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Connswater- Application by LIDL

I have read the opinion submitted by the applicant and would not differ with the general tenor and substance of that submission. In addition the following points seem to be germane to the consideration of this application.

1. The centre is designated a district centre- whilst PPS5 is defunct following the introduction of the SPPS, the definition of a district centre is to be found there. As it is the only definition of such a centre it must be considered to be valid for the purposes of the current consideration.
2. The “primary” function is stated to be the provision of locally accessible convenience goods. Convenience goods are generally defined in planning terms as food, beverages, newspapers/periodicals and non-durable household goods. In this context this type of development was observed under PPS5 as meeting local need. Indeed under the then policy further development in or adjoining such centres meeting need was “encouraged.” It is not legally rational to ignore the function and role of a district centre notwithstanding SPPS and the changed policy context.
3. It must be correct that the relevant catchment area for assessment in this particular case is the area that the centre was built to serve originally. Thus an area taking in both the city centre and other centres further afield is not appropriate as to do so undermines the underlying planning purpose served by the development in the first place. Convenience shopping accessible to populations with high numbers of persons with limited mobility is also a material consideration. I have had the opportunity to consider retail impact information provided by both MBA on behalf of the applicant and Dr Quinn for the Council. These demonstrate that the proposal has little or no adverse impact on existing centres.

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4. Section 6(1) of the Planning Act (NI) 2011 requires determination of applications to be made in accordance with the local development plan unless material considerations indicate otherwise. Section 45 of the Planning Act (NI) 2011 provides that where an application is made for planning permission, the council in dealing with the application, must have regard to the local development plan, so far as material to the application, and to any other material considerations, and.....may grant planning permission, either unconditionally or subject to such conditions as it thinks fit; or may refuse planning permission. Clearly this creates a vehicle for decision making that promotes the local development plan and overarching policy contexts as having primacy. It does not however create a requirement to slavishly adhere to policy when that policy could be set aside by the weight of other material considerations. It also calls for pragmatism when assessing applications in respect of which a special case might be made out and the appropriate use of conditions to inform the permission granted taking into account the prevailing circumstances. The ambition of policy in the context of BMAP and SPPS is the protection of town and city centres. Given the nature of the proposals and the impact assessed these do not in combination frustrate the objectives established in those policies.

5. In the present case the district centre does not incorporate the units in respect of which the application is made, it is adjacent to it and sits essentially in the same grounds. The main centre within which the predominant convenience type uses are permitted has high levels of vacancy including two substantial units in respect of which the current tenants continue to pay rent. One of the tenants has been the subject of a writ seeking forfeiture of the lease in the belief that it has not actively marketed the unit due to commercial advantage accruing to it at a nearby recently opened store. In any event, as I understand it, no interest has been expressed in occupation by any other convenience retailer. The net effect is that the centre is not performing the core function for which it was granted

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permission in the first place and is suffering from a significant reduction in footfall to the extent that its overall viability is in issue. The question arises therefore as to whether there is any evidence or prospect of the vacant units within the centre coming back into beneficial occupation without some form of intervention that might promote complimentary use. On the available evidence the answer to this would, without intervention, appear to be negative.

6. Permissions granted in respect of developments outside the district centre but within the curtilage of the Connswater Retail Park appear to treat the centre as an entity. So for example the permission for Poundstretcher is conditioned in relation to the use of floor space for convenience/comparison goods. Accordingly the divisibility of the main centre from the external units is to some extent semantic even though the overall desire to control the extent of convenience shopping is entirely understandable in terms of retail impact on other centres. However being pragmatic, it is unlikely that the units currently within the centre will revert to convenience use if the proposed development is to proceed. Additionally protection in respect of potential adverse consequences can be afforded to some extent through the prudent use of conditions limiting the permission to the applicant and/or specifying the retail floor space to be used in terms of convenience and comparison goods.
7. It also needs to be remembered that the applicant is relocating within Connswater and that the scale of any expansion in floor space is modest. Inadvertently one of the three units it proposes to occupy is not encumbered by any condition in respect of convenience retailing and, further, a condition establishing the proportion of convenience and comparison shopping means, in combination, the expansion is in real terms very modest. Lidl will vacate the current unit however it is not conditioned and no assumption should be made as to its future occupation. Even so the proposal is a modest increase in floor space.

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8. Whilst acknowledging the policy merits of SPPS and BMAP to direct major new shopping investment to the City Centre and existing district centres there are a number of key considerations which indicate that this proposal should be considered an exceptional case warranting departure as permitted by the 2011 Act. In addition to the foregoing reasons this application is not regionally significant. It entails a modest expansion of an existing retailer to a location 60M from where the current store is located. Whilst the district centre designated by BMAP relates to the shopping mall, the external units are inextricably linked to the retail offer at Connswater. Thus for practical purposes they should be considered as one.
9. On balance I am satisfied, subject to the appropriate use of conditions, that this application should be granted.

John Walsh LLB, LLM
Town Solicitor
Belfast City Council

2 June 2016