

An  
Bord  
Pleanála

## Planning Appeal Check List

(Please read notes overleaf before completing)

1. The appeal must be in writing (e.g. not made by electronic means).

2. State the

name of the appellant  
(not care of agent)

Better Value Unlimited Company

address of the  
appellant  
(not care of agent)

46-50 South Great Georges Street

3. If an agent is involved, state the

name of the agent

N/A

address of the agent

N/A

<b>AN BORD PLEANÁLA</b>	
LDG-	<u>019095-19</u>
ABP-	
<b>12 SEP 2019</b>	
Fee: € <u>220</u>	Type: <u>Cheque</u>
Time: <u>16.14</u>	By: <u>hand</u>
Planning Appeal Check List	



4. State the Subject Matter of the Appeal\*

Brief description of the development

A declaration has been issued by Cork City Council (Ref: R529/19) relating to Dunnes Stores, Douglas Court Shopping Centre. The question on which the declaration was sought was whether the uplift in Dunnes Stores convenience sales floor from 2,574 sqm to 3,000 sqm net by extending into the shops ground floor textile stockroom, including associated internal shop works, is or is not development or is or is not exempted development. The Councils decision was that the works described was development and not exempted development. We respectfully request that the Board reviews this declaration.

Location of the development

DUNNES STORES, DOUGLAS COURT SHOPPING CENTRE, DOUGLAS, CO. CORK, T12 E86C

Name of planning authority

CORK CITY COUNCIL

Planning authority register reference number

R529/19 COPY OF DECISION ENCLOSED

\* Alternatively, enclose a copy of the decision of the planning authority as the statement of the Subject Matter of the Appeal.

5. Attach, in full, the grounds of appeal and the reasons, considerations and arguments on which they are based. (PLEASE SEE ATTACHED LETTER)
6. Attach the acknowledgement by the planning authority of receipt of your submission or observations to that authority in respect of the planning application, the subject of this appeal. (Not applicable where the appellant is the applicant). (N/A)
7. Enclose / Pay the correct fee for the appeal and, if requesting an oral hearing of same, the fee for that request see "[Guide to Fees Payable](#)" under heading of Making an Appeal on Home Page of this website for current fees. (CORRECT FEE ENCLOSED)
8. Ensure that the appeal is received by the Board in the correct manner and in time. ✓

**AN BORD PLEANÁLA**

**12 SEP 2019**

LTR DATED \_\_\_\_\_ FROM \_\_\_\_\_

LDG- \_\_\_\_\_

ABP- \_\_\_\_\_



**BETTER VALUE UNLIMITED COMPANY, 46-  
50 SOUTH GREAT GEORGES STREET,  
DUBLIN 2**

The Secretary  
An Bord Pleanála  
64 Marlborough Street  
Dublin 1  
D01V902

12 September 2019

Dear Secretary

**RE: SECTION 5 REFERRAL RELATING TO DUNNES STORES, DOUGLAS COURT SHOPPING CENTRE, DOUGLAS, CO. CORK**

We, Better Value Unlimited Company, in accordance with Section 5 (3)(a) of the Planning and Development Act 2000 (as amended) wish to refer the enclosed Section 5 Declaration (R529/19) issued by Cork City Council Planning Authority on 20/08/2019 to the Board for review.

The purpose of this referral is to seek the Boards determination as to:-

*"Whether the uplift of Dunnes Store convenience sales floor area from 2,574 sqm to 3,000 sqm net by extending into the shops ground floor textile stockroom, including associated internal shop works, is or is not development or is or is not exempted development"*.

It is our opinion that the shop unit in its entirety forms a single planning unit with permitted and unrestricted shop use. We are also of the view that the part use of the planning units textile stockroom for convenience sales does result in a material change of use and that any internal works required to extend the shops convenience floor area would not constitute development for the purpose of the Planning and development Act, 2000 (as amended).

**DOCUMENTS ENCLOSED:**

- The correct fee – €220.00
- Site location plan x 1
- Site layout plan x 1
- Ground floor plan (existing & proposed store layouts) x 1
- First floor Plan (existing & proposed store layouts) x 1
- Copy of the Councils Declaration & Planning Report

The case for exemption outlined below.

**AN BORD PLEANÁLA**

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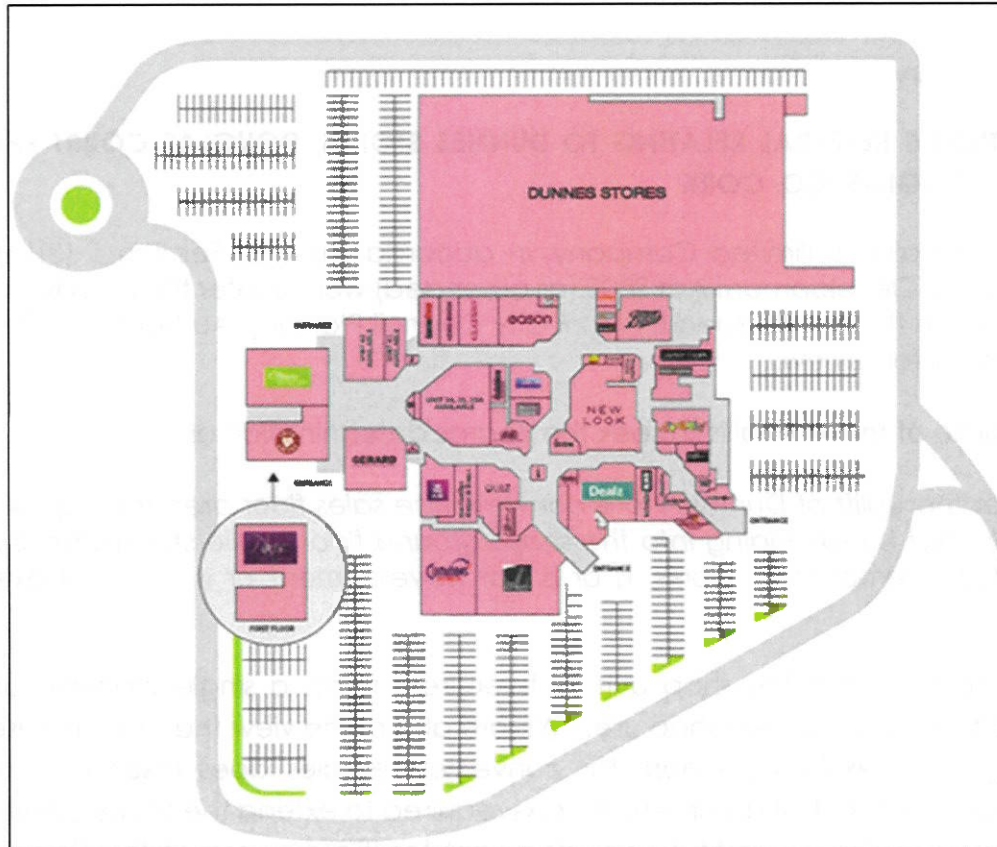


## 1.0 SITE CONTEXT

### Douglas Court Shopping Centre

The subject site is located within Douglas Court Shopping Centre. The shopping centre has over 50 units and a large surface level car park comprising approximately 890 parking space. Existing tenants include Dunnes Stores, Next, Kilkenny, Peter Mark, Gerard, Boots, Dealz, and Sam McCauleys, Cummins Sports. The Shopping Centre opened in 1990.

**Fig 1.0 - Shopping Centre Layout (For Illustrative Purposes)**



### Dunnes Stores Shop Unit

Dunnes Stores has been trading from Douglas Court Shopping Centre for over 28 years. The shops primary use is the sale of retail goods (convenience and comparison goods) to the public.

**Table 1.0 – Dunnes Stores Floor Schedule**

Floor Areas	Convenience Sq.m	Comparison Sq.m	Total
GF Net	2,574	2,753	5,327
GF Storage	620	576	1,196
FF Storage	567	468	1,035
<b>Total</b>	<b>3,761</b>	<b>3,797</b>	<b>7,558</b>

Access to the Dunnes Stores shop unit is via Shopping Centre's enclosed mall.

## 2.0 RELEVANT PLANNING HISTORY

### Planning Reg. Ref: S/1823/86 – Parent Planning Consent

On the 25 August 1986, planning permission was granted for a new shopping centre complex. The shopping centre was subject to 10no. condition none of which restricts Dunnes Stores shop use or net sales area (copy of decision attached at **Appendix 1**).

## 3.0 POLICY CONTEXT

### Cork County Development Plan 2014-2020

Douglas is a designated District Centre in the Retail Network/Hierarchy.

### Metropolitan Cork Joint Retail Strategy 2015

District centres as per the Joint Retail Strategy are generally comprised by a large convenience/comparison anchor, a range of comparison outlets, local retail services, ancillary specialists convenience outlets and community and social facilities.

### Ballincollig Carrigaline Electoral Municipal District Local Area Plan, 2017

The shopping Centre has a Town Centre Zoning. Appropriate uses could include offices, retail, retail services (restaurants, public houses etc.) leisure/recreational facility, community buildings and cultural uses.

## 4.0 RELEVANT LEGISLATION

### Planning and Development Act, 2000 (as amended)

**Section 3 (1)** of the Planning and Development Act 2000 (as amended) defines development as "...any works on, in, over or under land or the making of any material change in the use of any structures or other land."

**Section 4 (1) (a) – (i)** sets out what is exempted development for the purposes of this Act and includes (h) 'development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures.'

**Section 4 (2)** provides for the making of Regulations. The main Regulations are the Planning and Development Regulations, 2001.

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## Planning and Development Regulations, 2001 (as amended)

**Article 5 (1), Part 2** provides interpretations for the purposes of exempted development. The following is relevant to this case:

"shop" means a structure used for any or all of the following purposes, where the sale, display or service is principally to visiting members of the public—

- (a) for the retail sale of goods,
- (b) as a post office,
- (c) for the sale of tickets or as a travel agency,
- (d) for the sale of sandwiches or other food for consumption off the premises, where the sale of such food is subsidiary to the main retail use,
- (e) for hairdressing,
- (f) for the display of goods for sale,
- (g) for the hiring out of domestic or personal goods or articles,
- (h) as a launderette or dry cleaners,
- (i) for the reception of goods to be washed, cleaned or repaired,

but does not include any use associated with the provision of funeral services or as a funeral home, or as a hotel, a restaurant or a public house, or for the sale of hot food for consumption off the premises, except under paragraph (d) above, or any use to which class 2 or 3 of Part 4 of Schedule 2 applies.

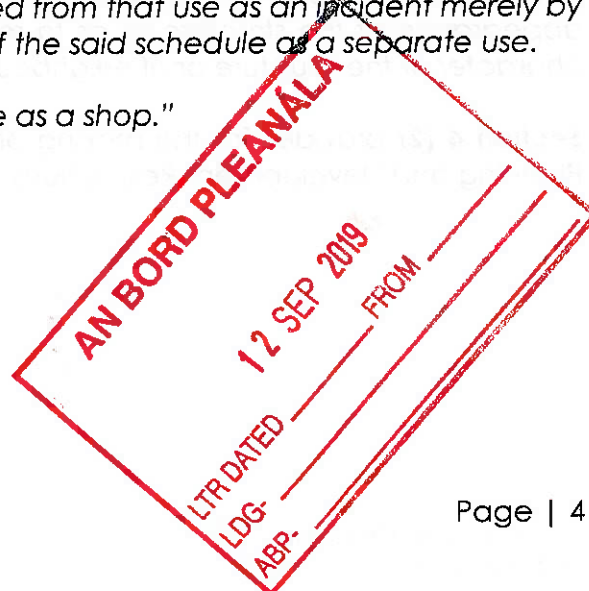
**Article 10 (1)** relating to changes of use states as follows:

"Development which consists of a change of use within any one of the classes of use specified in Part 4 of Schedule 2, shall be exempted development for the purposes of the Act, provided that the development, if carried out would not—

- (a) involve the carrying out of any works other than works which are exempted development,
  - (b) contravene a condition attached to a permission under the Act,
  - (c) be inconsistent with any use specified or included in such a permission,
- or
- (d) be a development where the existing use is an unauthorised use, save where such change of use consists of the resumption of a use which is not unauthorised and which has not been abandoned."

**Article 10 (2) (a)** further states that a use which is ordinarily incidental to any use specified in Part 4 of Schedule is not excluded from that use as an incident merely by reason of its being specified in the said Part of the said schedule as a separate use.

**Class 1 of Part 4 of Schedule 2** refers to: "Use as a shop."





## 5.0 THE CASE FOR EXEMPTION

### Change of Use

Having regard to the shops extant permission and having regard to the planning definition of a 'shop' provided under Article 5(1), it is our opinion that the Dunnes Stores shop unit comprising of sales & ancillary shop stockrooms constitutes a single planning unit, with a permitted and unrestricted shop use. Given the textile stockroom functionally relates to the shops primary use, it is our contention that **no change** of use takes place and therefore no development occurs.

However, should the Baord conclude that a change of use occurs we respectfully contend that the change of use is not a material change to constitute development for the purposes of the Act.

### Material Change of Use

For a change of use to fall within the definition of development, provided for under the Act, the change of use must be **'material'**.

For a change of use to be material, it must significantly alter the character of the property and the change must impact on the proper planning and sustainable development of the area in a way that differs from the previously established use.

### Shop Character

Convenience and comparison goods have been sold from the shop for over 28 years. It is our opinion that the use of the shops ground floor textile stockroom for convenience sales would not materially impact on the shops character as the shops primary use will continue to be the sale of retail goods to the public.

### Proper Planning & Sustainable Development considerations

The shop unit is located on lands zoned Town Centre where retail uses (convenience & comparison) are deemed appropriate. Douglas is designated as a district centre in the retail hierarchy, and district centres generally comprise of a large convenience/comparison anchor stores. The car parking standard set out in the County Development plan relate to maximum standards and are calculated on gross floor area. As the gross floor area of the Dunnes Stores shop does not change no additional car parking is deemed required. Nonetheless, we contend that the shopping centre site is well catered for in terms of surface level parking (approx. 890 parking spaces). Likewise, having regard to the shops current use and having regard to the sites town centre location we do not consider the proposal will give rise to additional traffic movements, which would constitute a material impact.

Therefore, it is our opinion, the proposed uplift in the shops convenience sales area 2,574 sqm to 3,000 sqm, by using part of the shops existing textile stockroom, would not trigger the need to take account of planning considerations that differ from those pertaining to the consideration of the planning applications under which Dunnes Stores shop unit was originally permitted.

**AN BORD PLEANÁLA**  
12 SEP 2019  
LTR DATED \_\_\_\_\_ FROM \_\_\_\_\_  
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## Internal Shop Works

'Works' for the purposes of the Act includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal.

The main elements involved in extending the shops convenience sales floor area will include:-

- Laying of new floor covering;
- Painting;
- New lighting and
- Provision of Shop fixtures and fittings (e.g. gondola shelving)

As we consider the above works to be of a minor nature (particularly in proportion to the overall size of the Dunnes Stores shop unit) we respectfully but forward the case that the extension of Dunnes Stores convenience sales area does not come within the definition of 'works' and, therefore, does not constitute development for the purpose of the Act.

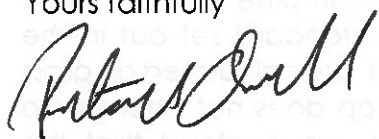
Nonetheless, we contend that any internal modifications to the physical fabric of the shop, in respect to the proposal, constitute exempted development by reason of the operation of Section 4(1)(h) of the Act.

## 6.0 CONCLUSION

We respectfully put forward the case that the uplift in the shops convenience sales area from 2,574 sqm to 3,000 sqm does not constitute a material change of use (i.e. not development) and that any associated internal shop works would not constitute development for the purpose of the Planning and development Act 2000 (as amended).

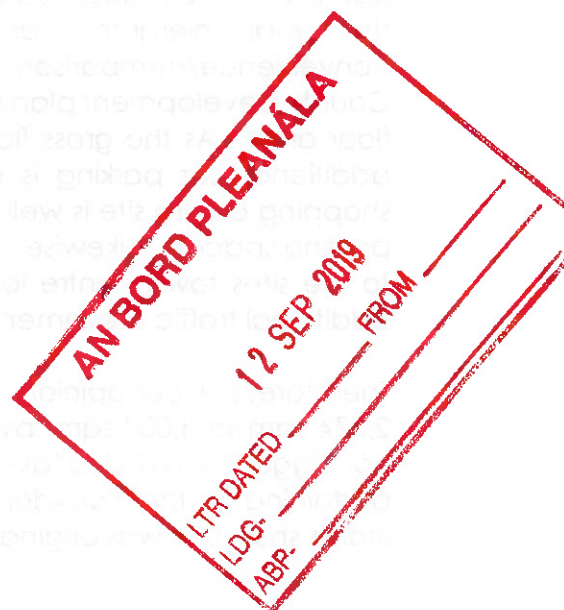
If further information is required to assist in the Declaration assessment, we will be happy to respond accordingly.

Yours faithfully



Patrick O'Neill

Property Department  
46-50 South Great Georges Street  
Dublin 2  
Direct Dial: 01 6112766



<b>AN BORD PLEANÁLA</b>	
<b>12 SEP 2019</b>	
LTR DATED _____	FROM _____
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CORK COUNTY COUNCIL

ORDER NO. 1175A/1986 for Permission  
SUBJECT: Application Reg. Ref. No. S/1823/86  
for Shopping complex including Banks and Offices  
at Douglas

ORDER: Permission is hereby GRANTED, subject to the  
provision of Sub-Sections 5 & 9 of Section 26 of the  
Local Government (Planning and Development) Act, 1963,  
to:

Douglas Developments Ltd.,  
C/O Kelly & Barry & Assocs.,  
of St. Patrick's House, Lower Road, Cork  
for Shopping complex including Banks and Offices  
at Douglas

in accordance with the plans and particulars submitted  
by the applicant on 9th July 1986 as amended  
on 5.8.1986 and subject to the  
Conditions (10 No.) set out on the schedule attached hereto.  
The ~~proposed development~~ Permission is to be granted  
subject to the said conditions, provided no appeal is made  
to an Bord Pleanála, within the statutory time for the  
making of such appeals.

**AN BORD PLEANÁLA**  
CORK COUNTY MANAGER  
Dated this 12 day of August 1986  
**12 SEP 2019**  
LTR DATED \_\_\_\_\_ FROM \_\_\_\_\_  
LDG- \_\_\_\_\_  
ABP- \_\_\_\_\_



# SCHEDULE

Reference No. in Planning  
Register S/1823/86

Referred to in Order No.  
P.D. 27/7/1986

Column 1 - Condition	Column 2 - Reason
<p>Provided that:</p> <p>(1) Boundary landscaping shall be as specified at 1.5m intervals for all the Northern, Eastern and Southern boundaries, except for a gap at the South-eastern corner of site to allow a 1.8m wide pedestrian link to lands outside the site boundaries.</p> <p>(2) Standard decorative, deciduous trees shall be planted for every notation X, shown on site layout plan by the Council's Engineer, in the piazza and front green verge area and the piazza shall be provided with raised seating and shrub beds, as noted Y on same site layout plan.</p> <p>(3) Car park tree planting, as specified, shall include at least 1 no. tree in each terminal shrub bed.</p> <p>(4) Car park flood lighting shall be to the satisfaction of the Council's Engineer and shall, if considered necessary, be altered, covered or otherwise changed to the Council's satisfaction.</p> <p>(5) No signs, logos or other advertising features other than those shown on the elevational drawings and at that size shall be erected or placed on site save with the grant of a new Permission.</p>	<p>In the interests of visual amenity and to provide for pedestrian access to the residential areas to the South-east of site.</p> <p>In the interests of visual amenity.</p> <p>In the interests of visual amenity.</p> <p>In the interests of road safety.</p> <p>In the interests of orderly development and visual amenity.</p>

Contd **AN-BORD PLEANALA**

12 SEP 2019

LTR DATED \_\_\_\_\_ FROM \_\_\_\_\_

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# SCHEDULE

Reference No. in Planning  
Register

8/123/16

Page 2

Referred to in Order No.  
P.D. /

Column 1 - Condition

Column 2 - Reason

(6) The developer shall:

(a) Notify the Planning Authority in writing of the date of commencement of the development

AND

(b) On completion of the development, certify in writing to the Planning Authority that the development has been completed in accordance with the terms and conditions of this permission.

To ensure the carrying out of the development in accordance with the terms and conditions of this permission.

(7) The developer shall display in a prominent position on the site during the course of the development

(a) A copy of this permission including the conditions attached thereto

AND

(b) A notice to the effect that the plans and drawings referred to in this permission are available on site for inspection during working hours by interested parties.

To facilitate the inspection by interested parties of permission, plans and drawings.

Contd.....

AN BORD PLEANALA

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# SCHEDULE

Reference No. in Planning

Register S/1823/86

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Referred to in Order No.

P.D. /

Column 1 - Condition

Column 2 - Reason

- (8) Before the development is commenced the developer shall pay to Cork County Council a sum of money equivalent to the value of £14,850 at the time of decision to grant Permission, updated in accordance with the Consumer Price Index to the value pertaining at the time of payment towards the expenditure incurred by the Council in the development of public water supply facilities which have facilitated the proposed development.
- (9) Before the development is commenced the developer shall pay to Cork County Council a sum of money equivalent to the value of £14,850 at the time of decision to grant Permission, updated in accordance with the Consumer Price Index to the value pertaining at the time of payment towards the expenditure incurred by the Council in the development of public sewage disposal facilities which have facilitated the proposed development.
- (10) Before the development is commenced the developer shall pay to Cork County Council a sum of money equivalent to the value of £9,000 at the time of decision to grant Permission, updated in accordance with the Consumer Price Index to the value pertaining at the time of payment towards the expenditure incurred by the Council in the carrying out of road traffic management works which have facilitated the proposed development.

It is considered appropriate that the developer should contribute towards the expenditure incurred by the Council in providing this service which has facilitated the proposed development.

It is considered appropriate that the developer should contribute towards the expenditure incurred by the Council in providing this service which has facilitated the proposed development.

It is considered appropriate that the developer should contribute towards the expenditure incurred by the Council in providing this service which has facilitated the proposed development.

AN BORD PLEANÁLA

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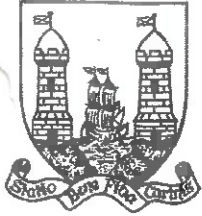
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FROM







# Comhairle Cathrach Chorcaí Cork City Council

Halla na Cathrach, Corcaigh - City Hall, Cork - T12 T997

Patrick O'Neil  
Property Department  
46-50 South Great Georges Street  
Dublin 2

20/08/2019

RE: Section 5 Declaration R529/19 Dunnes Stores Douglas Court Shopping Centre

A Chara,

With reference to your request for a Section 5 Declaration at the above named property, I wish to advise as follows:

Having regard to:

- (a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended, and
- (b) Articles 5, 6 and 10 of the Planning and Development Regulations, 2001 and Class 14 of Part 1 of the said regulations.

The proposed development is considered to be **Development** and **Not Exempted Development**.

Yours faithfully,

**Paul Hartnett**  
Assistant Staff Officer  
Development Management Section  
Community, Culture and Placemaking Directorate  
Cork City Council

**AN BORD PLEANÁLA**

**12 SEP 2019**

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**We are Cork.**



PLANNER'S REPORT  
Ref. R 529/19

Cork City  
Council

Culture  
Community  
and  
Placemaking

**Application type  
Description**

**Section 5 Declaration**

The question on which the Declaration is sought is whether the uplift of Dunnes Stores Convenience Sales Floor From 2,574sqm. to 3,000sq.m net by extending into the shops ground floor textile stockroom, including associated internal shop works, is or is not development or is or is not exempted development.

**Location**

Dunnes Stores, Douglas Court Shopping Centre,  
Douglas, Co. Cork, T12 E86C

**Applicant**

Better Value Unlimited Company

**1.0 REQUIREMENTS FOR A SECTION 5 DECLARATION APPLICATION**

Section 5(1) of the Planning and Development Act 2000 as amended states,

5.—(1) If any question arises as to what, in any particular case, is or is not development or is or is not exempted development within the meaning of this Act, any person may, on payment of the prescribed fee, request in writing from the relevant planning authority a declaration on that question, and that person shall provide to the planning authority any information necessary to enable the authority to make its decision on the matter.<sup>1</sup>

**2.0 THE QUESTION BEFORE THE PLANNING AUTHORITY**

The question on which the Declaration is sought is whether the uplift of Dunnes Stores Convenience Sales Floor From 2,574sqm. to 3,000sq.m net by extending into the shops ground floor textile stockroom, including associated internal shop works, is or is not development or is or is not exempted development.

**3.0 SITE LOCATION AND DESCRIPTION**

The subject site comprises an anchor unit within the overall Douglas Court Shopping Centre Site, located to the east of Douglas Village. Dunnes Stores occupies the northern extent of the Douglas Court Shopping Centre site.

<sup>1</sup> In this report 'the Act' refers to the Planning and Development Act 2000 (as amended) and 'the Regulations' refers to the Planning and Development Regulations 2001 (as amended), unless otherwise indicated.

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#### 4.0 RELEVANT PLANNING HISTORY

##### **S/18323/86 (Cork County Council) PL4/5/72295 (An Bord Pleanála) -**

Planning permission was granted by An Bord Pleanála shopping centre complex including banks and offices, following third party appeal. This permission was subject to 6no. conditions. Condition 1 is considered relevant to this section 5 application:

##### Condition 1

*"The proposed development shall be reduced in size and altered to ensure that:-*

*(a) The net area to be allocated for retail sales and services shall be reduced from the 116,232 square feet (approximately) shown on the drawings submitted with the application, to an area of not more than 90,000 square feet of which a maximum of 50% shall be allocated to "comparison goods".*

*(b) The car parking layout for the development shall be re-arranged so as to exclude parking at 90 along the service road. 45 parking should also be excluded except in very limited number of cases.*

*Prior to the commencement of development detailed plans and particulars setting out proposals to meet the above outlined conditions, including any necessary changes in layout and location, shall be submitted to the planning authority for approval.*

**Reason:** *To achieve a level of development consistent with the proper planning and development of the area and to provide off street car parking facilities and service areas consistent with needs, safety and convenience."*

##### **10/4256 (Cork County Council) PL 04.237415 (An Bord Pleanála)**

Planning permission was granted for the construction of a part single, part two-storey extension to the north, & first floor extension to the east of the existing anchor retail store, modification & extension to the existing surface car park, construction of an additional left-only slip road entrance north west of the existing roundabout, the removal of the existing roundabout & the construction of a new signalised traffic control junction incorporating pedestrian phases, replacing 2 existing unconnected pedestrian crossings, the construction of a new left-only exit to the south of the existing roundabout, & related road improvement works including road widening, lane improvements, the provision of a cycle lane route, pedestrian footpath improvement works & associated signage & landscaping.

The subject development included an extension to the existing anchor retail store (Dunnes Stores) comprising 3,971 m<sup>2</sup> gross floor area. extension is located on the northern (rear) elevation of the existing building. The extension is over two levels, ground floor plus mezzanine and comprises 763 m<sup>2</sup> of additional convenience floor area and 3,208 m<sup>2</sup> of comparison floor area.

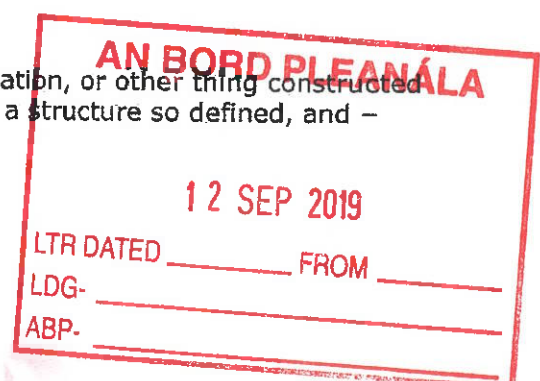
The subject application was accompanied by a retail impact assessment.

#### **5.0 RELEVANT LEGISLATION AND PLANNING POLICY**

***Planning and Development Act, 2000, as amended:***

Section 2(1) of the Act defined "works" as follows:

"structure" means any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined, and -





(a) where the context so admits, includes the land on, in or under which the structure is situate, and

(b) in relation to a protected structure or proposed protected structure, includes –

(i) the interior of the structure,

(ii) the land lying within the cartilage of the structure,

(iii) any other structures lying within the cartilage and their interiors, and

(iv) all fixture and features which form part of the interior or exterior of any structure or structures referred to in *subparagraph (i) or (ii)*.

"works" includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.

"alteration" includes—

(a) *plastering or painting or the removal of plaster or stucco, or*

(b) the replacement of a door, window or roof, that materially alters the external appearance of a structure so as to render the appearance inconsistent with the character of the structure or neighbouring structures;

Section 3(1) of the Planning and Development Act, 2000, as amended, states as follows:

*"Development" in this Act means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in use of any structures or other land.*

Section 4(1) The following shall be exempted developments for the purposes of this Act—

(h) *development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures;*

(j) *development consisting of the use of any structure or other land within the curtilage of a house for any purpose incidental to the enjoyment of the house as such;*

***Planning and Development Regulations, 2001, as amended:***

Class 14 of Part 1 of Schedule 2 of the Regulations provides exemptions in the case of specified changes of use. However, no change of use listed therein is considered relevant to this Section 5.

Part 4 of the same Schedule provides for exemptions within specified classes of use. However, no exemptions specified therein are considered relevant to this Section 5.

Part 2 Article 9 states that:

**AN BORD PLEANÁLA**

**12 SEP 2019**

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(1) Development to which article 6 relates shall not be exempted development for the purposes of the Act—

(a) if the carrying out of such development would—

(i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,

**Guidelines for Planning Authorities Retail Planning (April 2012)**

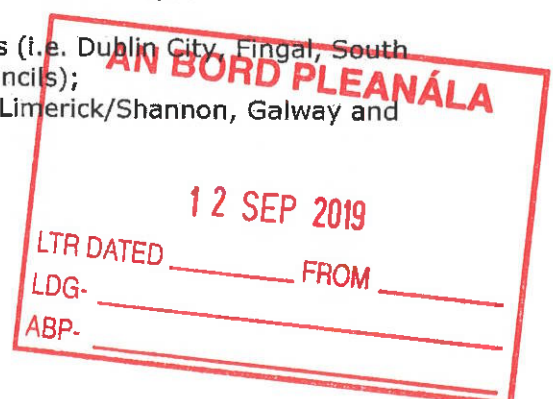
The following definitions as outlined in the Retail Planning Guidelines (Annex 1) are considered relevant to this section 5:

*"Although there is a trend for "scrambled merchandising" whereby some retail businesses sell both convenience goods and comparison goods, greater definitional clarity is obtained by adopting a goods-based retail classification. Retail goods categories can be divided into convenience goods and comparison goods as follows:*

- **Convenience Goods:**
  - food;
  - alcoholic and non-alcoholic beverages;
  - tobacco;
  - non-durable household goods;
- **Comparison Goods:**
  - clothing and footwear;
  - furniture, furnishings and household equipment (excluding non-durable household goods);
  - medical and pharmaceutical products, therapeutic appliances and equipment;
  - educational and recreation equipment and accessories;
  - books, newspapers and magazines;
  - goods for personal care;
  - goods not elsewhere classified;
  - bulky goods
    - 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."

Section 2.4.1 outlined the following Convenience retail floorspace caps:

- 4,000 M2 in the four Dublin local authority areas (i.e. Dublin City, Fingal, South Dublin and Dún Laoghaire-Rathdown County Councils);
- 3,500 M2 in the four other main cities of Cork, Limerick/Shannon, Galway and Waterford; and







- 3,000 M2 in the remainder of the State (i.e. those areas outside of the four Dublin local authority areas, and the cities of Cork, Limerick/Shannon, Galway and Waterford.

These floorspace caps apply to new retail stores or extensions to existing stores which will result in an aggregate increase in the net retail floorspace of the convenience element of such retail stores. In this regard, while some stores may retail convenience goods only, in other cases, stores may retail convenience and comparison goods. In these mixed comparison/convenience retailing stores described above, there is therefore no cap on the amount of non-grocery or comparison space delineated for the relevant store, for example on the planning application drawings.

### **Cork County Development Plan 2014-2020**

The main policy considerations in relation to retail are set out in Chapter 7 Town Centres and Retail in the Cork County Development Plan. The following objectives are considered pertinence to this Section 5 application.

#### **7.7 Requirement for Future Retail – Metropolitan Area**

7.7.1 The retail quantum's agreed between City and County for the Metropolitan Area to 2022 are set out in Table 7.2 with the background information and detail in relation to quantum's set out in the Metropolitan Retail study.

7.7.2 The requirement for additional floorspace is predicated on a number of factors including population growth, economic buoyancy and rising consumer demand. The Plan recognises and reflects prevailing circumstances underpinning floorspace projections and shall adopt a pragmatic approach where it is evident that changes have occurred

#### **Convenience Distribution – Metropolitan Area**

7.7.3 In relation to Convenience floorspace within the Metropolitan Area the distribution will be in accordance with planned population growth.

7.7.7 In line with the approach in the Metropolitan Strategy, development of comparison retail floorspace within the Small Metropolitan Towns will be limited over the period of the strategy to small scale and localised provision commensurate with the population targets for each centre.

Table 7.2: Floorspace – Proposed distribution of 2022 quantum for Metropolitan Area			
Location	Comparison	Convenience	Bulky/R. Warehouse
Cork City Centre and Suburban Centres	63,081 (Cork City Centre) 24,961 (Suburban Centres)	20,291 (City and Suburban Centres including Douglas and Ballyvolane)	--
Rest of Metropolitan	16,397	22,882	--
Total	104,439	43,173	57,555

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## 6.0 ENVIRONMENTAL ASSESSMENT

Section 4 (4) of the Planning and Development Act (as amended) sets out that:

*"Notwithstanding paragraphs (a), (i), (ia) and (l) of subsection (1) and any regulations under subsection (2), development shall not be exempted if an environmental impact assessment or an appropriate assessment of the development is required."*

### **Environmental Impact Assessment**

Pursuant to Article 103(1) of the Planning and Development regulations 2001 as amended, having regard to the nature and scale of the proposed development and following a preliminary examination of the nature, size and location of the development, it is considered that there is no real likelihood of significant effects on the environment and it is consequently concluded that EIA is not required.

### **Appropriate Assessment**

The relevant European sites are the Cork Harbour SPA (Site Code 004030) and the Great Island Channel cSAC (site code 001058). Having regard to its nature, scale and location it is considered that the proposed development would not affect the integrity of the sites referred to. Accordingly it is considered that a Natura impact statement for the purposes of Article 6 of the Habitats Directive is not required to be submitted.

## 7.0 PLANNING ASSESSMENT

### **Is or is not development**

Section 3(1) of the Planning and Development Act, 2000 defines "development" as meaning, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land. I consider the issue of materiality later in this assessment.

### **Is or is not exempted development**

The applicant holds in their accompanying planning statement/cover letter that it is their opinion that no material change of use occurs and that any internal works required to create the new convenience shop floor would not constitute development for the purpose of the Planning and Development Act 2000 (as amended).

I concur with the applicant that the test of whether the subject works are exempted development or not is balanced on the consideration of materiality, and it is on this basis that the following assessment is outlined.

In the case of Galway County Council v. Lackagh Rock Limited, Barron J. held that in order "to test whether or not the uses are materially different, it seems to me that what should be looked at are the matters which the planning authority would take into account in the event of a planning application being made, either for the use on the appointed day or for the present use. If the matters are materially different, then the nature of the use must be materially different".

The scale of the existing convenience sales floor area is 2,574sq.m. The applicant is seeking a declaration on the increase of sale convenience sales floor area to 3,000sq.m. I note that the net convenience area has already increased by 70sq.m since the making of planning application 10/4256 (Cork County Council) PL 04.237415 (An Bord Pleanála). This is noted on the basis that the Section 5 drawings submitted differ to those submitted in 2010, having particular regard to drawings DS-GE-409-PLA-001 Existing Ground Floor and PL1-S-013 Existing Ground Floor Layout. In particular I note that the

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ABP- \_\_\_\_\_



anchor tenant has now incorporated a former corridor area into the net convenience area comprising 70sq.m.

I am of the view that the characteristics of the proposed internal works could be carried out in a very simple manner which render it consistent with the existing character of the structure and neighbouring structures having regard to Section 4(1)(h).

However, the impact of this alteration and expansion of an existing retail unit into the existing storage area would result in up to a 17% increase in convenience retail floor space. Which presents material consideration outside the scope of Section 4(1)(h).

While the scale of the proposed convenience floorspace observes the 3,000sq.m cap for supermarkets outside of the city of Cork (as at the time of adoption of the cap) as per the Retail Planning Guidelines, the consideration of the implications of same would warrant review.

Having regard to the associated increase of 17% of convenience shopping floor, it is considered that this gives rise to the opportunity for a planning assessment of the implications for traffic, car parking and the retail impacts in the wider area. It is similarly evident that the proposed increase in both convenience and comparison floor space as proposed under 10/4256 (Cork County Council) / PL 04.237415 (An Bord Pleanála), although also relating to a physical extension together with floor space increases, included the provision of additional car parking and traffic layout works. Similarly the increase of convenience floor space in this instance warranted material consideration of planning policy having particular regard to the spatial distribution of retailing within the metropolitan area of Cork. I am of the view that similar considerations are necessitated by the question raised in this Section 5 application.

I therefore consider that the extension of convenience shopping into storage space is a material alteration and would not be exempted development.


## 8.0 RECOMMENDATION

Having regard to:

(a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended, and

(b) Articles 5, 6 and 10 of the Planning and Development Regulations, 2001 and Class 14 of Part 1 of the said regulations.

The proposed development is considered to be development and not exempted development.

  
**Siun McCarthy**  
Assistant Planner  
Culture Community and Placemaking ]  
19/08/2019

Agreed. Gwen Jordan McGee, SEP  
19/08/2019

