



An
Bord
Pleanála

Inspector's Report PL91.247323.

Development	Demolition of existing buildings and construction of a mono-pitch roofed licensed discount foodstore with ancillary infrastructure.
Location	Childers Road, Rossbrien Road, Limerick, Co Limerick.
Planning Authority	Limerick City and County Council.
Planning Authority Reg. Ref.	16/44.
Applicant(s)	Lidl Ireland GmbH.
Type of Application	Permission.
Planning Authority Decision	Grant permission.
Type of Appeal	First Party versus condition (Development Contribution).
Appellant	Lidl Ireland GmbH.
Observer(s)	None.
Date of Site Inspection	23 January 2017.
Inspector	Stephen Rhys Thomas.

1.0 Site Location and Description

- 1.1. The appeal site is located in the suburb of Ballinacurra, south of Limerick City Centre. The site is situated along the western end of Childers Road (R509), at the junction with Rossbrien and Greenfields Road.
- 1.2. The site comprises two retail uses; a vacant retail warehouse and an existing Lidl foodstore. The semi-detached commercial units are large in scale, set back on the site and surrounded by surface car parking and rear storage areas.
- 1.3. The wider area is characterised by housing estates to the south and commercial developments to the west and north, an all-weather playing pitch is located to the east. Childers Road is a wide and busy road with pedestrian crossing facilities associated with existing traffic signals at the junction with Rossbrien and Greenfields Road. New paving and pedestrian crossing facilities have been installed at the junction of Childers Road with Ballinacurra Road/O'Connell Avenue. There are pedestrian guard railings along the southern side of Childers Road from the junction with Ballinacurra Road, for a distance of 120 metres.

2.0 Proposed Development

- 2.1. Permission was sought for:
 - Demolition of the existing buildings and ancillary structures (totalling 3,308.5sq.m.) comprising the existing Childers Road Lidl Licenced Discount Foodstore unit and disused bulky goods retail unit (former Chadwicks Builders Providers).
 - Construction of a new mono-pitched roof licenced discount foodstore (all totalling 2,947sq.m with a net retail floor area of 1,002sq.m.) up to 8.2 metres in overall height.
 - The foodstore will comprise; a retail sales area with ancillary off licence, bakery, public facilities, offices, storage, delivery area, staff welfare (toilets, changing rooms, staff area), roof terrace.

- Corporate signage, comprising three totem pole signs, nameplate signage over entrance doors, finger post signage and three advertising panels on the east elevation.
- A covered trolley bay structure,
- 164 no. car parking spaces and 30 bicycle spaces.
- Primary vehicular & pedestrian access will be via the existing enhanced site entrance from Rossbrien Road and a repositioned enhanced site entrance from Childers Road. Pedestrian access will be via a dedicated pedestrian entrance from the intersection of Childers & Rossbrien Road.
- Landscaping.
- Below ground attenuation tank located under car parking along Childers Road.

3.0 Planning Authority Decision

3.1. Decision

The planning authority decided to grant permission subject to 25 conditions, the relevant condition is set out in its entirety below:

Condition 3.

The developer shall pay to the Planning Authority a special contribution of €59,020 (fifty nine thousand and twenty euro) in accordance with Section 48 2 (c) of the Planning and Development Acts, 2000 – 2014 in respect of apparatus upgrade at the Childers/Greenhills Junction. The contribution shall be paid prior to the commencement of development or in such phased payments as the Planning Authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment.

Reason – It is a requirement of the Planning and Development Acts, 2000 – 2014 that a condition requiring a special contribution in accordance with Section 48 2 (c) of the Act be applied to the permission.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Basis for the planning authority decision. Report includes:

- The initial Planner's Report required further information with regards to a revised design proposal that does not result in an increase in net retail floor area, Traffic Impact Assessment (TIA), Road Safety Audit, landscaping proposals, car parking, surface water, additional pedestrian access points and revised plans to meet Fire Safety requirements. The proposal was screened for AA, no significant impact to an SAC or SPA.
- The second Planner's Report required clarification of further information with respect to a revised proposal which does not increase floor area and given the traffic congestion rates identified by the TIA the applicant should forward details of a signal apparatus upgrade together with costings at the Childers/Rossbrien Road junction.
- The final Planner's Report recommends the attachment of a condition which restricts retail floor space, a condition which applies a section 48 (2) (c) financial contribution based upon the report of the Operations and Maintenance Department which sets out the details and scope of works required. The Planner's assessment concludes no Section 48 contribution under the County's Development Contribution Scheme shall apply.

3.2.2. Other Technical Reports

Roads Department. Initial report required further information with respect to Traffic Impact Assessment, Road Safety Audit, boundary treatment, car parking and surface water calculations.

The Planning Report refers to a further Roads Report which required Clarification of Further Information with respect to apparatus upgrades.

A final report (dated 25 August 2016) prepared by Roads/Traffic and referred to in the final Planner's Report as the Operations and Maintenance Department states that in order to improve pedestrian mobility in the context of retail business development, provision of new facilities is warranted at Childers Road/Greenfields Road junction. In this respect the provision of an additional pedestrian stage and

crossing point across Childers Road opposite the curtilage of the site, the provision of kerbside pedestrian detection to eliminate lost time and provision of pedestrian countdown timers will provide direct improvement to pedestrian safety, convenience and mobility.

The appropriately proportioned costs are as follows:

- Direct cost of apparatus upgrade is €28,000
- Associated civil works cost €24,000
- Vat is applicable at 13.5%

Environment Department (Pollution Control). Attachment of standard technical conditions.

Environment Department (Waste Management). Attachment of standard technical conditions with regard to a waste management plan.

Fire and Building Control. Initially, further information requested and subsequently the attachment of conditions.

Archaeologist. No objections.

Water Services. The site is not within a flood zone.

3.3. Prescribed Bodies

Irish Water. Attachment of standard technical conditions.

HSE Environmental Health Office. Attachment of standard technical conditions.

3.4. Third Party Observations

None.

4.0 Planning History

Planning register reference number 09770309. Permission granted for external renovations and façade alterations to existing foodstore. January 2010.

Planning register reference number 01770312. Permission granted for a dock leveller to existing foodstore. November 2001.

Planning register reference number 00770205. Permission granted for roofing to storage racks. July 2000.

5.0 Policy Context

5.1. Development Plan

The operative plan for the area is the Limerick City Development Plan 2010-2016.

5.2. Contribution Scheme

Limerick City Council Development Contribution Scheme 2013 – 2016.

Table 2 Proposed contribution rates for commercial development per sq.m.

Note 4 - Where an existing building is proposed to be demolished and replaced with a new building an offset of 100% of the floor area of the building to be demolished shall be applied to the contribution.

Section 1.9 Special Development Contributions

A special development contribution may be imposed under Section 48 of the Act where exceptional costs not covered by the Limerick City Council Development Contribution Scheme 2013 - 2016 are incurred by the Council in the provision of a specific public infrastructure or facility. (The particular works will be specified in the planning conditions when special development contributions are levied). Only developments that will benefit from the public infrastructure or facility in question will be liable to pay the special development contribution. Conditions imposing special contributions may be appealed to An Bord Pleanála.

Table 4: Proposed Division of Contributions

Class of Infrastructure	Proposed Percentage Allocation
Transport	40%
Water Supply & Waste Water	40%

Services	
Recreation & Amenities	18%
Community & Ancillary	2%
TOTAL	<u>100%</u>

5.3. Section 48 of the Planning and Development Act 2000 (as amended).

5.4. **Development Management Guidelines for Planning Authorities**, Department of the Environment, Heritage and Local Government 2007.

Paragraph 7.12 Conditions requiring development contributions (sections 48 and 49 of the Planning Act)

Finally ‘special’ contribution requirements in respect of a particular development may be imposed under section 48(2)(c) of the Planning Act where specific exceptional costs not covered by a scheme are incurred by a local authority in the provision of public infrastructure and facilities which benefit the proposed development. A condition requiring a special contribution must be amenable to implementation under the terms of section 48(12) of the Planning Act; therefore it is essential that the basis for the calculation of the contribution should be explained in the planning decision. This means that it will be necessary to identify the nature/scope of works, the expenditure involved and the basis for the calculation, including how it is apportioned to the particular development. Circumstances which might warrant the attachment of a special contribution condition would include where the costs are incurred directly as a result of, or in order to facilitate, the development in question and are properly attributable to it. Where the benefit deriving from the particular infrastructure or facility is more widespread (e.g. extends to other lands in the vicinity) consideration should be given to adopting a revised development contribution scheme or, as provided for in the Planning Act, adopting a separate development contribution scheme for the relevant geographical area. Conditions requiring the payment of special contributions may be the subject of appeal.

5.5. Natural Heritage Designations

The appeal site is located 1.3 kilometres from the Lower River Shannon SAC (site code 002165) and 1.2 kilometres from the River Shannon and River Fergus Estuaries SPA (site code 004077).

6.0 The Appeal

6.1. Grounds of Appeal

The first party appeal against the Financial Contribution only as attached under Condition 3 has been prepared and submitted by The Planning Partnership on behalf of the applicant Lidl Ireland GmbH. The Board is requested to remove Condition 3 in its entirety. The detailed appeal may be summarised as follows:

- The proposed development to demolish an existing building and replace with a new building was not levied a contribution under the Limerick City Council Development Scheme because an offset of 100% was applied. The Special Contribution amounts to double charging for works which would be covered under the general contribution scheme.
- Condition 3 requires works to existing signal apparatus infrastructure. The condition or internal reports do not detail the costs and works associated with the apparatus upgrade. Therefore, the condition is not in accordance with the requirements of Section 48 (2) (c) special contribution.
- Childers/Greenfields junction is already signalised. The nearby Crescent Shopping Centre has a significant impact upon traffic. A recent planning permission in respect of an extension to the Crescent Shopping Centre does not include a special contribution and instead a levy of €157,290 is charged under the general scheme. Under the Council's Development Contribution Scheme, 40% of such a contribution is allocated to Transport. The planning authority have double charged for transport improvements in the area.
- Traffic volume figures presented for the Childers/Greenfields junction and the likely impact of the new Lidl store, show that Signal Apparatus Upgrades would not be necessary. The new Lidl store will not compromise the junction.

The Signal Apparatus Upgrades would represent works not only benefiting the proposed development but also the surrounding development.

Note: The appeal was accompanied by a copy of the notification of decision to grant permission, Limerick City Council Development Contribution Scheme (2013), and a copy of the notification of decision to grant permission to the Crescent Shopping Centre (16/241).

6.2. Planning Authority Response

The planning authority state that all issues were considered in relation to the redevelopment of the site. The advice of the Roads Department was to upgrade the lights at Childers/Greenfields Road junction to facilitate the proposed development. The Roads Report, dated 25 August 2016, is included in the submission, and detailed in section 3.2.2 of this report.

6.3. Further Responses

The applicant has responded to the planning authority's comments by reiterating the contents of the grounds of appeal, new comments are as follows:

- The works are not specific exceptional costs not covered by the general contribution scheme, in that works specified relate to current apparatus and associated pedestrian infrastructure, normally levied for under the general scheme. The wording of the condition does not reflect the Roads Report which seeks an additional pedestrian stage crossing.
- With respect to an additional pedestrian crossing on Childers Road opposite the curtilage of the site, the Board cannot amend the condition to this affect as the applicant is appealing the condition under Section 48 (13) of the Act.

7.0 Assessment

- 7.1.1. This is a first party appeal solely against a special development contribution condition (condition 3) attached to the decision by Limerick City and County Council to grant permission for the proposed development and no other appeals have been lodged.

7.1.2. Section 48 (13) of the Planning and Development Act 2000 (as amended) states that an appeal that *relates solely to a condition dealing with a special contribution and no appeal is brought by any other person under Section 37 of the decision of the planning authority under that section, the Board shall not determine the relevant application as if it had been made to it in the first instance but shall determine only the matters under the appeal.*

7.1.3. The key issue in this appeal, therefore, is whether or not the costs as set out in Condition 3, properly constitute specific exceptional costs, not covered by a development contribution scheme and which would be incurred by the local authority in respect of public infrastructure and facilities which benefit the proposed development.

7.1.4. In my assessment of the appeal I refer to the Limerick City Council Development Scheme 2013, as the 'scheme'. I note that the scheme is currently under review and a draft has been published, but not adopted. When reference is made to the Act, the relevant Act is the Planning and Development Act 2000 (as amended).

7.2. **Special Development Contribution (Condition No 3)**

7.2.1. Condition 3 requires the developer to pay a special contribution of €59,020 towards apparatus upgrade at the Childers/Greenhills Junction.

7.2.2. The applicant submits that the proposed development was assessed under the Limerick City Council Development Scheme and no contribution was levied on account of a 100% offset. By charging under a Special Contribution provision results in 'double charging', despite no liability under the general scheme. The condition does not detail costs and works. Childers/Greenfields junction is already signalled and so therefore the upgraded apparatus works should be normally levied for under the general scheme. The infrastructure required by the condition will benefit other development in the area. Subsequently, and with reference to an additional pedestrian crossing on Childers Road opposite the curtilage of the site, the Board cannot amend the condition to this affect as the applicant has appealed the condition under Section 48 (13) of the Act.

7.2.3. Limerick City and County Council state that the provision of apparatus upgrade at Childers/Greenfields Road junction would facilitate the proposed development. Included in the planning authority's response to the applicant's appeal is a report

prepared on the 25 August 2016 by Roads/Traffic in which the rationale for a special contribution is outlined and details of the scope and cost of works is provided. This report is important because it outlines in detail what is required. The Roads/Traffic section specifically sought an additional pedestrian crossing stage and associated infrastructure at a point on Childers Road opposite the curtilage of the site.

7.3. **Wording of Condition 3**

- 7.3.1. In the first instance, it is relevant to test if the drafting of the condition is in accordance with the requirements of the Act, specifically section 48 (12) (a) which states:

(12) Where payment of a special contribution is required in accordance with subsection (2) (c), the following provisions shall apply—

(a) the condition shall specify the particular works carried out, or proposed to be carried out, by any local authority to which the contribution relates,

In this regard, the local authority has stated that the works comprise apparatus upgrade at the Childers/Greenhills Junction. I am not clear as to the location of this junction, there are no roads in the vicinity referred to as Greenhills. There is however, a Greenfields Road and perhaps this is the location referred to in condition 3. To clarify the Roads Report of the 25 August 2016 states Childers Road/Greenfields Road junction and seeks the provision of an additional pedestrian stage and crossing point opposite the curtilage of the site. Pedestrian crossing facilities already exist on all arms of this junction.

- 7.3.2. In broad terms the local authority has complied with the requirement of the Act to specify the particular works. I am not entirely certain as to the specific location and scope of works actually required. The condition is however, in accordance with the provisions of section 48 (12) (a) of the Act.

7.4. **Condition 3 in accordance with section 48 (2) (c) of the Act?**

- 7.4.1. The next question arises as to the need for a special contribution condition at all. Under section 48 (2) (c) of the Act, which states:

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 a scheme are incurred by any local authority in

respect of public infrastructure and facilities which benefit the proposed development.

Firstly, it must be demonstrated that the specific exceptional costs are not covered in the terms of the scheme. In this regard, I note that table 4 of the scheme sets out the proposed division of contributions, 40% is attributed to Transport. Contained within Appendix 3 of the scheme are outlined eligible expenditure and allocation of costs, which outlines what types of works would be included within the category of Transport. The works include Childers Road Upgrade (design and construction). I have not seen the detail of the upgrade works planned for. However, the fact that mention is made in the scheme of Childers Road, convinces me that the upgrade of Childers Road has been planned for and included in the terms of the scheme. I consider that the works mentioned in the decision cannot be viewed as specific exceptional costs not covered by a scheme.

7.4.2. Secondly, with reference to section 48 (2) (c) of the Act, and with respect to public infrastructure and facilities which would benefit the proposed development. I note that the pedestrian facilities in the wider area comprise footpaths either side of the public road, traffic signals and pedestrian facilities at the junction of Childers Road with Rossbrien/Greenfields Road and Childers/Ballinacurra Road. Pedestrian crossing facilities already exist on all arms of the Childers/Rossbrien/Greenfields Road junction. I note that upgraded pedestrian facilities and public realm improvements have been carried out at the junction of Childers Road and Ballinacurra Road/O'Connell Avenue, in the vicinity of the Greenpark Local Centre.

7.4.3. In my opinion apparatus upgrade at Childers/Greenfields Junction would benefit the existing Greenpark Local Centre to the west, community facilities at Our Lady of Lourdes, residential areas to the south and would provide broad improvements to pedestrian safety, convenience and mobility. The Development Management Guidelines advice on this matter state that circumstances which might warrant the attachment of a special contribution condition would include where the costs are incurred directly as a result of, or in order to facilitate, the development in question and are properly attributable to it. I consider that the benefit deriving from apparatus upgrade is more widespread. In addition, the proposed pedestrian stage and crossing point facility would not in its own right represent public infrastructure and facilities which would solely benefit the proposed development.

- 7.4.4. Given the foregoing, I consider that the works mentioned in condition 3 cannot be considered as specific exceptional costs not covered in the scheme and the works would not solely benefit the proposed development. Therefore, condition 3 is not in accordance with section 48 (2) (c) of the Act, the condition is neither necessary or warranted.

8.0 Recommendation

- 8.1. Having reviewed the application documents, the grounds of appeal and the planning authority's development contribution scheme and having regard to Section 48 of the Planning and Development Act, 2000 (as amended) and, based on the reasons and considerations set out below, the Board directs Limerick City and County Council to OMIT condition number 3 and the reason therefor:

9.0 Reasons and Considerations

The Board considered that condition number 3 does not accord with the provisions of section 48 (2) (c) of the Planning and Development Act, 2000 (as amended), with reference to the payment of a 'special contribution'. Furthermore, it is considered that an appropriate requirement to pay such a contribution is already provided for within the Development Contribution Scheme made under this section.

Stephen Rhys Thomas
Planning Inspector

25 January 2017