the site since 2001 and a Tesco store is located to the north - to the rear of the Lidl store. The site is bounded by an existing Aldi store to the west and a Tesco petrol service station to the south. A roundabout on the Dublin Road provides vehicular access to the Lidl and Tesco stores via the Clonmullen Industrial Estate Road. The Dublin Road is a single lane road leading to the centre of the town with footpaths either side.
- 1.2. The existing Lidl store is located towards the rear of the site and parking spaces are to the front and side facing the Dublin Road and Clonmullen Industrial Estate Road respectively. The store is single storey and a projecting gable wall is clearly visible where customers enter the store. The remainder of the store is screened by a small bungalow/office which is proposed to be demolished as part of the subject application. The boundary between the site and the road consists of a low fence and shrubbery.
- 1.3. Appendix A includes maps and photos of the site.

## 2.0 Proposed Development

- 2.1. The proposed development is for the redevelopment of the Lidl Store. It is proposed to replace the existing single storey store measuring 1,262sq.m gross floor space and 990sq.m net retail sales area, with a new two storey mono-pitch store on an extended site, measuring 2,624sq.m gross floor space and 1,424sq.m net sales area.
- 2.2. The proposal involves the demolition of the existing single storey bungalow/office building measuring approximately 192sq.m on adjoining lands. The overall site area is stated as being 0.71Ha, increasing from the existing 0.577Ha. It includes the redevelopment of the existing car park and will provide for 95 car park spaces and 14 cycle spaces and the closure of the second entrance to the north of the site. A new pedestrian access to the Dublin Road will also be provided. In addition, it

includes new signage including free standing and building mounted signage, free standing trolley bay and enclosure, refrigeration and air conditioning equipment, hard and soft landscaping and all other associated ancillary works.

- 2.3. A Planning Report accompanies the application which provides an overview and rationale for the redevelopment of the site. A Traffic Assessment is also included.

### 3.0 Planning Authority Decision

#### 3.1. Decision

The Planning Authority decided to grant permission subject to 16 conditions including two conditions which the applicant is appealing.

**Condition no.11:**

*Prior to commencement of development, a contribution shall be payable to Offaly County Council, in accordance with the Council's Development Contribution Scheme, in respect of public infrastructure and facilities benefiting development in County Offaly, that is provided or that is intended will be provided by, or on behalf of, the Council.*

*The amount of the development contribution is set out below and is subject to annual revision with reference to the Wholesale Price Index (Building and Construction), and interest for late payment, in accordance with the terms of the Council's Development Contribution Scheme:-*

<b>Class of Infrastructure</b>	<b>Amount of Contribution</b>
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A (Amenities)	€4.68 per sqm
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B (Roads)	€9.32 per sqm
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<i>Total</i>	<i>€14.00 per sqm</i>
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*Total Amount Due €14 x 2624sq.m = €36,736*

**Reason:** *It is considered that the developer should contribute towards the expenditure incurred or proposed to be incurred by Offaly County Council in respect of the provision/improvement of public services/infrastructure benefitting development in the area of the Planning Authority.*

**Condition no.12:**

*The developer shall pay to the Planning Authority a financial contribution of €48,796 (Forty-eight thousand, seven hundred and ninety-six euro) as a Special Development Contribution in respect of exceptional improvement works consisting of the upgrading of the roundabout on the R402 (adjacent to the proposed site) to a signalled system which is required to cater for both vehicular and pedestrian traffic and will benefit the proposed development, in accordance with the provisions of Section 48(2)(c) of the Planning and Development Act, 2000. The contribution shall be paid prior to the commencement of development and the provisions of Section 48(12)(b) and (c) of the Act shall apply in relation to payment of this special contribution.*

**Reason:** *It is considered reasonable that a special contribution be made in respect of specific exceptional costs to be incurred by the Planning Authority in respect of public infrastructure, which benefit the proposed development, but which are not covered by a Development Contribution Scheme.*

Other conditions of note and of relevance to this appeal are Conditions no.2 and no.6. Condition no.2 states:

*The existing site boundary shall be removed and a new boundary fence shall be erected in accordance with details submitted. Prior to the commencement of development, the developer shall agree finish details of the area between the proposed boundary line and the public roadway along the R402. Details shall be agreed with the Area Engineer and the written agreement of the Planning Authority shall be obtained.*

**Reason:** *In the interests of the proper planning and sustainable development of the area.*

Condition no.6:

*A photographic survey shall be carried out on the existing roads and footpaths in the area and any consequential damage to the public road or footpath shall be made good to the satisfaction of the Planning Authority prior to the completion of the development.*

**Reason:** *In the interest of orderly development.*

### 3.2. Planning Authority Reports

3.2.1. The **Planner's Report** is the basis for the Planning Authority decision. It includes:

- Notes primary position of Edenderry town as a Tier 2 settlement within the settlement hierarchy contained in the Core Strategy. Tier 2 towns are to serve the existing and projected populations convenience shopping needs. Land use zoning is Business/Employment – retailing is open for consideration.
- Proposed net increase in retail floor area is 391sq.m – not considered large in scale. There is no specific type and/or quantum of retail floor space identified for Edenderry town.
- Considers proposed development is in line with the role and function of Edenderry town and considers scale and type of retailing accords with policies and objectives of the plan.
- Parking standards would require 114 spaces but considers 95 spaces acceptable having reviewed the applicant's submission.
- Notes that during the pre-planning process, the Council's intention to upgrade the adjacent roundabout to a signalled junction was conveyed. Road design requested further information (FI) in the form of a swept path analysis for the junction. Full design calculations for surface water were also requested.
- Considers that the proposed siting and design is satisfactory.
- AA and EIA screening carried out and considers that neither is required.
- The response to the request for FI was considered acceptable and a grant of permission subject to conditions was recommended.
- The decision was in accordance with the Planner's recommendations.

### 3.2.2. Other Technical Reports

The application was referred to:

- **Area Engineer** – no objection subject to conditions
- **Environment and Water Services** – no objection subject to conditions

- **Roads** - no objection
- **CFO** – no objection.

### 3.3. **Prescribed Bodies**

The application was referred to:

- **Health Service Executive** – no objections
- **Irish Water** – no objections.
- **Arts Council, DoAHG, An Taisce, The Heritage Council, OPW** – file referred, no submissions referred to.

### 3.4. **Third Party Observations**

One submission was received by GVA Planning on behalf of Tesco Ireland Ltd., Gresham House, Marine Road, Dun Laoghaire, Co. Dublin. The main planning points raised by the objector include:

- The proposal is a relatively standard design which does not address the street or the prominent corner location of the site.
- The standard design is compounded by an undersupply of car parking which is also poorly sited and is a prominent feature of the proposal.

## 4.0 **Planning History**

There are planning applications associated with the subject site. Of relevance:

- **Reg. Ref. 13126** – 172sq.m single storey flat roof extension to the east of the existing Lidl Store including associated car parking modifications; new south facing façade; modifications to internal layout; addition and modification to signs, granted permission in September 2013. This permission has not been implemented to date.
- **Reg. Ref. 991486** – Discount Foodstore granted permission in May 2000.

## 5.0 Policy Context

### 5.1. Development Plan

The site is subject to the policies and objectives of the Edenderry Local Area Plan 2011 – 2017, and the Offaly County Development Plan 2014 - 2020.

#### Edenderry LAP 2011 - 2017:

Chapter 4 of the Plan refers to Town Centre, Retail and Renewal. Chapter 8 refers to Design Guidance and Chapter 9 refers to Land Use and Zoning.

Section 4.5 refers to Retail and notes that Edenderry is in the second tier in the retail hierarchy. Edenderry should provide an appropriate level of comparison and convenience shopping for its surrounding hinterland. The Council will assess the size, availability, accessibility and feasibility of developing sites within the town centre and secondly on the edge of the town centre (location of appeal site). It is considered that no further large scale out of town retail developments are required within the lifetime of the Plan. Policy **PO4-01** states:

*It is Council policy to encourage and enhance the role of Edenderry Town Centre as a retail and commercial centre serving the town and its wider hinterland.*

The site is zoned Business/Employment. Section 9.3.3 of Land Use refers. It is stated that retail uses are open for consideration in this zoning.

The Draft Edenderry LAP 2017 – 2023 has recently been published and is currently out for public consultation. It notes that market pressures have impacted on the town centre with retail and commercial leakage to peripheral areas. The zoning of the site has not changed from Business/Employment.

#### Offaly County Development Plan 2014 – 2020:

Chapter 5 of the Plan refers to Retail and Town Centre Strategy. Chapter 8 refers to Development Management Standards.

Chapter 5 states that Offaly, Westmeath and Roscommon County Councils are required to undertake a joint retail strategy for the Midlands Region and until such

time as this is undertaken, the retail development strategy for the Plan will be informed by the provisions of the Retail Planning Guidelines 2012.

Edenderry's role in retail is classed as Tier 2 and Sub-Regional, along with Birr and Portarlington. It states:

*The role and function of established centres should be consolidated (at all levels in the retail hierarchy) by encouraging the improvement of retail facilities and supporting services appropriate to each of the existing centres. This will include: (inter alia) A positive approach to planning applications which reinforce retail roles and functions;*

Table 5.2 identifies the level and form of retailing activity in the context of the Retail Hierarchy. It states that for Tier 2 '*Convenience provision will be supported where it is required to serve the existing and projected population catchment*'.

Section 5.3.9 states that a Retail Impact Assessment will be required where a new retail development is considered to be particularly large in scale compared to the existing town centre or where there is a particular allocation of a specific type and/or quantum of retail floorspace to a particular settlement and a proposed development absorbs on one site, the bulk of that potential retail floorspace.

Table 5.4 provides the Assessment Criteria for all types of development. With respect to large convenience goods stores it is stated that they '*should be located in town centres or on the edge of these centres and be of a size which accords with the general floorspace requirements set out in the development plan/retail strategy to support and add variety and vitality to existing shopping areas and also to facilitate access by public transport for shoppers*'.

Chapter 8 refers to Car Parking Standards and notes that a reduction in car parking standards may be deemed acceptable if an applicant can demonstrate a reasonable reduction in the number of car parking spaces is provided on various grounds. Table 8.2 states that there should be 1 space per 23sq.m of gross floor area.

#### Development Contribution Scheme 2014 – 2020:

Section 2.4.5 Commercial Extensions states:

*A development contribution will be required in the case of extensions to industrial / commercial development. For clarity, any contribution is applicable*



*to the total floor area of an extension and includes all areas such as toilets, canteen facilities, corridors, landing areas, etc. The appropriate rate of contribution will be payable in respect of each additional m<sup>2</sup> of development involved, subject to the principle of no “double charging”.*

Section 2.5 considers Exemptions and Reductions. Section 2.5(j) states:

*Change of Use Permissions*

*In order to avoid the practice of “double charging”, change-of-use permissions or extensions to existing developments, where the change of use or extension does not lead to the need for new or upgraded infrastructures / services or significant intensification of demand placed on existing infrastructure (including for example, transport infrastructure) – (100% exemption)*

Section 3.0 refers to Special Development Contribution Scheme.

*Offaly County Council may, in addition to the terms of the General Development Contribution Scheme require the payment of a special contribution in respect of a particular development where specific exceptional costs not covered by a scheme are incurred in respect of public infrastructure and facilities which benefit the proposed development. In such cases the condition will specify the particular works carried out or proposed to be carried out by the Council.*

## **5.2. Retail Planning Guidelines**

The Retail Planning Guidelines 2012 were published by the Department of Environment, Community and Local Government and provide the framework to guide the development of retail. The Guidelines set out a retail hierarchy. As noted in the County Development Plan the Retail Guidelines indicate that the planning authorities of Westmeath, Offaly and Roscommon must prepare a joint Retail Strategy which is not yet completed.

The Guidelines state in Section 4.4 that:

*Where the location of a proposed retail development submitted on a planning application has demonstrated to the satisfaction of the planning authority that it complies with the policies and objectives of a development plan and/or*

*relevant retail strategy to support city and town centre, additional supporting background studies such as a demonstration of compliance with the sequential approach, below, or additional retail impact studies are not required.*

Section 4.6 specifically refers to the ‘Sequential Approach and Extension – Change of Use Applications’. It states:

*The sequential approach should also be used to assess proposals for the extension or material change of use of existing development where they are of a scale which could have a significant impact on the role and function of the city/town centre. Such extensions will of course also have to be assessed in the context of the floorspace requirements of the development plan/relevant retail strategy where appropriate.*

### **5.3. Natural Heritage Designations**

The site is located approximately 4.2km from the Long Derries SAC (Site Code 000925).

## **6.0 The Appeal**

The application is subject to both a third party appeal and a first party appeal.

### **6.1. Grounds of Third Party Appeal**

A Third Party appeal has been submitted by GVA on behalf of Tesco Ireland Ltd. In summary, it states:

*Proposed design and siting are not in keeping with the requirements of the Retail Design manual issued with the Retail Planning Guidelines, 2012.*

- Site is located on a prominent corner site which indicates the entrance to the town. As such the site is a strategically important site.
- View is dominated by car parking spaces upon entering the town.
- Design of building provides little visual interest – there is possibility of providing a greater mix of uses on the site – create a focal building with the

use of quality materials – address the road junction in a more positive way – could include provision of open space or public art.

- An example of an alternative layout is provided.

#### *Car Parking*

- Proposal fails to address the street and provides poorly sited car parking that will dominate the development.
- Undercroft parking could be provided – benefit of providing efficient use of space as well as removing car parking from view and address shortfall in parking.

#### **6.1.1. Applicant Response to Third Party Appeal**

- Consider that none of the grounds of the appeal would warrant a refusal of permission – consider appellant to be a serial objector with the objective of delaying planning permission – request the Board to dismiss the appeal or to expedite the determination.
- Summarises the rationale for the development and notes that the principle of the existing use was robustly assessed under the parent permission. States that the proposal is an extension of the existing use.
- Submit that the proposed design is a significant improvement on the existing site arrangements and strikes a balance between the reasonable operational requirements of the proposed store and the visual amenities of the area. Store will provide a highly active façade and will be appropriately landscaped and will be a significant enhancement of the existing structures on the site including the dated store and the bungalow style offices with no coherent building line or architectural style.
- The siting of the store is considered to be the optimum – no other positioning would deliver as positive an effect on the streetscape.
- Scale and format is not capable of being significantly altered in terms of providing a wider range of uses/units. Alternative parking would not be viable having regard to shopping patterns in the area and the absence of surface parking would put the store at a commercial disadvantage.

- Sufficient parking will be provided on site having regard to the detailed analysis undertaken by the Traffic Engineer and previous Board decisions/precedent to disregard first floor areas when calculating parking requirements – which would result in a requirement for 94 spaces.
- Photomontages and a Landscape Plan accompany the response to the appeal.

#### 6.1.2. **Planning Authority Response to Third Party Appeal**

The Planning Authority consider that the Planner's Report dated 12<sup>th</sup> July 2016 addresses the concerns raised by the appellant, and requests the Board to uphold their decision to grant permission.

#### 6.2. **First Party Appeal against Conditions**

The applicant appealed against two conditions, no's. 11 and 12, the General Development Contribution (no.11) and the Special Contribution (no.12):

##### Condition no.11:

- The planning authority have not made allowance for the existing floorspace – contributions should be based on additional area only.
- Condition no.11 should be revised to €16,380 (€14 x 1,170sq.m).
- Refers to ABP decisions where a 'credit' is allowed where dwellings/floorspace are to be demolished. Ref. ABP PL25.226507, PL25.230257 and PL84.233031.
- Existing developments to be demolished are serviced commercial premises and any subsequent permission should benefit from their existence – levies would have been paid under previous planning permissions – existing development has a reserved loading on public infrastructure.

##### Condition no.12:

- Applicant consider that the contribution should be amended to €14,910 for similar reasons to changes requested to condition no.11.

- Specific issue relates to “apportionment” of the total costs of the works. Applicant willing to pay towards the works but portion should be related to the marginal effect of the permitted development.
- Note from reviewing the Traffic and Transportation assessment on the file proposed post-development would contribute towards 36% of the traffic on the access road from the R402. Planning authority have apportioned 36% of the costs to the applicant. Applicant should only have to pay towards the marginal effect, given that the existing floorspace already enjoys adequate road infrastructure – 25% of same relates to existing traffic generation with the further 11% relating to marginal traffic generation – this equates to €14,909.89.
- Applicant has facilitated the proposed road works in providing setback along the frontage of the site, at considerable cost in terms of land value etc.

#### 6.2.1. **Planning Authority response to First Party Appeal**

Condition no.11:

- There is no mention in the Development Contribution Scheme for the redevelopment of sites and the description of the proposed development is “The construction of a new discount foodstore” not an extension.
- Development Contribution Guidelines 2013, are in relation to the drawing up of new schemes not implementation of existing schemes. The adoption of development contribution schemes is a reserved function.
- Refers to planning history. Development contribution paid for the parent permission relate to costs associated with sewer/watermain networks. Development Contribution charged in the current application relate to class of infrastructure which can be categorised as roads and amenities. The applicant did not contribute towards these classes of infrastructure in the parent planning permission and therefore the principle of “double charging” has not occurred.

Condition no.12:

- Prior to submission of application, lengthy discussions took place between applicant and Road Design. Conveyed the necessity to upgrade the adjacent

roundabout to a signalled junction. Process involved setting back of applicants front boundary fence to allow for widening of the roadway and the inclusion of a 1.8m footpath and 1.5m reserve for a future cycle lane.

- Area Engineer provided costs and apportioned costs to applicant. Cost estimated at €312,800. 36.4% of the traffic is currently generated by the retail units on the Clonmullen arm of the junction. 43% of that traffic on the Clonmullen link will visit Lidl post development, therefore 15.6% should be attributable to Lidl (i.e. 43% of 36.4%), which equates to €48,796.
- The issue of double charging is not relevant because no previous contribution has been made in relation to preceding road works.
- It is the additional traffic which the proposed development will generate which requires the junction to be upgraded as a matter of urgency. Offaly County Council would not consider the development acceptable in the absence of such an upgrade to the junction.

#### **6.2.2. Applicant response to planning authority submission**

- Notes that the Development Contribution Scheme was drawn up after the Development Contribution Guidelines – the current scheme dates from 2014 and is obliged to be consistent with the Guidelines.
- Allowance for credit does not have to be explicitly stated in the Scheme it may be implicit. Guidelines are explicit in their absolute requirement for provision to charge only net additional development in cases of redevelopment projects.
- Refers to Planning and Development Act 2015 which inserted a new obligation that Guidelines are required to be applied by planning authorities and the Board. Submit that requirement for provision to charge only net additional development in cases of redevelopment projects is 'specific planning policy requirement'.
- The Board could consider removing the contribution in its entirety should the Board consider the Scheme does not include for a 'credit'.

- Condition no.12 - Restates position on apportionment. 4.78% is for the new development and 10.83% for existing – total being 15.6%. 4.78% equates to €14,959.83.
- Are of the opinion that the Board are obliged to allow a credit for existing development. S.48(2)(c) provides for contribution towards specific and exceptional costs.
- Conditions no.2 and 6 imposes a requirement on the Applicant to carry out certain amount of the works in question, e.g. road repairs, boundary treatment etc. which the applicant estimates will be €46,000 (or 15.29% of their estimate of cost of works being €300,843). Likely a degree of overlap. Applicant is amenable to payment of a contribution of €14,959.83.

## 7.0 **Assessment**

7.1. I will deal with both appeals, the third party and the first party, separately.

### 7.2. **Third Party**

The main issues in this appeal are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise. I am satisfied that the principle of development is in compliance with the relevant statutory plans and guidelines. The issue of appropriate assessment also needs to be addressed. The issues can be dealt with under the following headings:

- Nature of the third party appeal
- Siting issues/Design
- Car parking
- Appropriate Assessment

#### 7.2.1. **Nature of the third party appeal**

The first party submits that the appellant is a serial objector with the objective of delaying planning permission. It is requested that the Board consider the appeal vexatious/frivolous or should otherwise be dismissed. I have considered Section 138

(1)(a) of the Planning and Development Act 2000, as amended, and I consider that the points raised in the appeal are not without substance or foundation and the appeal is not to my knowledge made with the sole intention of delaying the development or the intention of securing the payment of money, gifts, consideration or other inducement by any person. I acknowledge that the Board's opinion on this matter may differ and that it may decide to dismiss the appeal under Section 138 (1) (a)(i) of the Planning and Development Act 2000, as amended. However, I intend to assess the appeal on its merits.

### 7.2.2. **Siting Issues/design**

The third party appellant states that the design is not in keeping with the requirements of the Retail Design Manual and notes that the site is in a prominent location. An alternative design is suggested whereby the building is located closer to the junction of the Dublin Road.

I have visited the site and agree that this cluster of convenience shops does mark the edge of the town centre from the eastern approach and is a well established land use. The proposed store will be located along the road front with a reasonable level of landscaping. I am of the opinion that the building and landscaping, and not the car parking, will be the most visually prominent on approach to the roundabout. Once a driver is at the roundabout/junction, the proposed layout will provide legibility with respect to how to access the stores. For pedestrians, the new pedestrian access provides direct access to the store without having to negotiate the car park.

The layout is modern, and while it is a formulaic design, it will contribute towards the streetscape far more than the current layout does. I am also satisfied that the replacement of the office bungalow with the store will be an improvement and enhancement of the streetscape at this location.

I do not agree with the appellant that other retail units could be accommodated on the site. The Development Plans (CDP and LAP) clearly highlight that the town centre should be the primary location for new retail development. The existing large scale convenience stores are an established use in this location but new smaller floorplate units should be encouraged to locate in the town centre in accordance with the sequential test.



The location of public open space and public art is a matter for the Council to determine in the plan making process. The site is zoned business/employment and while open space is a use permitted in principle, I note that the site is bounded by other convenience shops and commercial uses in accordance with the zoning objective. The redevelopment of the store will however, afford a better opportunity to include improved landscaping within the site.

In summary, I am satisfied that the proposed siting and design of the store will provide a better shopping and working environment for staff and customers alike. The design, albeit formulaic, will address the streetscape in a much more positive way. The proposal is a replacement of an existing, well established use on the site, and affords a better opportunity to provide a modern retail building of a higher specification which is compatible with the surrounding character of the area.

### 7.2.3. **Car parking**

The appellant considers that the proposal provides poorly sited car parking that will dominate the development. The existing layout comprises five rows of parking with three circulation aisles. The new layout is more compact with four rows and two circulation aisles and, therefore, less visually dominant.

The appellant suggests the consideration of undercroft parking as a solution to the parking layout. I agree that undercroft parking is acceptable in some circumstances but in this particular case, it would likely lead to an increased height of the building which would be visually dominant and overbearing considering the current character of the buildings in the area. Therefore, I do not agree that undercroft parking would be an appropriate solution in this instance.

The number of parking spaces proposed is 95. The Development Plan requires 1 space for every 23sq.m of gross floor area which equates to 114 spaces (2,624sq.m GFA). I draw the Board's attention to section 3.2.2 above, which notes that the Area Engineer and the Road Design sections of the Council did not object to the proposal, including the 95 spaces.

The applicant has stated that the retail sales area will be 1,424sq.m and the gross ground floor area is 2,167sq.m. I have read all the documents submitted in respect of the parking numbers, in particular the Traffic Technical Note which accompanied the application. I am satisfied that the car parking numbers proposed are acceptable in

this instance. I am also satisfied that the revised convenient pedestrian access onto Dublin Road will encourage more shoppers on foot or bicycle.

In summary, I am of the opinion that the revised siting of the parking will not be visually dominant. I do not accept that an undercroft parking solution would be appropriate for this location and I am satisfied that 95 spaces are acceptable in this instance.

#### 7.2.4. **Appropriate Assessment**

Having regard to the nature and scale of development proposed and to the nature of the receiving environment, namely an urban and fully serviced location, 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.

#### 7.3. **First Party Appeal against conditions**

The applicant has appealed two conditions relating to financial contributions. I will deal with each separately.

Condition no. 11 relates to the general development contribution. The applicant considers that the Council have applied the incorrect floor area.

The applicant is of the opinion that the contribution should be based on the net additional floorspace which would reduce the contribution from €36,736 to €16,380.

Section 2.4.5 of the Development Contribution Scheme states that the contribution for new extensions will be payable in respect of each additional sq.m of development involved, subject to the principle of no “double charging”.

The Council states that the development as described is for a “New Discount foodstore” and not an extension. However, a foodstore already exists on this site and is already availing of the public infrastructure. Therefore, I do not agree that the entire development is “new” or would place a “new” burden on public infrastructure. I am of the opinion that charging for the entire floorspace would amount to “double charging”.

The Council refers to the fact that the parent permission development contribution was for improvements to sewer/watermain networks and that no contribution was made towards amenities and roads. No explanation is provided as to why no such charges were levied at the time.

I am of the opinion that the subject proposal should be considered to be an extension of the existing use in terms of the net additional floorspace. This is fully in accordance with the Development Contributions Guidelines 2013, which were in existence at the time of the adoption of the Development Contribution Scheme 2014.

Therefore, I am satisfied that the Condition should be amended to reflect the net increase in floor area only.

Condition no.12 is for a Special Development Contribution in respect of specific exceptional improvement works for the upgrade of the roundabout to a signalised junction and will benefit the proposed development.

The applicant makes the case that this contribution should be based on the additional floorspace only, similar to the condition no.11. They also state that they are facilitating the works by providing a setback along the frontage of the site at considerable cost in terms of land value.

The Council states that it is the additional traffic which the proposed development will generate which requires the junction to be upgraded as a matter of urgency, and that the Council would not consider the development acceptable in the absence of such an upgrade to the junction.

I accept the Council's assertion that the proposed increase in traffic is generating the need for the junction to be upgraded.

A special contribution is for exceptional and specific costs which are not covered by the general contribution scheme and "*are incurred by a local authority in the provision of public infrastructure or facilities which benefit very specific requirements for the proposed development, such as a new road junction*"<sup>1</sup>. I consider the upgrade of the roundabout to benefit the proposal one such specific cost. I also acknowledge that the applicant is facilitating the works by providing a setback along the front of the

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<sup>1</sup> P.5 Development Contribution Guidelines 2013.

site, however, due to the exceptional nature of the project, I do not accept that the costs should be apportioned as requested by the applicant.

I have also considered conditions no's. 2 and 6 as referred to by the applicant. I am of the opinion that condition no.6 is appropriate and reasonable regardless of the roundabout works, and should have no influence on the contribution required by condition 12.

I note condition no.2 requires details of the finish of the area between the proposed boundary line and the public roadway to be agreed with the Area Engineer. The applicant has stated that these works are estimated to cost €46,000 but no breakdown of costs is provided. I agree with the applicant that there may be a degree of overlap in these works, however, as the design of the roadworks proposed is not included in this application, this cannot be determined.

In conclusion, I recommend that the applicant is required to pay their full share of the costs of the proposed works as required by the Council because they are a specific exceptional cost that the entire development will benefit from. There are no credits allowed for extensions in the Guidelines for special development contributions.

## **8.0 Recommendation**

I recommend that planning permission should be granted, subject to conditions, for the reasons and considerations as set out below.

## **9.0 Reasons and Considerations**

Having regard to the location and existing use of the site, the pattern of development and the character of the area, the nature, extent and design of the development proposed, it is considered that subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area. The proposed development 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 12th day of August 2016, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

**Reason:** In the interest of clarity

2. The existing site boundary shall be removed and a new boundary fence shall be erected in accordance with details submitted. Prior to the commencement of development, the developer shall agree finish details of the area between the proposed boundary line and the public roadway along the R402. Details shall be agreed with the area engineer and the written agreement of the Planning Authority shall be obtained.

**Reason:** In the interest of proper planning and sustainable development of the area.

3. Details, including samples, of the materials, colours and textures of all the external finishes to the proposed buildings shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

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

4. The proposed shopfront shall be in accordance with the following requirements:
  - (a) No additional signage other than that shown on the submitted drawings shall be erected on site.
  - (b) No awnings, canopies or projecting signs or other signs shall be erected on the premises without a prior grant of permission.

(c) External roller shutters shall not be erected. Any internal shutters shall be only of the perforated type, coloured to match the shopfront colour.

(d) No adhesive material shall be affixed to the windows or the shopfronts.

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

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

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

6. Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

**Reason:** In the interest of public health.

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

(a) details of all proposed hard surface finishes, including samples of proposed paving slabs/materials for footpaths, kerbing and road surfaces within the development;

(b) proposed locations of trees and other landscape planting in the development, including details of proposed species and settings;

(c) details of proposed street furniture, including bollards, lighting fixtures and seating;

(d) details of proposed boundary treatments at the perimeter of the site, including heights, materials and finishes.

The boundary treatment and landscaping shall be carried out in

accordance with the agreed scheme.

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

8. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including hours of working, noise management measures, measures to amend and make good any consequential damage to the public road or footpath, and off-site disposal of construction/demolition waste.

**Reason:** In the interest of public safety and residential amenity.

9. 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 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.

10. The developer shall pay to the planning authority a financial contribution of €16,380 (sixteen thousand three hundred and eighty euro) 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.

11. The developer shall pay the sum of €48,796 (forty eight thousand, seven hundred and ninety-six 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 exceptional improvement works consisting of the upgrading of the roundabout on the R402 (adjacent to the proposed site) to a signalled system which is required to cater for both vehicular and pedestrian traffic and will benefit the proposed development. 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.



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Ciara Kellett  
Senior Planning Inspector

15<sup>th</sup> December 2016