



national **consumer** agency  
gníomhaireacht náisiúnta tomhaltóirí

putting **consumers** first

## **Department of Environment, Heritage and Local Government**

### **Review of the Retail Planning Guidelines Issues Paper**

The National Consumer Agency (NCA) welcomes the opportunity to comment on the Department of Environment, Heritage and Local Government's Review of the Retail Planning Guidelines Issues Paper. The Agency is available to meet with the Department to discuss these comments in greater detail if required. The Agency also notes that the Issues Paper is published in advance of the preparation of revised guidelines. The Agency looks forward to commenting on these new guidelines.

**Q1. In general, do you think that the retail planning guidelines have struck the right balance in accommodating new retail development that is projected to be required in a way that is efficient, equitable and sustainable?**

**NO.**

The NCA recognises that the Retail Planning Guidelines (RPGs) were intended as a framework to guide and support those involved in the planning and development process in securing the best outcomes for society and the public in general, achieving an appropriate balance between complex social, environmental and economic factors.

However, the NCA is of the view, as previously set out in the *Consumer Strategy Group sub-report on Planning & Land Use and How it Affects the Consumer*

(November 2004)<sup>1</sup>, that the Guidelines as currently formulated tend to be construed and applied in a manner which is inflexible and deterministic, with little consideration given to competition, choice and the needs of the consumer in particular, as opposed to the public in general.

In its assessment of the capacity of the current RPGs to satisfy consumer objectives, the Consumer Strategy Group (CSG) sub-report on Planning and Land Use addressed the *“five key priorities that have equal weight”* that underpin the RPGs:

- Regarding the priority **“To ensure that in future all development plans incorporate clear policies and proposals for retail development”** the CSG sub-report observes that in practice what we see is retail strategies being developed for each area with the findings of these strategies then being incorporated into the review of the relevant Development Plans. It is suggested that a more integrated approach to the formulation of the underlying Development Plans, to include retail development ab initio, might deliver synergies, with retail planning being managed as a key input factor in addressing challenges such as achieving urban regeneration or facilitating access and mobility, for example.
- Regarding the priority **“To facilitate a competitive and healthy environment for the retail industry of the future”** the CSG sub-report suggests that the form of words used here might benefit from being strengthened to place a clearer emphasis on *“facilitating competition”* in the retail market – an emphasis that would tend to focus on promoting increased competition rather than the maintaining a status-quo, which may play to the strengths of incumbents and deter new market entrants.
- Regarding the priority **“To promote 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”** the sub-group report acknowledged that this focus is compatible with the

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<sup>1</sup> [http://www.nca.ie/eng/Research\\_Zone/Reports/planning\\_and\\_land\\_use.pdf](http://www.nca.ie/eng/Research_Zone/Reports/planning_and_land_use.pdf)

principles of sustainable development and supports good planning and practice.

- Regarding the priority **“To support the continuing role of town and district centres”**, whilst acknowledging that the protection and regeneration of town centres is a valid and meritorious planning objective, the CSG sub-group report suggests that this priority must be read on conjunction with its sister priority to ***facilitate a competitive and healthy environment for the retail industry of the future***. Any efforts to achieve the latter face the challenges raised by the sequential approach to retail development favoured under the Guidelines. A particular example of where this policy approach would appear to negatively affect the consumer is in the grocery retail market, where development limitations based on the sequential approach have had the effect of constraining the type of grocery retailer that can trade in an area, limiting the range of goods they can offer and influencing the price point at which they can operate – all of which may undermine the competitive environment and thereby deny consumers choice and value in the retail market. This point was also highlighted by the Competition Authority in its Grocery Monitor Report No. 3, published in September 2008<sup>2</sup>.
- Regarding **“A presumption against large retail centres located adjacent to or close to existing, new or planned national roads/motorways”** the sub-group report underscores the potential, in some instances, for conflict between this and the third priority above, referring to ease of access.

The “real world” implications of planning limitations acting as a barrier to competition in retail markets can be seen from the results of a large-scale price comparison survey, conducted by the NCA in July 2010. The results of this study, which will be released in early August, clearly illustrate that, after a period of vigorous price competition during 2009, price matching has resumed as the predominant feature in the Irish grocery market.

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<sup>2</sup> [http://www.tca.ie/images/uploaded/documents/grocery\\_monitor\\_report\\_3.pdf](http://www.tca.ie/images/uploaded/documents/grocery_monitor_report_3.pdf)

Any competition amongst the four largest multipliers<sup>3</sup> (accounting for just under 80%<sup>4</sup> of the total market) in core branded items is focused on special offers and juggling frequent but small price changes on individual items as opposed to actual price competition<sup>5</sup>. The NCA believes that this lack of competition is helped by the current RPGs as they do not easily facilitate new entrants<sup>6</sup>.

The Agency notes the comprehensive work of the Competition Authority in this area and supports their recommendations, made in 2008<sup>7</sup>. The Agency concurs with the assertion *that 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.*

The Agency believes that innovative ideas such as approving planning at national level for a number of sites for use by a single new entrant should be considered as part of the review, in order to stimulate competition in the grocery market.

In summary, as regards the effectiveness of the present RPGs in delivering equitable, efficient and sustainable retail development for Ireland, the NCA is of the view that:

- the current RPGs are written in a manner that does not adequately facilitate inclusion of consumer and competition objectives in the planning and delivery of new retail development;

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<sup>3</sup> Tesco, Dunnes Stores, SuperValu, Superquinn.

<sup>4</sup> Kantar Worldpanel, data to June 13<sup>th</sup> 2010.

<sup>5</sup> The Agency will conduct detailed price comparisons across a number of specific grocery segments, beginning in Q3 2010, in order to assess price levels across a much wider range of goods than previously.

<sup>6</sup> The Agency notes the contribution of Aldi and Lidl to the consumer landscape in recent years but notes that it has taken over 10 years for these retailers to achieve a combined market share of approximately 7%. - Kantar Worldpanel, data to June 13<sup>th</sup> 2010.

<sup>7</sup> <http://www.tca.ie/EN/Promoting-Competitio/Market-Studies/Grocery-Monitor-Project.aspx>

- the RPGs should be revised to specifically promote competition at local and national level on a consistent basis across all local authorities; and,
- per the Recommendation on page 33 of the CSG report (2007)<sup>8</sup>, the consumer should be at the centre of retail planning decisions, with the views and preferences of consumers being sought and consideration in the decision making process being given to issues such as competition, choice and the impact of planning decisions on consumer prices.

In this way, it is hoped that whereas the consumer has achieved an increase in choice of retail outlets in the period since the introduction of the current Guidelines, future RPGs might be structured to actively promote competition and to serve the consumer need for competition and value for money.

**Q2 Should the retail floorspace caps be retained?**

**No.**

The Agency is of the view that the floorspace caps are arbitrary and should be removed. Each case should be assessed on its merits, having regard to relevant provisions of the relevant Development Plan. Local Authorities should be required to consider the existing situation with regard to competition, value and choice, to take the views and preferences of consumers into account and to then grant or deny planning permission on the basis of a clear and transparent analysis of the specific needs of a given location.

**Q3. The sequential approach aims to protect the vitality of city and town centres.**

**Do you think this approach should be retained: NO. Modified: YES.**

Experience in both the UK and in Ireland suggests that an overly rigid approach to the application of the sequential approach may result in some retailers either

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<sup>8</sup> *“Oblige local authorities to demonstrate how needs of consumers have been explicitly taken into account at the forward d planning level stage and in dealing with planning applications in relation to retail and other service provisions”*

constraining their business model to the detriment of the consumer, merely to comply with the requirements attaching to a presence in a town or city centre location. Other retailers may make a decision not to trade in an area at all, if their preferred retail format is deemed incompatible on the basis of absolutist adherence to the sequential approach. For consumers, this has the potential downside of resulting in lower levels of competition and choice.

There is also the risk that the market itself will refuse to comply competitively unsustainable requirements to develop in an undesirable location, so some flexibility within Development Plans is desirable, to facilitate responsiveness to market changes and consumer needs.

**Q4. Has the application of the guidelines discriminated against discount grocery retailers such as Aldi & Lidl in terms of floor space and/or site locations?**

Given their expansion in recent years it is not clear that the caps on floor space have discriminated against Aldi and Lidl to their and to consumers' detriment, although it may be reasonable to suggest that the rate of their expansion has not been easily facilitated by the current guidelines. However, it bears noting that the description used in the RPGs of a "discount food store" as being of a size usually between 1,000m<sup>2</sup> and 1,500m<sup>2</sup> appears to have been taken as setting an upper limit, and this constraint being applied to the trading model used by Aldi and Lidl but not to other more traditional grocery retailers would appear to unjustifiably prejudice their competitive opportunities.

What is more clear, however, is that the RPGs do not allow the entry of larger scale and more price-aggressive grocery retailers, such as some of those operating in the nearest jurisdiction and in continental Europe. Instead of arbitrary caps, the guidelines should require Local Authorities to consider the existing situation with regard to competition, value and choice, to take the views and preferences of consumers into account and to then grant or deny planning permission on the basis of a clear and transparent analysis of a locations need.

In the event, however, that planning permission is granted to large-scale grocery retailers it should be made an explicit requirement of the planning permission that the floor space is to be utilised for the sale of groceries, as opposed to a grocery store with a large proportion of the floor space given to the sale of non-food items.

**Q5. Should the quantitative method for estimating future retail capacity needs continue to be used, given the drawbacks such as lack of certain key data? If yes, what key safeguards would you suggest?**

This submission already calls for the assessment of applications for retail development to be based on the merits of the individual case, having due regard to the exigencies of the relevant Development Plan, to an assessment of the consumer need and of the prevailing socio-economic and environmental objectives. Such a “case by case” approach, by definition, would require the introduction of a qualitative aspect to the planning evaluation process.

The data referenced in the current report is very much out of date. Demographic and settlement patterns have, without doubt, changed significantly in recent years. In addition, there may now be significant over capacity in some areas. For the current quantitative methods to retain credibility, a detailed study is required to update the data, as well as to reflect the current market situation and consider what has and has not worked across the country. Due regard should also be had to the extreme sensitivity of some of the variables used in the quantitative method and to the potential for such data to unduly influence decision making, absent a common-sense approach to the process in its entirety.

**Q 6. Has there been an over-emphasis placed by some planning authorities on the impact or proposed new or expanded shopping centres on existing outlets?**

The NCA has no comment to offer.

**Q7. Should Edge-of-Town and Out-of-Town retail outlets be required to charge for on-site parking?**

The Agency would not support a blanket requirement for out-of-town and edge-of-town retail parks to charge for parking and indeed, as a general principle would not be in favour of parking fees at these locations. However, where vehicle traffic to these retail parks is a cause of traffic congestion or other nuisance, the Agency recognises that parking fees or other limitations on access to and duration of parking may be required as part of a wider retail planning approach.

Given that one of the preferred criteria for large scale out of centre retail developments was to service the needs of consumers purchasing bulky items, unsuitable for carrying by pedestrian shoppers or on public transport, it would appear disproportionate to then penalise consumers buying such goods with parking charges for accessing the retail parks designed to supply them.

On a related point, the Agency would encourage Local Authorities to consider city centre parking fees and, at the very least, to contemplate charging lower amounts at off-peak times to incentivise shoppers into these areas as a means of supporting them as vibrant retail centres. The Agency notes Dublin City Council's free parking scheme in the run up to Christmas as a positive step and a welcome development for consumers and city centre business owners alike.

## **Other Comments**

The **National Consumer Agency (NCA)** is a statutory body established by the Irish Government in May 2007.

Our aim is to provide strong and modern consumer protection, safeguarding consumers in Ireland and empowering them to understand and to exercise their rights.

To achieve our aim, we:

- ◆ Inform consumers of their rights through consumer information;
- ◆ Promote a strong consumer culture in Ireland through consumer education and awareness;
- ◆ Help business obey consumer law through our enforcement activities; and
- ◆ Represent consumer interests at all levels of local and national consumer policy development through targeted research and forceful advocacy.

**-ends-**