



An  
Bord  
Pleanála

## Inspector's Report

### ABP-310230-21

#### Development

Construction of a discount foodstore supermarket with ancillary off-licence sales on an extended site. The proposed development comprises demolition of a single storey discount foodstore (with ancillary off-licence use) and construction of a single storey mono-pitch (with flat roof loading bay) discount foodstore (with ancillary off-licence use) measuring 2,268sqm gross floor space with a net retail sales area of 1,420sqm

#### Location

Lidl, Straffan Road, Maynooth, Co. Kildare W23 FV34

#### Planning Authority

Kildare County Council

#### Planning Authority Reg. Ref.

20/1066

#### Applicant(s)

Lidl Ireland GmbH

#### Type of Application

Permission

#### Planning Authority Decision

Grant Permission

<b>Type of Appeal</b>	<ol style="list-style-type: none"><li>1. First Party v Condition Nos. 2, 3, 4 and 10(a)</li><li>2. Third Party v Grant of Permission</li></ol>
<b>Appellant(s)</b>	<ol style="list-style-type: none"><li>1. Lidl Ireland GmbH (First Party)</li><li>2. Carton Court Residents Association (Third Party)</li></ol>
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	07.09.2021
<b>Inspector</b>	Anthony Kelly

## 1.0 Site Location and Description

- 1.1. The site is located adjacent to the R406/Straffan Road in the southern area of Maynooth in north east Co. Kildare, approx. 250 metres north of Junction 7 on the M4 Motorway.
- 1.2. The existing Lidl site contains a single-storey store in the eastern area of the site with the remainder of the site comprising brick surfaced car parking and vehicular circulation. The site has road frontage to Straffan Road to the west, where there is pedestrian access, and approx. 110 metres of road frontage to the south, which is currently a cul-de-sac. Vehicular access to the site is from this road. The junction of the cul-de-sac and the Straffan Road is signalised. There is a Circle K service station adjacent to the north west of the Lidl site. Fenced off to the north of the existing site is an overgrown, vacant site. There is a residential area north of the fenced off area (Carton Court) and on the opposite side of Straffan Road to the west. The area south of the cul-de-sac is commercial/industrial. There is a vacant site immediately east of the site.
- 1.3. The site has an area of 0.992 hectares.

## 2.0 Proposed Development

- 2.1. Permission was sought for:
  - Demolition of the existing single storey discount foodstore with ancillary off-licence, 1,753sqm gross/1,286sqm net retail sales area,
  - Construction of a single-storey discount foodstore with ancillary off-licence, 2,268sqm gross/1,420sqm net retail sales area,
  - Redevelopment of existing and extended site layout and car parking (increasing from 132 no. to 157 no. spaces) with revised vehicular access and additional pedestrian access to Straffan Road,
  - Boundary treatments, signage, trolley bay, plant and equipment, landscaping, public lighting, electric vehicle charging infrastructure, roof solar panels, cycle parking, services infrastructure, and ancillary works.

2.2. In addition to standard planning application plans and particulars the application was accompanied by:

- a detailed cover letter document prepared by The Planning Partnership dated 14.09.2020.
- a 'Flood Risk Assessment' prepared by JBA Consulting dated September 2020.
- a 'Traffic Assessment' prepared by Stephen Reid Consulting Traffic and Transportation Ltd. dated 11.09.2020.
- a 'Sunlight, Daylight & Shadow Assessment (Impact Neighbours)' report prepared by Chris Shackleton Consulting.
- a 'Noise & Vibration Impact Assessment' (NVIA) prepared by CLV Consulting dated 13.09.2020.
- a 'Preliminary Construction Environmental Management Plan' (CEMP) prepared by Structural Design Solutions Ltd. (SDS) dated September 2020.
- a 'Preliminary Construction & Demolition Waste Management Plan' prepared by SDS dated September 2020.
- a 'Services Design Information' report prepared by SDS dated September 2020.
- a 'Lusk Solar Shading and Glare & Glint Analysis' prepared by Green Energy Solutions dated 08.09.2020.
- a 'Lighting Impact Assessment Report' (LIAR) prepared by Noel Lawler Consulting Engineers dated 10.09.2020.
- photomontages prepared by Digital Dimensions architectural visualisation.

2.3. Further information was submitted in relation to, inter alia, an updated NVIA report prepared by CLV Consulting dated 12.01.2021, a LIAR prepared by Lawler Consulting dated 18.12.2020, and a 'Security Report' prepared by Seamus Gallagher Security Consultant dated 06.01.2021. Updated photomontages prepared by Digital Dimensions architectural visualisation were also received as well as revised floor plan, elevation, and site layout drawings. The number of car parking spaces was reduced by one to 156 no.

- 2.4. The application was re-advertised as significant further information.
- 2.5. Clarification of further information was submitted in relation to noise issues, including submission of a NVIA prepared by CLV Consulting dated 18.03.2021.

### 3.0 **Planning Authority Decision**

#### 3.1. **Decision**

Kildare Co. Co. granted planning permission subject to 22 no. conditions relating to, inter alia, hours of delivery, provision of a security barrier at the vehicular entrance, external finishes and advertising, restrictions on the advertising and display of alcohol, landscaping, construction practices including noise limits and submission of an operational phase Noise Study, surface water discharge, submission of a Construction Management Plan, provision of a bring bank area, and development contributions.

#### 3.2. **Planning Authority Reports**

- 3.2.1. Three Planning Reports form the basis of the planning authority's decision. The third report considered that, having regard to the nature and design of the development, the provisions of the Kildare County Development Plan 2017-2023, the Retail Planning Guidelines for Planning Authorities (2012), the existing use on site, and the site zoning in the Maynooth Local Area Plan 2013-2019 (LAP), subject to compliance with conditions, the proposed development would not seriously injure the amenities of the area, or of property in the vicinity, and would be acceptable in terms of pedestrian and traffic safety. The Council considered that the development would, therefore, be in accordance with the proper planning and sustainable development of the area.

#### 3.2.2. **Other Technical Reports**

**Transportation Department** – No objection subject to conditions following the further information response.

**Environment Section** – No objection subject to conditions following the clarification of further information response. Conditions include, inter alia, noise control conditions,

including the carrying out of a Noise Study within three months of operation, provision of a bring bank area, and restricted delivery times.

**Water Services** – Three conditions recommended primarily relating to surface water.

### 3.3. **Prescribed Bodies**

**Irish Water** – No objection. Observations made.

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

3.4.1. Nine observations were received by the planning authority on foot of the planning application. These were from residents of Carton Court, Carton Court Residents Association, two councillors, and a TD. The issues raised are largely covered by the grounds of appeal and further response, with the exception of the following:

- Relocation of building/delivery yard closer to Carton Court.
- Visual impact of proximity of a large commercial building/devaluation of property.
- Inadequate Noise Assessment.
- Noise from/location of external plant.
- ESB substation.
- Boundary treatment at the interface of the site and Carton Court.
- Increase in traffic/excessive number of car parking spaces proposed.
- The necessity of replacing the existing store is queried.

3.4.2. Revised public notices were required on foot of the further information response. Five further observations were received by the planning authority from local residents, Carton Court Residents Association, and one councillor. All had submitted an observation on the initial planning application. The issues raised are largely covered by the grounds of appeal, further response, and initial observations, with the exception of the following:

- Continuous noise, vibration and dust assessments during construction and any damage to private property to be remedied by the applicant.

## 4.0 Planning History

4.1. The relevant planning history on site is:

P.A. Reg. Ref. 03/374 – Permission was granted in 2005 for a single storey discount foodstore with a gross floor area of 1,648sqm, signage, car parking etc.

P.A. Reg. Ref. 10/1093 – Permission granted in 2011 for a 104sqm single storey extension, increasing the gross floor area to 1,752sqm.

4.2. Pre-planning was carried out under P.A. Reg. Ref. PP3534 in relation to this planning application.

## 5.0 Policy Context

### 5.1. Kildare County Development Plan 2017-2023 (as amended)

5.1.1. Chapter 9 (Retail) is relevant to the proposed development. Chapter 17 (Development Management Standards) is also relevant.

### 5.2. Maynooth Local Area Plan 2013-2019 (LAP)

5.2.1. The site is largely located in an area zoned 'T: General Development' with a zoning objective 'To provide for General Development' (0.7735 hectares). A 'Shop (Convenience)' is open for consideration. The north west area of the site is zoned 'F: Open Space and Amenity' with a zoning objective 'To protect and provide for recreation, open space and amenity provision' (0.2187 hectares). Open space and some ancillary car parking and vehicular circulation are located within this area.

### 5.3. Retail Planning Guidelines for Planning Authorities (2012)

5.3.1. These guidelines are relevant to the planning application.

## 5.4. Natural Heritage Designations

- 5.4.1. The closest Natura 2000 site is Rye Water Valley/Carton SAC (Site Code 001398) approx. 2.3km to the north east. The closest heritage area is Royal Canal pNHA (Site Code 002103) approx. 750 metres to the north.

## 5.5. EIA Screening

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

## 6.0 The Appeal

### 6.1. Grounds of Appeal

First and third party grounds of appeal have been received. The first party has appealed four conditions attached to the grant of permission. The third-party appeal has been submitted by Frank O'Shea, Acting Secretary of Carton Court Residents Association, 45 Carton Court, Maynooth. The separate grounds of appeal can be summarised as follows:

#### First Party Grounds of Appeal

- The appeal is against Condition Nos. 2, 3, 4 and 10(a) of the planning authority decision. The Board is requested to amend Condition Nos. 2, 3, and 10(a) and delete Condition No. 4. If the Board's deliberations are not limited to these conditions only the applicant requests the opportunity to make its full case in support of the development.
- Condition 2 states the proposed unit shall be used strictly in accordance with the definition of 'shop' set out in the Planning & Development Regulations, 2001 (as amended). The proposed development relates to a discount foodstore with



ancillary off-licence. It is not considered that the planning authority intended to delimit the proposed use to 'less than' a supermarket/discount foodstore with ancillary off-licence which is how the condition could be interpreted. No commentary in the assessments suggested that a 'shop' use, as distinct from discount foodstore with ancillary off-licence was envisaged or considered necessary. The wording of the condition potentially suggests a restriction excluding off-licence use. A modified condition is suggested, similar to that applied to a similar Lidl redevelopment at Newbridge, Co. Kildare under P.A. Reg. Ref. 19/1123.

- Condition 3 states delivery times shall be restricted to between 07.00 and 18.00 hours Monday to Friday and between 08.00 and 13.00 on Saturday with no delivery activity of any kind taking place outside these hours. Condition 10(a) states that noise shall not give rise to sound pressure levels (Leq 15 minutes) at noise sensitive locations exceeding 55 dB(A) between 08.00 and 18.00 Monday to Friday (excluding bank holidays) and 45 dB(A) at any other time.

Both conditions refer to/imply a 'watershed' at 6pm Monday to Friday. The former also refers to 3pm (sic) on Saturday while the entirety of the weekend is included in the more sensitive category in the latter. The appropriate watershed is 11pm Monday-Sunday inclusive of bank holidays, however the applicant is amenable to 10pm, in the interest of compromise. A 6pm/3pm/all weekend watershed is inappropriate, and not supported by industry standards or best practice.

In addition to imposing night-time noise criteria to the daytime, it restricts deliveries in the evening and over most of the weekend, however they can be undertaken from 7am which is somewhat inconsistent. The industry watershed for night-time is 11pm-7am seven days a week. An intermediate category is intended for the construction stage. The 'Kildare County Council Third Noise Action Plan 2019-2023' acknowledges these industry time thresholds.

Delivery hours are excessively restricted and excessive and arbitrary noise criteria are imposed by inappropriate watersheds. The principal concern of local residents related to night-time, post-11pm, deliveries. The residents did not seek such a strict approach as that imposed.

The restrictions are disproportionate and the submitted Noise Impact analyses demonstrating that deliveries can be facilitated up to 11pm do not appear to have been sufficiently considered. The Board is requested to change the 6pm/3pm deliveries to 10pm, notwithstanding 11pm being appropriate.

The applicant has three regional distribution centres. Produce arrives and is processed between 6am and 1.30pm daily, including weekends. Vehicles depart no earlier than late afternoon/early evening. Completion of deliveries by 6pm is a major logistical obstacle. Delivery times to 10pm at Lidl stores have been permitted by the Board at Clifden (PL 07.247751) and Greystones (PL 27.247126).

- Condition 3 prohibits deliveries on Sundays, and potentially bank holidays. Condition 10(a) also imposes stricter noise parameters during Sundays and bank holidays. No distinction should be made in respect of the weekend period as retail activities are a normal occurrence. Customers expect a full range of fresh goods on a daily basis which should be facilitated. The Clifden and Greystones examples permit deliveries up to 10pm on all days. Conditions 3 and 10(a) should be modified to remove restrictions and all days should be treated equally.
- Suggested modified wording for Conditions 3 and 10(a) are set out. The applicant is amenable to reducing morning deliveries to 8am to align with the morning watershed in Condition 10(a) and store trading hours.
- Condition 4(a) states a security barrier shall be erected at the vehicular entrance which shall be kept closed outside opening hours and delivery times. Subsection (b) requires design details to be submitted to the planning authority for approval. Following a further information request, a security report was commissioned on the issue of anti-social behaviour etc. The requirement for a barrier is an extreme solution to the issue of joy-riders or other unwanted traffic with a number of other passive approaches being appropriate in the overall spectrum of security measures such as lighting, CCTV, and appropriate warning signage. The removal of Condition No. 4 is proposed.

### Third Party Grounds of Appeal

- The fact that the building is to be demolished presents an opportunity to change its orientation and decrease its impact on residents in Carton Court.
- For the most part the grant of permission has gone a long way to alleviating the concerns of Carton Court Residents Association, but in doing so the zoning principals of the LAP have been materially contravened. A large portion of the proposed site is zoned 'F: Open Space and Amenity'. The Plan's zoning matrix clearly states car parking is forbidden on such zoning. The site layout plan clearly shows that the zoning principal has been materially contravened by situating a car park on this zoning. The Board is requested to remove this section of the car park through conditions of a grant of permission and not by refusing the application in totality. Neither the planning authority nor the Board can legally allow a material contravention of the zoning principle.
- It is acknowledged that residents' concerns have been dealt with by the grant of permission, apart from this material contravention.

### **6.2. Planning Authority Response**

The main points made can be summarised as follows:

#### Comments on First Party Appeal

- It was clear in the application that an ancillary off-licence was proposed. The planning authority does not dispute this and has no problem with a correction.
- The erection of a security barrier is a reasonable solution to anti-social behaviour on-site.
- Noise limits and related timescales are standard, recommended by the Environment Section for commercial and/or industrial developments. It is important to note, in the context of evening time, the proximity of houses and the possibility that young children could be resident in the properties.
- In relation to Saturday morning deliveries, it is the opinion of the Environment Section that the lower noise limits are appropriate.

- The Kildare County Council Noise Action Plan 2019-2023 applies primarily to road and rail noise.
- It is the opinion of the Environment Section that the noise levels and times in relation to Sundays and bank holidays are appropriate, again noting the proximity of houses. The Environment Section considers the alternative times proposed are inappropriate.

### 6.3. Observations

None.

### 6.4. Further Responses

Further responses were received from both first and third parties. These can be summarised as follows:

#### First Party Further Response

- The third-party appeal has a narrow scope, that of the encroachment of development into an area identified as Open Space in the LAP.
- This space is disused and has very limited potential as a stand-alone high quality public open space area. The development represents an appropriate and proportionate utilisation of urban land, including use as open space, substantively implementing the zoning objective. Notwithstanding, the applicant is amenable to a reduction in the extent of encroachment, as illustrated, should the Board deem it appropriate, giving effect to the appellant's wishes without affecting the viability of the layout. Neither the permitted nor alternative level of encroachment would constitute a material contravention of the LAP.
- The permitted development does encroach beyond the General Development zoning into Open Space and Amenity. The footpath is considered to be an element of public amenity. The active development footprint permitted in the 'F' zone is 0.0914 hectares/11.8% of the overall 'active development'. The revised layout would reduce this to 0.0584 hectares. The 'T: General Development' zoning borders Carton Court so the F zoning does not act as a buffer or intermediary area between the 'T' zoning and the housing estate.

- The applicant rejects the statement that the proposal is a serious material contravention of the LAP. Specific provisions of the LAP support a qualitative approach rather than a quantitative or absolute approach to the issue of encroachment e.g. statements in the LAP that the zoning objective seeks to protect, improve, and provide for recreation, open space, and amenity, that the zoning matrix is intended to provide guidance and is not intended to supplant the planning process, and that reasonable development proposals will be considered on their merits. These extracts demonstrate that the proposed development is entirely appropriate and allowable under the LAP zoning, would provide a gain in terms of open space provision, and would improve the existing situation.
- Fundamentally the development will provide a public open space area on undeveloped land susceptible to vermin, anti-social behaviour etc. as highlighted in the security consultant's report. The proposed development would only enhance the local environment and demonstrably provide for recreation, open space, and amenity provision. A portion of active development is a necessary and reasonable catalyst to enable the net gain. With the absence of any clear incentive to develop the land it may be rezoned or remain unused and unmaintained in the long-term.
- A relatively limited encroachment of 11.8% would not materially contravene the LAP and is entirely permissible. It would not represent a departure from a fundamental provision of the Plan or seriously prejudice an objective of the Plan, as per the Development Management Guidelines 2007. Four precedents are set out, and some detail provided, where an encroachment/overlap of a zoning boundary occurred: Lidl, Enniscorthy, PL 26.304025, Lidl, Ballina, PL 16.244269, Tesco, Mullingar, PL 25M.241303 and Aldi, Ardee, ABP-308582-20.
- Should the removal of 14 no. car parking spaces (a reduction to 142 no. overall) be preferred by the Board this could be affirmed by a condition. This would preserve manoeuvrability for deliveries and would reduce the footprint of the encroachment to 584sqm/7.6%.

- The LAP has expired with no new Plan adopted. The LAP remains a relevant reference document, but the Board is not bound to have regard to its provisions as would be the case if it was fully in force. A material contravention could not occur as the LAP has expired.
- The third-party appeal considers the building orientation could be changed. The siting and orientation of the proposed store has been considered in detail. Maintaining the existing positioning was the only viable approach. The planning authority has permitted substantial residential development immediately adjoining the subject site to the east.
- Should the Board be minded to make any modification to the development other than that sought, or offered, or seek to consider the application de novo, the applicant requests the opportunity to comment on same.
- A possible revised site layout plan was submitted with the further response.

#### Third Party Further Response

- The building demolition provides an opportunity to change the orientation of the building and decrease the impact on residents of Carton Court. The loading dock and mechanical ventilation has caused a loss of amenity, particularly 2am deliveries. The negative impact on residents must be addressed in any Board permission.
- The first party appeal is against conditions the residents agree with.
- For many years residents have put up with late night/early morning deliveries (reversing sirens, steel loading ramps) and anti-social behaviour in the car park.
- The noise reduction precedents outlined do not include a similar case in Maynooth where both the planning authority (18/1471) and the Board refused permission due to ongoing noise emanating from the site.
- Installation of CCTV is suggested to resolve anti-social behaviour. Any data gathered cannot be used or passed on given GDPR, thus rendering this solution redundant.

- Most conditions of the planning authority's grant are acceptable and will restore quality of life and residential amenity. The Board is urged to uphold the Council's decision, apart from the material contravention issue.

## 7.0 Assessment

The main issues are those raised in the grounds of appeal and the Planning Reports, and I am satisfied that no other substantive issues arise. The issue of appropriate assessment also needs to be addressed. While the first-party grounds of appeal relate to conditions only, as a third-party appeal was also received by the Board, I will consider the application de novo, having regard to the specific conditions cited by the applicant. The issues can be dealt with under the following headings:

- Zoning/Material Contravention
- Site Layout & Design
- Impact on Residential Amenity
- Condition No. 2 of P.A. Reg. Ref. 20/1066
- Appropriate Assessment

### 7.1. Zoning/Material Contravention

7.1.1. The third-party grounds of appeal are focused on the material contravention of the Maynooth Local Area Plan 2013-2019 (LAP), specifically the encroachment of car parking into the 'F' zoning.

7.1.2. The site is largely located in an area zoned 'T: General Development' with a zoning objective 'To provide for General Development' (0.7735 hectares) in the LAP. The north west area of the site is zoned 'F: Open Space and Amenity' with a zoning objective 'To protect and provide for recreation, open space and amenity provision' (0.2187 hectares). The grounds of appeal note that the LAP's zoning matrix shows that car parking is not permitted on 'F' zoning. The appellant is seeking the removal of this section of the car park and considers that neither the planning authority nor the Board can allow a material contravention of the zoning principle of the LAP.

- 7.1.3. The applicant acknowledges that there is encroachment of car parking and vehicular circulation into the Open Space and Amenity zoning. The applicant sets out several sections of the LAP which it considers supports a qualitative approach to the encroachment issue and that it is appropriate and allowable under the Plan. It is stated that the development will deliver a public open space area where the land in question is undeveloped and potentially susceptible to, for example, anti-social behaviour. The applicant does not consider that the relatively limited encroachment permitted would materially contravene the LAP. To support this the Development Management Guidelines (2007) are cited, precedent identified, and the applicant states that a material contravention could not occur in any event as the LAP has expired. Notwithstanding, a revised site layout plan has been submitted with the applicant's further response, reducing the extent of encroachment, should the Board deem this necessary or otherwise appropriate.
- 7.1.4. The planning authority's first Planning Report noted the presence of an 'F' zoned area in the north west corner of the site but did not refer to the presence of car parking or vehicular circulation space in the zoning. In the planning authority's response, in a letter which included the heading 'First Party Appeal by Applicant and Third Party Appeal', no reference was made to the third-party appeal, and the response focused on the first-party grounds of appeal.
- 7.1.5. The zoning objective of 'F' zoned land is set out in Table 16 (Land Use Zoning Objectives Table) of the LAP. The zoning objective is 'To protect and provide for recreation, open space and amenity provision'. It covers both public and private owned space. The zoning objective states, inter alia, that the aim is 'to protect, improve and provide for recreation, open space and amenity ...' and it could be considered that the inclusion and development of this area within the site redevelopment would improve the existing open space area and provide an accessible space. The zoning objective also states that reasonable development proposals will be considered on their merits. However, it appears that this specifically refers to agricultural development proposals. Car parks and shop (convenience) are not permitted in 'F' zoning, as set out in Table 17 (Land Use Zoning Matrix). Section 8.1 (Zoning Matrix) of the LAP states that the matrix is intended to provide guidance 'and is not intended to supplant the normal planning process'.



- 7.1.6. The proposed shop unit footprint itself does not encroach into the 'F' zoning. Of the 0.2187 hectares zoned 'F', 0.0914 hectares of the permitted layout is subject of 'active development' i.e. car parking and vehicular circulation. The appellant notes that car parking, specifically, is not permitted within 'F' zoned land. However, the car parking is an ancillary land use to the overall main retail use, rather than being the primary land use. I do not consider that because there is an element of car parking in an 'F' zoned area it automatically results in a material contravention of the Plan.
- 7.1.7. Section 5.12 (Material contravention applications) of the Development Management Guidelines (2007) states 'In deciding whether any development would materially contravene the plan, the authority should consider whether there would be a departure from a fundamental provision of the plan or whether the development – alone or in conjunction with others – would seriously prejudice an objective of the plan. If the answer is "no", there is no statutory prohibition on the granting of permission'. Having regard to the current condition of the 'F' zoned land, the proposed provision of an area of open space as part of the site redevelopment, and the relatively limited encroachment of a car parking and vehicular circulation space, ancillary to the main use of the site, I do not consider that the encroachment could be considered to be either a departure from a fundamental provision of the LAP or that it would seriously prejudice an objective of the plan.
- 7.1.8. In conclusion, I do not consider that the encroachment of an area of car parking and vehicular circulation, ancillary to the main use of the overall site, into the 'F' zoned area, would comprise a material contravention of the LAP. The development of the 'F' zoned area would improve an existing unmaintained and somewhat inaccessible area and would provide a public open space. I do not consider that there would be a departure from a fundamental provision of the LAP or that it would seriously prejudice the zoning objective.

## 7.2. Site Layout & Design

- 7.2.1. Site layout and development design is a standard element in a planning assessment.

### Site Layout

- 7.2.2. The planning application involves a redevelopment/reconfiguration of the existing/extended site. The structure footprint is to remain along the eastern boundary.

- 7.2.3. Third parties consider that, as the existing structure is to be demolished, there is an opportunity to reorientate the proposed structure and reduce the impact on Carton Court. In terms of siting and positioning the applicant notes that the areas fronting Straffan Road are not sufficiently wide to consider a building line along that road. The redevelopment of the site involves the building line of the structure being moved significantly closer to the Carton Court development. The development also involves the slight relocation of the existing vehicular entrance to the west to accommodate the wider store footprint.
- 7.2.4. It is proposed to increase the number of car parking spaces from 132 no. to 156 no. The proposed development would generate a requirement for 151.2 no. spaces based on the County Development Plan 2017-2023 requirements of one space per 15sqm floorspace as per Table 17.9 (Development Management Standards). The additional car parking area is located in an undeveloped, unmaintained, vacant site to the north of the existing site, which is covered with grass and vegetation and is largely zoned 'F: Open Space and Amenity' in the LAP. It is currently fenced off from both the Lidl and Circle K sites. The proposed store footprint is also proposed in the area to the north, but in the part zoned 'T: General Development'. An informal pathway through the area has developed between Carton Court and Straffan Road.
- 7.2.5. An alternative site layout was submitted for consideration with the applicant's further response which reduces the encroachment of car parking and vehicular circulation areas in the 'F' zoned area. The number of car parking spaces would be reduced from 156 no. to 142 no., which would be an increase of 10 no. spaces from the 132 no. currently on site. This reduction would also increase the extent of open space in an area zoned for that purpose.
- 7.2.6. Section 17.7.6 (Car Parking) of the Kildare County Development Plan 2017-2023 states that 'parking standards are maximum standards, having regard to the need to balance demand for parking against the need to promote more sustainable forms of transport, to limit traffic congestion and to protect the quality of the public realm from the physical impact of parking. Therefore the number of spaces provided should not exceed the maximum provision ... the maximum provision of parking should not be viewed as a target. Lower rates of parking may be appropriate at certain sites'. In determining lower rates the Council refers to, inter alia, the nature of the uses of the

site and likely durations of stays, and the nature of surrounding uses (open space in this case).

- 7.2.7. Having regard to the foregoing, I consider the alternative site layout plan would be preferable to the permitted layout. It would reduce encroachment of active development into an 'F' zoned area and would increase the extent of open space, the provision of 156 no. spaces exceeds the maximum number provided for in the County Development Plan 2017-2023, and the Plan allows for lower rates of car parking.
- 7.2.8. Condition 21 of the planning authority decision relates to the provision of a bring bank facility. I consider this is a reasonable condition, the applicant has indicated no objection to it, and I consider the condition should be restated.

### Design

- 7.2.9. The existing structure on site that it is proposed to demolish has a floor area of 1,753sqm. The proposed structure has a floor area of 2,268sqm. The proposed structure will provide an upgraded facility, including an increase in retail sales area.
- 7.2.10. The proposed development 'is informed by a corporate standard/specification'. The applicant considers the proposed modern structure to be a significant improvement on the existing store on site, has extensive glazing and a relatively neutral palette of materials, with some stone cladding to the western elevation to break up the elevation. Updated photomontages were submitted illustrating the existing and proposed developments.
- 7.2.11. There is a discrepancy between the floor plan and elevation drawings where Drawing No. 3103 (Proposed Floor Plan (Type 14 Store)) received by the planning authority on 25.01.2021 shows louvred screening along the external northern wall of the plant compound whereas the elevation drawing (Drawing No. 3201) shows a plaster wall. I consider this can be addressed by way of a compliance condition.
- 7.2.12. I consider that the design of the proposed structure is acceptable and would be appropriate at this location. I note the general design of the structure was not an issue in the planning authority's consideration of the planning application.

## Conclusion

- 7.2.13. I consider that the revised site layout plan included with the applicant's further response is a more suitable and appropriate layout plan than that permitted. I also consider that the design of the proposed structure is acceptable

### **7.3. Impact on Residential Amenity**

- 7.3.1. Impact on the residential amenity of Carton Court, adjacent to the north of the site, particularly as a result of noise from late night/early morning deliveries, was one of the primary issues in the observations received by the planning authority. Anti-social behaviour was also referenced. The third-party grounds of appeal considered that these issues had largely been addressed in the planning authority's decision, but some of these conditions are subject of the first-party grounds of appeal.

## Overlooking

- 7.3.2. The proposed structure is single-storey in scale. There are no windows on the northern elevation addressing Carton Court. The proposed windows on the eastern elevation are high-level windows and would not result in any undue overlooking to the adjacent undeveloped property. Windows/glazing to the south and west elevations overlook the car park and public road.
- 7.3.3. No overlooking impact would occur as a result of the proposed development.

## Shadowing

- 7.3.4. The structure to be demolished has height of 8.4 metres. The proposed building has a monopitch roof design and this varies in height from 6.739 metres to 5.0 metres, with the highest point on the western side. Extensive PV panelling is proposed on the roof. There is a set-back of approx. 2 metres proposed to the eastern site boundary. There is also a minimum set-back of approx. 2 metres proposed to the northern boundary from the building line of the delivery bay which has a height of 4.34 metres.
- 7.3.5. A Solar Shading and Glare & Glint Analysis was submitted with the planning application. This considers that there would be no issue with glare or glint.
- 7.3.6. A Sunlight, Daylight & Shadow Assessment was also submitted with the planning application. This concludes that neighbouring properties will generally not be affected by the proposed development.

7.3.7. In conclusion, I do not consider that glint or glare, or shadowing impact, is a concern.

#### Overbearing Impact

7.3.8. Though there is an increase in footprint of the proposed development, the overall maximum heights are reduced. This is a single-storey development in an urban area, a redevelopment of an existing commercial site, and I do not consider the development would result in any undue overbearing impact.

#### Noise

7.3.9. In terms of noise, it is the operational phase of the development that is the primary concern from deliveries and building plant etc.

7.3.10. In the cover letter submitted with the planning application it was stated that there would normally be one delivery per day with two on occasion. In the proposed site layout the delivery area/loading bay was repositioned significantly closer to the Carton Court boundary than is currently the case. An external plant compound was proposed adjacent to the site boundary. A new ESB substation was also proposed close to the boundary in this area of the site. This boundary currently comprises a hedgerow, but it was proposed to replace this with a 2.0 metres high timber fence.

7.3.11. A Noise & Vibration Impact Assessment (NVIA) was submitted with the application. Two areas close to the boundary with Carton Court were used as noise measurement locations for a limited survey period (18.25-20.50 on 01.09.2020 and 23.00-01.35 on 01/02.09.2020). In Location 1 (the eastern side of the northern boundary), the 'daytime' noise levels were in the range 57-59dB LAeq and 52-53dB LA90. At night, noise levels were in the range 52-53dB LAeq and 49-50dB LA90. In Location 2 (north west part of the site), the daytime noise levels were in the range 53-56dB LAeq and 50-52dB LA90. At night, levels were in the range 51-52dB LAeq and 45-47dB LA90.

7.3.12. The four principal sources of operational noise are identified as building services plant, deliveries, car parking, and additional vehicular traffic on public roads. Only building services plant is a day and night-time source. Notwithstanding, observations received by the planning authority refer to deliveries taking place during the identified night-time period. Heating and refrigeration plant, pumps etc. may operate twenty four hours a day and therefore be more noticeable during quiet periods. In terms of delivery truck events, these were not proposed to occur after 23.00. The cumulative noise levels

from all four noise sources is 49dB  $L_{Aeq, 16hr}$  at both Locations 1 and 2 in day time and 31 (Location 1) and 23dB  $L_{Aeq, 8hr}$  (Location 2) in night-time at the respective locations.

7.3.13. Noise and related issues formed a significant part of the planning authority's further information request. Physical changes incorporated into the scheme as a result included an enhanced boundary treatment/acoustic barrier comprising a second 2 metres high timber fencing barrier along the loading bay. The existing hedgerow will be retained with the originally proposed 2 metres high timber fence being located on the site side of the hedge and tree planting alongside. The plant compound is now internalised into the building. The proposed ESB substation was relocated from the Carton Court boundary area to the south west part of the site.

7.3.14. A number of noise related issues were included in the planning authority's further information request such as existing baseline noise levels, predicted operational noise levels and cumulative noise levels ( $L_{Aeq, 15mins}$ ), any tonal and vibration components from the operational phase, specified noise limits, delivery times, appointment of a Noise Liaison Officer, and night-time usage of loudspeakers. The response stated, inter alia, that there are no significant tonal components in the noise emissions from the proposed plant, predicted noise levels will not exceed those cited in the further information request, delivery times will strictly occur between 08.00 and 23.00, the outer timber fence to Carton Court has been upgraded with 75mm acoustic insulation between two timber layers, the Store Manager will act as the Noise Liaison Officer, and that there are no loudspeakers on site and there are none proposed. The response also notes that, though the delivery bay is moving closer to Carton Court, the slight increase in noise level 'will be more than offset by the minimum 10dB(A) reduction afforded by the noise barrier walls'. An updated NVIA was submitted.

7.3.15. Notwithstanding the further information response, a clarification of further information was sought by the planning authority, again referring to noise-related issues. In response, the applicant considered that the planning authority's noise measuring criteria departs from standard industry practice and that the proposed development remains acceptable from a noise impact perspective. An updated NVIA was submitted. A survey was carried out on 16.03.2021 to comply with the planning authority's definition of daytime hours (08.00-18.00 Monday to Friday) which, states the applicant, is distinct from those defined by the Environmental Protection Agency. The revisions have no impact on the findings or results in the NVIA, according to the applicant.

7.3.16. The planning application was granted, and two of the four conditions specifically appealed by the applicant are Conditions 3 and 10(a), relating to noise.

Condition 3

3. Delivery times shall be restricted to between 07.00 hours and 18.00 hours Monday to Friday and between 08.00 hours and 13.00 hours on Saturdays. No delivery activity of any kind shall take place outside of these hours.

Reason: In the interest of residential amenity.

7.3.17. The imposition of a 6pm watershed for deliveries Monday to Friday, and 1pm on a Saturday, is considered by the applicant to be excessively restrictive and disproportionate and not supported by industry standards or best practice. The condition omits deliveries on a Sunday and implies that there are to be none on Bank Holiday Mondays. The applicant considers an 11pm watershed is appropriate, Monday to Sunday. However, the applicant is amenable to 10pm. The applicant sets out the nature of its delivery operation and considers that completion of deliveries by 6pm is a major logistical obstacle. Modified wording for a condition is suggested which has been applied to other grants of permission.

7.3.18. The third-party considers the planning authority's conditions have largely addressed their concerns. The first party appeal is against conditions the residents agree with and the third-party wants the Board to uphold the planning authority's decision in this regard.

7.3.19. The delivery hours imposed by the planning authority would have, in my opinion, a significant adverse impact on the reasonable operation of the retail unit. Given the nature of the delivery process carried out by the applicant, a 6pm watershed on weekdays, 1pm on Saturday and no deliveries on Sundays, and arguably bank holiday Mondays, would unduly restrict the ability of the applicant to keep fresh produce in stock. I consider that the delivery hours specified in this condition are excessively restrictive. Given that there is an existing facility on site, and it is in an appropriately zoned urban area, I consider that normal, standard operation of the facility should be permitted to normal opening hours. I consider that deliveries comprise a normal feature of the operation of the facility, and I consider that deliveries to 10.00pm should be permitted. The condition of the Board's decision in ABP Reg. Ref. PL 07.247751 at Clifden, Co. Galway in 2017 is considered to be appropriate.

7.3.20. Condition 10(a) states as follows.

Condition 10 (a)

10 (a). Noise from the development shall not give rise to sound pressure levels (Leq 15 minutes) measured at noise sensitive locations which exceed the following limits:

- 55 dB(A) between the hours of 0800 and 1800 Monday to Friday inclusive (excluding bank holidays),
- 45 dB(A) at any other time.

Reason: In the interest of public health, to avoid pollution, and to ensure proper development.

7.3.21. As with Condition 3, the applicant considers that Condition 10(a) provides for inappropriate watersheds which are not supported by industry standards or best practice. The noise criteria imposed are considered to be excessive and arbitrary. Again, the applicant considers the appropriate watershed to be 11pm Monday to Sunday but is amenable to 10pm. The distinction in noise parameters between weekdays and weekends is an issue. The applicant notes that the NVIA demonstrated that deliveries can be facilitated at night. A suggested modified condition wording is provided for Condition 10(a) which increases the 1800 time to 2200 and replaces 'Monday to Friday inclusive (excluding bank holidays)' with 'daily'.

7.3.22. As set out previously under Condition 3, the third-party considers the planning authority's conditions have largely addressed their concerns and the first party appeal is against conditions the residents agree with.

7.3.23. It is stated in the planning authority response that the noise levels and times in relation to Sundays and bank holidays are appropriate, noting the proximity of houses, and the alternative times proposed are inappropriate.

7.3.24. The noise parameters in this condition is a similar issue to the delivery hours. As set out above, I consider that deliveries to 10pm are a reasonable feature of a large-scale retail operator, particularly those which have multiple stores. A later delivery time would result in additional noise later in the evenings. While there is residential development in close proximity, this is an established, permitted store in a zoned, urban area. Reasonable mitigation measures have been introduced through the



planning application process and there is no objection to the noise parameters set out i.e. 55 dB(A). It is the watersheds set out that is the issue. The normal functioning of a large-scale retail store is a seven day-a-week operation and I consider it unreasonable to impose differing noise limits during operation. I consider that it is reasonable for this commercial operation to adhere to consistent noise limits during opening/business hours. Therefore, I consider that the modified wording suggested in the first-party appeal for Condition 10(a) is reasonable. I also consider subsections (b) and (c) of the planning authority's condition are appropriate and should be restated.

7.3.25. In relation to noise, therefore, I consider that, while the development is likely to have some impact on residential amenity, the application is for an established and permitted use, in an appropriately zoned area, and reasonable mitigation measures have been introduced during the planning application process such as the provision of an additional acoustic barrier, largely internalising plant, relocating the proposed ESB substation, additional landscaping along the interface with Carton Court, and noise limits and times. One of the main issues raised by residents was late night/early morning deliveries. This type of activity can be restricted, by condition, to 22.00 at the latest, and I consider this is reasonable for both residents and the normal operation of the commercial unit.

#### Anti-Social Behaviour

7.3.26. Anti-social behaviour such as joy riding in the car park has been referenced in the observations received. A Security Report was received as part of the further information response. This concludes the development would enhance the area.

7.3.27. The applicant has appealed against the imposition of Condition 4 of the planning authority decision. This is.

#### Condition 4

4. (a) A security barrier shall be erected at the vehicular entrance to the site which shall be kept closed outside the opening hours of the shop and permitted delivery times.

(b) Design details shall be submitted for the written approval of the Planning Authority prior to commencement of the development.

Reason: In the interest of residential amenity.

- 7.3.28. The Board is requested to delete this condition. The applicant considers that the requirement for a barrier is an extreme solution to the issue of joy riders or other unwanted traffic with a number of other passive approaches being appropriate in the overall spectrum of security measures such as lighting, CCTV, and signage.
- 7.3.29. In the absence of any vehicular barrier to entry it would be possible for activity such as joy riding to occur. In my opinion the provision of such a barrier would ensure that such trespass would not be likely. I consider the condition should be retained.
- 7.3.30. The Security Report submitted as part of the further information response indicated that, though no anti-social behaviour, excessive alcohol consumption, criminal damage etc. was evident on inspection, the redevelopment of the site, including the currently fenced off area to the north, would further enhance the area.
- 7.3.31. In conclusion, in my opinion, the provision of a barrier at the vehicular entrance would likely eliminate the potential for joy-riding at this location which has been cited as a concern by local residents. I consider this is a reasonable condition.

#### **7.4. Condition No. 2 of P.A. Reg. Ref. 20/1066**

- 7.4.1. Condition 2 of 20/1066 states as follows.

2. The proposed unit shall be used as a shop, strictly in accordance with the definition of 'shop' set out in the Planning and Development Regulations, 2001, as amended.

Reason: In the interests of clarity, and to delimit the uses permitted in this unit.

- 7.4.2. The wording of this condition excludes the use of the unit for ancillary off-licence use. The applicant did not consider this was the intention of the planning authority, and a modified wording is suggested. The planning authority response states that it has no issue with a correction in this regard.
- 7.4.3. An off-licence use has been applied for in the public notices and it is a normal, ancillary feature of these types of developments. I have no concern with an off-licence use at this location. As the use was specified in the public notices, I consider that the removal of this condition, rather than a re-wording, is sufficient.

## **7.5. Appropriate Assessment**

- 7.5.1. Having regard to the nature and scale of the development proposed and to the nature of the receiving environment, namely an urban and fully serviced location remote from and with no hydrological or ecological pathway to any European site, 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**

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

## **9.0 Reasons and Considerations**

Having regard to the provisions of the Maynooth Local Area Plan 2013-2019, the Kildare County Development Plan 2017-2023, and the nature and scale of the proposed development, it is considered that, subject to compliance with the conditions set out below, the proposed development would be acceptable in terms of zoning, layout, and design, and would not seriously injure the amenities of the area. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## **10.0 Conditions**

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 25<sup>th</sup> day of January 2021, 2<sup>nd</sup> day of February 2021, 24<sup>th</sup> day of March 2021 and by the further plans and particulars received by An Bord Pleanála on the 16<sup>th</sup> day of June 2021, except as may

otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

**Reason:** In the interest of clarity.

2. The site layout shall be provided in accordance with the alternative layout plan received by An Bord Pleanála on the 16th day of June 2021.

**Reason:** In the interest of clarity.

3. Delivery times shall be restricted to between 08.00 hours and 22.00 hours Monday to Saturday and between 10.00 hours and 22.00 hours on Sundays. No delivery activity of any kind shall take place outside these hours.

**Reason:** In the interest of residential amenity.

4. (a) A security barrier shall be erected at the vehicular entrance to the site which shall be kept closed outside the opening hours of the shop and permitted delivery times.  
(b) Design details shall be submitted for the written approval of the planning authority prior to commencement of the development.

**Reason:** In the interest of residential amenity.

5. Prior to the commencement of development, the developer shall submit a revised floor plan and elevation drawing clarifying the treatment of the external northern façade of the plant compound.

**Reason:** In the interest of clarity.

6. (a) Noise from the development shall not give rise to sound pressure levels (Leq 15 minutes) measured at noise sensitive locations which exceed the following limits:

- 55 dB(A) between the hours of 08.00 and 22.00 daily,
- 45 dB(A) at any other time.

(b) There shall be no clearly audible tonal component or impulsive component in the noise emission from the development at any noise sensitive location. Suitable mitigation measures which remove tonal or impulsive components arising from trolleys or any other source in the development shall be included in the development.

(c) A detailed Noise Study, with recommendations, shall be carried out by a competent noise/environmental consultant within three months of the development being in full operation and at any other time as may be specified by the planning authority. The Noise Study shall be submitted to the planning authority for written approval.

**Reason:** In the interest of public health, to avoid pollution, and to ensure proper development.

7. Details of the materials, colours, and textures of all the external finishes to the development shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** In the interest of visual amenity.

8. Details of all signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** In the interest of the visual amenity of the area.

9. (a) Prior to commencement of development, the developer shall submit a revised landscape plan for the written approval of the planning authority for the additional open space area resulting from the revised site layout plan received

by An Bord Pleanála on the 16<sup>th</sup> day of June 2021. Landscaping detail shall otherwise be as submitted to the planning authority on the 25<sup>th</sup> day of January 2021.

(b) The landscaping scheme shall be carried out within the first planting season following substantial completion of external construction works.

(c) Notwithstanding subsection (b), the landscaping and acoustic mitigation works shown on Drawing No. 064520\_DD\_01 (Plant Area Detail) as submitted to the planning authority on the 25<sup>th</sup> day of January 2021 shall be provided prior to the operational phase of the proposed development.

(d) All planting shall be adequately protected from damage until established. Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

**Reason:** In the interest of residential and visual amenity.

10. Public lighting shall be provided in accordance with a scheme, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** In the interests of amenity and public safety

11. Site development and building works shall be carried out only between the hours of 0800 to 1800 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

**Reason:** In order to safeguard the amenities of property in the vicinity.

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

(a) Location of the site and materials compound(s) including area(s) identified for the storage of construction refuse;

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

(c) Details of site security fencing and hoardings;

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

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

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

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

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

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

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

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

(l) Means to ensure that surface water run-off is controlled such that no silt or other pollutants enter local surface water sewers or drains.

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

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

13. Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the “Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects”, published by the Department of the Environment, Heritage and Local Government in July 2006. The plan shall include details of waste to be generated during site clearance and construction phases, and details of the methods and locations to be employed for the prevention, minimisation, recovery and disposal of this material in accordance with the provision of the Waste Management Plan for the Region in which the site is situated.

**Reason:** In the interest of sustainable waste management.

14. A minimum of 10% of all car parking spaces shall be provided with functioning electric vehicle (EV) charging stations/points and ducting shall be provided for all remaining car parking spaces to facilitate the installation of electric vehicle charging points/stations at a later date. Where proposals relating to the installation of EV ducting and charging stations/points have not been submitted with the application, in accordance with the above requirements, such proposals shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development, and the agreed provisions shall be carried out and completed prior to the operational phase of the development.

**Reason:** In the interest of sustainable transport.



15. Drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

**Reason:** In the interest of public health.

16. The developer shall identify a suitable area within the development for the provision of bring banks. This bring bank area should be in accordance with the following:

- (a) There shall be a concrete plinth for twelve recycling receptacles.
- (b) There shall be a setdown parking area, fencing and any other suitable hard and soft landscaping required and associated signage.
- (c) The area shall be sited away from residential areas.
- (d) Consideration shall be given to turning requirements of HGVs used to service such banks and the potential noise generated by the banks from their usage.
- (e) Before any development takes place, a design drawing for the Bring Bank area shall be submitted to the planning authority for written approval.

**Reason:** In the interest of sustainable waste management.

17. All service cables associated with the proposed development (such as electrical and telecommunications) shall be located underground throughout the site.

**Reason:** In the interests of visual and residential amenity.

18. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the

Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

**Reason:** It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

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Anthony Kelly

Planning Inspector

28.09.2021