



An  
Bord  
Pleanála

## Inspector's Report ABP-300802-18

<b>Development</b>	Demolition of industrial premises and security hut, construction of discount foodstore, office uses, distributor road linking Killarney Road and Boghall Road, repositioned existing entrance on Boghall Road, car parking, public plaza and ancillary works.
<b>Location</b>	AO Smith Site, Boghall Road, Bray, Co. Wicklow
<b>Planning Authority</b>	Wicklow County Council
<b>Planning Authority Reg. Ref.</b>	17/469
<b>Applicant(s)</b>	Lidl Ireland Gmbh
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	To Grant Permission subject to conditions
<b>Type of Appeal</b>	First Party vs. Conditions and Third Party vs. Grant
<b>Appellant(s)</b>	1. Lidl Ireland Gmbh 2. Tesco Ireland Ltd.
<b>Observer(s)</b>	Cllr. Steven Mathews
<b>Date of Site Inspection</b>	26.06.2018
<b>Inspector</b>	Erika Casey

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## 1.0 Site Location and Description

- 1.1. The subject site forms part of an overall brownfield industrial site with an area of 3.08 ha known as the AO Smith site. It is located at the junction of Boghall Road and Killarney Road. The site of the proposed discount foodstore and offices is located to the eastern side of the site and has an area of 1.13 ha. The site currently accommodates a number of disused industrial buildings with a floor area of c. 4,638 sq. metres which have been vacant for c. 13 years. The site is bound by a mature hedgerow. There is an existing vehicular access from the Boghall Road. A dedicated cycle lane runs along the Killarney Road and Boghall Road adjacent to the site boundary.
- 1.2. There is an existing neighbourhood centre with surface car parking located to the east of the site. This accommodates a number of small retail units and a Centra convenience store. To the north of the site, is the Killarney Road Business Park. There is a community centre, library and church on the southern side of the Boghall Road, opposite the subject site. Killarney Road is generally characterised by residential development.

## 2.0 Proposed Development

- 2.1. The proposed development comprises:
- Demolition of existing industrial premises (4,638 sq. metres) and security hut (14 sq. metres);
  - Construction of a two storey building with a maximum height of 10.06 metres and a total gross floor area of 2,437 sq. metres to accommodate a discount foodstore with ancillary off licence (gross floor area 1,498 sq. metres and net retail area of 977 sq. metres) with office accommodation above of (c. 815 sq. metres) and shared facilities (c. 124 sq. metres). Undercroft area of 1,853 sq. metres to accommodate 64 no. car parking spaces (reduced by 1 space at Further Information Stage);

- Repositioned pedestrian and vehicular access at Boghall Road and a new pedestrian and vehicular access at Killarney Road Business Park;
- New link road (c. 217 metres long) through the AO Smith site which will connect the Boghall Road to the south with the Killarney Business Park to the north;
- Surface level parking of 75 no. spaces, bicycle parking (70 spaces), external loading dock, service yard area and external plant room;
- 9 advertising signs, retaining wall, hard and soft landscaping to include a public plaza of 0.03 ha at the Boghall Road, lighting, attenuation and drainage and all ancillary site development works.

### 3.0 Planning Authority Decision

#### 3.1. Decision

3.1.1 To grant permission subject to conditions. Conditions of note include:

**Condition 5:** A minimum of 134 no. car parking spaces shall be provided within the site. The surface car park shall be used to facilitate the parking demand generated by the proposed development and the future development of the remainder of the lands. A minimum of 37 no. spaces shall be open and available for use at all times by the staff and customers of any development within the opportunity site.

**Condition 6:** Detailed proposals for the design and implementation of the pedestrian link between the proposed development and the adjoining neighbourhood centre to be submitted for agreement.

**Condition 7:** Detailed design proposals to upgrade the Killarney/Boghall Road junction to be submitted for agreement. May include for an amended traffic signal layout, the widening of Boghall Road on the final approach to the junction, a longer dedicated left turn lane and upgraded cycle facilities. The upgrade of the junction shall be carried out in full by the developer under the supervision of the Roads Authority.

**Condition 9:** The new access road from the Killarney Business Park Road and the upgrade works to the Killarney Road/Boghall Road junction shall be completed to the written satisfaction of the Road Authority.

**Condition 11:** Details of retaining wall to the plaza at the south east corner of the site and its relationship with underlying sewers to be submitted for written agreement.

## 3.2. Planning Authority Reports

### 3.2.1. Planning Reports (20.06.2017 and 02.01.2018)

- A masterplan prepared in consultation with the land owner for the entire site has been submitted. It is acknowledged that the masterplan for the site is indicative, however, the proposed development would not prohibit or impede the overall development of the lands in accordance with the objectives of the Bray Town Development Plan.
- The methodology used in the Retail Impact Assessment would appear to be fairly robust and the quantitative impacts of the development have been assessed against the relevant policies and objectives of the Development Plan. It is considered that the applicants have demonstrated that there is sufficient capacity for an additional foodstore in this location.
- It is proposed to raise the existing ground levels on the site. This is considered acceptable in principle. As a result of the ground level changes, the proposed building (which is to be set back c. 16m from the Boghall Road) will have a finished floor level of c. 47.00 which is 2.6m above the existing ground level to the south east corner. A retaining wall is to be constructed along the roadside boundary.
- Note the submission of a conceptual design proposal for the provision of a pedestrian link between the proposed development and the adjoining neighbourhood centre. To achieve same would require third party consent and that this issue can be addressed by condition.
- Concerns were raised at Further Information Stage regarding the intensity of development which was considered low in terms of both plot ratio and site coverage. In considering the applicants response, noted that the application site of 1.13 ha incorporates shared services such as the distributor road and

public plaza, as well as office space and that this would contribute to the quantum of lands within the application site.

- Noted that the applicant's proposal regarding a licencing system for the surface car parking spaces was unacceptable as it provided no guarantee that the parking area within the scheme would be readily available to future occupants of the wider site.
- States that there are a number of concerns regarding the traffic assessment and that a major upgrade of the Killarney Road/Boghall Road junction with an amended traffic signal will be required to facilitate the development.
- States that having regard to the necessary works to the local road network that will be carried out as part of this application, it is considered that the proposed development would not have a significant additional impact upon public services and, therefore, development contributions are not considered necessary.

### **3.2.2. Other Technical Reports**

#### **Bray Engineer's Planning Report (13.06.2017, 15.06.2017 and email of 19.12.2017)**

- Satisfied that slit trench investigation demonstrates that foundations of the building will not adversely impact on the existing public foul and storm sewers along the eastern boundary. Notes that details of retaining wall to plaza to south east corner of the site and its relationship to the underlying sewers should be provided.
- States that queue lengths during the traffic counts for the traffic assessment of the Killarney Road/Boghall junction were not accounted for in the modelling and that the saturation flow for each lane appear overstated in the analysis. Notes that a major upgrade of the Killarney Road/Boghall Road junction with amended traffic signal layout is required to facilitate the development.
- The upgrade will require the widening of the Boghall Road on the final approach to the junction and a longer dedicated left turn lane. A further traffic analysis of the alternative options is required which uses saturation lane flows consistent with the lane geometry and traffic conflicts and addresses proposals

for the upgrade of cycle facilities in the area. One of the objectives of the analysis is to determine the extent of the boundary set back required on the south eastern boundary of the AO Smith site that will provide for adequate capacity for the next 15 years.

**Water and Environmental Services (16.06.2017):** No objection. Notes that surface water discharge and attenuation from the proposed development has been calculated in accordance with current design guidelines and is, therefore, considered satisfactory.

### 3.3. Prescribed Bodies

**Irish Water (25.05.2017 and 14.12.2017):** No objection.

### 3.4. Third Party Observations

3.4.1 There were a number of third party observations and the issues raised can be summarised as follows:

- The development is contrary to the EMP1 zoning objective pertaining to the site under the Bray Town Development Plan 2011-2017. The option for a discount foodstore should only be considered as of part of a mixed use employment scheme proposed for the overall site. The employment zoning emphasises the need to provide for employment uses as a priority.
- The masterplan submitted with the application is indicative and unenforceable. There is no evidence that the discount foodstore will act as a catalyst for the redevelopment of the site for employment uses. Concern that proposed offices will remain vacant and that the development could prejudice the delivery of the remaining lands for strategic employment purposes.
- The low scale of building, extensive parking and low plot ratio represents the under utilisation of the site. It fails to deliver a scheme of high quality urban design and innovative architectural design as required. The development provides a generic design response.
- Consider that the discount foodstore should have unrestricted access to the adjacent neighbourhood centre.

- State that the Retail Impact Assessment is flawed in terms of the identified catchment, population projections and expenditure estimates and that the trade diversion figures are inaccurate. Consider that there will be a direct impact on stores within the catchment which will result in the closure of existing smaller retailers. The site does not form part of the retail hierarchy for Bray and is an inappropriate location for a foodstore. Request a rigorous assessment of the Retail Impact Assessment.
- The development is overprovided for in terms of car parking, in excess of the Development Plan standards and no adequate justification has been provided for the additional spaces.
- Concern that the development will result in high traffic volumes and result in traffic congestion on the surrounding road network. The development should be a catalyst for a review of the efficiency of traffic movements in the entire area.
- That the development will result in an overconcentration of off licences in the area.
- The development is premature pending the finalisation of the new Bray Town Plan.
- The development does not adequately address the reasons for refusal raised under planning application reference 16/487.
- Height of building should be restricted to protect views of Bray Head.

## 4.0 Planning History

### Planning Authority Reference 16/487

4.1 Permission sought for the demolition of the existing buildings on the site and the construction of a discount foodstore. The development was refused in June 2016 for 3 no. reasons which can be summarised as follows:

1. Having regard to the Bray Town Development Plan 2011 – 2017 which identifies the site as an opportunity site and the zoning “predominantly employment use development” with the option for a discount foodstore, it is considered that:



- The failure to provide any employment uses as part of the development,
- The quantum of the site area dedicated to retailing activities and surface parking and the
- Failure to provide any holistic proposals demonstrating how the remainder of the site should be built out in a functional and holistic manner in terms of the location of internal service roads and buildings within the site and linkages to the Killarney Business Park,

it is considered that the development would be contrary to the zoning objective and the overall vision for the opportunity site whereby the primary use of the lands should be employment based. The development would also result in the Opportunity Site becoming underutilised. The design of the proposed building and the layout of the development is such that the proposed discount foodstore would be a standalone development and would fail to integrate into any future employment activities on the site.

2. It is considered that the application has failed to demonstrate that the proposed development would not have a significant adverse impact on the vitality and viability of the adjacent neighbourhood centre and that there is sufficient available expenditure in the catchment to allow for an additional retail outlet in this location.
3. The failure to include a justification for an off licence as part of the development would be contrary to section 12.4.2 of the Bray Development Plan.

## 5.0 Policy Context

### 5.1. Development Plan

- 5.1.1 It is noted that at the time the application was lodged and assessed by the Planning Authority, the operative development plan was the Bray Development Plan 2011 – 2017. Under this plan the site was zoned EMP1: Employment Uses Zone: *“To provide for economic development and employment”*. The site was also identified as Opportunity Site No. 7 AO Smith Site. With regard to acceptable uses on this site the plan stated *“Predominantly employment use development. Industry/office and*

*science and technology based uses in the main with the option of neighbourhood services/discount food store. The site is considered suitable for the location of taller buildings up to 5 storeys in height. Max plot ratio 1.5.”*

5.1.2 The plan also noted under section 4.4.9 *“It is the policy of the Council to permit in principle discount foodstore development on lands zoned NS, NS1 (neighbourhood centre uses) and the AO Smith Opportunity Site.”*

5.1.3 The Bray Municipal District Local Area Plan was adopted on the 14<sup>th</sup> of May 2018 and became effective from the 10<sup>th</sup> June 2018. This is the operative development plan for the area under which the current application must be considered.

5.1.4 Section 2.2.5 of the Plan sets out key strategic objectives regarding retail development. It is stated:

*“To expand the level of convenience floorspace within the County, to meet the convenience shopping needs of existing and future residents up to 2031.”*

5.1.5 The indicative additional convenience floorspace allocation for Bray is 7,000 sq. metres.

5.1.6 Section 5.1 sets out objectives for the Town Centre. Objective TC2 states:

*“To vigorously protect and promote the vitality and viability of town centres. Development proposals not according with the fundamental objective to support the vitality and viability of town centre sites must demonstrate compliance with the ‘sequential approach’ before they can be approved. The ‘sequential approach’ shall be applied and assessed in accordance with the ‘Retail Planning Guidelines, (DoECLG, 2012)’. The Planning Authority will discourage new retail development if they would either by themselves or cumulatively in conjunction with other developments seriously damage the vitality and viability of existing retail centres within the District.”*

5.1.7 Section 5.2 sets out general retail objectives. The following are of relevance:

**RT1:** *To promote and facilitate the development of retail developments in a sustainable manner. Retail related development shall be located on suitably zoned land within settlement boundaries.*

5.1.8 Chapter 10 of the LAP sets out a number of Specific Local Objectives. It is stated:

*“The purpose of the SLO is to guide developers as to the aspirations of the plan regarding the development of certain lands where more than one land use is proposed or the lands are zoned for ‘mixed use’, in a manner similar to Action Areas, but with the exception that no masterplan will be required to be agreed prior to the submission of a planning application.”*

5.1.9 The AO Smith site is identified as SLO 7. The plan states:

*“This SLO (measuring c. 3.2 ha) is located at the junction of Boghall Road and Killarney Road and is zoned for mixed use. This is considered an important development site that has lain vacant for many years and is in need of regeneration. Given that this site is surrounded by both residential and employment uses, it is considered that a mixed, high intensity employment and residential scheme would be suitable on these lands, in accordance with the following criteria:*

- *The development shall be delivered a high density format and in particular, shall have a plot ratio of not less than 1:1. Development of up to 4 storeys may be considered;*
- *The employment element shall be in high employment intensity format and low density manufacturing warehousing / retail will not be considered; on the basis of achievement of a 1:1 plot ratio, a total employment floor space yield of at least 18,000 sq. m. is desired;*
- *Use of part of the required employment floor space may be considered for supermarket / discount retail use, subject to satisfying all relevant retail objectives of this plan, the County Retail Strategy and the Retail Planning Guidelines. Stand-alone single or 2-storey, low density retail buildings will not be considered suitable on these lands; any retail use shall be integrated into a larger 3-4 storey structure which provides for other commercial or residential uses overhead;*
- *Not more than 40% of total floor space shall be devoted to residential use; depending on the range of unit sizes and formats, at least 120 units is desired (c. 10,000 sq. m. - 12,000 sq. m.);*
- *Any planning application shall include a detailed phasing programme that ensures the timely delivery of all elements of the SLO. In order to ‘kick start’ the development, a first phase of housing, comprising not more than 50% of the*

*total housing programme, may be developed as a 'Phase 1' of the overall development, strictly on the basis of the remaining housing being delivered in tandem with the employment element."*

5.1.10 With regard to the Mixed Use Zoning, Chapter 11 of the LAP sets out objectives regarding land use and zoning. It states:

*MU: To Provide for mixed use development. The nature of the mixed use development envisaged for any particular site is set out in the text of the plan.*

## 5.2. Other Policy

### **Wicklow County Development Plan**

5.2.1 Under the Retail Hierarchy, Bray is identified as a Level 2 Major Town Centre. The indicative additional floorspace allocation for convenience floorspace is 7,000 sq. metres. It is a key objective of the plan to expand the level of convenience floorspace within the County, to meet the convenience shopping needs of existing and future residents up to 2031.

5.2.2 Parking standards are set out in Appendix 1 of the Plan – Development Design Standards.

### **Retail Planning Guidelines (2012)**

5.2.3 The guidelines state that local or neighbourhood centres comprise a small group of shops, typically comprising newsagent, small supermarket/general grocery store, sub post office and other small shops of a localised nature serving a small, localised catchment population.

5.2.4 A supermarket is defined as a single level, self service store selling mainly food, with a net retail floorspace of less than 2,500 sq. metres.

### **Retail Design Manual (2012)**

5.2.5 This document sets out a planning framework for future development of the retail sector in a way which meets the needs of modern shopping formats while contributing to protecting and promoting the attractiveness of town centres. 10 key principles of urban design are set out.

## **Retail Strategy for the Greater Dublin Area 2008-2016**

5.2.6 Bray is identified as a County Town Centre. It is an objective of the strategy to promote and encourage major enhancement and expansion of retail floorspace and town centre activities including linked leisure and other commercial activity within Bray town centre to sustain its competitiveness as a major town centre.

### **5.3. Natural Heritage Designations**

5.3.1 The nearest Natura 2000 sites are the Bray Head SAC located c. 2.3km to the east of the site and the Ballyman Glen SAC located c. 1.8 km to the north west of the site.

## **6.0 The Appeal**

### **6.1. Grounds of Third Party Appeal – Tesco Ireland Ltd.**

- The proposed development is not consistent with the economic and employment zoning of the subject site as the primary use proposed is neither permitted in principle or open for consideration. Consider that the zoning objectives pertaining to the lands maintains primacy in policy terms over the identification of the site as an opportunity site. On a normal reading of the Development Plan, a member of the public would not reasonably conclude that a retail development of such scale would be permitted on the subject lands.
- Consider that at the time the Development Plan was being prepared, the term discount foodstore referred to a much smaller shop than that proposed in the current scheme. The removal of the discount foodstore designation occurred in the Retail Planning Guidelines 2012, after the development plan was adopted. It is considered that the Development Plan never envisaged a foodstore of the scale proposed and as such, the development is inconsistent with both the zoning and the identification as an opportunity site which allows for a discount foodstore and not a convenience retail operation.
- There is no guarantee that the masterplan which forms part of the application documents will be implemented and the development may prejudice the delivery of the remaining lands for strategic employment uses. A condition

should be imposed that the commercial offices are constructed and occupied prior to the opening of the foodstore.

- The sequential test is not sufficient and dismisses sites without providing the appropriate evidence to demonstrate that a similar scheme could not be provided on an alternative site. Consider that sites outside the catchment area of the store should also be considered.
- It is suggested by the applicant that the proposal represents an extension to an existing adjacent neighbourhood centre. However, the site is not zoned for such uses.
- Consider that there is an overprovision of car parking in the proposal and that the quantum should be reduced in line with the standards set out in the Development Plan.

## 6.2. Applicant Response to Third Party Appeal

- The subject site is identified as an “opportunity site” in the Bray Town Development Plan 2011 - 2017 and table 4.1 refers to acceptable uses on the subject site to include “*with the option of neighbourhood services/discount foodstore*”. Also note that the material alterations to the Bray Municipal District Local Area Plan 2018 include a new Specific Local Objective, the wording of which reinforces the suitability of the subject site for a supermarket/discount retail use. The application of specific local objectives to a site is common practice in the formulation of a Development Plan and the application does not materially contravene the Bray Town Development Plan 2011 – 2017.
- The planning policy conceived over 2010-2011 as part of the preparation of the development Plan clearly envisaged the development of a suitably scaled convenience store modelled at the time around the scale of facility typically referred to as a discount foodstore. The subject proposals clearly fits with this planning objective.
- The subject application relates to an area of 1.13 ha c. 36% of the overall site. The appellant’s reference that the site is to be developed primarily for a discount foodstore is, therefore, incorrect. Consider that the proposed

distributor road will support the councils Economic Policy in section 5.4.1 of the plan as it will facilitate the development of the remainder of the site for employment use.

- With reference to the sequential test and the Castle Street site, note that this site was subject to an appeal to An Bord Pleanála in relation to an application for a discount foodstore. It was refused and the Inspector noted that the access is problematic, sightlines and vehicular access including servicing arrangements would be difficult to achieve and that the development would increase traffic congestion at this location.
- Note that the methodology in preparing the Retail Impact Assessment was agreed with Wicklow County Council. Consider that the AO Smith site is the optimum site for the proposed development in terms of location, availability, viability and benefits to the local residential and business communities.
- The application does not seek an extension to the existing neighbourhood centre, rather it highlights that the proposed development of a discount foodstore at this location would be complementary to the existing services offered in the adjacent neighbourhood centre.
- The masterplan prepared provides an indicative proposal of how the remaining lands might be developed for employment uses by other interested parties in the future. It is clearly stated that separate applications will be required to deliver the remainder of the site. The application seeks to assist the delivery of development on the wider land bank through the proposed distributor link road which is a critical piece of infrastructure that will provide a foundation for future development of the site. Furthermore the foul drainage solution presented in the site takes full account of the full AO Smith site and surface level car parking will be shared with future occupants.
- Object to any potential condition restricting the opening of the foodstore until the commercial offices are opened and occupied. Such a condition would undermine the viability of the entire scheme.
- The Council has considered it appropriate to apply a condition (no. 5) that the proposed surface car park be used to facilitate the parking demand generated

by both the proposed development and the future development of the remainder of the AO lands. The applicant considers this acceptable.

### 6.3 Planning Authority Response to Third Party Appeal

- No response received.

### 6.4 First Party Appeal Against Conditions

6.4.1 The applicant has appealed against three conditions – No.s 3, 6 and 7 (a) and (b).

**Condition 3** states:

*“No development shall commence until contributions/submissions/agreements required by conditions 2, 4, 5, 6, 7, 11, 13 and 15 below have been submitted to and agreed acceptable in writing by the Planning Authority. All of the details required to be submitted for agreement by these conditions shall be submitted as a single compliance package.*

**Reason:** *In the interest of proper planning and development, and clarification.”*

6.4.2 Request that subject to the outcome of the appeal in respect of conditions 6 and 7, that condition 3 be amended accordingly.

6.4.3 **Condition 6** states:

*“Prior to the commencement of development, the applicants shall submit to and for the written agreement of the Planning Authority detailed proposals for the design and implementation of the pedestrian link between the proposed development and the adjoining neighbourhood centre. Unless otherwise agreed in writing with the Planning Authority, the agreed works shall be completed prior to the occupation of the development.*

**Reason:** *In the interests of proper planning and development.”*

6.4.4 Note that the existing railing and grass verge between the neighbourhood centre and the proposed site are not under the control of the Applicant. At Further Information Stage an indicative proposal was submitted to illustrate how a potential access could be designed to facilitate a more direct connection between the subject site and adjoining neighbourhood centre. States that the applicants are committed to providing an adequate and attractive connection to the neighbourhood centre and are continuing their efforts to identify the owner of the lands. Request rewording of



the condition to omit the requirement to submit details regarding the implementation of the link and that the applicant shall only be responsible for the link within their site boundary. Suggested rewording as follows:

*“Prior to the commencement of development, the applicants shall submit to and for the written agreement of the Planning Authority detailed proposals for the design ~~and implementation~~ of the pedestrian link between the proposed development and the adjoining neighbourhood centre. **The developer shall be responsible for the portion of the link within the site boundary.** Unless otherwise agreed in writing, **the agreed works shall be completed to** ~~with the Planning Authority’s satisfaction, the agreed works shall be completed~~ prior to the occupation of the development.*

*Reason: In the interests of proper planning and development.”*

#### 6.4.5 Condition 7 (a) and (b) state:

- (a) *Prior to commencement of development, the applicant shall submit to and for the written agreement of the Planning Authority full and detailed design proposal to upgrade the Killarney Road/Boghall Road junction. The proposals shall comply with the relevant engineering standards and the requirement of the Road Authority and may include for an amended traffic signal layout, the widening of the Boghall Road, on the final approach to the junction, a longer dedicated left turn lane and upgraded cycle facilities.*
- (b) *The upgrade of the junction shall be carried out in full by the developer under the supervision of the Roads Authority and testing of roads materials and CBR testing shall be submitted as and when requested by the Road Authority.*

*Reason: In the interests of traffic safety and equitable apportionment of the cost of the road improvement works proposed road link route, together with the associated junctions.*

#### 6.4.6 Consider that the wording of condition 7 should be reworded for the following reasons:

- A threshold assessment of the existing traffic signals at Killarney Road/Boghall Road concludes the discount foodstore will at worst result in an increase of

traffic of less than 1% during the weekday AM peak hour and less than 5% during the weekday PM peak hour.

- The information submitted at Further Information Stage demonstrated that the layout of the potentially improved signal junction will result in significant capacity improvement. It is agreed that there are capacity constraints at the junction. Any upgrade would benefit all road users, and as such it is considered that a proportionate contribution to the upgrade would be more appropriate.
- It is estimated that the combined delivery of the proposed distributor road and traffic signal junction will cost €1,185,356 to deliver. Consider that the operational phase of the development will result in an increase to the peak hour traffic of 3.5%. Request, therefore, that any contribution to a future improvement to this adjacent junction should be directly proportional to the traffic increase arising from the development. Propose a contribution of 3.5% of the estimated cost - €29,972.46.
- The equitable contribution should be in the form of a Special Contribution under Section 48 (2) (c) of the Planning and Development Act 2000 and should be proportionate to the identified traffic increase arising from the subject development and should take account of the public infrastructure that is being delivered i.e. the link road.

6.4.7 Seek the rewording of the condition as follows:

*“Before development commences the developer shall pay to the Planning Authority a special contribution under section 48 (2) (c) towards the cost of the proposed road improvement. The amount of the special contribution shall represent an equitable apportionment in respect of the benefit of the works to the proposed development. The amount shall be agreed with the planning authority before development commences and in default of such agreement shall be determined by An Bord Pleanála.”*

## 6.5 **Third Party Response to First Party Appeal**

- The applicant has throughout the application maintained that the development is essentially an extension to the adjacent neighbourhood centre and a significant reason why the proposed development should be considered acceptable at this location. Question the rationale as to why the applicant is seeking to have condition 6 amended so that the pedestrian connection may never actually be provided.
- It is important that details of how the pedestrian access will be implemented are agreed prior to the commencement of development so as to ensure that the link, which has been heralded as an important part of the application is provided.
- Also note that the applicant has sought to have the condition changed to that they are only responsible for a portion of the pedestrian link, and if this approach is taken, the development could be operational without there being any meaningful interaction with the surrounding area. Submit that the proposed pedestrian link should be fully operational prior to the occupation of the store.
- Consider that if the link cannot be provided, the increased trip that this would generate should have been factored in the traffic impact assessment.
- Request that the Board consider carefully the level of contribution to be paid in respect of any road infrastructure upgrades and that appropriate costs are conditioned should permission be granted in this case. Furthermore, any condition relating to the upgrade of the traffic or road network in the area, should note that the required change must be completed prior to the operation of the commercial development.

## 6.6 **Planning Authority Response to First Party Appeal**

- No response received.

## 6.7 Observations

### **Cllr. Steven Mathews**

- The subject site has lain vacant for many years and is need of regeneration. The Bray Local Area Plan 2018 has designated this site as a new Strategic Local Objective site and recognises it as a key development site for mixed use development which will include high density residential, office and uses.
- The application in its current form will not make the best use of this land considering the location of the site and the deficit of residential zoned land in Bray.
- The site is very well located in terms of public services, community services, schools and transport links. A revised application that seeks to maximise the land use potential would better serve the common good and would not unduly restrict the applicant in their objectives. Requests that in this context, the application be refused.

## 7.0 Assessment

### 7.1 Assessment of Third Party Appeal

7.1.1 The main issues in this appeal are those raised in the grounds of appeal and observation and it is considered that no other substantive issues arise. Appropriate Assessment also needs to be addressed. The issues can be dealt with under the following headings:

- Principle of Development and Compliance with the Bray Municipal District Local Area Plan 2018-2024
- Adequacy of Masterplan
- Retail Impact and Sequential Test
- Car Parking and Traffic
- Appropriate Assessment

## 7.2 Principle of Development and Compliance with the Bray Municipal District Local Area Plan 2018-2024

- 7.2.1 The principle thrust of the appellants appeal is that the proposed development is contrary to the zoning objective of the site. The appellant refers to the zoning under the Bray Town Plan 2011 – 2017 where the subject site was zoned EMP1: To provide for economic development and employment. As detailed above in section 5.1 however, there has been a fundamental policy change with regard to the site under the recently adopted 2018 Bray Municipal District LAP. This plan adopted in May 2018 is the operative Development Plan for the site and it is under this plan that the subject development must be considered. The observer to the appeal objects to the proposal on the basis that it does not comply with the objectives of the new LAP.
- 7.2.2 Under the current LAP, the site is zoned Mixed Use. There is a Specific Local Objective (SLO7) for the site and it is detailed that a mixed, high intensity employment and residential scheme would be suitable on the lands. The SLO states that use of part of the required employment floor space may be considered for supermarket/discount foodstore use. Having regard to the mixed use zoning and the statement that a discount foodstore may be considered, I am satisfied that in principle the proposed development is generally acceptable at this location.
- 7.2.3 However, the LAP also sets out a number of specific caveats for such supermarket/discount foodstore use and states:
- “Stand alone single or 2 storey, low density retail buildings will not be considered suitable on these lands; any retail use shall be integrated into a **larger 3 -4 storey structure** which provides for other commercial or residential uses overhead” (my emphasis).*
- 7.2.4 It is also stated that the development shall be delivered in a high density format and shall not have a plot ratio of less than 1:1. A total employment floor space yield of at least 18,000 sq. metres and housing provision of 120 residential units is desired.
- 7.2.5 The proposed development in my view, does not comply with these wider objectives relating to the site. The development comprises a two storey structure over undercroft parking. The ground floor area primarily comprises parking for 64 spaces and is not useable floorspace. Only one floor of commercial office space is proposed above the discount foodstore.

- 7.2.6 Furthermore, I would have significant concerns regarding the overall low density of the proposal and extent of surface car parking and the implications that this would have on the achievement of the wider objective for a high density, mixed use scheme on the site. The issue of the intensity of the use of the site and plot ratio was queried by the Planning Authority at Further Information Stage.
- 7.2.7 The applicants in their response noted that an overall masterplan for the site had been prepared in tandem with the application. The subject site has an area of 1.13 ha and represents 36% of the overall A.O. Smith site which has an area of 3.08 ha. The masterplan as submitted indicates that 11 buildings primarily in employment use, in addition to the discount foodstore, could be accommodated on the site with an area of c. 13,650 sq. metres. It is detailed that the plot ratio of the masterplan site is 0.7.
- 7.2.8 The Further Information submission further notes that the site area of the proposed development is 1.13 ha. However, if the area dedicated for the distributor road (0.16 ha), surface car parking, which will be a shared facility for the overall masterplan area (0.11 ha) and public plaza (0.03 ha), are omitted, the site area to be utilised by the Lidl discount foodstore is 0.56ha. It notes, therefore, that the plot ratio of the Lidl site is 0.5.
- 7.2.9 Having regard to the data presented by the applicant, I would calculate the overall site less the distributor road as 29,200 sq. metres (2.92ha). I do not consider that the surface car parking and public plaza should be omitted from the plot ratio calculation as these are an integral part of the development proposal. The combined area of the masterplan employment uses and proposed discount foodstore and offices is 16,087 sq. metres (13,650 + 2,437). The plot ratio proposed in the overall masterplan is, therefore 0.55. This is well below the current LAP objective which states that development must be delivered in a high density format of not less than 1:1.
- 7.2.10 Whilst I acknowledge that the overall site is not within the ownership of the applicant and that the masterplan as submitted is indicative of the wider land uses that could be achieved on the site, I am not satisfied that the layout as currently proposed in the application would ensure the realisation of the wider development objectives for the site as envisaged in the LAP. The current building format, coupled with the large expanse of surface parking, means that it is unlikely that a plot ratio of greater than

1:1 could be achieved on the wider site. In this context, I consider that the development is prejudicial to the delivery of a high quality, high density mixed use scheme on the wider SLO lands.

### **7.3 Adequacy of Masterplan**

7.3.1 Objections are raised by the appellant regarding the masterplan submitted with the application. There are concerns that the development would prejudice the delivery of the remaining lands for strategic employment purposes as there is no commitment by the applicant to deliver such uses as the red line of the application does not include these lands.

7.3.2 It is clearly acknowledged by the applicant that they have no legal interest of control over the AO Smith site in its entirety. Only the site of the proposed discount foodstore and office development is within their ownership. Notwithstanding this, a masterplan was prepared and submitted with the application which provided an indication of how the wider site could be developed for a range of employment uses. This approach, in my view, is reasonable and would, in principle, ensure that the development is integrated and consistent with the future objective of the lands.

7.3.3 Notwithstanding this, as detailed above, it is evident that the objectives regarding the future development of the subject lands have changed and it is now envisaged that the lands are to be developed for a high intensity, mixed use scheme. The masterplan submitted does not achieve this objective as an appropriate mix of uses, including residential development, is not indicated and the plot ratio, as detailed above, is not in accordance with the SLO. Furthermore, the SLO states a specific requirement to include a detailed phasing programme that ensures timely delivery of all elements of the SLO. Whilst I note the difficulties of the applicant complying with this objective, given that the remainder of the site is outside of their control, it is considered that some degree of phasing programme for the future development of the site should be submitted in agreement with the landowner of the remainder of the lands.

7.3.4 Whilst issues of design per se have not been raised by the appellant, I would note some concerns regarding the overall design approach in the application in the context of the masterplan approach to the site as a whole. The design of the proposed development is somewhat generic. Whilst the building presents a large

glazed elevation to the Boghall Road, the other elevations are functional in character and provide little animation or variation in elevational treatment. I would have concern regarding the interface of the building with the remainder of the site. A public plaza, as it is described, is proposed to the south of the development. This largely hard landscaped area, however, will, in my view, be primarily a circulation space and bicycle parking area and will provide little civic or amenity purpose. It is functionally separated from the remainder of the masterplan lands and there is poor pedestrian connectivity from the west and north due to the location of the extensive surface parking.

7.3.5 There is also a lack of connectivity and pedestrian permeability between the proposed development and the existing neighbourhood centre to the east. Whilst I acknowledge that this issue was given consideration at Further Information Stage, and that the applicant has endeavoured to make contact with the owners of the lands required to enable a meaningful connection, the lack of a clear pedestrian connection between these two sites is clearly a deficit in the design approach. Whilst the local authority has endeavoured to address this by way of condition, it is unclear that this connection will actually come to fruition. I also have significant concerns regarding the treatment of the site along the Boghall Road. Due to the raising of levels across the site, it is proposed to construct a large retaining wall along this frontage. This will present as a 2.24 metre wall with railing above adjacent to the public footpath and will create a somewhat defensive public realm. The extent of elevational signage, particularly on the Boghall Road elevation, is considered to be excessive and obtrusive.

7.3.6 In conclusion, I am not satisfied that the layout and design of the development would integrate successfully with a high quality high intensity mixed use development on the remainder of the site. The development would function as a standalone development and fails to provide an innovative design solution for this opportunity site.

#### 7.4 **Retail Impact and Sequential Test**

7.4.1 The Retail Impact Statement submitted with the application utilises a 15 minute walking catchment. Having regard to the proximity to other competing centres, and the likely neighbourhood shopping role that the store will have, this is considered



reasonable. The quantitative analysis demonstrates that there is generally sufficient expenditure capacity in the catchment to support the development without a material adverse impact on existing retailers. The assumptions and projections utilised in the study are generally in accordance with the guidance set out in the Retail Planning Guidelines regarding quantitative assessment.

- 7.4.2 With regard to the location of the site, the appellant is critical of the sequential test undertaken by the applicant. Reference is made in particular to a site at Castle Street. This site is discounted in the sequential test on the basis of potential traffic constraints. The site was subject of a previous proposal for a discount foodstore which was refused by the Board on urban design grounds (Appeal Reference PL27.245.361). Whilst undoubtedly there may be other town centre sites such as the Castle Street site that may be suitable for the development of a discount foodstore, regard must be had to the location of the subject site and the long established policy context to establish a discount foodstore at this location.
- 7.4.3 The current Wicklow County Development Plan sets out the retail strategy for the county. The plan acknowledges that centres such as Bray, due to its population size, will be served by neighbourhood centres and notes that such centres will normally provide for one supermarket ranging in size from 1,000 to 2,500 sq. metres. It is the clear policy objective of the plan to support the development and consolidation of the town centre which will be complemented by neighbourhood centres providing day to day convenience and service needs of the catchment.
- 7.4.4 Under the Bray Town Development Plan 2011 – 2017, the subject site was zoned for economic development and employment and as an opportunity site with the objective to provide for industry/office and science and technology bases uses in the main, with the option of neighbourhood services/discount foodstore. Under the current Bray Municipal District LAP 2018, it is detailed that use of part of the required employment floor space may be considered for supermarket / discount retail use, subject to satisfying all relevant retail objectives of this plan.
- 7.4.5 The subject site is located adjacent to an existing neighbourhood centre with limited convenience offer. I am satisfied, having regard to the zoning of the site, the previous and current policy objectives to facilitate convenience retail offer at this location, that the site is an appropriate location for a convenience supermarket

development. The development, subject to appropriate connectivity and permeability would in my view create commercial synergy with the adjacent neighbourhood centre, encourage potential for linked trips and form an integral part of an overall mixed use scheme for the subject lands to include high intensity employment and residential uses. In this regard, I am satisfied that, in terms of the sequential location of retail development in Bray, the development of a discount foodstore at this location would consolidate the role and function of the existing neighbourhood centre and is appropriate.

## 7.5 Car Parking and Traffic

7.5.1 Concerns have been raised by the appellant regarding the quantum of parking proposed and that it is well in excess of the Development Plan standards.

7.5.2 The current LAP does not provide parking standards. Appendix 1 of the County Plan sets out the following standards:

Offices above ground floor: 4 per 100 sq. metres

Large Food Retail: 1 space per 14 sq. metres.

Based on these standards, the parking requirement would be

Offices: 815 sq. metres: 33 spaces

Retail: 1,498 sq. metres: 107 spaces

Total: 140 spaces

7.5.3 The proposed development provides for 139 spaces, of which 37 are to be shared with the wider development. I do not consider the level of parking to be provided excessive in the context of the County Plan standards. Furthermore, the quantum of parking as detailed by the applicant is typical of discount foodstores and is appropriate having regard to operator requirements.

7.5.4 Access to the development is proposed by way of simple priority controlled junction from the Boghall Road, approximate to the location of the existing vehicular access, with a second access from Killarney Road via the adjacent Killarney Road Business Park Road. In their application, the applicants noted that the Boghall Road/Killarney Road junction could be improved in terms of geometry and operational capacity in the future and included a possible improved junction layout for this junction. It was

detailed that that the development and subsequent phases of development had been designed to provide sufficient lands free from development to accommodate this improved layout.

- 7.5.5 At Further Information Stage, a number of concerns were raised by the Bray Engineer regarding the proposed development and its potential impact on the Killarney Road and Boghall Road junction. It was noted that in order to facilitate the traffic generated by, and ease of access to, the proposed development, capacity improvements were required at this junction.
- 7.5.6 In their response to the Further Information request, the applicants undertook an independent review of the modelling and assessment of the potential improvements to the Killarney Road/Boghall junction and concluded that the provision of the additional road link through the site, together with signal improvements to the adjacent junction, would more than offset the low levels of traffic associated with the subsequent development. It was further detailed that the threshold assessment of the existing traffic signals at Killarney Road/Boghall Road concluded that the discount foodstore and offices will, at worst, result in an increase in traffic less than 0.9% during the weekday AM peak hour and 3.7 % during the PM peak hour.
- 7.5.7 Notwithstanding the submission, in an email dated the 19<sup>th</sup> of December 2017, the Area Engineer noted difficulty with the traffic assessment for the Killarney Road/Boghall Road junction submitted with the Further Information Response. The report noted that a major upgrade of the junction with amended signal layout is required to facilitate the development and that part of the upgrade will require widening of the Boghall Road on the final approach to the junction with a longer dedicated left turn lane required. It was further detailed that further traffic analysis and modelling would be required to determine the extent of the boundary set back required on the south eastern boundary of the AO Smith site that will provide for adequate junction capacity for the next 15 years. Condition 7 was attached to the decision which requires the submission of full and detailed design proposals to upgrade the Killarney Road/Boghall Road junction which may include the widening of the Boghall Road.
- 7.5.8 Whilst I acknowledge that the proposed development forms part of the first phase of development of an overall larger site, I am not satisfied that the traffic modelling and

assessment carried out is fully robust. Firstly, it should be noted that the overall traffic assessment is based on the site masterplan submitted with the application. It is stated that the assessment contains a consideration of the requirement of these subsequent phases of development in terms of their impact on the local roads and junction. As detailed above, however, the current Bray Municipal District LAP envisages a much higher quantum and intensity of development on the subject site than is provided for in the current masterplan and that 18,000 sq. metres of employment use and 120 residential units is desired. I am not satisfied, therefore, that the traffic assessment fully considers the potential of the development in the context of this wider vision for the site.

7.5.9 Furthermore, it is evident from the report and comments of the Area Engineer that, notwithstanding the projected impact of the development on the Boghall Road and Killarney Road junction as set out by the applicant in their application and further information response, a significant upgrade of the Killarney Road and Boghall Road junction is required to facilitate the development in its own right. This is reflected in condition 7 of the decision. It is noted that the works required to provide the necessary junction upgrade may require land take outside of the control of the applicant. It is unclear the extent of land that will be required or if the applicant has the necessary consent to undertake such works. It has not, therefore, been demonstrated that the road works to facilitate the development can be implemented.

## 7.6 **Appropriate Assessment**

7.6.1 A stage 1 Appropriate Assessment Screening Report is submitted with the application. This notes that the proposed site is located in a suburban environment with no direct hydrological or biodiversity corridor connection with a Natura 2000 site. The nearest Natura 2000 site is Bray Head. No impact is foreseen on this site.

7.6.2 Having regard to the nature and scale of the proposed development, an infill commercial and retail development within an established urban area, and the distance to the nearest European site, no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

## 7.7 Assessment of First Party Appeal

7.7.1 The applicant has appealed three conditions. Notwithstanding my recommendation to refuse the development, I will deal with each separately.

### Condition 6

7.7.2 This condition relates to the requirement to submit for written agreement to the planning authority detailed proposals for the design and implementation of the pedestrian link between the proposed development and the adjoining neighbourhood centre. The applicant is seeking to have the condition reworded to omit the requirement to indicate how the link will be implemented. Furthermore, it is requested that the wording should reflect that only the portion of the link within the site boundary shall be the responsibility of the developer.

7.7.3 Whilst I acknowledge the endeavours of the applicant to secure an agreement with the adjoining landowners regarding this proposed pedestrian link, I also note that the case for supporting the development of a discount foodstore at this location is largely predicated by the proximity of the site to this neighbourhood centre and the potential for linked trips and commercial synergy between the two. This is specifically identified in the Retail Impact Statement submitted with the application where the applicant states *“the site is located to suitability form an extension to the existing Boghall Road neighbourhood centre.”*

7.7.4 I, therefore, consider the potential connection and enhanced permeability between the subject site and adjacent neighbourhood centre to be an important part of the development strategy for these lands. I do not consider it appropriate, therefore, to amend this condition.

### Condition 7 (a) and (b)

7.7.5 This condition requires the applicant to submit full details of the detailed design proposals for the upgrade of the Killarney Road/Boghall Road junction which may include for an amended traffic signal layout, the widening of the Boghall Road, a longer dedicated left turn lane and upgraded cycle facilities. Part (b) of the condition states that the upgrade of the junction shall be carried out in full by the developer.

7.7.6 It is contended by the applicant, that the implementation of such upgrade works should be undertaken by Wicklow County Council with the applicant making an

equitable contribution in the form of a special contribution as is provided for under Section 48 (2) (c) of the Planning and Development Act 2000.

- 7.7.7 As detailed above, the imposition of this condition is somewhat problematic as it appears that land outside the control of the applicant is required to facilitate the necessary junction upgrade works. Furthermore, it is also noted that the subject application is the first phase of development on a much larger opportunity site. The works to be carried out to the Boghall Road/Killarney Road junction under condition 7(a) would facilitate the development of not just the subject site, but the wider lands as well. It would appear inequitable that these costs are borne entirely by the applicant and I would concur that any upgrade works that are carried out should be proportionate and would be most appropriately addressed by way of a condition under section 48 (2) (c). If the Board are minded to grant permission for the development, I would recommend the amendment of condition 7 accordingly.

### **Condition 3**

- 7.7.8 Condition 3 is a general condition, and I recommend no amendment to this condition.

## **8.0 Recommendation**

- 8.1. It is recommended that permission be refused permission for the reasons set out below.

## **9.0 Reasons and Considerations**

1. Having regard to the objectives of the Bray Municipal District Local Area Plan 2018 and to the Strategic Local Objective 7 designation pertaining to the subject site (wherein it is indicated that a mixed, high intensity employment and residential scheme would be suitable on these lands and that any retail use shall be integrated into a larger 3-4 storey structure which provides for commercial or residential uses overhead), it is considered that the proposed development, which provides for a single retail unit with offices only above, would not promote the appropriate redevelopment and intensification of use of this opportunity site and would result in this opportunity site becoming underutilised. Furthermore, by reason of its standardised form, low plot ratio,

extent of surface parking and impacts on the public realm, it is considered that the proposed development does not demonstrate a sufficiently high quality of urban design nor provide an innovative architectural design solution for this opportunity site and would fail to integrate successfully and achieve the vision for this site for high intensity mixed uses. The proposed development would, therefore, materially contravene the objective of the Bray Municipal District Local Area Plan to promote the re-development and intensification of use of this opportunity site in need of regeneration, and would be contrary to the proper planning and sustainable development of the area.

2. The necessary road works required to facilitate the development, including the upgrade of the Boghall Road and Killarney Road junction which will require an amended traffic signal layout and the widening of the Boghall Road appear in part to involve the use of third party lands. The Board is not satisfied that the necessary lands to facilitate these works are within the control of the applicant which may prejudice their implementation. The development would generate a significant volume of traffic which the road network in the vicinity is not capable of accommodating due to the restricted capacity of the Boghall Road/Killarney Road junction. The proposed development would, therefore, in the absence of the necessary upgrade works, give rise to traffic congestion and would endanger public safety by reason of traffic hazard.

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**Erika Casey**  
**Senior Planning Inspector**

**5th July 2018**