



An  
Bord  
Pleanála

## Inspector's Report

### ABP-310750-21

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<b>Development</b>	To permit the retail offer to include the sale of convenience goods from up to 17% of the permitted floor area and non-fashion clothing from up to 3% of the permitted floor area
<b>Location</b>	Kingsmeadow Retail Park, Inner Ring Road , Waterford , X91 TR84
<b>Planning Authority</b>	Waterford City and County Council
<b>Planning Authority Reg. Ref.</b>	21173
<b>Applicant(s)</b>	Centz Stores 3 Limited
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse Permission
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Centz Stores 3 Limited
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	8 <sup>th</sup> of February 2022
<b>Inspector</b>	Angela Brereton

## 1.0 Site Location and Description

- 1.1. The site is located at the Kingsmeadow an established Retail Park to the south of Waterford City. Access is via the Inner Ring Road (R709) to the south of the site. This is located opposite the entrance to Waterford Regional Sports Centre. There is a roundabout to the north-west of the access to the site. The Cork Road (R680) is to the north of the site.
- 1.2. 'Home Savers' currently occupies the retail warehouse that is the subject of this application. This unit sells garden/household items, toys, bric-a-brac etc. The application form provides that this unit is c.1250.8m<sup>2</sup> on a 0.25ha site. There is a parking area to the east of the unit. This was lightly parked on the day of the site visit.
- 1.3. The adjacent unit to the west contains a number of fast-food outlets such as 'Supermacs' which includes a 'Drive Thru', 'Papa Johns', 'Supersubs', 'Bewleys'. There is a Totem Pole advertising these uses facing the Cork Road to the north-west of the site. This unit including the 'Drive Thru' is also served by the access to the Inner Ring Road to the south of the site. There is a separate parking area to the west of this unit. The 'Drive Thru' appears to have a one-way route west to east i.e. from the fast food element of the site and exit via the parking area for 'Home Savers' to the access to the R709. This access/egress serves all the units.
- 1.4. There is a retail park to the north of the site, served by separate access to the Cork Road and other retail warehouse type units to the east with access to the Inner Ring Road. There is a palisade fence along the eastern site boundary of the site with the stream, which is set in an embankment at a lower level. There is a garage to the east of the stream.

## 2.0 Proposed Development

- 2.1. This proposal seeks permission for the following at Kingsmeadow Retail Park:
  - To permit the retail offer from the retail store permitted under planning permission ref: 99/515 to include the sale of convenience goods from up to 17% of the permitted floor area and non-fashion clothing, including pyjamas,

novelty socks, winter hats and gloves, from up to 3% of the permitted floor area.

2.2. The following have been submitted with the application:

- A letter from Peter Thomson Planning Solutions on behalf of the Applicant providing a description and rationale for the proposed development.
- A letter from Supermacs consenting to this application.
- A Site Layout Plan, Floor Plans, Sections and Elevations showing the existing and proposed.

## 3.0 Planning Authority Decision

### 3.1. Decision

On the 10<sup>th</sup> of June 2021, the Council refused permission for the proposed development for the following reason:

As expressed in Section 4.7 of the Waterford City Development Plan 2013 – 2019 (as extended and varied) it is the policy of the Planning Authority to strictly control retail warehousing in the city (POL 4.7.1). Having regard to the sites location and planning history on site it is the opinion of the Planning Authority that the proposed development as per the plans and particulars submitted with the application involving the sale of a mix of convenience goods and ‘non-fashion’ clothing’ within a retail warehouse unit would be contrary to Policy 4.7.1 of the current Waterford City Development Plan 2013-2019 (as extended and varied) and would not accord with the ‘Retail Planning Guidelines for Planning Authorities’ issued by the Department of the Environment, Community and Local Government April 2012’. The proposed development has potential to have a detrimental impact on the city centre, significantly affecting the role of the city centre as the primary retailing area as set out in the Waterford City Development Plan 2013-2019 (as extended and varied) by itself and the precedent it would set for other types of similar developments in the area. The proposed development would, therefore, be contrary to national policy and the policies of the Waterford City Development

Plan 2013-2019 (as extended and varied) and would set an undesirable precedent for similar types of developments and would, therefore, be contrary to the proper planning and sustainable development of the area.

## 3.2. Planning Authority Reports

### 3.2.1. Planning Reports

The Planner had regard to the locational context of the site, planning history and policy. Their Assessment included the following:

- They have regard to condition no. 1 of Ref. PD99/500515 and that the use of this building be limited for wholesale/retail warehousing as defined in Article 8 of the Local Government (Planning and Development) Regulations 1994/1999 and to use for retailing non-convenience goods.
- The proposed use is contrary to Planning Policy for usage of Retail Warehousing and sale of 'bulky goods'. They note policies in the Waterford City Development Plan 2013 – 2019 (as extended and varied).
- They note planning history and are concerned as the site adjoins the 'district centre' which is located to the east of the site and is anchored by Supervalu.
- They refer to and provide a discussion of precedent cases.
- A Habitats Directive Project Screening Assessment concluded no significant effects.

The Planner's concerns are noted and further information was requested.

#### Further information request

- A Retail Impact Assessment to be carried out in accordance with Section 28 Guidelines and the Retail Strategy as set out in the Waterford City Development Plan 2013 – 2019 as amended and extended.

#### Further information response

Peter Thomson Planning Solutions, response on behalf of the Applicants includes a Retail Impact Assessment as requested.

They provide that considering the nature and scale of the proposed development, which involves changing the retail offer of existing permitted retail floor space and no new additional retail floor space, and the findings of the RIA that there can be no adverse impact on the city centre or any other centre.

### Planners Response

They have regard to the Retail Impact Assessment submitted and their response includes the following:

- They are concerned that the proposed development would set an undesirable precedent relative to retail warehousing if permitted.
- Having regard to the site location, planning history, the policies and objectives of the Waterford City Development Plan 2013 – 2019 (as extended and varied) and the Retail Planning Guidelines 2012 they recommend refusal.

### 3.3. Other Technical Reports

None noted.

### 3.4. **Prescribed Bodies**

None noted.

### 3.5. **Third Party Observations**

None noted.

## 4.0 **Planning History**

The Planner's Report notes the planning history of the site and to that of the adjacent unit. These include the more recent:

*Adjacent unit to the west:*

- Reg.Ref. 18/548 – Permission was granted by the Council subject to conditions for (a) change of use from retail warehouse to fast food drive thru restaurant together with elevation alterations (b) extension to northern elevation and projecting canopy to west elevation (c) two illuminated free

standing signs and building mounted illuminated signage (d) height restriction barrier sign (e) alterations to car park layout including new retaining wall to site boundary and all associated site works.

These works have been carried out and the unit changed to fast food usage.

#### *Subject and adjoining unit*

- Reg.Ref. 11500131 – Permission granted subject to conditions for the extension of existing P.C. World into the existing adjacent building (Tile Market) including the incorporation of the existing passageway between both buildings to form one building as P.C. World. Permission was also sought for external works to incorporate new cladding to entire building, together with all associated site works.

Condition no. 3 is of note:

The development permitted herein shall be used solely as a retail warehouse as defined in the Retail Planning Guidelines 2005 (DEHLG).

Reason: In order to comply with the Waterford City Development Plan Retail Policy and having regard to the application sites high profile location, in the interest of the proper planning and sustainable development of the area.

## **5.0 Policy Context**

### **5.1. Development Plan**

Following the amalgamation of Waterford County Council and Waterford City Council in 2014, the lifetimes of the existing development plans within the amalgamated council area were extended. The 2013-2019 City Development Plan remains in effect until a new City & County Development Plan is prepared following the making of the Regional Spatial & Economic Strategy.

The Waterford City Development Plan 2013-2019 (as varied and extended) includes (as referred to in the Planner's Report relevant to the Council's decision):

Section 4.2 refers to the Retail Hierarchy. This includes:

1. The City Centre

2. District Centres – 5no. are listed and this includes ‘The Inner Relief Road/Tramore Road’.
3. Neighbourhood Centres
4. Corner shops and forecourt outlets at various locations
5. Retail warehousing at various locations, including district centres and designated sites.

Section 4.4 refers to the function of District Centres and notes that they are usually anchored by a large foodstore and contain a range of unit shops and non-retail services. They perform an important function for the local community.

Policies POL 4.4.1 – 4.4.4 refer to the role of District Centres.

- To acknowledge the role of the District centres in meeting local needs primarily for convenience shopping with a limited range of comparison shopping to service local need. (POL 4.4.1)
- To confine the development of large scale retail developments to the city centre and the District Centres. (POL 4.4.2)
- The future development of comparison floorspace in district centres should be carefully monitored to ensure that the level, type, scale and nature of the floorspace proposed is appropriate to that district centre and is appropriate in the context of the guidance set out in the Retail Planning Guidelines. Any proposal for significant comparison floorspace should be supported by a clear assessment as to whether such development would have a material impact on Waterford City Centre. (POL 4.4.3)
- Discourage the development of higher order comparison floorspace in District Centres to protect the retail primacy of the City Centre. (POL 4.4.4)

Section 4.7 refers to Retail Warehousing. This includes:

Furthermore, unless the range of retail warehousing goods on offer is restricted it can have an undermining effect on the city centre. Accordingly, the development of Retail Warehousing in the City shall be subject to strict controls on the volume of floorspace being provided. The restrictions are

generally in accordance with the Retail Planning Guidelines for Planning Authorities.

Sites supported for retail warehousing include the Tramore/Inner Ring Road retail area.

POL 4.7.1 permits retail warehousing subject to certain listed criteria. This includes:

Only retailing of non-convenience products not associated with the city centre such as bulky household goods, including carpets, furniture, automotive products, white electrical goods, DIY and gardening products; office and industrial plant and equipment, and building materials will be permitted. The sale of goods such as food, clothing, footwear, books/stationery, toys, and sports wear will not be permitted.

The site is in an area zoned 'General Business: 'To provide and improve General Business uses.'

Section 12.4 includes:

The zoning of lands for General Business use must have regard to the retail strategy Waterford City Development Plan 2013 - 2019 and the need to protect the function of the City Centre, while providing for the local needs of the neighbourhoods. The general business zoning makes provision for a limited expansion of commercial development outside the city centre and to facilitate neighbourhood centre expansion or new neighbourhoods.

## **5.2. Waterford Retail Strategy 2012**

A key aim of the retail strategy is to ensure that Waterford City fulfils its role as the principle retail destination in the South East Region. ... The main principles and policies of the strategy have been incorporated into the Waterford City Development Plan 2013-2019.

It is noted that the Waterford Retail Strategy is currently being renewed.

## **5.3. Retail Planning Guidelines 2012**

These guidelines are aimed at ensuring that the planning system continues to play its role in supporting competitiveness and choice in the retail sector commensurate



with promoting the vitality and viability of city and town centres thereby contributing to a high standard of urban design and encouraging a greater use of sustainable transport.

The Guidelines have five key policy objectives:

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

Section 3 refers to Retailing and Spatial Planning and includes:

- o The need for any additional retail warehousing should be carefully assessed in view of the significant levels of recent provision and potential impacts on vitality and viability of city and town centres.

Section 3.8 notes the context for the provision of retail warehousing in Development Plans. This includes regard to the level of vacancy in town centres and the pressure to entertain uses inappropriate to the edge-of-centre or out-of-centre locations of many of these developments.

Section 4.9 provides the criteria to be considered in a Retail Impact Assessment. This also has regard to the sequential approach.

Section 4.11 provides an Assessment of Specific Categories of Retail Development. Section 4.11.2 refers to Retail Parks and Retail Warehouses. This includes regard to the type of goods sold i.e. 'mainly bulky household goods'.

Annex 1 provides a Glossary of Terms to cover forms of retail development and types of retail location. This includes Types of Retail Floorspace, Types of Retail Goods (convenience and comparison) and includes definitions.

A Retail Warehouse is described as:

A large single level store specialising in the sale of bulky goods such as carpets, furniture and electrical goods, and bulky DIY items, catering mainly for car-borne customers.

#### A Retail Park:

A single development of at least three retail warehouses with associated parking.

#### District Centre

Provides a range of retail and non-retail service functions (e.g. banks, post office, local offices, restaurants, public houses, community and cultural facilities) for the community at a level consistent with the function of that centre in the core strategy. They can be purpose built as in new or expanding suburbs or traditional district centres in large cities or town.

Annex 2 – Assessing the Vitality and Viability of Town Centres. This includes regard to Health Check indicators.

Annex 5 – The Assessment of Retail Impact – criteria for consideration are provided.

## 5.4. **Natural Heritage Designations**

The closest heritage area is the Natura 2000 site Lower River Suir SAC (Site Code 002137) approx. 1.8km to the north.

## 6.0 **The Appeal**

### 6.1. **Grounds of Appeal**

Peter Thompson Planning Solutions, has submitted a First Party Appeal on behalf of the Applicant. Their Grounds of Appeal to the Council's reason for refusal include the following:

#### Background

- They set out the general business/economic background relevant to the appeal.
- The premises are located in a District Centre in Waterford.

- This application seeks to remove or amend planning condition no.1 of Ref. 99/515. This was attached to the previous permission in 2000, preventing the sale of convenience goods, clothing and footwear.
- What is being sought by Homesavers is a permission (ancillary to an existing retail planning permission) to sell a limited range of convenience goods and non-fashion clothing i.e updating the existing permission.
- Retail trends have changed enormously over 20 years and a retailer who is out of step with such shopping trends and developments is in a precarious position.
- They note that the market is currently concentrated in the hands of 5 larger retailers and that this severely restricts competition and consumer choice.
- These larger retailers offer a range and diversity of choices on offer in goods for sale. They submit that other retailers such as 'Woodies' have a wider choice range. They refer to Ref. 05/387 relative to this issue.
- Homesavers in order to compete will have to be given permission to do likewise in order to have a level playing field and promote customer choice.

#### Policy issues

- The 2012 Retail Planning Guidelines give support for the subject planning application. They note the importance of the retail industry and that these Guidelines set out the social and economic objectives for the retail industry.
- There were no objections from the public or the wider community which is a good indicator of the need in the wider community for the said permission.
- Rather than taking a strategic/economic policy-driven approach to the application, the Planning Authority considers the micro level analysis of certain types of convenience goods (which are themselves artificial classifications with little grounding in retail practice).
- These create a highly artificial and unsustainable distinction between retailers which are not practical or commercially sound.
- They note that there has been considerable media and political coverage of a large rejuvenation project located in North City Quarter of Waterford

scheduled for 2025. They are concerned that other retail maybe looked at negatively so that retailers will divert to the North City Quarter.

- The Planning Authority in refusing the application are disregarding their own Development Plan and the Retail Planning Guidelines.
- This is a very reasonable amendment to an existing permission, which is being applied to allow Homesavers to update their existing retail offer to reflect current retail trends and to compete with the retail offerings of comparable retailers in the District Centre.

### Legal Position

- They provide a quote from Scannell *Environmental and Planning Law*. This is to show that as a matter of law, planning permission should only be refused for good, sufficient and lawful reasons.
- They note the duty of planning authorities to have regard to the Retail Planning Guidelines as addressed in Section 28 of the Planning and Development Act 2000.
- They also refer to case law and note that it is a duty to give reasons and consider that there is a vagueness in the decision of the planning authority.

### Specific Grounds of Appeal

#### *Failure to ground the Planner's Report on the 'District Centre' guidelines*

- The Homesavers premises are located in a District Centre, namely the South West corner of the Inner Relief Road/Tramore Road District Centre. The significance of the District Centre status has not been taken into account by the Planning Authority.
- They quote policies relevant to the District Centre (POL 4.4.1 – 4.4.4) from the Waterford City DP (as varied and extended) which acknowledge the need for convenience and comparison floorspace in such centres.
- They note the relevant planning policy laid out in the 2012 Retail Planning Guidelines. They contend that there is a lack of cogent evidence from the Planning Authority as to the effect that the premises will have on retail sales in the City Centre.

- The District Centre where the premises is located already have numerous convenience stores. The precedent reason is ill founded.
- An Bord Pleanála case of 308607 explicitly states that all planning applications are to be considered on their own merits and policy considerations at the time rather than thinking in terms of future precedents.
- They provide a list of a number of Existing Operators 'precedents' in the Inner Ring Road Centre. Each of the items that Homesavers are seeking to sell are already being sold by these retailers.
- In a neighbouring District Centre in Waterford – Lisduggan District Centre – 'Dealz' operates by selling convenience goods and low order goods, again very comparable to Homesavers. They attach a list.

#### *Missing Planning Permission*

- Reference to the most relevant of all planning permissions – 99/515 is missing from the planner's report, which permitted the retail use from the premises and which the Council failed to consider when it took out the injunction in December 2020 before the store was reopened.
- This is a very significant omission from the planning report as this 2000 permission precedes the 2000 Retail Planning Guidelines. This retail permission was in accordance with the general business zoning.
- They note the situation of a retail permission to be granted in principle to Homesavers for the premises. They contend that this omission from the planning authority's analysis begins from an incorrect premise.

#### *Planning Law/Competition Law*

- There are numerous comparable – some almost identical – retailers that have been referred to in the grounds of appeal in the district centre which strongly supports the application for the development.
- By preventing this application at Homesavers, the net effect is less competition and consumer choice in the district centre. This is not an acceptable use of the planning code.

- The interaction with competition law and the planning code has been considered by the courts on multiple occasions. They provide examples of such cases.
- The issue of competitiveness in the retail sector was also addressed in the Retail Planning Guidelines 2012 and they provide an extract.
- The planning authority's refusal of permission stifles competition and reduces consumer choice.

#### *Range of Goods*

- The range of goods and classification is central to this appeal. The definition of the goods has not been applied properly.
- This application is for a very 'limited' range of convenience goods in a limited floor area of the premises.
- They note that fresh food stuffs, alcohol, cigarettes and newsagent goods are excluded.
- The planning application is simply giving effect to the retail policies enshrined in the Retail Planning Guidelines and the Development Plan.
- The definition of the goods that are appropriate (as per the Waterford City DP) to a District Centre are low order and middle order comparison goods and do not compete with City Centre.

#### *Goods Classification*

- Homesavers have very clearly defined the limited non-fashion items which are part of the proposed planning application.
- They refer to case law. Also, noting that fancy dress e.g. Halloween costumes are neither clothing for decency nor fashion and to the Bord's decision in 303868 as regards Fancy dress items considered as toys not clothing.
- This 3% of non-fashion goods reallocation of existing floor space can be achieved to the satisfaction of the planning authority by means of a suitably worded condition.

- Regard is had to caselaw relative to unwarranted and unjustified assumptions as to the future behaviour of a possible future retailer located on the premises.

#### *Exercise of Discretionary Power*

- These powers must be exercised properly and they refer to caselaw relative to this issue.
- The planning authority's refusal of permission must surely rank as arbitrary, particularly when one looks at the very similar product ranges of other very similar retailers in the district centre and other district centres in Waterford.
- This arbitrariness is manifest in the planning already granted by the P.A to very similar retailers in the District Centre and in neighbouring district area.

#### *Retail Warehouse?*

- The premises are at present a 'Retail Warehouse'. The planning implications of this classification is open to question.
- They include an extract from Simons J. judgement relative to categorisation of goods and lack of clarification.
- There are three planning matters in relation to the 'retail warehouse' permission which are certain and important to reemphasise in the context of appeal i.e.
  - It is located in a District Centre, not City Centre.
  - There is permission to sell 80% Bulky goods and 20% non-Bulky goods.
  - The bulky/no bulky goods distinction only applied after the 2000 planning permission.
- Section 4.7.1 of the Development Plan as quoted in the planner's report is ill founded. The Retail Warehouse the subject of this appeal is not located in the City Centre, rather in the District Centre.

#### *Impact on City Centre Retailing unfounded*

- There is no evidence of this presented and this is total speculation by the PA.

- The planning application being applied for is in essence following the guidelines and development plan prepared by the PA.
- There is no question of a 'retail warehouse in the city centre, and the mix of goods proposed is a carbon copy of other retail offerings in the district centre.
- It can hardly be correct in law or otherwise for a PA to refuse planning permission which in all material effects is giving effects to the guidance and policy considerations as provided by the same planning authority. A decision to refuse permission can be quashed if the reasons given are spurious and do not exist (they refer to case law).
- They include Comments and References and provide links to those.

## 6.2. **Planning Authority Response**

None noted on file.

## 6.3. **Observations**

Note noted on file.

## 6.4. **Further Responses**

Note noted on file

## 7.0 **Assessment**

### 7.1. **Nature of Use and Policy Provisions**

- 7.1.1. The site is located at the Kingsmeadow Retail Park to the south of the city with access via the Inner Ring Road to the south of the site. This proposal concerns a change of retail offer in part of an existing retail warehouse formerly in use as P.C. World and currently in use as 'Homesavers'. Regard is had further to the retail warehouse permission in the Planning History Section below. In this case the applicant is proposing to include the sale of convenience goods from up to 17% of the permitted floor area for non-fashion clothing, including pyjamas, novelty socks, winter hats and gloves, from up to 3% of the permitted floor area.



- 7.1.2. The Waterford City Development Plan 2013-2019 (as varied and extended) is the relevant plan. A key aim of the retail strategy is to ensure that Waterford City fulfils its role as the principle retail destination in the South East Region. ... The main principles and policies of the strategy have been incorporated into the Waterford City Development Plan 2013-2019. The site is located within a District Centre zoning within a 'General Business use' land use zoning and the proposed development has been assessed in the context of the Waterford City Development Plan 2013-2019 (as varied and extended) and the Retail Planning Guidelines 2012.
- 7.1.3. The site is in an area zoned 'General Business: 'To provide and improve General Business uses.' Section 12.4 of the Plan refers to this zoning and notes that it makes provision for a limited expansion of commercial development outside the city centre. Section 12.16 provides a Schedule of Land Uses. Permitted uses within the General Business Zoning includes 'Retail Warehouse'. It is also, of note that 'Retail' is also one of the uses listed. The First Party submits that therefore, both convenience and comparison bulky and non-bulky goods retailing are uses permitted in principle under this zoning.
- 7.1.4. As noted in Section 4.2 of the Development Plan relative to the Retail Hierarchy, the site which includes the retail warehouse is located within a Level 2 District Centre 'The Inner Relief Road/Tramore Road. This Section also refers to as Level 5 'Retail warehousing at various locations, including district centres and designated sites.'
- 7.1.5. Section 4.4 refers to the role of District Centres. "The range and volume of comparison floor space in District Centres should be of appropriate scale, be confined to low and middle order comparison goods, and should not compete with the city centre." Policies POL 4.4.1 - 4.4.4 refer to the role of retail in such District Centres. In this respect POL 4.4.3 as quoted in the Policy Section above is of particular relevance in that it seeks to ensure that significant comparison floorspace would not have a material impact on Waterford City Centre. It also seeks to ensure that the proposal is appropriate in the context of the Retail Planning Guidelines.
- 7.1.6. Section 4.7 of the Development Plan refers to Retail Warehousing and Policy POL 4.7.1 (as referred to in the Council's reason for refusal and quoted in the Policy Section above) seeks to strictly control the use of retail warehousing in the city to primarily 'bulky household goods'.

- 7.1.7. Regard is had to the Retail Planning Guidelines 2012. Bulky goods are defined in Annex 1 of 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”.
- 7.1.8. 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”.
- 7.1.9. Section 4.11.2 of the Retail Planning Guidelines recommends the 20% limit on ancillary items in total net retail floorspace and that such space should be clearly delineated on planning application drawings to facilitate future monitoring and enforcement. It also recommends that Planning authorities should closely monitor compliance with existing permissions for retail warehouses to ensure that the goods being sold are consistent with the definition of non-portable bulky goods in order to promote and protect the vitality and viability of the city and town centres. In addition, that enforcement action must be taken where retailing is not in compliance with the requirements. While the 20% limit is a recommendation that is not exceeded in the description of the change of use, regard is had to the existing use of the unit and the relevant Planning History below.

## 7.2. **Planning History**

- 7.2.1. Details submitted with the application note that the subject property was originally granted permission as a bowling alley in 1989 – Ref. 7386 refers. The First Party notes the omission of and includes reference to permission Reg.Ref.99/515. They

consider that the Council failed to consider this permission when it took out its injunction in December 2000 before the store reopened. Details relative to this issue have not been included with the subject application.

- Ref. PD99/500515 – Permission granted for alterations and change of use from bowling alley/Fun World centre to retail warehousing & extension to existing unit for retail warehousing with relevant site development works subject to 13no. conditions.

Condition no.1 is relevant to use of the subject unit and is as follows:

- The use of the building for wholesale retail warehousing shall be limited to a use as a ‘wholesale warehouse’ as defined in Article 8 of the Local Government (Planning and Development) Regulations 1994-1999, and to use for retailing of non-convenience goods. In particular, the sale of food, clothing and footwear shall be excluded from the permitted use, and no subdivision of the two permitted units shall take place without the prior and specific grant of permission.

Reason: It is considered that the control of intensification of use and on the type of goods which may be offered for sale is necessary (a) to ensure that the development will not affect significantly the role of the city centre as the primary retailing area in accordance with the Waterford City Development Plan, and (b) to limit traffic generation.

7.2.2. Regard is had to S.I No. 86/1994 – Local Government (Planning and Development Regulations, 1994. Article 8 provided an Interpretation of Part III Exempted Development. "wholesale warehouse" means a structure where business, principally of a wholesale nature, is transacted and goods are stored or displayed but only incidentally to the transaction of that business”.

7.2.3. It is noted that these Regulations have been superseded by the Planning and Development Regulations 2001 (as amended). Reference to the term ‘wholesale warehouse’ is included in Part 2 - Exempted Development in Article 5 ‘Interpretation’ i.e: “wholesale warehouse” means a structure where business, principally of a wholesale nature is transacted, and goods are stored or displayed incidentally to the transaction of that business”. A ‘wholesale warehouse’ is also referred to in Class 5 - Part 4 – *Exempted development – Classes of Use*. These Regulations also include

regard to 'retail warehouse'. A definition of such is given in the Retail Planning Guidelines.

7.2.4. Details submitted provide that the warehouse unit was first occupied by Curry's Electrical and P.C. World which was the last retail operator to occupy the property before Homesavers. It appears that the unit has been in use as a retail warehouse for some time. Regard is also had to the Planner's Report and to the planning history referred to. The most recent permission granted for the proximate unit to the west Reg.Ref. 18/548 refers, where a change of use was granted from retail warehouse to fast food usage including a drive thru. It is of note that the drawings included with that application show that signage on the subject unit indicated that it was formerly in use as P.C. World. (Reg.Ref.11500131 also refers).

7.2.5. However, there appears to be no planning history as to when the use of the unit was changed from the offer in P.C. World to 'Homesavers'. When on site I noted that the retail warehouse now sells items to the public such as household/garden items, toys, cards, bric-a-brac etc. While these items generally would fall into the range of Comparison Goods as per Annex 1 of the Retail Planning Guidelines 2012, they are generally small items that would not fall within the range of 'bulky goods', relative to this wholesale retail warehouse. Therefore, I would consider that the current usage appears to be unauthorised and not in compliance with condition no.1 of the said permission. In the interests of clarity, it would be in order to apply for planning permission for the change of use of the warehouse unit as a whole rather than in a piecemeal manner as put forward in the subject application. This would be more appropriately done by way of a new planning application.

### **7.3. Rationale and Design and Layout**

7.3.1. A letter submitted with the application and the grounds of appeal provides the rationale for the proposed part change of use of the floor area. Details are given of the locational context within the Inner Relief Road/Tramore Road District Centre. The Site Layout Plan submitted shows the subject unit, access and car parking area outlined in red, with the proximate unit and carpark area outlined in blue. Existing and Proposed Floor Plans have been submitted. No extensions or external alterations are proposed. The proposed plan shows that area proposed for the

change of use within the northern part of the building. These areas are shown colour coded with 17% of the unit for convenience uses and 3% for clothing. The application form provides that the existing unit is 1250.8m<sup>2</sup> and the proposed change of use relates to 156m<sup>2</sup> of the total floor area.

7.3.2. The First Party provide that the goods in the planning permission that are the subject of the 17% limited convenience goods and the 3% non-fashion goods in the proposed planning permission are predominantly low-order comparison goods and limited and restricted convenience goods which are to be fostered per Development Plan. Details submitted provide that the limited convenience offer (17%) will exclude fresh produce including meat, dairy and fruit, alcohol, cigarettes, newspapers and magazines. That the clothing offer (3%) will be limited to pyjamas, novelty socks, winter hats and gloves. Therefore, the proposed change of use will not exceed 20% of the floor area.

7.3.3. Details have been submitted of the use of other retail warehouse units in the area. This includes Mr Price, Woodies, Symths Toys, Dealz and Partyworld. It is provided that Homesavers offers a limited range of celebration, fancy dress and seasonal products in its retail offer. In addition, it offers a limited range of bulky and non-bulky products. It is submitted that Homesavers currently operates a store from a permitted retail unit in the Hypercentre, Morgan Street District Centre offering the same products as currently retailed in the subject property and proposed to be retained.

#### 7.4. **Access and Parking**

7.4.1. The access/egress is existing and to the south of the retail warehouse unit, from the Inner Ring Road (R709). It also serves the adjacent unit which contains fast food outlets, including Supermacs drive-thru. Parking is provided to the east of the subject unit and a separate area for the fast food outlets to the west. The area was not heavily parked on the day of the site visit and there do not appear to be issues with on-site parking.

7.4.2. Details submitted provide that there will be no increase in floor area of the store or the internal retail space. The First Party provide that the proposed development will not generate any additional traffic. That the increased retail offer may reduce the

need for customers to do top-up shopping in other stores which could create additional traffic movements.

## **7.5. Retail Impact Assessment**

- 7.5.1. In response to the Council's Further Information request Peter Thompson Planning Solutions submitted a Retail Impact Assessment. This has regard to the Waterford City Development Plan and to the Retail Planning Guidelines 2012. Section 4.9 of the latter provides the criteria for Retail Impact Assessment. The RIA submitted provides that it follows the main steps within Annex 5 of the Guidelines.
- 7.5.2. It notes that the proposed development does not plan any increase in floor area and the existing net floor area involved in the change in retail offer extends to only 156sq.m or 15.6% of the Development Plan threshold for out of centre developments. That as there is no change to the retail floor space quantum there will be no impact on available expenditure. That the value of goods to be replaced does not change materially and, therefore, increased expenditure is not needed to support the offer and the store turnover will remain constant. The only change will be increased choice to customers. Details of the turnover figures for the 20% floor area which is the subject of this application are attached in Appendix 1 of the RIA. They query the need for an RIA considering the small scale of the change of use proposed.
- 7.5.3. They note that the proposal is within an existing District Centre. Also, that there has been no retail convenience floorspace permitted within the Inner Relief/Tramore Road District Centre since the Retail Strategy was adopted. That the only change of any significance was the recent closure of the 'Buylo' discount store adjacent to the subject site which has since reopened as a bulky goods retail outlet (JYSK) thereby releasing convenience retail capacity. They provide that goods, which are not considered 'Bulky Goods' such as would fall into the general sales offer in retail warehousing.
- 7.5.4. The primary aim of the Development Plan Retail Strategy is to protect the City Centre as the primary retail centre for high and middle-order retail goods in the region. The RIA considers that this application will have no impact on City Centre Retail Offer and will reintroduce a small quantum of the convenience floorspace lost

from the District Centre when the adjoining Buylo store closed in or around 2019. They provide that as no new retail floor space is being created, the proposal will have no impact on private-sector retail investment or on vacant properties in the city centre. They consider that given the nature and scale of the proposal that the sequential test is not necessary. They request that it be noted that the existing store within which the retail offer is proposed is located within an existing District Centre. Also, that the retail offer is similar to other discount retailers in the District Centre and other District Centres in the city and will benefit customers and provide improved choice.

- 7.5.5. It is noted that the store is located on a public transport corridor, the broader retail offer is easily accessible to customers using public transport and on foot to the population in the District Centre catchment. The existing workforce is 25. That the minor change to the retail offer increases the attractiveness of the store offer, thereby increasing its viability and securing existing jobs. That Homesaver's offer from all other stores is tailored to meet customer demands and is based on ongoing shopper reviews. They submit that the broader retail offer will add to the appeal of the store and the usefulness of the District Centre generally as a local shopping centre for the District Centre catchment population. That the retail proposal accords with the Development Plan, its Retail Strategy and the provisions of the RPG.
- 7.5.6. It is noted that this Retail Impact Assessment is based on the change of floor space in the subject application (156m<sup>2</sup>) and does not include regard to the impact of the overall Homesavers store (1250.8m<sup>2</sup>). Also, it does not consider that the proposal will impact on trade diversion or vacancy in the city centre.

## 7.6. Precedent

- 7.6.1. The Council's reason for refusal considers that granting the application would give rise to similar applications and create an undesirable precedent relative to the mix of convenience goods and non-fashion clothing within the retail warehouse and would be harmful to the vitality and viability of other designated town centres/major town centres. That it would not accord with planning policy in the Waterford City Development Plan 2013-2019 (as varied and extended) or with the Retail Planning Guidelines 2012.

7.6.2. The Grounds of Appeal refer to precedent cases, relative to sale of a variety of goods within retail warehouses. They list a number of retailers in the vicinity and the range of goods for sale therein are referred to. The issue being that many of these are not confined to the sale of bulky goods items. Note is had to the Board decisions referred to below.

7.6.3. They refer to similar type cases where permissions were granted for Revisions to previous permissions relative to retail warehousing. These include Ref. PL06S-308607-19 where permission was granted subject to conditions by the Board for 'Revisions to previous permission (ABP-305228-19) warehouse to allow retailing of bulky and non-bulky sporting, recreation and leisure related produce and ancillary goods; current application to supersede condition 2 of (ABP-305228-19) which permits the sale of bulky goods only'. In that case the unit was located in Liffey Valley Retail Park, Coldcut Road, Dublin, approx.200m south of Liffey Valley Shopping Centre in the South Dublin Area. The Board considered that having regard to the South Dublin CDP 2016-2022, the Retail Planning Guidelines, 2012, the land use zoning of the site of Major Retail Centre and to the nature of the proposed development that it would be acceptable in terms of the zoning objective for the area and would be consistent with policy and objectives of the Development Plan and the Retail Planning Guidelines. That it would be in accordance with the proper planning and sustainable development of the area. Permission was granted subject to conditions. Condition no.3 is of note i.e:

The range of goods to be sold in the unit 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 the area.

7.6.4. Ref. ABP-303868-19 is a referral that asked the question as to whether the operation of a toy shop in a retail warehouse in a bulky goods retail park at World of Wonder, Unit Number 3, Limerick Road, Sheshheraghkeale Nenagh, Co. Tipperary is or is not development or is or is not exempted development. In that case the Board decided that the operation of a toy shop in a retail warehouse in a bulky goods retail park at World of Wonder is development (i.e. material change of use) and is not exempted



development. The Board had regard to the definitions contained in the Retail Planning Guidelines and to a condition restricting the goods sold within the unit to bulky goods. Therefore, it was decided that the proposal required planning permission.

- 7.6.5. Reference is also had to the permission granted for 'Buylo' (Reg.Ref. 09/156 – Ref.PL31.235114) which was for the Amalgamation of units 3 and 4, permitted under Reg.Ref. 07/257, to permit use as a wholesale warehouse retail unit open to trade and the general public and all associated site works at former Bolands Waterford City, Cork Road, Waterford (retail park to the north of and outside the boundaries of the subject site). Permission was granted by the Board for a period of 3 years to allow the traffic and servicing impacts to be assessed (condition no.2) and permission was subsequently extended. The retail offer was a mix of bulky and non-bulky comparison and convenience goods, including food. Aspects of the convenience offer were multiple pack. It is provided that the retail offer was broadly in line with that of Homesavers. The store closed early/mid 2020 and is now occupied by a furniture/furnishing store.
- 7.6.6. While these cases have been noted, they have been assessed regarding their locational context, and taking into consideration the specific issues arising. Regard has been had to the policies and objectives of the relevant development plans, to their planning history and to the Retail Planning Guidelines. While there are some similarities relative to the sale of non-bulky goods in retail warehouses, and regard to planning policy and the Retail Planning Guidelines, each case must be considered on its merits. This includes having regard to the planning history, sensitivity of the receiving environment and the specifics of the proposed development.
- 7.6.7. In this case the parameters of the proposed use are confined to the application on hand. As noted in the Planning History Section above, I would be concerned that the use of the existing unit is not authorised and that this proposal would be piecemeal and set a precedent for permitting a part change of use in a unit where the use as a whole is not authorised and does not have the benefit of planning permission. As such it would set an undesirable precedent that would be contrary to the proper planning and sustainable development of the area.

## **7.7. Screening for 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 permission be refused for the reasons and considerations below.

## **9.0 Reasons and Considerations**

1. It is considered that the goods currently for sale in the permitted wholesale retail warehouse now in use as 'Homesavers' would not fall within the terms of Condition No. 1 of the parent permission Register Reference: PD99/500515 and that the use of the unit as a whole is therefore unauthorised and an application has not been made for the retention of this use. To permit the current proposal in the context of this unauthorised development/use would therefore not be in order and would be piecemeal and contrary to proper planning and sustainable development of the area.
2. The proposed use would not be in accordance with Policy POL 4.7.1 of the Waterford City Development Plan 2013-2019 (as varied and extended) or Section 4.11.2 of the Guidelines relative to the type of goods for sale from retail warehousing, and would not fall within the range of bulky goods as specified in Annex 1 of the Retail Planning Guidelines which are Ministerial Guidelines as issued by the Department of the Environmental, Community and Local Government, April 2012. The Board is not satisfied, notwithstanding the location and zoning of the site, and the information submitted, that the proposed development would not have a detrimental impact on the vitality and viability of Waterford town centre and would not create a counter attraction to the town centre in terms of retail shopping, and considered, therefore, that the

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

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Angela Brereton  
Planning Inspector

23<sup>rd</sup> of February 2022