1. **Description of Proposed Development**

The proposed development is an application to vary condition 6 of A/1996/0505 and condition 4 of A/2001/0098/RM to allow mixed retailing at unit 4 Crescent Link Retail Park to allow for a mix of comparison and convenience goods to be sold at this location. The mix of goods indicated is 58.5% convenience goods relating to 550.1 sqm, 30% bulky comparison goods relating to 282.1sqm and 11.5% non-bulky comparison goods relating to 108.1 sqm.

2. **Summary of issues**

The above item was presented at the Planning Committee held in the Council Chamber, Derry Road, Strabane on Wednesday 2nd November 2016. The planning officer made a presentation to members to refuse the application with suggested refusal reasons. Members voted on this proposal and resolved that the case officer recommendation to refuse planning application A/2013/0507/F is not accepted.

Officers have considered the members comments of the meeting of the 2nd November 2016. Since the Committee meeting on the 2nd November 2016, the agent for Home Bargains in
Northern Ireland- Mr Eamonn Loughrey, has contacted the local planning authority to advise that Home Bargains are not linked to this site at Crescent Link (See attachment 1 for your information and discussion).

As a direct result of this it is apparent that the processing of this whole application has been carried out on the basis that Home Bargains was the end user. The proposed jobs and investment were based on Home Bargains end user. The transport assessment and trip generation figures were based on Home Bargains and it is unclear whether Transport NI would require new information for a different end user. The retail impact figures were based on home bargains sales densities and comparison and convenience turnover which changes for different end users. The site selection criteria supplied by the agent was based on the fact that they said they had already received an approval on the cityside and had disregarded sites at Springtown District Centre and near the Budget DIY site as they stated that it serviced the same catchment as their Budget DIY site.

All of this information cannot be now considered for this application. This would now mean that this application would allow for the unfettered approval of a class 1 retailer at this location. This may include users that are currently operating in units in the City Centre at present.

In relation to the improvements to the road junctions at this retail park, it is considered that the application is for amendment to conditions and initial views are that it is not considered that the roads amendments could be conditioned on this application.

3. Protocol for Operation of Planning Committee

Paragraph 6 of the ‘Protocol for Operation of Planning Committee— Derry City and Strabane District Council’ sets out the procedures for consideration of applications. It advises that in cases when members do not agree with the officer recommendation, that the application is deferred to the next Committee meeting to allow time for appropriate conditions to be drafted for Members approval. All such cases must be then be returned to the next Planning Committee following consideration of the legal robustness of the decision.

Following the consideration at Planning Committee on 2nd November 2016, whereby Members voted contrary to the officer recommendation to refuse, a proposal to approve on this site would be contrary to the local plan. In this instance, the planning authority has a duty to refer the application to Department of Infrastructure for call in as it falls Under schedule 1 for the
Description of Major Development for which applications must be notified to the Department of the Environment.

1. A major development application which would significantly prejudice the implementation of the local developments plans objectives and policies.

For clarification purposes, under the Planning (Development Management) Regulations (Northern Ireland) 2015, a major retail application is defined in section 7 of the major development thresholds as those where the gross floorspace of the development comprises 1,000 square metres or more gross floor space.

It is Planning’s opinion that by recommending this application for approval this would significantly prejudice the implementation of the Derry Area Plans objectives and policies. Therefore it is recommended Planning would recommend that the application be referred to Department of Infrastructure.
ATTACHMENT 1

From: Eamonn Loughrey  
Sent: 07 November 2016 10:35  
To: Andree McNee  
Cc: Malachy McCarron; Katrina Hope  
Subject: Crescent Link Discount application

Good morning Andree

I have been asked by Home Bargains to advise you that the application for a discount retailer in Crescent Link is not linked to Home Bargains.

Home Bargains have seen comments in the press that they will be opening the store, but that is incorrect.

I trust this helps to clarify the position, and I trust you can inform the relevant case officer.

Regards

Eamonn Loughrey  
eamonn@inaltus.com
Appendix 1

Derry City and Strabane District Council Planning Committee Report

COMMITTEE DATE: 30th November 2016

APPLICATION No: A/2013/0507/F

APPLICATION TYPE: Full

PROPOSAL: Application to vary condition 6 of A/1996/0505 and condition 4 of A/2001/0098/RM to allow mixed retailing

LOCATION: Unit 4 Crescent Link Retail Park

APPLICANT: Genova North West Ltd.

AGENT: TSA Planning

ADVERTISEMENT: 16th October 2013

STATUTORY EXPIRY: 9th November 2013

RECOMMENDATION: Refuse

REASON FOR PRESENTATION TO COMMITTEE: Major application, more than 1000 sqm of retail floorspace

All planning application forms, drawings, letters etc. relating to this planning application are available to view on www.planningni.gov.uk

4. Description of Proposed Development

The proposed development is an application to vary condition 6 of A/1996/0505 and condition 4 of A/2001/0098/RM to allow mixed retailing at unit 4 Crescent link Retail Park to allow for a mix of comparison and convenience goods to be sold at this location. The mix of goods indicated is 58.5 % convenience goods relating to 550.1 sqm, 30% bulky comparison goods relating to 282.1sqm and 11.5% non-bulky comparison goods relating to 108.1 sqm.

The original condition on the two permissions was as follows:
The floorspace comprised in the retail warehousing shall be used only for the retail sale and ancillary storage of the items listed hereunder and for no other purpose including any other purpose in Class 1 of the Schedule to the Planning (Use Classes) Order (NI) 1989.

(a) DIY materials, products and equipment,

(b) Garden materials, plants and equipment,

(c) Furniture and soft furnishings, carpets and floorcoverings,

(d) Electrical tools and equipment including items commonly classed as "white goods" and audio visual equipment,

(e) Car accessories,

(f) Toys - Only one unit will be occupied for the sale of toys. Not less than 70% of the trading floorspace will be used only for the sale of bulky goods and equipment and not more than 30% of the trading floorspace will be used for the sale of ancillary goods related to the bulky goods and equipment.

(g) Sports Goods - The maximum gross floorspace will be 1,400 sq m. Not less than 70% of the trading floorspace will be used for the sale of bulky goods and equipment and not more than 30% of the trading floorspace of the unit will be used for the sale of ancillary goods and equipment.

(h) Such other items as may be determined in writing by the Department and generally falling within the category of "bulky goods".

Reason for 2 to 4; To control the nature, size and scale of the retailing activity to be carried out at this location so as not to prejudice the continuing viability of established retail centres

The supporting information that accompanies this application indicates that permission is sought for Home Bargains. This application in basic terms will allow this unit to sell a range of convenience and comparison goods in an out-of-centre location.

**Convenience goods** are defined as relatively inexpensive goods which are purchased frequently and with minimum effort they are classified in the glossary of terms in PPS5 as food, drinks, tobacco, newspapers, magazines, cleaning materials and toilet articles.

**Comparison Goods** are defined as goods which consumers purchase relatively infrequently and so they usually evaluate prices, features and quality levels before making a purchase. Examples of comparison goods include cars, televisions and major appliances.

The agent has supplied a product breakdown table from 2010 showing the percentage of product types in a typical Home Bargains store. It is worth noting that in the General groceries section Home Bargains now do offer fresh and frozen goods in their stores.

The proposed units would be in direct competition with the city centre and other protected centres.
5. **EIA Determination**

This site falls below the size threshold of 0.5 ha for an urban development project and as such does not need to have an EIA determination carried out.

6. **Site and Surrounding Area**

Crescent Link Retail Park lies about 3 miles to the east of the City Centre. It is accessed from the Crescent Link dual carriageway via a spur road off a roundabout. Units 1 to 6 in Phase 1 of the development are all occupied by bulky comparison goods retailers. There are no vacancies within the 19 units in the retail park.

This site is unit 4 in the existing Crescent Link Retail Park, the unit is currently occupied by Land of Furniture.

Lands immediately to the north and east of the retail park is developed for housing. Housing dominates the western side of Crescent Link. Just over 1 mile to the southwest of the site, on the northern side of Crescent Link is the Lisnagelvin District Shopping Centre. A part of the Lisnagelvin District Centre lies to the west of this shopping centre and is connected to it by a pedestrian path under Dungiven Road.
Site Location Plan
7. **Site Constraints**

Unit 4 is not vacant, it is part of an existing successful bulky goods retail park which currently has no vacancies. This unit is for Land of Furniture and is currently trading and employs staff at this location.

8. **Neighbour Notification Report**

All relevant neighbour notification took place on the 17/10/13, no objections have been received.

9. **Relevant Site History**

**A/1996/0505**- Site for residential development, retail warehousing, leisure unit, neighbourhood centre, health centre, petrol filling station, restaurant and fast food outlet, hotel and ancillary carparking- **Approved**

**A/2001/1384/O**- Site for neighbourhood centre, doctors surgery, non-food retail, associated access roads, car parking and landscaping- **Approved**
Appendix 1

A/2001/0098- Erection of 12000 sq m retail warehousing, 1400 sq m garden centre, drive through restaurant, associated roadworks, car parking, service yard and landscaping- Approved

A/2006/0242/RM- Erection of 700 sqm store and 325sqm store as part of neighbourhood centre with associated roadworks, service yard and landscaping.- Approved

A/2004/1208/F- Change of use for 697sqm (7500sqft) for open A1 non food for Next Plc as part of 2323sqm (25,000sqft) Store on 2 Floors- Refused and subsequent appeal dismissed on 19/12/05

A/2010/0553/F- Application under Article 28 to vary condition 8 of A/2001/1284/O and condition 7 of A/2003/0325/RM to permit Unit 15 to be occupied by Boots the Chemist- Approved

10. Policy Framework

RDS 2035 - The RDS 2035 advises that Londonderry is the principal city of the North-West and SFG7 looks to strengthen the City’s role.

Derry Area Plan - Paragraph 8.1 of the Derry Area Plan lists the hierarchy of location for retailing comprising of the commercial core, District Centres, Local centres and corner shops in descending order of scale. The site sits within the Crescent Link retail park which was designated as a local centre in the Derry Area Plan

Strategic Planning Policy Statement for NI – The SPPS is a statement of the Department’s policy on important planning matters that should be addressed across NI. The provisions of the SPPS apply to the whole of NI and are material to all decisions on applications. Sustainable development is at the heart of the SPPS, which includes key principles for development and also strategic policies on retail. The SPPS has superseded PPS5 Town Centres and Retailing.

PPS 3 Development Control: Roads Considerations – sets out the planning policies for vehicular and pedestrian access, transport assessment, and the protection of transport routes and parking.

11. Consultee Responses

Transport NI- No objections to proposal- Transport NI has stated that “the existing Crescent Link Retail Park is 15% underprovided in parking at present. This application will not be used to address this shortfall, it will be assessed on its own merit re the ‘Parking Standards’, local TNI experience of access/parking pressure within the retail park and the consequent impact on the network”.
HQ Retail Unit- Retail unit assessed the application under PPS5 which has now been superseded by the SPPS. They concluded at the time that the retail impact upon the Lisnagelvin Centre was bordering the realms of acceptability but the cumulative impact on the City Centre and the District Centres would be considered to be detrimental. The alternative sites selection was left to the local office to decide on.

12. Representations
Letter of support received from Mr G. Middleton MLA – advising that the proposal would be of benefit to the waterside and wider city area with the potential of 40 new jobs and £750,000 investment.

13. Planning Assessment, including Other Material Considerations
Section 6 (4) of The Planning Act (Northern Ireland) 2011 requires the Council to make planning decisions in accordance with the local development plan, unless material considerations indicate otherwise.
This proposal has been assessed against the provisions of the Derry Area Plan 2011, as well as other material considerations including the Regional Development Strategy; the Strategic Planning Policy Statement for Northern Ireland and PPS 3 Access Movement and Parking,
This application seeks to change the conditions to allow convenience goods at this location.

10.1 SPPS- Retailing
This is strengthened in the SPPS in that the first three Regional Strategic Objectives for retailing are that:
- There will be a town centre first approach for the location of future retailing and other main town centre uses;
- Adopt a sequential approach to the identification of retail and main town centre uses in Local Development Plans;
- Ensure LDPs and decisions are informed by robust and up to date evidence in relation to need and capacity;
Paragraph 6.280 states that a sequential test should be applied to planning applications for main town centre uses that are not in an existing centre and are not in accordance with an up to date LDP.
At section 6.281 it lists the order of preference that main town centre uses to be considered in order and it states that they must consider all of the proposals catchment. In the list it mentions:

- Primary Retail Core;
- Town Centres;
- Edge of centre; and
- Out of centre locations, only where sites are accessible by a choice of good public transport modes.

The end user for this site is proposed in the supporting information is Home Bargains. The planning application however is for a relaxing of the planning condition to allow for more convenience goods to trade at this location so it could be argued that the site requirements are not specifically tied into the planning application as there is nothing firm to suggest this is Home Bargains.

Relevant case law includes Tesco v Dundee City Council (case ref) case in which it ruled that ‘suitable sites’ are seen as what is suitable for the applicant’s needs, the agent submitted a list of key site requirements.

- Premises of circa 10,000 sq ft;
- Unit must be serviceable by 40ft lorries as they operate from a single distribution centre;
- Low development costs;
- Prominent location;
- Floor space all at ground level;
- Medium to high footfall with easy access and free parking.

This essentially meant that all the sites selected did not meet the specific requirements of the end user and were automatically ruled out on the basis that they could not meet the desired needs. Some of the sites assessed by the applicant could be adapted to meet the needs of the end user whilst still enjoying the benefits of high footfall. To say that these end users have to have this particular format is inaccurate as Home Bargains have two sites in Northern Ireland that don’t meet this format as they are in the High Street Mall in Portadown and in the Rushmere Shopping Centre in Craigavon. The agent is relying on the Dundee judgement to try and meet all the tests for sites, however, in the Dundee judgement it also stated that “the application of the sequential approach requires flexibility and realism from developers and retailers...they are expected to consider the scope for accommodating the proposed development in a different built form, and where appropriate adjusting the proposed development in a
different built form, and where appropriate adjusting in the subdividing large proposals in order that their scale may fit within existing development in the town centre”.

The applicant has stated that this is the only unit suitable for Home Bargains as they have already received an approval for a site on the city side (at Budget DIY site, Strand Road) and now want a site in the Waterside. There is nothing in either the Derry Area Plan or the SPPS which would allow for this site selection criteria.

In relation to retail impact, the SPPS states that “all policies and proposals must ensure there will be no unacceptable adverse impact on the vitality and viability of an existing centre within the catchment, and meet the requirements of policy elsewhere in the SPPS”. The SPPS clarifies that applicants should undertake a “full assessment of retail impact as well as need”, and that decisions must be informed by “robust and up to date evidence”.

10.2 Derry Area Plan (DAP) 2011: Section 8 relates specifically to commerce and states that Derry is the principal retailing centre for the City Council Area and for the neighbouring areas of Limavady and Strabane and for parts of Donegal. Retailing outside the central area is concentrated in District Centres at Lisnagelvin, Northside, Springtown and Rath Mor. Policy COM 1 Role of the Commercial Core advises that the Department will seek to strengthen and consolidate the Commercial Core of the City as the principal focus for shopping in the district. Outside the commercial core retailing is provided in a hierarchy comprising the District Centres, Local Centres and corner shops in descending order of scale.

Derry currently has a large amount of existing and unbuilt retail warehousing. The Map in section 13 shows the position of the existing retail warehouse locations without the City, some of which have already been developed and some with extant planning permission on sites. The nature of retailing has changed considerably in the past few years in terms of the way that people shop and the fastest growing sector of the retail market is that of the discount retailer. Applying for units with a direct mix of convenience and comparison goods could set a wide ranging precedent for previously high street uses to locate to these out of town locations. The proposed units would be in direct competition with the city centre and other protected centres.

10.3 Court Judgements and appeals

Tesco vs Dundee Judgement already referred to in paragraph 10.1.
High Court of Justice case ref DEE8475 in the case of LIDL versus Callender street trustees limited, the conclusions by the judge confirmed that “Home Bargains clearly falls within the definition of a supermarket for the sale of discounted goods”. As a result this supermarket style retailer would have a direct impact on the district centre at Lisnagelvin as it would undermine the supermarket functions and as such the vitality and viability at this centre.

In appeal 2005/A033 for open class A1 retailing at the Crescent Link, Commissioner Rue stated that if the appeal were to succeed then it would be difficult to resist similar proposals from owners of other retail warehousing in the Derry Area. Commissioner Rue went on to state that in the case of the Crescent Link appeal that the amount of floorspace for whose conversion a precedent would be created is substantial in the local context.

The Crescent link appeal 2005/A033 is similar to this application, in that it could see a large number of applications being applied for in existing retail parks. Although this application is for comparison non-food retailing, the nature of shopping has changed so much that the likes of Poundland, B and M, and Poundworld that are currently within the central area of the city could move out of the central area to compete with other retailers in a similar market format. In the Crescent Link appeal the commissioner agreed that a decision to remove bulky goods conditions to allow open class 1 retailing would “send the wrong signal to would be investors in existing centres that enjoy protection under PPS5(PPS5 has now been superseded by the SPPS) The trade withdrawal from the Central Area and District Centres if the current retail warehousing parks were to apply for relaxation of their conditions to allow for a mix of convenience and comparison goods would be catastrophic for the Derry Area.” Consequently the proposal does not meet the tests as specified in the SPPS.

Appeal decision Riverside Retail Park 2014/A0266, referred to in paragraph 10.6.

The commissioner concluded that the appeal proposal was not in accordance with the Local Development Plan. They also concluded that a precedent would be created for further trading of non-bulky goods in the Riverside Retail Centre and this would prejudice the vitality and viability of the town centre.
10.4 Economic Benefits

The economic benefits of the proposal were stated as providing in the region of 30-50 new jobs. It would seem likely that even though these units may create 30-50 new jobs it would appear that the detrimental impact on the City Centre and nearby existing centres if this were to be approved would lead to job losses at other locations and possibly for the people currently working in the Land of Furniture unit at present. As we already know Unit 4 is not a vacant unit and is currently operating as Land of Furniture.

10.5 PPS 3 – Access Movement and Parking

Policy AMP7 states that development proposals will be required to provide adequate provision for car parking and appropriate servicing arrangements. The precise amount of car parking will be determined according to the specific characteristics of the development and its location, having regard to the Departments published standards. In terms of Car Parking at the Crescent Link, we are aware that there are operational issues with traffic and parking which are evident during the week and at weekends. Transport NI have advised that the current car park operates at 15% under provision which this application is not expected to compensate for. The Applicant has provided the additional 22 spaces required for this development and Transport NI have recommended approval with conditions and informatives.

10.6 Material Consideration

The agent has referred to a number of similar planning approvals listed elsewhere in Northern Ireland. All of these approvals would have been considered on their own merits under planning policy, mainly the superseded PPSS and their impacts on each of their centres and precedents already set. The precedent set by these does not override the requirements of the sequential test set out in the SPPS. Any precedent created for the trading of non-bulky goods in this location would prejudice the vitality and viability of the city centre.

There has been a relevant appeal decision in Riverside Retail Park in Coleraine (2014/A0266) for variation of condition to allow the sale of convenience and comparison goods to allow Home Bargains to trade out of unit 17. This was the first appeal to be assessed under the SPPS.

The commissioner concluded that the appeal proposal was not in accordance with the Local Development Plan. They also concluded that a precedent would be created for further trading of non-bulky goods in the Riverside Retail Centre and this would prejudice the vitality and viability
of the town centre. For these reasons the commissioner determined that the appeal in respect of the variation of the condition must fail.

14. Conclusion and Recommendation

The proposal would result in this unit retailing a range of convenience and comparison goods in an out-of-centre location. The proposal would be in direct competition with the city centre and other protected centres. The impacts of this proposal have been balanced against the economic benefits of the proposal, the third party representation and the consultation responses as well as the impacts on the other existing and proposed retail development in the city. Taking all this into account I would recommend refusal of this application as it fails the tests set down in the Derry Area Plan 2011 and the SPPS.

15. Proposed Refusal Reasons

1 The application is contrary to the Strategic Planning Policy Statement and Com 1 of the Derry Area Plan 2011 in that the development if permitted would be likely to create a wide ranging precedent for other town centre uses to be located in out of centre locations.

2 The application is contrary to the Strategic Planning Policy Statement and Com 1 of the Derry Area Plan 2011 in that suitable alternative sequentially preferable sites are available for retail use within the proposals whole catchment

3 The proposal is contrary to 6.282 and 6.290 of the Strategic Planning Policy Statement in that there is insufficient quantative and qualitative information provided to make an assessment for the need for this application and therefore lead to an unacceptable adverse impact on the existing City Centre and District Centres
16. Drawings
PROPOSED LAYOUT INCORPORATING APPROVED ASDA / HOMEBASE CAR PARKING WITH 16 ADDITIONAL SPACES

FRONT ELEVATION

REAR ELEVATION