

**INSPECTOR'S REPORT**  
**to**  
**AN BORD PLEANÁLA**

**Appeal No: PL 31.239425**

**P.A. Reg. Ref.: 11/79**

**PROPOSED DEVELOPMENT:**  
**(As per Newspaper notice)**

- Permission for the change of use of Unit 2 from Retail Warehousing use to use as a Discount Food Store and all associated site development works,
- At Former Bolands Waterford City, Cork Road, Waterford.

**APPEAL TYPE:**

**THIRD PARTY** against Notification of Decision to **GRANT PERMISSION** with Conditions.

**APPLICANT:**

Jim Boland

**PLANNING AUTHORITY:**

Waterford City Council.

**APPELLANT:**

RGDATA

**Observer**

None

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**Inspector:**

Dermot Kelly.

## **REPORT FORMAT**

This report follows my examination of this appeal including reading the documents on file, and follows a Site Inspection on 21<sup>st</sup> October 2011 which included the Photographs in Appendix B of this report.

1. SITE LOCATION
2. SITE DESCRIPTION
3. PROPOSED DEVELOPMENT
4. NOTIFICATION of DECISION of PLANNING AUTHORITY  
Submissions and Relevant Reports
5. APPEAL GROUNDS
6. APPEAL RESPONSES
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9. PLANNING ASSESSMENT – Issues and Evaluation
10. CONCLUSIONS AND RECOMMENDATION

## **APPENDICES**

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| APPENDIX C | - DEVELOPMENT PLAN             |

## **1. SITE LOCATION**

The appeal site is located at Unit 2 in the Former Bolands Waterford City premises at Cork Road in Waterford City approximately one kilometre to the south-west of Waterford City Centre, as indicated on **APPENDIX A - LOCATION MAP**.

## **2. SITE DESCRIPTION**

- 2.1** The appeal site lands at Unit 2 in the Former Bolands Waterford City premises are located on the southern side of the Waterford – Cork Road (N25).
- 2.2** The appeal premises Unit 2 is a Retail Warehouse Unit which is vacant and as submitted was never occupied and was one of four permitted Retail Warehouse uses at this location.
- 2.3** Vehicular access to the appeal premises Unit 2 is off the Waterford – Cork Road N25 to the north with car parking provision to the front and rear of the building in four units.
- 2.4** The adjoining Units 3 and 4 were the subject of a grant of permission (subject to conditions) by An Bord Pleanála (Ref. PL.31.235114) on 18<sup>th</sup> June 2010 for amalgamation of the units and “use as a wholesale retail unit open to trade and the general public” as submitted. The Submission on the Planning Application noted that “this unit is now open to the public as a Buy Lo Discount Store”.
- 2.5** The Planning Report for the Planning Authority documented the Site Context including as follows: -  
“The site forms part of a commercial/retail area adjacent to the District Centre (spatially undefined in the development plan) located at the Inner Relief Road/Tramore Road which has grown incrementally over time and which includes retailers such as Superquinn, Woodies, Lidl, Buy Lo, Smyths Toys, PC World, Tile Savers and a number of other local, national and international franchises in the retail and service sectors. The site is accessed directly through a new surface car park from the Cork Road and is bounded by the car park and other retail units all of which are stated as being within the applicant’s landholding.”
- 2.6** The above Inner Relief Road/Tramore Road District Centre is located adjacent to the junction of the Inner Relief Road with the Waterford – Cork Road (N25) to the northeast of the appeal site. Mixed Use zoned lands under the Development Plan referred to in submissions on file are located on the southern side of the Cork – Waterford Road (N25) to the west of the appeal site which are undeveloped (see Photograph 1 in Appendix B).
- 2.7** The attached Photographs in **APPENDIX B – PHOTOGRAPHS** (including Key Plan which indicates the approximate Photograph locations) illustrates the nature of the appeal premises and its context.

### **3. PROPOSED DEVELOPMENT**

#### **3.1 Planning Application**

- The appeal premises area is stated as 495.04 square metres. The proposed development comprises as specified in the public notices a permission for the change of use of Unit 2 from Retail Warehousing use to use as a Discount Food Store and all associated site development works at Former Bolands Waterford City, Cork Road, Waterford.
- The completed Planning Application Form specifies the gross floor area of the appeal premises as 1,050.43 square metres on an overall site area of 0.622 hectares as submitted.
- It was submitted that there was a history of ‘occasional seasonal flooding’ on the site with reference to the permission granted Ref. No. 07/257 for four Retail Warehousing Units on the site.
- The Planning Report for the Planning Authority included describing the proposed development as follows: -  
“The proposed development consists of the change of use to Unit 2 (total retail sales area of 495 square metres) from retail warehouse to discount food store on the ground floor of the existing 1,050 square metres unit. The proposed site extends to the perimeter of the building only. The mezzanine floor is to be used for store and stock, including cold store facilities, along with staff areas, lifts and stairwell. No material alternations are proposed to the exterior of the unit.”

#### **3.2 Submitted Drawings and Documentation**

The drawings and documentation received 26<sup>th</sup> May 2011 have been examined and are noted, in particular the submitted Site Plan Drawing (see Key Plan drawing in Appendix B of this report) which indicates the appeal premises Unit 2 within the existing building on the site; and the vehicular access off the Waterford – Cork Road (N25) and the car parking provision to the front and rear of the building.

- The submitted Ground Floor Plan drawing includes specifying ‘Area to which Change of Use Application relates shown hatched in Purple Area – 495 square metres.’ It is noted that the proposed development does not include the Mezzanine Floor of the appeal premises Unit No. 2.
- The submitted Mezzanine Floor Plan drawing and the submitted Front and Rear Elevation and Site Section A-A drawings are also noted.

#### **4. NOTIFICATION of DECISION of PLANNING AUTHORITY - Submissions and Relevant Reports**

##### **4.1 Submissions of RGDATA on Planning Application**

The submission received is noted and included as follows: -

- “RGDATA is the representative association for independent family grocers in Ireland. It represents supermarkets, convenience stores, forecourt stores and local shops some of which are aligned to various symbol groups and some which operate under their own family name. The independent sector represents about 38% of the Irish grocery market and members’ shops are located in towns, villages and urban areas.”
- It was stated that RGDATA supported sustainable and strategic retail development as specified.
- The Planning History of the site and its General Business Use zoning and Section 2.1 ‘Key Opportunity Sites’, ‘General Business Use’ Section 10.3 and Section 2.7.6 ‘Retail Warehousing’ provisions in the 2007-2013 Waterford City Plan’ were documented.
- Provisions of the 2005 Retail Planning Guidelines were also documented including the definitions of ‘Discount Food Store’ and ‘Retail Warehouse’, and Paragraphs 76 and 65 relating to Discount Food Stores and Retail Impact as specified.
- The submission requested that the proposed development be refused permission for reasons as follows: -  
“The development has the potential to adversely impact upon the vitality and viability of existing centres within the catchment.  
The Development Plan policy designates the area for retail warehousing. Condition No. 2 of parent permission 07/257 restricts the use to retail warehousing with no justification for lifting this condition.

The Retail Planning Guidelines specifically exclude Retail Parks as a location from which to sell grocery goods as they are proven to take business away from the town centre.

It contravenes the Waterford City Development Plan 2007-2013, regarding its policy 2.1 ‘Key Opportunity Sites’.”

##### **4.2 Executive Engineer’s Report**

This report dated 7<sup>th</sup> June 2011 stated that there was no objection to the proposed development subject to two conditions as specified.

##### **4.3 Water Services Section Report**

This report raised no objection to the proposed development subject to two conditions as specified.

#### 4.4 Roads and Transportation Report

This report included stating that the Roads Section had no objections or observations in regard to the proposed development.

#### 4.5 Planning Report

This report, dated 19<sup>th</sup> July 2011, included as follows: -

- The Site Context was documented as stated including noting that the Unit 2 appeal premises is currently vacant and “one of *three* newly constructed retail warehouses” as stated. In this regard I refer to the Planning History Section of this report in particular to the permission granted by An Bord Pleanála (Ref. PL 31.235114) on 17<sup>th</sup> June 2010 for a proposed development including ‘*Amalgamation of Units 3 and 4*’ as specified.
- The Relevant Site Planning History was documented as stated. Referrals and Objections/Submissions were documented as stated.
- Relevant provisions of the 2007-2013 Waterford City Development Plan and the 2005 Retail Planning Guidelines were documented as stated.
- The nature of the proposed development was specified as stated. Under Assessment it was considered as follows: -  
“Having regard to the policies of the Development Plan and the Retail Planning Guidelines, I am satisfied that the proposed development complies in principle with same for reasons of the ‘complimentary’ nature of discount stores. Furthermore for reasons of the confined floor area (between  $\frac{1}{2}$  and  $\frac{1}{3}$  of that which would normally be attributed to discount food stores), I would be satisfied that the development will not adversely impact on the vibrancy and vitality of the city centre or other centres in the vicinity provided appropriate conditions are attached to any grant of planning permission restricting the sale of goods to discount food only. It is for this reason also I would be satisfied that the Condition No. 2 of 07/257 should not be considered as impeding the proposed development.”
- It was noted that existing carparking on the appeal site was underutilised as stated.
- A shortfall of eight carparking spaces was estimated as stated and a development contribution as specified should be levied on the proposed development.
- A Note on the Planning Report stated that it was not considered appropriate for reasons stated to request a development contribution in lieu of the carparking requirement.
- Permission was recommended subject to the Conditions as stated in the notification of decision of the Planning Authority.

#### **4.6 Notification of Decision of Planning Authority**

The Planning Authority, Waterford City Council issued a notification of decision to **GRANT PERMISSION** for the proposed development subject to nine Conditions, including as follows: -

- Condition No. 2 as follows: -  
“The development permitted herein shall be used solely as a discount food store as defined in the Retail Planning Guidelines 2005 (DEHLG). No comparison goods shall be sold or material change in this use shall take place save with the prior grant of planning permission.  
REASON: In order to comply with the Waterford City Development Plan Retail Policy and having regard to the application site’s high profile location, in the interest of the proper planning and sustainable development of the area.”
- Condition No. 3 regarding external lighting and signage as specified.

### **5. APPEAL GROUNDS**

#### **5.1 Third Party Appeal of RGDATA**

The appeal submissions included as follows: -

- The Third Party Appeal Grounds included reiterating the earlier Submission on the Planning Application as summarised under Section 4.1 above of this report.
- It was noted that a ‘Discount Food Store’ is not considered an acceptable use under Section 10.15 ‘Schedule of Land Uses’ in regard to the General Business Use zoning of the appeal site.
- Section 2.7.6 ‘Retail Warehousing’ in the Development Plan was noted which included as stated that “Retail Warehouses will only be permitted where they fulfil the following criteria... The sale of goods such as food, clothing, footwear, books/stationary, toys and sportswear will not be permitted”. It was noted that no Retail Impact Assessment was submitted.
- “The subject area is designated as one which is suitable for retail warehousing in the Development Plan (paragraph 2.7.6). This designation is reflective of the nature and extent of the retail warehousing uses in the block bound by the Cork Road (N25), the Tramore Road and the Inner Ring Road. The policy in relation to retail warehousing, goes on to restrict the use of such retail warehouses to bulky comparison items. Condition No. 2 of Planning Ref. 07/257 reflects this policy and to permit the sale of convenience goods in an area designated for retail warehousing materially contravenes the provision of the Development Plan”, and

- “The approach by the planning authority establishes a wholly undesirable precedent and allows for the proliferation of food/convenience and even higher order comparison retailing in retail parks, thereby undermining the retail hierarchy of centres established by the Development Plan.”

## **6. APPEAL RESPONSES**

### **6.1 Applicant’s Appeal Response**

This appeal response received 8<sup>th</sup> September 2011 included as follows: -

- “The purpose of this permission is to secure the tenancy of a new discount retailer to Waterford. This discounter will introduce a new retail offer in Waterford – its profile is similar to the definition of discount food stores, as given by the Retail Planning Guidelines (RPGs). However, its floor space requirements are significantly less. The store proposed, being 495 square metres net retail sales and 1,050 square metres gross, is between half and one-third of the floor space generally attributed to discount food stores, and as noted in the aforementioned RPG definition.”
- It was submitted that the proposed development in Unit No. 2 was not located within a ‘Retail Park’ as defined in the Retail Planning Guidelines: -  
 “Unit Nos. 3 and 4 were also vacant prior to the grant of permission for their amalgamation. The first occupant of these units is Buy-Lo – a retail unit which is open to trade and the general public, offering convenience and comparison goods.  
 Therefore as there is only one unit, Unit No. 1, which can be described as a retail warehouse unit, this site cannot now be described as a retail warehouse park.  
 The site is located however immediately adjacent to one of the defined District Centres (The Inner Relief/Tramore Road Centre) and within this centre’s adjoining retail/commercial area.”
- In regard to Condition No. 2 of the previous permission Planning Authority Reference 07/257 it was submitted as follows: -  
 “The application which is now under appeal sought a change of use from the permitted retail warehouse use to use as a discount food store, allowing for 495 square metres of net retail sales space. The inclusion of a condition attached to a permission does not preclude a further application being made to allow for an amendment to the permission granted or an alternative permission being granted for a different use.”
- The recent permission granted by An Bord Pleanála (Planning Authority Reference No. 09/156 and An Bord Pleanála Reference No. PL31.235114) relating to the Amalgamation of Unit Nos. 3 and 4 at this location was noted.

- In regard to the proposed development within the General Business zoning under the 2007-2013 Waterford City Development Plan, it was submitted as follows: -

“The Schedule of Permitted Uses for this zoning does not specifically list a discount food store as a permitted use. However retail is listed and retail encompasses all formats of retail trade including discount food store. Furthermore, the Authority does not include a discount food store as a listed use in any element of the Schedule of Land Uses in its Development Plan. Section 10.11 does confirm, albeit that ‘the Schedule of Permitted Uses is intended as a guideline and should not be regarded as being exhaustive... developments involving uses not listed in the schedule will be considered on their merits’”.

This use is also compatible with existing uses adjoining Unit No. 2 (Buy-Lo Retail Unit) and other convenience and discount retail stores in the immediate vicinity.”
- The submission of a Retail Assessment under the Retail Planning Guidelines for the proposed Discount Store development was not considered necessary - which was accepted in the Planning Report for the Planning Authority “given the scale of the current proposal, its location and its existing retail permission”.
- A Retail Report was now submitted and it was stated as follows: -

“The Assessment detailed in this Report found that the nature and the scale of the proposed development can be accommodated at this location without having any significant adverse impacts upon the vitality, viability and attractiveness of the Inner Relief Road/Tramore Road District Centre, other centres in the catchment area or the city centre. This is based upon a qualitative and quantitative assessment using the criteria and parameters set out in the Retail Planning Guidelines.”
- It was also noted as follows in regard to a submitted Map: -

“In a previous appeal made by RGDATA for the amalgamation of Units 3 and 4 adjoining this site (PL31.235114), the Inspector stated and the Board agreed that the Section 2.7.6 of the City Development Plan relating to retail warehousing and the designation for development on retail parks at a site on the Cork Road, did not relate to this site. The location of the Cork Road site designated for retail warehouse units and where permission has been granted, is identified on the extract of the land use map below. Therefore the policies of the Development Plan listed by the appellants regarding retail warehouses are not applicable to this appeal.”
- It was submitted that the proposed development would not contravene Development Plan Policy and would not establish as Undesirable Precedent as stated: -

“In terms of convenience retailing specifically and the retailing extent of discount food stores, i.e. 1,500 square metres floor space selling a limited range of goods at competitive prices, it is submitted that this format of retailing cannot and should not be located within a City Centre but at its edge. This is due to the extent of floor space required, the low order nature of the goods being sold, the high requirement for car parking and

its impact on the vitality and vibrancy of prime or secondary retail spaces. The retail hierarchy of the City Development Plan and its Retail Strategy, including its policies and objectives as previously outlined above, confirm that this proposal is in accordance with the Plan.

Section 2.7.12 – Discount Format Retailing: Applications for development of these types of outlets will be favourably considered where they are located within or adjoining existing District and Neighbourhood Centres in accessible locations.”

- The submitted Retail Report in regard to the proposed Small Scale Discount Food Store, Cork Road, Waterford, is noted including under ‘Site Location’ where stated as follows: -  
“The proposed development is located at Unit 2 in the former Boland’s Garage/Showroom at Cork Road, Waterford. There are two retail units adjoining this site, including Unit No. 1 – a furniture retailer: Unit Nos. 3 and 4 – Buy Lo Retail Unit (amalgamated and retail use permitted under PL31.235114 Planning Authority Reference No. 09/156).

These lands are zoned ‘to provide and improve general business uses’. Under this zoning designation, the development of retail units is permissible. It is noted that the Development Plan does not specifically state discount food stores as a permissible use under any of its land use categories, but it is covered by the term retail.

The appeal site is also located in the recognised commercial/retail area adjoining the Inner Relief Road/Tramore Road District Centre, as designated in Section 2.7.1 of the City Development Plan.”

- Section 4.0 ‘Conclusion’ included stating as follows: -  
“The proposed development consists of a change of use of an existing vacant retail unit to allow for the trading of a small scale discount food store. This development is proposed in a vacant unit in the commercial/retail area adjoining the Inner Relief Road/Tramore Road District Centre.

The City Development Plan and its Retail Strategy, directs convenience shopping to Tier 2 District Centres, with discount food stores proposed for locations within or adjoining these centres. This applies to the appeal site. The Retail Planning Guidelines promote the re-use of existing non-retail and vacant premises for discount food stores – the appeal site is vacant and has not been occupied since construction”, and also

“Discount food stores are not suitably located in primary retail areas due to their expansive footprint, requirement for car parking and trading of low order goods. These areas should be maintained for high and middle order goods in order to protect its vitality and viability.

City Centre vacancy will not be affected by the proposed development. In fact, at a time of economic uncertainty, this proposal will occupy a vacant unit at a time when attracting new retailers is proving problematic. Therefore, this proposal will decrease the amount of vacant property in the District Centre and the City.”

## 6.2 Appeal Observation

No appeal observation was received.

## 6.3 Planning Authority Appeal Response

This appeal response received 6<sup>th</sup> September 2011 included as follows: -  
“It is the view of the planning authority that the development of the 495 square metres discount retail unit, confined to the scale of non-comparison goods only, located at this district centre will not impact on the retail function of the city centre or vibrancy and vitality of the centre, and as such the development is compliant with the policies of the Waterford City Development Plan 2007 – 2013 and the Retail Planning Guidelines for Planning Authorities 2005 (DEHLG) and is therefore acceptable.”

## 6.4 Planning Authority Response to Applicant’s Appeal Response

The response received 26<sup>th</sup> September 2011 made no further comment.

## 6.5 Appellant’s Response to Applicant’s Appeal Response

The response received 3<sup>rd</sup> October 2011 included submitting that Section 2.7.6 ‘Retail Warehousing was considered relevant to the proposed development on the appeal site on the Cork-Waterford Road as stated: -

“The subject site falls within the area designated for Retail Warehousing on the Cork Road under paragraph 2.7.6 of the Development Plan and this Planning policy states ‘it is the policy of the Planning Authority to strictly control retail warehousing in the city. Retail warehouses will only be permitted where they fulfil the following criteria’. (stated above).

As a result of this policy, Condition No. 2 of the Planning Authority Reg. Ref. 07/257 was attached restricting the use of retail warehouse units. RGDATA respectfully ask that this condition is upheld.”

## 7. PLANNING HISTORY

\*\* The following Planning History files are attached: **PL 31.235114 (Reg. Ref. 09/156)**: - An Bord Pleanála granted permission on 18<sup>th</sup> June 2010 for a proposed development described as follows: -

- Development comprising “Amalgamation of Units 3 and 4, permitted under planning register reference number 07/257, to permit use as a wholesale warehouse retail unit open to trade and the general public and all associated site works at former Boland’s Waterford City, Cork Road, Waterford”, subject to six conditions as specified.
- The Planning Report for the Planning Authority documented the Relevant Site Planning History as follows: -  
“**06/10**: Planning permission granted for 3 no. retail units which consist of the change of use of existing car showrooms, workshops and stores into retail premises to include internal remodelling and elevational amendments and the construction of a two-storey retail

extension to the side of the existing building, all to include drainage connections; signage programme, boundary treatments, new vehicular entrance, amendments to existing entrance, car parking and associated site works.

**07/257:** Planning permission granted for (1) part demolition of existing retail premises to include: internal remodelling and elevational amendments (2) to construct a ground floor and part first floor mezzanine retail area extension to the side and rear of an existing single-storey retail premises comprising 4 no. retail units to include: drainage connections, signage programme, boundary treatments, car parking alterations, external lighting provisions and associated site works.

Condition No. 2 of this permission reads as follows: -

“The use of the retail units is restricted to use as retail warehouse units. Only retailing of non-convenience products such as bulky household goods, including carpets, furniture, automotive products, white electrical goods, DIY and gardening products, office equipment are permitted. The sale of goods such as food, clothing, footwear, books/stationary, toys and sportswear are not permitted.

Reason: In order to comply with the Waterford City Development Plan Retail Policy and having regard to the application sites high profile location, in the interest of the proper planning and sustainable development of the area.”

Unit 2 to which the current planning application pertains has a permitted retail sales area of 855 square metres and a total floor area of 1,029 square metres.”

## **8. DEVELOPMENT PLAN**

**8.1** The provisions of the 2007 – 2013 Waterford City Development Plan have been considered and in particular the following provisions which are attached in **Appendix C – Development Plan**.

- \* The ‘General Business’ land use zoning objective for the appeal site is as follows as indicated on the Land Use Zoning Map: -  
“To provide and improve General Businesses”.
- \* Section 2.1 – ‘Key Opportunity Sites’.
- \* Section 10.11 – ‘Permitted Uses in Various Zones’.
- \* Section 10.15 – ‘Schedule of Land Uses’ in regard to 3 ‘To provide and improve General Business Use’.
- \* Section 2.7 – ‘Retail Strategy’ including Section 2.7.6 – ‘Retail Warehousing’ and Section 2.7.12 – ‘Discount Format Retailing’.

**8.2** The provisions of the Retail Planning Guidelines for Planning Authorities published by the Department of the Environment, Heritage and Local Government in January 2005 have also been considered including the following provisions:

- \* Annex 1 – Definitions of ‘Discount Food Store’ and ‘Retail Warehouse’.
- \* Sections 64 and 65 – ‘Impact on Vitality and Viability’.
- \* Section 76 – ‘Discount Food Stores’.

## **9. PLANNING ASSESSMENT – Issues and Evaluation**

Further to my examination of the documents on file and the site inspection, it is considered that it is appropriate to undertake a planning assessment of the issues raised by the applicant, the Planning Authority and appellant, in the course of this appeal, under the following general headings: -

- 9.1 Relevant Provisions of the Development Plan.**
- 9.2 Retail Planning Guidelines 2005.**
- 9.3 Retail Impact of Proposed Development.**
- 9.4 Car Parking Provision and Other Issues.**

### **9.1 Relevant Provisions of the Development Plan**

The first party submissions that the appeal premises Unit No. 2 – wherein a change of use of Unit 2 from Retail Warehousing use to use as a Discount Food Store is proposed – is not governed by the provisions of Section 2.7.6 ‘Retail Warehousing’ in the 2007-2013 Waterford City Development Plan which includes stating as follows:- “Retail Parks have emerged as amalgamations of retail warehouses grouped around a common car park selling bulky household goods” as submitted by appellant; is on balance accepted by reason of the definition of Retail Park in the 2005 Retail Planning Guidelines as follows: - “A single development of at least *three* retail warehouses with associated car parking”. (Italics added)

In addition to the existing vacant Retail Warehousing Use appeal premises Unit 2, there is only *one* other Retail Warehousing type use which is Unit No. 1 on the overall lands on which the appeal premises is located. Units Nos. 3 and 4 were the subject of a recent permission for a change of use from Retail Warehousing use to use as a Wholesale Warehouse Retail Unit and amalgamation of the two units granted by An Bord Pleanála (Ref. PL31.235114) – which decision confirmed the earlier notification of decision of the Planning Authority to grant permission and did not accept the present appellant’s appeal grounds submission in that case.

The following provisions of the Development Plan are considered relevant to the present proposed development. The Development Plan land use zoning objective for the appeal premises is ‘General Business Use’ defined as ‘To

provide and improve General Business Use’ as indicated on the Land Use Zoning Map, see Appendix C – Development Plan.

Section 10.3 ‘General Business Use’ in the Development Plan includes stating that ‘The zoning of lands for General Business Use must have regard to the retail strategy and the need to protect the function of the City Centre while providing for the local needs of the neighbourhoods.’

Section 10.11 ‘Permitted Uses in Various Zones’ includes stating as follows: - “The following schedule indicates the nature of the new uses or new developments that will normally be permitted in each zone and is the basis on which land use control will be exercised in the development management process. *Uses listed in the Schedule under each zone are generally acceptable in principle in the relevant zones.*” (Italics added)

Section 10.15 ‘Schedule of Land Uses’ under Land Use Zoning 3 ‘To provide and improve General Business Use’ specifies Uses ‘Generally Acceptable in Principle (as per Section 10.11 above) within Land Use Zoning 3 which includes Uses as follows: - ‘Retail’ and ‘Warehouse including Retail Warehouse’. As such the proposed change of use from Retail Warehousing Use to Retail Use is a Use which is ‘Generally Acceptable in Principle’ within the General Business Land Use Zone as stated under Section 10.15 ‘Schedule of Land Uses’ in the Development Plan.

Section 2.7 ‘Retail Strategy’ in the Development Plan notes the requirement under the 2005 Retail Planning Guidelines for a Retail Strategy to be included in the Development Plan. The Retail Hierarchy defined under Section 2.7.1 in the Development Plan included ‘1. The City Centre 2. District Centres of ... The Inner Relief Road/Tramore Road...’.

The submissions on file in regard to the proximity of the appeal premises to the above Inner Relief Road/Tramore Road District Centre are noted and that Section 2.7.3 ‘District Centres’ includes the following stated Development Plan Policy:- “To acknowledge the role of the District Centres in meeting local needs primarily for convenience shopping with a limited range of comparison shopping to service local need” and “to restrict the development of large scale retail developments to the city centre and the District Centres”.

The reference to ‘Retail Parks’ under Section 2.7.6 ‘Retail Warehousing’ has already been discussed above. It is accepted that the appeal premises is not located within a ‘Retail Park’ as defined in the 2005 Retail Planning Guidelines as submitted by the applicant and also accepted by the Planning Authority.

It is also accepted as submitted in the Applicant’s Appeal Response that the reference under Section 2.7.6 ‘Retail Warehousing’ in the Development Plan to sites ‘designated for the development of retail parks’ including ‘a site on the Cork Road’, does not refer to the present appeal site on the Cork Road, but to the lands zoned ‘Mixed Use’ further to the west on the southern side of the Cork Road as identified in the Map submitted with the Applicant’s Appeal Response.

In particular it is noted that Section 2.7.12 'Discount Format Retailing' in the Development Plan states as follows: - "This form of retailing is considered as complementary to the existing convenience market. Applications for development of these types of outlets will be favourably considered where they are located within or adjoining existing District and Neighbourhood Centres in accessible locations, or where they can form part of new mixed use centres, or within commercially zoned areas..."

The Applicant's Appeal Response in regard to the proposed Discount Food Store development within the 'General Business' zoned appeal site under the 2007-2013 Waterford City Development Plan is particularly noted and generally agreed where stated as follows:- "The Schedule of Permitted Uses for this zoning does not specifically list a discount food store as a permitted use. However *retail is listed and retail encompasses all formats of retail trade including discount food store*. Furthermore, the Authority does not include a discount food store as a listed use in any element of the Schedule of Land Uses in its Development Plan."

In regard to the Appellant's Response received 3<sup>rd</sup> October 2011 and the earlier submitted first party appeal grounds, it is noted as stated above that the Development Plan land use zoning of the appeal site is General Business Use and not Retail Warehousing Use and that 'Retail' use is a 'permissible in principle use' within the 'General Business' zoned appeal site.

In this regard also the General Business zoned location of the appeal premises adjacent to the Inner Relief Road/Tramore Road District Centre is noted as also the Applicant's Appeal Response submission that the proposed Discount Food Store would include only sale of convenience goods.

## **9.2 Retail Planning Guidelines 2005**

As stated above in regard to the Retail Planning Guidelines 2005 the first party submissions that the appeal premises Unit No. 2 is not located within a Retail Park – as submitted by the Appellant – is accepted by reason of the definition of Retail Park in the 2005 Retail Planning Guidelines as follows: - "A single development of at least *three* warehouses with associated car parking." (Italics added)

In addition to the existing vacant Retail Warehousing Use appeal premises Unit 2, there is only *one* other Retail Warehousing use which is Unit No. 1 on the overall lands on which the appeal premises is located. Units Nos. 3 and 4 were the subject of the recent permission for a change of use from Retail Warehousing use to use as a Wholesale Warehouse *Retail Unit* under the recent permission for amalgamation of the two units and retail use granted by An Bord Pleanála (Ref. PL31.235114) – which decision confirmed the earlier notification of decision of the Planning Authority to grant permission and did not accept the present appellant's appeal grounds submission in that case.

It is noted that the proposed Discount Food Store Development constitutes a small scale Discount Food Store in the existing vacant Retail Warehousing premises Unit 2 in the context of the definition of Discount Food Store in the Guidelines as ‘normally of between 1,000-1,500 square metres of gross floor space’. The proposed development comprises a specified total *retail sales area of 495 square metres* selling convenience goods only as submitted.

It is further noted in this regard that the Planning Report for the Planning Authority referring to the earlier permission for a proposed development comprising 4 no. retail units as specified (Ref. No. 07/257) stated as follows: “Unit 2 to which the current planning application pertains has a *permitted retail sales area of 855 square metres* and a total floor area of 1,029 square metres.”

Section 64 ‘Impact on Vitality and Viability’ in the Guidelines includes stating that new developments – which compromise the planning goal of promoting healthy town centres in the public interest – should be rejected. Section 65 in the Guidelines identifies criteria which should be addressed in regard to proposed large scale developments in relation to existing town centres. The Planning Report for the Planning Authority has stated that the present proposed development is not considered such a large scale development and noting the limited scale of the proposed development – as outlined above - I would concur.

As such a Retail Assessment in regard to the proposed development was not considered necessary by the Planning Authority and I concur. I note the submitted Retail Report included in the Applicant’s Appeal Response including under ‘Conclusions’ where stated as follows:- “The proposed development consists of a change of use of an existing vacant retail unit to allow for the trading of a small scale discount food store. This development is proposed in a vacant unit in the commercial/retail area adjoining the Inner Relief Road/Tramore Road District Centre,” and also “City Centre vacancy will not be affected by the proposed development. In fact, at a time of economic uncertainty, this proposal will occupy a vacant unit at a time when attracting new retailers is proving problematic. Therefore, this proposal will decrease the amount of vacant property in the District Centre and the City.” (Italics added).

Section 76 of the Guidelines in regard to Discount Food Stores is also noted in regard to the present proposed development where stated as follows: - “*Re-use of existing non-retail and vacant premises in existing centres should be encouraged* unless there is clear evidence to suggest that there would be a significant impact on the viability of smaller centres, due to the size of the discount store.” (Italics added) In my opinion no ‘significant impact on the viability of smaller centres’ would ensue further to the proposed small scale Discount Food Store development.

### 9.3 Retail Impact of Proposed Development

I concur with the Applicant and the Planning Authority that use of the appeal premises (Unit No. 2) which is presently vacant and as submitted “has not been occupied since construction”, would accord with Section 76 of the Guidelines as stated above. Though it is noted that the proposed Discount Food Store development is not located in an ‘existing centre’, the location is adjacent to the existing Inner Relief Road – Tramore Road District Centre.

The Applicant’s submission that no use of the existing appeal premises Unit No. 2 has occurred is noted in regard to the permission granted (Reg. No. 09/156 and Ref. PL31.235114) for a change of use from Retail Warehousing use (under Condition No. 2 of earlier permission Ref. No. 07/257) to ‘Use as a Wholesale Warehouse Retail Unit Open to Trade and the General Public’ development in the adjoining amalgamated Unit Nos. 3 and 4 at this location. There are also a number of existing Discount Food Store developments in this area as submitted. As such it is considered that the proposed small scale Discount Food Store development would be acceptable at this location and in accordance with the proper planning and sustainable development of the area, and on this issue I concur with the Planning Authority.

Furthermore in regard to the retail impact of the proposed development, it is noted that as submitted the proposed development is specified as relating to a total retail sales area of 495 square metres at ground floor level only in the existing Unit No. 2 appeal premises with a gross floor area in excess of 1,000 square metres, and a permitted retail sales area of 855 square metres as noted in the Planning Report for the Planning Authority, and it is considered that the limited extent of such retail area as proposed should be specified by condition in any grant of permission for the proposed development.

I do not accept that the proposed development with a retail sales area of 495 square metres in the currently vacant Unit No. 2 appeal premises would adversely impact on existing centres in the area or the city centre or impede the redevelopment of the eight identified ‘Key Opportunity Sites’ under Section 2.1 of the Development Plan. It is noted that Section 10.10 ‘Mixed Use and Opportunity Sites’ in the Development Plan states that “eight Mixed Use Opportunity Sites have been designated” including on such Site on the Cork – Waterford Road (N25) – see Photograph 1 in Appendix B.

Section 2.7.12 ‘Discount Format Retailing’ in the Development Plan includes stating that “Applications for development of these types of outlets will be favourably considered where they are located within or adjoining existing District and Neighbourhood Centres in accessible locations.” It is noted that the appeal site of the present proposed small scale Discount Food Store development is located adjacent to the Inner Relief Road/Tramore Road District Centre, and that the appeal site premises presently vacant accessed off the Cork-Waterford Road is in an ‘accessible location’ with extensive carparking provision.

#### **9.4 Car Parking Provision and Other Issues**

Further to site inspection it is considered that the existing extensive carparking provision at the appeal premises to the front and rear of the building, see Photographs 5 and 6 in Appendix B of this report, appears to be underutilised. The proposed small scale Discount Food Store development (495 square metres retail sales area) includes no proposed additional floor space. I concur with the Planning Report for the Planning Authority that existing car parking provision on the appeal site appears to be underutilised, and as such I consider the existing car parking to be adequate to serve the proposed small scale development.

In regard to the present proposed development contravening Condition No. 2 of the earlier permission (Ref. No. 07/257) for a retail warehouse development on the site as submitted by the Appellant, I note the Applicant's Appeal Response submission that as stated "The inclusion of a condition attached to a permission does not preclude a further application being made to allow for an amendment to the permission granted or an alternative permission being granted for a different use", and I concur with such submission.

I furthermore concur with the Planning Authority Appeal Response where stated that the Planning Authority considers that "the development of the 495 square metres discount retail unit, confined to the scale of non-comparison goods only, located at this district centre *will not impact on the retail function of the city centre or vibrancy and vitality of the centre*, and as such the development is compliant with the policies of the Waterford City Development Plan 2007 – 2013 and the Retail Planning Guidelines for Planning Authorities 2005 (DEHLG) and is therefore acceptable."

#### **10. CONCLUSIONS AND RECOMMENDATION**

In conclusion, further to the above assessment of matters pertaining to this appeal, including consideration of the submissions of each party to the appeal, and including the site inspection, I consider that the proposed development would be in accordance with the proper planning and sustainable development of the area having regard to the relevant provisions of the Development Plan, and the Retail Planning Guidelines (2005) which are considered reasonable, and I recommend that permission be granted for the proposed development for the stated Reasons and Considerations in the First Schedule and subject to the Conditions as stated in the Second Schedule below.

#### **DECISION**

GRANT permission for the above proposed development in accordance with the said plans and particulars based on the Reasons and Considerations under and subject to the Conditions set out below.

## REASONS AND CONSIDERATIONS

Having regard to the 'General Business' land use zoning objective for the area in the 2007-2013 Waterford City Development Plan wherein Retail Use is specified as a 'generally acceptable in principle use' under Section 10.15 of the Development Plan, and the pattern of development in the area and the Retail Planning Guidelines published by the Department of the Environment, Heritage and Local Government in 2005, and having regard in particular to the limited small scale of the proposed Discount Food Store development with a total retail sales area of 495 square metres at ground floor level, it is considered that, subject to compliance with the Conditions in the Second Schedule, the proposed development would be in accordance with the General Business land use zoning objectives for the area under the Development Plan and would not adversely impact upon the vitality and viability of existing retail centre developments in the area or contravene the Retail Planning Guidelines (2005). The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## CONDITIONS

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require points of detail to be agreed with the planning authority, these matters shall be the subject of written agreement and shall be implemented in accordance with the agreed particulars. This permission relates to a total retail sales area of 495 square metres at ground floor level as submitted and as identified on the submitted drawings received on the 26<sup>th</sup> day of May, 2011.

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

2. The development permitted herein shall be used solely as a discount food store as defined in the Retail Planning Guidelines 2005 published by the Department of the Environment, Heritage and Local Government. No comparison goods shall be sold or material change in this use shall take place without a prior grant of planning permission.

**Reason:** To comply with the Waterford City Development Plan Retail Policy and in the interest of the proper planning and sustainable development of the area.

3. Prior to the commencement of development the developer shall submit details including samples and brochures as necessary of any external lighting and signage for the proposed development which does not require a separate permission for the written agreement of the planning authority.

**Reason:** In the interest of the proper planning and sustainable development of the area.

4. The developer shall provide sufficient area for the storage of waste bins to cater for all waste generated on site which shall be stored on site and out of view of the general public. The developer shall submit details of the bin storage area and of the type and number of bins. The developer shall submit details of the waste contractor and the contract agreement, including collection permit details and the proposed frequency of removal of refuse. Details shall be submitted prior to the first occupation of the development.

**Reason:** In the interest of visual amenity and the proper planning and sustainable development of the area.

5. 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. 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. 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 the Board to determine the proper application of the terms of the Scheme.

**Reason:** It is a requirement of the Planning and Development Act 2000 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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**DERMOT KELLY**  
**SENIOR PLANNING INSPECTOR**

**28<sup>th</sup> October, 2011.**

APPENDIX A - LOCATION MAP  
APPENDIX B - PHOTOGRAPHS (incl. KEY PLAN)  
APPENDIX C - DEVELOPMENT PLAN

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