



An  
Bord  
Pleanála

## Inspector's Report ABP 300601-18

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<b>Development</b>	Retention of change of use from retail warehouse to retail shop.
<b>Location</b>	Unit 5. Wexford Retail Park, Clonard Little, Wexford.
<b>Planning Authority</b>	Wexford County Council.
<b>Planning Authority Reg. Ref.</b>	20171345.
<b>Applicant</b>	Poundland Ltd. T/A Dealz.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Refuse Permission.
<b>Type of Appeal</b>	First Party v Decision
<b>Appellants</b>	Poundland Ltd. T/A Dealz.
<b>Observers</b>	None.
<b>Date of Site Inspection</b>	26 <sup>th</sup> April 2018.
<b>Inspector</b>	Dáire McDevitt.

## **1.0 Site Location and Description**

- 1.1. The site, Unit 5 Wexford Retail Park, is located in the Wexford Retail Park in Clonard, a western suburb of Wexford town. The area is predominately characterised by retail and industrial parks with a mixture of residential development, ranging from ribbon development along the R733 to the Conrad Village development, located to the west of the site, consisting of a mix of residential and commercial units, many of which are unoccupied. The site is accessed via a link road via a roundabout off the R733, this road also serves to access Clonard Village and Industrial units to the northeast. The road links to Clonard Avenue via Whitemill. To the rear (north) is Clonard Retail Park which is accessed off the R733 at a point to the east of the appeal site. To the south, Wexford Retail Park is bounded by the R733 which links the town centre to the N25 ring road.
- 1.2 Wexford Retail Park consists of an L-shaped block which contains eight units, including Unit 5 which is the subject of this appeal. There are three standalone units: Woodies DIY store, Aldi and a KFC fast food outlet. There is large central surface car park and circulation area serving all the units.
- 1.3 Unit 5, Dealz, is located within the main block of units, bounded to the east by Wexford Indoor Market and to the west by Carpet Right. The remainder of the units within this block contain a mix of tenants: Home Focus, Petmania, Halfords, Mr Price and Cost Plus Sofas.

## **2.0 Proposed Development**

The applicant is seeking a temporary permission to retain a change of use from retail warehousing to 'shop', specialist retail, internal alterations and all associated works within Unit 5.

The unit has a gfa of c. 488sq.m (the planning application form refers to gfa of c. 682sq.m) and currently operates as a Dealz store.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

The decision to refuse permission was for following three reasons:

- 1. The site is located in an area with a land use zoning of 'Retail Park/bulky goods' under the Wexford Town and Environs Development Plan 2009-2019. The use of convenience and/or comparison shopping in an area with such a land use zoning would materially contravene this objective. The proposed development is therefore contrary to the proper planning and sustainable development of the area.*
- 2. The proposed temporary retention of the subject development would contravene condition No. 2 of Planning Reference 20000318 and condition No. 5 of Planning Reference 20032329 restricting use to bulky household goods and preventing convenience or comparison shopping at the subject site. The proposed development is therefore contrary to the proper planning and sustainable development of the area.*
- 3. Insufficient information has been submitted with the application to demonstrate the impact the proposed development would have on the vitality and viability of Wexford's Town Centre. It has not been demonstrated in the application that the Policy Principles of the Sequential Approach as set out in the Retail Planning Guidelines 2012 and the policies and objectives of the Wexford Town and Environs Development Plan 2009-2019 have been considered and the proposed is therefore contrary to the proper planning and sustainable development of the area.*

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Report**

The formed the basis for Planning Authority decision, the main issues raised are reflected in the reasons for refusal. These related to the principle of the development and compliance with the land use zoning objectives as set out in the Wexford Town and Environs Development Plan 2009, compliance with the

Retail Strategy and the Retail Planning Guidelines. Below is a brief summary of the main points:

- The sale of non-bulky goods would materially contravene the land use zoning objective 'Retail Park/Bulky Goods' attached to the site.
- The unit does not fall into the category of retail warehouse as it sells almost exclusively non-bulky goods.
- The granting of a temporary permission for retention of the retail use would contravene condition No. 2 of Planning Reference 20000318 and condition No. 5 of Planning Reference 20032329 which restrict the use of the units in the Retail Park to the sale and storage of bulky household goods only. Convenience or comparison shopping are not permitted at the subject site.
- Insufficient information was submitted with the application to demonstrate the impact the development would have on the vitality and viability of Wexford's Town Centre. The applicant had not demonstrated that the proposal complies with the policy principles of the sequential approach as set out in the Retail Planning Guidelines 2012.
- The development is not consistent with national, regional or local policy. It is considered that the development would be detrimental to the vitality and vibrancy of town centres and would set an undesirable precedent.

### **3.2.2. Other Technical Reports**

**Municipal Engineer.** No objection subject to conditions.

**Access Officer.** Items required to be addressed when applying for a Disability Access Certificate. External alterations would also be required.

**Chief Fire Officer.** A regularisations certificate would be required.

### **3.3. Prescribed Bodies**

None.

### 3.4. Third Party Observations

Two submissions were received by Wexford County Council in support of the development: The employees of Dealz and Ann Kehoe (employee of Dealz). These can be summarised as follows:

- Seek to support the application and reserve the right to appeal any decision.
- There are plenty of vacant units in the retail park, the closure of a unit would not promote the park.
- Concerns over job losses if permission is refused and the store closes.

Two submissions were received objecting to the proposal: Tesco Ireland Limited and Vera Markevich. These can be summarised as follows:

- The proposal would have a detrimental impact on Wexford Town Centre. Specifically in the context of any convenience, specialist or non-bulky comparison retail operator (or combination thereof) which should be located within the town centre, so as to avoid a detrimental impact on the town.
- Granting a temporary permission for retention would set an undesirable precedent.
- Granting permission would be ultra vires given with the zoning and permitted uses within the retail park.
- Does not comply with the land use zoning, policies and objectives of the Development Plan.

## 4.0 Planning History

### 4.1 Wexford Retail Park

**Planning Authority Reference No. 20000318 (ABP Ref. No. PL.26.123458)**

refers to a 2000 grant of permission for a retail warehouse park and office development. The following condition is of note:

Condition No. 2

*The retail warehouse shall be restricted to not more than four separate units on the footprint indicated as units 1 to 7 (total warehouse sales area of 4,405 square metres and garden centre of 800 square metres). Unit 8 shall be omitted and the garden centre shall be relocated in the general area thus freed up and each unit shall have a minimum floor area of 700 square metres. Prior to commencement of development, revised drawings, incorporating the above amendments, shall be submitted to the planning authority for agreement.*

*Furthermore, in respect of the use of the proposed building, the following shall apply.*

- (a) No units shall be subdivided except in respect of storage/sales areas.*
- (b) The use of the floor space in all of these units shall be restricted exclusively to the storage and selling of bulky household goods in the following categories:- furniture, carpets, white goods, DIY materials and garden products. No convenience or other comparison shopping shall occur in these units.*
- (c) No change in the use of any unit, either in part or whole shall be allowed without a prior grant of planning permission. Any change of use defined for the purpose of this permission in terms of type of goods sold within Use Class 1 (Shop) Part IV of the Local Government (Planning and Development) Regulations, 1994, shall not be allowed without a prior grant of planning permission. This restriction shall apply in this instance, notwithstanding the provisions of the said Regulations which normally exempt changes of use within the Use Class 1.*

**Reason:** *To define the nature and extent of the permission granted in the interest of clarity and to restrict the use of the retail warehouse park in keeping with the capacity of the town and the region.*

**Planning Authority Reference No. 20032329** refers to a 2003 grant of permission for single storey retail warehouse with mezzanine level and outdoor garden centre. New roundabout and revised layout for 4 no. retail warehouse units (P.A Reg. Ref. 20000318), carparking, etc. The following condition is of note:

Condition No.5

*The retail warehouses shall have a minimum floor area of 700 square metres and in respect of the use of the proposed building, the following shall apply.*

- (a) No units shall be subdivided except in respect of storage/sales areas.*
- (b) The use of the floor space in all of these units shall be restricted exclusively to the storage and selling of bulky household goods in the following categories:- furniture, carpets, white goods, DIY materials and garden products. No convenience or other comparison shopping shall occur in these units.*
- (c) No change in the use of any unit, either in part or whole shall be allowed without a prior grant of planning permission. Any change of use defined for the purpose of this permission in terms of type of goods sold within Use Class 1 (Shop) Part IV of the Local Government (Planning and Development) Regulations, 1994, shall not be allowed without a prior grant of planning permission. This restriction shall apply in this instance, notwithstanding the provisions of the said Regulations which normally exempt changes of use within the Use Class 1.*

**Reason:** *To define the nature and extent of the permission granted in the interest of clarity and to restrict the use of the retail park in keeping with the retail capacity of the town and region.*

## 4.2 Unit No. 5:

### Section 5 Declaration/Referral:

**Planning Authority Reference No. EXD00571** refers to a 2015 Declaration. The question sought by a third party referred to “whether the use of a retail premises at Unit 5, for storage and retail of goods and products other than bulky household goods (as defined in condition No. 5 of Planning permission reference 20032329) constituted development”. The Planning Authority declared that this constituted development and was not exempted development.

### Enforcement:

**Planning Authority Enforcement Reference 0123/2015** refers to the sale of non bulky goods and non-compliance with condition no. 2 of 20000318 and No. 5 of Planning Ref. No. 20032329.

### Planning Applications:

**Planning Authority Reference 20161417** refers to a 2016 decision to refuse permission for retention of the change of use of the unit to a shop (floor area of c. 488sq.m). Reasons for refusal mirror those of the current application.

## 4.3 Applications within Wexford Retail Park

There are numerous applications within the retail park, of note are the following:

**Unit 6**, adjoining the appeal site:

**Planning Authority Reference W2009096 (An Bord Pleanála Reference PL.85.234990)** refers to a 2009 application for changes to Unit 6. An appeal was lodged against condition No. 8 restricting the units to the sale of bulky goods. The Board amended the wording of Condition 8(b) to:

*The use of floorspace in the permitted development shall be restricted to the storage and selling of bulky type goods in accordance with the provision of*



*Annex 1 of the Retail Planning Guidelines 2005.*

**Reason:** *To define the nature and extent of the permission granted in the interests of clarity and to restrict the use of the retail park in keeping with the retail capacity of the town and region.*

**An Bord Pleanala Reference No. PL.85.2777** refers to a 2010 Section 5 Declaration and whether the use of unit 6 for the retail of bulky goods, associated with expectant mothers, babies and toddlers is or is not development and is or is not exempted development. The Board considered it to be development and not exempted development

**KFC:**

**Planning Authority Reference No. 20052797** refers to a 2005 grant of permission for a drive thru fast food restaurant.

**Aldi:**

**Planning Authority Reference No.20072920** refers to a 2007 grant of permission for a discount foodstore. Application for Leave to Appeal refused under **An Bord Pleanala Reference LV.26.LV2775.**

#### **4.4 Lands adjoining the Retail Park:**

**Planning Authority Reference W2008105** refers to a 2008 refusal for an extension to previously granted permission under Planning Authority Reference 20071186. Refused on the grounds that the development would materially contravene section 3.6.4 of the Wexford Town & Environs Development Plan 2002 having regard to inadequate parking provision.

**Planning Authority Reference 20071186** refers to a 2007 grant of permission for 5 no. retail units.

## 5.0 Policy Context

### 5.1 Guidelines

#### 5.1.1 Retail Planning Guidelines for Planning Authorities, Department of the Environment, Community and Local Government (April 2012).

##### **Annex 1 Definitions:**

**Retail warehouse:** a large single-level store specialising in the sale of bulky household goods such as carpets, furniture and electrical goods, and bulky DIY items, catering mainly for car-borne customers and often in out-of-town centre locations.

**Bulky goods:** goods generally sold from retail warehouses --where DIY goods or goods such as flat pack furniture are of such size that they would normally be taken away by car and not be portable by customers travelling by foot, cycle or bus, or that large floor space would be required to display them.

**Scrambled merchandising** refers to the trend whereby some retail businesses sell both convenience goods and comparison goods. Bulky goods are not included within the relevant lists of items and should be dealt with on their merits in the context of the definition of bulky goods.

**Specialist retailer** is not defined in the guidelines.

**Section 4.11.2** states that in order to minimise adverse impacts on central areas, it is important that the range of goods sold in both existing and any future retail parks is tightly controlled and limited to truly bulky household goods or goods which are not portable by customers travelling by foot, cycle or bus.

And, generally speaking, smaller units of less than 700m<sup>2</sup> gross floor space are more easily capable of being accommodated in town centres and, in any event tend, to sell a less bulky range of goods.

#### 5.1.2 Regional Planning Guidelines – South East Region 2010-2022

This contains regional planning guidance for the development of the South East Region which includes Wexford, Carlow, Kilkenny, South Tipperary and Waterford.

The settlement hierarchy identifies Waterford as the Regional Gateway, Kilkenny and Wexford as Hubs and Carlow, Clonmel and Dungarvan as County towns.

Kilkenny City and Wexford Town are identified as strategic urban centres that support and are supported by the Gateway and reach out to wider rural areas of the region that the Regional Planning Guidelines are targeting for significant levels of growth. In addition, the County Towns are recognised as critical elements in the structure for realising balanced regional development, acting as a focus for strengthening their own areas.

## **5.2 Local Policy**

### **5.2.1 Wexford Town & Environs Development Plan 2009-2019**

Wexford Town and Environs is divided into 20 Masterplan zones. The appeal site is located within **Master Plan Zone 10 Clonard Little**.

#### **Section 11.02 Land Use Zoning Objective:**

**Zoning Objective K – Bulky Goods (BG)** corresponds with the colour and ‘Retail Park/Bulk Goods’ legend attached the site as per the Land Use zoning Matrix – Map 21.

The purpose of this zoning is to provide for the sale of goods generally sold from retail warehouses where DIY goods or goods such as flatpack furniture are of such size that they would normally be taken away by car and are not manageable by customers travelling by foot, cycle or bus. Other non retail uses which are highly car dependent may be considered if they are deemed to compliment the overall zoning objective.

**Section 11.03 Land Use Zoning Matrix** does not include Zoning Objective ‘K’ (Bulky Goods).

## **Maps:**

**Map 21. Land Use Zoning Map** for the town. Shows the Retail Park zoned Retail Park/Bulky Goods. The relevant land use objective is not included in the accompanying land use matrix table for Map 21.

**Map 10. Masterplan Zone 10**, Map includes 'Bulky Goods' land use zoning and sets out the following pertaining to the retail park:

- Further expansion and consolidation could provide additional floorspace.
- Further linkages between each of the parks should be explored.
- Bulky goods restriction should remain in place.

The land use matrix table for Map 10 does not include 'Bulky Goods' (land use objective K)

### **5.2.1.3 Section 4.6 Retail Strategy**

This is informed by the Wexford Retail Strategy 2007-2013.

Wexford town is classified as a third tier centre in the retail hierarchy of the Retail Planning Guidelines. It is a busy Town Centre serving a wide rural catchment.

### **5.2.1.4 Section 4.9 Development Patterns Objectives include:**

- 1.** To ensure an efficient, equitable and sustainable distribution of retail centres in and around the town.
- 2.** To make an important contribution to sustaining and improving the retail profiles and competitiveness of County Wexford within the retail economy of the South East Region and beyond.
- 3.** To address leakage of retail expenditure from the Town and its catchment by facilitating the strengthening the range and quality of its retail offer.
- 4.** To establish clear principles and guidance on where various forms of new retail floor space would be acceptable.

5. To ensure that the retail needs of the Wexford catchment area as met as fully as possible to promote social inclusion within the Town and take due cognisance of the South East Region retail hierarchy.
6. To provide the criteria for the assessment of retail development proposals.

### **Wexford Town Retail Strategy.**

In relation to the Clonard area the retail strategy states that new comparison floorspace in this area should be limited in scale and nature to ensure that these centres do not undermine the needed investment in significant new comparison floorspace in the town centre.

## **5.3 Wexford County Development Plan 2013-2019**

The policies and objectives are generally reflective of what is included in the Town and Environs Development Plan.

### **Wexford County Retail Strategy**

The strategy reflects the designation of Wexford as a hub town in the Regional Planning Guidelines.

Wexford town is the primary retail centre for the county and designated as a Level 1 settlement in relation to floorspace and type (major convenience and comparison).

The retail policies for the Wexford Town will need to have due regard to the functional role of the town as outlined in the proposed settlement structure for the county and ensure that the provision of retail development in line with its role as the Primary Growth Area is provided.

The sequential test shall apply.

In addition proposals should:

- Support the long term strategy for town centres as established in the Development Plan and not materially diminish the prospect of attracting private sector investment into one or more town centres.
- Cause an adverse impact on one or more town centres by undermining the quality of the centre or its role in the economic and social life of the community.
- Diminish the range of activities and services that a town centre can support.
- Cause and increase the number of vacant properties in the primary retail area that is likely to persist in the long term.

Amongst others issues, it should also be demonstrated that there is a quantitative and qualitative need for the development.

### **Retail Warehouse Parks**

As stated in the Retail Planning Guidelines, individual retail units should not be less than 700 m<sup>2</sup> and not more than 6,000 m<sup>2</sup> in size. These figures are gross floor area, including storage and garden centres. In respect of retail warehouse developments outside town centres, it is essential that the range of goods sold is restricted by planning condition to bulky household items such as DIY products, carpets, furniture, and electrical goods. Failure to do so may have a negative impact on the vitality and viability of the town centre area.

## **5.4 Natural Heritage Designations**

There are none within the immediate vicinity.

## **6.0 The Appeal**

### **6.1 Grounds of appeal**

A first party appeal has been lodged. The grounds of appeal seek to address the reasons for refusal and are summarised as follows:

### 6.1.1 Background

- Dealz have been trading in Wexford Retail Park since August 2015, occupying a unit that had been vacant for a number of years.
- There is a live enforcement case (PEO123/2015) which relates specifically to the sale of non bulky goods from the subject site. The purpose of the current application is to regularise the sale of non bulky goods from the subject premises on a temporary basis.
- The appeal states that the governing permission for the site is Planning Authority Reference No. 20032329, granted by An Bord Pleanala on appeal. Condition No. 5 was attached restricting the use of the units in the retail park to the storage and sale of bulky goods.
- A Section 5 declaration **EXD00571** was lodged with the Planning Authority. This declared that the change to the sale of non bulky goods was development and not exempted development.
- There are a number of units within the retail park that do not comply with the land use zoning objective that do not appear to be the subject of legal proceedings. In addition KFC (Planning Authority Reference No.20052797) and Aldi (Planning Authority Reference No. 20072920) were granted permission despite materially contravening the land use zoning objective.
- The wording of condition No. 5 of Planning Authority Reference No. 20032329 includes 'no convenience or other comparison shopping shall occur in these units'. Woodies DIY has a non bulky items for sale within its store (eg kitchenware, confectionary, party supplies. Home Focus sells soft fabrics and bed linen, towels, stationary, crafts. Petmania sells dog grooming supplies and also offer professional services (vet and dog groomer), Halfords include sales of smaller electrical goods of a comparison nature. Dealz and Mr Price are mainly characterised by convenience but also sell bulky goods and Wexford Indoor Market is indefinable. In terms of compliance with condition no. 5, Carpet Right is the only current retailer that is fully compliant.

- The subject site falls under the provision of the Wexford Town and Environs Development Plan, The site is zoned for Retail Warehousing (Map 10), with a site specific policy which states that ‘bulky goods restriction shall remain in place’. There is no provision under the zoning matrix of the Development Plan for retail warehousing or bulky goods.
- During the recession the only available stock in the absence of a new neighbourhood centre was in the vicinity of the retail park, consisting of empty retail warehouse units.
- Permission is being sought for a temporary 7 year permission to continue trading at this location. With the intention of relocating to adjoining lands and a future neighbourhood centre, when developed.

#### **6.1.2 Reason for Refusal No. 1**

- The first reason for refusal sets out that the development would materially contravene the land use zoning objective for the site. Permission has been granted on two occasions for development that materially contravened the land use zoning objective for the site. However, the applicant notes that only one of them required a material contravention of the Plan (Aldi).
- The site is located on lands zoned for ‘Retail Park/Bulky Goods’ and it is accepted that convenience and/or comparison shopping is in contravention of this objective. However, this is not considered reasonable as the objective has been contravened by all but one of the existing uses within the park. The retail warehousing zoning is an aspiration in this context.
- The Wexford Retail Park in essence functions as a neighbourhood centre for the residential catchment. Aldi is the anchor store. The site is surrounded by significant amount of undeveloped lands zoned for neighbourhood centres.
- The use to be retained offers similar goods to Aldi and provides a similar neighbourhood function, therefore should be afforded the same consideration as Aldi was by the Planning Authority.



- The applicant requests a grant of temporary permission until such time an alternative location can be found.

### **6.1.3 Reason for Refusal No. 2**

- The established pattern of development in the area includes a mix of convenience, comparison, bulky and non-bulky goods retailers.
- The second reason sets out the development would contravene condition No. 2 of Planning Authority Reference No. 20000318 and condition No. 5 of Planning Authority Reference No. 20032329. The purpose of the current application is to obtain permission for the change of use and as such, if permission is granted, the development would not contravene the condition.

### **6.1.4 Reason for Refusal No. 3**

- In granting permission for Aldi under Planning Authority Reference No. 20072920, the planners report concluded that the development complied with the sequential test approach.
- The proposal uses a vacant unit and is considered sequentially appropriate. There is a large Dealz store located on the Main Street. Dealz consider Wexford town to be a two store strategy town with retail capacity available to support both stores.
- The two Dealz stores serve different catchments and the opening of the second store at the Retail Park, had only a marginal impact on the town centre one.
- In contrast the high proportion of vacant retail warehouse uses and non-conforming uses of retail warehouse units suggests an over proliferation of retail warehouse units in the town.
- Wexford Retail Strategy 2013-2019 was written at a time when there were a number of extant permissions for retail development throughout the town. The strategy presumed that 50% of the extant capacity would be development over the plan period, this has not occurred.
- There is a high level of vacancy rates throughout the town.

- The former Tesco site is not considered suitable and is located within c.200m of the other Dealz store.
- There is a capacity to accommodate an additional 1769sq.m of convenience floor space to the end of 2019 within the Wexford Catchment. The units to be retained is c. 488sq.m in area which is 27.5% of the available capacity.
- The development would, therefore, not have an adverse impact on the viability of existing convenience retail in Wexford and sufficient capacity exists to accommodate more than three times that of the current store.
- Sequential Assessment submitted with the appeal demonstrates that the application complies with the sequential approach.

#### **6.1.5 Retail Definitions**

The Planning Authority defined the development as being convenience retailing. Dealz do not consider this to be the case as their stores incorporate elements of convenience, comparison and bulky goods and do not fall exclusively into one category and should be considered as a 'specialist' retailer as set out in the Retail Planning Guidelines (2012).

#### **6.1.6 Precedent:**

- Reference to Gulliver's site Planning Authority Reference No. F17A/0068 (Fingal County Council). Temporary permission was granted for a change of use of a retail warehouse to a 'licensed supermarket'. The decision was upheld by An Bord Pleanala on appeal. While the applicant accepts that the circumstances were different, attention is drawn to the following comments by the Planning Inspector *Having regard to this very specific context, I do not consider that the proposed development would establish a general precedent for the conversion of retail warehouse to retail supermarkets, or other retail users.* The applicant argues that this application established that it is possible, under specific circumstances to permit a change of use on a temporary basis without establishing an undesirable precedent.

- Wexford Retail Park presents a unique and specific set of circumstances which would facilitate the short-term and temporary use, as proposed, without eroding the long term desire to establish the park as a 'bulky goods only' development. The extent of otherwise vacant units occupied by non-conforming uses together with the extent of undeveloped neighbourhood centre zoned lands in the vicinity, would indicated that the market has naturally responded to demand by utilising vacant stock. The Council have facilitated this over time and non-conforming uses to establishing themselves within the retail park and paying rates to the Council.
- The application of the Retail Planning Guidelines to the Retail Park would result in the closure of five units as demonstrated by the current scenario. Where enforcement action and refusal of permission resulted on the grounds of material contravention of the land use zoning objective.

## 6.2 Planning Authority Response

This is summarised as follows:

- The subject site has a land use zoning of 'Retail Park/Bulky Goods' under the Wexford Town and Environs Development Plan 2009-2019. The principle of convenience retail or comparison shopping is not acceptable under this land use zoning. The Planning Authority consider that the sale of convenience and low order comparison goods in an area zoned 'Retail Park/Bulky Goods' would materially contravene this zoning objective and may have a detrimental impact on the vitality and viability of Wexford's Town Centre.
- The development, if permitted, would contravene condition No 2 of An Bord Pleanála Reference No. PL.26.123458 and condition No. 5 of Planning Authority Reference No. 20032329 restricting the use of the floor space to bulky household goods and preventing convenience or comparison shopping at the subject site.

- The development, if permitted, would seriously weaken the vitality and viability of Wexford's Town Centre and would, therefore, be contrary to the Wexford Town and Environs Development Plan 2009-2019 and to the Retail Planning Guidelines for Planning Authorities. The development would facilitate the migration of convenience retail shopping from Wexford Town Centre and would undermine the Council's plans to enhance the positive growth and development of the town. In addition, the proposed development, if permitted would set a precedent for the relocation of non-bulky goods away from the core retail area and as such would be contrary to the proper planning and sustainable development of the area.

The Planning Authority request that An Bord Pleanala uphold the decision to refuse permission.

### **6.3 Observations**

None.

### **6.4 Further Responses**

None.

## **7.0 Assessment**

The main issues in this appeal are those raised in the grounds of appeal which seek to address the Planning Authority's three reasons for refusal. I am satisfied that no other substantive issues arise. Appropriate Assessment also needs to be considered. The issues are addressed under the following headings:

- Principle of Development
- Non Compliance with planning conditions.
- Sequential Approach.

- Appropriate Assessment

## 7.1 Principle of Development

7.1.1 The Planning Authority's first reason for refusal was on the premise that the site is located in an area with a land use zoning of 'Retail Park/Bulky Goods' under the Wexford Town and Environs Development Plan 2009-2019. And that the use of convenience and/or comparison shopping in an area with such a land use zoning would materially contravene this objective.

7.1.2 Wexford Retail Park which contains Unit No. 5, the appeal site, is located on lands zoned under Land Use Objective 'K' (Bulky Goods (BG)) in the current Wexford Town and Environs Development. The Land Use Objective 'K' relating to Bulky Goods (BG) is not included within the land use zoning matrix table set out in Section 11.03 of the Wexford Town and Environs Development Plan. Reference is therefore made to Section 11.02 Land Use Zoning Objectives which sets out that the purpose of this land use zoning objective, 'K' Bulky Goods (BG), is to provide for the sale of goods generally sold from retail warehouses where DIY goods or goods such as flatpack furniture are of such size that they would normally be taken away by car and are not manageable by customers travelling by foot, cycle or bus. Other non retail uses which are highly car dependent may be considered if they are deemed to compliment the overall zoning objective. Map 10 (Masterplan Zone 10) refers to the site as zoned for Retail Park/bulky goods and it includes a statement that the bulky goods restriction should remain in place.

7.1.3 In relation to the Clonard area the retail strategy states that new comparison floorspace in this area should be limited in scale and nature to ensure that these centres do not undermine the needed investment in significant new comparison floorspace in the town centre.

7.1.4 I note that the type of goods sold in the Dealz unit comprise a mix of non-bulky goods including food, drinks toiletries, household cleaning products, stationary items, to name but a few. The goods sold are not those typically sold in retail

warehouses. I do not agree with the appellants that the products on offer are specialised. And although the unit is not necessarily a shop-neighbourhood, I consider that it would be more aligned with same.

7.1.5 The appellants consider that the application of the zoning provisions and objectives as set out in the current Wexford Town and Environs Development Plan is unreasonable in light of existing non retail warehouse uses that have evolved, the presence of vacant units and the temporary nature of the permission being sought. At the time of inspection I did not note high vacancy rates within the Retail Park, there are however high vacancy rates in the adjoining Clonard Village development and throughout the town.

7.1.6 The applicant in the grounds of appeal accepts that the use to be retained would contravene the land use zoning objectives for the site. However, they have referred to following precedents, Planning Authority Reference No. 20052797 (KFC) and Planning Authority Reference No.20072920 (Aldi) where permission was granted by the Planning Authority for uses that would materially contravene the land use zoning objective attached to the Retail Park. I note that the Planning Officers in their recommendations concluded on both occasions that the developments materially contravened the Development Plan with subsequent directions/memos from the relevant Director of Services directing that permission be granted.

7.1.7 Notwithstanding the presence of non-conforming uses, the application before the Board must be assessed in the context of the policies and objectives for the site under the current Wexford Town and Environs Development Plan, the Retail Strategy for the town and the retail hierarchy as set out in the Wexford County Development Plan 2013-2019.

7.1.8 It is clear from the Development Plan zoning objective that the Wexford Retail Park is located within a 'K' (Bulky Goods) zone. As noted on the day of inspection there are a number of units in the Retail Park which similarly include a mix of

convenience, comparison, bulky and non-bulky goods retailers. Many of which would not be categorised as retail warehousing. Issues pertaining to compliance with planning conditions are a matter for the Planning Authority to enforce and beyond the scope of this report.

7.1.9 The development for retention provides predominantly for the sale of comparison and convenience goods in an established retail warehouse park. It is considered that the development to be retained would not be in accordance with the zoning objectives for the site as set out in the Wexford Town and Environs Development Plan for the area within which the site is located, nor is it in compliance with the defined retail hierarchy as set out in the County Development Plan which has been informed by the Retail Planning Guidelines. The change of use to be retained would contravene the policies and objectives aimed at restricting the role of retail warehousing to the retailing of bulky goods and would seriously injure the vitality and viability of Wexford town centre. The change of use to be retained would, therefore, be contrary to the proper planning and sustainable development of the area.

7.1.10 The Board will note that Reason Number 1 of the decision of Wexford County Council to refuse planning permission for the proposed development states that the proposed development would materially contravene the Wexford Town and Environs Development Plan 2009-2019. Therefore, one or more of the criteria as set out in Section 37 (2)(b) of the 2000 Planning and Development Act (as amended) applies, and must be met should the Board be disposed to a favourable decision in this instance.

## **7.2 Non compliance with planning conditions.**

7.2.1 The Planning Authority's second reason for refusal was on the grounds that The proposed temporary retention of the use of Unit No. 5 for the sale of non bulky goods would contravene condition No. 2 of Planning Reference 20000318 and condition No. 5 of Planning Reference 20032329 restricting use

to bulky household goods and preventing convenience or comparison shopping at the subject site.

7.2.2 Condition No.2 of An Bord Pleanala Reference No. PL.26.123458 (Planning Authority Reference No. 20000318) and condition No. 5 of Planning Authority Reference No. 20032319 restricted the use of the unit to the sale and storage of bulky goods. Conditions 2(c) and 5(c) respectively set out that *“No change in the use of any unit, either in part or whole shall be allowed without a prior grant of planning permission. Any change of use defined for the purpose of this permission in terms of type of goods sold within Use Class 1 (Shop) Part IV of the Local Government (Planning and Development) Regulations, 1994, shall not be allowed without a prior grant of planning permission. This restriction shall apply in this instance, notwithstanding the provisions of the said Regulations which normally exempt changes of use within the Use Class 1”*.

7.2.3 The purpose of the current application is to regularise the non-conforming use of Unit No. 5 and its non compliance with the above planning conditions. In light of section (c) attached to each condition as outlined above, I do not consider it reasonable or warranted to include a reason for refusal on the grounds of non-compliance with Condition No.2 of An Bord Pleanala Reference No. PL.26.123458 (Planning Authority Reference No. 20000318) and condition No. 5 of Planning Authority Reference No. 20032319 as a whole.

7.2.3 Therefore, the appeal in relation to the Planning Authority’s second reason for refusal should be upheld.

### **7.3 Sequential Approach**

7.3.1 The Planning Authority’s third reason for refusal was on the grounds that insufficient information has been submitted with the application to demonstrate the impact the proposed development would have on the vitality and viability of Wexford’s Town Centre. And that it had not been demonstrated in the application that the policy principles of the sequential approach as set out in the



Retail Planning Guidelines 2012 and the policies and objectives of the Wexford Town and Environs Development Plan 2009-2019 had been considered.

- 7.3.2 Wexford town is designated as a hub in the South East Regional Planning Guidelines and as the Primary Retail Centre for the County in the retail hierarchy in the current Development Plan. Wexford Retail Park appears to function as a traditional retail park, in that almost all trips are made by private car. I consider it extremely unlikely that any but the smallest number of trips are made by foot or public transport.
- 7.3.4 I do not consider that the applicant has demonstrated in the sequential analysis submitted with the appeal that the development would not have a detrimental impact on the vitality and viability of the town centre. I consider that the development for retention, albeit temporary, of a predominantly non bulky comparison and convenience retail unit within an established retail warehouse park would contravene the provisions of the Wexford Town and Environs Development Plan and the County Development Plan with regard to the retail hierarchy of the County. I am not satisfied, on the basis of the information on file that the application has clearly demonstrated development would not have a significant impact on the town centre and neighbourhood centres in the vicinity of this Retail Park. It is considered the development could impact on the vitality and viability of existing retail centres in the wider area
- 7.3.5 The development is akin to a shop-neighbourhood, in an area designated for the sale of bulky goods, The use of Unit No. 5 as a Dealz store does not accord with the policies and objectives as set out in the Development Plan, Retail Strategy or in line with national guidance as set out in the Retail Planning Guidelines and the requirement for a sequential approach to retail development. I consider the development to be retained would be contrary to the proper planning and sustainable development of the area.

#### **7.4 Appropriate Assessment**

Having regard to the nature and scale of the development to be retained and to the nature of the receiving environment, namely an urban and fully serviced

location, 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.

## **8.0 Recommendation**

I recommend that permission be refused for the following reasons and considerations.

## **9.0 Reasons and Considerations**

1. Having regard to the zoning provisions of the Wexford Town and Environs Development Plan 2009-2019 for the area within which the site is located, 'Objective K.'– (Bulky Goods), the 'Retail Planning Guidelines for Planning Authorities', issued by the Department of the Environment, Heritage and Local Government in January, 2012, the Wexford Retail Strategy and the retail hierarchy set out in the Wexford County Development Plan 2013-2019, it considered that the change of use to be retained would be contrary to the policies and objectives aimed at restricting the role of retail warehousing to the retailing of bulky goods and would seriously injure the vitality and viability of Wexford Town Centre. The change of use to be retained would materially contravene the zoning objectives as set out in the Plan and would, therefore, be contrary to the proper planning and sustainable development of the area.

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Dáire McDevitt

3rd May 2018