



An  
Bord  
Pleanála

## inspector's Report ABP-302966-18

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<b>Development</b>	A licensed, discount food store incorporating an off-license area and other developments
<b>Location</b>	Clare Road and, Toberteascain Road, Ennis, Co. Clare.
<b>Planning Authority</b>	Clare County Council
<b>Planning Authority Reg. Ref.</b>	18265
<b>Applicant(s)</b>	Lidl Ireland GMBH
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant Permission subject to conditions
<b>Type of Appeals</b>	First Party Third Party
<b>Appellant(s)</b>	Lidl Ireland GMBH.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	4 <sup>th</sup> February 2019.
<b>Inspector</b>	Bríd Maxwell

## 1.0 Site Location and Description

- 1.1. The appeal site which has a stated area of 1.32 ha is located at the junction of the Limerick/Clare Road R458 and Tobarteascáin Road within the townland of Clonroadmore in the southern built up area of Ennis Town, Co Clare. The site is circa 1km from Town Centre (O' Connell Street) and to the north of Clareabbey, west of the mainline railway and the River Fergus. The site 1.32ha is part of a larger landholding totalling 6.25ha.
- 1.2 The Tobarteascáin Road runs along the northern boundary of the site with the Limerick/Clare Road R458 to the west. The junction is defined by a four-arm roundabout. The site is a brownfield in nature and is currently occupied by a joinery workshop, yard and three detached dwellinghouses. Lands to the east are lower lying with evidence of past infilling. The general area is suburban in nature with a number of housing estates in the vicinity including Abbey Court and Westfields, Abbeyville to the East, Dun and Rí Honeywell, Ard Aoibhinn and Carraig Oir to the north, College Grove and the Hawthorns to the west.
- 1.3 The West County Hotel is located on the western side of the Limerick/Clare road a short distance opposite to the southwest of the site. *The Mall*, also referred to as *Clare Road Business Centre* a neighbourhood centre constructed circa 2000, comprising a 3 storey over basement building with converted attic space which includes a number of retail and office units (some vacant) and associated car parking is located opposite the Tobarteascáin Road to the north. The impressive St Flannan's College (Secondary School) which occupies a large site with imposing buildings and set within landscaped grounds is a significant landmark located to the north east of the roundabout.

## 2 Proposed Development

- 2.1 The proposal as set out within public notices involves permission for the demolition of the existing structures on site including three residential units, office block and ancillary buildings, the construction of a neighbourhood centre as part of a first

phase of development to include a licensed discount foodstore incorporating an off-license area, two number associated retail units and two office units within a three storey building; childcare unit / retail unit; public playground and public realm; new vehicular access to Tobarteascáin Road; car parking and cycle parking; all boundary treatment, ancillary mechanical plant; trolley bay structure; ancillary signage including 2 no double sided illuminated totem signs and all other signage associated with the development; ESB substation building; and all necessary site development works and services including all drainage and related underground works. The proposed discount foodstore has a 2,270sq.m gross internal floor area with net sales space of 1,200sq.m. Retail units with a floor area of 127sq.m and 130 sq.m. offices 741 sq.m and creche/retail unit 329sq.m.

2.2 Vehicular access is proposed from the northern boundary off the Tobarteascáin Road with provision for right turning lane. A plaza area is proposed west of the main retail building with a children's play area adjacent to the proposed creche towards the southern boundary.

2.3 The details of the proposal are set out in a number of documents accompanying the application including:

- Planning Report and Retail Impact Assessment by TBP Planning and Development Consultants
- Preliminary Construction Environmental Management Plan CEMP SDS Design Engineers.
- Preliminary Construction and Demolition Waste Management Plan SDS Design Engineers.
- Flood Risk Assessment Hydro Environmental Ltd
- Traffic Impact Report Stephen Reid Consulting.
- Services Design Report SDS Design Engineers.

2.4 I note Appendix 1 of Planning Report and Retail Impact Assessment by TBP Planning and Development Consultants which set out a Masterplan for the wider site (6.4ha) envisaging Phase 2 to comprise 7 retail units 139.5sq.m each and 75 car

parking spaces; Phase 3 Primary care centre and ancillary office accommodation 1860sq.m over 2 floors, 38 car parking spaces. Phase 4 Car Park. Phase 5. Area Zoned Open Space.

2.5 I note that in response to the Council's request for additional information some revisions were made to the proposal including:

- Alterations to design to provide for more gradual stepdown from office building to store. Office 1 and 2 fronting Limerick /Clare Road at first and second floor level with Net area 237sq.m, gross area 340 sq.m. Office 3 fronting Toberteascáin Road at ground and first floor level (Gross Area 717 sq.m nett area 536sq.m)
- Altered layout to Tobarteascáin Road.
- Provision for retail / café unit to the southwestern corner of the main building 75 sq.m
- Change of creche to retail unit. 200 sq.m
- Retail Unit 1 revised 315 sq.m
- Relocation of substation building towards the eastern part of the site.
- A total of 137 car parking spaces are provided.
- Licensed discount foodstore retains gross floor area of 2190 sq.m. with net sales floor area of 1,200 sq.m.

### **3 Planning Authority Decision**

#### **3.1 Decision**

3.1.1 By order dated 17<sup>th</sup> October 2018, Clare County Council decided to grant permission and 21 conditions were attached which included the following:

- Condition 2. No development shall commence on site unless and until St Flannan's culvert element of the Ennis South Flood scheme is completed unless otherwise agreed in writing with the Planning Authority.

- Condition 3. The development shall not come into operation unless and until the right hand turning lane from the Tobarteascáin Road into the site is in place. This right hand turning lane shall be 3m in width and shall be in accordance with TII DN Geo 0360. The road markings in the taper areas shall be intermittent at all locations where traffic from adjoining properties is required to cross over same.
- Condition 4. Development Contribution S48 €78,570 in accordance with the Development Contribution Scheme.
- Condition 5<sup>1</sup>. Special Development Contribution €235,570. towards signalisation of the St Flannan's roundabout junction, footpath and pedestrian crossing provision. Traffic calming, public lighting, tree removal and road surfacing and line marking.
- Condition 6. Amendments to layout to include provision for 2 age friendly spaces adjacent to parent and child parking spaces. Details of servicing for retail units, café and office. Revised elevations for 2 storey office building replacing aluminium cladding on north, east and west elevations with stone cladding. Replacement of aluminium cladding on north of discount store. Landscaping to include additional screen planting between the development and dwelling to the south west. Fencing to playground. Covered cycle parking.
- Condition 7. Not open to public outside the hours of 0800 to 2200 Monday to Sunday. Deliveries not before 0700 Monday to Saturday inclusive nor before hour of 0800 on Sundays and public holidays nor after 2200 hours on any day.
- Condition 8. Details of future occupiers to be agreed. Discount food store plan to demonstrate net retail floor space not exceeding 1200 sq.m.
- Condition 9. Management company.
- Condition 10. Overall Development herein permitted to be completed prior to operation of the discount foodstore.
- Condition 12. Groundworks to be monitored by suitably qualified archaeologist.
- Condition 13. Revised lighting plan to be submitted showing additional lighting to footpath on Tobarteascáin Road in the north of the site, also north of the playground to serve the ramp and steps, in the immediate environs of the access to the discount

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<sup>1</sup> Condition 5 is the subject of first party appeal.

foodstore, to serve pedestrian crossings within the site. Lighting plan to include revised lighting proposals for the plaza area. Replacement of plaza luminaires with directed and cowled lighting so as not to interfere with traffic.

## **3.2 Planning Authority Reports**

### **3.2.1 Planning Reports**

3.2.1.1 Initial Planning report sought a number of items of further information to include revisions to proposed design to provide for a more gradual transition in building height, provision for active frontage to Toberteascáin Road. Entrance required to southwestern corner of the building to provide active use to plaza area. Additional details to include roof plan and clarification of any utilities at roof level. Clarification also sought in relation to use of playground whether community use or creche use. Passive surveillance was raised as an issue as well as boundary treatment. The grouping of trolley shelter, substation, bin storage was encouraged to avoid visual clutter. Clarification required in relation to external finishes and omission of totem signage. Potential operators of units to be identified. Retail impact assessment to be supplemented to include concurrent neighbourhood proposal PL Ref 17/613. ABP Ref.30046<sup>2</sup> mixed use development within Clonroadmore neighbourhood (Heather Hill permitted under 05/502) and the neighbourhood centre to the north of the site (The Mall). Further information to include autotrack analysis, provision for pedestrian crossing adjacent to Dún an Rí estate, clarification of cycle parking and provision for electrical vehicle charging points.

3.2.1.2 Second planning report, countersigned by the Senior Planner, asserts that the scale of the proposal is significantly less than that refused by the Board. Having regard to the commercial land use zoning and the identified need for a neighbourhood centre at this location, the principle of the proposal is acceptable. In relation to the Retail Impact Assessment the proposal will not have an adverse impact on the vitality and viability of the town centre and existing centres in the environs. In relation to the

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<sup>2</sup> Permission granted by Clare County Council was subsequently overturned by the Board. See section 4 Planning History below.

design revisions provide for an active frontage to Tobarteascáin Road. Clarification that playground is for public use is welcome and issues with regard to boundary treatment and finished levels to be addressed by way of condition. External finishes are largely acceptable however stone cladding should be provided to the northern elevation. Omission of totem signage to be achieved by condition. In relation to flood risk a condition required to ensure no commencement pending completion of Ennis South Flood Relief Scheme. A special Contribution should apply to allow for replacement of roundabout with a signalised junction, footpath removal of trees, road marking and pedestrian crossing. Permission was recommended subject to conditions.

### 3.2.2 Other Technical Reports

3.2.2.1 Road Design Office notes recommends that the roundabout to be replaced with signals to provide advance stop boxes for cyclist and pedestrian phases in timings. A MOVA system was recommended. A percentage contribution for the development towards the upgrade to be agreed and conditioned. Noting auotrack analysis demonstrates exiting artic having to cross the east bound lane deliveries to be confined to off peak times. Delivery to retail units to be addressed. Right turning lane should be 3m wide not 2.7 as shown. Planting should not obscure sightlines. Parking to be provided in accordance with Development Plan with covered cycle parking. Public lighting along the Tobartaiscáin road to be reviewed. Zebra pedestrian crossing rather than signalised crossing recommended on Tobertescáin road east of the site. Trees to be removed to ensure visibility of the proposed crossing. Signs and road markings to comply with traffic signs manual. Tactile paving in accordance with NRA Pedestrian crossing specification. Construction traffic management plan to take account of the proximity to school.

3.2.2.2 Chief Fire Officer's report seeks further information to include details of fire hydrants and water supplies for firefighting.

3.2.2.3 Area Engineer recommends condition to apply to ensure St Flannan's culvert element of the Ennis South Flood Relief Scheme is completed prior to the commencement of development. Upgrade of public lighting required. Pedestrian crossing adjacent to Dún and Rí estate and pedestrian path/cycleway on the

southern side of the Tobarteascáin Road from this crossing to the proposed development. Removal of trees within the landholding to the east of the site required. In relation to lighting and traffic calming and signage, 40% of overall cost should be apportioned to the proposed development. In relation to alterations to the roundabout 50% of the cost should be apportioned to the proposed development with 25% of the cost to apply to remaining masterplan lands. The preferred option is for the applicant to carry out work adjacent to the development including resurfacing of the Tobarteascáin road following flood relief scheme, line markings cycleway and pedestrian crossing. Conditions recommended.

### **3.3 Prescribed Bodies**

3.3.1 Irish Water Submission indicates no objection subject to connection agreement

### **3.4 Third Party Observations**

3.4.1 Seven third party submissions were received in respect of the development from residents, businesses and other interested parties. Submissions have been summarised as follows:

- Submission from Vivienne Purcell and Ciara Gleeson object on grounds of traffic hazard, flood risk, negative impact on existing retail providers and town centre and negative impact on residential amenity. Development does not adhere to the ethos of neighbourhood centre.
- Paul Ryan and Kay Ryan, Ryan's Centra, Clonroadmore raise issues of traffic and retail impact. Scale of proposal is significant. Piecemeal development should be avoided.
- Gerard Sadlier, outlines concern with regard to delivery of masterplan.
- Gerard O Connor expresses concerns regarding delivery of playground, park and open space. Compliance with definition of neighbourhood centre is questioned, impact on existing retail and town centre. Requirement for provision of buffer between the development and adjoining residential area.
- GVA Planning on behalf of Tesco Ireland Ltd. asserts that the design of proposed development is substandard and will represents a missed opportunity to provide a



well-designed integrated neighbourhood centre. Proposal fails to deliver active frontage and fails to promote active sustainable forms of transport.

- RGDATA submission objects to the proposal. Large out of town location on the periphery of Ennis presents a threat to the vitality and viability of Ennis Town Centre. Significant retail on this site consistently refused by the Board. Proposal has disregarded vacancy rates in Ennis Town Centre and failed to carry out the requisite sequential test. According to Geoview Health Check report 2018 vacancy rate in Ennis Town Centre stands at 17.4% which is significantly higher than the national average 13.3%. Adverse cumulative impact with Cahircalamore and Limerick Road. Proposal does not accord with designated role of Neighbourhood Centre and would serve a much wider catchment in excess of the designation. Contrary to CDP Objective V3(a)8 the proposal exceeds net retail cap. Disproportionate gross floor area proposed for anchor retail unit. Proposal is premature pending completion of Ennis South Floor Relief Scheme and flood risk arising from swallow hole is not mitigated. Other issues raised in regard to injury to established residential amenity and poor playground design.
- Patrick Talty, Tulla asserts that the development should be required to provide for Electrical Vehicle Charging Points as a condition of Planning.

## 4 Planning History

4.1 There is an extensive Planning History on the site and adjacent land including the following:

**PL58.240147 11/6** March 2013 The Board refused permission for demolition of two habitable houses and construction of a new vehicular and pedestrian entrance. Refused on grounds of piecemeal development.

**PL240148 11/12** March 2013. The Board refused permission for demolition of all structures including 5 residential units office block and ancillary buildings, provision of a public plaza facing onto the Limerick Road, a retail development including a foodstore of 7,834 sq.m gross incorporating customer restaurant and café, off license sales area, dot com area storage service yard. A separate two storey retail

and office block of 1,194 sq,m gross. A standalone two storey office block of 657 sq.m gross, 3 kiosk units with a total gross area of 216 sq.m connected by a covered walkway in the car park area, 610 car parking spaces provision of a cycle parking, trolley bays and vehicular access to and from Tobarteascáin Road. Refused on grounds of adverse impact on vitality and viability of the town centre contrary to retail strategy for Ennis, and prematurity pending upgrade of Clareabbey Wastewater Treatment Plant and associated sewer network. A further reason related to flood risk.

**10/07** Application deemed withdrawn.

**PL58.216637** 04/207 October 2006. The Board refused permission in 2006 following third party appeals for a retail development comprising 15,218.5sq.m, gross floor area. Consisting of retail superstore, 7 no retail warehouse units, 1 garden centre, drop in child care facility associated car parking provisions and external signage. Refusal was on grounds of zoning, piecemeal development, lack of masterplan, inappropriate layout and design. Lack of district centre format and injury to residential amenity.

**PL58.216268** 05/159. October 2006. Refusal of permission for demolition of buildings on site construction of new vehicular access road onto N18 and relocation and reconfiguration of parking facilities associated with the West County Hotel. Decision to grant permission by the local authority was overturned on appeal to An Bord Pleanála on grounds of material contravention of the development plan, prematurity pending determination of road layout for the area and negative impact on residential amenity.

**05/153** Withdrawn.

4.2 I also note the following recent decision by the Board in relation to a site at Cahercalla More, Kilrush Road, Clonroadbeg referenced within the third party appeal submissions to the Board on the appeal file:

**300046-17** May 2018 Development consisting of change of use from and modifications to an existing retail warehouse development to provide for a mixed use neighbourhood centre and medical services. Refused for the following reasons:

*“Having regard to –*

*(a) the scale of the proposed development which would provide for a total floor area in excess of 6,000 square metres served by 216 car-parking spaces,*

*(b) the mix of uses proposed including retail and medical uses of a significant scale in the context of Ennis,*

*(c) the pattern of development in the area, the distance of the site from the town centre of Ennis and the location of the site on a major link road between the town centre and the N85 ring road and M18 motorway, and*

*(d) the existing quantum of retail and commercial development within Ennis and the level of vacancy currently prevailing therein,*

*it is considered that, notwithstanding the zoning of the site for use as a neighbourhood centre, and objective COM6, the proposed development would be of an excessive scale which is beyond what would be reasonably envisaged for a neighbourhood centre in this area and would be of a nature and scale that would create a counter-attraction to existing town centre services. This would seriously impact on the vitality and vibrancy of Ennis town centre and would constitute an unsustainable form of development which would be principally dependent on private car based transport and on serving a wider catchment than the Cahircallamore neighbourhood area, as envisaged by objective COM6 in the Development Plan. The proposed development would, therefore, contravene the policies of the Mid-West Retail Strategy and Mid-West Regional Planning Guidelines 2010-2022 and the strategic aim of the current Clare County Development Plan, which seek to consolidate town centres and co-ordinate transport and land use planning thereby reducing the need to travel, and would conflict with objective V3(2)(8)(c) of the Development Plan, which seeks to encourage the provision of new neighbourhood centres...in order to provide a mix of uses and services suited to the scale of the local neighbourhood. Furthermore, having regard to the "Retail Planning Guidelines for Planning Authorities", issued by the Department of the Environment, Heritage and Local Government in April 2012, which seek to protect the vitality and viability of town centres as the primary focus for retailing development, the Board is not satisfied that a location closer to the town centre of Ennis is not available for the scale of development proposed. The proposed development would, therefore, be contrary to these Ministerial Guidelines, to the overall provisions of the Development Plan and to the proper planning and sustainable development of the area."*

## 5 Policy Context

### 5.1 Development Plan

5.1.1 The Clare County Development Plan 2017-2023 refers has regard to Retail Planning – Guidelines for Planning Authorities 2012, the Mid-West Regional Planning Guidelines 2010-2022 “A strategy for Rural Retailing” Retail Excellence Ireland, Retail Design Manual 2012 and Retail Strategy for the Mid-West Region 2010-2016.

- Chapter 7 Retail

Retail Hierarchy for the Mid-West Region notes Ennis is Hub Town / County Town.

- CDP7.1 is the objective to work with relevant local authorities to prepare a retail strategy for the Limerick Shannon Gateway and for the wider region, if deemed necessary, during the lifetime of the plan.

- CDP7.2 is the objective

*“A) To ensure that sufficient lands are appropriately zoned for retail development in the settlements of County Clare to support a level, quantum and form of retail activity that is appropriate to the position of the settlement on the Settlement Hierarchy for the County.*

*B) To have regard to the guidance set out in “Retail Planning – Guidelines for Planning Authorities 2012” in the assessment of development proposals for retail development.”*

- 7.4.1 “The strategy for retail development in the Ennis Area is to concentrate comparison and convenience retail outlets in Ennis Town Centre, including the identified town centre expansion area. There is additional capacity for convenience retail in the Claureen, Cahircalla More and Clonroadmore neighbourhoods.”

It is not anticipated that there will be any requirement for new edge of centre or out of centre bulky, convenience or comparison floor space in the Ennis area during the lifetime of this plan.”

- The plan includes in Volume 3: Ennis Municipal District Written Statement & Settlement Plans.

Objective V3(a)4 is the objective

- A) *To protect and enhance the vitality and mix of Ennis Town Centre land use activities.*
- B) *To improve the suitability of the Ennis Town Centre retail accommodation for modern retailers whilst preserving the town's attractive historic character;*
- C) *To accommodate the need for additional non-bulky comparison floor space within the town centre or town centre expansion area, ensuring it is integrated into the existing shopping facilities;*
- D) *To provide for neighbourhood facilities to serve existing neighbourhoods and those planned for growth,*

*In identifying the optimum location for retail development, this plan has ensured that the locations chosen provide a synergy with the established shopping centre area. The identified locations will redress the imbalance of retail provision and associated car parking, both of which are predominantly located on the eastern side of town at present. New developments in the settlement area will also be required to incorporate a high level of accessibility for pedestrians, cyclists and those travelling by private car."*

- Table 1 page 21 allocates the Clare / Limerick Road as a neighbourhood centre with a quantity of 1000-1200 convenience space provision.
- Objective V3(a)6 is the objective *"to provide for the additional defined quantum of convenience and non-bulky comparison retail accommodation for modern retailers in the Ennis Town Centre Expansion area.*

*Site OP1 Former Boys National School Site and adjoining Lands on Kilrush road is a significant brownfield site identified for additional convenience and non-bulky comparison goods. Objective V3(a)7 is "to promote opportunity site OP1 as the preferred site for the expansion of retail development and to facilitate such*

*development, in accordance with the cap on floor space as identified in table 1 (3000sq.m convenience) along with necessary associated improvements in vehicular and pedestrian linkages to the town centre,”*

- Edge of Centre and Out of Centre Retail development is addressed at 1.7.5.

*“Edge of centre is defined as a location within easy walking distance (no further than 400m generally of the primary retail area of the town centre. An out of centre location is defined as a location that is clearly separate from the town centre but within the town development boundary, as indicated by this Plan. While it is not the purpose of the planning system to prevent competition or trade diversion, having regard to the plan-led approach to neighbourhood shopping set out below it is not envisaged that edge of centre or out of centre convenience retail development will be required or permitted during the life time of this plan.”*

- 1.7.6 Neighbourhood Centres.

*“The concept of neighbourhood centres in Ennis is fundamental to anchoring communities and meeting daily convenience shopping needs.”*

**Site Com9(a) and Com9(b) Clare Road.**

*“A new neighbourhood centre is proposed to serve the existing residential population along Clare Road. Limerick Road and the immediate environs. The neighbourhood centre must provide for a mix of uses, anchored and physically integrated with a retail unit no greater than 1,200m<sup>2</sup> (net floor area). Other services such as hairdressers/ barbers, pharmacy or café etc. may also be provided in the neighbourhood centre. A playground and park area shall be provided and maintained by the developer as part of the development of the neighbourhood centre.”*

- **Objective V3(a)8** is the objective

*“A To retain the vitality and viability of existing neighbourhood centres and local shops ensuring their sustainable development.*

*B. To work to ensure that all residential areas have easy access to, and are adequately serviced by, local /neighbourhood facilities and services;*

*C To encourage the provision of new neighbourhood centres, in the areas identified to provide a mix of uses and services suited to the scale of the local neighbourhood, Such developments will be subject of a retail impact assessment to ensure that there will be no resultant negative impacts on the vitality and viability of the town centre.*

*D To ensure that a physical buffer is provided between new neighbourhood centres and adjoining residential areas to avoid disturbance and promote compatibility.”*

- **2.9.3 Commercial Lands in Clonroad More**

**Sites Com9(a) and Com 8(b) Tobarteascáin**

*“Neighbourhood centre must comprise a landmark building of a scale height materials and finish appropriate to its landmark location on the entrance to the town. Development proposals shall incorporate a high quality of design which respects the set back / existing building line as established along the Limerick Road. A single access to the overall Com9(a) and Com 9(b) site shall be provided. The neighbourhood centre must provide for a mix of uses anchored and physically integrate with a retail unit no greater than 1,200m<sup>2</sup> (net floor area). Other services such as hairdressers/barbers, pharmacy café may also be provided in the neighbourhood centre.*

*Development proposals for a neighbourhood centre on this site must be accompanied by proposals for complementary community uses including a neighbourhood playground and a park area to be provided and maintained by the developer as part of the neighbourhood centre. ....*

*Future development on the site much also have regard to the findings of the Strategic Flood Risk Assessment in Volume 10(c) of this plan. Commercial and community uses shall be located on site COM9(a) with water compatible uses such as car parking located on site COM9(b).....*

*Although a scheme is proposed to address flooding that has arisen for the swallow hole in the vicinity of St Flannan’s college (Ennis Sought Scheme), the scheme is not designed to provide protection to the subject site. The central area of the site is at a*

*slightly lower elevation and in the event of failure of the scheme, the natural flow route down the road and over the subject site will be resumed. It is therefore essential that a flow route from the road to the southern central area of the site is maintained through landscaping and positioning of buildings. Development of the road frontage at the north of the site may be possible subject to a site-specific flood risk assessment being carried out. The finished floor levels of buildings on the site must be a minimum of 3000mm above ground level to prevent egress of water. Floor levels should also be raised above the level of the overflow spill between the southern central area and the eastern area (SFRA Volume 10(c)).”*

## **5.2 Retail Planning Guidelines for Planning Authorities Department of Environment Community and Local Government. April 2012.**

- **4.11.6 Local Retail Units.**

*“Local retail units such as corner shops or shops located in local or neighbourhood centres serving local residential districts perform an important function in urban areas. Where a planning authority can substantiate the local importance of such units in defined local centres, they should safeguard them in development plans, through appropriate land-use zoning. Development management decisions should support the provision of such units, particularly where they encompass both food-stores and important non-food outlets such as retail pharmacies, and have significant social and economic functions in improving access to local facilities especially for the elderly and persons with mobility impairments, families with small children, and those without access to private transport.”*

## **5.3 Mid-West Regional Planning Guidelines 2010-2022, Mid-West Regional Assembly**

The Region is overprovided with shopping facilities. Smaller rural centres of the region a positive approach to promoting new small-scale development should be pursued to ensure local people have access to shopping facilities which will meet their day to day needs. There is a strong case for strengthening the position of Limerick City Centre in the Regional Shopping hierarchy.

It is noted that Shannon and Ennis are part of a linked Gateway / Hub and have significant roles in catering for the population for the region that residents in the County



Clare area to date these towns have not realised their respective retail potentials. These towns will continue to expand as key growth towns and their retail markets must, therefore, also expand. In this context there may be a requirement for the development of district centres in Ennis and Shannon in order to more appropriately cater for the family shopping market.

## **5.4 Natural Heritage Designations**

The site is not within a designated site. The Lower River Shannon SAC Site Code 002165 is located within 700m to the east of the site. Other designated sites in the vicinity include Newhall and Edenvale Complex cSAC 002091 – Distance 2.2km and River Shannon and Fergus SPA 004077 – Distance 2.2km

## **5.5 EIA Screening**

5.5.1 On the issue of Environmental Impact Assessment screening I note that the relevant class for consideration is class 10(iv) “*Urban development which would involve an area greater than 2 hectares in the case of a business district, 10 hectares in the case of other parts of a built-up area and 20 hectares elsewhere*”. Having regard to the size of the development site (1.32ha) and scale of the development, it is sub threshold and does not the proposal does not require mandatory Environmental Impact Assessment. Having regard to the nature and scale of the proposed development, the brownfield nature of the receiving environment, and to the nature, extent, characteristics and likely duration of potential impacts, I conclude that the proposed development is not likely to have significant effects on the environment and that the submission of an EIAR is not required.

## **6 The Appeal**

### **6.1 Grounds of Appeal**

6.1.1 There are two appeals in this case, a first party appeal of condition 5 and a third party appeal of the decision to grant permission.

## **6.2 First Party Appeal**

6.2.1 The appeal submitted by Tony Bamford Planning on behalf of the first party relates to condition 5 requiring payment of Special Contribution. Grounds of appeal are summarised as follows:

- Proposed works outlined in condition 5 are not warranted at this phase of the development of the overall Com 9 lands.
- Works suggested in the condition were contemplated by the council prior to this application being lodged and can suitably be funded under the normal development contribution scheme.
- Area has local services and a school for which additional upgrades can and arguably should have been made in advance of any development of Com 9 lands.
- Report from Stephen Reid Consulting confirms that the upgrade from roundabout to signalised junction is not required for the proposed development. The conversion from roundabout to traffic signals would not be required to accommodate the traffic generated by the phase 1 development of the overall masterplan lands and the roundabout would continue to function adequately for vehicular traffic movements during peak periods and would be more efficient in catering for traffic volumes in off peak periods where traffic signals could introduce unnecessary delays to traffic passing through the junction.

## **6.3 Third Party Appeal**

6.3.1 The third-party appeal is submitted by RGDATA and grounds of appeal are summarised as follows:

- Inappropriate large-scale retail development out of town location.
- Significant threat to the vitality and viability of the town centre.
- Consistent decisions of the Board to refuse significant retail on this site. Board's recent refusal of the more mixed-use development at Cahircalla More Neighbourhood Centre (ABP300046) is also pertinent.

- Site is approximately 705m by road to the nearest edge of the M1 Mixed Use Zone (town centre) and 1,010 from the commercial core as measured from Upper O'Connell Street. Location on link road to N85 site is out of centre.
- Strategic Development Plan aim to improve the suitability of Ennis Town Centre Retail accommodation for modern retailers whilst preserving the town's attractive historic character will be undermined.
- Development Plan Objective V3(a)6 of the plan "to provide for the additional defined quantum of convenience and non-bulky comparison retail for modern retailers in the Ennis Town Centre expansion area. V3(a)7 seeks "to promote opportunity site OP1 as the preferred site for the expansion of retail development along with the necessary associated improvements in vehicular and pedestrian linkages to the town centre.
- Despite the upturn in the economy there is a disturbingly high rate of vacancy in Ennis Town Centre. 17.4% significantly higher than national average of 13.3%.
- Proposal would constitute a significant intensification of retail provision in this area to a degree that would be contrary to the neighbourhood centre designation. Large retail format along the primary southern artery serving the town would facilitate a wider catchment in excess of neighbourhood centre designation. Notably planning statement refers to a 15-20min drivetime catchment.
- Proposal will threaten and supplant existing retail outlets located across the Toberteascáin road to the north.
- RIA fails to demonstrate no resultant negative retail impacts on the town centre.
- Proposal does not provide buffer to protect existing residences to the south.
- Table 1 of the CDP p 22 Vol3 states that the maximum quantum of net convenience retail floorspace shall range between 1,000-1,200sq.m at the Clare /Limerick Road neighbourhood centre. Proposal involves a total retail area up to 1,790 sq.m (large convenience store and other retail units)
- Disproportionate gross floor area (2,190 sq.m GFA) for the proposed anchor retail unit Net Floor Area (1,200sq.m). Concern that GFA deliberately oversized to address net cap of 1,200sq.m and provide for potential future expansion.

- Neighbourhood Centre Designation does not absolve the requirement for RIA and or sequential test.
- Development is premature pending completion of the Ennis South Flood Relief Scheme and risk of groundwater flooding / flooding arising from the St Flannan's swallow hole remains.
- Proposal would result in a discordant and disjointed urban design intervention at this location. Juxtaposition of poorly animated two storey box corner building with single storey discount store provides an unsatisfactory response to the public realm. Design fails to meet the standards outlined in the Retail Design Manual and development plan requirement for a landmark building.

## **6.4 Applicant Response**

6.4.1 The submission by TBP Planning and Development Consultants is summarised as follows:

- Notably a single third-party appellant in this case.
- Case for development comprehensively set out in original planning report and Retail impact assessment and in response to FI request.
- Appeal is misleading and misrepresentative of case.
- The designated neighbourhood of Clonroadmore is substantial and devoid of good quality neighbourhood scale food retailing.
- Proposal is plan led and is not a peripheral large-scale retail development.

In contrast to 230046 the appeal site is closer to the town centre. Boards reasons for refusal are not reasonably transferrable.

- Capacity assessment undertaken in planning report and RIA lodged at FI stage illustrates the capacity in Clonroadmore to accommodate the proposed scheme and a small convenience offer on the Clare Road (Heatherhill).
- Site OP1 is critical to the development of comparison offer in Ennis.
- Catchment area in TIA at 10 minutes walking distance.

- Area of 1,000-1,200sq.m refers to overall convenience area. Applicant happy to accept a condition preventing use of other commercial units for sale of convenience goods.
- The retail strategy for Ennis is not isolated to the exclusive protection and enhancement of the town centre. The strategy is to enhance and expand the comparison role of the town centre while ensuring the designated neighbourhoods have access to better neighbourhood centre facilities where they exist and where there is a gap creating new neighbourhood centres.
- In relation to flood risk the overall development has been carefully considered in the context of the Strategic flood risk assessment carried out as part of the CDP Site also subject of site specific flood risk assessment.
- Proposal is a distinctive landmark project which entirely embraces good urban design while also creating a viable retail project. Scheme has all the hallmarks of a retail design manual compliant scheme including active perimeter development, active street frontages, excellent passive surveillance, visually interesting design and use of high quality materials, mix of uses, public plaza space, cycle and EV parking, children's play area, permeability through the site.

## **6.5 Planning Authority Response**

6.5.1 The Planning Authority response asserts that the issues raised in both the third party and first party appeals are adequately addressed in the Planner's reports and associated technical reports.

- Having regard to the nature and scale of the proposed development, the relevant Section 28 Ministerial Guidelines, the land use zoning of the site as 'Commercial COM9' and the specific provisions of the site as set out in Volume 3(a) of the Clare County Development Plan 2017-2023 and the pattern of existing and permitted development in the vicinity, it is considered that, subject to compliance with the conditions attached to the permission the proposed development would not seriously injure the amenities of the area or of properties in the vicinity, would not have a negative impact on the vitality and viability of Ennis town Centre, would be

acceptable in terms of traffic safety and convenience and would not be prejudicial to public health. The Planning Authority considers the proposal is in accordance with the proper planning and sustainable development of the area and respectfully requests that the decision to grant permission subject to 21 conditions is upheld.

- Development Contributions Calculations are reproduced as follows:

Special Contributions shall be levied towards required works in the environs of the site in accordance with the recommendations of the Ennis Municipal District Engineers Office. The figures outlined are the amounts payable by the applicant. A full breakdown of the actual overall costs of the works are set out in the Area Engineers report received post the further information response.

No	Item	Contribution Payable
1	Footpath on south side of the Tobarteascáin Rd east of entrance from the pedestrian crossing	€30,000
2	Removal of trees to east of proposed access	€10,000
3	Road resurfacing and line marking	€50,250
4	Pedestrian crossing on Tobarteascáin Road	€25,000
5	Traffic calming east of the site on Tobairteascáin Rd	€5,120
6	Public lighting – East of the site on Tobairteascáin Rd <sup>3</sup>	€4,800
7	Alteration of St Flannan’s junction from roundabout to a signalised junction	€110,400
	<b>Total Contributions</b>	<b>€235,570</b>

While the works listed are outside the reline boundary Clare County Council would be agreeable to the applicants carrying out items 1-4 above under a road opening

<sup>3</sup> I note that the Planner’s report refers to public lighting east of Dun an Rí estate and it is assumed that this is a transcription error.

licence. In such instance there may be scope to reduce the total of the special contribution payable by €115,250.

## **7 Assessment**

7.1 From my review of the file, all relevant documents and inspection of the site and its environs and having regard to national and local policies relating to retail development, I consider that the main issues for consideration may be considered under the following broad headings:

### **Retail Impact**

### **Flooding**

### **Design & layout**

### **First Party Appeal of Condition 5**

### **Other Matters**

## **7.2 Retail Impact**

7.2.1 One of the key policy objectives in terms of retail planning as set out in the national planning guidance and reflected in regional planning guidelines and strategies and through to local development plan policy is the promotion of city/town centre vitality through a sequential approach to development. The primacy of the town centre is a well-established pillar in retail planning terms.

7.2.2 The Ennis Municipal District Written Statement and Settlement Plan, Volume 3 of the Clare County Development Plan 2017-2023 seeks to protect and enhance the vitality

and mix of Ennis Town Centre land use activities and to improve the suitability of Ennis Town Centre retail accommodation for modern retailers whilst preserving the towns attractive historic character. The objective also seeks to provide for neighbourhood facilities to serve existing neighbourhoods and those planned for growth. Objective V3(a)4.

7.2.3 Opportunity sites in the town centre are identified as central to the achievement of the overall vision most notably the former Ennis Boys National School Site and adjacent lands on Kilrush Road (Opportunity Site OP1). In tandem with this approach the plan identifies the need for a limited number of new or refurbished neighbourhood centres to serve new areas for housing or to meet areas of local deficiency. At 1.7.6 it is noted that “Neighbourhood centres generally serve smaller more localised communities, where many of the inhabitants are able to access their daily needs within easy reach of their homes, preferably within walking distance. This is consistent with The Retail Planning Guidelines 2012 which refer to Local Centre or Neighbourhood Centre as *“a small group of shops, typically comprising newsagent, small supermarket /general grocery store, sub-post office and other small shops of a local nature serving a small, localised catchment population.”*

7.2.4 Objective V3(a)8 of the Development Plan is the objective to retain the vitality and viability of existing neighbourhood centres and local shops, encouraging the provision of new neighbourhood centres in the areas identified, to provide a mix of uses and services suited to the scale of the local neighbourhood. Such development will be subject of a retail impact assessment to ensure that there will be no resultant negative impacts on the vitality and viability of the town centre.

7.2.5 Specifically for the appeal site, Com 9(a) Commercial lands at Clonroadmore, the site is identified as having potential to accommodate a neighbourhood centre to serve local residents in the Clonroad More Area. The plan provides that the neighbourhood centre must comprise a landmark building with high quality design. A mix of uses to be provided anchored and physically integrated with a retail unit of no greater than 1,200m<sup>2</sup> (net floor area). Other services such as hairdressers / barbers, pharmacy, café etc may also be provided in the neighbourhood centre.



Development proposals for a neighbourhood centre on this site must be accompanied by proposals for complementary community uses including a neighbourhood playground and park area to be provided and maintained by the developer as part of the development of the neighbourhood centre.

7.2.6 The Retail Impact Statement submitted with the application identifies a catchment as the area within a walk time of 10 minutes from the application site with a population of circa 3,888 in 2016 projected forward at a growth rate of 0.8% per annum as 3,950 in the base year and 4,046 in the design year. Turnover for the store is projected at 9.02 million while available expenditure within Clonroadmore neighbourhood is estimated to be 15.65 million. The First Party asserts that the proposed development is centrally located in the Clonroadmore neighbourhood and that this can readily accommodate the additional convenience floor space proposed. In terms of convenience diversion, it is asserted that the greatest level of trade diversion arising will be on Lidl's existing store which is located to the north of the town, such diversion being positive in sustainability terms. It is asserted that the combined impact of the proposed development and the permitted Heatherhill Neighbourhood Centre to the south of the site on the existing Lids store, Dunnes., Aldi and Tesco is 10% which it is argued is not significant and is readily capable of being absorbed by these outlets. Essentially the first party contends that the development is plan led and will claw back retail expenditure leakage out of the local area.

7.2.7 I have noted the Retail Impact Assessment submitted however I have a number of concerns, I consider that notwithstanding the identification of the site as suitable for a neighbourhood centre, and in light of the uncertainty with regard to the additional proposed retail units as well as potential future retail units envisaged for phase 2 of the masterplan lands, I am not satisfied that the issue of cumulative impact on the vitality and viability of the town centre has been adequately addressed. I also note that the submitted assessment does not make reference to the existing neighbourhood centre to the north. The first party asserts that the appropriate strategy is to strengthen the comparison offer within the town centre. However, I note

that the Development Plan refers to both comparison and convenience in reference to the town centre expansion area. OP1.

7.2.8I note that that while the Retail Planning Guidelines 2012 provide that *“Where the location of a proposed development submitted on a planning application has demonstrated to the satisfaction of the planning authority that it complies with the policies and objectives of a development plan and/or relevant retail strategy to support city and town centre, additional supporting background studies such as demonstration of compliance with the sequential approach, below or additional retail impact studies are not required does not address the issue of sequential approach.”* In relation to District Centres *“Within the gateway cities and towns, hub towns and other larger towns (approximately 10,000 population), locations for the provision of essential local services and facilities to serve particular environs of the city or town, known as district centres, will be identified in the settlement strategy. These should also be supported in developing their retail offer to a scale which accords with the retail strategy. The sequential approach should be applied to these district centres.”* In the absence of the sequential approach and on the basis of the scale of development proposed in conjunction with intended future retail development, I consider that it has not been demonstrated that the quantum of development is appropriate and that the proposal will not have a negative impact on the vitality and viability of Ennis town Centre

7.2.9I consider that in common with the recent proposal refused by the Board ABP 300046-17, the proposal the proposal will result in a not insignificant increase in convenience floor space in an out of centre location and has the potential to give rise to single use car based trips. I further consider that in the absence of some certainty with regard to the viability of the smaller retail units and office units the question of sustainability and likely achievement of a vibrant neighbourhood centre is in question. (On the date of my site visit I noted office suites to let on within the adjacent Mall Business Centre). I further note third party concerns raised within the submissions to the local authority with regard to the delivery of the community elements of the masterplan (neighbourhood playground and park area). I consider that the configuration of the masterplan for the overall lands of which the site forms part is a material consideration in terms of proper planning and sustainable

development. On balance I am not satisfied that the development as proposed has been justified in terms of its retail impact.

### **7.3 Flooding**

7.3.1 I note that the appeal documents include a site-specific flood risk assessment by Hydro Environmental Ltd. In relation to flood risk, the appeal site and associated masterplan lands have been subject to historical fluvial flooding from the Edenvale Stream via overland flow paths from St Flannan's and the Clare Road. A further pathway identified from the November 2009 flood event was upwelling from a seriously surcharged storm sewer and combined sewer pipes on the Tobarteascáin Road. During the 2009 event the estimated maximum level on the site reached 5.6m OD and provided a flood inundation area of 2.7ha on the masterplan lands. CFRAM mapping of the 100-year and 100-year undefended fluvial flood extents show the significant flood extents within the eastern part of the site, an area similar to the observed flood outline for the 2009 flood event.

7.3.2 Flood risk zoning for the site excluding the flood relief scheme shows that the access road and car parking to be within Flood Zone A, plaza and Clare road retail building to be in flood zone C and main building spanning Flood Zone A B and C. I note that the Strategic Flood Risk Assessment prepared for the Clare County Development Plan splits the overall masterplan (Com 9a and Com9b) lands into four areas, three of which pertain to the current appeal site. The assessment notes that the Flood Relief Scheme for the Ennis South Area has been approved and the relevant elements of the scheme involve construction of flood relief culvert for the St Flannan's stream overflow and upgrade works to the River Fergus flood embankment back drain system and sluices along the right bank between Doorra

Bridge and the Clarecastle tidal barrage. Construction period is envisaged to have a 24-month duration.

7.3.3 In relation to the Justification Test (Box 5.1 of the Flood Risk Management Guidelines 2009), the first party sets out to address the criteria as follows:

1. Strategic Flood Risk Assessment justified the zoning.

2. (i) Lands will benefit in terms of reduction in flood risk by the approved Ennis South Flood Relief Scheme. The scheme has been designed to remove the primary source of flood risk to the site through the provision of a suitably sized flood overflow culvert for the Edenvale Stream at St Flannan's swallow hole. Combined with the existing swallow hole capacity (minimum 1.3 cumec capacity) the proposed large 1350mm pipeline will convey substantially greater than 100 year fluvial flood. For much of the site this reduced flood risk from high to moderate and moderate to low. A residual flood risk will remain for the site in the event of blockage to the proposed overflow culvert or pressurised upwelling from the pipeline. However it is asserted that rupture of the culvert and potential upwelling is unlikely given the size of the pipes involved and the sealing of manholes along the pipeline.

(ii) The first party asserts that the proposed neighbourhood store is considered less vulnerable development and suitable for a defended site with low residual flood risk. The more flood vulnerable development that includes the child care / retail unit and ESB substation are located on higher ground which is identified as risk zone C low flood risk. Lower lying lands will contain internal road car parking are considered suitable for defended Flood zone A with residual flood risk. I note however that revisions to the proposed development in response to request for additional information included relocation of the proposed ESB substation to the eastern end of the site adjacent to the proposed access road. (defended Flood zone A).

(iii) As regards mitigation FFL of the main store is 6mOD Malin. Smaller retail units 7.45-7.65mOD. Car parking area is set at 5.4m-5.8mOID. The appeal site and adjacent masterplan lands are contained within an enclosed basin which has the ability at 6mOD to spill overland eastward to lower lying lands referred to in the

SRFA as the Eastern Area. It is asserted that flow through the weathered rock will occur before 6m OD flood level is reached. Such elevated levels would be achieved post flood relief if a serious blockage were to occur or an extreme event that far exceeds available flow capacity. Notably the maximum level reached in 2009 extreme flood event was 5.6m OD.

(iv) Local storm water drainage from roofs roadways and paved areas on the site will be collected in a storm drainage system and attenuated on site until it can be discharged off site via a proposed stormwater connection to the existing Tobarteascáin 600mm Storm Sewer. To achieve a greenfield runoff rate set at 2l/s per ha an attenuation volume of 782m<sup>2</sup> is to be provided on site. This was estimated or a 24 hour 100 year storm event +20% climate change allowance and a site area of 1.3ha (permissible outflow 2.6l/s) The storm drainage system for the Lidl development is designed to connect to the existing Tobarteascáin storm sewer at an invert level of c3.6m OD.

(v) Car parking will be generally located at existing ground levels with small area of infilling required. Flood impact of infilling is compensated by proposed storm drainage treatment.

(vi) A flood pathway from Tobarteascáin Road via the proposed entrance road to the low-lying Com 9B lands as required by SFRA is provided for in the proposed layout.

7.3.4 The flood impact assessment concludes that post the completion of the Ennis South Flood Relief Scheme the proposed development passes the justification test of the Flood Risk Management Guidelines.

7.3.5 I have noted the details of the proposed flood mitigation which seek to address the issues arising however the Strategic Flood Risk Assessment County Development Plan 2017-2023 states that any proposal for development on the site Com 9(a) and Com 9(b) should be considered premature until the Ennis South Flood Relief scheme is constructed and fully operational. The document reports that the scheme has funding approval and was due to commence in 2015. I note a later date of commencement March 2018 proved uneventful as reportedly weeks ahead of the

anticipated start date a contractual issue resulted in this tender being withdrawn. I note that recent media reports reveal the recent response to question in Dáil to finance minister Paschal Donohoe suggesting that the works will get underway in March 2019.<sup>4</sup>

7.3.6 In light of the two-year construction timeframe I am of the view that the development of the site is premature pending the completion of the Ennis South Flood Relief Scheme.

#### **7.4 Design and Impact on the Amenities of the Area.**

7.4.1 As regards the proposed design, I acknowledge the efforts to create a bespoke design solution for the site in terms of the attempt to address the development plan requirements with respect to the creation of a landmark structure, provide for active street frontages, mitigate extensive surface car parking and provide an appropriate urban realm. I note the established character of the area which is car dominant. I further acknowledge that one should not lose sight of the need for a reasonable balance between design innovation and the practical operational requirements of the buildings and spaces. Notwithstanding this I consider that the proposed design requires further progression. I consider that view 1 and view 2 as illustrated in photomontage document are problematic and somewhat bland. I consider that regard should be had to view to and from St Flannan's College. I further note issues of concern with regard to the layout of the proposed detached retail unit (originally proposed as a creche and subsequently modified in response to the request for additional information) and the adjacent children's play area. The layout as currently configured necessitates the provision of a retaining wall between the play area and car park where a less harsh organic transition would be more desirable. As regards the delivery of the wider uses within the overall masterplan lands I again acknowledge the concerns raised with regard to piecemeal development. In my view a holistic approach in terms of the overall masterplan

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<sup>4</sup> <http://www.clare.fm/news/speed-quality-key-ennis-south-flood-relief-works-carey/>  
<https://clarechampion.ie/work-on-ennis-south-flood-relief-scheme-to-get-underway-in-next-ten-weeks/>

lands is indeed desirable in the interest of proper planning and sustainable development.

## **7.5 First Party Appeal of Condition 5.**

7.5.1 On the issue of the first party appeal of condition 5. The condition is as follows:

*“Prior to the commencement of development, the developer / applicant shall pay a Special Development Contribution to Clare County Council as a special contribution towards the signalisation of the St Flannan’s roundabout junction, footpath and pedestrian crossing provision, traffic calming. Public lighting, tree removal, and road surfacing and line marking in the area which are necessary to facilitate the development of the site and the overall area. The contribution payable will be based on the contribution rate applicable at the time of payment and not the rate in existence when permission is granted. The amount of the overall development contribution is set out below and is subject to annual revision with reference to the Wholesale Price Index (Building and Construction) and in accordance with the terms of the Council’s Development Contribution Scheme. The amount is currently €235,570.*

*Reason: In the interest of proper planning and sustainable development of the area and in accordance with Section 48(2)(c) of the Planning and development Act 2000(As amended).”*

7.5.2 In general terms, Development Contribution Schemes apply as a general levy on development and Special Contributions apply to particular developments where, for example, a specific exceptional cost would arise for the authority which is not covered by a scheme or a supplementary scheme, resulting from the carrying out of the development in question.

7.5.3 Condition 5 is expressly specified as a special contribution and the amount apportioned is €235,570. The specified works are towards the signalisation of the St

Flannan’s roundabout junction, footpath and pedestrian crossing provision, traffic calming. Public lighting, tree removal, and road surfacing and line marking in the area is expressly specified as a special contribution. The breakdown of the basis for the calculation is set out in the detailed report of the Area Engineer and summarised within the Council submission in response to the appeal as follows:

No	Item	Contribution Payable
1	Footpath on south side of the Tobarteascáin Rd east of entrance from the pedestrian crossing	€30,000
2	Removal of trees to east of proposed access	€10,000
3	Road resurfacing and line marking	€50,250
4	Pedestrian crossing on Tobarteascáin Road	€25,000
5	Traffic calming east of the site on Tobairteascáin Rd	€5,120
6	Public lighting – East of the site on Tobarteascáin Road	€4,800
7	Alteration of St Flannan’s junction from roundabout to a signalised junction	€110,400
	<b>Total Contributions</b>	<b>€235,570</b>

7.5.4 The specific explanation as to when a planning authority may require the payment of a Special Contribution is covered in Section 48(2)(c) of the Planning and Development Act 2000. It is clear that such a request should only be made in respect of a particular development, which is likely to incur specific exceptional costs not covered by the General Development Contribution Scheme of the Council. They are in addition to the terms of the general scheme and might cover specific developments whereby the scale of the development and the demand, the proposed development is likely to place on public services and facilities is deemed to be exceptional.



7.5.5 On the question of whether the specified works in condition 5 can be deemed to fall within the category for which a special contribution might be sought, I consider that the alteration of the St Flannan's junction from roundabout to signalised junction does not relate to specific exceptional costs that are not suitable for incorporation into an adopted development contribution scheme. As regards the issue of benefit, the works envisaged would be of general benefit to many. I consider therefore that these works should not come within the scope of special contributions as set out in Section 48(2)(c) of the Planning and Development Act, 2000 as amended and should be incorporated within a development contribution scheme prepared and adopted in accordance with the procedures set out in Section 48 of the Act, since such works would be likely to benefit the wider community of the area and are not specific to the proposed development. I note that the submissions on behalf of the first party (Report from Stephen Reid Consulting) suggest that the proposed upgrade is not necessary for the purposes of the phase 1 masterplan land development. In this regard it is of 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) of the Act.

7.5.6 As regards the other specified works I consider that these works are exceptional costs which benefit the proposed development. The calculation is set out in sufficient detail to be compatible with the terms of Section 48(12) (a) and the application of the terms of Section 48 12 (b) and (c) relating to refund or partial refund should the project not be commenced or be partially completed within the specified timeframes, if subsequently required. I note that the submissions from the Council indicate that agreement to the developer carrying out the provision of a footpath on the south side of the Tobarteascáin Road, removal of trees east of the access, road resurfacing and line marking and provision of pedestrian crossing on Tobarteascáin Road under a road opening license which would result in the reduction of the amount of contribution payable however I note the first party has not addressed this issue in submissions.

## **7.6 Other matters**

7.6.1 As regards Appropriate assessment, having regard to the nature and scale of the proposed development and nature of the receiving environment, no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect, individually or in combination with other plans or projects on a European site.

## **7.7 Recommendation**

7.7.1 In light of my assessment as set out above, I recommend that planning permission be refused for the following reasons and considerations.

1. Having regard to –

- (a) The scale of the proposed development and context with regard to intended future development of further retail units, a primary care centre and ancillary office accommodation within the wider masterplan area
- (b) The pattern of development in the area, distance from the town centre of Ennis and site location on a major link road between the town centre and N85 ring road and M18 motorway, and
- (c) The existing quantum of retail and commercial development within Ennis and the level of vacancy currently prevailing therein, it is considered that notwithstanding the zoning of the site for use as a neighbourhood centre, the proposed development would create a counter attraction to the existing town centre services, which would seriously impact on the vitality and vibrancy of the town centre and would constitute an unsustainable form of development which would be principally dependent on private car based transport. The proposed development would, therefore contravene the policies of the Mid-West Retail Strategy and the Mid-West Regional Planning Guidelines 2010-2022 and the strategic aim of the current Clare County Development Plan, which seek to consolidate town centres and co-

ordinate transport and land use planning thereby reducing the need to travel. The proposed development would, therefore be contrary to the proper planning and sustainable development of the area.

2. Having regard to the location of the proposed development within an area which is at risk of flooding and to the provisions of The Planning System and Flood Risk Management Guidelines for Planning Authorities November 2009 and to the Strategic Flood Risk Assessment Clare County Development Plan 2017-2023, it is considered that the proposed development would be premature pending the implementation of the Ennis South Flood Relief Scheme.

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Bríd Maxwell  
Planning Inspector

19<sup>th</sup> February 2019