



An  
Bord  
Pleanála

## Inspector's Report

### ABP-306980-20

#### Development

Completion of the construction of the development permitted under PA Ref: FW19A/0009 subject to amendment to condition 13 (ii) to allow for deliveries during the operational opening hours of the proposed development and to remove condition 10 (v) which also related to servicing hours.

#### Location

Lands bounded by Clonsilla Road to the south and Clonsilla Link Road to the east, Clonsilla, Dublin 15

#### Planning Authority

Fingal County Council

#### Planning Authority Reg. Ref.

FW19A/0233

#### Applicant(s)

Lidl Ireland GMBH.

#### Type of Application

1<sup>st</sup> party v's Refusal.

#### Planning Authority Decision

Refuse Permission

#### Type of Appeal

First Party v's Refusal

#### Appellant(s)

Lidl Ireland GMBH.

#### Observer(s)

Cllr. Tania Doyle.

**Date of Site Inspection**

25<sup>th</sup> of June 2020

**Inspector**

Stephanie Farrington

## 1.0 Site Location and Description

- 1.1. The site is located to the west of the junction of Clonsilla Road and Clonsilla Link road. Construction works have commenced on foot of the development permitted under FW19A/0009.
- 1.2. Porters Gate residential development is located to the north and west of the site. St. Mary's Church, a protected structure is located to the south west of the site and single storey cottages are located south of Clonsilla Road.

## 2.0 Proposed Development

- 2.1. The proposed development comprises completion of the construction of the development permitted under PA Ref. FW19A/0009 subject to amendment to condition no. 13 (ii) to allow for deliveries during the operational hours of the proposed development and to remove condition 10 (v) which also related to servicing hours.
- 2.2. Condition 10 (v) outlines that "*Deliveries shall be scheduled to be outside the peak operating hours of the car park*".
- 2.3. Condition 13 (ii) states that: "*Deliveries to the facility shall only occur between 8am and 11am Monday-Saturday and between 10am to 12pm on Sundays and Bank Holidays unless otherwise agreed in writing with the Planning Authority*".

## 3.0 Planning Authority Decision

### 3.1. Decision

Fingal County Council issued a decision to refuse permission for the proposed development in accordance with the following reasons and considerations:

1. The proposed gives rise to potential conflict between the movement of pedestrians and reversing HGV vehicles. Deliveries outside the peak operational hours of the development reduces the potential conflict. Accordingly, it is considered reasonable that the aforementioned conditions continue to be applicable to the management of deliveries to the store and in

the absence of same, the development would have the potential to endanger public safety by reason of a traffic hazard.

2. The development as proposed would contravene materially a condition attached to an existing permission being Condition No. 10 and Condition No. 13 of FW19A/0009.

## 3.2. Planning Authority Reports

### 3.2.1. Planning Reports

The Planner's report reflects the decision of the planning authority. The following provides a summary of the points raised.

- Mixed use scheme permitted under FW16A/0176 as amended by FW19A/0009 provided for a delivery area and access loading ramp to the west of the store. The arrangement shown facilitates a truck to reverse up the ramp before exiting in forward gear.
- Refers to report from the Transportation Planning Division which outlines that the main issue with reversing manoeuvres within a car park is the conflict between the movement of pedestrians and the reversing HGV. Deliveries outside the peak operational hours of the development reduces the potential conflict.
- Report concludes that given the manner in which deliveries to the premises are received and the configuration of the car park, it is considered appropriate that the current arrangements as required under Condition 13 (ii) and Condition 10 (v) are retained.
- Concurrent application FW19A/0234 under consideration by the planning authority for extended opening hours.

### 3.2.2. Other Technical Reports

#### Transportation Division:

Outlines that the main issue with reversing manoeuvres within a car park is the conflict between the movements of pedestrians and the reversing HGV vehicle. Deliveries outside of the peak operating hours of the development reduces the potential conflict.

Report states that the HGV deliveries shall continue to be outside of peak operational hours of the car park in accordance with the requirements of Condition 10 (v).

As an alternative manoeuvre it is suggested that the delivery truck could reverse into the loading bay from the access road. This would minimise turning movements within the car park.

If a grant of permission is being considered to allow deliveries during the peak operational hours of the car park then the following condition applies:

A Banks Man shall be present during deliveries and shall be implemented as part of the developments Health and Safety Plan and shall be the responsibility of the operators.

Water Services: No objections noted.

Environmental Health Officer: The Environmental Health Officer's Air and Noise Unit is satisfied with the proposed change in hours for deliveries subject to a condition that no deliveries to the store occur after 20.00hrs to prevent sleep disturbance/ noise nuisance from the deliveries.

### 3.3. **Prescribed Bodies**

None.

### 3.4. **Third Party Observations**

None.

## 4.0 Planning History

The following planning history relates to the appeal site.

**P.A. Ref: FW 19A/0234:** Planning permission granted for amendment to condition 13(i) of PA Ref 19A/0009 to increase trading hours as follows:

- From 08.00hrs to 21.00hrs Monday to Saturday and 10.00hrs to 19.00hrs on Sundays and Bank Holidays
- To 08.00hrs to 22.00hrs Monday to Saturday and 09.00hrs to 21.00hrs on Sundays and Bank Holidays.

**P.A. Ref: FW19A/0009:** Planning permission granted for amendments to Register Reference FW16A/0176 (ABP Ref) PL06F.249188. The amendments relate to the neighbourhood centre elements of the permission including the following.

- A 2 storey supermarket with ancillary off licence sales, measuring 2,445 sq.m. gross and located along the southern boundary of the site. Under PA Ref FW16A/0176, PL06F.249188 permission was granted for an anchor store at this location with a gross floor area of 1,288 sq.m. and net retail area of 942 sq.m.
- A single storey building including a café and retail unit along the eastern boundary of the site (similar location to the building previously permitted along the eastern boundary).
- The provision of external undercroft car parking and cycle parking;
- Vehicular access and egress from the access permitted under PA Ref FW16A/0176 and ABP Ref: PL06F.249188
- Signage, landscaping, connections to drainage and ancillary site development works.

The following conditions attached to this permission are relevant to the current appeal.

- Condition 10 (v) outlines that *“Deliveries shall be scheduled to be outside the peak operating hours of the car park”*.
- Condition 13 (ii) states that: *“Deliveries to the facility shall only occur between 8am and 11am Monday-Saturday and between 10am to 12pm on Sundays and Bank Holidays unless otherwise agreed in writing with the Planning Authority”*.

**P.A. Ref FW16A/0176** Planning permission granted by Fingal County Council and An Bord Pleanala on appeal (PL06F.249188) for development of a mixed use scheme on the site. The development comprised of 103 no. residential units and a local neighbourhood centre.

**P.A. Ref: FW09A/0019/E1** Permission granted to extend duration of permission Reference FW19A/0009 to 14<sup>th</sup> of May 2020.

**P.A. Ref FW09A/0019:** Planning permission granted by Fingal County Council and An Bord Pleanala under PL06F.235260 for a mixed use residential and neighbourhood centre development.

## 5.0 Policy Context

### 5.1. Development Plan

- 5.1.1. The appeal site is zoned for Town and District Centre purposes “TC” within the Fingal County Development Plan 2017-2023. This zoning objectives aims to *“protect and enhance the special physical and social character of town and district centres and provide and/or improve urban facilities”*.
- 5.1.2. Lands to the north and south of the site are zoned for residential purposes (RS) with an objective to *“provide for residential development and protect and improve residential amenity”*.

5.1.3. The zoning map illustrates an Indicative Cycle/pedestrian route along the southern boundary of the site along Clonsilla Road.

## 5.2. **Natural Heritage Designations**

None.

## 6.0 **The Appeal**

### 6.1. **Grounds of Appeal**

6.1.1. TBP Planning and Development Consultants have prepared a first party appeal which addresses the points raised within the decision of Fingal County Council to refuse planning permission for the development. The following provides a summary of the grounds of appeal.

- Application seeks to allow servicing hours at the permitted store to be permitted during normal opening times.
- If restricted servicing hours are applied this would be the first store operated by Lidl with substantially restricted servicing hours.
- The servicing restrictions are unworkable for operator.
- The application seeks to allow the hours of servicing to reflect the proposed revised trading hours.
- Deliveries are scheduled from main distribution hub in Mullingar. As a vehicle may be servicing more than one store, flexibility in delivery times is required.
- Service yard has been designed to reduce impact on adjoining residential development to the west. It is located 30 m from the apartment and is enclosed to mitigate noise impacts.
- A similar condition was recommended by Fingal County Council under Register Reference FW16A/0176. This provided more generous delivery times from 7am to 11am Mondays to Saturday and 9am to 12pm on Sundays and Bank Holidays. An Bord Pleanála did not include restrictions on deliveries as a condition on the final decision.



- The requirements of Condition 13(ii) contradicts Condition 10(v) as peak operating hours are between 8am and 10am. It would not be possible to comply with Condition 13(ii) and at the same time remain compliant with Condition 10(v).
- Condition 10(v) is unmanageable, non-prescriptive and entirely unenforceable and is therefore ultra vires. Planning authority has provided no tangible justification for the condition other than to suggest it is reasonable.
- Section 4 of the appeal requests the removal of Conditions 13(ii) and 10 (v) in accordance with the parent permission for the lands FW16A/0176 (PL06F.249188).

6.1.2. The appeal includes inputs from Stephen Reid Consulting Ltd. Transportation Consultants which raises the following technical points:

- Practice of reversing into a loading bay is commonplace – similar access arrangements in place at Dublin Road Swords and Strand Road, Portmarnock. No issues of conflict between delivery trucks/ cars and pedestrians at these sites.
- Deliveries are often scheduled for quieter periods during the day to minimise interaction with other users of the car park.
- Application submitted on the basis of deliveries to the Lidl store being undertaken using a 10m long rigid truck instead of a more traditional 16.5m articulated truck.
- Use of 10m truck agreed by condition on the Strand Road, Portmarnock site and sites at Terenure, Cabra and Drumcondra. A rigid 10m truck will have less onerous manoeuvring requirements than larger vehicle.
- 1-2 deliveries anticipated per day. Drivers will operate from the Lidl Regional Distribution Centre and will be familiar with delivery arrangements and site specific constraints.
- Reversing within the development car park would be a better and safer option than the suggestion within the planning authority transportation report relating to reversing manoeuvres from the access road.

- Vehicles will be moving at low speeds within the site and trucks entering/exiting the loading bay will be clearly visible to persons in the vicinity.
- Risk is considered low and manageable, with no specific mitigation measures required over and above the standard Lidl car parking/delivery access signage and road markings.

## 6.2. **Planning Authority Response**

The planning authority remains of the view that deliveries to the store should be in line with the conditions attached to the parent permission.

## 6.3. **Observations**

An Observation on the first party appeal was received by Councillor Tania Doyle. The following provides a summary of the points raised:

- Requests permission is refused for the proposed amendment.
- Development contravenes existing permissions. Conflict between the movement of pedestrians and cyclists by the requirement for HGV's to reverse in the loading bay.
- Deliveries outside of peak hours reduce potential conflict.
- Indicative cycle lane is scheduled to operate adjacent to the development.
- Amendment would have the potential to endanger pedestrian and cycle traffic using or traversing through the site.
- The development already has potential to create noise nuisance and sleep disturbance.
- Town centre/district centre zoning objective seeks to "provide and/or improve urban facilities". The proposal does not offer any improvement in urban facilities.

## 7.0 **Assessment**

7.1. I consider that the main issues in this appeal are as follows:

- Principle of Development
- Traffic and Transportation Issues
- Impact on Residential Amenity
- Contravention of Conditions attached to FW19A/0009
- Appropriate Assessment

## 7.2. Principle of Development

- 7.2.1. The appeal site is zoned for Town and District Centre purposes “TC” with an objective to *“protect and enhance the special physical and social character of town and district centres and provide and/or improve urban facilities”*.
- 7.2.2. The proposed development comprises the completion of the development as permitted under PA Ref FW19/0009 subject to amendment of Condition 13 (ii) and removal of Condition 10 (v) of the permission.
- 7.2.3. Under PA Ref FW19/0009 planning permission was granted for amendments to the neighbourhood centre element of the mixed-use development permitted under PA Ref FW16A/0176, (ABP Ref) PL06F.249188. Planning permission was granted for the proposal subject to 27 no. conditions. The permitted development is currently being implemented on site.
- 7.2.4. The principle of the development permitted under PA Ref FW19/0009 has clearly been established and is in accordance with the TC zoning objectives pertaining to the site. On this basis I have no objection to the completion of the development as permitted.

## 7.3. Traffic and Transportation Issues

- 7.3.1. The proposed development seeks completion of the construction of the development permitted under Register Reference FW19A/0009 subject to amendment to Condition no. 13(ii) to allow for deliveries during the operational hours of the proposed development and to removal of condition 10 (v) which restricts deliveries during peak operating hours.
- 7.3.2. Planning permission was refused by Fingal County Council for the proposed development on the basis of potential conflict between the movement of pedestrians and reversing HGV vehicles at the access to the development leading to a traffic

hazard. It is stated that deliveries outside the peak operational hours of the development reduces the potential conflict. It is stated that in the absence of such conditions the development would have potential to endanger public safety by reason of traffic hazard.

- 7.3.3. A case is made within the first party appeal that the cumulative impact of the above conditions place a significant restriction on delivery hours to the permitted retail unit. Peak store operating hours are identified between 8am and 10am on weekdays within the appeal. I note that these times overlap with the weekday delivery times of 8am and 11am as identified in Condition 13(ii).
- 7.3.4. I concur with the case made within the first party appeal and I consider that the combined restrictions on deliveries imposed by Conditions 13 (ii) and Condition 10 (v) are particularly onerous. The requirements of the conditions are considered having regard to the planning authority's reason for refusal as follows.
- 7.3.5. Condition 13 (ii) states that: "*Deliveries to the facility shall only occur between 8am and 11am Monday-Saturday and between 10am to 12pm on Sundays and Bank Holidays unless otherwise agreed in writing with the Planning Authority*". Reason: In the interests of clarity and in order to protect the residential amenities of the area.
- 7.3.6. On review of the planning report and decision issued under P.A. Ref. FW19A/0009 I note that the rationale for the imposition of condition no. 13 (ii) of the permission was to "*protect the residential amenities of the area*" rather than transportation related concerns.
- 7.3.7. I furthermore note that the restrictions on delivery hours set out in Condition 13 (ii) was not included on the basis of a recommendation within the Transportation Planning officers report. The Transportation Report raises concerns in relation to deliveries during peak store operating hours and outlines that "*deliveries outside of the peak operating hours of the development reduces the potential conflict*". I note that this is cited in the reason for refusal.
- 7.3.8. In terms of impact on adjoining residential amenities, I consider that the main impact of the proposed revisions to Condition 13(ii) relates to noise impact associated with deliveries. The issue of impact on residential amenity and the requirements of Condition 13 (ii) is addressed in Section 7.4 of this report.

- 7.3.9. Condition 10 of FW19A/0009 relates to Traffic and Transportation requirements of the Transportation Planning Section in Fingal County Council. Condition no 10 (v), which is the subject of this appeal outlines that *“Deliveries shall be scheduled to be outside the peak operating hours of the car park”*. Reason: In the interest of proper planning and sustainable development.
- 7.3.10. A detailed rationale for the imposition of condition no. 10 (v) is set out within the Transportation Planning Section report on the current application. This raises concern in relation to delivery trucks reversing within the site and conflicts between pedestrian movement and reversing HGV’s. It is stated that deliveries outside of the peak operating hours of the development reduces the potential conflict.
- 7.3.11. Drawing no. 3001 illustrates delivery arrangements to the retail unit. The delivery area is accessed via a ramped access to the west of the permitted store. The delivery vehicle would access the car park from the permitted access from Clonsilla Link Road, drive up the 5.8m aisle between parking spaces 13-18 and 36-44 and reverse from there into the designated loading bay to the west of the permitted retail unit.
- 7.3.12. Having reviewed the layout and configuration of the proposed car park and loading bay I consider that there is potential for conflicting movements between pedestrians, customers parking and the reversing delivery vehicles. Such conflicts arise in particular in the vicinity of parking spaces 13-18 and 36-44. I also consider that there would be a potential for conflict with the access/egress to the undercroft parking area.
- 7.3.13. The case made within the first party appeal in relation to the lack of any restrictions imposed by An Bord Pleanála on deliveries under the parent permission under PA Ref. P.A. Ref FW16A/0176 ABP Ref. PL06F.249188 is noted. Contrary to the development description which relates to amendments to the wording of Condition 13 (ii), I note that the appeal requests the removal of Conditions 13 (ii) and Condition 10 (v) in accordance with the parent permission.
- 7.3.14. On review of this history file I note that the size and layout of the retail unit, the car park layout and delivery arrangements were revised under PA Ref FW19A/0009 and an undercroft parking area was included. Issues of potential vehicular and pedestrian conflict did not arise under the development permitted under ABP Ref

PL06.249188 and deliveries were proposed outside business operating hours as detailed within the Traffic Impact Assessment submitted in conjunction with the application. On this basis issues of conflict between delivery vehicles and the operation of the car park did not arise.

- 7.3.15. I note the case made within the first party appeal that delivery van drivers would be aware of the site layout and delivery arrangements for each store and no specific mitigation measures required over and above the standard Lidl car parking/delivery access signage and road markings. I also note the reference to the limited number of deliveries proposed to the store each day (1-2 daily) and the fact that delivery trucks will be restricted to 10m.
- 7.3.16. However, I consider that not all customers, pedestrians or vulnerable road users would be aware of delivery arrangements on site and in my view the potential for conflicts between delivery manoeuvres and customer movements arise in the context of the permitted layout particularly at peak store operating times.
- 7.3.17. On this basis I consider it reasonable to restrict deliveries from peak store operating times as the potential for conflict between pedestrian, vehicles and deliveries is higher when the store and car park is operating at higher capacity. Alternatively I consider that additional safety measures for management of deliveries could be put in place to facilitate deliveries during store operating hours. Such safety measures are identified within the Transportation Planning report to include the presence of a banks man on site for deliveries during peak store operating hours.
- 7.3.18. It is suggested within the Transportation Planning Section report that as an alternative to reversing within the site, the delivery truck could reverse into the site from the access at Clonsilla Link Road. I concur with the reservation expressed within the first party appeal in relation to the safety of this arrangement. I consider that such a practice could result in conflict with delivery vehicles, traffic accessing and egressing the store and vehicles on the Clonsilla Link Road resulting in a potential traffic hazard.
- 7.3.19. Having regard to the configuration of the permitted car park and the proposed delivery arrangements I consider it appropriate that either restrictions on deliveries or additional safety measures are imposed during peak operating hours. I therefore recommend amendments to the wording of Condition 10 (v) in this regard.

#### 7.4. Impact on Residential Amenities

- 7.4.1. The appeal site is located in proximity to existing and permitted residential development to the north, south, east and west. The proposed revisions to delivery hours are considered in light of potential impact on the amenity of existing and proposed residential development and in particular potential noise impacts.
- 7.4.2. Condition 13 (ii) of PA Ref FW19a/0233 restricts deliveries to between 8am and 11am Monday-Saturday and between 10am to 12pm on Sundays and Bank Holidays. The reason cited for this condition was *“In the interests of clarity and in order to protect the residential amenities of the area”*.
- 7.4.3. The development as permitted provides for a retail unit to the south of the site addressing Clonsilla Road with car parking to the north. The delivery area is accessed via ramped access to the west of the site and it is proposed that delivery vehicles would reverse from the car park into the loading bay. Undercroft car parking is also incorporated in the design.
- 7.4.4. The nearest residential properties to the appeal site includes the permitted apartment development c. 30m to the west of the site. Existing residential development at Porter’s Gate and Castlefield are c. 100 and 120m from the relate permitted retail store. The existing single storey cottages at Weavers Walk are located to the over 35m to the south of the site at the opposite side of Clonsilla Road.
- 7.4.5. Condition 15 (ii) of FW19A/0009 relates to noise levels associated with deliveries and outlines that:

*“Noise from goods delivery vehicles shall be controlled so they do not pose a noise nuisance at the façade of the nearby noise sensitive location. Details of the noise abatement policy for goods delivery vehicles shall be submitted to the Planning Authority for the written agreement prior to the opening of the retail convenience food store”*.

*REASON: In the interest of the residential amenity, proper planning and sustainable development of the area.*

- 7.4.6. Having regard to the requirements of Condition 15 (ii) and the limited number of deliveries to the store per day I do not consider that revisions to delivery hours would significantly impact on the residential amenities of the area in terms of noise impact.
- 7.4.7. A report has been received from the Environmental Health Officer in Fingal County Council which raised no objection to the subject application subject to condition that deliveries will not be scheduled after 8pm.
- 7.4.8. On the basis of the above I have no objection to the amendment to Condition 13(ii) of the permission to allow deliveries to the facility between 8am and 8pm Monday to Saturday (excluding Bank Holidays) and 9am to 7pm on Sundays and Bank Holidays in order to facilitate more flexible delivery arrangements. No deliveries should occur outside of these hours in the interest of residential amenity.

#### **7.5. Contravention of Conditions attached to FW19A/0009**

- 7.5.1. The planning authority's second reason for refusal outlines that the proposal would contravene materially conditions attached to Condition no. 10 and Condition no. 13 of FW19A/0009.
- 7.5.2. In this regard I note that the subject application seeks planning permission for completion of development as permitted subject to amendment to Condition no 13 (ii) and removal of Condition no. 10 (v).
- 7.5.3. The current appeal relates specifically to Conditions 13 (ii) and 10 (v) and in this regard would not contravene the entire requirements set out under Conditions 10 and 13. An application for extended opening hours set out within Condition 13 (i) has been granted by Fingal County Council under P.A. Ref FW19A/0234 and no issues of contravention of the parent permission arose in this instance.
- 7.5.4. The proposed revisions to conditions have been assessed on their merits having regard to the proper planning and sustainable development of the area.

#### **7.6. Appropriate Assessment**

- 7.6.1. Having regard to the minor nature of the development and its location in a serviced urban area, 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.



## 8.0 Recommendation

I recommend that planning permission is granted for the proposed completion of development subject to amendment to the wording of Conditions 10 (v) and 13(ii) of FW19A/0009.

## 9.0 Reasons and Considerations

Having regard to the 'Town Centre' zoning of the site, the planning history of the site and the pattern of existing development in the area, it is considered that the proposed development, subject to compliance with the proposed amendments to Conditions 13 (ii) and 10 (v) set out below, would not seriously injure the amenities of the area or of property in the vicinity. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 10.0 Conditions

1.	Save for the amendments hereby permitted, the development shall otherwise comply with the terms and conditions of Reg. Ref FW19A/0009 and Reg. Ref. FW16A/0176, PL06F.249188.  Reason: In the interests of clarity.
2.	Amend Condition no 10 (v) as follows:  <i>"Deliveries shall be scheduled to be outside the peak operating hours of the car park, unless additional safety measures for management of deliveries during peak operating hours are subject to written agreement with the planning authority".</i>  Reason: In the interest of traffic safety and proper planning and sustainable development.
3.	Amend Condition no. 13 (ii) as follows:  <i>"Deliveries to the facility shall not occur outside of the hours of 8am and 8pm Monday to Saturday (excluding bank holidays) and 9am to 7pm on</i>

	<p><i>Sundays and Bank Holidays unless otherwise agreed in writing with the Planning Authority”.</i></p> <p>Reason: In the interests of clarity and in order to protect the residential amenities of the area.</p>
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Stephanie Farrington  
Senior Planning Inspector

8<sup>th</sup> of July 2020