



An
Bord
Pleanála

Inspector's Report

ABP-315633-23

Development	Extension to retail park comprising five retail warehouse units and a stand-alone 3-storey office and/or medical building.
Location	Waterford Retail Park, Cork Road, Butlerstown North, Waterford
Planning Authority	Waterford City and County Council
Planning Authority Reg. Ref.	22936
Applicant(s)	Monaco Properties Ltd
Type of Application	Permission.
Planning Authority Decision	Split Decision
Type of Appeal	First Party
Appellant(s)	Monaco Properties Ltd..
Observer(s)	None.
Date of Site Inspection	17 th January 2024
Inspector	Peter Nelson

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1.0 Site Location and Description

- 1.1. The site is located on the R710 Outer Ring Road in the outskirts of Waterford City. The site is an extension of the existing Waterford Retail Park. The retail park contains retailing warehousing, including Harvey Norman Furniture, Home Focus at Hickeys, Halfords, Curry's, Mazi-Zoo Pet Shop, EZ Living furniture, Home Store and More and a Costa Coffee in a separate building. On-surface car parking is at the front of the retail warehousing. There are two vehicular entrances to the existing retail park.
- 1.2. The site is located at the northwestern end of the retail park. The site, which has a stated area of 3.56 hectares, is surrounded by agricultural land on the northern and eastern boundaries, The R710 Outer Ring Road on the northwestern boundary and the existing retail park on the southwestern boundary. The site is relatively flat and at a lower level than the Outer Ring Road.

2.0 Proposed Development

- 2.1. The proposed development consists of an extension to the existing retail park development (totalling 9147 sqm gross floor area) comprising 5 no. retail warehouse units (Units 9-13 inclusive) ranging from 800sqm. to 2050sqm. including an outdoor garden centre with Unit 12; a specialist sports and leisure retail unit (Unit 14) of 2250 sqm. for sale and display of a range of bulky and non-bulky sporting, recreation and leisure-related products and ancillary goods and including an outdoor display/exhibition area.
- 2.2. Permission is also sought for a standalone 3-storey building to accommodate office and/or medical-related uses with all associated ancillary accommodation (totalling 3317 sqm. gross floor area).
- 2.3. Access will be from the existing Waterford Retail Park access on the Outer Ring Road through the existing car park, and permission is sought to extend and complete the existing car park to provide an additional 123no. parking spaces and 2no motorcycle spaces (resulting in 997 spaces in total for the Waterford Retail Park development).

2.4. Permission is also sought for all associated site and development works, including service roads, service yards, hard and soft landscaping totem sign and building-mounted signage, PV solar panels, ESB substation (28sqm) and bicycle parking facilities for staff and customers. A ten-year permission is sought to facilitate the phasing of development.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. On the 20th December 2022, Waterford City and County Council granted permission to extend the existing retail park development (totalling 9147 sqm gross floor area) comprising 5 no. retail warehouse units (Units 9-13 inclusive) ranging from 800sqm. to 2050sqm. including an outdoor garden centre with Unit 12; a specialist sports and leisure retail unit (Unit 14) of 2250 sqm. for sale and display of a range of bulky and non-bulky sporting, recreation and leisure-related products and ancillary goods and including an outdoor display/exhibition area subject to 17 conditions.

Condition No. 2 stated:

- A) *The specialist sports and leisure retail unit (Unit 14), permitted here in. Shall be used for the sale of bulky goods as defined in the Retail Planning Guidelines (2012). No more than 20% of the total net retail floor space of the unit shall be dedicated to the sale and display of ancillary items associated with bulky goods in accordance with the retail planning guidelines for planning authorities (2012).*
- B) *Prior to the occupation of the specialist sports and leisure retail unit (Unit 14) a floor plan shall be submitted to, and agreed in writing with, the Planning Authority, clearly delineating the retail floor space devoted to the sale and display of ancillary items associated with bulky goods (maximum of 20% of the total net retail floor space as per condition No.2A).*
- C) *The floor area of the specialist sports and leisure retail unit, (Unit 14), permitted herein, shall not be increased by the inclusion of a mezzanine floor without the prior grant of a planning permission.*

D) No change of use of the specialist sports and leisure retail units (Unit 14) permitted herein, shall be permitted without the prior grant of planning permission.

E) The specialist sports and leisure retail unit (Unit 14) permitted herein, shall not be subdivided or amalgamated with other unit(s) without the prior grant of planning permission.

Reason: In order to minimize 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.

3.1.2. Permission was refused for a standalone three storey building to accommodate office and/or medical related uses with all associated ancillary accommodation (totalling 3317sqm. gross floor area) for the following reason:

'It is considered that the proposed standalone 3 storey building to accommodate office/medical related uses situated within a retail warehousing park, which is not served by public transport, would be contrary to the policy provisions of the Waterford City and County Development Plan 2020- 2028, which seeks to direct significant employment development to strategic locations as identified in the Waterford Metropolitan Area Strategic Plan and as contained in Table 4.1 Strategic Employment Locations of the Waterford City and County Development Plan, 2022-2028. The proposed development if permitted would be contrary to the Core Strategy Strategic Aims, and policy objectives of the Waterford City and County Development Plan 2022-2028 years, specifically Core Strategy Strategic aims 1 and 12 and policy objectives ECON 10. WCITY 14 which seek to direct new employment areas to strategic locations and in district and local service centres. Thus the proposed standalone 3 story building to accommodate office. Medical related uses would be contrary to the policy provisions of the Waterford City and County Development Plan 2020-28 and the planning of sustained growth.'

3.2. Planning Authority Reports

3.2.1. Planning Reports

The main points of the planning report dated the 16th December 2022 can be summarised as follows:

- The site is in an area zoned ‘general business’ in the Waterford City & County Development Plan 2022-2028.
- The site is not in an identified district retail and local neighbourhood centre as designated in the development plan.
- Unit No.14 will consist of a “specialist sports and leisure retail unit”.
- The ‘Waterford City and Retail Strategy 2020’ states that ‘There is no requirements for additional retail warehouse floorspace within the catchment until after 2031’.
- However, the strategy states that there is ‘limited future retail warehousing development to be directed to the planned and existing retail parks in the City, Dungarvan and Tramore in line with the retail floorspace projections.
- The strategy states, ‘It is recommended that future retail warehousing provision is met in existing and planned retail parks. Conditions should be imposed in such developments clearly restricting the sale of goods to bulky housing items.’
- The current proposal is for an extension to an established retail park.
- It has not been demonstrated that the proposed use of the standalone office and/or medical-related uses accord with the ‘core strategy strategic aim ‘To protect existing employment and promote new employment areas at strategic locations and in the district and Local Services centres across Waterford County’.
- The Roads Section have reviewed the proposal and has no objection to the proposed development.
- There is no justification for a 10-year planning permission.
- The proposed office/medical-related uses and quantum of space is unsuitable for a retail warehousing park, which is not served by public transport.

3.2.2. Other Technical Reports

Report from the Environment Section dated 24th November 2022 had no objection to the proposed development subject to three conditions.

3.3. Prescribed Bodies

None

3.4. Third Party Observations

The main points raised in the third-party observation can be summarised as follows:

- The applicant has not proven there is this level of demand for the expansion of retail warehousing in the city.
- The proposal for the retail of comparison goods of a non-bulky nature is contrary to the policy in relation to retail warehousing.
- It would set a precedent for the sale of comparison goods in other locations outside the city centre and undermine the vitality and vibrancy of the city.
- The existing retail park is in breach of its planning conditions and is operating as an unauthorised development, creating a serious traffic hazard.
- The location of the proposed 3-storey office building in this remote location is contrary to the Core Strategy of the development plan with respect to strategic employment location and is not in keeping with the principles of compact growth and sustainable development.

4.0 Planning History

ABP Ref: 318456

First Party appeal on planning decision made on the 20th December 2022 to refuse a development consisting of a standalone three-storey building to accommodate medical related uses with all associated ancillary accommodation and a standalone ESB substation (totalling 3490sqm gross floor area). Access will be from the existing Waterford Retail Park access on the Outer Ring Road through the existing car park, where an additional 102 parking spaces will be provided, bringing the total to 976 spaces. The 102 spaces in this application were also part of the car park extension (123no. spaces) proposed under Ref: 22/936. Permission is sought for all associated

site and development works hard and soft landscaping, building mounted signage and bicycle parking facilities for staff and customers. This appeal has yet to be decided.

P.A. Ref: 20/930

Permission was granted on 9th February 2021 for the proposed change of use of this retail warehouse unit to use as a gym, the provision of a mezzanine floor, associated stair cores, gym user facilities and ancillary staff areas to facilitate this change of use, elevational modifications, associated signage and all associated works at Unit 8 Waterford Retail Park.

P.A. Ref:19/194

Permission was granted on the 16th May 2019 for the provision of a mezzanine floor, associated stair cores, lift and ancillary staff area, elevational modifications for proposed fire exits, associated signage and all associated works at Unit 8, Waterford Retail Park.

Condition No.2 states;

‘(a) The proposed use shall be restricted to the sale of bulky goods as defined in Annex 1 of the Retail Planning Guidelines for Planning Authorities, 2012, shall not exceed 20% of the total net internal retail floor space.’

(b) Prior to the first occupation of the retail warehouse unit herein permitted and following any subsequent change in occupier of the unit or at time following occupation of the unit on request in writing by the Planning Authority a floor plan layout clearly delineating the area allocated to the sale of ancillary items associated with the otherwise bulky goods as per condition no.2 (a) above shall be submitted to, and agreed in writing with the Planning Authority.

Reason:

Having regard to the planning history of the site, the Retail Planning Guidelines for Planning Authorities, 2012 and in the interest of the proper planning and development of the area.’

Referrals

PL24.RL2562

As to the questions, Whether the use of units at a Retail Park by TK Maxx is a change of use from that permitted under permitted planning permissions and is or is not development, and is or is not exempted development and whether the amalgamation of 3 no. units into one single unit is or is not development, and is or is not exempted development; the Board determined that the buildings on site had a permitted use (under numbers 06/522 and 06/2026) as retail warehouses, that the proposed use of the units by TK Maxx therefore constituted a change of use. In coming to that conclusion, the Board noted that the retailing activity carried out by TK Maxx (which includes the sale of fashion clothing, footwear, sportswear, toys, jewellery, non-bulky household goods and goods for personal care or other goods which are included in the definition of “comparison” goods in Annex 1 of the Retail Planning Guidelines) did not come within the scope of the definition of activities of a retail warehouse as set out in the said Retail Planning Guidelines. The Board stated that the change of use constituted development, being a material change of use, having regard to its character and its material external impacts (such as its possible impacts on city centre retailing, traffic or parking) on the proper planning and sustainable development of the area and that the internal alterations to the units to amalgamate same were directly related to the change of use in question and were, therefore, not exempted development:

Therefore, the Board decided that the use of 3 no. units by TK Maxx and the amalgamation of said 3 no. units into one single unit was development and was not exempted development.

PL 24. RL2563

As to the question of whether the use of a unit by Mothercare is a change of use from that permitted under previous planning permissions and is or is not development, and is or is not exempted development, the Board determined on the 23rd February 2009 that the use as described was development and was not exempted development, as follows:

- The buildings on site had a permitted use as retail warehouses, and therefore the proposed use by Mothercare was a material change of use given that it typically traded non-bulky comparison goods and was not akin to a retail warehouse.

- The said change of use constituted development, being a material change of use, having regard to its character and its material external impacts (such as its possible impact on city centre retailing, traffic and parking) on the proper planning and sustainable development of the area

Relevant Appeals

ABP Ref: 310750/21

Permission was refused on first party appeal on 5th April 2022 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. The reason for refusal stated that the nature of the goods sold would not be in accordance with the policies of the Waterford City Development Plan 2013-2019 and Section 4.11.2 of the Retail Planning Guidelines and would have a detrimental impact on the vitality and viability of Waterford town centre and would create a counter attraction to the town centre in terms of retail shopping.

ABP. Ref: 308607-20

Permission granted on first-party Appeal on the 14th April 2021 for revisions to previous permission (ABP-305228-19) warehouse to allow retailing of bulky and non-bulky sporting, recreation and leisure-related produces and ancillary goods; current application will supersede condition 2 of (ABP-305228-19) which permits the sale of bulky good only at Unit 14, Liffey Valley Retail Park.

ABP. Ref: 305228-19

Permission granted on third-party appeal on the 3rd March 2022 for the construction of the mezzanine floor to the existing retail warehouse unit, signage, associated alterations to internal layout, elevational alterations, and associated site works. The applicant was Decathlon Sports Ireland Ltd.

Condition no. 2 stated:

‘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.’

5.0 Policy Context

5.1. Development Plan

The Waterford City and County Development Plan is the operational plan for the area. It came into effect on the 19th July 2022.

Zoning

The site is zoned in an area zoned ‘General Business GB’. The Zoning Objective is:

‘To provide for and improve General Business uses; this includes suburban district retail and local neighbourhood centres’.

Relevant Policies

W City 09: Vibrancy & Vitality: Land Use Mix Policy Objectives

In the interest of vitality and viability of the city centre and the delivery of a vibrant diverse community and mix of uses across the city centre we will:

- *Manage the spread of uses that could lead to a reduction in the attractiveness of, and the retailing function of the principal shopping streets.*
- *Promote and support the provision of retail, service and employment uses across the city centre in order to enhance its commercial resilience and vitality and the experience of visitors and residents alike while managing the extent of retail and commercial developments, of a type and scale which are more appropriate to the City Centre, outside the central area;*
- *Promote and enhance the evening economy in the City Centre with a view to enhancing the function of the broader City Centre area in this regard.*

- *To adhere to the principle of the primacy of the City Centre as set out in the Retail Planning: Guidelines for Planning Authorities 2012 (DOECLG) and the Waterford City and County Retail Strategy; and,*
- *Facilitate where appropriate “meanwhile uses” and temporary uses of vacant or underutilised properties/opportunity sites where such uses are consistent with the proper planning and sustainable development of the area.*

Retail 01: Retail Guidelines

Ensure that all proposed retail development accords with the relevant policies of the Development Plan and the requirements and criteria as established within the Retail Planning Guidelines 2012, the accompanying Retail Design Manual and the Waterford City and County Retail Strategy 2020 (or any subsequent updates).

Retail 05: Retail Warehousing

The Council will strictly control additional new retail warehousing/retail park floorspace throughout the County for the duration of the Plan. Any application for retail warehousing will be required to demonstrate that the proposal will not impact adversely on the vitality and viability of established retail centres in accordance with the criteria set down in the Retail Planning Guidelines for Planning Authorities (2012) or any update thereof.

W City Retail 07: Retail Warehousing

The Council will strictly control additional new retail warehousing in Waterford City for the duration of the Plan. Any application for retail warehousing will be required to demonstrate that the proposal will not impact adversely on the vitality and viability of the City Centre in accordance with the criteria set down in the Retail Planning Guidelines for Planning Authorities (2012) or any update thereof and the Retail Strategy.

Appendix 4: Retail Strategy

The purpose of the retail strategy is to implement the objectives of the Retail Planning Guidelines. A key aim will be to ensure that Waterford City fulfils its role as the principal retail destination in the County and the South East region and performs as the major economic driver for the South East region, and that the towns of Dungarvan & Tramore continue to play important complimentary and supportive roles within their respective catchment areas, in addition to the provision of an appropriate range of retail facilities at a local level throughout the County.

5.2. National Guidelines

Retail Planning Guidelines for Planning Authorities (2012)

The aim of the Guidelines is to ensure that the planning system continues to play a key role in supporting competitiveness in the retail sector for the benefit of the consumer in accordance with proper planning and sustainable development. In addition, the planning system must promote and support 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.

5.3. Natural Heritage Designations

Lower River Suir Special Area of Conservation (002137): 1.7km from the site.

6.0 The Appeal

6.1. Grounds of Appeal

The first party appeal relates solely to Condition No.2 of the Notification of Decision to Grant for the Retail Park Extension.

The main points of appeal can be summarised as follows:

- Request that the Board replace Condition No.2 with the following (or similar)
‘The range of goods to be sold in the unit shall be limited solely to the 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.'

- Applicant willing to accept Conditions 2(c), (d) and (e).
- Permission was sought for Unit 14 as a 'Sports and Leisure Retail Unit'. To facilitate the Decathlon type use as a unique retail format which has, in other locations, been compatible with a retail park development. Condition no.2 does not reflect this.
- The application was for a very specific use definition to facilitate a specific type of store unsuited to a shopping centre or a high street environment.
- The local authority did not consider An Bord Pleanála APB -308607-20's relevant decision, which facilitated the Liffey Valley Decathlon.
- The assessment of the current application on its merits makes a strong case for accommodating this unique retail format at Waterford Retail Park to serve the southeast region.
- In the same way as an established retail park was deemed to be suitable to accommodate Decathlon in Limerick, Waterford Retail Park will provide an equivalent facility for Waterford.
- Decathlon is compatible with the retail park format from a land use planning perspective.
- Decathlon offers bulky goods for a variety of sorts and includes ancillary non-bulky sports goods.
- The compatibility of the Decathlon format within a retail warehouse park format is well established throughout Europe, and this is the pattern, to date, in Ireland.
- The first Decathlon's first Republic of Ireland store in Ballymun is on lands zoned for 'Retail Warehousing'.
- The 'General Business' zoning matrix includes 'Retail Comparison' use as 'open for consideration'. Therefore, the zoning objective facilitates the consideration of a bespoke retail format such as Decathlon at Waterford Retail Park.

- The Planning Application Report included a Retail Assessment, which included evidence to support the need for the nature and scale of the floorspace proposed.
- Condition No.2 represents a narrow interpretation of the Retail Planning Guidelines (RPG).
- Section 4.5 of the RPG requires flexibility in applying the sequential approach to ensure that the various forms of retailing are developed in the most appropriate locations.
- Decathlon needs to be considered in the context of its role in supporting tourism and recreation, which is a significant part of Waterford City and County Council's economic strategy.

6.2. Planning Authority Response

- None

6.3. Observations

- None

7.0 Assessment

- 7.1. The First-Party Appeal relates to Condition No. 2 only attached to the Planning Authority's Notification of Split Decision. I am satisfied that the proposed development of the extension to the existing retail park development comprising 5 no. retail warehouse units, including an outdoor garden centre and a specialist sports and leisure retail unit is otherwise in accordance with the proper planning and sustainable development of the area, and that the determination by the Board of the application as if it had been made to it in the first instance would not be warranted.
- 7.2. My assessment will, therefore, be limited to the matters raised in relation to the terms of the Condition, pursuant to the provisions of Section 139 of the Planning and Development Act 2000 (as amended). Therefore, additional EIA screening for the overall development is not required.

7.3. The proposed development is in an area zoned In the Waterford City and County Development Plan 2022-2028 for 'General Business' uses. Retail Warehousing is 'Open for Consideration'. Retail Comparison Goods are also 'Open for Consideration'. Therefore, both the sale of bulky goods and retail comparison goods are acceptable in principle.

7.4. Condition No.2 limits the floor area dedicated to the sale and display of ancillary items associated with bulky goods to 20% of the total net floor space of Unit 14 in accordance with the Retail Planning Guidelines.

7.5. In Annex 1 of the Retail Planning Guidelines, 'Bulky Goods' are described 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.

This includes bulky durables for recreation and leisure.

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

7.7. The applicant refers to ABP. Ref: 308607-20, which was for '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,'

7.8. This permission included the condition that the applicant now requests the Board to attach instead of Condition No. 2 of this notification of permission. The condition stated, 'The range of goods to be sold in the units be limited solely to bulky and non-bulky sporting goods, 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.' In this instance, I note that the site

was located in the Liffey Valley Core Retail Area as defined in the South Dublin County Development Plan 2016-2022 (which was the operation plan and the time of decision). The inspector highlighted that Section 11.3.6 of the Development Plan stated, "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".

- 7.9. I consider that the current application's circumstances are different. The proposed development is in a location not classified as part of Waterford City Centre and is just within the outer ring road. The site is not classified as being in Tier 2(L2) District/Suburban Centres of Tier 3 Small Towns and Rural Areas of the Retail Hierarchy for Waterford City and County.
- 7.10. The Waterford City & County Retail Strategy 2020 states that Waterford City is underperforming in terms of comparison offering and that there is clearly a need to reinforce the retail role of the city further. It also states that extensive areas of retail warehousing have been developed or have permission in the Waterford Area and its environs and that the nature and type of goods sold from retail warehousing developments need to be strictly controlled and monitored and limited to bulky goods.
- 7.11. Section 4.12.7 of the Waterford City and County Development Plan states that: 'In respect of retail warehouse developments outside town centres, it is essential that the range of goods sold is restricted by planning condition to bulky household items such as DIY products, carpets, furniture, and electrical goods.' Policy Retail 05 requires any application for retail warehousing to demonstrate that the proposal will not adversely impact the vitality and viability of established retail centres the criteria set down in the Retail Planning Guidelines for Planning Authorities (2012) or any update thereof. I consider that the applicant has not demonstrated that the removal of a limit of 20% of ancillary goods in this unit will not impact adversely on the vitality and viability of established retail centres in accordance with the criteria set down in the Retail Planning Guidelines.
- 7.12. I, therefore, consider that given the location of the site in an out-of-centre retail warehousing park, removing a restriction of ancillary non-bulky leisure and sports-related goods would have the potential to adversely affect the vitality and viability of established retail centres in Waterford City.

7.13. I have considered the proposal, and with the inclusion of condition No.2, as attached by the Planning Authority, I am satisfied that the proposed development accords with the Retail Planning Guidelines for Planning Authorities (2012).

7.14. **Appropriate Assessment**

Having regard to the nature, scale and location of the proposed development adjacent to an existing retail park, the nature of the receiving environment and proximity to the nearest European site, it is concluded that no Appropriate Assessment issues arise as the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European Site.

8.0 **Recommendation**

Having regard to the nature of the condition, the subject of the appeal, the Board is satisfied that the determination by the Board of the relevant application as if it had been made to it in the first instance would not be warranted. Accordingly, I consider that it would be appropriate to use the provisions of Section 139 of the 2000 Act, as amended.

I recommend that Condition No. 2 be attached.

9.0 **Reasons and Considerations**

Having regard to the nature and scale of the proposed development, the location of the site, the 'General Business' zoning for the site, and the provisions of Waterford City and County Development Plan 2022-2028, and the Retail Planning Guidelines 2012, it is considered that the inclusion of Condition No.2 will help protected the vitality and viability of Waterford City Centre and would therefore be in accordance with the proper planning and sustainable development of the area.

Peter Nelson
Planning Inspector

26th March 2024