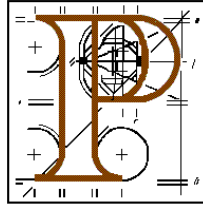


**An Bord Pleanála**



**Inspectors Report**

**Proposed Development:** Permission is sought for the construction of a new entrance and access road from the Ballyhooly Road at Banduff, Ballyvolane, Cork. The planning application consists of the opening of a new entrance and construction of a vehicular and pedestrian access road. The road is to provide access to lands within the administrative boundary of Cork County Council which are the subject of a planning application granted by Cork County Council (Planning Reference 14/4895) for a mixed used retail development and currently on appeal to An Bord Pleanala (Appeal Reference PL04.244668). The planning application includes all associated site services and ancillary site development works and allows for connectivity to the future proposed amenity walkway along the Glen River. All works are proposed at Fox and Hounds, Ballyhooly Road, Banduff, Ballyvolane, Co. Cork.

**Planning Application:**

|                               |                                      |
|-------------------------------|--------------------------------------|
| Planning Authority:           | Cork City Council                    |
| Planning Authority Reg. Ref.: | 15/36520                             |
| Applicant:                    | Ballyvolane Development Company Ltd. |
| Type of application:          | Permission                           |
| Planning Authority Decision:  | Refuse permission                    |

## **Planning Appeal**

Appellants: Ballyvolane Development Company

Observers: Dunnes Stores.

Type of appeal: First Party against refusal

Site Inspection: 18/06/2015 & 18/01/2016

**Inspector: A. Considine**

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## **1.0 THE SITE**

- 1.1 The site, the subject of this appeal, is located approximately 2.5km to the north west of Cork City Centre and is located on the boundary of the Cork County Council jurisdiction. The site itself is located within the jurisdiction of Cork City Council with the proposed retail development to be located in the area of Cork County Council. The Board will note that a concurrent planning application was lodged with Cork County Council with regard to the proposed access to the site. Cork County Council have granted planning permission for the proposed retail development subject to permission being approved for the entrance and access road and this decision is currently on appeal with the Board, PL 04.244688 refers. The site is located on the junction of the Ballyhooly Road, R614 and the Ballyvolane Road. The Cork City North Link Road, the R635, is located approximately 100m to the south of the site.
- 1.2 The overall site has a stated area of 0.4445 hectares and the boundaries comprise the Glen Stream to the north, Ballyhooly Road to the west, the North Ring Road to the south and open space to the east. Opposite the site to the west there is a large Dunne's Stores supermarket within the Ballyvolane Shopping Centre. A Lidl supermarket and attached furniture shop are located on a site to the north of the Rathcooney Road. The area to the north west of the overall site, including the site the subject of appeal in the County Councils jurisdiction, comprises the existing Fox and Hound development which includes a number of existing commercial services including a pub, restaurants, off licence, convenience store, bookmakers, hair salon, beauty salon and offices. The total existing gross floor area is indicated at 1515.8sqm. The subject site is generally undeveloped and is not easily accessible. The area to be developed is quite low-lying compared to the area occupied by the Fox and Hound complex with a difference in levels noted up to approximately 7.5m with a steep slope towards the north and south of the site. Site conditions are indicated as being somewhat wet and marshy.

## **2.0 PROPOSED DEVELOPMENT**

- 2.1 Permission is sought for the construction of a new entrance and access road from the Ballyhooly Road at Banduff, Ballyvolane, Cork. The planning application consists of the opening of a new entrance and construction of a vehicular and pedestrian access road. The road is to provide access to lands within the administrative boundary of Cork County Council which are the subject of a planning application granted by Cork County Council (Planning Reference 14/4895) for a mixed used retail development and currently on

appeal to An Bord Pleanála (Appeal Reference PL04.244668). The planning application includes all associated site services and ancillary site development works and allows for connectivity to the future proposed amenity walkway along the Glen River. All works are proposed at Fox and Hounds, Ballyhooly Road, Banduff, Ballyvolane, Co. Cork.

2.2 In support of the planning application, the applicants submitted to Cork County Council the following information / documents:

- A copy of the planning application form
- All relevant drawings, plans, particulars, public notices and planning fee
- Letter of consent from Cork City Council (Landowner) consenting to the application.
- Planning Report – prepared by Cunnane Stratton Reynolds
- Drainage Report
- Landscape details and Tree Survey
- AA Screening Report
- Flood Risk Assessment and Management Report
- Ecological Mitigation Plan
- Flood Risk Assessment & Management Report
- Access Proposal including
  - Traffic Modelling Report
  - Stage 1 Road Safety Audit
  - Traffic Modelling Peer Review
  - Transportation Assessment

2.3 The proposed development of the access road is to sit on the current site levels to the south and will be supported on piles to the north so as to minimise interface with the topography of the site and to allow for flood compensation in areas under the proposed road. It is submitted by the applicant that “this approach is the optimum design approach to the access

road as it minimises the impact on the ecology of the area while providing additional flood compensation for the prevention of flooding down-stream. It also facilitates the bridging of the Glen Stream.” It is further submitted that the access road has been designed to facilitate a future possible access point to Cork City Council’s future proposals to provide an amenity river walk along the Glen River.

### **3.0 REPORTS ON PLANNING AUTHORITY FILE**

3.1 The planning application was lodged with Cork City Council on 17<sup>th</sup> August, 2015 and it is indicated that a pre planning consultation was undertaken.

3.2 In terms of the Planning Authority’s assessment, twenty third party submission objecting to the proposed development are noted on the planning file from the following:

|  |                                 |
|--|---------------------------------|
| Pat & Frances Russell  | Brookvale Residents Association |
| Noreen Canty   |                                 |
| Eoin Browne  | Brid Blake                      |
| Aisling Browne   | John & Rita Scott               |
| Murphy McCarthy Consulting Engineers on behalf of residents to north and west of site. | Ger Keohane                     |
|  | Una Crowe                       |
|  | Bronadh Olotu                   |
| Michelle Brook   | Sharon Holland                  |
| Deborah O’Flynn  | Paul Downey                     |
| Brian & Linda Carr   | Dorota Misiak                   |
| Fergus O’Brien   | Roy Scott                       |
| Marcella & Declan Feagan   | Dunnes Stores                   |

The issues raised are summarised<sup>1</sup> as follows:

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<sup>1</sup> See appendix 1 for detailed summary of submissions.



- Non-compliance with Development Plan or zoning objective for the site
- Traffic congestion and unworkable
- Noise pollution
- Visual impact
- Impacts on natural habitats and wildlife
- Flood risk
- Depreciation of value of homes

3.3 There are five external reports noted on the planning file from the following:

**Transport Infrastructure Ireland:** notes that the Authority will rely on the PA to abide by official policy in relation to development on / affecting national roads, as outlines in the DoECLG Spatial Planning & National Roads Guidelines for Planning Authorities (2012).

**Inland Fisheries Ireland:** It is requested that conditions require that there is no interference with, bridging, draining, or culverting of the adjoining Glen River, its banks or bankside vegetation to facilitate this development without the prior approval of IFI.

**Cork County Council:** The submission advises regarding the inclusion of Condition 2 of the Councils grant of planning permission under 14/4895, which states 'The development shall not commence until the prior grant of permission by Cork City Council for the new entrance and access roads which serve the development within its jurisdiction. REASON: Access from within the City is required to facilitate the development.'

The submission advises that the development granted by Cork County Council cannot be implemented without a permission for a new entrance and access road.

**Irish Water:** No observations.

3.4 There are reports noted from five internal departments within Cork County Council as follows:

**Environment Section:** Waste Management & Control raise no objection to the proposed development subject to the inclusion of 11 state conditions.

**Drainage Division:** The report is presented under a number of headings as follows:

- AA - It is considered that the development would not affect the integrity of the European sites and accordingly, AA is not required.
- Flooding - Under the Flood Risk Management Guidelines, the proposed access road is considered to be essential infrastructure, and is therefore classed as a highly vulnerable development, within a Flood Zone A. Justification test required. It is considered that the development is premature pending the publication of the 'Lower Lee Flood Relief Scheme'. The report notes the argument of the applicant that the access road should be considered ancillary to the overall development and asks that the road be permitted in a co-ordinated manner with the County Council. It is concluded that if the development is deemed to be within zoning, the requirement is limited to the site – specific test. The submission is deemed to meet the more limited criteria. If development is deemed to be within the current zoning, there is no objection, subject to submitted mitigation measures.
- Storm Drainage - condition recommended.

A second report repeats the recommended condition in relation to storm drainage and also advises in relation to the including of a condition re connections to Irish Water.

**Transportation Division:** Raises concerns relating to the proposed development on the basis that the proposed in only entrance and the proposed entry/exit junction may have undesirable serious negative impacts on the operation of the local traffic network. A number of issues are required to be clarified such that a robust assessment and a recommendation can be made. FI required in relation to the following:

- Issues with a number of identified coding errors identified in the LINSIG Models provided in the Traffic Modelling Report.

- Following addressing the coding errors, the applicant should demonstrate that the proposed development can be accommodated with an acceptable impact on the operation of the existing road network.
- Confirmation of the number of car parking spaces to be provided in the adjoining development TP14/4895.

**Road Design Division:** Due to the scale of the development, a considerable amount of infrastructural improvements are required as identified by the applicant, of which this application only forms a part. It is requested that FI be sought where the applicant is requested to confirm how he proposes to deliver the additional infrastructure identified in the master plan, required to facilitate the development but which falls outside the scope of the application.

**Heritage Officer:** In the absence of the EIS Ecology Chapter or an Ecology Report, it is difficult to assess the effectiveness of the Ecology Mitigation Plan. Many of the flora and fauna species mentioned in the Ecology Mitigation Plan are protected under Irish and European legislation and their importance is outlined in Policy 10.7 Designated Areas and Protected Species of the Cork City Development Plan 2015-2021. Even though the site is not designated, it is still considered to be of high biodiversity value from a city perspective and urban context.

It is considered that the proposed development will result in the modification, removal, destruction and isolation of many of the habitats and species on the entire site. It is recommended that permission be refused. Should FI be sought, a copy of the Ecology Report and /or ecology section of the EIS should be submitted.

**Exec. Parks Supt:** FI sought as follows:

- Tree survey report and plot on site map required.
- Site survey to show existing and finished ground levels for the entire length of the access road and any areas of proposed cut and fill.
- Site specific details to include finished levels for the proposed junction linking the access road to the proposed greenway corridor.

**Planning Policy Division:** A report from the Planning Policy Division of Cork City Council was prepared and the following considerations are presented:

- The site is zoned Public Open Space and it is considered that the development of an access road on 0.44 Ha of public open space zoned lands, materially contravenes the land use zoning objective for the site which is 'to protect, retail and provide for recreational uses, open space and amenity facilities.'
- The proposed development materially contravenes Objectives 10.2 and 10.3 of the Plan which deals with Cork City Landscape and Cork City Landscape Structure Plan
- It is considered that the proposed development on a 'high landscape value' designated lands will cause significant harm (visual intrusion) to the intrinsic character of the said lands by way of extent (footprint of engineering works) and as such materially contravenes Objective 10.4, namely 'to conserve and enhance the special landscape character and visual amenity of the Areas of High Landscape Value.'
- In terms of Rivers & Waterways, it is considered that development materially contravenes Objective 10.9 of the Plan.
- The development is inconsistent with the Council's aim to develop North-East City Park / River Glen Corridor Park extending from Ballyhooly Road to Tinkers Cross and materially contravenes Objective 11.7 of the Plan 'to protect, retail, improve and provide for areas of public open space for recreation and amenity purposes.'
- In terms of Flood Risk, as part of the SEA prepared for the City Development Plan, zoned lands along/adjoining the valley of the Glen River were tested against the Justification test for Development Plans in accordance with the Flood Risk Management Guidelines. Zoned lands adjoining the subject site failed to satisfy the justification test insofar as the LeeCFRAMS did not demonstrate that the flood risk to the development area could be adequately managed and would not cause unacceptable adverse impacts elsewhere. The open space zoned lands were not subject to the Justification Test as they are deemed to be water compatible. The OPW is currently preparing the Lower Lee Flood Relief Scheme and it is considered that the development is premature pending the completion of this scheme.
- The Justification Test as presented by the applicant states that 10% of the site is zoned public open space and an area of high landscape value and that the remainder is zoned town centre. This is inaccurate and misleading. The entire holding subject to this application is zoned

public open space and is also designated an Area of High Landscape Value. The site is not zoned for 'water vulnerable' class of development but for water compatible use and therefore, the site and zoning does not satisfy the Justification Test. The development of an access road materially contravenes the public open space land use zoning objective and the proposal does not satisfy the JT in this regard. The development materially contravenes Objective 12.15.

The proposed development is considered to be contrary to the proper planning and sustainable development of the area and it is recommended that permission is refused.

3.5 In terms of the planning officers' report, the report considers the nature of the proposed development against policy context, including local, regional and national policy. The planning history of the site is considered as are the submissions and reports presented. The report also notes that while no pre planning meetings were held with regard to the current planning application, there were meeting in relation to the previous application, TP14/36016, in March, 2014. It is noted that the applicant was advised as follows:

- Roads Directorate will require a Special Contribution to compensate for the capacity lost due to the proposal in relation to its design scheme for this section of road close to the junction with the North Ring Road.
- The proposal may need to be modified in light of the recommendation of the forthcoming flood relief proposals scheduled for June 2014.

The Planners report also presents a section on Environmental Assessment which included a consideration of the proposed development in terms of EIA, AA and Flood Risk Assessment. The planning assessment considered the proposed development under a number of headings including the zoning & principle of the development, area of High Landscape Value, set back from River Glen, heritage, parks, transportation & road design and drainage / flooding. The report concludes that there is no significant change to the current proposal from that of the previous applications. It is therefore considered that the same issues apply and the proposed development would be contrary to the proper planning and sustainable development of the area. It is recommended that permission be refused for 5 reasons, summarised as follows:

1. Materially contravenes the ZO 14 Public Open Space zoning afforded to the site.
2. Insufficient legal interest demonstrated in lands required for the delivery of the full package of roads infrastructure which is vital for the

proposed development to function. The development would be likely to endanger road safety by reason of traffic hazard and cause serious traffic congestion.

3. The development does not satisfy all the criteria of the Justification Test and is premature pending the publication of the Lower Lee Flood Relief Scheme.
  4. Impact on habitats in a non-designated area of biodiversity importance, materially contravening policy 10.7 and 10.8 of the CDP.
  5. The development on lands designated High Landscape Value would damage the intrinsic character and important landscape asset of the area and would contravene objective 10.4 and 10.9 of the CDP.
- 3.6 The Director of Services considered the Planning report and decided to refuse permission for the proposed development but omit reasons 4 and 5 as presented on the basis that he considered the impact to be minimal and will not materially impact on the character of the open space

#### **4.0 DECISION OF THE PLANNING AUTHORITY**

- 4.1 The Planning Authority decided to refuse planning permission for the proposed development for the following 3 reasons:
1. The site is subject to zoning objection ZO14 Public Open Space, the purpose of which is, 'to protect, retain and provide for recreational uses, open space and amenity facilities, with a presumption against developing lands zoned public open space areas for alternative purposes, including public open space within housing estates.' Having regard to the siting of the proposed access road it is considered that the proposed development would materially contravene a development objective indicated in the Cork City Development Plan for the zoning of land for Public Open Space use and would therefore be contrary to the proper planning and sustainable development of the area.
  2. The applicant has proposed a full package of road infrastructure works at the Ballyhooly Road/North Ring Road junction, at the 'Fox and Hounds' junction and at a proposed new entrance. The applicant has

not demonstrated sufficient legal interest in lands required for the delivery of the full package of roads infrastructure which is vital for the proposed development to function. The applicant has not demonstrated how this vital infrastructure will be delivered or the timescale envisaged for its delivery. Having regard to the heavily trafficked nature of the adjoining road network and the proximity of the proposed entrance to the Ballyhooly Road / North Ring Road junction, it is considered that the proposed development would be likely to endanger road safety by reason of traffic hazard and cause serious traffic congestion and would therefore be contrary to the proper planning and sustainable development of the area.

3. Part of the proposed development site is located within Flood Zone A and Flood Zone B as defined in the '*Planning System and Flood Risk Assessment Guidelines for Planning Authorities, 2009*' (DECLG and OPW). The proposed development is therefore subject to a 'Justification Test' as set out in the Guidelines. The proposed development site is zoned 'ZO 15<sup>2</sup> Public Open Space'. The planning authority is not satisfied that the development satisfies all the criteria of the 'Justification Test'. Furthermore, the SEA for the Cork City Development Plan, 2015-2021 recommended that any proposed developments should be informed by the Lower Lee Flood Relief Scheme being prepared by the OPW. Consequently, the proposed development would be contrary to the above mentioned Ministerial Guidelines and would be premature pending the publication of the 'Lower Lee Flood Relief Scheme' and would therefore be contrary to the proper planning and sustainable development of the area.

## 5.0 RELEVANT PLANNING HISTORY

- 5.1 The following is the relevant planning history associated with the subject site:

**Reg.ref.12/35230:** Application by Ballyvolane Development Company Ltd for the integration of the existing mixed use retail/commercial development known as the Fox & hounds, Ballyvolane, Co Cork into a mixed use retail

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<sup>2</sup> The Board will note that appears to be a typo in Cork City Councils decision as the site is zoned ZO 14 Public Open Space, while ZO 15 deals with Public infrastructure and utilities.

development and natural linear park within the jurisdiction of both Cork County Council and Cork City Council. The proposed development includes 899no. car parking spaces which includes the incorporation of 22no.existing car parking spaces. Vehicular access is provided for through the upgrade of the existing Fox & Hounds access and a new access onto the North Ring Road and Ballyhooly New Road to the south and west of the site respectfully. Appeal against decision of Cork City Council to REFUSE permission was **WITHDRAWN.**

**Reg.Ref.13/35635:** Application lodged 23/05/13 to construct a new entrance and access road off the Ballyhooly Road at Banduff, Ballyvolane, Cork. The planning application consists of alterations to the existing road layout on the Ballyhooly Road and the opening of a new entrance and construction of a two lane road with cycling lane and pedestrian footpaths. The road is to provide access to lands within the administrative boundary of Cork County Council which are the subject of a planning application for a mixed use retail development under TP12/4725. The planning application includes all associated site services and ancillary site development works and allows for connectivity to the future proposed amenity walkway along the Glen River. Decision due 18/11/13 (time period for consideration extended). This application was withdrawn prior to a decision issuing.

**Reg.Ref.14/36016:** Permission sought to construct a new entrance and access road off the Ballyhooly Road at Banduff, Ballyvolane, Cork. The planning application consists of alterations to the existing road layout on the Ballyhooly Road and the opening of a new entrance and construction of a two lane road with cycling lane and pedestrian footpaths. The road is to provide access to lands within the administrative boundary of Cork County Council which are the subject of a planning application for a mixed use retail development under TP14/4895. This application was withdrawn prior to a decision issuing.

## 5.2 Concurrent application within Cork County Council area

**APB PL28.244668 (PA Reg ref: T.P. 14/04895):** Permission sought for the integration of the existing mixed use retail / commercial development known as the Fox and Hounds, into a mixed use retail district centre. The development comprises of the construction of 8no units in two blocks with a total gross floor area of 1570sqm ranging in size from 98sqm to 321sqm and containing 1no. restaurant 1no. community building & 6no. retail service units. The construction of an anchor unit of 9545sqm gross floor area, including



2920sqm of net convenience retail sales area (including alcohol sales area), 1434sqm net comparison retail sales area, 2no. retail services units, café and an 844sqm dedicated home shopping delivery service area. The proposed development includes 468no. car parking spaces which includes the incorporation of 22no. existing car parking spaces, 50no. of the car parking spaces are provided at ground level to the north of the site and 418no. are provided at undercroft level (under the anchor store and the 8no units). The proposal also includes landscaping, ESB substation, service yard, elevation signage, bicycle stands and all associated services and ancillary development. Vehicular access is provided for through the existing Fox and Hounds access and two access points on the Ballyhooly Road, one of which is an ingress only access to the undercroft car park and the other, the primary access and egress to the site, is located within the jurisdiction of the Cork City Council and is the subject of a concurrent planning application to the City Council. All works are proposed at Fox and Hounds, Ballyhooly Road, Banduff, Ballyvolane, Co. Cork.

### 5.3 Concurrent historic applications within Cork County Council area

**Reg.ref.03/3544:** Permission **GRANTED** by Cork County Council (16/10/03) for demolition of storage facility and construction of bookmaker's premises with apartment overhead, at Fox & Hounds Bar, Ballyhooly Road, Banduff, Ballyvolane.

**ABP Ref PL04.209851 (PA ref.04/6996):** Permission **GRANTED** by the Board on appeal for partial change of use of existing licenced premises for use as off license, alterations to elevations to provide new traditional shop front, relocation of permitted entrance to betting office and alterations to entrance to apartment permitted under Reg. No. S/03/3544.

**Reg.ref.05/5487:** Permission **REFUSED** by Cork County Council (08/11/05) for demolition of dwelling house and the construction of a mixed use development with access from the Rathcooney Road and new egress onto Ballyhooly New road comprising: a) alterations and extension to the existing Fox & Hounds Bar and premises to include a cafe at ground floor level and restaurant at first floor level (Block A); b) the construction of a two storey structure comprising 1 no. pharmacy, 1 no. travel agents, 1 no. retail unit and 1 no. convenience store at ground floor level, and an office area and medical centre with 6 no. consulting rooms at first floor level [Block B]; c) the construction of a single storey structure comprising a dry cleaners and 1 no.

video store [Block C]; d) 71 no. car park spaces and e) all associated site development works

**Reg.ref.06/4064:** Permission **GRANTED** by Cork County Council (11/04/06) for demolition of dwelling house and construction of mixed use development with access from the Rathcooney Road and new egress onto Ballyhooly Road, to include alterations and extension to Fox & Hounds Bar and premises to provide restaurant on first floor level (Block A), construction of two storey structure comprising of pharmacy, travel agents, 1 no. retail unit and convenience store at ground floor level, office area and medical centre with 6 no. consulting rooms at first floor level (Block B), provision of 120 no. car parking spaces and all associated site development works and retention of existing fill at Fox & Hounds Bar, Banduff, Ballyvolane.

**Reg.ref.07/10848:** Permission **GRANTED** by Cork County Council (06/01/08) for retention and completion of alterations and extension to existing ground floor bar and first floor restaurant to include external seating/deck areas at ground and first floor level, relocation of lift shaft, associated elevational alterations and site development works, at Block A, Fox & Hounds Bar, Banduff, Ballyvolane.

**ABP ref PL04.242108 (PA Reg.ref.12/04725):** Permission **GRANTED** by Cork County Council (04/06/13) for a mixed use retail development and linear park within jurisdiction of Cork County and Cork City Councils, Fox and Hounds, Ballyhooly Road, Banduff, Ballyvolane, Co. Cork. This development was appealed and a recommendation to refuse for four reasons was prepared. The appeal was withdrawn prior to the decision issuing.

#### 5.4 Other proximate sites:

##### **Ruben Homes site adjacent the east of the appeal site.**

**Reg.ref.04/9737:** Permission **GRANTED** by Cork County Council (04/04/05) for construction of 131no. dwelling houses, crèche facility, E.S.B. substation, car-parking and ancillary site works with recreational amenity area at Banduff, Ballyvolane.

### **Lidl site north of the appeal site.**

**Reg.ref.06/5274:** Permission **GRANTED** by Cork County Council (01/12/06) for demolition of garage complex and construction of discount food store incorporating off-licence and an attached single storey retail unit plus 171 no. car parking spaces, access roadway and signage and a two storey building comprising of no. ground floor units and 5 no. first floor rooms for retail / commercial use and / or professional / medical use and all associated site works and services at Ballyhooly Road, Ballyvolane.

**Reg.ref.10/8361:** Permission **GRANTED** by Cork County Council (14/03/11) for the construction of a single storey, flat roofed extension to the front of the existing licensed discount food store, also comprises an enclosed plant area adjoining the proposed extension, internal modifications/connection to existing store and all associated works amendments to car parking layout, connection to existing services and all associated site works at Ballyhooly Road, Ballyvolane.

### **Dunnes Stores (Ballyvolane Shopping Centre) -**

**Reg.ref.T.P.07/32606:** Permission **GRANTED** by Cork City Council (28/07/08) extension of, and amendments to Dunne's Stores shopping centre to 11,260-sq.m GFA at ground floor level and 2,349.518-sq.m at first floor level. The planner's report to T.P.13/35651 indicates that the subject proposal T.A.07/32606 resulted in a decrease of convenience floor space by 27-sq.m to 2701-sq.m and net comparison of 3,500-sq.m, however the history details provided by the planning authority and those available on the Council's website are inadequate to allow me confirm same. The proposal included the partial rerouting of the Glen Stream / River and revision to car park layout.

**Extension of Permission Reg.ref.T.P07/32606:** An extension of the appropriate period to 27/07/18 was **GRANTED** by Cork City Council on 02/08/13.

**Reg.ref.T.P.13/35651:** Permission **GRANTED** by Cork City Council (31/07/13) for extension of, and amendments to Dunne's Stores shopping centre. The proposed development entailed an increase of convenience floor space by 543-sq.m to 2,998-sq.m and an increase of comparison floor space by 950-sq.m to 2,546-sq.m.

## **6.0 POLICY CONTEXT**

6.1 In terms of the local policy context, the Board will note that when the previous planning applications for the same proposed development were lodged, the 2009 Cork City Development Plan was the relevant planning policy document. The 2015 CDP came into effect on the 20<sup>th</sup> of April, 2015. In the interests of completeness, I have included a small summary of the relevant sections in the 2009 City Development Plan.

### **Cork City Development Plan 2009-2015**

6.2 The lands to the south are zoned public open space and designated as 'area of high amenity value', with objective to provide 'proposed-upgrade walkways-cycleways'. The lands to the west are zoned 'residential, local services & institutions'.

6.3 The Board will note that at the time the planning application was lodged with Cork County Council, and indeed, when the appeal was lodged with An Bord Pleanala in terms of the Cork County Council element of the proposed development, the Cork City Development Plan, 2009-2015 was in effect. Since that time, the new City Development Plan was adopted and came into effect on the 20<sup>th</sup> April, 2015. At this point in time, the Cork City Council Development Plan 2015-2021 is the relevant policy document for the Boards consideration.

### **Cork City Development Plan 2015-2021**

6.4 The lands to the south of the subject site (within the County Council jurisdiction) is subject to proposed works in order to provide for the access road to serve the overall retail development. The current 2015 City Development Plan zones the subject lands ZO14 'Public Open Space' and it is the stated objective of this zoning 'to protect, retain and provide for recreational uses, open space and amenity facilities, with a presumption against developing land zone public open space areas for alternative purposes, including public open space within housing estates'.

6.5 Further to the above, the area continues to be designated as an 'Area of High Landscape Value', where it is the stated objective 'to conserve and enhance the character and visual amenity of the area.' Chapter 10 of the Cork City Development Plan deals with Landscape and Natural Heritage and the following policies and objectives are considered relevant:

- Objective 10.2: Cork City Landscape
- Objective 10.3: Cork City Landscape Structure Plan
- Objective 10.4: Areas of High Landscape Value
- Objective 10.7: Designated Areas & Protected Species
- Objective 10.8: Non Designated Areas of Biodiversity Importance
- Objective 10.9: River and Waterway Corridors

6.6 Chapter 11 of the Plan deals with Recreational Infrastructure and the following policies and objectives are considered relevant:

- Objective 11.1 Recreational Infrastructure Strategic Objectives
- Objective 11.4: City Parks
- Objective 11.7: Public Open Space
- Objective 11.13: Amenity Routes

6.7 Chapter 12 of the Plan deals with Environmental Infrastructure and Management and the following policies and objectives are considered relevant.

- Objective 12.13 Lee Catchment Management Plan / Lower Lee Flood Relief Scheme
- Objective 12.14 Flood Risk Management in Development Proposals
- Objective 12.15 Restrictions on Development in Flood Risk Areas
- Objective 12.16 Floodplains
- Objective 12.17 Flood Impact Assessment

**Cork County Council Development Plan, 2014**

6.8 The subject development site is located immediately adjacent to lands within the County Metropolitan Cork Strategic Planning Area of County Cork where objective CS 4-1 seeks to:

- a) 'Recognise the importance of the role to be played by Metropolitan Cork in the development of the Cork 'Gateway' as a key part of the Atlantic Gateways Initiative and, in tandem with the development of Cork City, to promote its development as an integrated planning unit to function as a single market area for homes and jobs where there is equality of access for all, through an integrated transport system, to the

educational and cultural facilities worthy of a modern and vibrant European City’

- n) In the Cork Gateway, development to provide the homes and jobs that are necessary to serve the planned population will be prioritised in the following locations, Carrigaline (Shannon Park), Midleton (Waterrock) and Carrigtwohill (North of the Railway), Ballincollig (Maglin), North Environs (Ballyvolane), Glanmire (Dunkettle), Blarney (Stoneview), Monard and Cobh. Details of the proposed development will be set out in Master Plan studies and Local Area Plans as appropriate.

- 6.9 Objective TCR 4-1 of the Plan deals with Retail Hierarchy and seeks to:  
‘Facilitate a competitive and healthy environment for the retailing industry into the future which provides for adequate choice in appropriate locations whilst ensuring that future growth in retail floor space is broadly in line with the identified Retail Hierarchy set out in Table 7.1’.

Ballyvolane is identified in the 4<sup>th</sup> tier in Table 7.1 (part 1) as follows:

**Type:** Sub Regional/ Metropolitan Cork District Centres (existing and proposed)

**Location:** Existing – Blackpool, Douglas, Mahon Point, Wilton,  
Proposed - Ballyvolane, Cork Docklands, Holyhill

**General Retail Function and Policy:**

Districts – Established centres generally characterised by a large convenience/comparison anchor, a range of low order comparison outlets, local retail facilities, ancillary specialist convenience outlets, community and social facilities. Primarily to serve their catchments.

Preference for retail park developments to locate in or adjacent to District Centres, to ensure the potential for linked trips and commercial synergy. Cautious approach to proposals for edge/out of town retail warehouse developments.

**Objective:** **TCR 45:** Support the vitality and viability of District Centres to ensure that such centres provide an appropriate range of retail and nonretail functions to serve

the needs of the community and respective catchment areas, in order to protect the primacy of Cork City Centre.

6.10 Section 7.7 of the Plan deals with Future Retail in the Metropolitan Area and notes as follows:

7.7.1 The retail quantum's agreed between City and County for the Metropolitan Area to 2022 are set out in Table 7.2 with the background information and detail in relation to quantum's set out in the Metropolitan Retail study.

7.7.2 The requirement for additional floor space is predicated on a number of factors including population growth, economic buoyancy and rising consumer demand. The Plan recognises and reflects prevailing circumstances underpinning floor space projections and shall adopt a pragmatic approach where it is evident that changes have occurred.

#### **Convenience Distribution – Metropolitan Area**

7.7.3 In relation to Convenience floor space within the Metropolitan Area the distribution will be in accordance with planned population growth.

#### **Comparison Distribution Suburban Centres**

7.7.4 There are currently four district centres in the Cork Suburbs, namely Blackpool, Wilton, Douglas and Mahon. Most of these serve a localised catchment and are primarily designed to serve weekly shopping needs. The exception to this is Mahon District Centre which has a wider and higher order range of comparison floor space and an adjacent retail warehouse park and performs a different role and function to other district centres within the Metropolitan Area.

7.7.5 No significant expansion in Mahon is envisaged over the lifetime of the strategy. In addition to the existing centres, the strategy supports the upgrading of neighbourhood centres at Ballyvolane and Holyhill to District Centres.

6.11 Table 7.2 of the Plan provides details for Floor space – Proposed distribution of 2022 quantum for Metropolitan Area and indicates as follows:

| <b>Location</b>                       | <b>Comparison</b>  | <b>Convenience</b>  | <b>Bulky/R. Warehouse</b> |
|---------------------------------------|--|---|---------------------------|
| Cork City Centre and Suburban Centres | 63,081<br>(Cork City Centre)<br>24,961<br>(Suburban Centres) | 20,291<br>(City and Suburban Centres including Douglas and Ballyvolane) | --                        |
| Rest of Metropolitan                  | 16,397   | 22,882  | --                        |
| <b>Total</b>                          | <b>104,439</b>   | <b>43,173</b>   | <b>57,555</b>             |

6.12 Objective TCR 7-1 deals with Metropolitan Retail – 2022 Quantum Distribution, and states as follows:

- a) Ensure that the retail quantum's to 2022 are broadly distributed in accordance with Table 7.2.
- b) Distribution primarily in accordance with planned population growth.
- c) Ensure an even distribution of comparison floor space within the city suburbs, new floor space shall be distributed around district centres at a ratio of 40:60 to the North side : Southside respectively. No district centre should have a greater amount of comparison floor space than the current largest District Centre (Mahon) which will not grow significantly over the period of the strategy.
- d) Preferred location for new retail warehousing/bulky goods floor space is within or adjoining District Centres and town centres within Large Metropolitan Towns, as opposed to the development of out of town retail parks or locating within industrial estates/business parks.

6.13 Chapter 10 of the Plan deals with transport and mobility and identifies the need to improve the public bus services and the area of Ballyvolane is identified as an area where it is hoped to improve the frequency of service to every 15 minutes.

6.14 Chapter 11 of the Plan deals with Water Services, Surface Water and Waste and section 11.6 deals with flood risk. The subject site is located within a flood risk area and the plans approach is to avoid flood risk area and where development in floodplains cannot be avoided, to take a sequential approach



to flood risk management based on avoidance, reduction and mitigation of risk. With regard to zoned lands, the plan provides as follows:

‘In line with the approach set out in the Ministerial Guidelines, areas ‘zoned’ for town centre development comprise the main category of future development ‘zoning’ that often satisfy the requirements of the ‘Justification Test for development plans’. Development proposals in these ‘town centre zonings’ will need to follow the procedures indicated in Paragraph 11.6.16 of the planning application stage with a view to developing appropriate flood mitigation measures at the project stage.’

Objective WS 6-2 of the Plan deals with Development in Flood Risk Areas.

- 6.15 Chapter 12 of the Plan deals with heritage and Objective HE 2-3 deals with Biodiversity outside Protected Areas and seeks to ‘

Retain areas of local biodiversity value, ecological corridors and habitats that are features of the County’s ecological network, and to protect these from inappropriate development. This includes rivers, lakes, streams and ponds, peatland and other wetland habitats, woodlands, hedgerows, tree lines, veteran trees, natural and semi-natural grasslands as well as coastal and marine habitats. It particularly includes habitats of special conservation significance in Cork as listed in Volume 2 Chapter 3 Nature Conservation Areas of the plan.

- 6.16 Chapter 15 of the Plan provides details as to the implementation of the plan. Table 15.1 identifies the major housing and employment projects identified in the County’s local area plans that are necessary to accommodate the planned economic and population growth for the County Metropolitan Cork Strategic Planning Area and identifies the infrastructure that is considered critical to the delivery of each project.

In this regard, with particular regard to major housing projects, the plan notes that Ballyvolane is identified in the second tranche with the critical infrastructure being identified as follows:

|                  |                                 |
|------------------|---------------------------------|
| On commencement: | Waste water connection          |
|                  | Water supply infrastructure     |
| Within project:  | Public Transport Infrastructure |
|                  | Cork Northern Ring Road         |

In addition, the following observations are provided in Table 15.1:

Master plan Study to be completed mid-2016.

To be included in the Review of the relevant Local Area Plan which will be adopted mid-2017. Development could commence during 2018.

The Plan notes that the above planned development is envisaged in the medium to long term.

6.17 Appendix D deals with parking and cycling standards

### **Blarney Electoral Area Local Area Plan 2011**

6.18 Section 2.2.10 of the LAP deals with 'Economy & Employment'

Section 2.3.5 deals with 'Retail Provision'

Section 2.4 deals with 'Planning Proposals'. General Objectives DB-04 (all development to make provision for safe, convenient and pleasant pedestrian and cycle routes linking the development to the public transport connections and the other principle area of the North Environs); DB-05 (need to comply with flood risk objectives FD1-1 to FD1-6).

Section 2.4.17 of the LAP relates to 'Special Policy Area zoning objective X-01' – lands located to the north of the subject proposed development site.

Sections 2.4.25 - 2.4.28 of the LAP deal with 'Town Centre Development' - and Objective no.T-01 provides:

- a) *It is an objective of this plan to facilitate the upgrade of the existing neighbourhood centre at the Fox and Hounds to a district retail Centre.*
- b) *Parts of this site are at risk of flooding. Any development proposals on this site will normally be accompanied by a flood risk assessment that complies with Chapter 5 of the Ministerial Guidelines 'The Planning System and Flood Risk Management' as described in objectives FD 1-4, 1-5 and 1-6 in Section 1 of this plan.*
- c) *Provision should be made on site, and/or in adjacent areas, for improved recreational facilities, including pedestrian walks and play areas.*

Objective X-01 states as follows:

*To facilitate the phased development of up to 3,600 dwellings in accordance with a master plan prepared by the landowners following*

*County Council guidelines, with attention to provision of, inter alia, appropriate convenience and complementary comparison shopping facilities.*

Section 1.8 of the LAP deals with Flood Risks and objectives nos. FD 1-1 to FD 1-6 are relevant.

### **Other relevant documents**

6.19 The following documents have been consulted in the consideration of this appeal:

- Cork Area Strategic Plan 2008
- Cork Strategic Retail Study 2008
- Cork City Walking Strategy
- 'The Planning System and Flood Risk Management: Guidelines for Planning Authorities', OPW (2009)
- 'Appropriate Assessment of Plans and Projects in Ireland: Guidance for Planning Authorities', DoEH&LG (2009)
- Advice Notes on Current Practice (in the preparation of Environmental Impact Statements), EPA (2003)
- Guidelines for Planning Authorities and An Bord Pleanála on carrying out Environmental Impact Assessment, DoEC&LG (2013)
- Guidelines for Planning Authorities: Retail Planning, DoEC&LG (2012)
- Retail Design Manual, a Companion Document to the Planning Guidelines for Planning Authorities, (DoEC&LG)
- Design Manual for Urban Roads and Streets, DoTTS & DoEC&LG (2013)

## 8.0 GROUNDS OF APPEAL

This is a first party appeal against the decision of Cork City Council to refuse planning permission for the proposed development. The submission refers to the concurrent appeal with the Board, awaiting and Oral Hearing and submits that a co-determination of the files may be of merit. An OH is also requested in respect of the subject file, refused by Cork City Council. The grounds of appeal are summarised as follows:

- Contravention of zoning objective ZO14 Public Open Space:
  - It is submitted that the position of the City Council, that the provision of the access road on lands zoned open space materially contravenes the objective is incorrect.
  - Reference is made to Section 37(2)(b) of the P&D Act 2000, as amended is referred to.
  - It is submitted that the proposal is not a material contravention of the Development Plan. The plan has multiple instances where new roads are proposed on lands that are zoned for many purposes. The plan includes a new road that traverses the same open space zone to the east.
  - The Councils position is further undermined by reference to other major road proposals located in open space zoned lands.
  - There is no consistency in the Councils position and roads can be developed on lands zoned ZO 14 open space by private bodies or under CPO if ever implemented.
  - The development of the road is not materially significant in the context of creating and enhancing an access to a linear park.
  - The zoning objective is to provide protection of development of lands from 'buildings' not necessarily infrastructure or works that would facilitate amenity uses.
  - The area of the road is small compared to the extent of the Open Space zoned lands in the area. All roads in the City are subject to a zoning including for example, residential and local services. The proposal for a road does not compromise the overall zoning and the Council position is unreasonable.
  - Reference is made to case PL28.239383 with regard to looking at the broad sense on zonings, in that case, whether an open space provided met zoning requirements. It was determined that

the issue was not a key issue in determining whether something was a 'material contravention' or not.

- In terms of the High Landscape Value it is submitted that the development has been designed to integrate into the proposed City Council Linear Park sensitively and with as little as possible impact on the existing area.
  - In terms of the area covered by the proposed access road in terms of the Glen Park Zone is 1,520m<sup>2</sup> of 125,462m<sup>2</sup>, amounting to only 1.2% of the zone, which is not a material impact.
  - The development will facilitate links to the proposed linear park to and from the access road and it will bring life to the park and foster a sense of passive supervision.
  - Though PAs are required to have regard to the Development Plan it is established that the weight be attributed to particular policies is a question of judgement, and that there should be an element of discretion and flexibility in the interpretation of a sites zoning.
  - It is the view of the applicant that the proposal, at worst is a contravention of a plan but not a material one, the provisions of S37(2)(b) apply. In particular, S37(2)(b)(ii) refers – conflicting objectives in the development or the objectives are not clearly stated.
  - In addition, it is submitted that S37(2)(iv) applies. A primary objective of a number of the strategic plans for the area is that a District Centre is developed at Ballyvolane.
- Road Safety & Traffic Congestion:
    - The applicant submitted letters of consent were submitted allowing the applicant to make the application.
    - The EE Road Design Services' report did not challenge the technical merits of the proposal and whether they represent an acceptable engineering solution. It is submitted that the issue of delivery of the infrastructural works is a civil matter and the applicant has indicated that it can be resolved.
    - The proposal to be delivered is essentially the Council's Part 8 solution and permissions have been granted where they have

allowed off site road modifications or access infrastructure to be delivered outside the red line area, examples cited.

- With regard to the delivery of the road infrastructure and the timescale of its delivery, these issues are generally agreed post decision. A construction management plan can be prepared and the applicant has committed to the development of the road infrastructure works, which were the subject of a Cork City Council Part \*.
- Proposed development is subject to a Justification Test and is premature pending the publication of the OPW Lower Lee Flood Relief Scheme:
  - The submitted FRA has demonstrated that there would be negligible impact on flood risk to the site or adjoining areas.
  - In terms of the impact on the landscape, it is submitted that the development is minor in nature and its sensitive design will not negatively impinge on the landscape, ecology, typography, tree canopy or visual amenity of the area.
  - The proposed road will be constructed in piers keeping the lowest level of the road above the existing ground level. Therefore the existing topography will remain largely unchanged.
  - Where the proposed access road impacts on areas in Flood Zone A or Flood Zone B direct compensatory storage will be provided in accordance with the requirements of FRM Guidelines.
  - It is submitted that the planner has materially erred in focusing not on the proposal and its flood risk, but on what the development will ultimately access to, outside the City's functional area.
  - The applicants are required to undertake a FRA in support of the application. The Blarney LAP Review process was also subject to a SEA. Given the comprehensive process that the Council were obliged to pursue with regard the designation of the site for a District Centre, it can be deduced that the flood risks on the site are considered to be insignificant. An FRA was completed.
  - The proposed access road is designed to minimise the effect it has on the existing flooding regime in the Glen Stream.

- Compensatory storage is proposed within the site at locations outside both Flood Zones A and B and at the same level as those areas being filled and will provide 39% additional floor storage area and 37% additional flood storage volume over the existing scenario, thereby reducing any potential flood risk to less than that which currently prevails on site.
- The proposed development is classified as 'Less Vulnerable Development'. A JT has been undertaken in accordance with the FRM Guidelines and finds that:
  - The proposed access road will serve a site that has been zoned for the particular use or form of development in the Blarney LAP which has been adopted taking into account the FRM guidelines.
  - The development of the access road will not increase flood risk elsewhere and will in fact reduce the overall flood risk due to the provision of additional flood storage area and volume.
  - The development of the access road will not prevent the flood plain being used for increased attenuation of flood flows in the future if required for flood risk management elsewhere in the catchment.
  - The development proposal includes measures to minimise flood risk to people, property and the economy by setting the lowest level of the access road at 1.26m above the predicated 1 in 100 year flood level.
  - The development proposed includes measures to ensure that residual risks to the area and / or development can be managed to an acceptable level as regards the adequacy of existing flood protection measures and provisions for emergency services access as the lowest level of the access road and footpaths will be a minimum of at 1.26m above the predicted 1% AEP flood level.
- The FRA has demonstrated that there would be no significant impact on the flood risk to the site, adjoining areas downstream of the site.
- In addition to the above, the first party has sought to address the other issues raised in the PAs planning officers report as follows:

- Development of the site will inevitably and unavoidably result in the loss of existing habitat amounting to 1.2% of the overall zoned open space area.
- An Ecological Mitigation Plan was prepared and submitted in support of the application. The Ecological Assessment concluded that no Habitats Directive Annex I habitats or protected species were identified on the site.
- It is requested that the Board note that:
  - The lands are zoned and this zoning can accommodate roads on this site as elsewhere in the City. It therefore cannot be a material contravention of the zoning.
  - The road provides an access to a retail site that is designated as required in the Retail Strategy and other documents.
  - The road and the adjacent retail permission will provide access to the Councils proposed linear park in the future.
  - There is no known flooding on the site and the development will enhance the scenario downstream.
  - There are no Annex I species or habitats on site.
  - There are no evident technical reasons as to why the proposal cannot be accommodated; traffic concerns appear to be related to query/issue as the proposal has been discussed and agreed in many meetings with the City and County Council Traffic personnel.

The appeal document is accompanied by a number of Appendices as follows:

- a. Copy of the City Councils decision
- b. Copy of Flood Risk Assessment
- c. MHL Report

## **9.0 RESPONSES**

### **9.1 Planning Authority:**

The Planning Authority has responded to this appeal advising no further comments.



## **10.0 OBSERVERS TO APPEAL**

10.1 There is one observer noted in relation to this appeal. Simon Clear & Associates on behalf of Dunnes Stores has presented a submission which sets out the background and context of the proposed development, raising issues in relation to EIS/EIA, lack of co-ordinated approach, proposed road improvements and consideration of the permitted Dunnes Stores access. Further to the above, the submission presents a commentary on the PAs assessment. The observations on the grounds of appeal are summarised as follows:

- Material Contravention:
  - The applicants submission in relation to the above are based on a litany of references to legal and planning cases that are of no relevance to the subject development.
  - A planned road, which is identified as a mapped objective in the Development Plan would not materially contravene the underlying zoning objective whether that be ZO14 Public Open Space or otherwise.
  - Such planned roads are subject to SEA, AA and FRA Justification Test as part of the Development Plan process.
  - The interpretation of the zoning objective is founded on a tenuous reference to Mahon v ABP, and there is no basis to the claim that the zoning objective is to protect lands from development of buildings. Mahon judgement was to confirm that zoning lands as public open space does not have the effect of making the lands available to members of the public.
  - Roads are structures that have major implications for associated flood risk and are not water compatible infrastructure when built.
  - References to the Flood judgement in Chawke v Limerick County Council, affirms the decision of the City Council to refuse permission and any degree of flexibility sought must be within the parameters of the consideration of the potential for development under the zoning as assessed under SEA, AA and FRA.
- Provisions of Section 37(2)(b):
  - In relation to the grounds of appeal that the provisions of S37(2)(b) apply, it is submitted that there is no basis for drawing comparisons between mapped objectives in the Development Plan and unplanned road proposals. There are no conflicting objectives in the Cork City Development Plan in respect of the subject lands.

- An objective in statutory plans to deliver an upgrade of the existing neighbourhood centre to a district centre at Ballyvolane does not establish a context under the provisions of S37(2)(b)(i) to drive unwanted and unanticipated roads infrastructure through a sensitive landscape in an adjoining planning authority area.
  - A higher level co-ordinated and integrated is required for population expansion, delivery of roads infrastructure and public transport infrastructure to facilitate the opening up of these areas prior to the delivery of District Centre scale facilities.
  - Strategic importance in a local context does not justify unco-ordinated piecemeal development. There has been no pattern of development or permissions granted in the vicinity since the making of the development plan that would provide a precedent for the type of development proposed.
- Roads Infrastructure:
    - The issue of sufficient legal interest to enable the delivery of the full package of roads infrastructure and the delivery or timescale of same, has been raised by Cork City Council on a number of occasions.
    - Rather than address the matter, the appellants' agent refers to a series of planning files. The key issue is not what the PA has or hasn't done in the past but the fact that concerns have been expressed regarding the delivery of the infrastructure.
    - The assertion that the delivery of major road infrastructure is a 'civil issue' is absurd. The mechanism for delivery of critical infrastructure in respect of roads, public transport, services and flooding are fundamental planning issues.
    - It is stated in the Traffic report that several changes to the approved Part 8 would be required to accommodate the development. Therefore, a new Part 8 scheme would need to be approved by the PA which would be subject to full regulatory procedures including public consultation.
    - It is considered that the development is piecemeal and premature until such time as integral approval has been given for all of the necessary infrastructure works and programme for delivery has been agreed with all parties, including Dunnes Stores.

- The issues arising are complex and a planning application for selective works is not the appropriate forum for this essential consultation.
- Traffic Modelling:
  - OCSC Consulting Engineers have been engaged by Dunnes Stores to review the transportation elements of the grounds of appeal, and concludes that the appeal does not satisfactorily address the issues previously raised in relation to the Traffic Modelling Report submitted by MHL and the associated ILTP report.
  - A summary of the OCSC report notes:
    - A number of inaccuracies in the MHL Traffic Modelling Report.
    - Traffic modelling did not use 85<sup>th</sup> percentile Trics estimates to assess worst case scenario, as previously requested by Cork City Council.
    - Use of non-compatible trip generation figures from other approved developments.
    - Lack of empirical evidence or other rationale for use of 30% bypass trip reduction.
    - A worst case scenario has not been assessed and there are real concerns as to the validity of the results shown in the Traffic Modelling Report.
    - Lack of verifiable data relating to Traffic Models.
    - No clarification in the appeal regarding significant discrepancies between the Measured Traffic Flow figures and Existing Traffic O-D Matrix.
    - The Linsig model completely underestimates the impact of the proposed development on the most heavily congested sections of the local road network.
    - The appeal has not addressed the safety issues highlighted in the Atkins Road Safety Audit.
    - The impact on the permitted Dunnes Stores entrance has not been taken into account in the proposed development.

- Flood Impact Assessment:
  - The Planning officers report notes the contention that 10% of the overall site is zoned public open space and an area of high landscape value and states 'this is inaccurate as the entire site subject to this application is zoned Public Open Space and designated an Area of High Landscape Value'.
  - The application fails criterion 1 of the Justification Test as 100% of the site is zoned Public Open Space in the Cork City Council area.

It is requested that the decision of Cork City Council be upheld and that permission be refused.

## **11.0 ORAL HEARING**

11.1 An Oral Hearing was held on the 19<sup>th</sup> and 20<sup>th</sup> January 2016 in the Imperial Hotel, Cork, Co. Cork. The hearing related to two planning applications lying to the Board with regard to the retail development and the access to the site. The two planning applications relate to a single development but the subject overall development site traverses two local authority areas, Cork County Council and Cork City Council. In this regard, a joint hearing was held to hear both cases in tandem. The agenda was advised to all parties prior to the hearing opened. A copy of the Inspectors Opening Statement is included with this report.

11.2 The format of the hearing was intended as follows:

1. The Applicant will present a brief summary of the proposed development and will respond to the issues raised by Cork City Council and appellants/ observers.
2. Cork County Council will make a submission
3. Cork City Council will make a submission.
4. Prescribed Bodies will make submissions on behalf of their respective organisations and agencies.
5. Appellants / Observers will present their concerns about the proposed development.

6. Questioning by:

Applicant  
Cork County Council  
Cork City Council  
Prescribed Bodies  
Appellants

7. Summing up / closing statements in reverse order – a maximum of 5 minutes.

The Board will note that Mr. Eamon Galligan, on behalf of Dunnes Stores, sought to make a legal submission in the first instances and advised that he would not take any further part in the hearing.

11.3 The Inspector opened the hearing at 10am.

11.4 Mr. Galligan referenced the Simon Clear & Associates submissions to the Board on the proposed developments to date. The issues raised are summarised as follows:

- a. Fundamental alterations of the planning application to Cork County Council under Reg Ref 14/04895
- b. Project splitting
- c. Applicants response to project splitting objection.
- d. Failure of Cork County Council to provide a record of an EIA or any reasons and considerations for its decision to grant permission.

Mr. Galligans submission concluded that An Bord Pleanala does not have jurisdiction to determine the applications or appeals currently before it arising out of fundamental flaws in the said applications which include the following:

1. The failure of the EIS to address a fundamental element of the overall project, namely the vehicular access that is currently proposed.
2. The planning applications before the Board are mutually inconsistent.
3. The application to Cork County Council has never altered or modified to include for the vehicular access provided for under Reg Ref 15/36520 and, such a fundamental alteration to the application to Cork County Council cannot now be made.

4. The application to Cork Co. Co. does not comply with the requirements of the 2001 Regulations in relation to statutory notices in so far as it does not accurately state the nature and extent of the proposed development the subject matter of the application to Cork Co. Co.

For these reasons, the Board is requested to refuse permission for both applications. On the basis that the Board does not have jurisdiction, it is requested that the hearing be abandoned.

11.5 First party disagreed with the above. Re: O’Grianna case (04.242223 and 245082 refer). It is submitted that the application to the City Council does provide details of the road access. Mr. Galligan responded by indicating that there is no statement of the likely significant effects of the proposed road. The two applications are mutually inconsistent. Mr. Crean advised that traffic impact is included as part of the EIS.

11.6 The first party team made a number of submissions as follows:

- Mr. Joe Doyle, Architect made a presentation detailing the scheme. A full suite of drawings were provided in support of the submission.
- Mr. John Crean, CRS, made a number of submissions as follows:
  - In relation to the retail application to the County Council
  - In relation to the proposed access within the City Council area.
  - In response to the Dunnes Stores submission.
- Ms. Claudine Mahu, CRS, made a submission dealing with residential amenity issues raised by third parties.
- Mr. Kieran Thornton, Byrne Looby PHMcCarthy, made a submission dealing with flood risk. Two reports were presented at the hearing one dealing with Cork County Council area and the other with Cork City Council area.
- Mr. Paul Matson, MMOS, read a Statement of Evidence and provided the hearing with two reports, one for the County and one for the City, with regard to the proposed system design for the surface water, foul water and watermain services.
- Mr. Ken Manly, MHL Consulting Engineers, prepared a Traffic & Transportation Assessment for the development. Two separate papers were presented to deal with issues in terms of both jurisdictions. A set of drawings was also included.
- Mr. Jim Kelly, CSR, made a submission in terms of the Landscape and Visual Impact Assessment in terms of both the District Centre and the proposed access road.

11.7 The County Council followed the First Party. Mr. Noel Sheridan, A/Senior Planner for the North and East Cork Development Management Areas made a submission on behalf of the County Council and advised that representatives from the Roads Section, Transportation Section, Environment Directorate and Planning were present to respond to questions if necessary.

11.8 An Taisce sought to be heard at this point as it was unclear if their representative would be available on the following day. Ms. Doireann Ni Cheallaigh. Concerns raised relate to ecology, retail impact, access and smarter travel policy and the future development of the site. It is requested that the development be refused permission.

11.9 Cork City Council made a number of submissions from the following:

- Mr. Kevin Gallagher, Senior Executive Engineer, Drainage Section of the Environment Directorate of Cork City Council. Mr. Gallagher considered that the development is:
  - Inappropriate for the flood risk area in which it is to be located.
  - Contravenes materially, the zoning of the lands
  - It is submitted that the proposed development of the road is on a site wholly zoned Public Open Space and not 10% over the overall site is zoned Public Open Space. The development does not satisfy the justification test for inappropriate development in a flood risk area.
- Mr. Patrick Ledwidge, Director of Services in the Strategic Planning & Economic Development Directorate of Cork City Council. Mr. Ledwidge sought to address the first reason for refusal and deal with the primary issue of material contravention and issues raised by the appellant. The submission is summarised as follows:
  - The proposed development comprises a new vehicular and pedestrian entrance and access road on lands which are zoned Public Open Space, a zoning which was indicated in the previous Development Plan.
  - The site is located within Flood Zones A and B. No Plan Making Justification Test was undertaken as no development was foreseen to be located in the area.
  - The development of an access roadway serving a commercial development will fundamentally alter the character of the site and the adjacent public open space lands, clearly contravening materially land use zoning objective ZO14 Public Open Space, contrary to the opinion of the applicant.

- The City Council submits that the lands are zoned to be protected against development – it is unsure why the applicant references ‘buildings and not infrastructural works which should be facilitated’.
- References to other application, it is submitted that the cited development is not directly relevant as it involved the major redevelopment of a key city centre site of which just over 10% was zoned public open space and for which a detailed non-statutory development brief was prepared. The nature of the open space was also different, being a hard landscaped city centre area.
- With references to the first party citing of S37(2)(b), it is submitted that it is the responsibility of the applicant to ensure that adequate access can be provided to the satisfaction of the Planning Authority. It was also noted that Cork County Council did not assess traffic impacts of the development on the city in their consideration of the retail development.
- While the proposal may be the best solution for the applicants proposed development, it is not acceptable to the City Council because of the impacts, which will be discussed later. It is further submitted that there are options available to the applicant to reduce the size of the development.
- There is no objective for a roadway on, across or otherwise affecting the area zoned Public Open Space at issue. Other roadway objectives in the Plan are mapped and have been included following SEA and AA processes. A part 8 cannot happen if the proposal materially contravenes the development plan.
- Ms. Louise Aherne, Assistant Planner, Cork City Council, was the reporting planning officer for the application and sought to deal with the second and third reasons for refusal.
  - In terms of roads and transport, it is understood that all of the improvement works proposed would bring the capacity of the junction back to slightly worse levels than existing and would not allow for any future proofing of the Ballyhooly Road Junction.
  - There are a number of outstanding issues relating to the number of third party landowners, delivery and securing of the lands and infrastructural works required and a timescale for the delivery of the works as well as the funding for same.
  - In terms of flooding, the Justification Test for development management requires that the subject lands have been zoned or otherwise designated for the particular form of development.



- The site is zoned for water compatible use and as such the site and zoning does not satisfy the Development Management Justification Test.
- Mr. John Stapleton, A/Senior Engineer in Roads Design, Cork City Council presentation sought to set the background and context.
  - NTA approved funding for the upgrading of the Ballyhooly Road Junction and the Part 8 planning for the layout was approved in 2013. The works were not commenced and the funding was reallocated and is no longer available.
  - A number of meetings were held during which the City Council expressed concerns regarding the proximity of the junction to the propose access. It was encouraged that the proposed entrance be repositioned further north, opposite the Dunnes Stores entrance as this would facilitate the most efficient junction layout from a traffic and pedestrian safety perspective.
  - Traffic modelling demonstrated that the current road configuration is not capable to accommodate the development, the permitted Part 8 would not be able to accommodate the development and anticipated level of traffic generated by the development would require three entrances and a package of road infrastructure work, all completely reliant on each other – all are required.
  - The extent of the works proposed by the applicant extend beyond the permitted Part 8, affecting lands in both public and private ownership.
- Mr. Andrew Archer, Projects Director, SYSTRA, sought to deal with traffic modelling audit findings and key traffic issues raised in the first party submission received by ABP.
  - The junctions are operating capacity now, with the improvements and development in place, there would still be no capacity for additional developments in the area.
  - Key traffic issues include, LinSig Model inputs, model queuing outputs at both junctions (Fox & Hound and Northern Ring Road) and background and development traffic.
  - The applicant has not demonstrated that the road network has sufficient capacity to accommodate the proposed development in the future year scenarios, even with the proposed upgrade works completed.

11.10 The second day of the hearing commenced at 10am.

11.11 An Taisce sought to clarify an issues raised in relation to the reasons for refusal as discussed the day previously.

#### 11.12 Third Parties:

- Mr. Murphy made a submission on behalf of the Brookvale Estate Residents. a book of photographs were presented and a summary of the issues raised are as follows:
  - Zoning – is it intended to construct the supermarket and not the units? Is it possible to cherry pick elements of a permitted development?
  - Site ownership
  - Flooding
  - Residential amenity issues including visual impact, scale, mass and nuisance.
  - Retail impact – there are adequate retail facilities in the area.
  - Traffic is a huge issue and the area is saturated at present. The proposed works will not address the current issues or accommodate the development. Residents of Brookvale Estate have not been considered in the assessment. The Banduff Road, Rathcooney Road and all legs of the Fox and Hound Junction are a problem and are at capacity. The problem should be improved not dis-improved.  
The Northern Ring Road is not on the priority list or on the immediate NRA agenda. If it was constructed, it would improve the whole area. A development of the size proposed is premature pending the provision of the Northern Ring Road.  
Existing entrance into the F&H is too narrow to accommodate lorries / delivery trucks and no auto-track was done by the applicant. There should be a traffic link between the upper and lower area of the site.
  
- Mr. Bill Green on behalf of McCarthy family. The lands to provide an access to the site via the preferred lands indicated by Cork City Council are in the ownership of Mr. Greens clients. The lands are available for sale. (1<sup>st</sup> Party refer to S138 of the Act)
  
- Mr. Finbar O'Donovan supported the proposed development and advises as follows:
  - There is no flooding on the site.
  - Hours cited in the traffic impact are unreasonable as congestion times – any area is going to be busy at those times.

- If refused the development will be lost to the North side of Cork City. Most development is put to the south side.
  - 300 jobs will be created.
  - Traffic is not as bad as is presented.  
(In response to some comments, Mr. Ledwidge advised of major developments in the North sit of the city including Apple)
- Cllr Thomas Gould made a submission stating that he had no objection to retail development or jobs, but that the infrastructure is not in place to support the development. Traffic issues were raised as was site suitability for the development. Mr. Gould submitted that there are more suitable locations north of Cork City which could accommodate the development.  
Mr. Gould further considered that the amenity of the area should be encouraged and concern regarding building on the floodplain was also raised. Similar issues were raised in Blackpool, where development was permitted on a flood plain and now the area floods.  
Finally, it was submitted that the development is premature pending the construction of the Northern Ring Road, which is not on the priority list.
  - The Board will note that Cllr. Joe Kinnane was due to speak at the hearing, but due to a death in the family, was unable to attend on the second day.

11.11 The First Party posed a number of questions to the City Council relating to the following:

1. Peak times
2. Trics Database figures used
3. Pass way trips – 30% agreed
4. Distribution in background.

There was a discussion in relation to the above and the Board is referred to the hearing recording, Day 2, 12.00 – 12.41 where the first party, Cork City and County inputted into the discussion.

11.12 Further to the above, Mr. Peter O'Donoghue, Cork County Council Senior Engineer Traffic & Transport, made comments in response to transportation issues raised on day 1 of the hearing (submission no 19 in Hearing Documents Pack).

11.13 Questioning of the parties commenced with the first party questioning and responding to issues raised by third parties. In addition, there was a discussion between the first party and Cork City Council, notably in terms of traffic related issues. Cork County Council made a statement advising that the North Ring Road is unlikely to be delivered in the near future. It is a matter for the TII and is not in the gift of Cork County Council to deliver. Cork City Council also contributed to the discussion.

11.14 Closing statements were presented.

11.15 As the presiding Inspector I formally closed the hearing at approximately 5.20pm

11.16 A summary list of documentation and copy of all submissions received at the Oral Hearing are enclosed on the files PL04.244668 and PL28.245709 for reference by the Board.

## **12.0 ASSESSMENT**

12.1 In assessing this proposed development, the Board will note the second appeal regarding the retail development within the jurisdiction of Cork County Council, for which the subject proposed entrance and access road will serve. Having had a joint oral hearing for the two file, together with the desire from all parties that the two applications be considered as a single development, it is my intention to present an assessment which not only deals with the proposal as presented in terms of the policy requirements, proper planning and sustainable development of the jurisdiction in which the site lies, but also, in conjunction with the related appeal.

12.2 Having considered all of the information submitted with the planning application, together with the appeal documentation and responses, and having undertaken a site visit, I consider it appropriate to assess the proposed development application under the following headings:

1. Overview & principle of the development in terms of compliance with:
  - a) Current County Development Plan
  - b) Blarney Electoral Area Local Area Plan, 2011
  - c) Current City Development Plan
  - d) Strategic Plans / Documents
2. Environmental Impacts
  - a) Landscape, Design & Layout
  - b) Flooding
  - c) Natural Heritage Issues
  - d) Water Services
3. Roads & Transportation
4. Retail Impact Assessment
4. Residential Amenity
  - a) Visual Impact
  - b) Loss of Green Area
  - c) Roads & traffic

- d) Overshadowing & Loss of Light
  - e) Noise
5. Other Issues
- a) S138 of Planning & Development Act, 2000 as amended
  - b) Procedural Issues

### ***Overview & Principle of development***

#### **Compliance with the County Development Plan:**

12.3 The subject site is located within the County Metropolitan Cork Strategic Planning Area of County Cork, in Ballyvolane, which is identified as a strategic location for further development and population growth within the city region, Objective CS 4-1 refers. In addition, The CDP seeks to support retail growth in this area, Objective TCR 4-1 refers, which seeks to:

‘Facilitate a competitive and healthy environment for the retailing industry into the future which provides for adequate choice in appropriate locations whilst ensuring that future growth in retail floor space is broadly in line with the identified Retail Hierarchy set out in Table 7.1’.

Ballyvolane is identified in the 4<sup>th</sup> tier in Table 7.1 (part 1) as a sub-regional / Metropolitan proposed District Centre. In this regard, objective TCR 4-5 is relevant and states:

‘Support the vitality and viability of District Centres to ensure that such centres provide an appropriate range of retail and non-retail functions to serve the needs of the community and respective catchment areas, in order to protect the primacy of Cork City Centre’.

12.4 Further to the above, Section 7.7 of the County Development Plan deals with Future Retail in the Metropolitan Area and notes that retail quantum’s have been agreed between City and County for the Metropolitan Area to 2022, as provided for in the Cork Joint Metropolitan Retail study. Section 7.7.2 of the plan provides that ‘The requirement for additional floor space is predicated on a number of factors including population growth, economic buoyancy and rising consumer demand. The Plan recognises and reflects prevailing circumstances underpinning floor space projections and shall adopt a pragmatic approach where it is evident that changes have occurred.’ The Board will note that in addition to the existing centres, the Retail Strategy supports the upgrading of neighbourhood centre at Ballyvolane to a District

Centre and that distribution is primarily in accordance with planned population growth.

12.5 Chapter 15 of the Plan provides details as to the implementation of the plan and Table 15.1 identifies the major housing and employment projects identified in the County's local area plans that are necessary to accommodate the planned economic and population growth for the County Metropolitan Cork Strategic Planning Area and identifies the infrastructure that is considered critical to the delivery of each project. In this regard, with particular regard to major housing projects, the plan notes that Ballyvolane is identified in the second tranche with the critical infrastructure being identified as follows:

|                  |                                 |
|------------------|---------------------------------|
| On commencement: | Waste water connection          |
|                  | Water supply infrastructure     |
| Within project:  | Public Transport Infrastructure |
|                  | Cork Northern Ring Road         |

In addition, Table 15.1 provides observations advising that a Master plan Study is to be completed mid-2016, and is to be included in the Review of the relevant Local Area Plan which will be adopted mid-2017. The County Plan notes that development could commence during 2018 and the planned development is envisaged in the medium to long term. These matters are further elaborated upon and supported by policies and land use zoning objectives for this area under the Blarney Electoral Local Area Plan 2011. Indeed, at the Oral Hearing, Cork County Council advised that the Planning Authority is preparing a Master Plan for the zoned lands to the north of the current proposed development site, zoned Objective X-01, which will comprise part of the review of the Blarney Electoral Area LAP. It is anticipated that this area of zoned land will provide for up to 3,600 residential units and associated convenience and comparison shopping to support the population growth.

12.6 In addition to the above, the County Development Plan deals with Water Services, Surface Water and Waste while section 11.6 of the Plan deals with flood risk. The subject site is located within a flood risk area and the plans approach is to avoid flood risk area and where development in floodplains cannot be avoided, to take a sequential approach to flood risk management based on avoidance, reduction and mitigation of risk. With regard to zoned lands, the plan provides as follows:

'In line with the approach set out in the Ministerial Guidelines, areas 'zoned' for town centre development comprise the main category of future development 'zoning' that often satisfy the requirements of the 'Justification Test for development plans'. Development proposals in these 'town centre zonings' will need to follow the procedures indicated in Paragraph 11.6.16 of the planning application stage with a view to developing appropriate flood mitigation measures at the project stage.'

Objective WS 6-2 of the Plan deals with Development in Flood Risk Areas and it is the objective of the Council to normally avoid flood vulnerable developments unless a number of criteria can be achieved. The first party has submitted a Flood Risk Assessment in support of both proposed developments and flooding is discussed further below in this report in Sections 12.41-12.47.

- 12.7 Chapter 12 of the Plan deals with heritage and Objective HE 2-3 deals with Biodiversity outside Protected Areas and seeks to 'Retain areas of local biodiversity value, ecological corridors and habitats that are features of the County's ecological network, and to protect these from inappropriate development. This includes rivers, lakes, streams and ponds, peatland and other wetland habitats, woodlands, hedgerows, tree lines, veteran trees, natural and semi-natural grasslands as well as coastal and marine habitats. It particularly includes habitats of special conservation significance in Cork as listed in Volume 2 Chapter 3 Nature Conservation Areas of the plan.' I will deal with natural heritage issues collectively below in Sections 12.48 to 12.54 of this report.
- 12.8 The development of a district centre in this area of Ballyvolane is generally supported by the regional strategies, the county plan and the local statutory plans for the area, which I consider to be generally reasonable. In this regard the designation of a new district centre in this area, might reasonably be considered as being consistent with the Cork Strategic Retail Study (2008), the Metropolitan Area Joint Retail Strategy, and indeed, the County Development Plan in principle. There are issues in terms of the delivery of critical infrastructure, the North Ring Road in particular, necessary to support development in this area of Cork, and these issues will be discussed further in this assessment.

**Compliance with the Blarney Electoral Area Local Area Plan, 2011:**

- 12.9 The majority of the overall subject site is covered by specific policy area objective T-01 in the Blarney LAP, which seeks to facilitate the upgrade of the



lands to 'district retail centre' under the LAP. The Board will note the zoning is for Town Centre and not necessarily District Centre. This objective may be regarded as equivalent as the zoning of lands primarily for commercial use to include future retail expansion in both comparison and convenience as identified in the core strategy of the CDP. This might reasonably be considered as being in accordance with the requirements of Section 10(2) of the Planning & Development Act, which requires that the development plan shall include objectives for "the zoning of land for the use solely or primarily of particular areas for particular purposes...where and to such an extent as the proper planning and sustainable development of the area, in the opinion of the planning authority, requires the uses to be indicated". The Board will note that there is no matrix provided in terms of uses permitted in principle, open for consideration or not permitted on the various land zonings. However, I am satisfied that the uses as proposed in the overall development can be considered as acceptable in principle in terms of the zoning.

12.10 It is the primary intention of Cork County Council through the relevant development plans, policies and objectives, to ensure that district centres provide an appropriate range of retail and non-retail functions to serve the needs of the community and respective catchment areas, in order to protect the primacy of Cork City Centre. This is considered reasonable and appropriate. This intention is also reflected in the vision of the CSRS for district centres to develop as 'urban centres rather than out-of-town malls'. In this regard, I suggest that a mix of uses, including retail, offices, non-retail and even residential would be appropriate to secure the objective of the Council in relation to Ballyvolane District Centre.

12.11 The Board will note that the mixed use development as proposed provides for the following:

- Tesco Anchor unit to include a DotCom service facility with a gross floor area of 8,082m<sup>2</sup>, including 2,427m<sup>2</sup> of net convenience retail sales area and 1,189m<sup>2</sup> net comparison retail sales area
- Unit 1 - Café 160m<sup>2</sup>
- Unit 2 - 'Retail Service' unit 285m<sup>2</sup>
- Unit 3 - 'Retail Service' unit 285m<sup>2</sup>
- Unit 4 - 'Retail Service' unit 285m<sup>2</sup>
- Unit 5 - 'Retail Service' unit 285m<sup>2</sup>
- Unit 6 - 'Community Use' / Post Office unit 285m<sup>2</sup>
- Unit 7 - 'Restaurant' unit 285m<sup>2</sup>
- Unit 8 - 'Retail Service' unit 125m<sup>2</sup> - to be located at Fox & Hound car park level

- 434 car parking spaces between 298 in the undercroft car park, 55 at lower ground level and 39 at grade with Fox & Hounds.

12.12 The proposed development is described as ‘mixed use’ in the public notices, but having regard to the above, I suggest that the uses are primarily retail in nature, save for the proposed Post office / community use unit 6, the café and the restaurant, a combined total of 730m<sup>2</sup>. I am concerned that the range of uses proposed is inadequate to constitute a development which would develop into an appropriate district centre with a variety of functions necessary to service the catchment community. I refer in this regard to the Retail Planning Guidelines which provide the following definitions:

**District Centre:** Provides a range of retail and non-retail service functions (e.g. banks, post office, local offices, restaurants, public houses, community and cultural facilities) for the community at a level consistent with the function of that centre in the core strategy. They can be purpose built as in new or expanding suburbs or traditional district centres in large cities or town

**Shopping Centre:** Predominantly purpose-built centres comprising a mix of large and small units, typically anchored by a large convenience goods stores.

I am concerned, based on the information presented to date, that the development as proposed, cannot be adequately described as a District Centre, and is rather, more akin to a shopping centre. I am therefore concerned that the proposed development if permitted would be contrary to objectives of the County Development Plan 2015, the zoning objective for the subject site in the Blarney LAP and would be contrary to the proper planning and sustainable development of the area.

**Compliance with the Cork City Development Plan 2015:**

12.13 The proposed development comprises the creation of a new entrance and access road within the jurisdiction of Cork City Council. The purpose of the new entrance and access road is to provide access to the proposed integration of the existing mixed use retail / commercial development known as the Fox and Hounds into a mixed use retail district centre. The subject site is located within the northern suburbs of Cork City in the Ballyvolane area and lies immediately adjacent to the Cork City functional boundary within Cork County Council. The site, the subject of the proposed development is zoned ZO 14 Public Open Space in the Cork City Development Plan, 2015. This was also the zoning of the site in the previous 2009 Development Plan. It is the stated objective of the Plan in this regard, ‘to protect, retain and provide for recreational uses, open space and amenity facilities, with a presumption against developing land zoned public open space areas for alternative

purposes, including public open space within housing estates.’ In addition, Objective 11.7 provides that it is the objective ‘to protect, retain, improve and provide for areas of public open space for recreation and amenity purposes. There will be a presumption against development of land zoned public open space for alternative purposes.’

12.14 The subject site also comprises part of a larger public open space area which is described as a natural, undisturbed parkland bounded by the Glen River to the north and which extends from Tinkers Cross to the east, to Ballyvolane Cross to the west, and further through the Glen River Park towards Blackpool. Table 11.3 of the City Development Plan deals with Lower Level Park Projects, and identifies this area as ‘River Glen Linear Park (extending River Glen Amenity Park and River Glen Corridor in the area along the North Ring Road to Tinkers Cross public open space.’ It is indicated by the City Council, that the Council is actively pursuing the delivery of the parks within the lifetime of the Plan.

12.15 The site is also located within an area designated as an ‘Area of High Landscape Value’. It is the stated objective of the Plan, at Objective 10.4, ‘To conserve and enhance the character and visual amenity of Areas of High Landscape Value (AHLV) through the appropriate management of development, in order to retain the existing characteristics of the landscape, and its primary landscape assets. Development will be considered only where it safeguards to the value and sensitivity of the particular landscape. There will be a presumption against development where it causes significant harm or injury to the intrinsic character of the area of High Landscape Value and its primary landscape assets, the visual amenity of the landscape, protected views, breaks in the existing ridge silhouette, the character and setting of buildings, structures and land marks and the ecological and habitat value of the landscape.’

12.16 It is the submission of Cork City Council, that the proposed development, being the construction of a vehicular and pedestrian access road through an area of zoned public open space, (the subject of current appeal 245709) to facilitate a mixed use development within the County Council jurisdiction (the subject of current appeal 244668) materially contravenes this zoning objective. This matter was discussed extensively at the Oral Hearing and the City Council submitted that the development of an access roadway serving a commercial development will ‘fundamentally alter the character of the site and the adjacent public open space lands, clearly contravening materially land use

zoning objective Z014 Public Open Space', contrary to the opinion of the applicant. In addition, it was considered that the City Development Plan provides that the lands are zoned to be protected against development, not just buildings as suggested by the applicant, but all development, which includes infrastructural works as proposed.

12.17 The Oral Hearing also heard from the first party, references to another application, which involved the major redevelopment of a key city centre site of which just over 10% was zoned public open space. The City Council advised that the cited referenced development is not directly comparable as a detailed non-statutory development brief was prepared for that site. The nature of the open space was also different, being a hard landscaped city centre area. The first party submitted that the total area of the subject site comprises approximately 10% of the overall site, the majority of which is zoned T-01 in the Blarney LAP, and supports the proposed mixed use development. It is to be noted however, that the current proposed development site, the subject of the access road and entrance application, is wholly located within Cork City Council and wholly on lands zoned Public Open Space.

12.18 In addition the above, the first party suggested that the Cork City Development Plan facilitates the development of roads across public open space zoned lands, as well as other zoned lands and those were not considered to constitute a material contravention of the Plan. In relation to this point, I would acknowledge that this is the case, however, these would appear to have been planned roads and infrastructure and were so mapped following the complete Development Plan process. As such, these roads and infrastructure would have been considered as part of the Strategic Environmental Assessment and Appropriate Assessment processes which constitute part of the Development Plan preparation process. In addition, I note that the previous City Development Plan, 2009, was varied, Variation 10 2013, to incorporate a roadway objective at Tinker's Cross – referred to by the applicant. The variation also included the rezoning of lands from Sports Ground to Public Open Space in that area. The purpose of the variation to incorporate the above, was deemed necessary as the inclusion of the road infrastructure on/across lands zoned 'Open Space', constituted a material contravention of the 2009 City Plan as it stood. The City Council noted at the Oral Hearing that a Part 8 Process cannot happen, if the development proposed materially contravenes the objectives of the Development Plan.

12.19 The first party sought to draw similarities between this mapped road objective and the current proposal, however, it is clear that there is no objective for a roadway on, across or otherwise affecting the area zoned Public Open Space at issue. Other roadway objectives in the Plan are mapped and have been included following SEA and AA processes. I would also agree with the City Council that there are no conflicting objectives in the Development Plan in relation to the subject lands. As such, I am of the opinion that the proposed development would materially contravene the zoning objective afforded to the subject site in the Cork City Development Plan 2015.

12.20 In the interests of completion, and in relation to an issue which I will discuss further below, the Board will note that the area of the proposed development within the County Council area is zoned T-01, 'Town Centre Development'. The lands to the west of the Ballyhooly Road, site of Dunnes Stores, is zoned District Centre in the Cork City Development Plan.

### **Strategic Documents**

#### Cork Area Strategic Plan, Update 2008:

12.21 The Cork Area Strategic Plan (update 2008) (CASP) identifies the Ballyvolane area as a location for significant population growth and employment growth in the Cork City environs area. The Plan also envisages that the Ballyvolane neighbourhood centre will emerge as a district retail centre serving the existing and future population of the area, including new neighbourhoods in the County area as well as the existing population in the north east of the city. The Board will note that a doubling of the 2006 population to approximately 13,500 people by 2020, is presented in the CASP, but that this figure was revised down to 9,100 in the Blarney Electoral Area Local Area Plan 2011, section 2.4.2. This population growth is predicated, as per section 2.3.11, on the potential to deliver a high quality public transport corridor connecting the north of the City to the City Centre, and the requirement to plan the area jointly between Cork City and Cork County Councils.

#### The Cork Strategic Retail Study (2008):

12.22 The Cork Strategic Retail Study (2008) (CSRS) identified the need for an additional district centre to the northeast of the city in order to deliver a more equitable distribution of retail provision. The Board will note that this need has been repeated in the Metropolitan Cork Joint Retail Strategy, draft 2013. This distribution of retail provision was to be achieved, if feasible, by upgrading of existing neighbourhood centres to district centres, or through the development

of a new district centre. While CSRS did not expressly recommend that Ballyvolane be upgraded from neighbourhood centre to district centre, paragraph 6.39 of the study provided that “*where an area is planned for significant additional population growth it will be necessary to consider the need for expanding existing neighbourhood centres or providing purpose built new ones.*”

Retail Planning Guidelines, 2012:

- 12.23 In terms of the above, it might reasonably be considered that the proposed provision of a district centre as proposed on lands zoned for such uses under the County Development Plan 2009, to be generally consistent with the provisions of the Retail Planning Guidelines 2012. The first party submits that the proposed development accords with the guidelines on the basis that it is a plan-led development consistent with the core strategy and, having regard to para.4.4 of the RPG, sequential approach, the location of the proposal. The RPG provides that the development of designated district centres to a scale that accords with the retail strategy should be supported and that the sequential approach should apply to district centres in addition to town and city centres and demonstration of compliance with the sequential approach is not therefore required. In addition to the above, I consider that the definitions contained within the RPGs are relevant as follows:

**District Centre:** Provides a range of retail and non-retail service functions (e.g. banks, post office, local offices, restaurants, public houses, community and cultural facilities) for the community at a level consistent with the function of that centre in the core strategy. They can be purpose built as in new or expanding suburbs or traditional district centres in large cities or town

**Shopping Centre:** Predominantly purpose-built centres comprising a mix of large and small units, typically anchored by a large convenience goods stores

As a matter of interest, I note that in the EIS for the retail element of the overall development proposed in this area of Ballyvolane, the development is described as Ballyvolane Retail Shopping Centre. I have discussed this matter above in Section 12.12 of this assessment.

Assessment of Strategic Plans / Documents:

- 12.24 In terms of the above cited documents, it is clear that all identify the general Ballyvolane area as an area where growth is to be supported and retail developments should be encouraged. However, I also note that the documents require that both the City and County Councils plan the area

jointly. In this regard, I refer back to the zoning of lands in the Ballyvolane area in both the Cork City Development Plan and the Blarney Local Area Plan (Cork County Council). Both documents provide for development in the area, with a District Centre zoning afforded to the existing Dunnes Stores site, and the Fox & Hound site being zoned for Town Centre uses. In addition, the Board will note the presence of a discount foodstore located to the north of the Fox & Hound and a large area of lands further north zoned Objective X-01, which seeks 'to facilitate the phased development of up to 3,600 dwellings in accordance with a master plan prepared by the landowners following County Council guidelines, with attention to provision of, inter alia, appropriate convenience and complementary comparison shopping facilities.'

12.25 In terms of the above, I suggest that an extensive area in Ballyvolane has been zoned under various plans and zonings for development which could support the nature of the district centre proposed. The aim of the CSRS and the MCJRS would suggest that district centres would develop as 'urban centres rather than out-of-town malls' which, in my opinion, suggests mixed commercial retail, commercial office, non-retail services and possibly residential development.

12.26 The Board will note that the first party, in their appeal of the Cork City Council decision to refuse planning permission for the access road, suggested on page 16 of their appeal that the Council Planner materially erred in focusing not on the proposal to the City Council, ie. the entrance and access road, but on what the development will ultimately access, outside their functional area<sup>3</sup>. To achieve a properly planned and integrated district centre for Ballyvolane, rather than a number of standalone shopping centres or supermarkets would require clear direction from and co-ordinated planning between the two neighbouring Councils. A co-ordinated approach is required in the strategic documents, and indeed, essential in my opinion to ensure an appropriate and integrated district centre and in the interests of the proper planning and sustainable development of the area. In this regard, I consider that the two local authorities do not appear to have consulted adequately on significant zoning issues, which have resulted in these two cases before the Board.

12.27 The issue of non-cooperation / consultation is also evident in terms of the traffic assessment carried out by Cork County Council, who advised that there was no consideration of impacts outside their jurisdiction. I will discuss this

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<sup>3</sup> I acknowledge that this particular reference related to FRA.

matter further below, but it is interesting in the context that the first party would appear to object to the consideration of issues which would impact Cork City Council but relate to developments which are located on adjacent lands in Cork County Council area in terms of an assessment of the proposed access road to the overall retail development proposed.

***Environmental Impacts:***

**Landscape, Design & Layout:**

- 12.28 The site the subject of the proposed primary entrance and access roadway is located within an area designated as an Area of High Landscape Value, where it is the stated policy of the City Council to conserve and enhance the character of the and visual amenity of the area. The site of the retail development itself, is located within lands zoned for Town Centre developments and is a mixture of Greenfield and brownfield sites. The first party has submitted that the proposed scheme / road has been designed to integrate into the proposed City Council Linear Park sensitively and with as little as possible impact on the existing area. The submitted plans also provide for a tentative layout of a riverside access walkway, with an access from the proposed new road. The applicant has indicated that the area of the proposed road comprises only 1.2% of the overall 125,462m<sup>2</sup> area of the Glen Park Zone and as such is not a material impact. The scheme has been designed to minimise impact on the surrounding landscape and the road will be constructed on piles, so as not to significantly affect the existing topography of the site.
- 12.29 In addition, the Cork City Development Plan, 2015, at Map 5 provides details of existing amenity routes and proposed amenity routes. The Board will note that a proposed amenity route is clearly identified across the large area of public open space from which the subject application site is taken. It is the stated objective, Objective 11.13 Amenity Routes, of the plan ‘to pursue the development of a network of high quality amenity routes, particularly along waterways, and linking existing and proposed parks and public open spaces, and to work with Cork County Council and other stakeholders to achieve and improve external linkages subject to Ecological Assessment and Appropriate Assessment Screening’.
- 12.30 The proposed mapped amenity route is located to the south of the subject site, and having regard to the proposed, albeit tentative, riverside access walkway, it is clear that there is a disparity. It is the submission of the first party, that the development will facilitate a significant enhancement in terms of



accessibility and use of the City's green infrastructure, and the use of the proposed new road by vehicular traffic will 'help bring life to the park and foster a sense of passive supervision'. I would not agree and I consider that the proposed development, together with the tentative riverside walkway as proposed, has had no regard, in my opinion, to the aspirations of the City Council in this regard. While the applicant suggests that the overall impact of the proposed road and access as proposed would not constitute a material impact, I would not necessarily agree.

12.31 The road proposed is not just to facilitate access to the public open space area, rather it will provide for a three lane road to access a large proposed District Centre with provision for 400+ car parking spaces, together with access to the anchor store for delivery trucks and the DotCom home shopping facility. The impact at this location, together with the necessary removal of vegetation, will not be insignificant. In addition, the visual impact of the overall proposed retail development on the landscape should also be considered in the context of the City Council landscape designation, and I would not agree with the first party's submission in relation to the discretion and flexibility in the interpretation of a site's zoning. I am satisfied that the City Council Development Plan is clear in terms of its proposals for the subject site. That said, I also note that the subject site is in the ownership of the City Council, and permission has only been given for the making of the planning application.

12.32 In terms of the overall impact of the development on the landscape and its overall character in this area of Cork City, I have had regard to the information presented in terms of the tree removal necessary to facilitate the proposed retail development, entrance and access road. While I acknowledge the proposed planting and landscaping for the site, I consider that the proposal as presented has had no real regard to the landscape character value of the lands and amenity potential of the Glen Stream as presented in the City Development Plan. It is my opinion that the development of the road as proposed will seriously injure the amenities of the stream and will have a significant impact on the City Council objectives with regard to the development of the lands as part of a mapped and planned linear park which will connect the existing green belt in the County Council area into the north east of the city along the River Glen Valley Corridor, from Ballyhooly Road to Tinkers Cross and further eastwards.

12.33 In terms of the proposed retail development elements, it is clear that the proposed development of a large retail development on the subject lands will

represent a significant change to the existing landscape. The land within the County Council area, while zoned T-01 within the Blarney LAP, the Board will note that part of the site, the upper area, is currently occupied by the mixed use neighbourhood centre known as the Fox & Hounds, including the associated car parking. The remainder of the site, is generally undeveloped and is not easily accessible. The primary area to be developed is quite low-lying compared to the area occupied by the Fox and Hound complex with a difference in levels noted up to approximately 7.5m with a steep slope towards the north of the site. Site conditions are indicated as being wet and marshy. In order to facilitate the proposed development, the existing trees, hedgerows and scrub areas will be required to be cleared. The removal of the natural vegetation will result in the overall area of the site being more visible in the wider area. Indeed, I note in particular, the visual impact associated with the proposed development will be significant from the Brookvale Estate to the north of the site. I do note the proposals for landscaping as presented by the first party, but it is clear that the existing visual amenity of the residents will be negatively impacted upon for the medium to long term, and until the proposed boundary planting grows. In addition, I have raised concerns regarding the visual impact of the proposed development in terms of the Cork City Councils Area of High Value Landscape designation for the area to the south of the Glen River.

12.34 In terms of the proposed design of the retail development, the Board will note that the Retail Planning Guidelines, 2012, identify and support the need for greater design guidance which places a greater emphasis on quality of design. The Retail Design Manual accompanies the Retail Planning Guidelines and seeks to provide guidance in the form of key principles of urban design. To this end, the Manual provides that 'The Retail Planning Guidelines 2012 encourage planning authorities to include policies to promote quality design in their development plans and local area plans – and to implement these policies through the development management process. Clearly defined design policies in a development plan or local area plan give greater clarity and certainty to developers and their design teams and provide an agenda for pre-application discussion and the subsequent development management process'. Such an approach is also identified in the CSRS 2008 (section 6.31).

12.35 In terms of local policy, I refer the Board to Section 2.3.10 of the Blarney Electoral Area LAP 2011 which highlights the fact that the northern environs lack a coherent urban form or quality public spaces appropriate for an urban centre or to create a sense of place. It also advises that development proposals need to pay particular attention to building form and massing to

define an attractive public realm to enhance the physical appearance of the area and the public's experience of the area. There is further information presented as to how this might be achieved in terms of the provision of a District Centre. Policy Objective T-01 provides however, that "*provision should be made on site, and / or in adjacent areas, for improved recreational facilities, including pedestrian walks and play areas*". The guidance is lacking in my opinion in terms of appropriate design and layout of the district centre.

12.36 The Retail Design Manual identifies ten key design principles against which proposed developments can be assessed. The development site is largely Greenfield in character, with the surrounding area dominated by suburban housing and retail. The Fox & Hounds pub is located at the corner of Ballyhooly and Rathcooney Road on the north western corner of the site and is a building of character in this area. This building has been redeveloped as part of the neighbourhood centre. There is no doubt that the site could accommodate some development, but I have concerns regarding the design and layout as proposed. The development as presented, provides for a large anchor supermarket and a number of smaller retail units which will face west and south, creating an overlooked area which will comprise primarily car parking. These elements of the development will be located at a lower level to the existing Fox & Hound neighbourhood centre, save for the provision of 1 retail unit, with a floor area of 125m<sup>2</sup>, proposed at the level of the Fox & Hound. The remaining area at this level is to be occupied by surface car parking. I have concerns in terms of the connectivity between the levels, but note the proposed stairs access from the north of proposed unit 8 at the F&H level which includes a lift, as well as the pedestrian access from the Ballyhooly Road footpath. A third link is proposed to the east of the car park area at the Fox & Hound level. There are steps involved, and so, cyclists will have to dismount.

12.37 It is stated Government policy in '*Smarter Travel: A New Transport Policy for Ireland*', to create a walking culture in Ireland. Action 16 of Smarter Travel seeks to '*ensure that urban walking networks are strengthened by increasing opportunities for walking and removing constraints as part of planning for more attractive public realms*'. Such urban walking networks will be achieved by a number of measures including the provision of safe routes and appropriately designed safe, well-lit, direct, continuous facilities for pedestrians. The 'Masterplan' presented in support of the proposed development seeks to show how the overall design of the area has evolved during the consideration of the proposed development over the past number of years. What is clear is that any 'urban space' proposed at either level within the site is dominated by parking and vehicular circulation. While provision is

sought to be made for pedestrians, I would not be convinced that the layout as submitted would represent an appropriate urban environment for pedestrians or cyclists. I also have concerns regarding the frontage onto Ballyhooly Road which I consider to be very important if an appropriate District Centre is to be facilitated at this location within Ballyvolane.

12.38 Together with the upper level, the lower level of the proposed development also provides for surface car parking, which will include a set down area and a bus stop adjacent to the Anchor Store. Pedestrian movement on the lower level is also set well below the priority of the car and this area is devoid of any features that would encourage its use as a district centre space, either informally or formally. In terms of the area operating as an appropriate or inviting District Centre, I have concerns that the lack of pedestrian connectivity to the area to the south of the Glen River, the fact that the development as proposed is introverted, dominated by car parking including the undercroft parking level and, contrary to the opinion of the applicant, would not encourage access to the Glen River amenity park area in the City Council area to the south. There is no facility for the community to appropriately utilise the space or use it as an access to the amenity lands.

12.39 While I acknowledge the logic behind the proposed design feature of raising the level of the proposed development on pile supports above a void to accommodate the floodplain of the Glen River / Stream, I consider that the visual impact of the development along the Glen River and the amenity lands would be significant and negative. Given the zoning afforded to the lands within the City Council Development Plan, I consider that if permitted, the entrance and road elements of the overall development would not accord with the zoning objectives for the site within the City Council area and would be contrary to the proper planning and sustainable development of this area. In terms of the landscape within Cork County Councils jurisdiction, I have a real concern that the development as proposed provides no real opportunity to integrate with the existing urban form or other retail developments in the area. Of particular note is the fact that the lands across the Ballyhooly Road to the west of the site are zoned District Centre in the Cork City Development Plan. My primary concern in this regard is that the area will develop as a number of shopping centres rather than a properly planned and integrated district centre for Ballyvolane. This again, reflects the absolute need for a coordinated planning approach between Cork City and County Councils, and for clearer guidance for developers seeking to support the development of such a District Centre in the area.

12.40 I note the submission of a tentative 'Master plan' which incorporates two residential properties to the west of the subject site and fronting onto the Ballyhooly Road. In principle, it might be considered reasonable that the development of the district centre in this area should provide appropriate frontage onto Ballyhooly Road, with the possible creation of a 'main street'. In any event, there should at least be some connection between the two areas. The access points to the subject site, as well as the access to the Dunnes Stores site across the road as aligned, would not encourage connectivity either by car or on foot. I am of the strong opinion that the development of a new district centre which straddles the Cork City / Council boundary should be guided by a master plan or action plan which is agreed between the two planning authorities. Considering the potential development of the X-01 lands to the north of the subject site within the County Council area, I consider it essential to ensure an appropriate development in the interests of the proper planning and sustainable development of the area.

#### **Flooding:**

12.41 The subject site is located within an area identified as part of the flood plain of the Glen River and within a Flood Zone A and B area. The applicant, in support of the proposed development, submitted a Flood Impact Assessment, Chapter 13 of the EIS and a Flood Risk Assessment to Cork City Council, where the issues of flood risk arising from the overall proposed development were identified and where necessary, proposals for the management and mitigation of possible impacts are presented. Reference is made to Table 4.1 Justification Test for Development Plans, where the Planning Authority is required as part of their deliberations on all new zonings, to be satisfied that the proposed zoning can be justified by reference to the following;

- The settlement is targeted for growth under the statutory plan for the area.
- Is essential to facilitate expansion of the urban settlement
- Comprises underutilised lands
- Will achieve compact and sustainable urban growth
- There are no suitable alternative lands for the particular land use in areas at lower risk of flooding within or adjoining the core of the urban settlement.

12.42 It is submitted that the proposed retail development and associated entrance and access road is designed to minimise the effect it has on the existing flooding regime of the Glen Stream. The development, including the access road will be constructed on piers keeping the lowest level of the road above the existing ground level at a level of +51.0 OD. The existing topography will remain largely unchanged which will allow the existing flood plain to continue

to function in relation to flood flow and storage as it does at present. The mid-range future scenario which provides for climate change (+20% for flows) and including a factor for uncertainty of 1.65, the calculated flood levels for the 1% (1 in 100 year) and the 0.1% (1 in 1000 year) annual exceedance probability event (AEP) at the subject site is estimated at 49.74m OD and 50.27m OD respectively. The FRA submits that the development will have a finished ground floor level between 1.26m and 0.73m above the highest potential flood level in a 1:100 and 1:1000 year event. Where the piers impact on areas in Flood Zones A or B, direct compensatory storage will be provided. The FRA submits that the scheme will provide four times more flood storage area and four times more flood storage volume than the existing scenario, thereby reducing any potential flood risk to less than that which currently prevails on the site.

12.43 The submitted FRA has considered whole development as a 'Less Vulnerable Development', including the proposed access road, for the purposes of the FRA. The Board will note that the City Council has considered this approach inappropriate and that the road should be classified as 'highly vulnerable development' as it is essential infrastructure required to serve the proposed retail development. I would agree. In addition, the City Council have submitted that as part of the SEA prepared for the City Development Plan, the zoned lands along / adjoining the valley of the Glen River were tested against the Justification Test for Development Plans in accordance with the 'Planning System and Flood Risk Management Guidelines for Planning Authorities, 2009'. The lands 'failed to satisfy the JT insofar that the Lee CFRAMS did not demonstrate that the flood risk to the development area could be adequately managed and would not cause unacceptable adverse impacts elsewhere'. It is also noted that the public open space zoned lands were not subject to the JT on the basis that the zoning is considered to be a water compatible land use in the Guidelines. The conclusion of the SEA recommended that any proposed developments should be informed by the Lower Lee Flood Relief Scheme being prepared by the OPW. The City Council also noted that the FRA submitted in support of the proposed development is based on the retail development rather than the proposed access and roadway. Justification for the roadway should not be based on a development in another jurisdiction.

12.44 In terms of the justification test criteria of the FRM Guidelines, the following is relevant:

1. *The subject lands have been zoned or otherwise designated for the particular use or form of development in an operational plan, which has been adopted or varied taking account of these guidelines:*

The applicant submits that the Blarney LAP has zoned 90% of the overall site for T-01 'Town Centre Development', with a primary objective to 'facilitate the upgrade of the existing neighbourhood centre at the Fox & Hounds to a District Retail Centre'. In this regard, it is submitted that the overall development is generally and largely in compliance with objective 1, Box 5.1 of the Guidelines. In addition, it is submitted that the proposed development complies with the statutory development plans in the area, including the Cork City Development Plan, 2015, which recognise the status of Ballyvolane as being a Level 2 District Centre (planned). In this regard, it is submitted that the 10% of the overall site located on lands zoned open space is minor in nature and its sensitive design will not negatively impinge on the ecology, typography, tree canopy and visual amenity of the area. It is requested that the realisation of the T-01 zoning objective be permitted.

In response to the above, I would suggest that the applicant has failed to recognise that the Cork City Development Plan, while acknowledging the zoning objectives of the Blarney Local Area Plan, the City Council itself, has provided for a District Centre zoning within the City Council area in Ballyvolane. This is further evidence of the lack of a co-ordinated approach in terms of the overall development of the Ballyvolane area. In addition, the subject site within the City Council area is zoned for Public Open Space, with a presumption against development. The proposed development for an access road is not considered to be classified as 'less vulnerable development' as the first party proposes. In this regard, and notwithstanding the submissions of the first party, I am not satisfied that the proposed development of the entrance and access road satisfies this criteria of the FRA guidelines justification test.

2. *The development has been subject to an appropriate flood risk assessment that demonstrates:*
  - (i) *The development proposal will not increase flood risk elsewhere and, if practicable, will reduce overall flood risk:*
  - (ii) *The development proposal includes measures to minimise flood risk to people, property, the economy and the environment as far as reasonably possible;*
  - (iii) *The development proposed includes measures to ensure that residual risks to the area and/or development can be managed to an acceptable level as regards the adequacy of existing flood protection measures or the design, implementation and funding of any future flood risk management and provisions for emergency services access; and*

- (iv) *The development proposed addresses the above in a manner that is also compatible with the achievement of wider planning objectives in relation to development of good urban design and vibrant and active streetscapes.*

In terms of a consideration of part 2 of the JT Criteria, I would accept that the FRA, although primarily in terms of the retail development within the County area, has presented mitigation proposals to suggest that the overall development, if permitted, will not exacerbate or add to flooding risk in the area. However, I am not satisfied that nature of the proposal is appropriate or sustainable. Overall, the proposal is to not interfere with the flood plain, by constructing the development above the flood plain on piles. While the nature of the proposed construction works may avoid a flood risk, I would be concerned regarding the general impacts on the environment beneath the buildings, hard stand areas and the proposed access and roadway. I fail to see any positive environmental impacts associated with the proposed development including any benefit to wildlife, ecology or local amenity.

12.45 Further to the above, and in terms of the Flood Zone A designation of the site, the Board will note that the Planning System and Flood Risk Management' Guidelines (2009) advise that "*most types of development would be considered inappropriate in this zone. Development in this zone should be avoided and / or only considered in exceptional circumstances, such as in city and town centres, or in the case of essential infrastructure that cannot be located elsewhere, and where the Justification Test has been applied.*" While the Guidelines provide no definition for 'town centre', I would suggest that the overall development site area is not a 'town centre', rather it is a Greenfield site within the suburban fringe of Cork City. In terms of the lands within the County area, it is notable that there were zoned 'open space' under the previous CDP 2003-2009. While the site is now zoned under the Blarney LAP for development purposes, the site the subject of the proposed access and roadway remain zoned in the City Development Plan as public open space.

12.46 Notwithstanding the above, and having regard to the identification of the Ballyvolane area as a strategic location for the future planned development as a district centre, it might be considered reasonable to argue that an exceptional circumstance exists in relation to the proposed development currently before the Board. One must balance all considerations in this instance particularly due to the identification of the area as a strategic location for the future planned expansion of the Cork City Metropolitan area under



CASP, and in order to balance the retail provision between the northern and southern suburbs. However, as indicated above, all strategic policy documents relating to this area require that a co-ordinated approach be taken between both local authorities. Indeed, between the relevant development plans and local area plans relating to the area, there are a number of options available to facilitate the realisation of the strategic objectives for the overall Ballyvolane area. The Draft OPW Lee Catchment Flood Risk Assessment & Management Study maps identify the subject proposed development site as being at risk from flooding, while the District Zoned lands within the City Council jurisdiction have no such risk identified.

12.47 I accept that the development has been designed in order not to increase flood risk, but I consider that the impact on the environment is wholly negative, without benefit to wildlife, ecology or local amenity. As such, and primarily due to the lack of a co-ordinated approach to this area of Cork City / County by the relevant local authorities, I am not satisfied that adequate consideration of alternatives have been considered in terms of the overall development of a District Centre for the Ballyvolane area, and as such, I consider that the proposed development as proposed, is not compatible with the achievement of wider planning objectives in relation to proper planning and sustainable development, and would, if permitted, result in a significant adverse impact on the public open space environment and on the high amenity value lands within the City Council.

**Natural Heritage Issues:**

12.48 The Board will note that an Ecological Mitigation Plan was submitted to Cork City Council in support of the proposed access road proposal, and that Chapter 7 of the submitted EIS to Cork County Council deals with issues of Flora & Fauna across the full site of the proposed retail development. The Ecological Mitigation Plan also relates primarily, to the larger retail development site. In terms of the site the subject of the proposed entrance and access road within Cork City Council, and in terms of natural heritage, the subject site is identified as part of 'a secondary green link' designated for the development of new parks and upgraded landscapes with improved public access. In terms of the larger retail development site, the habitats identified on the site have been presented in the EIS. I have had regard to the mitigation measures presented and indeed, Chapter 7 of the EIS submitted in support of the retail development element of the overall development.

12.49 The area which will be affected by the proposed retail development is indicated as primarily comprising (GM1) marsh, (WS1) scrub, (ED3)

recolonizing bare ground, (GS2) dry meadows and grassy verges and (GS4) wet grassland. The main part of the site occurs on low lying ground and occupies two large fields comprising floating marsh dominated by Greater Tussock Sedge *Carex Paniculata*. The EIS identifies that approximately 0.6 hectares of marsh, which has been rated locally important higher value, will be affected by the proposed construction of the retail development. The EIS notes that the reason for the high rating is that the marsh provides habitat for wetland flora. The potential for macro-invertebrates, frogs and newts in the marsh is also considered likely. The Cork County Biodiversity Action Plan 2009-2014 lists marsh as a habitat considered rare, at risk or having undergone a high rate of decline in extent at a local level and its conservation is of great local significance (Grade C). The Biodiversity Action Plan also lists marsh as a habitat importance for assemblages of key species / species of conservation concern (Grade D). In terms of mitigation, it is submitted that a large area of the marsh will be covered by the footprint of the development on stilts which will allow for the marsh area beneath to maintain its current drainage capacity. The vegetation beneath will inevitably be destroyed, but mitigation habitat and enhancement measures will be provided elsewhere within the study area to offset impacts associated with the proposed loss of marsh habitat.

12.50 The area which will be affected by the proposed access and road is indicated as primarily comprising WD1 (Mixed) broadleaved woodland in the habitat map, with a small area of WS1 Scrub in the eastern area of the site. It is submitted in the Mitigation Plan that 'it is not possible to adequately mitigate for the unavoidable loss of semi-natural habitat of conservation interests (scrub and freshwater marsh) within the site.' As a means of compensating for this loss of habitat it is proposed that a detailed Habitat Management and Biodiversity Enhancement Plan be developed for the areas of semi-natural habitat that occur in the immediate surroundings of the proposed development. In terms of the Impact Assessment presented in the EIS, it is noted that the subject area is given a rating of 'locally important – lower value'. The EIS states that 'this woodland type is artificial in origin but increases structural diversity within the local area and provide cover, linear commuting corridors and habitat for many fauna species. An active badger sett with three sett entrances were recorded on the slopes of this habitat. The habitat is considered to be of high value, locally important.'

12.51 The Board should note that the identified badger sett is located to the south of the overall area assessed and along the boundary with the North Ring Road as opposed to the area of WD1 along the Ballyhooly Road. The Otter however, is also noted as being potentially present within / adjacent to the

site, and the site is afforded a rating of locally important higher value. It is further noted that the area of scrub along the stream was not surveyed for otter holts. In addition, bats and birds were recorded at the subject site, amongst other mammals that are afforded protection under Irish and European legislation. The site is identified as having a locally important higher value rating in terms of bats due to the potential bat roost habitat in the stone culvert and the broadleaved woodland which contains mature trees likely to serve as bat roosts. The EIS concludes that it is likely that the development will lead to some loss of roosting, commuting and foraging opportunities for bats. However, it is considered to be neutral once new trees and bat boxes are incorporated into the development.

12.52 Chapter 12 of the Cork County Development Plan deals with heritage and Objective HE 2-3 deals with Biodiversity outside Protected Areas and seeks to 'Retain areas of local biodiversity value, ecological corridors and habitats that are features of the County's ecological network, and to protect these from inappropriate development. This includes rivers, lakes, streams and ponds, peatland and other wetland habitats, woodlands, hedgerows, tree lines, veteran trees, natural and semi-natural grasslands as well as coastal and marine habitats. It particularly includes habitats of special conservation significance in Cork as listed in Volume 2 Chapter 3 Nature Conservation Areas of the plan'.

12.53 Further to the above, it is the opinion of the City Council that the subject site acts as part of a wildlife corridor with the Glen Amenity Park and other natural heritage areas in the vicinity and that the presence of some of the habitats and species on the site could be considered rare in an urban context. In this regard, the City Development Plan seeks to protect such areas and to prevent the modification, removal, destruction and isolation of habitats and species. I refer the Board to objectives 10.7 Designated Areas and Protected Species and in particular, 10.8 Non Designated Areas of Biodiversity Importance, of the Cork City Development Plan, 2015 which states as follows:

- a. To work with local communities, groups, landowners, National Parks and Wildlife Service and other relevant parties to identify, protect, manage and where appropriate enhance and promote sites of local biodiversity value;
- b. To map the City's ecological networks/corridors of local biodiversity value outside of designated areas;
- c. To encourage the management of features which are important for wild flora and fauna. Such features are those which by virtue of their linear or continuous nature e.g. rivers, tree groups or hedgerows are

essential for the migration dispersal and genetic exchange of wild species.

12.54 In terms of the mitigation plan submitted, I am concerned that there appears to be significant gaps in the information with specific regard to the site the subject of the access and roadway. I have also had regard to the Tree Survey submitted and of the 44 trees surveyed in the vicinity of the proposed entrance and proposed road, 34 are to be removed, with 3 indicated as 'unlikely to thrive in the long term'. In this regard, there is no doubt that the impacts associated with the proposed development, will have a significant and negative impact on the natural heritage of the area. The loss of natural vegetation would have a potentially significant and negative impact on the species that frequent the site and while I note the intentions of the developer with regard to mitigation measures during the construction phase of the development, I consider that there remains significant number of outstanding issues of concern. I am particularly concerned regarding the loss of the marsh habitat effectively across the full site and the inadequate consideration of the impacts on the fauna that use the site. The primary concern relates to the loss of vegetation, which in itself is significant considering the rarity of the habitat. I am not satisfied that the matter of natural heritage has been adequately addressed. In this regard, I consider that the proposed development should be refused. The Board will note that the Director of Services, Cork City Council considered this issue to have minimal impact on the character of the area, but I would disagree in terms of the impact on the species and fauna that use the site, in particular bats and otters.

**Water Services:**

12.55 The Board will note that the proposed development has been assessed in terms of infrastructural and water services requirements. MMOS presented details and drawings to both files and it is noted that the development is proposed to connect to Cork City's foul drainage systems. The City Council has advised the inclusion of conditions in the event of permission being granted. With regard to Water, the applicant will be required to consult with Irish Water, who has advised no objection to the proposed development.

12.56 With regard to surface water, it is advised that the system has been designed in accordance with SUDS best practice principles. It is proposed to attenuate the site to agreed discharge levels, which are in line with green field runoff rates. Three attenuation tanks are proposed within the site with a stated storage volume capacity of 1,112m<sup>3</sup>. The access road to the south of the subject site it to be attenuated by means of oversized service pipes and the

volume of attenuation to be provided for the roadway is indicated at 58m<sup>3</sup>. It is submitted that the attenuated volume will result in a reduction in discharge volumes during intense rainfall entering the local Glen River. The Board will note that the City Council Engineers have indicated that if the proposed development is deemed to comply with zoning and policy objectives, there is no objection submitted mitigation measures.

12.57 I have no objections in principle in terms of infrastructure and water services serving the site.

***Roads & Transportation:***

12.58 The Board will note that the issue of roads and traffic comprised as significant element of the Oral Hearing. It is clear that there have been efforts made in terms of consultation and proposals to address the concerns of the City Council with regard to the overall proposed development. In terms of the existing situation in terms of roads, the overall development site needs to be considered.

- The North Ring Road runs west-east a short distance to the south of the site access. This road is an important and a significant traffic route and connects Blackpool to Tivoli
- The Ballyhooly Road, a regional road, is a significant arterial route and runs south to north to the west of the site. The Ballyhooly Road has a significant junction with the North Ring Road to the south of the proposed site.
- To the north of the proposed entrance to the subject site (off the Ballyhooly Road) lies the Ballyvolane Cross Roads, also referred to as the Fox & Hound Junction. This junction is located where the Ballyhooly Road crosses the Rathcooney Road which runs in a west to east direction.
  - To the west of the junction, the Rathcooney Road, a county road, serves a large residential area and ultimately connects to the North Ring Road, west of the Ballyhooly / North Ring Road junction.
  - To the east of the junction, the Rathcooney Road runs east and north east.
  - Where the Rathcooney Road turns in a north east direction, there is a small junction with the Banduff Road, a smaller county road of poor horizontal and vertical alignment and width. This road provides access to a number of suburban housing developments and a primary school.
- The Ballyhooly Road to the north of the Fox & Hounds junction continues in a west/north west direction as the R614.

At the OH, it was submitted by the City Council that the results of the LinSig modelling assessment (submitted by the applicant) indicates that the existing North Ring Road junction, without any future development, already operates at capacity, with a degree of saturation of 85%. Indeed, all third party objections to the proposed development suggest that the current traffic congestion in the area is a significant issue for residents. I also experienced significant congestion along the Banduff Road to the north / north east of the site on the days on my site inspections. The City Council raised serious concerns with the proposed retail development and the proposed traffic generated by the development, and considers that if permitted, it would result in a serious negative impact on the operation of the City Road Network. The concern was compounded following the identification of a number of coding errors in the LinSig models provided in the Traffic Modelling Report.

12.59 In terms of accesses to the site, the Board will note that there are three proposed access points as follows:

1. Primary access / egress from Ballyhooly Road will be a signal controlled junction. A dedicated right turn lane for north bound traffic on the Ballyhooly Road with a capacity for 7 PCUs<sup>4</sup>.
2. An entry only vehicular link to the development from the Ballyhooly Road, just south of the Fox & Hounds junction.
3. A revised priority junction serving the existing Fox & Hounds rear car park. This will allow for a left in / left out only access / egress.

The overall traffic and roads proposals also include a number of off-site road improvements in the form of:

- a. Significant capacity improvements to the North Ring Road / Ballyhooly Road junction with
  - the addition of a dedicated left and right turn slip lanes for traffic leaving Ballyhooly Road accessing the North Ring Road,
  - the provision of a 2 lane approach to the North Ring Road for north bound traffic on Ballyhooly Road adjacent to O'Callaghans Service Station,
  - the extension of the right turn lane facility on the eastern approach to the junction on the Northern Ring Road for up to 15 vehicles,
  - the improvement of pedestrian facilities on all approaches
- b. Capacity and operational improvements to the Rathcooney / Ballyhooly Road Junction which will include

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<sup>4</sup> The EIS provides that space exists to accommodate up to 10 PCUs before the lane interferes with through traffic on the North Ring Road.

- the provision of a dedicated right turn lane for north bound traffic from the Rathcooney Road, lane capacity 7 PCUs
- a right turn lane for west bound traffic from the Ballyhooly Road north, 7 vehicles capacity
- the provision of associated pedestrian and cycle facilities in accordance with the requirements of the Cork County Council / City Council Ballyvolane Cycle Network Scheme.

In addition dropped kerbs and tactile paving are to be included on pedestrian crossings at the proposed site access junctions and at the improved off-site junctions.

12.60 In addition to the above, I consider it prudent to note that the preferred route for the proposed Cork Northern Ring Road Scheme (motorway / dual carriageway scheme connecting N22 Ballincollig Bypass to the N8 Glanmire Bypass) has been selected to the north of the subject site and Fox & Hound junction. It is likely that this new road will accommodate a junction with Ballyhooly Road. The Traffic Infrastructure Ireland (TII) website advises that the progress of the proposed scheme through the planning phases is currently suspended. Cork County Council advised at the Oral Hearing, that the North Ring Road is unlikely to be delivered in the near future. It is a matter for the TII and is not in the gift of Cork County Council to deliver. It is envisaged that the outer Northern Ring Road, a strategic road priority for the city, would result in a significant reduction in traffic flows on the surrounding roads network in the vicinity of the proposed development site.

12.61 The Board will also note that Cork City Council have permitted a Part 8 development, the Ballyvolane Cycle Network Scheme, which proposes modifications to the existing junction of the North Ring Road and Ballyhooly Road. The Part 8 proposes to provide cycle lanes and a dedicated right turn lane on the Ballyhooly Road southern approach. Cork City Council has indicated that these works will not be carried out by the Council as the funding for same was used elsewhere and is no longer available to implement the scheme. The applicant has committed to carrying out an enhanced version of the Part 8 scheme in order to facilitate the proposed development and as detailed above.

12.62 The works associated with the enhanced Part 8 scheme will include for significant infrastructure works to both the North Ring Road and the Fox & Hounds Junctions which the applicant has committed to carrying out at a cost of approximately €1.7M. It is submitted that the carrying out of an enhanced Part 8 scheme, including a link to the proposed Glen River amenity walk is a

significant planning gain. The applicant also indicates that the necessary permissions / lands have been acquired to carry out the works. At the OH however, it was noted that the works to the north of the Fox & Hounds junction are not necessarily included in the overall infrastructural works advised. Indeed, the submitted drawings detailing the overall master plan, drawing no. BDC-JL-P10 refer to this area of the road network as 'proposed junction upgrade when Council take ownership of lands'.

- 12.63 The submitted Traffic Modelling Report submitted with the City Council application, in the Non-Technical Summary, advises that 'this TIA should be regarded as supplementary to the TIA previously submitted with the concurrent planning application (on appeal) to Cork County Council for the mixed use retail development.' I note that the TIA referred to does not appear to have been submitted to Cork City Council for consideration. In any case, and with regard to the proposed vehicular accesses to the site, I have outlined the proposals for same above in section 12.55 of this report.
- 12.64 In terms of an assessment of the traffic implications associated with the proposed development, the Board will note that at the OH, the coding errors identified in the LinSig models provided in the EIS / Traffic Modelling Report were addressed. The traffic analysis presented suggested that in terms of the Degree of Saturation on the network, the proposed development, together with the enhanced Part 8 upgrade works in place, the modelled network will operate generally as it does at present in the presumed opening year of 2015. In terms of the LinSig results for future years, in 2020, and with a cycle time of 90 seconds, the saturation jumps to 90.9% (Low NRA growth factor), to 91.7% (medium NRA growth factor) to 97.7% (high NRA growth factor). The degree of saturation decreases with increased cycle times, but it is clear that the development, if permitted and with the road upgrade works implemented, will have a significant impact on the carrying capacity of the road network.
- 12.65 In terms of the traffic modelling the Board will note that the Friday evening peak hour between 5:00-6:00 alone, was used. This is indicated as having been requested by Cork City Council. This was in 2013 and it was also agreed at that time that 'a robust assessment would need to be carried out but may be limited to opening year, taken as 2015. This was agreed based on works in the pipeline that would effectively mitigate background future traffic growth.' Since this time, a new school has opened on the Banduff Road (August 2014) and the 'works in the pipeline' shelved. I note that no assessment of the morning peak hour was carried out, which is a pity, in my opinion given that the surrounding area has a number of schools and large residential areas. In



addition, the Board will note that the area of Ballyvolane is identified as a strategic growth area for the metropolitan area of Cork City in CASP, County and City Development Plans. In addition, Cork County Council has zoned extensive lands to the north of the subject site, objective X-01 of the Blarney EA LAP, 2011 where it is advised that up to 3,600 new dwelling units will be provided. Indeed, at the OH, the County Council advised that a master plan is being prepared for these zoned lands as part of the review of the Blarney LAP. What is clear in my opinion, is that the current situation in the Ballyvolane area is that the roads and junctions are at capacity and that the local residents suffer significant traffic congestion. In particular, Banduff Road has significant issues at present. It is also clear that if permitted with the stated infrastructural improvement, the development will absorb any and all capacity which will result in the status quo remaining. There would be no capacity on the road network, to accommodate the proposed development of the X-01 lands, or any other developments in the local area.

12.66 However, I do accept that the assessment as presented by the first party seeks to consider the 'worst case scenario' in terms of assessing the surrounding roads network. That said, I am concerned if the results of the traffic survey carried out are actually representative of the existing traffic conditions on the wider road network. No details of traffic movements at the junctions other than between 1700-1800 hours are provided and there is no evidence that the survey of existing traffic conditions extended outside the stated PM peak. While the NRA guidelines do not recommend a minimum number of surveys, the '*Traffic Modelling Guidelines*' (Version 3.0) advise that comprehensive data be collected to include for AM peak, midday peak, PM peak Saturday midday peak, Sunday PM peak. I do however, acknowledge that the applicant was guided by the local authority in this regard.

12.67 The reports submitted in support of the proposed retail development, entrance and access road provide information in relation to the existing traffic movements on the road network at the surveyed two hour PM peak period (16.30 – 18.30) recorded Friday, 13<sup>th</sup> September, 2013. The results are advised as follows:

- 647 PCU<sup>5</sup> on Ballyhooly Road north of Dunne's entrance,
- 388 PCU on Ballyhooly Road south of Ring Road
- 1,180 PCU on North Ring Road – 624 PCU East and 556 PCU west,

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<sup>5</sup> Passenger Car Unit (PCU) this is a method used in Transport Modelling to allow for the different vehicle types within a traffic flow group to be assessed in a consistent manner. Typically, a car is classed as 1 PCU while a large goods vehicle could have a PCY value of 2.5-3.

- 329 on Rathcooney Road west
- 410 on Banduff Road – Rathcooney Road east.
- 204 PCU at Dunnes Stores junction.

In total, the local road network resulted in 3,158 PCU

12.68 In terms of traffic generated by the proposed development, the report identifies a total of 880 trips generated with 443 arrivals and 437 departures within the PM peak period, 17.00-18.00. In calculating the pass-by and diverted trips, the applicant used the TRICS 95/2 report rather than the more recent 14/1 report, published on the 5<sup>th</sup> December, 2014. A figure of 30% was used and the result is that the full traffic generation for the development entrance junction is modelled with existing background traffic figures reduced by 113 trips. In addition, it was required that the permitted 40% retail floor space increase of Dunes also be accounted for. In this regard, the trip distribution matrix is presented with a total of 4,103 trips calculated for the road network with the development in place in the opening year of 2015 with the Low Growth Rate applied. This figure increases to 4,113 and 4,159 when the Medium and High Growth Rates are applied. For 2020 and 2030 the following is presented:

| Growth Rate \ Year | 2020  | 2030  |
|--------------------|-------|-------|
| Low                | 4,258 | 4,397 |
| Medium             | 4,290 | 4,467 |
| High               | 4,474 | 4,795 |

12.69 The results of the various scenarios modelled are presented in the Traffic Modelling Report in terms of Degree of Saturation, which for an urban signalised junction should be below 90%. Cork City Council have submitted that a Ratio of Volume to Capacity of less than 85% is considered acceptable. Any higher and the junction starts to operate over capacity. The junctions in this area are generally operating close to / at capacity. The first party has presented models for a number of scenarios with different signal cycle times of 90 seconds – the current cycle time – 110 seconds and 120 seconds. I refer the Board to Table 8.5 contained within the Traffic Modelling Report submitted in support of the proposed development to Cork City Council where the results clearly suggest that with the development and the changes, in all cases, the junctions will operate over capacity. With a 10% modal shift

applied, and where the cycle time is increased from the current 90 seconds, the predicted impacts of the development for 2020 and 2030 on the junctions will still result in them operating over capacity. The report concludes that if a modal shift of 12% was applied, and other infrastructural schemes were developed, the proposed development can be accommodated.

12.70 The City Council also raised concerns regarding the queuing lengths on the roads, for example, a queue length on the northbound lane on approach to the Fox and Hound Junction was predicted to be 22 PCUs in the 2015 scenario, whilst there is only a storage capacity of 15 PCUs to the Dunnes Stores access priority junction and a further 10 PCUs to the proposed signalised junction for the proposed development access. The City Council suggest a similar situation in the south bound direction, predicted queue length of 21 PCUs with a storage capacity of only 7 PCUs. In this regard, it is considered that such a situation would cause operational issues for the road network. The City Council has concluded that the applicant has not demonstrated that the road network has sufficient capacity to accommodate the proposed development in the future year scenarios, even with the proposed upgrade works completed. Overall I am inclined to agree.

12.71 In terms of the design of the proposed urban roads to and within the site, together with all proposed works to the junctions, it is a requirement that they be considered against the Design Manual for Urban Roads and Streets (DMURS), DoTTS, March 2013. This Manual replaces DMRB<sup>6</sup> in respect of all urban roads and streets and it does not differentiate between public and private urban streets, where a 60kph speed limit or less applies. The DMURS provides radically new design principles and standards from DMRB. The implementation of DMURS is obligatory and divergence from same requires written consent from relevant sanctioning authority (NRA, NTA or DTT&S) and is applicable in the case at hand. The Manual seeks to address street design within urban areas (i.e. cities, towns and villages). It sets out an integrated design approach providing that the design must be:

- a) Influenced by the type of place in which the street is located, and
- b) Balance the needs of all users.

12.72 The DMURS sets out a road user priority hierarchy as follows:

- 1 Pedestrians;
- 2 cyclists

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<sup>6</sup> The Board will note the reference in the EIS to DMRB rather than DMURS.

- 3 public transport
- 4 car user.

The key design principles for roads include –

1. Integrated streets to promote higher permeability & legibility;
2. Multi-functional, place-based, self-regulating streets for needs of all users;
3. Measuring of street quality on the basis of quality of the pedestrian environment
4. Plan-led, multidisciplinary approach to design.

The importance of this design approach is dependent on site context, but also on road type - local, arterial or link. The DMURS defines a hierarchy of places based on place-context and place-value, with centres (such as town and district centres) having highest place-value. Places with higher context / place-value require:

1. Greater levels of connectivity;
2. Higher quality design solutions that highlight place;
3. Catering for and promotion of higher levels of pedestrian movement;
4. A higher level of integration between users to calm traffic and increase ease of movement for vulnerable users.

12.73 DMURS provides detailed standards for appropriate road widths - 2.5m to 3m per lane on local streets and a 3.25m standard for arterial and link route lanes, junction geometry - greatly restricted corner radii to slow traffic speed and improve ease of pedestrian crossing, junction design - omit left turn slips and staggered crossings etc., and requires that roads are not up designed above their speed limit. There has been no commentary with regard to the proposed access roads and junctions with the public roads and footpaths according with DMURS design standards or the principles behind the standards – for example staggered junctions are not encouraged and maximum standards are provided in terms of radii measurements for arterial road junctions heavily used by large vehicles. While not directly relevant in this instance, it should be noted that I also have concerns in terms of the internal layout of the retail scheme and how it complies with the requirements of DMURS. I am concerned that the design of the overall scheme gives priority to the car and as such, might be considered as failing to comply with the design requirements appropriate to the development of a district centre. As such, I consider that the development as proposed, does not comply with DMURS. This in itself however, is not necessarily an issue for refusal, in that the details could be agreed with all parties. The issue of the level of traffic generated by the proposed retail development however, remains a concern in

terms of the impacts on the local road network and the significant junctions affected.

12.74 In terms of roads and traffic issues, I am not satisfied based on the information submitted to date, the details of the existing traffic assessment including junction capacity assessments, the requirements of the Design Manual for Urban Roads and Streets regarding the junction and road design, the proximity of the proposed primary access / egress and other access junctions to the site to significant road junctions, existing retail developments and already congested county roads, Banduff Road and Rathcooney Road in particular, together with the fact that there are questions regarding the ability of the applicant to secure the lands to implement the full suite of road improvements as described most notably to the Fox & Hounds junction, that the proposed development would not adversely affect the carrying capacity of the R635 North Ring Road and the R614 Ballyhooly Road, important traffic routes for the Cork City, and the surrounding county road network, by reason of the additional traffic resulting from the proposed development.

12.75 I refer the Board to my comments in section 12.5 above in relation to the preparation of a Master plan Study in the Ballyvolane area, for lands zoned Objective X-01 in the Blarney LAP. It is anticipated that this area of zoned land will provide for up to 3,600 residential units and associated convenience and comparison shopping to support the population growth as well as other facilities. In addition, and in line with the CASP Strategy, the primary focus of development in the Blarney Electoral Area is indicated as being 'in those locations served principally by rail based public transport infrastructure, Monard and Stoneview. In the longer term, priority will be given to more sustainable locations in close proximity to existing infrastructure and population centres such as Ballyvolane where bus based public transport options are capable of being provided.' In terms of roads and traffic, I am concerned that the shelving of the provision of the North Ring Road will significantly impact the delivery of the planned population on the lands zoned Objective X-01 and as such, I consider that the development of the District Centre as proposed is premature pending the delivery of the Northern Ring Road and the necessary junction improvements as identified.

***Retail Impact Assessment:***

12.76 Chapter 5 of the EIS presents the Retail Impact Assessment that has been carried out in support of the proposed development. The Assessment provides an executive summary and seeks to assess both the qualitative and the quantitative impacts of the proposed development on the catchment area,

advising that the subject proposed development currently before the Board represents a significant reduction in size to that originally proposed for the site, in the order of 36%. The report also notes that the principle of a retail development on the site has been accepted by Cork County Council as evidenced in the issuing of the grant of permission. The assessment refers to the relevant policy documents as well as the Draft Metropolitan Joint Retail Study 2013 noting that the impact of the proposed development, unlike other District Centres, will be less than those other centres as the proposed anchor unit is aimed primarily at the bulk food shopping sector and as such, will not be competing for trade with the City Centre. The assessment concludes that the proposal accords with the policy requirements for the area in terms of the provision of retail floor space.

12.77 The RIA also provides that the proposed development was considered against the sequential test approach as provided for in the Retail Planning Guidelines. The EIS notes that as the lands are identified in the Blarney Electoral Area Local Area Plan 2011 for Town Centre development, with an objective to upgrade the existing Fox & Hound to a District Centre, and in this regard, it is submitted that the proposed development complies in full with section 4.4 of the RPGs in terms of the sequential test, and considers the proposed development against a range of criteria set out in the RPGs. The Board will note that the figures presented in the EIS, Chapter 5, exclude an existing permission for an extension to Dunnes Stores, on the basis that 'it is unlikely to be built'. The assessment concludes that the proposed development would consolidate and increase the total convenience and comparison spend in the north eastern environs as a whole and because of its proximity to the existing neighbourhood centre, will see an overall increase in people using other retail facilities in the area.

12.78 The proposed development, as amended and in accordance with the figures presented at the oral hearing, indicates that the gross floor area of the anchor unit from 9,454m<sup>2</sup> to 8,082m<sup>2</sup>, with a net 2,427m<sup>2</sup> convenience floor space, with a turnover of €26.7M and 1,189m<sup>2</sup> of net comparison floor space with a turnover of €8.3M expected. This represents 12% of the expected available expenditure revenue within the catchment. These figures are within the convenience floor space cap of 3,500-sq.m applying to Cork City under the RPG 2012 and the Board will note that there is no cap applicable to comparison floor space under the RPG 2012. Further to the above, it can be assumed that the 1,995m<sup>2</sup> GFA in the proposed 8 units can be assumed to be comparison floor space (excluding restaurant and café units and the proposed community / post office unit, amounting to 730m<sup>2</sup> GFA total).

12.79 The Metropolitan Cork Joint Retail Strategy, 2013 was adopted into the Cork County Development Plan and the Cork City Development Plan and is identified as forming the agreed basis on which each authority would formulate appropriate development plan objectives or policies for retail development and for the determination of applications for retail developments. Both Plans, and the MCJRS identify Ballyvolane as an area for the provision of a District Centre. It is submitted that the expected demand growth in the period up to 2022 is indicated as requiring an additional net convenience floor area of 20,291m<sup>2</sup> for the Cork City Centre and including Ballyvolane and Douglas. The strategy identifies that there is 11,734m<sup>2</sup> of permitted convenience floor space within the City Centre and suburbs, including Ballyvolane, resulting in an available capacity in the order of 7,557m<sup>2</sup>. Based on the figures and information presented, I am satisfied that there would appear to be capacity for the proposed convenience floorspace proposed. The Board will also note that there was no objection in terms of retail impact from either of the Planning Authorities.

12.80 In terms of comparison floor space the MCJRS identifies the need for c.9,987m<sup>2</sup> in the northern suburbs up to 2022. This figure accounts for the required 40:60 ratio of allocation in the suburbs north:south. The strategy identifies that there is 3,795m<sup>2</sup> of permitted comparison floor space with northern environs of Cork City and as such, there is capacity for 6,192m<sup>2</sup>. It is submitted by the applicant that the proposed provision of 1,434m<sup>2</sup> of lower order comparison floor space on the subject site would represent only 23% of the total floor space designated to the three identified district centres in the northern environs, Ballyvolane, Blackpool and Hollyhill. Based on the figures and information presented, I am satisfied that there would appear to be capacity for the proposed comparison floorspace proposed in this area. I would accept that the comparison offer would be lower order comparison that would be less likely to undermine the vitality and viability of the city centre. Again, the Board will note no objection from either Planning Authority in terms of retail impact.

12.81 In terms of existing supply within Ballyvolane, the Board will note that there is a Dunne's Store to the west of Ballyhooly Road, Ballyvolane Shopping Centre, and a Lidl store to the north east of the Fox & Hounds Junction. In addition, there is a unit available for a small convenience shop within the Fox & Hounds centre. This unit was closed on the dates of my site inspections. I would not consider that there is a deficit of convenience retail provision in this area, but certainly, if permitted, the development would result in greater competition and convenience retail offer in the area. In terms of extant permissions, the Board will note that Dunnes Stores in the Ballyvolane

Shopping Centre has permission for an extension and alterations to their store within the City Council area of the District Centre as zoned in the Cork City Development Plan. If constructed, this would result in an additional net convenience floor space of 378m<sup>2</sup> (to 2,973m<sup>2</sup>) and net comparison floor space of 3,670m<sup>2</sup> (to 5,277m<sup>2</sup>m). An extension of duration until 28/07/18 has been also been granted (02/08/08) for the previously permitted redevelopment of Dunne's Stores.

12.82 The applicant submitted a Retail Impact Assessment as part of the EIS which sought to assess the capacity of the area to accommodate the additional retail floor space. The RIS includes an assessment of both the qualitative and quantitative impacts of the proposed development on the catchment area and concludes that the proposed development is:

- a top-down plan-led development;
- that there is a need to address deficiencies in retail provision when compared to competing centres on the southern environs as recognised by the CSRS 2008 and the relevant development plans for the area;
- that the overall scale of the proposed District Centre is significantly smaller than existing centres at Blackpool, Mahon, Douglas and 30% the size of the permitted Wilton redevelopment, all of which have a significant level of other compatible uses.
- the capacity analysis demonstrates that it would not detract from the vitality and viability of Cork City Centre as it allows for 35% outflow to the city centre and other district centres; and
- its comparison offer will consist of low-middle order and therefore will not directly compete for trade with the city centre.

12.83 The growth in available expenditure to 2022 is based on population growth within the catchment and growth in retail expenditure per capita. It indicates that the catchment area population grew by an average of 6% in the 5 years to 2011, or 1.2% p.a. A growth rate of 1% was applied for the period 2014-2014 and 2% for the period 2017-2020. The RIA submits that the population growth rate is conservative given that Ballyvolane is identified as a population growth area under the regional (CASP) and county plans. In particular, it is submitted that the population will grow with the development of the Ballyvolane master plan lands X-01 which proposes to provide a minimum of 2,337no. households. The Board will note that Cork County Council indicated at the OH that work on a master plan for these lands will be commencing soon and will comprise part of the review of the Blarney Local Area Plan. While I accept the basis of the figures uses, I am concerned that there is potential uncertainty in terms of the provision of the North Ring Road, which



may have an impact on the deliverability of the X-01 lands and that development of those lands may occur on a phased basis. Therefore the rate of growth may be lower than suggested and perhaps it may be considered that the population growth to 2022 may be unrealistic at this stage. However, the Board will note no objection from either Planning Authorities in this regard.

12.84 The per capita expenditure on convenience and comparison goods is based on Annual Service Inquiry (ASI), with the CSRS (2008) rate for 2006 (€3,049 convenience and €3,151 comparison) applied up to 2013 and a growth rate of 4.3% p.a. thereafter. The figures contained in the Metropolitan Cork Joint Retail Study 2013 are much higher than those cited, convenience per capita expenditure of €3,876 in 2013, €4,239 in 2022 (based on 1% growth rate); and comparison per capita expenditure €3,641 in 2013, €4,614 in 2022 (based on 3% growth rate). The figures in the CSRS 2008, for Cork City and Douglas, are in line with the figures in the MCJRS. The projected overall convenience expenditure for 2020 is predicted to be €176.763M (€4,156 per capita) while the projected overall comparison expenditure is predicted to be €184.972M (€4,349 per capita). Overall available expenditure within the catchment is predicted to be €166.5m convenience and €167.5m comparison in 2018, but it is assumed, in accordance with the Retail Study 2008, that 35% of comparison expenditure will outflow from the catchment to Cork City and a further 13% to other district centres. In the opening year of 2018, the City Centre figure remains, but the outflow to other suburban centres is reduced to 5% to reflect the opening of the proposed District Centre at Ballyvolane. No significant outflow for convenience expenditure. In 2020, the available expenditure within the catchment, and having regard to the outflow of expenditure, the applicant submits that convenience will be €176.763M and comparison will be €120.23M giving a total available expenditure within the catchment of €297M,

12.85 The turnover for the existing and extant retail developments in the catchment have been calculated using the turnover rates provided in the MCJRS, €11,000/m<sup>2</sup> for convenience floor space and a sales density of €7,00/m<sup>2</sup> for comparison floor space. With regard to Lidl, the applicant used a reduced figure of €6,000/m<sup>2</sup>, given the store format. In 2014, the total convenience turnover is €41.75M, which amounts to a residual capacity of €109M. In terms of comparison turnover, in 2014 is €13.87M with a residual capacity of approximately €60M, rising to €95.3M in the design year of 2018. The turnover of the proposed development is estimated to be in the order of €35M (€26.7M convenience and €8.3M comparison) amounting to 12% of the expected available expenditure revenue for the catchment in 2018. The Board will note that these figures do not take account of proposed 8 additional units.

Based on the RIA, and the information provided at the oral hearing, it would appear that the proposed development would not adversely affect the vitality and viability of the city centre or the other suburban district centres.

***Residential Amenity:***

12.86 The Board will note the extensive third party objections to the proposed development from local residents in the Ballyvolane area. I would also acknowledge the submissions from third parties in support of the proposed development. I raised a number of issues with the first party at the oral hearing and a response was presented on day one of the hearing, seeking to address the relevant issues raised. The issues raised in this regard, can be considered under the following headings:

- visual impact
- loss of green area / open space
- traffic congestion and general roads issues
- overshadowing / loss of light
- noise
- odours

**Visual impact:**

12.87 The proposed development site is directly adjacent to residential areas, including two houses to the west and the Brookvale Estate to the northeast. In terms of the current landscape context, there is no doubt but that the development, if permitted, will constitute a significant visual addition to the local area and will have an impact on the existing residential amenities currently enjoyed by the residences. There are a number of factors affecting residential amenity including the visual impact due to the substantial scale and overall design of the development. The potential visual impact of the anchor building on the residential estate to the north is significant by reason of the proposed site layout and the proximity of the building to the estate boundaries. In addition, the Board will note the necessity to remove extensive areas of existing vegetation to accommodate the proposed development which will compound the visual impact. I acknowledge the landscaping plans the first party has presented for the site, but it is in the short to medium term, before the vegetation matures, that the visual impact will be significant. Indeed, the landscape master plan submitted at the hearing would suggest that the majority of existing trees and hedgerows are to be removed to accommodate the development in the first instance, with the indicative outline of trees to be retained relating to trees on lands outside the subject proposed development site.

### **Loss of Green Area:**

12.88 The Tree Survey Report submitted to Cork City Council considered the detail of those trees located within the area of the proposed access road and I have addressed the issue of tree removal above in section 12.54 of this report. I submit that the significant loss of the existing vegetation on the site, together with the nature and scale of the development as proposed, would compound the visual impacts associated with the proposed development and would affect the existing visual amenity of the residents and the wider area. In addition, notwithstanding the efforts of the applicant to improve the visual appeal of the northern elevation of the building, I remain concerned that the development, if permitted will have a significant and undesirable visual impact on the small area of residential open space and on the suburban residences a short distance to the north and, as a consequence will injure the residential amenities of the area.

12.89 The impact of the loss of the green open space area has been discussed in terms of the impact on natural heritage and non-compliance with policy and zoning objectives contained in the Cork City Council jurisdiction. In terms of the retail element of the proposed development, I have also raised concerns in terms of nature and scale as well as the public spaces proposed.

### **Roads & Traffic:**

12.90 Roads & traffic issues have already been addressed above in this assessment, and the Board will note that the third parties raised issues in this regard at the oral hearing.

### **Overshadowing & Loss of Light:**

12.91 In terms of overshadowing and loss of light, the concern of the residents requires to be considered given the orientation of the subject development site, being located to the south of Brookvale Estate and to the east of the houses fronting onto Ballyhooly Road. The proposed anchor store is to be located within approximately 5m of the boundary to the north of the site, adjacent to Brookvale Estate. The applicant submits that the anchor store will be located 32m at its closest to houses in the estate. The proposed car parking area on the upper level of the site is indicated as being located 20m from the closest house and significant screening is proposed to be provided along the north eastern boundary of the site. The applicant also submitted that the 8 proposed retail service units have been redesigned and accommodated at the lower level of the site so as to minimise their impact on the residential amenities of the adjacent dwellings. In addition, the roof of the bulk storage area will be at +59mOD, with a screen which will extend up 4.7m. In this

regard, the overall height of the northern elevation is 13m above the proposed car park level, and will be 4m higher than the ridge height of the closest house, located 36m away.

12.92 In support of the proposed development, the applicant references the Douglas Shopping Centre which has an elevation height of 14m with a separation distance of 33m. The Board will note however, that this example locates the Douglas Shopping Centre is to the north of the affected properties and in this regard, would be unlikely to have any impacts in terms of overshadowing / loss of light. From my calculations, the finished floor level of the proposed development will be approximately 1.4m below the level of the existing Brookvale Estate road. Given the proposed height of the building, indicated at 14m, this will result in a building rising 12.5m above the level of the Brookvale estate. The houses in Brookvale are scaled at 7m in height, which would suggest that the height above the ridge of the houses will be 5.5m and not 4m as indicated. Having regard to the location of the proposed anchor store immediately adjacent to the green area associated with the residential estate, I have concerns regarding the potential impact of same on the residential amenity of the area in this regard. I also have concerns regarding the proposed planting and landscaping plan given the proximity of the site to the boundary, and the necessary works to construct the building on piles.

12.93 While I accept that the proposed development may not have an impact on the amenities of individual residential properties by excessive direct overshadowing, I am concerned that overshadowing of the open amenity space to the front of those houses within Brookvale will be negatively impacted upon by direct overshadowing and from loss of daylight due to the height, scale and proximity of the proposed anchor building. This, in combination with the visual overbearing on the space, and seriously injure the local residential amenities of the housing estate.

**Noise:**

12.94 The primary concerns arising in terms of noise associated with the proposed development include traffic noise, plant noise and operational noise. In support of the proposed development, the applicant submitted a Noise Assessment which included 3D noise modelling for both the construction and operation stage of the development. The Noise Impact Assessment concluded that any noise impacts from the proposed development has been mitigated by design and through the use of approved plant and machinery. It is further submitted that the service yard for the development has been specifically designed with noise abatement measures. The service area is

internalised as much as possible with a 5m screen provided on the northern elevation. Should the Board be minded to grant permission in this instance, these issues could be addressed by way of appropriate conditions.

12.95 Noise from car parking areas, particularly in the evening and at night can cause significant annoyance to the residential amenity of the area due to irregular and random loud noises arising from car doors opening and closing, the starting up of cars and people chatting etc. Enclosed spaces can exacerbate such noises, because hard surfaces reflect rather than absorb the noise. The surface car park to the west of the site will be screened on its western side and as such, is unlikely to have a significant impact on the residences to the west, fronting onto Ballyhooly Road. To the north and north east, the Board will note that the applicant has proposed landscaping and planting which is likely to provide a buffer for noise travelling beyond the site. With regard to the undercroft car park, the issue of enclosed and hard surfaces reflecting noise is potentially more likely, however I am satisfied that the applicant has made efforts to mitigate the impact of same. Should the Board be minded to grant permission, I am satisfied that this issue could be addressed by condition.

12.96 It is proposed to place all plant machinery at roof level of the anchor store. The applicant contends that the ventilation system will be designed by suitably qualified consultant and housed on roof of structures, subject to agreement of Planning Authority and will be covered by a maintenance contract. The drawings show no plant on any elevation facing towards neighbouring residences. The Noise Assessment concluded that no significant impact would result. I am satisfied that the impact of noise arising from plant and machinery can be appropriately addressed by condition.

**Odours:**

12.97 The Board will note that residents have raised the issue of on-going problems with the bin storage area associated with the existing Fox & Hounds Neighbourhood Centre. The proposed development seeks to extend the existing refuse facility in a westerly direction and it is submitted that if deemed necessary, the applicant is willing to roof the existing and proposed refuse area. Should the Board be minded to grant planning permission in this instance, I consider that the proposed refuse service storage areas should be fully enclosed by walls and roof to prevent any further disturbance to residents. The design of the stores should be agreed by condition. It should be a requirement of the permission that the required amendments to the

existing refuse store be completed in advance of the first opening of the anchor unit should permission be granted.

12.98 In addition to the above, there have been on-going issues with odour emissions from premises within the existing Fox and Hound development. In terms of the proposed development, and having regard to the proposed layout of the development proposed, I do not consider it likely that odour emissions from the anchor store will pose a significant threat to local residents and their residential amenities. The proposed 8 units may potentially pose an issue in terms of possible future changes of use in terms of the restaurant / café use proposed or the potential for a change of use for a fast food premises. Control of odour emissions can be addressed by condition, and potentially further development management processes, however it is ultimately an issue of local authority enforcement.

***Other Issues:***

**S138 of the P&D Act:**

12.99 With regard to the submission on behalf of the McCarthys, Greens, Barrys, Drinans and Savages, I respectfully refer the Board to S138 of the Act which provides as follows:

**138.—(1)** The Board shall have an absolute discretion to dismiss an appeal or referral—

(a) where, having considered the grounds of appeal or referral or any other matter to which, by virtue of this Act, the Board may have regard in dealing with or determining the appeal or referral, the Board is of the opinion that the appeal or referral—

(i) is vexatious, frivolous or without substance or foundation, or

(ii) is made with the sole intention of delaying the development or the intention of securing the payment of money, gifts, consideration or other inducement by any person.

In terms of the above, I am satisfied that this objection / submission should not be considered any further.

**Procedural Issues:**

12.100 It is contended that the proposed development as presented represents project splitting as ‘submitting part of a development that in its entirety requires an EIS to Cork City Council without an EIS indicates project splitting’. This point was further made at the oral hearing. I have considered

this issue very carefully. The site of the overall proposed retail development straddles two planning authority jurisdictions and as such, two separate planning applications are required to be made. The significant element of the proposed development, the retail element including the proposed anchor store and 8 further retail / community-post office/café/ restaurant units is located to the north of the overall site which is located within the jurisdiction of Cork County Council. The primary access proposed for the site is located within the jurisdiction of Cork City Council. The issue of project splitting would arise, in my opinion, where an effort was made by an applicant to deliberately present smaller elements of a larger development individually, which if presented all together, would exceed a threshold of development that would require the mandatory preparation of an Environmental Impact Statement. I am satisfied that this is not the case in this instance.

12.101 As part of the overall proposed development, the applicant prepared an EIS and sought to cover all aspects of the proposed development. In addition, further information was provided in support of the proposed development and a number reports were prepared by the various departments of both Cork City and County Councils. The EIA Guidelines for Planning Authorities & An Bord Pleanala, March 2013, provides that 'the assessment of the environmental effects of relevant projects is carried out by the competent authority'. At this point, An Bord Pleanala is the competent authority and in accordance with Section 171(A), subsections (1E), (1F), (1G), (1H) and (1I) of the Planning & Development Act, 2000 as amended, the Board, in carrying out an EIA, shall consider the following;

- the EIS
- any further information furnished
- any submissions or observations

In this regard, I am satisfied that there is no concerns arising with regard to project splitting in this instance.

### 13.0 APPROPRIATE ASSESSMENT - SCREENING:

13.1 The obligation to undertake appropriate assessment derives from Article 6(3) and 6(4) of the Habitats Directive. Essentially it involves a case by case examination for Natura 2000 site and its conservation objectives. Appropriate Assessment involves consideration of whether the plan or project alone or in combination with other projects or plans will adversely affect the integrity of a European site in view of the site's conservation objectives and includes consideration of any mitigation measures to avoid reduce or offset negative effects. This determination must be carried out before a decision is made or consent given for the proposed plan or project. Consent can only be given after having determined that the proposed development would not adversely affect the integrity of a European Site in view of its conservation objectives.

13.2 In support of the proposed development, the applicant submitted an EIS to Cork County Council for the larger site area comprising the retail development and certain access and roads to the site. In support of the proposed entrance and access roadway, to Cork City Council, a Stage 1 Appropriate Assessment Screening Report was submitted. The reports were prepared by Wetland Surveys Ireland. The report identified two Natura 2000 sites within 15km of the subject site as follows:

- Cork Harbour SPA (Site Code 004030)
- Great Island Channel SAC (Site Code 001058)

13.3 The Cork Harbour SPA is located approximately 2.8km to the south east of the subject site. The Glen River, which is located immediately adjacent to the subject site discharges to the River Lee approximately 3km downstream, which in turn flows into Cork Harbour SPA a further 5km from the site. This SPA is so designated for the following qualifying interests:

|  |  |
|--|--|
| Little Grebe<br>( <i>Tachybaptus ruficollis</i> )<br>[A004]    | Grey Heron ( <i>Ardea cinerea</i> ) [A028] |
| Great Crested Grebe<br>( <i>Podiceps cristatus</i> )<br>[A005] | Shelduck ( <i>Tadorna tadorna</i> ) [A048] |
| Cormorant<br>( <i>Phalacrocorax carbo</i> )<br>[A017]          | Wigeon ( <i>Anas penelope</i> )<br>[A050]  |
|  | Teal ( <i>Anas crecca</i> )<br>[A052]      |



|   |   |
|---|---|
| Pintail ( <i>Anas acuta</i> )<br>[A054]                     | Bar-tailed Godwit<br>( <i>Limosa lapponica</i> )<br>[A157]        |
| Shoveler ( <i>Anas clypeata</i> )<br>[A056]                 | Curlew ( <i>Numenius arquata</i> ) [A160]                         |
| Red-breasted Merganser<br>( <i>Mergus serrator</i> ) [A069] | Redshank ( <i>Tringa totanus</i> ) [A162]                         |
| Oystercatcher<br>( <i>Haematopus ostralegus</i> )<br>[A130] | Black-headed Gull<br>( <i>Chroicocephalus ridibundus</i> ) [A179] |
| Golden Plover ( <i>Pluvialis apricaria</i> ) [A140]         | Common Gull ( <i>Larus canus</i> ) [A182]                         |
| Grey Plover ( <i>Pluvialis squatarola</i> ) [A141]          | Lesser Black-backed Gull ( <i>Larus fuscus</i> ) [A183]           |
| Lapwing ( <i>Vanellus vanellus</i> ) [A142]                 | Common Tern ( <i>Sterna hirundo</i> ) [A193]                      |
| Dunlin ( <i>Calidris alpina</i> )<br>[A149]                 | Wetlands & Waterbirds<br>[A999]                                   |
| Black-tailed Godwit<br>( <i>Limosa limosa</i> ) [A156]      |   |

13.4 The Great Island Channel SAC (Site Code 001058) is located approximately 6.8km to the east of the subject site. The Glen River, which is located immediately adjacent to the subject site discharges to the River Lee approximately 3km downstream, which in turn flows into Cork Harbour SPA a further 5km from the site. The Great Island Channel SAC comprises part of eastern area of Cork Harbour. This SAC is so designated for the following qualifying interests:

- Estuaries [1130]
- Mudflats and sandflats not covered by seawater at low tide [1140]
- Spartina swards (*Spartinion maritimae*) [1320]
- Atlantic salt meadows (*Glauco-Puccinellietalia maritimae*) [1330]

13.5 It is the stated objective to maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for the identified SPA. The site the subject of this appeal itself can be considered a

primarily green field site with hard area in the vicinity of the existing Fox & Hounds car park. The Glen River flows through the site. The site is not identified as a Natura 2000 site but, given that there are Natura 2000 sites located within 15km of the site, the Board will be required to consider the potential effects of the proposed development on the identified SPAs and SACs. The site must be subject to AA regarding its implications for the Natura 2000 site in view of the site's conservation objectives *"if it cannot be excluded, on the basis of objective information, that it will have a significant effect on that site, either individually or in combination with other plans or projects"* (EC, 2006). In other words, where doubt exists about the risk of a significant effect, an Appropriate Assessment must be carried out.

- 13.6 Having considered a number of potential significance indicators which have regard to any potential or likely effects of the proposed development on the on-site habitats, together with the habitats so protected under the designated SACs within 15km of the subject site, it is clear that the potential impact associated with the proposed development relates to the deterioration of water quality of the Glen River, which could have an indirect effect on the species and habitats that occur within the SACs.
- 13.7 The applicant submitted a Stage 1 Appropriate Assessment screening report. It concluded that the no significant deleterious impacts on the conservation objectives for Cork Harbour SPA (of international ornithological importance) site ref.004030, or Great Island Channel cSAC (sheltered tidal sand and mudflats and Atlantic salt meadows) site ref.001058, are expected to occur and that the proposed development does not constitute a significant risk to the integrity of European sites in the surrounding area and there is no requirement to proceed to stage 2 Appropriate Assessment. In general I consider this to be a reasonable conclusion in view of the sites' conservation objectives and the NPWS sites descriptions.
- 13.8 The safeguards set out in Article 6(3) and (4) of the Habitats Directive are triggered not by certainty but by the possibility of significant effects. Thus, in line with the precautionary principle, it is unacceptable to fail to undertake an appropriate assessment on the basis that it is not certain that there are significant effects. Having regard to information provided, and in terms of screening for AA, I consider that, given the distance between the site and the SACs and the mitigation measures proposed in the EIS, the proposed development is unlikely to have an impact on the Natura 2000 sites within the 15km of the site. I am of the opinion therefore, that the development, if permitted, is likely to have little or no impact on the proximate Natura 2000 site. Invoking Article 28 and seeking the comments of the NPWS, is unnecessary in my opinion.

## 14.0 ENVIRONMENTAL IMPACT ASSESSMENT

### *Legislative Context:*

- 14.1 In the first instance, it is appropriate to determine whether the proposed development is development for the purposes of Part X of the Act 2000, as amended, (as defined under schedule 5 of the Regulations 2001, as amended) and therefore requires the carrying out of EIA. Notwithstanding that the proposed development straddled two separate planning authorities and was reduced in scale through submissions of further information and on appeal, the initially proposed development comprised a shopping centre exceeding 10,000-sq.m GFA and therefore falls within the scope of infrastructure development 10(b)(iii) under part II of schedule 5 of the Regulations 2001, as amended. An Environmental Impact Statement was submitted with the application to the Cork County Council as the total area of the retail element is to be located within this jurisdiction. The EIS was not submitted to Cork City Council.
- 14.2 The EIS submitted with the planning application is presented in a single volume which includes appendices and a non-technical summary. The EIS provides 16 chapters and seeks to address all environmental matters associated with the proposed development. I have read this EIS in its entirety. The EIS provides a non-technical summary as well as a reasoning for the EIS, including its scope and the structure and methodology of same. The EIS submitted provides information in relation to a number environmental aspects and describes the potential affects the development will have on the receiving environment. It is also to be noted that the EIS is also advertised in the public notices pertaining to the proposed development to Cork County Council only.
- 14.3 In accordance with the requirements of Article 3 of the European Directive, Directive 85/337/EEC, as amended by Council Directive 97/11/EC of 3<sup>rd</sup> March 1997, by Directive 2003/35/EC of the European Parliament and of the Council of 26<sup>th</sup> May 2003, and Section 171A of the Planning & Development Act 2000-2010, the environmental impact statement submitted by the applicant is required to be assessed by An Bord Pleanala, as the competent authority. It is a requirement that the direct and indirect effects of the proposed project are identified, described and assessed in an appropriate manner, in accordance with Articles 4 to 11 of the Environmental Impact Assessment Directive. As indicated above in section 3.0 of this report, the EIS submitted in support of this proposed development is made up of a single volume which includes a Non-Technical Summary, main report chapters and a number of appendices, where the potential impacts of the proposed development on the environment are detailed.

***Adequacy of the EIS:***

- 1.4 I consider that the EIS seeks to comply with Articles 94 and 111 of the Planning and Development Regulations, 2001, as amended. In this regard, it is notable that the EIS contains the information specified in paragraph 1 of Schedule 6 of the Regulations. The EIS seeks to -
- Describe the proposal, including the site and the development's design and size;
  - Describe the measures envisaged to avoid, reduce and, if possible, remedy significant adverse effects;
  - Provide the data necessary to identify and assess the main effects the project is likely to have on the environment;
  - Outline the main alternatives studied and the main reasons for the choice of site and development, taking into account the effects on the environment.

- 14.5 The EIS, supplemented by the further information response and submissions at the Oral Hearing, seeks to provide the relevant information specified in paragraph 2 of Schedule 6 of the Regulations. This includes-

- A description of the physical characteristics of the project and its land use requirements;
- The main characteristics of the wind energy process to be pursued;
- The emissions arising resulting from the operation of the proposed development;
- A description of the aspects of the environment likely to be significantly affected by the proposal;
- A description of the likely significant effects on the environment resulting from the development's existence, the development's use of natural resources, the emission of pollutants and creation of nuisances, and
- A description of the forecasting methods used; and
- Provision of an indication of any difficulties encountered in compiling information.

There is an adequate summary of the EIS in non-technical language, although I would suggest that certain information is lacking in this summary.

- 14.6 The EIS submitted with the application does not include a chapter on '*water*' or '*material assets*' factors of the environment. However, the Board will note that it includes a Traffic Impact Assessment, Retail Impact Assessment, Flood Impact Assessment as well as a chapter dealing with Services. The main issues concerning existing material assets are principally dealt with while the Flood Impact Assessment chapter can be considered as covering issues

relating to certain elements associated with water, whilst the Flora and Fauna chapter of the EIS addresses issues relating to the surface waters on the site. The failure of the EIS to include discrete chapters pertaining to material assets and water factors of the environment make the carrying out of an EIA a little difficult, however I'm reasonably satisfied that, given the nature of the proposed development and the context and characteristics of the site that the EIS submitted adequately addresses these factors.

- 14.7 The EIS includes a detailed section on the alternatives examined, chapter 2, with the alternatives relating only to alternative designs and layouts on the basis that the statutory plans provide for the nature and range of uses proposed on this site and not in other locations in the vicinity. While this might be considered reasonable in the context of the Cork County Council plans, no consideration was given with regard to the District Centre zoning designation in the Cork City Council jurisdiction. This DC zoning is provided on the lands to the west of the proposed development site and where the existing Ballyvolane Shopping Centre (Dunnes Stores) is located. In terms of the alternative design and layouts considered, the Board will note that a number of masterplan options were also presented in the context of future development of the wider Ballyvolane proposed district centre and adjacent lands. An assessment of the potential environmental impacts arising from the alternatives considered is somewhat lacking, in my opinion and I would be concerned as to the adequacy of the EIS in this regard.
- 14.8 The EIS provides a Non-Technical Summary associated with the main EIS document. This NTS is presented in accordance with the legal requirements for the preparation of an EIS in that it clearly presents information relating to the development in clear and non-technical language. The project is described, as is the site selection process, the need and justification for the project, the methodology employed in the preparation of the EIS, consultations undertaken and alternatives, including sites, and design, considered. The NTS, however, does not provide a clear assessment of the environmental impacts associated with a number of the relevant aspects of the environment.

### ***Environmental Impact Assessment***

- 14.9 It is necessary to determine whether the EIS submitted is adequate in the context of the requirements of the legislation. Section 171A of the Act, as amended, requires an EIA to assess the direct and indirect effects of a proposed development on the following factors:

- (a) human beings, flora and fauna,
- (b) soil, water, air, climate and the landscape,
- (c) material assets and the cultural heritage, and
- (d) the interaction between the factors mentioned in paragraphs (a), (b) and (c).

***Description of the likely significant effects of the proposed development on the following environmental aspects:***

14.10 Chapter 16 of the EIS seeks to address the main likely significant direct and indirect effects arising from the proposed development, and the interaction of the environmental aspects in accordance with the requirements of Schedule 6 of the Planning & Development Regulations, 2001 as amended. The chapter considers the interactions by means of cross referencing each environmental aspect against all other aspects considered. The likely effects arising from the development proceeding are anticipated in the EIS, to include the following:

1. Human Beings:

|                                    |   |
|------------------------------------|---|
| Retailing:                         | positive interaction due to increased range of retail services, community and civic facilities employment opportunities   |
| Traffic:                           | no indication regarding interactions but notes that bicycle racks and pedestrian priority zones are proposed and that the access proposals have been designed to cater for projected traffic flow |
| Landscape:                         | impact mitigated through landscape design and the design and massing of the building  |
| Flora & Fauna:                     | there will be loss of habitat. Impacts will be minimised due to mitigation measures   |
| Archaeology:<br>Cultural Heritage: | Any potential material on site will be recorded   |
| Noise:                             | No significant noise impacts. Operational Management Plans will be put in place to ensure no impact.  |
| Air:                               | No significant impacts on air quality   |

2. Development:
- Servicing: Increased demand on the foul drainage, water supply and surface water drainage resources.
- Adequate capacity in the existing services infrastructure to cater for the development.
3. Traffic:
- Landscaping: potential visual impact of car park mitigated through design.
- Access routes will be adequately landscaped to screen and soften from the wider environment.
- Noise: Impact is not significant as it is concluded that the resultant noise impact due to increased traffic is imperceptible.
- Air: pollutant levels from traffic are below the relevant limit values.
4. Landscaping:
- Flora & Fauna: The landscape master-plan has regard to topography and where necessary, reinstatement is proposed.
5. Flooding:
- Human Beings: negligible impact on flood risk to the site or adjoining area.
- Ecology/  
Landscaping: it is not expected that there will be a negative impact on ecology or landscape character, as the landscaping plan proposes to reinstate the trees on part of the southern embankment.

6. Visual Impact:

Human Beings: the development has been designed to integrate into the existing Fox and Hounds Neighbourhood Centre with the design allowing for the future integration of properties into the overall scheme.

***Assessment of the Likely Significant Effects Identified, having regard to the mitigation measures proposed:***

14.11 The assessment contained in this report fully considers the range of relevant likely significant effects having regard to the information submitted with both planning applications, together with all the comments and submissions made in relation to the overall proposed development. Mitigation measures proposed to be applied if the proposed development proceeds will be fully integrated to the assessment. Some of the more important mitigation measures proposed to be employed, which are considered necessary to address the range of potential significant impacts arising from the proposed development include as follows:

- Roads & traffic
- Landscape & visual impact
- Flora & fauna
- Soils & Geology
- Cultural Heritage
- Noise & Vibration
- Air Quality & Dust

14.12 In terms of the requirements of S171A of the Act, an EIA is required to assess the direct and indirect effects of a proposed development on the following factors:

**Human beings (171A(a))**

14.13 The EIS, with regard to impacts on human beings, considers the proposed development primarily in terms of the employment opportunities associated with same. Chapter 3 of the EIS acknowledges that there may be some negative impacts associated with the construction and operation of the development, relating to noise, dust and impact on air quality, but no real assessment is undertaken in this regard. While the EPA advice note that it can be referenced, employment opportunities per se should not be a consideration under EIA. The chapter provides no relevant information in terms of the particular sensitivities of the residents who live adjacent to the



subject site, including the impacts of the development on the visual amenities of the area and impacts on the wider road networks and traffic implications associated with the development. The EIS considers the proposed development in terms of traffic impacts as being positive given that bicycle racks and pedestrian priority zones together with the access proposals, have been designed to cater for projected traffic flow. I am concerned that the issues raised by third parties in terms of the loss of green open space have not been considered in the EIS.

### **Flora & fauna (171A(a))**

14.14 The EIS identifies a number of construction and operational impacts likely to have varying degrees of impact on the ecology of the site and adjacent watercourse. The EIS concludes that the implementation of the mitigation and compensation measures proposed will offset impacts associated with the proposed development. It is indicated that the development will be constructed over the existing site on piles which will result in the loss of 0.6ha and the Chapter 7 identifies that even with mitigation measures in place, adverse ecological impacts will remain, including impact on water quality in the Glen River, hydrological impacts on the remaining freshwater marsh that occurs in the surrounds and potential impacts on commuting and foraging bats due to habitat alteration and artificial lighting. The EIS also refers to the loss of occasional mature trees. The EIS concludes that the overall impact of the development will be moderate negative.

14.15 In terms of an assessment of the likely significant effects associated with the proposed development, I am particularly concerned regarding the loss of the marsh habitat effectively across the full site and the inadequate consideration of the impacts on the fauna that use the site. The primary concern relates to the loss of vegetation, which in itself is significant considering the rarity of the marsh habitat in an urban setting, as advised by the Cork City Ecologist. In addition, the Board will note the indication in the EIS that the FRA has necessitated the provision of flood compensation zones to the south of the proposed development where there is a requirement to re-grade the sloping topography to the southern boundary, leading to the loss of trees on part of the southern embankment. Notwithstanding the intention to reinstate these trees as part of the overall landscaping plan for the site, I am not satisfied that the matter of flora and fauna has been adequately addressed.

### **Soil (171A(b))**

14.16 The EIS submits that the adoption of the development, including car parking area on stilts, is a significant mitigation measure which considerably reduces

the requirements and impacts on the soils. Chapter 8 of the EIS provides little in the way of an assessment of any real impacts and fails to assess the potential impacts associated with the construction of the piles and associated support structures, under the proposed development. I would have concerns in terms of the likelihood of compaction of soil over the majority of the site, a reduction in the capacity of the heavily waterlogged soil to retain moisture, with potential implications for flooding, ecology and possibly air in terms of foul odours.

### **Water (171(b))**

- 14.17 The EIS indicates that the proposed development would result in an improved situation in terms of flooding on the basis that flood attenuation is incorporated into the overall design of the site and that the proposed building is to be built on raised piles with finished floor level 1.26m and 0.73m above the highest potential flood level in a 1:100 and 1:1000 year event. Where the piers impact on areas in Flood Zones A or B, direct compensatory storage will be provided. The FRA submits that the scheme will provide four times more flood storage area and four times more flood storage volume than the existing scenario, thereby reducing any potential flood risk to less than that which currently prevails on the site. The FRA concludes that the development will reduce flood risk through proposed compensatory measures. The EIS also notes that the existing culvert at the Ballyhooly Road is not to be upgraded as part of the proposed development and as such, the existing flow regime of the Glen River will not be changed. It is concluded that there will not be any increase to the existing flood levels in the downstream catchment and flood levels will increase at a slower rate than at present. I am concerned however that the EIS has not adequately considered the potential interactions of soils and flora and flooding, notably in terms of the compacting of soil during the construction of the piles, the loss of marsh vegetation which will reduce flood absorption capacity and possible increased flow rate of runoff and increasing flood risk.

### **Air / dust / Climate / Noise & Vibration (171(b))**

- 14.18 The EIS notes that the main predicted impact on existing climate in the vicinity of the proposed development site is due to additional traffic arising from the operation of the site. Using DMRB, Air Quality screening methodology, it has been determined that the air quality impact predictions due to the proposed development will not exceed the relevant limit values outlined in the Air Quality Standards. If the pollutant concentrations are found to be in excess of 90% of the air quality standards, then a detailed dispersion modelling assessment will be carried out. Chapter 12 of the EIS considers that the impacts associated with the proposed development in the short term relate to dust impacts during demolition, excavation, construction and traffic sources,

but concludes that these will not be significant and that a dust minimisation plan will be provided to mitigate these impacts during construction. It is reasonable to address the impact through a dust minimisation plan. The mitigation measures proposed during operations are reasonable.

14.19 in terms of noise and vibration, Chapter 11 of the EIS presents details of the Noise Impact Assessment prepared in support of the proposed development. The report seeks to assess the potential noise impact on residential properties as a result of the proposed development and noise monitoring was carried out in the vicinity of the site. The results of the survey concluded that the existing daytime and night time noise climate in the area is typical of an urban area, with the noise climate dominated by traffic noise. The only potential significant noise impacts are considered as arising during the construction phase but that they will be short term and temporary and that appropriate mitigation is proposed. The EIS also noted that the operational phase of the development will have potential to cause noise disturbance due to increased traffic, car parking, retail unit service yard activity and plant services. It is concluded however, that none of these noise sources have the potential to cause a significant increase. The assessment is generally comprehensive, but only in respect of the anchor store. The Board will also note that it does not appear that the Assessment has been updated in terms of the overall proposed development as currently proposed. I am also unclear as to whether account has been taken of the existing Fox & Hound development. While I consider the conclusions of the Noise Impact Assessment to be reasonable, I am concerned that it has not been updated to reflect the currently proposed development.

### **Landscape (171A(b))**

14.20 The EIS seeks to address the potential impact of the proposed development on landscape in accordance with the EPA guidelines, addressing the sensitivity of the existing landscape and the significance and permanency of the visual impacts. In terms of mitigation measures in relation to landscape and visual impact, the EIS submits that the development is designed to optimize the potential of the site to function as a district centre and to facilitate access to and use of the adjacent linear park. The development will have a significant physical and built presence commensurate with developments of this nature. It is configured to integrate with the scale of the existing neighborhood centre units and where it abuts adjacent residential properties, building heights have been considered and elevations embellished to soften visual impact. In addition, significant tree planting is proposed to provide suitable screening.

14.21 The EIS seeks to address the potential impact of the development on landscape in accordance with the EPA guidelines, dealing with the sensitivity of the existing landscape and the significance and permanency of the visual impacts. The EIS considers the sensitivity of the landscape as medium, which does not take account of the Area of High Landscape Value. The EIS concludes that once constructed, the impact of the development will be medium and that the scale or magnitude of landscape effects will be high. The EIS further concludes that the changes to the landscape character will, on balance, be high, beneficial and the impact will be permanent. While I may not necessarily agree with the conclusions of the applicant in terms of the impacts on the landscape character of the area, I consider the assessment to be adequate.

### **Material assets (171A(c))**

#### *Traffic Impact Assessment*

14.22 The issues surrounding Roads and Traffic have been presented in Chapter 4 of the submitted EIS, and the Board will note that there has been significant additional information presented in this regard, in the course of the assessment of the two planning applications and appeals currently before the Board. In terms of the significance of the development on roads and traffic, it is at all times predicated by the proposed road improvement works to be carried out at the expense of the applicant on the major road junctions in the vicinity of the site being in place. During the course of the Oral Hearing, there was a lot of discussion on this topic and having regard to all of the information available to the Board to assess the likely significant effects of the proposed development in this regard, I have concluded that the applicant has not demonstrated that the road network has sufficient capacity to accommodate the proposed development in the future year scenarios, even with the proposed upgrade works completed.

14.23 In the absence of the works proposed, for which I am not satisfied the applicant can fully deliver with particular regard to the Fox & Hound Junction improvements, the development would significantly contribute to exacerbating the existing traffic congestion problems in the Ballyvolane area. In addition, the Board will note that the evidence would suggest that even with all of the road improvement works in place, the current traffic congestions and delays would not be improved and that the development would absorb essentially all of the improved capacity resulting from the road works. This is an important issue in light of the plans to develop the extensive area of zoned lands within Cork County Council area to accommodate up to 3,600 residential units, for which the new District Centre is required to support. I consider that the proposed development is premature pending the provision of the Northern

Ring Road, which has been shelved by TII for the near future. The consideration of more vulnerable road users has not been adequately addressed, in my opinion.

*Retail Impact Assessment.*

- 14.24 The RIA can be viewed as an assessment of the potential impacts on the existing local economy and commercial infrastructure in the city centre as well as other centres in the vicinity of the site. The Board will note that the qualitative review of the proposed development is based on the fact that the subject site is zoned for such uses as proposed. The RIA concludes that the development will consolidate and increase total convenience and comparison spending in the north eastern environs and will not detract from the vitality and viability of Cork City Centre. The assessment concludes that the development will be positive for the northern environs of Cork City. Based on the RIA, and the information provided at the oral hearing, it would appear that the proposed development would not adversely affect the vitality and viability of the city centre or the other suburban district centres. I do have concerns however, that the information presented has not had regard to a potential impact on the cultural heritage of the City Centre, notably in terms of the potential risk of increased vacancy, particularly in historic buildings and sites within historic or culturally significant streetscapes. However, overall I consider the issue of retail impact to have been adequately addressed.

*Services (drainage, water supply and other utility services)*

- 14.25 Chapter 9 of the EIS seeks to examine the potential impact of the development on the waste water and surface water drainage infrastructure in the vicinity of the site. The chapter however, generally comprises a description of the proposed services connections rather than an assessment of any potential impacts associated with the development. The chapter does submit that the planning authority has indicated that there are no capacity issues in the existing foul water drainage system for the area. There are a number of concerns arising in relation to the EIS which I must note at this point. For example, section 9.3 of the document deals with Surface Water Drainage and the heading associated with section 9.3.2 is Predicted Impact at Construction. However, this section just notes that 'as the development is on a Greenfield site a surface water management plan will be required for the construction phase'. There is no indication of any predicted impacts and section 9.3.3 is missing – if one existed.

- 14.26 The chapter refers to potential contamination of surface water and ground waters from the construction and operation of the proposed development, but

there is no assessment of the significance of the impacts. Mitigation measures are advised in terms of construction management and good construction practices with little detail. The assessment concludes that there will be ‘an imperceptible residual impact on the surface and ground water post mitigation’, and ‘if required a discharge licence will be obtained’. I would not consider that the EIS is adequate in this instance.

#### *Waste management*

14.27 This chapter of the EIS, Chapter 14, seeks to deal with waste management issues arising during the construction phase of the development and presents a Waste Management Plan. In the context of an EIS and indeed, the requirements for EIA under Section 171A of the Planning & Development Act, 2000 as amended, I am not clear as to why it was included here. There is no reference to a risk of significant impacts on the factors of the environment and as such, I have no further comments to make in the context of EIA.

#### **Cultural Heritage Assessment (171A(c))**

14.28 The EIS includes a comprehensive assessment of the cultural and archaeological heritage within 1km of the site and concluded that the only potential impact is on unrecorded archaeology within the development site and recommends that archaeological monitoring of topsoil removal takes place. I consider this is reasonable.

#### **Sustainability**

14.29 Chapter 15 of the EIS seeks to advise how the development will be sustainable in accordance with international, national and local sustainable development policies.

#### **Interaction of foregoing**

14.30 Chapter 16 of the EIS seeks to deal with the interactions of the environmental aspects discussed in the previous chapters of the EIS and the means of reducing the impacts of the development when it is in operation. I consider that this element of the EIS is wholly inadequate. I consider that the assessment of the interactions is subjective and has glaring omissions. I refer the Board to the above sections of this EIA where I have raised some concerns in this regard.

***Conclusions Regarding the Acceptability or Otherwise of the Likely Residual Effects Identified***

14.31 The conclusions regarding the acceptability of the likely main residual effects of this proposal are addressed under the various headings of the main assessment above. The principal areas of concern, in my opinion, focus on non-compliance with policy documents relating to the overall site, consideration of alternatives, roads & traffic issues, residential amenity, visual impacts, noise and ecology issues. In terms of the comments of Cork County Council in relation to EIA, I would concur that the EIS contains a number of contradictory details in relation to a number of elements of the proposed development. I do accept that there is somewhat limited information and assessment provided in support of some aspects of the proposed development but that in most instances, these issues have been addressed through the submission of additional information in the assessment period of the planning applications. That said, I do consider that there are outstanding issues particularly with regard to human beings, flora & fauna, soils, water environment, noise and roads & traffic issues. As such, I conclude that the above inadequacies preclude me from determining that there will not be a significant environmental impact associated with the proposed development.

## 15.0 CONCLUSION & RECOMMENDATION

### Conclusion:

- 15.1 In terms of an overall conclusion pertaining to the overall proposed retail development including the anchor store, retail units, entrance and access road etc., it is clear that the Ballyvolane area of Cork has been identified for development and population growth as part of the strategic development of Cork City and the northern environs. In principle, I have no objection to the development of a district centre in Ballyvolane, and would agree, that such a proposal would accord with all of the relevant and strategic policy objectives for the area. However, having regard to the nature, scale, layout and overall design of the proposed development, I have raised concerns in my report with the nature of the development as presented.
- 15.2 In the context of the proposal before the Board in the area of Cork City Council, I have considered that the development of the entrance and road to sever the overall proposed retail development, if permitted on the subject lands zoned Public Open Space, would materially contravene the City Development Plan. In accordance with Section 37(2)(b) of the Planning & Development Act, 2000 as amended, the Board may only grant permission in accordance with *paragraph (a)* where it considers that—
- (i) the proposed development is of strategic or national importance,
  - (ii) there are conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned, or
  - (iii) permission for the proposed development should be granted having regard to regional planning guidelines for the area, guidelines under *section 28*, policy directives under *section 29*, the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government, or
  - (iv) permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan.
- 15.3 In consideration of the above, I would not consider that the development as presented is either of strategic or national importance, that there are no obvious conflicting objectives in the development plan and that the objectives are clearly stated for the subject public open space lands. In terms of items (iii) and (iv), the proposal is not affected by the regional guidelines or any



government policy which would warrant a permission and given that the Development Plan has only in the past year been adopted, there have been no significant alterations to the pattern of development or permissions granted in the area.

- 15.4 I also note that all other road objectives located within lands zoned public open space, were planned as such and comprised part of the AA and SEA prepared in support of the Plan. I also refer the Board to Variation 10 of the previous City Development Plan which provided for a new road through public open space zoned lands. The Variation was required as the proposal was deemed to materially contravene the Development Plan and the Part 8 process could not be proceeded until such time as the proposal complied with the Plan.
- 15.5 In terms of roads and transportation, I consider that the development is premature pending the delivery of the North Ring Road, which has been shelved as a priority, by TII. The existing road network is currently operating almost at capacity, and notwithstanding the intention of the applicant to implement a suite of road improvement works to the adjacent junctions, there remains some concern that the applicant will not be in a position to deliver all proposed works. Indeed, even with all of the works in place, the road network will still not be capable of accommodating the level of traffic generated by the proposed development. The development, if permitted will result in significant traffic hazard by reason of extensive queuing and congestion on the network and would be contrary to the proper planning and sustainable development of the area. In addition, I am not satisfied that the overall layout of the proposed District Centre has been appropriately considered in terms of the creation of an additional junction on the Ballyhooly Road.
- 15.6 Having regard to the designation of the area as a High Value Landscape, together with the proposed works to the site and the removal of extensive existing natural vegetation including mature trees, hedgerows and scrub areas, amongst other habitats including rare marsh habitats, I am concerned that elevating of the proposed development on raised piles over the existing flood zones as a flood prevention measure, and notwithstanding the landscaping and planting proposals for the site, will seriously injure the visual amenities of the riverine corridor and habitat of the Glen Valley. In this regard, I consider that the development will contravene objectives in the City Development Plan and will seriously injure the visual amenities of lands zoned open space. I also consider that a grant of planning permission for the overall

proposed development, and particularly in terms of the proposed entrance and access road, in the current format will significantly militate against the potential for the future development of the area as an amenity for the Ballyvolane area and would set an undesirable precedent for similar development on the Glen Stream flood plain.

- 15.7 Part of the proposed development site is located within Flood Zone A and Flood Zone B and as such, is required to be subject to a justification test as set out in the '*Planning System and Flood Risk Assessment Guidelines for Planning Authorities, 2009*' (DECLG and OPW). As the site was zoned public open space in the current development plan, as well as the previous plan, the site has not been considered for development in terms of the City Councils JT carried out as part of the SEA for the Cork City Development Plan, 2015-2021. It is also noted that the SEA recommended that any proposed developments should be informed by the Lower Lee Flood Relief Scheme being prepared by the OPW. It is therefore considered that the development would be premature pending the publication of the 'Lower Lee Flood Relief Scheme' and would therefore be contrary to the proper planning and sustainable development of the area.
- 15.8 In terms of the natural heritage associated with the subject site, the Board will note my comments and concerns contained in my assessment above. The subject site is considered to act as part of a wildlife corridor with the Glen Amenity Park and other natural heritage areas in the vicinity and that the presence of some of the habitats and species on the site could be considered rare in an urban context. In particular, the nature of the proposed development, to be constructed on piles, is presented as a mitigation measure to ensure minimal loss of the marsh habitat present across much of the site. In addition, a significant landscaping plan has been prepared for the overall development site. In terms of the site within the area of Cork City Council, the Board will note that an extensive area of mature trees will be removed in order to facilitate the proposed entrance and road to the overall retail development. The area has been identified as being suitable for otters, badgers and bats, identified as having a locally important higher value rating in terms of bats due to the potential bat roost habitat in the stone culvert and the broadleaved woodland which contains mature trees likely to serve as bat roosts. Notwithstanding the mitigation measures presented in the Ecological Mitigation Plan, I have a number of outstanding concerns in relation to natural heritage and I consider that the development, if permitted, would significantly and negatively impact on the local biodiversity value of the site in the urban context and would be contrary to the proper planning and sustainable development of the area.

15.10 In terms of the impact of the development on residential amenity, the Board will note that the primary concerns relate to roads and traffic issues as well as visual impacts, loss of green area, overshadowing and loss of light, noise and odours. I have considered and addressed all of these issues as part of my overall assessment above. In addition, I have concerns regarding the proposed layout and design of the overall retail development and the fact that it appears to have the car as priority through the site above pedestrians and cyclists. I am also concerned that the overall development does not provide for an appropriate or usable public realm, with car parking comprising the majority of the open spaces. In terms of the proposed entrance and access road, the same is true. The layout design and movement potential is prioritise for cars and I do not accept that the development, if permitted, would encourage the public to use the road as access for the wider public open space lands in the area. The development would, therefore, be contrary to the proper planning and sustainable development of the area.

15.11 While I accept that the principle of a district centre has been provided for within both the Cork City and Cork County Development Plans, I also note the requirement of all strategic documents that a co-ordinated approach to the development of the Ballyvolane area be taken. In considering the proposed development before the Board, this clearly has not occurred. I note that within the Cork City Development Plan, the location of the existing Ballyvolane Shopping Centre is designated the District Centre, while the area within the Cork County Council area is for town centre developments. I do accept however, that either zoning might reasonably be considered as accommodating the proposed development. I would question if the nature of the development as proposed actually accords with the Retail Planning Guidelines definition of a District Centre and I suggest, it is more like a shopping centre. In any case, I consider overall that the proposed development is inappropriate for the subject site.

Recommendation:

15.11 I recommend that planning permission be refused for the proposed development for the following stated reasons and considerations:

## REASONS & CONSIDERATIONS

1. The site, the subject of the proposed development, being the entrance and primary access / egress road to a proposed retail development within the area of Cork County Council, is zoned ZO 14 Public Open Space in the Cork City Development Plan, 2015, where it is the stated objective *'to protect, retain and provide for recreational uses, open space and amenity facilities, with a presumption against developing land zoned public open space areas for alternative purposes, including public open space within housing estates.'* In addition, Objective 11.7 of the Plan provides that it is the objective *'to protect, retain, improve and provide for areas of public open space for recreation and amenity purposes. There will be a presumption against development of land zoned public open space for alternative purposes.'*

While the City Development Plan provides for proposed and mapped roadways through Open Space areas, there is no objective for a roadway on, across or otherwise affecting the subject site. Notwithstanding the submissions of the first party in this regard, the Board is satisfied that the development, if permitted, would materially contravene the zoning objective afforded to the subject site. The development would therefore, be contrary to the proper planning and sustainable development of the area in the absence of an appropriate variation of the City Development Plan to accommodate the road and entrance.

2. Based on the information on file, the details of the applicants traffic assessments, including junction capacity assessments and the assumptions and surveys informing same, the requirements of the *'Design Manual for Urban Roads and Streets'* (2013) regarding the junction and road design, and the proximity of the proposed accesses / egresses to / from the site to junctions on the surrounding road network, the Board is not satisfied that it has been demonstrated that the proposed development, if permitted and the proposed full package of road infrastructure works at the Ballyhooly Road/North Ring Road junction, at the 'Fox and Hounds' junction and at a proposed new entrance, has been implemented, will not adversely affect the use of major roads, the R635 (North Ring) and the R614 (Ballyhooly Road), by traffic due to the increased traffic generated by the development.

Having regard to the currently heavily trafficked nature of the adjoining road network and the proximity of the proposed entrance to the Ballyhooly Road / North Ring Road junction, it is considered that the proposed development

would be likely to endanger road safety by reason of traffic hazard and cause serious traffic congestion and would therefore be contrary to the proper planning and sustainable development of the area. It is further considered that the development is premature pending the delivery of the North Ring Road.

3. The proposed development is located within and proximate to an area designated as an Area of High Landscape Value, where it is the stated policy of the City Council '*to conserve and enhance the character of the and visual amenity of the area*'. It is considered that the elevating of the proposed development on raised piles over the existing flood zones as a flood prevention measure, together with the extensive removal of existing natural vegetation including trees, hedgerows and scrub area, notwithstanding the landscaping and planting proposals for the site, will seriously injure the visual amenities of the riverine corridor and habitat of the Glen Valley, will seriously injure the visual amenities of lands zoned open space and identified as an area of high value landscape to the south within Cork City Council area and will significantly militate against the potential for the future development of the area as an amenity for the Ballyvolane, which is identified as a strategic growth area under the CASP. The development, if permitted, would set an undesirable precedent for similar development on the Glen Stream flood plain, would represent a significant and negative visual impact on this landscape and would be contrary to the proper planning and sustainable development of the area.
  
4. Part of the proposed development site is located within Flood Zone A and Flood Zone B as defined in the '*Planning System and Flood Risk Assessment Guidelines for Planning Authorities, 2009*' (DECLG and OPW). The proposed development is therefore subject to a 'Justification Test' as set out in the Guidelines. The proposed development site is zoned '*ZO 14 Public Open Space*'. The planning authority is not satisfied that the development satisfies all the criteria of the 'Justification Test'. Furthermore, the SEA for the Cork City Development Plan, 2015-2021 recommended that any proposed developments should be informed by the Lower Lee Flood Relief Scheme being prepared by the OPW. Consequently, the proposed development would be contrary to the above mentioned Ministerial Guidelines and would be premature pending the publication of the 'Lower Lee Flood Relief Scheme' and would therefore be contrary to the proper planning and sustainable development of the area.

5. The subject site is considered to act as part of a wildlife corridor with the Glen Amenity Park and other natural heritage areas in the vicinity and that the presence of some of the habitats and species on the site could be considered rare in an urban context. The Cork City Development Plan, Objective 10.8 which deals with Non Designated Areas of Biodiversity Importance, seeks to protect such areas and to prevent the modification, removal, destruction and isolation of habitats and species. In addition, the site has been identified as being suitable for otters, badgers and bats, identified as having a locally important higher value rating in terms of bats due to the potential bat roost habitat in the stone culvert and the broadleaved woodland which contains mature trees likely to serve as bat roosts.

Notwithstanding the mitigation measures presented in the Ecological Mitigation Plan, the Board is satisfied that there remains significant number of outstanding issues of concern relating to matters of natural heritage. It is considered that the development would significantly and negatively impact on the local biodiversity value of the site in the urban context and would be contrary to the proper planning and sustainable development of the area.

6. Having regard to the nature, scale, design and layout of the overall proposed retail development, it is considered that, if permitted, there will be a significant impact on the existing residential amenity of existing residential properties in the vicinity of the site by reason of visual impact and loss of green open space without the benefit of the addition of an appropriate public realm to compensate. The development would, therefore, be contrary to the proper planning and sustainable development of the area.

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A. Considine

Planning Inspector

18<sup>th</sup> February, 2016