



An
Bord
Pleanála

Inspector's Report ABP-302449-18

Development

Demolition of the existing Lidl Licenced Discount Foodstore (1342 sqm gross floor area) and 1 no. adjacent disused retail unit (745 gross floor area) and the construction of a new mono-pitched Licenced Discount Foodstore with ancillary infrastructure and associated site development works (2167 sqm gross floor area).

Location

Courthouse Road (N72), Fermoy, Co. Cork

Planning Authority

Cork County Council

Planning Authority Reg. Ref.

18/4037

Applicant(s)

Lidl Ireland GmbH

Type of Application

Permission

Planning Authority Decision

Grant, subject to 28 conditions

Type of Appeal

Third party -v- Decision

Appellant(s)

Michael Riordan

Observer(s)

None

Date of Site Inspection

13th December 2018

Inspector

Hugh D. Morrison

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1.0 Site Location and Description

- 1.1. The site is located on the eastern outskirts of Fermoy, 0.6 km from Pearse Square in the town centre, in an area that comprises several food and non-food retail uses. This site lies on the northern side of Courthouse Road, which forms part of the N72 (50 kmph zone). Fields and the River Blackwater lie to the north of the site. Major flood defence works have recently been undertaken within these fields. The M8 passes on a viaduct 0.3 km to the east of the site.
- 1.2. The site itself is of rectangular shape and it extends over an area of 1.101 hectares. This site is composed of the following three parts: the site of the existing Lidl food retail store, the site of the former non-food retail store known as “A Touch of Luxury” and a small portion of the adjoining field to the north, which is needed to “square-off” the north western corner of the site. Existing access to the site is from Courthouse Road to the forecourt car park of the Lidl store. The “A Touch of Luxury” store would likewise have formerly been accessed from this Road, only it is presently enclosed by means of a hoarding.

2.0 Proposed Development

- 2.1. The proposal would comprise the following elements:
- Demolition of the existing Lidl Licenced Discount Foodstore (1342 sqm gross floor area with 1052 sqm net retail sales area) and 1 no. disused retail unit (745 gross floor area) situated adjacent to the existing Lidl store and formerly operated as “A Touch of Luxury.”
 - The construction of a new mono-pitched Licenced Discount Foodstore with ancillary infrastructure and associated site development works (all totalling 2167 sqm gross floor area and ranging in height equivalent from 1 to 2 storeys). This new Licenced Discount Foodstore would be composed of the following parts:
 - A retail sales area with ancillary off-licence use and bakery (total net retail sales area of 1338 sqm),
 - entrance pod,

- public facilities (including lobby and toilets),
- staff facilities (including lobbies, operations office, meeting room, canteen, showers and toilets),
- storage (including cold storage),
- IT room, and
- plant room, and delivery area.

All of the above would be at ground floor level;

- Corporate signage consisting of 2 no. building mounted corporate internally illuminated signs, 1 no. free standing internally illuminated totem pole sign at entrance, 3 no. wall mounted externally illuminated poster panel display boards, and 1 no. free standing externally illuminated poster display board;
- 1 no. covered trolley bay structure (42 sqm gross floor area);
- 140 no. surface car parking spaces (6 no. disabled, 6 no. parent and child, and 128 no. regular);
- 10 no. motorcycle and 21 no. bicycle parking spaces;
- Primary vehicular and pedestrian access to the proposed Licenced Discount Foodstore development will be provided via a re-positioned site entrance onto Courthouse Road (N72);
- Secondary pedestrian access to the proposed Licenced Discount Foodstore development will be provided via a new dedicated pedestrian entrance from Courthouse Road; and
- Boundary treatments, hard and soft landscaping, services (including 1 no. below ground attenuation tank) and all ancillary and associated site development works above and below ground level.

3.0 Planning Authority Decision

3.1. Decision

Following receipt of further information, permission was granted subject to 28 conditions.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Further information was requested with respect to siting/landscaping, the dismantling of an asbestos roof, a foul sewer line, the operation of the existing store during the construction period, a dangerous wall, a drainage channel, size of attenuation tanks, drainage arrangements during the construction period, monitoring of the identified otter holt during the construction period, and the level of car parking provision proposed.

3.2.2. Other Technical Reports:

- TII: Observations made.
- Irish Water: No objection, standard observations made.
- Environment: No objection, subject to conditions.
- Area Engineer: Following receipt of further information, no objection, subject to conditions.
- Ecologist: Following receipt of further information, no objection, subject to conditions.

4.0 Planning History

Site

- 99/5149: Demolition of outbuildings and construction of single storey discount foodstore: Permitted at appeal PL04.118919
- 08/51015: Demolition of industrial building and construction of new access and car park in conjunction with a proposed mixed-use development on

adjoining lands: Refused at appeal PL60.231308 on the grounds of prematurity in advance of said mixed-use development.

- 08/6992: Mixed-use development: Refused.
- 11/4200: Extension (115 sqm) to store: Permitted.
- 11/6496: Alterations to store: Permitted.
- 12/6577: Retention of double sided billboard sign: Permitted.
- Pre-planning consultation occurred on 28th June 2018.

5.0 Policy Context

5.1. Development Plan

The Cork County Development Plan 2014 – 2020 (CDP) identifies Fermoy as a ring town to the Greater Cork Area.

The site is dissected by the former Town Council boundary. Thus, the building last used as “A Touch of Luxury” lies within this boundary and the existing Lidl foodstore lies outside it. The former building is thus the subject of the Fermoy Town Development Plan 2009 – 2015 (TP), while the latter building is the subject of the Fermoy Municipal District Local Area Plan 2017 (LAP).

The portion of the site that is under the TP is subject to the town centre zoning objective TC-02, which states the following:

Zoned for mixed use that would be in keeping with the vibrant role of the town core as a retail, commercial, service, tourist and family friendly residential area.

The portion of the site that is under the LAP is shown as lying within the development boundary and it is recognised as “existing built-up area”, apart from the north western corner, which, as part of a larger expanse of land to the north (6.98 hectares), is subject to the open space objective FY-O-03, which states the following:

This gateway site makes a significant contribution to the setting of Fermoy. Part of this land is within the Blackwater River SAC and there is a presumption against the

development of the site. In particular regard should be had to the protection of otters and otter breeding sites and resting places along the river side.

The entirety of the site is in Zone A for the purposes of flood risk assessment.

5.2. Natural Heritage Designations

Blackwater River SAC (site code 002170)

Blackwater Callows SPA (site code 004094)

Blackwater River Callows NHA (site code 000073)

6.0 The Appeal

6.1. Grounds of Appeal

- The proposal would entail a significant increase in convenience retail floorspace at an out of centre location and this would have an appreciable impact upon the vitality and vibrancy of the town centre. In this respect, the increase in *convenience* retail floorspace would not be 80 sqm but 745 sqm, as the building used as “A Touch of Luxury” comprised comparison retail floorspace. Under the sequential test, sites within the town centre should be considered ahead of ones outside this centre.
- Part of the site is zoned open space and so its development as proposed would be a material contravention of the LAP.
- Part of the site lies within the Blackwater River SAC and so its development would not support the Conservation Objectives of this Natura 2000 site.
- Ample lands are zoned for commercial development and so there is no need for the loss of lands zoned for open space and designated as a SAC.

6.2. Applicant Response

The applicant begins by stating that it understands the appellant to be the director of the Supervalu store on the opposite side of Courthouse Road from the site. Attention is drawn to the grounds of appeal, which do not overlap with the reasons for

objection cited at the application stage and which focus on gross floorspace rather than the more pertinent net retail floorspace, which would actually contract under the proposal, i.e. while a comparison of the existing and proposed Lidl stores yields an increase of 286 sqm in this respect, the loss of 596 sqm of net retail floorspace from “A Touch of Luxury” indicates that a contraction would ensue. The Board is thus requested to exercise its powers under Sections 131 and 132 of the Planning and Development Act, 2000 – 2018, to seek clarification from the appellant of his *bona fide* interest in the case or, alternatively, to, under Section 138(1)(a)(ii), dismiss his appeal.

The applicant responds to the above cited grounds of appeal as follows:

- Under Section 3.6 of the TP, the commercial zoning is stated as facilitating “shopping” and so the proposal would not contravene this zoning.

Under Objective ZU 3-1 of the CDP, proposals in “existing built-up areas” that support in general the primary land uses in such areas are to be encouraged. Convenience retailing occurs in the area in question and so the proposal would not contravene this designation.

Under Objective ZU 3-4 of the CDP, the open space uses that are to be positively supported are delineated. No restrictions on development are explicitly stated. Under Paragraph 14.3.20 open space that is in agricultural use and that contributes to the setting of a town “should *generally* remain unchanged”. Discretion is thereby afforded to the Planning Authority. The area of zoned open space in the site represents only 2.78% of area of land thus zoned in the vicinity of this site and so the said discretion should be extended. Accordingly, no contravention of this zone would occur.

- Under Open Space Objective FY-O-03 of the LAP, there is a general presumption against the development of the “gateway” site thus identified. Again, the area of the site to which this Objective pertains represents only 2.78% of the lands affected. The proposed site layout would entail the siting of the new building partly within this area for urban design and site efficiency reasons and its removal from the wider lands zoned open space would not impact upon their “gateway” role. The said Objective would not therefore be contravened.

- The applicant confirms that its Flood Risk Assessment was undertaken in accordance with the advice set out in The Planning System and Flood Risk Management Guidelines. This Assessment stated that the proposal would represent “low vulnerability development” and that there was no record of the site having been flooded in the past. The site lies behind flood defences and if they were breached its development would not inhibit its role in the storage of flood waters.
- Contrary to the appellant’s view, a comprehensive and rigorous assessment of the proposal was undertaken for the purposes of AA, including the submission of a Stage 2 NIS, which concluded that the removal of 0.0019 hectares of land from edge of the Blackwater River SAC would not result in the loss, deterioration or disturbance to any habitats or species (qualifying interests) for which this Natura 2000 site was designated. Accordingly, no significant effects upon the Conservation Objectives of this site would be likely to ensue.

The Planning Authority, as the competent authority, concurred with the aforementioned conclusion.

- Within the context of Fermoy and the existing Lidl store, the increase of 286 sqm in the net retail floorspace would be modest. The Board has taken a similar view in comparable cases in Kanturk (PL04.248281), Mitchelstown (PL04.248147), and Edenderry (PL19.247229).

Nevertheless, the applicant has undertaken a Quantitative Retail Assessment of the 286 sqm, which concludes that the proposal would not detract from the vitality and viability of the town centre. In this respect, Table 2.4 predicts a shortfall in net retail floorspace within the catchment of Fermoy for the design year (2021) and so, within this context, the projected proportions of 2.17% convenience expenditure in the proposed new store and 0.32% comparison expenditure would not have a negative impact.

The current total of net retail floorspace in use for convenience retailing in Fermoy is 6668 sqm and so the increase proposed would represent only 4.28%.

The draft LAP defined the retail core of Fermoy town centre. The site is 265m to the east of this core and so, under the Retail Planning Guidelines, it qualifies as an edge of centre location. Furthermore, the proposal is for the redevelopment of an existing Lidl store, which is considered sequentially acceptable. The Board's Kanturk decision cited above took such a view of a comparable case.

The applicant undertook a physical vacancy survey of the ground floors of properties within the aforementioned retail core. This survey identified that, of 168 commercial properties, 30 were vacant. It also identified a pattern of vacancy in the more peripheral parts of the core where footfall is lower. An accompanying commentary on the 30 properties states that only 12 would be available for reuse without significant refurbishment. Furthermore, the opportunity to consolidate any adjoining vacant units to provide a substantial floorspace is heavily constrained. An array of factors influence vacancy and so it is simplistic to claim that an over supply of retail floorspace is to blame.

6.3. Planning Authority Response

None

6.4. Observations

None

6.5. Further Responses

None

7.0 Assessment

7.1. I have reviewed the proposal in the light of national planning guidelines, the CDP, the TP, and the LAP, relevant planning history, the submissions of the parties, and my own site visit. Accordingly, I consider that this application/appeal should be assessed under the following headings:

(i) Legalities,

- (ii) Land use,
- (iii) Retail policy,
- (iv) Conservation and aesthetics,
- (v) Traffic, access, and parking,
- (vi) Water,
- (vii) EIA – Preliminary Examination, and
- (viii) AA.

(i) Legalities

- 7.2. The applicant questions the *bona fide* interest of the appellant in the current proposal and it requests that the Board make enquiries in this respect under either Section 131 or 132 of the Planning and Development Act, 2000 – 2018. Alternatively, the Board is requested to exercise its powers under Section 138(1)(a)(ii) of the Act and to dismiss the appeal.
- 7.3. The appellant submitted a valid letter of objection to the Planning Authority on 12th February 2018. His right to subsequently submit an appeal was thereby established. While the reasons cited in the said letter differ from the grounds of appeal now cited, the appellant is not legally obliged to reiterate his original reasons for objection, even if in this case they relate to the design of the proposal, which was not changed under the draft permission subsequently granted. His grounds must, however, relate to material planning considerations. As his appeal does relate to such grounds, I do not consider that there is a case for taking up either of the two legal routes suggested by the applicant.
- 7.4. I conclude that there are no legal impediments to the Board proceeding to assess and determine the current application/appeal in the normal manner.

(ii) Land use

- 7.5. The site is dissected by the former Town Council boundary and so it is the subject of the TP and the LAP. Under the former Plan, the majority of the “A Touch of Luxury” site and the south western portion of the Lidl site is subject to the town centre zoning objective TC-02, which states the following:

Zoned for mixed use that would be in keeping with the vibrant role of the town core as a retail, commercial, service, tourist and family friendly residential area.

Under the latter Plan, the remainder of the “A Touch of Luxury” site and all of the existing Lidl site, apart from the aforementioned south western portion, is recognised as “existing built-up area.” Under Objective ZU 3-1 of the CDP, the following is stated:

Normally encourage through the LAP’s development that supports in general the primary land use of the surrounding existing built up area. Development that does not support, or threatens the vitality or integrity of, the primary use of these existing built up areas, will be resisted.

The remaining north western portion of the site is the subject of the open space objective FY-O-03, which states the following:

This gateway site makes a significant contribution to the setting of Fermoy. Part of this land is within the Blackwater River SAC and there is a presumption against the development of the site. In particular regard should be had to the protection of otters and otter breeding sites and resting places along the river side.

- 7.6. In the light of the foregoing paragraph, the redevelopment of the first part of the site cited above for the proposed retail after use would be acceptable in principle. Likewise, the redevelopment of the second part of the site cited above for the said after use would be acceptable, as the site lies within a retail area, which, in addition to the existing Lidl and former “A Touch of Luxury” furniture store, includes a SuperValu and various local hardware, tile and bathroom, and garden shops.
- 7.7. The third part of the site cited above has been the subject of comments by both the appellant and the applicant. The former states that the proposed development of this part of the site would materially contravene the open space zoning objective. The latter counters this position by reference to the following points:
- Attention is drawn to Objective ZU 3-4 of the CDP, which delineates appropriate uses within areas zoned for open space. The applicant observes that no restrictions on development are explicitly stated.
 - Attention is drawn to the use of the word “generally” in Paragraph 14.3.20 of the CDP, which states the following:

Other open spaces largely used for agricultural uses often provide important visual settings that add to the character of a settlement or locality and enhance the surroundings and the biodiversity of the area. The land-uses in these areas should generally remain unchanged over the lifetime of this plan.

The applicant detects in the use of this word “generally” some discretion that the Planning Authority/Board can exercise.

- Attention is drawn to the Open Space Objective FY-O-03 and to the presumption within this Objective against development in this gateway site, which makes a significant contribution to the setting of Fermoy and which, as part of the Blackwater River SAC, is of ecological interest. The applicant emphasises that the land in question only represents 2.78% of the lands zoned open space within this gateway site and that it has been incorporated into the application site to facilitate good urban design and its efficient use. The gateway role of the wider site would not be affected thereby.

- 7.8. During my site visit, I observed that the third part of the site would be needed to ensure that the site is “squared-off” in its north western corner. It would thereby be of consistent depth with the existing Lidl site and of similar depth to the site further to the east, which is also in retail use. To its west, the TP zones the adjoining land for town centre mixed use. Specifically, the TP identifies this land as TC-01 and so its development on a mixed-use basis is envisaged.
- 7.9. In the light of the foregoing paragraph, I consider that at present and under the future scenario envisaged by the TP, the third part of the site does not contribute in any meaningful way to the open space setting of Fermoy that Objective FY-O-03 is intent on protecting. Likewise, as discussed more fully below under the Screening heading, the contribution that it makes to the ecological interest of the Blackwater River SAC is not significant. Nevertheless, in strict land use terms, Objective ZU 3-4 with respect to the open space zone does not envisage retail uses and so the proposal would entail a material contravention of the CDP.
- 7.10. Where the Planning Authority has granted permission, the Board has the discretion, under Section 37(2)(a) of the Planning and Development Act, 2000 – 2018, to grant permission, too, even if the proposal contravenes materially the relevant development plan. I consider that it would be reasonable for the Board to exercise its

discretion in favour of the proposal in this case, as to do so would entail the loss of a small portion of land from the open space zone which is/would be surrounded on two/three sides by development and which consequently makes no meaningful contribution to the site-specific Objective FY-O-03 to protect the open setting to Fermoy.

7.11. I conclude that the proposal would be acceptable from a land use perspective.

(iii) Retail policy

7.12. The appellant critiques the proposal on the basis that it would entail the redevelopment of an out of town site to provide a significant increase in convenience retail floorspace, which would adversely affect the vitality and viability of Fermoy town centre. Instead, under the sequential test, sites inside the town centre should be considered for the proposal.

7.13. The applicant has responded by drawing attention to the before and after floorspace figures for the site. Thus,

- The existing Lidl has gross and net retail floorspaces of 1342 and 1052 sqm, respectively.
- The former “A Touch of Luxury” had gross and net retail floorspaces of 745 and 596 sqm, respectively.
- Aggregating the baseline for the site results in gross and net retail floorspaces of 2087 and 1648 sqm, respectively.
- The proposed Lidl would have gross and net floorspaces of 2167 and 1338 sqm, respectively.
- Consequently, the changes in gross and net floorspaces would be +80 and - 310 sqm, respectively.

7.14. The appellant contends that convenience floorspace should be considered in isolation from comparison floorspace, i.e. “A Touch of Luxury” should be removed from floorspace calculations. If this is done the increases in gross and net retail floorspace would be 825 and 286 sqm, respectively.

- 7.15. The applicant states that if the aforementioned increase of 286 sqm is compared with the total net convenience retail floorspace in Fermoy of 6668 sqm, then the current proposal would represent a rise of only 4.28%.
- 7.16. In the light of my discussion of land use under the first heading of my assessment, it is clear that the vast majority of the site is either in or was last in retail use and so the proposal is essentially for redevelopment to facilitate the provision of a modern enlarged Lidl food store rather than the introduction of retail use to the site for the first time. In the light of the floorspace analysis set out above, it is evident that the proposal would entail a slight contraction in net retail floorspace, although if convenience retail floorspace is considered in isolation a modest increase would occur. In all of these circumstances, the applicant considers that the need to subject its proposal to the sequential test does not arise. In this respect, similar proposals in the towns of Kanturk, Mitchelstown, and Edenderry are cited. These proposals were assessed/ determined by the Board, which considered that the need for the said test did not arise.
- 7.17. Again, in the light of my discussion of land use, the first part of the site is zoned town centre. The applicant refers to the retail core of Fermoy, which is a sub-set of its town centre. Under the draft, as distinct from the adopted, TP, this core was defined. The site would be 265m from this core, and so within the 300 to 400m limit cited by the Retail Planning Guidelines for establishing whether or not a site is edge of town centre. So, although the site on approach along the N72 from the east may “read” as out of town, given the compactness of Fermoy on this approach, it can rather be regarded as an edge of town centre site.
- 7.18. Notwithstanding, the applicant’s aforementioned position with respect to the applicability of the sequential test, it has undertaken both a Quantitative Retail Assessment and a physical vacancy survey of the ground floors of properties within the aforementioned retail core.
- 7.19. With respect to the former Assessment, a shortfall in net retail floorspace for the catchment of Fermoy in 2021, the design year of the proposal, would arise. Thus, Table 2.4 shows that while the design year floorspace requirement would be 10,521 sqm for convenience goods and 17,644 sqm for comparison goods, as existing and extant floorspace would be 7658 and 6088 sqm, shortfalls of 2863 and 11,556 sqm

would arise. Within this context, the addition of 286 sqm of net retail floorspace would be comfortably accommodated. In expenditure terms, the turnover of the overall proposal would only account for 2.17% and 0.32% of the total projected to be spent on convenience and comparison goods, respectively, within the catchment area in the design year.

- 7.20. With respect to the latter survey, it identified 168 commercial properties within the retail core, of which 30 were vacant. Of these vacant properties, only 12 would be available for reuse without significant refurbishment and any opportunity to amalgamate adjoining vacant properties to provide a substantial area of floorspace would be heavily constrained. Thus, in practise, the incidence of vacancy is attributable to an array of factors that range beyond simply an over-supply of retail floorspace.
- 7.21. During my site visit, I observed that there are Aldi and Iceland food stores on the northern approach to the town centre just as there are Lidl and SuperValu food stores on the eastern approach. The town centre is the focus for comparison goods retailing, services, and eateries. I consider that under the current proposal this pattern would be maintained. I consider, too, that, while the increase of 286 sqm in the net retail floorspace of the Lidl food store would represent an increase of 27.19% in this store's net retail floorspace, this increase would represent only a rise of 4.28% in the net retail floorspace of the town, which is dedicated to convenience goods, and as such it represents only a modest increase in the same. The applicant's Quantitative Retail Assessment demonstrates that such increase would make a small contribution towards the additional net retail floorspace, which it is projected would be needed in the design year. Its physical vacancy survey of commercial properties in the town centre's retail core demonstrates that, on the supply side, there are no realistic opportunities to relocate to vacant properties within the said core. And so, in all of these circumstances, I consider that the proposal would be compatible with the maintenance of the vitality and viability of the town centre.
- 7.22. I conclude that the proposal would accord with retail planning policy.

(iv) Conservation and aesthetics

- 7.23. The applicant has submitted an Architectural Heritage Impact Assessment, which addresses the proposal within the context of the wider conservation interest of the area. Map 4 of the TP shows the presence of an ACA at some remove to the west of the site and Map 5, likewise, shows the presence of protected structures within this ACA. To the west of the site lies a cleared, enclosed, vacant site and to the south west lies a SuperValu food store, in an elevated position, and a modern building, which forms part of the town hall. Given that the said site and these buildings lie between the site and the ACA, I do not consider that the proposal would have any significant effect upon the setting of this ACA and its protected structures.
- 7.24. At present the site accommodates the existing Lidl food store and the former “A Touch of Luxury” furniture store. The former store lies behind a forecourt car park and the latter store lies over the eastern half of its site, the western half being laid out as a car park. Under the proposal, the “A Touch of Luxury” site would be developed to provide a new Lidl food store and the existing Lidl site would be laid out as an accompanying car park.
- 7.25. The applicant has submitted a Visual Impact Assessment of the proposal within its context. This VIA is informed by photomontages, which depict the existing and proposed developments upon the site.
- 7.26. The applicant draws attention to the siting and design of the proposed Lidl food store, which would differ from the existing one. Thus, the southern elevation of the store would be sited adjacent to Courthouse Road and, as a predominantly glazed elevation, it would address this Road. This elevation would be raised in relation to the Road. The entrance to the store would be in its south eastern corner and so it would be capable of being reached via steps from the public footpath along the northern side of Courthouse Road. It would be conveniently situated with respect to the accompanying car park, too. The eastern elevation of the store would address this car park.
- 7.27. The design of the proposed Lidl food store would comprise a building of rectangular form under a mono-pitched roof, which would rise in an easterly direction. The public southern and eastern elevations would be variously glazed in aluminium units and finished in metallic silver panels and white plasterwork. The remaining elevations

would be finished in white plasterwork and the roof would be clad in metallic silver panels. Signage would accompany the entrance to the store and a totem pole sign would be sited in a position adjacent to the site entrance. Three billboards (each 4.1m x 2.1m) would be installed at intervals across the northern half of the eastern elevation of the store, too.

7.28. Thus, the proposal would replace the existing buildings on the site with one of contemporary design that addresses Courthouse Road.

7.29. I conclude that the proposal would have no significant effect on the conservation interest attendant upon buildings in the wider area of the site. I conclude, too, that it would enhance the existing visual amenities of the area.

(v) Traffic, access, and parking

7.30. The applicant submitted a Traffic Assessment and a Stage 1 RSA of the proposal. This Assessment undertook a traffic count on Courthouse Road during the late afternoon/early evening on Friday 24th November 2017. It established that within this period between 17:00 and 18:00 proved to be the peak hour for traffic.

7.31. The traffic figures resulting from the said count were modified to account for both the closure of the “A Touch of Luxury” furniture store and the proposed re-opening of an enlarged Lidl food store. On this basis traffic forecasts for the design year of 2018 and 5 and 15 years on from this year were made. The resulting impact of the proposal on traffic movements on Courthouse Road for the said peak hour are summarised in Table 2 and show that there would be a border line significant impact upon traffic to the west of the site entrance, i.e. c. 5% increase, and a lesser impact upon traffic to the east. However, there is no suggestion that any capacity issues would ensue.

7.32. The existing vehicular and pedestrian access to the site is sited in its south eastern corner. Direct access from Courthouse Road is thereby available. Under the proposal, this access would be retained, although it would be modified to coincide with DMURS, e.g. its width would narrow, and its radii kerbs would tighten. A pedestrian access from this Road would be added within the vicinity of the entrance to the Lidl food store itself. This access would take the form of a series of steps to enable the difference in levels between the public footpath and the site to be spanned. Under further information, the public footpath on the northern side of

Courthouse Road would connect with a parallel footpath at the front of the forecourt to provide a continuous alternative route for pedestrians.

- 7.33. The existing car park has 107 spaces. Under the proposal, the replacement one was revised under further information to specify 108 spaces, including 11 parent and child and 6 mobility impaired ones. Additionally, 10 motorcycle spaces and 21 cycle spaces would be provided. The car parking spaces would be laid out in rows on north/south axes and they would be accompanied by 3 east/west pedestrian routes across the site. The margins to the car park would be landscaped.
- 7.34. Under Appendix D of the CDP, car and cycle space parking standards are cited, i.e. the former is set at a maximum of 1 space per 20 sqm and the latter at a minimum of 1 space per 100 sqm. The proposed Lidl food store would have a gross floorspace of 2167 sqm and so under these standards a maximum of 108 car parking spaces and a minimum of 21 cycle parking spaces would be appropriate. As 108 and 21 spaces are variously proposed, these standards would be complied with.
- 7.35. Notes attached to Table 1a of the aforementioned Appendix state that 10% of spaces should be laid out as parent and child ones and 5% of spaces as mobility impaired ones. Applying these standards to the proposed car park would mean that there should be 11 and 6 spaces for these user groups. The proposal would include these exact numbers and so it would be compliant in these respects as well.
- 7.36. Delivery and service vehicles would avail of the same access as would be used by non-operational vehicles. That said the applicant indicates that it is its practise to schedule one daily delivery of goods from a central distribution centre at an off-peak time for customer activity on-site. The submitted site layout plan (drawing no. 1002 revision PL.8) illustrates how an HGV could successfully negotiate the site.
- 7.37. I conclude that the traffic likely to be generated by the proposal would be capable of being accommodated on Courthouse Road and access arrangements and car and cycle parking arrangements would all be satisfactory.

(vi) Water

- 7.38. The site is a fully serviced urban one for the purposes of water supply and the discharge of waste water. On-site surface water would be collected via a petrol interceptor and attenuation tank for discharge to an existing off-site surface water sewer to the rear of the site. This tank would provide storage for 1 in 100-year storm

events (plus a 20% allowance for climate change) and it would have a discharge rate of 34 l/s.

7.39. The proposal is the subject of a Flood Risk Assessment (FRA). This Assessment identifies the site as lying within Zone A for the purposes of, in this instance fluvial, flood risk and the proposed use as “less vulnerable development”, which under Table 3.2 of the Planning System and Flood Risk Management Guidelines (PSFRM) triggers the need for the Justification Test set out in Box 5.1. The FRA duly undertakes this Test. Insofar as land use is discussed under the second heading of my assessment, I will only summarise the main findings of Part 2 of the Test below.

- With respect to any displacement of flood risk, the proposal is for essentially the redevelopment of an existing urban site, which lies behind flood defences recently constructed by the OPW.
- With respect to the minimisation of flood risk, the said flood defences would afford protection against 1% AEP flood events.
- With respect to residual flood risk, in the event of a 0.5% AEP flood event which would lead to overtopping of the flood defences, the FFL of the proposal would be designed to withstand the same.
- With respect to wider planning objectives, as outlined under the fourth heading of my assessment the proposal would enhance the streetscape.

7.40. In the light of the above findings, I consider that the proposal would pass the above Justification Test.

7.41. I conclude that the proposal would be capable of being satisfactorily serviced and that it would be compatible with the limited fluvial flood risk that pertains to the site following the recent construction of flood defences.

(vii) EIA – Preliminary Examination

7.42. Under Items 10(b)(iii) and (iv) of Part 2 of Schedule 5 to Article 93 of the Planning and Development Regulations, 2001 – 2018, the proposal is of a type that could be the subject of EIA and hence sub-threshold EIA.

7.43. I note that the area of the subject site and the proposed food store would be well below the relevant figures cited in the said Items. I note, too, that whereas part of the

site lies within the Blackwater River SAC and the Blackwater Callows SPA is within 1 km, any issues arising can be dealt with under Appropriate Assessment.

7.44. Notwithstanding the proximity of the proposal to the Blackwater River SAC and the Blackwater Callows SPA, the nature and scale of the development would not result in a real likelihood of significant effects on the environment. The need for EIA can, therefore, be excluded at preliminary examination and a screening determination is not required.

(viii) AA

7.45. At the further information stage, the applicant submitted a Stage 1 Screening Exercise and a Stage 2 Natura Impact Statement (NIS). I have reviewed these documents and draw upon them in my Appropriate Assessment, which is set out below. I note that, while the term “mitigation measures” is used in the NIS, the matters being referred to thereby constitute either standard construction methods that are integral to the design of the project or monitoring rather than mitigation measures *per se*.

7.46. The subject site overlaps slightly with the Blackwater River SAC (site code 002170) and it is within 1 km of the Blackwater Callows SPA (site code 004094).

7.47. With respect to the said SAC, the area of overlap extends over 0.19 hectares, which represents c. 0.0019% of the total area of this SAC. The habitat of the area thus affected is grassland/scrubland. As such it neither constitutes a priority habitat nor a qualifying interest for the SAC. Accordingly, the development of this area, as proposed, would not adversely affect the integrity of the SAC.

7.48. Beyond the aforementioned question of land take from the SAC, the potential issues of water quality and otters are discussed below.

- During the construction phase, there is a risk that surface water run-off from the site could enter the Blackwater River via a stream to the north of the site. While the recent routing of a flood relief berm between this stream and the site would provide a physical barrier, which would largely prevent such connectivity, the applicant would address any residual risk by means of standard construction methodologies, as outlined in its Preliminary

Construction Environmental Management Plan, as revised under further information.

- During the operational phase, surface water run-off would be handled by means of the SuDS methodologies outlined under the sixth heading to my assessment and waste water would discharge via the public sewerage system to the Fermoy WWTP, which is operating within capacity.

In the light of the above factors, I do not consider that the water quality of the SAC would be likely to be significantly affected by the proposal.

- 7.49. The applicant has identified an otter holt between the tributary of the Blackwater River and the aforementioned flood relief berm (cf. Figure 7 in the applicant's documentation). (The otter is one of the qualifying interests of the SAC). While the physical barrier posed by the berm would again be of relevance, the applicant proposes to undertake a monitoring programme of this holt during the construction phase. To this end the methodologies of this programme have been set out under further information.
- 7.50. With respect to the SPA, the following wetland bird species are the qualifying interests of this SPA: Whooper Swan, Wigeon, Teal, and Black-tailed Godwit. Of these the Swan and Godwit forage within grasslands. That said, the small area of grassland that would be developed under the proposal is so closely related to existing development that it is unlikely to be used by these birds for foraging and so its loss would be unlikely to have any significant adverse effect upon them.
- 7.51. The applicant has undertaken a search of the Planning Authority's planning register and it advises that there are no live applications that could act in combination with its current proposal.
- 7.52. I consider it reasonable to conclude on the basis of the information on the file, which I consider adequate in order to carry out a Stage 2 Appropriate Assessment, that the proposal, individually or in combination with other plans or projects would not adversely affect the integrity of the European sites Nos. 002170 and 004094, or any other European site, in view of the sites' Conservation Objectives.

8.0 Recommendation

- 8.1. That permission be granted.

9.0 Reasons and Considerations

Having regard to the Retail Planning Guidelines, The Planning System and Flood Risk Management Guidelines, the Cork County Development Plan 2014 – 2020, the Fermoy Town Development Plan 2009 – 2015, the Fermoy Municipal District Local Area Plan 2017, and the planning history of the site, it is considered that, subject to conditions, the proposal would be appropriate from a land use perspective and it would comply with retail planning policies. The proposal would be compatible with the conservation interest pertaining to the wider context of the subject site and it would enhance the visual amenities of the area. Traffic generation would be capable of being accommodated satisfactorily on the public road network and access and car and cycle parking arrangements would comply with relevant Development Plan standards. The proposal would be capable of being serviced satisfactorily and no significant flood risk would arise. It would not require to be the subject of either EIA or sub-threshold EIA and no Appropriate Assessment issues would arise. The proposal would, thus, accord 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 11th 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 area of the net retail floorspace hereby permitted shall not exceed 1338 square metres. Notwithstanding the provisions of the Planning and Development Regulations, 2001 – 2018, or any statutory provision modifying or replacing them, any increase in this area, either by internal re-arrangement or otherwise, shall be the subject of a separate planning application and it shall not be provided in the absence of a grant of planning permission.

Reason: For the avoidance of doubt and in order to afford the Planning Authority the opportunity to control any such increase in area in the light of retail planning policy then pertaining.

3. The external wall and roof finishes of the new food store shall be in accordance with the specifications shown on the submitted plans.

Reason: In the interest of visual amenity.

4. The landscaping scheme shown on drg no. 044517_LP_01 revision C, as submitted to the Planning Authority on the 11th day of May 2019, shall be carried out within the first planting season following substantial completion of external construction works.

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 the development, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

Reason: In the interest of visual amenity.

5. (a) The new food store shall not be open to the public outside the hours of

0800 to 2100 on Monday to Saturday inclusive or outside the hours of 0900 to 2100 on Sundays and public holidays.

(b) Deliveries shall not take place before 0700 on Monday to Saturday inclusive or before 0800 on Sundays and public holidays and no deliveries shall take place after 2200.

Reason: In the order to safeguard the amenities of the area.

6. No advertisement or advertisement structure other than those shown on the drawings submitted with the application shall be erected or displayed on the building or within the curtilage of the site in such a manner as to be visible from outside the building, unless authorised by a further grant of planning permission.

Reason: In the interest of visual amenity.

7. No external security shutters shall be erected on the new food store building unless authorised by a further grant of planning permission. Details of all internal shutters shall be submitted to, and agreed in writing with, the Planning Authority prior to commencement of development.

Reason: In the interest of visual amenity.

8. The monitoring of the otter holt during the construction period shall be undertaken in accordance with the programme set out under the further information received by the Planning Authority on 11th May 2018.

Reason: In the interest of wildlife protection.

9. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the Planning Authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including:

(a) Location of the site and materials compound(s) including area(s)

identified for the storage of construction refuse;

(b) Location of areas for construction site offices and staff facilities;

(c) Details of site security fencing and hoardings;

(d) Details of on-site car parking facilities for site workers during the course of construction;

(e) Details of the timing and routing of construction traffic to and from the construction site and associated directional signage, to include proposals to facilitate the delivery of abnormal loads to the site;

(f) Measures to obviate queuing of construction traffic on the adjoining road network;

(g) Measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network;

(h) Alternative arrangements to be put in place for pedestrians and vehicles in the case of the closure of any public road or footpath during the course of site development works;

(i) Details of appropriate mitigation measures for noise, dust and vibration, and monitoring of such levels;

(j) Containment of all construction-related fuel and oil within specially constructed bunds to ensure that fuel spillages are fully contained. Such bunds shall be roofed to exclude rainwater;

(k) Off-site disposal of construction/demolition waste and details of how it is proposed to manage excavated soil;

(l) Means to ensure that surface water run-off is controlled such that no silt

or other pollutants enter local surface water sewers or drains.

A record of daily checks that the works are being undertaken in accordance with the Construction Management Plan shall be kept for inspection by the Planning Authority.

Reason: In the interest of amenities, public health and safety.

10. Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the Planning Authority prior to commencement of development. This plan shall be prepared in accordance with the “Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects”, published by the Department of the Environment, Heritage and Local Government in July 2006.

Reason: In the interest of sustainable waste management.

11. Litter in the vicinity of the premises shall be controlled in accordance with a scheme of litter control which shall be submitted to, and agreed in writing with, the Planning Authority prior to commencement of development. This scheme shall include the provision of litter bins and refuse storage facilities.

Reason: In the interest of visual amenity.

12. Water supply and drainage arrangements, including the attenuation and 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.

13. Prior to the commencement of use of the new food store, the car park, including the car parking spaces, motorcycle and cycle spaces, and pedestrian facilities, shall be completed and made available for use and thereafter it shall be retained in-situ for the duration of the new food store

on the site.

Reason: In order to ensure that the car park is available at all times in the interests of good traffic management and pedestrian safety.

14. The developer shall pay to the Planning Authority a financial contribution of €3917 (three thousand nine hundred and seventeen euro) in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. The application of any 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 a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

Hugh D. Morrison
Planning Inspector

9th January 2019