



Oifig an
Rialaitheora Pleanála
Office of the
Planning Regulator

14 July 2020

Mr Darragh O'Brien TD
Minister for Housing, Planning and Local Government
Department of Housing, Planning and Local Government
Custom House
Dublin 1
D01 W6X0

Re: Notice pursuant to section 31AN(4) of the Planning and Development Act 2000 (as amended) - Variation No.2 of the Cork County Development Plan 2014

A Chara,

I am writing to you pursuant to section 31AN(4) of the Planning and Development Act 2000 (as amended) (the "Act") in the context of Variation No. 2 of the Cork County Development Plan 2014 ("Variation No. 2"). In particular, I write arising from the consideration by this Office of the following:

- a) the Notice of Intent to issue a Direction issued to Cork County Council (the "Council") by your office on 5 March 2020, and
- b) the report of the Chief Executive of the Council dated 23 June 2020 on the submissions and observations received by the Council (the "Report").

I refer also to the submissions made directly by elected members of the Council to this Office and considered by this Office pursuant to section 31(10)(a) of the Act. Each of the submissions received by this Office is attached to this letter. This Office has carefully considered the Report and the submissions made directly to this Office.

For the avoidance of any doubt, this Office rejects the assertion in the Chief Executive's Report that the Notice which issued by this Office to your office in accordance with section 31AM(8), on 21 February 2020, is inadequately reasoned and fundamentally flawed for the reasons set out in the Report or otherwise.

Following detailed consideration, this Office recommends that you as Minister issue the direction as attached to the Notice of Intent to issue a Direction dated 5 March 2020. This Office has made one minor amendment to the reasons set out in the direction. In this regard, please see attached the direction with the minor amendment to Reason II) noted in tracked form as follows:

The Cork County Development Plan 2014 as varied by Variation No.2 purports to identify a preferred location for a retail outlet centre to serve the Cork metropolitan area in advance of the preparation of an updated joint retail strategy, as, in the opinion of the Minister, is required under in the circumstances, to ensure consistency with the Guidelines on Retail Planning published by the Minister in April 2012 under Section 28 of the Act and is inconsistent with the Guidelines on Spatial Planning and National Roads published by the Minister in January 2012 under Section 28 of the Act, and therefore fails to set out an overall strategy for the proper planning and sustainable development of the area.

In forming this decision, this Office reiterates the submissions made to the Minister under cover of Notice which issued from this Office to your office on 21 February 2020. However, in terms of a response to the position set out by the Chief Executive, you might please note the following:

a) It is accepted that, as suggested by the Chief Executive, in general terms it is “best practice” rather than a “requirement” of the Retail Planning Guidelines (RPGs) to have an up to date joint retail strategy. However, this Office is of the view that in the circumstances of Variation No. 2, an updated joint retail strategy is required in order to ensure consistency with the RPGs and a plan-led approach to retail development in Cork City and County and to ensure that there remains an overall strategy for retail development in the Cork County Development Plan.

The RPGs state the following – ‘*The purpose of such joint or multi-authority retail strategies is to encourage a more holistic approach to planning for the retail sector based on the dynamics of the retail catchments around cities and large towns and to plan on that basis rather than a piecemeal planning authority by planning authority basis.*’ This Office considers that the unilateral approach by Cork County Council in adopting Variation No. 2, which supports such a significant scale of retail development in a location with known constraints and in the absence of an updated / revised joint retail strategy, represents a piecemeal rather than a holistic approach inconsistent with the RPGs. An updated / revised joint retail

strategy prior to any such variation of Development Plans for Cork City and County would inform those plans and provide for a plan-led approach.

The Report fails to demonstrate any acceptable rationale for the necessity for Variation No. 2 to proceed at this time in advance of an updated joint retail strategy. It is noted that the Report states that an updated joint retail strategy is being prepared as part of the review of the Development Plan, but the report does not explain why this is being done after the variation. Clearly any such review should take place *in advance of* varying the Development Plan in the manner proposed when it can shape the overall strategy rather than after the Development Plan has been varied in a piecemeal manner.

Since the prospective outlet centre is akin to a district centre in terms of its scale, this Office considers that it would have implications for the details that should be contained in a joint retail strategy set out in Section A 3.3 (Annex) of the RPGs, including:

- The retail catchment covered by the strategy
- An overall analysis of the retail sector in the relevant area, including the retail hierarchy
- High level objectives for the retail sector
- A quantification of the broad extent of future retail floorspace requirements in relation to both convenience and comparison retailing both for the overall area of the strategy and the retail hierarchy.

Furthermore, the existing joint retail strategy reflects the guidance in the RPGs regarding principles for the location of large-scale retail development and to protect the primacy of Cork City Centre.

Since the current joint retail strategy does not consider the potential for a regionally significant outlet centre, and has not been updated in respect of the administrative boundary changes affecting the Cork City and County Council area, the strategy is considered to be out of date with respect to Variation No. 2. Therefore, the adoption of a variation that identifies a preferred sub-catchment for a regionally significant retail proposal in isolation is inconsistent with the policies and direction in the current joint retail strategy and does not provide for a plan-led or holistic approach for retail development. In this regard, the adoption of Variation No. 2 is considered to be inconsistent with the objectives of the RPGs.

b) The OPR remains concerned at the prematurity in recommending a preferred sub-catchment for such a significant regional scale retail development given its implications for the N25 national road having regard to the Spatial Planning and National Roads Guidelines for Planning Authorities (SPNRGs). It is accepted that there was consultation with the National Transport Authority and Transport Infrastructure Ireland as stated in the Report. It is not explained by the Chief Executive how the reservations expressed by those bodies are addressed in Variation No. 2.

c) Variation No. 2 was adopted (on 27 January 2020) prior to the adoption of the Regional Spatial and Economic Strategy for the Southern Regional Assembly area (RSES) (31 January 2020) and the finalisation of the Cork Metropolitan Area Transport Strategy (CMATS) (February 2020). The Cork County Development Plan has not yet been varied to align with the RSES, although it is noted that a full review of the Cork County Development Plan has recently commenced. CMATS will inform the future update of Cork City and County development plans.

The Office notes that Cork MASP Policy Objective 16 of the RSES refers to support for the role of the Metropolitan Cork joint retail strategy and further preparation of joint retail strategies for Metropolitan Cork between Cork City Council and Cork County Council in accordance with the RPGs.

This Office is of the view that, in the circumstances, Variation No. 2 should not proceed pending the completion of the full review of the Cork County Development Plan.

d) The Office agrees that section 31AM(8)(a) to (c) are cumulative requirements to be met prior to a recommendation or draft direction being issued. This is readily apparent from the first page of the Notice letter which issued from this Office on 21 February 2020. This Office is of the view that:

- There is no doubt that Variation No. 2 has not been made in a manner consistent with the recommendation of this Office.
- In the circumstances, Variation No. 2 results in a failure to set out an overall strategy for the proper planning and sustainable development of Cork County.

- As a consequence, the use by the Minister of his functions to issue a direction under section 31 would be merited.

e) This Office remains of the view that the designation of a preferred sub-catchment for a regionally significant retail outlet centre in a manner inconsistent with the RPGs and the SPNRGs, and in advance of the pending updates to the joint retail strategy for Cork County and City currently taking place as part of the process of the review of the Cork County Development Plan means that the current Development Plan, as varied by Variation No. 2, fails to set out an overall strategy in respect of retail development.

For the avoidance of doubt, the Office does not have any view on whether – in due course – the identified sub-catchment should be the preferred catchment for such development but considers that for there to be an overall strategy for retail, the preferred sub-catchment should only be identified following the completion of the update to the joint retail strategy and in a manner which is consistent with section 28 Guidelines referenced above.

f) The Office's position is that a development plan must establish an overall strategy for proper planning and sustainable development based on a holistic plan and policy led approach which, in relation to retail development in the main cities and specifically Cork, requires in the circumstances an up-to-date joint retail strategy to ensure consistency with the Guidelines on Retail Planning published by the Minister in April 2012 under Section 28 of the Act. Piecemeal departures from that overall plan and policy led approach undermine the integrity of any such overall strategy. In this regard, the submission of Cork City Council referred to in the Chief Executive's Report is of particular relevance given that Cork City Council and Cork County Council are the two planning authorities that would prepare such a joint retail strategy under the section 28 Guidelines above.

In its submission, Cork City Council supports the draft Direction and states that it will work with Cork County Council to prepare a new agreed joint retail strategy for Cork, which should inform the locational aspects of both authorities development plans with regard to future retail development.

Taking account of all of the submissions referred to above, it is the view of this Office that there has been a piecemeal approach to the proposed variation. Instead, and as provided for under the guidelines of the Minister referred to above, a collective and strategic approach should have been adopted.

Therefore, I recommend that you, as Minister for Housing, Planning and Local Government, issue the Direction subject to the minor amendment to Reason II as attached to this letter.

Recommendation

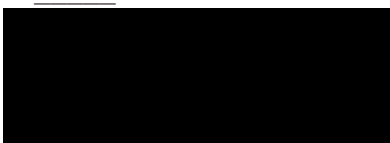
Having regard to section 31AN(4) of the Act, the Office recommends the exercise of your function under the relevant provisions of section 31 of the Act, taking the steps set out in the direction accompanying this notice, i.e. the deletion of Variation No.2 of the Cork County Development Plan 2014, so as to rectify the matter in a manner that, in the opinion of this Office, will ensure that the Cork County Development Plan 2014 sets out an overall strategy for proper planning and sustainable development and meets the requirements of the Act.

Please do not hesitate to contact the Office should you have any queries in relation to the above. Contact can be initiated through the undersigned or at plans@opr.ie.

Yours sincerely,



Niall Cussen
Planning Regulator



**DIRECTION IN THE MATTER OF SECTION 31
OF THE PLANNING AND DEVELOPMENT ACT 2000 (as amended)**

Variation No. 2 of the Cork County Development Plan 2014

“Development Plan” means the Cork County Development Plan 2014

“Variation No. 2” means adopted Variation No. 2 of the Cork County Development Plan 2014

“Planning Authority” means Cork County Council

WHEREAS the Minister at the Department of Housing, Planning and Local Government in exercise of the powers conferred on him by section 31 of the Planning and Development Act 2000 (as amended), and consequent to a recommendation made to him by the Office of the Planning Regulator under section 31AN(4) of the Act hereby directs as follows:

- (1) This Direction may be cited as the Planning and Development (Variation No. 2 of the Cork County Development Plan 2014) Direction 2020.
- (2) The Planning Authority is hereby directed to take the following steps with regard to the Cork County Development Plan 2014:

Revert to the Cork County Development Plan 2014 as made following the adoption of Variation No. 1 and prior to the adoption of Variation No. 2 by:

- (i) The text in Paragraph 7.10.5 Retail Outlet Centres is to be deleted as follows:

~~In relation to Retail Outlet Centres the Councils vision is to;
“Facilitate an innovative competitive comparison retail outlet centre
serving a regional catchment that is sustainably located, which provides
synergies with tourism attractions and existing urban centres, avails of~~

~~existing and planned public transport, does not give rise to traffic congestion, and does not have any adverse effects upon the vitality and viability of existing retailing centres.”~~

- (ii) The text in Paragraph 7.10.5 Retail Outlet Centres is to be reinstated as follows:

“Cork County Council will undertake a detailed evidence based assessment to confirm the need for such developments and which will identify potential suitable locations.”

- (iii) The text in Paragraph 7.10.5 Retail Outlet Centres is to be deleted as follows:

~~In 2019 Cork County Council appointed consultants to carry out a Study on the Requirement for a Retail Outlet Centre in the Cork Metropolitan Area. On the basis of the study’s findings Cork County Council is satisfied that there is scope and retail potential capacity to accommodate a quantum of additional comparison retail floor space within the Cork Metropolitan Area and region up to 2023 of between 90,000 and 100,000 sq.m. of net retail comparison floor area. Therefore there is capacity to accommodate a Retail Outlet Centre in the Cork Metropolitan Area.~~

~~There are a variety of different Retail Outlet Centre formats and the success, and indeed impact of a Retail Outlet Centre is dependent upon the precise format chosen or proposed. The Council are satisfied such a proposal should not have an adverse impact upon the vitality and viability of other retail centres in Metropolitan Cork or the existing retail network/hierarchy as set out in Table 7.1.~~

~~The Study indicates that the cumulative retail impact of a retail outlet centre on Cork City Centre, the District Centres and the Metropolitan Towns would be 1% or less.~~

~~Metropolitan towns in particular generally offer middle order comparison retailing which is generally not in direct competition with the type of goods on offer in the typical Retail Outlet Centre format which seeks to attract customers from a wide catchment area and from the tourism sector. Furthermore there is a requirement on applicants to demonstrate that products sold will not be in competition with those currently on sale in typical city/town centre locations.~~

~~The provision of such a Retail Outlet Centre can be a significant benefit to the metropolitan economy and an important contributor to the life, vitality and attractiveness of Metropolitan Cork as well as an important asset to the wider southern region.~~

~~Having assessed a number of potential locations within a number of sub catchments against a range of considerations including retail impact, tourism synergy, traffic, access and public transport it was concluded that the most appropriate location for a Retail Outlet Centre in Metropolitan Cork is the NE 2 sub catchment (N25).~~

- (iv) County Development Plan Objective TCR10-2: Retail Outlet Centre is to be deleted.
- (v) The Map in adopted Variation No. 2 titled 'NE-2 Sub Catchment (N25)' is to be deleted.
- (vi) Section 7.10.6 Innovation in the County's Retail Offer is to be deleted as follows:

~~Innovation in the County's Retail Offer~~

~~To ensure that the county sustains and enhances its attraction and competitiveness as a retail destination, it must be proactive and responsive in respect of innovation in retailing and new retail market trends. Retailing is a key part of Cork County's tourism offer and, as such, is important to the county's economy as a whole. Encouraging and facilitating innovation, be that in trading format, location or product, will assist the county to build on the success that has been established to date and, consequently its retail profile and attraction.~~

STATEMENT OF REASONS

- I. The Office of the Planning Regulator is of the opinion that Variation No. 2 has not been made in a manner consistent with its recommendations, that the Cork County Development Plan 2014 as varied by Variation No. 2 fails to set out an overall strategy for the proper planning and sustainable development of the area.

- II. The Cork County Development Plan 2014 as varied by Variation No. 2 purports to identify a preferred location for a retail outlet centre to serve the Cork metropolitan area in advance of the preparation of an updated joint retail strategy, as, in the opinion of the Minister, is required ~~under~~ in the circumstances, to ensure consistency with the Guidelines on Retail Planning published by the Minister in April 2012 under Section 28 of the Act and is inconsistent with the Guidelines on Spatial Planning and National Roads published by the Minister in January 2012 under Section 28 of the Act, and therefore fails to set out an overall strategy for the proper planning and sustainable development of the area.

GIVEN under my hand,

Minister for Housing, Planning and Local Government

day of July, 2020.