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## **EXECUTIVE SUMMARY**

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### **Introduction**

The Competition Authority has undertaken the *Grocery Monitor* project at the request of the Minister for Enterprise, Trade and Employment to monitor the grocery sector in light of recent changes in the legislative and regulatory environment. The request was made following the repeal of the Restrictive Practices (Groceries) Order, 1987 (the 'Groceries Order') on March 20<sup>th</sup> 2006 and the insertion of sections 15A, 15B and 15C in the Competition Act, 2002 which address certain business practices in the grocery sector.

The Competition Authority decided, given available resources, to prepare an initial set of three reports that together provide a comprehensive description of the evolution of the grocery sector with respect to market structure and competition at the wholesale and retail levels, retail pricing trends and the effects of the planning system on expansion and entry at the retail level.

This *Report* (Report No. 3) examines the retail planning system as applied to the grocery sector from 2001 to 2007. The first report (Report No. 1), published in April 2008, examined market structure and competition at the wholesale and retail levels of the grocery sector from 2001 to 2006. The second report (Report No. 2), which was published at the same time as the first report, described retail pricing trends in the grocery sector from 2001 to 2007.

### **Key Findings**

The Competition Authority examined competition issues relating to the planning system through the planning experience of the seven largest grocery retailers in the State between 2001 and year-end 2007. These are ALDI, Dunnes Stores, Lidl, M&S, Superquinn, the SuperValu retailers and Tesco.

The importance of planning cannot be overstated. Planning, through the pursuit of a variety of environmental and sociological objectives, affects the lives of every citizen. In a very fundamental way, planning influences the scarcity value of a basic input into our economy - land. Planning policy, and its implementation, therefore affects the final prices that consumers pay for a wide variety of products, including groceries.

The planning system has influenced the type of grocery retailers that trade in Ireland, where they locate, what they offer consumers and the prices that consumers pay.

The Competition Authority has found that, despite the growth in the number and size of grocery retail outlets in Ireland since 2001, the planning system acts as a barrier to competition in grocery retailing in three ways:

1. Restrictions on the *size* of a grocery retail outlet.
2. Restrictions on *where* a grocery retail outlet can locate.
3. The *uncertainty* regarding planning permission can raise the cost and delay the arrival of a new retail outlet.

These factors limit competition between grocery retailers and also limit competition between different grocery brands. They combine to limit consumer choice and value for money.

Over the period 2001 to 2007, overall grocery outlet numbers increased from 349 to 569 while floorspace devoted to the retailing of groceries has increased from 471,508m<sup>2</sup> to 835,647m<sup>2</sup>. Lidl, ALDI and Dunnes Stores have been the most active in opening new outlets while Tesco, Dunnes Stores and Lidl have been most active in adding floorspace.

However, the size, location and rate of expansion of grocery retail outlets has been restricted in the following manner:

- Ireland does not have any *large scale* low cost grocery retailers, as exist in other European countries;
- Discount retailers face more stringent limitations on size than other grocery retailers;
- The size restrictions on grocery retailers means there is less shelf space in retail outlets and so competition between the branded groceries that sit side by side on supermarket shelves is reduced; and
- Consumers all over the country are denied the benefits of competing grocery retailers in their local area due to prolonged planning delays.

In this *Report*, the Competition Authority makes seven recommendations to promote competition in grocery retailing in Ireland. They each require action

by the Department of the Environment, Heritage and Local Government. The recommendations do not require a sea change in Irish planning policy, but rather a refocusing of the system to better accommodate competition and consumer issues.

### **Competition Issues and Recommendations**

The retail planning system is part of the general planning system. The Retail Planning Guidelines, which were first introduced in January 2001 by the Department of the Environment, Heritage and Local Government, embody retail planning policy. The Retail Planning Guidelines set out requirements for both planning authorities and retail planning applicants. Local authorities are required to produce development plans which incorporate retail strategies and policies that are informed by so-called 'health checks' and, since June 2007, the Department of the Environment, Heritage and Local Government's Development Plan Guidelines. Retail planning applicants are required to produce "retail impact assessments".

### **Caps on Retail Space**

The Retail Planning Guidelines set caps, or upper thresholds, on the size of retail development. The caps for grocery retail are set at different levels within and outside the Greater Dublin Area - 3,500m<sup>2</sup> and 3,000m<sup>2</sup> respectively.

The evidence from the period since 2001 suggests that while grocery retailers have been frequently required by the planning system to curtail the size of their outlets, the number of cases where the retail caps were at issue was relatively few. The number of these cases however can be expected to rise given the trend among certain retailers toward larger outlets.

The real effect on competition of the caps, however, is the fact that some retailers will have been completely discouraged from submitting planning applications for large scale outlets, i.e., of a size greater than the caps allow. Large floorspace requirements are typically associated with high turnover, low margin grocery retailing. The effect of the retail caps is therefore to deter the entry of the most price aggressive grocery retailers.

The Competition Authority recommends that the retail caps be removed and that decisions on the extent of development are left to local authorities to make. Floorspace caps inhibit the scale and extent of expansion by existing retailers and prevent the entry of new ones. The availability of larger sized

outlets would give consumers the ability to exercise choice over a wider range of products at more competitive prices. The present limit thus protects existing retailers at the expense of Irish consumers. Limiting floorspace means that Irish consumers experience less choice (for example, less competition between brands due to lack of shelving space) and, higher prices.

**Recommendation 1: Remove caps on grocery retail space**

The Department of the Environment, Heritage and Local Government should remove the grocery retail caps in the Retail Planning Guidelines and allow local authorities to determine the extent of retail development in their respective administrative areas.

**Discount Food Stores**

The Retail Planning Guidelines describe discount food stores as being of a size normally between 1,000m<sup>2</sup> and 1,500m<sup>2</sup>. Planning authorities appear in practice to regard the 1,500m<sup>2</sup> figure as being a binding limit. Where entry to the grocery retail sector has occurred, as with Lidl and ALDI, outlet sizes have tended to be relatively small, even in comparison to the main incumbent retailers. Thus, so-called discount food stores in effect face a much lower retail cap than other grocery retailers. It is unclear whether this is an intended or unintended effect of the Retail Planning Guidelines. In any case, the differential treatment of discount food stores based on pricing strategies is unjustified.

**Recommendation 2: End the discrimination against discount stores**

The Department of the Environment, Heritage and Local Government should delete the reference in the Retail Planning Guidelines to typical discount store sizes and ensure that no distinction is made in the Retail Planning Guidelines between retailers based on their pricing policy.

**Floorspace Projections**

Local authorities are required to produce development plans that contain specific retail strategies. Such retail strategies establish the optimal scale and location for retail development. The Retail Planning Guidelines provide a methodology that local authorities may follow when determining future retail floorspace requirements.

The principal competition concern here is that local authorities may regard their floorspace projections as limits on the total amount of retail development that they can permit within their administrative areas. Estimates of future requirements are very dependent on assumptions about population and consumer spending that may not prove correct. Adhering to a plan without accommodating unforeseen demand would inevitably lead to a lack of adequate provision of space for retail development.

**Recommendation 3: Remove the emphasis on past projections of floorspace requirements**

The Department of the Environment, Heritage and Local Government should amend the Retail Planning Guidelines so as to ensure that planning authorities and An Bord Pleanála place minimum weight on projections of floorspace requirements when assessing planning applications and clarify that individual applications should instead be assessed on their merits.

### **Health Checks**

The Retail Planning Guidelines suggest that local authorities carry out “health checks” to assess the vitality and viability of their respective retail centres. Health checks make use of a wide variety of indicators including those intended to measure diversity of uses, retailer representation and numerous environmental factors. Health checks do not however incorporate indicators of competition.

**Recommendation 4: Include an assessment of competition in health checks of local development plans**

The Department of the Environment, Heritage and Local Government should amend the Retail Planning Guidelines (at Annex 2) so as to require that local authorities undertaking health checks include a competition dimension. Guidance for local authorities on appropriate competition criteria should also be developed.

### **Retail Impact Assessments**

When making planning applications, retailers are required to produce ‘retail impact assessments’. Retail impact assessments include an estimate of how much trade will be diverted from existing retail centres by the proposed new

retail development. The Retail Planning Guidelines set out the main steps that should be taken to arrive at an estimate of trade diversion.

The possibility of losing turnover to new retailers is what drives retailers to provide maximum value and service to consumers. This is the essence of competition. When this possibility is removed, as is the case when trade diversion explicitly informs the decision making process of planning authorities, the established retailer is given the market power to charge higher prices than might otherwise be the case.

**Recommendation 5: Recognise that competition from new retail centres benefits local consumers**

The Department of the Environment, Heritage and Local Government should amend the Retail Planning Guidelines so as to effectively reduce the level of importance that planning authorities apparently place on trade diversion when considering the retail impact assessment process.

**Consumer Representation**

The level of attention paid to consumer interests in the planning process may be insufficient. Planning authorities in arriving at a decision on any individual application must balance a variety of objectives taking into account a variety of views from different organised interests. Consumers are typically not organised and are therefore at a disadvantage when it comes to tilting the balance in their favour. Planning decisions are more likely to reflect the interests of consumers if their views are formally surveyed and taken into account, especially when future floorspace requirements are being assessed.

**Recommendation 6: Formally survey consumers regarding attitudes and preferences**

The Department of the Environment, Heritage and Local Government should amend the Retail Planning Guidelines (at Annex 3) so as to require that local authorities, when assessing future floorspace requirements, survey consumers in a formal statistically representative manner, to accurately ascertain attitudes and preferences. Guidance for local authorities on appropriate survey methodologies should also be developed.

### **Third Party Appeals**

The Irish planning process facilitates third party appeals. This is unusual across Europe. The effect of appeals by competitors is to prolong the planning process by, on average, 50%.

The analysis in this *Report* suggests that there is consistency in the decision making of local authorities and An Bord Pleanála, with outright reversal decisions being relatively uncommon. This is testament to the effectiveness of the Retail Planning Guidelines. Nevertheless the identity of planning applicants, rather than the nature of their proposed retail developments appears to be the principal driver of appeals by third parties. The Competition Authority recognises the legitimate right of third parties to appeal planning applications. However, given that the effect of third party appeals, especially by competitors, is primarily to delay the planning process and therefore raise the cost of entry, the Competition Authority recommends that further research be undertaken with a view to limiting grounds for appeals by competitors.

<b>Recommendation 7: Research ways to limit appeals by competitors</b>
The Department of the Environment, Heritage and Local Government should undertake research into how grounds for third party rights of appeal by competitors may be limited.

### **Concluding Comment**

The planning environment is a principal determinant of the level of competition in local markets. New retailers, and even the threat of new retailers, are what drive established retailers to provide their customers with the best possible value. Allowing retailers to have a certain comfort that their markets will be protected, that their turnover is in some sense guaranteed, in effect confers market power on those retailers. One implication of this is that prices will tend to be higher than they might otherwise be.

Competition and the associated consumer value that goes with competitive markets, is not the only objective facing society or, as agents of society, planners. Planners must balance a variety of objectives. However, greater cognisance of the impact that planning can have on competition, and therefore on prices and consumer value, is warranted.





# 1. INTRODUCTION AND BACKGROUND

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## Introduction

- 1.1 Following the removal of the Restrictive Practices (Groceries) Order, 1987 ('the 1987 Order') on March 20<sup>th</sup> 2006, the Competition Authority was asked by the Minister for Enterprise, Trade and Employment ('the Minister') to monitor the grocery sector. In response to this request, the Competition Authority undertook the *Grocery Monitor* Project ('the Project').
- 1.2 This *Report* is the third in an initial set of three reports arising from the Project and describes the application of the retail planning process to the retail level of the grocery sector.

## The *Grocery Monitor* Project

### Background

- 1.3 The *Grocery Monitor* Project was undertaken by the Competition Authority following a Government decision to abolish the 1987 Order by means of the Competition (Amendment) Act 2006 ('the Amendment Act'), which entered into force on March 20<sup>th</sup> 2006.
- 1.4 In addition to abolishing the 1987 Order, the Amendment Act introduced a number of enforcement provisions to the Competition Act, 2002, which relate specifically to the grocery sector.
- 1.5 With the coming into force of the Amendment Act, the Minister asked the Competition Authority, in cooperation with the Director of Consumer Affairs:

*"to review and monitor the structure and operation of the grocery trade for the foreseeable future to see how it responds to the new legislative environment".*

- 1.6 The request was further elaborated in the Government's Social Partnership Framework Agreement, *Towards 2016*, published in June 2006.<sup>1</sup> The Competition Authority was asked:

*"to assess, over time, the impact of the new regulatory environment in the context of abuse of a dominant position including both excessive and predatory pricing. As part of this process the Authority will be asked to report to Government*

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<sup>1</sup> See *Towards 2016: Ten Year Framework Social Partnership Agreement 2006-2015*, available at: [http://www.taoiseach.gov.ie/attached\\_files/Pdf%20files/Towards2016PartnershipAgreement.pdf](http://www.taoiseach.gov.ie/attached_files/Pdf%20files/Towards2016PartnershipAgreement.pdf)

*periodically and to make any recommendations it considers appropriate having regard to its findings".<sup>2</sup>*

## **Objectives**

- 1.7 Given the broad terms of the Minister's request, the Competition Authority initially sought to define the scope of the Project. Consideration was given to the context in which the request had been made, the mandate of the Competition Authority under the Competition Act, 2002, and the available resources of the Competition Authority.
- 1.8 An investigation of possible breaches of any part of the Competition Act or of EU competition law does not come within the scope of this *Report*. Any such investigation would be carried out by the appropriate enforcement division(s) of the Competition Authority.
- 1.9 The Competition Authority decided to initially focus on three aspects of the grocery sector.
- 1.10 Firstly, the Competition Authority is of the view that any assessment of the impact of the new regulatory environment on the structure and operation of the grocery sector requires an understanding of the grocery supply chain and how it and the various constituent operators have evolved over time. The Competition Authority recognised that there is a paucity of publicly available information about the grocery sector. The Competition Authority concluded in the early stages of the Project that it would be preferable to devote its resources to compiling a comprehensive description of the grocery sector. In order to facilitate the manageability of the Project, the Competition Authority decided to focus on the retail and wholesale levels of the grocery sector and to consider the period from 2001 to 2006. It is expected that the supply level of the grocery sector will be the subject of a future report.
- 1.11 Secondly, in light of the direct impact on consumers, the Competition Authority is of the view that an analysis of aggregate trends in retail grocery prices is valuable. It is expected that additional aspects of pricing in the grocery sector will be the subject of a future report.

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<sup>2</sup> *Ibid*, p. 21.

1.12 Finally, the Competition Authority is of the view that a preliminary examination of the retail planning process and how it affects grocery retailing in particular is warranted. From a consumer perspective, markets typically underperform when entry is restricted. The Competition Authority recognises that the retail planning system may have the effect of restricting entry to various retail sectors. It is expected that the preliminary examination of the retail planning system, as applied to the grocery sector, will inform the future work of the Competition Authority.

1.13 Accordingly, the Competition Authority is publishing a set of three reports addressing three aspects of the grocery sector:

- *A Description of the Structure and Operation of Grocery Retailing and Wholesaling in Ireland: 2001 to 2006* (Report No. 1)<sup>3</sup>;
- *Price Trends in the Irish Retail Grocery Sector: A Description of the Evolution of Retail Grocery Prices: 2001 to 2007* (Report No. 2)<sup>4</sup>; and
- *The Retail Planning System as Applied to the Retail Grocery Sector: 2001 to 2007* (this Report, Report No. 3).

1.14 Report No. 1 and Report No. 2 were published in April 2008.

### **Methodology**

1.15 During the initial phases of the *Groceries Monitor* Project, the Competition Authority met with representatives of the Department of Enterprise, Trade & Employment, the National Consumer Agency, major participants in the grocery sector, trade associations and others to inform them of the objectives of the Project, and among other things, to gather any views or concerns they might have about the development of the methodology for monitoring the sector. One issue that arose as a concern was the operation of the retail planning system as applied to the retail grocery sector.

1.16 Report No. 1, which described market structure in the retail grocery sector, revealed that there has been some considerable expansion by grocery retailers of various kinds. Expansion in the context of grocery

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<sup>3</sup> Available for download at: [http://www.tca.ie/controls/getimage.ashx?image\\_id=2053](http://www.tca.ie/controls/getimage.ashx?image_id=2053)

<sup>4</sup> Available for download at: [http://www.tca.ie/controls/getimage.ashx?image\\_id=2055](http://www.tca.ie/controls/getimage.ashx?image_id=2055)

retailing refers not only to increasing the sales capacity of a given retail outlet, but also to entry into new local markets (i.e., the opening of a retail outlet in a new geographic area). Moreover, two new entrants to the Irish grocery sector first began opening retail outlets shortly before the period of our analysis. This suggests that substantial entry and expansion is at least possible in the grocery sector.

- 1.17 Evidence of entry or expansion is not in itself sufficient to disprove the existence of barriers to entry or expansion. Barriers to entry or expansion do not need to result in no new entry or expansion (i.e., they do not need to be absolute barriers) to impact on competition. Such barriers need only delay, frustrate or otherwise increase the cost of entry or expansion to have an effect on competition.
- 1.18 Potential barriers to entry or expansion at the retail level of the grocery supply chain include the availability of suitably zoned sites for retail use and the process of gaining planning permission to build or expand existing retail outlets. The major retailers have indicated to the Competition Authority that these two issues represent significant barriers to entry and expansion.
- 1.19 This *Report* builds on the analysis of Report No. 1 and makes use of information gathered for the purposes of describing market structure. Additional information relating specifically to the planning process and retailers' experiences of entry and expansion has been gathered directly from retailers (including an additional year's worth of data on more recently opened grocery retail outlets). Other sources of information include the Department of Heritage and Local Government, the local authorities themselves and An Bord Pleanála.

### **Boundaries of this Report**

- 1.20 This *Report* focuses on the planning experience of the larger retailers. Specifically, ALDI, Dunnes Stores, Lidl, M&S, Superquinn, the SuperValu retailers and Tesco.<sup>5</sup> The planning experience of smaller retailers is not considered. This limitation may be justified on the grounds that, *a priori*, one would expect that larger retailer developments that tend to raise planning issues. Smaller retail outlets,

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<sup>5</sup> In the terminology of Report No. 1, these retailers are the vertically-integrated retailers and the SuperValu group of affiliated retailers.

due to their size, tend to find entry easier to achieve because of the relative abundance of suitable sites.

### **Structure of this Report**

1.21 The structure of the remainder of this *Report* is as follows:

- Section 2 provides an overview of the general planning system, outlines how planning policy is determined and explains the role of the various bodies involved in its implementation;
- Section 3 focuses on how the planning system is applied to retail sectors;
- Section 4 describes entry and expansion in the retail grocery sector between 2001 and year-end 2007 and identifies the 311 planning histories that form the basis of further analysis in the *Report*;
- Section 5 identifies and analyses a series of nine issues relating to the planning system and how it may be acting as a barrier to entry and expansion in the grocery retail sector; and,
- Section 6 provides a summary of findings and outlines the seven recommendations arising from the *Report*.



## **2. THE IRISH PLANNING SYSTEM**

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### **Introduction**

2.1 This section provides a description of the Irish planning system. First, the policy context for planning in Ireland is considered and the role of supra national, national, regional and local influences are emphasised. Second, the manner in which planning policy is implemented in practice is considered. The purpose of this section is to emphasise the complex nature of general planning policy in Ireland as well as the wide variety of social and economic objectives that are embodied within the system.

### **Background**

2.2 Ireland's planning system was established on October 1<sup>st</sup> 1964, with the introduction of the Local Government (Planning and Development) Act 1963 ("the 1963 Act"). It was the first piece of legislation to provide for the development and systematic planning of the country. The legislation provided that planning applications would be assessed by local authorities. Since then, a considerable body of planning legislation and regulations has been passed to reflect the dynamic and changing nature of the planning process within Ireland.

2.3 Since the introduction of the 1963 Act there has been continuous updating and revision of planning legislation up to the present day. With the introduction of the Planning and Development Act, 2000, all of the planning legislation from 1963 to 1999 has been consolidated, and this Act provides an overall self-contained piece of legislation that governs the entire Irish planning process.<sup>6</sup>

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<sup>6</sup> There have been a number of amendments/additions to the 2000 Act, the most significant of which are as follows:

- Planning and Development (Amendment) Act, 2002 - the primary purpose of this Act is to amend Part V of the Planning and Development Act, 2000 (Housing Supply);
- Housing (Miscellaneous Provisions) Act, 2004 - this Act primarily amends section 99 of the Planning and Development Act, 2000 in relation to affordable housing;
- Planning and Development (Strategic Infrastructure) Act, 2006 - which primarily provided for the establishment of a streamlined consent procedure for certain types of major infrastructure and the creation of a specialised division within An Bord Pleanála to take decisions in relation to such projects.

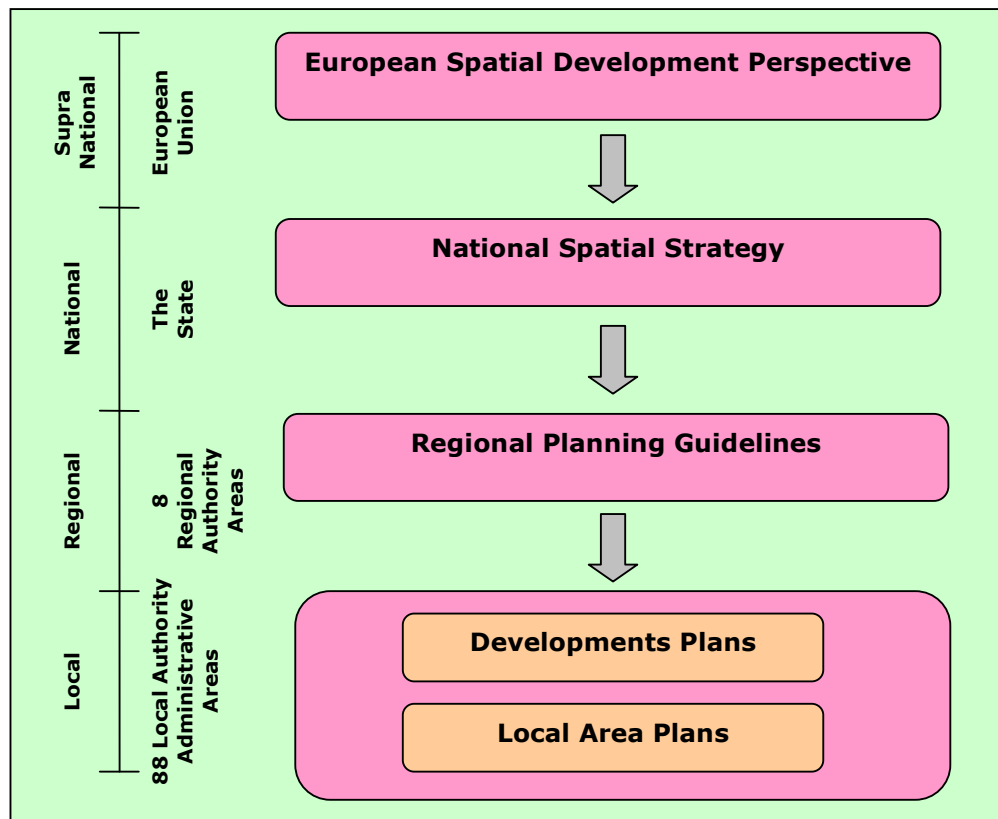
Under the Planning and Development (Strategic Infrastructure) Act, 2006, An Bord Pleanála is empowered to determine whether a proposed development falls under the new strategic infrastructure procedures on the basis that the development is of the category set out in the Seventh Schedule of the Act and the Board considers that the development meets at least one of the following criteria: (a) the development is of strategic economic or social importance to the State or region, (b) the development would contribute substantially to the fulfilment of any of the objectives of the National Spatial Strategy or relevant Regional Planning Guidelines, and (c) the

2.4 In addition to the legislative acts there are also planning regulations, the principal one being the Planning and Development Regulations 2001 which replace the Local Government (Planning and Development) Regulations 1994 - 2000. These regulations detail guidance on planning processes and procedures.

### The Planning Policy Hierarchy

2.5 The hierarchy in which the Irish planning system operates is based on a set of statutory plans prepared at supra national, national, regional and local levels, as illustrated in Figure 1 below.

**Figure 1: The Irish Planning Process Hierarchy**



### European

2.6 When considering the hierarchical structure of the Irish planning process it is important to set it in the overall European planning context. The European policy influence on planning is primarily centred

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development would impact significantly on the area of more than one planning authority. The Seventh Schedule categorises infrastructure developments under the headings of energy, transport and environmental.



on the European Spatial Development Perspective (ESDP) document which was approved by the Informal Council of Ministers responsible for Spatial Planning in Potsdam in 1999. The ESDP sets out common principles and policy options for territorial development across Europe. The ESDP is a legally non-binding inter-governmental framework document forming a policy framework with 60 policy options for all tiers of administration with a planning responsibility.

- 2.7 The aim of the ESDP is to achieve a balanced and sustainable spatial development strategy. The ESDP is intended to guide national and regional planning authorities in developing planning policies which will lead to social and economic cohesion and sustainable development. The INTERREG Community Initiative, which aims to stimulate interregional cooperation in the European Union, plays a key role in implementing the ESDP. The INTERREG initiative can be considered as a European “territorial” instrument which assists in the contribution of improved knowledge about good practice in territorial development, thus linking directly to the principles and policies of the ESDP. INTERREG has helped to promote the exchange of experience among many regions throughout Europe.

## **National**

- 2.8 At the highest level of the Irish planning process hierarchy is the National Spatial Strategy (NSS) 2002-2020, which was published in 2002 following the introduction of the ESDP. The NSS, which was prepared by the Spatial Planning Unit of the Department of the Environment, Heritage and Local Government, is a twenty-year national strategic planning framework for all parts of Ireland. It aims to achieve an improved quality of life for the island’s inhabitants<sup>7</sup>, a strong, competitive economic position and a high quality environment.<sup>8</sup> These aims are pursued by attempting to ensure a greater balance of social, economic and physical development and population growth between the regions of Ireland. The strategy recognises that regions of the country have different roles and seeks to organise and coordinate these roles in a complementary way making all regions more

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<sup>7</sup> In addressing spatial issues for the island of Ireland as a whole and strengthening cross-border co-operation, the NSS acknowledges the importance of Shaping Our Future. This is a Regional Development Strategy which offers a strategic and long-term perspective on the future development of Northern Ireland up to the year 2025. For more information see: <http://www.drdni.gov.uk/shapingourfuture/>

<sup>8</sup> For more information see:

<http://www.environ.ie/en/DevelopmentandHousing/PlanningDevelopment/NationalSpatialStrategy>

competitive according to their strengths. The strategy seeks also to promote a high quality urban environment, as well as vibrant rural areas. Regional and local planning initiatives must have regard to the NSS.

- 2.9 The NSS requires that areas of sufficient scale and critical mass<sup>9</sup> be built up through a network of gateways and hubs. The gateways are Dublin, Cork, Limerick/Shannon, Galway, Waterford, Dundalk and Sligo. There are also two linked gateways; Letterkenny/Derry and the Midland towns of Athlone/Tullamore/Mullingar.<sup>10</sup>
- 2.10 The National Development Plan (NDP) 2007-2013 prepared and published by the Government sets out the economic and social investment priorities for Ireland over the six-year period, and replaces the 2000-2006 plan.<sup>11</sup> The NDP aims to promote the development of all regions in Ireland in line with the NSS and within a coordinated, coherent and mutually beneficial framework, which builds on regional strengths and addresses regional weaknesses. The promotion of regional development aims to ensure that each NSS Gateway region maximises its potential and also that there is enhanced coordination in the development of the Gateways and their regions and between planning and investment at local, regional and national levels. Therefore, the NDP underpins the NSS as capital investment is prioritised in line with the NSS and places the NSS at the centre of capital infrastructure decisions until 2013.

## **Regional**

- 2.11 Ireland is divided into eight regions with eight corresponding regional authorities.<sup>12</sup> Each regional authority is required to prepare Regional Planning Guidelines (RPGs). The primary objective of the RPGs is to provide a long-term (12-20 years) strategic planning framework for the development of the eight regions of Ireland, with particular

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<sup>9</sup> The following definition of critical mass is that put forward in the NSS which states that "Critical mass relates to the size and concentration of population that enables a range of services and facilities to be supported. This in turn can attract and support higher levels of economic activity and improved quality of life". (Government of Ireland, 2002: Page 12).

<sup>10</sup> The National Development Plan 2000-2006 had already identified Dublin, Cork, Limerick/Shannon, Galway and Waterford as existing gateways. The NSS designated four new national level gateways - the towns of Dundalk and Sligo and the linked gateways of Letterkenny/Derry and the Midland towns of Athlone/Tullamore/Mullingar. For more information see:

<http://www.environ.ie/en/DevelopmentandHousing/PlanningDevelopment/NationalSpatialStrategy>

<sup>11</sup> There have been several National Development Plans. The most recent plan, 2007 -2013, is the first to have regard for the National Spatial Strategy considerations.

<sup>12</sup> See Appendix A for a list of the eight regional authorities.

reference to the physical, social, economic, environmental and other issues that impact on more than one local authority administrative area. RPGs provide a general framework for the implementation of policy at the local level, and in particular, for local development plans. The RPGs promote economically and socially balanced regional development as directed by the NSS, and therefore aim to ensure a coordinated and integrated delivery of the NSS aims.

## **Local**

2.12 There are 88 local authority administrative areas. Development plans are the principal planning policy instrument of local authorities. The preparation of local authority development plans is central to the operation of the planning system and is a statutory requirement. Each local authority is required to publish a development plan for its area every six years. Development plans are the "*main instrument of development and control*" and implement planning policies promoted by the Department of the Environment, Heritage and Local Government.<sup>13</sup>

2.13 Development plans primarily set objectives and policies for the planning and sustainable development of the local authority administrative area of jurisdiction for a period of 6 years. Plans show local authorities' objectives for "*the sole or primary use of particular areas (e.g., residential, commercial, industrial, agricultural), for road improvements, for development and renewal of obsolete areas, and for preserving, improving and extending amenities.*"<sup>14</sup>

2.14 In association with the objectives and policies, section 10(2)(a) of the Planning and Development Act, 2000 requires that a development plan shall include objectives for:

*"the zoning of land for the use solely or primarily of particular areas for particular purposes (whether residential, commercial, industrial, agricultural, recreational, as open space or otherwise, or a mixture of these uses) and to such extent as the proper planning and sustainable development of the area, in the opinion of the planning authority, requires the uses to be indicated."*

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<sup>13</sup> For more information see:  
<http://www.environ.ie/en/DevelopmentandHousing/PlanningDevelopment/Planning/Overview/DevelopmentPlans/>

<sup>14</sup> *Ibid.*

- 2.15 When zoning land, local authorities must ensure a balance is obtained between, firstly, ensuring that enough land is being zoned to meet the development needs of the economy and society and, secondly, the avoidance of over zoning and creating a situation where the development priorities are unclear. In essence, land use zoning is concerned with identifying the quantity of land needed over the period of the development plan.
- 2.16 The Planning and Development Act, 2000 states that within four years of making a development plan a local authority must give notice of its intention to review that plan and prepare a new plan. The timeframe for completion of the review process requires that the new development plans are completed within 99 weeks of commencement of the review process.
- 2.17 The High Court decision in the case of *McEvoy and Smith v Meath County Council* [2003] 1 IR, 208, confirmed the status of recommendations contained in RPGs. In preparing and implementing development plans, local authorities are not required rigidly to comply with the recommendations or even necessarily to adopt the strategy and policies outlined in them. They can depart from them for *bona fide* reasons consistent with the proper planning and development of the area for which they have planning responsibility.
- 2.18 In 2007, the Department of the Environment, Heritage and Local Government, published Development Plans Guidelines for Planning Authorities.
- 2.19 In addition to the making of development plans, local authorities also prepare local areas plans (LAPs). LAPs are prepared, independently of development plans, for:
- "any area, including a Gaeltacht area, or an existing suburb of an area, which the planning authority considers suitable and, in particular, for those areas which require economic, physical, and social renewal and for the areas likely to be subject to large scale development within the lifetime of the plan."*<sup>15</sup>
- 2.20 Based on this, LAPs are prepared for areas within the overall administrative area of a local authority. The Planning and Development (Amendment) Act 2002 requires that a LAP shall be consistent with the

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<sup>15</sup> Section 19(1)(a), Planning and Development Act, 2000.

objectives of the development plan. A LAP shall consist of a written statement and a plan (or plans) which may include:

*"(a) objectives for the zoning of land for the use solely or primarily of particular areas for particular purposes, or (b) such other objectives in such detail as may be determined by the planning authority for the proper planning and sustainable development of the area to which it applies, including detail on community facilities and amenities and on standards for the design of development and structures."*<sup>16</sup>

2.21 The development plan is the 'parent' document, which sets out the strategic framework within which the zoning and other objectives of the LAP must be formulated.

### **The Implementation of the Planning System**

2.22 In this subsection, the role of the various bodies involved in the implementation of the planning system is examined. The Department of Environment, Heritage and Local Government is responsible for planning legislation and policy.<sup>17</sup> The planning system itself is run by 88 local planning authorities. An Bord Pleanála is the final link in the chain and acts as an independent planning appeals body.

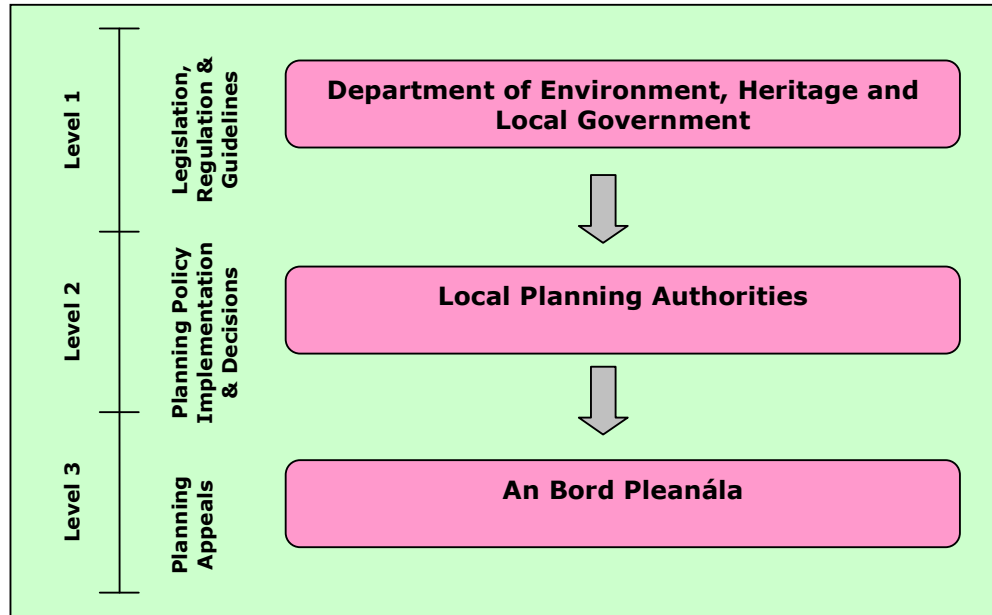
2.23 Figure 2 below illustrates the levels of implementation of planning policy. The Department of Environment, Heritage and Local Government is at the highest level, local planning authorities are on the second level and An Bord Pleanála is on the third level.

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<sup>16</sup> Section 8(2) Planning and Development (Amendment) Act, 2002.

<sup>17</sup> The regional authorities are not directly involved in the planning legislation process with their focus being on policy.

**Figure 2: Levels of Implementation of the Irish Planning System**



**The Role of the Department of the Environment, Heritage and Local Government**

2.24 The primary objective of the Department of Environment, Heritage and Local Government is to seek and request sustainable development through the pursuit of a number of key requirements. Two of these requirements are of direct interest to retail planning, namely, to ensure that regions and communities are planned and built to respect sustainable and balanced regional development, and to support and enable democratic and responsive local government. The workings of the Department of Environment, Heritage and Local Government come under four principal areas; these are environment, heritage, local government, and development and housing which incorporates planning.

2.25 With regard to planning the Department of Environment, Heritage and Local Government is responsible for the development, introduction and review of all planning legislation and policy. This includes legislation and policy in relation to development plans, planning permission, exempted development, appeals against decisions and enforcement. In recent years, this work has been influenced by Ireland’s membership of the European Union (see paragraph 2.5 above for a brief discussion of the European dimension of national planning policy).

## **The Role of Local Planning Authorities**

- 2.26 Local authorities deliver most of the planning policies promoted by the Department of Environment, Heritage and Local Government. There are 88 local planning authorities which control the implementation of the physical planning system in Ireland. This is broken down into 29 County Councils, five County Borough Corporations, five Borough Corporations and 49 Town Councils. In effect, local authorities deliver planning policies promoted by the Department of the Environment, Heritage and Local Government. Appendix A contains a list of the 88 local authorities in the State.
- 2.27 Local authorities are responsible for the preparation of development plans for their administrative areas.
- 2.28 Planning permission is needed for any development of land or property unless the development is exempted. The purpose of this exemption is to avoid controls on developments of a minor nature, such as certain domestic extensions, interior alterations and small business advertisements. Development includes the building, demolition, or alteration of a structure on land and the making of a significant change of use of land or building. There are two types of planning permission applications: 'permission' and 'outline permission'. Outline permission is when an applicant seeks permission for a proposal before going to the trouble of making a detailed application. It is essentially an approval in principle. Applications for full permission are the more common form.
- 2.29 An applicant applies for planning permission to their local planning authority. This could be a local county council, city council or town council depending on where the development is located. All planning applications are checked against the policies and objectives specified in the local planning authority's development plan.
- 2.30 Once an application for planning permission is made, members of the public have the right to view and comment on it. Applicants must publish the notice of application in a locally circulated newspaper and erect a site notice. In making a decision on an application, the planning authority must take all written comments into consideration. Interested parties have five weeks from the date of receipt of the application by the planning authority to comment on the proposal.

2.31 The local authority has a statutorily defined eight week period to decide applications.<sup>18</sup> Proposals that are consistent with the relevant local planning authority development plan should be granted planning permission, with or without conditions. Where either outline or full permission is given, it lasts five years from the date granted. This may be extended, however, if substantial works have already been completed or if the relevant local planning authority is satisfied that the development will be finished within an acceptable time. Where an application is refused, the reasons for refusal must be included in the notification.<sup>19</sup>

### **The Role of An Bord Pleanála**

2.32 An Bord Pleanála was established in 1977 following the enactment of the Local Government (Planning and Development) Act, 1976. An Bord Pleanála was granted the function of reviewing and determining appeals of planning decisions. Prior to this, appeals were made to the Department of Local Government<sup>20</sup> and were decided by the Minister or the Parliamentary Secretary<sup>21</sup>.

2.33 All planning decisions made by planning authorities may be subjected to independent review by An Bord Pleanála. An Bord Pleanála has responsibility for reviewing and determining appeals under the Planning and Development Act, 2000. The appeals system is designed to be independent, open and impartial. The Government cannot exercise any power in relation to particular appeal cases. An Bord Pleanála can also advise the Department of Environment, Heritage and Local Government on issues of policy, in light of its experience in considering individual planning appeals.

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<sup>18</sup> The eight week deadline may be extended by four weeks if the the relevant local authority makes a request for further information.

<sup>19</sup> For more information see:

<http://www.environ.ie/en/Publications/DevelopmentandHousing/Planning/FileDownload,1582,en.pdf>

<sup>20</sup> In 1977 the title of the Department of Local Governments was changed to the Department of Environment. In 1997 this title was changed again to the Department of the Environment and Local Government, and in 2003 it became the Department of the Environment, Heritage and Local Government.

<sup>21</sup> Under the Local Government (Planning and Development Act, 1963) appeals had to be made to and decided by the Minister. The Parliamentary Secretary to the Minister for Local Government to whom the relevant power and duties of the said Minister are delegated by the Local Government (Delegation of Functions) (Number 2) Order 1973, could also sign and decide appeals.



2.34 Appeals to An Bord Pleanála fall into three categories:<sup>22</sup>

- First party appeals against decisions of planning authorities to refuse permission;
- First party appeals against conditions proposed to be attached to permissions by planning authorities; and
- Third party appeals against decisions of planning authorities to grant permission.

2.35 In some cases, there can be a combination of appeal types.

2.36 An applicant for planning permission can always appeal the decision of a local planning authority. Other interested parties may appeal on condition that they originally made submissions in writing to the relevant local planning authority prior to the initial decision. Exceptions to this are prescribed bodies, i.e., bodies that were entitled to be notified of a planning application but were not, or persons with an interest in land adjoining the site.<sup>23</sup> All appeals must be made to An Bord Pleanála within four weeks of the decision of the relevant local planning authority.

2.37 By facilitating the right to appeal by third parties, An Bord Pleanála is supposed to strike a balance between the benefits (e.g., equality) and the costs (e.g., increased financial costs and delays). A further potential cost, however, is that competitors can use the planning system with anti-competitive intent. The Planning and Development Act, 2000, provides that An Bord Pleanála may dismiss appeals or referrals if vexatious:

*“The Board shall have an absolute discretion to dismiss an appeal or referral — (a) where, having considered the grounds of appeal or referral, the Board is of the opinion that the appeal or referral (i) is vexatious, frivolous or without substance or foundation, or (ii) is made with the sole intention of delaying the development or the intention of securing the payment of money, gifts, consideration or other inducement by any person.”<sup>24</sup>*

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<sup>22</sup> There may also be the case when a third party appeals against the decision of a planning authority to refuse permission e.g. a consumer associations, local employment groups. The Competition Authority came across one example of this type of appeal in the present review. Tesco were refused planning permission to set up a store on the Delvin Road, Mullingar. This application was appealed both by the First Party and by Lakepoint Park Residents Association, who strongly supported the development. For information see: <http://www.pleanala.ie/casenum/214428.htm>

<sup>23</sup> For more information see: [http://www.pleanala.ie/guide/appeal\\_guide.htm](http://www.pleanala.ie/guide/appeal_guide.htm)

<sup>24</sup> Planning and Development Act, 2000, Chapter III, Section 138 (1).

2.38 The strategic target of An Bord Pleanála is to give decisions within 18 weeks in 90% of cases. When an appeal is made, An Bord Pleanála is required to determine the application as if it had been made to it originally. It must apply the same criteria as the relevant local planning authority and so must be cognisant of the relevant local authority's development plan. All documentation submitted in the first application is reviewed. In certain circumstances, An Bord Pleanála can contravene the provisions of a local authority development plan if it deems it necessary, for example if the proposed development is of national or strategic importance, there are conflicting objectives in the development plan or the objectives are not clearly stated.<sup>25</sup>

## **Summary**

2.39 General planning policy and implementation in Ireland is achieved through a variety of bodies operating within a hierarchical structure of administration.

2.40 There are four levels of policy influence within the general planning system. First, there is the European influence which, while non-binding, is achieved through the European Spatial Development Perspective and whose aim is to promote social and economic cohesion as well as interregional cooperation within the European Union. The second level of policy influence is at the national level. The principal policy instrument here is the National Spatial Strategy. The NSS aims to ensure over the long term a greater balance of social economic and physical development and population growth between the regions of Ireland. Regional and local planning initiatives must have regard to the NSS. The NSS singles out nine so-called gateways or hubs for strategic development. The third level of policy influence is at the regional level. The principal policy instruments of the eight regional authorities are the Regional Planning Guidelines. The RPGs aim to promote long term regional development and make particular reference to issues that impact on more than a single local authority administrative area. Local planning initiatives must have due regard for the RPGs. The final level of policy influence is at the local level. Development plans are the principal means of development and control of the 88 local authorities in the State. Development plans set out local authorities' objectives for different uses of land.

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<sup>25</sup> For more information see: [http://www.pleanala.ie/guide/appeal\\_guide.htm](http://www.pleanala.ie/guide/appeal_guide.htm)

- 2.41 There are three levels of implementation within the general planning system. At the highest level the Department of the Environment, Heritage and Local Government is responsible for implementing planning policy through legislation and regulation. At the second level of implementation are the local authorities. The local authorities are responsible for making planning decisions. Finally, An Bord Pleanála is responsible for adjudicating on appeals of planning decisions made by local authorities.
- 2.42 The purpose of this section was to provide an overview of how general planning policy is arrived at in the State and how, in practical terms, planning is implemented. The breadth of social, economic and developmental objectives of the various bodies involved is considerable and extends well beyond the narrow focus of competition. In the next section, planning as applied to the retail sector of the economy is considered in some detail. The role of competition in particular is emphasised.



### **3. THE RETAIL PLANNING SYSTEM**

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#### **Introduction**

3.1 This section focuses on the planning system as applied to the retail sector. As described in the previous section, the *retail* planning system is part of a general planning system. As with general planning, retail planning has gone through a series of revisions and updates resulting in the current system of operation. Accordingly, this section first provides background on the retail planning system, which has developed more recently than the general planning system. Second, the Retail Planning Guidelines themselves are considered in some detail. Specifically, their objectives and principal elements are described. The purpose of this section is to help identify those aspects of the retail planning system that may affect competition in the grocery retail sector.

#### **Background**

3.2 In 1982, specific Retail Planning Guidelines and controls were introduced in Ireland by the Local Government (Planning and Development) General Policy Directive, 1982 (the "1982 Directive") (SI no. 264 of 1982).

3.3 Prior to this there were no specific retail guidelines or controls in existence.

3.4 Retail planning controls were introduced following lobbying by small independent retailers who were concerned about the growing presence of large-scale shopping developments. The 1982 Directive was general in form and proved inadequate as a means for assessing planning proposals.

3.5 The unprecedented growth of the Irish economy during the 1990s had a significant impact on retail markets. As population and incomes increased, and with it the demand for retail services, retailers attempted to expand and enter new markets. This development was evident not only in the major urban centres but also in small and medium-size towns across the country. Pressure for retail development of a larger size to achieve economies of scale became more and more common. Small retailers argued that they would not be able to compete with these new large scale developments, that local

monopolies would ultimately be created and that the economic infrastructure of towns would be damaged.

- 3.6 In response to the increased pressure on planning authorities, the Department of the Environment concluded that planning authorities did not have the resources or guidance to carry out their functions effectively and consistently. In June 1998, the Local Government (Planning and Development) General Policy (Shopping) Directive (SI No. 193 of 1998), now referred to as the "1998 Ministerial Directive", was introduced. The 1998 Ministerial Directive strengthened the policies contained in the 1982 Directive and significantly, a cap on the size of supermarkets was introduced for the first time.<sup>26</sup> Planning permission would no longer be granted for a supermarket if the retail floorspace (Net Retail Sales Area (NRSA))<sup>27</sup>, exceeded 3,000m<sup>2</sup>, whether such a development involved the extension of an existing development or otherwise.
- 3.7 Following the 1998 Ministerial Directive, it was decided that comprehensive guidelines would be prepared. Guidelines would aim to control retail development by restricting both the location and the size of outlets. *Retail Planning, Guidelines for Planning Authorities* (the "Retail Planning Guidelines") was published in December 2000 and came into effect on January 1<sup>st</sup> 2001.<sup>28</sup> The Retail Planning Guidelines are Ministerial Guidelines under section 28 of the Planning and Development Act, 2000. Consequently, planning authorities and An Bord Pleanála must have regard to the provisions of the Retail Planning Guidelines when exercising their planning functions.<sup>29</sup>

### **The Retail Planning Guidelines**

- 3.8 The Retail Planning Guidelines were drawn up with the aim of accommodating projected additional development in a way that is efficient, equitable and sustainable. The optimal location for new retail

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<sup>26</sup> While the Ministerial Directive did not provide a definition of a supermarket, the 2001 Retail Planning Guidelines did. The Retail Planning Guidelines (2005), at page 42, describe them as "Single level, self-service stores selling mainly food, with a net sales area of less than 2,500 square metres, often with adjacent car parking."

<sup>27</sup> Net Retail Sales Area (NRSA) is the area of a shop or store which is devoted to the sale of retail goods (including the area devoted to checkouts – as defined by the Retail Planning Guidelines for Local Authorities (2005), p. 40.

<sup>28</sup> The Retail Planning Guidelines were prepared on behalf of the Department of the Environment and Local Government by the consultants Roger Tym & Partners/Jonathon Blackwell & Associates. The second version was prepared in 2005 by the same authors: Roger Tym & Partners in association with Jonathan Blackwell & Associates (2005), *Retail Planning, Guidelines for Planning Authorities*.

<sup>29</sup> Section 28 (2), Guidelines and Directives, Planning and Development Act, 2000.

development was defined as “*somewhere which is accessible to all sections of society and is of a scale which allows the continued prosperity of traditional town centres and existing retail centres.*”<sup>30</sup>

3.9 There are a number of provisions in the Retail Planning Guidelines that have the potential to affect competition in retail sectors. These are:

- **Retail Caps/Thresholds:** As already noted, retail caps were first introduced in the 1998 Ministerial Directive and they were incorporated into the Retail Planning Guidelines;
- **Retail Policies or Strategies:** As specified in the Retail Planning Guidelines, detailed retail policies and strategies, beyond those specified in the development plans are prepared for more urban areas;
- **Retail Impact Assessment:** The Retail Planning Guidelines require that a proposal for a new, or an extension to an existing, retail development must incorporate a study of the retail impact on existing retail centres within the surrounding vicinity.

3.10 Before considering each of the above elements, the objectives of the Retail Planning Guidelines are first examined.

### **Objectives of the Retail Planning Guidelines**

3.11 There are five objectives of the Retail Planning Guidelines which are summarised in Table 1 below.<sup>31</sup>

3.12 The first objective of the Retail Planning Guidelines states that local authorities must outline clear policies and proposals for the retail development of their respective administrative areas. Policies and proposals for retail development should be included in the local authority’s development plan.

3.13 The second objective states that planning should not have a negative impact on the competitive environment of the retailing industry. The second objective outlines that it is not the purpose of the planning system to inhibit competition or preserve existing commercial interests, and that in interpreting the Retail Planning Guidelines local

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<sup>30</sup> *Ibid*, p. 6.

<sup>31</sup> *Ibid*, p. 7.

authorities should avoid taking actions that would adversely affect competition.

**Table 1: The Retail Planning Guidelines Policy Objectives**

<b>Objective 1</b>	All future development plans must incorporate clear policies and proposals for retail development.
<b>Objective 2</b>	Facilitation of a competitive and healthy environment for the retail industry of the future.
<b>Objective 3</b>	Promotion of forms of development which are easily accessible, particularly by public transport, in a location which encourages multi-purpose shopping, business and leisure trips on the same journey.
<b>Objective 4</b>	Support for the continuing role of town and district centres.
<b>Objective 5</b>	A presumption against large retail centres located adjacent or close to existing, new or planned national roads/motorways.

Source: Retail Planning, Guidelines for Planning Authorities (2005)

3.14 The third objective focuses on ensuring that retail developments are accessible to all sections of society. The Retail Planning Guidelines state that retail development is most accessible to customers where it is well located within its catchment area and is accessible by both public transport and the private car. The third objective therefore states that development plans should promote forms of development that are easily accessible, particularly by public transport and which encourage multi-purpose trips on the same journey.

3.15 The fourth objective supports the continuing role of town and district centres. It states that established centres should be the preferred locations for developments that attract many trips. The objective also recognises the role of town and district centres as centres of social and business interaction in the community. The Retail Planning Guidelines state that to achieve this objective, the preferred location for retail



development should be within town centres. This is consistent with the requirement to achieve good access especially by public transport. If there are no development sites available within a town centre, the next preference should be a location on the edge of the town centre. The fourth objective states that out-of-centre development should be contemplated only where there are no sites, or potential sites, within a town centre or on its edge, or where satisfactory transport accessibility (including park-and-ride) cannot be ensured within a reasonable period of time.<sup>32</sup>

- 3.16 Finally, the fifth objective is a presumption against large retail centres located adjacent or close to existing, new or planned national roads/motorways. The guidelines state that such centres can lead to an inefficient use of costly and valuable infrastructure and may have the potential to undermine the regional/national transport role of the roads concerned.
- 3.17 For the purposes of this *Report*, the principal concern is the extent to which the second objective is in conflict with the other objectives (or associated requirements and the manner of their implementation). Casual consideration of the objectives suggests that, at the very least, the fourth and last objectives are likely to be in conflict with the second. As the discussion below will show, other conflicts are likely to be present as well.

### **The Retail Caps/Thresholds**

- 3.18 The 1998 Ministerial Directive introduced a cap of 3,000m<sup>2</sup> Net Retail Sales Area (NRSA) on the size of supermarkets. When introduced in 2001, the Retail Planning Guidelines extended the floorspace cap from the Ministerial Directive to 3,500m<sup>2</sup> NRSA for supermarkets in the Greater Dublin Area (GDA). The Retail Planning Guidelines also make reference to the fact that in very exceptional circumstances County Councils outside the Greater Dublin Area and the other four City Council areas could introduce a small downward revision to the floorspace cap in appropriate circumstances where the size of existing

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<sup>32</sup> This is commonly regarded as the implementation of the 'sequential testing' approach regarding the determination of new retail development.

town centres is small in relation to the scale of the cap, and the potential for convenience goods expenditure growth is limited.<sup>33</sup>

- 3.19 The Retail Planning Guidelines also introduced in 2001 a cap of 6,000m<sup>2</sup> NRSA on *retail warehouse*. Retail warehouses are retail outlets that sell mainly bulky household goods and require extensive areas of showroom space. The Retail Planning Guidelines state that retail warehouses do not fit easily into town centres, given their size requirements and the need for good car parking facilities and ease of servicing.<sup>34</sup>
- 3.20 In 2005, following a consultation undertaken by the Department of the Environment, Heritage and Local Government, the Retail Planning Guidelines were amended to provide that the floorspace cap of 6,000m<sup>2</sup> NRSA on retail warehouses would not apply in those areas which are the subject of Integrated Area Plans (IAPs) under the Urban Renewal Act, 1998 in NSS Gateways (see paragraph 2.9).
- 3.21 IAP areas are generally urban, and have the greatest concentrations of physical decay and social/economic disadvantage. The targeting of new forms of retail development into these IAP areas was intended to provide an additional source of employment for such areas.<sup>35</sup> The change in the Retail Planning Guidelines was intended to facilitate new operators that require large floorspace, such as IKEA<sup>36</sup>, to enter the Irish market and to allow existing operators to operate larger formats thus assisting the promotion and encouragement of competition in certain retail markets.

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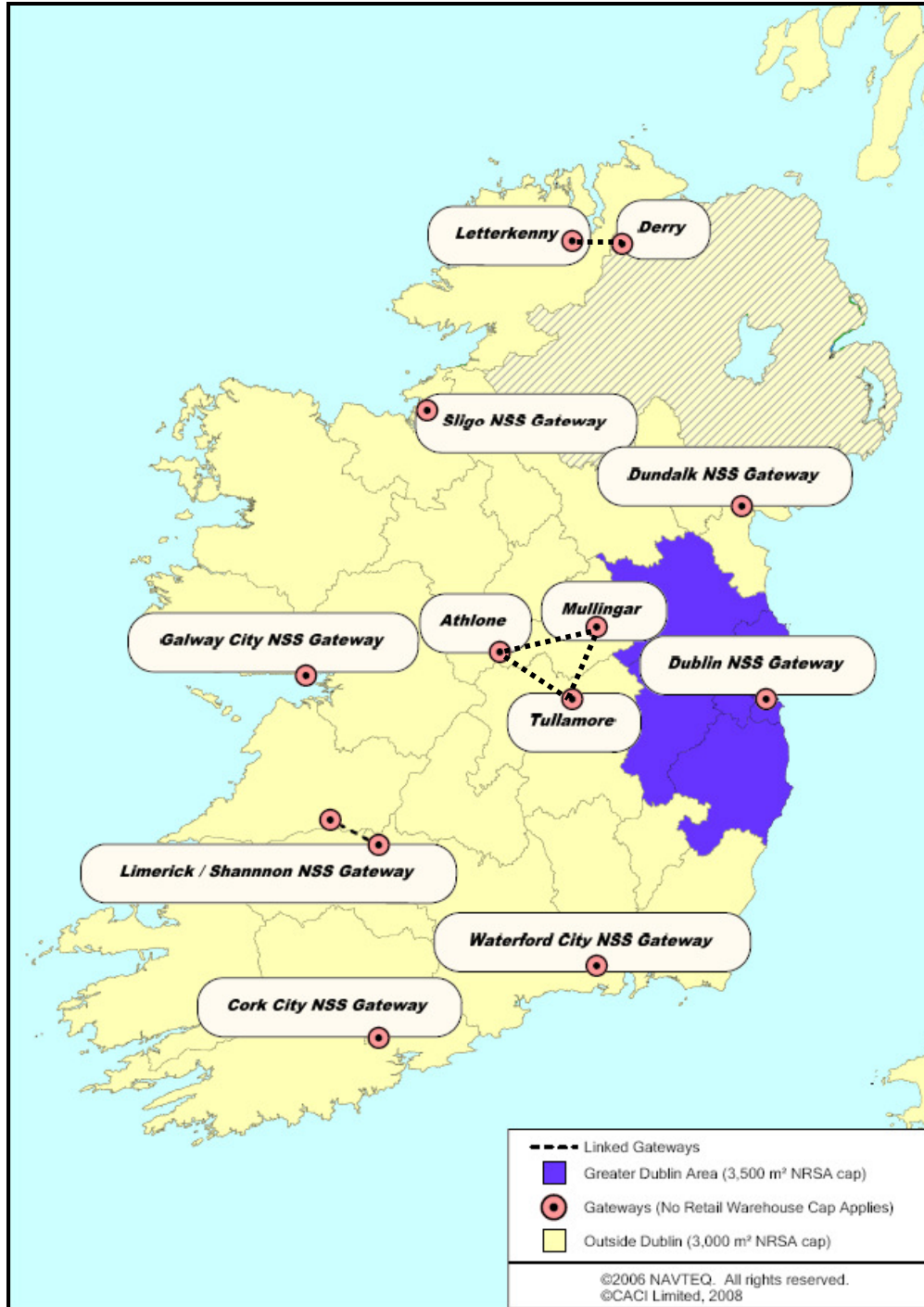
<sup>33</sup> Roger Tym & Partners in association with Jonathan Blackwell & Associates (2005 ) *Retail Planning Guidelines for Planning Authorities*, p. 18

<sup>34</sup> *Ibid.*, p. 28.

<sup>35</sup> *Ibid.*, p. 31.

<sup>36</sup> IKEA is a Swedish retailer that sells household durable goods. It has a very specific store model, and its outlets typically span 28,000m<sup>2</sup>. Given this requirement, the retail warehouse cap of 6,000m<sup>2</sup> prevented entry of the retailer. Following the relaxation of the cap in certain areas in 2005, IKEA made a submission to Fingal County Council to set up a store in Ballycurris, which is part of the Ballymun Regeneration area project. Permission was granted by the Council to set up a store of size 30,000m<sup>2</sup>, and following an appeal permission was granted by An Bord Pleanála on June 12<sup>th</sup> 2007.

**Figure 3: Retail Caps by Geographic Areas**



3.22 Apart from the amendment of 2005, the overall policy objectives of the Retail Planning Guidelines remain the same. The 6,000m<sup>2</sup> NRSA cap on the floorspace of retail warehouses continues to apply in all other areas (i.e., areas other than the nine spatial strategy gateways). Figure 3

above illustrates which guidelines apply in which geographic areas of the State.

- 3.23 The retail caps clearly have the potential to limit entry and, therefore, competition in all retail sectors. Section 5 of this *Report* considers this issue in some detail.

### **Retail Policies or Strategies**

- 3.24 As discussed in Section 2, local authorities are required to produce development plans every six years. Development plans are the “*main instrument of development and control*” and deliver planning policies promoted by the Department of the Environment, Heritage and Local Government.<sup>37</sup> As already noted, the first objective of the Retail Planning Guidelines is that local planning authorities incorporate strategic retail policies and proposals in the development plans for each area. Urban planning authorities make plans in co-operation with adjoining authorities, in order to provide for the integrated planning of towns and their hinterlands.<sup>38</sup>

- 3.25 In June 2007, *Development Plans, Guidelines for Planning Authorities* were published. These guidelines set out a framework for development plans to achieve high standards in how they set out their aims and objectives, are produced, presented, implemented and monitored. A development plan should at a minimum contain the following:<sup>39</sup>

- **Policy Context:** The national and regional planning policy context, and, where appropriate, the Northern Ireland and European policy contexts;
- **Planning Strategy:** The overall strategy for the proper planning and sustainable development of the area;
- **Relevant Demographic Projections:** Population, housing and employment growth estimates, education provision requirements, as well as an indication of the more important drivers for change into the future;

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<sup>37</sup> For more information see: <http://www.environ.ie/en/DevelopmentandHousing/PlanningDevelopment/Planning/Overview/DevelopmentPlans/>

<sup>38</sup> Department of the Environment, Heritage and Local Government (2007), *Development Plans, Guidelines for Planning Authorities*, p. 7.

<sup>39</sup> *Ibid.* p.17.

- **Mandatory Objectives:** Land use zoning, the provision of infrastructure, protected structures and urban renewal and other objectives set out in section 10(2) of the Planning and Development Act, 2000 (see also paragraph 2.14 above);
- **Relevant Discretionary Objectives:** Objectives relating to the location and pattern of development (e.g., sustainable settlement and transport strategies), control of areas and structures (e.g., density and design issues<sup>40</sup>), community facilities (e.g., healthcare, recreational and children’s play facilities), environment and amenities (e.g., landscape protection), infrastructure and transport (e.g., reservations of land for road and rail) and the other objectives set out in the First Schedule of the 2000 Act;
- **Housing:** Housing Strategy under Part V of the Act (as amended by the 2000 Act);
- **Environmental Assessment:** A strategic environmental assessment of the likely environmental effects of implementing the plan; and
- **Retail:** Retail policies or strategies (for county and city development plans).

3.26 Thus, it is a requirement of the Retail Planning Guidelines that all county and city development plans include retail policies or strategies. More urban counties and cities are required to prepare separate detailed retail policies and strategies. The remainder of the local authorities are only required to prepare more general statements of strategic retail intentions.

3.27 In general, development plans contain a separate section for retail which set out the retail policies, and in addition any separate retail strategies prepared are generally incorporated into development plans in the form of an appendix. In preparing retail policies and strategies, county councils must liaise closely with the appropriate urban district authorities, and in a number of areas, counties and county boroughs jointly prepare retail policies and strategies, e.g., Greater Dublin Area, Greater Cork, Greater Waterford.

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<sup>40</sup> With appropriate reference to the Government’s policies set out in Action on Architecture 2002-2005.

3.28 To inform the preparation of development plans and associated retail policies or strategies, the Retail Planning Guidelines suggest that local authorities should undertake a 'health check' of the area. The use of a 'health check' assessment is a mechanism to assess the vitality and viability of a town centre. The health check examines the quality of attractions, accessibility, amenities and action in terms of the retail sector. The undertaking of health checks enables the strengths, weaknesses and overall performance of town centres to be analysed and should both inform and be undertaken within the framework provided by the development plan process. Health checks make use of indicators such as diversity of uses (i.e., multi-functional space usage), retailer representation and intentions to change, shopping rents, vacancy levels, accessibility, environmental quality, customer views and behaviour, perception of safety and occurrence of crime, commercial yields and pedestrian flows. Health checks do not however incorporate a competition element.

3.29 Regardless of the urban/rural character, all retail policies or strategies should include particular details regarding the following:<sup>41</sup>

- **Retail Hierarchy:** Confirmation of the retail hierarchy, the role of centres and the size of the main town centres. Planning authorities should positively favour town centre locations having regard to the 'sequential approach' to the location of new retail development;<sup>42</sup>
- **Shopping Boundaries:** The boundaries of the core shopping area of town centres;
- **Floorspace Requirements:** An assessment of required additional retail floorspace. This requires a projection of future population and associated retail expenditure, the use of appropriate sales turnover ratios, and then the allocation of

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<sup>41</sup> Roger Tym & Partners in association with Jonathan Blackwell & Associates (2005) *Retail Planning Guidelines for Planning Authorities*, p. 12.

<sup>42</sup> The Retail Planning Guidelines establish a planning 'retail hierarchy'. The hierarchy has four-tiers based on the settlement size structure, with reference to the population centres, of the State. The first tier consists of metropolitan Dublin, the second tier incorporates Cork, Limerick, Galway and Waterford, the third tier is not precisely defined and includes the towns of Athlone, Carlow, Castlebar, Clonmel, Drogheda, Dundalk, Ennis, Kilkenny, Letterkenny, Monaghan, Mullingar, Newbridge, Portlaoise, Tralee, Tullamore and Wexford, and the fourth tier comprises a large number of towns with a population of between 1,500 and 5,000 with approximately 75 towns in total.

future floorspace through the application of the retail hierarchy;<sup>43</sup>

- **Development Guidance:** Guidance on the location and scale of retail development;
- **Initiatives:** Policies and action initiatives to encourage the improvement of town centres; and
- **Criteria:** Criteria for the assessment of retail developments. Paragraph 3.33 below details the assessment criteria which sets out a series of steps that should be adhered to when preparing an assessment of the retail impact.

3.30 Two main concerns arise with respect to retail policies or strategies. First, retail policies or strategies confirm the retail hierarchy (consistent with the fourth and last of the Retail Planning Guidelines). As already noted this feature of planning policy can potentially raise competition issues.

3.31 Second, the requirement that retail policies or strategies should include an assessment of required additional floorspace has the potential to limit competition. In effect, this aspect of the retail planning process places a local authority in the position of regulating entry. Section 5 of this *Report* considers these issues in some detail.

### **Retail Impact Assessment**

3.32 As noted, the Retail Planning Guidelines and local authority development plans are intended to provide clarity and guidance to retailers and developers making planning applications. Development plans identify clear policies and proposals and should provide a context against which all the retail sectors and developers can prepare proposals with a degree of certainty as to the possible outcome of a particular application.

3.33 A proposal for a new, or an extension to an existing, retail development must incorporate a study of the retail impact on existing retail centres within the surrounding vicinity. The Retail Planning Guidelines set out criteria in the form of six main steps that should be

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<sup>43</sup> The application of the retail hierarchy (see footnote 42) implies that, for example, locations on the higher tiers are allocated a greater share of future floorspace requirements.

followed when preparing an assessment of retail impact. These steps are:<sup>44</sup>

- **Catchment:** Identification of catchment or study area;
- **Available Expenditure:** Estimation of expenditure available within the defined catchment or study area;
- **Existing Turnover:** Estimation of the turnover of existing centres within the catchment area which are likely to be affected by a new development;
- **Turnover Projections:** Estimation of the turnover of the new development for which a planning application is being lodged;
- **Diverted Expenditure:** Estimation of the quantum of consumer retail spending available in the catchment area which will be diverted from existing centres to the new retail development. This assessment normally highlights the diversion of expenditure by zone within the catchment area;
- **Trade Diversion:** Aggregation of the zonal diversions from each centre to the new development to provide an estimate of trade diversion; trade diversion is then expressed as a proportion of a centre's turnover at the target year to provide a measure of impact.

3.34 The requirement that developers or retailers prepare a retail impact assessment as part of their planning application is the aspect of the retail planning system that is potentially most restrictive. The essence of competition is that one firm can take business away from another firm. Any attempt to limit this possibility is a restriction of competition.

## Summary

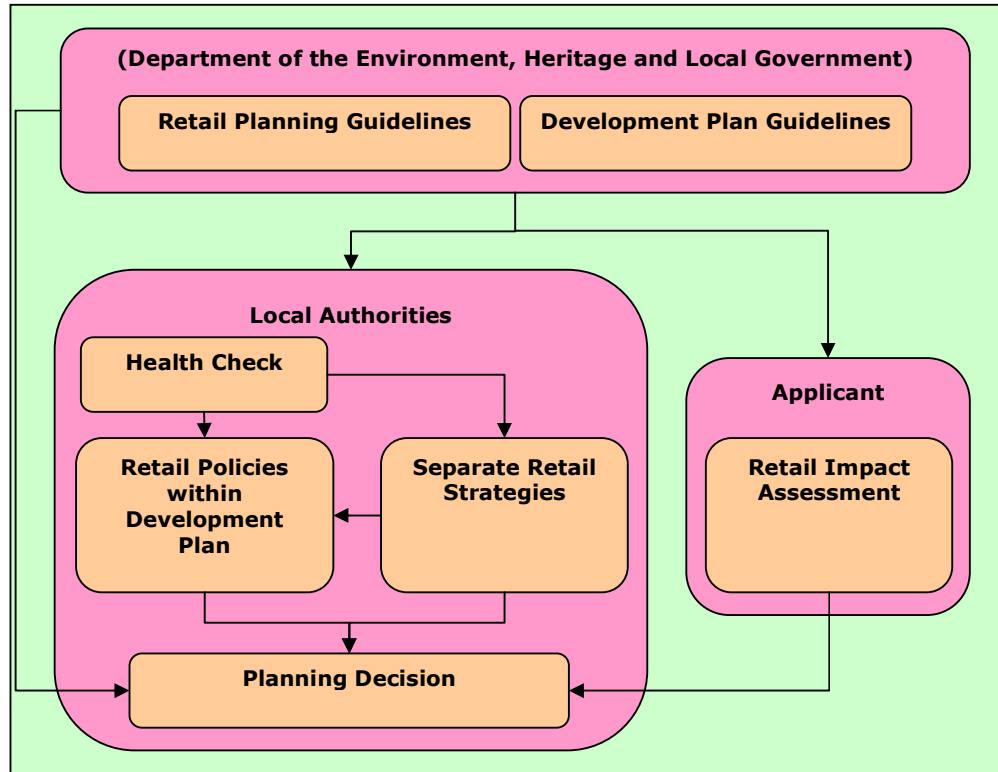
3.35 This section described how planning policy is implemented in the retail sector. Figure 4 below illustrates the relationship between the various elements of the retail planning process and how they inform the decisions of local authorities.

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<sup>44</sup> Roger Tym & Partners in association with Jonathan Blackwell & Associates (2005) *Retail Planning Guidelines for Planning Authorities*, p. 52.



**Figure 4: The Retail Planning Process**



3.36 The Retail Planning Guidelines which embody planning policy, inform the structure and form of the retail planning process. The Retail Planning Guidelines set out requirements for both local authorities and would be retail planning applicants. Local authorities are required to produce development plans which incorporate retail polices and strategies that are informed by so called health checks and the Development Plan Guidelines). Retail polices and strategies inform both planning applicants when making application and local authorities when making planning decisions. Retail planning applicants are required to produce retail impact assessments.

3.37 A number of issues, embedded in both planning policy and implementation, raise competition concerns. The principal concerns, which are considered in some detail in Section 5, are: the retail planning caps; the planning hierarchy; the requirement the local authorities establish likely retail floorspace requirements; and the requirement that retail planning applicants demonstrate trade diversion from incumbent retailers.



## 4. ENTRY AND EXPANSION IN GROCERY RETAILING

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### Introduction

4.1 This section describes entry and expansion in Irish retail grocery sector between 2001 and 2007. The focus of this *Report* is on how the planning process influences the entry or expansion activities of the main retailers. The main retailers are ALDI, Dunnes Stores, Lidl, M&S, Superquinn, the SuperValu retailers and Tesco. This group of retailers are collectively referred to as the 'planning group'.

4.2 The choice of retailers in the planning group is appropriate for a number of reasons. Report No. 1 classified retailers according to ownership structures. Three classes of retailer were identified:

- **Vertically-integrated Retailers:** Retailers who self-supply or internalise the wholesale function by procuring grocery goods directly from suppliers for resale to consumers (e.g., ALDI, Dunnes Stores etc.);
- **Affiliated Retailers:** Retailers who have aligned themselves with a wholesaler-franchisor by contract (e.g., SuperValu retailers to the Musgrave Group etc.); and
- **Independent Retailers:** Retailers who procure grocery goods from suppliers or wholesalers for resale to consumers, but who have not affiliated themselves with a wholesaler-franchisor.<sup>45</sup>

4.3 The analysis contained in Report No. 1 revealed that, in addition to having similar ownership characteristics, the vertically-integrated retailers are similar in terms of pricing policies, product range carried and, importantly for this *Report*, outlet size. Similarly, affiliated retailers had certain common characteristics. The exception among the affiliated retailers was the SuperValu group of affiliated retailers. Report No. 1 found that in many respects, the group of SuperValu affiliated retailers were similar to the vertically-integrated retailers. Specifically, the SuperValu group of affiliated retailers were similar to the vertically-integrated retailers in terms of pricing policies, product range carried and, again importantly for this *Report*, outlet size.

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<sup>45</sup> A summary of the classification of retailers by trading brand, used in Report No. 1, is contained in Appendix B.

- 4.4 *A priori*, one would expect that the size of retail outlets is one of the principal determinants of outcomes within the planning system. Given the typically larger size of retail outlets of the vertically-integrated retailers and the group of SuperValu affiliated retailers, this group of retailers was selected for inclusion in the planning group.
- 4.5 The section begins by describing the growth of grocery retailing capacity in the State. Aggregate growth of retail capacity, as measured by the number of outlets retailing groceries and floorspace dedicated to the sale of groceries is considered first. Entry and expansion by retailers belonging to the planning group is then described. The section continues with a geographic description of entry. Particular attention is paid to the distribution of planning applications by local authority administrative area. Finally, the set of planning histories for which the Competition Authority has information and which are subsequently analysed in Section 5 are identified.

## **Growth in Grocery Retailing Capacity in the State**

### **Aggregate Growth of Retailing Capacity**

- 4.6 As described in Report No. 1, grocery retailing capacity in the State grew considerably between 2001 and 2006. While there was an overall decline in the number of outlets retailing groceries in the State, overall grocery retailing capacity, as measure by floorspace (NRSA), increased. Table 2 below summarises the data presented in Report No. 1.
- 4.7 Between 2001 and 2006 the number of outlets retailing groceries in the State fell from 8,705 to 6,404. This implies a 26% fall over the period. Retailing capacity or NRSA (for grocery goods) grew from 1,069,548m<sup>2</sup> to 1,296,147m<sup>2</sup>. This implies 19% growth over the period.
- 4.8 There are two principal drivers of these trends. First, while the number of retail outlets belonging to the vertically-integrated retailers and affiliated retailers increased over the period, the number of retail outlets belonging to independent retailers fell by a greater amount, resulting in an overall decline in outlet numbers. Over the period, the number of retail outlets belonging to the vertically-integrated retailers increased from 204 to 337, implying growth of 65%. The number of

grocery retail outlets belonging to affiliated retailers increased from 1,549 to 2,569, implying growth of 66%. In contrast, number of outlets belonging to independent retailers decreased from 6,952 to 3,498, implying a fall of 50%.<sup>46</sup> Figure 5 below illustrates trends in numbers of retail outlets for the period 2001 to 2006.

**Table 2: Difference in Numbers of Retail Outlets and Net Retail Sales Area for Sale of Groceries (2001 – 2006)**

	2001	2006	Difference	% Growth
<b>Outlet Numbers*</b>				
Vertically-integrated Retailers	204	337	133	65%
Affiliated Retailers	1,549	2,569	1,020	66%
Independents **	6,952	3,498	-3,454	-50%
<b>Total without Independents</b>	<b>1,753</b>	<b>2,906</b>	<b>1,153</b>	<b>66%</b>
<b>Total with Independents</b>	<b>8,705</b>	<b>6,404</b>	<b>-2,301</b>	<b>-26%</b>
<b>Outlet Net Retail Sales Area for Grocery Goods in m<sup>2</sup> *</b>				
Vertically-integrated Retailers	273,926	442,815	168,889	62%
Affiliated Retailers	448,022	651,432	203,410	45%
Independents **	347,600	174,900	-172,700	-50%
<b>Total without Independents</b>	<b>721,948</b>	<b>1,094,247</b>	<b>372,299</b>	<b>52%</b>
<b>Total with Independents</b>	<b>1,069,548</b>	<b>1,269,147</b>	<b>199,599</b>	<b>19%</b>

\* See Tables 19, 20 and 25 of Report No. 1. Estimates for Independents are based upon AC Nielsen figures. It is assumed that the Net Retail Sales Area for grocery goods for an average independent grocery store is around 50 metres squared.

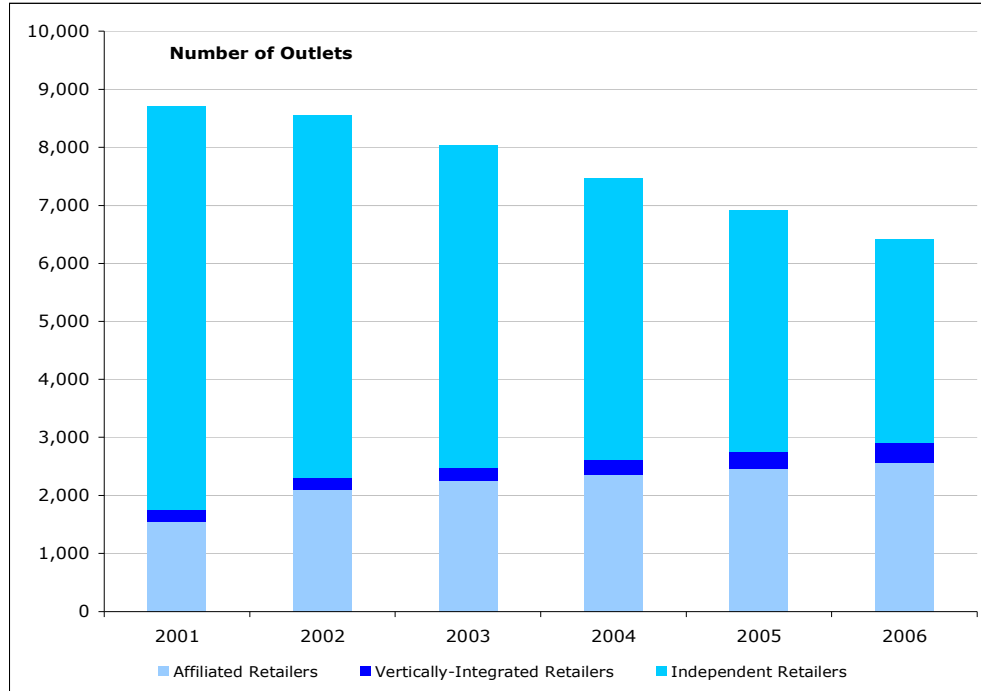
\*\* The decrease in the number of independent retail outlets reflects a long term trend in the sector. The trend is driven by a combination of closures and a movement by independent retailers to affiliation with a wholesaler-franchisor. For further information please see Report No. 1.

4.9 Second, despite the fact that the number of outlets retailing groceries in the State has fallen, overall grocery retailing capacity has increased. Together, Net Retail Sales Area for grocery goods, belonging to the vertically-integrated retailers, increased from 273,926m<sup>2</sup> to 442,815m<sup>2</sup>, implying growth of 62%. Similarly, Net Retail Sales Area, belonging to affiliated retailers, increased from 448,022m<sup>2</sup> to 651,432m<sup>2</sup>, implying growth of 45%. The decrease in the number of outlets belonging to independent retailers implies a decrease of 50% in

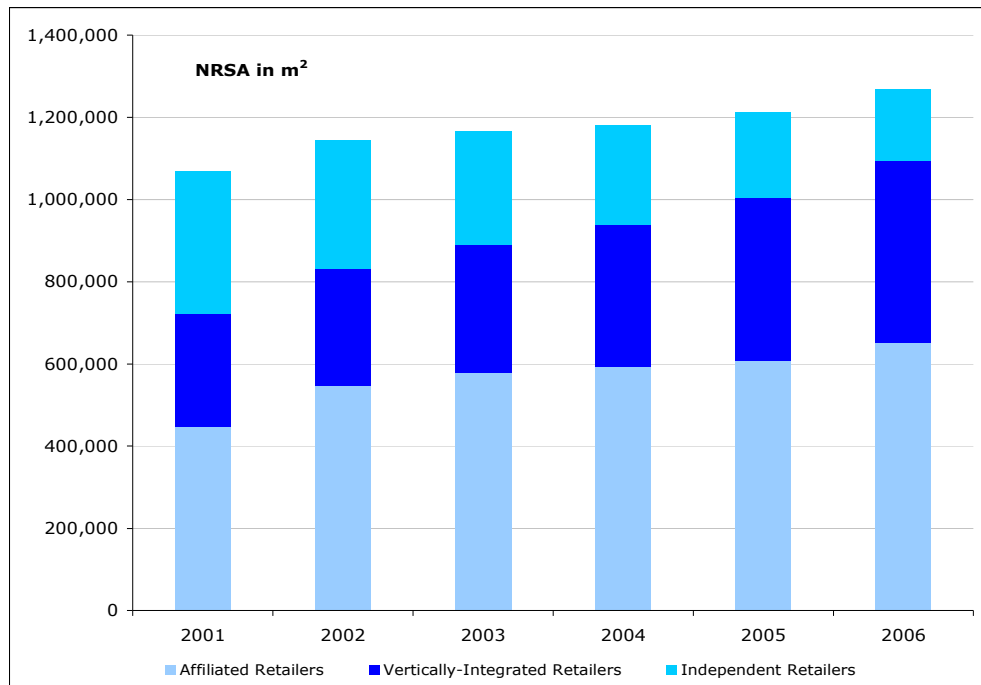
<sup>46</sup> According to AC Nielsen, since 1977 the total number of grocery stores has declined by 54%, pointing to a long-term trend. The number of independent stores has declined by 63%.

Net Retail Sales Area. As illustrated in Figure 6 below, the growth in capacity belonging to the vertically-integrated retailers and affiliated retailers, more than compensates for the decline of independents.

**Figure 5: Trend in Number of Retail Outlets by Retailer Type (2001 – 2006)**



**Figure 6: Trend in Net Retail Sales Area (in m<sup>2</sup>) for Grocery Goods by Retailer Type (2001 – 2006)**

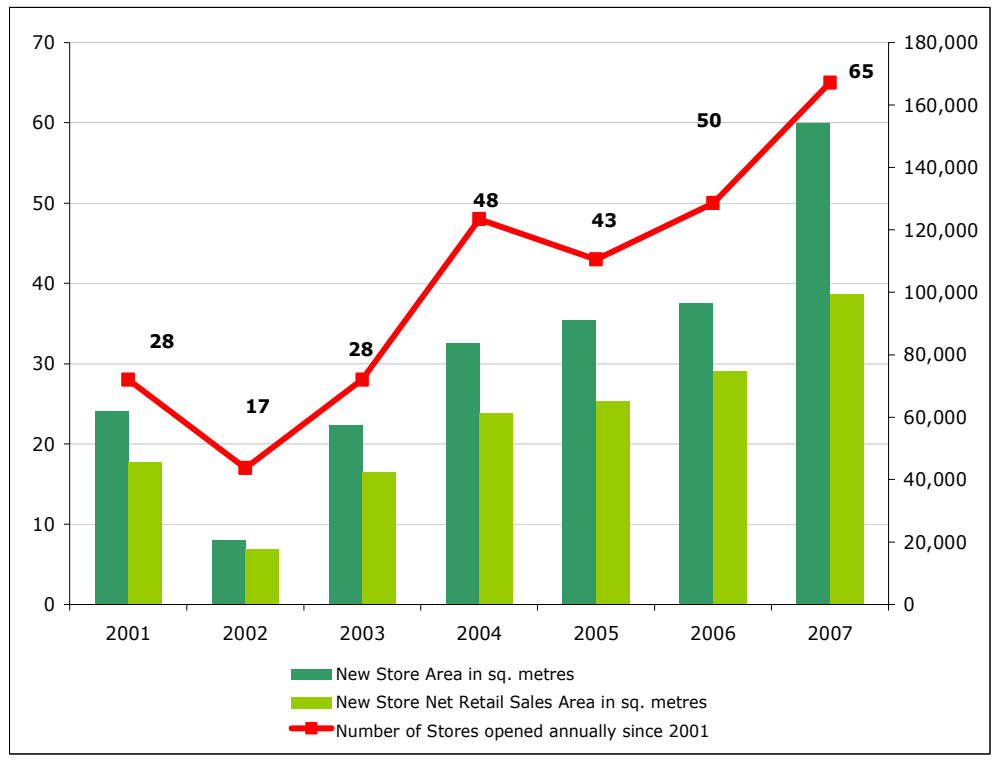


### Growth of Retailing Capacity by Retailer

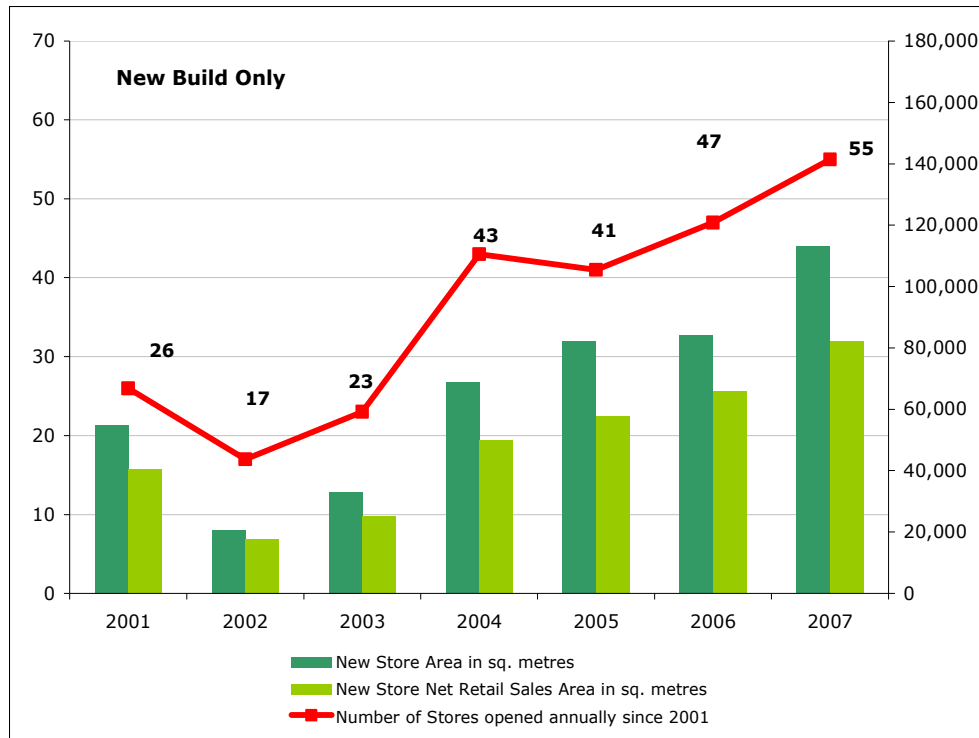
4.10 As indicated in Section 1 (see paragraph 1.19), the Competition Authority requested a further year's data on retail outlets opened by the planning group. For the purposes of this *Report* therefore, the entry and expansion history of the planning group is available for the period 2001 and 2007.

4.11 As of year-end 2000, the seven retailing groups belonging to the planning group together had 349 of retail outlets or, in terms of Net Retail Sales Area, 471,508m<sup>2</sup>. As of year-end 2007, the same retailing groups together had 569 retail outlets or, in terms of Net Retail Sales Area, 835,647m<sup>2</sup>. This implies 63% growth in the number of retail outlets and 77% growth in Net Retail Sales Area. Figure 7 and Figure 8 below illustrates the year-on-year trend for the period. The difference between the figures is Figure 8 that includes new builds only and therefore excludes acquisitions and replacements. As can be seen from the figures, the number of new retail outlets, and additional Net Retail Sales Area, generally follows an upward trend over the period.

**Figure 7: Overall Year-on-year Entry by the Planning Group (2001 - 2007)**



**Figure 8: Overall Year-on-year Entry (New Build Only) by the Planning Group (2001 - 2007)**



**Extent of Expansion by the Planning Group between 2001 and 2007**

4.12 Table 3 below shows the extent of expansion, in terms of numbers of grocery retail outlets, by each of the retailers in the planning group. As already noted, the overall growth in numbers of retail outlets for the planning group is 63% over the period. However, the breakdown by retailer shows some considerable diversity.

4.13 Based on growth rates, two groups can be distinguished. In the first group are ALDI, M&S and Lidl, who show the greatest growth rates in numbers of retail outlets over the period: 592%, 525% and 325% respectively. In the second group are Dunnes Stores, Tesco, Superquinn and SuperValu who show relatively lower levels of growth rates in numbers of retail outlets: 55%, 43%, 35% and 9% respectively.

4.14 The high growth rates in numbers of retail outlets of the first group of retailers needs to be put in context. Specifically, these growth rates are from a very low base. For example in 2000 ALDI had only eight retail outlets, accounting for just 2% of all retail outlets belonging to



the planning group. As of year-end 2007, having added 42 retail outlets over the period, ALDI accounted for 9% of all retail outlets belonging to the planning group.

**Table 3: Growth in Numbers of Retail Outlets (2001 - 2007)**

	Number of Retail Outlets active in 2000 (Proportion of Total for Planning Group)	Number of Retail Outlets active in 2007 (Proportion of Total for Planning Group)	Net increase in Retail Outlets over the period (Proportion of Total new outlets opened by the Planning Group)	% Growth over the period
ALDI	8 (2%)	50 (9%)	42 (19%)	525%
Dunnes Stores	66 (19%)	102 (18%)	36 (16%)	55%
Lidl	13 (4%)	90 (16%)	77 (35%)	592%
M&S	4 (1%)	17 (3%)	13 (6%)	325%
Superquinn	17 (5%)	23 (4%)	6 (3%)	35%
SuperValu*	171 (49%)	187 (33%)	16 (7%)	9%
Tesco	70 (20%)	100 (17%)	30 (14%)	43%
<b>Total</b>	<b>349</b> <b>(100%)</b>	<b>569</b> <b>(100%)</b>	<b>220</b> <b>(100%)</b>	<b>63%</b>

\* Data for SuperValu was only available since 2001.

4.15 The situation was similar for M&S who accounted for just 1% of all retail outlets belonging to the planning group as of year-end 2000. M&S opened an additional 13 retail outlets over the period and, as of year-end 2007 accounted for 3% of all retail outlets belonging to the planning group.

4.16 Lidl, with 13 retail outlets in 2000 accounted for 4% of all retail outlets belonging to the planning group. As of year-end 2007, Lidl had opened

an additional 77 retail outlets and accounted for 16% of all retail outlets belonging to the planning group.

- 4.17 While growth rates tend to overstate the extent of expansion for M&S, this is not the case with Lidl and ALDI who opened the first and second greatest number (35% and 19% respectively) of retail outlets among the planning group over the period. M&S opened the sixth (6%) greatest number of new retail outlets among the planning group respectively.
- 4.18 In a similar fashion, the relatively low growth rates in numbers of retail outlets of the second group of retailers needs to be put in context. Apart from Superquinn, with 17 or 5% of retail outlets in 2000, growth rates for each of the other three retailers were from a relatively high base.
- 4.19 Dunnes Stores showed the third greatest level of expansions over the period and accounted for 16% of all new retail outlets opened by the planning group over the period. With 66 or 19% of retail outlets belonging to the planning group at year-end 2000, Dunnes Stores had 102 or 18% of all retail outlets by year-end 2007.
- 4.20 Tesco showed the fourth greatest level of expansion in terms of numbers of retail outlets opened over the period and accounted for 14% of all new retail outlets opened over the period. Tesco, with 70 or 20% of all retail outlets belonging to the planning group in 2000, opened 30 additional retail outlets over the period so that by year-end 2007, with 100 retail outlets, Tesco accounted for 17% of all retail outlets belonging to the planning group.
- 4.21 SuperValu retailers, with 171 or 46% of all retail outlets belonging to the planning group at year-end 2000, showed the fifth greatest rate of expansion in absolute terms. Over the period, 16 additional SuperValu retail outlets were opened so that by year-end 2007, SuperValu had 187 retailers (or 33% of all retail outlets) belonging to the planning group. SuperValu therefore accounted for 7% of all new retail outlets opened by the planning group.
- 4.22 When expansion is measured in terms of additional retail floorspace a slightly different picture emerges. Table 4 below shows the extent of expansion, in terms of Net Retail Sales Area, by each of the retailers in

the planning group. Again two groups of retailers can be distinguished. In the first group are ALDI, M&S and Lidl, who show the greatest growth rates in retail floorspace over the period: 660%, 639% and 153% respectively. In the second group are Dunnes Stores, Tesco, SuperValu and Superquinn who show relatively lower levels of growth rates in retail floorspace: 72%, 52%, 39% and 25% respectively.

- 4.23 As before, growth rates need to be qualified in terms of absolute growth in floorspace. ALDI, who accounted for 1% of retail floorspace belonging to the planning group in 2000, added 38,210m<sup>2</sup> between 2001 and year-end 2007. ALDI accounted for 10% of all retail floorspace added by the planning group, placing them fifth, so that by year-end 2007, they accounted for 5% of all retail floorspace belonging to the planning group.
- 4.24 M&S, who accounted for 1% of retail floorspace belonging to the planning group at year-end 2000, added 9,007m<sup>2</sup> between 2001 and year-end 2007. M&S accounted for 2% of all retail floorspace added by the planning group, placing them sixth. By year-end 2007, M&S accounted for 2% of all retail floorspace belonging to the planning group.
- 4.25 Lidl with 13,442m<sup>2</sup> of retail floorspace accounted for 3% of all retail floorspace belonging to the planning group at year-end 2000. Between 2001 and 2007, Lidl added 88,652m<sup>2</sup> of retail floorspace and accounted for 12% of all retail floorspace belonging to the planning group. Lidl added the greatest amount of retail floorspace and accounted for 24% of all retail floorspace added by the planning group over the period.
- 4.26 As before, the relatively low growth rates in retail floorspace belonging to retailers in the second group needs to be put in context. Dunnes Stores showed the second greatest expansion in terms of retail floorspace among all retailers in the planning group (compared to third when expansion is measured in terms of numbers of retail outlets). Dunnes Stores added 83,150m<sup>2</sup> of retail floorspace between year-end 2000 and 2007 and accounted for 23% of all retail floorspace added by the planning group. Dunnes Stores' share of all retail floorspace decreased slightly between 2000 and 2007 from 25% to 24%.

**Table 4: Growth in Capacity (NRSA) of Retail Outlets (2001 - 2007)**

	Capacity (NRSA) of Retail Outlets in 2000 (Proportion of Total for Planning Group)	Capacity (NRSA) of Retail Outlets in 2007 (Proportion of Total for Planning Group)	Net increase in Capacity (NRSA) over the period (Proportion of Total new capacity opened by the Planning Group)	% Growth over the period
ALDI	5,977 (1%)	44,188 (5%)	38,210 (10%)	639%
Dunnes Stores*	115,688 (25%)	198,837 (24%)	83,150 (23%)	72%
Lidl	13,442 (3%)	102,094 (12%)	88,652 (24%)	660%
M&S*	5,876 (1%)	14,883 (2%)	9,007 (2%)	153%
Superquinn	33,633 (7%)	42,117 (5%)	8,484 (2%)	25%
SuperValu**	139,078 (29%)	193,035 (22%)	53,957 (14%)	39%
Tesco	157,814 (33%)	240,493 (29%)	82,679 (23%)	52%
<b>Total</b>	<b>471,508</b> <b>100%</b>	<b>835,647</b> <b>100%</b>	<b>364,139</b> <b>100%</b>	<b>77%</b>

\* For Dunnes Stores and M&S, the Net Retail Sales Area excludes clothing and home.

\*\* For SuperValu, only total store area was available. Data for SuperValu was only available since 2001.

4.27 Tesco expanded by the third greatest amount between 2000 and 2007 when expansion is measured in terms of floorspace (compared to fourth when expansion is measured in terms of numbers of retail outlets). Tesco added 82,679m<sup>2</sup> of retail floorspace between 2001 and 2007 and accounted for 23% of all retail floorspace added by the planning group. Tesco's share of all retail floorspace fell between 2000 and 2007, from 33% to 29%.

4.28 Floorspace belonging to SuperValu retailers grew by the fourth greatest amount between 2000 and 2007 (compared to fifth when expansion is measured in terms of numbers of retail outlets). Between

2000 and 2007, SuperValu retailers collectively added 53,957m<sup>2</sup> of retail floorspace and accounted for 14% of all retail floorspace added by the planning group. The share of floorspace belonging to SuperValu retailers fell from 29% to 22% over the period.

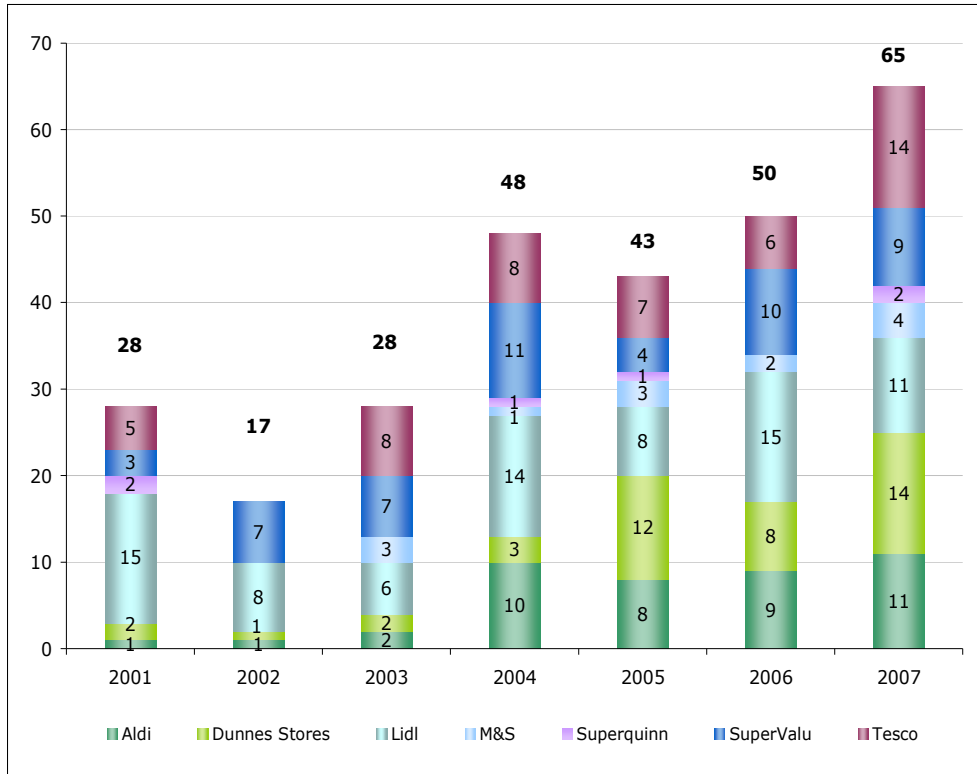
- 4.29 In terms of floorspace, Superquinn grew by the least amount of the planning group and contributed 2% to overall growth in retail floorspace. Superquinn had 33,633m<sup>2</sup> or 7% of retail floorspace as of year-end 2000. By year-end 2007, Superquinn had 42,117m<sup>2</sup> or 5% of all retail floorspace belonging to the planning group.

#### **Year-on-year Expansion by the Planning Group between 2001 and 2007**

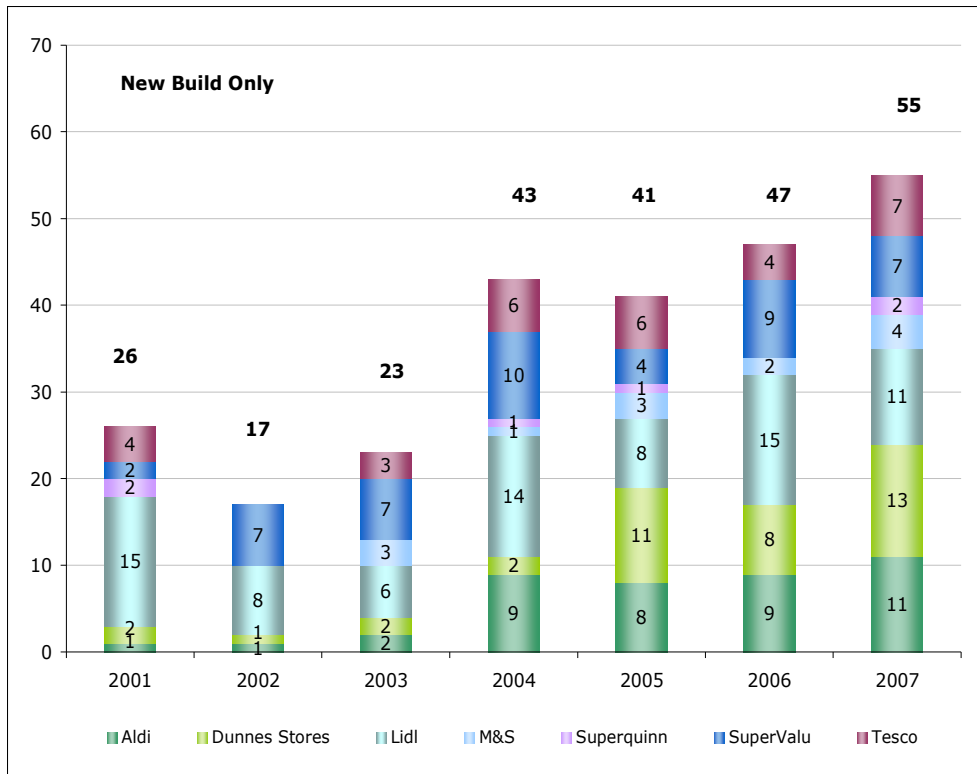
- 4.30 Figure 9 to Figure 12 below show the year-on-year expansion activities of each of the retailers belonging to the planning group. Figure 9 and Figure 10 show annual expansion in terms outlets opened. The difference between the figures is that Figure 10 includes only outlets that are entirely new builds and therefore excludes outlets that were either acquired during the relevant year, as is frequently the case with SuperValu, or that are replacements for another outlet, as is frequently the case with Tesco. Figure 11 and Figure 12 show annual expansion in terms of floorspace. Again the figures differ to the extent that only new builds are included in Figure 12. The discussion that follows is in terms overall expansion, i.e., expansion including replacements and acquisitions. Each of the figures shows a relatively even overall upward trend. When expansion is broken down by retailer, a slightly different picture emerges.

- 4.31 Expansion will first be considered in terms of outlet numbers. Lidl, the retailer in the planning group that opened the greatest number of new outlets (77) between 2001 and 2007, expanded at a relatively even pace. In most of the years over the period, Lidl opened more outlets than any other retailer. In 2002, 2003 and 2005 Lidl opened eight, six and eight new retail outlets respectively. In each of the other four years, Lidl opened between 11 and 15 new retail outlets. A simple count of the number of retail outlets opened by Lidl tends to overstate the magnitude of its rate of annual expansion owing to the relatively smaller size of retail outlets.

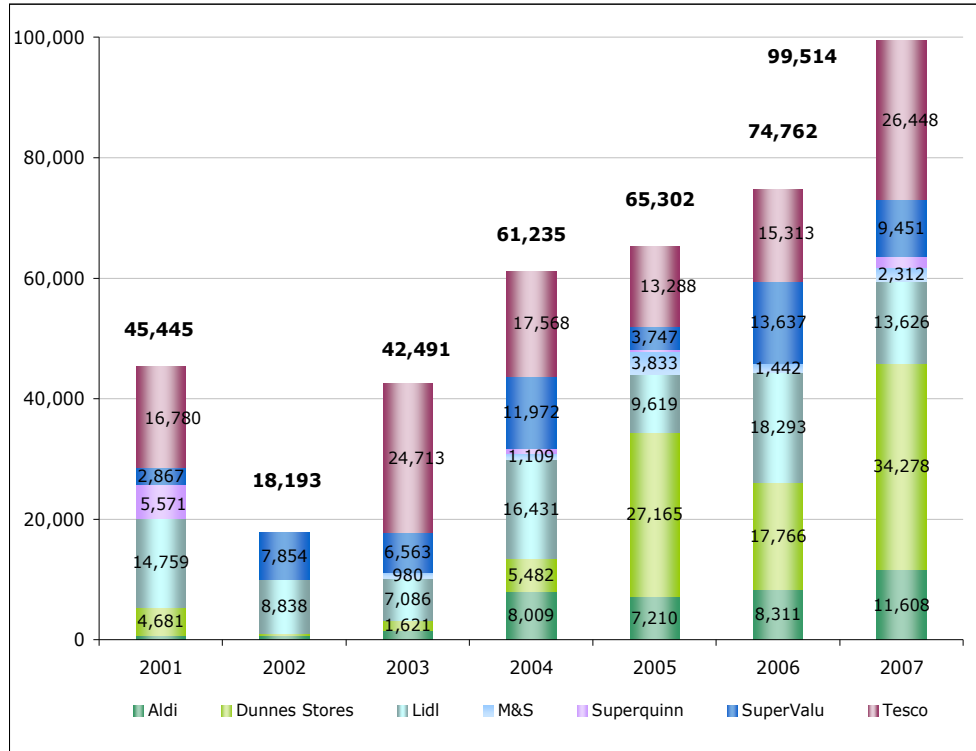
**Figure 9: Retailer Outlet Expansion (2001 – 2007)**



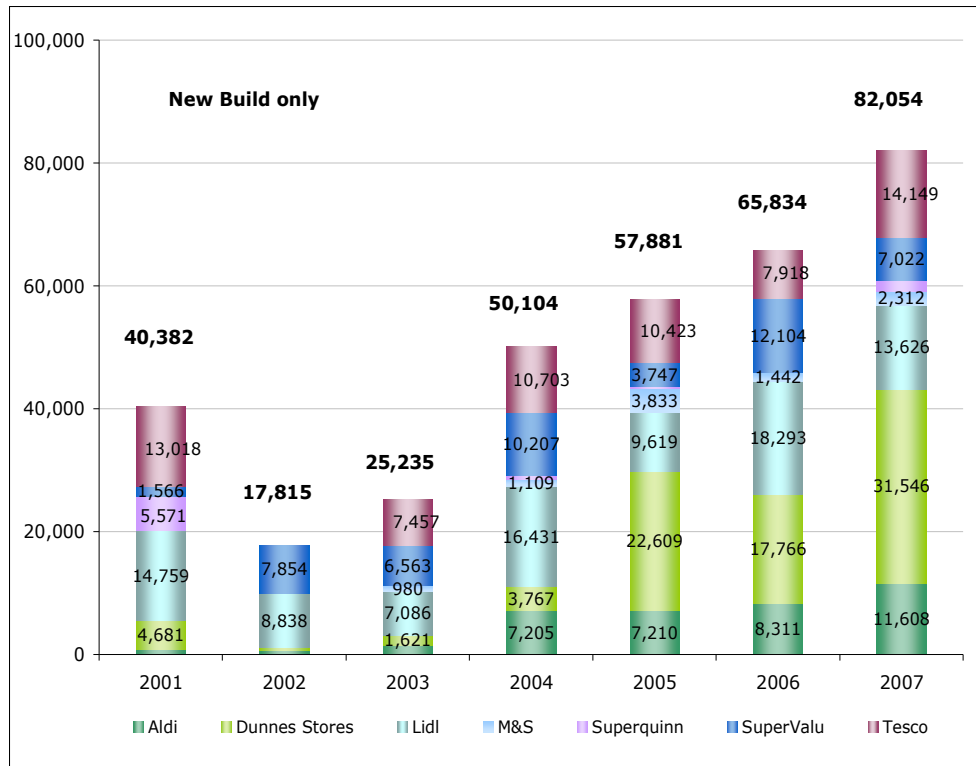
**Figure 10: Retailer Outlet Expansion (New Build Only) (2001 – 2007)**



**Figure 11: Retailer Capacity (NRSA, m<sup>2</sup>) Expansion (2001 – 2007)**



**Figure 12: Retailer Capacity (NRSA m<sup>2</sup>) Expansion (New Build Only) (2001 – 2007)**



- 4.32 Tesco and SuperValu retailers also expanded at a relatively even pace. Tesco opened between five and eight new outlets in each year over the period, apart from 2001 and 2006. No new Tesco outlets were opened in 2002, while 14 new outlets were opened in 2007. SuperValu opened between seven and 11 outlets in each year apart from 2001 and 2005 when three and four outlets were opened respectively. When floorspace is considered, Tesco's rate of annual expansion is more pronounced. The opposite is the case for SuperValu, who, like Lidl, tend to open smaller retail outlets.
- 4.33 ALDI and Dunnes Stores have followed a slightly different pattern. For each of the initial years in the period, i.e., 2001, 2002 and 2003, ALDI opened only one or two new retail outlets. During 2004, expansion by ALDI picked up significantly with 10 new outlets being opened. ALDI's rate of expansion remains relatively high for the remainder of the period. Similarly, in each of the initial years in the period, Dunnes Stores' rate of expansion is relatively low. For each of the years 2001, 2002, 2003 and 2004, Dunnes Stores opened one, two or three new retail outlets. Dunnes Stores' expansion increased significantly in 2005 when 12 new outlets were opened. Dunnes Stores continued this rapid expansion during 2006 and 2007. When floorspace is considered however, the level of increase in the rate of annual expansion is much greater for Dunnes Stores than for ALDI. Again the reason for this relates to the larger size of Dunnes Stores outlets compared to ALDI. In two of the three years when Dunnes Stores expanded rapidly, i.e., 2005 and 2007, they added more floorspace than any other retailer in the planning group. In 2006, the amount of floorspace added by Dunnes Stores was only just exceeded by Lidl who opened almost twice as many outlets in that year.
- 4.34 Superquinn and M&S have expanded less than the other retailers in the planning group. Superquinn opened no new retail outlets in three of the seven years since 2001 (2002, 2003 and 2006) and one or two outlets in each of the other years. M&S opened no new outlets during 2001 and 2002, and between one and four outlets in each of the following years.
- 4.35 When considering expansion in terms of floorspace a similar picture emerges. The principal differences are as follows. First, as already noted, the rate of annual expansion by Lidl, Tesco and SuperValu was



relatively even over the period with Lidl tending to open the greater number of outlets. When floorspace is considered, Tesco and Dunnes Stores tended to have the greater rate of annual expansion among the three.

## **Geographic Distribution of Entry**

### **Geographic Distribution of Retail Outlets**

4.36 The geographic distribution of entry and retailer location choice was discussed in some detail in Report No. 1. That Report found that, unsurprisingly, retailers tend to locate in and around significant population centres. SuperValu, Dunnes Stores and Tesco have the widest geographic distribution of retail outlets and can truly be regarded as having a national presence. The Report found that the distribution of SuperValu retail outlets differed somewhat from that of Tesco or Dunnes Stores in the sense that SuperValu retail outlets are not predominantly located in the more urban areas. Lidl and ALDI also have a wide distribution of retail outlets with a growing national presence. Superquinn and M&S had a more limited geographic distribution.

### **Entry by Local Authority Administrative Area**

4.37 For the purposes of this *Report*, the distribution of new retail outlets by local authority administrative area is of interest. Figure 13 and Figure 14 below illustrate entry by local authority administrative area between 2001 and 2007.<sup>47</sup>

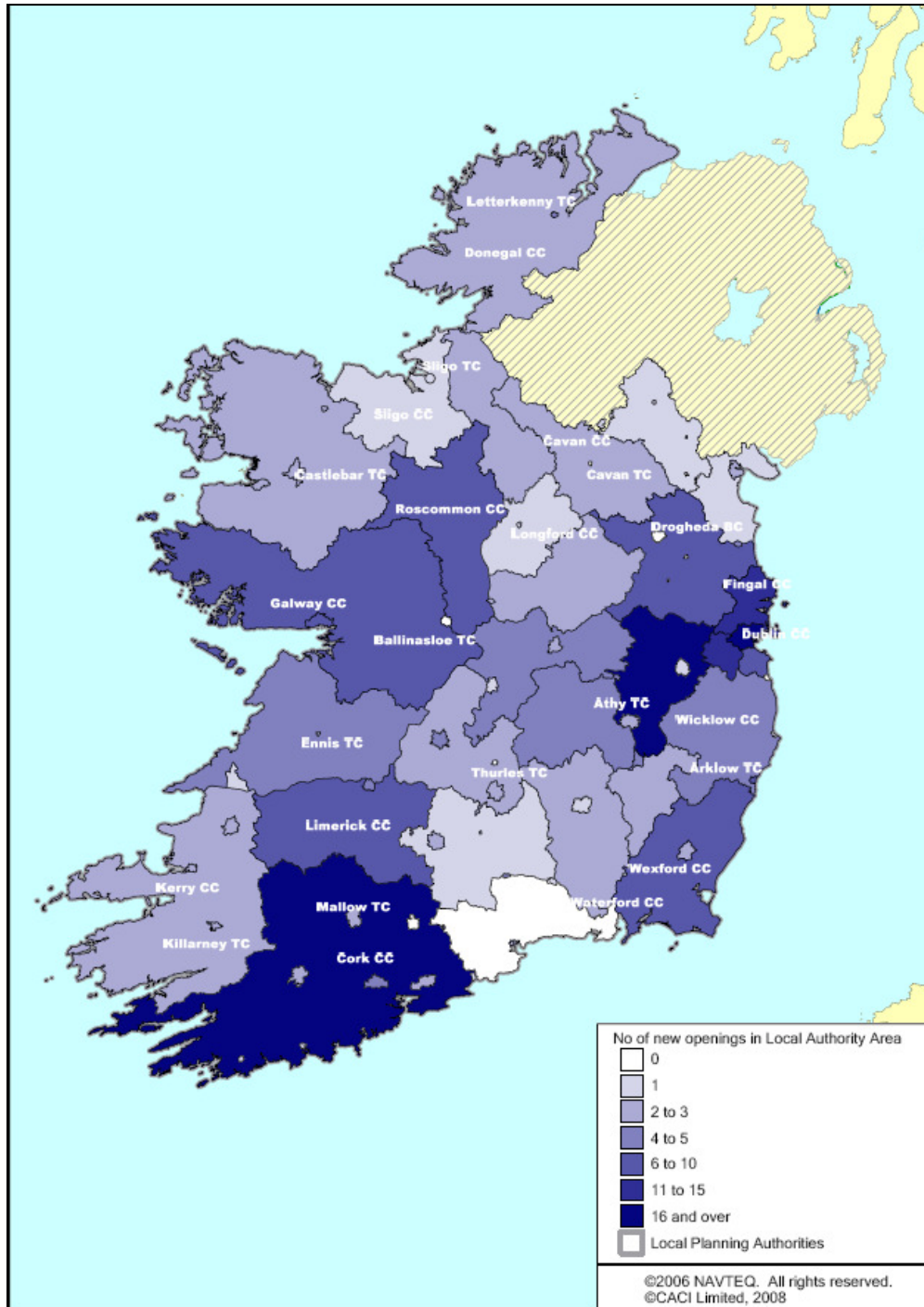
4.38 Figure 13 shows the number of grocery retail outlets opened in each local authority administrative area, while Figure 14 shows the amount of new floorspace added in each local authority administrative area. The figures clearly illustrate that the local authorities responsible for making planning decisions in their respective administrative areas have different degrees of experience in dealing with planning applications.<sup>48</sup>

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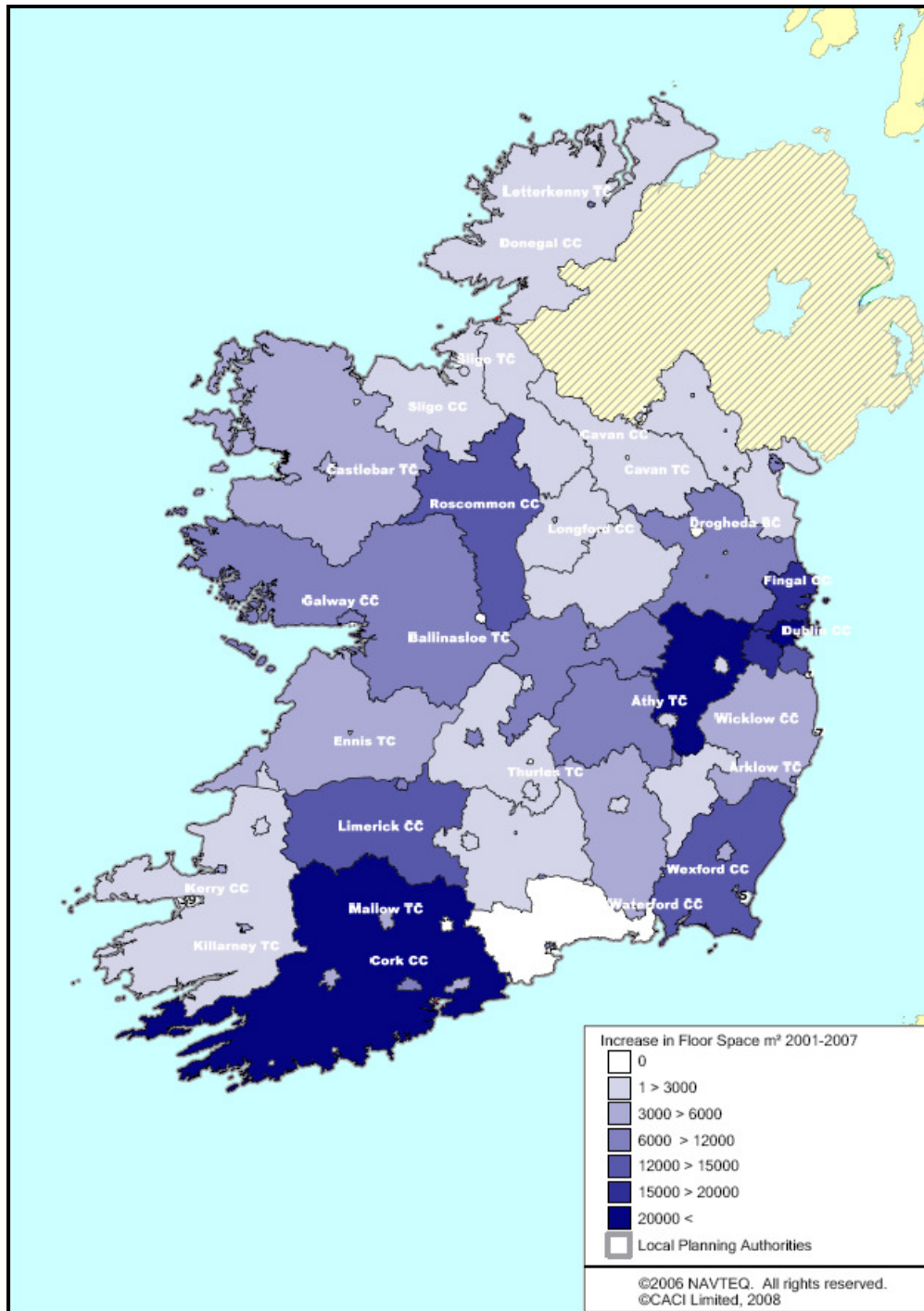
<sup>47</sup> Appendix C provides an illustration for each retailer in the planning group of the geographic locations of grocery retail outlets opened since 2001. The illustrations also indicate the locations of these new outlets in terms of their relative position to town centres (i.e., town centres, edge-of-centre, out-of-centre or out-of-town).

<sup>48</sup> Figure 13 and Figure 14 are based on a sample of 279 new outlets opened since 2001. The sample includes new builds, replacements and expansions. See Table 5 below for more information.

**Figure 13: Entry by Local Authority Administrative Area (2001 - 2007)**



**Figure 14: Increase in Floorspace NRSA by Local Authority Administrative Area (2001 - 2007)**

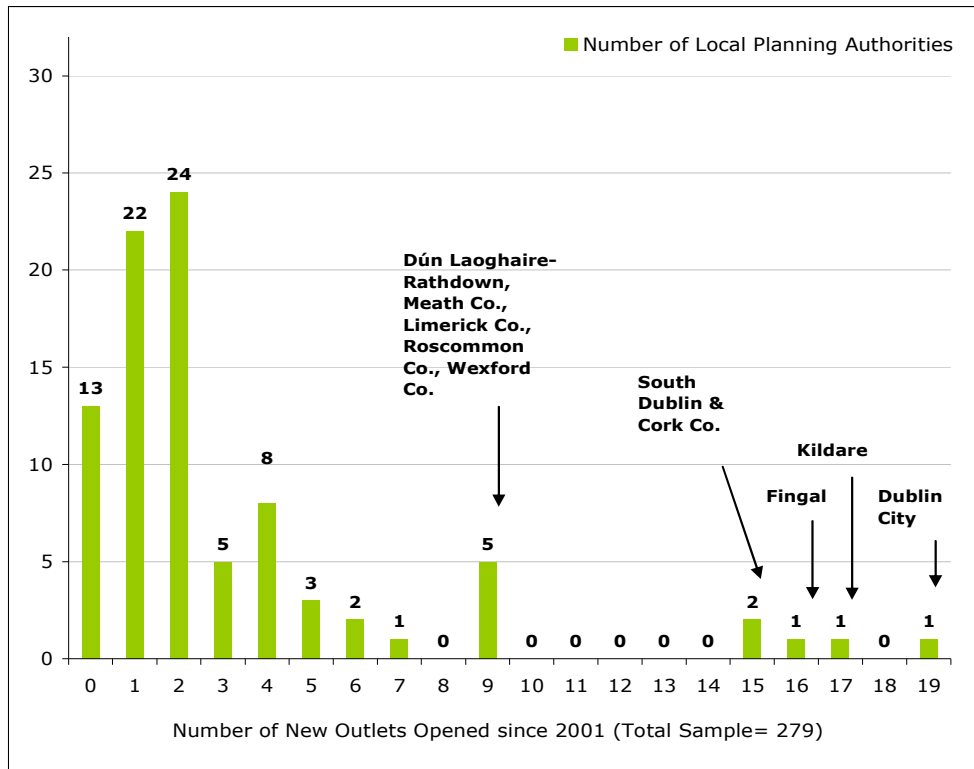


- 4.39 Looking more closely at entry by local authority administrative areas reveals that a considerable number of local authorities have little or no experience of entry or expansion of large grocery retail outlets. Figure 15 shows the distribution of new outlets across local authority administrative areas, while Figure 16 shows the distribution of floorspace expansion by local authority administrative area.<sup>49</sup>
- 4.40 Since 2001, only 15% of local authorities (13 out of 88 local authorities) have seen more than five new retail outlets open in their area administrative area. These areas include large counties such as Cork County, Wexford County and Meath County and smaller local authority administrative areas with high population densities such as Dublin City, Fingal and Dún Laoghaire-Rathdown.
- 4.41 No new retail outlets have been opened in 15% of local authority areas since 2001 (13 out of 88 local authorities): these areas include large counties such as Waterford County and small urban districts such as Bray, Clones and Trim. Only one outlet was opened in 25% of local authority administrative areas (22 local authorities): these areas include large counties like South Tipperary County and Sligo County. Many of the counties with zero or only one new retail outlet opened since 2001 have relatively small populations.

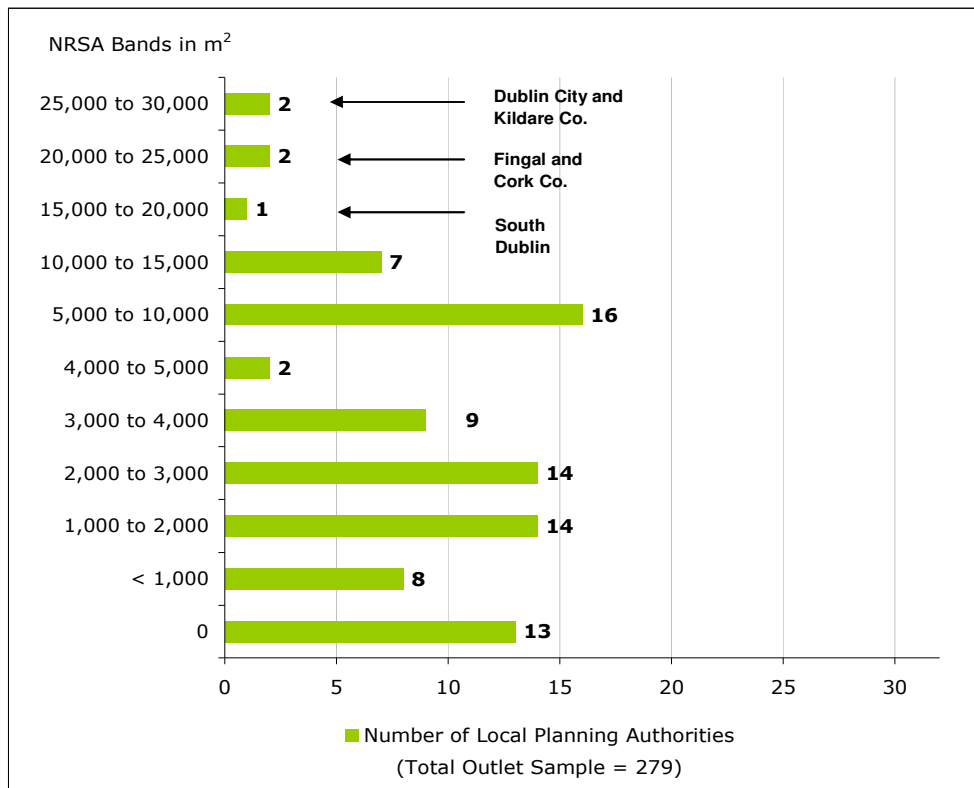
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<sup>49</sup> Figure 15 and Figure 16 are also based on 279 new outlets opened since 2001. See note 48 above.

**Figure 15: Distribution of Local Planning Authorities per Number of Retail Outlets Opened (2001 – 2007)**



**Figure 16 : Distribution of Local Planning Authorities per Size Band of Total NRSA of Outlets Opened (2001 – 2007)**



## Planning Histories

4.42 This section has thus far described entry and expansion in the Irish retail grocery sector between 2001 and 2007. In order to focus on how the planning process has influenced the entry or expansion activities of the main retailers, the Competition Authority requested that retailers in the planning group submit information on their experiences of the planning system. As discussed earlier, this group of retailers was chosen as they are similar in terms of pricing policies, product range carried and importantly for this *Report*, outlet size.

4.43 The majority of new outlets opened by retailers in the planning group are either entirely new outlets or outlets built with the purpose of replacing an existing outlet, and so require significant effort on behalf of the applicant to acquire planning permission. For example, planning applications must comply with the relevant area's development plan and should be accompanied by a retail impact assessment.<sup>50</sup>

4.44 Retailers belonging to the planning group were initially asked to provide a planning history for each retail outlet opened from January 2001 to March 2007. An updated second questionnaire covered the period from March 2007 to March 2008.<sup>51</sup> Specifically the planning group was asked to provide information on:

- The date of the initial (parent) application to construct the new retail outlet;
- The name of the applicant;
- The name of local planning authority applied to;
- The decision of the local planning authority;
- The length of time taken for a decision of the local authority<sup>52</sup> to be delivered;
- Whether the decision was appealed to An Bord Pleanála;

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<sup>50</sup> As noted in Report No. 1, retailers affiliated to a wholesaler-franchisor typically operate smaller retail outlets. Expansion of any of the affiliated retailer grouping is typically driven by changes of affiliation from one wholesaler-franchisor to another, movement from independence, or affiliation with a wholesaler-franchisor from start up. The planning requirements associated with these kinds of expansion are typically less onerous, either because little more than a change of fascia is required or because the size of the relevant retail outlets is small.

<sup>51</sup> For the sake of convenience, data is only analysed where a full year's worth of information is available. Data corresponding to the first three months of 2008 is therefore omitted.

<sup>52</sup> The "Length of Time for Decision" was calculated as being the length of time from the date of application to the local authority, to the decision date of the local authority or An Bord Pleanála if appealed. In the case of Further Information Requested, a "stop-the-clock" system was not asked for.

- The name(s) of appellant(s);
- The date of the grant decision from An Bord Pleanála; and
- The classification of the retail outlet. Each new store was classified as either a 'new build', 'expansion', 'replacement' or 'acquisition'.

4.45 The planning group was also asked to supply similar information on any unsuccessful applications from 2001 to 2007, i.e., planning applications that ultimately proved unsuccessful and resulted in no new entry. There were 70 such planning applications.

4.46 Table 5 below provides information on the entry of new retail outlets from 2001 to 2007 and the planning history that the Competition Authority received in relation to these new retail outlets. In all 279 retail outlets were opened between 2001 and 2007. The Competition Authority obtained the planning history on 241 of these retail outlets.

4.47 The number of new retail outlets opened since 2001 includes 217 new builds, eight expansions, 19 replacements, and 35 acquisitions. Tesco account for the majority of both outlet expansions (75%) and replacements (63%). This is at least partially explained by the fact that Tesco acquired Quinnsworth in 1997 and has since upgraded many of the newly acquired outlets. The SuperValu group of affiliated retailers account for the majority (71%) of acquisitions over the period. The reason for this lies in the business model operated by the SuperValu retailers. As described in some detail in Report No. 1, SuperValu retailers are affiliated retailers of the wholesaler franchisor Musgrave. Expansion by the wholesaler franchisors and their affiliated retailers involves new retailers choosing to affiliate themselves with the relevant wholesaler franchisor. Such retailers are either independent retailers (i.e., retailers that are not affiliated with any wholesaler-franchisor) or retailers that are affiliated with a different wholesaler franchisor and who choose to switch affiliation.

4.48 Given that no planning permission is needed when a new store is acquired from a previous retailer (if changes to the store layout are minimal), all acquisitions\change of signage applications are omitted from the forthcoming analysis in Section 5, leaving us with 241

instances of successful entry. When combined with the 70 unsuccessful planning applications, there are 311 planning histories for analysis.

**Table 5: Planning History Data for the Planning Group (2001 - 2007)**

	Tesco Ireland	Dunnes Stores	M&S	Superquinn	ALDI	Lidl	SuperValu	Total
<b>Outlets Opened</b>	48	42	13	6	42	77	51	279
<b>Type of development:</b>								
<i>New Build</i>	29	38	11	5	38	75	21	217
<i>Expansion</i>	6	0	0	0	0	0	2	8
<i>Replacement</i>	12	3	0	0	1	0	3	19
<i>Acquisitions*</i>	1	1	2	1	3	2	25	35
<b>Number of outlets for which planning histories were not obtained</b>								<b>3</b>
<b>Number of acquisitions (no relevant planning histories)</b>								<b>35</b>
<b>Number of Outlets with associated planning histories</b>								<b>241</b>
<b>Unsuccessful Planning Applications</b>								<b>70</b>
<b>Total Number of Planning Histories</b>								<b>311</b>

\* Acquisitions include acquisitions, change of fascia, change of signage, and change of use.

## Summary

4.49 Report No. 1 described the evolution of market structure at the retail and wholesale levels of the grocery supply between 2001 and 2006. That Report found that while the total number of grocery retail outlets in the State has been in decline, the amount of floorspace devoted to the sale of groceries has increased. Two principal factors are responsible for this trend. First, even though the number of outlets belonging to affiliated retailers and vertically-integrated retailers is increasing, the long term decline in the number of independent retailers tends to result in a net decrease in overall outlet numbers. Second, the growth of floorspace belonging to vertically integrated retailers and affiliated retailers more than compensates for the decline in floorspace belonging to the independents so that overall the trend in aggregate floorspace is upward.



- 4.50 The focus of this *Report* is on the retail planning system. For the purposes of this *Report* therefore, seven retailers have been identified, i.e., the so called planning group. The planning group consists of ALDI, Dunnes Stores, Lidl, M&S, Superquinn, the SuperValu retailers and Tesco. These retailers have been chosen for inclusion in the planning group because of the relatively larger size of their retail outlets. A priori, one would expect that larger retail outlets tend to face greater planning problems than smaller ones.
- 4.51 Each of the retailers in the planning group have been active in terms of entry and expansion over the period 2001 to 2007 to different degrees:
- In terms of outlet numbers, Lidl, ALDI and Dunnes Stores have been most active
  - In terms of new floorspace added over the period, Tesco, Dunnes Stores and Lidl have been most active.
- 4.52 The pattern of expansion by retailers over the period differs somewhat. For example, while Lidl, Tesco and SuperValu have shown relatively even expansion over the period, Dunnes Stores and ALDI have tended to expand by far greater amounts over more recent years. Expansion by Dunnes Stores, because of the greater numbers and larger size of outlets, is particularly notable over the last three years.
- 4.53 The discussion of the geographic distribution of entry by retailers showed the local authorities have widely varying degrees of experience in dealing with retail planning applications.
- 4.54 Finally, this section identified 311 planning histories that will be further analysed in Section 5. Each of these planning histories contains an account of how long and which hurdles retailers faced in the course of progressing an application through the retail planning process. The 70 failed applications also inform the discussion in Section 5.



## **5. THE PLANNING SYSTEM AS A BARRIER TO ENTRY AND EXPANSION**

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### **Introduction**

5.1 This section identifies and analyses a series of nine issues relating to how the planning system may inhibit entry or expansion in the grocery retail sector. The issues can be classified under three headings. First, three issues relating to restrictions on the size of developments are considered. Second, two issues relating to restrictions on location are described. Finally, four issues relating to uncertainty in planning system are analysed.

### **Restrictions on Size**

5.2 Within the Irish retail planning system, there are three restrictions on the size of retail development that may act as a disincentive to entry and expansion in grocery retailing. The first is the cap on retail floorspace contained in the Retail Planning Guidelines. The cap is an outright restriction whose object is to limit the scale of entry. The second and third factors, while not outright restrictions, may have the effect of limiting entry to the sector.

### **Issue 1: The Retail Caps/Thresholds**

#### **Issue**

5.3 As discussed in Section 3, the Retail Planning Guidelines outline a number of restrictions on the scale of retail development that may be permitted by local planning authorities. In particular the guidelines specify a number of floorspace caps/thresholds, which must be applied to retail development. If the amount of retail floorspace applied for by a retailer exceeds these caps, planning permission will not be granted or conditions may be attached to a grant of permission that requires the floorspace to be reduced below the cap. Table 6 below summarises the floorspace caps.

5.4 Caps on floorspace are, by their very nature, barriers to entry and expansion. Their object is to limit the retailing capacity of operators in any single location. There are a number of potential effects of such restrictions. First, restrictions on size limit the extent of competition between retailers. Second, restrictions on size limit inter-brand competition. These effects combine to limit consumer choice and value.

**Table 6: Summary of Retail Floorspace Caps**

<b>Outlet Type</b>	<b>Location</b>	<b>Cap/Threshold</b>
<b>Large Food Store</b>	Greater Dublin Area	3,500m <sup>2</sup> NRSA
<b>Large Food Store</b>	Outside Dublin Area	3,000m <sup>2</sup> NRSA
<b>Hypermarket</b>	Greater Dublin Area	3,500m <sup>2</sup> Convenience Goods NRSA
<b>Hypermarket</b>	Outside Dublin Area	3,000m <sup>2</sup> Convenience Goods NRSA
<b>Retail Warehouse</b>	All of State*	6,000m <sup>2</sup> gross (including any ancillary garden centres).

\* This cap does not apply within the functional areas of the four Dublin local authorities and other National Spatial Strategy Gateways.

Source: Retail Planning, Guidelines for Planning Authorities (2005)

## **Analysis**

- 5.5 As already noted, the object of retail caps is to limit the extent of entry or expansion by retailers. In principle, the effect of retail caps is to limit the nature and extent of competition. Large food stores facilitate large shopping aisles, additional shelves and food storage, and thus support a wider choice of products for consumers. Limiting floorspace, through its effect on limiting the extent of product range that a retailer can carry, tends also to limit inter-brand competition and innovation. In other words, a greater scarcity of shelving space implies a more limited product range and fewer opportunities for new products to successfully launch.
- 5.6 Table 7 below shows, separately for retail outlets that were active pre-2001 and outlets opened between 2001 and year-end 2007, average outlet size in terms of Net Retail Sales Area and the distribution of outlet sizes across six bands. Information is presented for all relevant retail outlets belonging to the planning group and is broken down by retailer.

**Table 7: Size of Retail Outlets (NRSA) (Outlets Active Pre-2001 and Opened between 2001 and 2007)**

	Tesco Ireland	Dunnes Stores	M&S	Superquinn	ALDI	Lidl	SuperValu	Total
<b>Outlets Active Pre-2001</b>								
<b>Number</b>	59	61	4	17	8	13	136	298
<b>Average Size (m<sup>2</sup>)*</b>	2,163	1,844	1,469	1,978	747	1,034	1,001	1,461
<b>Band 1:</b> Less than 500m <sup>2</sup>	0%	8%	0%	0%	0%	0%	8%	5%
<b>Band 2:</b> 500m <sup>2</sup> to 1,000m <sup>2</sup>	12%	11%	0%	0%	100%	77%	47%	32%
<b>Band 3:</b> 1,000m <sup>2</sup> to 1,500 m <sup>2</sup>	15%	23%	75%	0%	0%	23%	32%	25%
<b>Band 4</b> 1,500m <sup>2</sup> to 2,500m <sup>2</sup>	32%	35%	25%	88%	0%	0%	13%	25%
<b>Band 5</b> 2,500m <sup>2</sup> to 5,000 m <sup>2</sup>	41%	23%	0%	12%	0%	0%	0%	13%
<b>Band 6</b> Greater than 5,000m <sup>2</sup>	0%	0%	0%	0%	0%	0%	0%	0%
<b>Outlets Opened Since 2001</b>								
<b>Number</b>	45	40	11	5	39	75	26	241
<b>Average Size (m<sup>2</sup>)</b>	2,400	2,232	744	1,516	918	1,162	1,210	1,529
<b>Band 1:</b> Less than 500m <sup>2</sup>	18%	3%	37%	20%	0%	0%	0%	6%
<b>Band 2:</b> 500m <sup>2</sup> to 1,000m <sup>2</sup>	4%	0%	46%	40%	64%	27%	27%	25%
<b>Band 3:</b> 1,000m <sup>2</sup> to 1,500 m <sup>2</sup>	4%	10%	9%	0%	36%	73%	58%	38%
<b>Band 4</b> 1,500m <sup>2</sup> to 2,500m <sup>2</sup>	25%	60%	9%	20%	0%	0%	15%	17%
<b>Band 5</b> 2,500m <sup>2</sup> to 5,000 m <sup>2</sup>	42%	27%	0%	20%	0%	0%	0%	13%
<b>Band 6</b> Greater than 5,000m <sup>2</sup>	7%	0%	0%	0%	0%	0%	0%	1%

\* Only outlets with associated planning histories are considered (see Table 5). All outlet sizes are in terms of Net Retail Sales Area.

5.7 Some differences emerge between the stock of outlets that were active pre-2001 and those that have been opened since. Overall, average

outlet size is somewhat greater for outlets that have been opened since 2001. The overall average size of retail outlets increased by just 4% from 1,461m<sup>2</sup> to 1,529m<sup>2</sup>. This appears to be driven by a shift in the distribution of outlets across the size bands. Specifically, there is a decrease, from 32% to 25%, in the proportion of outlets falling into the second band which corresponds with an increase, from 25% to 38%, in the proportion of outlets falling into the third band. The other notable difference in the distribution of outlet sizes is that while there were no outlets falling into the highest band for outlets active pre-2001, there were three such outlets opened since 2001.

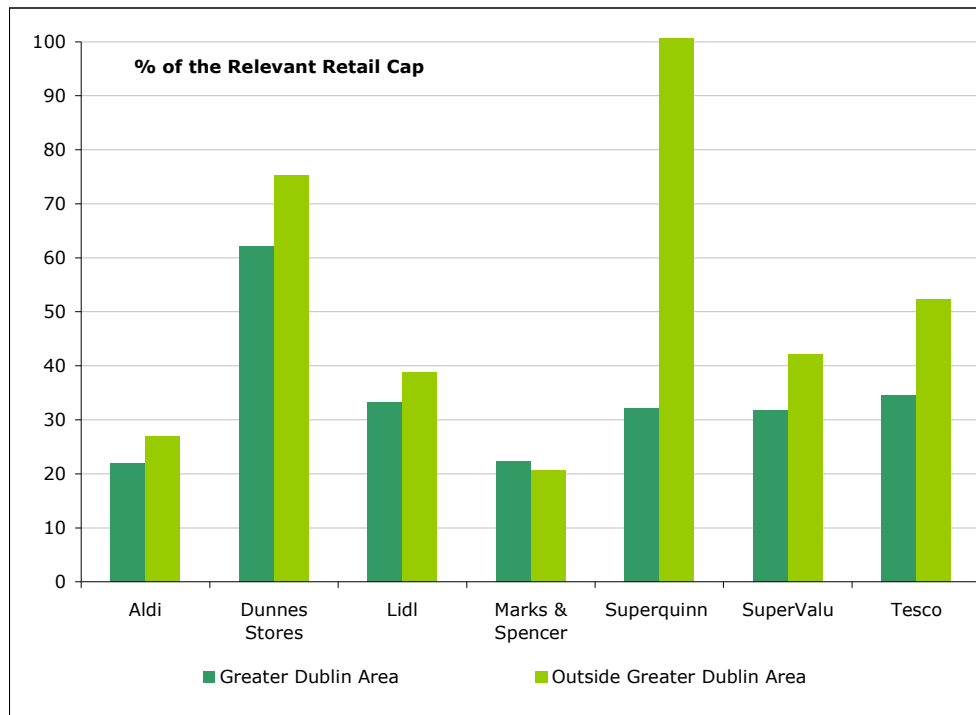
- 5.8 When the distribution of outlet sizes by retailer is examined, the trend is not uniform. Dunnes Stores, SuperValu and Tesco, who have the greatest number of retail outlets, each saw increases in the average size of retail outlets for outlets opened since 2001. For these retailers, the average size of outlets opened since 2001 was 21%, 21% and 11% greater than the average size of outlets that they opened pre-2001 respectively. New retail outlets opened by Dunnes Stores tended to fall into the higher bands with 60% and 28% falling into the fourth and fifth bands respectively. SuperValu tended to open the greater proportion of retail outlets in the third band.
- 5.9 The relatively low increase in average outlet size for Tesco, when compared with Dunnes Stores and SuperValu, is explained the fact that the majority of outlets opened by Tesco since 2001 fall into two size bands, the first and fifth size band. In other words, Tesco has expanded with two types of outlets, relatively small ones and much larger ones. Indeed, the proportion of outlets falling into the first and fifth bands, 18% and 42% respectively, are greater than for any other retailer. Further, Tesco is responsible for opening all three of the outlets falling into the sixth band.
- 5.10 Lidl and ALDI also saw increases in the average size of retail outlets. For these retailers, the average size of outlets opened since 2001 was 12% and 23% greater than the average size of outlets that were opened pre-2001 respectively. Unlike the other retailers in the planning group, outlets belonging to Lidl and ALDI are relatively uniform in size. Pre 2001, Lidl outlets fell into the second and third bands. Similarly for outlets opened since 2001, though a greater proportion of outlets opened since 2001 fall into the third band. ALDI

outlets opened pre-2001 were all in the second band, while outlets opened since 2001 tended to fall in the second and third bands. It should be noted however, that the vast majority of outlets belonging to each of Lidl and ALDI were opened since 2001.

5.11 In contrast, M&S and Superquinn each saw decreases in the average size of outlets. For these retailers, the average size of outlets opened since 2001 was 49% and 23% less than the average size of outlets that were opened pre-2001 respectively.

5.12 Figure 17 below shows, separately for outlets within the Greater Dublin Area and outside the Greater Dublin Area, average size of retail outlets of the retailers in the planning group as a proportion of the relevant retail cap. For each retailer, average outlet size is closer to the relevant retail cap outside the Greater Dublin Area. The reason is that the relevant retail cap is lower outside the Greater Dublin Area. Both within and outside the Greater Dublin Area, Tesco, Dunnes Stores and Superquinn have outlets that are closer to the relevant caps.

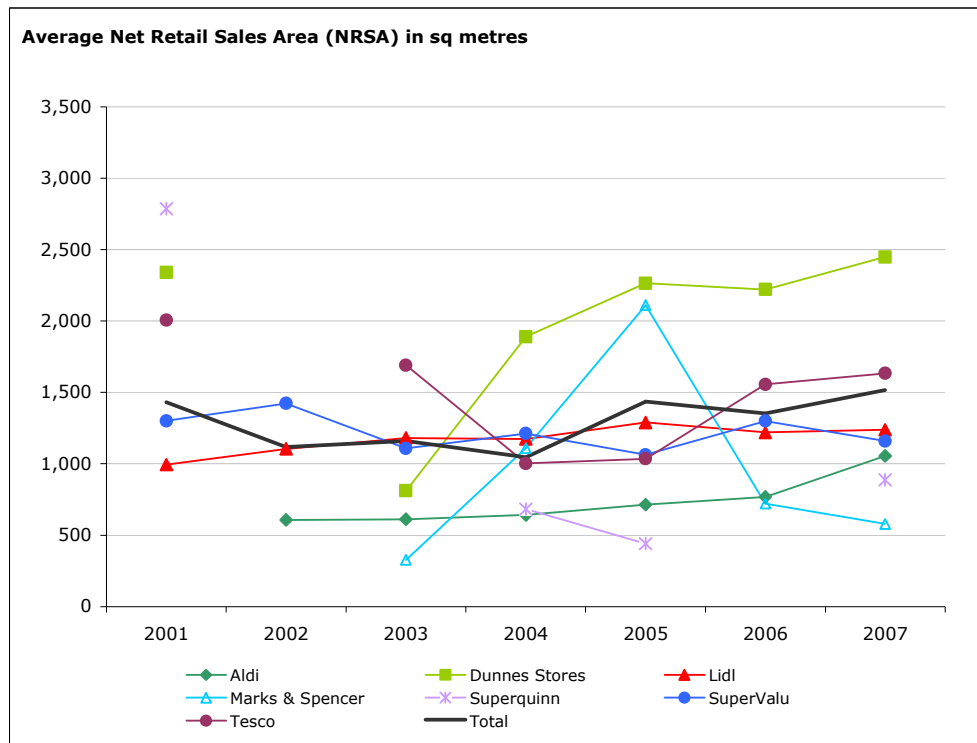
**Figure 17: Average Outlet Size (NRSA) as % of Relevant Retail Cap<sup>53</sup>**



<sup>53</sup> Based on the sample of 241 outlets with associated planning histories (see Table 5). The value for Superquinn outside the Greater Dublin Area is based on one outlet only. For Dunnes Stores, M&S and Tesco only grocery NRSA was considered.

5.13 Figure 18 below shows trends in average outlet sizes, both by retailer and overall. Overall, average outlet size has remained relatively constant. This relative overall stability hides the diversity between retailers. Dunnes Stores shows a strong year-on-year increase in average outlet size. Average outlet size shows considerable year-on-year diversity for Tesco and M&S (though there are relatively few new M&S outlets opened in each of the years). The trend for both ALDI and Lidl is slightly upward over the period, while it is slightly downward for SuperValu. There were too few Superquinn outlets opened to establish a trend.

**Figure 18: Trend in Average Store Size (NRSA) Of New Openings (2001 – 2007)<sup>54</sup>**



5.14 The floorspace caps appear to be binding in a limited number of cases. Of the 70 planning applications that were ultimately unsuccessful, it appears that the retail caps were at issue in only two cases - once in relation to an application for development during 2007 in Galway and

<sup>54</sup> Based on the sample of 241 outlets with associated planning histories (see Table 5).



once during 2006 in Waterford.<sup>55</sup> On both occasions, Tesco was the applicant.

- 5.15 Another issue that arises in relation to the retail caps concerns so called 'discount food stores'. Discount food stores are described in the Retail Planning Guidelines as being single level, self service stores normally of between 1,000m<sup>2</sup> and 1,500m<sup>2</sup> of gross floorspace, selling limited range of goods at competitive prices and often with adjacent car parking. Elsewhere in the Retail Planning Guidelines discount food stores are referred to as:

*"having a potential role in extending the choice and range of retailing, particularly for certain sectors of the community. Their customer catchment and retail offer is different to the mainstream superstores and supermarkets and their trade draw will be different; this will be relevant when assessing impact, although the effect on neighbourhood centres and other shops should also be considered. Discount food stores can effectively anchor smaller centres or local neighbourhood centres."*<sup>56</sup>

- 5.16 While there is no specific mention of a cap on the size of discount food stores, it appears that planning authorities may interpret the Retail Planning Guidelines to mean that discount food stores can have a gross floorspace of no greater than 1,500m<sup>2</sup>. For example, this issue arose in the case of Lidl's application to set up a discount food store in Gorey in 2003.<sup>57</sup> In this case, one of the reasons Wexford County Council refused the planning application, was that the proposed development was of gross size 1,661m<sup>2</sup> and was therefore contrary to the Retail Planning Guidelines. Lidl appealed on the grounds that there were other circumstances where planning authorities had granted applications which were in excess of 1,500m<sup>2</sup>.

- 5.17 In examining the case An Bord Pleanála noted that the definition of discount food stores in paragraph 76 of the Retail Planning Guidelines was clear and established that discount food stores are stores of up to 1,500m<sup>2</sup>. The inspector acknowledged that some 'confusion' arises in that the definition of a discount food store within Annex 1 of the Retail Planning Guidance refers to such a facility as 'normally' being between 1,000m<sup>2</sup> and 1,500m<sup>2</sup> gross. This might indicate that exceptionally such a store could be above 1,500m<sup>2</sup>, or for that matter below

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<sup>55</sup> Planning reference Waterford (05/507) and Co. Galway. (06/3007). See Appendix D.

<sup>56</sup> Roger Tym & Partners in association with Jonathan Blackwell & Associates (2005 ) *Retail Planning Guidelines for Planning Authorities*, p. 28

<sup>57</sup> Planning reference number 2003/1264. See Appendix D.

1,000m<sup>2</sup>. However the inspector concludes that paragraph 99 of the Guidelines, which states "*Planning permission should also not be granted for any change of use which would result in a retail outlet contravening the floorspace caps/thresholds recommended in these guidelines*", is key and thus saw no flexibility in its application.<sup>58</sup>

### **Comment**

5.18 What emerges from the above discussion is that the retail caps are binding in only a limited number of cases. That is, grocery retail outlets opened since 2001 are, in most cases, well below the levels of the caps. Indeed, of 70 unsuccessful entry attempts (see Appendix D), in only two cases was the planning application refused because the proposed development exceeded the level of the cap. There is a trend among some retailers toward larger outlets, so the effect of the cap is likely to be become relatively more binding over time.

5.19 Two further points are worth making. Firstly, there may be a competition issue in relation to the treatment of discount food stores. Local authorities and An Bord Pleanála appear to interpret the Retail Planning Guidelines as meaning that discount food stores cannot exceed 1,500m<sup>2</sup> gross floorspace. This goes somewhat toward explaining the relative uniformity in size of Lidl and ALDI outlets and suggests that these operators face a different retail cap than other food retailers. The differential treatment of discount outlets appears to hinge on the pricing strategy associated with these retailers and is therefore difficult to justify on competition grounds. The notion that more price-aggressive competitors are limited in the extent of retail capacity that they may offer is anti-competitive. Indeed, given that the business model of discount retailers typically involves low margins and relatively high turnover, the restriction on floorspace likely inhibits the effectiveness of the business model. Whether or not this is the intention of the Retail Planning Guidelines is unclear, but in practice, the evidence appears to suggest that this is in fact the case.

5.20 Secondly, one effect that does not show up in the analysis of applications refused and granted, which is unsurprising, is the effect

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<sup>58</sup> In relation to Lidl's specific response that the cap did not seem to always apply, the inspector stated the examples referred to cases that were applied for prior to the introduction of the guidelines in 2001. Lidl's application was eventually granted on condition that Lidl reduce the gross size of the store to below 1,500m<sup>2</sup>. For more information see: <http://www.pleanala.ie/casenum/203458.htm>

that the caps have on deterring entry entirely. Specifically, it does not make sense for a retailer to apply for planning permission for outlets that are above the cap. Large format grocery outlets are typically associated with discount retailers. The unobserved effect of the caps therefore is to deter entry of discount grocery retailers.

## **Issue 2: Development Plans and Local Authority Assessment of Floorspace Requirements**

### **Issue**

5.21 Legislation requires that each local authority prepare and publish a development plan for its administrative area every six years. As discussed in Section 3, development plans are the “*main instrument of development and control*” and deliver planning policies promoted by the Department of the Environment, Heritage and Local Government. The Retail Planning Guidelines require that local planning authorities incorporate strategic retail policies and strategies in their development plans. In particular, these retail policies and strategies must “*establish the optimum location for new retail development which is accessible to all sections of society and is of a scale which allows the continued prosperity of traditional town centres and existing retail centres.*”<sup>59</sup>

5.22 However before such ‘optimum locations’ can be confirmed in a development plan, local authorities must carry out some background research. In order to plan for future development, the Retail Planning Guidelines state that:

*“the relevant counties should assess the broad requirement for additional development over the plan period. This assessment should take account of both emerging demands in the retail market and a general estimate of future requirements based on projected changes in the local population and consumer spending.”*<sup>60</sup>

5.23 Although the Retail Planning Guidelines state that these assessments should not seek to inhibit competition, the requirement for such an assessment may act as a barrier to entry. That is, their effect may be to limit entry, although admittedly, in a manner that is less direct than the retail caps. Specifically, an assessment by a local authority of the likely additional floorspace required within their administrative area could be seen as determining how many entrants will be admitted to

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<sup>59</sup> Roger Tym & Partners in association with Jonathan Blackwell & Associates (2005) *Retail Planning, Guidelines for Planning Authorities*, p. 6.

<sup>60</sup> *Ibid*, p. 14-15.

the retail trade in a particular area. The Goodbody Report in 2000 highlighted this as a concern stating that these assessments could be “*anti-competitive, would tend to stifle innovation, and would be contrary to the interest of consumers.*”<sup>61</sup>

## **Analysis**

5.24 Annex 3 of the Retail Planning Guidelines suggests a quantitative method that local authorities may follow when estimating future floorspace requirements. The suggested methodology involves:

- **Estimating Existing Floorspace:** The Retail Planning Guidelines suggest a number of information sources and techniques that may be of use when assessing existing floorspace. For example, the Retail Planning Guidelines suggest adapting the data contained in the 1988 Census of Services or initiating a floorspace survey;
- **An Assessment of Demand:** Planning authorities should attempt to acquire a general picture of emerging retailer demand by looking at trends in retail planning applications, conducting general research (newspapers, journals, periodicals etc.), and by consulting with private interests (retailers, leisure operators, property agents etc.);and
- **An Assessment of the Need for Additional Development:** The suggested methodology for assessing the *need* for retail floorspace involves estimating the future value of consumer expenditure (taking account of population growth, shopping patterns and consumer spending) and, by making use of appropriate sales density ratios, converting this into a floorspace requirement.

5.25 The process of planning for future retail development is an onerous one for local authorities. Local authorities are in effect required to anticipate changes in consumer preferences and economic fortunes as well as the relative efficiency of different types of retail in terms of floorspace usage. Given the difficulties associated with carrying out this type of exercise in a reliable and consistent (across local authorities)

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<sup>61</sup> Goodbody Economic Consultants (2000), *The Impact of the Draft Retail Planning Guidelines on the Retail Sector*, p.74.

fashion, it must necessarily be the case that whatever estimates are arrived at, are only indicative at best.

- 5.26 The principal concern from a competition perspective is that local authorities place too great a weight on the floorspace requirement estimates. The Consumer Strategy Group, in its 2005 report also identified this issue as a concern. The report of the Consumer Strategy Group notes that the results of the estimation technique outlined in the Retail Planning Guidelines *"are extremely sensitive to variations in the inputs used in terms of estimated expenditure per capita, population projections and turnover rates."*<sup>62</sup> The report continues:

*"Some planning authorities view the calculated estimated requirements in a prescriptive manner, using them as targets. The result is that they become floorspace caps rather than minimum levels of provision. This may result in planning authorities under-estimating future retail floorspace requirements of an area and responding negatively to planning applications that are seen to exceed the quantitative guidelines. The result of this is likely to restrict competition and choice, and is hence clearly against the interests of consumers."*<sup>63</sup>

- 5.27 Apart from the concern that local authorities may place too great an importance on estimated future floorspace requirements, an additional concern with the methodology suggested for estimating future floorspace requirements in the Retail Planning Guidelines is that it may lead to a situation where competition within local retail markets is managed a level below that which is desirable from a social welfare perspective. The final step in the process of estimating floorspace requirements involves local authorities converting estimated future consumer spend to estimated floorspace requirements by using appropriate sales density ratios. Sales density ratios are ratios of turnover per square metre of floorspace. Different types of retailing involve different sales density ratios; indeed, different retailers operating similar retail operations but under different business models and market conditions have different sales density ratios. A key observation here is that the level of competition in a market will also influence sales density ratios. If estimated future floorspace requirements are based on historical information, which reflect historical competition conditions, then adherence to the floorspace requirements that are produced by the methodology imply that

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<sup>62</sup> Consumer Strategy Group (2005), *Make Consumers Count*, p. 32.

<sup>63</sup> *Ibid.*

competition may never increase. In effect, the level of competition becomes managed at a historical level and increases in consumer choice and the lower prices that competition brings may never truly materialise.

### **Comment**

5.28 Of the 70 grocery retail applications that ultimately proved unsuccessful, 54 applications were initially refused by a local authority and 56 by An Bord Pleanála. Contravention of the local authority development plan, on the grounds that the size of the proposed development exceeded that envisaged in the retail strategy of the local authority and thus would lead to an excessive amount of additional retail floorspace being provided was raised as one of the reasons in five of the local authority refusals (three for Tesco, twice for ALDI, once for Lidl) and seven of the refusals by An Bord Pleanála (five for Tesco, once for ALDI and Lidl). The first party's response is typically to point out that the figures presented in retail strategies are indicative and are not intended to be prescriptive, nor to place a cap on the scale of future retail developments. In practice therefore, it seems that local authorities and An Bord Pleanála do place weight on projections of required future retail floorspace contained in local authority development plans.

### **Issue 3: The Retail Impact Assessment and Competitor Turnover Diversion**

#### *Issue*

5.29 In addition to outlining the planning policies of local authorities, development plans, *inter alia*, are also intended to provide clarity and guidance to retailers and developers making planning applications regarding retail development. To this end, development plans should identify clear policies and proposals, thus providing a context in which retailers and developers can prepare proposals with a degree of certainty as to the outcome of a particular application. However, as discussed in Section 3, the Retail Planning Guidelines also state that on making a planning application, there is an onus on applicants to demonstrate compliance with the relevant local authority development plan. In particular, planning applicants are required to demonstrate that a proposed development will not have a material adverse impact

on the vitality and viability of any existing town centre.<sup>64</sup> The applicant demonstrates this in the form of a retail impact assessment.

5.30 Retail impact assessments involve the calculation of trade diversion from existing retail centres. If new entry will result in a significant decrease in the turnover of incumbents in the retail centre, and thus have a negative impact on the vitality and viability of the town, entry will not be permitted. The requirement that planning applicants demonstrate that not 'too much' trade is diverted from incumbent retailers is a barrier to entry which may block entry entirely or limit the scale of entry.

### **Analysis**

5.31 The purpose of a retail impact assessment is to outline the impact that a new retail outlet will have on existing retail centres in the surrounding area. As discussed in Section 3, Annex 4 of the *Retail Planning Guidelines* sets out six steps that must be completed in a retail impact assessment. The six steps are:

- **Catchment:** Identification of catchment or study area;
- **Available Expenditure:** Estimation of expenditure available within the defined catchment or study area;
- **Existing Turnover:** Estimation of the turnover of existing centres within the catchment area which are likely to be affected by a new development;
- **Turnover Projections:** Estimation of the turnover of the new development for which a planning application is being lodged;
- **Diverted Expenditure:** Estimation of the quantum of consumer retail spending available in the catchment area which will be diverted from existing centres to the new retail development. This assessment normally highlights the diversion of expenditure by zone within the catchment area; and
- **Trade Diversion:** Aggregation of the zonal diversions from each centre to the new development to provide an estimate of trade diversion; trade diversion is then expressed as a

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<sup>64</sup> Roger Tym & Partners in association with Jonathan Blackwell & Associates (2005) *Retail Planning, Guidelines for Planning Authorities*, p. 20.

proportion of a centre's turnover at the target year to provide a measure of impact.

- 5.32 The fifth and sixth steps in a Retail Impact Assessment are included so as to show the effect that new entry will have on the vitality and viability of a town. Normal competition would suggest that a new retail development would naturally impact on existing stores. Retailers expect to compete with each other over customers and to vie for market share. By only granting entry that will not have an adverse effect on existing retailers, local authorities could possibly halt the development of competition within a local market, and negatively impact on consumer welfare.
- 5.33 Of the 70 grocery retail applications that ultimately proved unsuccessful, 54 applications were initially refused by a local authority and 56 by An Bord Pleanála. The retail impact assessment was raised as an issue in 21 of the local authority refusals (10 for Tesco, five for ALDI and six for Lidl) and 27 of the refusals by An Bord Pleanála (17 for Tesco, five for ALDI, four for Lidl and once for M&S). A common theme running through these decisions concerns disagreements over estimates of the quantum of retail impact, often arising from differences in the assumptions made by applicants and appellants.
- 5.34 Rather than discouraging entry entirely, the more likely effect in practice of the methodology suggested in Annex 4 of the Retail Planning Guidelines is to reduce the scale of entry where it does occur. When retail planning applicants assemble the various elements of the retail impact assessment, it is likely that they will attempt to minimise the estimate of trade diversion arrived at. This may be achieved in a number of ways. For example, applicants may attempt to overestimate the quantum of potential available expenditure or underestimate the extent of diverted expenditure from different centres, and so on. However, depending on the success or otherwise of these efforts, the final calculation of trade diversion will depend crucially on the amount of floorspace at the proposed development. The final option available to an applicant who is trying to minimise trade diversion is therefore to reduce the amount of floorspace at the proposed outlet.



## **Comment**

5.35 The requirement that retailers must produce a retail impact assessment that demonstrates that not too much trade will be diverted from existing retail centres is potentially anti-competitive. Issues arising in relation to the exact methodology to be employed to produce estimates of trade diversion aside, the principal and policy underlying the process are at odds with competition policy. The Goodbody Report raised this concern and recommended that the Retail Planning Guidelines avoid criteria that are anti-competitive in this way and that development plans and retail policies and strategies have regard to the maintenance and enhancement of competition in local markets.<sup>65</sup>

## **Restrictions on Location**

5.36 The second class of restrictions concerns the location of retail development. Two issues under this heading are considered. The first restriction relates to the retail hierarchy contained in the Retail Planning Guidelines and is a presumption against out-of-town development. While the restriction relates to the location of outlets, the effect is to likely limit the size of retail developments and is therefore conceptually not entirely distinct from the size restrictions identified in the previous subsection. The second restriction relates to the zoning of land for retail development.

## **Issue 4: The Retail Hierarchy**

5.37 The Retail Planning Guidelines adopt a “hierarchical approach” to the location of retail development. The “hierarchical approach” to planning means that the preferred location for new retail development, where practicable and viable, is within a town centre. Where it is not possible to provide the form and scale of retail development that is required on a site within the town centre, then consideration can be given to a site on the edge of the town centre so as to encourage the possibility of one journey serving several purposes. Only where it can be demonstrated that there is no town centre or edge-of-centre sites which are suitable, viable or available should alternative out-of-centre sites be considered. The hierarchical approach raises the possibility that retailers reduce the scale of their outlets to fit into available town centre sites and as such, this requirement acts as a barrier to entry.

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<sup>65</sup> Goodbody Economic Consultants (2000), *The Impact of the Draft Retail Planning Guidelines on the Retail Sector*, pp. 46-47.

## Analysis

5.38 Table 8 below illustrates the effect of the hierarchical approach to locations. Overall, the majority, at 59%, of outlets opened since 2001 are located at either town centre or edge-of-centre (28% and 31% respectively). Proportionately fewer outlets, at 24%, are located out-of-centre, and fewer again, at 17% are located out-of-town.

5.39 Broadly speaking, the preference within the planning system toward retail development closer to town centres appears also to be borne out by individual retailers' experiences. The effect appears to be most pronounced for Tesco, Superquinn and M&S with 80%, 80% and 64% of new outlets located at either town centre or edge-of-centre. The other retailers in the planning group show a relatively more even distribution across locations. Dunnes Stores has the greatest proportion of outlets, at 30% located out-of-town.

**Table 8: Location of New Retail Outlets by Retailer (2001 – 2007)**

	Tesco Ireland	Dunnes Stores	M&S	Superquinn **	ALDI	Lidl	SuperValu	Total
<b>Total</b>	45	40	11	5	39	75	26	241
<b>Town Centre</b>	19	13	6	3	2	17	7	67
Proportion	42%	32%	55%	60%	5%	23%	27%	28%
<b>Edge-of-Centre</b>	17	7	1	1	17	26	6	75
Proportion	38%	18%	9%	20%	44%	35%	23%	31%
<b>Out-of-Centre</b>	2	8	1	0	11	25	10	57
Proportion	4%	20%	9%	0%	28%	33%	38%	24%
<b>Out-of-Town</b>	7	12	3	1	9	7	3	42
Proportion	16%	30%	27%	20%	23%	9%	12%	17%

\* Only outlets with associated planning histories are considered (see Table 5).

\*\* Superquinn classified 2 stores as district centres. These have been included as town centres.

5.40 Table 9 below shows how outlet sizes vary depending on their location. Overall across retailers in the planning group, there appears to be a tendency toward opening larger outlets at out-of-town locations. This effect is strongest for Tesco and M&S whose out-of-town outlets are considerably larger than outlets at other locations. The same effect, though less pronounced appears to operate for Dunnes Stores and SuperValu. The effect seems to be least pronounced for ALDI and Lidl. This is explained by the fact that ALDI and Lidl outlets tend to be relatively uniform in size (see also the earlier discussion on discount food stores at paragraph 5.15). The opposite effect appears to hold for Superquinn whose out-of-town outlets appear to be smaller than those located at either town centre or edge-of-centre, although this is for one observation only.

**Table 9: Location and Average Outlet Size of New Retail Outlets by Retailer (2001 – 2007)**

	Tesco Ireland	Dunnes Stores	M&S	Superquinn **	ALDI	Lidl	SuperValu	Total
<b>Outlet Opened</b>	45	40	11	5	39	75	26	241
<b>Town Centre</b>	19	13	6	3	2	17	7	67
Average Size (m <sup>2</sup> )*	2,390	2,022	618	1201	1,074	1,123	1,190	1,621
<b>Edge-of-Centre</b>	17	7	1	1	17	26	6	75
Average Size (m <sup>2</sup> )	2,157	2,266	280	3089	887	1,139	1,250	1,457
<b>Out-of-Centre</b>	2	8	1	0	11	25	10	57
Average Size (m <sup>2</sup> )	1,566	2,151	353	-	886	1,204	1,140	1,224
<b>Out-of-Town</b>	7	12	3	1	9	7	3	42
Average Size (m <sup>2</sup> )	3,255	2,465	1,202	887	983	1,195	1,414	1,864

\* Only outlets with associated planning histories are considered (see Table 5). All outlet sizes are in terms of Net Retail Sales Area.

\*\* Superquinn classified 2 stores as district centres. These have been included as town centres.

5.41 The Retail Planning Guidelines state that:

*"When making planning applications the private sector must be adaptable and flexible in appraising potential sites and buildings and should liaise with the planning authority before submitting assessments of site or building suitability. Retailers should be prepared to make reasonable compromises and, if possible, adapt standard development formats in order to accommodate retail schemes on sites which are well located in relation to the sequential approach to retail development."<sup>66</sup>*

5.42 There are numerous instances in the planning decisions of local authorities and An Bord Pleanála where failure to meet the sequential test is cited as one of the reasons for refusing planning permission. Often in these cases, a third party identifies alternative suitable sites. Such sites are typically of a smaller size than that of the site of the proposed development. As expected therefore, the effect of the sequential test is to limit the scale of entry by forcing retailers into smaller sites closer to town centres.

### **Comment**

5.43 The Goodbody Report made the point that:

*"left to free market forces and in the absence of planning controls, retailers would probably opt for larger stores in these centres than the planning practices inherent in the DRPG are likely to permit. This means, in turn, that in these circumstances the DRPG will add to retailing costs and prices."<sup>67</sup>*

5.44 As the discussion shows, the hierarchical approach toward the location of retail development has been effective. Retail outlets have tended to be open at more central locations and are consequently smaller. As the Goodbody Report notes, this tends to increase costs for retailers by inflating the cost of land within centres and by limiting scale economies.

## **Issue 5: The Zoning of Land for Retail Development**

### **Issue**

5.45 A number of retailers raised the zoning of suitable sites for retailing as a barrier to entry. Zoning has the potential to operate as a barrier to entry in two ways. First, an insufficient quantity of land may be zoned

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<sup>66</sup> Roger Tym & Partners in association with Jonathan Blackwell & Associates (2005), *Retail Planning, Guidelines for Planning Authorities*, p. 22 paragraph 61.

<sup>67</sup> Goodbody Economic Consultants (2000), *The Impact of the Draft Retail Planning Guidelines on the Retail Sector*, p. 78.

for retail. Second, land zoned for retail may be inappropriate for development, for example, if it is of an insufficient size to facilitate entry on a scale capable of enhancing competition in the relevant local market.

## **Analysis**

- 5.46 As discussed in Section 2 (see paragraph 2.15), development plans are used as a zoning instrument. Land use zoning is concerned with identifying the quantity of land needed over the period of the development plan. The Competition Authority examined the reasons why 70 planning applications were ultimately refused (see Appendix D). The contravention of zoning objectives arises frequently.
- 5.47 Of the 70 unsuccessful grocery retail planning applications, 54 were initially refused by a local authority. The contravention of zoning objectives was raised as one of the reasons for a refusal to grant planning permission on 35 occasions: on 10 occasions for Tesco, once for M&S, 13 for ALDI and 11 for Lidl.
- 5.48 Of the 70 unsuccessful grocery retail planning applications 56 were ultimately refused by An Bord Pleanála. The contravention of zoning objectives was raised as one of the reasons for a refusal to grant planning permission on 33 occasions: on 10 occasions for Tesco, once for M&S, 11 for ALDI and 11 for Lidl.
- 5.49 For ALDI and Lidl, it appears that applications for proposed retail development that were refused concerned sites that were zoned as industrial warehousing sites. Planners were of the view that ALDI and Lidl discount outlets could not be categorised as industrial warehouses. This occurred on more than half of the occasions where ALDI and Lidl applications were ultimately refused.
- 5.50 In a number of the other instances where zoning objectives were raised as reasons for refusing planning permission, the issue appears less clear cut. For example, the distinction between 'convenience' and 'comparison' retail has been raised as a reason for refusing planning permission. Convenience retail includes grocery goods while comparison retail includes bulky household items.

## **Comment**

5.51 As noted, zoning objectives, while legitimate, have the potential to limit the scale of entry. Retailers have raised the issue of scarcity of suitable sites due to zoning, as a barrier to entry. The number of instances where zoning is raised as an issue when planning authorities refuse planning permission suggests that a scarcity of suitable sites is a genuine concern.

## **Certainty within the Planning System**

5.52 The final class of issues relate to uncertainty within the planning system. Uncertainty within the planning system can act as a barrier to entry and expansion because it tends to raise the cost of entry. Entry or expansion restrictions need not effectively prohibit entry, but by delaying it, competition in the sector may be affected. Four issues under this heading are considered. The first relates to the consistency of decision making by the relevant decision making bodies within the planning system, i.e., local authorities and An Bord Pleanála. The second issue relates to the timing of decisions by local authorities and An Bord Pleanála. The third set of issues relate to appeals of planning decisions made by local authorities and their potential to create uncertainty in the system. The final issue focuses on the potential within the planning system for retailers to delay the entry of competitors.

5.53 Before turning to these issues however, it will be useful to first give an overview of the number of successful and unsuccessful planning applications made by the planning group, as well as the various paths through the planning process that lead to these two outcomes.

5.54 Table 10 below shows the number of planning applications that were submitted by the planning group that were either ultimately successful (i.e., resulted in the opening of a new retail outlet) or unsuccessful (i.e., did not result in the opening of a new retail outlet). Of the 311 planning applications made, 241 or 78% were ultimately successful while the remaining 70 or 22% were ultimately unsuccessful. As the table shows, individual retailers' experiences differ, in some cases quite substantially from the trend. Tesco, Lidl and ALDI account for the vast majority of unsuccessful applications. Each of these retailers also appears to have a relatively high proportion of unsuccessful

applications relative to their respective total number of applications made. Tesco has the highest proportion of unsuccessful applications at 40% (of 75), followed by ALDI with 32% (of 57) and Lidl, just below the average with 20% (of 94). The proportion of Dunnes Stores, M&S and Superquinn applications that ultimately proved unsuccessful lie between 0% and 8%.<sup>68</sup>

**Table 10: Unsuccessful and Successful Applications**

Planning Stages	Tesco Ireland	Dunnes Stores	M&S	Superquinn	ALDI	Lidl	SuperValu*	Overall
<b>Total Applications</b>	75	42	12	5	57	94	26	311
<b>Successful Applications</b>	45	40	11	5	39	75	26	241
Proportion	60%	95%	92%	100%	68%	79%	100%	78%
<b>Unsuccessful Applications</b>	30	2	1	0	18	19	n/a	70
Proportion	40%	5%	8%	0%	32%	20%	-	22%

\*SuperValu retailers were not asked to supply information on unsuccessful planning applications.

5.55 Figure 19 below is a stylised representation of the 'routes' through the planning process to both successful and unsuccessful entry. Nine routes in all are identified. Five of the routes (Routes 1 to 5) result in successful entry while the other four result in unsuccessful entry. The successful routes to entry are as follows:

- Route 1 (Approval/No Appeal):** Of applications that are ultimately successful, the most common route through the planning process involves a successful application to a local authority that is not appealed (60% of the 241 successful entries);

<sup>68</sup> Unlike the vertically-integrated retailers, Musgrave Retail Partners do not get directly involved in the planning process, i.e. affiliated retailers make applications independently. Musgrave were only able to provide the Competition Authority with information on successful applications by contacting the 26 successful entrants directly.

- **Route 2 (Approval/3<sup>rd</sup> Party Appeal Unsuccessful):** The second most common route to successful entry involves an application to a local authority that is approved, but unsuccessfully appealed by a third party (29% of the 241 successful entries);
- **Route 3 (Approval/3<sup>rd</sup> Party Appeal Withdrawn):** The next most common route to successful entry involves a successful application to a local authority that is appealed, but where the appeal is withdrawn (7% of the 241 successful entries);
- **Route 4 (Denied/1<sup>st</sup> Part Appeal Successful):** The least common route to successful entry involves an unsuccessful application to a local authority that is successfully appealed by the first party (less than 2% of the 241 successful entries);
- **Route 5 (Approval/1<sup>st</sup> Party Appeal of Conditions Successful):** The final route to successful entry is a separate type of first party appeal. This occurs when a first party appeals conditions attached to a grant decision (2% of the 241 successful entries).<sup>69</sup>

5.56 The four routes to unsuccessful entry are as follows:

- **Route 6 (Denied/Unsuccessful 1<sup>st</sup> Party Appeal):** The most common route to unsuccessful entry involves an unsuccessful application to a local authority followed by an unsuccessful appeal by the first party (60% of the 70 unsuccessful entries).
- **Route 7 (Denied/No 1<sup>st</sup> Party Appeal):** The third most common route to unsuccessful entry involves an unsuccessful application to a local authority that is not appealed (15% of 70 unsuccessful entries).
- **Route 8 (Approval/3<sup>rd</sup> Party Appeal Successful):** The second most common route to unsuccessful entry involves an approval of an application made to a local authority followed by a successful third part appeal (21% of 70 unsuccessful entries).
- **Route 9 (Denied/1<sup>st</sup> Part Appeal Withdrawn):** The next route, which appears rarely to occur in practice, involves an

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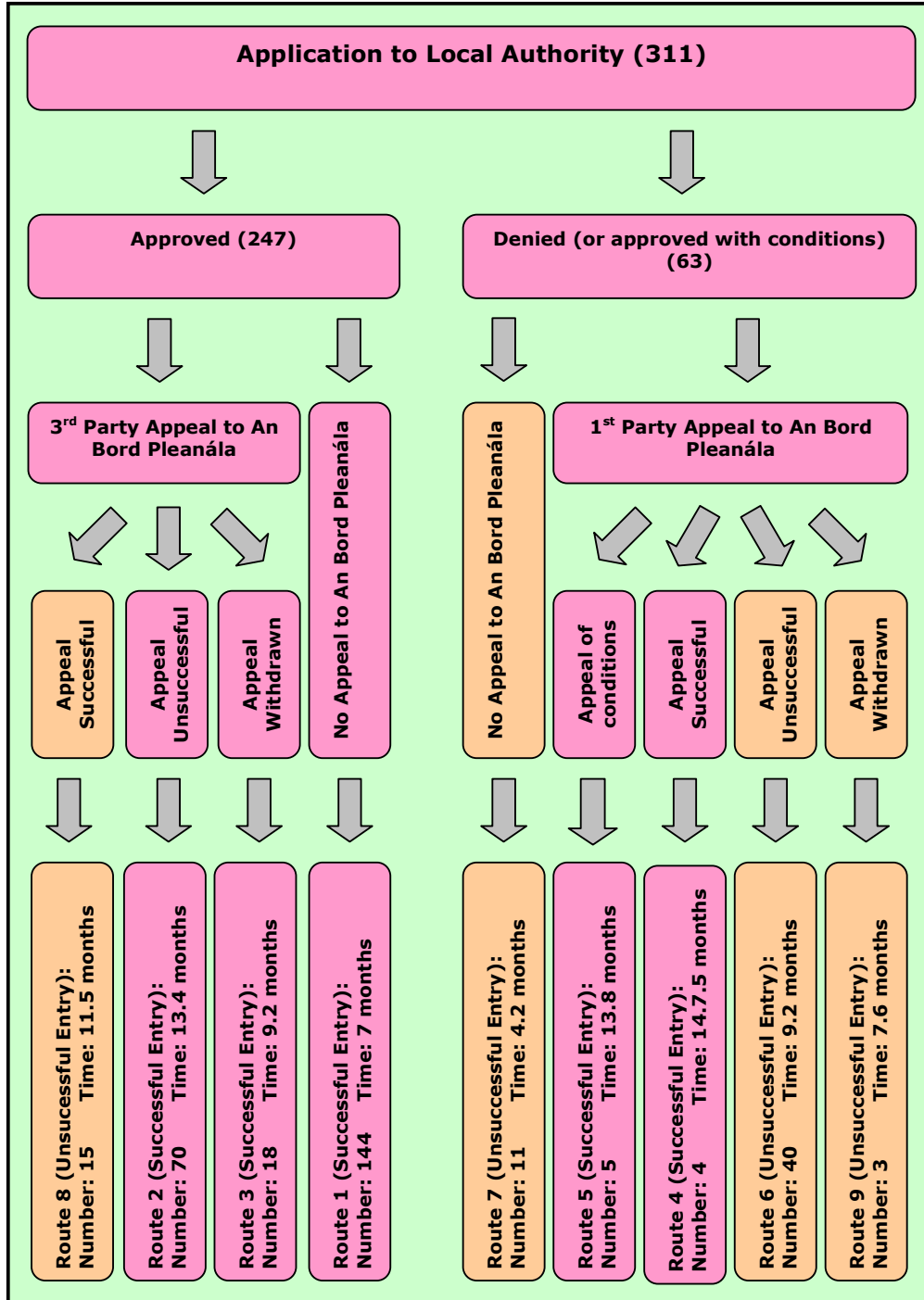
<sup>69</sup> Route 4 also includes two occasions where a first party appeal of conditions was later withdrawn. It should also be noted that, with Route 2, where a third party appeals an approval decision made by a local authority, it is often the case that the first party also appeals conditions attached to the approval.



unsuccessful application to a local authority that is appealed, but where the appeal is withdrawn (4% of 70 unsuccessful entries).

- 5.57 As discussed in Section 2, both local authorities and An Bord Pleanála face time constraints as regards the delivery of decisions. Local authorities have a statutory target of eight weeks to deliver decisions. However the eight-week period may be extended if the planning authority seeks 'further information' from the applicant. The planning authority must do this within the first four weeks of receiving an application. The applicant must then reply to each point of the information request within six months of the request being made, otherwise the application is deemed withdrawn. If the information request has been fully responded to, local authorities then have four weeks to make a decision on the application. If the local authority needs to clarify the points in the applicant's response to the information request in order to make a decision, it may request 'clarification' on some or all of the response submitted. Again the applicant must reply to the request for 'clarification' in full, within six months of the request for 'clarification', otherwise the application is deemed withdrawn. Similarly An Bord Pleanála's strategic deadline of deciding cases within 18 weeks will most likely not be met, for example, due to delays resulting from an oral hearing.
- 5.58 In analysing the length of time required to progress a planning application through the system, the Competition Authority considered the length of time from the date of application to the date the application was granted, or in the case of unsuccessful applications, the date the refusal was announced. Given this methodology, one should not interpret the results to conclude that local authorities or An Bord Pleanála are consistently missing targets.

Figure 19: Routes Through the Planning System<sup>70</sup>



<sup>70</sup> Information was not obtained for one unsuccessful application for Dunnes Stores.

## **Issue 6: Consistency in decision making**

### **Issue**

5.59 Uncertainty as to the likely decision of a local authority or An Bord Pleanála can add to the cost of entry and inhibit forward business planning for a retailer. Consistency in decision making is therefore key to the notion of certainty within the planning system.

### **Analysis**

5.60 The identification of clear retail policies and strategies in development plans should result in An Bord Pleanála generally making the same decision as the local authority. As outlined in Section 3, when an appeal is made, An Bord Pleanála is required to determine the application as if it had been made to it originally. It must apply the same criteria as the relevant local authority and so must be cognisant of the relevant local authority's development plan. All documentation submitted in the first application is reviewed.

5.61 Of particular interest here are decisions of local authorities that are reversed by An Bord Pleanála. In terms of the stylised representation of the routes through the planning system presented in Figure 19 above, Routes 4 and 8 are of interest. Route 4 corresponds to the case where a negative decision is delivered by a local authority which is subsequently reversed by An Bord Pleanála. Route 8 corresponds to the opposite situation, i.e., where a positive decision is delivered by a local authority which is subsequently reversed.

5.62 The first point to note is that a reversal decision by An Bord Pleanála is relatively uncommon. Looking at Route 4, there are four successful first party appeals to An Bord Pleanála of an application that was denied by a local authority, out of 49 first party appeals (not including first party appeals of conditions attached to grant decisions), implying a reversal rate of approximately 8%. Looking at Route 8, there are 15 successful third party appeals to An Bord Pleanála of an application that was approved by a local authority, out of 102 third party appeals, implying a reversal rate of approximately 15%. Thus, reversal decisions appear twice as likely when the initial decision by a local authority is to grant an application for planning permission.

- 5.63 In An Bord Pleanála's latest Annual Report<sup>71</sup>, statistics are given on general reversal rates. The report shows that the rate of reversal of local planning authority decisions appealed showed a slight increase – 32.8% in 2006 compared to 30% in 2005. However there was large disparity between local authorities in this rate of reversal, ranging from 21.7% in Dublin City to 61.6% in Cavan. Thus, compared to general planning, the level of consistency between decisions of local authorities and An Bord Pleanála appears quite high.
- 5.64 As stated above there were four occasions when applications that were refused by the local authority were later granted by An Bord Pleanála. The reasons for these reversals are quite different. In two of the cases the reasons for An Bord Pleanála's reversal of local authority decisions included disagreement over the material impact of the proposed development on the town centre. In all four cases however final grants were subject to the retailers complying with conditions.<sup>72</sup>
- 5.65 There were 16 occasions when a local authority granted an application for planning permission which was later successfully appealed to An Bord Pleanála. An Bord Pleanála reversed the decisions of the local authorities on various grounds. Common reasons included improper application of the sequential test and the contravention of zoning objectives. Other reasons included concerns over traffic implications arising from the proposed developments (especially with respect to out-of-town developments) and impact on local amenities.

### **Comment**

- 5.66 Based on the numbers of reversals, overall it appears that there is quite a high level of consistency in decision making between local authorities and An Bord Pleanála. The likelihood of a reversal of a positive decision by a local authority is more likely than with a negative decision. Where reversals do occur, they often involve disagreement between the relevant local authority and An Bord Pleanála over the proper application of the sequential test and zoning objectives contained in development plans. Local authorities therefore appear to

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<sup>71</sup> An Bord Pleanála (2006), *Annual Report 2006*, Annex 2 p. 36. For further information see: <http://www.pleanala.ie/news/20071109.htm>

<sup>72</sup> Planning reference Wexford County Council, 2003/1264 and Wicklow County Council (Reference Number) 04/1354. See also Appendix D.

have a somewhat more flexible approach to the sequential test and zoning objectives than An Bord Pleanála.

## **Issue 7: Timing of decisions**

### **Issue**

- 5.67 Uncertainty as to the time taken to deliver decisions and the likely outcome of a decision can add to the cost of entry and inhibit forward business planning for a retailer. The planning system therefore has the potential to deter or delay entry.
- 5.68 One of the principle aims of the Retail Planning Guidelines is to provide clarity and guidance to developers or retailers making planning applications. Where an application for a retail development complies with the retail policies and strategies of a development plan in all material aspects, the Retail Planning Guidelines state that it should not be necessary to supply supporting background studies. According to the Goodbody Report:

*"The identification of clear policies and proposals in Development Plans as recommended by the DRPG should provide a context against which all the retail sectors and developers can prepare proposals with a degree of certainty as to the possible outcome of a particular application."*<sup>73</sup>

- 5.69 While the following analysis focuses on the time taken for retailers to obtain decisions from planning authorities it should be noted that apart from the planning application process, opening a new retail outlet involves a significant amount of pre-planning. Pre-planning includes the time retailers give to identifying a suitable site, the time required to evaluate and assess the site (investment appraisals, retail impact assessments) and the time required for the construction of the stores to the opening of the store (taking into account any conditions attached to grants). Apart from these, retailers often have phases of engagement with local authorities and residents in an effort to agree how best to meet the terms of a development plan, prior to any initial application. The retailers in the planning group have indicated that on average pre-planning can take up to two and a half years<sup>74</sup>.

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<sup>73</sup> Goodbody Economic Consultants (2000), *The Impact of the Draft Retail Planning Guidelines on the Retail Sector*, p.32.

<sup>74</sup> SuperValu were not asked to provide information on the pre-planning process.

## Analysis

- 5.70 The identification of clear policies in local authority development plans is intended to provide a degree of certainty for would be planning applicants, i.e., retailers and developers. In principle, the identification of clear policies in development plans should also reduce delays in the processing of planning applications by local authorities and lead to a consistency in the time to deliver decisions.
- 5.71 The most common route to successful entry, Route 1 (Approval/No Appeal), across all retailers in the planning group, takes on average seven months (28 weeks). The second most common route to successful entry, Route 2 (Approval/Third Party Appeal Unsuccessful), across all retailers in the planning group, takes on average 13.4 months (54 weeks), almost twice as long as a successful application that is not appealed. The next most common route to successful entry, Route 3 (Approval/Third Party Appeal Withdrawn), typically takes on average 9 months (36 weeks), longer than a successful application that is not appealed but, unsurprisingly, shorter than a successful application that is appealed. The least common routes to successful entry, Route 4 (Denied/First Part Appeal Successful) and Route 5 (Approval/First Party Appeal of Conditions Successful), typically take 14.7 months (59 weeks) and 13.8 months (55 weeks) respectively, longer than each of the other three routes.
- 5.72 Table 11 below shows the number of planning applications, broken down by retailer, successfully progressed through the various stages of the planning process. The 'Overall' column from Table 11 corresponds to the data on successful entries presented earlier in Figure 19. What emerges clearly from the table is that retailers' experiences of the planning system can differ substantially.
- 5.73 As noted above, the most common route to successful entry among the planning group, at 60%, is Route 1 (Approval/No Appeal). However, when broken down by retailer, experiences are varied. Four of the seven retailers in the planning group have proportionally less successful applications that are not appealed to An Bord Pleanála: these are Superquinn with 20% (of 5); Tesco with 33% (of 45); Dunnes Stores with 50% (of 40); and M&S with 46% (of 11). The remaining three retailers in the planning groups have a proportionally

greater number of successful applications that are not appealed to An Bord Pleanála: these are Lidl with 68% (of 75), SuperValu with 62% (of 26); and ALDI with 92% (of 39). There is also some diversity in retailers' experiences of the amount of time required to progress an application through this route. On average, this route takes seven months; retailers experience range from just over five months (M&S) to over nine months (Lidl).

- 5.74 The second most common route, at 29%, is Route 2 (Approval/Third Party Appeal Unsuccessful). Again, there is some diversity in retailers' experiences. Tesco with 56% (of 45) have the highest proportion of applications following this route. Apart from ALDI with just 5% (of 39) of applications following this route, the other retailers are all relatively close to the average, ranging between 20% and 36%. As before there is also some diversity in retailers' experiences of the amount of time required to progress an application through this route. On average this route takes over 13 months; retailers' experiences range from just over 16 months (Tesco) to over 11 months (Dunnes Stores).
- 5.75 The least common routes to successful entry, together accounting for just under 12% of all successful entries, are Route 3, Route 4 and Route 5. Table 11 above shows a diversity of experience among retailers. However, given the relatively few number of applications involved in any individual case, it is difficult to draw firm conclusions.

**Table 11: Routes to Successful Entry (Retailer Experience 2001 – 2007)**

	Tesco Ireland	Dunnes Stores	M&S	Superquinn	ALDI	Lidl	SuperValu	Overall
<b>Number of Successful Applications</b>	45	40	11	5	39	75	26	241
Avg. Months	11.7	8.6	9.5	8.5	7.2	11.3	8.3	9.3
<b>Route 1:</b>								
Number	15	20	5	1	36	51	16	144
Avg. Months	5.4	6.9	5.2	9	6.9	9.3	6.2	7
Proportion	33%	50%	46%	20%	92%	68%	62%	60%
<b>Route 2:</b>								
Number	25	9	4	1	2	20	9	70
Avg. Months	16.2	11.1	13.8	12	13	15.4	12.2	13.4
Proportion	56%	23%	36%	20%	5%	27%	35%	29%
<b>Route 3:</b>								
Number	4	8	1	2	1	1	1	18
Avg. Months	7.25	7.6	12	6.5	5.5	17.5	6	9.2
Proportion	9%	20%	9%	40%	3%	1%	4%	7%
<b>Route 4:</b>								
Number	0	0	0	1	0	3	0	4
Avg. Months	-	-	-	8	-	17	-	14.7
Proportion	-	-	-	20%	-	4%	-	2%
<b>Route 5:</b>								
Number	1	3	1	0	0	0	0	5
Avg. Months	12	10.3	11	-	-	-	-	13.8
Proportion	2%	7%	9%	-	-	-	-	3%

Route 1: Applications approved by local authority and not appealed.

Route 2: Unsuccessful third party appeal to An Bord Pleanála of application approved.

Route 3: Appeals withdrawn include all cases of third party appeals being withdrawn.

Route 4: Successful first party appeal to An Bord Pleanála of application denied by local authority.

Route 5: Successful first party appeal to An Bord Pleanála of application denied by local authority or First Party appeal withdrawn of conditions imposed by local authority.

\* Includes all successful applications for new builds, expansions, replacements. Only outlets with associated planning histories are considered (see Table 5).



5.76 Table 12 below shows the number of planning applications, broken down by retailer, unsuccessfully progressed through the various stages of the planning process. The 'Overall' column from Table 12 corresponds to the data on unsuccessful entries presented earlier in Figure 19 above.

**Table 12: Routes to Unsuccessful Entry (Retailer Experience 2001 – 2007)**

	Tesco Ireland	Dunnes Stores	M&S	Superquinn	ALDI	Lidl	SuperValu	Overall
<b>Number of Unsuccessful Applications*</b>	30	2	1	0	18	19	n/a	70
Avg. Months	10.7	17**	10	-	7	7.42	-	8.9
<b>Route 6:</b>								
Number	13	0	1	0	13	13	n/a	40
Avg. Months	11.7	-	10	-	6.7	9.1	-	9.2
Proportion	43%	0%	100%	0%	72%	65%	-	57%
<b>Route 7:</b>								
Number	4	0	0	0	3	4	n/a	11
Avg. Months	5.3	-	-	-	6.3	1.8	-	4.3
Proportion	13%	0%	0%	0%	17%	20%	-	16%
<b>Route 8:</b>								
Number	11	1	0	0	1	2	n/a	15
Avg. Months	12.2	17	-	-	9	8	-	11.5
Proportion	37%	50%	0%	0%	5%	11%	-	22%
<b>Route 9:</b>								
Number	2	0	0	0	1	0	0	3
Avg. Months	6.5	-	-	-	10	-	-	7.6
Proportion	7%	0%	0%	0%	6%	0%	0%	4%

Route 6: Unsuccessful first party appeal to An Bord Pleanála of application denied.

Route 7: Applications denied by local authority and not appealed by Applicant.

Route 8: Successful third party appeal of application approved by local authority

Route 9: First party appeal of application denied by local authority, but withdrawn.

\*Includes all unsuccessful applications for new builds, expansions, replacements (see Table 5).

\*\*Information was not obtained for one unsuccessful application for Dunnes Stores. Averages are therefore based on one observation only.

5.77 The amount of time taken to unsuccessfully progress a planning application is only of secondary interest as the principal point is that the entry attempt ultimately fails. However, the diversity of experience by retailer is of some interest. The most common route to failed entry, at 57%, is Route 6 (Denied/Unsuccessful 1<sup>st</sup> Party Appeal). This route typically takes 9.2 months (37 weeks), though retailers' experiences vary between just under seven months (ALDI) to just under 12 months (Tesco). The second most common route to failed entry, at 22%, is Route 8 (Approval/3<sup>rd</sup> Party Appeal Successful) and takes on average just over 11.5 months (46 weeks) across retailers. Again retailers' experiences are diverse, varying from just under nine months to, in one case, 17 months. Route 7 (Denied/No 1<sup>st</sup> Party Appeal) and Route 9 (Denied/1<sup>st</sup> Part Appeal Withdrawn) are the least common routes, between them accounting for 20% instances of failed entry.

### **Comment**

5.78 The above discussion illustrates the variety of routes through the planning system. Unsurprisingly, the fastest entry experiences occur where planning applications are initially approved by a local authority, and are not appealed by either first or third parties. Where grant decisions of local authorities are appealed, on average, the length of time required to secure eventual approval almost doubles. Thus, even though reversal rates are low, as discussed earlier (see paragraph 5.62 above), elements of the planning process are capable of increasing the cost of and delaying entry. Another important point that emerges from the discussion above is that retailer experience of the planning system varies. As already noted, the associated uncertainty can also add to cost of entry. Given the importance that appeals play in determining the cost of entry, factors that contribute to the likelihood of appeal are considered under the next issue.

## **Issue 8: Likelihood of Appeal**

### **Issue**

5.79 As noted in the discussion of the previous issue, whether or not a planning application is appealed tends to lengthen the process of entry substantially. An applicant or a third party submitting an appeal does so on the grounds that they have been treated unfairly or that the local authority's decision is incorrect. Factors that increase the likelihood of

appeal are therefore considered in some detail here. The following factors are considered:

- The identity of the applicant;
- The location of development; and,
- The size of the retail outlet.

### **Analysis – Likelihood of appeal depending upon applicant**

5.80 It is not always the retailer that applies for planning permission from a local authority. Often a developer makes the initial application, and if planning permission is granted the developer will then sell the site to the highest bidder. A local developer may have a greater understanding of the development plan of a town and so may make applications that have a greater chance of being accepted first time. Some retailers also choose this option so as to remain undetected by competitors.

5.81 To assess whether the identity of the applicant makes any difference to the likelihood of appeal, or the length of time required to progress a successful application, the Competition Authority asked retailers to specify whether a developer made the application, whether it was the retailer acting alone or whether it was a joint application. With a joint application, frequently only the developer's name is in the public domain at the initial stages. This information is presented in Table 13 below. Across all retailers in the planning group, 61% of applications are initiated by the retailers themselves, 36% are initiated by a developer, while just 3% are initiated jointly by a retailer and a developer.

5.82 ALDI and Lidl initiate a much greater proportion of their applications themselves, 93% and 84% respectively. Superquinn and Dunnes Stores appear to pursue the opposite strategy with developers initiating 100% and 81% of planning applications respectively. SuperValu also appears to pursue this strategy with developers initiating 69% of planning applications. Tesco appears to use a relatively more balanced approach, initiating 49% of planning applications themselves and developers initiating 42%. Among all the retailers in the planning group, Tesco make most use of joint

applications at 9%. Dunnes Stores is the only other retailer to make applications jointly with a developer.

**Table 13: Planning Applications by Applicant (2001 – 2007)**

Application made by:	Tesco Ireland	Dunnes Stores	M&S	Superquinn	ALDI	Lidl	SuperValu	Overall
<b>Total*</b>	75	42	12	5	57	94	26	311
Success Rate	60%	95%	92%	100%	68%	79%	100%	77%
<b>Retailer</b>								
Number	37	6	3	0	53	79	8	191
Proportion	49%	14%	25%	0	93%	84%	31%	61%
Success Rate	54%	100%	66%	-	66%	85%	100%	75%
<b>Developer</b>								
Number	31	34	9	5	4	15	18	111
Proportion	42%	81%	75%	100%	7%	16%	69%	36%
Success Rate	61%	94%	100%	100%	100%	53%	100%	81%
<b>Joint</b>								
Number	7	2	0	0	0	0	0	9
Proportion	9%	5%	0	0	0	0	0	3%
Success Rate	86%	100%	-	-	-	-	-	89%

\*Includes all successful and unsuccessful applications for new builds, expansions, replacements (see Table 5).

\*\*Information was not obtained for one Dunnes Stores unsuccessful application.

5.83 Table 13 also shows the success rate associated with the different application strategies. Overall, retailers in the planning group have a success rate (successful applications as a proportion of all applications made) of 77% (see also paragraph 5.54 above). When the success rate is broken down according to who initially made the planning application, the results do not differ enormously from the overall average. The success rates for retailer, developer and jointly made applications are 75%, 81% and 89% respectively. Thus it appears that where a developer is involved in the planning process, applications are somewhat more likely to result in the eventual opening of a retail outlet. This effect is also evident when success rates depending on the identity of the applicant are broken down by retailer, though there are

some exceptions. For example, Lidl is substantially less successful when applications are initially made by a developer.

5.84 Table 14 below shows the proportion of decisions that are appealed by third parties, appealed by the first party or not appealed at all, depending upon whether the application was initially made by a developer, a retailer or made jointly by the developer and retailer, i.e., a joint application.

**Table 14: Planning Application Appealed (by Applicant)**

<b>Application Appealed?</b>	<b>Tesco Ireland</b>	<b>Dunnes Stores</b>	<b>M&amp;S</b>	<b>Superquinn</b>	<b>ALDI</b>	<b>Lidl</b>	<b>SuperValu</b>	<b>Overall</b>
<b>Total</b>	45	40	11	5	39	75	26	241
% Appealed (3 <sup>rd</sup> )	56%	23%	36%	20%	5%	25%	35%	29%
% Appealed (1 <sup>st</sup> )	2%	7%	9%	20%	0%	1%	0%	3%
% Withdrawn	7%	20%	9%	40%	2%	4%	4%	8%
% Not Appealed	35%	50%	46%	20%	93%	70%	61%	60%
<b>Retailer</b>								
Number	20	6	2	0	35	67	8	138
% Appealed (3 <sup>rd</sup> )	75%	33%	0%	-	6%	28%	25%	29%
% Appealed (1 <sup>st</sup> )	0%	0%	0%	-	0%	5%	0%	2%
% Withdrawn	5%	0%	0%	-	3%	66%	12%	3%
% Not Appealed	20%	67%	100%	-	91%	1%	63%	66%
<b>Developer</b>								
Number	19	32	9	5	4	8	18	95
% Appealed (3 <sup>rd</sup> )	32%	22%	45%	20%	0%	13%	39%	27%
% Appealed (1 <sup>st</sup> )	5%	9%	11%	20%	0%	0%	0%	6%
% Withdrawn	5%	19%	11%	40%	0%	0%	61%	11%
% Not Appealed	58%	50%	33%	20%	100%	87%	0%	56%
<b>Joint</b>								
Number	6	2	0	0	0	0	0	8
% Appealed (3 <sup>rd</sup> )	67%	0%	-	-	-	-	-	50%
% Appealed (1 <sup>st</sup> )	0%	0%	-	-	-	-	-	0%
% Withdrawn	33%	100%	-	-	-	-	-	50%
% Not Appealed	0%	0%	-	-	-	-	-	0%

\* Only outlets with associated planning histories are considered (see Table 5).

- 5.85 Across all retailers in the planning group, 29% of applications are appealed by a third party while 3% are appealed by the first party alone. There are a further 8% of applications that are appealed but where the appeal is withdrawn and 60% of applications are not appealed at all. Overall, there is some difference between the proportions of decisions appealed (by first or third parties), withdrawn or not appealed at all depending on whether an application is made by the retailer, a developer or made jointly by a retailer and a developer. Where planning applications are made by a retailer, 29% are appealed by a third party, 2% by the first party alone, 3% are appealed but withdrawn and 66% are not appealed. Where planning applications are made by a developer, 27% are appealed by a third party, 6% by the first party alone, 11% are appealed but withdrawn and 56% are not appealed. Where applications are made by a developer therefore, the likelihood that the applications are appealed appears greater, though a greater proportion of such appeals are withdrawn.
- 5.86 Where planning applications are made jointly by a retailer and developer, 50% are appealed by a third party and 50% are appealed but withdrawn. Thus it appears that applications made jointly by a developer and a retailer are more likely to be appealed. It should be noted however that the number of joint applications is small and firm conclusions are therefore difficult to draw.
- 5.87 Some considerable diversity emerges when appeal rates by applicant are broken down by retailer. For example, for each of Dunnes Stores, Lidl and SuperValu, third party appeal rates (not including appeals that are withdrawn) for retailer-made applications are close to the average at 33%, 28% and 25% respectively. Tesco is the outlier in the sense that 75% of retailer-made applications are appealed by a third party. In the other direction, M&S and ALDI are the outliers with just 0% and 6% of applications appealed by third parties, though the numbers of retailer-made applications for M&S is very low.
- 5.88 The proportion of applications, initially made by a developer and appealed by a third party, for Tesco and Dunnes Stores is close to the average at 32% and 22% respectively. For Tesco it therefore appears that the identity of the applicant is an important factor determining the likelihood of appeal. When a planning application is made by Tesco

directly, the likelihood of appeal appears to be far greater than when the application is made by a developer.

- 5.89 ALDI and Lidl have relatively low appeal rates, but the number of developer-lead applications is small. Since only two retailers make use of joint applications, a comparison is of little additional value.

#### **Analysis – Likelihood of appeal depending on outlet location**

- 5.90 Another potentially significant factor in determining whether retail applications are appealed concerns the location of the proposed development. As discussed earlier (see Issue 4 above), the Retail Planning Guidelines envisage a hierarchical approach to the location of retail development. In other words, there is an in-built preference with planning policy for retail development to be located, in the first instance, in town centres. Where this is not possible then consideration can be given to locations progressively further from the centre.
- 5.91 Table 15 below shows how planning applications breakdown by location, both overall and by retailer, and the associated success rates (i.e., whether the planning application resulted in the opening of a new retail outlet). Across all retailers in the planning group, the overall success rate for planning applications is 77%. This compares with 86%, 77%, 66% and 89% for applications for development at town centre, edge-of-centre, out-of centre and out-of-town respectively. As might be expected, the likelihood of success appears to decrease the further an application for development is from town-centre. The exception concerns locations furthest from town centres (i.e., out-of-town locations) which appear to be associated with the highest success rates.
- 5.92 When success rates by location are broken down by retailer some diversity emerges. For Tesco, there does not appear to be a discernable pattern. Success rates for applications for development at town centre, edge-of-centre and out-of town are all high, while the success rate for at out-of-centre locations is very low at just 11%. Out of the 19 applications for development at out-of-centre locations, just one ultimately resulted in the opening of a new retail outlet. For Dunnes Stores and M&S success rates are uniform across locations, except for out-of-town locations where success rates are lower. For

Lidl, success rates decrease the further locations are from town centres. For ALDI, the effect seems to work in the opposite direction with success rates increasing the further locations are from town centres.

**Table 15: Planning Applications by Location (2001 – 2007)**

Application made by:	Tesco Ireland	Dunnes Stores**	M&S	Superquinn	ALDI	Lidl	SuperValu***	Overall
<b>Total*</b>	75	42	12	5	57	94	26	311
Success Rate	60%	95%	92%	100%	68%	80%	100%	77%
<b>Town Centre</b>								
Number	27	13	6	3	5	17	7	78
Proportion	36%	31%	50%	60%	9%	18%	27%	25%
Success Rate	70%	100%	100%	100%	40%	100%	n/a	86%
<b>Edge-of-Centre</b>								
Number	22	7	1	1	28	33	6	98
Proportion	29%	17%	8%	20%	49%	35%	23%	32%
Success Rate	86%	100%	100%	100%	61%	78%	n/a	77%
<b>Out-of-Centre</b>								
Number	19	8	1	0	15	34	10	87
Proportion	25%	20%	8%	0	26%	36%	38%	28%
Success Rate	11%	100%	100%	-	73%	73%	n/a	66%
<b>Out-of-Town</b>								
Number	7	13	4	1	9	10	3	47
Proportion	10%	32%	34%	20%	16%	11%	12%	15%
Success Rate	100%	92%	25%	100%	100%	70%	n/a	89%

\*Includes all successful and unsuccessful applications for new builds, expansions, replacements (see Table 5).

\*\*Information was not obtained for one Dunnes Stores unsuccessful application.

\*\*\*SuperValu were not asked to provide information on unsuccessful applications.

5.93 Table 16 below shows the proportion of decisions that are appealed by third parties, appealed by the first party or not appealed at all, depending upon the location of the proposed development.



**Table 16: Planning Applications Appealed (by Location)**

<b>Application Appealed?</b>	<b>Tesco Ireland</b>	<b>Dunnes Stores**</b>	<b>M&amp;S</b>	<b>Superquinn</b>	<b>ALDI</b>	<b>Lidl</b>	<b>SuperValu***</b>	<b>Overall</b>
<b>Total*</b>								
% Appealed (3 <sup>rd</sup> )	48%	24%	42%	20%	5%	23%	35%	28%
% Appealed (1 <sup>st</sup> )	22%	7%	8%	20%	25%	17%	0	16%
% Withdrawn	5%	20%	8%	40%	2%	1%	4%	6%
% Not Appealed	25%	49%	42%	20%	68%	59%	61%	50%
<b>Town Centre</b>								
Number	27	13	6	3	5	17	7	78
% Appealed (3 <sup>rd</sup> )	52%	31%	33%	0	0	30%	14%	33%
% Appealed (1 <sup>st</sup> )	19%	0	17%	33%	40%	0%	0%	12%
% Withdrawn	7%	8%	17%	33%	0	0%	14%	8%
% Not Appealed	22%	61%	33%	33%	60%	70%	72%	47%
<b>Edge-of-Centre</b>								
Number	22	7	1	1	28	33	7	98
% Appealed (3 <sup>rd</sup> )	45%	14%	0	100%	11%	21%	29%	25%
% Appealed (1 <sup>st</sup> )	14%	14%	0	0	32%	21%	0	20%
% Withdrawn	9%	42%	0	0	4%	0	0	6%
% Not Appealed	32%	20%	100%	0	53%	58%	71%	49%
<b>Out-of-Centre</b>								
Number	19	7	1	0	15	34	10	87
% Appealed (3 <sup>rd</sup> )	37%	14%	0	0	0	23%	30%	22%
% Appealed (1 <sup>st</sup> )	42%	0	0	0	20%	21%	0	22%
% Withdrawn	0	29%	0	0	0	3%	0	3%
% Not Appealed	21%	57%	100%	0	80%	53%	70%	53%
<b>Out-of-Town</b>								
Number	7	13	4	1	9	10	3	47
% Appealed (3 <sup>rd</sup> )	71%	31%	50%	0	0	20%	100%	36%
% Appealed (1 <sup>st</sup> )	0	8%	25%	0	0	20%	0	7%
% Withdrawn	0	15%	0	100%	0	0	0	6%
% Not Appealed	29%	46%	25%	0	100%	60%	0	51%

\*Includes all successful and unsuccessful applications for new builds, expansions, replacements (see Table 5).

\*\*Information was not obtained for one Dunnes Stores unsuccessful application.

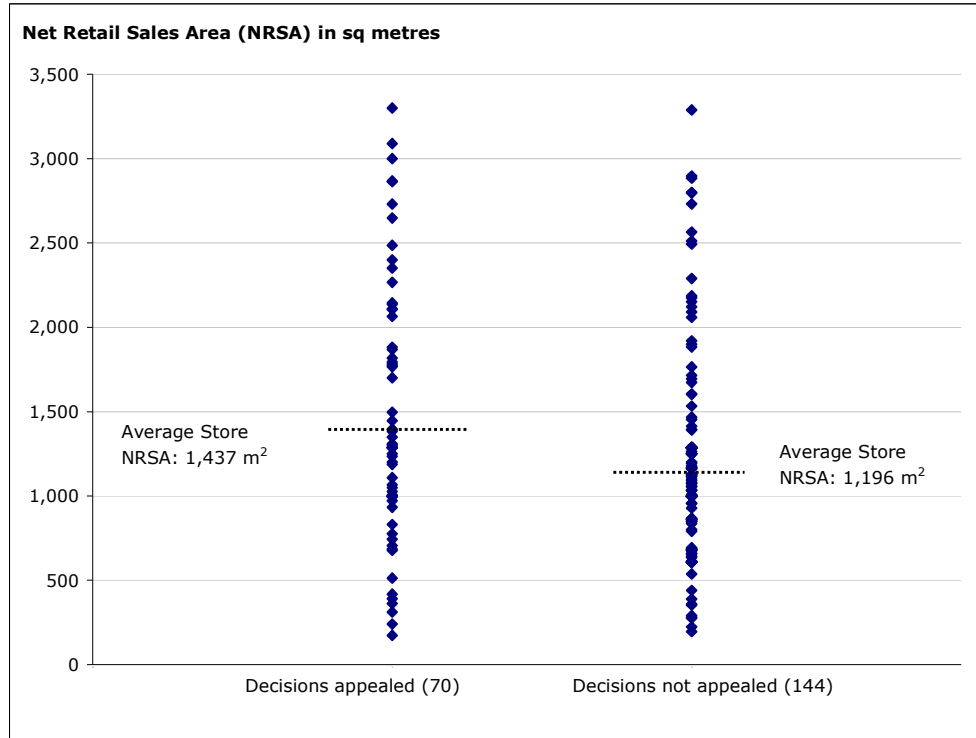
\*\*\*SuperValu were not asked to provide information on unsuccessful applications.

- 5.94 On average across all retailers in the planning group, it appears that the likelihood of appeal does not vary substantially depending upon the location of the proposed retail development. Overall, 50% of applications are not appealed at all. This compares with 47%, 49%, 53% and 51% for applications for development at town centres, edge-of-centre, out-of-centre and out-of-town respectively. Overall, 34% of applications are appealed by a third party (28% are third party appeals that are not withdrawn plus 6% of third party appeals that are withdrawn). This compares with 41%, 31%, 25% and 42% for applications for development at town centres, edge-of-centre, out-of-centre and out-of-town respectively.
- 5.95 When appeal rates by location are broken down, no obvious pattern emerges. What is of note however is that for Tesco, the third party appeal rate is relatively low for out-of-centre locations compared to the overall third party appeal rate for Tesco, while the first party appeal rate is relatively high. The third party appeal rate is relatively high for out-of-town locations.

#### **Analysis – Likelihood of appeal depending upon outlet size**

- 5.96 It might be expected that outlet size would be a significant determinant of whether a planning application is appealed or not. Figure 20 shows the distribution of outlet sizes, for all planning applications that were ultimately successful, depending upon whether the application was appealed by a third party or not.
- 5.97 A number of points about the figure are worth stressing. Although the range of outlet sizes for applications that were appealed and that were not appealed is broadly the same, the average size of outlets for which planning decisions were appealed is slightly higher than for outlets for which planning decisions were not appealed.

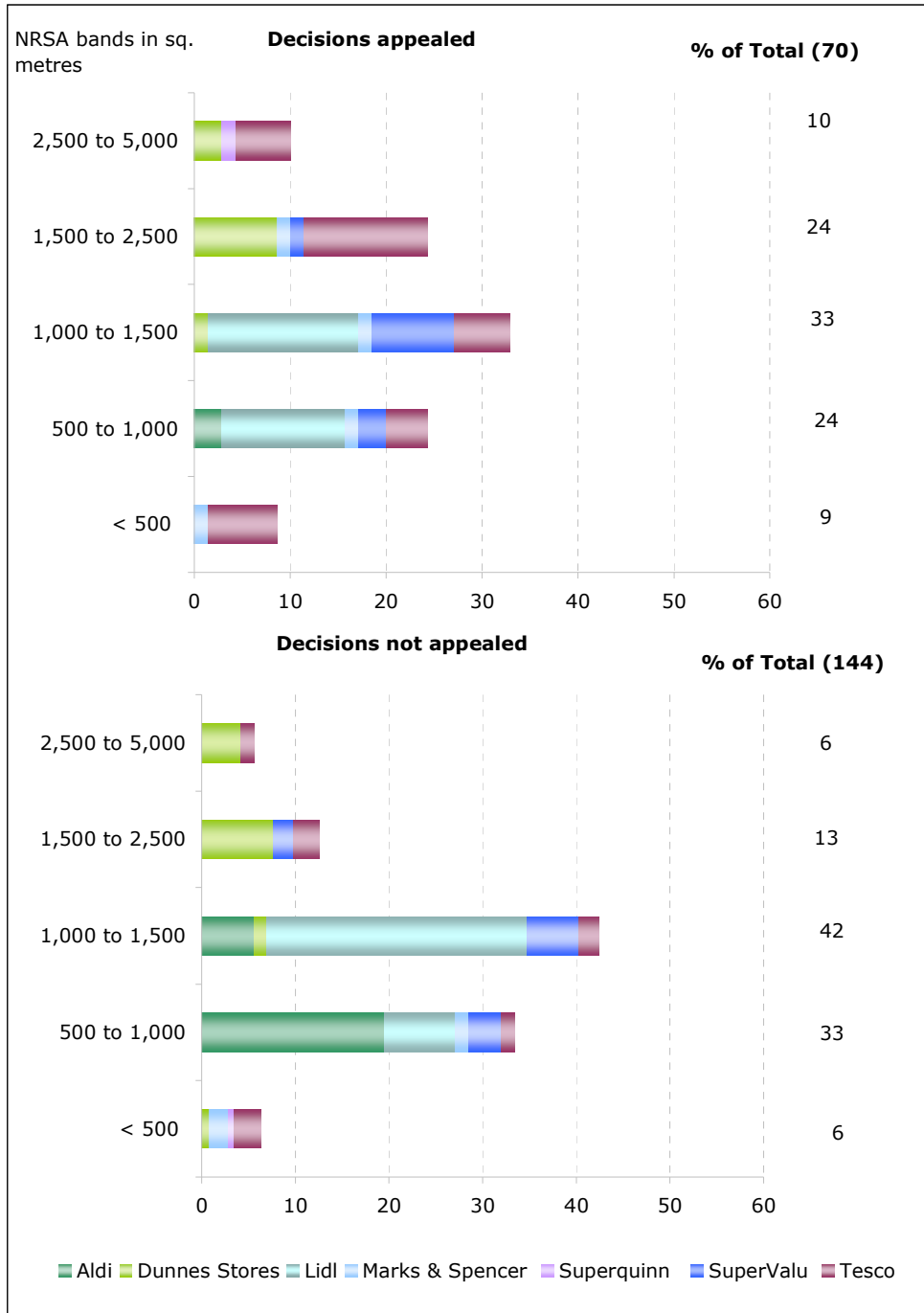
**Figure 20: Outlet Size (Appealed/Not Appealed)**



5.98 Figure 21 again shows the distribution of outlet sizes for outlets that were and were not appealed. Again the same points about the range and average size of outlets both appealed and not appealed as from Figure 20 emerge. The principal differences between the distributions appears to be that the distribution of outlet sizes for applications for which decisions were not appealed appears to be slightly more concentrated around the average (i.e., the bars toward the centre of the distribution are longer).

5.99 Figure 21 also includes a breakdown by retailer. The distribution of outlet sizes for applications made ALDI and Lidl that were appealed and not appealed appear to be concentrated in the middle size ranges. This is to be expected given that ALDI and Lidl outlets tend to always to fall in the middle size ranges. For Dunnes Stores and Tesco, there appears to be little or no difference between the distribution of outlets sizes for applications that were appealed and not appealed. The stronger showing for Tesco in the distribution of outlets sizes for planning applications that were appealed occurs because Tesco applications are on average appealed more frequently.

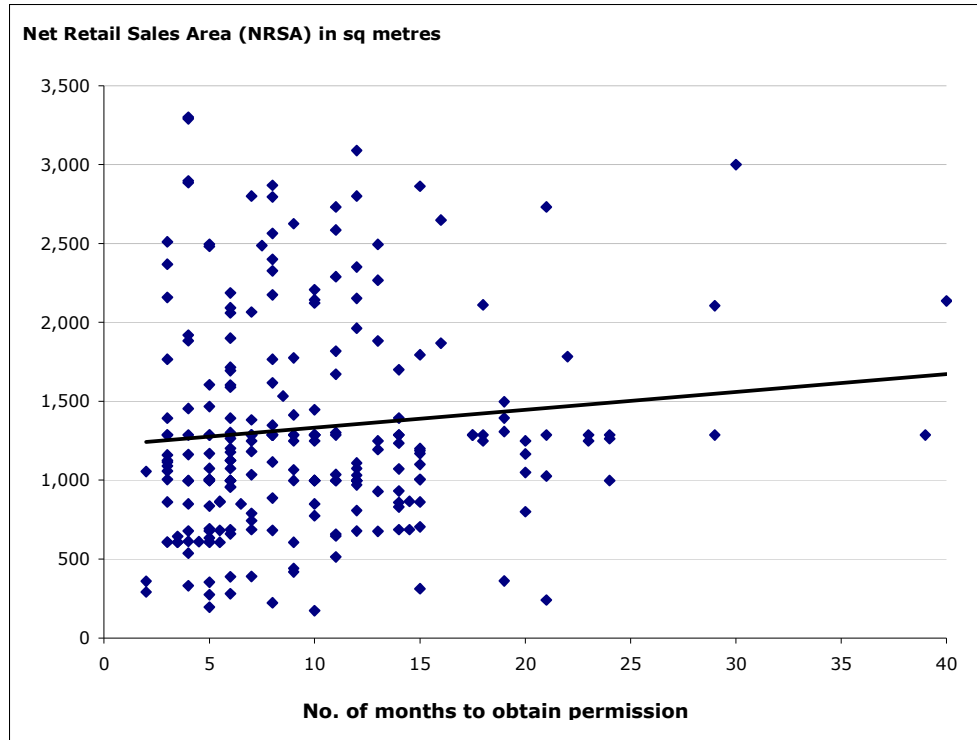
**Figure 21: Distribution of Outlet Size (Appealed/Not Appealed)**



5.100 Overall, outlet size does not appear to substantially affect the likelihood of appeal. This point is further reinforced when the relationship between outlet size and the length of time taken to obtain final planning permission is examined. Figure 22 below shows a scatter plot of outlet sizes against the number of months required to obtain

final planning permission. The figure appears to suggest no, or only a weak relationship.

**Figure 22: Relationship Between Outlet Size and Length of Time to Obtain Final Planning Permission**



**Comment**

5.101 Issue 8 looked at the likelihood of appeal depending upon three factors: the identity of the applicant, the location of the proposed development and the size of the proposed development. The planning histories examined appear to indicate that there is an increased likelihood of an appeal in cases where the applicant is identified as being Tesco. Tesco face the highest rate of appeals of any retailer among the planning group. However, when applications are developer-led, appeal rates are much lower, by a factor of almost three.

5.102 The location of proposed development does not appear to be a significant factor in determining the likelihood of appeals. However, the likelihood of an application being successful appears to decrease the further an application for development is from town-centre. The exception concerns locations furthest from town centres (i.e., out-of-

town locations) which appear to be associated with the highest success rates.

5.103 Outlet size appears to only have a very limited effect on the likelihood of appeal. The range of outlet sizes for applications that were appealed and that were not appealed is broadly the same, while the average size of outlets for which planning decisions were appealed is only slightly higher than for outlets for which planning decisions were not appealed.

## **Issue 9: Appeals by Competitors**

### **Issue**

5.104 The final issue for discussion concerns how competitors, as third parties to a planning application, may delay, increase the cost or otherwise frustrate the entry and expansion of competitors. As discussed in Section 3, an interested party may appeal a planning decision on condition that they originally made submissions in writing to the relevant local authority prior to the initial decision.

5.105 The Planning and Development Act, 2000 says that An Bord Pleanála may dismiss appeals or referrals if they are vexatious:

*“The Board shall have an absolute discretion to dismiss an appeal or referral — (a) where, having considered the grounds of appeal or referral, the Board is of the opinion that the appeal or referral (i) is vexatious, frivolous or without substance or foundation, or (ii) is made with the sole intention of delaying the development or the intention of securing the payment of money, gifts, consideration or other inducement by any person.”<sup>75</sup>*

5.106 This provision should prevent competitors using the planning system with anti-competitive intent. However, no retailer in the planning group could inform the Competition Authority of any case where An Bord Pleanála had dismissed an appeal on these grounds. While most of the Planning Group have indicated that they often believe third party appeals to be vexatious, and highlight this belief in their response to third party appeals, no one reported any occasion where An Bord Pleanála supported this, and dismissed the appeal.

### **Analysis**

5.107 As seen in the numerous issues discussed above, the Retail Planning Guidelines and local authority development plans may inadvertently

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<sup>75</sup> Planning and Development Act, 2000, Chapter III, Section 138 (1)

facilitate the protection of incumbent retailers. A third party competitor can appeal a planning application on various grounds. For example, a competitor may appeal on the grounds that a local authority has not comprehensively accounted for the effect that a new retail outlet will have on existing retail centres within the surrounding vicinity, without it being interpreted as an anti-competitive act.

5.108 Given this set-up one would expect to see a relatively high proportion of appeals coming from competitors. Even if a competitor believes that the likelihood of An Bord Pleanála over-turning a decision is low, the cost to the appellant in comparison to the applicant may make the appeal worthwhile. A further benefit of appealing a decision of a local authority is the size of the proposed retail development may be reduced.

5.109 The Competition Authority requested that retailers provide information on the identity of third party appellants. Table 17 below summarises this information. "Competitor" was defined to include trade associations and local retailers. "Other" was defined to include any other third party appellants including local residents, schools, community councils, An Taisce and developers.

5.110 Overall, where third parties appeal a retail planning application, the proportion of appellants that are competitors is 37%. Experience varies considerably by retailer. Lidl and Supervalu are close to the average at 35% and 30% respectively. Dunnes Stores are well below the average at 12%, while M&S, Superquinn and ALDI applications are never appealed by competitors. Tesco has the highest proportion of third party appeals by competitors at 57%.

5.111 Table 17 also shows the success rates associated with applications that are appealed by third parties. Overall, where third parties appeal a retail planning application, the application results in the opening of a new retail outlet 79% of the time. When the appellant is a competitor, entry is successful 76% of the time. This compares with a success rate of 82% when the appellant is not a competitor.

5.112 When success rates are broken down by retailer, experiences vary. When a competitor is a third party appellant, applications by Dunnes Stores and Lidl applications are always ultimately successful, though

numbers are small. This compares with only a slightly lower success rate when the appellant is not a competitor, at 93%, for Dunnes and a considerably lower success rate for Lidl at 81%. The identity of the appellant does not appear to make a difference for Tesco.

**Table 17: Third party Appeals by Appellant (Competitors and Others)**

	Tesco Ireland	Dunnes Stores	M&S	Superquinn	ALDI	Lidl	SuperValu***	Overall
<b>Total*</b>	44	17	2	3	3	23	10	102
Success Rate of application	64%	94%	100%	100%	100%	87%	n/a	79%
<b>Competitor**</b>								
Number	25	2	0	0	0	8	3	38
Proportion	57%	12%	0%	0%	0%	35%	30%	37%
Success Rate	64%	100%	-	-	-	100%	n/a	76%
<b>Other</b>								
Number	19	15	2	3	3	15	7	65
Proportion	43%	88%	100%	100%	100%	65%	70%	63%
Success Rate	64%	93%	100%	100%	66%	81%	n/a	82%

\*There were 88 third party and third party appeals withdrawn in the Planning Group (Successful Applications). The Competition Authority obtained third party names for 82 of these. There were 22 third party appeals that led to unsuccessful applications. The Competition Authority obtained third party names for 21 of these.

\*\*In the case where there was more than one appellant, if a competitor was one of the appellants then this appeal was identified in the analysis as a competitor appeal.

\*\*\*SuperValu were not asked to supply information on unsuccessful applications.

5.113 Earlier in this section, it was shown how third party appeals (as well as other appeal forms) tend to increase the length of time taken to enter new local markets. Table 18 below shows how this effect operates depending on the identity of the appellant. Table 18 therefore only includes applications that are ultimately successful, i.e., successful entry attempts.

5.114 Overall, when applications are appealed by third parties, the average time taken to successfully progress an application through the planning process takes 13.3 months (53 weeks). However, when application is appealed by a competitor the planning process tends to take longer.



When the appellant is a competitor, the planning process takes on average 17 months (68 weeks). This compares with just 11.3 months (45 weeks) when the appellant is not a competitor. When a third party appellant is a competitor therefore, the planning process takes on average 50% longer. The reason why the planning process takes substantially longer when a competitor appeals likely relates to the nature of the appeal grounds. As discussed earlier retail impact assessments, for example, necessarily contain a variety of assumptions about population growth, growth in consumer spending power as well the magnitude of trade diversion from existing retail centres. Grounds for appeals such as these often require extensive information requests (and clarifications) to applicants as well as consideration of substantial third party submissions.

**Table 18: Time Taken for Planning Applications by Appellant\* (Successful Applications)**

	Tesco Ireland	Dunnes Stores	Marks and Spencer	Superquinn	Aldi	Lidl	SuperValu	Overall
<b>Total</b>	28	16	2	3	2	21	10	82
Time (months)	15.1	9.6	11	8.3	13	15.4	11.6	13.3
<b>Competitor</b>								
Time (months)	18.1	12	-	-	-	17.3	14.3	17
Number	16	2	0	0	0	8	3	29
Proportion	57%	13%	0%	0%	0%	38%	30%	35%
<b>Other</b>								
Time (months)	11.3	9.2	11	8.3	13	14.3	10.4	11.3
Number	12	14	2	3	2	13	7	53
Proportion	43%	87%	100%	100%	100%	62%	70%	65%

\*There were 88 third party appeals in the Planning Group. The Competition Authority obtained third party names for 82 of these.

5.115 When the timing of entry, where third party appellants are involved, is broken down by retailer, some diversity in experience emerges. The effect that competitor appeals have in prolonging the planning process is borne out in the experience for each of the retailers where competitors make appeals. The effect is most pronounced however for Tesco whose applications take 60% longer when a competitor appeals.

For Dunnes Stores, Lidl and SuperValu, the corresponding figures are 30%, 21% and 38% respectively.

### **Comment**

5.116 Allowing third parties to make appeals is the exception rather than the rule in most other European countries.<sup>76</sup> Apart from Ireland, only Denmark and Sweden facilitate third party appeals. In 2002, the Centre for the Protection of Rural England (CPRE), along with a number of environmental groups, commissioned a research project examining third party rights of appeal.<sup>77</sup> They concluded that the main reasons systems do not facilitate third party appeals include:

- Landowners have an expectation that they will be permitted to develop their land, so when such a right has been taken away there should be the ability to appeal; third parties do not have an equivalent expectation and so are not being denied a right;
- There exist ample opportunities for third parties to express views on planning applications and have them properly considered at the most appropriate time - that is, before the decision is made;
- Any benefits to third parties would be outweighed by the disadvantages, not least the delay to development; and
- Decisions can be subject to legal challenge through the courts.

5.117 The above discussion suggests that while the identity of the appellant appears not to affect the likelihood of successful entry, it does have a considerable effect on the length of time required to obtain a final grant decision. Across all retailers, it appears third party appeals by competitors prolong the planning process by 50%. Competitor appeals therefore raise the cost of entry and as such act as a barrier to entry.

### **Comment**

5.118 This section examined nine issues or features of the retail planning system that affect competition in the grocery retail sector. The issues were classified under three general headings: restrictions on size, restrictions on location and uncertainty in the planning system.

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<sup>76</sup> For more information see: <http://www.pleanala.ie/guide/characteristics.htm>

<sup>77</sup> Green Balance, Leigh Day & Co Solicitors, John Popham, Prof Michael Purdue (2002), *Third Party Rights of Appeal*.

5.119 It is difficult to isolate the individual effects of the nine issues described in this section. The restrictions and features of the planning system instead tend to combine to limit the type and extent of entry. The cumulative effect however is to raise the cost of entry and to limit the extent of competition that successful entrants may bring to the market.



## **6. SUMMARY OF FINDINGS**

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### **Summary of Findings**

- 6.1 The Irish planning system operates within a structured hierarchy and implementation process, which is coordinated and controlled through continuously updated and revised planning legislation. The retail planning system is part of the general planning system, and the current system of operation is based on the operation of the 2005 Retail Planning Guidelines.
- 6.2 One of the essential statutory requirements of each local authority is the preparation and publication of a six-year development plan, which is the principal planning policy instrument of local authorities. All County and City Development Plans include retail policies and/or separate detailed retail strategies.
- 6.3 There are potential barriers to entry or expansion at the retail level of the grocery supply chain that include the availability of suitably zoned sites for retail use and the process of gaining planning permission to build or expand existing retail outlets. There is little or no experience among a considerable number of local authorities in dealing with planning applications for the development of larger grocery retail outlets. The Retail Planning Guidelines and development plans may inadvertently inhibit competition.
- 6.4 Section 5 considered a series of nine issues relating to how the planning system may inhibit entry or expansion in the grocery retail sector:
- Three issues relating to restrictions on the size of developments;
  - Two issues relating to restrictions on location; and
  - Four issues relating to uncertainty in planning system.

### **Restrictions on Size**

- 6.5 The first restriction on the size of retail outlets concerns the retail caps contained in the Retail Planning Guidelines. The retail caps are set at different levels within and outside the Greater Dublin Area for grocery retail, (3,500m<sup>2</sup>) and (3,000m<sup>2</sup>) respectively. The entry and expansion

histories of the retailers in the planning group suggest that over the period since 2001 the retail caps have only been binding in a limited number of cases, though given the trend among certain retailers toward larger outlets, the caps have likely become more binding in their effect over time. The observed planning histories of the retailers in the planning group hide a second effect of the retail caps, that of entirely deterred entry. Large floorspace requirements are typically associated with high turnover, low margin grocery retailing. The deterrent effect of the retail caps is therefore most likely to discourage the entry of the most price-aggressive retailers. Finally in relation to the retail caps, it appears to be the case that so-called discount food stores face a much lower effective retail cap than other grocery retailers. The Retail Planning Guidelines identify discount food stores as being of a size normally between 1,000m<sup>2</sup> and 1,500m<sup>2</sup>. Planning authorities appear in practice to regard the upper limit as being binding. It is unclear whether this is an unintended effect of the Retail Planning Guidelines. In any case, it is difficult to justify the differential treatment of discount food stores based on pricing strategies.

- 6.6 The second size restriction relates to the requirement that local authorities produce estimates of future floorspace requirements. While the object of this exercise is not to inhibit competition, this in fact may be the case. The main concern is that planning authorities place too great a weight on projected floorspace requirements. Estimating future floorspace requirements involves making a series of forward assumptions about consumer preferences and potential spending power. Such estimates are projections and very sensitive to certain assumptions.
- 6.7 The third size restriction relates to the requirement that, in retail impact assessments, applicants estimate the quantum of trade diversion from existing retail centres. As with local authority projections of floorspace requirements, assessments of the quantum of retail impact are very sensitive to assumptions and methodology. The main concern with the requirement to estimate trade impact, however, is that the purpose of the process is to cushion existing retailers from competition. The effect is twofold. First, as the scale of entry is limited, applicants tend to reduce their scale of entry. Second, incumbent

retailers are not subject to the threat of effective entry and therefore have more market power than otherwise would be the case.

### **Restriction on Location**

- 6.8 Two issues relating to the location of retail development were examined: the hierarchical approach to the location of development and land use zoning. Each of these location restrictions impacts on competition by creating a scarcity of suitable sites for retail development and by forcing retailers to establish at locations that can only facilitate a smaller scale development. This tends to increase costs for retailers by inflating the cost of land within centres and by limiting scale economies.
- 6.9 The analysis of the unsuccessful planning applications has shown that failure to meet the sequential test was often raised as an issue. Across all grocery retail outlets opened by retailers in the planning group since 2001 only 17% were at out-of-town locations while the 69% of new outlets were in town-centre or edge-of-centre locations. Grocery retail outlets opened at out-of-town locations outlets have an average size of 1,864m<sup>2</sup>, higher than the average size of outlets at town-centre locations, 1,621m<sup>2</sup>.
- 6.10 Of the 70 grocery retail planning applications that failed, contravention of zoning objectives was raised in 35 (out of 54) cases where a local authority of refused planning permission and in 33 (out of 56) cases where An Bord Pleanála refused planning permission.

### **Certainty in the Planning System**

- 6.11 The final set of issues examined concern uncertainty in the planning system. Uncertainty can raise the cost of entry to a market and therefore can act as a barrier to entry. The Retail Planning Guidelines should increase the level of certainty within the planning system. Four issues were examined under this heading. First, there appears to be a high level of consistency between the decisions of local authorities and An Bord Pleanála. Where differences do occur, often the improper application of the sequential test and contravention of zoning objectives are at issue.
- 6.12 The second issue relating to uncertainty concerned the time required to ultimately acquire planning permission. The fastest entry experiences

occur where planning applications are initially approved by a local authority and are not appealed by either first or third parties. Where appeals are involved, on average, the length of time required to secure eventual approval almost doubles.

- 6.13 The third issue relating to uncertainty within the planning system concerned the likelihood of appeals. Given the capability of appeals to prolong the planning process, factors contributing to the likelihood of appeal are important. *A priori*, one would expect that the identity of the applicant, the location of the proposed development and the size of the proposed development would each influence the likelihood of appeal. The planning histories examined appear to indicate that where Tesco is identified as being the applicant there is an increased likelihood of an appeal. Tesco face the highest rate of appeals of any retailer among the planning group. However, when applications are initially made by a developer, appeal rates are much lower, by a factor of almost three. Surprisingly, the location of proposed development does not appear to be a significant factor in determining the likelihood of appeals. Outlet size appears to only have a very limited effect on the likelihood of appeal. The range of outlet sizes for applications that were appealed and that were not appealed is broadly the same, while the average size of outlets for which planning decisions were appealed is only slightly higher than for outlets for which planning decisions were not appealed.
- 6.14 The last issue examined concerned the impact that appeals by competitors can have on the planning process. Across all retailers, it appears that third party appeals by competitors prolong the planning process by 50%.

### **Recommendations**

- 6.15 It is essential that the retail planning process is central to the operation of the overall planning system and that consideration be given to the regular review, and update if necessary, of the Retail Planning Guidelines due to the continuous change of the retail sector.
- 6.16 Based on the undertaking of this monitoring process of the grocery sector it is evident that substantial entry and expansion is possible in the sector. However, the manner in which this process of entry and expansion has been and continues to be effectively managed through



the implementation of the retail planning process has not allowed for maximising of the potential level of competition in local grocery retail markets.

### **The Retail Caps**

- 6.17 The Competition Authority has argued in the past that the retail caps should be removed. The principal arguments made by the Competition Authority were that a blanket restriction on floorspace is a disproportionate restriction of competition. Firstly, contrary to arguments made by proponents of the caps, the risk of monopolisation is extremely unlikely to be a concern. The Competition Authority argued:

*"... instances of new entrants managing to acquire monopoly positions are extremely rare. Such an outcome would require the product offering of the new entrant to be enormously more attractive to almost all consumers than the offering of existing suppliers. Furthermore, the removal of barriers to entry is in itself a protection against monopolisation. Even if an entrant did manage to acquire a position of dominance, it would always be vulnerable to further new entry, and consequently would always have to keep ahead in terms of pleasing consumers."<sup>78</sup>*

- 6.18 Secondly, where other objectives, such as social or sectoral policy objectives, are at issue, more proportionate policy instruments are available. This would allow an opportunity for a careful consideration and weighing up of the benefits to consumers of such developments against any possible negative effects by the local representatives of the area concerned, who are best equipped to make a decision in the interests of their own local communities.
- 6.19 The Competition Authority continues to be of the view that retail caps should be removed and that the decisions on the extent of allowed development should be left to local authorities to make. Floorspace caps inhibit the scale and extent of expansion by existing retailers and prevent the entry of new ones. Where entry to the grocery retail sector has occurred, as with Lidl and ALDI, the entry strategy has involved the establishment of outlets that are relatively small, even in comparison with main incumbent retailers in the sector. The availability of larger sized outlets would give consumers the ability to exercise choice over a wider range of products at affordable prices. The present

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<sup>78</sup> Competition Authority (2003), *Submission on the Review of the floorspace cap on retail warehouses contained in the Retail Planning Guidelines (2000)*, S/03/004, p. 4.

limit thus protects existing retailers at the expense of Irish consumers. Limiting floorspace means that Irish consumers experience less choice (for example, less inter-brand competition due to lack of shelving space) and, higher prices.

**Recommendation 1: Remove caps on grocery retail space**

The Department of the Environment, Heritage and Local Government should remove the grocery retail caps in the Retail Planning Guidelines and allow local authorities to determine the extent of retail development in their respective administrative areas.

**Discount Food Stores**

6.20 An additional concern in relation to retail caps concerns the treatment of discount food stores in the Retail Planning Guidelines. Discount food stores are singled out in the Retail Planning Guidelines for different treatment, apparently based on pricing policies.

6.21 The Retail Planning Guidelines describe discount food stores as being normally between 1,000m<sup>2</sup> and 1,500m<sup>2</sup>. Planning authorities appear in practice to regard the upper limit as being binding. Discount retailing relies on a large turnover, low margin business model and therefore requires substantial floorspace. Restricting discount retailers to the operation of smaller retail outlets, even in comparison to the size of outlets operated by the other main retailers, limits the effectiveness of the discounting business model and therefore the extent of competition that such operators can bring to the market.

6.22 It is unclear whether it is the intention of the Retail Planning Guidelines to treat price aggressive retailers differently. The Competition Authority recommends that no distinction be made in the Retail Planning Guidelines between retailers based on their pricing policy.

**Recommendation 2: End the discrimination against discount stores**

The Department of the Environment, Heritage and Local Government should delete the reference in the Retail Planning Guidelines to typical discount store sizes and ensure that no distinction is made in the Guidelines between retailers based on their pricing policy.

## Floorspace Projections

- 6.23 Local authorities are required to produce development plans for their respective administrative areas. Within these development plans are contained specific retail policies or strategies. Such retail strategies establish the optimal scale and location for retail development.
- 6.24 The Retail Planning Guidelines, at Annex 3, provide a methodology that local authorities may follow when determining future retail floorspace requirements. As noted in this *Report* and the Report of the Consumer Strategy Group, estimates derived from the technique are very sensitive to assumptions about population growth and expenditure growth. Accordingly, little weight should be put on such estimates as presented in local authority development plans. The Competition Authority recommends that only minimal account of projections on floorspace requirements, as contained in development plans, should be taken when local authorities are assessing planning applications. Rather, individual applications should be assessed on their merits.

<b>Recommendation 3: Remove the emphasis on past projections of floorspace requirements</b>
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The Department of the Environment, Heritage and Local Government should amend the Retail Planning Guidelines so as to ensure that planning authorities and An Bord Pleanála place minimum weight on projections of floorspace requirements when assessing planning applications and clarify that individual applications should instead be assessed on their merits.
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## Health Checks

- 6.25 The Retail Planning Guidelines suggest that local authorities carry out health checks to assess the vitality and viability of their respective retail centres. Health checks make use of a wide variety of indicators including those intended to measure diversity of uses, retailer representation and numerous environmental factors. Health checks do not however incorporate a competition element.
- 6.26 Given the importance of health checks in the creation of development plans, and that one of the objectives of the Retail planning Guidelines is to facilitate a competitive retail environment, consideration should be given to the inclusion of a competition dimension in the health

checks. The Competition Authority is available to the Department of the Environment, Heritage and Local Government to provide any assistance required for the development of appropriate competition criteria and associated guidance.

**Recommendation 4: Include an assessment of competition in health checks of local development plans**

The Department of the Environment, Heritage and Local Government should amend the Retail Planning Guidelines (at Annex 2) so as to require that local authorities undertaking health checks include a competition dimension. Guidance for local authorities on appropriate competition criteria should also be developed.

### **Retail Impact Assessments**

- 6.27 When making planning applications, retailers are required to produce retail impact assessments. Retail impact assessments include an estimate of trade diversion. That is, how much trade will be diverted from existing retail centres by the proposed new retail development.
- 6.28 Annex 4 of the Retail Planning Guidelines set out the main steps that should be taken to arrive at an estimate of trade diversion. As with the determination of future floorspace requirements made by local authorities, estimates of trade diversion are sensitive to, *inter alia*, assumptions about future population growth and consumer spend.
- 6.29 The possibility of losing turnover to entrant retailers is what drives retailers to provide maximum value to consumers. When this possibility is removed, as is the case when trade diversion explicitly informs the decision making process of local authorities, market power is conferred on incumbent retailers and higher prices are the result.
- 6.30 The Competition Authority recommends that local authorities should not place the level of importance that they apparently do on determined existing and future consumer spend and retail centre turnover when considering the retail impact assessment.

**Recommendation 5: Recognise that competition from new retail centres benefits local consumers**

The Department of the Environment, Heritage and Local Government should amend the Retail Planning Guidelines so as to effectively reduce the level of importance that planning authorities apparently place on trade diversion when considering the retail impact assessment process.

**Consumer Representation**

6.31 The level of attention paid to consumer interests in the planning process may be insufficient. This point was noted by the Consumer Strategy Group in 2005:

*"All planning decisions are taken on the basis of balancing complex sets of issues and interests, including environmental matters, traffic and amenity concerns. The planning system is structured, through statutory requirements for public consultation, to accommodate and consider representations. The level of representation made by interest groups may influence the balance achieved in any particular case. Many interests are represented by well-structured and organised groups – for example, manufacturers, retailers, small businesses and environmentalists. However, there is no organised consumer voice in the planning process."<sup>79</sup>*

6.32 The report goes on:

*"In practice, how much consideration is given to consumer issues during the planning process? An examination of a range of forward planning documents was undertaken on behalf of the Group made by An Bord Pleanála on applications relating to retail outlets, medical facilities and leisure centres. This study revealed little evidence of direct consideration of consumer issues such as competition and choice and no consideration of other consumer-related issues such as the impact of planning on prices."<sup>80</sup>*

6.33 The report made the following recommendation:

*"Oblige local authorities to demonstrate how needs of consumers have been explicitly taken into account at the forward planning level stage and in dealing with planning applications in relation to retail and other service provisions".<sup>81</sup>*

Responsibility: Department of Environment, Heritage and Local Government

<sup>79</sup> Consumer Strategy Group (2005), *Make Consumers Count*, p. 31.

<sup>80</sup> *Ibid.*, p. 32.

<sup>81</sup> *Ibid.*, p. 31.

6.34 In response, the Department of the Environment, Heritage and Local Government, in Development Plan Guidelines, published in June 2007 state:

*"The retail hierarchy should be clearly linked to and evolved from the settlement hierarchy envisaged in the settlement strategy elements of the development plan. It should take into account the needs of consumers in terms of facilitating a competitive retail environment, while promoting development at locations which are readily accessible, particularly by public transport, and in forms which support multi-purpose trips on the same journey"<sup>82</sup>*

6.35 The new Development Plan Guidelines also recommend that local authorities prepare an 'Issues Paper' before the drafting of development plans:

*"While section 11(2)(c) of the Act does not specifically require the preparation of background papers at the pre-draft stage, the compilation of a single, over-arching and concise "Issues Paper" to accompany the initial notification that a new development plan is to be prepared is strongly recommended at that stage as a means of presenting key information on strategic planning and heritage issues and inviting public submissions on differing policy approaches."<sup>83</sup>*

6.36 The Competition Authority welcomes these efforts. However, simply inviting submissions from the public is unlikely to yield the kind of information required to gauge consumer attitudes and preferences in an accurate fashion. In the same way that special interests have tended to be well organised and capable of bring influence to bear on the planning process in the past, the same interests are likely to provide in future the most substantial input on local authority issues papers. The Competition Authority therefore recommends that local authorities be required to survey consumers to accurately ascertain attitudes and preferences.

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<sup>82</sup> *Development Plans; Guidelines for Planning Authorities*, June 2007, Development Plan Format, Chapter 3, Department of Environment Heritage and Local Government, p. 25.

<sup>83</sup> *Ibid.*, p. 59.

<b>Recommendation 6: Formally survey consumers regarding attitudes and preferences</b>
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The Department of the Environment, Heritage and Local Government should amend the Retail Planning Guidelines (at Annex 3) so as to require that local authorities, when assessing future floorspace requirements, survey consumers in a formal statistically representative manner, to accurately ascertain attitudes and preferences. Guidance for local authorities on appropriate survey methodologies should also be developed.
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**Recommendation 7**

6.37 The Irish planning process facilitates third part appeals. This is unusual across Europe. The analysis in this *Report* suggests that there is consistency in the decision making of local authorities and An Bord Pleanála, with outright reversal decisions being relatively uncommon. Nevertheless the identity of planning applicants, rather than the nature of their proposed retail developments appears to be the principal driver of appeals by third parties. This appears to be particularly the case for Tesco. Tesco face the highest rate of appeals among the retailers considered in this *Report*. However, when Tesco applications are developer-led, appeal rates are much lower, by a factor of almost three. Across all retailers, when appeals are made by competitors, the effect can be to prolong the planning process by on average 50%.

6.38 The Competition Authority recognises the legitimate right of third parties to appeal planning applications. However, given that the effect of third party appeals, especially by competitors, is only to delay the planning process and therefore raise the cost of entry, the Competition Authority recommends that further research be undertaken with a view to limiting grounds for appeal.

<b>Recommendation 7:</b>	<b>Research ways to limit appeals by competitors</b>
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The Department of the Environment, Heritage and Local Government should undertake research into how grounds for third party rights of appeal by competitors may be limited.
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## Concluding Comment

6.39 The Report of the Consumer Strategy Group made the following observation about the significance of planning:

*"Every planning decision affects the consumer in one way or another. Whether it involves the zoning of land in a development plan or the granting or refusal of a development proposal, planning has considerable impact on the choices and services available to us, on the level of competition in particular sectors, and on the final price we pay for certain commodities."*<sup>84</sup>

6.40 This *Report* has focussed on the impact of planning on entry and expansion in the grocery retail sector. It is certainly true that the retail planning system has been one of the principal determining factors in how the grocery retail sector has developed over the last number of years. There has been much comment over recent months about the level of prices in Ireland, not just for groceries but for a wide variety of consumer products. Reasons forwarded from various quarters include the differences in the cost of doing business in Ireland versus other comparable countries such as the United Kingdom. Undoubtedly these factors are important. However, limited competition in retail sectors is likely an important factor also.

6.41 Report No. 1 described market structure at the retail and wholesale levels of the grocery supply chain and identified potential competition problems in local retail markets. The planning environment is a principal determinant of the level of competition in local markets. Entry and the threat of entry are what drive incumbent retailers to provide their customers with the best possible value. Allowing retailers to have a certain comfort that their markets will be protected, that their turnover is in some sense guaranteed, in effect confers market power on those retailers. One implication of this is that prices will tend to be higher than they might otherwise be.

6.42 This *Report* has identified a series of issues or features of the retail planning system that affect competition in the grocery sector. Of course, competition, and the associated consumer value that goes with competitive markets, is not the only objective facing society or, as agents of society, planners. Planners must balance a variety of objectives. However, greater cognisance of the impact that planning

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<sup>84</sup> Consumer Strategy Group (2005), *Make Consumers Count*, p. 31.



can have on competition, and therefore on prices and consumer value, is warranted. For this reason, the Competition Authority is making the seven recommendations elaborated above. A decision to implement these recommendations does not require a dramatic change in planning policy. Rather, the recommendations involve only a refocusing of planning policy on competition and consumer issues.



## **APPENDICES**

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## A. LOCAL AND REGIONAL AUTHORITIES

**Table A. 1: Local Authorities**

<b>County Councils: 29</b>		<b>Borough Councils: 5</b>	
<b>City Councils: 5</b>		<b>Town Councils: 49</b>	
<b>County Councils</b>	<b>City Councils</b>	<b>Town Councils</b>	
Carlow	Cork	Arklow	Killarney
Cavan	Dublin	Athlone	Kilrush
Clare	Galway	Athy	Kinsale
Cork	Limerick	Ballina	Letterkenny
Donegal	Waterford	Ballinasloe	Listowel
Dun Laoghaire – Rathdown		Birr	Longford
Fingal	<b>Borough Councils</b>	Bray	Macroom
Galway	Clonmel	Buncrana	Mallow
Kerry	Drogheda	Bundoran	Midleton
Kildare	Kilkenny	Carlow	Monaghan
Kilkenny	Sligo	Carrickmacross	Naas
Laois	Wexford	Carrick-on-Suir	Navan
Leitrim		Cashel	Nenagh
Limerick		Castlebar	New Ross
Longford		Castleblayney	Skibbereen
Louth		Cavan	Templemore
Mayo		Clonakilty	Thurles
Meath		Clones	Tipperary
Monaghan		Cobh	Tralee
North Tipperary		Dundalk	Trim
Offaly		Dungarvan	Tullamore
Roscommon		Ennis	Westport
Sligo		Enniscorthy	Wicklow
South Dublin		Fermoy	Youghal
South Tipperary		Kells	
Waterford			
Westmeath			
Wexford			
Wicklow			

**Table A. 2: Regional Authorities**

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**Regional Authorities: 8**

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Dublin Regional Authority
Mid-East Regional Authority
South-East Regional Authority
South-West Regional Authority
Midlands Regional Authority
Mid-West Regional Authority
West Regional Authority
Border Regional Authority

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## B. CLASSIFICATION OF RETAILERS FROM REPORT NO. 1

**Table B. 1: Classification of Market Operators**

<b>Market Operators</b>	
<b>Vertically-Integrated Retailers</b>	
	ALDI
	Dunnes Stores
	Lidl
	M&S
	Superquinn
	Tesco
<b>Wholesaler-Franchisors</b>	<b>Associated Affiliated Retailers*</b>
ADM Londis	Londis*
Barry Group	Costcutter
	Quikpick
BWG Foods	MACE
	SPAR /EUROSPAR /SPAR Express
	XL Stop & Shop
Gala Wholesalers (14)	Gala **
Mangan Wholesale	MACE
	Vivo
	Xpress Stop
Musgrave	Centra
	Daybreak
	DayToday
	SuperValu
<b>Independent Retailers</b>	Various individual and unique brands.

\* ADM Londis license two retail brands or fascias: Londis and Londis Topshop. In this *Report*, they are treated as one retail brand: Londis.

\*\* Gala Wholesalers, through Gala Retail Services, license four retail brands or fascias: Gala, Gala Superstore, Gala Xpress and Checkout. In this *Report*, they are treated as one retail brand: Gala.





## C. ENTRY AND EXPANSION BY GROCERY RETAILERS (2001 – 2007)

Figure C. 1: Location of New Retail Outlets Opened by Tesco (2001 - 2007)



**Figure C. 2: Location of New Retail Outlets Opened by Dunnes Stores (2001 - 2007)**



**Figure C. 3: Location of New Retail Outlets Opened by M&S (2001 - 2007)**



**Figure C. 4: Location of New Retail Outlets Opened by Superquinn (2001 - 2007)**





**Figure C. 5: Location of New Retail Outlets Opened by ALDI (2001 - 2007)**



**Figure C. 6: Location of New Retail Outlets Opened by Lidl (2001 - 2007)**



**Figure C. 7: Location of New Retail Outlets Opened by SuperValu Retailers (2001 - 2007)**







## D. PLANNING APPLICATIONS REFUSED

**Table D. 1: Planning Decisions Reason Legend**

<b>Reason No.</b>	<b>Explanation</b>
<b>1</b>	The proposed development would have an adverse impact on the character and visual amenity of the area.
<b>2</b>	The proposed development would materially contravene the zoning objectives set out in the development plan.
<b>3</b>	The proposed development would have a substantial adverse impact on traffic, obstruct access to the overall area or road, or endanger public safety by reason of traffic hazard.
<b>4</b>	The proposed development would severely compromise the viability and vitality of the town centre.
<b>5</b>	The proposed development would seriously injure the amenities of the area and residential property in the vicinity by virtue of noise, pollution, poor lighting conditions, or by obtrusive and overbearing visual impact.
<b>6</b>	The proposed development has not properly addressed the availability of other suitable sites, i.e., the sequential test, as required by the Retail Planning Guidelines and the areas retail strategy.
<b>7</b>	The proposed development is above the floorspace cap as provided for in the Retail Planning Guidelines.
<b>8</b>	The location of the proposed development is on the outer periphery of the town where it would not be served by public transport, would encourage dependence on private car use, would not encourage multi-purpose journeys, or would contribute to the social exclusion of members of society who do not have access to a car.
<b>9</b>	The proposed development would be premature pending the adoption of a new development plan or local area plan.
<b>10</b>	The proposed development does not meet with Retail Hierarchy Policy as the site is not within a designated centre.
<b>11</b>	The car parking proposed is inadequate and below the minimum standard required for on site car parking standards.
<b>12</b>	Other environmental concerns are not satisfied such as deficiency in the provision of sewerage facility, drain facility, flooding risk, or concerns about the effects on an archaeological feature in the site.
<b>13</b>	The proposed development would result in an excessive concentration of retail floorspace and would therefore be in excess of the estimated need for additional convenience floorspace projected by the area's Development Plan and Retail Strategy.
<b>14</b>	The proposal would contravene an earlier permission.

**Table D. 2: Unsuccessful Planning Applications**

<b>Planning Number</b>	<b>Address</b>	<b>Date</b>	<b>Retailer</b>	<b>Local Authority Decision*</b>	<b>Appellant</b>	<b>An Bord Pleanála Reasons for Refusal*</b>
05/9263 & 216947	Ballybofey, Co. Donegal	09/06	Tesco	Granted	Third Party (Shane Fitzgerald)& First Party	3, 4
07/810 & 225041	Callan, Co. Kilkenny	01/08	Tesco	Granted with conditions	Third Party (D&C Callan) Supermarket Ltd. & others) & First Party	1, 4, 5,
04/896 & 212929	Cashel, Co. Tipperary	02/06	Tesco	Granted	Third party (RGDATA) <sup>85</sup>	1, 2, 4, 6, 8, 10, 13
05/5124 & 216723	Kanturk, Co. Cork	09/06	Tesco	Granted	Third Party (Kanturk Chamber of Commerce & others)	1, 2, 3, 6, 8
03/1573 & 207810	Tramore, Co. Waterford	12/04	Tesco	Granted	Third Party (SuperValu & Others) & First Party	2, 4, 8, 13
06/4019 & 220901	Listowel, Co. Kerry	07/07	Tesco	Granted	Third Party (RGDATA & Garvey Group)	2, 5, 6
04/5660 & 214562	Loughrea, Co. Galway	05/06	Tesco	Granted	Third Party (RGDATA & Chamber of Commence) & First Party	4, 8, 9
01/478 & 130965	Donegal Town, Co. Donegal	08/03	Tesco	Granted	Third Party (RGDATA & others)	3, 4, 5, 8, 9
0503/00 & 124013	Malahide Rd., Dublin 13	04/02	Tesco	Refusal: 1, 4, 11	First Party & Third Party (RGDATA)	1, 2, 4, 11
03/5115 & 203165	Mullingar, Co. Westmeath	12/03	Tesco	Refusal: 4, 6, 8,	First Party	4, 9
05/5228 & 214428	Mullingar, Co. Westmeath	02/06	Tesco	Refusal: 4, 9,	First Party & Third Party (Lakepoint Park Residents Association)	4, 9
05/691 & 213547	Ardee, Co. Louth	1/06	Tesco	Refusal: 1, 2, 3, 4, 5, 6, 13	First Party	2, 4
05/507 & 217075	Outer Ring Rd. Waterford	11/06	Tesco	Refusal: 4, 13, 14	First Party	4, 7, 13, 14
07/139 & 223443	Ardaun, Galway City	11/07	Tesco	Refusal: 2, 3, 9,13	First party	Withdrawn
05/878	Ballybrit, Galway City	02/06	Tesco	Refusal: 2, 3, 9	No Appeal	

<sup>85</sup> RGDATA (Retail Grocery, Diary and Allied Trades Association) is a representative organisation for independent supermarkets, convenience stores, forecourt stores and local shops in Ireland. RGDATA's principal aim and objective is to provide support to grocers and to act on their behalf with any difficulties independent grocers may be experiencing. This includes notifying members of any relevant planning concerns, and getting involved in the planning process on behalf of local grocers.

<b>Planning Number</b>	<b>Address</b>	<b>Date</b>	<b>Retailer</b>	<b>Local Authority Decision*</b>	<b>Appellant</b>	<b>An Bord Pleanála Reasons for Refusal*</b>
1251/06 & 222493	Castleisland, Co. Kerry	11/07	Tesco	Refusal: 2	First party	1, 2, 4, 5
PL2/04/93 & 210414	Clara, Co. Offaly	05/05	Tesco	Refusal: 4, 12	First Party	1, 5, 12
05/315 & 212544	Portarlinton, Co. Laois	09/05	Tesco	Refusal: 2, 12	First party	Withdrawn
05/3770	Charleville, Co. Cork	02/06	Tesco	Refusal: 2	No Appeal	
05/500009 & 211926	Naas, Co. Kildare	08/05	Tesco	Refusal: 2, 3, 4	First Party	2, 3, 4
04/500053 & 207852	Naas, Co. Kildare	11/04	Tesco	Refusal: 2, 3, 4	First Party	2, 3, 4, 9, 11
6664/06 & 222602	Sandymount Dublin 4.	08/07	Tesco	Refusal: 3, 5, 12	First Party	1, 3, 5
06/3007 & 223207	Tuam Co. Galway	11/07	Tesco	Refusal: 3	First Party	4, 5, 7, 8,13
PD 06/58	Carrick On Suir, Co. Waterford	05/07	Tesco	Refusal: 2, 4, 9	No Appeal	
06/1724 & 219350	Annacotty Co. Limerick	04/07	Tesco	Refusal: 3, 5, 10, 11	First Party	10, 11
PA/12501 & 130146	Clonmel Co. Tipperary	05/03	Tesco	Refusal: 9, 11	First party	4
PA 4701	Clonmel Co. Tipperary	07/01	Tesco	Refusal: 1, 2, 4	No Appeal	
D02A/078 6 & 201656	Stillorgan, Co. Dublin	09/03	Tesco	Granted with Conditions	Third Party & First Party	1, 3, 5, 13
04/207 & 216637	Ennis, Co. Clare	10/06	Tesco	Granted	Third Party	2, 4, 5, 9, 10
TM/732 & 211884	Templemore, Co. Tipperary	09/05	Tesco	Granted	Third Party	1
7387/5/07 & 223450	Tralee, Co. Kerry	12/07	M&S	Refusal: 2	First Party	2, 4, 6
07/3876 & 227270	Cahiriveen, Co. Kerry	05/08	Aldi	Refusal: 2, 5, 12	First Party	1, 2, 4, 11
5619/04 & 212612	East Wall Rd., Dublin 3	10/05	Aldi	Granted	Third Party	2, 3
F04A/1818 & 211398	Kilbarrack Rd., Dublin 5	07/05	Aldi	Refusal: 2, 3	First Party	1,2,3
4316/05 & 214853	Finglas Rd., Dublin 11	05/06	Aldi	Refusal: 2, 3, 5	First Party	2, 5, 9
F04A/1463	Swords, Co. Dublin	12/04	Aldi	Refusal: 2, 9	No Appeal	
F06A/0038 & 217020	Clonsilla, Dublin 15	08/06	Aldi	Refusal: 5, 9, 11, 12	First Party	1, 5, 9, 11
D04A/109 3 & 209987	Cabinteely, Dublin 18	05/05	Aldi	Refusal: 2, 5, 10	First Party	2
05/1632 & 214274	Tipperary Town,	02/06	Aldi	Refusal: 4, 13	First party	4, 13

<b>Planning Number</b>	<b>Address</b>	<b>Date</b>	<b>Retailer</b>	<b>Local Authority Decision*</b>	<b>Appellant</b>	<b>An Bord Pleanála Reasons for Refusal*</b>
Co. Tipperary						
02/1698 & 202474	Dublin Rd., Co. Kilkenny	10/03	Aldi	Refusal: 2, 6, 8	First Party	2, 6, 8
04/1393	Tramore Waterford	07/05	Aldi	Refusal: 2, 5	First Party- Refusal	Withdrawn
SD03A/07 & 205678	Tallaght, Dublin 24	05/04	Aldi	Refusal: 2, 4	First Party	2,4
DA/30037	Ashbourne, Co. Meath	04/03	Aldi	Refusal: 2, 9, 11	No Appeal	
1378/04 & 206989	Finglas Rd., Dublin 11	08/04	Aldi	Refusal: 4, 5, 13	First Party	4, 5
04/28527 & 208728	Blackpool, Co. Cork	01/05	Aldi	Refusal: 2,	First Party	2, 10,
05/181 & 214584	Bray, Co. Wicklow	02/06	Aldi	Refusal: 2	First Party	2
03/2719 & 206829	Naas, Co. Kildare	08/04	Aldi	Refusal: 2, 3, 4, 9	First party	2, 3, 4, 8
06/45	Kilrush, Co. Clare	11/07	Aldi	Refusal: 3	No Appeal	
06/26 & 217900	Cornageeha, Co. Sligo	10/06	Aldi	Refusal: 2, 4	First Party	2, 5
KT 60002 / 217147	Kells, Co Meath	09/06	Lidl	Refusal: 2, 6, 3	First Party	1, 2, 5,
4686/05	Harolds Cross, Dublin 6	11/05	Lidl	Refusal: 5	No Appeal	
D04A/102 7	Dun Laoghaire, Co. Dublin	10/04	Lidl	Refusal: 1, 2, 12	No Appeal	
S00A/0165 & 122389	Clondalkin, Dublin 22	06/01	Lidl	Refusal: 2, 3, 5, 12	First Party	1, 2, 3, 5, 12
F05A/ 0337 & 212513	Santry, Dublin 9	12/05	Lidl	Refusal: 2, 3,	First Party	2, 3
D03A/ 0944 & 206812	Bray, Co. Wicklow	08/04	Lidl	Granted with conditions	First Party- Condition & Third Party- Granting	2, 3, 5
03/9130	Blessington, Co. Wicklow	10/03	Lidl	Refusal: 3, 4,		
05/2289 & 212029	Blessington, Co. Wicklow	01/06	Lidl	Refusal: 3, 4, 5, 9,	First Party	4, 9,
SD04A/ 0009 & 206675	Tallaght, Dublin 24	06/04	Lidl	Refusal: 2	First Party	2
03/1732 & 208276	Celbridge, Co. Kildare	12/04	Lidl	Refusal: 3, 4, 5	First Party	3, 4, 5, 9
03/153 & 204320	Drogheda, Co. Louth	01/04	Lidl	Refusal: 2, 3, 5	First Party	1, 2, 5
05/2390 & 212288	Bray, Co. Wicklow	10/05	Lidl	Refusal: 2, 3, 4, 6, 9,	First Party	2
06/1398 & 221255	Loughrea, Co. Galway	11/07	Lidl	Refusal: 2, 3, 5	First Party	1,2,
07/5 &	Carrick On Suir	03/08	Lidl	Refusal: 2, 6,	First Party	2,

<b>Planning Number</b>	<b>Address</b>	<b>Date</b>	<b>Retailer</b>	<b>Local Authority Decision*</b>	<b>Appellant</b>	<b>An Bord Pleanála Reasons for Refusal*</b>
225052	Co. Tipperary			9,		
06/2314 & 220218	Ennis Rd, Co. Limerick	03/07	Lidl	Refusal: 1, 3, 4, 10, 12	First Party	1, 3, 4, 10
02/117 & 129752	Headford Road, Galway City	10/02	Lidl	Refusal: 2, 3	First Party	2,3
01 1211 & 126449	Castlebar, Co. Mayo	04/02	Lidl	Refusal: 14	First Party	5, 8
03 1396 & 206037	Clonbracknagh, Co. Roscommon	06/04	Lidl	Granted with conditions	First Party & Third Party	1, 12
04 6697 & 209761	Ballincollig, Co. Cork	04/05	Lidl	Refusal: 1, 2, 4, 13	First Party	1, 2, 4, 13
05/317 & 217133	Donegal Town, Co. Donegal	12/06	Dunnes Stores	Granted	Third Party	1, 3, 6
N/A			Dunnes Stores	N/A	N/A	N/A

\* See Table D1 above for a list of the reasons.

\*\* The explanations given are not exhaustive; however they do represent the main explanations given by the Planning Authority of reasons for refusal.

vigorous  
competition  
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economy



growing

productivity

competition

vigorous  
competition  
drives  
productivity  
growth,  
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economy

economy



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