



An
Bord
Pleanála

Inspector's Report

ABP-308607-20

Development

Revisions to ABP-305228-19 to allow retailing of bulky and non-bulky sporting, recreation and leisure related produces and ancillary goods. The application will supersede Condition 2 of ABP-305228-19 which permits the sale of bulky goods only

Location

Unit 14, Liffey Valley Retail Park,
Coldcut Road, Dublin 22 D22 E789

Planning Authority

South Dublin County Council

Planning Authority Reg. Ref.

SD20A/0213

Applicant(s)

Intrust Properties Company Limited by
Guarantee

Type of Application

Permission

Planning Authority Decision

Refuse Permission

Type of Appeal

First Party v Refusal of Permission

Appellant(s)

Intrust Properties Company Limited by
Guarantee

Observer(s)

Liffey Valley Management Ltd.

Date of Site Inspection

24.03.2021

Inspector

Anthony Kelly

1.0 Site Location and Description

- 1.1. The unit subject of the application is in Liffey Valley Retail Park. The Retail Park is located approx. 200 metres south of Liffey Valley Shopping Centre.
- 1.2. Liffey Valley Retail Park is accessed from Fonthill Road. There are commercial retail units e.g. Curry's PC World, Halford's, Hanley's Furniture, Argos and Carpet Right in an 'L' shape along the west and south of the site with the remainder of the Retail Park mainly comprising car parking and vehicular circulation. There is also a detached McDonald's drive-thru restaurant in the north western corner of the Retail Park. Unit 14, subject of the application, is currently vacant and is located between Currys PC World to the east and Halford's to the west.

2.0 Proposed Development

- 2.1. Permission is sought for a revision to ABP Reg. Ref. ABP-305228-19 to allow retailing of a range of bulky and non-bulky sporting, recreation and leisure related products and ancillary goods. The application will supersede Condition No. 2 of that permission which permits the sale of bulky goods only.
- 2.2. The existing structure has a floor area of 2,032sqm with a permitted mezzanine floor area of 1,220sqm. It has a general height of 10.04 metres and a maximum height of 10.9 metres.

3.0 Planning Authority Decision

3.1. Decision

South Dublin County Council refused permission for two reasons:

1. Having regard to the non-bulky and ancillary nature of goods proposed to be sold, the use proposed conflicts with national, regional and Development Plan policies which seek to restrict the sale of non-bulky goods in retail parks in order

to protect the vitality and viability of town centres and as such, is contrary to the proper planning and sustainable development of the area.

2. The proposed development, involving the retailing of a range of bulky and non-bulky sporting, recreation and leisure related products and ancillary goods from a permitted retail warehouse unit, would set an undesirable precedent for other similar uses, which would in themselves and cumulatively, be harmful to the vitality and viability of designated town centres/major retail centres and would be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

- 3.2.1. The Planning Report forms the basis for the planning authority's decision. The report concludes that, having regard to the zoning and planning history on site, the proposed development would be contrary to the Retail Planning Guidelines (2012), would conflict with the County Development Plan 2016-2022, would adversely affect the viability and vitality of the existing retail centre and would, therefore, not be in accordance with the proper planning and sustainable development of the area.

3.2.2. Other Technical Reports

Roads Department – No Roads objections.

3.3. Prescribed Bodies

None.

3.4. Third Party Observations

One submission was received from Liffey Valley Management Ltd. The issues raised are largely covered by the observation received on foot of the grounds of appeal with the exception of the following:

- Floor plans do not illustrate where bulky and non-bulky goods and ancillary products would be potentially located as required in the Retail Planning Guidelines.

- There is a differential in Local Authority rates charged in respect of the Shopping Centre and the Retail Park. Retail Park occupiers have a significant economic advantage over Shopping Centre occupiers.

4.0 Planning History

There have been a number of planning applications made in relation to the Retail Park and the subject unit. The following are considered to be the most relevant applications:

P.A Reg. Ref. S97A/0523 – Permission granted in 1997 for revisions to previously approved permissions for District Town Centre Development including 15 no. retail warehousing units with feature entrances, car parking, service yards, loading bays, access roads, landscaping, boundary treatment and associated services.

P.A. Reg. Ref. S98A/0060 – Permission granted in 1998 for revisions and alterations to previously approved S97A/0523 for Retail Park which includes 13 no. Retail Warehousing Units with feature entrances, car parking, service yards, loading bays, security hut, ESB substations, switch rooms, maintenance shed, landscaping, boundary treatment and access road.

P.A. Reg. Ref. S99A/0463 – Permission granted in 2000 for retention of amendments to S98A/0060 to include alterations to internal subdivision from 12 no. to 14 no. units, elevational amendments including feature entrance and external door locations and provision of traffic access barriers, compactors, washlighting, CCTV, security hut and landscaping.

P.A. Reg Ref. SD19A/0078 / ABP Reg. Ref. ABP-305228-19 – Permission was granted in 2020 for the construction of a new mezzanine floor (1,220sqm) to the existing retail warehouse unit resulting in an overall floor area of 3,252sqm, external signage, associated alterations to the internal layout, associated elevational alterations and all other associated works at Unit 14. Condition 2 states no more than 20% of the net retail sales shall be dedicated to ancillary items associated with bulky goods.

5.0 Policy Context

5.1. South Dublin County Development Plan 2016-2022

- 5.1.1. The site is in an area zoned 'Objective MRC; To protect, improve and provide for the future development of a Major Retail Centre'.
- 5.1.2. Chapter 5 (Urban Centres & Retailing) and Chapter 11 (Implementation) of the Plan is relevant to the application.

5.2. Retail Planning Guidelines for Planning Authorities (2012)

- 5.2.1. These guidelines are relevant to the current application.

5.3. Natural Heritage Designations

- 5.3.1. The closest Natura 2000 site is Rye Water Valley/Carton SAC approx. 6.7km to the west. The closest area of natural heritage designation is Liffey Valley pNHA approx. 1.2km to the north.

6.0 The Appeal

6.1. Grounds of Appeal

The main points made can be summarised as follows:

- The recent grant of permission was to facilitate Decathlon who offer a wide range of sports and leisure goods and would like the flexibility to trade without a 20% restriction on non-bulky goods. The purpose of the current application is to bring clarity/certainty to the nature of the retail use that can operate. The use definition applied for does not seek 'open retail' use and is therefore limited to a Decathlon type user who would sell a mix of bulky and non-bulky sporting, recreation and leisure related products.
- The proposed use definition has been tailored to suit Decathlon. In their stores, all products are available to test before purchasing. Products for more than 62 no. sports are sold and stores require approx. 3,000sqm floorspace. Stores are

often stand alone or in out-of-centre locations e.g. Decathlon's store in Ballymun.

- The planning authority has rigidly applied and narrowly interpreted Paragraph 4.11 of the Retail Planning Guidelines in relation to retail warehousing/retail parks. Viewed in a wider context the assessment must be viewed quite differently. Specific sections of Chapter 2 (Retail Policy Context), Chapter 3 (Retail and Spatial Planning) and Chapter 4 (Retailing and Development Management) are referenced. The sequential approach requires flexibility to ensure that various forms of retailing are developed in the most appropriate locations. The Board's Inspector previously agreed that the development would complement the existing retail offer and is an ideal location. Policy on Retail Parks and Retail Warehousing applies predominantly to more typical retail warehouse/retail park developments which tend to be in out-of-centre locations, not zoned for retail use and not included in the retail hierarchy. The Council's own Development Plan supports this by the inclusion of Section 11.3.6 which confirms the different approach that should be taken when dealing with retail warehousing within designated centres. No evidence is provided in the planning report identifying potential adverse impacts resulting from the sale of non-bulky goods and fails to make any reference to Section 11.3.6. The Board's Inspector previously dismissed the third party submission concluding there was no basis to assert the proposed development would prejudice the viability or retail development in the Major Town Centre or undermine the retail hierarchy. An 'open retail' use is not sought, rather it is a very specific use definition not suited to a shopping centre or high street.
- The 2008 Greater Dublin Area Retail Strategy recommended two policy approaches whereby retail warehousing associated with Town Centre would be allowed some level of flexibility over out-of-centre retail warehouses. It states that for retail warehouses located within town centres, some level of flexibility could be applied in allowing types of stores where a mix of bulky and non-bulky goods are sold if the location is easily accessible by foot from the core retail area, the form of development is in keeping with good urban design and the development would not detract from the local area plan aspirations for the area. This is precisely the context at Liffey Valley Retail Park.

- The zoning objective of the site in the South Dublin County Development Plan 2016-2022 supports various retail categories and the planning authority failed to apply or refer to the most relevant provision of the Plan, Section 11.3.6 (Retail Warehousing), which states a level of flexibility will be applied in core retail areas. Liffey Valley Shopping Centre is at Level 2 in the Council's Retail Hierarchy. Retail Policy Objectives R2 Objective 1 and R2 Objective 2 highlight the need to consolidate existing retail centres and the primacy of the Core Retail Areas. The subject unit is located within the Core Retail Area. Objectives of the Liffey Valley Major Retail Centre are set out. The proposal is entirely in keeping with Development Plan policy in relation to Liffey Valley.
- In response to the second reason for refusal, much of the response to the first reason for refusal is also relevant. In addition:
 - Liffey Valley Retail Park is the only planned Retail Park in a designated Core Retail Area in South Dublin.
 - Shop-Local, Shop-Major Sales Outlet and Shop-Neighbourhood are permitted in principle in this MRC zoning as well as Retail Warehousing. No precedent arises in this instance where any proposal should be considered on their merits.
 - In Blanchardstown, retail warehouse units in the Major Town Centre have been permitted to expand the range of goods beyond the strict confines of bulky goods.
 - S98A/0060 for The Retail Park Liffey Valley included a condition permitting 'leisure/sports' products (Condition 3). This predated the Retail Planning Guidelines (2000) 'bulky goods' definition and the 2012 Review which introduced the 20% ancillary 'non-bulky goods' provision. The unit has previously been granted a permission that could facilitate Decathlon.
 - Condition 3 of S98A/0060 and Condition 3 of S99A/0463 required a separate planning application for other uses, suggesting that other uses should be considered on their merits.

- The proposal will not directly compete with and will therefore not have a material adverse impact on the viability and vitality of Liffey Valley Shopping Centre or the 'Retail Opportunity Site'. This statement in the second reason for refusal is made without any evidence and is at odds with the conclusion of the Inspector in the previous application.
- Rather than setting a precedent the application will assist in the control of the type of uses that are suitable at this location at this time.
- In relation to precedent, Fonthill Retail Park and Fonthill Industrial Estate have seen significant retail development and significant pressure to expand beyond 'bulky goods' in zones where Shop-Major Sales Outlet and Shop-Neighbourhood are 'not permitted'. The Retail Planning Guidelines policy should be applied to these locations. Liffey Valley Retail Park is within the Major Retail Centre, is sequentially preferred and policy allows flexibility in relation to the sale of non-bulky goods. However, Fonthill is being allowed significant non-bulky uses as its list of tenants makes clear, while Liffey Valley Retail Park is not being allowed to evolve. It appears the policy is being applied in reverse.

6.2. Planning Authority Response

The planning authority confirms its decision, and the appeal raises no new issues.

6.3. Observations

An observation has been received from Liffey Valley Management Ltd., the Liffey Valley Shopping Centre landlord. The main points made can be summarised as follows:

- A key objective of the Retail Planning Guidelines (2012) is to control and limit the range of goods sold in Retail Parks to bulky goods, to prevent adverse impact on designated centres. Bona fide bulky goods require the use of a car and cannot be easily accommodated in town centre locations. The Guidelines state that it is important that the range of goods sold in retail parks "is tightly controlled and limited to truly bulky household goods..." There can be no doubt the proposed development clearly contravenes the Guidelines. The applicant's

position that they would like the flexibility to trade without a restriction to 20% non-bulky goods but that they do not seek an open retail use is somewhat contradictory as the removal of the non-bulky goods restriction and allowance of the sale of unrestricted ancillary goods effectively grants an open retail use. Ancillary items should be truly ancillary to the bulky goods items rather than allowing a dilution to effectively sell mainstream comparative goods. It is obvious that the retail warehouse floorspace will be comprised of non-bulky goods and ancillary products including clothing and footwear. The development description is extremely wide ranging and has been purposefully crafted to include inappropriate goods and products for a retail park as per Condition 3 of S99A/0463. Contrary to the applicant's position, the particular type of retail offer would be incongruous in the retail park and is characteristic of a shopping centre or high street location. The inference in the application is the planning authority should view Decathlon as a special case because of the store layout, products being available to test in-store and the requirement for approximately 3,000sqm floor area. However, any permission granted would relate to the unit, not the occupier. It is clear Decathlon desire an open retail use. The applicant is requesting revisions to the conditions to suit the occupier rather than the occupier tailoring their trading format to suit the planning conditions relating to the unit.

- Condition 3 of S99/0463 expressly permits bulky goods only to be sold. It excludes the sale of food and clothing items. The condition ensures the Retail Park was restricted to a retail warehouse use. In a further information response on SD19A/0078 a commitment was provided that any ancillary items would fall within the recommended 20% limit as set out in the Retail Planning Guidelines. However, clarification was not provided on what type of ancillary items would be sold though the applicant advised indirectly that bulky items are complemented with the offer of all ancillary material that may be needed to practice the sports/activities in its catalogue. The planning authority's Condition 2 gave rise to a degree of ambiguity. The observer appealed the decision due to the uncertainty on the grounds that (i) Condition 3 of S99A/0463 explicitly stated the sale of food and clothing items are not permitted, (ii) no change of use was applied for and (iii) from the application documentation it appeared the

intended use of the unit was contrary to the parent permission, the Retail Planning Guidelines and the permission granted that did not change the authorised use. The Board upheld the planning authority's decision.

- The proposal seeks an open-ended retail offer, offering goods and products incompatible with the Retail Park, contravening planning policy and the Retail Park's planning history.
- The unit is at the extremity of the MRC zoning and is separate and distinct from Liffey Valley Shopping Centre in distance, integration and linkage. South Dublin County Council are of the view the proposal would have a detrimental impact on the vitality and viability of the town centre/major retail centre. The Liffey Valley Centre and the Retail Park are separate and distinct shopping locations despite the wider MRC zoning objective. Unit 14 is outside the existing retail centre and not the sequentially preferable site for the propose development. It is clear that Decathlon cannot be appropriately accommodated in the Retail Park because of their atypical trading format and desire to remove any restrictions on goods to be sold.
- Granting permission will set an undesirable precedent. It represents a form of open-ended retail development incompatible with the parent permission and be harmful to the vitality and viability of other town centres/major retail centres.
- Clear doubt still exists regarding the proposed use of and goods and products to be sold and on that basis the proposal cannot be granted.
- References in the 2012 Retail Planning Guidelines to permitting limited ancillary goods were not designed to open up bulky goods retail parks to mainstream comparison goods.

6.4. Further Responses

None sought.

7.0 Assessment

Planning permission was granted under ABP-305228-19 (SD19A/0078) in March 2020 to Decathlon Sports Ireland Ltd. for construction of a mezzanine floor to the existing retail warehouse unit, signage and internal and external alterations at Unit 14 Liffey Valley Retail Park. Condition 2 of the decision states as follows.

2. No more than 20% of the net retail sales shall be dedicated to ancillary items associated with bulky goods in accordance with the Retail Planning Guidelines for Planning Authorities (2012).

Reason: In order to minimise potential impacts on central retail areas, in accordance with the Retail Planning Guidelines for Planning Authorities (2012) and the proper planning and sustainable development of the area.

The wording of the condition has given rise to uncertainty and a degree of ambiguity in relation to the development and the application did not address the issue of use within the unit with the permitted use being retail warehousing. The cover letter submitted with the planning application stated that “In order to satisfy the concerns of prospective tenants regarding the planning status and use of Unit 14, the current application is being submitted to address the use issue, confirm the nature and range of goods that can be sold from the unit and put the matter beyond question”.

The main issues are those raised in the grounds of appeal and the Planning Report and I am satisfied that no other substantive issues arise. The issue of appropriate assessment also needs to be addressed. The issues can be dealt with under the following headings:

- Zoning
- Planning History
- South Dublin County Development Plan 2016-2022
- Retail Planning Guidelines for Planning Authorities (2012) (RPGs)
- Precedent
- Overall Conclusion
- Appropriate Assessment

7.1. Zoning

- 7.1.1. The site is in an area zoned 'Objective MRC; To protect, improve and provide for the future development of a Major Retail Centre'. Schedule 5 (Definition of Use Classes & Zoning Matrix Table) of the County Development Plan 2016-2022 states that a 'Retail Warehouse' and a 'Shop-Major Sales Outlet' are permitted in principle in this zoning. A 'Shop-Major Sales Outlet' is defined as 'Superstores in excess of 2,500 sq.m. of net retail floorspace but not greater than 5,000 sq.m. net retail floorspace which are larger in scale than neighbourhood shops, or are very specialised and therefore serve a wider area including district centres and town centres'. The observer states that the subject unit is located at the absolute extremity of the MRC zoning. However, it is a mid-unit structure in a larger overall structure with Halfords and Currys PC World to either side. Under the previous permission the Board decided that Decathlon, the proposed Occupant, was an appropriate user of this unit given their general product range.

7.2. Planning History

- 7.2.1. The observation on the grounds of appeal refers to the planning history of Liffey Valley Retail Park and cites the fact that the use of Unit 14 is controlled by Condition 3 of S99A/0463 and is permitted to sell bulky goods only. Condition 3 states as follows.

3. Prior to the occupation of each unit full details of the proposed use shall be submitted for the prior written agreement of the Planning Authority as in compliance with this permission. The use of each unit shall be restricted to retail warehousing which may include building materials, electrical goods, garden equipment, floor coverings, leisure/sports and D.I.Y. products but shall exclude the sale of food and clothing items. No change of use shall take place, including what may be considered as exempted development, without first receiving a separate permission.

Reason: In the interests of proper planning and development of the area.

- 7.2.2. Condition 3 ensured the Retail Park was restricted to a retail warehouse-type uses though I note 'bulky goods' is not used in the wording of the condition. While the condition was included to restrict the uses within the Retail Park at the initial stage of its development, this does not mean that the uses cited must remain in perpetuity. The

condition did envisage future change of use applications, to be considered and assessed on their own merits.

- 7.2.3. 'Leisure/sports' was included in the permitted uses in Condition 3. Decathlon was the applicant under the previous application and has again been cited as the occupant under the current application. This company is a sporting goods retailer and would likely have been an acceptable occupant for the retail unit under the terms of S99A/0463.
- 7.2.4. While the observer considers the proposed development would contravene a condition of the parent permission, this does not mean that any planning application must therefore be refused on that basis. An applicant is entitled to make a planning application for a development of any type. While previous conditions would be taken into consideration, the recommendation and decision would be based on the circumstances at the time of the decision.
- 7.2.5. SD19A/0078 was submitted to the planning authority in 2019. The application sought to increase the internal floor area of Unit 14 by way of a mezzanine level. In the further information request the planning authority sought to be consistent with the Retail Planning Guidelines (2012) which recommend that the retail floorspace devoted to ancillary products associated with an otherwise bulky good in retail parks should not exceed 20% of the total net retail floorspace. The response set out the variety of different sporting equipment available. Many of these are bulky products e.g. bicycles, tents, inflatable dinghies, exercise equipment, kayaks and surfboards. An indicative floor layout was submitted but the applicant stated the layout can change several times a year. Nonetheless, the further information response stated that "at any one time, no more than 20% of net retail sales area will be dedicated to items that are considered to be ancillary to the bulky goods being sold. The Applicant is committed to ensuring that the ancillary items to be sold in the shop will fall within the Guidelines recommended 20% limit". South Dublin County Council granted permission. Liffey Valley Management Ltd. appealed the decision for reasons including the intended use. The Inspector's Report for ABP-305228-19 noted, inter alia, that the products offered by Decathlon are specialised, that non-bulky goods including clothing associated with the bulky goods would be ancillary and that the nature of goods sold are typically sold in retail warehouses. Condition 2 imposed by the planning authority was also noted, recommended in accordance with the Retail Planning Guidelines (2012) and, subject

to this 20% limit, the proposed development was considered acceptable. Condition 2 of the Board's decision was the same as the County Council's Condition 2.

2. No more than 20% of the net retail sales shall be dedicated to ancillary items associated with bulky goods in accordance with the Retail Planning Guidelines for Planning Authorities (2012).

Reason: In order to minimise potential impacts on central retail area, in accordance with the Retail Planning Guidelines for Planning Authorities (2012) and the proper planning and sustainable development of the area.

7.3. South Dublin County Development Plan 2016-2022

- 7.3.1. The consistency of the proposed development use with the County Development Plan 2016-2022 is a core consideration in this application.
- 7.3.2. I consider that the proposed use of the unit for bulky and non-bulky goods can be considered as a 'Shop-Major Sales Outlet' as defined in the Plan. Section 5.2.1 (Strategic Guidance) of the Plan states that the Retail Planning Guidelines (2012) and the Retail Strategy for the Greater Dublin Area (2008) form the basis for retail planning in the Greater Dublin Area. Liffey Valley Shopping Centre is identified as a Level 2 Centre in the South Dublin County Retail Hierarchy (Table 5.1). Retail (R) Policy 1 Objective 1 states regard shall be had to, inter alia, the 2012 Guidelines and the 2008 Retail Strategy "in defining the role of retail centres and in determining planning applications for retail development". R1 Objective 6 states it is an objective, inter alia, to promote the use of vacant floorspace. Section 5.4.0 (Sequential Approach) states the overall preferred location for new retail development is within town centres, major retail centres and district centres. Figure 5.6 of the Plan identifies the Liffey Valley Core Retail Area. Liffey Valley Retail Park is included within its boundary. R Policy 4 relates specifically to Liffey Valley Major Retail Centre and sets out five separate objectives including Objective 2 'To support and facilitate consolidation of the quantum and quality of the retail offering at the Liffey Valley Major Retail Centre'. R Policy 9 relates to Retail Warehousing and states it is policy to consolidate existing retail warehousing clusters.
- 7.3.3. Section 11.3.6 (Retail Development) (v) (Retail Warehousing) of the Plan is very relevant. This section states that the range of goods sold in retail parks will be "tightly

controlled and limited to bulky household goods or goods which are not portable by customers travelling by foot, cycle or bus". Ancillary products "should" not exceed 20% of the net retail floorspace of the unit. The final sentence of the section states that "Within core retail areas, the Planning Authority will apply a level of flexibility in allowing types of stores where a mix of bulky and non-bulky goods are stored". As set out in Figure 5.6 of the Plan, the site is located within the Liffey Valley Core Retail Area. I consider that a sporting goods retailer of the type referenced in the application is the type of occupant that could be accommodated under this flexibility. The wording of the final sentence implies that a 20% restriction need not necessarily always be rigidly applied.

- 7.3.4. As noted, R Policy 1 Objective 1 of the Plan states regard shall be had to, inter alia, the Retail Planning Guidelines (2012) and the 2008 Retail Strategy for the Greater Dublin Area. Section 6.30 of the Retail Strategy outlines policy approaches to retail warehousing recommended for Development Plans. The Strategy states, "For retail warehouses located within town centres, some level of flexibility could be applied in allowing types of stores where a mix of bulky and non-bulky goods are sold, allow the retail core to expand if (i) the location is easily accessible by foot from the core retail area; (ii) the form of the development is in keeping with good urban design and (iii) the development would not detract from the adopted masterplan/urban centre strategy/local area plan aspirations for the area in question". It is likely that this section of the Strategy informed the last sentence of Section 11.3.6 (v) of the Plan. The site is easily accessible by foot from the core retail area i.e. Liffey Valley Shopping Centre, no external alterations to the unit are proposed under this application, and, as the Retail Park is located within the Core Retail Area, I do not consider it would detract from the adopted aspirations for the Liffey Valley area, or unduly affect the vitality and viability of the Shopping Centre.
- 7.3.5. Having regard to the foregoing, I do not consider that the proposed development would be inconsistent with the provisions of the South Dublin County Development Plan 2016-2022.

7.4. Retail Planning Guidelines for Planning Authorities (2012)

- 7.4.1. The observation received considers that the proposed development would be contrary to the provisions of the Retail Planning Guidelines.
- 7.4.2. Condition 2 of both the planning authority decision and the Board's decision under the previous application stated that no more than 20% of the net retail sales shall be dedicated to ancillary items associated with bulky goods in accordance with the Retail Planning Guidelines for Planning Authorities (2012). The 'net retail sales' wording has led to an element of vagueness and ambiguity in interpretation. Bulky goods are defined in the Guidelines as "Goods generally sold from retail warehouses where DIY goods or goods such as flatpack furniture are of such size that they would normally be taken away by car and not be portable by customers travelling by foot, cycle or bus, or that large floorspace would be required to display them e.g. repair and maintenance materials, furniture and furnishings, carpets and other floor coverings, household appliances, tools and equipment for the house and garden, bulky nursery furniture and equipment including perambulators, bulky pet products such as kennels and aquariums, audio-visual, photographic and information processing equipment, catalogue shops and other bulky durables for recreation and leisure". Retail Parks and Retail Warehouses are referenced in Section 4.11.2 of the Guidelines. The Guidelines state that "To minimise potential adverse impacts on central areas, it is important that the range of goods sold ... is tightly controlled and limited to truly bulky household goods or goods which are not portable by customers travelling by foot, cycle or bus". However, in this case, as the unit is located within the Core Retail Area and is zoned Major Retail Centre, I do not consider it would have an adverse impact on central areas because it is, effectively, in a central area. Section 4.11.2 recommends the 20% limit on ancillary items. However, I note that the 20% limit is only a recommendation.
- 7.4.3. The observation received on the grounds of appeal considers that the aim of the applicant is to secure an open-ended retail offer for the unit, offering goods and products that are incompatible with the Retail Park. The observer considers that "it is quite clear that Decathlon's desired outcome is for an open retail use at Unit 14" allowing the unrestricted sale of goods and products to suit its trading format. The observer also considers that clear doubt still exists regarding the proposed use of and goods and products to be sold and, on that basis, the proposal cannot be granted. The

observer is concerned about the sale of clothing and food items as expressly excluded under the parent permission. The observer disagrees with the applicant's assertion that they have identified a very specific use definition and points out that any permission would attach to the unit, rather than the occupier.

7.4.4. While I note the comments set out in the observation, I consider that the use definition set out in the application i.e. retailing of a range of bulky and non-bulky sporting, recreation and leisure products and ancillary goods, is a reasonable outline of the goods and products to be sold from the unit. The identified occupant, Decathlon, is a sporting goods retailer and a number of goods and products available are bulky products relating to particular sports and activities. Sports and activities catered for on their Irish website and as set out in the further information response to the previous application include camping, cycling, sailing, fitness and gym equipment, golf, kayaking, skiing, surfing, trampolining and windsurfing. All of these activities require bulky equipment and, naturally, there are other accessories to support the activities which would not be considered bulky goods, including clothes. Nutrition and supplements would also be a normal ancillary product associated with a sporting goods retailer. While I note that Condition 3 of S99A/0463 specifically excludes clothes and food from the development, I consider this to refer to clothing stores such as menswear stores or supermarkets/foodstores rather than ancillary products directly related to the primary use of a unit as a sporting goods retailer.

7.4.5. Having regard to the foregoing, I do not consider the development would be inconsistent with the provisions of the Retail Planning Guidelines for Planning Authorities (2012).

7.5. Precedent

7.5.1. The observer considers that granting the application would give rise to similar applications and create an undesirable precedent within the Retail Park and would be harmful to the vitality and viability of other designated town centres/major town centres.

7.5.2. The site is located within a Major Retail Centre zoning and the proposed development has been assessed in the context of the County Development Plan 2016-2022 and the Retail Planning Guidelines 2012. Each planning application is considered on its own

merits having regard to the sensitivity of the receiving environment and the specifics of the proposed development. In this case the parameters of the proposed use are reasonably set out and would not result in an open-ended retail development. Any grant would be bound by the use definition applied for. Any future application involving similar or different parameters would be considered in the context of the receiving environment and policy environment applicable at that time. Therefore, I do not concur that any grant of permission would necessarily create a precedent.

7.6. Overall Conclusion

- 7.6.1. The previous five sections assessed the application under separate considerations. This section considers the separate sections in the round.
- 7.6.2. The site is in an area zoned 'Objective MRC; To protect, improve and provide for the future development of a Major Retail Centre' in the South Dublin County Development Plan 2016-2022. It appears there were several planning applications granted on site e.g. S97A/0523, S98A/0060 and S99A/0463 which established the retail park. Condition 3 of both S98A/0060 and S99A/0463 set out the accepted uses of the retail warehousing units. The uses included 'leisure/sports', which the cited occupant would likely have complied with. Permission was granted in 2020 to Decathlon for a mezzanine level. However, the permission gave rise to a degree of vagueness and ambiguity in terms of the use of the unit and the wording of Condition 2 which stated that no more than 20% of the 'net retail sales' shall be dedicated to ancillary items associated with bulky goods in accordance with the Retail Planning Guidelines (2012). As the application was for increased floorspace this 20% figure was imposed as a condition.
- 7.6.3. Under the current application the applicant wishes to remove this 20% restriction. The nature of the retail offer is cited as 'a range of bulky and non-bulky sporting, recreation and leisure related products and ancillary goods'. The proposed occupier is a sporting goods retailer whose products include bulky goods and also ancillary non-bulky goods, including clothing and nutrition products.
- 7.6.4. Notwithstanding that the unit is located in a Retail Park, the site is in an area zoned as a Major Retail Centre where a 'Shop-Major Sales Outlet' is permitted in principle. The site is also identified as being within the Liffey Valley Core Retail Area. Section

11.3.6(v) of the Plan states “Within core retail areas, the Planning Authority will apply a level of flexibility in allowing types of stores where a mix of bulky and non-bulky goods are stored”. R Policy 1 Objective 1 of the Plan states regard shall be had to, inter alia, the Retail Strategy for the Greater Dublin Area (2008). The Strategy states, “For retail warehouses located within town centres, some level of flexibility could be applied in allowing types of stores where a mix of bulky and non-bulky goods are sold, allow the retail core to expand if ...” three criteria are met. I consider they are met.

7.6.5. Condition 2 of the previous decision was consistent with the recommendation of the Retail Planning Guidelines for Planning Authorities (2012) in that a limit of 20% of the total net retail floorspace for ancillary items associated with bulky goods was imposed, notwithstanding the ambiguity in the wording of the condition. I consider the proposed occupant would carry a substantial range of bulky goods but would also sell a significant amount of non-bulky, ancillary goods. The 20% limit in the Guidelines is only a recommendation and it should be implemented appropriately. The Guidelines also state that the sale of bulky goods in retail parks should be tightly controlled to “minimise potential adverse impacts on central areas”. In this case the site is located within the Liffey Valley Core Retail Area, which can be considered to be a central area unlike, for example, Fonthill Retail Park approx. 900 metres to the west.

7.6.6. I consider that the use definition set out in the application i.e. ‘retailing of a range of bulky and non-bulky sporting, recreation and leisure products and ancillary goods’ is a reasonable outline of the goods and products to be sold from the unit by the cited occupant and a reasonable parameter for considering what would comply in the event of any potential enforcement activity relating to the sale of goods and products outside this definition. While I acknowledge the observer’s concern that a permission would attach to the unit and would therefore, in theory, be available to any sporting goods retailer who might offer fewer bulky products than Decathlon, I consider that, having regard to the fact that Decathlon was the applicant in the previous application and the general acceptability of a sporting goods retailer in this Major Retail Centre area, permission is nonetheless warranted.

7.6.7. I do not consider the development would set an undesirable precedent. Every application is assessed on its own merits having regard to the circumstances and policy environment in place at the time of the decision.

7.6.8. Having regard to the foregoing, I am satisfied that the retailing of a range of bulky and non-bulky sporting, recreation and leisure products and ancillary goods from Unit 14 of Liffey Valley Retail Park would be an acceptable use of the unit, would not contravene the provisions of the South Dublin County Development Plan 2016-2022 or the Retail Planning Guidelines for Planning Authorities (2012), would not unduly affect the vitality or viability of the Shopping Centre and would be in accordance with the proper planning and sustainable development of the area. I recommend permission be granted.

7.7. Appropriate Assessment

7.7.1. Having regard to the nature and scale of the development proposed and to the nature of the receiving environment, namely an urban and fully serviced location remote from and with no hydrological pathway to any European site, no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

8.1. I recommend that planning permission should be granted subject to conditions, for the reasons and considerations as set out below.

9.0 Reasons and Considerations

Having regard to the provisions of the South Dublin County Development Plan 2016-2022, the Retail Planning Guidelines for Planning Authorities issued by the Department of the Environment, Community and Local Government in April, 2012, and the nature of the proposed development, it is considered that, subject to compliance with the conditions set out below, the proposed development would be acceptable in terms of the land use zoning objective for the area and would complement the Liffey

Valley Retail Park. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application except as may otherwise be required in order to comply with the following conditions.

Reason: In the interest of clarity.

2. The development shall be carried out and completed in accordance with the relevant terms and conditions of the permission granted under planning register reference number ABP-305228-19 (South Dublin County Council register reference SD19A/0078), except as amended in order to comply with the conditions attached to this permission.

Reason: In the interest of clarity and to ensure that the overall development is carried out in accordance with the previous permission.

3. The range of goods to be sold in Unit 14 shall be limited solely to bulky and non-bulky sporting, recreation and leisure related products and ancillary goods.

Reason: In the interest of clarity and in order to prevent an adverse impact on the established retailing facilities within this area.

Anthony Kelly

Planning Inspector

26.03.2021