



## **Development**

A retail development comprising 1 no. retail comparison unit to be partially subdivided to serve 2 no. retail comparison concessions (in accordance with the Retail Planning Guidelines 2012). Permission is also sought for a mezzanine level within this unit resulting in a retail development of total gross floor area 3,798 sq.m. Permission is sought for associated elevational signage, utilisation of existing entrance to the retail park and extension of the existing entrance road to serve rear service yard containing delivery area and open plant areas, minor demolition / removal of part of the existing wall onto Hanover Road and the provision of 1 no. new pedestrian access, reconfiguration and utilisation of existing car parking to serve the proposed development with the provision of additional disabled and parent and child parking, bicycle parking, landscaping and all ancillary

	site and engineering works necessary to the facilitate the development.
<b>Location</b>	Carlow Retail Park, Hanover Road, Carlow.
<b>Planning Authority</b>	Carlow County Council
<b>Planning Authority Reg. Ref.</b>	18/433
<b>Applicant(s)</b>	Thomas Thompson Holdings Limited.
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant subject to conditions
<b>Type of Appeal</b>	First Party v. Decision Third Party v. Decision
<b>Appellant(s)</b>	Thomas Thompson Holdings Limited Fairgreen Shopping Centre (Carlow) Limited
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	18 <sup>th</sup> December, 2019
<b>Inspector</b>	Robert Speer

## 1.0 Site Location and Description

- 1.1. The proposed development site is located on the edge of the Hanover / Carlow Retail Park, approximately 750m southeast of the junction of Tullow Street / Dublin Street in the traditional core of Carlow town centre, 370m southeast of the Carlow Shopping Centre, and 250m south / southwest of Phase 2 of the Fairgreen Shopping Centre (which includes the IMC cinema complex). The existing retail park is dominated by a series of 8 No. conventional retail warehouse units, an expanse of surface car parking and a fast-food restaurant, with the retail offering including 'Woodies DIY', 'Carpet Right', 'Halfords', 'Harry Corry' & 'Electro City'. Vehicular access is obtained from the Carlow Inner Relief Road via the Hanover Roundabout whilst an alternative pedestrian access onto Hanover Road is available from within the north-western corner of the car park.
- 1.2. The site itself has a stated site area of 0.53 hectares, is irregularly shaped, and presently comprises an undeveloped parcel of land in addition to the existing service road and car parking associated with the retail park. It is bounded by the existing retail warehouse units to the west whilst the undeveloped portion of the site area is positioned between the existing car park and the Burren River to the east. To the immediate south the site adjoins 'greenfield' lands which separate it from the nearby housing estate of Feltham Hall. The southern boundary of the retail park is defined by a 2m high palisade fence whilst the undeveloped site area is similarly enclosed by palisade fencing with mature hedging alongside the river to the east.

## 2.0 Proposed Development

- 2.1. The proposed development, as initially lodged with the Planning Authority, consists of the construction of 1 No. retail comparison store (Gross Floor Area: 3,798m<sup>2</sup>), including a mezzanine level, to be partially subdivided to serve 2 No. retail comparison concession uses with 'TK Maxx' & 'Homesense' identified as the end-users. It will provide for 3,070m<sup>2</sup> of net retail floor area in addition to ancillary staff and storage facilities at both ground and mezzanine floor levels. Ancillary site development works will include the utilisation of the existing entrance to the retail park, the extension of the existing entrance roadway to access a rear service yard, the provision of 1 No. new pedestrian access, the reconfiguration and utilisation of

the existing car park, the provision of additional disabled and parent & child car parking, landscaping, and connection to existing services.

- 2.2. In response to a request for further information, the nature of the proposed development was subsequently amended whereby the subdivision of the new store would provide for two distinct use classes comprising 1 No. comparison concession use (floor area: 1,900m<sup>2</sup>) and 1 No. retail warehouse / bulky goods use (floor area: 1,898m<sup>2</sup>) to be occupied by 'TK Maxx' & 'Homesense' respectively. Alterations were also made to the external elevational treatment of the proposed construction.

### 3.0 Planning Authority Decision

#### 3.1. Decision

- 3.1.1. Following the receipt of responses to requests for further information and subsequent clarification, and on the instruction of the Acting Director of Services (Planning), on 26<sup>th</sup> August, 2019 the Planning Authority issued a notification of a decision to grant permission for the proposed development subject to 26 No. conditions. These conditions are generally of a standardised format and relate to issues including external finishes, infrastructural works, landscaping, signage, construction management, and development contributions, however, the following conditions are of note:

Condition No. 2 – Restricts the use of Unit No. 1 to the sale of comparison goods as defined in Annex 1 of the '*Retail Planning, Guidelines for Planning Authorities, 2012*'.

Restricts the use of Unit No. 2 to the sale of bulky goods as defined in Annex 1 of the '*Retail Planning, Guidelines for Planning Authorities, 2012*', save for that area permitted for the sale of ancillary items (as detailed below).

Requires the submission of a revised floor plan for Unit No. 2 which identifies 20% of the net retail floorspace for the sale of ancillary items associated with an otherwise bulky good e.g. computer software, printing paper etc.

Condition No. 13 – Refers to the implementation of the mitigation measures detailed in the Flood Risk Assessments and requires all service roads and finished floor levels to be set at least 300mm over the 0.1% AEP flood level.

Condition No. 14 – Refers to the implementation of the mitigation measures / construction control measures detailed in the Natura Impact Statement and the Outline Construction and Environmental Management Plan.

## 3.2. Planning Authority Reports

### 3.2.1. *Planning Reports:*

In an initial assessment of the proposal, whilst it was acknowledged that the application site was within the identified 'retail core' of Carlow town on lands zoned as 'town centre', concerns arose as regards its peripheral 'edge-of-centre' location relative to the traditional town centre of Tullow Street / Dublin Street etc. and the adequacy of the sequential test provided. Further concerns were raised in respect of the nature of the retail use proposed, its suitability within an established retail warehouse park, and its potential impact on the town centre.

Following consideration of the response to a request for further information wherein the proposal was amended to provide for two distinct use classes comprising 1 No. comparison concession use and 1 No. retail warehouse / bulky goods use, a further report indicated that concerns remained as regards the nature of the comparison use and its overall suitability at the location proposed.

Upon receipt of a response to a request for clarification of further information, the case planner (as endorsed by the senior planner) ultimately recommended that permission be refused for the following 2 No. reasons:

- Having regard to the nature of the retail proposed, the location of the site on an edge of centre site outside of the Carlow Inner Relief Road, its location at a distance from the defined core traditional town centre and the lack of connectivity / pedestrian linkages to the town centre, the Planning Authority is not satisfied, notwithstanding the zoning of the site, that the site is the optimum location for such a development. The proposed development would

materially contravene key objectives for Carlow Town which identified the need to reinstate the role and function of the traditional retail core of the town which is centred on Tullow Street and Dublin Street and the need to prioritise central opportunity sites for development (Ref. 9.4.1 Carlow County Retail Strategy). The proposed development would also be contrary to the policy of the Council to ensure that new development create, or positively contribute towards, a connected network of streets and spaces, putting the requirements of pedestrians and cyclists as a priority by creating direct routes that connect to the main areas of shopping activity (Ref. Carlow Town Policies Retail Strategy JSP). The proposed development would therefore materially contravene the provisions and objectives of the Joint Spatial Plan for the Greater Carlow Graiguecullen Urban Area 2012-2018, the Carlow County Retail Strategy 2015-2021, the Carlow Town Retail Strategy 2012-2018, and would be contrary to the Retail Planning Guidelines for Planning Authorities (2012), would have an adverse impact on the vitality and viability of the traditional town centre and would, therefore, be contrary to the proper planning and sustainable development of the area.

- Having regard to the edge-of-centre location of the site in relation to the traditional town centre of Carlow, as well as its location in an established retail warehousing park, and notwithstanding its current location on lands zoned town centre in the Joint Spatial Plan for the Greater Carlow Graiguecullen Urban Area 2012-2018, it is considered that the proposed retail use would (a) undermine the established role and use of the retail park for the sale of bulky goods comparison retailing (retail warehousing goods), (b) set an undesirable precedent for further such change of uses in other units in the retail park, (c) create a strong negative counter attraction to the town centre and (d) materially adversely affect the vitality and viability of the town centre. The proposed development would, therefore, be contrary to the Retail Planning Guidelines for Planning Authorities (2012), to the policies and objectives of the Joint Spatial Plan for the Greater Carlow Graiguecullen Urban Area 2012-2018 which seek to maintain a healthy town centre and restrict retail warehouse developments to the sale of bulky comparison goods and would

therefore be contrary to the proper planning and sustainable development of the area.

However, this recommendation was rejected by the Acting Director of Services who instructed that permission be granted for the proposed development, subject to conditions.

### 3.2.2. *Other Technical Reports:*

*Water Services:* No objection, subject to conditions.

*Carlow Fire Authority:* No objection, subject to conditions.

*Environment (Senior Executive Engineer):* An initial report stated that whilst most of the site was not within a flood zone, the Flood Risk Assessment provided with the application should be amended to include the most up-to-date flood mapping completed as part of the CFRAM study (2016). It advised that flood levels should be extrapolated from suitable nodes on the River Burren and the revised report was to follow the guidance set out in the Technical Appendices of *'The Planning System and Flood Risk Management, Guidelines for Planning Authorities'*. It was further stated that the updated report should consider the requirement for a 'Justification Test' as per the guidelines.

In addition, it was recommended that the screening for appropriate assessment be amended to have regard to the revised Flood Risk Assessment and a Construction and Environmental Management Plan with the updated screening report reaching a conclusion that the proposed development would not, by itself or in combination with other plans or projects, adversely affect the integrity of the site whilst also confirming that there was no scientific doubt regarding that conclusion.

Following the receipt of a response to a request for additional information, a further report was prepared which considered the amended Flood Risk Assessment and Natura Impact Statement before recommending a grant of permission, subject to conditions.

*Environment (Executive Engineer):* Refers to the proposed servicing arrangements and states that there is no objection to the proposed development.

*Carlow Municipal District Area Office:* No objection.

*Transportation Dept.:* No objection, subject to conditions.

### 3.3. Prescribed Bodies:

3.3.1. *Irish Water*: No objection, subject to conditions.

3.3.2. *Inland Fisheries Ireland*: Advises that the proposed development borders the main channel of the Burren River which is an important salmon spawning / nursery tributary of the Barrow River. It is further stated that the Barrow River is an important spring salmon & sea trout fishery whilst its wider system supports several species listed in Annex II of EU Habitats Directive, including salmon, river lamprey, brook lamprey and sea lamprey. In addition, much of the main channel of the Barrow River is a candidate Special Area for Conservation. The report proceeds to outline various concerns pertaining to the protection of downstream waters, including:

- Given the proximity of the stream, the pollution threat from concrete and concrete / cement washings is significant. Pre-cast concrete should be used whenever possible to eliminate the risk to all forms of aquatic life. Good housekeeping is of the utmost importance while using concrete or cement near watercourses.
- Systems should be put in place to ensure that there is no discharge of suspended solids or any other deleterious matter to watercourses during the construction phase and during any landscaping works, even during periods of prolonged heavy rainfall.
- Any in-stream works or works on the bank of the river should be subject to consultation and agreement with IFI regarding the associated method statement.
- Fuels, oils, greases and hydraulic fluids must be stored in bunded compounds.
- Refuelling of machinery must be carried out in bunded areas.
- All waste oil, empty oil containers and other hazardous wastes are to be disposed of in conjunction with the requirements of the Waste Management Act, 1996.
- All surface water from the site should be passed through a petrol / oil interceptor and be subject to attenuation prior to discharge.
- All fuel & oil tanks must be adequately bunded.



### 3.4. Third Party Observations

- 3.4.1. A total of 3 No. submissions were received from an interested third party (the appellant) in respect of the subject proposal, however, in the interests of conciseness, and in order to avoid unnecessary repetition, I would advise the Board that the principle grounds of objection / areas of concern raised therein are reiterated in the grounds of appeal.

## 4.0 Planning History

### 4.1. On Site:

PA Ref. No. PD5041. Was granted in 2002 permitting Thomas Thompson Holdings Limited permission for a retail warehouse park development of 12,075m<sup>2</sup> gross floorspace involving the erection of 11 No. retail warehouse units consisting of 1 No. anchor unit of 3,251m<sup>2</sup>, 2 No. further units of 929m<sup>2</sup>, 1 No. unit of 884m<sup>2</sup>, 1 No. unit of 711m<sup>2</sup>, and 6 No. units of 700m<sup>2</sup>, a garden centre of 1,768m<sup>2</sup>, associated car parking (598) bays, servicing and landscaping.

PA Ref. No. 106301 / ABP Ref. No. PL42.237008. Was refused on appeal on 23<sup>rd</sup> May, 2011 refusing Thomas Thompson Holdings Limited permission for the construction of a retail superstore of 8,889m<sup>2</sup> gross floor area to include convenience supermarket with a net floor area of 2,598.2m<sup>2</sup>, and a home stores textiles and comparison goods net floor area of 2,662m<sup>2</sup> including alcohol sales area, ancillary administration offices, staff facilities, bulk store cage marshalling area, café, circulation space to include entrance atrium, and service yard. The re-alignment and landscaping of existing 598 car parking spaces granted under planning register reference number PD 5041 to include additional 180 new parking spaces to give total of 778 spaces, new ESB substation, all ancillary landscaping, site development works and services to include re-alignment of existing entrance and boundary wall to the Hermitage (a protected structure) and construction of new Link Road from Paupish Bridge to Hanover Cross including the modifications to existing junction arrangements at Hanover Cross. Access to the proposed development will be via the existing Carlow Retail Park entrance and via two car park accesses and a service yard access onto the new link road; all on site of 5.24 hectares at Carlow Retail Park, Hanover, Carlow, Co. Carlow.

- The site of the proposed development is located some 600 metres from the historic town centre of Carlow. The proposed development incorporates a large convenience and comparison retail element combined with extensive onsite car parking. Having regard to its scale and taken in conjunction with recently developed retail provision in proximity to the Carlow Inner Relief Road, and permitted developments, it is considered that the proposed development would form a strong counterweight to the historic town centre, which is recognized as a distinguishing feature of Carlow in the Carlow Town Development Plan, 2009–2016. Notwithstanding the zoning of the site for Town Centre Activities in the said development plan, it is considered that the proposed development would adversely affect the vitality and viability and undermine the role of the historic town centre and the commercial core of Carlow Town. The proposed development would, therefore, be contrary to the “Retail Planning Guidelines for Planning Authorities” issued by the Department of the Environment, Heritage and Local Government in January, 2005, where it is national planning policy to protect the role of town centres and would be contrary to the proper planning and sustainable development of the area.
- Having regard to the proximity of the proposed road to the boundaries of existing residential properties to the south and to the River Burren to the east, the banks of which are designated as an amenity area in the Carlow Town Development Plan, 2009–2016, it is considered that the proposed development would seriously injure the amenities of the area and of property in the vicinity by reason of noise and visual obtrusiveness. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

PA Ref. No. 116453 / ABP Ref. No. PL42.240640. Was refused on appeal on 1<sup>st</sup> March, 2013 refusing Thomas Thompson Holdings Limited permission for a development comprising the construction of a retail development of 5,109m<sup>2</sup> gross floor area to include convenience supermarket with a net floor area 2,500m<sup>2</sup> and comparison goods textiles and homewares and drapery net floor area 1,000m<sup>2</sup>, including alcohol sales area, ancillary administration offices, staff facilities, bulk store cage marshalling area, café, circulation space to include entrance atrium and service

yard. The landscaping and rearrangement of existing car parking provision, 598 No. spaces granted under planning register reference number PD 5041 to include additional 31 No. new parking spaces to give total 629 No. spaces, Taxi Rank, all ancillary landscaping, site development works, plant and services and lighting. Access to the proposed development will be via the existing Carlow Retail Park entrance via the Inner Relief Road at Hanover Roundabout, all on a site area of 3.68 hectares at Carlow Retail Park, Hanover, Carlow, County Carlow (An Environmental Impact Statement accompanied the application).

- Having regard to the nature and extent of the proposed development incorporating a substantial convenience and comparison shopping store, to its location at a distance from the town centre and its lack of connectivity and pedestrian linkages to the town centre, to the provisions and objectives of the Carlow Town Development Plan, 2009-2015, the Carlow County Retail Strategy, 2009, and the Retail Planning Guidelines for Planning Authorities issued by the Department of the Environment, Heritage and Local Government in April, 2012, the Board is not satisfied that the proposal would not have a detrimental impact on the vitality and viability of the town centre and considered, therefore, that the proposed development would be contrary to the proper planning and sustainable development of the area.

#### 4.2. *Other Relevant Files:*

##### 4.2.1. *The Fairgreen Shopping Centre:*

PA Ref. No. 19198 / ABP Ref. No. ABP-305709-19. Application by Fairgreen Shopping Centre (Carlow) Limited for permission for the demolition of an existing retail unit / commercial building (unit 27) comprising 874m<sup>2</sup> and the construction of 1 no. two-storey retail unit of 3,732m<sup>2</sup> (gross floor area) with ancillary office and staff facilities and all associated ancillary development works including the provision and relocation of parking, access roads, footpaths, drainage and landscaping, all at Fairgreen Shopping Centre, Barrack Street, Carlow.

(The notification of a decision to grant permission for this development has been appealed by Thomas Thompson Holdings Limited and a decision is pending with the Board).

4.2.2. *The Former Penneys' Retail Store & Hanover Park, Kennedy Avenue, Carlow (identified as 'Opportunity Site 1: Former Penny's Site off Kennedy Avenue' within the Spatial Plan for the Greater Carlow Graiguecullen Urban Area, 2012-2018):-*

PA Ref. No. 075852 / ABP Ref. No. PL42.228338. Was granted on appeal on 11<sup>th</sup> February, 2009 permitting Donnybrook Property Investments Limited permission for the construction of development consisting of a c. 68,225m<sup>2</sup> retail, office and residential development comprising: the demolition of an existing c. 4,000m<sup>2</sup> Penneys' Supermarket and adjoining buildings, 22,566m<sup>2</sup> gross floor area retail development (13,313m<sup>2</sup> net) comprising 26 units of 11,652m<sup>2</sup> (net) comparison shopping and 1,661m<sup>2</sup> (net) convenience shopping, 490m<sup>2</sup> Café and Food Court, an occasional Farmers Market, 2,367m<sup>2</sup> of Class 3 Offices, 63 residential units comprising a mixture of one, two and three bedroom apartments and two and three bedroom duplex units, ancillary mall, signage, circulation, service, plant areas and public/private open space; all in a two, three, five and landmark eight-storey structure over a 1,092 space two-level underground car park. The proposal will result in the reduction by circa 0.5 hectares of the present area of Hanover Park which will be reconfigured and upgraded with hard landscaping and planting. Vehicular access will be via Kennedy Avenue and Kilkenny Road with separate service access off Kilkenny Road. A cycling, pedestrian/fire access link will be provided between Kennedy Avenue and Kilkenny Road. A riverside walk will be provided on the southern Bank of the Burrin River and provision made to receive a new boardwalk to the western side of the existing bridge over the River. Access to the existing Hanover Shopping Centre will be maintained and provision made for a future pedestrian link to Burrin Street via the existing stone gateway at 59 Burrin Street (a Protected Structure – Item 19), all on a circa 2.8 hectare (6.9 acre) site at Penneys' Supermarket and Hanover Park, Kennedy Avenue (N80), Kilkenny Road (N9), Carlow.

PA Ref. No. 106308 / ABP Ref. No. PL42.236653. Was granted on appeal on 14<sup>th</sup> November, 2011 permitting Donnybrook Property Investments Limited permission for a c. 49,560m<sup>2</sup> retail, office and residential development on a c. 2.94 hectares (7.26 acres) site including demolition of the existing Penneys' Store (c. 4,000m<sup>2</sup>) and Hanover Shopping Centre (770m<sup>2</sup>) and adjoining buildings; 26,071m<sup>2</sup> gross floor area retail development (17,767m<sup>2</sup> net) comprising 36 units of 13,492m<sup>2</sup> (net)

comparison shopping and 580m<sup>2</sup> (net) convenience shopping; 975m<sup>2</sup> café and food court; an occasional farmers market; 927m<sup>2</sup> of Class 3 offices; 30 residential units comprising a mixture of two and three bedroom apartments and two bedroom duplex units; ancillary mall, signage, circulation, service, plant areas and public/private open space; all in a two, three, five and landmark seven storey structure over a 640 space single level underground car park. The proposal will result in the reduction by circa 0.5 hectares of the present area of Hanover Park which will be reconfigured and upgraded with hard landscaping and planting. Vehicular and service access will be via Kennedy Avenue and Kilkenny Road. A cycling, pedestrian/fire access link will be provided between Kennedy Avenue and Kilkenny Road. A riverside walk will be provided on the southern bank of the Burrin River and extension to the western side of the existing bridge over the river. Pedestrian access to the proposed development will be provided from Burrin Street via the existing stone gateway at 60 Burrin Street (a Protected Structure – Item CT19) which is retained. The proposed development represents a 26% reduction and revision of the approved (planning register reference number 07/5852, appeal reference number PL42.228338) 67,263m<sup>2</sup> mixed use development on the same site whose established principles have been incorporated, all at Penneys' retail store and Hanover Park, Kennedy Avenue, Kilkenny Road (R448) and Burrin Street, Carlow.

- PA Ref. No. 16136. Was granted on 24<sup>th</sup> June, 2016 permitting Donnybrook Property Investments Limited an 'Extension of Duration' of PA Ref. No. 106308 / ABP Ref. No. PL42.236653 with an expiry date of 13<sup>th</sup> November, 2021.

PA Ref. No. 116455. Was granted on 28<sup>th</sup> March, 2012 permitting Donnybrook Property Investments Limited permission amendment of previously permitted (Planning Register Ref. No. 10/6308; An Bord Pleanála Ref. No. PL42.236653) mixed use retail, Class 3 office, food court, occasional farmers market, residential, car-park, landscaped park and ancillary development on a c.2.94 hectare (7.26 acre) site at Penneys' Retail Store and Hanover Park, Kennedy Avenue, Kilkenny Road (R448) and Burrin Street, Carlow. The site includes a protected structure at 60 Burrin Street (stone gateway - Item CT19). The proposed amendments comprise internal alterations and extension to previously permitted Unit 17 for Debenhams (proposed total area: 4,727sq.m.) including its incorporation of formerly proposed Units 16, 30 &

31 at ground floor (576sq.m.) incorporation of Unit 36 and extension at first floor (998sq.m.), re-location of Unit 17 roof top plant enclosure, the omission of 6 no. permitted residential units and alteration of 3 no. units from 2 bed to 3 bed apartments at first, second and third floors, a reduction in the number of residential units from 30 to 24 and associated alterations to elevations at Penneys' Retail Store & Hanover Park, Kennedy Avenue, Kilkenny Road & Burrin Street, Carlow.

PA Ref. No. 19478. Application by Primark Ltd. for permission for the refurbishment of the existing store (3,892m<sup>2</sup>) including retail, staff area, stock room, external envelope, new plant buildings (29.16m<sup>2</sup>) and replacement roof to the retail store. The works will also include new signage, new canopy to loading bay, convert partial convenience retail to comparison retail, allocation of 47 no. carparking spaces including 3 no. disabled parking spaces, 15 no. bicycle stands, upgrade of existing carparking surface, landscaping and entrance to store, temporary hoarding to adjacent properties and associated works. All at Kennedy Avenue, Carlow. No decision to date.

## 5.0 Policy and Context

### 5.1. National and Regional Policy

- 5.1.1. The '*Retail Planning, Guidelines for Planning Authorities, 2012*' provide a framework to assist Local Authorities in respect of the preparation of Development Plans and in the assessment of planning applications in addition to guiding retailers and developers in the formulation of development proposals.

### 5.2. Development Plan

5.2.1. ***Carlow County Development Plan, 2015-2021:***

*Chapter 2: Development Strategy:*

*Section 2.5: Settlement Structure for Carlow:*

*Section 2.5.1: Carlow Town and Environs:*

Carlow is designated as a County Town in the National Spatial Strategy and is a key driver which can help promote more balanced regional development. Under the NSS

and South-East Regional Planning Guidelines, Carlow is an important regional centre with a sphere of influence extending northwards into County Kildare, north-west into County Laois as well as its role as a County Town within the South-East region. Given that the population of the Carlow Urban Area stood at 23,030 in the 2011 Census, it is anticipated that the next review of the RPG's and its population target for Carlow Town of 25,000 will be amended during the lifetime of this Plan. In order to fulfil its role as a County Town, Carlow will be the main focus for public and private sector investment within the county over the period of the Plan.

*Objectives:*

- To implement the NSS and South-East Regional Planning Guidelines by encouraging developments of Carlow Town, Greater Carlow and Graiguecullen Urban area.
- To review the County Development Plan in the light of any emerging replacement to the NSS and South-East Regional Planning Guidelines and vary the Development Plan accordingly if necessary.

*Section 2.6: Retail Strategy:*

The Planning Authority will seek to ensure that all retail development permitted is in accordance with the Retail Planning Guidelines for Planning Authorities (2012) and the accompanying Retail Design Manual – A Good Practice Guide (2012) and the Carlow County Retail Strategy accompanying this Development Plan. This Retail Strategy sets out the Retail Hierarchy for the county and confirms the level and form of retailing activities appropriate to each town and settlement.

Retail Hierarchy for Carlow County: *Level 1 – Carlow County Town Centre*

*Section 3.6: Urban Development / Urban Renewal*

*Chapter 11: Design and Development Standards:*

*Section 11.12: Commercial Development*

New commercial and retail development shall be provided for in areas that are specifically zoned for such purposes. The Council will seek to maintain the vitality and viability of town and village centres and will have regard to the Carlow County

Retail Strategy 2015 - 2021 (or any amendment of same) in the assessment of any applications for retail development.

In some cases, the Council may require the applicant to submit a Retail Impact Assessment to demonstrate that a proposal complies with the County Retail Strategy and the Retail Planning Guidelines, and that it will not have an adverse impact on existing town or village centre developments, or result in displacement.

*Appendix 4: Retail Strategy (July, 2015):*

*Chapter 5: Health Check Assessment*

*Section 5.2: Carlow:*

*Identification of Core Retail Area:*

The traditional town centre is recognised as Tullow Street and Dublin Street, however, development in the town centre in the past 10-20 years has been concentrated to the south east of the traditional town core.

The town harnessed opportunities afforded to it through the Government tax designated urban renewal schemes which kick started an expansion of the town centre eastward. The initial phase of this expansion comprised the development of the Carlow Shopping Centre and more recently the redevelopment of the former livestock mart to accommodate the Fairgreen Shopping Centre and the development of Hanover Retail Park further south. This has resulted in a geographical shift from the traditional core retail area of the town. The Fairgreen development has led to a somewhat disjointed retail structure in the town centre.

*Health Check Assessment Conclusion:*

Carlow Town functions and performs the role of the main town centre within the County. The town accommodates an excellent range of functions not found in other towns within the County in accordance with its Level 1 County Town Centre designation. The quality and quantum of retail goods on offer in Carlow reflects its role and function in the national retail hierarchy as a Level 1 Tier Centre.

The south eastern expansion of the core retail area of the town over the past 10-20 years with developments such as the Carlow and Fairgreen Shopping Centres have facilitated the expansion of the retail profile of the town. These developments have provided large retail floorplates within the town which cater for the needs of national



and international convenience and comparison retailers, these developments have resulted in a geographical shift of the retail activities within the town centre.

The health check assessment has identified a significant lack of permeability between the traditional town core retail area of Dublin Street and Tullow Street and the more recent town centre expansion area especially the Fairgreen Shopping Centre. The Fairgreen Centre has rather poor pedestrian linkage to the Tullow Street area and lacks profile and visibility from Barrack Street. The poor pedestrian permeability between the historic core of Tullow Street and Dublin Road and the Fairgreen Centre in particular has resulted in a fragmented retail core and limited interaction between the traditional core and town centre expansion area. The fragmented nature of the core has resulted in the weakening of the role and function of traditional core shopping streets such as Dublin Road and Tullow Street as evidenced by the more frequent occurrences of vacancies within these areas, especially the western end of Tullow Street.

*Chapter 7: Quantitative Assessment:*

*Section 7.7: Floorspace Capacity:*

<b>Table 7.12: Indicative Floorspace Potential (sq.m.)</b>		
	<b>2011</b>	<b>2021</b>
Convenience	2,951	7,137
Comparison	8,992	21,179

*Chapter 8: Retail Hierarchy and the Future Distribution of Floorspace:*

Level 1: Carlow County Town Centre

<b>Table 8.2: Comparison Floorspace Distribution</b>		
Settlement	<b>Floorspace Allocation Ratio</b>	<b>Comparison Floorspace Allocation</b>
Carlow Town	80%	16,943
Remainder of County	20%	4,236
<b>Total</b>	<b>100%</b>	<b>21,179</b>

*Chapter 9: Policies and Objectives:*

*Section 9.4: Specific Town Centre Objectives for Carlow Town (incl.):*

- The core retail area should form the primary focus and preferred location for new retail development. Within this area there is a need to reinstate the role and function of the traditional retail core of the town which is centred on Tullow Street and Dublin Street.
- Central opportunity sites should be prioritised for development.
- Opportunities for enhancement of the pedestrian permeability of the retail core should be considered. The proportion of space devoted to pedestrians should be improved within the core retail area in order to enhance pedestrian permeability. Further pedestrian crossing facilities should be provided between Tullow Street, Fairgreen Shopping Centre, Carlow Shopping Centre and Kennedy Avenue to enhance the overall permeability of the retail core.
- Adopt car parking management standards in the town centre that reduces the presence of on-street car parking in favour of off-street parking.

*Chapter 10: Criteria for Assessing Future Retail Development*

*Appendix 4: Opportunity Sites: Carlow Town*

**5.2.2. *Joint Spatial Plan for the Greater Carlow Graiguecullen Urban Area, 2012-2018 (as extended up to 4<sup>th</sup> November 2022):***

*Land Use Zoning:*

The proposed development site is located in an area zoned as ‘Town Centre’ with the stated land use zoning objective ‘*To protect the vitality and vibrancy of the town centre and provide for town centre activities*’.

*Other Relevant Sections / Policies:*

*Part 2: Core Strategy:*

*Carlow Town Development Plan Core Strategy (including the following principles):*

- Consolidate the urban area and provide for a retail hierarchy including town centre, district centres and neighbourhood centres in the interest of ensuring

the vitality and viability of the town centre (Map of retail hierarchy contained in Part 3, Section 1).

- Advance key opportunity sites by preparing development briefs or urban design framework plans.

*Part 3: Thematic Strategy:*

*Section 1: Economic Development and Inward Investment:*

*Retail Policies:*

*ECN P11:* Ensure retail proposals are determined having regard to the Joint Retail Hierarchy included in this Plan, the Joint Retail Policy Document and the Retail Planning Guidelines 2005 or as amended and do not undermine or erode the vitality or vibrancy of Carlow Town Centre.

*ECN P12:* Support the retail primacy of Carlow Town Centre within the Greater Carlow Graiguecullen Urban Area and County Carlow and the focus for comparison retail development in accordance with the Retail Strategy and Retail Planning Guidelines 2005 or as amended.

*Section 10: Urban Design and Built Form*

*Part 4: Sub-Area Spatial Strategy:*

*Section 1: Carlow Town:*

*Objective CTO1: Consolidate the built form of Carlow Town:*

- *Policy CT P1:* Focus development on Carlow Town Centre and the wider Carlow Town functional area to make efficient use of existing infrastructure and services and provide for sustainable land use patterns. Dependent upon clear demonstration that there will be no impact on the integrity of a Natura 2000 site in accordance with Article 6 of the Habitats Directive or significant adverse effects on other environmental receptors.
- *Policy CT P3:* Actively promote appropriate backland and infill development as well as re-development of brownfield sites and under-used lands particularly within Carlow Town Centre and subject to environmental considerations and wider planning considerations.

Objective CTO2: *Reinforce the quantum and diversity of uses within Carlow Town Centre:*

- *Policy CT P5:* Encourage the provision of a wide range of shopping, commercial, community, civic, tourism, amenity and transport services within Carlow Town Centre.
- *Policy CT P6:* Direct high-order commercial, civic and tourism services to town centre locations.
- *Policy CT P7:* Apply the recommendations of the Joint Retail Policy Statement along with relevant Retail Strategies, the Joint Retail Hierarchy and the Retail Planning Guidelines 2005 or as amended to safeguard and strengthen the vitality and vibrancy of the town centre.
- *Policy CT P8:* Support the full occupation of newly-developed, purpose-built building stock in the town centre including office space, retail space and apartment units.

Objective CTO5: *Encourage specific urban renewal projects and advance opportunity sites.*

- *Policy CTP 30:* Support the principle of redeveloping the former Penny's site (Opportunity Site 1), Barrow Track site (Opportunity Site 2), Court Place site (Opportunity Site 3) referred to above and mapped.

*Appendix 5: Retail Strategy, 2012-2018:*

*Section 5: Broad Capacity Assessment*

*Section 6: Retail Strategy:*

*Carlow Town Centre:*

Carlow Town functions and performs the role of the main town centre within the County. Carlow is a market town and service centre. It has the additional appeal of being a key tourist destination and symbolises the Gateway to the South East Region.

Carlow accommodates an excellent range of functions not found in other towns within the County and dominates the settlement hierarchy befitting its role as the County Town.

With respect to retail floorspace provision, Carlow Town provides a good range of convenience and comparison shopping floorspace selling goods not found elsewhere within the County. All types of retail floorspace are considered to be appropriate within the Level 1 Centre, particularly centrally located comparison floorspace at Kennedy Ave and Kilkenny Road.

A permitted scheme for renewal at the Penny's site includes some 26,071 sqm gross floor area retail development (17,767 sqm net) comprising 36 units of 13,492 sqm (net) comparison shopping and 580 sqm (net) convenience shopping; 975 sqm Café and Food Court, an occasional Farmers Market, Offices and 30 residential units.

*Level 1 County Town Centre: Carlow: Town Centre:*

*Policies:*

- It is the policy of the Council to facilitate and encourage the consolidation and improvement of retailing and other town centre activities.
- In accordance with national policy objective for urban design, new retail developments within the defined town centre core should complement the defined urban nature of its location, and have a positive impact on urban design with long-term sustainable uses, and contribution to the town, where mixed-use and urban renewal is appropriate.
- It is the policy of the County to ensure that new development create, or positively contribute towards, a connected network of streets and spaces, putting the requirements of pedestrians and cyclists as a priority by creating direct routes that connect to the main areas of shopping activity.
- The Council will seek a robust and thorough analysis in respect of the Sequential Test for all significant retail developments in accordance with the Retail Planning Guidelines.
- It is the policy of the Council to develop a traffic management strategy and provide for a good quality car-parking programme linked to the pedestrian network in the town.
- It is the policy of the Council to continue a programme of urban landscaping including measures to improve pedestrian safety, convenience, and accessibility through the town centre.

- It is the policy of the Council to encourage activities that enliven the evening economy, including culture and entertainment uses.

*Actions:*

- Promote access to car parks in the town centre and publicize approach routes to each car park/multi storey car park in the Carlow Town Centre, by adopting a circulation system that directs cars to these car parks.
- Adopt car parking management standards within the town centre that reduces on-street car parking in favour of off-street car parking and a restriction on long term car parking (i.e. commuter) facilities in favour of short term (business, retail and leisure) car parking use.
- There is a presumption against surface car parking in the Town Centre, which tends to be visually unattractive, undermines the vitality of town centre and represents inefficient use of land. Underground car parking facilities provide a more efficient use of land, subject to archaeological investigations. Where car parking is not underground or integrated into the building shell (i.e. Multi storey), car parking facilities should be provided behind established building lines in each development and shall be screened and to the rear of buildings so as to avoid the view of expansive car parks and to assist in providing continuous development blocks and building lines expected within a new street form.
- Implementation of the proposals for Plas na Saoire with particular focus on delivery of environmental improvement of spaces, buildings, linkages, the public realm, the town's heritage and specifically its relationship to the River Burrin/Barrow.
- Encourage late night shopping and amenities that will help promote it, including effective advertising and provision of street entertainment.
- Upgrade the quality of pedestrian streets within the centre, restricting on-street car parking and undertaking environmental improvements.
- Incorporate public art and high quality urban design, street furniture and landscaping, etc., into newly pedestrianised areas.

- Focus on providing a safe and clean pedestrian street environment at all times throughout the day and evening.
- The local authorities will consider implementing free controlled parking schemes for parts of the day (particularly on weekday afternoons).
- Seek to establish town centre partnership including Local Authorities, Retailers, Commercial Interests and Residents to progress town centre initiatives, proactively manage the town centre and consider diversified funding mechanisms for town centre improvement.
- Establish a working group to encourage, facilitate and simplify positive re-development initiatives in the traditional urban core (both small and large scale) and explore and disincentives to town centre development, and vacancy.

### **5.3. Natural Heritage Designations**

5.3.1. The following Natura 2000 sites are located in the general vicinity of the proposed development site:

- The River Barrow and River Nore Special Area of Conservation (Site Code: 002162), approximately 750m west of the application site.

### **5.4. EIA Screening**

5.4.1. Having regard to the nature and scale of the development proposed, the site location outside of any protected site and the nature of the receiving environment, the limited ecological value of the lands in question, the availability of public services, and the separation distance from the nearest sensitive location, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

#### 6.1.1. *Thomas Thompson Holdings Limited (First Party v. Decision):*

- The subject application, as initially lodged with the Planning Authority, sought permission to develop ‘1 No. retail comparison unit to be partially subdivided to serve 2 No. retail comparison concessions’, however, in response to requests for further information and subsequent clarification (and informal discussions with the Council which indicated that given the nature of the lands within an established retail park, only bulky goods would be considered notwithstanding the land use zoning as town centre and the associated retail policies relevant to town centre development), the use of half of the unit was amended to provide for 1 No. comparison use and 1 No. bulky goods use. Permission was subsequently granted for the development as amended, however, it has since been confirmed that Homesense is not in a position to operate under a bulky goods use class (as confirmed by the Board’s previous determination of ABP Ref. No. PL24.234298 at Butlerstown Retail Park, Co. Waterford) and thus will not operate under the permission as granted. Homesense which, in addition to bulky items, includes a substantial range of non-bulky comparison goods, has previously been deemed by the Board as comprising a predominantly comparison use and as such the precedent has been set that it should operate under a retail comparison goods use class. Indeed, the permitted development whereby half the unit is bulky goods, half comparison, would not be suitable going forward for any party and thus the Board is requested to grant permission for the use as originally sought i.e. 1 No. retail comparison unit to be subdivided into 2 No. comparison concession uses.
- Notwithstanding the view of the Planning Authority that the site in question forms part of a retail warehouse park and as such only bulky goods can be permitted, it is submitted that a retail comparison use fully accords with the applicable town centre land use zoning where such uses are permitted in principle within the defined retail core of the town as set out in the Retail



Strategy. This has been confirmed by the decision of the Planning Authority to grant permission for a retail comparison use within half of the permitted unit. In the event the Board decides to grant permission as approved by the Planning Authority for a partial bulky goods use, the intended end-users of TK Maxx and Homesense will not locate in Carlow as there are no other sites available for the proposed development.

- The subject site comprises vacant and underutilised lands left over from the development of the Carlow Retail Park. It amounts to a serviced brownfield site within the retail core of Carlow town centre which is readily accessible and available for development. The development of such lands finds support in the Joint Spatial Plan for the Greater Carlow and Graiguecullen Urban Area.
- The provision of 1 No. retail comparison unit accords with the objectives for Carlow town as set out in national and regional planning policy. It accords with the aims and objectives of the National Planning Framework as the proposal involves the development of zoned and serviced lands within Carlow town centre whilst the Draft Regional Spatial & Economic Strategy for the Southern Region identifies Carlow as a key town and an important generator of economic activity. Of crucial importance is the economic viability and vitality of Carlow and its ability to act as a self-sustaining regional driver. Since the previous application on site, there has been very little retail development in Carlow with no significant increase in the vitality or viability of the retail function of the town given that there has been no notable investment in any new retail developments, no enhancement of the retail environment and no new offerings or choices in the retail comparison offer. Therefore, to fulfil Carlow's role as a regional driver of growth, it is necessary to support new retail developments in order to broaden its retail and services base which will in turn attract further investment in the town. Indeed, a strong retail environment encourages synergistic uses with increased variety and choice enhancing the attractiveness of the town as a destination. The operation of the proposed unit by TK Maxx and Homesense will not only enhance the environment of this underutilised and brownfield site but will also enhance the retail environment of the town through increased choice etc. thereby

increasing vitality through the retention and attraction of patrons to Carlow town whilst it will also reduce existing levels of leakage to surrounding towns.

- Carlow has experienced minimal retail growth in the last 8-10 No. years whilst there has also been a minimal increase in the vitality and vibrancy of the town as no new attractions for residents or visitors have been provided within the retail sector. The '*Retail Planning, Guidelines for Planning Authorities*' state that future retail development should be plan-led and, therefore, given Carlow's role in a sub-regional context, it is of the utmost importance to reinforce its position within the settlement and retail hierarchy. The Guidelines further define the 'Retail Area' as that part of the town centre primarily devoted to shopping and which is identified in the settlement hierarchy of a Development Plan. These definitions have informed the designation of the retail core of Carlow town as set out in the Joint Spatial Plan for the Greater Carlow and Graiguecullen Urban Area.
- The Guidelines state that the preferred location for new retail development is within city and town centres and in this respect the subject site is located within the defined retail core of Carlow town centre. Accordingly, the assertion by the case planner that the site is edge of centre and distant from the traditional town centre is unfair given that the retail core of Carlow has expanded to incorporate a much larger area, including both the Hanover Retail Park and the Fairgreen Shopping Centre, with the Development Plan expressly acknowledging that the town centre has experienced a geographical shift.
- The traditional town centre is not appropriate for the contemporary comparison retail formats now required by end-users. The traditional corner store is not of a sufficient scale or size for any retail comparison user and is more appropriate for mix of uses such as cafes & restaurants etc. This has been recognised in the Retail Planning Guidelines which notes that development plans must identify sites which can accommodate the needs of modern retail formats in a way that maintains the essential character of the shopping areas.

- The County Retail Strategy and the Retail Strategy set out in the Joint Spatial Plan for the Greater Carlow and Graiguecullen Urban Area both require retail development to be directed firstly to within the defined retail core and then to the remainder of the town. The subject site is located within the defined retail core and therefore accords with the retail strategy. A comprehensive sequential test was submitted which confirms that there are no other alternative viable sites within the town centre and the subject lands represent the optimum location for a town centre development. Therefore, the subject proposal fully complies with the retail strategies for Carlow.
- The zoning of the subject site for town centre development is the primary planning consideration and not the location of the lands within an established retail park. The lands are not zoned for retail warehousing and any attempt to restrict their development to that use class would be contrary to the adopted land use zoning. Accordingly, the proposed development does not materially contravene the Development Plan whilst the town centre zoning allows permission to be granted for 1 No. retail unit comprising 2 No. comparison retail concession uses.
- Other town centre uses have previously been considered appropriate within the Carlow Retail Park, for example, PA Ref. Nos. 09/6292 (comparison retail) & 03/5226 (a drive-through restaurant) and, therefore, a significant precedent has been set whereby the proposed development would also involve the suitable use of this town centre site.
- Planning policy does not preclude the development of edge-of-centre locations provided it has been demonstrated that there are no available sites within the town centre. The sequential test provided with the application has established that there are no suitable sites or units available for the proposed development within the traditional town centre of Carlow.
- With regard to the suggestion by the Planning Authority that the proposed development could be split into 2 No. units within the town, this is not a viable option for the end-user who requires 1 No. retail unit with 2 No. comparison uses to be operated together under one group with the servicing of the units by one operator. There is no possibility of amending the floor plate or

segregating the development to provide for two separate units in two different locations in the town.

- Notwithstanding the site location with the retail core of Carlow town centre, cognisance should also be taken of the close proximity of the bus park and Barrack Street. In addition, Hanover Road includes several signalised crossing points which ensures good pedestrian connectivity and this will be further enhanced under the provisions of the 'My Carlow' regeneration plan which envisages improved links between Barrack Street and the Fairgreen shopping area.
- The Carlow County Retail Strategy states that the core retail area should form the primary focus and preferred location for new retail development. It does not state that such development should only occur within the traditional core of the town. The traditional town centre can provide other additional supporting uses such as cafés, restaurants and other services that do not require the floorplate sought by retailers.
- The proposed development will not undermine the established role of the retail park. Furthermore, it will not set an undesirable precedent for other retail parks in the town given that those locations are zoned for retail warehousing where retail / shopping uses are not permitted.
- The subject proposal will not result in a strong counter attraction to the town centre nor will it adversely impact on the vitality or viability of same. The proposed development provides the opportunity to promote economic regeneration through the creation of employment, increased choice for consumers within the core retail area, and will also address leakage to neighbouring counties.
- The proposed development is materially different to that refused by the Board under ABP Ref. No. PL42.240640 whilst the policies and objectives pertaining to the subject lands have also changed over the intervening years. In effect, the subject proposal has overcome the previous reasons for refusal as follows:
  - The nature and extent of the current proposal is materially different to that refused under ABP Ref. No. PL42.240640 in that it comprises a

single smaller comparison unit that will be subdivided to accommodate TK Maxx and Homesense.

- The subject site is located in the town centre with recent planning policy having acknowledged the expansion of same whilst it has also been accepted that the traditional town centre is no longer restricted to just the traditional streets but rather encompasses new retail developments such as Carlow Retail Park.
  - There are significant pedestrian linkages to the town centre ensuring connectivity between the subject lands and the town – these linkages have been clearly demonstrated within the supporting documentation. Walking distances are less than 10 minutes to the opposite end of the retail core of the town centre.
  - The current Carlow County Retail Strategy and the Joint Spatial Plan for the Greater Carlow and Graiguecullen Urban Area supersede the previous policy provisions with the result that the application site is now within the core retail area of the town centre where current policy seeks to direct retail development.
  - The proposed development will not have a detrimental impact on the viability or vitality of the town centre. Instead, it will increase the vitality and viability of the town by providing a new retail offering that will counteract leakage to surrounding towns.
- The Retail Impact Assessment provided with the application confirms that there is significant available expenditure within the catchment to accommodate the proposed development. In addition, in response to the request by the Planning Authority to include vacancy rates within the RIA, an addendum detailing same is included in Appendix B of the grounds of appeal.
  - The only opposition to the proposed development has been from the Fairgreen Shopping Centre which seeks to avoid competition. Otherwise, there has been general enthusiasm from traders in Tullow Street and Dublin Street as outlined in the accompanying submission from the Chamber of Commerce.

### 6.1.2. *Fairgreen Shopping Centre (Carlow) Limited (Third Party v. Decision):*

- The proposed development involves the construction of 3,798m<sup>2</sup> of retail floorspace for the sale of non-bulky comparison goods as opposed to encompassing a comparison retailer (TK Maxx) and a bulky goods retailer (Homesense). There has been an attempt to retro-fit these retailers within an established retail warehouse park by putting forward the argument that a significant proportion of the floorspace will be for the sale of bulky goods. This has implications as regards the proposal's conformity with planning policy in addition to potential impacts on the vitality and viability of the traditional retail core of Carlow town.
- The assertion that 'Homesense' trades as a bulky goods retailer (by reference to the definition of 'bulky goods' set out in Annex 1 of the 'Retail Planning, Guidelines for Planning Authorities, 2012') is rejected. The vast majority of products available for sale within a 'Homesense' store (e.g. cushions, bed linen, cookware, crockery, photo albums, stationary, beauty products, and candles etc.) can be purchased on the day and taken away in a plastic bag on foot or by bicycle or bus. The size of these items means that they are portable and do not require a car to transport them. Although a typical 'Homesense' store will offer a limited line of occasional furniture within display areas amounting to c. 10% of the overall floorspace, this is the only evidence of bulky goods within the product line and is clearly ancillary to the mainstay i.e. non-bulky comparison goods.

Furthermore, the 'Homesense' website describes itself as an off-price retailer which offers goods at a significantly discounted price when compared to a department store or a shop on the high street. Therefore, given its product line, it is clear that 'Homesense' is a retailer which would be expected to trade on the high street or within a department store in a town centre. By consequence, it is apparent that 'Homesense' is not a bulky goods retailer.

- TK Maxx is primarily a discount fashion retailer which also sells accessories and a limited quantum of homeware, gifts and toys and thus it falls within the definition of comparison retailing as set out in Annex 1 of the of the 'Retail

Planning, Guidelines for Planning Authorities, 2012'. Notably, the Guidelines state that:

*'The centres of cities and towns are the most suitable locations for the higher order fashion and comparison goods and are the most accessible locations for the majority of the catchment population. They should be supported in maintaining and expanding their retail offer to serve that population in a sustainable way which will also help to reduce the need to travel'.*

Therefore, the optimum location for such a comparison retailer is within a town or city centre as opposed to an edge of centre or out of centre location. Only in instances where the applicant can demonstrate that there are no sites within a city, town or designated district centre should an edge-of-centre location be considered.

- The departure by the Acting Director of Services from the recommendation of the case planner(s) to refuse permission is somewhat irregular and the grounds for same are considered to be tenuous. In this regard, the reasons for superseding the recommendation of the case planner can be rebutted as follows:

- *The zoning of the site as 'Town Centre':*

Whilst it is acknowledged that the site is located within the retail core of the town centre as identified in the Joint Spatial Plan for the Greater Carlow Graiguecullen Urban Area (JSP), 2012-2018, land use zoning is only one of a number of issues to be taken into consideration in the decision-making process. Other matters would include the provisions of the Development Plan and any relevant policy of the Government or the Minister e.g. the *'Retail Planning, Guidelines for Planning Authorities'*.

It must also be noted that the application site is recognised as a retail warehouse park in the Carlow County Retail Strategy, 2015-2021 whilst the Retail Strategy for the JSP states that *'It is the policy of the Council to restrict retail warehouse developments to the sale of bulky comparison goods, and ensure they are of an appropriate scale'*. The *'Retail Planning, Guidelines for Planning Authorities'* have

acknowledged the pressure to blur the lines between the definition of those goods which may be sold from within retail warehouse parks and Carlow has to date been relatively successful in protecting its town centre from inappropriate out of centre and edge of centre retail development. Notably, Condition No. 7 of the parent permission (PA Ref. No. PD 5041) for the Carlow / Hanover Retail Park limits the use of its premises to the sale of bulky household goods such as carpets, furniture and white electrical goods, and whilst subsequent permissions have allowed other uses within the retail park, it is considered that incremental changes to the nature of retailing within such retail warehouse parks threaten the vitality and viability of Carlow town centre (with the subject proposal representing a credible risk).

Whilst the application site is identified as being within the town centre, it is nonetheless an edge-of-centre site.

- *Development of a vacant site:*

Although Objective CT P3 of the Joint Spatial Plan for the Greater Carlow Graiguecullen Urban Area, 2012-2018 actively promotes the redevelopment of brownfield sites and under-used lands, particularly within the town centre, this is subject to the development being '*appropriate*' and '*environmental considerations and wider planning considerations*'.

Neither TK Maxx nor Homesense are appropriate end-users for the application site given the nature of their retail offering. Furthermore, this is an edge-of-centre location as opposed to a town centre site. The policy thrust of Objective CT P3 is to encourage regeneration within the traditional core of the town centre (i.e. Tullow Street and Dublin Street').

The subject lands do not constitute an infill, backland or brownfield site. In any event, the Local Authority has the power under the Derelict Sites Act, 1990 to address any site that detracts or is likely to detract, to a material degree, from the amenity, character or appearance of land in



the area because of the neglected, unsightly or objectionable condition of the site or any structures upon it.

- *Previous planning history:*

Notwithstanding that permission was previously granted for 2 No. retail warehouse units on the subject site and that approval was subsequently given for a change of use to open retail use, the subject proposal represents unsustainable development at an unsuitable location which is representative of the continued pressure to blur the nature of goods sold from within retail warehouse parks. The proposed development offends Policy ECN P11 of the JSP to not undermine or erode the vitality or vibrancy of Carlow town centre.

The proposal is also contrary to Policy ECN P12 of the JSP in that it will create a retailing destination in its own right thereby undermining the primacy of the town centre.

- *The site is located within the Retail Core Area:*

(The Board is referred to the foregoing commentary).

- *There are no sites or potential sites, including vacant units, within the Core Retail Area and Edge of Town Centre that are suitable, available or viable for the nature of the retail type proposed:*

Notwithstanding the sequential test submitted, the applicant has illustrated an unwillingness to amend the retail format of the development and thus has discounted alternative sites / options open to it. The *'Retail Planning, Guidelines for Planning Authorities'* are clear in stating that retailers should be more flexible in their design solutions and should be prepared to make compromises and to investigate alternative options.

Homesense and TK Maxx stores operate in stand-alone formats in other locations in Ireland and the UK. Therefore, it is not an impossibility for the proposed development to be disaggregated.

Furthermore, the Retail Strategy of the County Development Plan, 2015 prioritises 7 No. opportunity sites as locations to accommodate

future retail development within and adjacent to the retail core of the town centre. The Carlow Retail Park is not included within these prioritised sites.

In addition, the 'My Carlow' plan published in 2019 is representative of the Local Authority's most recent thinking on how the town should grow and develop. The subject site is not identified as an opportunity site in that plan which is indicative that there are other more attractive and suitable locations for retail development.

- *Connectivity:*

Although the site is within the Retail Core Area of the town centre as shown in the JSP, it is nevertheless peripheral to the traditional town centre. Indeed, the site can be considered to be edge-of-centre as per the definition provided in the Retail Planning Guidelines.

In determining whether a site is 'edge-of-centre', consideration should be given to the local circumstances. The classification of an edge-of-centre site depends not only on the distance from the core of the town centre, but also on the ease and quality of the visual and pedestrian connectivity to the retail core.

The County Retail Strategy, 2015 states that *'Tullow Street and Dublin Street form the original street grid of Carlow and their intersection represents the very core of the traditional town centre'*. The subject site is located in the southernmost extent of the lands identified as the retail core which protrudes from an otherwise compact town centre boundary. This somewhat unnatural extension of the town centre / retail core zoning comprises land which is bounded by the River Burrin, the Inner Relief Road and residential development.

There is a lack of connectivity between the application site and the traditional town centre with the route linking same posing some challenges to pedestrians in having to negotiate busy roads and junctions. Accordingly, it is highly unlikely that trips to the site will be made on foot from the traditional core.

Current travel habits to the Carlow Retail Park are almost exclusively made by car and thus it could be held to constitute a destination in its own right given its outlying fringe location. By consequence, it is unlikely that there will be commercial synergy between the subject proposal and the core of the town or that the location will engender linked trips to the core of the town centre. Therefore, it is submitted that retailers such as TK Maxx and Homesense would be better placed at an alternative site within or in closer proximity of the traditional town centre in order to allow for commercial synergies.

Having regard to the '*A Framework for Town Centre Renewal*' as referenced by the Acting Director of Services, it is observed that the route between Fairgreen and the subject site via Bridge Street (or from Barrack Street via Hanover Street) is not a significant pedestrian route in terms of the hierarchy of streets. The A/DoS has also stated that the proposed development site is located in the vicinity of the bus park, despite this being some 550m-600m away by foot.

A pedestrian trip from the Fairgreen Shopping Centre and Carlow Retail Park is not one that has been established by existing shoppers, due partly to the fact that the retail offer is distinctly different at both locations. The subject site is inconveniently located and any pedestrians will have to navigate a heavily trafficked route that includes the Burrin Road Roundabout, a bridge over the River Burrin, and the Hanover Road Roundabout. It does not represent the most pleasant or safest walking environment whilst the River Burrin itself acts as a barrier dissecting Carlow town.

While the intention of the Local Authority to improve pedestrian connectivity between the Fairgreen Shopping Centre and the traditional retail core of the town via Barrack Street is to be welcomed, any such link will do little to support pedestrian connectivity with Carlow Retail Park.

In summary, the application site is disconnected and removed from the traditional town centre core and the subject proposal will not create a

connected customer experience with the Core Retail Area. Therefore, the development proposed will not enhance the town overall or contribute to its vitality or viability. If approved, the proposal will act as a destination in its own right, isolated from the town centre.

- *The proposed design compliments and has regard to the type of development already constructed on site:*

The design of the construction is not in itself a justification for approval when the end use is undesirable given the potential negative impact on the traditional core shopping area of Carlow town.

- *Economic regeneration, creation of employment opportunities:*

The same economic benefits through job creation could be enjoyed if the proposal had been disaggregated within the traditional retail core.

A more sustainable approach would be to increase the critical mass of such comparison retailers by locating them among their counterparts on the high street and within the traditional town centre thereby fostering linked shopping trips and commercial synergy etc.

- *No objections from internal departments of Carlow County Council:*

The absence of any objection from internal departments does not justify or support a recommendation to grant permission, particularly when there are valid planning concerns which have not been addressed.

- *Condition No. 2(c): Prior to commencement of development, a revised floor plan shall be submitted for Unit No. 2 clearly identifying 20% of the total net retail floorspace which shall be dedicated to ancillary items associated with an otherwise bulky good e.g. computer software, printing papers etc.*

In the knowledge that Homesense is the end user for this unit, it is clear from the product line and range of goods sold in existing Homesense stores, which have illustrated a generic floor plan layout and store fit-out, that it is impossible for the applicant to delineate non-bulky goods equating to less than 20% of the net floor area. The vast majority of goods sold from Homesense are non-bulky i.e. it is a comparison retailer with a limited line of

occasional furniture. Accordingly, Homesense cannot comply with the aforementioned condition.

Section 4 of the '*Retail Planning, Guidelines for Planning Authorities*' states the following:

*'While it is acknowledged that there are ancillary items associated with an otherwise bulky good, e.g. computer software, printing paper, it is recommended that the net retail floorspace devoted to such ancillary products should not exceed 20% of the total net retail floorspace of the relevant retail unit and such space to be clearly delineated on the planning application drawings to facilitate future monitoring'.*

The applicant was already afforded the opportunity to submit amended plans by way of a request for further information and failed to do so. Therefore, the appropriate response would have been to refuse permission rather than to approve the proposal subject to a condition that cannot be complied with.

The proposal thus offends Policy ECN P14 of the JSP in that it proposes retail warehousing units for the sale of non-bulky comparison goods.

## **6.2. First Party Response to Third Party Appeal**

- It is reiterated that there has been no significant investment within the retail sector of Carlow town centre in recent years and, therefore, no notable increase in the vitality or viability of the town. Accordingly, it is necessary to support new retail developments in order to broaden Carlow's retail and services base thereby providing for greater synergy between uses which will in turn serve to increase patronage to the town.
- The only opposition to the proposed development is from the Fairgreen Shopping Centre which is primarily anti-competitive and intended to protect alternative establishments and / or development sites from a competing proposal.
- For the purposes of clarity, permission was originally sought for 1 No. comparison retail unit to be subdivided into 2 No. comparison concession uses. The provision of such a unit was thus shown to fully conform with

planning policy and the application was supported by a retail impact assessment which demonstrated that there was more than sufficient capacity within Carlow to accommodate the proposed development and that it would not adversely impact on the viability of the traditional core of the town centre. However, the proposal was subsequently amended in response to requests for further information and clarification (in line with discussions with the Council) to provide for 1 No. comparison use and 1 No. bulky goods use on the basis that the Planning Authority had indicated that given the nature of the lands within an established retail park, only bulky goods would be considered notwithstanding the zoning of the site as town centre and the associated retail policies in support of town centre development.

Planning permission was ultimately granted for 1 No. retail unit to be subdivided into 1 No. comparison use and 1 No. bulky goods use, however, it has since been confirmed that Homesense is not in a position to operate under a bulky goods use class. Therefore, the first party appeal seeks to obtain permission for 1 No. retail comparison unit to be subdivided into 2 No. comparison concession uses as originally proposed.

- The suggestion that the subject site is not an appropriate location for the 1 No. comparison retail unit proposed is rejected. The lands are zoned as 'town centre' and are within the defined retail core as set out in the Carlow County Retail Strategy and the Joint Spatial Plan for the Greater Carlow Graiguecullen Urban Area, 2012 where a retail use is permitted in principle. Moreover, in granting permission for a retail comparison use within half of the proposed unit, the Planning Authority has acknowledged that such a use is appropriate at this location and accords with the relevant planning policies.
- Retail use on edge-of-centre sites can be accommodated provided it has been clearly demonstrated that alternative town centre sites are not appropriate for the nature of the development proposed. The subject application was accompanied by a comprehensive sequential test which established that there are no other town centre sites available or suitable for the proposed development. Therefore, the subject site is an optimum location within the core retail area of Carlow town centre and complies with the Retail Planning Guidelines.

- A full rebuttal of the case planner's recommendation to refuse permission is set out in the first party grounds of appeal.
- The application site is zoned for town centre development and is also within the defined retail core of Carlow town. Whilst the appellants have asserted that the lands in question comprise a 'Retail Warehouse Park', this does not override the retail hierarchy set out in the retail strategies nor does it supersede the land use zoning or prevent the development of the site for anything other than retail warehousing. Indeed, the County Retail Strategy merely identifies Hanover Retail Park as an existing retail park, it does not state that its future redevelopment will be forever limited to retail warehousing or the sale of bulky goods. Furthermore, a precedent has been set within the existing retail park for comparison uses whilst the Council previously considered a convenience and comparison superstore as complying with the town centre land use zoning.
- There are multiple planning precedents whereby established structures, which were permitted for a certain type of development, have been rezoned and permission granted for alternative developments. In those cases, the principle consideration was whether the proposal complied with the zoning objective and not if it accorded with the planning history or established use of the lands. In the subject instance, the primary consideration is that the proposed comparison retail use accords with the town centre land use zoning and is permitted in principle.
- The suggestion that those instances of permission having been granted for comparison uses within the existing retail park have adversely affected the vitality and viability of the town centre is rejected. There has been no significant investment within the retail sector of Carlow town in recent years which has resulted in leakage to other centres such as Newbridge & Kildare etc. for comparison shopping purposes. The proposed development aims to prevent this leakage and to increase expenditure within Carlow town through a greater retail offering.
- The subject proposal will not have any adverse impact on the environment as demonstrated by the Natura Impact Statement. Furthermore, there are no

environmental or wider planning issues such as traffic, water services etc. that would prevent the development of this brownfield infill site.

- The description of the subject lands as 'derelict' is rejected. The site in question is serviced and readily available for development and accords with Objective CTP3 which aims to regenerate valuable zoned and serviced lands within the town centre.
- Policy ENCN P11 of the Joint Spatial Plan fully supports the development of the subject lands for retail purposes by reference to the site location within the retail core of the town centre.
- In response to the suggestion that the end-users were not prepared to investigate alternative options and demonstrated an inflexibility to compromise or amend the retail format, the Board is advised that the TJX Group completed a full assessment of Carlow town, including prospective locations and the feasibility and commercial reality of trading within the town.

The argument that the proposed unit could be subdivided would not cause an appropriate site to become available within Dublin Street / Tullow Street as the traditional plot sizes and the need to acquire and demolish multiple vacant units is simply not feasible for any high street comparison retailer. Whilst TK Maxx and Homesense can feasibly operate independently, in the subject instance it is necessary for the users to trade together in order to get the economic benefit of a larger unit.

- Although Carlow Retail Park is not identified as an opportunity site (in reference to the 'My Carlow' plan), this does not preclude its development.
- The repeated references to the subject site as being peripheral to the town centre are out of context and have only been applied to the traditional town core. This is unfair given that the town centre has clearly expanded with the Acting Director of Services noting that the traditional core retail area has grown to include the Fairgreen Shopping Centre and the Carlow Retail Park.
- The subject site does not represent an unnatural extension of the town as the surrounding lands have been zoned for development.



- There is already good pedestrian connectivity between the subject site and the traditional town core. This will be further enhanced through the provisions of the 'My Carlow' regeneration plan within which there is a commitment to provide a link between Barrack Street and the Fairgreen area.
- The submitted design accords with the 'Retail Planning, Guidelines for Planning Authorities'.
- The demolition of a number of traditional blocks to accommodate a single unit would be contrary to the protection of the traditional town centre. Furthermore, there will be no further job creation should the proposed development be refused permission as the end-users have completed a sequential test and will not locate elsewhere.

### 6.3. Third Party Response to First Party Appeal

- Whilst the description of the proposed development refers to 1 No. retail comparison unit to be subdivided to serve 2 No. retail concession uses, the application was presented as comprising a retail comparison use (TK Maxx) and a retail warehouse bulky goods use ('Homesense') and thus was assessed accordingly. Notably, following discussions with the Local Authority, the applicant sought to stress thereafter that Homesense was a bulky goods retailer.

The report of the Acting Director of Services clearly refers to Homesense as a retail warehouse / bulky goods retailer and specifically requests the inclusion of conditions to address matters which include *'the retail floorspace devoted to ancillary products associated with bulky goods should not exceed 20% of the total net retail floorspace of the relevant retail unit'*. Therefore, the imposition of Condition No. 2 illustrates the understanding by the Planning Authority that the proposal was for a single building to be occupied by a comparison retailer alongside a bulky goods retailer (as had been presented by the applicant).

- A key principle of the appeal process is that any appeal should relate to the same proposal as that which was considered by the Planning Authority. Where an applicant is of the opinion that it would be beneficial to revise a proposal, a new planning application should be submitted – not to the

appellant body but rather to the planning authority. While there is no statutory provision governing the amendment of a planning application at appeal stage and thus it is matter for the discretion of the Board, in light of relevant case law (*British Telecommunications PLC v. Gloucester City Council 2001*), consideration should be given to the following:

- Whether an amendment would alter the substance of the development applied for;
- Whether third parties or those who would have been consulted on the altered development would be deprived of such consultation; and
- Whether any prejudice is caused.

The change in the nature of the application sought by the applicant at this stage (through the omission of the bulky goods retail use and the provision of 2 No. comparison retail concession uses within a single unit) is substantially different from the development as originally proposed in terms of how the retail space will be utilised. The 'Retail Planning, Guidelines for Planning Authorities, 2012' make a clear distinction between comparison goods and bulky goods and, therefore, the change sought by the applicant at this stage cannot be considered inconsequential and clearly alters the substance of the development applied for. By deciding this appeal on the basis of the substantially altered development, interested parties would be prejudiced through the denial of an opportunity to comment on same.

- With regard to the submission by Carlow Chamber of Commerce (provided with the third party grounds of appeal), it is incorrect to state that there has been '*general enthusiasm from traders in Tullow Street and Dublin Street for the proposed development*'. The submission actually states that the Chamber is '*concerned however that the development and enhancement of the retail offering in the Carlow Retail Park while bringing benefits to the retail environment in the town, will unfortunately have a negative effect on the existing retail areas of Dublin Street and Lower Tullow Street*'.
- The wider public should be given the opportunity to comment on the altered proposal, with particular reference to traders within the traditional town centre

when there is a general consensus that the proposal will have a negative impact.

- Best practice transparency and fairness would support the premise that a planning appeal should be made on the basis of the proposal previously considered by the Planning Authority. The appropriate course of action for the substantially altered proposal now sought by the applicant would be to submit a new application for consideration by the Planning Authority.
- It is not accepted that the applicant was unaware that Homesense could not trade as a bulky goods retail warehouse operation.
- The reason for the inclusion of Condition No. 2 is *'to regulate the use of the development in the interests of protecting the vitality and viability of the traditional town centre'* and part (c) of the condition was specifically included on the instruction of the Acting Director of Services.

Condition No. 2(c) requires the submission of a revised floor plan for Unit No. 2 which identifies 20% of the net retail floorspace for the sale of ancillary items associated with an otherwise bulky good e.g. computer software, printing paper etc. Its inclusion was considered reasonable in order to clarify the scope of the development permitted and was also deemed necessary as permission would not otherwise have been granted. This condition was also necessary to regulate the use of the development in the interests of protecting the vitality and viability of the traditional town centre.

- The subject proposal represents an attempt not only to erode the bulky goods use over time within Carlow Retail Park but to undermine the comparison retail offer of the traditional retail core of Carlow town. It would set an undesirable precedent for change of use applications in the existing retail warehouse units within the retail park.
- The suggestion that the decision to grant permission for 1 No. comparison concession is an open endorsement for a subsequent grant of permission is a considerable assumption. The proposal represents 3,798m<sup>2</sup> of comparison retail floorspace at a site which is distinctly separate and removed from the traditional comparison retail offer of the town. Notwithstanding its designation as town centre and inclusion within the 'retail core', the site remains separate

from the rest of the town. It forms the most southerly part of the town centre, an edge of centre site, which protrudes from the compact traditional core, and is not encompassed within the traditional shopping area of Carlow town.

- The application site is predominantly visited by car given the bulky goods nature of the retail park. The proposal is therefore premature given the lack of connectivity between the site and the traditional retail core of the town. While the 'My Carlow' regeneration plan represents the Council's current thinking on how the town should develop, it envisages pedestrian linkages between the traditional core and the Fairgreen Shopping Centre which may never come to fruition. It has been noted that a new plan is to be developed but there is neither a timescale nor information on public consultation etc. available in respect of same. In terms of the hierarchy of streets, the routes to the subject site for pedestrians do not carry any significant flows.
- There is little prospect of linked trips between a TK Maxx and Homesense store and the existing retail units in the Carlow Retail Park. Trips to the existing retail warehousing are predominantly by car and this behaviour is set to continue should the subject proposal go ahead given its peripheral location. The product line, particularly in relation to TK Maxx – designer labels at reduced prices, causes shoppers to make a trip solely to a TK Maxx store for the prospect of securing a bargain with the result that linked trips to similar comparison stores are unlikely given that the store is surrounded by bulky goods uses and is located off an inner relief road which can easily see customers travel to / from the town without having to navigate the traditional town centre or retail core. In contrast, clustering comparison uses within a town centre makes commercial sense, engenders vibrancy, increases critical mass and creates a compact urban core. Therefore, the subject site is not the optimum location for the proposed development.
- Contrary to the applicant's claims, there have been a number of new entrants to the comparison retail market since the previous planning application on site (e.g. Easons, Villa, Vera Moda, Only & JD Sports within the Fairgreen Shopping Centre). In addition, permission has recently been granted under PA Ref. No. 19/198 for an additional 3,732m<sup>2</sup> of retail floorspace (Phase 3) at the Fairgreen Shopping Centre.

- Phase 3 of the Fairgreen Shopping Centre and other sites have been discounted by the applicant and should be considered as alternatives under the sequential test.
- Each of the concession uses proposed could plausibly operate independent of each other in standalone / separate stores. This is currently the case for all TK Maxx and Homesense stores in Ireland. Therefore, it is submitted that the applicant has not illustrated flexibility on design and retail formats in this instance nor has it exhausted all alternative store options open to it. In this respect, the proposal does not fully comply with the requirements of the sequential test when it is clearly possible to segregate the uses into separate stores.
- The proposed development would have an adverse impact on the traditional retail core of Carlow town, would set an undesirable precedent as regards eroding the bulky goods retail offer of Carlow Retail Park, and would act as a retail destination in its own right.
- The notification of the decision to grant permission is not fit for purpose and Condition No. 2(c) cannot be complied with. Accordingly, permission should be refused.

#### 6.4. **Planning Authority Response**

6.4.1. No further comments.

#### 6.5. **Observations**

None.

### 7.0 **Assessment**

7.1. From my reading of the file, inspection of the site and assessment of the relevant local, regional and national policies, I conclude that the key issues raised by the appeals are:

- The nature of the proposed development

- The principle of the proposed development
- Retail impact assessment / impact on the town centre
- Traffic implications
- Flood risk assessment
- Appropriate assessment

These are assessed as follows:

## 7.2. The Nature of the Proposed Development:

- 7.2.1. In assessing the merits of the subject proposal, and in light of the issues raised in both the first and third party appeals, it is of the utmost importance at the outset to clarify the precise nature of the development under consideration. In this respect, I would advise the Board that the proposed development, as initially lodged with the Planning Authority, provided for the construction of 1 No. retail (comparison) store that was to be subdivided into 2 No. retail concession uses with 'TK Maxx' & 'Homesense' identified as the end-users. Notably, at this stage of the planning process, it was asserted by the applicant that both of the concession end-uses would entail the sale of comparison goods as defined in Annex 1 of the *'Retail Planning, Guidelines for Planning Authorities, 2012'* (e.g. clothing and footwear; furniture, furnishings and household equipment (excluding non-durable household goods); medical and pharmaceutical products, therapeutic appliances and equipment; educational and recreation equipment and accessories; books, newspapers and magazines; goods for personal care; & bulky goods).
- 7.2.2. However, in response to a request for further information, the nature of the proposed development was subsequently amended whereby the subdivision of the new store was altered to provide for two distinct use classes comprising 1 No. comparison concession use (floor area: 1,900m<sup>2</sup>) and 1 No. (retail) warehouse / bulky goods use (floor area: 1,898m<sup>2</sup>) to be occupied by 'TK Maxx' & 'Homesense' respectively. In support of the foregoing, it was submitted that the retail offering and the range of products sold by 'Homesense' (i.e. household products and homeware, furniture etc.) accorded with the definition of 'bulky goods' as set out in the *'Retail Planning, Guidelines for Planning Authorities'*.

7.2.3. In its decision to grant permission, the Planning Authority thus approved the proposal as amended in response to the request for further information and sought to further clarify / regulate the use of the development '*in the interest of protecting the vitality and viability of the traditional town centre core*' through the imposition of Condition No. 2 as follows:

- a) *Use of Unit No. 1 shall be restricted to the retail sale of comparison goods as defined in Annex 1 of the Retail Planning, Guidelines for Planning Authorities issued by the Department of Environment, Community and Local Government in April 2012.*
- b) *Use of Unit No. 2 shall be restricted to the retail sale of bulky goods as defined in Annex 1 of the Retail Planning, Guidelines for Planning Authorities issued by the Department of Environment, Community and Local Government in April 2012 with the exception of floor area permitted for ancillary items as permitted in item no.(c) of this condition.*
- c) *Prior to the commencement of development, a revised floor plan shall be submitted for Unit No. 2 clearly identifying 20% of the total net retail floorspace which shall be dedicated to ancillary items associated with an otherwise bulky good, e.g. computer software, printing paper etc.*

7.2.4. However, within the first party grounds of appeal, the applicant has now confirmed that Homesense will not be in a position to trade under a solely 'bulky goods' use class on the basis that, in addition to bulky items, its retail offering includes a substantial range of non-bulky comparison goods whilst the Board has previously determined that its retail format comprises a predominantly comparison use (please refer to ABP Ref. No. PL24.234298 at Butlerstown Retail Park, Co. Waterford) and as such the precedent has been set that it should operate under a retail comparison goods use class. Accordingly, the applicant has requested the Board to grant permission for the proposed development as originally sought i.e. the construction of 1 No. retail comparison unit to be subdivided into 2 No. comparison concession uses.

7.2.5. With regard to that element of the proposed development which is to be occupied by TK Maxx as an end-user, there would appear to be no dispute between any of the parties concerned that the nature of the retailing activity carried out by TK Maxx

comprises a comparison retail use. Indeed, in its determination of ABP Ref. No. PL24.RL.2562 the Board has previously held that the retailing activity carried out by TK Maxx (which includes the sale of fashion clothing, footwear, sportswear, toys, jewellery, non-bulky household goods and goods for personal care or other goods which are included in the definition of “comparison” goods in Annex 1 of the ‘Retail Planning Guidelines for Planning Authorities’) does not come within the scope of the definition of activities of a retail warehouse. Therefore, given that there has been no notable change in the range of products sold by TK Maxx since that determination (as evidenced by the particulars of the retail offering set out in the submitted documentation i.e. the sale of assorted clothing, apparel, shoes, giftware & homeware etc.), I am satisfied that the intended use of Unit No. 1 will consist of the retail sale of comparison goods as defined by Annex 1 of the *‘Retail Planning, Guidelines for Planning Authorities’* and does not involve a retail activity involving the sale of bulky goods more commonly categorised as comprising a retail warehouse activity.

- 7.2.6. With respect to the intended end-use of Unit No. 2 and its occupation by ‘Homesense’ (a sister company of TK Maxx), within the first party grounds of appeal the applicant has reverted to its initial position whereby the format of retailing activity proposed is considered to be more akin to a ‘conventional’ comparison retail use as per Annex 1 of the guidance as opposed to a ‘bulky goods’ use class. In this regard, specific reference has been made to the precedent set by the Board’s previous determination of ABP Ref. No. PL24.234298 at Butlerstown Retail Park, Co. Waterford, wherein it was stated that the nature of the goods sought to be sold from a proposed ‘Homesense’ store included a substantial range of non-bulky comparison goods to the effect that it amounted to a retail comparison goods use class and thus would not accord with the definition of retail warehousing.
- 7.2.7. In my opinion, it is apparent from a review of the details provided with the initial application that the range of goods available for purchase within the proposed ‘Homesense’ store, which will include discount designer household products, homeware, furniture, and ancillary luxury items etc., can reasonably be categorised as predominantly comprising non-bulky comparison goods as defined by the *‘Retail Planning, Guidelines for Planning Authorities’*. Indeed, it is my wider understanding that the ‘Homesense’ format of retailing involves the sale of an assortment of



kitchenware, soft furnishings, bed linen, bathroom accessories, lighting, dining ware, and home decor products, in addition to some furniture items.

- 7.2.8. Therefore, on the basis of the foregoing, I am satisfied that each of the end-uses identified for the proposed development will predominantly entail the sale of non-bulky comparison goods as defined in Annex 1 of the '*Retail Planning, Guidelines for Planning Authorities, 2012*' and that the application should be assessed accordingly.

### 7.3. **The Principle of the Proposed Development:**

- 7.3.1. The proposed development site is located in an area zoned as '*Town Centre*' in the Joint Spatial Plan for the Greater Carlow Graiguecullen Urban Area, 2012-2018 with the stated land use zoning objective '*To protect the vitality and vibrancy of the town centre and provide for town centre activities*'. The purpose of this zoning is to protect and enhance the vitality and vibrancy of the town centre and to provide for and improve retailing, residential, commercial, office, cultural, tourism, public facilities, amenity and other uses appropriate to the centre of a developing urban core, although retail proposals are to be considered in the context of the Retail Strategy and resultant retail policies. More specifically, in accordance with the zoning matrix set out in Section 11: '*Land Use Zonings*' of the Joint Spatial Plan, the development of a 'shop' is considered to be normally acceptable within this land use zoning (subject to the normal planning process, including the policies and objectives outlined in the Plan).
- 7.3.2. In addition to the foregoing, it is of further relevance to note that the proposed development site is located within that area identified as the '*Retail Core*' of the town centre which comprises Tullow Street, Dublin Street, the Barrow Track, Kennedy Avenue, Plas na Saoirse, Barrack Street including Fairgreen, and the Hanover / Carlow Retail Park. This core retail area is placed at the top of the retail hierarchy within the Development Plan and is the preferred location for new retail development in order to protect and enhance the vitality and viability of the town centre. Following on from the Greater Carlow Graiguecullen Urban Area Retail Strategy, 2012-2018 included at Appendix 5 of the Joint Spatial Plan, the Carlow County Retail Strategy, 2015 (Appendix 4 of the Carlow County Development Plan, 2015-2021) further reiterates that the core retail area of Carlow Town is to form the primary focus and preferred location for new retail development.

7.3.3. Whilst I would acknowledge that the Hanover / Carlow Retail Park is referred to as a retail warehouse park in Section 5.2.25 of the County Retail Strategy and that the nature of the retailing activity proposed would not involve the sale of bulky household goods from a retail warehouse as defined in Annex 1 of the '*Retail Planning, Guidelines for Planning Authorities, 2012*', in my opinion, this reference does not in itself prohibit consideration of the subject proposal given the site location within the identified retail core of Carlow town centre where retail developments are encouraged to locate.

7.3.4. Therefore, in light of the foregoing, I am satisfied that the overall principle of the proposed development is acceptable, subject to the consideration of all other relevant planning issues, including retail impact assessment and the potential impact of the proposal on the vitality and viability of the town centre.

#### **7.4. Retail Impact Assessment / Impact on the Town Centre:**

##### *7.4.1. Demand for Development / Retail Capacity:*

In analysing the available retail capacity within Carlow town, at the outset, I would refer the Board to the Greater Carlow Graiguecullen Urban Area Retail Strategy, 2012-2018 (included at Appendix 5 of the Joint Spatial Plan for the Greater Carlow Graiguecullen Urban Area, 2012-2018) which was prepared as a joint / multi-authority retail strategy by Carlow County Council, Laois County Council & Carlow Town Council and is specific to the urban area which encompasses Carlow town. This document provides a broad capacity assessment as regards the future provision of retail floorspace within the urban area, however, it is of relevance to note that it was prepared in the context of the previous Carlow County Retail Strategy, 2009 and against the backdrop of national and international recession and significant changes in the retail industry (particularly internet retailing / online shopping trends). In recognition of the foregoing, the strategy therefore emphasises that '*providing certainty with regard to floorspace and expenditure projections and additional development requirements can become a precarious task, and one that should be approached with some caution*'. The strategy proceeds to consider the likely population trends and projections and notes that the population of the Greater Carlow Graiguecullen Urban Area as recorded in 2011 (i.e. 23,030 No. persons) had doubled in the space of 15 No. years, although it is acknowledged that the

catchment area of the town is not restricted to its immediate environs and extends into neighbouring counties and beyond. It subsequently analyses the estimated per capita expenditure figures and sets out the average per capita growth rates per annum for both convenience and comparison retailing activities before determining that it is prudent to assume that there has been no growth in per capita expenditure figures since the 2009 Retail Strategy given the prevailing macro-economic circumstances (i.e. the economic downturn).

- 7.4.2. Broadly speaking, the Greater Carlow Graiguecullen Urban Area Retail Strategy, 2012 notes that the study area experienced strong population growth over the preceding 15 No. years and that this was accompanied by a significant increase in retail floorspace. It was further noted that permission had been granted for a number of significant retail developments within the strategy area including the redevelopment of the Penny's site at Hanover (with a gross retail floor area of 26,071m<sup>2</sup>, including 13,492m<sup>2</sup> of net comparison retail floorspace) and a scheme proposed by Naus Developments at Barrow Track which included 10,981m<sup>2</sup> floorspace, including 5,827m<sup>2</sup> comparison, although I would advise the Board that neither of these developments has progressed. In terms of the potential for additional expenditure, it is stated that Carlow town faces considerable competition from other centres and that in light of its rank and role within the national, regional and county retail context, it would be important to sustain and enhance its comparison retail offer (with the exception of bulky goods), although the indicative turnover ratios set out in the Carlow County Retail Strategy 2009 subsequently suggest that comparison goods floorspace is slightly under-trading (possibly due to inefficiencies or an oversupply of bulky goods floorspace). It is further noted that the Carlow County Retail Strategy, 2009 highlighted a limited capacity for additional floorspace in the county as a whole and that the estimated net spare expenditure capacity for the period 2009 to 2016 was negative with - €94.2m for comparison retailing in a high growth scenario. The Retail Strategy for the Urban Area thus concludes by stating that there has been no marked change in circumstances from the 2009 floorspace projections with limited capacity for additional floorspace and a reluctance in the market to implement significant permissions on key sites, although it is emphasised that it is not the purpose of the Retail Strategy to limit competition and as such there

is an obligation to consider robust arguments for renewal and investment in floorspace.

7.4.3. Whilst I am cognisant of the findings of the Greater Carlow Graiguecullen Urban Area Retail Strategy, 2012, it must be noted that this document is somewhat outdated and thus I am hesitant to place an overt weighting on same. Moreover, an updated Carlow County Retail Strategy (2015) has been prepared as part of the Carlow County Development Plan, 2015-2021 (Appendix 4) which notes that the national economy has returned to growth, which is an important trend in the context of potential future retail development, although the retail sector continues to feel the effects of the recession whilst the growth of online retailing is likely to primarily impact on the comparison sector (particularly with smaller centres). This County Retail Strategy provides a breakdown of the total expenditure available for non-bulky comparison goods retailing within the identified study area in 2011 (which extends into neighbouring counties) and includes a projection of €292,564,29 for 2021 with adjustments having been made for inflows and outflows of expenditure (incl. online shopping and the trade draw of other centres). By utilising the existing retail floorspace figures for the county derived from a 2014 survey, and by applying an assumed turnover ratio of €6,000 / m<sup>2</sup> (based on 2011 figures adjusted to account of the variation in turnover yields dependent on location), it has been estimated that the existing comparison floorspace within the county has a turnover of €165,492,000. Accordingly, the Strategy has calculated a residual surplus in the available expenditure for new comparison (non-bulky goods) retail floorspace of €127,072,529 for the year 2021.

7.4.4. On the assumption that the aforementioned comparison turnover figure of €6,000 / m<sup>2</sup> is representative of a high level of trading (and thus no growth factor has been applied to same), it has been estimated that there is a future requirement for 21,179m<sup>2</sup> of comparison (non-bulky) retail floorspace in the county up to 2021, although this figure is only indicative and is not to be considered an upper limit. Notably, this figure does not include for any 'pipeline' floorspace which has already been permitted in the county but has yet to be constructed such as the redevelopment of the Penny's site and the construction of the Barrow Track scheme in Carlow Town. In addition, the aforementioned figures do not have regard to the existing levels of vacancy in the county. Moreover, it is emphasised that a key

consideration in the assessment of any planning application will be the location and quantum of the retail floorspace proposed with the appropriate redevelopment and revitalisation of town centre lands to be promoted as a priority.

- 7.4.5. Chapter 8 of the County Retail Strategy, 2015 proceeds to consider the distribution of the indicative future floorspace projections and states that, in light of Carlow town's designation as a sub-regional centre within the national retail hierarchy as per the '*Retail Planning, Guidelines for Planning Authorities, 2012*' and its position as the principal urban centre in the county, and noting the existing county-wide distribution of comparison floorspace, a total of 16,943m<sup>2</sup> (i.e. 80%) of the indicative future comparison floorspace requirement is to be allocated to Carlow town. From a wider policy perspective, the strategy thus aims to promote and encourage the major enhancement of retail floorspace, primarily comparison goods, and town centre functions in Carlow town to sustain its competitiveness and importance as the only Level 1 centre within the County Retail Strategy. Specifically, the core retail area is to form the primary focus and preferred location for new retail development, with a particular need to reinstate the role and function of the traditional retail core of the town which is centred on Tullow Street and Dublin Street.
- 7.4.6. Having considered the foregoing I would draw the Board's attention to the multiple versions of the Retail Impact Assessment submitted in support of the subject application and the grounds of appeal which has been updated and amended throughout the planning process. In this regard, and for the purposes of clarity, I propose to focus my analysis on the RIA provided with the initial planning application on the basis that this document concerns the original proposal for the construction of 1 No. retail comparison store to be partially subdivided into 2 No. retail comparison (non-bulky) concession uses (as now sought by the first party appeal), although I also take note of the later additions to the document as regards vacancy rates and other potential suitable sites etc.
- 7.4.7. The RIA details that the catchment for the assessment has been informed by the study area used in the Carlow County Retail Strategy, 2015 (i.e. the whole of Co. Carlow and parts of neighbouring counties), however, it subsequently employs a catchment extending to a 15km radius of the application site. The projected population of this catchment is subsequently extrapolated from the 2016 census population figures by applying the average annual rate of population growth for the

State of 1.6% and is calculated as 65,462 No. persons for a design / opening year of 2021. The RIA then utilises the projected expenditure per capita figure for comparison retailing set out in the County Retail Strategy, 2015 (i.e. a per capita spend of €4,121) to calculate a total available comparison expenditure in 2018 of €235,436,924 with an adjusted figure taking account of on-line shopping and outflows to competing centres of €200,121,385. With respect to the design year of 2021 the unadjusted and adjusted equivalent figures are €269,768,902 and €229,303,567.

7.4.8. At this point, I would advise the Board that the calculations used in the RIA derive from a considerably smaller population catchment when compared to the study area used for the County Retail Strategy, 2015, however, the applicant's consequent calculation of the total available comparison expenditure figure has not taken account of that portion of the expenditure attributable to 'bulky goods' retailing. In this regard the County Retail Strategy states that c. 20% of comparison expenditure will be accounted for by bulky household goods in retail warehouse type premises and, therefore, both the applicant's adjusted and unadjusted available comparison expenditure figures would seem to be an over-estimation. If the applicant's unadjusted comparison expenditure figure for 2021 is amended to account for 20% bulky goods' retailing it would then equate to €215,815,122 (i.e. €269,768,902 less 20% @ €53,953,780). By extrapolation, an adjusted available comparison (non-bulky) expenditure figure of €183,442,854 can be calculated for a design year of 2021.

7.4.9. In its calculation of the turnover of the existing floorspace within the catchment area, Table 5 of the RIA details a total existing comparison (non-bulky) retail floorspace of 22,666m<sup>2</sup> within Carlow town (as derived from the 2014 floorspace figures contained Table 7.8 of the County Retail Strategy) and also includes a further 2,000m<sup>2</sup> of such floorspace for the remainder of the catchment area. By applying an assumed turnover ratio of €6,000 / m<sup>2</sup> as per the Retail Strategy, it has been calculated that there is an existing (2018) turnover of comparison (non-bulky) retail floorspace within the catchment area of €147,996,000. The RIA proceeds to assert that in 2018 there was an underprovision of comparison floorspace within the catchment area given that there was an available expenditure of €52,125,385 i.e. total available comparison expenditure (2018) (as adjusted): €200,121,385 – turnover of existing comparison

(non-bulky) retail floorspace (2018) within the catchment: €147,996,000 = €52,125,385.

- 7.4.10. On the basis that the proposed development has a net comparison retail floorspace of 3,083m<sup>2</sup> (although a conflicting floorspace of 3,070m<sup>2</sup> is provided elsewhere in the application), and by applying an assumed turnover ratio of €6,000 / m<sup>2</sup>, it has been submitted that the subject proposal will have an estimated turnover of €18,498,000. Accordingly, in light of the available expenditure of €52,125,385, the case has been put forward that there is significant capacity within the catchment area to accommodate the proposed development.
- 7.4.11. Having reviewed the foregoing, in my opinion there are flaws within the submitted RIA, most notably, the failure to account for bulky goods in the calculation of the available comparison expenditure. However, by applying the proportionate reduction of 20% as previously referenced, an adjusted available comparison (non-bulky) expenditure figure of €183,442,854 can be calculated for a design / opening year of 2021. In turn, on the assumption that there has been no additional floorspace developed in the area since 2018, and by continuing to apply an assumed turnover ratio of €6,000 / m<sup>2</sup>, (i.e. a turnover of comparison (non-bulky) retail floorspace within the catchment area of €147,996,000), it can be calculated that there will be an estimated available expenditure of €35,476,854. Therefore, it would appear that there would nevertheless be sufficient capacity in Carlow town to accommodate the proposed development, although it would take up slightly over half of the available capacity.
- 7.4.12. Although I would have reservations regarding a number of elements of the RIA, on the basis of the available information and the provisions of the County Retail Strategy, there appears to be sufficient capacity to accommodate additional comparison (non-bulky) retailing within Carlow town. This finds further support in the current County Retail Strategy which allocates a total of 16,943m<sup>2</sup> (i.e. 80%) of the indicative future comparison floorspace requirement for the county to Carlow town with the proposed development representing only approximately 18% of that figure. It is of further note that neither the redevelopment of the Penny's site nor the construction of the Barrow Track scheme progressed with the latter's permission having since expired whilst permission has also recently been sought under PA Ref. No. 19478 for the refurbishment of the existing Penney's store. Therefore, on

balance, I am generally satisfied that there is sufficient capacity within Carlow town to permit the subject proposal.

7.4.13. *Sequential Test:*

7.4.14. It is apparent from a review of the available information that particular concerns arise with regard to the appropriateness of the selected site for the proposed development and its potential to impact on the vitality and viability of the town centre, with specific reference to the 'retail core' as defined in the Development Plan / Retail Strategy and the historic 'traditional core' of the town encompassing Tullow Street / Dublin Street and the immediate surrounds. In this respect, it is of the utmost relevance to reiterate that the intended use of each of the proposed units will entail the retail sale of comparison goods as defined by Annex 1 of the '*Retail Planning, Guidelines for Planning Authorities*' and does not involve a retail activity concerning the sale of bulky goods that would more commonly be categorised as comprising a retail warehouse activity.

7.4.15. The proposed development site is located within the confines of the Carlow / Hanover Retail Park on the south-eastern periphery of those lands identified in the Joint Spatial Plan for the Greater Carlow Graiguecullen Urban Area, 2012-2018 as comprising Carlow town centre whilst the Retail Park itself is further identified as a '*Town Centre Retail Location*' in the Greater Carlow Graiguecullen Urban Area Retail Strategy, 2012. Moreover, the site is located within the '*Retail Core*' of the town centre as shown in the Joint Spatial Plan in addition to the '*Core Retail Area*' designated by the Carlow County Retail Strategy, 2015. This core retail area is placed at the top of the retail hierarchy within the Development Plan and is the preferred location for new retail development in order to protect and enhance the vitality and viability of the town centre. However, there is considerable disagreement between the respective parties as to whether or not the subject site can in fact be categorised as 'town centre' with the third party appellant asserting that it should instead be considered as 'edge of centre', particularly in light of its peripheral location relative to the traditional town centre.

7.4.16. The issue of the site location relative to the town centre was previously considered in the Board's assessment of ABP Ref. No. PL42.240640 (Decision Date: 1/3/2013) with a view to determining the impact of that proposal on the vitality and viability of



Carlow's town centre with the reporting inspector concluding that the subject lands could be categorised as '*edge-of-centre*' by reference to the definition provided in Annex 1 of the '*Retail Planning, Guidelines for Planning Authorities, 2012*'. In that instance, whilst it was acknowledged that the subject site was located within the '*Indicative Core Retail Area*' on lands zoned '*to provide for town centre uses*', the inspector was of the opinion that the site was not located within the primary retail area of the town. Having regard to the definitions outlined in A 1.6 '*Types of Location*' of Annex 1 of the Retail Planning Guidelines, it was considered that the eastern edge of the retail area of Carlow town was defined by Barrack Street, due in large part to the established land-uses of that location and adjoining areas, although it was also accepted that there was merit to the applicant's claim that the town centre was shifting eastwards, initially to the Fairgreen Shopping Centre and then further southeast to the appeal site. However, given the separation distance of c. 340m between the development then proposed on site and Barrack Street, and the poor level of pedestrian permeability and connectivity between the site and the town centre, it was considered that the site in question was located on the edge of the town centre. These conclusions would appear to have been accepted by the Board in its determination of ABP Ref. No. PL42.240640 with the sole reason for refusal referencing the site location '*at a distance from the town centre*'.

7.4.17. Whilst I would acknowledge that the foregoing decision was issued in 2013 and that a considerable period of time has elapsed since, I am inclined to suggest that there has not been a significant change in the retail context of the subject site in the interim period. In this respect, it is of relevance to note that during the assessment of ABP Ref. No. PL42.240640 the Fairgreen Shopping Centre (Phases 1 & 2, including the cinema complex) was already trading whilst the Hanover Retail Park and a nearby Aldi foodstore were also in place. Although I would concur with the previous reporting inspector in their assessment of ABP Ref. No. PL42.240640 and the Carlow County Retail Strategy, 2015 that there has been a geographical shift from the traditional core retail area of the town with the town centre having expanded eastwards, initially to the Fairgreen Shopping Centre and then further southeast to the appeal site, I am inclined to conclude that the site location continues to accord with the definition of '*edge-of-centre*'. Such locations are defined in Annex 1 of the Guidelines as being within easy walking distance of the primary retail area of a city

town centre or district centre whilst Section 4.7 of the guidance refers to edge-of-centre retailing as not more than 300-400m from the primary retail area of the city or town. The subject site is located c. 360m southeast 'as the crow flies' of the Carlow Shopping Centre at the junction of Kennedy Avenue / Barrack Street and c. 430m south of the junction of the link road leading to the Fairgreen Shopping Centre with Barrack Street, however, these would equate to actual walking distances of approximately 430m and 550m respectively. In addition, Phase 2 of the Fairgreen Shopping Centre is in excess of 300m walking distance from the site with the main (Phase 1) centre located c. 450m away. At this point, I would emphasise that the Guidelines refer to an 'easy walking distance' and thus cognisance should be taken of the physical barriers and separation of the Hanover Retail Park from the wider town centre. In this regard, I would advise the Board that pedestrians travelling from the proposed development towards the Carlow or Fairgreen Shopping Centres will have to traverse a considerable expanse of the existing retail park as well as the Inner Relief Road in addition to crossing several busy junctions. Indeed, the case could be made that the Inner Relief Road and the River Burren act as physical barriers serving to separate the application site from the town centre proper. Whilst I would accept that there have been various road improvements in the area with provision made for dedicated pedestrian crossing points, and although there are future plans to improve the public realm within the town centre (as envisaged in the 'My Carlow' regeneration plan), having conducted a site inspection, and following a review of the available information, in my opinion, with particular reference to the poor level of pedestrian permeability and connectivity between the appeal site and the town centre, the subject site can be reasonably considered to be located on the edge of the town centre.

- 7.4.18. Having established the 'edge of centre' nature of the site location, it is necessary to consider the proposed development in the context of the sequential approach advocated in the Guidelines whereby the order of priority is to locate retail development in city / town centres and to only allow retail development on edge-of-centre or out-of-centre locations where all other options have been exhausted. In effect, an application for development on an edge of town centre site must demonstrate that there are no suitable, available or viable town centre sites which could accommodate the proposal.

- 7.4.19. Similar to the Retail Impact Assessments, the subject proposal has been accompanied by multiple 'Sequential Test Analyses' which have been revised over the course of application process and thus I propose to focus my assessment of same on the version received by the Planning Authority on 2<sup>nd</sup> July, 2019 in response to the request for clarification of further information.
- 7.4.20. In analysing the site selection process and the application of the sequential test, the applicant's analysis provides for an assessment of a series of town centre locations which have been afforded priority consideration, primarily by reference to their identification as 'Opportunity Sites' in Appendix 4 of the Carlow County Retail Strategy, 2015. Whilst I would broadly concur with the applicant's rationale for the exclusion of various existing vacant units / potential sites within the town centre due to factors such as the restricted plot size and the limited floorspace available (given the requirements of the retail format proposed), in my opinion, particular consideration needs to be given to '*Town Centre Site 1: Penny's Site and Hanover Shopping Centre*', '*Town Centre Site 14: Fairgreen Shopping Centre*', and '*Edge of Centre Site 2: Barrow Track*'.
- 7.4.21. With regard to the 'Penny's' site, whilst it has been acknowledged that the property benefits from an extant grant of permission (ABP Ref. No. PL42.236653) for a substantial development comprising 36 No. units of 13,492m<sup>2</sup> (net) comparison shopping and 580m<sup>2</sup> (net) convenience shopping, a café and food court, an occasional farmers market, offices, and 30 No. residential units, it is subsequently stated that the property is not presently available for let or purchase. The site has also been discounted on the basis that its redevelopment is envisaged to entail a significantly larger scale, format and range of uses than is required by the applicant whilst the site is also located within Flood Zone 'A' as identified in the Strategic Flood Risk Assessment for the Joint Spatial Plan for the Greater Carlow Graiguecullen Urban Area.
- 7.4.22. Whilst I would accept that the 'Penney's' site may not be available for purchase or rent by the applicant, I am cognisant that these town centre lands are located in closer proximity to the 'traditional' retail core of Carlow and are sequentially preferable site to the subject site. Furthermore, although the nature and scale of the development envisaged on these lands may be in excess of the applicant's requirements, in my opinion, this would not necessarily preclude the incorporation of

the applicant's retail format into same, possibly as part of a wider redevelopment proposal or by way of adopting a more flexible approach to its retail format as advocated by Section 4.5 of the Retail Planning Guidelines. More notably, a planning application has recently been lodged under PA Ref. No. 19478 for the refurbishment of the existing store (floor area: 3,892m<sup>2</sup>) to include for the conversion of the partial convenience retail to comparison retail. Although it is unclear if this refurbished property is intended for occupation by that applicant (i.e. Primark) or another party, the size and format of the unit proposed, in addition to the availability of car parking etc., would seem to satisfy the applicant's requirements and thus could represent a viable alternative to the subject site.

7.4.23. In relation to the potential site within the overflow car park of the Fairgreen Shopping Centre, this has been dismissed on the grounds that not only is the property unavailable but that its redevelopment would result in the loss of existing town centre car parking required by the shopping centre whilst also generating a demand for additional parking spaces. Although this specific site is not identified as an opportunity site in the Carlow County Retail Strategy, 2015, the wider Fairgreen Shopping Centre is recorded as a '*Town Centre Retail Location*' in the Greater Carlow Graiguecullen Urban Area Retail Strategy, 2012. More particularly, the Board is presently considering an appeal with regard to an application on that site at Barrack Street for a directly comparable (and potentially competing) scale and format of comparison retail development encompassing the demolition of an existing retail unit / commercial building and the construction of new two-storey retail unit of 3,732m<sup>2</sup> (gross floor area). In my opinion, this town centre location, given its siting relative to Barrack Street and the Carlow and Fairgreen Shopping Centres would seem to be sequentially preferable to the proposed development site and would also seem to satisfy the requirements of the end-users referenced in the subject application.

7.4.24. With respect to the '*Edge of Centre Site 2: Barrow Track*', although these greenfield lands are zoned as town centre and have previously been granted permission (since expired) for a mixed-use development including convenience and comparison retailing, it has been submitted that they are not readily available for purchase, are located further from the town centre than the appeal site, and are subject to flooding. Whilst I would accept that these lands may not be sequentially preferable to the

application site, I note that they are similarly zoned 'town centre' and are located within the identified retail core. Furthermore, although the retail profile of these lands is perhaps less than the appeal site given their backland location and the surrounding pattern of land usage, and whilst they are also at a distance from the established retail uses within the Hanover Retail Park and the Fairgreen Shopping Centre (as representative of the geographical shift of the town centre east / southeast), they are actually closer to the traditional town centre at Tullow Street / Dublin Street.

7.4.25. On balance, I would suggest that both the 'Penney's' and the Fairgreen Shopping Centre sites are suitable for the development proposed and are sequentially preferable to the subject lands given the specifics of their siting within the core retail area of the town centre and likely connectivity and synergy with the established land uses in their immediate surrounds. It should also be noted that both sites have historically been used for retail purposes (unlike the subject site) and have either previously obtained approval for redevelopment or, more recently, sought permission for same.

7.4.26. *Impact on the Town Centre:*

7.4.27. Having established that the proposed development site can be categorised as 'edge of centre' and that there are sequentially preferable sites within the town centre, consideration must be given to the potential for the subject proposal to impact on the vitality and viability of Carlow town centre. In this regard, it is clear that the proposed development represents a significant addition in terms of retail floorspace provision to the town and, therefore, there is an onus on the applicant to demonstrate compliance with the Development Plan and that there will not be a material adverse impact on the vitality and viability of the existing town centre. In respect of retail impact, the proposal should demonstrate whether or not it would:

- support the long-term strategy for the town centre as established in the retail strategy/development plan, and not materially diminish the prospect of attracting private sector investment into one or more such centres;
- have the potential to increase employment opportunities and promote economic regeneration;

- have the potential to increase competition within the area and thereby attract further consumers to the area;
- respond to consumer demand for its retail offering and not diminish the range of activities and services that an urban centre can support;
- cause an adverse impact on one or more city/town centres, either singly or cumulatively with recent developments or other outstanding planning permissions (which have a realistic prospect of implementation) sufficient to undermine the quality of the centre or its wider function in the promotion and encouragement of the arts, culture, leisure, public realm function of the town centre critical to the economic and social life of the community;
- cause an increase in the number of vacant properties in the primary retail area that is likely to persist in the long term;
- ensure a high standard of access both by public transport, foot and private car so that the proposal is easily accessible by all sections of society; and/or
- link effectively with an existing city/town centre so that there is likely to be commercial synergy.

7.4.28. Whilst I would acknowledge the findings of the RIA that there is sufficient capacity within the area to accommodate the comparison retailing proposed and that the proposal will expand the overall range of retailing services available in Carlow town, I would have reservations regarding the extent of commercial synergy between the proposed development and the retail core of the town. In this respect, I would reiterate my earlier comments (and those of the previous reporting inspector in their assessment of ABP Ref. No. PL42,240640) as regards the physical separation of Hanover Retail Park from the town centre proper and the poor level of pedestrian permeability and connectivity between the appeal site and the wider town centre. In my opinion, the overall nature and extent of the comparison retailing proposed would be more appropriately sited within the core of the town centre. Furthermore, considering the nature and scale of retailing which will be on offer within the proposed development relative to the town centre and the availability of readily accessible on site car parking I would have concerns regarding the potential for the scheme to essentially trade as a standalone entity thereby reducing the likelihood of shared trips with the town centre proper.

- 7.4.29. Notably, the Joint Spatial Plan for the Greater Carlow Graiguecullen Urban Area (Part 4: Sub-Area Spatial Strategy: Section 1: Carlow Town) states that there are concerns as regards the potential for the erosion of the vitality and vibrancy of the traditional commercial core of Carlow Town and thus there is a need to protect prime commercial space within that area. This is given further expression in the Carlow County Retail Strategy, 2015 which notes that whilst the traditional town centre is recognised as having been focused on Tullow Street and Dublin Street, there has been a geographical shift to the east / southeast over the last 10-20 No. years with the development of the Fairgreen Shopping Centre leading to a somewhat disjointed retail structure in the town centre. More particularly, the health-check assessment for Carlow town centre set out in Section 5.2.31 of the County Retail Strategy has identified a lack of permeability between the traditional town core retail area of Dublin Street / Tullow Street and the more recent town centre expansion eastwards, especially the Fairgreen shopping centre. Therefore, key objectives for Carlow town include the need to reinstate the role and function of the traditional retail core of the town, which is centred on Tullow Street and Dublin Street, as well as the prioritisation of central opportunity sites for development.
- 7.4.30. On the basis of the foregoing, and in light of its positioning outside of the traditional retail core of the town centre, I am not satisfied that it has been sufficiently demonstrated there will be a likelihood of commercial synergy between the two areas and that the proposal will not serve to undermine the vitality and viability of the town centre or the development of prospective schemes on those sequentially preferable sites identified in the Retail Strategy.

## **7.5. Traffic Implications:**

- 7.5.1. The proposed development will be accessed from the Carlow Inner Relief Road via the Hanover Roundabout by way of the existing access road serving the adjacent Carlow / Hanover Retail Park and in this respect it is of relevance to note that the proposed access arrangements are broadly similar to those previously considered by the Board to be acceptable in its determination of ABP Ref. No. PL42.240640 which sought permission for a noticeably larger scale of retail development than that presently proposed (i.e. a proposal comprising 5,109m<sup>2</sup> of retail floorspace including a convenience supermarket with a net floor area of 2,500m<sup>2</sup> and comparison goods net floor area of 1,000m<sup>2</sup>).

- 7.5.2. In terms of trip generation and the potential impact on the surrounding road network, I would refer the Board to the Traffic Impact Assessment submitted with the application which states that the likely future trip generation for the proposed development has been predicted using the current observed peak flows (derived from short count traffic surveys conducted in 2018) and by reference to those traffic surveys undertaken with respect to earlier development proposals on site (i.e. PA Ref. Nos. 10/6301 & 116453) in addition to predictions derived from the TRICS database for similar sites. It has also equated the distribution of traffic flows from the proposed development onto the public road by reference to the directional patterns established from previous traffic surveys / counts conducted during peak hours.
- 7.5.3. Having established the total number and distribution of trips likely to be generated by the proposed development, the Traffic Impact Assessment proceeds to assess the impact of same on the road network during a peak hour at the year of opening + 15 years and has calculated that the traffic generated will add 11% traffic volume to Hanover Roundabout and 6% volume to the L4056 on each side of the Burren roundabout. The TIA proceeds to conclude that the conservative analysis employed has established that there is adequate capacity within the road network to cater for the proposed development and nearby approved developments.
- 7.5.4. In my opinion, the traffic data analysis presented in the TIA and the conclusions drawn therefrom would benefit from further elaboration in the interests of clarification, however, in light of the planning history of the application site, including the Board's assessment of the traffic impact of previous development proposals on site, the completion of localised improvements to the wider road network in recent years (such as the provision of a link road from Barrack Street to the Fairgreen Shopping Centre), and noting that neither the Carlow Municipal District Area Office nor the Transportation Dept. of the Local Authority have raised any objection to the proposed development, I am satisfied that the proposed development will not give rise to any undue impact on the operation or safety of the surrounding road network.

## 7.6. **Flood Risk Assessment:**

- 7.6.1. From a review of the available information, consideration needs to be given to the potential flooding implications of the proposed development given its proximity to the Burren River. In this respect I would advise the Board at the outset that whilst the



National Flood Hazard Mapping available from the Office of Public Works does not record any flood events within the confines of the site itself, flooding has previously occurred to the northeast at Paupish Lane although this mapping is not definitive and serves only as a useful tool in highlighting the potential for flood events in a particular area.

- 7.6.2. On examination of the most up-to-date flood mapping prepared by the Office of Public Works as part of its CFRAM programme, which has recently been made available on [www.floodinfo.ie](http://www.floodinfo.ie) and serves to inform the development of Flood Risk Management Plans for specific areas, it would appear that a small part of the south-eastern extent of the application site is within Flood Zone 'A' as defined by the *'Planning System and Flood Risk Management, Guidelines for Planning Authorities'* in that it is presently subject to a 'medium probability' of fluvial flooding from the Burren River ('Medium Probability' flood events have approximately a 1 in 100 chance of occurring or being exceeded in any given year). A marginally greater proportion of the site area is within the 'low probability' 0.1% (1 in 1,000 chance in any given year) AEP fluvial flood extent which would equate to 'Flood Zone B'. Notably, these findings would correspond with the mapping contained in the Strategic Flood Risk Assessment for Carlow Town included in Appendix 2 of the Joint Spatial Plan for the Greater Carlow Graiguecullen Urban Area, 2012.
- 7.6.3. Given the potential flooding implications associated with proposed development, the subject application has been accompanied by a Flood Risk Assessment (which was subsequently amended in response to a request for further information). This report acknowledges that the south-eastern extent of the application site is prone to flood events, however, it also clarifies that no development works will be undertaken within Flood Zones 'A' or 'B'. Accordingly, on the basis that all of the proposed development works will occur within Flood Zone 'C' as defined by the *'Planning System and Flood Risk Management, Guidelines for Planning Authorities'*, the completion of a more detailed Stage 3 FRA or adherence to a 'Justification Test' in line with the *'Planning System and Flood Risk Management, Guidelines for Planning Authorities'* is not warranted in this instance.
- 7.6.4. Having considered the foregoing, it is my opinion, on balance, that the submitted proposal includes for an adequate assessment of the risk of flooding and thus satisfies the requirements of the *'Planning System and Flood Risk Management,*

*Guidelines for Planning Authorities'* and is unlikely to have any adverse impact on the existing flood regime of the area.

#### **7.7. Appropriate Assessment:**

- 7.7.1. From a review of the available mapping, including the data maps from the website of the National Parks and Wildlife Service, it is apparent that whilst the proposed development site is not located within any Natura 2000 designation, it is situated approximately 750m east of the River Barrow and River Nore Special Area of Conservation (Site Code: 002162) and alongside the River Burren which discharges into the River Barrow. In this respect it is of relevance to note that it is an objective of the Planning Authority, as set out in Section 9 of Part 3 of the Joint Spatial Plan for the Greater Carlow Graiguecullen Urban Area, 2012-2018, to seek to realise the conservation objectives of the River Barrow and River Nore candidate Special Area of Conservation. By way of further clarity, Policy HER P01 of the Plan aims to ensure that all planning applications are screened to determine whether a full Appropriate Assessment is necessary in accordance with the *'Appropriate Assessment of Plans and Projects in Ireland Guidance for Planning Authorities (2010)'* whilst Policy HER P03 restricts development that would be likely, either individually or in combination with other plans or projects, to give rise to significant adverse effects on Natura 2000 sites having regard to their conservation objectives.
- 7.7.2. In effect, a proposed development may only be authorised after it has been established that the development is not likely to have a significant effect on the fauna, flora or habitat being protected through an Appropriate Assessment pursuant to Article 6 of the Habitats Directive. Accordingly, it is necessary to screen the subject proposal for the purposes of 'appropriate assessment'.
- 7.7.3. *Stage 1: Screening:*
- 7.7.4. In screening the subject proposal for the purposes of appropriate assessment, I would refer the Board at the outset to the screening exercise set out in the Natura Impact Statement provided with the application (as updated in response to the request for further information) in addition to that undertaken by the Planning Authority (as appended to the initial report of the case planner wherein it is stated that the likelihood for the proposed development to have a significant effect on the

River Barrow and River Nore Special Area of Conservation is 'unknown' and thus cannot be ruled out).

7.7.5. From a review of the available information, it can be established that the following 2 No. European Sites are located within a 15km radius of the proposed works pursuant to the advice contained in the *'Appropriate Assessment of Plans and Projects in Ireland, Guidance for Planning Authorities'* published by the Department of Environment, Heritage and Local Government:

- The River Barrow and River Nore Special Area of Conservation (Site Code: 002162)
- The Slaney River Valley Special Area of Conservation (Site Code: 000781)

7.7.6. In addition to the foregoing, using the precautionary principle, I would also advise the Board that I have given consideration to Natura 2000 sites located outside of the defined 15km radius, however, as no potential pathways for any significant impacts can be established, it can be concluded that there is no potential for any impacts on those Natura 2000 sites located outside the 15km radius.

7.7.7. In terms of assessing the potential direct, indirect or secondary impacts of the proposed development on the conservation objectives of the aforementioned Natura 2000 sites, it should be noted that due to the location of the proposed works outside of any Natura 2000 designation, and the separation distances involved, it is clear that the subject proposal will not directly impact on any European Site (such as by way of habitat loss or reduction). However, having reviewed the available information, in light of the nature and scale of the proposed development, the specifics of the site location relative to certain Natura 2000 sites, and having regard to the prevailing site topography, in my opinion, by employing the source / pathway / receptor model of risk assessment, it can be determined that particular consideration needs to be given to the likelihood of the proposed development to have a significant effect on the conservation objectives of the River Barrow and River Nore Special Area of Conservation on the basis that the proposed development site is situated approximately 1.3km upstream of that Natura 2000 site and alongside the River Burren, which discharges into the River Barrow, with surface waters draining towards same i.e. it will be necessary to consider the potential implications for downstream protected species etc. arising from any potential deterioration in water quality

attributable to the proposed works given the hydrological connectivity between the application site and that European site.

7.7.8. In reference to the Slaney River Valley Special Area of Conservation, given the separation distances involved and the absence of any pathway (hydrological or other) between the subject lands and that European site, it is my opinion that no appropriate assessment issues arise and that the proposed development would not be likely to have a significant effect, either individually or in combination with other plans or projects, on that Natura 2000 site.

7.7.9. Accordingly, I would concur with the findings of the applicant's screening exercise that consideration for the purposes of appropriate assessment should be focused on the following:

<i>European Site:</i>	<i>The River Barrow and River Nore Special Area of Conservation (Site Code: 002162)</i>
<i>Distance &amp; Direction:</i>	c. 750m west & 1.3km downstream
<i>Qualifying Interests:</i>	[1016] Desmoulin's whorl snail <i>Vertigo moulinsiana</i> [1029] Freshwater pearl mussel <i>Margaritifera margaritifera</i> [1092] White-clawed crayfish <i>Austropotamobius pallipes</i> [1095] Sea lamprey <i>Petromyzon marinus</i> [1096] Brook lamprey <i>Lampetra planeri</i> [1099] River lamprey <i>Lampetra fluviatilis</i> [1103] Twaité shad <i>Alosa fallax</i> [1106] Atlantic salmon ( <i>Salmo salar</i> ) (only in fresh water) [1130] Estuaries [1140] Mudflats and sandflats not covered by seawater at low tide [1310] <i>Salicornia</i> and other annuals colonizing mud and sand

[1330] Atlantic salt meadows (*Glauco-Puccinellietalia maritimae*)

[1355] Otter *Lutra lutra*

[1410] Mediterranean salt meadows (*Juncetalia maritimi*)

[1421] Killarney fern *Trichomanes speciosum*

[1190] Nore freshwater pearl mussel *Margaritifera durrovensis*

[3260] Water courses of plain to montane levels with the *Ranunculion fluitantis* and *Callitricho-Batrachion* vegetation

[4030] European dry heaths

[6430] Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels

[7220] \* Petrifying springs with tufa formation (*Cratoneurion*)

[91A0] Old sessile oak woods with *Ilex* and *Blechnum* in the British Isles

[91E0] \* Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (*Alno-Padion*, *Alnion incanae*, *Salicion albae*)

**Conservation Objectives:** To maintain or restore the favourable conservation condition of the Annex I habitats & Annex II species for which the SAC has been selected.

(The status of the freshwater pearl mussel (*Margaritifera margaritifera*) as a qualifying Annex II species for the River Barrow and River Nore SAC is currently under review. The outcome of this review will determine whether a site-specific conservation objective is set for this species. Please note that the Nore freshwater pearl mussel (*Margaritifera durrovensis*) remains a qualifying species for this SAC).

7.7.10. Therefore, following consideration of the 'source-pathway-receptor' model, including the likelihood that potentially negative impacts on downstream water quality could arise during the works stage of the proposed development due to the pollution of watercourses through the release of suspended solids or the discharge of hydrocarbons / other contaminants, and also potentially through the discharge of contaminated surface waters during the operational phase, I would concur with the findings of the initial screening exercise undertaken by the Planning Authority and thus it is my opinion that, in accordance with the precautionary principle, it is not possible to rule out the likelihood of the proposed development adversely impacting on a Natura 2000 site and that particular consideration needs to be given to the likelihood of the proposal to have a significant adverse effect on the conservation objectives of the River Barrow and River Nore Special Area of Conservation. Accordingly, it is reasonable to conclude on the basis of the information available, which I consider adequate in order to issue a screening determination, that the likelihood of the proposed development adversely affecting the aforementioned Natura 2000 site cannot be objectively ruled out and therefore it is necessary to proceed to 'Appropriate Assessment (Stage 2)'.

7.7.11. *Stage 2: 'Appropriate Assessment':*

7.7.12. With regard to the Stage 2 Appropriate Assessment set out in the Natura Impact Statement which has accompanied the subject application, I am generally satisfied that it has adequately identified the key characteristics of the significant effects arising as a result of the proposed development which would be likely to undermine the stated conservation objectives of the designated site i.e. the potential indirect impact on the integrity of the downstream aquatic environment within the River Barrow and River Nore Special Area of Conservation arising from a deterioration in water quality consequent on constructional impacts, including the release of sediments. However, whilst the NIS has stated that the aforementioned impacts will only affect Atlantic salmon (on the basis that the required water quality standard for this species, with particular reference to its spawning habitats, is not currently being met along all sections of the Burren or Barrow rivers) given that the project site is located outside of the catchment of the remaining qualifying interests of the SAC, I am inclined to suggest that further cognisance must be had to the likely effects

attributable to water pollution on other downstream protected species such as lamprey etc.

7.7.13. Having identified the risk to water quality arising during the development works, it is proposed to implement a series of mitigation measures as follows

- Adherence to the guidance issued by Inland Fisheries Ireland as regards the protection of fish habitat during construction works.
- The provision of a 10m buffer alongside the River Burren during the course of the construction works.
- All water leaving the site will be passed through an appropriately sized silt trap or settlement pond so that only silt-free runoff is permitted to enter the River Burren. This may include the erection of a silt curtain along the eastern boundary to prevent the ingress of silt to the river.
- The storage of soils, fuels etc. within a bunded area.
- The training of site personnel in the importance of preventing pollution and the mitigation measures described herein.
- The maintenance and monitoring of the mitigation measures by a site manager for the duration of the works with a record of inspections to be maintained.
- The implementation of an Outline Construction Management Plan (submitted to the Planning Authority under separate cover on 19<sup>th</sup> March, 2019 in response to the request for further information).

7.7.14. The NIS has thus concluded that, subject to implementation of the foregoing mitigation measures, the proposed development, either alone or in combination with other plans or projects, can be carried out without giving rise to any significant effects on the River Barrow and River Nore Special Area of Conservation.

7.7.15. Whilst I would generally concur with the findings of the NIS, I would have some reservations that the potential for significant effects on downstream qualifying species other than the Atlantic salmon may have been downplayed. However, it is my opinion that the implementation of best practice construction and adherence to the mitigation measures set out in the NIS combined with the preparation of a

Construction and Environmental Management Plan will serve to avoid any impacts on downstream water quality thereby ensuring that no significant adverse effects on the Special Area of Conservation will arise as a result of the construction of the proposed development.

- 7.7.16. In terms of the operational stage of the proposed development, surface water runoff from the site will be diverted through the existing surface water drainage system serving the adjacent retail park and will pass through an oil / petrol interceptor trap before discharging to the River Burren. That system was designed to accommodate the additional volumes of surface water runoff attributable to the development of the subject site. Wastewater flows will be disposed via connection to the existing public mains system.
- 7.7.17. With regard to the potential for in-combination / cumulative impacts with other plans or projects, I am also satisfied that the proposed development, subject to suitable mitigation, would not be likely to give rise to any in-combination / cumulative impacts with other plans or projects which would adversely affect the integrity of any Natura 2000 site and would not undermine or conflict with the Conservation Objectives applicable to same.
- 7.7.18. Therefore, I consider it reasonable to conclude, on the basis of the information available, that the proposed development, when taken individually and in combination with other plans or projects, will not adversely affect the integrity of the SAC in view of the sites' conservation objectives.

## **8.0 Recommendation**

- 8.1. Having regard to the foregoing, I recommend that the decision of the Planning Authority be overturned in this instance and that permission be refused for the proposed development for the reasons and considerations set out below:

## **9.0 Reasons and Considerations**

1. Having regard to the nature and extent of the proposed development which incorporates a substantial comparison shopping store, its location at a remove from the town centre and its lack of connectivity and pedestrian linkages to



the town centre, to the provisions and objectives of the Joint Spatial Plan for the Greater Carlow Graiguecullen Urban Area, 2012, the Carlow County Development Plan, 2015, the Carlow County Retail Strategy, 2015, and the Retail Planning Guidelines for Planning Authorities issued by the Department of the Environment, Heritage and Local Government in April, 2012, the Board is not satisfied that the proposed development would not have a detrimental impact on the vitality and viability of the town centre, would not create an overly strong counter attraction to Carlow town centre in terms of retail shopping, and would not undermine the viability or substantial advancement of retail schemes within those sequentially preferable town centre sites identified in the Carlow Retail Strategy, 2015, and considered, therefore, that the proposed development would be contrary to the proper planning and sustainable development of the area.

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Robert Speer  
Planning Inspector

29<sup>th</sup> January, 2020