



An
Bord
Pleanála

Inspector's Report PL93.247429

Development	Change of use of existing retail / commercial unit to off-licence; amendments to external elevation, including signage.
Location	Ardkeen Shopping Centre, Dunmore Road, Waterford.
Planning Authority	Waterford City and County Council
Planning Authority Reg. Ref.	16/525
Applicant	Brendan O'Brien, O'Brien's Off Licence
Type of Application	Permission
Planning Authority Decision	Refuse permission
Type of Appeal	First Party
Appellant	Brendan O'Brien
Observers	Gerard Breen & Marie Breen Declan & Claire Brady David Ahern Cllr Eddie Mulligan

Thomas G. Sex
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Date of Site Inspection

3rd January 2017

Inspector

Sarah Moran

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1.0 Site Location and Description

1.1. The site is a single storey retail unit located in a standalone block at the Ardkeen Shopping Centre, Dunmore Road, Waterford. The Ardkeen Centre is a substantial suburban shopping centre with the Ardkeen Food Store as anchor tenant and a variety of smaller neighbourhood retail outlets such as a pharmacy, butcher's shop, etc. and several cafés. There are also a library, a post office, several bank branches, a Tesco supermarket, Aldi and Lidl discount food stores and various pubs / restaurants in the immediate vicinity. According to the documentation on file, the structure in which the site is situated was originally developed as a supermarket in the 1980s. The block now contains, in addition to the subject site, a café / restaurant, two fast food outlets, a community room and a car valeting operation. There is surface car parking in front of the block and within the Ardkeen centre. The University Hospital Waterford is immediately across the road. The site is located on the R683, which connects to the R710 Waterford ring road nearby to the east. The existing retail unit has a stated area of 150.09 sq.m. and is unoccupied at present.

2.0 Proposed Development

2.1. Permission is sought to change the use of the existing retail / commercial unit to an off-licence, also for amendments to the exterior of the unit including signage.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. The planning authority refused permission for the following stated reason:

It is the policy of the Waterford City Development Plan 2013-2019 to restrict the excessive concentration or intensity of uses such as off licences, public houses, take aways, nightclubs etc. in order to maintain an appropriate mix of uses and protect night time amenities in any particular area. Taking cognisance of the locational context of the proposed development and the mix of commercial uses in the vicinity it is considered that the Ardkeen area is more than adequately serviced with off licence sales retail floor space. Therefore the proposed development, taken in conjunction

with other commercial uses in the vicinity would result in an inappropriate mix of uses at this location and reduce the night time amenity of the area, would set a precedent for similar inappropriate development in the city, would materially contravene the policies of the development plan and would therefore be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

- 3.2.1. The planning report on file, dated 22nd September 2016, recommends refusal on grounds relating to contravention of development plan policies to prevent an excessive concentration of licenced premises, off licences, takeaways and similar uses in order to maintain an appropriate mix of uses and protect night time amenities.
- 3.2.2. The AA screening report on file concludes that there is no requirement for stage II Appropriate Assessment with regard to potential effects on Natura 2000 sites.
- 3.2.3. There are no other technical reports on file.

3.3. Third Party Observations

- 3.3.1. The planning authority received a total of 13 no. third party submissions, primarily from local residents. These all objected to the development on grounds similar to those raised in the observations submitted in response to the appeal.

4.0 Planning History

4.1.1. 10/500177

Relating to a unit to the immediate west of the subject site, within the same commercial block. Permission granted for the change of use of an existing shop to a sandwich bar, along with related changes to external elevations.

4.1.2. 13/500077

Relating to a larger retail unit at the eastern end of the block in which the subject site is situated. Permission was granted for a change of use from retail unit to restaurant use, new external seating area, alterations to elevational treatment, new signage and associated site works.

4.1.3. **14/500013**

Relating to a larger area, including the subject site, within the commercial block. Permission granted to Ardkeen Superstores Ltd. for alterations to elevational treatment of the north elevation (meeting rooms) and west elevation (old petrol station), replacement roof to existing stair enclosure at roof level and all associated site works.

4.1.4. **14/600373**

Relating to the subject site. Permission granted to Ardkeen Superstores Ltd. for change of use of 2 no. community rooms to a single retail unit, minor alterations to the already approved northern (front) elevation under 14/20013, all associated site works. Condition no. 2 of the permission limited the use of the permitted unit to the retail sale of convenience goods and low order comparison goods as defined in the RPG.

5.0 **Policy Context**

5.1. **DoECLG Retail Planning Guidelines 2012**

5.1.1. These guidelines update and replace the 2005 RPG. They state an overarching objective to enhance the vitality and viability of city and town centres in all their functions through sequential development. They include a range of caps on the size of convenience and retail warehouse stores with the aims of ensuring both competitiveness in the retail sector and strong city and town centres. The following key policy objectives are identified:

- Ensuring that retail development is plan-led;
- Promoting city / town centre vitality through a sequential approach to development;
- Securing competitiveness in the retail sector by actively enabling good quality development proposals to come forward in suitable locations;
- Facilitating a shift towards increased access to retailing by public transport, cycling and walking in accordance with the Smarter Travel strategy; and
- Delivering quality urban design outcomes.

5.1.2. RPG section 3.4 outlines the role of district centres. This is to provide 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 an appropriate level to serve the catchment population. They should not serve as a retail destination in their own right sufficient to adversely impact on the city/town centre to which they are subservient. RPG section 4.4.1 states that district centres should be supported in developing their retail offer to a scale which accords with the retail strategy.

5.2. **Waterford City Development Plan 2013-2016**

5.2.1. The following parts of the development plan are considered particularly relevant to this case:

- Development plan chapter 4 sets out the retail hierarchy for Waterford city, with the Ardkeen / Farronshoneen area designated as a district centre;
- The site is zoned for general business use as per City Development Plan Map A;
- Development plan section 13.2 sets out policy in relation to takeaways, amusement centres, night clubs / licenced premises, off-licences and open air concerts.

5.3. **Natural Heritage Designations**

5.3.1. The following Natura 2000 sites are located within 15 km of the subject site:

- Tramore Dunes and Back Strand SAC, site code 000671;
- Lower River Suir SAC, site code 002137;
- River Barrow and River Nore SAC, site code 002162;
- Tramore Back Strand SPA, site code 004027;
- Mid-Waterford Coast SPA, site code 004193.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. The grounds of the first party appeal may be summarised as follows:

Zoning and Retail Policy

- The site has a general business zoning under the development plan.
- Ardkeen Shopping Centre is designated as a district centre. The RPG support district centres as appropriate locations for a range of convenience and lower order comparison retailing and in that context the definition of ‘convenience goods’ includes the sale of alcoholic and non-alcoholic beverages.
- The proposed development should be acceptable in principle at this location with regard to the development plan zoning and RPG policy outlined above.

Suitability of Premises

- The subject site is a modern retail unit which is suitable for ‘off-licence’ use.
- The premises is permitted as a ‘shop’ under reg. ref. 14/600373.
- Article 5(1) of the Planning and Development Regulations 2001, as amended, includes the sale of wine for consumption off the premises, defined as ‘any intoxicating liquor which may be sold under a wine retailer’s off-licence (within the meaning of the Finance (1909-1910) Act, 1910’ but does not include the sale of intoxicating liquor for consumption off the premises other than as defined. This definition was changed in 2005 to reflect changes in the liquor licencing code whereby the determination of the ‘suitability’ of a premises for off-licence use was deemed to be a matter more appropriately addressed by the planning system rather than the courts.
- The site is generally suitable for off-licence use with regard to its profile in Ardkeen district centre, its size and design; availability of parking, public transport and pedestrian and cycle facilities and servicing / delivery facilities.

Land Mix / Concentration of Uses

- There is one full off-licence in the Ardkeen Centre (World Wide Wines). There is also a number of part off-licences within existing supermarkets. There is no planning basis for a refusal of permission based on 'over concentration' of such uses in the vicinity.
- The proposed off-licence is complementary and compatible with the existing uses in the Ardkeen district centre.
- The Ardkeen shopping centre complex and surrounding area includes a typical mix of district centre uses including retail, non-retail services, residential, café / restaurant / takeaway, public house, banking, dental / medical, library / community, office, etc. A list of retailers present is submitted with the appeal. The appeal includes a pie chart of the land uses present at the Ardkeen Centre. It is submitted that the land use survey indicates that there are 4 takeaways, 2 public houses and 1 off licence in a total of 55 units.

Competition Considerations

- The planning authority decision is anti-competitive and grants a monopoly to the only existing full off-licence in the Ardkeen area.
- The applicant O'Brien's is an independent specialist business and its retail offer and customer profile is different to part-off licences located within convenience stores or 'carry out' trade from public houses. The full off-licence is a destination store rather than a secondary purchase while undertaking the weekly grocery shop.
- The Council decision does not comply with the RPG, which state that the planning system should not be used to inhibit competition or preserve existing commercial interests, also that planning authorities and the Board should avoid taking actions which would adversely affect competition in the retail market.
- The refusal of permission for a dedicated off licence at this location compounds the trend of alcohol sales from supermarkets, which is undesirable from a planning perspective. There are 4 no. supermarkets in the Ardkeen area, i.e. Ardkeen Stores, Lidl, Aldi and Tesco. The Council should be seeking to protect independent retail outlets from encroachment by the larger multiples.

Amenity Issues

- The nature of the O'Brien's clientele is such that there will be no anti-social behaviour associated with the proposed off licence use in this instance.
- The potential for loitering and anti-social behaviour is limited, due to the location of the site in a busy district centre directly fronting onto the Dunmore Road.
- The third party concerns relating to the availability of alcohol and related anti-social behaviour in residential areas some distance from the subject site are not relevant to the assessment of this development.
- The appeal refers to ABP case PL08.246309, which granted permission for a part off licence within a supermarket in relation to this issue.
- Any issues which may arise in the vicinity of the premises can be mitigated through appropriate store and centre management / security and co-operation with the Gardaí.
- The visual amenity of the area will be improved by the O'Briens shopfront branding.

6.2. Planning Authority Response

6.2.1. The main points made may be summarised as follows:

- The planning authority wishes to emphasise the importance of the role of the Ardkeen shopping centre as part of the Ardkeen – Farronshoneen district centre. The subject site falls within the 'range of unit shops & non-retail services' element of the district centre, which is recognised as performing an important function for the local community (development plan section 4.4).
- The use of the unit as an off-licence specifically requires planning permission as opposed to other shop uses, which may not. This is because of the many issues that arise in relation to such a use, as is reflected in current development plan policies and principles. This issue is not about competition but rather whether the use at this location is in accordance with the proper planning and sustainable development of the area.

- In the context of the development plan, the planning authority considers that the existing convenience stores and the range of unit shops within this district adequately address the function of providing alcohol for sale to the local community. There are 4 supermarkets selling alcohol within the district. Alcohol would be ancillary to the overall convenience element on offer in all instances.
- The planning authority having considered the zoning objectives and policies for this area considers that the proposed use is already adequately catered for and therefore urges the Board to uphold its decision.

6.3. Observations

- 6.3.1. There are a total of 9 no. third party observations on file. Of these, 8 no. have been submitted by local residents and one submission has been made on behalf of the owners of a local off-licence (World Wide Wines). There is also a submission by Cllr. Eddie Mulligan of Waterford East electoral area. All of the observations raise broadly similar concerns. The main issues raised may be summarised as follows.

Validity of the Application

- The observation of Declan and Clare Brady (World Wide Wines) submits that the planning authority may be precluded from granting permission as the existing and permitted use at the site is 'community rooms'. Details of the planning history of the site are provided, dating back to 1983. Permission was granted to redevelop the supermarket to provide community services in 1997, reg. ref. 97/186, PL31.103358. Condition no. 12 of PL31.103358 required the community facilities to remain unless with the benefit of a prior grant of permission for any other use.
- Permission was recently granted to change the use of the unit to a shop. However, the unit is still in use as a community room as the change of use was never carried out. The land use impacts of a change of use from 'community rooms' to 'shop' are far greater and different than that from 'retail' to 'off-licence'. The current use as a community room provides great benefit to the local community.

- The observation refers to a recent Board decision, ref. PL26.246619. One of the Board's refusal reasons referred to the applicant's failure to adequately describe the development to which the application related.
- It is submitted that in the case of the change of use from one class to another use class as an exempted development under the Planning and Development Regulations, there is legal opinion that this can only relate to an implemented planning permission.

Concentration of Off Licence Uses

- The Ardkeen / Farranshoneen district centre has 6 no. premises with licences permitting the sale of intoxicating liquor for consumption off the premises, i.e. Ardkeen food Store, Tesco, Aldi, Lidl, Uluru public house, Bellissimo restaurant. There are a further two licences immediately adjacent to the district centre, i.e. World Wide Wines and the Cove bar. There are believed to be 14 existing off-licences operating within the neighbourhood served by the district centre, including service stations, convenience stores, restaurants, bars and other premises. The planning authority was correct to conclude that the proposal would result in an over provision and concentration of such uses.
- The appeal does not accurately state the commercial context of the development and underplays the existing provision of off-licenced facilities in the area. The Ardkeen Centre has been described as a 'bi nodal' district centre in previous cases considered by the Board, ref. PL31.217075. District centres are only expected to cater for the local needs to the neighbourhood catchment. The total retail floorspace at Ardkeen has grown considerably in recent years, including off-licence provision, while population growth in the neighbourhood has stopped. Ardkeen is clearly drawing customers from the city centre and elsewhere. Permitting another off licence will only fuel this situation, with a detrimental impact on the city centre.
- The submissions state serious concerns about underage drinking and anti-social behaviour. It is submitted that the proposed concentration of off-licence facilities at a location adjacent to several fast food restuarants frequented by young people will contribute to the problem of anti-social behaviour in the wider

community. The store and centre management will have no role to play in dealing with matters arising outside the boundaries of their responsibility.

- The appeal does not address the issue of the concentration of 'non retail' uses in the block in which the site is situated. Development plan policy requires maintaining an appropriate mix of uses and strictly controlling against an over concentration of non retail type uses in a particular area or building in addition to the wider area. There are other important planning considerations, such as social consequences.
- Planning legislation does not distinguish between 'full' and 'part' off-licences, as referred to in the appeal. Since the definition of a 'shop' was changed in 2005, there is a distinction between the retail sale of intoxicating liquor for consumption off the premises and other retail uses. However, two uses, i.e. 'off-licence ' and 'shop' may operate from the same premises or separately. The planning authority is to assess the land use impacts of each use separately, including issues such as parking and anti-social behaviour. The upcoming Public Health Bill 2015 will provide for the physical separation of off-licences from the remainder of the shop premises. Therefore the principle of two separate uses within stores will be far greater than at present. The impacts and consequences of 'standalone' off-licences are the same as those within retail units.

Loss of Community Facilities

- The proposed use will dilute the community use of the block and most of the block will be non retail, non community uses. This represents a poor land use mix within a mixed use centre.
- Development plan policy is to support and encourage the provision of multi function buildings with flexible formats capable of accommodating different groups of uses and users, ref. objective 7.5.2. The loss of community facilities would contravene development plan policies and objectives to retain existing community facilities.

Traffic and Parking

- There is a severe lack of parking serving the Ardkeen portion of the district centre, particularly in the vicinity of the development. Traffic congestion is also an issue. The development will exacerbate this situation.
- The planning authority acknowledged that there was already a shortage of parking when permission was granted to change the retail unit to the east of the site to a restaurant / café.
- A Traffic Impact Assessment (TIA) should be carried out for the proposed development.

7.0 **Assessment**

7.1. The following are considered to be the principal issues arising from this case:

- Section 37(2)(b) of the Planning and Development Act 2000;
- Change of Use Provisions;
- Principle of Development;
- Appropriate Assessment.

These matters may be considered separately as follows.

7.2. **Section 37(2)(b) of the Planning and Development Act 2000**

7.2.1. The refusal reason states that the proposed development would materially contravene development plan policy regarding the restriction of an excessive concentration of night time uses. Section 37(2)(b) of the Planning and Development Act 2000 (as amended) provides that where a planning authority has decided to refuse permission on the grounds that a development materially contravenes the development plan, the Board may only grant permission 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 spatial and economic strategy 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.

Each of the above may be considered separately as follows.

7.2.2. (i) the proposed development is of strategic or national importance

This is not considered to be the case with regard to the nature and scale of the development.

7.2.3. (ii) there are conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned

(iii) permission for the proposed development should be granted having regard to regional spatial and economic strategy 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

Development plan chapter 4 sets out retail policy for Waterford city. The Ardkeen Centre is within the Ardkeen / Farronshoneen district centre and is zoned for general business use. Development plan section 4.4 states that the range and volume of comparison floor space in district centres should be of an appropriate scale, be confined to low and middle order comparison goods and should not compete with the city centre. The general business use zoning objective provides for a limited expansion of commercial development outside the city centre at neighbourhood centres. These provisions are consistent with the guidance provided in the RPG regarding the role of district centres, ref. section 3.4, as discussed above. The other relevant development plan provision is section 13.2, which states an objective to prevent an excessive concentration of uses including take-aways, amusement centres, night clubs / licenced premises, off-licences and open air concerts, in order to maintain an appropriate mix of uses and protect night-time amenities. This objective is considered reasonable and does not conflict with the retail policies or the RPG. Overall, it is considered that the relevant objectives are clearly set out and are

consistent with the other policies and objectives of the development plan and with the regional and national policies and guidelines. On this basis, it is considered that section 37(2)(b)(ii) and (iii) do not apply.

7.2.4. (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

The current Waterford City Development Plan was adopted on 11th February 2013. I have examined the planning history of lands zoned for general business use at the Ardkeen / Farronshoneen district centre since that date. I note the following permissions granted in the area:

- Reg. ref. 13500009. Permission granted to Lidl Ireland for extensions and modifications to existing licensed discount foodstore at Ardkeen, Dunmore Road, Waterford.
- Reg. ref. 13500077. Permission granted for a change of use from retail to restaurant use, new external seating area, alterations to elevational treatment, new signage and associated site works at a unit within the same commercial block as the subject site.
- Reg. ref. 14500008. Permission granted for an extension to an existing restaurant including a reception bar at Bellissimo, Block F, Cove Roundabout, Dunmore Road, Waterford. This development involved a 55 sq.m. enclosed area on a first floor deck. Retention permission was also granted for the 'as constructed' first floor level reception bar to the rear of existing restaurant under reg. ref. 15/122. This increased the area to 22.2 sq.m.
- Reg. ref. 15/359. Permission granted for change of use from retail unit to restaurant including takeaway at a separate commercial block nearby to the south of the subject site. There was a third party appeal, ref. PL93.245387. The Inspector's report recommended refusal on grounds relating to residential amenity. However, the Board considered that the use was acceptable in a designated district centre on lands zoned general business. It also noted the ancillary nature of the proposed takeaway use and considered that the Inspector's concerns regarding potential impacts on residential amenities from late night activity, noise and odour could be adequately addressed by planning

condition. The Board therefore granted permission, subject to limited hours of operation and to a requirement that the takeaway remain ancillary to the restaurant use.

- Reg. ref. 16/216. Permission granted for (1) change of use of 6 no. carparking spaces to licensed seasonal sun terrace (May to September) and erection of partially enclosed terrace screen; (2) erection of an entrance canopy to the public house / restaurant and (3) associated works at the Uluru Centre, Dunmore Road, Waterford. This development created a seasonal beer garden with an area of c. 70 sq.m., to be used as such from May to September only.

I note that the above permissions granted in the area since the adoption of the current development plan allowed for 2 no. extensions to licenced premises, 2 no. changes of use from retail to restaurant and an extension to a discount supermarket that sells alcohol. I consider that the proposed development should be considered in the context of these permissions such that section 37(2)(b)(iv) would apply.

7.2.5. I therefore conclude that section 37(2)(b) of the Act does apply and that the Board is not precluded from granting permission in this case.

7.3. Change of Use Provisions

7.3.1. Section 3(1) of the Act defines development as follows:

In this Act, "development" means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land.

Part 2 and Schedule 2 of the Planning and Development Regulations 2001 (as amended) relate to exempted development. Article 5(1) provides interpretations for the purposes of exempted development and defines a shop as follows:

"Shop" means a structure used for any or all of the following purposes, where the sale, display or service is principally to visiting members of the public –

(a) for the retail sale of goods,

(b) as a post office,

(c) for the sale of tickets or as a travel agency,

(d) for the sale of sandwiches or other food or of wine for consumption off the premises, where the sale of such food or wine is subsidiary to the main retail use,

and “wine” is defined as any intoxicating liquor which may be sold under a wine retailer’s off-licence (within the meaning of the Finance (1909-1910) Act,

(e) for hairdressing,

(f) for the display of goods for sale,

(g) for the hiring out of domestic or personal goods or articles,

(h) as a launderette or dry cleaners,

(i) for the reception of goods to be washed cleaned or repaired.

but does not include any use associated with the provision of funeral services or as a funeral home, or as a hotel, a restaurant or a public house, or for the sale of hot food or intoxicating liquor for consumption off the premises except under paragraph (d), or any use to which class 2 or 3 of Part 4 of Schedule 2 applies.

7.3.2. The site was originally part of a larger supermarket premises. Permission was granted to change its use to retail under reg. ref. 14/600373. This superseded the previous permission, reg. ref. 97/186, PL31.103358, which related to the overall relocation of the Ardkeen Centre. At the subject site, permission was granted for a change of use of the original supermarket to provide community facilities, retail service unit and restaurant with takeaway facilities. Condition no. 12 of PL31.103358 specified that the areas marked as meeting rooms (including the subject site) shall continue to be used as community facilities unless with a grant of permission for another use. Given that a shop has already been granted at the site, I do not accept that the current proposal would result in the loss of a community facility. The proposed use of the premises as a full off-licence requires planning permission as the use does not come within the scope of the definition of a shop set out above.

7.4. Principle of Development

7.4.1. The site is zoned for general business use under the current development plan. This zoning objective provides for a limited expansion of commercial development outside the city centre at neighbourhood centres. Section 12.16 states that the uses ‘public house’ and ‘retail’ are permissible under this zoning objective. The development plan therefore does not specifically refer to ‘off-licence’ under the ‘general business use’ zoning objective. However, given that the uses ‘public house’ and ‘retail’ are permissible, it is considered that the off-licence use would generally be in keeping

with the zoning objective. The fundamental issue therefore is whether the development contravenes development plan policy in relation to off-licences.

7.4.2. Development plan section 13.2 provides the following in relation to takeaways, amusement centres, night clubs / licenced premises, off-licences and open air concerts:

In order to maintain an appropriate mix of uses and protect night-time amenities in a particular area, it is the objective of Waterford City Council to prevent an excessive concentration of the above uses and to ensure that the intensity of any proposed use is in keeping with both the scale of the building and the pattern of development in the area.

The provision of any of the above will be strictly controlled, having regard to the following, where appropriate:

- *The amenities of nearby residents, i.e. noise, general disturbance, hours of operation, litter and fumes;*
- *The need to safeguard the vitality and viability of shopping areas in the city and to maintain a suitable mix of retail uses;*
- *Traffic considerations;*
- *The number/frequency of such facilities/events in the area;*
- *The operators come to a satisfactory arrangement with Waterford City Council in relation to litter control;*
- *The larger leisure complexes which contain a mix of uses, e.g. cinema, bowling, and restaurant will be treated on their merits.*

These matters may be considered separately as follows.

7.4.3. The amenities of nearby residents, i.e. noise, general disturbance, hours of operation, litter and fumes

I would note at the outset that the site is located in a district centre where there is a variety of neighbourhood facilities and services. While there are several restaurants and public houses in the area, as would be typical in a neighbourhood or district centre, it does not appear to me that there is a particular concentration of *night time* economic activities, as defined in the development plan above, i.e. bars, night clubs,

music venues, late night restaurants, such as would warrant significant impacts on residential amenities in the immediate vicinity by way of noise, late night activity, traffic and other disturbances. I note the concerns of local residents regarding alcohol consumption by young people and associated anti-social behaviour and, while these are undoubtedly genuine, they do relate to the wider neighbourhood rather than the Ardkeen Centre. In addition, there does not appear to be any specific problem with litter, loitering or other anti-social behaviour at this particular location at present. I also note in this regard that the Board granted permission to convert a retail unit to a restaurant, including ancillary takeaway, at a location within the Ardkeen district centre in 2015, ref. PL93.245387. The Board noted that the site was located on lands zoned general business within a designated district centre and considered that the development would not result in the over proliferation of restaurants in the area and that concerns regarding late night activity, noise and odour could be adequately addressed by condition.

I do not consider that the development would have any significant adverse impact on visual amenities.

7.4.4. The need to safeguard the vitality and viability of shopping areas in the city and to maintain a suitable mix of retail uses

Development plan chapter 4 sets out the retail hierarchy for Waterford city. The city centre is at the top of the hierarchy. The Ardkeen / Farronshoneen area is designated as one of 4 no. district centres in the city, the others being Lisduggan, Kilbarry and a new district centre at the Hypercentre, Morgan Street. Section 4.4 states that the range and volume of comparison floor space in district centres should be of an appropriate scale, be confined to low and middle order comparison goods and should not compete with the city centre. There is to be a clear presumption against the development of high order comparison retailing in district centres, due to their potential adverse impact on the city centre. I consider that a change of use from shop to off-licence at this location would not contravene these retail policies. An off-licence of this scale would generally serve local needs only and would not detract from the vitality or viability of the city centre. Moreover, the replacement of a shop with an off-licence would not create additional retail floor area such as would significantly increase the overall retail floorspace at the district centre.

7.4.5. Traffic considerations

I note that the local residents have concerns regarding the overall traffic safety of the Ardkeen shopping centre and with parking issues in the vicinity. However, I consider that the proposed off-licence use would not have a significantly greater traffic or parking impact than the retail use already permitted at the subject site.

7.4.6. The number/frequency of such facilities/events in the area

The subject site is indisputably located in an area where there is a large number of retail outlets selling alcohol including 4 no. supermarkets, an established off-licence and pubs / restaurants licenced premises. I do not accept the argument of the applicant, which distinguishes between 'full' and 'part' off-licences, given that many supermarkets are open long hours and thus may sell alcohol well into the evening. The applicant submits that the decision of the planning authority is anti-competitive in that it prevents a new off-licence opening on the basis that there are already several such outlets in the vicinity. I note that RPG section 2.5.3 states a national policy to ensure competitiveness in the retail sector, stating:

“The planning system should not be used to inhibit competition, preserve existing commercial interests or prevent innovation. In interpreting and implementing these Guidelines, planning authorities and An Bord Pleanála should avoid taking actions which would adversely affect competition in the retail market. In particular, when the issue of trade diversion is being considered in the assessment of a proposed retail development, planning authorities and An Bord Pleanála should assess the likelihood of any adverse impacts on the vitality and viability of the city or town centre as a whole, and not on existing traders.

However, competition is only one factor to be considered in assessing an application for development, and a decision should not be made on grounds of competition alone.”

In this case, the pertinent issue is whether the development would result in adverse impacts on residential amenities by way of noise, disturbance, etc., due to an excessive concentration of night time economic activities at this location. As discussed above, I consider that the proposed development would not result in significant adverse impacts on residential amenities at this location.

- 7.4.7. The operators come to a satisfactory arrangement with Waterford City Council in relation to litter control.

This issue may be dealt with by condition if the Board is minded to grant permission.

- 7.4.8. The larger leisure complexes which contain a mix of uses, e.g. cinema, bowling, and restaurant will be treated on their merits.

This aspect of the policy is not relevant to the subject case.

7.5. **Appropriate Assessment**

- 7.5.1. Having regard to the nature and scale of the proposed development, to the nature of the receiving environment and to proximity to the nearest European sites, no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

7.6. **Conclusion**

- 7.6.1. The proposed development was refused permission by the planning authority on the basis that it materially contravenes the development plan. However, it is considered that section 37(2)(b) of the Planning and Development Act 2000 (as amended) applies and therefore the Board is not precluded from granting permission in this case. The development is acceptable in principle with regard to its location on lands zoned for general business within a designated district centre. Having regard to the above assessment, it is considered that the development would not result in an excessive concentration of night time land uses, such as would result in significant adverse impacts on residential amenities. Permission is therefore recommended, subject to the conditions set out below.

8.0 **Recommendation**

- 8.1. Having regard to the foregoing, I recommend that permission is granted subject to the conditions set out below.

9.0 Reasons and Considerations

9.1. Having regard to the zoning of the site which is 'to provide and improve General Business Uses' in the Waterford City Development Plan 2013 – 2019, to the planning history of the site, to the pattern of development in the area, to the submissions and documentation on file and to the nature and extent of the proposed development, it is considered that subject to compliance with the conditions set out below, the proposed development would be in accordance with the zoning objective for the site, as set out in the said Development Plan, would not contravene the permission previously granted on this site, would not seriously injure the amenities of the area, would not result in the over proliferation of off-licences in the area and would be acceptable in terms traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable of the area.

10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. Details of the materials, colours and textures of all the external finishes to the proposed buildings shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of the visual amenities of the area.

3. No signage, advertising structures/advertisements, security shutters, or other projecting elements, including flagpoles, shall be erected within the site unless authorised by a further grant of planning permission.

Reason: To protect the visual amenities of the area.

4. Security roller shutters, if installed, shall be recessed behind the perimeter glazing and shall be factory finished in a single colour to match the colour scheme of the building. Such shutters shall be of the 'open lattice' type and shall not be used for any form of advertising, unless authorised by a further grant of planning permission.

Reason: In the interest of visual amenity.

5. Litter in the vicinity of the premises shall be controlled in accordance with a scheme of litter control which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This scheme shall include the provision of litter bins and refuse storage facilities.

Reason: In the interest of visual amenity.

6. A plan containing details for the management of waste (and, in particular, recyclable materials) within the development, including the provision of facilities for the storage, separation and collection of the waste and, in particular, recyclable materials and for the ongoing operation of these facilities shall be submitted to, and agreed in writing with, the planning

authority prior to commencement of development. Thereafter, the waste shall be managed in accordance with the agreed plan.

Reason: To provide for the appropriate management of waste and, in particular recyclable materials, in the interest of protecting the environment.

7. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

. Sarah Moran

. Senior Planning Inspector

30th January 2017