



An
Bord
Pleanála

Inspector's Report 302001-18

Development	Retention of changes to supermarket as granted permission by ABP. Ref. PL88.247100 (P.A. Ref. 16/333)
Location	Reenrour West, Bantry, Co. Cork
Planning Authority	Cork County Council
Planning Authority Reg. Ref.	18/40
Applicant(s)	G. W. Biggs & Co.
Type of Application	Planning permission
Planning Authority Decision	Grant permission
Type of Appeal	Third Party
Appellant(s)	Tim Coakley Peter Sweetman
Observer(s)	None
Date of Site Inspection	3 rd October 2018
Inspector	Mary Kennelly

1.0 Site Location and Description

- 1.1.** The site is located in Bantry Town, West Cork. It is situated at the western end of Harbour Road, on the northern shores of Bantry Harbour, to the west of the main square in the centre of the town. There is a Halting Site to the west of the appeal site and a hard surfaced car park to the east. The lands to the rear rise steeply to the north and there is an embankment forming the boundary with the appeal site.
- 1.2.** The site has recently been developed as a Supervalu supermarket under PL88.247100. the building comprises a 2-storey structure with a stone feature integrated with curtain walling on the south-eastern corner. The front elevation (with pedestrian entrance) faces east, towards a Harbour View Car Park. It consists of a stone and glass feature at the southern end with a white-painted elevation to the north. The southern elevation comprises a series of pitched roofs emulating a warehouse structure facing Harbour Road. The gables at the eastern end are dark grey and the gables at the western end are painted white. The western end of the Harbour Road elevation contains an entrance and an exit to/from a first-floor car park serving the supermarket. There are some staff facilities, store rooms and ancillary offices located at the eastern end of the first floor.
- 1.3.** The site area is given as 0.49ha. There is a retaining wall to the rear (north) of the building, behind which the ground levels rise steeply. The embankment was not landscaped and was fenced off at the time of my inspection.

2.0 Proposed Development

- 2.1.** It is proposed to retain certain amendments to the permitted development in respect of internal alterations to the layout of the supermarket, alterations to the first floor and elevational changes. The amendments that are proposed to be retained may be summarised as follows:

1) Internal alterations to ground floor –

- increase in retail space, originally granted as storage;
- reconfiguration of the storage area; incorporation of an in-house ancillary café;

- construction of a recycling compactor area.

2) Alterations to first floor –

- provision of toilets and staff facilities;
- reduction in the number of parking spaces from 74 to 65;
- revisions to the plant areas.

3) Elevational changes –

- Change from Frameless glazing to curtain walling in respect of shopfront glazing.
- South elevation - Addition of 2 doorways, cladding and render.
- North elevation - Relocation of 3 no. doorways and minor finish treatments;
- East elevation - Addition of a ventilation louvre and increase in parapet height;
- West elevation - Addition of a doorway and cladding finish (in lieu of ventilation louvres);

4) External area to rear –

- Modification and realignment of retaining wall to rear.
- Regrading and change of levels of hillside to rear.
- Location of emergency generator behind retaining wall at rear.

2.2. The proposed alterations to the permitted development were justified on the basis that the internal layout of the shop floor area had not been designed in any detail at planning application stage, and was constantly evolving until quite late in the construction stage. The changes to the first floor were described as being necessary as a result of the structural design of the building in terms of the location of support columns, together with a need to provide customer toilets and proposed staff facilities and ancillary offices. These factors, it is stated, resulted in the loss of 9 parking spaces.

3.0 Planning Authority Decision

3.1. Decision

The planning authority decided to grant permission subject to 7 no. conditions. These were generally of a standard type and included a requirement to comply with the terms of the parent permission (247100) and a subsequent permission for amendment to the hours of operation (300450-17). The following conditions are of note:-

- Condition 3 required the track at the rear of the site to be reduced in width to 1.0m within 3 months of the decision and thereafter no vehicles shall be allowed to access the track.
- Condition 4 required the area to the rear of the site to be landscaped in accordance with the hillside Landscaping Plan (26/04/18) and implemented within the following planting season. Cond. 5 required the maintenance of the landscaping to be carried out.
- Condition 6 required the erection of an illuminated sign indicating “parking” at the entrance to the first-floor car park within 3 months of the decision, details to be approved by the P.A. in advance.
- Condition 7 required the payment of a Special Contribution in respect of the shortfall of 9 no. parking spaces, (amount of €54,000).

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Area Planner’s report (22/03/18) noted that a complaint regarding certain unauthorised development regarding non-compliance with the permitted development under the parent permission PL88.247100, had resulted in a Declaration being issued on 18/12/18. This had concluded that the various items (which form the basis of the current application/appeal) were development and were not exempted development, and furthermore, that the development had breached the terms of Conditions 1 and 17 of the said parent permission. It was further noted that planning permission has been granted for alteration to the hours of opening, but

that this had been appealed and that the appeal had not been determined at the time of writing the initial planner's report.

The Area Planner referred to the report of the Traffic Engineer (13/03/18), who had noted the submission of a Traffic and Transport Assessment as part of the original permission, which had concluded that there would be no significant adverse traffic impact on the existing town centre road network. This report had also identified that there had been a shortfall in parking provision in the original permission of 26 spaces, which had been addressed by means of a special contribution condition, but that there did not appear to be any proposals to address the 9-space shortfall in the current application. However, it was further noted that the original parking requirement had been based on a floor area of 2222sq.m, which included net retail and storage space.

Deferral was recommended pending receipt of further information. A request for FI was issued on 23/03/18 in respect of the following matters:-

1. Amended elevational drawings with heights annotated, particularly re the east wing.
2. Floor area of in-house café as well how parking deficit for café will be addressed, together with details on how the parking shortfall of 9 spaces is to be addressed in order to comply with the terms of the parent permission (PL88.247100).
3. A revised and up-to-date Retail Impact Assessment based on the original 1,672m² together with the additional 550m² retail floor space now proposed. Alternatively, submit a revised floor plan indicating that the additional retail floor space as storage space, as originally permitted (PL88.247100).
4. The landscaping at the rear of the site on the masterplan permitted under PL88.247100 has not been implemented in accordance with the approved drawing (L102, Revision B, received 27/05/16). Furthermore, an unauthorised track has been introduced to the rear of the building. Details are required regarding the extent, width and length of the track as well as its length and destination. Confirmation is required as to whether it will be removed or amended plans will be submitted.

3.2.2. Other Technical Reports

Area Engineer's Report – (13/03/18) – Deferral was recommended on the basis of the parking shortfall as discussed above.

Environment Unit (14/03/18) – permission recommended subject to a condition regarding construction waste management.

3.3. Prescribed Bodies

Irish Water (06/03/18) – no objection subject to recommended conditions.

3.4. Third party observations

Three submissions received including one from each of the two appellants. The issues raised are summarised in pages 7-8 of the Area Planner's initial report (22/03/18). Much of the content of the submissions relate to the unauthorised nature of the works, the failure of the applicant to abide by the terms of the parent permission and concerns regarding legal entitlement of the applicant to use the adjoining car park, which is owned by trustees. Specific issues also relate to the increased retail floorspace, the lack of planning permission for the café, significant regrading works on the hillside, the unauthorised track on the embankment, loss of mature trees on the embankment, the shortfall of 9 no. parking spaces, demolition of boundary wall to east without consent and proposals to use car park to access track to rear of site without consent.

3.5. Response to Further Information Request 26th April 2018

1. Height of building - Revised elevational drawing including the east wing submitted.
2. Café floor area and parking deficit - Drawing 4000-P-500 with legend showing breakdown of floor areas. Café (coffee dock plus seating area c. 57.3m²). Detailed justification provided re coffee dock and seating area being ancillary to shop and hence no separate parking requirement for café required. A

detailed justification for the 9-space parking shortfall was also provided, which was based on the Town Centre Location where a reduction in commercial parking is advocated, the conclusions of the TTA, the availability of existing and underutilised car parking in the immediate vicinity. This will be referred to in more detail in the assessment section of this report.

3. Retail Impact Assessment – no formal requirement for additional Retail Impact Assessment due to Town Centre Location in line with local and national policy. Notwithstanding this, there has been a misinterpretation of the additional floorspace involved. The increase represents an additional 41m² rather than 550m². The RIA submitted with the original supermarket application had identified that there was significant leakage from the area and that even with the implementation of all of the permitted convenience floorspace in the town, the capacity of the catchment would not be breached.
4. Landscaping and track to rear of site – the track is shown on CIE mapping (1966) as a farm track. It was in place pre-construction and will remain in place post construction. It is a wayleave to adjacent lands and it is proposed to retain it to a max. width of 3.5m. A revised landscaping hillside plan is submitted includes the planting of a small copse of native woodland which will provide a tree canopy backdrop to the supermarket and enhance biodiversity in the area. Additional landscaping proposals are also proposed. These will be discussed further in the Assessment Section of this report.

The FI was deemed to be significant and was therefore re-advertised.

3.6. P.A. response to submission of 26/04/18

The Area Engineer (14/05/18) acknowledged the points made in respect of the café and associated parking deficit, but remained of the view that the 9-space shortfall must be addressed. It was therefore recommended that a Special Contribution condition be attached to any permission in this regard.

Environment Officer (11/05/18) – no objection.

Submission from third party (16/05/18) – FI request fails to include many items contained in TP’s original submission to P.A. These have been summarised on pages 3-5 of the Planner’s Report (11/06/18), the main points of which are as follows:

- PL88.247100 cannot be implemented as applicant does not have sufficient interest in the adjoining lands to east (car park).
- Unauthorised works to hillside outside red line boundary not addressed.
- Unauthorised demolition of stone boundary wall to west of car park to facilitate access to the supermarket nor addressed.
- Absence of documentation demonstrating sufficient legal interest to traverse the car park to access the track.
- Lack of legal interest to park service vehicles in car park at new double door service entrance to east side of supermarket. Perking for the marina may never materialise and parking deficit will result in on-street parking.
- Car parking – TTA relates to parent permission, not current application. Public car park in heavy demand and applicant has no legal interest of consent from Trustees to utilise this car park.
- Revised Retail Impact Assessment required and planning permission for café also required.
- Track at rear – no documentary evidence and suggest it was a walking track and no information on how it is to be accessed from the car park, particularly in view of difference in ground levels.
- Landscaping inappropriate as mature tree canopy has been removed and will take 50 years to replace.

The **Area Planner (11/06/18)** had regard to the supplementary reports of the Area Engineer and the Environment Officer and recommended a grant of permission subject to conditions. The elevational changes were considered to be minimal and largely immaterial. The issues relating to lack of interest over the adjoining car park

were not of concern as the car park is leased to the County Council and is not part of the application.

Car parking shortfall

The applicant's justification for the 9-space shortfall was not accepted. However, the demand for parking at/near the site was considered to have been overstated in the third-party submission. Although there has been an increase in on-street parking on Harbour Road, the first-floor parking is very much underutilised, notwithstanding that a lift is available. It was accepted that at present, there is ample space available but it is not being used to its potential. It was further noted that the presence of the FF car park is not readily visible or obvious and it was considered that signage in this respect was inadequate, but could be addressed by means of a condition. In the longer term, however, it was considered that the 26 space and 9 space shortfall would need to be addressed by means of alternative parking solutions in the town. Hence the Area Engineer's recommendation for a Special Contribution was considered to be appropriate.

It was pointed out that the Special Contribution condition to address the parking deficit attached to the original permission was based on €2000 per space. However, the Area Engineer explained that this was based on a reduced rate which had been adopted due to lower costs during the recession. The proposed charge in relation to the current application is €6,000 per space. This was based on the current market rates for material and labour costs, together with the difficult nature and terrain of land available within Bantry town. It was further noted that the rate before the recession had been proposed at €6,106 per space in 2006.

Additional retail floorspace

In terms of the additional retail floorspace, it is acknowledged that the P.A. had misread the situation, and that it is now noted that the increase would be c.41m². It is accepted that the coffee dock/seating area is ancillary to the supermarket and would

not generate an additional need for parking spaces. It was further accepted that there is no need for a revised Retail Impact Assessment.

Landscaping of embankment and uncertainty re track

It was acknowledged that mature trees had been felled, but noted that this issue was not mentioned in the Inspector's report on the parent permission. The embankment needs to be landscaped and the revised landscaping scheme was considered to be acceptable in this regard. It was noted that the track had not been shown in the plans submitted with the original application (PL88.247100). It is considered that it is more likely to have been a walker's path, based on an examination of maps and aerial photography over the years. Hence it was considered that any track should be reduced to 1.0m in width and any proposals for a wider track would have to form the basis of a fresh planning application.

4.0 Planning History

243290 – Planning permission for a supermarket was refused by the Board following a third-party appeal on grounds of being contrary to the zoning objective and impact on visual amenity. A Section 47 Agreement had been negotiated with the developer as part of the P.A.'s decision to grant permission. This would have secured the acquisition of and improvement works to the Harbour View Carpark, which is currently leased by the Council and would have been required for access. The S47 Agreement also addressed issues relating to a programme of public realm improvement works, including public lighting, for the entire length of road/walkway/promenade which fronts the site from the Diesel Depot site to the east, as well as other improvement works to the Slob car park and public lighting elsewhere.

PL88.247100 – permission granted subject to conditions for demolition of workshop and construction of supermarket with net retail floor space of 1,672sq.m and 74 parking spaces at first-floor level. The permitted scheme included 550m² storage space at GF level and 318m² office space at FF level. Condition 20 of the P.A. decision had sought to incorporate the works contained in the Section 47 Agreement

(negotiated under 243290) in a Special Contribution condition, which had also sought to address the 26-space parking shortfall. This condition was also appealed by the developer. The Board decided to reduce the amount to be paid in respect of the Special Contribution and restrict it to addressing the parking deficit and the acquisition and improvement works to the Harbour View Car park only (Cond 17).

300450-17 – permission granted by Board to vary opening times of supermarket by one hour.

D/42/17 – Declaration issued by P.A. on 18/12/18 that certain works to elevations and to the rear, a change of use of part of the ground floor storage area to additional retail floor space, and a parking deficit of 9 spaces was development and was not exempted development. This gave rise to the current application/appeal.

5.0 Policy Context

5.1. Cork County Development Plan 2014

Relevant policies include:

T-01 and TCR 2-1 – these objectives seek to promote the town centre as the primary area for retail and mixed-use development, encourage sensitive refurbishment/redevelopment of existing sites and promote public realm improvements.

GI-6-1 Landscape

- (a) Protect the visual and scenic amenities of County Cork's built and natural environment.
- (b) Landscape issues – important factor in all land-use proposals
- (c) Ensure new development meets high standards of siting and design.
- (d) Protect skylines and ridge lines for development
- (e) Discourage development requiring the removal of extensive amounts of trees, hedgerows and historic walls or other distinctive boundary treatments.

5.2. West Cork Municipal District Area Local Area Plan 2017

BT T-01 – Town Centre and Neighbourhood Centre – promote retail and mixed-use development

5.3. Natural Heritage Designations

Glengarriff Harbour and Woodland SAC and NHA (000090) – lies approx. 8km to the northwest.

Caha Mountains SAC (000093) lies approx. 10km to the northwest.

Derryclogher Bog SAC (001873) lies approx. 9km to the north.

Sheep's Head SAC (000102) lies approx. 12km to the southwest.

6.0 The Appeal

6.1. Grounds of Appeal

Two third-party appeals have been submitted. The first appeal is from Tim Coakley & Finian O'Sullivan. The second appeal is from Peter Sweetman, submitted by David Mulcahy Planning Consultants on his behalf.

The main points raised may be summarised as follows:

- **Intensification of unauthorised development** – it is alleged that the developer has not completed the permission granted under PL88.247100. Reference is made to works which were shown on permitted Landscape Drawing No. L104 prepared by Forestbird Design which it is stated showed the provision of special needs parking, bicycle parking, a covered trolley bay, stone clad seat plinth, stone paving, picnic table and bollards. As these items are shown on the adjoining Harbour View Car Park, over which the applicant has no legal interest, and cannot therefore implement the development as permitted. This is in breach of condition 1 which requires all development to be carried out in accordance with the submitted plans and particulars. Case law is referred to in respect of the requirement to carry out the development in accordance with the permitted plans and that the permission is indivisible. Furthermore, the applicant has demolished a wall between the car park and the

supermarket, for which no permission has been obtained. In light of these matters, it is submitted that the development represents intensification of an unauthorised development.

- **Material intensification of retail use** – Drawing 4000-P-500 indicates that the storage area of 550m² has now been replaced by 4 separate storage areas, a food production area a coffee dock and a seating area. It is submitted that the definition of net retail floor space includes serving counters and the area behind them and that this area and the café/seating area should be included in the calculation. This means that the increase in net retail floor space is 236.51m² which is substantial and merits a revised Retail Impact Assessment.
- **Café area**– it is submitted that the café and seating area do not come within the definition of shop and that this requires planning permission in its own right.
- **Insufficient parking** – it is disputed that the parking deficit is not significant. It is considered that the development has given rise to a significant increase in on-street parking and that the 9-space shortfall together with the previous shortfall of 26 spaces results in a substantial deficit of 35 spaces, which is too great to be addressed by way of a special contribution. The on-street parking detracts from the visual amenity of the harbour and will only intensify as the harbour area is developed. This road is narrow and serves as access to the Supervalu car park, delivery bays and to the Whiddy Island ferry. The parking shortfall gives rise to congestion on this road and should not be allowed. One of the reasons for this overflow of parking is the failure to provide special needs parking as shown on the permitted drawings L104.
- **There is an over-reliance on other car parks in the area** - this is unacceptable. The adjoining public car park is heavily in demand, particularly on market day (Fridays) and during the summer months, and is also used for a circus and amusement events. Furthermore, the anticipate parking permitted for the marina redevelopment (16/640) has not yet been implemented and may not be implemented as there is a revised application being considered.
- **Removal of mature trees** – These trees were critical to the backdrop to supermarket in terms of softening the visual impact. No analysis has been

undertaken of the revised landscaping scheme and how it will impact on the visual amenity of the area.

- **Track not included in planning application** – it is submitted that the application does not include the retention of this track and third parties have not been informed of the track forming part of the application. The council has now granted permission for the retention of a reduced width track, which is ultra vires.
- **Lack of clarity regarding track and rights of access** – it is stated that there is uncertainty regarding what has been permitted. At present it is a road in an unfinished state with no access point. Will it be connected to the public car park? Does the applicant have sufficient legal interest to access it from the car park? The track is shown as extending into the public car park, yet this part of the track is outside the red line boundary. There is no information on the finished treatment, surface water drainage measures to be employed and the gradient of the track. It should, therefore, be excluded from any planning permission and should form part of a new planning application which would allow for full public participation in the process.
- **Dependence on adjoining car park** – the Trustees who own the car park believe that the development is fundamentally flawed as it is dependent on the adjoining car park to operate. The car park is currently leased to Cork Co. Co. for use as a public car park and to facilitate temporary festivals and tourist events. It is not leased to facilitate any private development or to provide parking spaces to backfill shortfalls resulting from private development.
- **Lack of legal interest** – the Planner's report stated that the issues relating to the public car park are civil issues and are not relevant to the current application. This viewpoint is fundamentally disagreed with and it is believed that the car park is integral to the permitted development under PL88.247100, but that due to the lack of legal interest or consent from the trustees (who own the car park), this permission cannot be implemented. It is submitted that the applicant must obtain the consent of the trustees to implement the car parking, trolley bays, picnic tables etc. as well as for the demolition of the wall and obtaining access to the track at the rear. Furthermore, Cork Co. Co. has not

obtained permission to implement the additional car parking improvements and landscaping within the public car park as per Condition 17 (Special Contribution).

6.2. Planning Authority Response

The P.A. responded to the grounds of appeal on 9th August 2018. The Area Planner had no further comments to make but the Area Engineer (27/07/18) made the following points:

- The statement that the supermarket's dependency on the Harbour View Car Park is not valid as having inspected the site on numerous occasions since the opening of the supermarket, the Senior Executive Engineer has never experienced any difficulties in finding parking.
- The statement that the Special Contribution does nothing to resolve the underlying issues and serves to compound the unsustainable nature of the development is unfounded as the appellants have not made any enquiries regarding the Council's plans to provide future parking facilities. The car park site is also zoned to facilitate future development.
- The assertion that the Council cannot carry out any works without the permission of the trustees is disputed as the lease agreement requires the Council to maintain and keep the site in "sufficient order, repair and condition...", which it is assumed would include works such as resurfacing and relining.
- The submission that there is a significant issue with on-street parking generated by the supermarket is refuted. It is accepted that some yellow lines are required at the narrower point of the road beyond the supermarket, but it is stated that this is unrelated to and was not caused by the development of the supermarket.

6.3. Response from First Party to grounds of appeal

A response was submitted by the applicant on 9th August 2018. This was mainly in the form of a rebuttal of the grounds of appeal. However, the following points are worthy of note:

- **Works outside red line boundary** - It is confirmed that the adjoining Harbour View Car Park is outside the red line boundary of the application site. It is also clarified that the works referred to in respect of the provision of special needs parking, trolley bays, etc. as part of PL88.247100 were indicative only and provided for illustrative purposes. The Special Contribution Condition (17) has been paid and it is the responsibility of the Council to carry out the works specified in that condition. In respect of the removal of the wall, the Board should note that this had been constructed by the ESB and had been purchased by the applicant. Its removal was included in the development permitted by the Board under PL88.247100.
- **Retail floorspace** - It is reiterated that the overall increase in net retail floorspace is 41m² only and that there is no formal requirement for a revised Retail Impact Assessment.
- **Car parking deficit** - It is submitted that the claims that the parking shortfall is contributing to on-street parking congestion is disingenuous.
- **Removal of mature trees** – It is acknowledged that the replanting proposals are not acceptable to the appellants. It is stated that the removal of these trees was unintended and was in response to the construction methodology regarding the retaining wall to the rear. It is further stated that the changes to the design resulted in the removal of trees to allow the embankment to be temporarily re-profiled while the retaining wall was being constructed. Once this was achieved, the embankment was reinstated. It is confirmed that it is the intention to replace the landscaping such that the hillside can evolve into a small copse of woodland.

- **Track at rear of site** – it is reiterated that the track was in place pre-construction, but unknown as it was hidden under a blanket of thick scrub, and will remain in place post construction. It is thought to have originated in 1966, as per CIE mapping, and the Council accepts that its existence as a ‘walker’s path’ has much credibility. The track will be retained at the request of the Council. It has no functional link to the supermarket and the applicant only has discretion to maintain what is within its ownership. It is disputed that the lack of control over access to the track is a ground for refusal.

The applicant considers that the appeals are without foundation as the changes were carried out to address technical building requirements and following the finalisation of the internal floor plan. It is stated that the appellants are seeking to use the appeals process to strengthen their current legal positions in disputes and cases that they have taken against the planning authority and the applicant (see page 2 of response).

7.0 Assessment

7.1. It is considered that the main issues arising from the appeal are as follows:-

- Extent of unauthorised development
- Intensification of use
- Adequacy of car parking
- Revised landscaping proposals and retention of track

7.2. Extent of unauthorised development

7.2.1. The appellants consider that the planning permission granted by the Board (PL88.247100) has either not been implemented in full (by reference to the landscaping/special needs parking/trolley bays etc shown on permitted drawing L104), or cannot be implemented due to lack of sufficient legal interest. It was further stated that a wall along the western boundary of the adjoining car park was removed without permission. The appellants believe that this permission is dependent on use and or access from the public car park. However, the car park, which is owned by

trustees and leased on a 35-year lease to the County Council, is outside the red line boundary of the development site for both the parent permission and the current application/appeal. Although a shortfall of parking had been identified in respect of the parent permission, this was to be addressed by means of a specific development contribution for car parking (€52,000) which was required to be paid to the Council under Condition 17 of the Board's decision. The applicant has advised that this has been paid and that the onus is now on the Council to address the parking deficit within the town centre.

7.2.2. The second element of Condition 17 was to pay €168,697 to provide for the acquisition of and improvement works to the Harbour View Car Park. There is no requirement for the applicant or the Council to provide parking to serve the development within this car park. Neither is the supermarket development dependent on this adjoining car park for access to its development, as the pedestrian entrance and the carpark and delivery entrances to the site are directly from Harbour Road. I therefore agree with the planning authority that the claim that the supermarket development is dependent on the Trustee's car park for either access or parking is unfounded.

7.2.3. The appellant's reference to Drawing L104 of the parent permission correctly identifies that certain items are shown on the adjoining car park lands. These include a trolley bay, special needs parking bays, covered cycle parking, stone paving, picnic tables etc. However, the L104 Drawing includes two footnotes which read as follows:

- 1) These proposals include works that lie beyond the site boundary and are provided for consultation purposes only.
- 2) For details to layout within site boundary refer to L102 for landscape and architectural drawings for the Site Layout Plan

A review of Drawing L102, entitled 'Landscape Masterplan', shows that there are no works proposed to the adjoining car park. However, the proposal to remove the stone wall and to replace it with a concrete header at ground level is annotated on this drawing. It is noted that the full set of landscape drawings included L103 'Public Realm Considerations' and L104 'Forecourt Enlargement'. The works indicated on these drawings include works to the public car park, the quayside and Harbour Road

itself. It is clear that these drawings are 'concept drawings' for wider public realm improvements beyond the site itself and are not part of the permitted development.

7.2.4. Admittedly, it is quite confusing and it is understandable how the misunderstanding could have arisen. However, it is clear that the only works that are within the control of the applicant are those within the red line boundary, which as stated previously, excludes the Harbour View Car Park. It was for this reason that the P.A. had attached a Special Contribution condition to its decision, which was subsequently retained and modified by the Board (No. 17). It is considered, therefore, that the extent of the unauthorised development does not extend to the works referred to by the appellants at the western end of the adjoining car park and that the demolition of the wall was indicated on the permitted drawings. It is further stated in the response to the grounds of appeal that this wall was in the ownership of the applicant.

7.3. Intensification of use

7.3.1. The alterations to the internal floor area result in an increase in the net retail floor space and in the introduction of a café with seating area within the premises. It is asserted by the appellants that these changes require a revised Retail Impact Assessment and that the café element requires a fresh planning application. The quantum of additional floor space is also in dispute.

7.3.2. I would refer the Board to Drawing No. 4000-P-500 which provides a full breakdown of the floor areas as proposed to be retained. It is noted that the permitted development allowed for 1,672m² net retail space and 550m² storage space. The revised proposals now show the retail area increased to 1,713.21m², which represents an increase of 41m², (it had originally been understood by the P.A. that the 550m² storage space had been converted to retail space). It also shows four separate storage areas with a combined floor area of 161.18m², a food production area of 195.3m² and the coffee dock (14.93m²) and seating area (42.37m²).

7.3.3. The appellant submits that the net retail floor space allocation should include the food production areas, by reference to the definition of this term in the Retail Planning Guidelines. This view was based on firstly, an interpretation of the definition of net retail floorspace that areas behind the serving counters should be included in the net floorspace. It is further stated that a restaurant is specifically excluded from

the legal definition of a shop, and that as such, the café and seating area require planning permission, in their own right.

- 7.3.4.** The applicant, however, disagrees with what it is believed to be a narrow interpretation of the definition in the Retail Planning Guidelines Annexe 1. This definition reads as follows:

Net Retail Floorspace – the area within the shop or store which is visible to the public and to which public has access including fitting rooms, checkouts, the area in front of checkouts, serving counters and the area behind used by serving staff, areas occupied by retail concessionaires, customer service areas, and internal lobbies in which goods are displayed, but excluding storage areas, circulation space to which the public does not have access, cafes and customer toilets.

The applicant states that whilst the areas behind serving counters such as the bakery and the deli etc. are included in the net floor space calculation, the other areas where food is baked and related equipment is stored, and to which the public has no access, is not included in the calculation. I would accept that the drawing does show the serving counters and areas immediately associated with them as retail space, (red line) with the remaining areas to the rear as food production areas (blue line). I would agree that the food production areas to which the public does not have access should be excluded from the net retail floorspace, and that as such the net retail floorspace identified by the applicant is accepted.

- 7.3.5.** The P.A. has accepted that the coffee dock is subsidiary to the main retail use. This is generally consistent with previous decisions made by the Board on Referral cases where such a café involves the sale of food to visiting members of the public. In these cases, the Board had decided that the use came within the scope of the definition of a 'shop' under Article 5(1) of the P & D Regulations, 2001 (as amended). Examples of such decisions would include RL2941, RL2516, RL3315 and RL3023.

- 7.3.6.** I would agree that the café in this instance is a small area within the supermarket, which, by reason of its scale and layout, forms an integral part of the retail area. It is unlikely that the café would attract customers in its own right, due to its location and to the fact that the customer would have to go into the supermarket in order to

access the café. The items sold are generally consistent with the items sold in the supermarket, and is considered to be an ancillary use to the main retail floorspace.

7.3.7. In terms of the need for a revised Retail Impact Assessment, it is considered that given that the site is located within the defined town centre, which is designated as the prime location for retail development in accordance with the Retail Planning Guidelines, and that the increase in net floor space is only 41m², a revised Retail Impact Assessment is not required in this instance. The applicant has also pointed out that the original RIA had identified a substantial convenience retail leakage from Bantry which it had been established would not be fully addressed even with the implementation of the original planning permission together with the extant planning permissions for retail development elsewhere in the town. I note that the P.A. has accepted this and further noted that the original RIA (dated May2016) had identified a surplus spend of €11.1million in the catchment.

7.4. Adequacy of car parking

7.4.1. The supermarket development, as permitted had an identified shortfall in parking provision of 26 spaces. This deficit was addressed in the parent permission by means of a special contribution condition, which has since been paid. The current application/appeal for retention of alterations, increases the shortfall by a further 9 spaces to 35 spaces. The appellants believe that this is too great to be addressed by means of a special contribution condition, and that it has given rise to problems such as the over-reliance of the supermarket on the adjoining public car park (which has other community related functions) and in overspill parking on the street. The planning authority disagrees with the foregoing. It is further considered by the P.A. that a special contribution will adequately address the issue and that, based on several site visits since the opening, there has never been any issues with finding a parking space and that the overspill parking is more a matter of convenience for customers.

7.4.2. I can confirm from my site inspection that customers of the supermarket were parking in the Harbour View Car park, which is immediately adjacent and did not appear to have any restrictions in terms of duration of time/payment for parking. However, I can also confirm that there is a newly appointed, well-lit and easily accessed first floor car park above the supermarket. At the time of my inspection,

(mid-week, late afternoon), there were two cars parked in the entire car park, one of which appeared to belong to a supermarket employee, which left while I was there. This car park is accessible by means of lifts from the ground floor entrance, and is clearly under-utilised. I note that the P.A. in its decision has required the erection of an illuminated sign to draw attention to the presence of the car park, which is likely to help to increase the use of the car park. However, it is also considered that should the Harbour View Car Park no longer be available or have parking restrictions introduced, customers would be forced to use the first-floor car park

7.4.3. There were approx. 5 cars parked on Harbour Road at the time of my inspection. I also noted that there are double yellow lines on both sides of the carriageway beyond the supermarket site (on the corner), and on either side of the entrance to the car park. However, there are no such restrictions directly opposite the delivery access. Presumably, should access to and from the delivery access become problematic, the Local Authority could address this by means of additional double yellow lines. I note that one of the appellants had provided an aerial photo to substantiate his case regarding the impact of the parking deficit on Harbour Road, and that the P.A. had discounted this on the basis that the date of the photo was not clear. The appellant has confirmed that it was taken the day after the opening of the supermarket. However, I would also draw the Board's attention to a similar photo attached to the Inspector's report on PL88.247100, which shows the former ESB building in situ and the Harbour View car park at full capacity, in addition to a line of cars parked the full length of Harbour Road (both sides). Thus, the evidence that the supermarket is directly responsible for parking congestion in the area is dubious.

7.4.4. In conclusion, I would accept the P.A. Senior Executive Engineer's view that there is no evidence of overspill parking on Harbour Road arising from the permitted supermarket development, which currently has a parking deficit of 35 spaces. It is further noted that the P.A. intends to address the parking deficit in the town by means of the funding provided by Special Contribution conditions. Thus, it is considered that the proposed parking deficit can be addressed by means of such a condition in this instance.

7.5. Revised landscaping proposals and retention of track

- 7.5.1.** It is acknowledged that mature trees have been removed from the area to the rear of the supermarket development and that this was unintentional, but arose due to the method of construction employed for the retaining wall to the rear. It is stated, in the response to the grounds of appeal, that the trees were removed to facilitate the embankment to be temporarily reprofiled, while the retaining wall was being constructed, and that the embankment has since been restored. The applicant has submitted revised proposals for the landscaping of the area to the rear of the site, together with a statement regarding the planting and landscaping proposals for this area. This conveys an intention to provide a small copse of native woodland on the hillside, between the retaining wall and the red line boundary, which would provide a backdrop to the supermarket building and increase biodiversity. It is further proposed to implement the original permitted planting, which is deciduous woodland, but it was advised that this cannot be installed until the winter planting season of 2018-19.
- 7.5.2.** The submitted planting scheme is agreeable to the planning authority. However, the appellants have objected to the proposed planting scheme on the basis that no visual impact assessment has been carried out. It would appear from the documentation on the file Ref. PL88.247100 and the submissions on the current file, that the area behind the supermarket had previously comprised a mixed woodland copse which extended up the embankment and around the ruined stone structure in the car park. However, it is also clear that the implementation of the development permitted by the Board would have necessitated the felling of a substantial part of this woodland and that much of the remainder would have been vulnerable to damage during the construction works involving the regrading of the southern part of the hillside and the insertion of a new retaining wall.
- 7.5.3.** Although it is regrettable that so many mature trees have been lost, it is acknowledged that these trees will be replaced by a comprehensive, designed and planned woodland planting scheme, which will in time provide for an equivalent level of visual amenity and increased biodiversity. It is further noted that the applicant intends to provide replacement planting (subject to landowner agreement) to the north of the stone structure.

- 7.5.4.** The revised proposals include a track which had not been shown in the scheme permitted by the Board. This track has been quite controversial in the assessment of the current application/appeal. Initially, the applicants had stated that it was intended to reduce its width to 3.5m and to retain it as part of the landscaping proposals. However, the P.A. required that the width be reduced to a maximum of 1.0m, on the basis that it appears that it may have been a long-established walking track. The appellants believe that the retention of the track requires a separate planning application, and consider the decision of the P.A. in this respect to be ultra vires.
- 7.5.5.** It is noted that the survey plan submitted with the FI on the current scheme on 26/04/18, (Drg. No. 4000-SV-1001 Rev A) shows an “original access track” and a realigned track, which is roughly in the same position and with similar dimensions. The applicant has advised that it was previously unknown and uncovered during construction works under scrub. It is further stated that it is shown on CIE mapping (1966) and is a way-leave, which provides access to adjoining lands. Thus, it is intended to retain it as is and to reseed it to minimise its visual appearance.
- 7.5.6.** Given that the former existence of the track was not known at the time that the Board granted permission, but has since been discovered and is shown on CIE mapping for the area dating to 1966, it seems reasonable that the applicant should seek to retain it. However, I note that there is no evidence before the Board relating to its legal status or purpose, and the P.A. has stated that it is not shown on any plans/aerial photos other than the CIE map referred to by the applicant. The photographic evidence of the site/area prior to the development also indicates a wooded area to the rear of the site. The applicant has stated (response to grounds of appeal) that the track has no functional relationship with the supermarket. The question therefore arises as to why it should be retained at all. It is considered, therefore, that it should be omitted from the landscaping and site layout plans.
- 7.5.7.** I would agree with the P.A. that if the Board considers that it should be retained, it should be reduced to the width of a walking track, which can be incorporated into the landscaping scheme as a pedestrian pathway within the red-line boundary of the development. The issue of access to the Harbour View Car park is considered to be a civil matter which is beyond the remit of the Board.

7.6. Environmental Impact Assessment

Having regard to the nature, size and location of the proposed development, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

7.7. Appropriate Assessment

The closest European sites are Glengarriff Harbour and Woodlands SAC (000090), which lies approx. 8km to the northwest and Derryclogher Bog SAC (001873), which lies approx. 9km to the north. Given the distances involved, that the site is located in an established area, on serviced lands, it is considered that no appropriate assessment issues are likely to arise.

8.0 Recommendation

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

9.0 Reasons and Considerations

9.1. Having regard to the provisions of the Cork County Development Plan 2014-2020, and of the West Cork Municipal District to the scale and nature of the proposed development and to the nature and character of the surrounding environment, it is considered that subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area and would be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further

plans and particulars submitted on the 2nd day of February, 2018, on the 26th day of April 2018, on the 16th day of May, 2018 and on the 17th day of May, 2018, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The development shall comply with the terms and conditions of An Bord Pleanála Appeal Reference Nos. PL88.247100 and ABP-300450-17 which govern the overall development of the lands of which the site forms part, save where amended by the terms and conditions herein, unless amended by the grant of a further permission.

Reason: in the interests of clarity.

3. The proposed development shall be amended as follows:
 - (a) The site layout shall be revised to show the omission of the track across the rear of the site as indicated on Drawing No. 4000-SV-1001 Rev A and Hillside Planting Plan L105, received on 26th April 2018.
 - (b) A forward projecting and illuminated “parking” sign shall be erected on the southern façade of the building, close to the entrance to the first-floor carpark.

The revised drawings showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to within three months of the date of this Order.

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

3. Notwithstanding the exempted development provisions of the Planning and Development Regulations, 2001, and any statutory provision amending or replacing them, and the requirements of Condition 2(b) above, no further signs, symbols, emblems or other advertising devices shall be erected or displayed externally on the site, unless otherwise authorised by a prior grant of planning permission.

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

5. The landscaping scheme shown on Drawing Nos. L105 and L106 as submitted to the planning authority on 26th day of April 2018 shall be carried out within the first planting season following the date of this Order, except as otherwise amended by the terms and conditions of this permission hereby granted. All planting shall be adequately protected from damage until established. Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of development, shall be replaced within the next planting season with other of similar size and species, unless otherwise agreed in writing with, the planning authority.

Reason: In order to assimilate the development into the surrounding townscape and in the interest of visual amenity.

7. Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

8. The developer shall pay the sum of €54,000.00 (fifty-four thousand euro) (updated at the time of payment in accordance with changes in the Wholesale Price Index-Building and Construction (Capital Goods), published by the Central Statistics Office) to the planning authority a special contribution under section 48 (2)(c) of the Planning and Development Act 2000, as amended, in

respect of works proposed to be carried out for the provision of 9 car parking spaces. This contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate. The application of indexation required by this condition shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine.

Reason: It is considered reasonable that the developer should contribute towards the specific exceptional costs which are incurred by the planning authority which are not covered in the Development Contribution Scheme and which will benefit the proposed development.

Mary Kennelly
Planning Inspector

12th December 2018