



An
Bord
Pleanála

Inspector's Report ABP314570-22

Development	Development comprising the internal configuration of existing Lidl foodstore to facilitate storage area for new Deposit Return Scheme facilities.
Location	Childers Road Lidl Licensed Foodstore, Childers Road Rossbrien Road, Limerick City.
Planning Authority	Limerick City and County Council.
Planning Authority Reg. Ref.	22696.
Applicant(s)	Lidl Ireland GmbH.
Type of Application	Permission.
Planning Authority Decision	Grant permission with conditions.
Type of Appeal	First Party v Financial Contribution condition
Appellant(s)	Lidl Ireland GmbH.
Observer(s)	None.
Date of Site Inspection	N/A.

Inspector

Des Johnson.

1.0 Site Location and Description

- 1.1. The site is located at the junction of Childers Road and Rossbrien Road in Limerick City.
- 1.2. The site is occupied by Lidl Foodstore and car parking.

2.0 Proposed Development

- 2.1. The proposal is for development comprising the internal configuration of existing Lidl foodstore to facilitate storage area for new Deposit Return Scheme facilities, and provide for an increased Net Retail Sales Area. The Deposit Return Scheme is described as a 'reverse vending machine' service for plastic beverage bottles and aluminium cans as part of a new approach to recycling.
- 2.2. The existing gross floor space is stated to be 2475 sqm, and the gross floor space would not be increased in the development. The proposal would result in an increased Net Retail Sales Area from 1002 sqm to 1672 sqm (670 sqm), comprising 1338 sqm Convenience floorspace and 334 sqm Comparison floorspace. The Deposit Return Scheme facilities have a floor area of 36 sqm. The site area is stated to be 0.2646 ha.

3.0 Planning Authority Decision

3.1. Decision

By Order dated 12th August 2022 (P.D.929/2022), the Planning Authority decided to grant permission subject to 5 conditions. Condition 2 reads as flows:

The developer shall pay to Limerick City and County Council a financial contribution of E67,200.00 (sixty seven thousand two hundred euro) in respect of public infrastructure and facilities benefitting 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 the 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.

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.*

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report states that “this is the redevelopment of an established store in a residential area, within the existing envelope of the building ...”.

The report indicates how the financial contribution was calculated as follows:

Retail – E100 per sqm

672 sqm x E100 = E67,200.00

3.2.2. Other Technical Reports

None relevant to this appeal case.

4.0 Planning History

Register Reference 16/44 – permission granted for the demolition of building and ancillary structures (totalling 3,308.5sqm) comprising the existing Childers Road Lidl Licensed Discount Foodstore unit and disused bulky goods retail unit and construction of a new mono-pitched licensed discount foodstore with ancillary infrastructure (all totalling 2,947 sqm) with a net retail floor area of 1,002 sqm and associated site development works. The permission is subject to 25 conditions.

Condition 2 required the net retail floor area in the proposed development to be reduced to 1002 sqm, and that the ancillary floor area of the store be revised as necessary to reflect the reduced net retail floor area. The reason for the condition is ‘orderly development’.

Condition 3 required a Special Contribution of E59.020 in accordance with section 48 (2)(c) in respect of the upgrade of the Chiders/Greenhills junction. This condition was appealed (Reference 91.247323) and subsequently removed by the Board for

reasons that the junction came within the scope of works identified for this location in the Development Contribution Scheme, the junction would not be of any particular benefit to the proposed development, and the Board was not satisfied that the condition adequately specified works to be carried out.

No General Development Contribution condition was applied to Reference 16/44.

5.0 Policy and Context

5.1. Development Plan

The land use zoning for the site is 'Local Centre'.

Development Contribution Scheme

Limerick City and County Council Development Contribution Scheme 2022 was adopted on 24th January 2022. It was in effect at the time of making the decision to grant permission on 12th August 2022. The Scheme was made under Section 48 of the Planning and Development Act 2000, as amended, which enables Planning Authority's to attach conditions to a planning permission granted under Section 34, requiring the payment of a financial contribution in respect of public infrastructure and facilities in the area of the Planning Authority, that is provided or intended to be provided by, or on behalf of the Local Authority.

Section 8.0 of the Scheme refers to Exemptions. This section lists categories of development which are exempt from the requirement to pay development contributions under the Scheme. 'Internal layout changes where no additional floor area is proposed' is listed as a category that is exempt under the Scheme.

Section 10.0 refers to Change of Use. Where a proposed change of use does not lead to the need for new or upgraded infrastructure/services or a significant intensification in demand placed on existing infrastructure, the development is exempt from paying a contribution. In all other circumstances, the change of use shall be charged at the rate appropriate to the new use, subject to a reduction in respect of the contribution rate appropriate to the existing usage.

Section 20.2 refers to Commercial Development (Charge per sqm). The rate appropriate to a site in the location of the appeal site is E100 per sqm.

5.2. Natural Heritage Designations

Not relevant.

5.3. EIA Screening

Not relevant.

6.0 The Appeal

6.1. Grounds of Appeal

The appeal relates to Condition 2 only of the Planning Authority's decision and the grounds of appeal may be summarised as follows:

1. The proposed development comprises only internal layout changes with no additional Gross Floor Space proposed. Under Section 8.0 of the current Limerick City and County Council Development Contribution Scheme 2022, development consisting "internal layout changes where no additional floor area is proposed" is listed as exempt from a requirement to pay development contributions under the scheme. The Scheme was adopted on 24th January 2022.
2. The merits or appropriateness of the adopted Scheme is not open for interpretation by the Board. The terms of the adopted Scheme have not been properly applied in this case. There is no basis for Condition 2 and it is not appropriate. Applying an *ad hoc* Financial General Development Contribution is outside the terms of the Scheme.
3. No additional floor area is proposed, or change of use in use classes, The entire building will continue to function as permitted.
4. The Planner's report includes a calculation which is unclear. It refers to 672 sqm, whereas the proposal would result in 670 sqm increase in Net Retail Sales Area.

6.2. Planning Authority Response

In a letter dated 16th September 2022, the Planning Authority stated that observations on the appeal would follow in due course. There are no further observations on the file.

7.0 Assessment

- 7.1. This is a first party appeal against a Financial Contribution condition (Condition 2 of Register Reference 22/696). No other conditions are appealed by the first party and there are no third party appeals made under Section 37 of the Planning and Development Act 2000, as amended (the Act). Under Section 48(10) of the Act, an applicant for permission granted under Section 34, may bring an appeal where it is considered that the terms of an adopted Development Contribution Scheme may not have been properly applied. I submit that the sole consideration for the Board in this appeal, is whether or not Condition 2 reflects the correct application of an adopted Development Contribution Scheme.
- 7.2. The Limerick City and County Council Development Contribution Scheme 2022 was adopted on 24th January 2022. The Scheme was in effect at the time of the planning authority's decision. The Scheme was made under section 48 of the Act and provides the basis for financial contributions to be attached to planning permissions granted under section 34. Contributions may relate to General Development Contributions (section 48 – Principal Contribution Scheme), and Special Development Contributions (section 48(2)(c)). Supplementary Development Contributions may be charged under section 49 of the Act. The condition under appeal relates to a General Development Contribution under section 48 of the Act. The adopted Development Contribution Scheme 2022. Includes, in Section, 8.0 a list of categories of development which are exempt from the requirement to pay development contributions under the Scheme. *'Internal layout changes where no additional floor area is proposed'* is listed as a category that is exempt under the Scheme. Section 10.0 of the adopted Scheme provides for a financial contribution where change of use is involved.

7.3. A key issue for the Board's consideration in this appeal is whether or not there is a change of use involved. The application to the Planning Authority contained two main elements – increase in Net Retail Sales Area by 670 sqm, and a new Deposit Return Scheme facility of 36 sqm. The appealed condition appears to relate to the requirement for a financial contribution for the increased Net Retail Floor Sales Area. I submit that the application for internal reconfiguration of floorspace in the permitted foodstore increasing the New Retail Sales Area, is necessary to address Condition 2 of the planning permission under reference 16/44, which required the net retail floor area in the proposed development to be reduced to 1002 sqm. The condition also required the ancillary floor area of the store to be revised to reflect the reduced net retail floor area. The Planner's report refers to the proposal as the redevelopment of an established store. It contains a calculation for the financial contribution of E67.200.00, but does not provide reasoning for the necessity to include the financial contribution condition. The Planning Authority has not submitted a response to the grounds of appeal, which argue that the terms of the Scheme have not been properly applied in this case.

7.4. On this issue I conclude that there is no change of use involved as the planning unit in this case is Retail, and that there is no increase in floor area proposed.

7.5. **Conclusion.**

I conclude that the Limerick City and County Council Development Contribution Scheme 2022 was adopted and in effect at the time of the making of the decision to grant permission. The adopted Scheme includes, in section 8.0, categories of development which are exempt the requirement to pay a financial contribution, including *'internal layout changes where no additional floorspace is proposed'*. In this case, there is no change of use and no additional floorspace involved. In these circumstances, I conclude that the terms of the adopted Scheme were not properly applied by the Planning Authority by the attachment of Condition 2, and that the condition and the associated reason for its inclusion should be omitted.

8.0 Recommendation

I recommend that Condition 2 be removed.

9.0 Reasons and Considerations

The Limerick City and County Council Development Contribution Scheme 2022 was adopted and in effect at the time of the making of the decision to grant permission. The adopted Scheme includes, in section 8.0, categories of development which are exempt the requirement to pay a financial contribution, including *'internal layout changes where no additional floorspace is proposed'*. The development does not incorporate any change of use and no additional floorspace is involved. In these circumstances, the Board considers that the terms of the adopted Scheme were not properly applied by the Planning Authority by the attachment of Condition 2, and that the condition and the associated reason for its inclusion should be removed.

Des Johnson
Planning Inspector

3rd January 2024

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.