



An
Bord
Pleanála

Inspector's Report PL 04 248281

Development	Demolition of discount store and construction of new mono pitched one and two storey discount store ancillary infrastructure and site works (2,962.5 sq. m.) (complete description available on public Notices)
Location	Banteer Road, Kanturk, Co. Cork.
Planning Authority	Cork County Council.
P. A. Reg. Ref.	166209.
Applicant	Lidl (Ireland) GmbH
Type of Application	Permission.
Decision	Grant Permission
Type of Appeal	Third Party
Appellant	RGDATA
Date of Site Inspection	27 th July, 2017
Inspector	Jane Dennehy

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1.0 Site Location and Description

- 1.1.1. The site comprises an enlargement of the existing Lidl store site entailing the addition of undeveloped lands adjoining the southern boundary. It has frontage onto west side of the Banteer Road (R576) to the south side of Kanturk town centre and has a total stated area of 1.327 hectares.
- 1.1.2. The existing LidL store has a stated floor area of 1,762 square metres and the site has associated surface carparking. This development was constructed on foot of a grant of permission under P.A. Reg. Ref 07/7961. (Details are in section 4 below.). There is an extant application for industrial units on the lands to the immediate south of this area. A hardware store (Burtons) adjoins the northern boundary, and the North Cork Co-operative Creameries premises is located 130 metres to the north on the east side of the R579.
- 1.1.3. The site location is at the edge of the built up area of the town and inside the speed limit signs and it is also one hundred metres from the River Arrow within the Blackwater River (SAC 002170) to the east.

2.0 The Planning Application.

- 2.1.1. The application lodged with the planning authority on 2nd September, 2016 indicates proposals for demolition the existing buildings on the site which have a total stated floor area of 1,762 square metres and, for construction of a replacement one and two storey monopitch store with a total stated floor are of 2,962 square metres. The footprint is shown towards the southern site boundary and perpendicular to the road frontage of the site. One hundred and forty-four surface carparking spaces (eight disabled), thirty cycle and fifteen motor cycles are provided for in the site' s parking layout. A new vehicular entrance is to be positioned to the south of the existing entrance on the road frontage. Proposals for signage includes totem pole signs and shopfront signage and ancillary development such as trolley bays.
- 2.1.2. Effluent is to be discharged to the Kanturk Treatment plant prior to discharge to the River Allow Storm water drainage is to be managed via a hydrocarbon interceptor and attenuation tank designed for 1 n 100 flood event, maintaining greenfield rates.

- 2.1.3. The application is accompanied by a planning report, appropriate assessment screening assessment, flood risk assessment report, services design report, preliminary construction and demolition waste management plan, landscaping plan, letter of consent from the land owner.
- 2.1.4. Additional information was requested in relation to the site selection, configuration and layout of the development, construction management and construction traffic management pedestrian linkage, parking provision and entrance arrangements. A further submission was received by the planning authority on 21st December, 2016 and some outstanding issues were raised in subsequent clarification of additional information. A sequential and quantitative retail assessment although not requested, was included with the response submission to address the objections in the third party's submission.
- 2.1.5. Clarification of additional information was requested in 24th January 2017 in relation to entrance arrangements and engineering concerns and a response was received on 6th February, 2017. It includes design details for a proposed right turning lane at the proposed location for the new entrance onto the R 576 and a pedestrian route on a north south axis.
- 2.1.6. According to the written submissions accompanying the application, the existing store does not lend itself readily to adaption and the applicant wish to replace with it with a new store in the "LOR design format" which accounts for most the increased gross floor area. Within the gross increase of 1,200.5 square metres in floor area relative to the existing development, a modest increase in net sales area of 299 square metres is proposed. The existing site location on a main southern approach was favoured and the inherent requirement to maintain the operational capacity of the existing store to ensure continuity during construction was an important.
- 2.1.7. The planning authority's assessment of the application and supplementary submissions is addressed under section 3 which follows.
- 2.1.8. The flood risk assessment in which the sequential approach is applied notes the classification of the proposed development as "less vulnerable" and suitability for Flood Zone B, the floor level being above the estimated AEP flood level and attenuation measures being included in the design of the development. The

majority of the site area comes within Flood Zone B with some areas towards the northern boundary coming within Flood Zone B

3.0 Planning Authority Decision

3.1. Decision

By order dated, 13th April, 2017, the planning authority decided to grant permission subject to twenty-eight conditions most of which are of a standard nature.

Condition No 2 contains the requirement for a final CEMP to be submitted to the planning authority for agreement. It is to include a programme for environmental and ecological monitoring for reasons of protection of the water quality in the receiving environment.

Condition No 3 contains the requirement for the external wall and roof finishes to be in accordance with the details in the original application submission of 2nd September, 2016.

Condition No 7 removes exempt development entitlements for advertising and signage.

Condition No 12 contains a requirement for submission of a construction traffic management plan for written agreement with the planning authority.

Condition No 19 has the requirement that the existing entrance be made redundant and closed up to match the existing boundary.

Condition No 19 has a requirement for the proposed attenuation for storm water to be in accordance with the application submission design and the SUDS manual.

Condition No 28 Payment of a special development contribution. In the amount of €205,000.00.

3.2. Planning Authority Reports

3.2.1. Planning Officer.

The planning officer in her final report prepared following receipt of the further information and final the technical reports indicates satisfaction with the proposed development. The planning officer accepted the case made on behalf of the applicant not to reposition the store as recommended in the additional information request but to retain the position for the store on the site shown in the original application and the proposal for relocation of the site entrance.

3.2.2. Other Technical Reports

3.2.3. Engineering Reports.

The initial report of the Area Engineer indicated a preference for retention of the original entrance as opposed to the proposed relocation southwards on the front boundary to allow for continuation of use of the existing right turning lane. Also indicated is concern as to oversupply of carparking on site and insufficient provision for pedestrian linkage within the site layout. A recommendation is also included for provision for a construction traffic management plan to be prepared. Subsequently, the further information proposal was accepted in which the applicant retained the proposal for the new entrance for reasons related to flood zones and continuation of use of the existing unit, the proposed new entrance was accepted, with the existing entrance being discontinued. A requirement for construction of a replacement right turning lane is included in the recommendations.

3.2.4. Also recommended is a condition with a requirement a special development contribution in the amount of €200,000 on grounds that the development would benefit from the Kanturk Relief Road which is under construction. (The Relief Road is a specific roads objective of the Local Area Plan.) The area engineer's report also contains a recommendation for a special contribution towards the cost of road markings and adjustments in the amount of €10,000.

3.2.5. A separate engineer's report on the further information submission of 6th March, 2017 indicates acceptance of the proposed development subject to submission of the final construction and environmental management plan for compliance in advance of construction for written agreement, acceptance that the revised layout

addresses a concern about the original position within a Flood Risk Zone 'A' area by relocation to a low risk position and satisfaction that the proposed development would not increase flooding risk or affect flood storage capacity having regard to the flood risk assessment and comments of the area engineer.

- 3.2.6. The report of the Ecologist includes consideration of flood risk and appropriate assessment matters notes existing minor overloading of the treatment plant, existing upgrade works and the limited increase in organic loading involved in the proposed development, indicates satisfaction that water quality having regard to nutrient inputs to the Allow River would not be affected.
- 3.2.7. The report of the County Architect welcomes the proposed development, recommends preparation of an urban design statement and repositioning the building towards the road frontage to provide for a plaza if feasible along with landscaping.
- 3.2.8. The report of the Environmental Officer indicates no objection subject to conditions
- 3.2.9. The report of Irish Water indicates no objection to the proposed development.

3.3. Prescribed Bodies

- 3.3.1. The submission of An Taisce indicates concerns about car dependency and vitality and viability of the town centre.
- 3.3.2. The submission of Inland Fisheries Ireland of 4th October, 2016 notes concerns about potential for discharge of silt and fuel and the importance of mitigation against invasive species. at construction stage.

3.4. Third Party Observations

- 3.4.1. An observation was received by the planning authority from RGDATA, the appellant party. Issues raised relate to the intensity and nature of use and the location outside the town centre, national transport objectives and lack of retail impact assessment within the application.

4.0 Planning History

4.1. P. A. Reg. Ref. P. A. Reg. Ref. 07/7961: Permission was granted for demolition of existing buildings and construction of a discount store, carparking, dock leveller compactor, boundary treatments signage and connection services. This is the existing LiDL store development. Permission for the extension of this development with a single flat roof extension with a stated floor area of circa 115 square metres was granted subsequently under P. A. Reg. Ref. 10/8602

5.0 P. A. Reg. Ref. 07/11196: Permission was granted for five light industrial units and associated works on lands at Banteer Road. Under P. A. Reg. Ref. 13/04477 Permission was granted for the extension of the duration of the prior grant of permission. These lands are to the south and west of the existing LidL store's site.

PL 04 216723/P. A. Reg. Ref. 05/5324: The planning authority decision to grant permission for a supermarket, parking signage and a new sewer allowing for decommissioning of a sewer to the south was overturned following appeal. The Board's file is attached.

6.0 Policy Context

6.1. Development Plan

6.1.1. The operative county development plan is the Cork County Development Plan, 2014-2020. Kanturk is designated as a large county town of the North Cork Strategic Planning Area in the settlement hierarchy. According to Policy TC1 4-6 it is the policy of the county council to "support the vitality and viability of the Ring and Larger towns and to ensure that such centre provide an appropriate range of retail and non-retail functions to serve the needs of the community and respective catchments."

6.1.2. Policy TC 8-1 contains criteria for retail convenience store development. to include a primarily the selection of town centre locations, retention and enhancement of the vitality and viability and viability of town centres and appropriate scale for the size of the catchment and location.

6.2. Local Area Plan.

- 6.2.1. The operative local area plan is the Kanturk Local Area Plan, 2011. The site is within a location subject to the zoning objective, “Existing built up area” allowing for flexible use and redevelopment of underused and derelict land or buildings. Proposals for development are considered in the context of the local area plan objectives, the surrounding area characteristics and other relevant planning considerations.
- 6.2.2. It is an objective under ZU- 3-1 to encourage (through the LAP) development that supports the primary land-use in the surrounding built up area with development that threatens the vitality, integrity of the primary use of the existing built up area being resisted.

6.3. Strategic Guidance

- 6.3.1. The most recent strategic guidance is the “*Retail Planning: Guidelines for Planning Authorities*”: DOECLG (2012). It is accompanied by the Retail Design Manual. An accompanying retail design manual supports the strategic guidance document.
- 6.3.2. A sequential approach is recommended in assessment of proposals for new development and extensions to and material changes to existing development which also must accord with the relevant retail strategy where appropriate according to Chapter 4.

7.0 The Appeal

7.1. Third Party Appeal by RGDATA

- 7.1.1. An appeal was received from RGDATA on 3rd April, 2017 and the case made is outlined in brief below:
- The statement in the planning officer report suggesting that the proposed development is justified by reason of the pre-existing development outside the town centre enables favourable consideration of the proposed development from a land use perspective is rejected because demolition and replacement

with a new larger development on lands which includes lands where the use is not permissible or established is unacceptable.

- The proposed development amounts to intensification of use. According to the Cork County Development plan, (section 14.3.5) problems arise when intensification of expansion of a use that is not the primary use upsets the balance between different uses. The location is typified by light industrial units and is 580 metres from the town centre 300 metres from edge of the town centre.
- The proposed development is in material contravention of the local area plan policy for protection of the vitality and viability of the town centre. There are no changes to the established land use zoning in the 2011 LAP and Draft 2016 LAP which were published after the existing development was considered and permitted. Areas identified as suitable for retail development are to the south and to the east are identified in the draft LAP in which the policy is for protection and promotion of the town centre and inner town sites for retail development. Measures were taken to facilitate robust expansion.
- The current LAP identifies the town centre as the appropriate location for retail warehousing, as having potential to expand and the amount of zoned lands was increased. The mart area to the west of the town centre is undeveloped and the adjoining former Keating's bakery site is available.
- The proposed development is materially different from the existing development; it is 68 % larger, is greater in height and is clearly intended for a wider catchment and customer base, leading to increased adverse impact on the retail development within the town centre. The twenty per cent increase in customer footfall projected would directly affect viability of town centre shops.
- The rationale for not accepting the recommendation from the perspective of urban design, (in the further information request) about the position of the building and dominance of carparking by repositioning the building northwards in the direction of the town centre is not accepted. The movement of the footprint is moved eastward and the carparking south, proposed, on grounds

of avoidance of the Flood Zone 'A' area and so that demolition of the existing store in advance of construction is avoided.

- In the absence of a proper Town Centre Health Check identifying exactly what development is required in the town centre, it is important that no large convenience stores are permitted. Reference is made to The Retail Planning Guidelines in which plan led development following the settlement hierarchy is recommended.
- The development is unsustainable in that it is car dependant encouraging additional journeys which is contrary to the Sustainable Transport Strategy and does not accord with the third objective of the retail planning guidelines which his to ensure accessibility in the catchment by car public transport cycles and walking. RGDTA made a submission to the department of transport indicating that now is the time to address retail modes that delivers sustainable transport and transport implications should be core to the consideration of suitability of proposals for retail development.
- Sequential assessment. The sequential assessment submitted with the application aims to justify the appropriateness of the site location on the basis that there are no other sequentially appropriate viable sites available. Two out of six sites assessed were partially suitable (Keating's Bakery and the former Mart site at Percival Street) both of which are zoned "town centre/neighbourhood centre". According to the assessment:

The 1.65-hectare brownfield Keating's Bakery site requires significant rehabilitation and is peripheral within the urban fabric of the town and, Development of a discount store on the Mart site where there are no existing retail uses would constitute a form of leapfrogging.

The Retail Planning Guidelines, DOECLG, (2012) requires a developer to demonstrate that there are no suitable sites within a city, town centre, edge of town centre or other designated centre and that only in exceptional circumstances where no sites are available at the centre or edge of centre should an out of centre site be considered.

The LAP is not consistent with the submitted sequential assessment. Section 2.3.6 of the LAP specifies that the expansion of the town

centre should first be to these two sites. According to section 2.4.13 of the LAP these sites are suitable for hotels shops food supermarkets retail warehousing, housing, civic buildings, offices and banks.

According to the Appeal, there are a number of appropriate sites available for the development which are expressly identified in the LAP on which the proposed development could be located.

- Similar zoning, intensity of development and traffic issues were considered in the assessment and determination of a decision on a similar development in Enniscorthy, (PL 26. 246524 refers.)

7.2. Applicant Response to the Appeal.

7.2.1. A submission was received from the applicant's agent on 3rd May, 2017 in which it is requested that the planning authority decision be upheld and, in which it is separately requested that Condition No 28, a special development contribution condition be revised. The submission is comprehensive and considerable in length and the case made is outlined in brief below:

- The appellant could be considered a "serial objector" delaying the planning process with generic objections in appeals many of which are not upheld. The appellant has not provided details of *locus standii* to the appeal site or a true of *bona fide* interest so the reasoning for the appeal is questioned and dismissal of the appeal may be justified. Key elements of retail planning and zoning designations are misinterpreted.

Zoning and nature of use: The zoning in the current 2011 LAP and the 2016 Draft LAP is "Existing Built Up Areas" (Objective ZU 3-1) in which there is no prohibition on retail development or restriction on retail development outside the town centre and sites identified as acceptable for development. It is considered that the planning authority identifies the area as suitable for flexibility in approach. The planning officer assessment is pragmatic and reasonable. The proposal is a replacement licensed discount store on a site where there is a principle of well-established convenience retail development is established. Only the marginal effect of the proposed development, that is, the small increase in net sales area improvement shopping experience,

improvement to design and landscaping are within the parameters of assessment and the decision. The proposed development does not constitute a new retail use as contended in the appeal on the basis of the proposed demolition of the existing store and redevelopment. The proposed development should be considered on its merits as an extension expansion of an existing use. It does not contravene the development plan or local area plan and does not have adverse impact on the vitality and viability of the town centre. The planning officer noted the established principle of development, the zoning and proposal for expansion of the use. The scale of increase is limited in the context of the existing store. A similar level of increase was favourably considered in the decision on a proposal for Edenderry. (PL 247229 refers) It is demonstrated that the modest increase will not have significant adverse impact on existing centres.

Sequential Development.

- The appellant's assessment of the sequential acceptability of the named sites in its review of the sequential assessment is flawed and is not accepted.
- It was clearly demonstrated in the sequential assessment that with the exception of the subject site there are no suitable, available and viable sites for retail development of the nature and extent proposed. Primary criteria for sequential assessment are suitability, availability and viability.
- Edge of centre and out of town locations can be considered if no viable town or district centre/ 'edge of centre' locations can be identified that accord to the Retail Planning Guidelines 2012 (RPG).
- The site is at a sequentially acceptable location and the only site which is suitable, available and viable. It is preferred on a sequential basis when compared with alternative sites where there is no established convenience retail use.
- The site was assessed as more sequentially acceptable than the "edge of centre" Mart Site or the former Keating's Bakery site particularly with regard to the established use. The site complies with the provisions of sequential testing as provided for in the RPG preferred to the alternative sites where there is no retail development on a sequential basis and consistent with the

County and Local Area Plans the commercial character of the area and the proper planning and sustainable development of the area.

Site layout:

- The planning officer accepted the layout as modified in the further information submission which complies with Article 33 (1) (a) of the Planning and Development Regulations, 2001-2015 and addresses concerns of the planning authority the location of Flood Zone A, urban design, landscaping and carparking.

Appropriate design approach.

- The revised layout places the store closer to the R579 and Flood Zone area in the site. The structure is orientated towards the town centre enabling the glazed elevation to integrate into the streetscape, with active street frontage and as a marker to the edge of commercial area and transition to rural hinterland. The revised layout and design enables coherence and legibility and a visual connection to the town centre and to adjacent land uses, enhanced by pedestrian routes. If located on the northern boundary the building turns away from the town inhibiting linkage with the town centre.

Landscaping:

- The proposed development accords with design principles of the Retail Design Manual, 2012 and is accepted as appropriate in design for the location by the planning officer and architect. The proposed development as provided for in the landscape design plan is an appropriate design response consistent with the standards in the Retail Design Guide.

Scale of Development.

- The appellant misinterprets the application in claiming that there is a 68 per cent increase in the net sales floor area. It is a modest increase and is not intended to attract an expanded catchment or affect vitality and viability of the town centre. The catchment is a rural area and substantial, extending to the neighbouring counties of Limerick and Kerry and the potential customer base is 15,144. The discounter model supports rather than replaces trips to

mainstream retailers which it complements. This is a reflection of the evolution of convenience retailing in Ireland.

- The LOR design format enhances functionality, especially the quality of the back of house space which is increased in floor area by 845 square metres. It is a departure from the first generation store design and introduces contemporary features such as the mono pitch roof and glazed façade with active frontage contributing aesthetically along with the landscaping to the surroundings.

Impact on receiving environment:

- The estimated increase in customer numbers and additional loading on the sewage treatment plant would not impact on the River Allow within the SAC as special attention was given to foul water services design. The services design report has an upper design parameter of an estimated uppermost 20 per cent increase in customer numbers which is not projected growth but is incorporated to ensure the foul system accords with design parameters. The additional net retail sales are can be accepted without effect on the environment having regard to the SAC or the town centre.

Sustainable Transport.

- The proposed replacement development will not facilitate any substantive change in the overall retail offer and consequently will not be increased in the catchment area. Carparking requirements reflect the reality of convenience shopping and the proposal is consistent with the parking standards in appendix D of the county development plan. The site is well connected to local populations and the town centre and is not reliant on private transport, catering for all shoppers.

Town Health Check:

- It is acknowledged that a town centre health check, inclusive of qualitative indicators would be beneficial and is supported by the applicant. The claim that no large convenience store development be permitted in advance amounts to embargoing new retail development pending a town centre health check. It is unreasonable in that the proposed development facilitates

construction of a replacement store where the principle is established and the increased net sales area is negligible.

Individual Merit:

- The application should be considered on its own merit having regard to the detailed rationale to justify it which is provided by the applicant. The timing of such a check should have no bearing on the proposed development. The issues leading to the determination of the decision on application under PL 26 246524 are that of potential for retail impact and absence of retail impact assessment and sequential testing and overall design issues. These issues are not relevant to the current proposal as there is a sequential and quantitative retail assessment supporting the site location, is consistent with the zoning and does provide active street frontage and comprehensive landscaping. Whether an expansion or demolition and replacement, the existing land-use is a primary consideration. This is demonstrated in the permitted development on the Donore Road, Drogheda (PL 15/246710) The principle of the existing use was robustly assessed under the parent permission and no material change in circumstances arose. Sequential acceptability had been demonstrated. As is the case with the proposed development, the permitted expansion was proportionate to identified need and the development brings out an improvement and positive development for the site.

Flooding;

- The position of Flood Zone A has changed, the further information request having predated the change in Flood Zone A between the site boundaries. The positioning of the store on the northern boundary as requested by the planning authority is inappropriate due to the location in Flood Zone A in this area. The location is suitable for flood storage in the event of a significant flood event. The position on the southern boundary facilitates the preservation of the area to the north.

Sustainable transport:

- The proposed development is consistent with the RPG which recognises the car as an indispensable part of convenience shopping. As Kanturk's

catchment is predominantly rural it is unrealistic to expect the population to be able to avail of public transport or other sustainable transport. The proposed 148 car spaces are therefore adequate and justified and comply with the standards Appendix D of the Cork County Development plan at one space per 20 square metres GFA.

- Specific attention was given to pedestrian linkage with the town centre and facilities with clearly designed routes on site. Dedicated cycle parking is also provided aligning with standards in the development plan RPG and, *Smarter Travel: A Sustainable Transport Future*.

Condition No 28 – Special Development Contribution

The submission contains a detailed objection to the attachment of the special development contribution conditions although a separate appeal has not been lodged.

- It is requested that the contribution required by Condition No 28 of €205,000 towards the cost of repositioning the right turning lane at the location of the proposed new entrance and for the Kanturk Relief Road Works be omitted. It is submitted that the requirement amounts to double charging and contrary to the Development Contributions Guidelines as it replicates the requirement for a payment of €200,000 under Condition No 57 of the grant of permission under P. A. Reg. Ref. 07/7961 which has been fully paid to the local authority.
- Secondly, with reference to Section 48 (2) (c), 48 12 (a) and 48 (17) and the technical reports on the application file provided by the planning authority it is claimed that requirement is not within the scope of special contributions. The apportionment of costs and the relationship to the proposed development is not available. It is submitted that the planning authority replicated Condition No 57 of the prior grant of permission and added €5000 for the cost of relocating the right turning lane at the entrance.
- According to the appeal the specific (legislative) criteria for attachment of a special contribution condition is not satisfied. There is small increase in net sales area, there is no impact on the R576, and that the Relief Road is not

essential to or of specific benefit to the proposed development. Section 48 (2) (c) and 48 (17) of the Act refers.) Reference is also made in support of the claim, to *O'Malley Construction Company Limited v Galway County Council* [2011] IEHC 440.

- It is accepted that the €5,000 contribution towards the cost of the relocation of the right turning lane is not a cost that is covered by the development contributions scheme and directly benefits the proposed development. The applicant proposes agreement to a revised condition in which there is a requirement to pay a special development contribution under Section 48 (2) (c) in respect of road works and road markings out the application site to facilitate access under the terms of the grant of permission. However, as an alternative, the applicant is willing to carry out these works (shown on drawing SCR_113_100) to the satisfaction of the planning authority.

7.3. It is requested that the decision of the planning authority be upheld with amended conditions as appropriate.

7.4. **Planning Authority Response**

7.4.1. There is no submission from the planning authority on file.

8.0 **Assessment**

8.1.1. The issues considered central to the determination of a decision can be considered under the following sub-headings.:

- Land-use, site location and sequential development.
- Design and layout.
- Transport traffic and parking.
- Flooding and Environmental Protection.

8.1.2. Following from the main assessment, the development contribution condition is reviewed (condition 28) and appropriate assessment screening is conducted.

- 8.2. Land-use, site location and sequential development.
- 8.2.1. As is explained in the submission made on behalf of the applicant, there is a current 'second generation' development programme for upgrading of the Lidl stores throughout the country entailing a combination of replacements of existing stores and new stores on new sites involving new store design, additional facilities and new site and internal layouts. The current proposal is for a modern replacement store and site layout that entails a very much enlarged floor space which facilitates the operation of the business but only a marginal increase in net retail sales space.
- 8.2.2. It is agreed with the planning officer that the nature of use for the site location has already been established by reason of the prior grant of permission and establishment of the existing Lidl store operation on the site. It is therefore considered inappropriate to consider the proposed development as a *de novo* proposal having regard to land use and the development objectives for the location and the town of Kanturk. The area between the site location and the town centre on the west side of the road is in mixed use development and the Cooperative creamery development is a short distance to the north east on the opposite side of the R579. The zoning objective: "existing built up area" is unchanged and is of note that the speed restriction signs for the urban area are a short distance further to the south on the Banteer Road. The rationale for the planning officer's suggestion for the building to be positioned towards the north side of the site closer to the adjacent existing built up area is reasonable although the applicant having referred to flooding characterises opted against the repositioning the building and this was accepted.
- 8.2.3. In principle, the nature of the use of the proposed development is consistent with the zoning objective "existing built up area" as was established at the time of the consideration of the application of the existing development. Convenience retailing can be considered although other strategic and local objectives must simultaneously be taken into consideration in an assessment according to the local area plan. While there is a replacement upgraded convenience store involved it is agreed that the additional net retail sales space and potential increased in business is relatively insignificant. As the existing store is an established use has previously been deemed to accord with the zoning and other policies and objectives and, as the

increase is relatively immaterial it is agreed with the planning authority and the applicant that sequential testing exercise to justify the site location is inessential.

- 8.2.4. It is also agreed and accepted that development that would compromise existing town centre development and which precludes consideration of existing town centre sites should be discouraged so that the protection and regeneration of the town centre and sequential development is prioritised in accordance with county development plan and local plan strategic policy and local objectives. The entire town was visited in the course of the inspection in connection with the appeal and it is agreed that there are brownfield opportunity sites such as Mart closer to the town centre that might be suitable for convenience store development. However, the assertion by the appellant that the subject proposal for the upgrade and extended replacement store would compromise and undermine the vitality and viability of the town centre is not accepted. The appellant's argument would be reasonable and potentially applicable, subject to sequential testing, should a new retail convenience store retail proposal involving significant additional retail floor space and/or broadened retail offer intended to attract a larger catchment, larger spend and increased trips to the store be before the planning authority or an Bord Pleanála on appeal.
- 8.2.5. Nevertheless, the sequential and quantitative retail assessment included in the further information submission and the case made within it as to favourability of the site of the existing development as opposed to the Mart and Former Keating's Bakery site have been noted. Having reviewed the study and considered the proposed development on its own merits it can be concluded that the proposed development is not in conflict with the criteria with regard to site suitability, availability and viability within recommendations in the Retail Planning Guidelines DOECLG, (2012) The appeal grounds would be more appropriate where significant expansion of net retail sales space is involved or a new store as opposed to a replacement store is subject of the proposed development. Furthermore, each case should be considered on its own merits and as such there are limitations in so far as precedent could be taken from prior decisions on proposals for new, replacement or extended LidL stores.

- 8.3. Design and layout.
- 8.3.1. The applicant has introduced a new contemporary LOR design concept for its second generation new and replacement stores enhancing its operations and also providing for a significantly enhanced external presentation entailing a glazed façade and monopitch roof supported by hard and soft landscaping. The enhanced design provides for an aesthetically improved presentation to the street. Overall the visual impact and the appeal of the development from within the public realm along Banteer Road would be significantly enhanced.
- 8.3.2. The initial request for the building to be positioned so that it is oriented towards the town centre to the north, on the northern section of the existing site by the planning authority is appreciated. While the repositioning would have been desirable, the reasoning, relating to overlap of Flood Zone 'A' areas within the site for the retention of the proposed position on the southern end of the enlarged site is reasonable.
- 8.3.3. The position is within the zoned area and within the speed limit signs and to the inner side of land for destined for industrial development provides for an enhanced positive road frontage development within the transitional location or outer edge of the built up area of Kanturk. The layout which in revised proposal provides for primacy for pedestrian linkage and a good, unobstructed pedestrian environment and acceptable signage.
- 8.4. Transport traffic and parking.
- 8.4.1. By reason of the location of Kanturk for which the catchment is a large rural area, any suggestion that a substantial proportion of the journeys to and from the store for convenience goods purchases should be by sustainable public transport, cycle and foot is unrealistic. It is reasonable for the urban area within a short distance, including trips originating in the town centre. Trips by means other than a private car that could reasonably be expected to be feasible would amount to a limited proportion of the overall trips.
- 8.4.2. A location within the centre of the town, at the former Mart or former Keating's Bakery site would not have had potential to facilitate a significantly greater proportion of pedestrian and cycle trips within the overall trip and travel patterns for customers of the store. Thus it is considered that with regard to encouragement of sustainable

trip generation, the location whether it is at the edge or within the centre of Kanturk is relatively immaterial.

- 8.4.3. Nevertheless, encouragement of alternative sustainable travel is supported and encouraged by way of the facilities for cycle, motorcycle parking and by the pedestrian facilities and connectivity through the site within the proposed development. Bearing the location of Kanturk in mind, the lack of alternative transport options and the wide rural catchment area, it is agreed with the applicant that the on-site carparking provision, (the layout and landscaping of which is high quality) is reasonable and is justified.
- 8.4.4. There is no objection to the proposed relocation of the entrance to the site and associated right turning lane road markings from the existing to the proposed location on the frontage to Banteer Road, a regional route linking Cork and Kanturk which are on a straight section of the road with good sightlines and availability of pedestrian footpaths.
- 8.5. Flooding risk.
 - 8.5.1. The proposed position of the building within the Flood Zone B, as subsequently confirmed in the further information submission which is outside the Flood Zone areas within the site along with the incorporation of appropriate storm water attenuation and discharge and landscaping details which accord with the submitted flood risk assessment arrangements. The incorporation of appropriate pollution control measures for storm water which can also be addressed in conditions should prevent potential contamination of storm water collected within the site.
- 8.6. Special Development Contributions. (Condition No 28)
 - 8.6.1. The applicant in the response to the appeal requests an amendment to Condition No 28 according to which there is a requirement for payment of a special development contribution towards the costs of the Kanturk Relief Road. There is an additional payment included to cover the costs of the works for the replacement right turning lane at the location of the proposed new entrance. There is no dispute on the part of the applicant with regard to the payment for the costs of the right turning lane, the applicant also being willing, as an alternative option to carry out this works at the developer's own expense. It is considered reasonable that the costs of the works for relocation of the right turning lane be covered by a special development

contribution under section 48 (2) (c). The costs could come within the meaning of provisions for special development contributions not covered by the development contributions scheme and which directly facilitates and benefits the development.

- 8.6.2. With regard to the requirement for a special development contribution towards the costs of the Kanturk Relief Road, it is noted that this project is included among the specific objectives of the Kanturk Local Area Plan which would suggest that the project is also included in the development contributions scheme. It is questionable as to whether the requirement for the contribution would satisfy the criteria for attachment of special development contribution conditions provided for in Section 48 of the Planning and Development Acts, 2000 – 2015. It would need to be established as to whether the costs of the project are included within the development contributions scheme adopted by the Council.¹
- 8.6.3. However, there is a separate issue of the contention that the requirement amounts to double payment in that a similar condition was attached to the prior grant of permission for the existing development and that full payment was made. This matter could be addressed by way of attached of a revised condition whereby the payment is required less any payments previously made, (and not refunded) in respect of the costs of the Relief Road, thus eliminating potential for overcharging.

8.7. Appropriate Assessment.

- 8.7.1. This assessment has been conducted with reference to the appropriate assessment screening report provided with the application. The site is located approximately 100 to 150 metres to the west side of the River Allow one of several tributaries of the Blackwater River within the Blackwater River SAC (Code 002170)
- 8.7.2. The SAC is of significant conservation significance with the presence of considerable Annex 1 animal and plant species and habitats and marshland and wet land communities. The conservation status for the habitats and species of qualifying interest range from bad to inadequate to favourable for the freshwater habitats in the SAC.

¹ It could not be confirmed at the time of writing whether the project is included as the development contribution scheme was not available for inspection on the Council's website.

The site is the site of the existing Lidl store on the west side of the Banteer Road (R579) which is otherwise in use as a hard surfaced carparking and circulation area. The River Allow does not give rise to fluvial flooding, the areas within Flood Zone A and Flood Zone B within the site having been designated as having low risk of fluvial flooding and no risk of pluvial flooding.

- 8.7.3. The threats to associated with waste from demolition and construction works, nutrient input generated by the project and increased effluent disposal from the existing treatment plant. Pollution and impact on hydrology in surface water run off at operational stage which could affect the species and their habitats which are qualifying interests.
- 8.7.4. The threats are the water quality within the river Allow that of significant increases in nutrient levels, BOD and suspended solids in the water treatment plant taking waste from the proposed development, contamination of flood waters by pollutants escaping to the river waters, dust and noise and waste pollution at both construction and operational stages.
- 8.7.5. Aquatic habit was examined and biological samples were taken at three selected locations of riffle/glide. Water samples upstream and downstream of the WWTP outfall for the waste water that treats the existing development has been recorded as unpolluted and achieving good status up stream and unpolluted downstream having regard to the Water Framework Directive. Conditions are recorded as poor quality further downstream at a third site and condition should not be allowed to deteriorate at construction or operational stages in view of the presence of protected species requiring high quality water standards. (Freshwater pearl mussel does not occur downstream of Kanturk and is to be considered a conservation objective upstream only of Kanturk according to revisions to be made to the Conservation objective for the site.)

The project comprises the demolition of existing Lidl convenience store building and associated development and construction of a larger convenience store building on a larger site with associated hard surfacing to provide for carparking, associated development and landscaping works. The proposed development does not involve substantive intensification of use of the site at operational stage. A marginal increase in foul effluent is anticipated. Specific measures and design mitigation are

incorporated in the proposed development in conjunction with the management and methodologies for storage and treatment of materials and storm water (to include collection, installation of a bypass petrol interceptor, attenuation facilities and discharge) and provision is made for compliance with standards for construction and demolition waste management. The existing additional capacity for the treatment plant is unknown and an additional capacity of 3000 pe is anticipated. The effect on the waste water infrastructure and treatment plant is marginal and can be regarded as neutral. The proposed replacement of the existing store is essentially neutral in impact and no cumulative individual or in combination effects are predicted.

- 8.7.6. Having regard to the location, scale and nature of the proposed development it is considered that the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on the Blackwater River Special Area of Conservation or any other European site.

Recommendation

- 8.8. In view of the foregoing, it is recommended that the appeal be rejected and that the planning authority decision be upheld. Draft Reasons and Considerations and Conditions follow.

9.0 Reasons and Considerations

- 9.1.1. Having regard to the scale and nature of the existing development on the site and to the scale, nature and limited extent of increased net retail sales area provided for in the proposed replacement development; to the site location within the development area of the town of Kanturk town and within an area subject to the zoning objective "Existing built up area" according to the Kanturk Electoral Electoral Area Local Area Plan, 2011, and, to the established pattern and character existing development in the vicinity it is considered that the proposed development would not adversely affect the vitality and viability of Kanturk Town centre, would not be seriously injurious to the visual amenities, would integrate with the established pattern and character of development in the area, would be acceptable in terms of traffic safety and convenience and, would be compatible with the existing development in the

immediate vicinity. 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 to the planning on 21st December, 2016 and 6th February, 2017 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 which shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The external elevation and roof finishes shall accord with the plans and particulars lodged with the application on 2nd September, 2016.

Reason: In the interest of clarity and visual amenity.

3. The following requirements shall be provided for in the development:

1. The existing site entrance shall be made redundant and closed up and with new boundary treatment to match the existing boundary treatment.
2. The new entrance shall be recessed by a distance of 4.5 metres from the site frontage and the splays shall be at an angle of 45 degrees.
3. The front boundary walls shall not exceed a maximum height of one metre above the level of the public road.

Reason: In the interest of orderly development and vehicular and pedestrian safety.

4. 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 surface materials, kerbs and markings within the development;
 - (b) 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) boundary treatments at the perimeter of the site, including heights, materials and finishes, and,
 - (e) details of the finishes to the area between the proposed boundary line and the public road along the R579

Revised plans and particulars showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. The development shall be landscaped in accordance with the agreed scheme.

Reason: In the interest of visual amenity.

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

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

6. The following requirements shall be provided for and adhered to in the development:

- (a) No additional signage other than that shown on the submitted drawings shall be erected on site.
- (b) External shutters are not permitted. Internal shutters, if erected, shall be of the perforated type, coloured to match the shopfront colour.
- (c) No adhesive material shall be affixed to the windows or the shopfronts.

Reason: In the interest of visual amenity.

7. Notwithstanding the provisions of the Planning and Development Regulations 2001, as amended, no advertisement signs other than those authorized by this grant of permission, advertisement structures, banners, awnings, canopies, flags, or other projecting elements shall be displayed on the building or erected within the curtilage of the site, without a prior grant of planning permission.

Reason: To protect the visual amenities of the area.

8. 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.

9. No additional development shall take place above roof parapet level, including lift motor enclosures, air handling equipment, storage tanks, ducts or other external plant, telecommunication aerials, antennae or equipment, unless authorised by a prior grant of planning permission.

Reason: To protect the residential amenities of property in the vicinity and the visual amenities of the area.

10. All service cables associated with the proposed development shall be run underground within the site.

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

11. 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.

Reason: In the interest of visual amenity.

12. A plan containing details for the management of waste and recyclable materials shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, waste shall be managed in accordance with the agreed plan.

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

13. 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 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.

14. 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 the commencement of

development. This plan shall provide details of intended construction practice for the development, including hours of work, noise management measures and off-site disposal of construction/demolition waste.

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

15. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000 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.

- 16 The developer shall pay the sum of €5,000 to the planning authority as a special contribution under section 48 (2)(c) of the Planning and Development Act 2000 in respect of road marking to provide for a right turning lane at the entrance to the proposed development. This contribution shall be paid prior to the commencement of the 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 the Board 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.

- 17 The developer shall pay the sum of €200,000 to the planning authority as a special contribution under section 48 (2) (c) of the Planning and Development Act 2000 in respect of the costs of the Kanturk Relief Road. All contributions previously paid as a special contribution under Section 48 (2) (c) of the Act in respect of the Kanturk Relief Road and which have not refunded to the developer shall deducted from the amount payable. The contribution shall be paid prior to the commencement of the 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 the Board 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.

Jane Dennehy
Senior Planning Inspector
31st July, 2017.