



An
Bord
Pleanála

Inspector's Report PL25M.249398

Development	Construction of a single storey discount foodstore
Location	Kinnegad, Co. Westmeath
Planning Authority	Westmeath County Council
Planning Authority Reg. Ref.	16/6230
Applicant(s)	Aldi Stores (Ireland) Limited
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Tesco Ireland Limited
Observer(s)	None
Date of Site Inspection	9 th January 2018
Inspector	Niall Haverty

1.0 Site Location and Description

1.1. The appeal site, which has a stated area of 2.2 ha, is located to the south of Kinnegad Main Street, in County Westmeath. The site extends along the R446 Regional Road (former N6 route to Rochfortbridge) which is also known as the Kinnegad Inner Relief Road. The appeal site is irregular in shape, and it bounded by the rear boundaries of Main Street properties to the north and west, The R446 and Kinnegad River to the south, and by Main Street to the east. A Tesco supermarket and associated car park is located to the west of the appeal site. The M4/M6 motorway interchange is located c. 500m to the south west of the appeal site.

2.0 Proposed Development

2.1. The proposed development consists of:

- The construction of a single storey discount foodstore (to include off licence use) with a gross floor area of 1,757 sq m and net retail area of 1,254 sq m.
- Erection of one free standing double sided internally illuminated pole sign, one single sided internally illuminated gable sign, one single sided entrance glass sign and one poster sign.
- Access from the R446.
- 90 car parking spaces.
- Landscaping, boundary treatment and site development works.

2.1.1. In response to a request for further information, a pedestrian and cycle link is also proposed through the appeal site, providing linkage to Main Street via a roadway to the side of a commercial development variously referred to as Haven Pharmacy or the Gildea development.

2.1.2. The planning application was accompanied by a Retail Impact Statement, Retail Design Statement, Traffic Impact Assessment, Engineering Services Report, Appropriate Assessment Screening Report, Archaeological Assessment, and letters of consent from Westmeath County Council and the Receiver of the assets of Liam Young, Donal Doyle and Patricia Doyle, the owners of the site.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. The Planning Authority decided to grant planning permission, and the following summarised conditions are noted:

- **C3:** Landscaping plan to be submitted, including details of boundary treatment with open space zoned lands to the east.
- **C6:** Hours of operation limited to 0700 to 2300 hours.
- **C8:** Detailed requirements for road construction details.
- **C9:** Direct access from Kinnegad Relief Road is for a temporary period only and shall be closed once the service road access via the roundabout has been constructed.
- **C10(e):** Revised layout showing a shared footpath/cycleway connecting through the Gildea development to Main Street to be submitted.
- **C11:** Revised drawing to be submitted showing 320 cu m of surface water attenuation storage.
- **C14:** Applicant shall transfer lands to Westmeath County Council for a nominal sum of €1.00 for the construction of a roundabout to the west of the site.
- **C15:** Special levy of €103,086 under section 48(c) of the PDA towards cost of road infrastructure and traffic management, including a roundabout.

3.2. Planning Authority Reports

3.2.1. The Planning Officer's final report can be summarised as follows:

- Lands are indicated as 'future riverside park' on the site plan, but no development is proposed outside of the walled boundaries of the store, other than the link to Main Street.
- Riverside walk is not proposed, and neither is use of land as a park.

- Pedestrian/cycle route heading west is proposed to run out along the entrance and then parallel to the busy regional road. In the event that the roundabout is built, the easy movement of pedestrians and cyclists would be compromised.
- The proposed route along the regional road does not satisfy the objective of the east-west pedestrian/cycleway links across the lands. The link highlighted as an objective in the CDP should be reserved at this stage along the north western boundary of the lands.
- The proposed development will prejudice the achievement of the pedestrian/cycleway route to the west.
- Link via the Gildea site brings the development within walking distance of the Main Street.
- The connection through the Aldi lands is considered to be of appropriate quality to encourage use. The connection through the Gildea development narrows to footpath. It is considered that this is an ideal site for a shared surface.
- Site can be considered edge-of-centre as per section 4.7 of the Retail Planning Guidelines.
- Car park will bring a low level of activity to any potential street along the western boundary. The east side of the building is not considered to provide an active frontage facing onto open space zoned lands.
- Applicant has not provided traffic surveys or locations of other stores to make an assessment of the adequacy of car parking provision.
- Proposed link to Main Street falls within flood zone. The development is however within allowable developments for such a zone and flooding need not be considered further.
- Boundary walls have been amended to timber rail fences in flood area to address concerns.
- A Part VIII permission exists for a roundabout on the KIRR and may result in an alternative access to the Aldi lands. It is not an objective to provide such an access in the CDP and as such may never be achieved in this form.

- Refusal recommended for three reasons, summarised as follows:
 1. The development, in the absence of a pedestrian and cycle link runs contrary to the Kinnegad Objectives Map and Kinnegad Service Town Plan 2014-2020.
 2. Development presents an inactive elevation onto open space zoned lands and may lead to anti-social behaviour on the proposed link and future extended amenity area and would detract from the vitality and vibrancy of the public realm. Development is contrary to policies and objectives of the CDP and Retail Design Manual.
 3. Proposed development includes insufficient car parking and would endanger public safety by reason of traffic hazard.

3.2.2. A subsequent Memo from the Acting Director of Service to the Chief Executive can be summarised as follows:

- Proposed development does not contravene any objectives of the Kinnegad Service Town Plan 2014-2020.
- Pedestrian link to the Main Street is provided. Cycleway can be provided as part of a written agreement.
- Planner's concerns regarding the elevation facing the future open space can be addressed by condition regarding the boundary treatment.
- With regard to car parking, Aldi have built several stores and should be familiar with requirements. Tesco car park is adjacent to the development and there are pedestrian links to the town and other car parking areas.
- Recommend that Chief Executive consider granting permission.

3.2.3. The Planning Authority subsequently decided to grant planning permission, by Direction of the Chief Executive. The Chief Executive's reasons for not accepting the recommendation of the Planning Officer were as follows:

- District Engineer and Transportation have no objection to the development.
- Applicant has provided a pedestrian and cycle link to the Main Street.

- Reasons listed by Planner can be overcome with suitable conditions as outlined in the report of the Acting Director of Service.

3.3. Other Technical Reports

3.3.1. Area Engineer:

- No objection, subject to conditions.

3.3.2. Transportation:

- No objection, subject to conditions.

3.3.3. Water Services:

- 2015 AER for Kinnegad Wastewater Treatment Plant shows that discharges were non-compliant with ELVs for Ortho-P and ammonia and discharge from WWTP may be having negative impact on water quality status in terms of Ortho-P and ammonia.
- Deterioration in water quality has been identified in terms of biochemical oxygen demand. WwTP was compliant in terms of BOD in 2015 and it is not considered that WwTP is impacting on this deterioration.
- Discharge from the WwTP does not have an observable negative impact on Water Framework Directive status of the waterbody which is 'moderate' both upstream and downstream.
- Wastewater loadings from the proposed development are 5PE, which is so small as to be insignificant in terms of the total load on the WwTP. There is sufficient spare treatment capacity in the WwTP for the proposed development.
- Planning Authority can screen out the requirement for a Stage 2 NIS.

3.3.4. Chief Fire Officer:

- No objection.

3.4. Prescribed Bodies

3.4.1. HSE:

- No objection, subject to conditions.

3.4.2. Meath County Council:

- Lands to the south are located within a flood risk area, as outlined in the Meath County Development Plan 2013-2019.

3.4.3. Department of Arts, Heritage, Regional, Rural and Gaeltacht Affairs:

- Due to the scale of the development, archaeological monitoring should take place.

3.4.4. An Taisce:

- An Taisce note the Tesco and SuperValu serving Kinnegad and the Council should ensure that the subject proposal would not create excessive retail provision relative to the catchment area.
- The Council should have consideration of Section 3.23.2 of the CDP regarding the siting of retail development.

3.5. **Third Party Observations**

- 3.5.1. One third party observation was made on behalf of Tesco Ireland Limited. The issues raised are generally as per the appeal.

4.0 **Planning History**

- 4.1. **PL25.228988 (Reg. Ref. 08/5039):** Permission refused for 74 dwelling units, 22 retail units, financial services unit, crèche and ancillary works.
- 4.2. **Reg. Ref. 07/5300:** Permission refused for mixed use development consisting of 131 dwelling units, retail, offices, crèche, library.

5.0 **Policy Context**

5.1. **Midland Regional Planning Guidelines 2010-2022**

- 5.1.1. Kinnegad is designated as a 'Service Town' under the MRPG. It states that these towns perform important retail, residential, service and amenity functions for local

rural hinterlands and support the upper tiers of the urban hierarchy including the linked gateway and principal towns. Many of these towns have experienced high levels of population growth over the last census period, in some cases without the necessary supporting services. As a result, the RPGs envisage that the development of these towns needs to be increasingly aimed at consolidating growth within the service town and better matching to the development of relevant supporting physical and social infrastructure.

5.2. Westmeath County Development Plan 2014-2020

5.2.1. Section 3.21 of the Development Plan relates to retail development and the following Policies and Objectives are noted:

- P-GR3: To support the vitality and viability of existing designated centres and facilitate a competitive and healthy environment for the retailing industry into the future by ensuring that future growth in retail floorspace is in keeping with the Retail hierarchy, as prescribed in the Retail Strategy.
- O-GR5: To align new retail development with existing and proposed public transport infrastructure and services and encourage access by foot and bicycle to reduce the dominance of access by private car.

5.2.2. Section 3.22 states that “retail development shall be carried out in accordance with the principles set out in the Retail Planning Guidelines for Planning Authorities (DoECLG 2012), pending the adoption of a Retail Strategy for the remainder of the county. Policies for retailing are currently set out in the Retail Strategy for County Westmeath 2007-2012. The strategy and policy prescribed in this Retail Strategy shall remain in force pending the adoption of a Joint Retail Strategy for the Midlands Gateway Towns.”

5.2.3. The Kinnegad Service Town Plan 2014-2020 is included at Section 13.4 of the Development Plan. The stated settlement function for Kinnegad is as follows:

“...to perform important retail, residential, service and amenity functions for local rural hinterlands and support the upper tiers of the Settlement Hierarchy. Kinnegad has experienced high levels of population growth over the last two census periods, but this growth has not been accompanied by the requisite supporting services. This plan shall seek to consolidate growth within the

development boundary and to provide for supporting social and community infrastructure to meet the needs of existing and future residents.”

5.2.4. It goes on to state that:

“The role of Kinnegad as a local retail and commercial centre shall be consolidated and maintained with this plan, with a focus on developing the backlands from the Main Street to the inner Relief Road.

In this context, the provision of new and enhanced linkages to the town’s Main Street in the development of these lands is of utmost importance to sustaining the vitality of the area. Any development schemes will appropriately address and be sympathetic to the valuable amenity feature of Kinnegad River.”

5.2.5. The following Objectives and Policies are noted:

- **O-KGD2:** To secure the expansion of the public amenity area and playground adjacent to the Kinnegad River.
- **O-KGD6:** To enhance road and pedestrian linkages between the Main Street and lands to the south and improve connectivity between the Inner Relief Road, the Main Street and the amenity open space associated with the River Kinnegad.
- **O-KGD10:** To secure the development of vacant lands between the Inner Relief Road and the Main Street with appropriate mixed-use development that compliments existing environmental and amenity features associated with the River Kinnegad.
- **P-KGD4:** To enhance pedestrian and cycle permeability from the centre of the town to the development boundaries on all access roads, in association with further development in the settlement.
- **P-KGD5:** To permit the provision of new appropriately scaled retail development and commercial outlets of a range and type consistent with the growth of the town and located in an expanded Mixed Use town core.
- **P-KGD6:** To require that provision be made for adequate car and cycle parking accommodation, in respect of new retail and commercial

development, in accordance with the Planning Authority's standards for retail/commercial uses.

- **P-KGD7:** To secure the provision of appropriate sustainable mixed-use developments in the town centre which create opportunities to live, work, shop, etc. within Kinnegad and reduce the propensity to travel by private car.
- **P-KGD8:** To secure new and enhanced linkages between the Main Street and backlands to the south in the development of these lands.
- **P-KGD9:** To provide for appropriately scaled employment generating uses in Kinnegad and attract inward investment.

5.3. Westmeath Retail Strategy

- 5.3.1. Kinnegad is identified in the Retail Strategy as being Tier Two on the retail hierarchy. It states that “the focus of the retail strategy will be to consolidate the role and function of the existing settlement hierarchy, including the secondary tier (such as Moate, Kinnegad, Kilbeggan and Castlepollard) as well as lower tier centres, by encouraging the retention of retail and services appropriate to each centre. Where a future need emerges to serve the local population then appropriate provision should be made in order to enhance the vitality and viability of the County towns and reduce the incidence of trade leakage outside the study area.

In general, there is unlikely to be a major increase in retail requirements in the short-to-medium term, especially in the smaller, local and lower tier centres within County Westmeath. The main type of additional retail provision is likely to be in the form of new foodstores. This position should of course be reviewed over time.”

- 5.3.2. In respect of discount foodstores, the Retail Strategy states:

“Discount foodstores will typically comprise about 1,500 sq m gross and are served by a surface car park with up to 100 spaces. The preferable location for a discount foodstore would be town centre or edge-of-centre, in a designated District Centre (if applicable) or in a larger Neighbourhood Centre. The potential role for a discount foodstore to act as the anchor in a small centre is acknowledged by the Retail Planning Guidelines.

The main criteria that can be adopted to assess the suitability of discount foodstore proposal may include the likely impact of the store on the urban design, character and amenity of the town or area, as well as its overall accessibility by all means of travel, and its impact on the vitality and viability of the town centre.”

5.4. Retail Planning Guidelines for Planning Authorities 2012

- 5.4.1. These Guidelines state that enhancing the vitality and viability of town centres through sequential development is an overarching objective in retail planning. There are 5 key policy objectives – ensuring plan led development; promoting town centres through sequential development; promoting a competitive market place; encouraging sustainable travel by located shops in locations accessible by such modes; and realising high quality urban design.
- 5.4.2. Section 4.11.1 states that large convenience goods stores should be located in city or town centres or in district centres or on the edge of these centres and be of a size which accords with the general floorspace requirements set out in the development plan/retail strategy to support and add variety and vitality to existing shopping areas and also to facilitate access by public transport for shoppers.
- 5.4.3. Kinnegad would fall within the ‘Small Towns and Rural Areas’ tier within the national retail hierarchy.

5.5. Retail Design Manual 2012

- 5.5.1. This is a companion document to the Retail Planning Guidelines which highlights the need for high quality design that is appropriate to the character location and configuration of the site and its environs improving the urban grain, pedestrian permeability and using high quality design/finishes. The manual utilises 10 principles of urban design as a benchmark for suitable development.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. A third party appeal was submitted on behalf of Tesco Ireland Limited by GVA Planning. The grounds of appeal can be summarised as follows:

- Case planner recommended that planning permission be refused due to failure to comply with policy or provide any open space.
- Objective O-KGD6 requires east-west and north-south pedestrian and cycling connectivity through the site. This was not provided. Partial connection does not accord with envisaged routes.
- Proposed development does not provide any usable open space as outlined in the Kinnegad Service Town Plan, which forms part of the Development Plan. The Development Plan envisages that the flood risk area would be developed as open space, and there is a concern that it will remain undeveloped and unused.
- Design is inappropriate and fails to address any road/street or the planned open space to the east. It is contrary to the Retail Design Manual due to its failure to provide an active street frontage.
- Shortfall in car parking provision. Appellant is concerned that this could impact on surrounding businesses. It is inappropriate to use the Tesco car park as an overflow car park and could be considered ultra vires in the absence of a legal agreement.
- Special development contribution is significantly less than contribution attached to Tesco's permission (Reg. Ref. 07/5420). Aldi should have to contribute proportionately towards infrastructure delivery.
- Layout and design with surface car parking is inefficient, given the finite area of town centre expansion lands.
- Revised design should be considered with undercroft car parking, mix of uses, ancillary retail units and usable open space.

6.2. Applicant Response

6.2.1. A response to the third party appeal was submitted on behalf of the applicant and can be summarised as follows:

- Proposed development will improve consumer choice and complement the existing retail provision in the town.
- Appeal is made on behalf of a competing retailer on an adjacent site. Appellant has an inherent commercial interest in preventing the introduction of an additional convenience retailer within the town. Appeal is contrary to Retail Planning Guidelines which are clear that it is not the purpose of the planning system to prevent competition or protect individual retailers.
- Applicant is happy to comply with the conditions imposed by the Planning Authority.
- Appellant is incorrect to state that the proposed development does not provide required pedestrian and cycle linkages with the town centre. This was fully addressed in applicant's further information response.
- Proposed development provides a direct link from the relief road to the Main Street for pedestrians and cyclists and provides for future vehicular, pedestrian and cycle links to the future roundabout to the west to be provided by the County Council.
- Applicant operates 125 stores in Ireland with car parking provision in the range of 75 – 90 spaces. Such provision is adequate to cater for the applicant's requirements, particularly where stores are within or adjacent to existing town centres.
- The proposal includes sufficient car parking, and no reliance is made on the adjacent Tesco car park.
- It should be noted that the appellant appealed their special contribution for the future roundabout to the Board, and it was subsequently reduced to €300,000. The applicant is happy to comply with condition 15.

- Proposed development complies with Retail Planning Guidelines, Retail Design Manual, Westmeath County Development Plan 2014-2020 and Westmeath County Retail Strategy 2007 and is plan-led development.
- Site is located on 'Expanded Town Centre' zoned lands, is easily accessible by all modes of transport and will reinforce the role of the town centre.
- Having regard to the existing character of the area, including the Tesco store, it was considered that an Aldi could be accommodated without being obtrusive to its surroundings.
- The proposed store is smaller in scale than the adjoining Tesco, and the provision of undercroft car parking is neither appropriate or viable.
- There is no requirement for any open space to be provided in concurrence with the proposed Aldi store. The development does, however, include pedestrian and cycle linkage through the open space and a detailed landscaping plan for the linkage and periphery of the Aldi store.
- The application relates primarily to the western part of the site zoned for 'Expanded Town Centre'. The remainder of the site will be retained in its current semi-natural state. Future use and development of this area will be a matter for future discussion with the Planning Authority.
- The applicant is willing to accept a condition requiring a temporary landscaping scheme and management plan to be submitted for agreement, as per drawing enclosed with response to appeal.
- Proposed store has been designed in accordance with the Retail Design Manual, it has been orientated to ensure a fully glazed front elevation onto the R446 and attractively landscaped car parking area.
- Scale and height of proposed development is in keeping with other commercial buildings, such as the adjacent Tesco.
- Submitted drawing illustrates how the site has been designed to accommodate both the current vehicular access route and the potential future access routes off the proposed roundabout.

- Cycle and pedestrian route from the R446 to Main Street will be landscaped to a high standard, with recessed seating areas and low level boundary to allow for unrestricted sightlines.

6.2.2. A response to parking and traffic issues, prepared by TPS Ltd. was also submitted with the response to the appeal. It can be summarised as follows:

- Aldi has established methodology for calculating car parking requirements, based on experience, net floor area, catchment area and comparison with other Aldi stores that have a similar socio-economic profile.
- A comfort factor of 10% is applied to projected car parking requirements to reduce the need for customers to re-circulate within the parking aisles.
- It is not in Aldi's interest to underprovide car parking spaces, as customers will revert to their previous food store operator if they experience delays.
- Aldi can operate with a parking ratio of 1 space per 20 sq m of gross floor area. Store opening programme reduces catchment area and car parking demand.
- There is a large variance in parking requirements among Local Authorities. For an Aldi store this can range from 36 in Limerick to 147 in Galway or Leitrim.
- Car parking surveys for Aldi stores in Clifden, Claremorris and Carrick-on-Shannon demonstrate that 90 spaces at Kinnegad is more than sufficient.
- Aldi's car parking spaces are wider than standard parking spaces. If the width were reduced, an additional 7 spaces could be realised.
- The Board has accepted the extent of Aldi car parking in a number of cases.
- While the extent of parking within the Aldi site may differ from the Development Plan standards, it does not represent a shortfall in customer parking.
- Temporary junction with R446 will operate at Level of Service A, representing almost free flow traffic conditions with no queueing within the site access.
- Tesco appeal fails to acknowledge that some Tesco customers will also link their car borne trip with a visit to the Aldi store. Customer cross-visitation in

such circumstances is well established, with examples such as Naas, Castlebar and Portlaoise.

6.3. **Planning Authority Response**

6.3.1. None.

6.4. **Observations**

6.4.1. None.

6.5. **Further Responses**

6.5.1. None.

7.0 **Assessment**

7.1. I consider the key issues in determining the appeal are as follows:

- Principle of proposed development.
- Design and layout.
- Car parking provision.
- Access and traffic.
- Special Development Contribution.
- Flood risk.
- Other issues.
- Appropriate Assessment.

7.2. **Principle of Proposed Development**

7.2.1. The appeal site is zoned as 'Expanded Town Centre' and 'Open Space' in the Kinnegad zoning map contained within the CDP. I note that the existing town centre is zoned as 'Mixed Use'.

- 7.2.2. While the appeal site is partially zoned as 'Expanded Town Centre', this is not one of the land use zoning objectives listed in Chapter 15 of the CDP, and the CDP does not specify permissible or open for consideration uses for this zoning objective. Notwithstanding this, I note that Policy P-KGD5 states in respect of Kinnegad that it is the Policy of the Planning Authority to permit the provision of new appropriately scaled retail development and commercial outlets of a range and type consistent with the growth of the town and located in an expanded Mixed Use town core.
- 7.2.3. I am therefore satisfied that the proposed development is acceptable in principle, subject to consideration of the planning issues identified above.

7.3. Design and Layout

- 7.3.1. The appellant contends that the design and layout of the proposed development is inappropriate and inefficient and that it fails to address any road/street or the planned open space to the east. The appellant also contends that the proposed development is contrary to the Retail Design Manual due to its failure to provide an active street frontage.
- 7.3.2. The proposed building has a gross floor area of 1,757 sq m, with a net retail area of 1,254 sq m. It is a relatively simple single storey building with a maximum height of c. 5.46m and with extensive glazing along its southern elevation, and with a continuous strip of high level glazing along its western elevation. The northern and eastern elevations are more utilitarian, featuring a number of service doors as well as plant and bin storage areas. Finishes to the building generally comprise precast concrete wall panels, with metal cladding detailing to the western and southern elevation and a projecting canopy element. A Retail Design Statement was submitted with the application, which assesses the proposed development against the 10 design principles of the Retail Design Manual, and which includes images of a number of recently developed Aldi stores. The proposed development is similar in design and detailing to these stores.
- 7.3.3. Having reviewed the Design Statement, I consider the design and scale of the proposed development to be broadly acceptable and consistent with the character of the area, as defined by the appellant's own supermarket and car parking area, located a short distance to the west. While the proposed retail unit is a somewhat

generic 'box' format, it is well detailed, and presents an active frontage to the south and west, the areas which are most visible from surrounding roads.

- 7.3.4. With regard to the site layout, I would concur with the appellant that the retail unit essentially turns its back on the open space zoned lands to the east and fails to address these lands. However, having regard to the requirement for back-of-house service areas, stores etc. I consider it more appropriate that the southern and western elevations serve as the principle elevations, with more active frontages. I consider that the proposed use of landscaping and suitable boundary treatments between the retail unit and open space zoned lands will mitigate the impact of the development on these lands.
- 7.3.5. The appellant states that the proposed development does not provide any usable open space as outlined in the Kinnegad Service Town Plan, and expresses concern that the lands will remain undeveloped and unused.
- 7.3.6. While the lands to the east of the building footprint are zoned open space, I do not consider that there is any requirement under the provisions of the CDP to provide public open space as part of a retail development. No development is proposed on the lands in question, other than the pedestrian/cycle link, and I consider that the future use of these lands as public open space would not be prejudiced by the proposed development.
- 7.3.7. In terms of signage, it is proposed to erect one free-standing double-sided internally illuminated pole sign in the south west corner of the site, one single-sided internally illuminated gable sign on the southern elevation, one single-sided entrance glass sign and one poster sign, both on the western elevation. Having regard to the site context, and particularly the lack of residential properties in the vicinity, I consider the level of signage proposed to be appropriate for the scale of the building and the size of the site.
- 7.3.8. In conclusion, I consider the design and layout of the proposed development to be acceptable.

7.4. Car Parking Provision

- 7.4.1. The appellant contends that the proposed development has a shortfall in car parking provision, and expresses concern that this could impact on surrounding businesses.

The appellant states that it is inappropriate to use the Tesco car park as an overflow car park and that this could be considered *ultra vires* in the absence of a legal agreement. I note that the Planning Officer had also recommended refusal on the basis of inadequate car parking.

- 7.4.2. Section 14.9.2 of the CDP states that it “will generally be required that developments that are residential, commercial, enterprise and employment or otherwise, shall comply with the parking standards detailed in Table 14.11 below. The Council shall seek to control the provision of parking in town centres and has a policy to encourage alternatives to car commuting. Within the designated town centre locations of Athlone and Mullingar, a lower standard of car parking provision shall apply.”
- 7.4.3. Table 14.11 sets out a minimum number of 6 spaces per 100 sq m of gross floor area, with a reduction to 3 spaces per 100 sq m in designated town centre areas. The proposed development has a stated gross floor area of 1,757 sq m, which would give rise to a requirement for 105 spaces.
- 7.4.4. A total of 90 car parking spaces are proposed, based on a larger than usual space size of 2.7m x 5m. The applicant contends that 90 spaces are more than adequate for the proposed development, based on their experience of operating 125 such stores throughout Ireland, and they state that there is no reliance on the Tesco car park. The applicant also states that if smaller spaces were utilised, an additional 7 spaces could be realised.
- 7.4.5. By way of comparison, I note that the Board has considered the issue of car parking provision in respect of two appeals regarding discount supermarkets in County Westmeath in the lifetime of the current CDP. These are the Aldi and Lidl supermarkets in Mullingar (PL25M.244863 and PL25M.242793, respectively). The Lidl supermarket had a gross floor area of 1,902 sq m and 79 car parking spaces, while the Aldi supermarket had a gross floor area of 1,573 sq m and 94 car parking spaces. Although, as noted above, Mullingar has a lower car parking requirement than other areas of the County.
- 7.4.6. A car parking accumulation survey for three Aldi stores in Clifden, Claremorris and Carrick-on-Shannon was submitted as part of the TIA. This survey demonstrates that the number of vehicles in any of the three sites rarely exceeded 90. The applicant

also states that the appellant has raised car parking in a number of its appeals against Aldi sites where car parking differed from Development Plan requirements, and that the Board has granted permission in respect of these sites.

- 7.4.7. While there is a shortfall in car parking provision relative to the CDP car parking requirements, I consider that having regard to the Expanded Town Centre zoning of the appeal site, its proximity to the Main Street of Kinnegad, and the likely potential for cross-visitation between both different retailers and non-retail services, that the proposed level of car parking is adequate.
- 7.4.8. Finally, I note that the Westmeath County Council Development Contribution Scheme 2013-2020 makes provision for a shortfall in car parking spaces at the rate of €2,000 per space. Since this forms part of the section 48 scheme, I do not consider that a special contribution is required.

7.5. Access and Traffic

- 7.5.1. It is proposed to provide vehicular access to the proposed retail store via a new entrance on the R446, also referred to as the Kinnegad Inner Relief Road. The R446 has roundabouts c. 370m to the west and c. 290m to the east, respectively, of the proposed access point, while the existing entrance point to the Tesco supermarket is c. 88m to the west, and comprises a ghost island priority T junction.
- 7.5.2. The R446 is c. 9m wide, with a footpath and grass verge along its northern side. To the west of the Tesco junction there is also a cycle lane.
- 7.5.3. The Traffic Impact Assessment submitted with the application demonstrates, based on three days of traffic surveys and trip generation rates taken from the TRICS database, that the evening peak traffic period occurs between 1700 hours and 1800 hours and that the proposed development will generate a limited amount of additional traffic during this PM peak period. Additional traffic surveys were provided for three Aldi stores in Clifden, Claremorris and Carrick-on-Shannon, and I note that these surveys indicate that the traffic movements in and out during the PM peak hour would appear to generally be in excess of those predicted by the TRICS database. PICADY analysis of the proposed junction with the R446 was undertaken in the TIA, and indicates that the proposed development would result in minimal queueing, with

a ratio of flow to capacity at the junction of 0.143. This results in a Level of Service of 'A', which represents "reasonable free flow urban traffic conditions".

- 7.5.4. Notwithstanding the low existing level of congestion on the R446, it is also proposed, in response to a request for further information, to provide a ghost island right-turning lane on the R446, similar to that which serves the nearby Tesco site. This would be capable of storing 8 right-turning vehicles, which would be more than adequate for the projected 28 vehicles per hour that will undertake this turning manoeuvre. I consider these access arrangements to be acceptable, and I do not consider that the proposed development would result in the creation of a traffic hazard.
- 7.5.5. Notwithstanding the general acceptability of the proposed access arrangements from the R446, it is noted that Westmeath County Council are proposing to upgrade the Tesco junction to a roundabout. The Area Engineers report states that a Part 8 process has been completed for this development and that it would also potentially serve the proposed development and other lands in the vicinity.
- 7.5.6. Downes Associates Drawing 12152-001, submitted in response to the request for further information, illustrates both the proposed access arrangement and the future access arrangements once the roundabout is constructed. The drawing includes swept path analysis to demonstrate that the HGV loading bay can be safely accessed in both scenarios. While I consider the proposed access point and associated right-turning lane to be generally acceptable, I also consider that the future access arrangements via a link road off the roundabout would be preferable in the interests of maintaining a freeflow of traffic and minimising the number of junctions on the regional road. I therefore recommend that the use of the future roundabout for access, once it is constructed, be required by way of condition.
- 7.5.7. With regard to pedestrian and cycle access, the Kinnegad Objectives map included in the CDP indicates a north-south pedestrian/cycle access from Main Street to the R446 and an east-west access linking the north-south access to the Tesco access road. A recreational walking/cycling route is also indicated along the banks of the River Kinnegad. Policy P-KGD4 and Objective O-KGD6 of the CDP seek to enhance pedestrian and cycle permeability in Kinnegad and in the case of Objective O-KGD6 specifically between the Main Street and lands to the south, and to improve

connectivity between the Inner Relief Road, the Main Street and the amenity open space associated with the River Kinnegad.

- 7.5.8. The proposed development includes a pedestrian and cycle link that will facilitate connectivity between the Main Street and the R446 via a roadway to side of the Gildea development which is included within the 'red line' site boundary. While the route does not exactly match that shown in the Kinnegad Objectives Map, it does serve to link the R446 to Main Street, and is therefore consistent with Objective O-KGD6 and P-KGD4 in my opinion. Having regard to the conflict that exists at the point where the pedestrian and cycle path passes through a proposed gate of reduced width into the Gildea development and the presence of two car parking spaces at this location, I consider that in the interests of public safety it would be preferable if these two existing car parking spaces were removed and a combined pedestrian/cycle path continued as far as the junction with Main Street.
- 7.5.9. While the proposed development does not provide a pedestrian/cycle route along the banks of the River or to the west, sufficient undeveloped lands exist to allow such routes to be provided in the future.
- 7.5.10. In conclusion, I consider that the proposed development would not result in an increase in traffic congestion or in the creation of a traffic hazard and I therefore consider it to be acceptable from a traffic and access perspective.

7.6. **Special Development Contribution**

- 7.6.1. The appellant contends that the special development contribution imposed by the Planning Authority in connection with the proposed roundabout to the west of the appeal site is significantly less than the contribution attached to their permission (Reg. Ref. 07/5420) and that the applicant should have to contribute proportionately towards infrastructure delivery. In response, the applicant has noted that the appellant's contribution was reduced on appeal to the Board (Ref. PL25.228929).
- 7.6.2. An email on the planning file dated 16th June 2014 relates to the apportionment of costs for the new roundabout. It apportions the total €500,000 cost for the roundabout based on the relative size of three landholdings, minus the land take for the roundabout, as follows:

- Tesco: 43.7722% = €218,861

- Dalys: 35.6106% = €178.053
- Farbill/Receiver: 20.6172% = €103,086

7.6.3. I note that the costs for the Farbill/Receiver site (i.e. the appeal site) are based on a total landholding of 0.946 ha, whereas the current appeal site extends to 2.2 ha. The smaller area may relate to the town centre expansion zoned portion of the lands, as the remainder are zoned open space.

7.6.4. Having regard to the apparent discrepancy between the costs apportioned to the Tesco site under the email of 16th June 2014, compared to the amended contribution of €300,000 previously imposed by the Board under PL25.228929, and the resultant impact of any such discrepancy on the costs that should be apportioned to the appeal site, I recommend that if the Board is minded to grant permission that an unspecified special development contribution condition be utilised, allowing the amount to be agreed between the Planning Authority and the developer.

7.7. Flood Risk

7.7.1. As noted above, the Clonard River, also known as the River Kinnegad, flows along the southern boundary of part of the appeal site. A preliminary flood risk appraisal was contained within the Engineering Services Report submitted with the planning application.

7.7.2. The majority of the open space zoned lands within the appeal site, to the east of the footprint of the retail unit and car park, fall within the area indicated on the OPW flood mapping as lands “that might benefit from the implementation of Arterial (Major) Drainage Schemes (under the Arterial Drainage Act 1945) and indicating areas of land subject to flooding or poor drainage”. The Kinnegad Flood Risk Map contained in the CDP also the majority of the open space zoned lands within the fluvial 1000 year flood event, or the fluvial 100 year flood event. A small portion of the footprint of the proposed development would appear to be located within the identified flood risk zone, and the applicant’s engineer therefore considers the proposed development to be located within Flood Zone B, which is a predication I would concur with.

7.7.3. Retail is a land use which the Planning System and Flood Risk Guidelines for Planning Authorities considers to be a ‘less vulnerable development’. In accordance

with Table 3.2 of the Guidelines, less vulnerable development is considered to be 'appropriate' within Flood Zone B, and therefore does not require a justification test.

7.7.4. The applicant is proposing to provide a floor level of c. 73.0m for the proposed building and car park, which would provide c. 1.5m of freeboard above the mapped flood level. I consider this approach to be reasonable, and I note that the applicant is proposing to provide attenuation storage within the site with discharge to the River Kinnegad limited to greenfield run-off rates, which I am satisfied will ensure no net reduction in floodplain capacity, or increased flood risk downstream. Notwithstanding this, I note that the Planning Authority considered that a larger attenuation storage volume was required within the site, and if the Board is minded to grant permission I recommend that a condition be included requiring revised SuDS proposals to be submitted for the agreement of the Planning Authority.

7.8. Other Issues

7.8.1. Ceding of Land

7.8.2. Condition 14 of the Planning Authority's decision requires the applicant to transfer lands to Westmeath County Council for a nominal sum of €1.00 for the construction of a roundabout to the west of the site.

7.8.3. While the applicant has stated that they are happy to comply with the conditions imposed by the Planning Authority, I note that Section 7.11 of the Development Management Guidelines for Planning Authorities states that Conditions should not be attached to planning permissions requiring land to be ceded to the local authority for road widening or other purposes, and that Conditions of this sort are not lawful. The Guidelines state that while it is in order to require a developer to reserve land free of any development in order, for example, to permit the implementation of a road improvement proposal, it is not lawful to require by condition a transfer of an interest in land to the local authority or other person/body.

7.8.4. Therefore, if the Board is minded to grant permission, I recommend that it would be more appropriate for a condition to be included requiring the lands necessary for the construction of the roundabout to be reserved free from development, rather than a condition requiring the lands to be ceded to the Local Authority.

7.8.5. Archaeology

7.8.6. An Archaeological Assessment report was submitted with the application. Having regard to this, and noting the scale of the site, its proximity to the historic town centre of Kinnegad and the submission made by the Department of Arts, Heritage, Regional, Rural and Gaeltacht Affairs, I recommend that an archaeological monitoring condition be included if the Board is minded to grant permission.

7.9. Appropriate Assessment

7.9.1. A report entitled 'Screening for Appropriate Assessment', prepared by Openfield Ecological Services was submitted with the planning application.

7.9.2. The appeal site is not located within or in immediate proximity to any Natura 2000 sites. The closest such site is the Mount Hevey Bog SAC (site code 002342), which is c. 2.5km to the north. The River Kinnegad flows along the south eastern boundary of the appeal site and joins the River Boyne c. 9km downstream. A further c. 1km downstream, the River Boyne flows under the Royal Canal, and at this point the boundary of the River Boyne and River Blackwater SAC and SPA (site codes 002299 and 004232, respectively) commences.

7.9.3. The qualifying interests of the Mount Hevey Bog SAC are as follows:

- Raised Bog (Active)
- Degraded Raised Bog
- Rhynchosporion Vegetation

7.9.4. The conservation objectives for the site are to restore the favourable conservation condition of Active raised bogs, as defined by a list of specific attributes and targets.

7.9.5. The sole qualifying interest of the River Boyne and River Blackwater SPA is the Kingfisher (*Alcedo atthis*), while the qualifying interests of the SAC are as follows:

- River lamprey (*Lampetra fluviatilis*)
- Atlantic salmon (*Salmo salar*)
- Otter (*Lutra lutra*)
- Alkaline fens
- Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior*.

- 7.9.6. Both the SAC and SPA have generic conservation objectives to maintain or restore the favourable conservation condition of the relevant habitats/species.
- 7.9.7. Since the appeal site is within the catchment area of the River Kinnegad, and ultimately of the River Boyne, it is both physically removed from, and hydrologically separated from, the Mount Hevey Bog SAC. I am therefore satisfied that there is no pathway between the appeal site and that designated site and that no Appropriate Assessment issues arise.
- 7.9.8. With regard to the potential effect of the proposed development on the River Boyne and River Blackwater SPA and SAC, I note that the AA Screening report makes reference to correspondence received from the NPWS on 2nd September 2016 in which the NPWS stated that they were of the view that the development does not pose a known threat to the designated sites, and advising that the Kinnegad River should be protected from light spill. However, a copy of the NPWS correspondence was not submitted with the planning application.
- 7.9.9. During the construction phase I consider that, having regard to the significant distance of the appeal site from the SPA and SAC, and subject to compliance with standard good practise construction methods for works in the vicinity of watercourses, that there will be no significant effect on the SPA and SAC. With regard to the operational phase, wastewater arising from the proposed development will be discharged to the public foul sewer network, where it will be treated in the Kinnegad WwTP before discharge to the River Kinnegad. While the 2015 AER for the WwTP shows non-compliance with ELVs for Ortho-P and ammonia, I would tend to agree with the Water Services Department of the Planning Authority that the wastewater loadings from the proposed development, which are 5PE, are insignificant in terms of the total load on the WwTP and having regard to the low level of wastewater generated, and the separation distance and subsequent dilution effect between the appeal site and the SPA/SAC, I am satisfied that no Appropriate Assessment issues arise.
- 7.9.10. In conclusion, it is reasonable to conclude that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on any European sites, in view of the

sites Conservation Objectives, and a Stage 2 Appropriate Assessment and submission of a NIS is not therefore required.

8.0 Recommendation

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

9.0 Reasons and Considerations

9.1. Having regard to the zoning objectives for the area and the pattern of development in the area, 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 property in the vicinity and would 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 22nd day of August 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 in accordance with agreed conditions.

Reason: In the interest of clarity.

2. The proposed development shall be amended as follows:
 - (a) A shared footpath/cycleway shall be provided along the roadway to the east of Gildea's pharmacy, linking to Main Street. The two car parking spaces at the southern end of the roadway shall be removed.

Revised drawings showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interests of traffic safety.

3. The direct vehicular access point from the R449 shall be closed once the service road access from the roundabout to the west has been constructed.

Reason: In the interests of traffic safety.

4. The proposed retail unit shall not operate outside the hours of 0800 to 2200 Monday to Saturday inclusive, nor outside the hours of 1000 to 2200 on Sundays or public holidays.

Reason: To protect the amenities of the area.

5. Details, including samples, of the materials, colours and textures of all the external finishes, including external glass, to the proposed development shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. In this regard, samples shall be erected on site where required by the planning authority.

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

6. (a) Advertisement signs shall be as shown on the drawings submitted with the application.

(b) No additional advertisement, advertisement structure, freestanding sign, or other projecting elements including flagpoles or banners, shall be erected or displayed on the building or within the curtilage of the site, unless authorised by a further grant of planning permission.

Reason: In the interest of visual amenity

7. Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall be agreed in writing with the planning authority prior to the commencement of development.

Reason: In the interest of public health.

8. 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 further grant of permission.

Reason: To protect the visual amenities of the area

9. All service cables associated with the proposed development (such as electrical and communication cables) shall be located underground.

Reason: In the interest of visual amenity.

10. The internal road network serving the proposed development, including turning bays, junctions, parking areas, footpaths and kerbs shall comply with the detailed standards of the planning authority for such road works.

Reason: In the interest of amenity and traffic and pedestrian safety.

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

- (a) Details of all proposed hard surface finishes including samples of the 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 the proposed species and setting. This shall include additional planting at the boundary between the retail unit and the open space zoned lands to the east.
- (c) Details of proposed street furniture including bollards, lighting, fixtures and seating.
- (d) Details of proposed boundary treatment at the perimeter of the site including heights, materials and finishes.
- (e) Details of temporary landscaped areas on the open space zoned lands to the east of the retail unit, as indicated on drawing no. 11.31.115 submitted to An Bord Pleanála in response to the appeal.

The boundary treatment and landscaping shall be carried out in accordance with agreed scheme.

Reason: In the interest of visual amenity.

12. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

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

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

13. The developer shall facilitate the preservation, recording and protection of archaeological materials or features that may exist within the site. In this regard, the developer shall –

(a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development,

(b) employ a suitably-qualified archaeologist who shall monitor all site investigations and other excavation works, and

(c) provide arrangements, acceptable to the planning authority, for the recording and for the removal of any archaeological material which the authority considers appropriate to remove.

In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.

Reason: In order to conserve the archaeological heritage of the site and to secure the preservation and protection of any remains that may exist within the site.

14. Prior to commencement of development, land required by the planning authority for the construction of the roundabout and associated development on the western boundary of the site (as indicated in the lodged documentation) shall be reserved free from development and shall be marked out on site in consultation with the planning authority.

Reason: In the interest of traffic safety and to prevent the development of this area prior to its use for future road improvements.

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 to the planning authority a financial contribution as a special contribution under section 48(2) (c) of the Planning and Development Act 2000 in respect of the construction of the roundabout and associated development to the west of the proposed development. The amount of the contribution 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 for determination. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be updated at the time of payment in accordance with changes in the Wholesale Price Index – Building and Construction (Capital Goods), published by the Central Statistics Office.

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.

Niall Haverty
Planning Inspector

9th February 2018