



An
Bord
Pleanála

Inspector's Report PL09.248675.

Development	Refurbishment of Dunnes Stores and associated works.
Location	Newbridge Shopping Centre, Newbridge, Co. Kildare.
Planning Authority	Kildare County Council.
Planning Authority Reg. Ref.	16/1337.
Applicant(s)	Castlebrook Investments Ltd.
Type of Application	Permission.
Planning Authority Decision	Grant permission subject to conditions.
Type of Appeal	Third Party vs. grant.
Appellant(s)	Andrew Ross.
Observer(s)	None.
Date of Site Inspection	31 st August 2017.
Inspector	Ciara Kellett.

1.0 Site Location and Description

The site is located in Newbridge Town Centre. It is a corner site at the junction of Edward Street (R445) and the Athgarvan Road¹, and stated as being c.2.3Ha. It is within the core retail area as defined by the Newbridge Local Area Plan 2013 - 2019. Newbridge Retail Park is located to the immediate east of the site, a Lidl Store further east and the Whitewater Shopping Centre lies beyond that. Woodies DIY and a Tesco store are located to the south-west of the site. Newbridge Silverware is located off the Athgarvan Road to the south.

The Dunnes Stores shopping centre is a typical 1980's construction with a large convenience and comparison offering within the store, noted as having a net retail sales area of 6,282sq.m (including smaller shop units within the mall). It is a single storey structure with white cladding panels and a brick façade at low level with limited display windows. A number of the smaller shop units within the mall are currently vacant.

A large surface car park lies to the north of the centre fronting onto Edward Street. Access and egress from the surface car park is off the Athgarvan Road. A second exit only from the surface car park lies further east along the Athgarvan Road, adjacent to the Retail Park entrance.

Appendix A includes maps and photos.

2.0 Proposed Development

The existing shopping centre is noted as being built in 1987 and is described as being in need of modernisation. The applicant intends to upgrade the shopping centre which involves partial demolition of the existing shopping mall and restaurant area.

An extension to the current retail area is proposed with modifications to the existing structure through amalgamations of adjacent shop units, to provide retail and ancillary café/restaurant floor space with a net retail sales area of 6,426sq.m. The

¹ Also referred to as Military Road

remaining section of the shop will incorporate 4 no. shop units (338sq.m), and an upgraded toilet block. Total net retail floor space will amount to 6,764sq.m.

Elevations facing Edward Street and Athgarvan Road will be upgraded, and the existing car park layout will be reconfigured to provide 417 spaces as well as hard and soft landscaping. A new pedestrian covered walkway will be provided along the centre of the car park. Signage and two new totem signs are proposed.

A Planning Report, Traffic and Parking Statement and an Engineering report accompany the application as well as standard drawings and forms.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to grant permission subject to 37 standard conditions, including conditions no.25 and 26 which require the applicant to maximise traffic flows in this SCOOT region, as well as upgrades to the traffic related CCTV in the area. Conditions no. 35 and 36 require the applicant to reconstruct damaged footpaths, and to secure the precast concrete capping along the wall of the service yard.

3.2. Planning Authority Reports

The Planner's Report is the basis for the Planning Authority decision. The application was subject to a request for Further Information and Clarification of Further Information. Therefore, there are a number of planning and technical reports on file. They can be summarised as follows:

First Planning Report:

- Considers the principle of the proposed development is acceptable.
- Considers upgrade and modernisation of the centre to be a positive contribution to the visual amenities of the area.
- Considers the replacement signs to be acceptable, but considers that additional landscaping proposals are required to assist in improving the public realm and urban design of the area.

- Notes vehicular access to the site will remain as is. Notes Transportation Department seek Further Information in relation to the potential reopening of a pedestrian access way between the site and the adjoining lands. The applicant's comments regarding legal control over the Retail Park lands are noted, but the Department consider a pedestrian connection is important to connect the shopping centre to surrounding retail and town centre sites.
- Notes District Engineer recommends Further Information be sought on the footpath and the issue of precast concrete capping being dislodged.
- Further Information is sought in February 2017 on comments by the Transport Department and the District Engineer, as well as requesting the applicant to comment on the third party submissions.

Second Planning Report:

- The applicant responded to the request in March 2017 detailing the history of the wall between both sites. It is stated that the original permission was for a standalone shopping centre, and that permission was never sought for a vehicular and/or pedestrian link between the shopping centre and the Retail Park, or in any subsequent applications. The applicant further states that a vehicular link was in place 2 years ago, but that was when the Retail Park was mostly vacant and was used for bulky goods. It is stated that the Retail Park has changed character from bulky goods to mainstream retailing which has the potential to increase traffic volumes.
- Planner notes that the applicant states that they do not own lands outside the red line and therefore not in a position to provide a link. Notes the applicant states the shopping centre has been in existence for 30 years and that the 2015 planning permission did not refer to links. Notes reference made to other recently granted planning permissions in the vicinity which provide insufficient detail on the new street and road network as envisioned in the LAP.
- Planner notes that the Transportation Department seek Clarification of Further Information on this point. The Transport Department state that they have serious concerns with the response and state that they are mindful to recommend refusal, if the boundary wall remains in position.

- Notes response to other items and requests Clarification of Further Information as per the Transportation Department request, with respect to vehicular access to the adjoining site.
- Clarification of Further Information is sought in March 2017. It is stated that the boundary wall has resulted in restricted permeability and connectivity between the shopping centre and the Retail Park, which is not in compliance with DMURS standards. The applicant is requested to show how it is proposed to address compliance with DMURS, connectivity and permeability and traffic safety.

Third Planning Report:

- The applicant responded to the request in April 2017. The applicant states that the rationale for not providing vehicular access to the adjoining Retail Park was set out in the earlier response to Further Information. The reasons are summarised including shopping centre history, extant planning permission with no link, error in Newbridge LAP, planning precedent for Lidl (Reg. Ref. 13/1041) on other side of Retail Park with no link, and extended Retail Park permission (Reg. Ref. 15/819) which it is considered is substantially below parking requirements, legal reasons, use of a negative planning condition, reasonableness/necessity of clarification request, traffic safety, connectivity and permeability, and compliance with DMURS.
- Planner notes that the Transport Department have no objection but seek a specific condition requiring the opening of the wall. Planner refers to Section 34(4)(a) of the Planning and Development Act. States permeability would be welcome, but notes the applicant's assertion that they do not control lands outside the red line, and that a legal agreement with the adjoining landowner would be required. Having regard to Section 34(4)(a) of the Act states that the inclusion of a condition requiring the reinstatement of permeability is not feasible and should not be included.
- Recommends permission is granted subject to conditions.

The decision was in accordance with the Planner's recommendation.

3.2.1. Other Technical Reports

- **Area Engineer:** Further information requested with respect to footpaths and capping of boundary wall. Following response, no objection subject to conditions.
- **Water services:** No objection subject to conditions.
- **Environment:** No objection subject to conditions.
- **Transportation:** Requests that applicant reinstate full permeability between the shopping centre and the Retail Park which existed up to 2.5 years previous. This will be in compliance with DMURS which is now mandatory. Following response, requests Clarification of Further Information. Following response, has no objection to the development but requests condition to reinstate link.
- **EHO:** No objection subject to conditions.
- **CFO:** No objection subject to conditions.

3.3. Prescribed Bodies

- **Irish Water:** No objection subject to conditions.

3.4. Third Party Observations

Four submissions were received by the Planning Authority. Issues raised included:

- Welcome refurbishment.
- Since the wall was built traffic congestion has caused major disturbance.
- Leaseholders of Unit 7 in the Shopping Centre consider proposal is contrary to original plans.
- No consideration given to the Newbridge Local Area Plan and Figure 10, which indicates intention to establish a “Local Road Linkage” with adjoining commercial development to the east.
- Link was in existence for 14 years.
- Request recycling facilities are restored.

- Landscaping concerns.

4.0 Planning History

4.1. Planning Applications associated with the site (summary):

- **Reg. Ref. 15/522:** Permission granted in September 2015 for the amalgamation of retail units with the Dunnes Stores anchor unit. This permission has not been implemented.
- **Reg. Ref. 13/794:** Permission granted in November 2013 for an extension of duration of Planning Permission **Reg. Ref. 07/2826** granted in November 2008 for an extension to the north-west side of the existing mall designed to link to the permitted multi-storey car park.
- **Reg. Ref. 13/53:** Permission refused in May 2013 for the replacement of 1 no.3 sided totem sign.
- **Reg. Ref. 11/1197:** Permission granted in February 2012 to extend the duration of permission of **Reg. Ref. 06/388** granted in April 2007 for a two storey car park and amendments to the existing surface car park.
- **Reg. Ref. 03/1604:** Permission granted in April 2004 for a two storey stockroom extension and a new HGV one-way system.
- **Reg. Ref. 99/2240:** Permission granted in December 2000 for an extension to the north-west.
- **Reg. Ref. 91/1254:** Permission granted in January 1992 for a new pedestrian entrance from Edward Street.
- **Reg. Ref. 86/585 & 87/223:** Parent permissions for a free standing shopping centre providing for the Dunnes Stores anchor unit and 19 retail mall units and car park. Vehicular entrance permitted off Athgarvan Road and an exit only slip lane onto Athgarvan Road.

4.2. Planning Applications in the Retail Park (summary of key applications):

- **Reg. Ref. 15/819:** Permission granted in November 2016 for an extension to the Retail Park for 5,403sq.m of retail floor space, 9 no. apartments, and

office space and 101 car parking spaces. (Development Contribution and parking shortfall contribution appealed to the Board Ref.PL09.246805)

- **Reg. Ref. 14/97:** Permission granted in March 2015 for the change of use of a retail warehousing unit to create two retail units – Homestore & More and Supervalu. (Development Contribution appealed to the Board Ref.PL09.243664).
- **ABP Ref. PL09.125609, KCC Reg. Ref. 00/2262:** Permission granted in January 2002 to DID Electrical for changes and retention permission at units 8 and 9 of the Retail Park. The applicant appealed conditions to the Board.
- **Reg. Ref. 99/1480:** Permission granted in March 2000 for a change of use from industrial to retail warehousing.
- **Reg. Ref. 98/892:** Permission granted in January 1999 for development of 9 industrial units on site to the east of the shopping centre.

5.0 Policy Context

5.1. Newbridge Local Area Plan 2013 - 2019

Under the Newbridge LAP, the site is zoned '**Town Centre** - To provide for the development and improvement of appropriate town centre uses including retail, residential, commercial and civic uses.'

Chapter 3 refers to the Town Profile, Chapter 7 to the Town Centre and Chapter 8 to Land Use zoning.

Section 3.8 of chapter 3 refers to the town centre. It states that "*It is a key aim of this Plan to consolidate and strengthen the town centre. There are extensive lands zoned for town centre purposes which can accommodate the required expansion within a compact urban environment rather than at peripheral locations*".

Chapter 7(vi) states "*The plan also sets specific policies for local improvements in and around the town centre and objectives to secure routes for long term roads infrastructure*".

Map 1 identifies the Core Retail Area, which the shopping centre is located within. Section 7.5.9 states "*In addition to the former industrial lands, the upgrading/*

redevelopment of the Moorefield/Dunnes Shopping Centre and adjacent lands are key opportunities for further expansion and improvement of the heart of the town centre. This would serve to consolidate it and provide the basis for enhanced linkage between the different parts of Main Street’.

Policy RR11 states:

To relieve traffic congestion within the town centre by improving permeability.

Section 7.6 refers to Urban Design and Town Centre Improvement. Figure 10 within this section identifies a local road going through the Retail Park and exiting at the existing entrance and exit of the shopping centre. Section 7.6.3 refers to Proposed Urban Strategy. It states:

Movement Strategy – the purpose of this strategy is to identify streetscape improvement works within the existing town centre and outline proposals to dismantle the large urban blocks in the south side of Main Street/Edward Street by creating two new primary streets – Military Road to Edward Street (beside Lidl) and the Athgarvan Road to Main Street (through Bord na Mona).

Figure 15 illustrates the Public Realm Strategy and indicates an existing pedestrian focussed route through the Retail Park and into the shopping centre. A proposed pedestrian focussed route is illustrated to the east of the shopping centre (as noted above, in section 7.6.3 of the Plan to create two new primary streets – Military Road² to Edward Street) as well as a proposed public urban square/plaza/park in the centre of the Retail Park.

Figure 21 illustrates the Design Brief Study Areas. An area to the east of the shopping centre incorporating the Retail Park is identified as Design Brief 2. With respect to Connectivity/Movement, it states:

- *New central street north/south to increase permeability linking Military Road to Edward Street*
- *A number of east/west secondary streets to facilitate additional permeability and pedestrian movement between key spaces*

² Athgarvan Road is also called Military Road in various documents.

- *New pedestrian connections to the Courtyard Shopping Centre, Newbridge Retail Park and The Whitewater Shopping Centre*

5.2. Design Manual for Urban Roads and Streets (DMURS)

Shopping Centres are referred to in Figure 3.5: Context and The Place Value of Streets. It states:

This refers to existing Shopping Centres developed to service lower density areas. These generally do not display the characteristics associated with highly valued places due to their inward looking nature and focus on vehicle movement (including extensive areas of surface parking). Their importance as destinations gives them a high place value that needs to be better responded to should these centres undergo significant redevelopment.

5.3. Natural Heritage Designations

Pollardstown Fen SAC (Site Code 000396) is located c. 1.6km to the north-west of the site and Mouds Bog SAC (Site Code 002331) is located c. 4km to the north.

6.0 The Appeal

6.1. Grounds of Appeal

One third party appeal from Mr. Andrew Ross, Unit 6B, Cill Dara Industrial Estate, Newbridge, has been lodged. In summary it states:

- Highlights that the Transportation Department had serious concerns with the boundary wall staying in place, and stated that the wall would endanger public safety by reason of a traffic hazard, and is not in compliance with DMURS.
- Notes Transport Department required a condition to be attached to the grant to have the wall removed and fully reinstate access.
- Considers the Dunnes Stores site is a key opportunity site within the Newbridge Local Area Plan.

- Refers to Figures 10 and 15 of the LAP which illustrate that the link was clearly in place at the time of the preparation of the LAP, and considers the link is clearly on the drawings submitted with previous planning applications (Reg. Ref. 13/794 and 13/53).
- States that the wall is over 70m in length and 2m high, and acts as a barrier between the site and surrounding area.
- Notes the surrounding site is considered a key opportunity site. Considers Dunnes site an adjoining site which should be linked to the opportunity site.
- Disagrees with the applicant's response to Clarification of Further Information where it is stated that DMURS does not apply to private car parks. Considers development fails to comply with policies and is contrary to proper planning of the area.
- References the Planner's comments in relation to Section 34(4)(a) of the Planning and Development Act and refers to Section 34(4)(b), and considers that permeability would serve the common interest and, therefore, the Planning Authority is entitled to ask for reinstatement of the access.
- Cannot understand the applicant's contention that they cannot reinstate the access because they do not control lands outside the red line. Notes that the applicant, in response to the Further Information, states that the applicant took the decision to close the link without any legal agreement with the adjoining landowners, but now has no power to carry out the reinstatement of the access.

6.2. Planning Authority Response

The Planning Authority responded stating that they have no further comment and refer to all internal reports.

6.3. Applicant's Response

The applicant responded to the appeal. The applicant considers that the appeal can be summarised under 4 headings: Traffic issues raised by KCC Transport Department; Compliance with Newbridge LAP; Compliance with DMURS; and power to impose planning conditions.

In summary, it states:

6.4. Traffic Issues:

- Query why, after the response to the Further Information request, the Transport Department consider the development to endanger public safety by reason of creating a traffic hazard.
- Consider the Transport Department provided no evidence to substantiate their claim, that the act of reinstating a lawful wall, has or could endanger safety, and consider this amounts to an accusation against the applicant.
- Considers the Technical Report prepared by their consultants concludes that the proposal will not result in any significant impacts on the road network and will not lead to a traffic hazard. The reinstatement of the wall has resulted in no negative impacts in terms of sightlines, indivisibility between pedestrians and vehicles, or vehicle speeds within either development. The net retail sales area is similar to that granted under Reg. Ref. 15/552.
- Providing a vehicular access between the shopping centre and the Retail Park would place undue pressure on the shopping centre car park, by introducing a connection that was never provided as part of either sites planning applications/permissions, and would expose customers to increased risk of traffic hazard by encouraging rat-running through the site.
- It is not the responsibility of the shopping centre to service the traffic requirements of adjoining developments.
- Transport Department have failed to give credence to the fact that the shopping centre was constructed as a standalone development and that a vehicular link was never permitted or sought, therefore, it is inaccurate to state that the reinstatement of the wall has restricted permeability when a formal

link was never permitted. Consider that the Department continuously fail to acknowledge the existence of the second customer vehicular exit located at the south-east corner.

6.5. Compliance with Newbridge LAP

- It is acknowledged that an opening in the wall between the Retail Park and the shopping centre did exist at one point, but did not have permission and has been closed for approximately two years.
- Permission for a local road running through the middle of the shopping centre car park has never been sought or permitted. There is no public right of way. The existing local road illustrated in Figure 10 of the LAP does not exist and is shown in error.
- Refers to appellant's reference to the link shown on drawings accompanying Reg. Ref, 13/794 and 13/53. Notes the link was not authorised, Reg. Ref, 13/794 was never implemented and 13/53 was refused.
- Notes Urban Block of Design Brief 2 in the LAP does not include the shopping centre. There is no reference to the shopping centre, therefore, there is no specific policy or objective requiring a vehicular link to be provided between the shopping centre and the Retail Park.

6.6. Compliance with Design Manual for Urban Roads and Streets (DMURS)

- Considers sites existing connections are more than adequate to serve the proposed development and existing connections do not conflict with DMURS.
- Notes there is no guidance provided within DMURS relating to existing or proposed shopping centres, and considers appellant's 'shopping centre quote' is taken from "Figure 3.5: Context and the Place of Streets". Considers the proposed development does not represent significant redevelopment of the shopping centre as referred to in DMURS Note 1.

6.7. Power to impose Planning Conditions

- Notes Section 34(4)(a) of the Act gives power to impose a condition regulating the development or use of adjoining land, but such land must be under the

control of the applicant and the condition must be “expedient for the purposes of or in connection with the development authorised by the permission”.

- Notes the applicant does not control lands outside the red line and therefore is not in a position to meet the planning authority’s request. Considers it would be ultra vires to condition any new link (vehicular or pedestrian).
- There is no public right of way. A planning condition requiring a vehicular link to be provided to the Retail Park would result in the applicant ceding control over the car park as a new vehicular link, which would result in creation of a new public right of way over the car park. Consider that a condition of this nature is unlawful.
- Consider a new vehicular link is not required to serve the proposed development. The development will increase the floor space by 2.38% and consider that the site has adequate vehicular and pedestrian access to serve the existing and proposed development.

7.0 **Assessment**

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

- Link to adjacent Retail Park
- Appropriate Assessment

7.1. **Link**

There has been no third party appeal in relation to the principle of redevelopment of the shopping centre, nor in relation to the actual design proposed. I am satisfied that the proposed modifications on the subject site are acceptable in principle.

The third party appeal lodged with the Board is fundamentally about a link between the shopping centre and the Retail Park. The shopping centre has as its anchor tenant Dunnes Stores, with a number of smaller units in the mall which are mostly

vacant. The Retail Park has a mix of occupants, including DID Electrical and more recently Supervalu and Homestore & More.

Both the applicant and the appellant have brought up a number of issues relating to the link, and I intend to consider them under the following headings: History of both sites including relevant planning permissions; compliance with the Newbridge Local Area Plan 2013 – 2019; compliance with DMURS; and power to impose conditions.

7.1.1. **History of both sites**

From a review of the Planning History of both sites, the shopping centre and the Retail Park (see Section 4 above), it would appear that the shopping centre was granted permission in the late 80's and has been in existence since then. The shopping centre was developed as a standalone unit.

It is unclear what existed to the east of the site in the late 80's, but the first planning application for development of that site in recent times was for the development of 9 industrial units granted permission in January 1999 (KCC Reg. Ref. 98/892). Bin stores are indicated along the boundary, as illustrated on drawings following a request for Further Information. A planning application for a change of use to retail warehousing was granted in March 2000 (KCC Reg. Ref. 99/1480), which indicates parking spaces with what appears to be a path along the boundary. I note that detail of what the boundary actually consisted of is not indicated on drawings (i.e. whether it was a concrete wall etc.)

Planning Application ABP Ref. PL09.125609, KCC Reg. Ref. 00/2262, granted in January 2002, was for changes and retention permission at units 8 and 9 of the Retail Park for DID Electrical. In the Inspector's Report there is a comment that "*Up to recent weeks it was not possible to gain access to the retail park from the Shopping Centre as the two sites were separated by a 2m high concrete block wall. Vehicular and pedestrian access has now been facilitated by the removal of part of this wall*". Parking spaces were identified on that site layout, where the wall is now.

From a review of the information on the file provided by both the applicant and the appellant as well as planning history, it would appear that the wall between both sites was removed in the early 2000's and re-erected approximately 2 – 3 years ago.

From a review of the main files associated with both sites, it would appear that

neither its removal nor its subsequent reinstatement was the subject of any planning application or permission.

I have reviewed the files referred to by the appellant where the drawings indicate that a link between both sites exists (Reg. Ref. 13/794 and Reg. Ref. 13/53). As stated by the applicant, Reg. Ref. 13/794 has never been implemented, and Reg. Ref. 13/53 was refused permission.

In conclusion, no link existed when the shopping centre and Retail Park were first developed as illustrated on numerous planning permission drawings. Those applications were assessed by the Council on the basis of no link between the two sites. The removal of the wall in the early 2000's and its recent reinstatement was not the subject of any planning application or permission. Thus, I consider there is no established link, pedestrian or vehicular, between the two sites.

7.1.2. Compliance with Newbridge Local Area Plan 2013 - 2019

There are a number of figures contained within the LAP illustrating various permeability policies and objectives for the town centre area³. A number of the figures indicate existing local roads, and existing and proposed pedestrian focussed routes.

Figure 10 is referred to by both the appellant and the applicant. Figure 10 of the LAP indicates a local road between the Retail Park and the shopping centre. I agree with the applicant that this may be an error. Regardless of the merits of a link between both sites, this was not a local road, and according to the applicant is not a public right of way.

Figure 15 indicates a "pedestrian focussed route" existing between both sites. It also indicates a proposed pedestrian route running north-south to the east of the site of the shopping centre, potentially where the existing vehicular exit only from the shopping centre currently exists, or to the west of the Supervalu/Homestore & More unit of the Retail Park.

It is likely that the reference to the "existing" pedestrian focused route refers to the fact that a link existed between both sites, at the time of the drafting of the Newbridge LAP.

³ Copies of the figures are in the pouch of the file for the Board's convenience

Figure 18 indicates a pedestrian priority route linking the Athgarvan Road and Edward Street running north-south along the eastern boundary of the shopping centre. Another is shown adjacent to the Lidl store which lies to the east of the Retail Park. This is referred to in a number of sections of the LAP, with the stated intent of dismantling the large urban blocks on the south side of Main Street/Edward Street.

The Design Brief Area 2 incorporates the Retail Park. It does not include the Dunnes Stores shopping centre site. The shopping centre is identified for upgrading to expand and improve the heart of the town centre (Section 7.5.9 of the LAP). The Design Brief with respect to connectivity and movement refers to new pedestrian connections between the Courtyard Shopping Centre, the Retail Park and the Whitewater Shopping Centre, as well as east/west secondary streets to facilitate additional permeability and pedestrian movement between key spaces. There is reference to deliver east-west movement both within the area and to adjoining sites, but there is no specific reference to the Dunnes Stores shopping centre.

As such, while it would be preferable for a link between both sites to improve permeability, and assist with the clear intention of the Council to improve connections between all the sites to the south of Edward Street, there is no specific objective in relation to the shopping centre in Design Brief 2.

As noted above, the reference to a local road in Figure 10 would appear to be an error, and I consider it unreasonable that a local road would run through a shopping centre surface car park. This is likely to give rise to public safety issues.

I do not consider it unreasonable for the Council to seek a pedestrian route through both sites, and I consider that it would greatly improve pedestrian permeability in the area. However, as noted in section 7.1.1 above, it appears that there is no established link between the sites.

The subject application has not sought any changes to the wall. I do not consider the fact that there is no pedestrian link proposed as grounds for refusing the upgrade and modernisation of the shopping centre. The upgrade of the shopping centre is noted in the LAP as a key opportunity for further expansion and improvement of the heart of the town centre, albeit being seen to provide the basis for enhanced linkage between the different parts of Main Street as well.

In conclusion, there is reference to improving the public realm and permeability in the LAP, and while it would be preferable that a pedestrian link is provided, there is no specific objective relating to the Dunnes Stores site. The pedestrian link shown in Figure 15 going through a new urban park/plaza in the Retail Park and into the shopping centre as existing is unclear, in terms of the existence of the Retail Park structures, and is based on a link that no longer exists.

7.1.3. **Compliance with Design Manual for Urban Roads and Streets (DMURS)**

The appellant considers that the proposal is not in compliance with DMURS and the applicant submits that there is no specific reference to private car parks or shopping centres in DMURS.

DMURS provides guidance relating to the design of urban roads and streets. The manual notes that it does not cover every scenario. The reference to shopping centres in DMURS is in relation to *Context and Place Value of Streets*. It notes their importance as destinations gives them a high place value that needs to be better responded to should these centres undergo significant redevelopment.

The shopping centre is currently served by two vehicular accesses onto Athgarvan Road – one near the junction of Edward Street and the other further east on Athgarvan Road near the entrance to the Retail Park. There is a pedestrian only entrance onto Edward Street also.

A pedestrian link between the shopping centre and the Retail Park would be beneficial to customers but links with the existing surrounding streets are provided for. No links exist between the Lidl shopping centre and the Retail Park and no link was required with the extant permission for the redevelopment of Dunnes granted permission in September 2015.

7.1.4. **Power to impose conditions**

The applicant refers to Section 34(4) of the Planning and Development Act which refers to conditions which may be imposed. Section 34(4)(a) of the Act gives power to impose a condition regulating the development or use of adjoining land, but such land must be under the control of the applicant.

The applicant states that they have no control over the land in the Retail Park and that it would be ultra vires to condition any new link (vehicular or pedestrian).

Furthermore, the applicant states a planning condition requiring a vehicular link to be provided to the Retail Park would result in the applicant ceding control over the car park, which would result in creation of a new public right of way over the car park.

The Act clearly states that a condition can be imposed on land which is under the control of the applicant, and which the Planning Authority consider is expedient for the purposes of, or in connection with, the development. The applicant does not have control over adjoining land.

The appellant refers to Section 34(4)(b) which states that conditions can be imposed for requiring the carrying out of works which the Planning Authority considers are required for the purposes of the development.

I consider that while a link would be beneficial, it is not required for the purposes of the development. The proposal is only increasing the floor space by 2.38% and the existing access is deemed to adequately cater for this increase.

7.1.5. Conclusion

In conclusion, permission was never sought for a link in the first instance and a link no longer exists. There is no specific objective relating to the shopping centre site in the LAP and the applicant has no control over the adjoining lands. I do not consider the fact that a link is not proposed as part of the upgrade of the shopping centre reason to refuse permission.

7.2. 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.

8.0 Recommendation

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

9.0 Reasons and Considerations

Having regard to the location of the site on town centre zoned lands as set out in the Newbridge Local Area Plan 2013-2019, to the existing use on site and previous permissions, to the pattern of development in the area, and to the acceptable scale and design of the refurbishment 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 or of property in the 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 on the 6th day of March 2017 and on the 18th day of April 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 and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. No advertisement or advertisement structure, the exhibition or erection of which would otherwise constitute exempted development under the Planning and Development Regulations 2001, or any statutory provision amending or replacing them, shall be displayed or erected on the building/within the curtilage of the site unless authorised by a further grant of planning permission.

Reason: In the interest of visual amenity.

3. Details of the materials, colours and textures of all the external finishes shall be submitted to, and agreed in writing with, the planning authority

prior to commencement of development.

Reason: In the interest of visual amenity.

4. 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.

5. Site development and building works shall be carried out between the hours of 08.00 to 19.00 Mondays to Fridays inclusive, between 08.00 to 14.00 hours on Saturdays and not at all on Sundays or public holidays. Deviation from these times shall only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

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

6. Noise monitoring locations for the purposes of the construction phase of the proposed development shall be agreed in writing with the planning authority prior to commencement of any development on site.

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

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

Reason: In the interest of public safety and visual amenity.

9. 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:

- (a) Location of the site and materials compound(s) including areas identified for the storage of construction refuse;
- (b) Location of areas for construction site offices and staff facilities;
- (c) Details of site security fencing and hoardings;
- (d) Details of on-site car parking facilities for site workers during the course of construction;
- (e) Details of the timing and routing of construction traffic to and from the construction site and associated directional signage, to include proposals to facilitate the delivery of abnormal loads to the site;
- (f) Measures to obviate queuing of construction traffic on the adjoining road network;
- (g) Measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network;

- (h) Alternative arrangements to be put in place for pedestrians and vehicles in the case of the closure of any public road or footpath during the course of site development works;
- (i) Details of appropriate mitigation measures for noise, dust and vibration, and monitoring of such levels;
- (j) Containment of all construction-related fuel and oil within specially constructed bunds to ensure that fuel spillages are fully contained. Such bunds shall be roofed to exclude rainwater;
- (k) Off-site disposal of construction/demolition waste and details of how it is proposed to manage excavated soil;
- (l) Means to ensure that surface water run-off is controlled such that no silt or other pollutants enter local surface water sewers or drains.

A record of daily checks that the works are being undertaken in accordance with the Construction Management Plan shall be kept for inspection by the planning authority.

Reason: In the interest of amenities, public health and safety.

10. A plan containing details for the management of waste (and, in particular, recyclable materials) within the development, including the provision of facilities for the storage, separation and collection of the waste and, in particular, recyclable materials and for the ongoing operation of these facilities within each retail unit shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, the waste shall be managed in accordance with the agreed plan.

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

11. Bicycle parking spaces shall be provided within the site as required by Chapter 17 of the Kildare County Development Plan 2017 - 2023. Details of the layout and marking demarcation of these spaces shall be

submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: To ensure that adequate bicycle parking provision is available to serve the proposed development, in the interest of sustainable transportation.

12. Prior to the commencement of development, details of modifications to the SCOOT – Urban Traffic Control Region RNE Newbridge Edward Street, to maximise traffic flows in this SCOOT region shall be submitted to, and agreed in writing with, the planning authority. The modifications shall include some traffic signal adjustments, addition of traffic detectors, SCOOT validation and commissioning. The cost of the design and implementation of these works shall be borne solely by the applicant. The works shall be constructed and implemented prior to occupation of the development.

Reason: In the interest of safety for all road users at this location.

13. Prior to the commencement of development details for the upgrade of the existing traffic related CCTV facilities at the junction of Moorefield Road (R445) and the Dunnes Stores entrance shall be submitted to, and agreed in writing with, the planning authority. The cost of the design and implementation of these works shall be borne solely by the applicant. The works shall be constructed and implemented prior to occupation of the development.

Reason: In the interest of safety for all road users at this location.

14. The damaged footpaths at the entrance to the delivery area shall be reconstructed, and the precast concrete capping along the wall of the service yard shall be secured, to the satisfaction of the Municipal District Engineer. Details shall be submitted to, and agreed in writing with, the planning authority.

Reason: In the interest of public safety.

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, 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. 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 An Bord Pleanála to determine the proper application of the terms of the Scheme.

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.

Ciara Kellett
Inspectorate

14th September 2017