

**OFFALY COUNTY COUNCIL
DECLARATION UNDER SECTION 5 OF THE
PLANNING & DEVELOPMENT ACT 2000, AS AMENDED**

REFERENCE: DEC 24/14

NAME OF APPLICANT: Cwire Retail 13 Ltd, T/A Chemist Warehouse, C/O Hughes Planning and Development Consultants.

ADDRESS: C/O Hughes Planning and Development Consultants.

ADDRESS FOR CORRESPONDENCE: 85 Merrion Square South, Dublin 2

NATURE OF APPLICATION: Request for Declaration under Section 5 of the Planning & Development Act 2000, as amended as to whether or not the sale of bulky goods is or is not development and is or is not exempted at Unit D, Tullamore Retail Park, Tullamore, Co. Offaly.

LOCATION OF DEVELOPMENT: Unit D, Tullamore Retail Park, Tullamore, Co. Offaly

WHEREAS a question has arisen as to whether the sale of bulky goods is or is not development and is or is not exempted at unit d, Tullamore Retail Park, Tullamore, Co. Offaly

AS INDICATED on the plans and particulars received by the Planning Authority on 30th January 2024;

AND WHEREAS CWIRE Retail 13 Ltd, T/A Chemist Warehouse requested a declaration on the said question from Offaly County Council;

AND WHEREAS Offaly County Council as the Planning Authority, in considering this declaration under Section 5 of the Planning and Development Act 2000 (as amended), had regard to;

- (a) Sections 2 and 3 of the Planning and Development Act 2000 (as amended);

AND WHEREAS Offaly County Council has concluded that the sale of bulky goods on site is development and is not exempted development.

NOW THEREFORE Offaly County Council, in exercise of the powers conferred on it by Section 5(2)(a) of the Planning and Development Act 2000 (as amended), hereby decides that the sale of bulky goods on site is development and is not exempted development.

MATTERS CONSIDERED In making its decision, the Planning Authority had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.



Administrative Officer

26/02/2024

Date

Note: Any person issued with a Declaration may on payment to An Bord Pleanála, 64 Marlborough Street Dublin 2 of such fees as may be described refer a declaration for review by the board within four weeks of the issuing of the Declaration.

Planning Report

Section 5 Declaration

File Reference:	Dec. 24/14
Question:	TO WHETHER OR NOT THE SALE OF BULKY GOODS WITH ANCILLARY FLOOR AREA DESIGNATED TO THE SALE OF NON-BULKY GOODS IS COMPLIANT WITH THE ESTABLISHED USE ON SITE IS OR IS NOT DEVELOPMENT AND IS OR IS NOT EXEMPTED AT UNIT D, TULLAMORE RETAIL PARK, TULLAMORE, CO. OFFALY
Applicant:	CWIRE RETAIL 13 LTD, T/A CHEMIST WAREHOUSE, C/O HUGHES PLANNING AND DEVELOPMENT CONSULTANTS
Correspondence Address:	85 MERRION SQUARE SOUTH, DUBLIN 2
Location:	UNIT D, TULLAMORE RETAIL PARK, TULLAMORE, CO. OFFALY

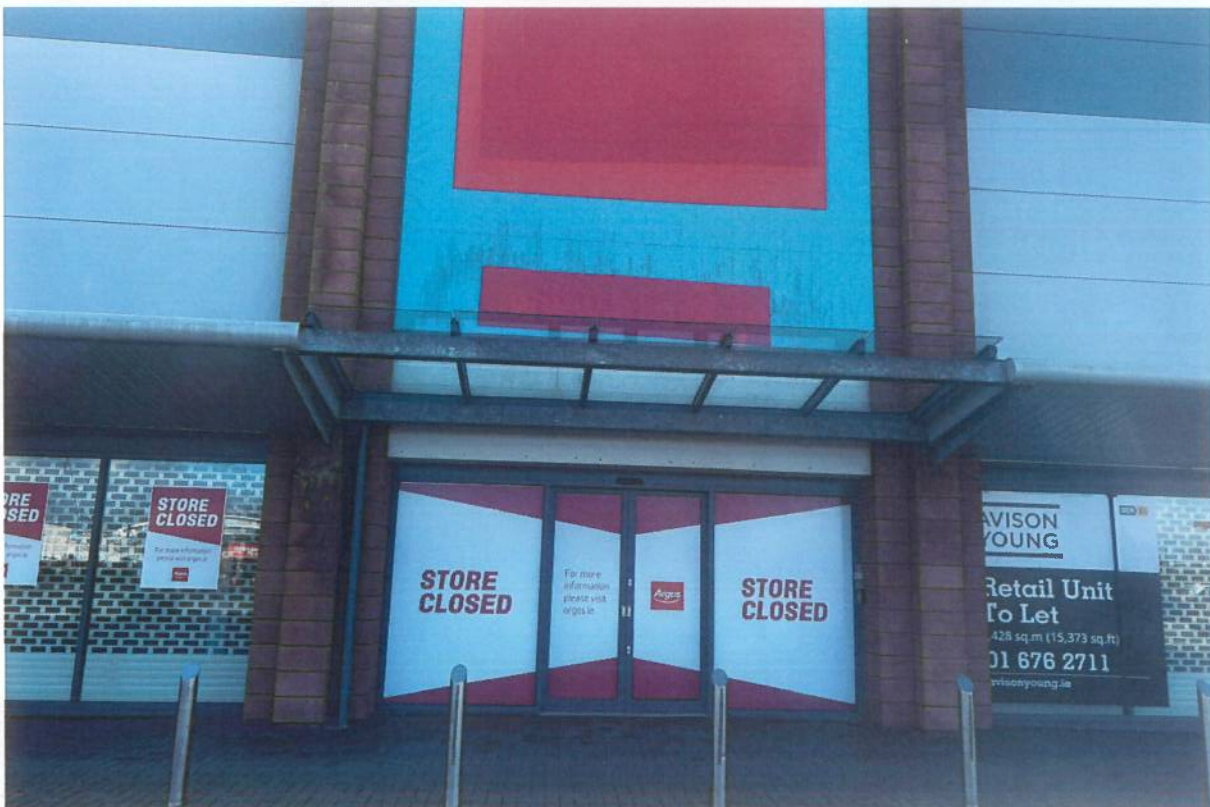


Photo 1: Subject Site.

1. Introduction

The question has arisen as to whether or not the sale of bulky goods with ancillary floor area designated to the sale of non-bulky goods is compliant with the established use on site is or is not development and is or is not exempted at Unit D, Tullamore Retail Park, Tullamore, Co. Offaly

2. Background

The Industrial/Warehouse unit is located within the Tullamore Retail Park. (see below).

3. Site History;

04/254: Permission **Granted** to Arkencourt Ltd for the amendment of grant of permission 01/651 retail park (Tullamore Retail Park) to include (a) removal of condition 6 in relation to unit d to allow use as a catalogue retail store and in relation to unit h to allow use as a neighbourhood retail centre (b) alterations to size of unit f (from 720 sq m. To 900 sq m.), unit g (from 720 sq m to 1620 sq m) and unit h (from 1944 sq m. To 1296 sq m.), unit h will be sub divided to form 3 separate units of 360 sq m. Each, and mall area (non retail) of 216 sq m. and will include revised elevational treatment and roofline (c) increase in overall floor area of 432 sq. M (d) minor modifications to elevations of each unit including additional windows to unit a (e) alterations to site layout including revised car park and internal road layout construction of sprinkler pump house (14.9 sq m) and water tank, ESB substation and electrical plant room (28.7 sq m) refuse storage and recycling area and revised layout to DIY/garden centre layout at unit A subject to 16 conditions.

Condition 6 of 04/254 states:

Permission is granted for the removal of Condition 6 of PL2/01/651 to allow use as a Catalogue Retail Store in Relation to Unit D only. Units A, B, C, E, F, G and Unit H shall remain as Retail Warehouse Units and the range of goods permitted to be sold shall comprise only low key household goods such as carpets, furniture and white electrical goods, DIY items and automotive products. No change of use shall take place without a prior grant of Planning Permission, (notwithstanding the exempted development provisions of the Planning and Development Regulations 2001).

01/651: Permission **Granted** to Arkencourt Ltd for the construction of 8 retail warehouse units, drive thru restaurant, car parking & construction of roundabout & access roads subject to 16 conditions.

Condition 6 of 01/651 states:

The range of goods permitted to be sold in the approved units shall comprise only bulky household goods such as carpets, furniture and white electrical goods, DIY items and automatic products

4. Legislative Context

In order to assess whether or not the proposed works constitute exempted development, regard must be had to the following items of legislation:

Statutory Provisions

Section 2 (1) Planning and Development Act 2000 (as amended) states as follows:

“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.

‘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,

Section 3 (1) Planning and Development Act 2000 (as amended) defines development as:

“development” 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 the use of any structures or other land.

5. Proposal by Applicant

The question posed by the applicant is that they wish to ascertain to whether or not the sale of bulky goods with ancillary floor area designated to the sale of non-bulky goods is compliant with the established use on site.

I do not consider that this can be answered via a part five declaration.

The planning acts states that a part five request is to ascertain “ 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”

The request, as phrased in this case, is asking for information on the extent of uses which are permitted under the relevant planning permission on site.

I therefore consider that the question such be rephrased as follows “whether the sale of bulky goods is or is not development and is or is not exempted at unit d, Tullamore Retail Park, Tullamore, Co. Offaly”

6. Evaluation

Question: Is the following works considered as Development?

I consider that the selling of bulky goods is development.

Question: Is the following works proposal considered as Exempted Development?

There is no exemption in the planning acts/ regulations for the selling of bulky goods. The selling of bulky goods may have planning permission on this site but that is not an issue to be determined by a section five declaration.

7. Appropriate Assessment Screening

Please see screening attached.

8. Recommendation

Works are development and are not exempted development.

Declaration on Development and Exempted Development

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

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Please note that any person issued with a declaration under subsection 2(a) of the Planning and Development Act 2000 (as amended) may on payment to the Board of the prescribed fee, refer a declaration to An Bord Pleanála within 4 weeks of the issuing of the decision.

Michael Duffy

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Executive Planner

26th February 2024

Ed Kelly

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Acting Senior Executive Planner

26th February 2024

**APPROPRIATE ASSESSMENT SCREENING
REPORT FOR PLANNING APPLICATIONS**



Screening is used to determine if an AA is necessary by examining:

- If the plan / project is directly connected with / necessary to the management of the European site.
- If the effects will be significant on a European site in view of its conservation objectives, either alone / in combination with other plans / projects.

Planning Application Ref. No.: Dec 24/14

(A) DESCRIPTION OF PROJECT AND LOCAL SITE:			
Proposed development:	Selling of bulky goods from a site		
Site location:	Uniot D Tullamore Retail park		
	Floor Area of Proposed Development:	725 sq.m	
Identification of nearby European Site(s):	2000 site(s): SAC 000571– Charleville Wood SAC		
Distance to European Site(s):	3 km		
The characteristics of existing, proposed or other approved plans / projects which may cause interactive / cumulative impacts with the project being assessed and which may affect the European site:	None		
Is the application accompanied by an EIAR?		No: ✓	
(B) IDENTIFICATION OF THE RELEVANT European SITE(S):			
The reasons for the designation of the European site:			

The site is a Special Area of Conservation (SAC) selected for the following habitats and/or species listed on Annex I / II of the E.U. Habitats Directive (* = priority; numbers in brackets are Natura 2000 codes): [91E0] Alluvial Forests* [1016] Desmoulin's Whorl Snail (*Vertigo moulinsiana*)

The conservation objectives / qualifying interests of the site and the factors that contributes to the conservation value of the site: (which are taken from the Natura 2000 site synopses and, if applicable, a Conservation Management Plan; all available on www.npws.ie) **(ATTACH INFO.)**

Objective: To maintain or restore the favourable conservation condition of the Annex I habitat(s) and/or the Annex II species for which the SAC has been selected: Code Description 91E0 Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (*Alno-Padion*, *Alnion incanae*, *Salicion albae*)*
 * denotes a priority habitat Code Common Name Scientific Name 1016 Desmoulin's Whorl Snail *Vertigo moulinsiana*

(C) NPWS ADVICE:

Advice received from NPWS over phone:	None received

(D) ASSESSMENT OF LIKELY SIGNIFICANT EFFECTS:

*(The purpose of this is to identify if the effect(s) identified could be significant – if **uncertain** assume the effect(s) are significant).*

If the answer is 'yes' to any of the questions below, then the effect is significant.

(Please justify your answer. 'Yes' / 'No' alone is insufficient)

Would there be...	Not likely due to the location and type of development.
... any impact on an Annex 1 habitat? (Annex 1 habitats are listed in Appendix 1 of AA Guidance).	The site is sufficient distance from the European site.
... a reduction in habitat area on a European site?	There will be no reduction in the habitat area.
	The site is sufficient distance from the European site.
... direct / indirect damage to the physical quality of the environment (e.g. water	Not likely due to the location and type of development

<p>Quality and supply, soil compaction) in the European site?</p>	<p>The site is sufficient distance from the European site.</p>
<p>... serious / ongoing disturbance to species / habitats for which the European site is selected (e.g. because of increased noise, illumination and human activity)?</p>	<p>Not likely due to the location and type of development</p> <p>The site is sufficient distance from the European site.</p>
<p>... direct / indirect damage to the size, characteristics or reproductive ability of populations on the European site?</p>	<p>None likely due to the location and type of development</p> <p>The site is sufficient distance from the European site</p>
<p>Would the project interfere with mitigation measures put in place for other plans / projects. [Look at <i>in-combination effects</i> with completed, approved but not completed, and proposed plans / projects. Look at projects / plans within and adjacent to European sites and identify them]. Simply stating that there are no cumulative impacts' is insufficient.</p>	<p>No other plans known of in the vicinity of the site.</p> <p>The site is sufficient distance from the European site.</p>
<p>(E) SCREENING CONCLUSION:</p>	
<p>Screening can result in:</p>	
<p>1.</p>	<p><i>AA is not required</i> because the project is directly connected with / necessary to the nature conservation management of the site.</p>
<p>2.</p>	<p><i>No potential for significant effects / AA is not required.</i></p>
<p>3.</p>	<p><i>Significant effects are certain, likely or uncertain.</i> (In this situation seek a NIS from the applicant, or reject the project. Reject if too potentially damaging / inappropriate.</p>
<p>Therefore, does the project fall into category 1, 2 or 3 above?</p>	<p>Category 2</p>
<p>Justify why it falls into relevant category above:</p>	<p>There would be no likely significant impact on European sites from the proposed development.</p>

Name:	Michael Duffy		
Position:	Exec. Planner	Date:	26/2/2024

Given the location the nature and size of the development applied for and the characteristics of European sites in the vicinity it is considered that 500 metres should be used as a potential zone of impact of the project in accordance with section 3.2.3 of the appropriate assessment guidelines. There are no European sites within 500 metres of the development applied for and therefore no significant effects on any European sites either alone or in combination with other plans and projects.

<https://www.npws.ie/protected-sites/sac/000571>

