



An
Bord
Pleanála

Inspector's Report ABP 302641-18

Development

Mixed use development

Location

Barry's Field, Carrigaline Road &
Churchyard Lane, Douglas, Co.Cork

Planning Authority

Cork County Council

Planning Authority Reg. Ref.

18/5814

Applicant

Lidl Ireland

Type of Application

Permission

Planning Authority Decision

Grant subject to conditions

Type of Appeal

1. 3rd Party v. Grant
2. 1st Party v. Conditions

Appellants

1. Allied Cork Taxi Council
2. Peter Collins
3. Liam Edwards
4. Lidl Ireland

Observers

1. Canmont Ltd.
2. Cllr. Eoghan Jeffers
3. Douglas Tidy Towns

Date of Site Inspection

01/03/19

Inspector

Pauline Fitzpatrick

1.0 Site Location and Description

The site, which is referred to as Barry's Field, has a stated area of 0.83 hectares, and is located to the south-west of Douglas village centre. It is roughly square in shape and relatively level. It is bounded by two residential units fronting onto Church Street to the north with Barry's public house and restaurant and a retail unit to the north-east. Churchyard Lane bounds the site to the west. The lane is narrow with a footpath on one side and pay and display on-street parking. St. Lukes Church and graveyard are on the other side of the lane. Carrigaline Road bounds the site to the east with one-way vehicular movements and on-street pay and display parking in addition to a taxi rank along the site frontage. There are a mix of commercial and residential uses along the road with a Telecom Exchange immediately to the south and a carpark serving Barry's public house and restaurant to the north. The site boundaries are delineated by mature trees, with the boundary to the dwellings to the north delineated by a hedge. Stone walls also delineate the eastern and western boundaries with a block wall and palisade fence to the telecom exchange. There are footpaths on both sides of Carrigaline Road.

2.0 Proposed Development

The application was lodged with the planning authority on 11/07/18. The proposal entails a mixed use development comprising:

- Single level licenced discount foodstore with a stated gross floor space of 2251 sq.m. and net retail sales area of 1413 sq.m. The building is to be located along the southern boundary with external finishes comprising a mix of natural stone cladding, render and glazing. The overall height would be 10.432 metres.
- 3 storey building to be positioned in the north-eastern corner with a stated gross floor area of 1351 sq.m. It is to have an overall height of 11.5 metres with external finishes comprising a mix of brick and zinc cladding. The building will consist of:
 - café/restaurant unit (172 sq.m.) and retail office unit (230 sq.m.) at ground floor level,

- office unit (212 sq.m.) and 2 no. 2 bedroom apartments at 1st floor level.
- 1 no. 2 bedroom apartment and 2 no. 3 bedroom apartments and private communal roof garden at 2nd floor level.
- Signage
- 98 surface parking spaces
- Attenuation tank to be installed in the south-western corner of the site.

Vehicular access is to be from the Carrigaline Road with pedestrian access also proposed from Churchyard Lane. The existing sod and stone wall along the western boundary is to be retained save to facilitate the pedestrian access. A new earthen bank faced vertically with natural stone is proposed along the eastern site boundary. The northern and southern boundaries are to be planted

The application is accompanied by

- Planning Report
- Planning and Design Statement
- Photomontages
- Visual Impact Assessment
- Architectural Heritage Impact Assessment
- Lighting Impact Assessment Report
- Tree, Hedgerow & Vegetation Survey, Assessment, Management & Protection Measures
- Knotweed Management Options Report
- Traffic Assessment
- Engineering Planning Report
- Noise and Vibration Impact Assessment
- Flood Risk Assessment
- Archaeological Testing
- Bat Survey and Bat Habitat Assessment

- Preliminary Waste Management Plan

3.0 Planning Authority Decision

3.1. Decision

Grant permission subject to 46 conditions including:

Conditions 5 & 6: signage requirements including prohibition of totem poles and corporate branding adjusted to enhance the quality of the ACA.

Condition 9: Notwithstanding exempted development provisions no further ventilation systems/extractor fans/apparatus to be erected without grant of permission.

Condition 16: Redesign of pedestrian link through the site to reduce number of crossing points.

Condition 31: Odour abatement system requirements.

Condition 33: Suitably qualified person to undertake the design and installation of the ventilation system. Reference to be made to HVCA DW/172 and HVCA TR/19. Maintenance programme to be put in place and log kept.

Condition 45: €397,060 special contribution for provision of upgrades to the Fingerpost Roundabout, to address parking deficiencies, to provide a raised pedestrian crossing point on Chapelyard Lane and to upgrade the traffic island junction at Douglas East.

Condition 46: €141,427.21 in accordance with Development Contribution Scheme.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The *Executive Planner's* report states that having regard to an email received from the Senior Planner on the 31/08/18 the planning authority is prepared to accept the principle of the mixed use development proposed as presented. Ultimately planning policy zoning objectives represent aspirational, wider strategic land use aims. In reality there can be practical constraints. In this case the lands directly to the north

which form part of the town centre zoning block are in separate ownership. Also, the planning authority has no control over the form of planning applications and must deal with applications as presented. The parking deficiency has to be balanced against the town centre zoning designation and wider DLUTS measures to improve pedestrian permeability and encourage alternative modes of transport to the car. Following discussion with the Senior Executive Planner and Senior Planner for the area he was advised that the building positioning as proposed and creation of a new public realm along the eastern boundary is acceptable. It is noted that the Flood Risk Assessment concludes that the development will not pose any flooding issues and will be downgraded to Flood Zone C following implementation of Flood Relief Scheme contract works. A grant of permission subject to conditions recommended.

The *Senior Executive Planner's* report notes that the full redevelopment as envisaged in the zoning objective is not feasible as key parcels of land are in separate ownership. Supporting documents include indicative layout options along with a narrative illustrating how the entire block could be developed in an integrated manner. It is considered that the proposed mix of uses meets with the requirements of the zoning objective and will not impede further development at this location in line with the zoning objective. It is considered that a Retail Impact Statement is not required. The food store has moved away from the standardised model in terms of design with the aim of addressing the concerns highlighted in the previous Board's decision. Particular emphasis has been placed on providing a mixed use development and a full frontage to Carrigaline Road. Given the town centre zoning it is recognised that the character of the area will change. While there are some concerns about the scale and mass of the development proposed it is recognised that there may be an underlying conflict between the zoning designation which requires a significant development on the site and the ACA designation which focuses on retaining the existing character. The development of this long term vacant site is an important element in the ongoing development of Douglas. The design approach is considered acceptable. The Transport Assessment is based on the assumption that the measures identified in DLUTS will be implemented. It noted that the development will have a significant traffic impact on road junctions in the area and in particular on the Fingerpost roundabout which is a very important junction in the Douglas Area. A special contribution towards the wider road network

is considered appropriate as per the report from the Traffic and Transportation section. While a special contribution has been recommended for public realm improvements these would not fall within the scope of a special contribution. Likewise the proposed changes to Churchyard Lane would not be supported as it will involve significant changes to this narrow laneway and will increase the visual impact of the proposal. While it is noted that the requirements of the County Development Plan are deemed to be maximum figures the deficit of 54 spaces is significant. A special contribution to address same is appropriate. It is considered that additional information will be required in order to further assess the application. *Note:* the report then recommends grant of application subject to conditions.

Email from the *Senior Planner* references discussions with the Divisional Manager and Director of Planning. They note that the site has been idle for about 40 years and that Douglas is in need of redevelopment and has had no development of a mix use like that proposed for over 10 years. The development will deliver a mix of appropriate uses at a central location which has a relatively small number of high profile vacant commercial sites. They are, therefore, of the view that if a balance has to be struck between competing objectives or architectural conservation and mixed use development that the latter should prevail. It is also noted that the previous proposal was granted by the Council.

3.2.2. Other Technical Reports

Public lighting report considers the design to be unacceptable. Further information required.

Environment has no objection subject to conditions.

Area Engineer notes that the proposed access will require the elimination of 9 parking spaces. These should be accommodated within the site for 24 hour public use however there is no spare capacity in the car park proposed. Access is quite tight for delivery truck access. Deliveries should be out of hours times only. The proposed pedestrian access to Churchyard Lane is hazardous as there is no footpath. Revised site layout required to address same via raised crossing point to the footpath on the other side. The internal pedestrian route, in crossing vehicular paths is an unnecessary hazard. Parking deficiency is calculated at 54 spaces. Redesign may facilitate additional on site spaces. If not possible a €3000

contribution per space shortfall should be sought. The Traffic Assessment relies on the assumption that the Douglas LUTS recommendations will be implemented. This development could not be permitted without the implementation of LUTS, therefore it is imperative that a special contribution be levied towards the upgrades to the public infrastructure and public realm included in the LUTS report. A contribution of €110,000 recommended. A special contribution of €5,000 to be levied towards upgrade of the traffic island to the north of the site. In terms of surface water the attenuation calculations should be revised to allow for the revised development. The development relies on the upgrade works to the Ballybrack Stream.

Traffic and Transport considers that the proposal will have a significant impact on Douglas Village both in terms of vehicular traffic and increased footfall. There is no objection in principle. The results of the Transport Impact Assessment are noted. The applicant has not proposed any mitigation measures. The DLUTS measures are not committed to and cannot be assumed. Should permission be granted a Special Contribution to be levied towards implementation of improvements to Douglas East/Carrigaline Road (11.3% of overall costs), and R609/R610 (Fingerpost) roundabout (19.35% of overall costs). The loss of kerbside parking spaces is significant and the applicant has not proposed any mitigation measures. With regard to on site parking deficiencies redesign to provide for an additional 54 spaces recommended. If not possible €3,000 per space required. It is a minimal levy as providing spaces elsewhere in Douglas will cost significantly more than €3,000 per space. The vehicular entrance detail on Carrigaline Road needs to be improved. Special contribution of €10,000 towards raised pedestrian crossing and associated works on Churchyard Lane. Parallel parking and footpath to be provided on Churchyard Lane.

3.3. Prescribed Bodies

Inland Fisheries Ireland has no objection subject to there being sufficient capacity in public wastewater treatment plant.

Irish Water has no objection subject to conditions.

Environmental Health Officer, HSE considers there is a lack of information and more detailed floor plans are required.

Irish Aviation Authority requires contact in relation to all crane operations.

3.4. Third Party Observations

Objections to the proposal received by the planning authority are on file for the Board's information. The issues raised are comparable to those set out in the 3rd party appeals and observations summarised in section 6 below. In addition, impact on amenities of adjoining property, pedestrian safety and need for more housing are raised.

4.0 Planning History

PL.04-249088 – permission refused on appeal in March 2018 for a licenced discount foodstore and ancillary infrastructure for the following reason:

Having regard to the objectives of the Ballincollig Carrigaline Municipal District Local Area Plan, 2017, in particular objective SE-T-03 which require that the Barry's Field site be developed in an integrated manner, providing a mixed use development with full frontage along the Church Street and Carrigaline Road to form a continuous commercial strip with the existing Barry's Pub and Restaurant, it is considered that, by reason of its semi-industrial form of design, its lack of civic design and streetscape presence onto Carrigaline Road and its lack of mix of uses on this prominent site within the Church Street Architectural Conservation Area, the proposed development would not contribute to the achievement of this objective, would adversely affect the Church Street Architectural Conservation Area, and would seriously injure the visual amenities of the area. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

5.0 Policy and Context

5.1. Development Plan

5.1.1. Ballincollig Carrigaline Electoral Municipal District Local Area Plan, 2017

The site is zoned Town Centre/Neighbourhood Centre

Objective SE-T-03

The key objectives of this zoning provision are as follows;

- The site is to be developed in an integrated manner
- Provision of a mixed use development of 4,000 sq. m.
- Full frontage development onto Church Street and Carrigaline Road to form a continuous commercial strip with the existing Barry's pub and restaurant.
- Any density increase will have to demonstrate that there is no negative net impact to the proposed improvements to the existing transport network.
- Incorporation of Eircom building to south and removal/or incorporation of existing dwelling and outbuildings desirable
- Construction of a new municipal car park with at least 200 bays
- Vehicular access from Church Street and the Old Carrigaline Road
- Car parking provision in line with revised parking standards in County Development Plan.

Section 3.5.5. notes that the Douglas Land Use and Transportation Study is now complete and key elements of it are incorporated into the current LAP.

Part of the site is within Flood Zone A.

5.1.2. ***DLUTS, 2013***

The relevant policy objective is TC-03 which is similar to 'SE-T-03' above.

5.1.3. ***Cork County Development Plan***

HE 4-5 Architectural Conservation Areas

Conserve and enhance the special character of the ACAs included in this plan.

c) ensure new development within or adjacent to an ACA respects the established character of the area and contributes positively in terms of design, scale, setting and material finishes to the ACA.

d) promoting high quality architectural design within ACAs.

5.2. **Natural Heritage Designations**

The nearest point of Cork Harbour SPA is c.500 metres to the north.

5.3. **Environmental Impact Assessment**

Having regard to the nature and scale of the proposed development within the southern environs of Cork city on zoned and serviced lands, 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.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

6.1.1. ***Allied Cork Taxi Council***

The submission can be summarised as follows:

- The existing taxi rank along the Carrigaline Road will have to be removed. Due consideration was not given to this fact.
- The loss of the taxi rank would have a negative impact on both Douglas and the taxi drivers' businesses.
- No consideration given to an alternative rank location in Douglas.

6.1.2. ***Peter Collins***

The submission by Kieran J. Barry & Associates Ltd. on his behalf can be summarised as follows:

- Mr. Collins owns the adjoining property, Barry's of Douglas. It will be negatively affected by the proposal.
- A number of significant issues raised by Council officials have not been addressed, and in the absence of reports from four departments the Council, did not carry out a fully informed assessment.

- The Area Engineer states that the development could not be permitted without the implementation of LUTS. The Traffic and Transport report also states that the proposal will have a significant impact on Douglas village both in terms of vehicular traffic and increased footfall. It would be contrary to Section 3.5.19 of the Ballincollig Carrigaline Municipal District LAP 2017.
- The proposal will have a momentous impact in terms of traffic congestion in the village centre and the wider area.
- The proposal is deficient in car parking.
- The site is located within Flood Zone A. The development will be solely dependent on works to be carried out by the Council. The mitigation measures are not yet in place.
- The proposal is contrary to the requirements set out in objective SE-T-03 of the LAP for the site and specifically the requirement that the entire site be developed in an integrated manner. There has been no meaningful consultation with the appellant. It does not provide for full frontage development along Church Street and Carrigaline Road.
- The site is within an ACA and does not comply with the Development Plan policies and objectives for same. The proposal does not enhance or respect the existing urban fabric.
- It does not address the reason for refusal on the previous file PL04.249088.

6.1.3. **Liam Edwards**

The submission can be summarised as follows:

- The proposal will result in a significant vehicular and pedestrian impact on Douglas Village without the commensurate mitigation measures in place.
- Carrigaline Road is already seriously congested.
- There is no guarantee or timeframe for the implementation of the works subject of the special contribution applied by the planning authority.
- With a shortfall of 54 parking spaces the proposal represents a significant overdevelopment of the site.

- The proposed pedestrian link onto Churchyard Lane would be hazardous as there is no footpath.
- The pedestrian route through the site crosses the vehicular paths at four locations.
- The proposal does not fully respond to the requirements of objective SE-T-03.
- The applicant's flood risk assessment relies on upgrade works to Ballybrack Stream. Surface water proposals are based on the previous smaller scheme. The issue of flooding has not been resolved.
- The Conservation Officer did not comment on the application.
- The proposal does not respect the established character of the area and does not contribute positively in terms of design, scale, setting and material finishes to the ACA. The design, positioning, layout and the strengthening of the urban streetscape has not been addressed. It is therefore contrary to objective HE 4-5 of the County Development Plan. It is unclear whether the Board's previous refusal has been satisfactorily addressed with respect to compatibility with the ACA.
- If the Board is minded to grant permission a condition should be attached requiring either the mixed use building to be constructed in phase 1 and construction on the convenience store not commencing until phase 1 substantially complete or the Lidl store not to become operational until such time as the overall development is completed.

6.1.4. **1st Party against conditions**

The submission by The Planning Partnership on behalf of the applicant can be summarised as follows:

Conditions 31 & 33: Odour abatement and ventilation systems

- The requirement for such systems is operator specific having regard to the specific food preparation methodologies which may be employed. No end user has been identified for the café/coffee shop/restaurant use. Thus, the specific requirements cannot yet be determined.

- In terms of the ancillary bakery use which forms part of the proposed Lidl store it is contended that such systems are not required having regard to the methodology associated with the operation of this bakery. The ventilation of the bakery area is factored into the design of the store wide ventilation system.
- It is requested that the conditions be amended to allow the planning authority to provide written agreement as to the systems which will be installed when the occupier of the unit is identified. Suggested rewording of the conditions detailed.

Condition 45: Special contribution €397,060

- It does not represent exceptional costs which benefit specific requirements for the proposal.
- Improvements to Douglas East/Carrigaline Road is not referenced within the condition, although from the details available from internal technical reports the levy includes a contribution towards same.
- It does not identify the nature/scope of works, the expenditure involved and the basis for the calculation.
- It does not include how it is apportioned to the development having regard to existing, permitted and future development within the area.
- The contribution amounts to double charging. The upgrade to the fingerpost roundabout, provision of raised pedestrian crossing point and upgrade of the traffic island junction at Douglas East fall within the roads category of the Cork County Council Development Contribution Scheme.
- The benefits of the proposed works would be far more widespread than the proposed development.
- The planning authority has apportioned the cost solely on the basis of the quantum of additional traffic which the development would generate. The additional traffic is negligible.

- There is no reference to the requirement or rationale for the upgrade of the traffic island at the junction of the Carrigaline Road and Douglas East. It is referenced in the Planner's reports.
- The contribution towards parking is contested on the grounds that the planning authority has failed to state/clarify where or how the spaces are to be provided, whether the spaces are actually of a specific and exceptional need, how the amount of the contribution has been calculated, how the costs have been apportioned and whether or not the provision of parking spaces is covered by the Cork County Council Development Contribution Scheme. Precedent set in PL04.229549, PL01.212701, PL39.222473.
- It may not be possible/feasible for the planning authority to provide such parking given the highly developed nature of the surrounding area.
- The Board is obliged to consider whether these additional spaces are actually necessary to facilitate the development. The failure to meet the car parking standards is not evidence that the proposed infrastructure is actually needed to facilitate the development. Section 48(2)(c) sets a strong benchmark. PL01.212701 and PL46.227310, PL01.228557 are relevant. Whilst there is a technical shortfall of the 'maximum' parking needs of the development of 54 spaces no actual physical need will arise. Shortfall of parking spaces by reference to development plan parking standards does not equate to shortfall of parking spaces in terms of the development contribution scheme. File ref. PL09.227809 is relevant.
- How the €3,000 per space was determined is not provided. This is ultra vires. How it has been apportioned to other developments in the area has not been given. In addition, should spaces be provided and be subject to pay and display charges as is practice within Douglas village, this would be contrary to the principle of development contributions.
- The condition should be deleted in its entirety.

6.2. Applicant Response to 3rd Party Appeals

The submission by The Planning Partnership on behalf of the applicant, which is accompanied by supporting detail, can be summarised as follows:

6.2.1. Compliance with Objective SE-T-03

- The proposal is fully compliant with the objective. It does not inhibit the achievement of the obligations of the objective as it applies to the adjoining lands to the north. It does not prohibit the achievement of the required frontage along Carrigaline Road and Church Street. The objective consists of a mix of obligations, recommendations and options in terms of the type of uses and the overall format of development. The wording facilitates flexibility in how the objective will be realised. The requirement for continuous active use and for site access represent contradictory obligations which would necessitate some compromise.
- The proposal, providing for full commercial frontage to Carrigaline Road save for the site access, responds fully to the previous reason for refusal. It will facilitate the extension of this commercial frontage to the adjacent carpark of Barry's pub. It has sought to respond to the concerns of the Conservation Officer.
- The application was accompanied by an Overall Site Delivery Strategy to address the development of the lands in an integrated manner.

6.2.2. Suitability of Design

- The proposal will provide a counterbalance to the influence of the two existing shopping centres and will encourage pedestrian movement and re-engagement with the traditional village core of Douglas.
- The format will facilitate the creation of a gradual and legible transition from the urban streetscape focus of the northern part of Carrigaline Road with the more rural aesthetic to the south.
- The proposal is consistent with the principle of rejuvenating the Carrigaline Road by extending the village core in a southerly direction as envisaged in the

LAP. It is proportionate to the requirements of Douglas. It does not constitute overdevelopment.

- The design, featuring a combination of a contemporary built form and bespoke hard and soft landscaping, delivers a development which integrates sympathetically with the character of the area and represents an appropriate design solution. It is entirely consistent with Objective HE 4-5 relating to development in ACAs. The proposal will be a legible bookend to the village core. The use of varying finishes will ensure that there is visual interest and rhythm in how the structures present to and integrate with the streetscape.
- The proposed pedestrian route follows a logical design line through the site. Any concerns can be addressed by way of condition. Wording suggested for condition dealing with crossing point on Churchyard Lane.

6.2.3. Roads, Traffic and Parking

- The proposal will not impact upon the capacity of the R609 Carrigaline Road Junction, the Church Street-Douglas East-Carrigaline Road Junction or the Fingerpost Roundabout, while the junctions serving Douglas from the N40 will not experience any perceptible impact. The only junction which will experience any increase will be the Douglas East-Carrigaline Road T junction which may experience a 7% increase in RFC from 152% to 159% during the weekday AM peak traffic period. This junction does not experience congestion outside of this period.
- The proposal is not dependent on the implementation of DLUTS. The works which are to be funded by the special contribution relate to existing infrastructure. No details have been provided as to the scope of these works and it is unclear as to how there could be a reliance on the completion of same where no details are provided as to how they will enhance the relevant junctions or traffic flows. The key elements of DLUTS are objectives of the LAP.
- The peak generation associated with the development does not coincide with the AM peak traffic period, therefore the additional traffic which will occur on the Carrigaline Road will be negligible.

- The potential impact of issues related to congestion has been overstated by the appellants within the context of the town centre/neighbourhood centre zoning and SE-T-03 development objective.
- 98 parking spaces are to be provided in accordance with Appendix D of the County Development Plan in terms of minimum requirements for residential units and maximum provision for all other uses. There is no stated obligation within the Development Plan which requires developers to achieve the maximum provision. The proposal accords with the Retail Design Manual. The site is within an area which benefits from a high quality public transport service which will mitigate any perceived shortfall in on-site parking provision.
- Prioritising the delivery of active uses on the site rather than simply delivering the maximum number of parking spaces represents an efficient and more sustainable use of the site. The proposal does not constitute overdevelopment.
- A revision to the site access in response to comments from the Area Engineer is proposed. The accompanying drawings demonstrate how HGVs can access and egress without posing any risk to pedestrians or other road users.
- The convenience store will be served by a maximum of 1 no. HGV per day increasing to 2 deliveries during peak periods (ie. Christmas). It is standard practice for the applicant to schedule deliveries to avoid peak traffic periods.
- The designation of taxi ranks is a function of the County Council. The applicant has no role in its relocation. The Council in applying objective SE-T-03 which requires site access from Carrigaline Road must have understood that the achievement of the objective would likely necessitate its relocation. DLUTS by way of policy T-06 recommends the provision of a new, centrally located Taxi Rank and night time Taxi Rank which would compensate for its loss.
- Development contributions which are levied under the General Contribution Scheme are intended to cover costs in providing public infrastructure including road infrastructure such as the relocation of the taxi rank.

6.2.4. Miscellaneous Issues

- The application was assessed by the Council in accordance with section 34 of the Planning and Development Act. The planning authority was under no obligation to seek further information.
- The proposal will not be susceptible to flooding and will not contribute to or result in downstream flooding.
- The applicant will be obligated to complete the development in its entirety.
- The proposal will also have social and economic benefits in terms of job creation and residential accommodation.
- The Bona Fides of two of the appellants is queried.
- A meeting was held with the adjoining landowner.

6.3. **Planning Authority Response to 1st and 3rd Party Appeals**

The submission can be summarised as follows:

6.3.1. Application Assessment

- The Board is referred to the reports on file. At all stages of the assessment the planning authority has attempted to take a reasonable and balanced approach to the proposal. The views of the applicant and 3rd parties were given due consideration.
- The proposal was considered de novo. It was developed to address the concerns set out in the Board's decision on the previous appeal.

6.3.2. Special Contribution

The details of how the figures were calculated are as set out in the Traffic and Transportation report on file.

- Douglas East/Carrigaline Road T Junction:
 - The Transport assessment states that the RFC for Carrigaline Road in 2018 opening year without development is 152% and with development would be 159% in AM. At an RFC greater than 90% congestion will be experienced. Therefore 159% will result in very serious congestion.

The RFC is 62% above the 90% maximum without development and 69% above with development. Therefore the development would be responsible for 7% over 62% which is 11.3%.

- Levy towards implementation of improvements to the Douglas East/Carrigaline Road as set out in DLUTS to be applied at 11.3% of the overall costs of €920,000 equating to €103,960.
- Fingerpost Roundabout
 - The Transport Assessment has identified that the development will have a significant impact on the road junctions in the area and in particular the roundabout. The assessment states the RFC for the Carrigaline Road in 2023 without development is 121% on Saturdays and would be 127% with development traffic. The RFC is 31% over the 90% max. without development and 37% over with development. Therefore, the development would be responsible for 6% over 31% which is 19.35%
 - Levy to be applied towards costs of upgrading this junction in order to mitigate the impacts of the proposed development, improve capacity and improve safety at approaches at a rate of 19.35% of the overall costs of €600,000 equating to €116,100.
- Carparking
 - There is a requirement for an additional 54 spaces at €3000 per space. This is a minimal levy as providing car parking spaces elsewhere in Douglas will cost significantly more.
- €5000 towards the traffic island to the north of the site.
- €10000 towards a raised pedestrian crossing on Churchyard Lane in the interest of pedestrian safety.

The recommendations for a special contribution to public realm improvements and changes to Churchyard Lane were not included; the former on the basis that it did not fall within the scope of a special contribution, the latter on the basis that the significant changes would increase the visual impact.

6.4. Observations

Observations have been received from

1. Canmont Ltd.
2. Cllr. Eoghan Jeffers
3. Douglas Tidy Towns

The submissions can be summarised as follows:

- The proposal does not comply with the site integration objectives set out in SE-T-03. There is very little potential for any positive integration of the site with adjoining sites. There has been no serious engagement with adjoining landowners.
- The proposal would have a negative impact on the ACA in terms of its design, scale, setting, material finishes and inappropriate integration into the existing streetscape. The previous reason for refusal would continue to apply.
- The proposal is deficient in carparking. There will be access and nuisance issues arising on the Carrigaline Road as a result. The financial contribution sought in lieu of the shortfall at €3000 per space is lower than levels previously charged for shortfalls in Douglas. 9 public street parking spaces are to be removed and have not been charged for. The removal of the spaces would affect local businesses.
- The taxi rank is long established and is a vital service. Its replacement has not been mentioned.
- The traffic study is inadequate. It does not take into account that the centre of Douglas Village (Douglas Road) is to be pedestrianised under DLUTS.
- Both Carrigaline Road and Churchyard Lane are unsuitable. Carrigaline Road is not suitable for HGVs in its current form.
- Vehicular movements will add to existing congestion in both the vicinity and wider area and would have a negative impact on pedestrians. The proposal would conflict with DLUTS plans to decrease traffic in the village and would negate the upgrades made along Carrigaline Road.

- Notwithstanding the town centre mixed use zoning a sequential test should have been undertaken to demonstrate the suitability of the site for a large scale convenience retail in the context of promoting the overall retail offering in Douglas with minimal traffic impact.
- The area is well served by convenience retail and restaurants/take aways.
- Douglas is already served by two large shopping centres which already take from the village feel and streetscape. The proposal would only add to the problem. The Main Street is already suffering from dereliction.
- Existing retail vacancy should be addressed before greenfield sites are developed. The proposal may exacerbate existing vacancy.
- Construction traffic would have to be carefully regulated.
- The red line should have included the impacted area owned by the Council on the Carrigaline Road ie. taxi tank, access area and street parking with the application accompanied by a letter of consent.
- The site is within Flood Zone A. The proposal would increase the risk of flooding.
- The site is infested with Japanese Knotweed. Its treatment should be implemented in accordance with Regulations 49 and 50 of the European Communities (Birds and Natural Habitats) Regulations 2011.
- A number of sections of the Council did not comment on the application.

6.5. Further Responses

6.5.1. Circulation of Applicant's Response to 3rd Party Appeals

Allied Cork Taxi Council reiterated its concerns as set out in its appeal submission

Peter Collins

Submission by Kieran J. Barry & Associates refers. In addition to reiterating a number of points made in the appeal submission the following are noted:

- The traffic data used for the Traffic Assessment was taken from a model carried out in September 2015.

- The applicant has not clearly ruled out any opportunity for flooding nor has the applicant participated in providing new/improved infrastructure and is heavily dependent on works to be carried out by the County Council.
- Reports on the previous application are irrelevant to the current proposal.
- The proposal does not provide active frontage to the Carrigaline Road. There is only one entrance/egress to the foodstore on the side adjoining the vehicular entrance.
- The statement made that the development contributes additional car parking to Douglas is queried. It is contended that the provision of unauthorised parking could potentially cause profound traffic effects on his business if people are parking at the premises to reach other destinations.
- The proposal could provide a strong input to the ACA but that put forward fails to do so.
- The absence of reports from sections of the Council is a significant point. The planning authority failed to carry out an informed assessment.

6.5.2. ***Liam Edwards***

- Following DLUTS, as incorporated into the LAP, the village requires a number of specific transportation measures to achieve the development potential of sites such as that subject of the appeal.
- There is no guarantee or timeframe for the implementation of the works subject of the special contribution condition.

6.5.3. **Circulation of Planning Authority's Submission**

Applicant's Response

The submission by The Planning Partnership refers. In addition to reiterating a number of points made in its appeal submission and its response to the 3rd party appeals the following are noted:

- The submission has not provided any justification for the levying of the special contribution.

- Even where traffic congestion already occurs within Douglas the impact of the proposal in the worst case scenario is negligible and will not impact upon the capacity of the majority of junctions within the village.
- The amount to be levied is entirely disproportionate with the projections for additional traffic.
- All of the road works specified fall within the roads category of the Development Contribution Scheme and will have widespread benefits.
- No details of costings have been provided. This is inadequate given the overall value of the contribution being levied. The applicant would be at a disadvantage in calculating or verifying the value or any refund which may be forthcoming should the works be commenced but not completed within the stated 7 year period.
- In terms of traffic the worst case scenario increases have been substantially overstated by the planning authority. The projections indicate a 4.4% increase of overall traffic volumes using the Douglas East-Carrigaline Road T junction during its peak period and not 11.3%, 4.7% of overall traffic volumes using the Fingerpost roundabout at its peak period and not 19.35%.

Peter Collins

Submission by Kieran J Barry & Associates refers and reiterates points made in the appeal submission and subsequent response submissions.

Liam Edwards

None of the reasons set out in the Board's decision on the previous appeal have been addressed.

6.6. Section 131 Notice

Due to the location of the site within the Church Street Architectural Conservation Area certain prescribed bodies were invited to make a submission on the appeal.

Department of Culture, Heritage and the Gaeltacht recommends archaeological monitoring by way of condition should permission be granted.

7.0 Assessment

I consider that the issues arising in the case can be assessed under the following headings:

- Compliance with Policy Objectives
- Suitability of Design
- Access, Traffic and Parking
- Other Issues
- Appeal against Conditions
- Appropriate Assessment

7.1. Compliance with Policy Objectives

The current appeal is the 2nd to come before the Board for the development of the site which is referred to as Barry's Field. The Board previously refused permission for a convenience store and associated works under ref. PL04.249088 in 2018. The failure of the proposal to contribute to the achievement of objective SE-T-03 of the Ballincollig Carrigaline Municipal District LAP due to design, lack of civic design and streetscape presence onto Carrigaline Road and lack of mix of uses, constituted a material concern in the Board's decision.

The policy context for the site remains the same in that the 2017 LAP is applicable with the site covered by zoning objective SE-T-03. The site forms the substantive part of the lands covered by the objective with the lands to the north and north-east not in the ownership of the applicant.

The agent for the applicant in its response to the 3rd party appeals is of the view that the objective consists of a mix of obligations, recommendations and options in terms of the type of uses and the overall format of development and facilitates flexibility in how the objective will be realised. I would generally concur with this interpretation.

I submit that whilst the objective recommends that the entire site be developed in an integrated manner the issues of ownership and absence of consent from the landowners to the north (including two dwellings, pub and restaurant) must allow for a level of compromise in this regard. In support of the application the planning and

design statement includes an indicative masterplan for the overall SE-T-03 lands including the lands to the north. It also takes due cognisance of the Eircom site to the south although this does not form part of the lands covered by the objective.

I submit that the obligations set out in the objective pertain to the mix of uses including office accommodation, full frontage development along Church Street and Carrigaline Road to form a continuous commercial strip with the existing Barry's Pub and Restaurant and vehicular access from both the Carrigaline Road and Church Street.

The current proposal in terms of the mix of uses including retail, office and residential can be seen to comply with the objective in this regard and addresses this shortcoming as set out in the Board's refusal on the previous appeal. I would also submit that the current proposal provides for a greater level of frontage development onto the Carrigaline Road. Invariably, the need to provide for vehicular access as required by the objective precludes full frontage development.

In this regard, therefore, I consider that the proposal can be seen to comply with the stated requirements of the objective, although it is noted that the gross floor space of the scheme at 3602 sq.m. accounts for a significant proportion of that identified in the objective for the overall lands (4000 sq.m.).

Notwithstanding, the acceptability or otherwise of the proposal is predicated on other planning considerations being met including the acceptability of the design solution and suitability within the ACA, impact on amenities of adjoining property and access and traffic.

7.2. Suitability of Design

As noted in the Board's decision on the previous appeal the site is prominent within the Church Street ACA. It is a development plan objective to conserve and enhance the special character of ACAs by ensuring new development within or adjacent to same respects the established character of the area and contributes positively in terms of design, scale, setting and materials and the securing of appropriate infill development. I note that the former Garda Station on the opposite of the Carrigaline Road (in use as a restaurant) is a protected structure.

I would concur with the view as set out in the Architectural Heritage Impact Assessment that the character of the area extends from St. Lukes Church and

Graveyard to the west and submit that the immediate area of the appeal site does not exhibit any notifiable unifying design. Obviously, any development of the town centre zoned site will bring about a change in the character of the area including the aspect and environment of the residential and commercial properties on the opposite side of the Carrigaline Road. I submit that the challenge is to ensure that the design complements and does not detract from the ACA designation and provides for an appropriate form of development extending the village streetscape to the south.

The design of the convenience unit to be located along the southern boundary at a height of 10.432 metres with a marginal setback from the road frontage so as to allow for the stone wall front boundary treatment is generally acceptable subject to controls in terms of finishes and signage.

However, I consider that the three storey mixed use building to be positioned in the north-east corner is problematic in terms of both its scale and massing which, in my opinion, is exacerbated by the proposed 1st floor overhang. This is evident from the photomontages submitted, notably from the north along Douglas East and along the Carrigaline Road, itself, where it would be a dominant influence in views as the properties in the foreground are generally domestic in scale and height. The proposed finishes do not assist in this regard. As such I would not concur with the agent for the applicant's view that the proposal facilitates the creation of a gradual and legible transition from the urban streetscape focus to the north with the more rural aesthetic for the south.

Also of concern is the proposed fenestration to the north/north-east elevation with windows serving habitable rooms in the apartments on the upper levels overlooking the site immediately to the north (carpark serving the pub and restaurant). This could prejudice the realisation of the development potential of this site in accordance with objective SE-T-03.

As evidenced from the photomontages accompanying the application views of the site are generally screened from St. Lukes Church and graveyard to the west of the site.

I note the email from the Senior Planner recounting discussions with the Divisional Manager and Director of Planning which notes that if a balance has to be struck between competing objectives of architectural conservation and mixed use

development then the latter should prevail. I do not necessarily consider that the objectives are competing and that subject to appropriate design that a mixed use scheme can be provided on the site which would respect and complement the ACA designation.

Therefore, I consider that the proposal would be out of scale and visually dominant and would not make a positive contribution to the visual amenity of either the ACA of the village. In view of the importance of the site and the need to ensure an integrated approach to its development as per the relevant objective I do not consider that modifications to the mixed use building could be successfully secured by way of condition. I therefore recommend refusal on this basis.

7.3. Access, Traffic and Parking

The proposed vehicular access is from Carrigaline Road which facilitates one way vehicular movements (northwards). The scheme will provide for left-in, left-out vehicular movements. As per the details accompanying the application and appeal response the Autotrack Analysis demonstrates that the access junction (as revised in the appeal documentation) and internal arrangements can accommodate the maximum size delivery vehicle which would service the convenience unit. Such deliveries are generally once a day and scheduled outside of peak hours.

As noted by the agent for the applicant the parking requirements set out in Appendix D of the County Development Plan are the maximum for all but residential units and are not to be exceeded. As per section 3.4 of the Traffic Impact Assessment the proposed development in providing 98 spaces (7 to specifically serve the residential units) falls short of the maximum requirement of 149 (deficient of 51). This is marginally less than the 54 shortfall identified by the planning authority. From my calculations the figure of 149 accords with the parameters set out in Appendix D. The proposal will also require the removal of a number of on-street spaces (approx. 9) in addition to a taxi rank. Whilst I fully acknowledge (a) the move towards more sustainable patterns of movement and transport away from car dependency, (b) the merit in the view of some linked trips and shared usage of spaces especially between the convenience unit, café/restaurant and retail office units and (c) that the parking standards are maximum figures and not a target, I submit that the shortfall, coupled with the parking provision to be lost along the road so as to facilitate the

development, is material. In view of the town centre zoning I consider that the a financial contribution in lieu of the provision would be appropriate. As per the Cork County Development Contribution Scheme car parking spaces will be charged through a special contribution. I propose to address the matter of the special contribution later in my assessment.

The scheme now proposed entails a slightly smaller convenience unit reduced from 2871 sq.m. to 2251 sq.m. but now provides for 5 residential units, offices and a café/restaurant. The Traffic Impact Assessment which accompanies the application uses the impact assessment that accompanied the previous file as its basis. I submit that the additional traffic generation of the additional uses proposed in the current scheme relative to that previously proposed would not be material. I note that the Board did not express concerns regarding the potential traffic generation in its refusal on the previous case.

The junction analysis undertaken notes that the Carrigaline Road/R609 and the Church Street/Douglas East/Carrigaline Road junction would operate within capacity in the design year. The Fingerpost roundabout (R609/R610 roundabout) will operate above capacity in the 2018 opening year without development traffic, notably the Maryborough Hill arm with the Rochestown Road arm approaching capacity. The proposed development will result in 6% and 3% increase on these arms respectively in the opening year and opening year +5 and are comparable to the results of the previous assessment.

In addition, Church Street/Douglas East/Carrigaline Road is currently operating over capacity in the AM peak. The proposal development would equate to a further 5% increase in RFC in the 2018 opening year and 6% in 2023. It does not experience a capacity constraint at any other time of the day.

The DLUTS recommendations which have been incorporated into the LAP notes that Douglas suffers from congestion during peak period and identifies a number of investments, including upgrading of 23 junctions to provide for improved bus priority, pedestrian, cycle and traffic movements and public transport priority on East Douglas Street with the elimination of through traffic. The recommendations would have been drawn up in the context of the development of Barry's Field (TC 3) which is specifically referenced in the plan as a distinct precinct.

The Area Engineer and Traffic and Transportation Sections of the Council in their reports on the application note that the proposal will result in significant material vehicular movements and will have an impact on existing junctions. To offset these impacts special contributions are recommended with specific costs detailed for the two junctions predicted to operate above capacity.

In view of the location of the proposal within the village centre and the delineation of the site for development in both DLUTS and the LAP I consider that the proposal would be acceptable in terms of traffic generation. I will address the issue of the special contributions applied by the planning authority in further detail below.

As noted previously the proposal will require the removal of the taxi rank in addition to a number of parking spaces along Carrigaline Road. The absence of an alternative location identified for the taxi rank forms the substantive concern of one of the appellants. As noted by the applicant any development of the site requiring access from the Carrigaline Road would require the removal of the taxi rank and that the provision of such facilities falls within the remit of the local authority as roads authority. In this context the agent for the applicant notes that policy T-06 of DLUTS recommends a taxi rank be provided in a more central location in the village.

7.4. Other Issues

Flood Risk

The application is accompanied by a Flood Risk Assessment. The western most part of the site is identified as being within 1% Annual Exceedance probability (AEP) fluvial floor extent associated with the Ballybrack Stream c. 200 metres to the west arising from the narrow channel and culvert sizes. Remediation works are proposed to be undertaken by the Council to address the deficiencies. The finished floor level of the proposal will be well above the predicted 1:100 year flood level. SuDs measures including an attenuation tank are proposed which would preclude any impact on the downstream network.

I consider that sufficient detail has been provided to support the view that the proposed development would not be liable to flooding nor give rise to downstream impacts and I have no objection on this basis. I note that the Board did not express concerns in this regard in its refusal on the previous appeal on the site.

Retail Impact

In terms of retail impact assessment I note the recommendations of the Retail Planning Guidelines which states that where a proposed retail development is in compliance with the policy and objectives of a development plan then a sequential test is not required. Paragraph 7.5 of the County Development Plan, 2014 – 2020, states that the preferred location for retail development is town centres and particularly primary areas. As noted previously the site is zoned for town centre uses and is in close proximity to Douglas village centre (less than 100 metres). On this basis I submit that a sequential test would not be required.

Treatment of Invasive Species

A Japanese Knotweed management plan accompanies the application. The necessary requirements to ensure appropriate treatment can be addressed by way of condition.

Planning Authority Assessment of Application

In terms of the assessment of the application by the planning authority and absence or otherwise of reports from specific sections I submit that it is not for the Board to comment on or assess the manner in which the Planning Authority considered the scheme.

7.5. Appeal Against Conditions

The 1st party is appealing conditions 31 & 33 which set out, in detail, the requirements for odour abatement and ventilation systems. It is argued that the conditions are unduly prescriptive and that such systems would be operator specific relevant to the food preparation methodologies which may be employed. As no end user has been identified the specific requirements cannot be determined at this juncture.

I consider the case made to be entirely reasonable. Such prescriptive requirements are considered unduly restrictive and are beyond the remit of planning conditions. Should the Board be disposed to a favourable decision I recommend that the wording of the conditions be amended accordingly allowing for details of the systems to be installed to be subject of the written agreement of the planning authority.

The applicant has also appealed condition 45 which requires €397,060 as a special contribution for provision of upgrades to the Fingerpost Roundabout, to address parking deficiencies, to provide a raised pedestrian crossing point and to upgrade the traffic island junction at Douglas East. The details as to the costs involved are set out in the reports from Traffic and Transportation and the Area Engineer, sections of which are repeated in the planning authority's response to the grounds of appeal. The amount as detailed in the condition exceeds that detailed for the respective projects in the reports. It appears that the condition fails to mention the contribution of €103,960 towards improvements to the Douglas East/Carrigaline Road T-Junction.

In the interests of clarity and on the basis of the information before the Board I calculate that the special contribution can be broken down as follows:

Douglas East/Carrigaline Road Junction	€103,960
Fingerpost Roundabout	€116,100
Upgrade of island to north of site	€5,000
Raised Pedestrian Area Chapelyard Lane	€10,000
Car parking	€162,000
Total	€397,060

As to when a planning authority may require the payment of a Special Contribution is covered in Section 48(2)(a) of the Planning and Development Act 2000, as amended, with Section 7.12 of the Development Management Guidelines, 2007 providing guidance with respect to same. It is clear that such a request should only be made in respect of a particular development whereby demands likely to be placed on public services and facilities are deemed to be exceptional thereby incurring costs not covered by the General Development Contribution Scheme of the Council. As per section 48(12) any condition imposed under this section must '*specify the particular works carried out or proposed to be carried out by the local authority to which the condition relates*'. This requirement to identify the nature / scope of the works, the expenditure involved and the basis for its calculation, including how it is apportioned to the particular development, is of relevance and includes a mechanism

whereby special contributions can be refunded to the applicant in the event that the works in question are not commenced or are not completed within the required timescales.

The question in this appeal is whether the stipulated works can be taken to fall within the category for which a special contribution might be sought.

Fingerpost Roundabout

Whilst the reports on file provide the overall cost of the improvement works to the roundabout (€600,000) and means of apportioning the cost to the proposed development no detail is provided as to the manner of the works. As noted from the Transport Impact Assessment the Maryborough Arm of the roundabout would exceed capacity without the development in the opening year with the Rochestown Road Arm due to exceed capacity with development in 2023.

I submit that the proposed improvement works would not be specific to the current scheme nor exceptional and will benefit development in the immediate vicinity and the wider community. I consider that such financial requirements would be better incorporated into the general contribution scheme and adopted in accordance with the procedures set out in Section 48 of the Act. In this regard I also note that there is provision for the adoption of further schemes in respect of different parts of the functional area of the Planning Authority under Section 48(2)a of the Act. I therefore do not consider that this element of the contribution meets the parameters in terms of specific exceptional costs and I recommend its omission.

Douglas East/Carrigaline Road T Junction

In my opinion much the same difficulty arises with the special contribution towards the upgrade works to the Douglas East/Carrigaline Road T Junction which appears to have been levied in the condition but not specifically referenced. As above whilst the overall costings of work is given at €920,000 no details are given as to the manner of the improvement works. The manner in which it is apportioned to the development is detailed.

I submit that the proposed upgrade works would not be specific to the current scheme nor exceptional and will benefit both development in the immediate vicinity and in the wider community. I consider that such financial requirements would be

better incorporated into the general contribution scheme and adopted in accordance with the procedures set out in Section 48 of the Act.

Upgrade of Traffic Island Junction at Douglas East.

As per the Area Engineer's report a special contribution of €5,000 is sought towards the upgrade of the island to the north of the site. This island is in proximity to the junction of the Douglas East and Carrigaline Road Junction and could reasonably be subsumed into the improvement works to which the above special contribution applies. Again, there is an absence in detailed costings or any justification of how the works would be specific to the proposed development. As above, I cannot see how the works would be specific to the current scheme or exceptional. Such works would benefit both development in the immediate vicinity and in the wider community. For the reasons as set out previously I recommend that this be omitted.

Car Parking

As noted above the proposal falls short of the maximum development plan requirements by 51 spaces. This does not take account of the 9 on-street parking spaces that will be lost to facilitate the proposal. I consider there is merit in making allowances for shared usage/linked trips and the central location of the site. In view of the nature of the proposal the parking requirements for the convenience unit in addition to those for the residential units could be considered as a minimum requirement. As per the provisions of Appendix D of the County Development Plan this would equate to 112 spaces for the convenience unit and 6 spaces for the apartments giving a total of 118 spaces. With 98 spaces to be provided this would equate to a shortfall of 20 spaces.

As above there is no information provided as to the actual cost of car parking provision with the Traffic and Transportation section considering the €3,000 per space levy to be a nominal requirement in the context of the greater costs of providing such facilities in Douglas. No details are provided of parking provision to be made/proposed.

The appeal submission refers to previous Board decisions where it removed the special contribution towards shortfall of car parking on the basis that there was no planned infrastructure to which the development could be linked. File references PL04.229549, PL04.212701 and PL04.222473 refer. In the context of the

requirements for a special contribution as set above I consider that the local authority in failing to submit details of the specific parking provisions has not met its legislative obligations. I therefore recommend that this contribution be omitted.

Raised Pedestrian Area Chapelyard Lane

A €10,000 contribution is required towards the provision of a raised pedestrian area connecting the proposed pedestrian access along the western boundary on to the existing footpath on the opposite side of Church Lane. Without such provision pedestrians would access directly onto the road. The works would be specific and exceptional to the proposed development and is considered reasonable.

7.6. Appropriate Assessment

The site is approx. 500 metres to the of Cork Harbour SPA (site code 004030). Having regard to the location of the site within Douglas village on a zoned and serviced site and to the built up environment in the intervening distance, it is my opinion that no appropriate assessment issues arise and that the proposed development would not be likely to have a significant effect, either individually or in combination with other plans or project, on any Natura 2000 site.

8.0 Recommendation

Having regard to the documentation on file, the grounds of appeal, the responses thereto, observations received, a site inspection and the assessment above I recommend that permission for the above described development be refused for the following reasons and considerations

9.0 Reasons and Considerations

It is considered that the proposed development by reason of its design, scale and massing would be visually dominant and out of character with the pattern of existing development in the Church Street Architectural Conservation Area and would be visually obtrusive within the Douglas village streetscape. The proposed development would be contrary to objective HE 4-5 of the current Cork County Development Plan which seeks to conserve and enhance the special character of the Architectural Conservation Area which objective is considered to be reasonable. The proposed development would, therefore, adversely affect an Architectural Conservation Area and would be contrary to the proper planning and sustainable development of the area.

Pauline Fitzpatrick
Senior Planning Inspector

March, 2019