



Development

The redevelopment of Bishopstown Shopping Centre, Curraheen Road, Bishopstown, Cork. The proposed development includes the part demolition of the existing supermarket and adjoining retail units and redevelopment to provide for an extended supermarket (1,500 sq.m. NFA) and an adjoining unit providing for either retail or café / restaurant type use. The overall proposal allows for a reduction in the total existing floorspace. The proposal also allows for external alterations to the elevations, revisions and extension storage / ancillary spaces, modifications to existing car park layout, landscaping, signage, totem sign and all associated site development works. The supermarket will provide for the sale of alcohol.

Location

Bishopstown Shopping Centre,
Curraheen Road, Bishopstown. Cork.

Planning Authority	Cork City Council
Planning Authority Reg. Ref.	17/37366
Applicant(s)	Dunnes Stores
Type of Application	Permission
Planning Authority Decision	Grant subject to conditions
Type of Appeal	First Party v. Conditions.
Observer(s)	None.
Date of Site Inspection	30 th January, 2018
Inspector	Robert Speer

1.0 Site Location and Description

- 1.1. The proposed development site is located within the primarily residential district of Bishopstown in the south-western suburbs of Cork City, approximately 3.7km southwest of the City Centre and 700m southwest of Cork University Hospital, where it occupies a position situated between Curraheen Road to the south and Firgrove Drive to the north. The surrounding area is predominantly characterised by established two-storey semi-detached housing, although there are several instances of assorted retail / commercial uses along Curraheen Road both adjacent to the site and in the wider vicinity (*N.B.* Construction works have commenced on those lands previously occupied by 'The Viscount Bar' to the immediate southwest of the application site).
- 1.2. The site itself has a stated site area of 1.18 hectares, is irregularly shaped, and is presently occupied by the Bishopstown Shopping Centre which comprises a 'Dunnes Stores' supermarket (as the anchor retail unit) and a number of other smaller shop units. The existing building is generally of a single storey construction, save for a small first floor storage area, and is somewhat dated in its appearance. It is positioned to the west of the site and aligned along a north-south axis in order to face eastwards with a service / storage area extending to the rear of the building. The remainder of the site area comprises an expanse of car parking and associated circulation aisles to the south and east, although the eastern periphery of the site includes an area of green space between the shopping centre and Firgrove Avenue. Vehicular access to the site is obtained from Curraheen Road to the south and Firgrove Avenue to the east whilst there is also a stepped pedestrian access available from Firgrove Drive to the north.

2.0 Proposed Development

- 2.1. The proposed development involves the redevelopment of the existing Bishopstown Shopping Centre (floor area: 2,760m²) and includes for the partial demolition of the existing supermarket and the 5 No. adjoining retail units (total floor area to be demolished: 1,656m²) with the subsequent construction of an extended supermarket area (proposed net retail floor area: 1,500m²) and a new adjoining unit to provide for either retail or café / restaurant type use (floor area: 155m²). The overall proposal

provides for a reduction in the total gross floorspace on site from 2,760m² to 2,396m² (*N.B.* Whilst it has been indicated that the extended supermarket will provide for the sale of alcohol, the extent of any such area has not been detailed on the proposed floor plans).

- 2.2. The proposed redevelopment also includes for alterations to the external elevations of the existing structure, the revision and extension of ancillary storage and service areas, the modification of the existing car park layout, landscaping works, the erection of signage, and all associated site development works.

3.0 **Planning Authority Decision**

3.1. **Decision**

- 3.1.1. Following the receipt of responses to requests for further information and subsequent clarification, the Planning Authority issued a notification of a decision to grant permission for the proposed development subject to 27 No. conditions. These conditions are generally of a standardised format and relate to issues including external finishes, landscaping, construction management and infrastructural services, however, Condition Nos. 3, 7, 11, 13, 19 & 25 (which refer to matters pertaining to opening / servicing hours, the provision of wayleaves for existing services, public lighting and surface water attenuation) are of specific relevance in the context of this first party appeal.

3.2. **Planning Authority Reports**

3.2.1. Planning Reports

An initial report sets out the site context, the planning history, and the relevant planning policy considerations before proceeding to state that the subject proposal is acceptable in principle given the established use of the site as a neighbourhood centre, the applicable land use zoning, and as the proposed development will not give rise to any requirement to undertake a retail impact statement or a sequential test. The report further states that the proposal will not result in any significant additional impact on residential amenity or will it involve any intensification in the usage of the existing vehicular access arrangements. However, the assessment

subsequently concludes by recommending that further information be sought with regard to an existing watermain which passes through the application site.

Following the receipt of responses to requests for further information and subsequent clarification, a final report was prepared which recommended a grant of permission subject to conditions.

3.2.2. Other Technical Reports:

Drainage Division: No objection, subject to conditions.

Environment: No objection, subject to conditions.

Roads Design: No objection, subject to conditions.

Transport & Mobility: No objection, subject to conditions.

Water Section: No objection, subject to conditions.

3.3. **Prescribed Bodies**

3.3.1. *Irish Water:* An initial report noted that there appeared to be a 150mm watermain running through the site and that this should be located and marked on the ground prior to the commencement of any works on site. It further stated that the submitted details did not provide Irish Water with sufficient data to make a determination on the development proposal and recommended that the applicant be requested to submit a drawing detailing the location of the existing watermain with meters, valves and other fittings, and the distance from the proposed and existing works, in addition to any wayleave over the watermain.

3.3.2. Following the receipt of a response to a request for further information wherein the applicant had indicated that whilst there was a watermain passing through the site, this was not a public watermain, a further report was prepared by Irish Water which reiterated that insufficient data had been provided to make a determination on the application.

3.4. **Third Party Observations**

3.4.1. A single submission was received from Coakley O'Neill Town Planning on behalf of Bishopstown Credit Union Ltd., however, no specific comments or grounds of objection are contained therein.

4.0 Planning History

4.1. On Site:

PA Ref. No. 0225884. Was granted on 14th May, 2002 permitting Dunnes Stores permission to re-clad & upgrade the existing cladding and signage to elevations and to erect a pole sign at the Curraheen Road entrance & at the Grocery shop entrance.

PA Ref. No. 0833098 / ABP Ref. No. PL28.232203. Was granted on appeal on 23rd December, 2009 permitting Dunnes Stores permission for the demolition of existing shopping centre and the proposed mixed-use development containing Dunnes Stores anchor retail unit, licensed restaurant/coffee shop/off-licence with permission for the sale and consumption of alcohol and food to go off the premises, shop units, 21 No. two-bedroom apartments, 2 No. three-bedroom apartments, basement car park, plant rooms, staff areas, stockrooms and signage and full site development.

4.2. On Adjacent Sites:

PA Ref. No. 0934115. Was granted on 21st December, 2009 permitting Tom Scriven permission to redevelop the site known as 'The Viscount Bar', Curraheen Road, Bishopstown, Co. Cork, into a mixed use development. Works will consist of demolition of single storey ground floor annex to southwest corner of building housing existing public house floor, male and female toilets and construction of a two storey extension in its place, construction of a two storey extension to front elevation, construction of a two storey extension to front elevation, construction of a first floor extension over existing flat roof section to rear. Internal separation and change of use of ground floor into 127m² Public House, 100m² Restaurant, 92m² Retail Shop, 108m² Pharmacy and change of use of first floor to 331m² Restaurant. Changes to all elevations including new window layouts, shop fronts and all associated site works.

PA Ref. No. 1235228 / ABP Ref. No. PL28.241224. Was granted on appeal on 23rd April, 2013 permitting Bishopstown Credit Union Limited permission for the demolition of the existing building, the construction of a three-storey over basement credit union building of 1,655m² internal gross floor area, car parking, bicycle stands, external plant, signage and all associated boundary treatment, landscaping and site development works at the Viscount Bar, Curraheen Road, Bishopstown, Cork.

PA Ref. No. 1737400. Was granted on 21st July, 2017 permitting Bishopstown Credit Union Ltd. permission for the development at the former Viscount Bar, Curraheen Road, Bishopstown, Cork. The development will consist of: Modifications to the development permitted, but not yet constructed, under reg. Ref. 12/35228 (Appeal Ref. PL 28.241224). The proposed modifications to the permitted scheme will include a set back to the eastern site boundary, a reduction in floorspace, alterations to elevations and revised car parking arrangements.

5.0 Policy Context

5.1. National and Regional Policy

- 5.1.1. The *'Retail Planning, Guidelines for Planning Authorities, 2012'* provide a framework to assist Local Authorities in respect of the preparation of Development Plans and in the assessment of planning applications in addition to guiding retailers and developers in the formulation of development proposals.

5.2. Development Plan

5.2.1. **Cork City Development Plan, 2015-2021:**

Land Use Zoning:

The proposed development site is located in an area zoned as *'ZO9: Neighbourhood Centres'* with the stated land use zoning objective *'To protect, provide for and/or improve the retail function of neighbourhood centres and provide a focus for local services'*.

Explanatory Note:

Neighbourhood Centres are listed in Table 4.1 and shown in the suburban zoning maps in Volume 2. The primary purpose of these centres is to fulfil a local shopping function, providing a mix of convenience shopping, lower order comparison shopping, and local services to residential and employment areas. Some of these centres need to be enhanced significantly in terms of their retail offering, mix of uses, public realm, and overall viability and vitality. Limited retail offices will be acceptable in these centres to serve local needs and are subject to guidance on size and extent (paragraph 3.28) including a limit of 100sq.m. per unit. Residential uses are also acceptable within this zone. Where neighbourhood centres are located in areas of

historic significance, for example, former villages now within the suburbs of the city such as Blackpool, policies to protect and enhance their architectural character will be applied.

Other Relevant Sections / Policies:

Chapter 4: Retail Strategy:

Objective 4.1: Strategic Retail objectives:

- a) To maintain and strengthen the role of Cork City Centre as the primary retail centre in the South-West region;
- b) To create vibrant mixed-use district centres within the suburbs;
- c) To provide good quality and accessible convenience goods shopping to all residents of the city.

Objective 4.2: Retail Strategy:

To have regard to the Metropolitan Cork Joint Retail Strategy and to adopt the Retail Hierarchy in defining the role of retail centres, in preparing plans and in assessing planning applications for retail development

Objective 4.6: Neighbourhood Centres:

- a) To support, promote and protect Neighbourhood Centres which play an important role in the local shopping role for residents and provide a range of essential day to day services and facilities;
- b) To support and facilitate the designation of new and the expansion of existing Neighbourhood Centres where significant additional population growth is planned or where a demonstrable gap in existing provision is identified, subject to the protection of residential amenities of the surrounding area and that they are adequately served by sustainable transport;

- c) Proposals should demonstrate the appropriateness of the site by means of a Sequential Test Statement; demonstrate retail impact and provide for a mix of uses appropriate to the scale of the centre.

Chapter 12: Environmental Infrastructure and Management

Objective 12.3: Sustainable Urban Drainage Systems:

Planning applications shall include proposals for managing stormwater in accordance with details set out at www.irishsuds.com (unless superseded by policies and standards set out in the adopted “Storm Water Management Plan per Objective 12.2) and shall minimise and limit the extent of hard surfacing and paving.

Chapter 16: Development Management:

Part E: Non-Residential Development

5.3. Natural Heritage Designations

5.3.1. The following Natura 2000 sites are located in the vicinity of the proposed development site:

- The Cork Harbour Special Protection Area (Site Code: 004030), approximately 5.8km east of the site.
- The Great Island Channel Special Area of Conservation (Site Code: 001058), approximately 12.5km east of the site.

6.0 The Appeal

6.1. Grounds of Appeal

The Board is requested to omit or amend the following conditions on the basis that they are either unreasonable or unnecessary. In some cases, the conditions are considered to be irrational (with no basis defined by the Local Authority) whilst in other instances they demand the carrying of works for the benefit of the public realm and the Council which are disproportionate, in excess of the needs of the

development and that, in reality, should be covered by the Council's General Development Contribution Scheme.

6.1.1. Condition No. 3 (Opening hours and servicing hours):

- There are no restrictions presently in place as regards the trading hours of the existing store and, therefore, it can only be assumed that this condition was included on the assumption that trading on a 24-hour basis would be undesirable from an amenity perspective (as per a similar condition attached to the grant of permission issued in respect of PA Ref. No. 0833098 / ABP Ref. No. PL28.232203). However, it should be noted that Condition No. 6 of ABP Ref. No. PL28.232203 only restricted the hours of operation of the coffee shop / restaurant element of that development and did not place any restriction on the trading hours of the supermarket. Furthermore, whilst the applicant is not proposing to operate on a 24-hour basis, the Board is advised that such trading has previously occurred in the area at Christmas i.e. at Tesco within the Wilton Shopping Centre. Therefore, it is submitted that the subject condition restricts trading flexibility.
- With respect to the surrounding area, whilst it is a suburban location, it is also a 'Neighbourhood Centre' which provides for a variety of commercial uses with different trading patterns and hours. Therefore, as the existing pattern of development includes for unrestricted trading, it is considered that there is no basis to restrict the trading hours of the subject proposal.
- The existing store has an unencumbered right to trade as it sees fit and the inclusion of Condition No. 3 serves to restrict that right. Whilst the matter could be assessed if there were a reasoned basis for the imposition of the proposed restriction, given the acknowledgement by the case planner that the reduction in the overall scale of development on site will lead to a reduced impact, it is submitted that Condition No. 3 should be omitted in its entirety and the limitation on trading only imposed on the ancillary unit.
- The applicant is a long-standing provider of retail services to the local community and none of the neighbouring residential properties have objected to the proposed development. Therefore, the applicant cannot be perceived as a 'bad neighbour'.

6.1.2. Condition Nos. 7 & 25 (Wayleaves):

- These conditions should be removed as the planning process is not the correct procedure to create a wayleave over unencumbered property; having regard to the powers open to Irish Water under the Water Services Act, 2007.
- Whilst it is acknowledged that the case planner has recommended an amended wording in order to reflect that the wayleave does not affect the subject development, the condition nevertheless impacts on development rights that pertain to the site on an ongoing basis.
- The survey works undertaken by Lowflow and JODA Consulting Engineers on behalf of the applicant have provided no evidence to support Irish Water's claim that there is a public watermain traversing the application site. It is also of relevance to note that the grant of permission issued under PA Ref. No. 0833098 / ABP Ref. No. PL28.232203 made no reference to any public watermain crossing the site.
- In the absence of any proposal to undertake construction works over the existing services, there is no reason to propose or demand the wayleaves sought. In the event that a development proposal was to be submitted for consent which would impact on the infrastructure in question then it would be appropriate at that time to assess the impact of those works and to provide for the rerouting of services as required in order to comply with the requirements of Irish Water under its 'Pre Connection Agreement' process.
- The provision of the wayleaves sought by Condition Nos. 7 & 25 is unrelated to the development under consideration or any civil obligations that rest with the landowner or the statutory powers of Irish Water. Therefore, the imposition of these conditions is wholly unreasonable in the context of the subject development and thus they should be dismissed.
- In the event that the Board is minded to attach Condition No. 7, it is considered that an 8m wide wayleave is excessive for a 150mm watermain. Although it may be possible to provide one wayleave to serve both the watermain and sewerage pipes, the site becomes more restricted to the northern end of the development with less space to move services around. In

this regard it is submitted that it is always possible to relocate services and any associated wayleaves.

- The imposition of the subject conditions serves to restrict the applicant's rights over its land.
- The Water Services Act, 2007 is the appropriate mechanism by which to address the issues raised by the Local Authority. Moreover, it is unacceptable for the Council to demand that a wayleave be ceded to any party; in particular, a third party legal entity. By way of further reference, the Board is advised of the following alternative approaches by which a landowner's consent may be obtained in order to lay pipes through private lands
 - Acquisition of wayleaves under the Public Health (Ireland) Act, 1878;
 - Acquisition powers under Part XIV (Section 213) of the Planning and Development Act; or
 - Exercising powers to lay pipelines on, under or over the land in accordance with the simplified procedures provided for in Section 182 of the Planning and Development Act (i.e. without actually requiring a wayleave).

Based on the powers available under the Planning and Development Act, 2000, as amended, Local Authorities can either enter into an agreement or acquire wayleaves by way of compulsory purchase when compensation should be available.

- The Board is referred to Section 7.8 of the *'Development Management, Guidelines for Planning Authorities'*, with particular reference to the following extracts:

'There has been a tendency to attach to planning permissions conditions relating to matters that, though of concern in the exercise of development management, are the subject of more specific controls under other legislation or are directly regulated by other statutes or by the common law . . . It is inappropriate, however, in development management, to deal with matters which are the subject of other controls . . . The existence of a planning condition, or its omission, will not free a developer from his or her

responsibilities under other codes and it is entirely wrong to use the development management process to attempt to force a developer to apply for other some licence, approval, consent, etc’.

- The conditions in question are in no way relevant to the development proposed. No works are proposed to be carried out which would impact on what may be a watermain or sewer and, therefore, the demand for the wayleaves is considered to be *ultra vires*. This view is supported by the Section 7.11 (*Conditions requiring the ceding of land*) of the ‘*Development Management, Guidelines for Planning Authorities*’.

6.1.3. Condition Nos. 11 & 13 (Provision and replacement of public street lighting):

- Cork City Council is responsible for the replacement and maintenance of public lighting, however, Condition Nos. 11 & 13 seek to impose the cost and responsibility for the upgrading / routine maintenance of lighting on the applicant.
- The proposed development comprises replacement floorspace and thus is not subject to any development contributions. Moreover, it is submitted that the cost of any upgrading / maintenance of public lighting should be derived from the budget accumulated under the General Development Contribution Scheme, however, as there was no requirement for the payment of a general development contribution imposed on the subject proposal, the costs sought by the Planning Authority with regard to upgraded public lighting etc. must be considered to comprise a special development contribution pursuant to Section 48(2)(c) of the Act. In this respect the Board is referred to its previous determination of ABP Ref. No. PL28.238146 wherein it was held that as the funding of certain works was already provided for under the Cork City General Development Contribution Scheme, 2009, the imposition of further special contributions in respect of that infrastructure did not accord with the provisions of Section 48(2)(c) of the Planning and Development Act, 2000, as amended.
- In the event of a charge being imposed, it is submitted that it has to be proportional as the lighting in question will also benefit the surrounding area.

6.1.4. Condition No. 19 (Attenuation):

- The subject proposal involves the redevelopment of an existing brownfield site and will not give rise to any additional area of hardstanding.
- With regard to the reference to Condition 14(d) of the grant of permission issued for PA Ref. No. 08/33098 (which relates to a materially different and more intense development proposal), that condition has no legal effect given that it was superseded on appeal by a decision of the Board.
- The Planning Authority's demand for on-site attenuation effectively involves an improvement to the public storm / surface water network and thus should be considered as coming with the auspices of Section 34(4)(m) of the Planning and Development Act, 2000, as amended. In this respect the Board is referred to Section 7.3.5 of the *'Development Management, Guidelines for Planning Authorities'*.
- The unsubstantiated demand to provide a drainage enhancement of the site which involves the limitation of surface water runoff to 'greenfield' rates ignores the established legal rights of the applicant to discharge to the public sewer, including its valid consent to develop the original centre and its right to access the drainage network.
- Compliance with this condition will place a disproportionate financial burden on the applicant which could jeopardise the redevelopment of the site.

6.2. **Planning Authority Response**

None.

6.3. **Observations**

None.

6.4. **Further Responses**

None.

7.0 Assessment

7.1. From my reading of the file, inspection of the site and assessment of the relevant local, regional and national policies, I conclude that the key issues raised by the appeal relate to the inclusion of Condition Nos. 3, 7, 11, 13, 19 & 25. Furthermore, in accordance with the provisions of Section 139 of the Planning and Development Act, 2000, as amended, I am satisfied that this appeal should relate only to the merits of the inclusion of the aforementioned conditions and thus I propose to assess same accordingly.

7.2. **Condition No. 3:**

'The proposed development shall not be open to the public outside the hours 07.30 to 22.00 Monday to Saturday inclusive, nor outside 07.30 to 20.00 on Sundays or public holidays. Deliveries shall be permitted during open hours and between 0700 and 0730 Monday to Saturday inclusive.'

Reason: In the interest of residential amenity'.

7.2.1. It has been asserted in the grounds of appeal that the imposition of the foregoing condition serves to unreasonably undermine the applicant's established trading practices given that the existing shopping centre is not subject to any restrictions as regards its opening hours. In this regard it has also been submitted that whilst the condition in question may have been imposed on the assumption that any future trading on a 24-hour basis would be undesirable from an amenity perspective, the existing store has an unencumbered right to trade as it sees fit, notwithstanding that it is not presently proposed to operate on a 24-hour basis (unlike other shopping / retail centres in the wider area). Furthermore, it has been suggested that the Planning Authority has failed to put forward any clear or balanced rationale for the restriction of opening hours in light of the acknowledgment by the case planner that the proposed development will not give rise to any significant additional impact on the residential amenity of neighbouring properties and as no comparable restrictions were imposed in respect of the previous redevelopment proposal approved under ABP Ref. No. PL28.232203.

7.2.2. Having reviewed the available information, whilst I would accept that it is not uncommon for Planning Authorities to seek to restrict the opening / trading hours of

retail / commercial developments where the scheme in question could potentially have a detrimental impact on the amenity of neighbouring properties, in this particular instance I am inclined to suggest that greater cognisance should be taken of the established use of the subject site as a 'Neighbourhood Centre' and the impact (if any) of its current trading practices. In this regard, it is of relevance to note that the overall development proposal will provide for a reduction in the total gross floorspace on site from 2,760m² to 2,396m² whilst it will also result in a lesser net retail floorspace when compared to the existing shopping centre. Furthermore, the physical extent of the redeveloped shopping centre is such that the building footprint (and the associated service yard / area) will no longer extend alongside the full length of the western site boundary to the rear of neighbouring housing with the result that the subject proposal is unlikely to have any additional impact on the residential amenity of those properties.

- 7.2.3. Accordingly, on the basis of the foregoing, with particular reference to the reduced level of activity / floorspace on the site consequent on the subject proposal, I am inclined to concur with the applicant that there would appear to be no clear basis on which to limit the opening hours of the proposed retail unit. In further support of such a conclusion, it is notable that the anchor unit (i.e. Dunnes Stores) previously approved by the Board under ABP Ref. No. PL28.232203 had a net retail floor area of c. 2,649m², which is considerably in excess of that proposed in the subject application, yet the Board did not impose any restriction on the operating hours of the retail aspect of that development (as distinct from the proposed coffee shop/restaurant element).
- 7.2.4. Therefore, I would recommend that the Planning Authority should be directed to omit any reference to the restriction of the opening hours of the proposed retail unit, however, in light of the inclusion of a café / restaurant as part of the overall development, which could potentially impact on the amenity of neighbouring properties, and in order to be consistent with the Board's previous determination of ABP Ref. No. PL28.232203, it is my opinion that Condition No. 3 should be amended to reflect the provisions previously included in Condition No. 6 of ABP Ref. No. PL28.232203.

7.3. **Condition Nos. 7 & 25:**

7.3.1. **Condition No. 7:**

'A wayleave 8 metres wide over the existing 150mm watermain shall be ceded by the applicant / developer to Irish Water. Other than the works permitted hereunder, no new structure shall be constructed within 5 metres of this watermain. No planting to be carried out in the wayleave area. The applicant / developer shall be responsible for the protection of the watermain during the course of the work. The applicant / developer shall be responsible to maintain sufficient protection to the satisfaction of planning authority (Water Department) on the existing watermain during the course of the work.

Reason: In the interests of public health'.

7.3.2. **Condition No. 25:**

'There is a public sewer passing through the site. Wayleaves and rights of way shall be provided in respect of sewers located within the site. Full details of existing wayleaves and / or rights of way agreements shall be submitted to and agreed in writing with the Planning Authority. Where no wayleave or right of way agreements exist, or are deemed inadequate for proposed development, revised wayleave and right of way shall be submitted to be agreed in writing with the Planning Authority.

Reason: In the interest of public health'.

7.3.3. With regard to the inclusion of Condition No. 7, it would appear that in light of the possibility of a 'public' watermain extending through the subject site between Firgrove Drive and Curraheen Road, the Planning Authority has sought to obtain a wayleave over same for the benefit of Irish Water. In response, the applicant has asserted that the planning process is not the appropriate mechanism by which to procure a wayleave over unencumbered property and that it is unacceptable for the Planning Authority to demand that a wayleave be ceded to any party; in particular, a third party legal entity (i.e. Irish Water).

7.3.4. From a review of the available information, I would have a number of concerns as regards the appropriateness of Condition No. 7. In the first instance I would advise the Board that whilst it would appear to have been accepted by all parties that there

is an existing ring main around the shopping centre and that it will be necessary to divert a short section of same to the rear of the building in order to accommodate the proposed development, it has not been definitively established that the watermain referenced in Condition No. 7 actually connects through to Curraheen Road. Indeed, the survey work undertaken by the applicant in response to the requests for further information and subsequent clarification only refers to a 'possible connection' to Curraheen Road whilst the supporting drawings (with particular reference to Drg. No. 4395-103 submitted to the Planning Authority on 21st August, 2017) only detail a possible connection route given the absence of any 'positive response' to the presence of a watermain in the survey area. Secondly, in the event that the watermain in question does traverse the application site (i.e. private property), it is unclear if the water authority could be held responsible for the maintenance of same given the absence of any existing right of way / wayleave which would authorise access to this piece of 'public' infrastructure (*N.B.* No details have been provided of any historical maintenance of the watermain in question and what party / body undertook the responsibility for same). Furthermore, I am inclined to concur with the applicant that the requirement to provide a right of way over this questionable 'public' section of watermain is unrelated to the development under consideration in view of the fact that the works proposed will not impact on that piece of infrastructure.

7.3.5. Notwithstanding the foregoing, I would draw the Board's attention to Section 7.11 of the *'Development Management, Guidelines for Planning Authorities'* which states that *'It is not lawful . . . to require by condition a transfer of an interest in land to the local authority or other person / body'* and, therefore, I am not satisfied that the imposition of Condition No. 7, which has sought the ceding of a legal right of way / wayleave over private property to a third party (i.e. Irish Water) in the absence of compensation, could be held to be appropriate. Moreover, I would suggest that there are other more suitable legal mechanisms by which a local authority or a State body may acquire access to lands for the purposes of maintaining public infrastructure in the interests of the common good.

7.3.6. With regard to the imposition of Condition No. 25, which aims to establish a wayleave / right of way to an existing public sewer within the site (seemingly for the benefit of either the Local Authority or Irish Water), in my opinion, this condition is similarly unrelated to the development under consideration and also fails to adhere

to the provisions of the 'Development Management, Guidelines for Planning Authorities' for reasons similar to Condition No. 7.

7.3.7. Therefore, I would recommend that the Planning Authority should be directed to omit Condition Nos. 7 & 25 on the basis that said conditions are unnecessary, not relevant to the development to be permitted, and are unreasonable.

7.4. **Condition Nos. 11 & 13:**

7.4.1. **Condition No. 11:**

'The replacement and upgrades to street lighting for the extent of new building line shall be designed to comply with CCC External Lighting requirements and implemented by the developer whereby all costs associated with the modifications to public lighting shall be at the developer's expense.

Reason: To cater for more sustainable energy use and facilitate the proposed improvement in the level of service for all modes but especially pedestrians and cyclists'.

7.4.2. **Condition No. 13:**

'All public lighting requirements associated with the proposed development shall be agreed with the Planning Authority prior to commencement of development. These works are to be undertaken and paid for by the applicant.

Reason: In the interest of traffic safety'.

7.4.3. The principle concerns raised in the grounds of appeal as regards the inclusion of Condition Nos. 11 & 13 effectively pertain to the implication that the applicant / developer will be required in some manner to provide or contribute towards the provision of public / street lighting in the surrounding area. In this respect I would suggest that as the subject proposal clearly concerns the redevelopment of a private commercial enterprise on privately held lands there can be no obligation on the applicant / developer to provide public lighting (as distinct from privately operated lighting within the confines of the application site). In my opinion, it is likely that the confusion caused by Condition Nos. 11 & 13 has simply arose as a result of somewhat generic lighting conditions more applicable to conventional housing development having been inadvertently imposed in respect of the subject proposal. Accordingly, whilst it would be open to the Board to amend the aforementioned

conditions by way of omitting the references contained therein to 'public' or 'street' lighting, I am inclined to suggest that both conditions should be omitted in their entirety on the basis that Condition No. 12 of the notification of the decision to grant permission already requires the provision of external lighting to be agreed with the Planning Authority prior to the commencement of development as follows:

'All external lighting requirements associated with the proposed development including lighting associated with the construction stage shall be designed collectively with any existing lighting (including public lighting) requirements. The external lighting requirements shall also optimise energy efficiency, incorporate glare control and be agreed with the Planning Authority prior to commencement of development. The works are to be undertaken and paid for by the applicant.

Reason: In the interests of traffic safety'.

7.5. Condition No. 19:

'Contrary to the assertion contained in the planning report and drainage report submitted as part of this planning application that no attenuation is to be provided, the Applicant is referred to Condition 14(d) of planning permission 08/33098, previously granted on this site on 28 November 2008 and further extended on 23 December 2014, which states:

"The maximum storm run-off from the proposed development to the public sewerage occurring within a 20-year return period shall be 11.49l/s".

Accordingly, prior to commencement, the Applicant is requested to submit details and calculations of the attenuation measures proposed to maintain this run-off rate, to the Planning Authority and obtain written agreement for same.

Reason: In the interests of public health'.

- 7.5.1. With regard to the foregoing condition, whilst I would acknowledge the desirability of implementing a Sustainable Urban Drainage System on site as part of the proposed development, particularly in light of the evolution of local planning policy and the inclusion of Objective 12.3: 'Sustainable Urban Drainage Systems' in the current Cork City Development Plan, 2015, on the basis that the subject proposal involves the partial / limited redevelopment of an existing brownfield site and will not give rise

to any additional area of hardstanding (or surface water runoff), I would have reservations as regards the appropriateness of imposing such a condition in the absence of any clear consideration being given to the current discharge rate from the application site. Furthermore, I would share the applicant's concerns as regards including a reference in the subject condition to a discharge limit that was sought to be imposed in respect of an earlier development proposal on site which was not implemented. In my opinion, Condition No. 19 would appear to be excessive and unreasonable in light of the scale of development proposed and as the works in question will not give rise to any additional impact on the public sewer network. Therefore, I would suggest that the Planning Authority should be directed to remove this condition, although the Board may wish to consider if it would be more appropriate to impose an amended version of same that would more coherently accord with local policy.

7.6. **Appropriate Assessment:**

- 7.6.1. From a review of the available mapping, it is apparent that whilst the proposed development site is not located within any Natura 2000 designation, it is situated approximately 5.8km west of the Cork Harbour Special Protection Area (Site Code: 004030 and c. 12.5km west of the Great Island Channel Special Area of Conservation (Site Code: 001058). Having regard to the 'Screening Statement' which has accompanied the application, the screening exercise undertaken by the Planning Authority, the overall design, nature and intended use of the proposed development, the nature of the receiving environment, the availability of public services, and the separation distance relative to the nearest designated sites, it is my opinion that the proposed development, either individually and in combination with other plans or projects, would not be likely to have a significant effect on the European sites identified above in view of the sites' conservation objectives and an appropriate assessment (and submission of a NIS) is not therefore required.

8.0 **Recommendation**

Having regard to the nature of the conditions the subject of the appeal, the Board is satisfied that the determination by the Board of the application as if it had been made to it in the first instance would not be warranted and based on the reasons and

considerations set out below, directs the Council, under sub-section (1) of Section 139 of the Planning and Development Act, 2000 to **AMEND** Condition No. 3 and to **REMOVE** Condition Nos. 7, 11, 13, 19 & 25 and the reasons therefore as follows:

3. The proposed café / restaurant shall be used as such and shall not be used as stand-alone off-licence. The hours of operation of the café / restaurant, including the sale of hot food for consumption off the premises, shall be restricted to between the hours of 0730 and 2400.

Reason: In the interest of residential amenity.

It is considered that the attachment of conditions numbers 7, 11, 13, 19 & 25 is not necessary in relation to the proper planning and sustainable development of the area.

Robert Speer
Planning Inspector

14th February, 2018