



An
Bord
Pleanála

Inspector's Report

ABP-307766

Development	Refurbishment of store, new plant building, replacement roof to retail store, signage, canopy to loading bay, conversion of partial convenience retail to comparison retail, 47 car park spaces, 15 bicycle stands, upgrading of car park surface, landscaping and store entrance.
Location	Kennedy Avenue, Carlow
Planning Authority	Carlow Co. Council
Planning Authority Reg. Ref.	Reg. Ref.: 19478
Applicant(s)	Primark Ltd.
Type of Application	Permission
Planning Authority Decision	Grant permission
Type of Appeal	Third-Party
Appellant(s)	Thomas Nolan Paddy Murphy
Observer(s)	Alan Kenny
Date of Site Inspection	15 th December 2020
Inspector	Suzanne Kehely

1.0 Site Location and Description

- 1.1. The appeal site is located at the southern edge of Carlow Town Centre between Kennedy Avenue to the north and Hanover Street (also referred to as Kilkenny Road to the south). It comprises a substantially vacant single storey shopping centre (3892 sq.m.) and surface car parking for c.250 cars. The site is stated to be 1.788 ha and is reduced in size from the previous development site by omission of open space to east which is landscaped and a small vacant shopping unit complex site (Hanover Centre) to the west which extends to Burrin Street. Part of the site also now excludes a row of car park spaces along the western site boundary alongside the vacant units excluded from the site and also alongside an apartment development located between the site and the river and the junction off Burrin Street and Kennedy Avenue. There is a gated pedestrian access onto the site alongside these apartments. Historically the site relates to the grounds of Hanover House which has been long demolished with the exception of the entrance gates and piers on Burrin Street which comprises a structure included in the Record of Protected Structures. This was part of the previous development site. The structure is now omitted from the subject site and has been deemed a dangerous structure by the Council and is subject of statutory notice requiring action, as displayed on that site at time of site inspection.
- 1.2. The shop frontages are oriented onto Kennedy Avenue with intervening car parking. There are two vehicular entrances to the site – one bridging over the river from Kennedy Avenue (R430) and one to the south off Kilkenny Rd/Hanover st (R448) which is opposite a mature housing development - Riverside.
- 1.3. The service area is located off the southern entrance road (off Hanover Street). The service yard is gated and enclosed by a high boundary wall separating the site from multiple properties on Burrin Street and Hanover St. A vacant boarded up building comprising an old stone two storey building and single storey recent concrete building extends along the boundary alongside the rear of no. 58 Burrin St. It is obscured from public view by a railing and a container which separate the carpark and the enclosed service area to the west.
- 1.4. The Burrin River (sometimes referred to as Burren in the submitted documents) which is significant tributary to the River Barrow, marks the northern boundary

alongside Kennedy Avenue and the vehicular access bridges over this river. The site terrain is fairly level with a variance of 48.02m to 48.89mOD substantially across the car park.

- 1.5. The site is within walking distance of the older established shopping streets in the town centre to the north. There are also pockets of purpose-built retailing/commercial/services centres and units along Kennedy Avenue east of the site. Residential development is concentrated to the south of Hanover Street and there is pedestrian access to and through the site from this area. Burrin Street has a mix of residential and commercial uses and substantially retains the original street grain which incorporates a number of large scaled terraced 19th century houses and more modest single storey cottage scaled houses.
- 1.6. At time of inspection the car park was in use with parking concentrated to the northern frontage of the site along Kennedy Avenue.

2.0 **Proposed Development**

- 2.1. Permission is sought for works to upgrade and remodel a substantially vacant shopping complex and partial change in the nature of retail use so as to accommodate the return of a Penney's store in an extended format within substantially the same building footprint.
- 2.2. Specifically the works include:
 - Separation of site from the Hanover centre by way of a of 45m length of temporary hoarding for 5 years – clarified in further information to comprise 2.4m high aluminium sheet fencing wall fixed to posts This includes double doors at the northern end on the return.
 - Subdivision of site by allocation of an island of 16 car park spaces to adjacent property,
 - Internal and external refurbishment of buildings including:
 - recladding of red brick with an insulated render and granite plinth in a remodelled elevation
 - reconfiguring of internal layout to provide one large store and ancillary areas for servicing, administration and staff.

- Replacement roof tiles (removing existing asbestos) to retail store, removal of old steel signage mounts, removal of water tank and aerial.
- New window display and entrance canopy glazing in front elevation
- New windows.
- Some dismantling/demolition and removal of internal walls.
- Conversion of 1788 sq.m. of convenience retail use to comparison retail use to facilitate a larger single comparison retail unit of 2580 sq.m. There will be no increase in retail floor area other than minor plant and canopy/service enhancement – additional new area of 29.16sq.m.
- New plant structures comprising a water tank for sprinkler system, a pump house and an air-cooled chiller – all located along the western boundary of the service yard.
- Removal of a container and replacement of fence with new fencing (west of premises).
- Retention of gates to loading area near southern site access.
- Retention of outhouses (boarded up) within enclosed service yard.
- Retention of fence along river.
- Resurfacing/upgrading of sections of service yard area and entrance (e.g. strengthening concrete for truck manoeuvring)
- Existing car park surface to be made good and remarked. (kerbing and embankment details incorporating drainage details are included in site plan in Further Information.)
- Pedestrian crossings with tactile surface and entrance/ road markings- as clarified in Road Safety Audit.
- New granite pavements to walkway and entrance.
- Roof mounted signage (illuminated columns at entrance omitted in Further Information) , canopy to loading bay to replace a steel shed to be removed.
- Upgrading of car parking to include disabled car parking spaces, 15 bicycle stands, landscaping and store entrance.

2.3. The application is accompanied by

- A Natura Impact Statement (amended in further information to take account of CEMP. This was re-advertised.)
- Screening for Appropriate Assessment.

- Preliminary Construction Management Plan (further detailed in a Construction Environmental Plan (CEMP) submitted as part of Further Information.
- Landscaping plan and design report (further information) - no additional planting along northern boundary alongside river, dishing of footpath close to river. Plans include planter boxes, bike parking, bollards, lighting
- Bat Survey Report.
- Site Specific Flood Risk Assessment – Clarified in Further Information.
- A Road Safety Audit – stage 1 and 2 (as part of Further Information.)

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The Planning Authority decided to grant Permission subject to 27 no. conditions. This followed a request for Further Information on 24th March 2020.

3.2. Planning Authority Reports

- 3.2.1. In the initial report of 2020, the proposal to refurbish the existing premises and bring it back to use is encouraged. There are some concerns as highlighted in the engineering reports such as:
- Clarification on site specific flood risk assessment details with respect to CEFRAM data. Proposals are advised to comply with the Carlow Flood relief Scheme. Mitigation should be for 0.1% AEP flood level.
 - The need for a detailed CMEP and its incorporation into the NIS.
 - Details regarding temporary hoarding.
 - The need for Road Safety Audit.
 - Surface water details including the need to address concerns of Fisheries Ireland.
 - The need to address concerns of Irish Water regarding protection of pipe network within site.
- 3.2.2. In terms of addressing visual clutter in context of Development Plan policy, the scaling back of signage is advocated and together with engineering and environmental issues these matters are addressed by way of further information.

3.2.3. Having considered all the submissions and following further consultation within the respective departments these issues were addressed to the satisfaction of the planning authority and the proposed development was considered to be consistent with the proper planning and sustainable development of the area.

3.2.4. Other Technical Reports

Traffic: (3/2/2020) As it is an established site where traffic impacts have been previously addressed and there is no material increase in floor area, no traffic and transport assessments are required. A Road Safety Audit is however recommended. Car parking is noted to be in excess of current development plan requirements (263 instead of 156 spaces). In a subsequent report there are no objection subject to conditions.

Water Services: (10/12/19): A 1200mm sewer traverses the site and works should not impact on this. The location should be identified by the contractor to ensure its protection.

Engineering:(15/1/20) No objection but advised to refer to environment division regarding examination of flood risk and mitigation proposals.

Environment Section: Further information request recommended. In a subsequent report (16/4/2020) the proposal incorporating surface water collection, discharge and management together with flood control measures is acceptable. Mitigation measures are required to ensure protection against the 0.1% AEP.

Chief Fire Officer: No objections subject to conditions.

3.3. Prescribed Bodies

3.3.1. Irish water (30/12/19): No objection subject to condition regarding identification and protection of sewer traversing site.

3.3.2. Fisheries Ireland:(27/1/20) concerns about River Barrow which is an important salmonid system and potential for pollution and impact on water quality in Burrin River which is a tributary of this River. Concerns are primarily focused on the construction stage and the control of suspended solids entering the river system. Details of addressing potential for silt pollution during excavation and earthmoving works needed. In subsequent correspondence, Fisheries Ireland is happy that any negative impacts will be minimal subject to adherence to specified measures.

3.3.3. Department of Culture, Heritage and the Gaeltacht: (Part of site is within a Zone of Archaeological Potential). No submission.

3.3.4. An Taisce: No submission

3.4. Third-Party Observations

3.4.1. The Planning Authority received 4 submissions in relation to the planning application. The issues raised are similar to those set out in the grounds of and appeal and observation.

3.4.2. Paddy Murphy: Objects to relocation of Penny's from its present site to subject site as it will take away footfall for Tullow Street, Barrack Street and Carlow Shopping centre. The town centre should be consolidated rather than developed on a flood plain that is removed from the shopping core.

3.4.3. Thomas Nolan: While the development is described as a refurbishment, it is in effect a new development and should be assessed as such. Access to Hanover Street needs to be addressed by way of road marking. The potential increase in run-off due to increased impermeable surfaces needs to be addressed. The removal of asbestos needs to be addressed in more detail.

3.4.4. Alan Kenny: He compares the proposal with the previous proposal which would have enhanced the town centre. He is critical of the proposal as it does not address population decline and the increased car park and traffic will result in urban blight and pollution. It is also considered to be of poor design quality. Retail development should contribute to the urban design quality of the town.

3.4.5. Billy Boyd: Refusal requested having regard to conflict with consolidation of town centre retailing and development on a flood zone

4.0 Planning History

4.1. The site

4.1.1. An Bord Pleanála Ref:PL42.236253/ PA ref 10/6308 refers to Permission for a 49,560 sq.m. mixed use development comprising of 26,071 sq.m of retail and 30 residential units with a 640-space underground carparking. The proposal includes pedestrian and cycle link through the and upgrading of river frontage including

riverside walk a stone gateway at 60 Burrin Street. This application sought to reduce the development by 20% as permitted in case PL42.228338 (attached). Condition 2 reduced the scale of the development by omission of 6 units. Later cases (PA 11/6455 sought permission for alterations and 16/136 refers to an extension of duration of the parent permission.

- 4.1.2. An Board Pleanala Ref. PL42.228338 refers to permission or 68,225 sq.m. of retail offices and residential development on a site of 2.8 hectares. In this case the Board wrote to the applicant inviting revised proposals and stating, inter alia, that 'a pedestrian link should be considered at the western end of the site through the Hanover Shopping Centre onto Burrin Street' on the basis that the Board considers that the development as proposed presents a problem in terms of: (a) its permeability for pedestrians and cyclists having regard to its central location between the town centre and Kilkenny Road (b) the extent of dead frontage at ground floor level facing onto Kilkenny Road resulting from the location of the car park ramp and the eastern service area (c) the quality of design and finish of building (d) the lack of connectivity between the eastern portion of the development and Hanover Park.

5.0 Policy & Context

5.1. Development Plan

- 5.1.1. The Joint Spatial Plan for the Greater Carlow Graiguecullen Urban Area 2012-2018 which incorporates the Carlow Town Plan 2012-2018 is described as the current plan by the planning authority. In this, the subject site is identified as being in the Town Centre zone where the objective is to protect the vitality and vibrancy of the town centre and provide for town centre activities. The site is also partly within Flood zone A and a zone of archaeological interest. Lands to the south are zoned residential.

5.2. Retail and town Centre policy

- 5.2.1. The site is located in the retail core area. The implementation of the Carlow county retail strategy is provided for in section 2.6 of the Carlow County Development Plan 2015-2021 and is contained in Appendices. Reinforcing the central retailing role and function of the core retail area is recognised as being of critical importance. Tullow Street and Dublin Street are named as being in the traditional core and the increased

permeability between this area and the south eastern and as part of town centre expansion is a key consideration. As part of this strategy the subject site is identified as one of 7 opportunity sites.

- 5.2.2. The strategy (in section 9) recommends adoption of car parking management standards in the town centre that reduces the presence of on-street car parking in favour of off-street car parking.
- 5.2.3. Transport policy for the area promotes walking and cycling and protection of routes and facilities such as provision of bicycle parking to achieve this objective.
- 5.2.4. Appendix 4 of the retail strategy includes the subject site as an opportunity site and describes the site as a key retail opportunity site within the town and its redevelopment for a mix of uses as permitted would incur significant benefits to the vitality and viability of the core retail area Its redevelopment also affords significant opportunities for the creation of increased pedestrian permeability across Kennedy Avenue and enhancements to the public realm and setting of the River Burrin.
- 5.2.5. Vacant units are identified as adversely impacting on the vitality of the town.
- 5.2.6. Based on 2014 data, just over 13,000 sq.m. of convenience retail area and 22,660 sq.m. of comparative retail area is in Carlow Town. There is an estimated capacity for an additional 7,000 sq.m. of convenience floor area and 21,000 sq.m. of comparative floor area in the county . The town is stated to be well served by convenience floor space.

5.3. Natural Heritage Designations

- 5.3.1. The nearest relevant Natura 2000 is the River Nore and River Barrow SAC Site no. 002162. The River Burrin along the northern boundary of the site is a tributary to the River Barrow and is about 450m upstream and 363m west.
- 5.3.2. The Slaney River Valley SAC (Site no. 000781) is around 10.5 km to the east but is not hydrologically connected.

6.0 Environmental Impact Assessment - Preliminary Examination

- 6.1.1. Having regard to the limited nature and scale of the proposed development which is substantially a refurbishment of premises and making good sections of an existing car park and which includes measures to address potential silt laden deposits into the adjacent river, 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.

7.0 The Appeal

7.1. Grounds of Appeal

- 7.1.1. **Thomas Nolan:** This objection centres on the conflict with the retail strategy for the town centre and its consolidation. The proposed development is seen as a new development and should be assessed on this basis. It is a standalone site disjointed from the other retail areas in the town and its use for a large single use will detract from these other areas. It is also considered that the development reinforces underutilization of an identified opportunity site and compromises a comprehensive redevelopment that would address for example meaningful flood mitigation measures such as attenuation. He also raises concerns about traffic issues relating to the Hanover Street (south) access and congestion and the need for a roundabout for safe right turns.
- 7.1.2. **Paddy Murphy:** This objection relates to the loss of convenience shopping in the town centre where it is submitted to be already in short supply. There will be no benefit to the town centre.

7.2. Applicant's Response

- 7.2.1. It is emphasised that the proposal is for refurbishment and not an extension of retail and that the application is only seeking to facilitate the return of Penney's to its previous location albeit in a refurbished premises rather than in a redeveloped site as originally intended. This is based on the fact that the previous developer has ceased trading and Penney's is not a speculative developer. The proposed

refurbishment would significantly strengthen the existing presence of Penney's in the town and would also significantly enhance the visual amenities of the site and in this way attract custom to the core retail area within the town centre and thereby enhance the overall vitality and viability of Carlow in compliance with retail strategy.

- 7.2.2. The proposal will assist with the revitalisation of the core area. It is within walking distance of the shopping streets and this is supported by the continued use of the car park for town centre shopping etc.
- 7.2.3. The shortage of convenience retailing in the town centre is unsubstantiated and it is argued that the change of use is exempted development. The expansion of the comparison retail area is consistent with the retail strategy which supports all types of retailing in this level 1 retailing location. Kennedy Avenue and Kilkenny Road are specifically identified as suitable locations for such (p.39 of retail strategy.)
- 7.2.4. In respect of Traffic it is explained that there is no alteration to existing access and egress required by the transport division of the planning authority. The RSA was undertaken and highlights some safety measures that will be undertaken. A roundabout is not needed.
- 7.2.5. In respect of flooding, issues have been addressed and clarified in the Site-Specific Flood Risk Assessment to the satisfaction of the planning authority.
- 7.2.6. It is submitted that the appeals are driven primarily by a desire to keep Penney's in its present location in Carlow Shopping Centre which was only ever intended to be a temporary location.
- 7.2.7. The proposal does not compromise future comprehensive redevelopment of the site.

7.3. Planning Authority Response

- 7.3.1. The planning authority has no further comments.

7.4. Observations

- 7.4.1. Alan Kenny: He reiterates the same points made in his submission to the planning authority. He compares the proposal with the previous proposal which would have enhanced the town centre. He is critical of the proposal as it does not address population decline and the increased car park and traffic will result in urban blight

and pollution. It is also considered to be of poor design quality. Retail development should contribute to the urban design quality of the town.

8.0 **Assessment**

8.1. **Issues**

- 8.1.1. The applicant is seeking to refurbish an old shopping centre complex of (c.4000 sq.m.) that has fallen into disrepair. The centre has been subject of planning permissions for the comprehensive and intensive redevelopment of the site with provision for a mix of commercial and residential uses in a multi-storey complex incorporating underground parking. In preparation for the initially planned redevelopment, Penney's relocated to its present location in a prominent corner site in Carlow Shopping centre. It is explained that the developer has ceased trading and so Penney's is seeking to return its retail operation to the subject site, however this involves modifications to premises (previously intended for demolition) and ancillary works for parking and amenities.

There are two separate appeals and an observing party and having regard to the nature of the proposal and contents of the file I consider the issues to relate to:

- Principle of use
- Flood Risk
- Retail Impact
- Urban design
- Traffic
- Appropriate Assessment – addressed in next section of report.

8.2. **Principle of use**

- 8.2.1. There are three key factors in determining the acceptability in principle of the nature of the proposal in this town centre site. The first relates to flood risk, the second relates to retail impact and the wider impact on the town centre functionality and the third relates to impact on urban form.

8.3. Flood Risk

- 8.3.1. The site is in an area categorised as Flood Zone B based on the most up to date Carlow Pluvial Flood Extent Map(Nov 2018) produced by the OPW funded south east CFRAM study. This updates the development plan wherein the site is identified as being within Zone A and is the basis of some of the concerns in the objections. In the Site-Specific Flood Risk Assessment, the Burren River is identified as a pathway to possible high risk flooding impact on people and property including vehicles. Surface water drainage is also identified as a possible source of a medium risk due to flooding from surcharging of the drainage system with the potential for consequent moderate impact of injury to people and to property.
- 8.3.2. In terms of principle of development the site is a commercial use (and established on the site) and is classed as less vulnerable – an appropriate category of development for Flood Zone B areas. Accordingly I see no basis in principle to refuse permission on grounds of its location in a potential flood zone.
- 8.3.3. I note there are some outstanding measures of the Flood Relief Scheme for the area. I note in the technical reports that it had been agreed with the previous developer that sections of the River Burren/Carlow Town Flood relief Scheme adjacent to the site that were omitted would be included with later development of the site. The planning authority report also raises issues about a residual risk of blockages in the drainage system and the need to account for climatic change factors. Following the request for further information and discussion between the applicant and the planning authority, the outstanding issues appear to be satisfactorily addressed.
- 8.3.4. Of note, the applicant clarifies that the proposed measures will protect the site for the 0.1% AEP (plus 20% climatic change) peak flood levels and any possible surcharge from the combined sewer. The mitigation measures proposed are stated and accepted to be in line with the Flood Relief Scheme and include embankments (200mm high) and kerbing. These measures are included in the drainage layout drawing no. 180205-3001 submitted as part of further information. New flood measures for the car park will help mitigate risk by directing floods away from buildings in addition to flood resilient building technique. An emergency warning system will also mitigate risk to people and property. In terms of wider impact, it is

stated that there will be no increase in run-off rates as compared to the existing site which satisfies the requirements of the SFRA to not increase risk flooding.

- 8.3.5. Having regard to the scope of the FRA, the flood risk nature and the reports of the planning authority which include a range of site-specific conditions that have been factored into a detailed CEMP and informed the NIS, I consider it reasonable to accept that the flood mitigation measures, fully implemented are sufficient to mitigate flood risk of the site and surrounding properties. I do not consider the proposal will increase the risk of flooding on the site and can be seen as a positive development in terms completing the Flood Relief Scheme. In these circumstances and having regard to the established use on this built-up site, I do not therefore consider flood risk to constitute grounds for refusal of permission.

8.4. Retail Impact

- 8.4.1. The objections in this regard are concerned about the impacts on the town centre by virtue of a large-scale single occupancy unit at this peripheral location and loss of convenience retailing for the town.
- 8.4.2. It is essentially submitted that by permitting the refurbishment and modification of the premises to facilitate a standalone single use anchor store amid a sea of surface car parking at this location will significantly detract from the traditional town core (Barrow St, Dublin St, Tullow St.) and thereby compromise the long-term viability of the town. It is argued that that by permitting a key anchor store such as Penney's to operate as a sole trader with its own extensive car parking will only result in enhancing Penney's business while being of no benefit to the core shopping areas in need of revitalisation. It is further argued that the mixed use development with residential and office would be preferable as an agent for much needed town revitalisation and the loss of such a mix is also argued to have an indirect impact on retailing in the town.
- 8.4.3. In the first instance, it is important to highlight that this is not a proposal to increase net floor space and in fact it is a significant reduction in retailing as previously permitted. (Most recently an extension of duration of permission brought this to within the last 5 years.) I note the previous permission was for demolition of 4,000sq.m. (Penney's) and 770sq.m. (Hanover St SC) and replacement with 26,071

sq.m. of comparison shopping in 36 units and 580 sq.m. convenience shopping, a 975 sq.m. café and food court with provision for an occasional farmers market, 927 sq.m. of offices and 30 residential units. As the proposal in this case is to facilitate the return of an established retailer from another site within the town and for reinstatement of the 4000sq.m. retailing operation, albeit in a reconfigured area, I do not consider there to be reasonable basis to argue that the reordered retail space in an effort to enhance an established presence in the town will impact on the viability of retailing in the town centre. I note in this regard that development plan policy is to support enhancement of retail floor space and to sustain competitiveness in this category 1 retail centre in the town. All retail types are included in the retail strategy. I do not therefore consider there to be any reason in principle to refuse the refurbishment works as proposed.

8.4.4. With respect to the scale of the units there is no cap for such development within the Retail Planning Guidelines (2005) . The nearest applicable category would be retail warehouse for which there is an advised cap of 6,000 sq.m. and restriction of coalescence of two or more stores in this context. The subject development which is not strictly retail warehouse is well within these limits. If anything by my understanding of the guidelines, the larger store provides a different shopping experience than the smaller units more typically accommodated in a traditional town centre and does not necessarily present direct competition . The guidelines for example suggest a minimum limit of 700 sq.m. in out-of-town shopping areas so as not to compete with the town centre. The purpose of the guidelines is not to unduly interfere in competition among retailers and I consider there is no basis within the framework of these guidelines or the retail strategy for the county to seek to restrict the scale of the proposed single unit. I concur with the applicant that there are more reasons to indicate a positive benefit to the town than a negative one.

8.4.5. It is also argued that the loss of convenience shopping at this location will have a particular impact as there is a shortage of such retailing in the town centre. However it is counterargued that there are several convenience outlets serving the town and that further opportunities will arise in Carlow Shopping centre when Penney's store relocates from here back to the subject site.

8.4.6. I note the context of the Carlow retail strategy (2015) which identifies the site as an opportunity site in the revitalisation of the town centre. It acknowledges the planning

permission rather than advocating it as a brownfield site at that time. Notably there is much emphasis on the need for permeability through the site and across the river to connect with the traditional shopping core as part of the town expansion to the south east. The strategy also acknowledges the importance of addressing dereliction and vacancy which is identified as having a negative retail impact. In this case there is no increase in the retail area than previously permitted, but rather it is to address building condition and amenities. The main difference is the loss of residents and office works (and their purchasing power) which the developer is not obliged to provide.

- 8.4.7. While I accept that there are merits in the previous proposal in supporting the revitalisation of the town, the retail issue in this case does not fall on the quantum of retail space which is the basis for the retail planning guidelines. In this case there is no material increase in floor area but rather a restoration of existing floor space, albeit in a less intense format than envisaged in the previous permitted development. I do not consider the continuation of retailing in the scale proposed compromises the retail strategy for the town. The relevant issues in this case are more related to impact on urban design and dynamics through the town which has the potential to indirectly impact on retailing and town centre vitality. This is addressed more appropriately under the heading of urban design.

8.5. Urban Design

- 8.5.1. One of the key issues in the policies and objectives for the town centre, of which the site forms an integral part, is permeability and connectivity between the traditional town core and lands to the south east. In a previous case for comprehensive redevelopment, the Board raised concerns in respect of permeability, and this was addressed by the applicant by way of multiple pedestrian access points including one from Burrin Street as set out in an amended submission to the Board during the appeal process. In this case the splitting of the site by omission of the Halford shopping centre and construction of a 45m long 2.4m high fence is I consider a retrograde step in terms of achieving permeability. The omission of this centre potentially compromises the opportunity for incorporating an attractive pedestrian access through the landmark 19th century cut stone piers and gates (to the now demolished Hanover House) on Burrin street (and that I note from inspection are

subject of Council action seeking appropriate protection). It is not clear if this is outside the control of the applicant, but I do note that the previous site was an amalgamation of sites under separate leaseholds from the original development site. While it is an undeniable loss, it would be unreasonable to effectively prevent the applicant from re-occupancy because of a third party's lack of involvement. At the same time rights of way should not be compromised by the subdivision. Ultimately future interconnection should not be impeded. Accordingly in view of the very clear strategy of permeability in the retail strategy appended to the development plan, I consider it reasonable to restrict the fencing off of a potential pedestrian route through a gateway that is a protected structure. This should be reviewed in 4 years' time (rather than the 5 years proposed) and in the interest of clarity by attaching a condition for temporary fencing only and the applicant should also submit details of provision for future pedestrianisation as part of compliance. Similarly the car parking spaces as allocated should not result in long term site fragmentation which may compromise a future orderly layout in this opportunity site, however, as part of the site is omitted, other than refusing on grounds of piecemeal development it is difficult to regulate the excluded car park area by condition.

8.5.2. In terms of the visual aspect, I accept that if the site were to be redeveloped, a more defined and interactive streetscape would be the more appropriate urban format in accordance with Best Practice Guidelines. However, the situation is such that this is a re-use of an existing building in need of repair and upgrading. I do not accept there is any basis to assess this as a new build. In the context of sustainable development, the re-use is positive. It is clear that the upgrading of the roof, removal of metal frames and roof plant, the insertion of external display windows and external remodelling and recladding together with enhanced parking facilities and landscaping will enhance the visual amenities of a site that is underused. The reduction in columnar entrance signage from what was initially proposed is also a positive step in the context of development plan policy on controlling visual clutter. The obscuring of views of the vacant boarded up units will also visually enhance the environs - although this should not be a long-term measure.

8.5.3. I note from my site inspection of the environs that there are sites for development and that there are vacant units and accordingly in a strategic context, I do not consider the continued use of a low intensity development by current standards will

displace development to an out of town location. Ultimately permission in this instance is for relatively minor works and does not compromise the future redevelopment of the site for more intense development subject to appropriate regulatory measures relevant at the time.

8.6. Traffic and other matters

- 8.6.1. The appellants raise concerns about the intensification of use of the entrance at Kilkenny Road. The applicant has addressed traffic safety by way of a stage 1 and 2 Road Safety Audit, and the engineering divisions of the planning authority have no concerns subject to conditions. In view of the fact that this is an existing car park serving the town and the enhanced safety measures are aimed at clear demarcation for pedestrians, cyclists and drivers, the development appears to be a positive step in terms of traffic safety. In respect of the wider issues of traffic flow through the town, I consider this to be an issue more appropriately addressed by the Roads Authority of the County Council. I do not consider that there is any basis to refuse permission for the proposed development on grounds of traffic hazard.

9.0 Appropriate Assessment

9.1. Stage 1 - Screening

- 9.1.1. A Natura Impact Statement was submitted as part of the planning application with the application and was subsequently modified to take account of the site-specific CEMP as required in a request for further information by the planning authority. The revised NIS was advertised by the applicant.
- 9.1.2. Notwithstanding the submission of a Screening report, a staged approach to screening for appropriate assessment as recommended in both EU Guidance and by the Department of Environment, Heritage and Local Government guidance is required in the following sequence.
- 9.1.3. **Project Description and Site Characteristics:**
- 9.1.3.1. The proposed development is as described in section 2 of this report. In summary the proposal relates to alterations to an existing building complex and its ancillary

yard and car parking areas which extend to the Burrin River to the north of the site. The works involve dismantling of the roof and minor structures within the building complex, replacement roof and application of external cladding including render and granite plinths, new windows, installation of plant structures in the services yard to the rear, some minor works in the surface car park such as partial resurfacing, fencing and hard and soft landscaping. The revised plans as submitted in further information clarify landscape works which include some limited replanting by the riverbank and omission of columnar signage at the entrance by the river. A CEMP clarifies the management of the site at construction stage. In respect of surface water drainage, drawing no.180205-3001 shows the drainage system in response to the requirements of the planning authority. It is acknowledged by the drainage division of the planning authority that much of the site is drained to the 1m diameter combine public sewer that traverses the car park. The applicant proposes to fit a non-return valve on the discharge point to prevent surcharge and also to collect surface water and discharge through an new interceptor before discharging to the River Burrin.

9.1.4. **Relevant Natura 2000 Sites, Qualifying Interests and Conservation Objectives:**

9.1.4.1. There is only one site within the zone of influence of the proposed development based on proximity and potential hydrological links. This is the River Nore and River Barrow SAC (Site Code 002162), less than 500m from the site. The Slaney River Valley (site code 000781) which is 10.5km to the east has no hydrological connection to the site and there is therefore no likelihood of significant effects.

9.1.4.2. As described by the NPWS, this site (Site Code 002162) consists of the freshwater stretches of the Barrow and Nore River catchments as far upstream as the Slieve Bloom Mountains, and it also includes the tidal elements and estuary as far downstream as Creadun Head in Waterford. The main threats to the site and current damaging activities include high inputs of nutrients into the river system from agricultural run-off and several sewage plants, over-grazing within the woodland areas, and invasion by non-native species, for example Cherry Laurel (*Prunus laurocerasus*) and Rhododendron (*Rhododendron ponticum*). The water quality of the site remains vulnerable. Good quality water is necessary to maintain the populations of the Annex II animal species listed. Good quality is dependent on

controlling fertilisation of the grasslands, particularly along the Nore. It also requires that sewage be properly treated before discharge. Drainage activities in the catchment can lead to flash floods which can damage the many Annex II species present. Capital and maintenance dredging within the lower reaches of the system pose a threat to migrating fish species such as lamprey and shad. Land reclamation also poses a threat to the salt meadows and the populations of legally protected species therein.

9.1.4.3. Overall, the site is of considerable conservation significance for the occurrence of good examples of habitats and of populations of plant and animal species that are listed on Annexes I and II of the E.U. Habitats Directive. Furthermore it is of high conservation value for the populations of bird species that use it. The occurrence of several Red Data Book plant species including three rare plants in the salt meadows and the population of the hard water form of the Freshwater Pearl Mussel, which is limited to a 10 km stretch of the Nore, add further interest to this site.

9.1.4.4. The following table sets out the qualifying interests and the conservation target.

Site and Designation	Distance from Site	Qualifying Habitats and Species of conservation interest - and conservation target	Potential for connection
002162 River Nore and River Barrow SAC	363m west 436m down- stream	Salicornia and other annuals colonising mud and sand [1310] – To maintain the favourable conservation condition Estuaries [1130]- To maintain the favourable conservation condition Reefs [1170] Mudflat and sandflats not covered by low tide - To maintain the favourable conservation condition Atlantic salt meadows (<i>Glaucopuccinellietalia maritimae</i>) [1330] - To restore the favourable conservation condition	No >90km downstream No >90km downstream No >90km downstream No >90km downstream No >90km downstream

		Mediterranean salt meadows (<i>Juncetalia maritimi</i>) [1410] - To restore the favourable conservation condition	No >90km downstream
		Water courses of plain to montane levels with the <i>Ranunculion fluitantis</i> and <i>Callitricho-Batrachion</i> vegetation [3260] - To maintain the favourable conservation condition	Yes – downstream
		European dry heaths [4030] - To maintain the favourable conservation condition	No pathway
		Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels [6430]- To maintain the favourable conservation condition	No pathway
		Old sessile oak woods with <i>Ilex</i> and <i>Blechnum</i> in the British Isles [91A0]- To restore the favourable conservation condition	No pathway
		Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> (<i>Alno-Padion</i> , <i>Alnion incanae</i> , <i>Salicion albae</i>) [91E0] - To restore the favourable conservation condition	No pathway
		Petrifying springs with tufa formation (<i>Cratoneurion</i>) [7220] - To maintain the favourable conservation condition	Yes downstream
		<i>Vertigo moulinsiana</i> (Desmoulin's Whorl Snail) [1016] of Desmoulin's whorl snail - To maintain the favourable conservation condition	No pathway
		<i>Margaritifera margaritifera</i> (Freshwater Pearl Mussel) [1029] - The status of the freshwater pearl mussel (<i>Margaritifera margaritifera</i>) 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.	No pathway
			No pathway

		Trichomanes speciosum (Killarney Fern) [1421] - To maintain the favourable conservation condition	No pathway
		Margaritifera durrovensis (Nore Pearl Mussel) [1990] - To restore the favourable conservation condition	
		Austropotamobius pallipes (White-clawed Crayfish) [1092] To maintain the favourable conservation	Yes
		Petromyzon marinus (Sea Lamprey) [1095]- To restore the favourable conservation condition	Yes
		Lampetra planeri (Brook Lamprey) [1096] To restore the favourable conservation condition	Yes
		Lampetra fluviatilis (River Lamprey) [1099] - To restore the favourable conservation condition	Yes
		Alosa fallax (Twaite Shad) [1103] - To restore the favourable conservation condition	Yes
		Salmo salar (Salmon) [1106] - To restore the favourable conservation condition	Yes
		Lutra lutra (Otter) [1355] - To restore the favourable conservation condition	Yes

9.1.5. Assessment of likely Effects:

9.1.5.1. I concur with the applicant's Screening Report in its conclusion that further assessment is required in relation to this site. This is based on the hydrological connection provided by the River Burrin and the fact that the qualifying interests are dependant on good water quality. Run-off at construction and operational stages could, without mitigation effect water quality. Machinery and deliveries may be a vector for transmitting invasive species. Disturbance by machinery, noise and lighting may also effect species. Extra loading on the foul sewer may impact on the outflow of the Carlow WTP which discharges to the SAC. Accordingly, in the

absence of mitigation there is potential for direct, indirect and cumulative impacts on the River Barrow which is less than 450m downstream.

9.1.6. **Statement and Conclusions:**

9.1.6.1. Having regard to the nature and location of the proposed works in such close proximity to the River Burrin which is 436m upstream of the River Barrow and to the nature of the site and the characteristics of the qualifying interests, I concur with the screening assessment that significant effects cannot be ruled out on the River Nore and River Barrow SAC Site Code 002612. In conclusion having regard to the foregoing, it is reasonable to conclude that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that significant effects cannot be ruled out and a Stage 2 Appropriate Assessment is accordingly required.

9.2. **Stage 2 Appropriate Assessment**

9.2.1. **Assessment of potentially direct and indirect effects:**

9.2.1.1. The relevant site is the River Nore and River Barrow SAC Site Code 002612. There will be no direct effects on the habitats that are qualifying interests of this Natura Site as the development site lies outside its boundary and the proposal does not provide or propose any access to any part of the designated sites. It is possible that some populations of the SAC species could however be present in the River Burrin such as otters, brook/river lampreys and salmon and may therefore be potentially directly effected. In terms of indirect effects, protected habitats may also occur downstream as well as the other aquatic species such as sea lampreys which would be dependant on good water quality. In the absence of mitigation there is potential for changing water quality, introduction of invasive species and disturbance impacts primarily as a consequence of the construction stage and to a lesser degree during the operational phases. The deterioration of surface water due to pollution caused during the dismantling/demolition, construction/refurbishment/landscaping phase is the most likely risk, as the site operates as a public car park at present.

- 9.2.1.2. Impacts arising via the foul sewer are not significant as there will be only a negligible increase in use associated with staff facilities only. (café and toilets are for staff).
- 9.2.1.3. The NIS includes control/mitigation measures for the demolition, construction and operational phases to ensure water quality is protected. These measures include control of surface water collection and its discharge to the public surface water network, no discharges of polluting materials, provision of appropriate boundary/hoarding around the development site, connection to existing public surface water network and foul sewer. Biosecurity, noise and vibration, lighting and landscape treatment mitigation is also provided.
- 9.2.1.4. The NIS was amended to take account of the updated Site Specific Flood Risk Assessment and the CEMP which includes a surface water management plan and waste management plan. This informs the likely impacts and residual effects based on the conservation objectives for the designated site.
- 9.2.1.5. The mitigation measures proposed are sufficient to ensure that impacts regarding water quality, disturbance and non-native invasive species are reduced to an imperceptible level. On this basis the proposed development will not prevent any of the qualifying interests from achieving or maintaining the conservations objectives listed.
- 9.2.1.6. Cumulative effects may arise in-combination with other plans and projects in the vicinity. The surrounding development sites are however on zoned lands and benefit from connection to municipal infrastructure in terms of surface water drainage and sewerage. Subject to adherence with the mitigation measures outlined, it is considered that the proposal will not give rise to in-combination effects with other plans and projects.
- 9.2.1.7. I am satisfied that it has been demonstrated based on the information in the submitted Natura Impact Statement that with implementation of mitigation measures including construction management and operational measures that the proposed development, individually or in combination with other plans and projects would not adversely affect the River Nore and River Barrow SAC (Site Code 002162).

9.2.2. **Appropriate Assessment Conclusions**

9.2.2.1. I consider that it is reasonable to conclude on the basis of the information on the file, which I consider adequate in order to carry out a Stage 2 Appropriate Assessment that the proposed development, individually or in combination with other plans and projects would not adversely affect the integrity of the River Nore and River Barrow SAC (Site Code 002162).

9.2.2.2. While I note the general acceptability of the submitted Construction Environmental Management Plan, which incorporates all mitigation measures indicated in the Natura Impact Statement as a precautionary approach provision in the decision should be made for agreement of all final details between the planning authority and the relevant statutory authorities prior to the commencement of development.

10.0 **Recommendation**

I recommend that planning permission for the proposed development be granted based on the following reasons and considerations.

11.0 **Reasons and Considerations**

Having regard to the existing pattern of development in the area, and the nature of the proposed development which relates substantially to the refurbishment and reconfiguration of an existing premises at a prominent location in the town centre, it is considered that, subject to compliance with the conditions set out below, the proposed development would not conflict with the Carlow Retail Strategy as contained in the current Carlow Development Plan 2016-2021, would contribute positively to the revitalisation of the town centre and would be acceptable in terms flood risk, natural conservation and traffic safety. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

12.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application and lodged on 24th March 2020 except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars

Reason: In the interest of clarity

2. The proposed temporary screen sheet fence along the western boundary shall not be used for advertising, shall be maintained to a visually high standard and shall be removed in its entirety after 4 years whereupon the area shall be suitably reinstated and landscaped unless prior permission is obtained for its retention. Drawings and photomontages showing details of the proposed finishes and materials and future reinstatement landscaping shall be submitted to, and agreed in writing with the planning authority prior to commencement of development.

Reason: In the interest of visual amenity and to allow for a review of the fencing and access arrangements having regard to the circumstances then pertaining with particular regard to providing for future pedestrian access to Burrin Street.

3. The proposed subdivision of the car parking area within the site shall be for a period of 5 years from the date of this order and shall re-amalgamated with the surrounding car park/site unless prior permission is obtained for its retention.

Reason: In the interest of visual amenity and orderly development and to allow for a review of the car parking arrangements having regard to the circumstances then pertaining

Reason: In the interest of visual amenity and to allow for a review of the fencing and access arrangements having regard to the circumstances then pertaining with particular regard to providing for future pedestrian access to Burrin Street.

4. The site shall maintain pedestrian permeability to the wider area including from Hanover Park, the River Burrin, Kennedy Avenue and the R448 and details of this together with future provision for pedestrian access to Burrin Street shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of clarity and to comply with the development plan objectives for town centre accessibility and vitality.

5. Details including samples of the materials, colours and textures of all the external finishes to the proposed refurbished building and additional structures/plant, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.

6. The existing stone wall bounding the site in the service yard shall be retained in full, made good where required and protected during any demolition and construction works. Details of these measures together with a building condition report shall be submitted for written agreement with the planning authority prior to commencement of development.

Reason: In the interest of traffic safety, orderly development and to ensure that adequate off-street parking provision is available to serve the proposed development.

7. Prior to commencement of development, the developer shall enter into water and/or waste water connection agreement(s) with Irish Water.

Reason: In the interest of public health

8. Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services. In respect of flood mitigation the following shall apply:
- (a) The recommendations and flood mitigation measures as detailed in Section 6.3 and Figure 6.3 in the Revised Site Specific Flood Risk Assessment (February 2020) and Drawing No. 180205-3001 received by the planning authority on 24th March 2020 shall be strictly adhered to and carried out in full prior to opening the premises to the public.
 - (b) The development shall include the construction of a kerb and embankments around the carpark perimeter, which shall protect against the 1% AEP Current Scenario plus 20% climate change (48.40mOD). Details of the measures including elevations and finishes shall be agreed in writing with the planning authority.
 - (c) Non-return valves shall be provided at the inlet to the existing services to mitigate against pluvial flooding. Oil interceptors and other infrastructure as detailed in the revised Site-Specific Flood Risk Assessment shall be provided.
 - (d) Flood resilience measures shall be provided for the existing building to protect against the 1% AEP Current Scenario plus 20% climate change (48.40mOD), These shall have regard to best practice.

Reason: In the interest of Public Health

9. The construction of the development shall be managed in accordance with a Construction Environmental Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall incorporate the requirements of Fisheries Ireland and provide details of intended construction practice for the development, including, hours of operation, noise and dust management measures and off-site disposal of construction/demolition waste.

Reason: In the interest of environmental protection of the River Burrin, traffic safety and to protect the amenities of the area.

10. Public lighting shall be provided in accordance with a scheme, which shall include lighting along pedestrian routes, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Such lighting shall be provided prior to the making available for occupation of any unit.

Reason: In the interests of amenity and public safety.

11. Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: To protect the amenities of the area.

12. All the recommendation and remedial works and measures in the Road Safety Audit Stages 1 and 2 received by the planning authority on 24th March 2020 shall be strictly adhered to and carried out in full.

Reason: In the interest of traffic safety

13. All utility cables shall be located underground except as otherwise agreed with the planning authority in writing. Any service poles which require relocation on or from this site shall be relocated prior to construction works at the expense of the applicant.

Reason: In the interest of visual amenity.

14. Detailed measures in relation to the protection of bats shall be submitted to and agreed in writing with the planning authority, prior to commencement of development. These measures shall be implemented as part of the development. Any envisaged destruction of structures or felling of trees that support bat populations shall be carried out only under licence from the National Parks and Wildlife Service and details of any such licence shall be submitted to the planning authority.

Reason: In the interest of wildlife protection.

15. The developer shall facilitate the archaeological appraisal of the site and shall provide for the preservation, recording and protection of archaeological materials or features which may exist within the site. In this regard, the developer shall:-

- (a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development, and
- (b) employ a suitably-qualified archaeologist prior to commencement of development. The archaeologist shall assess the site and monitor all site development works.

The assessment shall address the following issues:-

- (i) the nature and location of archaeological material on the site, and
- (ii) the impact of the proposed development on such archaeological material.

A report containing the results of the assessment shall be submitted to the planning authority with any application for permission consequent on this grant of outline permission. Details regarding any further archaeological requirements (including, if necessary, archaeological excavation) prior to the commencement of construction work, shall be determined at permission consequent stage.

Reason: In order to conserve the archaeological heritage of the area and to secure the preservation (in-situ or by record) and protection of any archaeological remains that may exist within the site.

16. The landscaping scheme as submitted to the planning authority on the 24th day of March, 2020 shall be carried out within 6 months of the date of commencement of development unless otherwise agreed in writing with the planning authority. All planting and associated works shall be in accordance with the mitigation measures contained within the NIS as amended and submitted to the planning authority on the 24th day of March, 2020.

All planting shall be adequately protected from damage until established. Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

Reason: In the interest of visual amenity.

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

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

Suzanne Kehely
Senior Planning Inspector

22nd February 2021