



An
Bord
Pleanála

Inspector's Report PL 91.248965

Development	Demolition of one building and ancillary structure and construction of a licence discount food-store and all associated site works.
Location	Childers Road & Rosbrien Road, Limerick.
Planning Authority	Limerick City & County Council
Planning Authority Reg. Ref.	17/60
Applicant(s)	Lidl Ireland GmbH
Type of Application	Permission
Planning Authority Decision	Grant Permission
Type of Appeal	First & Third Party
Appellant(s)	Lidl Ireland GmbH Tesco Ireland Ltd.
Observer(s)	None
Date of Site Inspection	6 th November 2017
Inspector	Michael Dillon

1.0 Site Location and Description

- 1.1. The site, with a stated area of 1.28ha, is located at the junction of Childers Road (R509) and Rosbrien Road, within the inner suburbs, to the south of Limerick City centre. Childers Road is a two-way thoroughfare, whereas Rosbrien is a one-way thoroughfare in a northwesterly direction. The junction is signal-controlled and provides for pedestrian crossing. The site is relatively flat – there being a very slight rise from east to west and from south to north. There is current vehicular access to the site from both the aforementioned roads. There is separate pedestrian access from Childers Road and from the junction of Childers Road and Rosbrien Road. There are public footpaths, and public lighting is in place on both roads. The 50kph speed restriction zone applies in this area. There are double yellow lines at the junction of Childers Road and Rosbrien Road only. There is a yellow box on Childers Road, at the entrance to Oakview Drive housing estate.
- 1.2. The site is occupied by an existing Lidl food-store and a builder's providers' store and yard (no longer trading). Surface car-parking for approximately 105 cars is shared between the two commercial premises – with a limited amount of landscaping. The car-park is lit at night. There are free-standing Lidl signs at the Rosbrien Road entrance and the pedestrian access at the junction of Childers Road and Rosbrien Road. There are a further two Lidl logo signs above the shop entrance, together with a number of advertising panels attached to external walls. The existing covered trolley bay is located adjacent to the shop entrance on the east side of the building. The goods delivery area is located on the north side of the building. There is currently no access to the former yard area of the builder's providers, which presents a derelict aspect.
- 1.3. The southern boundary of the site (car-park) with Childers Road is a 1.4m high wall (capped and plastered) and backed by trimmed laurel hedge. The Childers Road boundary of the builder's providers' yard is a 2.2m high brick wall surmounted by a 1.0m high metal railings. On the opposite side of Childers Road, is the Oakview Drive housing estate – located at a slightly lower level than the appeal site, and separated from Childers Road by a landscaped strip of ground. To the west of the

site is the small Greenpark Shopping Centre (a crescent of single-storey shops and surface car-parking/landscaping and the separate site of Ballinacurra ESB sub-station – the boundary with which is part retaining wall (up to 2m in height) surmounted by metal railings, and part 2.4m high palisade fencing. To the north, the site abuts a two-storey HSE office building, located on slightly higher ground, the boundary with which is part 2.4m high palisade fencing and part retaining wall surmounted by palisade fencing. The Rosbrien Road boundary of the site is a 1.5m high wall surmounted by 1.0m high railings. On the opposite side of Rosbrien Road, there is a playing pitch, community buildings and Credit Union.

2.0 Proposed Development

2.1. Permission sought on 26th January 2017, for development as follows-

- Demolition of existing buildings on site – builders' providers (1,857m²), existing Lidl food-store (1,323m²) and stand-alone storage structure (128m²) within builders' providers' yard.
- Construct new food-store with mono-pitch roof. Gross ground floor area 2,506m² (net retail floorspace 1,690m²). First floor staff/plant area of 332m².
- Free-standing covered trolley bay of 33m².
- Revised vehicular entrance from Childers Road.
- Revised delivery access and marshalling area off Rosbrien Road.
- Revised car-parking layout for 164 spaces.
- Bicycle parking area (29 spaces).
- Landscaping and large grassed area at eastern end of site.
- Three free-standing signs at site boundaries, and other internal site signage.
- Retaining wall on northern boundary of site.
- New boundary treatments – with timber knee-rail fencing on Rosbrien Road and Childers Road. New boundary treatment along parts of western and northern site boundaries.
- Reconfiguration of drainage on site.

- New surface water attenuation tank of 320m³, below ground level immediately to the south of the new food-store building. An 'Hydrobrake' mechanism will limit outfall to 8.4 litres/second. This will connect to a 450mm diameter public surface water sewer on Childers Road. The connection will be fitted with an hydrocarbon interceptor.
- Connection to existing 225mm diameter combined sewer which runs within the site along the Rosbrien Road.
- Water supply connection to existing 300mm diameter mains on Rosbrien Road.

2.1.1. The application was accompanied by the following documentation of note-

- Engineering Planning Report – dated January 2017.
- Preliminary Waste Management Plan – dated January 2017.
- Traffic Assessment – dated January 2017.
- Site Investigation Report (trial holes & bore holes) – dated October 2015.
- Noise Impact Assessment Report – dated January 2017.
- Strategic Retail Assessment – dated January 2017.
- Planning Report – dated January 2017.

2.2. Following a detailed request for additional information, the following was submitted to LCCC on 8th June 2017-

- Indication that applicant was not willing to reduce the net retail floorspace to 1,002m².
- Redesign to retain the pedestrian access to the site from the Childers Road/Rosbrien Road junction.
- Revised details in relation to surface water attenuation, and separate drawings for water, foul and surface water networks.
- Revised sight-line drawing for Rosbrien Road access.

2.2.1. The submission is accompanied by the following documentation of note-

- Revised Traffic Assessment – dated May 2017.

- Stage 1 Road Safety Audit – dated May 2017.
- Preliminary Mobility Management Plan – dated May 2017.
- Engineering Planning Report – dated January 2017 [this one containing surface water calculations and details of attenuation construction, and hydrocarbon separator].

3.0 Planning Authority Decision

By Order dated 5th July 2017, LCCC issued a Notification of decision to grant planning permission subject to 27 no. conditions – the principal ones of which may be summarised as follows-

1. Development to be carried out in accordance with plans and particulars submitted on 26th January and 8th June 2017.
2. Developer shall pay development contribution of €163,550.
3. The net retail floorspace shall be reduced to 1,250m².
23. Relates to reduction in the amount of signage proposed.
26. Relates to Smarter Travel requirements.

4.0 Planning History

Ref. 16/44: Permission granted by LCCC for demolition of existing buildings on this site and construction of a new food-store of 2,947m² (net retail floorspace of 1,002m²), subject to 25 conditions. On appeal by the applicant, Lidl Ireland GmbH, in relation to a special financial contribution (condition no. 3), which required payment of €59,020 (**PL 91.247323**), by Order dated 7th February 2017, the Board decided that condition 3 should be removed. I note that condition no. 2 restricted the net retail floorspace to 1,002m² – where permission had been sought for a net retail floorspace of 1,288m². This condition was not appealed by the applicant.

5.0 Policy Context

5.1. Development Plan

The relevant document is the Limerick City Development Plan 2010-2016. This plan remains in force, following the amalgamation of Limerick City Council and Limerick County Council, and pending the adoption of a new plan for the unified authority.

- The site is zoned Zoning Objective 5, which deals with mixed use developments. Within this zoning, there are a number of sub-categories for- 'General Mixed Use', 'District Centres', 'Neighbourhood Centres' and 'Local Centres'. In relation to Local Centre use, the objective ZO.5 (D) states- "To protect, provide for and/or improve the retail function of local centres and provide a focus for local centres". The Plan goes on to state- "Local centres provide for convenience shopping, with anchor units of 400m² or less and a similar amount of associated small units containing convenience, lower order comparison shopping and local services outlets. Limited retail offices will be acceptable in these local centres to serve local needs, subject to restrictions on scale and extent including a cap of 75m² per unit. Residential uses are also acceptable within this zone".
- Chapter 4 of the Plan outlines policy in relation to retail development and includes an overview of the retail hierarchy for the metropolitan area (Table 4.5). Tier 1 comprises Limerick City. Tier 2 Level 1 is Dooradoyle (Crescent Shopping Centre), Tier 2 Level 2 includes Caherdavin, Castletroy, Parkway, Roxboro and Moyross.
- Policy R8 of Chapter 4 states- "It is the policy of Limerick City Council to support the provision of modern convenience goods stores of an appropriate scale, and associated retail and service units to enable these centres to meet the day to day needs of their local catchment population".
- Policy EDS.20 states- "It is the policy of Limerick City Council where a use exists as a non-conforming use, to facilitate their continued operation provided they do not seriously detract from the zoning objectives for the area or from residential or other amenities in the vicinity of the proposed development.

5.2. Retail Strategy for the Mid West Region 2010-2016

This Strategy covers Limerick City Council, Limerick County Council and Clare County Council administrative areas. The document states that Limerick City no longer performs to its Tier 1 status. The city is in urgent need of comprehensive retail development. The Strategy seeks to re-establish Limerick City Centre at the top of the regional hierarchy in the Limerick Metropolitan Area. The Strategy also identifies Roxboro and Moyross as District Centres. Local Centres offer potential to accommodate a local catchment and provide top-up shopping facilities.

5.3. Mid-West Regional Planning Guidelines 2010-2022

This document refers to the Mid-West Retail Strategy 2008-2016. North Tipperary is included as part of the Mid-West Region. Section 4.3.2 states- “The Mid- West Region is now at a crossroads where, if further uncontrolled/unrestricted retail development is allowed, there will be a detrimental impact to Limerick City Centre”. It goes on to state- “Those centres in the Metropolitan Area (outside the city centre) meeting the day to day needs of a local catchment population through the provision of main food shopping outlets should be supported and reinvigorated where necessary. However, their role should not be allowed to expand to encompass a materially broader range of comparison goods, as this could lead to further competition with the City Centre”.

5.4. Retail Planning – Guidelines for Planning Authorities, 2012

The Guidelines require Retail Impact Assessment for large scale retailing. The sequential test is incorporated within the document.

5.5. Natural Heritage Designations

- 5.5.1. The site is not located within or immediately abutting any European site. The River Shannon and River Fergus Estuaries SPA (Site code 004077) is 1.2km distant, and the Lower River Shannon SAC (Site code 002165) is 1.3km distant.
- 5.5.2. The Conservation Interests of the River Shannon and River Fergus Estuaries SPA (Site code 004007), located some 600m to the north of the site, are as follows-

- Cormorant (*Phalacrocorax carbo*)
- Whooper swan (*Cygnus cygnus*)
- Light-bellied Brent Goose (*Branta bernicla hrota*)
- Shelduck (*Tadorna tadorna*)
- Wigeon (*Anas penelope*)
- Teal (*Anas crecca*)
- Pintail (*Anas acuta*)
- Shoveler (*Anas clypeata*)
- Scaup (*Aythya marila*)
- Ringed plover (*Charadrius hiaticula*)
- Golden plover (*Pluvialis apricaria*)
- Grey plover (*Pluvialis squatarola*)
- Lapwing (*Vanellus vanellus*)
- Knot (*Calidris canutus*)
- Dunlin (*Calidris alpina*)
- Black-tailed godwit (*Limosa limosa*)
- Bar-tailed godwit (*Limosa lapponica*)
- Curlew (*Numenius arquata*)
- Redshank (*Tringa totanus*)
- Greenshank (*Tringa nebularia*)
- Black-headed gull (*Chroicocephalus ridibundus*)
- Wetland and Waterbirds.

5.5.3. The published Conservation Objectives for the SPA (17th September 2012) indicate that long-term population trends for all species are stable or increasing.

5.5.4. The conservation interests of the Lower River Shannon SAC (Site code 002165), located some 600m to the north of the site, are as follows-

- Sandbanks which are slightly covered by sea water all the time
- Estuaries
- Mudflats and sandflats not covered by seawater at low tide
- Coastal lagoons
- Large shallow inlets and bays
- Reefs
- Perennial vegetation of stony banks
- Vegetated sea cliffs of the Atlantic and Baltic coasts
- Salicornia and other annuals colonising mud and sand
- Atlantic salt meadows (*Glauco-Puccinellietalia maritima*)
- Mediterranean salt meadows (*Juncetalia maritimi*)
- Water courses of plain to montane levels with the *Ranunculion fluitantis* and *Callitriche-Batrachion* vegetation
- Molinia meadows on calcareous, peaty or clayey-silt-laden soils (*Molinion caeruleae*)
- Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (*Alno-Padion*, *Alnion incanae*, *Salicion albae*)
- *Margaritifera* (Freshwater Pearl Mussel)
- *Petromyzon marinus* (Sea Lamprey)
- *Lampetra planeri* (Brook Lamprey)
- *Lampetra fluviatilis* (River Lamprey)
- *Salmo salar* (Salmon)
- *Tursiops truncatus* (Common Bottlenose Dolphin)
- *Lutra* (Otter).

6.0 The Appeal

6.1. 3rd Party Appeal

The appeal from GVA Planning, agent on behalf of Tesco Ireland Ltd, received by the Board on 1st August 2017, can be summarised in bullet point format as follows-

- Tesco is the anchor tenant at the nearby Roxboro Road Shopping Centre.
- The retail floorspace proposed is excessive – far greater than envisaged for a site zoned for Local Centre use.
- The proposal is inconsistent with the Retail Planning Guidelines 2012, as increase in floorspace is contrary to principles outlined in the retail hierarchy.
- Whilst it is acknowledged that the quantum of retail floorspace has been reduced to 1,250m² by way of condition 3, the potential impact on nearby district and neighbourhood centres would seem to indicate that no increase in floorspace should be permitted. The zoning envisages that anchor stores in excess of 400m² should not be permitted.
- Permission for this development should be refused, or else the quantum of floorspace reduced to that permitted ref. 16/44.
- The Mid-West Regional Planning Guidelines note that retail floorspace was delivered in the Limerick Metropolitan Area to the detriment of Limerick City Centre. The policies for development of the city centre support and acknowledge the need to strengthen the city centre retail offer. The retail hierarchy of the City includes the City Centre, District, Neighbourhood and Local Centres. Whilst Local Centres have a restriction of 400m² on anchor floorspace, other centres do not have such a restriction.
- Policy EDS.22 of the Plan is not solely there to allow for extensions of non-conforming uses. The policy is drafted to avoid unnecessary restrictions on non-conforming uses within a zoning. The Plan states that they would be considered, "...provided they do not seriously detract from the zoning objectives for the area..."

- The non-conforming use on this site is already impacting negatively on surrounding District and Neighbourhood Centres, by undermining their role in the retail hierarchy.
- Limerick City Council sought to make an amendment to the Limerick Southern Environs Local Area Plan (SELAP) 2011, which would have provided for an increased level of floorspace in Neighbourhood Centres – allowing for net convenience floorspace of up to 1,400m² within an anchor unit. When the submission of the Minister for Environment, Community and Local Government was not taken into consideration by the Council, the Minister issued a Ministerial Direction requiring that the policy be changed to adhere to national and regional guidelines, which specified a cap of 600m² net retail floorspace.
- The Chadwicks' building on this site was operated as a retail warehouse, and does not represent retail floorspace that would be associated with either comparison or convenience goods. A recent ABP referral relating to the proposed change of use of a retail warehouse to a food-store, confirmed that this would be development and would not be exempted development – ref. RL3445.
- Prior to 2016, this Lidl food-store was operating with a net retail floorspace of 978m². In deciding to reduce the net retail floorspace from 1,288m² to 1,002m², the PA noted that increase in net sales area was contrary to the Local Centre zoning. Nothing has changed by way of policy in the Development Plan since that time.
- Notwithstanding that the PA had requested a reduction in net retail floorspace to 1,002m² by way of additional information request, subsequent to the submission of additional information it was decided that a 25% increase in net retail floorspace (up to 1,252m²) could be countenanced by reference to permitted expansion of other food-stores around Limerick. The PA highlighted two cases – both of which were in District Centres – and so they are not analogous to the appeal site which is located in a Local Centre.
- Lidl currently offer a range of goods which are primarily convenience rather than comparison. The 80:20 split is suggested by the applicant. Any

permission to increase floor-space would result in permission to increase comparison floor-space on the 80:20 split. Comparison floorspace is more appropriate to either District Centres or Limerick City Centre.

6.2. 1st Party Appeal

The appeal from The Planning Partnership, agent on behalf of Lidl Ireland GmbH, received by the Board on 1st August 2011, can be summarised in bullet point format as follows-

- This appeal is against conditions 2 & 3 only. It is requested that the Board remove both conditions.
- Any financial contribution should be based only on an increase in residual gross floor area. The existing floor-space should be credited to the permitted new floor-space.
- The Board is requested to restrict itself to consideration of condition 3 only, and not to look at the application *de novo*.
- The new store will replace an existing one and will offer planning gain to the community by way of retail offer and visual amenity.
- Conditions 2 & 3 result in an unviable development proposition for the applicant.
- The new building will provide a higher specification than the existing, for both staff and customers.
- There is an overall net reduction in gross floor area resulting from demolition of 3,308.5m² and construction of 2,871m² of new floor area.
- The absence of an express provision for allowance for replacement floor area within Development Contribution Schemes has not prevented the Board making such allowances in appeal cases. However, on p.14 of the Development Contribution Scheme for Limerick City & County, express provision is made- "In the case of an application for replacement development contributions will be charged on any additional floor area". The buildings to be demolished are serviced commercial/retail use buildings. There is an excess

of 437.5m² of demolished floor-space. There should be no development contribution charged.

- The use on this site is well-established but non-conforming. No new or additional net retail floorspace is to be added to the site. The proposal constitutes a reorganisation and reallocation of the space on the site. There will be a 240m² decrease in overall net retail floorspace.
- This unit will continue to anchor the Childers Road Local Centre.
- This unit will offer increased diversity, variety, vitality and viability.

6.3. 1st Party Response to 3rd Party Appeal

6.3.1. The response of The Planning Partnership, received by the Board on 29th August 2017, can be summarised in bullet point format as follows-

- Tesco has a history of appealing decisions to grant planning permission for Lidl stores. This appeal is based on commercial considerations only. The Board should invite the 3rd Party appellant to clarify its *bona fide* interests and reasoning. The appeal is without substance, and should be dismissed.
- The objective of the application is to improve the visual appearance and character of the site and to enhance operational functionality. In addition, there is substantial planning gain to benefit the local community. This development will remove the deteriorating Chadwicks' building and enliven the streetscape. This will act as a catalyst for the regeneration of the wider area. The development will create employment in the area.
- The proposed development is a proportionate expansion of an existing use.
- The development is consistent with the sustainable development of the area, regard being had to the Development Plan and other national/regional guidance.
- The Retail Planning Guidelines encourage completion amongst retailers.
- The site is well served by public transport.
- There has been a food-store on this site for 17 years.

- The 3rd Party appellant has offered no evidence in relation to the claim that the proposed development would have a negative impact on surrounding neighbourhood and district centres.
- Policy EDS.20 of the Plan allows for expansion of non-conforming uses, which do not seriously detract from the zoning objectives for the area.
- The Board should avoid making decisions which would restrict retail competition.
- The Mid-West Regional Planning Guidelines 2010-2022, indicate that the retail problems of Limerick City relate to comparison shopping at out-of-town centres. This proposal is for a convenience retail store.
- The Retail Strategy for the Mid West Region 2010-2016 states- “Those centres in the Metropolitan Area meeting the day to day needs of a local catchment population through the provision of main food shopping outlets should be supported and reinvigorated where necessary. However, their role should not be allowed to expand to encompass a materially broader range of comparison goods as this could lead to further competition with the City Centre”. The proposed development will serve a local catchment population. Whilst the Retail Strategy goes on to state that permission should not be granted for “...the extension of any existing store...”, this is interpreted to refer to comparison stores in suburban locations. It would be incorrect of the Board to adopt a literal interpretation of this policy, as this would effectively stifle all expansion outside of Limerick City Centre. LCCC has granted permission for expansion of units and centres outside of the City Centre.
- Policy R8 of the Development Plan supports the development of “...modern convenience goods stores of an appropriate scale...to meet the day to day needs of their local catchment population”.
- The reference to Ministerial Direction is erroneous. It refers to the SELAP. The site is located in what was the functional area of Limerick City Council, and is not located within the SELAP boundary.
- Permission was granted in 1999 for this Lidl store. The current store comprises a non-conforming use – being of 1,002m² net retail floorspace

within a Local Centre where there is a cap of 400m² on anchor units. It is considered that the zoning did not envisage a restriction on an existing use – rather to influence the introduction of new uses.

- The Retail Hierarchy exists to provide guidance on the location of future retail developments. The proposal is for the redevelopment of an existing retail use. Redevelopment or expansion of an existing use should be guided by the need to encourage competition, adherence to the sequential test, good design and delivery of a sustainable retail use.
- The supporting text in relation to Policy EDS.22 of the Plan states- “In relation to change of use, expansion, and intensification of uses which do not conform to the zoning objectives for an area, the City Council will consider each case on its own merits, having regard to the impact on the surrounding environment”. This policy clearly facilitates the expansion of a non-conforming use.
- The development does not encompass any substantive change in the character of the current convenience retail use.
- A refusal of permission will only inhibit the capacity of the existing store to adapt to the ever-changing dynamics of the local retail market and may undermine the viability of the site its ability to continue to serve its catchment area or to anchor the Childers Road Local Centre.
- Whilst the 3rd Party appellant has suggested that the floor area of the Chadwicks’ building is not retail floor-space, the Retail Planning Guidelines 2012 define Net Retail Floorspace as “...the area within the shop or store which is visible to the public and to which the public has access...”. Irrespective of the type of goods which were sold from the former Chadwicks premises, the floorspace associated with this unit complies with the definition of Net Retail Floorspace. However, it should also be highlighted that Annex 1 of the Retail Planning Guidelines 2012, clearly defines ‘Bulky Goods’ as being a sub-category of ‘Comparison Goods’.
- A refusal of planning permission will likely perpetuate the vacancy and ongoing deterioration of the former Chadwicks unit and will inhibit the long-term viability of the adjoining Lidl food-store.

- The development would be acceptable in terms of traffic safety and convenience.

6.3.2. The response is accompanied by a copy of Ministerial Direction, dated 2nd September 2014, in relation to the Southern Environs Local Area Plan 2011-2017 and Limerick County Development Plan 2010-2016.

6.4. **3rd Party Response to 1st Party Appeal**

The response of GVA, received by the Board on 29th August 2017, can be summarised in bullet point format as follows-

- There is a conflict between the development as applied for and the retail policies at national, regional and local level, and these have already been outlined.
- The planning policy for this area does not permit the granting of this development.
- If the logic of the applicant were applied to the 400m² cap, then this would allow for uncontrolled expansion in all of the retail centres in Limerick to the detriment of the proper planning and sustainable development of the city.
- Retail warehouse floorspace is not the same as convenience retail floorspace.
- Policy EDS.20 does not specifically provide for expansion of non-conforming uses. Such expansion would seriously detract from the zoning objective.

6.5. **Planning Authority Response**

There is no response from LCCC to the grounds of appeal submitted. The Board wrote to LCCC, specifically requesting comment, on or before 23rd October 2017, in relation to the calculation of the Development Contribution applied at Condition 2. The response of LCCC, received by the Board on 10th October 2017, comprised an Engineer's Report (Anne O'Sullivan), which addressed the costs of upgrading the pedestrian crossing at the junction of Childers Road/Rosbrien Road, but which did not address the actual S.48 Development Contribution appeal submitted by the applicant, Lidl GmbH.

7.0 Assessment

The principal issues of this appeal relate to the zoning of the site, the appropriateness of the size of store for which permission has been granted, traffic and visual amenity (signage).

7.1. Principle of Development

- 7.1.1. Planning permission already exists for a replacement Lidl store on this site – ref. PL 91.247323, notwithstanding that the appeal only related to a financial contribution. Nonetheless, this has resulted in permission for a replacement food store of 1,002m² net retail floorspace. This development has not been taken up – but is a live permission (dated 7th February 2017). Having regard to this precedent decision to grant permission, I would consider that the principle of a replacement food-store has already been established, and what is at issue is not whether there should or should not be a Lidl store on the site zoned for “Local Centre” use, but rather the extent of the net retail floorspace which could or should be permitted. For this reason, I do not propose to examine the national, regional and local retail planning policies in relation to food-stores, except where the issue of floor area may be of relevance. I have outlined the relevant policy in Section 5.0 of this Report, in the event that the Board is minded to consider it a central issue of the appeal.
- 7.1.2. I note that Lidl GmbH did not appeal condition 2 of permission ref. 16/44, which restricted the net retail floorspace of the replacement food-store to 1,002m² – to essentially replace the net retail floorspace in the existing food-store. The appeal (ref. PL 91.247323) was restricted to a 1st Party appeal against a Special Development Contribution only. However, since that time, it would appear that the applicant has had a change of heart, and has now sought to increase the net retail floorspace within the new food-store to 1,690m². This represents an increase of 68% over and above what exists at present. By way of additional information, LCCC requested a reduction in net retail floorspace to 1,002m². The applicant was not prepared to accede to this request. LCCC then had a change of heart, and decided, based on other permissions granted within the metropolitan area of Limerick, that an increase of 25% could be countenanced; and granted planning permission for net retail floorspace of 1,250m² (condition 3). The applicant has appealed this condition,

and is seeking its removal. The 3rd Party appellant has argued that there is no rationale for the change of heart by LCCC, in granting planning permission for 1,250m², and I would be inclined to agree with this contention.

7.1.3. The site is zoned for “Local Centre” use in the current development plan for the area. The zoning at Childers Road is a large one, bigger than many of the neighbourhood and district centres identified elsewhere within the development plan maps. The appeal site forms a substantial part (approximately 50%) of the area zoned “Local Centre”. There is a single-storey cluster of shops to the west of the appeal site, at the junction of Childers Road and O’Connell Avenue (Greenpark Shopping Centre), the heart of the “Local Centre” zoning. The zoning stipulates that anchor stores (such as this one) should be of 400m² or less. It is taken that this figure relates to net retail floorspace, although it does not specifically state such. This floorspace restriction is to differentiate the “Local Centre” in the hierarchy of retail service centres, expanding upwards to Neighbourhood, District and City Centre scale.

7.1.4. The applicant contends that, whilst the existing use on site is non-conforming (insofar as the net retail floorspace significantly exceeds the 400m² threshold), it was a use permitted by Limerick City Council, and there has been a Lidl store on the site for seventeen years, serving the needs of the local population. Whilst this may well be the case, it is no more than an argument for allowing for the replacement of the existing net retail floorspace in any new building, rather than an argument for increasing it. Policy EDS.20 of the Plan allows for the expansion of non-conforming uses. However, this policy is balanced by the requirement that the development would not seriously detract from the zoning objectives for the area. It is difficult to see how an expanded net retail floorspace would not seriously detract from the zoning objectives for the area. To grant planning permission for any increase in net retail floorspace would be to set the retail planning policy of the Council on its head. The site is zoned for “Local Centre” use. It is open to the elected representatives of LCCC to vary the relevant development plan or to produce a new development plan, if they see fit. However, in the absence of any such indication by the elected representatives, it would be inappropriate to essentially rezone this site from a “Local Centre” to a “Neighbourhood Centre” or District Centre” by way of planning permission. The granting of such a permission would set an undesirable precedent for other similar applications, and would allow for a ‘free-for-all’ in relation to large-

scale retail developments within Metropolitan Limerick – particularly where it has been specifically identified that Limerick City Centre has suffered a loss in retail vibrancy due to the number of suburban permissions which have been granted. If this site is to be judged to be appropriate for larger-scale retail development, then it should be done as part of a comprehensive reassessment of the retail function of the Limerick metropolitan area, and not by way of individual planning permissions.

- 7.1.5. The applicant has contended that the net retail floorspace of the former Chadwicks' building should be taken into consideration when calculating the overall retail sales floor area on this site. The applicant has submitted no drawings showing the layout of the Chadwicks' building. This builders' providers' is no longer trading. Such a use, when it was trading would be considered to be bulky goods and not equivalent to convenience shopping. Reference is made in the appeal to a Reference Case to the Board, relating to change-of-use at a retail warehouse (ref. RL3445) to use as a food-store. The applicability of this case is not strictly of relevance, as each case should be dealt with on its merits. In any event, there is no application before the Board for change of use of existing floor-space within a disused building.
- 7.1.6. The Lidl food-store model offers a range of comparison goods for sale. This is roughly on an 80:20 split of convenience/comparison – as per application documentation. Any permission to expand the net retail floorspace of the food-store on this site would likely result in a proportionate increase in the comparison sales floorspace. Such a proportionate increase would be inappropriate, where the objective of the zoning is to- “provide for convenience shopping with anchor units of 400m² or less and a similar amount of associated small units containing convenience, lower order comparison shopping and local services outlets”.
- 7.1.7. Having regard to the assessment that not more than 1,002m² of net retail floorspace be granted permission on this site, the building, as proposed, has an excess of 688m² net retail floorspace. It is unlikely that this amount of floorspace would be needed for storage, as the storage required for a such a food-store has been provided for. In fact, it is likely that the storage area provided for a food-store of 1,690m² would be in excess of what would be required for a food-store of 1,002m², and that it too would be over-sized. Having regard to the fact that permission exists for a food-store with net retail floorspace of 1,002m² on this site, planning permission should now be refused by the Board for a food-store which is significantly in excess

of what should be provided on this site, in light of the zoning. I note that the floor plates of the two buildings are largely similar – that permitted under ref. PL 91.247323 and that currently under appeal ref. PL 91.248965.

7.2. **Water**

Planning permission has already been granted for a largely similar-type development, ref. PL 91.247323. A detailed services drawing has been provided with the application – highlighting proposals for water supply, foul drainage and surface water drainage. The Council was satisfied that permission could be granted subject to appropriate conditions.

7.3. **Traffic & Parking**

Planning permission has already been granted for a largely similar-type development, ref. PL 91.247323. Having regard to the recommendation that permission be refused on grounds of excessive net retail floorspace proposed, it is likely that the quantum of parking proposed with this current application would be excessive to service a food-store of only 1,002m² net retail floorspace. At present there are approximately 105 car-parking spaces provided on the site. The proposed development seeks to provide 164 no. spaces. Such an amount would be excessive for a food-store of 1,002m², and again, granting planning permission for this development, with a condition requiring a reduction in net retail floorspace to 1,002m² would not seem to make much sense.

The vehicular entrances are to remain the same in the new scheme. Provision is made to retain the pedestrian access to the site from the junction of Childers Road and Rosbrien Road. Provision is made for bicycle parking. I would consider that the trolley bay would be more appropriately located immediately adjacent to the entrance to the store, rather than remote from it, potentially involving additional pedestrian movements crossing traffic circulation aisles. This was the opinion of LCCC also.

7.4. **Signage**

There is an existing free-standing sign at the Rosbrien Road entrance and the pedestrian entrance to this site from the junction of Childers Road and Rosbrien

Road. It is proposed to replace these two with more substantial signs, providing for considerably more advertising. In addition, a third is now proposed on the Childers Road entrance. The two signs above the entrance to the existing store are to be replicated at the new store entrance, as are the billboard-type hoardings on the east wall of the store. I would consider that the amount of signage proposed is excessive – particularly having regard to the fact that Rosbrien Road is one-way only, that the store has existed on site for a considerable length of time already, and that it is zoned “Local Centre” – to serve local needs. The totem signs proposed are excessive, and no additional signage should be permitted at this site, over and above that which already exists.

7.5. Other Issues

7.5.1. Financial Contribution

Condition 2 of the Notification of decision to grant planning permission requires payment of a Development Contribution of €163,550. I note that permission ref. 16/44, granted for a similar-type development, did not require payment of a general development contribution. It must be pointed out that in that case, LCCC granted planning permission for net retail floorspace of 1,002m², direct replacement for net retail floorspace which was to be demolished/lost in the existing food-store. That permission did attract a requirement to pay a Special Development Contribution (Condition no. 3); which was removed by the Board following a 1st Party appeal against the condition (ref. PL 91.247323). LCCC has now attached a Development Contribution condition. The PA was invited by the Board to comment specifically on the condition, regard being had to the 1st Party appeal against the requirement to pay a development contribution. There was no response received from LCCC.

The Development Contribution Scheme of LCCC – the first of the amalgamated Limerick City Council and Limerick County Council, runs from 2017 to 2021. Section 8 of the Scheme deals with exemptions. The exemption for “internal layout changes where no additional floor area is proposed”, does not make reference to replacement floor area. Section 9 deals with reductions, and makes no reference to replacement floor area. Section 10 deals with change-of-use, and provides for exemption from paying a development contribution, where one has previously been paid. Section 12 relates to “Replacement Applications” and states- “In the case of an application for

replacement, development contributions will be charged on any additional floor area. Replacement applications, where the [sic] contributions have not been paid previously will be subject to contributions at the appropriate rate. Applicant's agent shall provide evidence of proof of payment at application stage in order to expedite assessment and avail of this provision. I note that the planning application was lodged with LCCC on 26th January 2017. The Development Contribution Scheme came into effect on 23rd January 2017. I am not aware of any "evidence of proof of payment" of previous development contributions paid on this site having been submitted by the applicant, either at application or appeal stage. In the absence of any such evidence, it may be that no development contribution was paid.

I note that the Development Contribution Scheme has differing sq.m rates of contribution for types of commercial space such as- manufacturing, office, retail/restaurant, retail warehouse, warehouse, and hotel/guesthouse. This may be of relevance in relation to any claim for exemption arising from the proposed demolition of the builders' providers' building.

The proposed development provides for 2,781m² of new floor space. The charge for retail development is €100 per sq.m. This would seem to imply a requirement to pay a development contribution of €278,100. However, condition 2 required payment of €163,550. It is not clear why the amounts would differ – perhaps to take account of development levies paid for the existing Lidl store on this site.

As I have recommended refusal on zoning grounds, the issue of whether payment of a development contribution is required, is moot. However, if the Board is minded to grant planning permission, the reason for the difference between €278,100 and €163,550 may need to be established. It may be that it represents the difference between the floor area of the existing Lidl store to be demolished and the new one to be built – allowance perhaps being made for an already paid development contribution/levy.

7.5.2. Archaeology

Permission has already been granted for demolition of the buildings on this site and replacement with a new food-store – ref. PL 91.247323. The proposed development is similar in size and scale to the permitted building. There will be no additional archaeological impact.

7.5.3. Boundary Treatment

It is proposed to remove existing boundary treatments. The replacement roadside boundary treatments on Rosbrien Road and Childers Road – timber knee-rail fencing, backed by hedges is acceptable. The replacement/augmentation of palisade fencing on the western and northern boundaries is acceptable.

7.5.4. Landscaping

The proposed development provides for landscaping along roadside boundaries of the site and for a large grassed area at the junction of Rosbrien Road and Childers Road. It is difficult to see what amenity purpose such a large grassed area would provide at a location such as this. However, it would provide some level of visual amenity – and would likely be maintained by the applicant at no cost to LCCC. Having regard to the zoning of the site, it would be better used for “Local Centre” uses – to provide amenities for the local population it serves.

7.5.5. Appropriate Assessment

The existing buildings on the site are connected to public sewers. Provision for surface water attenuation is made within the proposed scheme. Planning permission already exists for a similar-scale development on this site. The closest European sites are located to the north. The Lower River Shannon SAC (Site code 002165) is 1.3km distant, and the River Shannon and River Fergus Estuaries SPA (Site code 004077) is 1.2km distant. There is no direct waterway connection between the European sites and the appeal site. I consider it reasonable to conclude on the basis of the information on the file, which I consider adequate in order to carry out a Stage 2 Appropriate Assessment, that the proposed development, individually or in combination with other plans or projects would not adversely affect the integrity of European sites 002165 and 004077, or any other European site, in view of the sites’ Conservation Objectives.

7.5.6. Waste

A significant amount of waste would be created by the demolition of the existing buildings on this site, boundary treatments and excavations. A Preliminary Waste Management Plan was submitted with the application. A condition should be attached to any grant of planning permission requiring appropriate disposal of C& D waste.

8.0 Recommendation

I recommend that permission be refused for the Reasons and Considerations set out below.

9.0 Reasons and Considerations

1. The proposed development, by reason of the extent of the net retail floorspace proposed, would significantly exceed what exists as a “non-conforming” use on this site at present; and would materially contravene the zoning objective for the site- “To protect, provide for and/or improve the retail function of local centres and provide a focus for local centres”, and in particular would significantly exceed the identified cap of 400m² on anchor units within such centres.
2. The level of signage proposed is excessive for a store of this size, which is to replace an existing store, which has been on this site for a considerable length of time. Having regard to the zoning of the site for “Local Centre” uses and the rationale of the zoning, to serve local needs, the level of signage proposed would be contrary to the zoning and would seriously detract from the visual amenities of the area.

**Michael Dillon,
Inspectorate**

16th November 2017