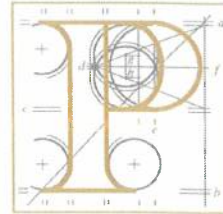


Our Ref: ABP-301291-18

PA .eg Ref: 18/6



An
Bord
Pleanála

Offaly County Council
Áras an Chontae
Charleville Road
Tullamore
Co. Offaly

Date: 30 August 2018

Re: Change of use of building from agriculture use to commercial use and construction of lean-to extension with mezzanine floor commercial storage yard with a weighbridge.
Killelery, Geashill, Co. Offaly.


Dear Sir / Madam

I have been asked by the Board to refer to the above-mentioned appeal and, in particular, to the Board's notice to you under section 126 of the Planning and Development Act, 2000 (as amended) in which it was indicated that the Board intended to determine this appeal before 29th August, 2018.

I regret to inform you that, the Board will not now be in a position to determine the appeal before that date. An Inspector's report has been received and the file is at Board level. The continuing delay is due to the necessity to clear the current backlog of cases.

The delay involved is regretted.

Yours faithfully,


Leonard Mangan
Executive Officer
Direct Line: 01-8737131

BP93



OFFALY COUNTY COUNCIL
DECLARATION UNDER SECTION 5 OF THE
PLANNING & DEVELOPMENT ACT 2000, AS AMENDED

REFERENCE: DEC 18/6

NAME AND ADDRESS OF APPLICANT: Lidl Ireland Gmbh
Main Road,
Tallaght,
Dublin 24

ADDRESS FOR CORRESPONDENCE: C/o Peter O'Connor
The Planning Partnership
The Coach House
Dundanion
Blackrock Road
Cork

NATURE OF APPLICATION: Request for Declaration under Section 5 of the Planning & Development Acts 2000, as amended as to whether the installation of the proposed PV solar panels on the roof of the permitted new mono-pitched Licenced Discount Foodstore (currently under construction), is or is not development or is or is not exempted development under the Planning and Development Act 2000 (as amended).

LOCATION OF DEVELOPMENT: Tullamore Road, Townparks, Birr, Co. Offaly

WHEREAS a question referred to Offaly County Council on 13th July 2018 has arisen as to whether the installation of the proposed PV solar panels on the roof of the permitted new mono-pitched Licenced Discount Foodstore (currently under construction) at Tullamore Road, Townparks, Birr, Co. Offaly is or is not development or is or is not exempted development under the Planning and Development Act 2000, (as amended).

AND WHEREAS the Planning Authority, in considering this declaration request, had regard particularly to-

- (a) Section 2 (1) of the Planning & Development Act 2000 as amended
- (b) Section 3 (1) of the Planning & Development Act 2000 as amended
- (c) Section 4 (1)(h) of the Planning & Development Act 2000 as amended

AND WHEREAS Offaly County Council has concluded that:

The proposed development is **Development and is NOT Exempted Development**

NOW THEREFORE Offaly County Council, in exercise of powers conferred on it by Section 5 (2) under the Planning and Development Act 2000, as amended hereby decides that the installation of the proposed PV solar panels on the roof of the permitted new mono-pitched Licenced Discount Foodstore (currently under construction) at Tullamore Road, Townparks, Birr, Co. Offaly **IS DEVELOPMENT AND IS NOT EXEMPTED DEVELOPMENT**

MATTERS CONSIDERED In making its decision, the Planning Authority had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.



Administrative Officer

08/08/2018

Date

Planning Report S.5 Declaration 18/6

Section 5 Declaration

Applicant: Lidl Ireland GmbH

A Question has arisen as to whether:

The installation of the proposed PV solar panels on the roof of the permitted new mono-pitched Licenced Discount Foodstore (currently under construction) at Tullamore Road, Townparks, Birr, Co. Offaly is or is not development or is or is not exempted development having regard to the provisions of Section 4(1)(h) of the Planning and Development Act 2000 as amended.

Address of correspondence: C/O Peter O'Connor (agent) The Planning Partnership, The Coach House, Dundanion, Blackrock Road, Cork.

Location of development: Tullamore Road, Townparks, Birr, Co Offaly

Whereas a question has arisen as to whether the above development is exempted development.

Development Plan Policy: The subject site is located on 'Commercial' zoned lands as per the Birr Town and Environs Development Plan 2010-2016 as extended to 2020.

SITE HISTORY

16/354 - Lidl Ireland GmbH sought Permission for the demolition of the existing Lidl licenced discount foodstore (1,255sqm gross floor area with 997sqm net retail sales area) and the construction of a new mono-pitched licenced discount foodstore with ancillary infrastructure and associated site development works (all totalling 2,680.5sqm gross floor area and ranging in height equivalent from 1 to 2 storeys), at this site of approximately 1.110 hectares. The construction of the proposed new licenced discount foodstore (2,624sqm gross floor area) comprises of:

A retail sales area with ancillary off-licence use and bakery (total net retail sales area of 1,424sqm), entrance pod, public facilities (including lobby and toilets), staff facilities, operational office, storage (including cold storage), stairs and lift to first floor, plant room and delivery area, all at ground floor level; Staff welfare (including toilets, changing rooms and staff canteen area), roof terrace, meeting room, IT room, cleaning room, stairs and lift from ground floor, all at first floor level; Corporate signage consisting of 2 No. building mounted corporate internally illuminated sign, 1 No. free standing internally illuminated totem pole sign at entrance, 3 No. wall mounted externally illuminated poster panel display boards, and 1 No. free standing externally illuminated poster display boards. 1 No. trolley bay covered structure (56.5sqm gross floor area), 142 No. surface car parking spaces (6 No. disabled, 12 No. parent and child, and 124 No. regular), 20 No. motorcycle and 24 No. bicycle parking spaces; primary vehicular and pedestrian access to the proposed new licenced discount foodstore development will be maintained from the existing vehicular and pedestrian entrance, via the 'northern link' (local distributor) road from the Tullamore Road; Secondary pedestrian access will be provided via a new dedicated pedestrian

entrance from the Tullamore Road adjacent to the southern boundary of the site; and boundary treatments, hard and soft landscaping, services (including 1 No. below ground attenuation tank) and all other ancillary and associated site development works above and below ground level. **Granted** on appeal by An Bord Pleanála.

BR 13003 - Lidl Ireland GmbH sought Permission for 1. The construction of the single storey flat roof extension of 107sqm gross floor area, including an enclosed plant area to the front of the store and all associated works required to connect to the existing store, 2. Amendments to the existing elevations consisting of the replacement of the existing fascias and soffits and gables with alucobond panels, amendments to the elevations consisting of changes to the windows to the side and the rear elevations, and the erection of a new entrance pod, 3. The erection of 2 No. back illuminated logo signs of 6.25sqm each, 1 sign to be erected to the front and one to the side elevation of the store and the moving of the existing standalone sign of 2sqm the front of the trolley bay, 4. The erection of 3 No. illuminated billboard signs to the front of the new extension each sign to have an area of 8.6sqm and the erection of an illuminated stretchboard advertisement of 4.1sqm to the entrance side of the new extension to the store, 5. The erection of an illuminated double sided billboard advertisement of 18.6sqm on each side (total signage 37.2sqm) to the front of the side and the erection of a billboard sign of 8.6sqm to the north-eastern corner of the existing site, 6. The erection of a new bin store enclosure of 8.8sqm to the side of the store, 7. The creation of two new pedestrian entrances to the store from the public footpath to the front of the site, one entrance to the south-western corner of the site and one to the south-eastern corner of the existing carpark on the site, 8. All associated site works, including the erection of new plant to the rear and amendments to car parking layout. Spilt Decision. The following refusal reason was cited:

- 1. Permission for the erection of 2 No. back illuminated logo signs of 6.25sqm each, 1 sign to be erected to the front and one to the side elevation of the store and the moving of the existing standalone sign of 2sqm the front of the trolley bay. The erection of 3 No. illuminated billboard signs to the front of the new extension each sign to have an area of 8.6sqm and the erection of an illuminated stretchboard advertisement of 4.1sqm to the entrance side of the new extension to the store. The erection of an illuminated double sided billboard advertisement of 18.6sqm on each side (total signage 37.2sqm) to the front of the side and the erection of a billboard sign of 8.6sqm to the north-eastern corner of the existing site.*

BR 1210 – **John Kelly** sought outline permission for 2 No. business/retail units. **Refused**

BR 1145 – **John Kelly** sought permission for a single storey pitched roof discount foodstore, new road and site entrance, associated car parking and signage. **Granted**

LEGISLATIVE FRAMEWORK

In order to assess whether or not the proposed works constitute exempted development, regard must be had to the following items of legislation:

Planning and Development Act, 2000 as amended
Section 2 provides a definition of:

“Works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal.

“Structure” means any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined, and –

- (a) Where the context so admits, includes the land on, in or under which the structure is situate, and
- (b) In relation to a protected structure or proposed protected structure, includes –
 - (i) The interior of the structure,
 - (ii) The land lying within the curtilage of the structure,
 - (iii) Any other structures lying within that curtilage and their interiors, and
 - (iv) All fixtures and features which form part of the interior or exterior of any structure or structures referred to in subparagraph (i) or (iii).

Section 3 provides a definition of development.

S.3.(1) In this Act, “development” means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land.

Section 4 provides a definition of development.

S.4.(1) The following shall be exempted developments for the purposes of this Act-

- (h) development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which only affect the interior of the structure or which do not materially affect the external appearance of the structure so as to render it inconsistent with the character of the structure or of neighbouring structures.

Planning and Development Regulations 2001 as amended

Schedule 2, Part 1

Class 56

- (f) The installation or erection on a business premises or light industrial building, or any ancillary buildings within the curtilage of such premises or building, of photo-voltaic solar panels.

Conditions and Limitations

1. The total aperture area of any such panels, taken together with any other such panel previously placed on or within the said curtilage, shall not exceed 50 square metres or 50% of the total roof area, whichever is the lesser.
2. The distance between the plane of the wall and the panel shall not exceed 15cm.
3. The distance between the plane of a pitched roof and the panel shall not exceed:
(a) 50cm in the case of a light industrial building. (b) 15cm in the case of a business premises.
4. The distance between the plane of a flat roof and the panel shall not exceed: (a) 2 metres in the case of a light industrial building. (b) 1 metre in the case of a business premises.
5. The solar panel shall be a minimum of 50cm from the edge of the wall or pitched roof on which it is mounted, or 2 metres in the case of a flat roof.
6. The total aperture area of any wall mounted panel, or free-standing solar array shall not exceed 25 square metres.
7. Any equipment associated with the panels, including water tanks, shall be located within the roof space of the building.
8. The height of a free-standing solar array shall not exceed 2 metres, at its highest point, above ground level.
9. A free-standing solar array shall not be located forward of the front wall of the building or premises.
10. No sign, advertisement or object, not required for the functioning or safety of the turbine shall be attached to or exhibited on the panels.

PROPOSAL BY APPLICANTS:

The applicants submitted a Section 5 Declaration to confirm their understanding that no planning permission is required to provide a photovoltaic solar panel array to the roof of the permitted new mono-pitched Licences Discount Foodstore (currently under construction) at Tullamore Road, Birr, having regard to the provisions of Section 4(1)(h) of the Planning and Development Acts 2000-2018.

The applicants consider that the proposed photovoltaic solar panels and the works associated with their installation *do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures.*

The applicants consider that the proposed works “*to be relatively minimal in the context of the overall existing development and would not be likely to give rise to material planning issues or concerns*”. The proposed external changes to the building in the form of the installation of a photovoltaic (PV) solar panel array:

- “*Will not materially affect the external appearance of the permitted structure (currently under construction) so as to render the structure’s appearance inconsistent with the permitted structure or with neighbouring structures*”, and
- “*Will not affect the permitted use of the building (as a Licenced Discount Foodstore) by way of intensification of that use or though the introduction of a new use for the building, being wholly ancillary to this permitted use*”.

The applicant states that the solar panels will be mounted on the roof on the same 3-degree fall of the existing roof structure, thereby maintaining the existing roof profile, facing in a southerly direction to maximise daylight benefit. The panels will be 93.4mm above the existing roof structure, they will not be visibly prominent or protrude above the existing gable flashings on both the northern and eastern elevations.

The submission goes on to say that visibility of the panels from the public realm or from adjacent structures will be limited and will not visibly alter the character of the structure or its surroundings. No additional external plant or equipment is proposed other than panels and associated cables.

The applicant has stated that the appearance of the proposed panels will be typical of standard PV panels, i.e. dark blue/black colour, thereby ensuring that they are entirely compatible in terms of appearance with the existing roof cladding material.

In conclusion the applicant seeks the Planning Authority's determination that the proposed works, are exempted development under the provisions of Section 4(1)(h) of the Planning and Development Acts 2000-2018.

ASSESSMENT:

I note the plans and particulars submitted with this Section 5 Declaration.

I note also that a Lidl store was granted permission under An Bord Pleanála Reg. Ref. No: PL19.248906 (Offaly County Council Planning Ref: PL2 16/354. The new Lidl store is currently under construction having only commenced the construction of external walls and supporting columns at this stage.

I refer to the definition of '*structure*' as provided for in Section 2 of the Act and as set out above. The definition makes it clear that a structure is something that is *constructed* which I consider to mean in full. This new store is currently under construction. As of this date, the under construction building is devoid of a roof. This is a particularly important requirement/aspect for the proposed PV solar panels.

I consider that given there is no feasible '*structure*' on this site, the under construction development does not come under the definition of '*structure*' in the first instance. This is especially relevant in this case as the PV Solar Panels seeking exemption are proposed to be constructed on the roof structure of a building that does not exist on site at present. It makes any assessment under section 4(1)(h) of the Act extremely difficult as I cannot determine properly if the proposed PV Solar panels constitute:

Development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures.

The '*structure*' has not been constructed for any assessment to be made about its implications physically or otherwise on the external appearance of the building itself,

or whether it would render the appearance of the building inconsistent with its own character which has not yet been developed, or to be fully assessed against nearby structures.

On the premise that no 'structure' currently exists it is difficult to consider the proposal within the remit of the definition of 'structure' set out in the Act. The development, in not being of a particular and determined state of completion to allow for a proper assessment of its impacts, gives rise to my determination that the applicant cannot benefit from exemptions as per the Planning and Development Act (as amended). There is no 'entity' on site that can essentially benefit from these exemptions.

Additionally, the works as proposed by the applicants at this early stage of construction could be considered a material alteration to the development approved planning permission under An Bord Pleanála Reg. Ref. No: PL19.248906 (Offaly County Council Planning Ref: PL2 16/354 for a new Lidl store. Such alterations at this stage would compromise the integrity of condition No. 1 of this permission which requires that all works should be carried out in accordance with the plans and particulars submitted as part of the planning application.

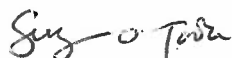
I have considered also that on perusal of www.lawsociety.ie a precedent and relevant case which states "*Where a developer seeks to carry out alterations or to add extensions or conservatories in reliance on the exempted development regulations, he will first need to ensure that the house is fully complete in accordance with the planning permission and plans on foot of which the planning permission issued, and that only then the extension or additional work is carried out*".

I consider this reasonable to ensure a proper approach to the development of this site also.

Therefore, I consider that until such time as the new Lidl store is constructed, completed and has demonstrated compliance with all relevant planning conditions, can exemptions of the nature being sought by the applicants be adjudicated on properly in the full and proper context of the provisions of Section 4 (1) (h) of the Planning and Development Act 2000 (as amended). In the interim, the proposal falls outside the scope of exempted development provisions of the Act and cannot be considered as exempted development at this time.

Conclusion:

Having considered Section 2, 3 and 4(1)(h) of the Planning and Development Act 2000 (as amended) the proposed development is considered to be Development and is NOT Exempted Development.



S O'Toole A/SEP
7th August 2018

WHEREAS a question has arisen as to whether:

A question has arisen as to whether:

The installation of the proposed PV solar panels on the roof of the permitted new mono-pitched Licenced Discount Foodstore (currently under construction) at Tullamore Road, Townparks, Birr, Co. Offaly is or is not development or is or is not exempted development having regard to the provisions of Section 4(1)(h) of the Planning and Development Act 2000 as amended.

are considered exempted development in the Planning and Development Act 2000 (as amended).

AND WHEREAS Offaly County Council, in considering this declaration request, had regard particularly to-

- (a) Section 2 (1) of the Planning and Development Acts, 2000 as amended
- (b) Section 3 (1) of the Planning and Development Acts, 2000 as amended
- (c) Section 4 (1)(h) of the Planning and Development Acts, 2000 as amended

AND WHEREAS Offaly County Council has concluded that –

The proposed development IS development and IS NOT Exempted development.

NOW THEREFORE Offaly County Council, in exercise of powers conferred on it by section 5 (2) hereby decides that the:

The installation of the proposed PV solar panels on the roof of the permitted new mono-pitched Licenced Discount Foodstore (currently under construction) at Tullamore Road, Townparks, Birr, Co. Offaly

IS Development and is **NOT Exempted** development at this location Tullamore Road, Townparks, Birr, Co. Offaly.

**APPROPRIATE ASSESSMENT SCREENING
REPORT FOR PLANNING APPLICATIONS**

Screening is used to determine if an AA is necessary by examining:

- If the plan / project is directly connected with / necessary to the management of the European site.
- If the effects will be significant on a European site in view of its conservation objectives, either alone / in combination with other plans / projects.



Planning Authority: OCC

Planning Application Ref. S5 Dec 18/6

(A) DESCRIPTION OF PROJECT AND LOCAL SITE:			
Proposed development:	The installation of the proposed PV solar panels on the roof of the permitted new mono-pitched Licenced Discount Foodstore (currently under construction) at Tullamore Road, Townparks, Birr, Co. Offaly is or is not development or is or is not exempted development having regard to the provisions of Section 4(1)(h) of the Planning and Development Act 2000 as amended.		
Site location:	Tullamore Road Townparks Birr		
Site size:	ha	Floor Area of Proposed Development:	-
Identification of nearby European Site(s):	Dovegrove Callows SPA		
Distance to European Site(s):	1.5km as the crow flies		
The characteristics of existing, proposed or other approved plans / projects which may cause interactive / cumulative impacts with the project being assessed and which may affect the European site:	None		
Is the application accompanied by an EIS?	Yes: <input type="checkbox"/>	No: X <input type="checkbox"/>	
(B) IDENTIFICATION OF THE RELEVANT EUROPEAN SITE(S):			
The reasons for the designation of the European site(s):	Dovegrove Callows SPA		
The conservation objectives / qualifying interests of the site and the factors that contributes to the conservation value of the site: (which are taken from the European site synopses and, if applicable, a Conservation Management Plan; all available on www.npws.ie) (ATTACH INFO.)	PLEASE SEE SITE SYNOPSIS and CONSERVATION OBJECTIVES SHEETS ATTACHED.		
(C) NPWS ADVICE:			
Advice received from NPWS over phone:	None Received		
Summary of advice received from NPWS in written form (ATTACH SAME):	None Received		

(D) ASSESSMENT OF LIKELY SIGNIFICANT EFFECTS:

(The purpose of this is to identify if the effect(s) identified could be significant – if uncertain assume the effect(s) are significant).

If the answer is 'yes' to any of the questions below, then the effect is significant.
(Please justify your answer. 'Yes' / 'No' alone is insufficient)

Would there be... ... any impact on an Annex 1 habitat? (Annex 1 habitats are listed in Appendix 1 of AA Guidance).	Not likely due to the location and type of development
	The site is sufficient distance from the European site.
... a reduction in habitat area on a European site?	There will be no reduction in the habitat area.
	The site is sufficient distance from the European site.
... direct / indirect damage to the physical quality of the environment (e.g. water quality and supply, soil compaction) in the European site?	Not likely due to the location and type of development
	The site is sufficient distance from the European site.
... serious / ongoing disturbance to species / habitats for which the European site is selected (e.g. because of increased noise, illumination and human activity)?	Not likely due to the location and type of development
	The site is sufficient distance from the European site.
... direct / indirect damage to the size, characteristics or reproductive ability of populations on the European site?	None likely due to the location and type of development
	The site is sufficient distance from the European site
Would the project interfere with mitigation measures put in place for other plans / projects. [Look at <i>in-combination effects</i> with completed, approved but not completed, and proposed plans / projects. Look at projects / plans within and adjacent to European sites and identify them]. Simply stating that there are no cumulative impacts' is insufficient.	No other plans known of in the vicinity of the site.
	The site is sufficient distance from the European site.

(E) SCREENING CONCLUSION:**Screening can result in:**

- | | |
|----|---|
| 1. | <i>AA is not required</i> because the project is directly connected with / necessary to the nature conservation management of the site. |
| 2. | <i>No potential for significant effects / AA is not required.</i> |
| 3. | <i>Significant effects are certain, likely or uncertain.</i> (In this situation seek a Natura Impact Statement from the applicant, or reject the project. Reject if too potentially damaging / inappropriate. |

Therefore, does the project fall into category 1, 2 or 3 above?

Category 2

Justify why it falls into relevant category above:

There would be no likely significant impact on the European site from the proposed development due to the scale of the proposed development and the separation distance between the subject site and European Site.

Name: Suzanne O'Toole

Position: A/SE Planner

Date:

7th August 2018

Suzanne O'Toole

COMHAIRLE CHONTAE UÍBH FHAIL
7 AUG 2018
PLANNING



NEW STORE
COMING SOON

Warning
Keep out

KOMATSU
SUNVO
OLING