



An
Bord
Pleanála

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Inspector's Report PL91.248430

Development	Single storey restaurant with takeaway and drive through facilities, signage, carparking, vehicular access and associated site works.
Location	Ennis Road, Clonmacken, Co.Limerick
Planning Authority	Limerick City and County Council
Planning Authority Reg. Ref.	16/1040
Applicant	Moveford Ltd.
Type of Application	Permission
Planning Authority Decision	Grant subject to conditions
Type of Appeal	3 rd Party v. Grant
Appellant	(1) Keelside Ltd. (2) Damien Ryan
Observers	None
Date of Site Inspection	21/07/17
Inspector	Pauline Fitzpatrick

1.0 Site Location and Description

- 1.1. The site, which has a stated area of 0.25 hectares, has frontage onto the Ennis Road and is located approx. 2km from Limerick city centre. The site is currently enclosed by a hoarding. The area to the north between the site and the Ennis Road is landscaped with cycle parking provided. A path runs immediately to the west of the site providing pedestrian access from the Ennis Road to the Ennis Road Retail Centre which bounds the site to the south. The retail centre is a complex of units in an L-shaped layout fronting onto surface parking. The unit immediately adjoining the site is occupied by Woodies DIY. Access to the retail park is via an internal road serving both the centre and the Jetland Shopping Centre further west again. The said internal road extends south from the Ennis Road and connects with the Clonmacken Road to the south-west. The junction with the Ennis Road is a signalised junction which also controls vehicular movements from the Lidl and Supermacs developments on the opposite side of the road.
- 1.2. The retail centre and shopping centre form part of the wider Caherdavin district centre area which also includes other commercial premises to the north along the Ennis Road. Ashbrook housing estate bounds the site to the east with a fenced off laneway in-between.

2.0 Proposed Development

- 2.1. The application was lodged with the planning authority on 15/11/16 with further plans and details including revised public notices (arising from changes to red line boundary) received 30/03/17 following a request for further information dated 17/01/17. The proposal comprises:
- Single storey restaurant with a stated area of 339 sq.m. (dining area stated to be 111sq.m.) with takeaway and drive through facilities.
 - 24 no. new and use of 7 no. existing car parking spaces
 - Vehicular access is to be via the existing Ennis Road Retail Centre access road and internal roundabout and through the surface car park to the west.
 - Signage

Opening hours are proposed between 11am and 11pm.

By way of further information the applicant states that it has sufficient legal interest in the lands. The right of way to the east within the site boundary is unobstructed.

The application is accompanied by:

- Planning Application Report
- Traffic and Transport Assessment. The Ennis Road signalised junction, without the proposed development, is calculated to be approaching capacity for the final design year (2033). It is likely that the level of capacity anticipated in the final design year would be replicated at many of the junctions along the Ennis Road. The impact of the proposed development on the local road network is expected to be minimal from a traffic impact point of view.
- Engineering Design Report
- Site Specific Flood Risk Assessment. The flood risk map included in the City Development Plan identifies the development area as Flood Zone A. The more recent CFRAM mapping shows that the site will not be affected by any direct significant tidal or fluvial events. The finished floor levels are to be set at 3.6mOD which is 150-300mm above surrounding ground levels and is in line with the FFLs elsewhere in the park. An 87.08m³ attenuation tank is proposed which will discharge to the drainage system at a maximum rate of 5 l/sec. The use of permeable parking, rain roofs etc. would also reduce the run-off potential and reduce the size of attenuation proposed.
- Public Lighting Design
- Appropriate Assessment Screening

3.0 Planning Authority Decision

3.1. Decision

Grant permission subject to 24 conditions addressing standard planning, environmental and engineering requirements.

3.2. Planning Authority Reports

The 1st Planner's report dated 17/01/17 (countersigned) recommends further information on accessible car parking provision, pedestrian crossing, public lighting design, service yard provision, grease trap installation and legal interest over the site. The 2nd report dated 25/04/17 following FI (countersigned) recommends a grant of permission subject to conditions.

3.2.1. Other Technical Reports

The 1st report from Operations and Maintenance Services details concerns regarding accessible carparking provision and the new pedestrian crossing. The 2nd report following FI considers the response to be acceptable.

The 1st report from Environment Section recommends conditions should permission be granted. The 2nd report following FI has no objection.

Air, Noise & Water Pollution Control and Public Health Team recommends conditions should permission be granted.

Executive Archaeologist states that there are no archaeological issues.

Fire and Building Control requires the development to be carried out in accordance with the Building Regulations.

3.3. Prescribed Bodies

Irish Water has no objection subject to conditions.

The Environmental Health Officer, HSE, in a report dated 19/12/6 requires FI to allow for a full assessment from a food safety viewpoint.

3.4. Third Party Observations

Objections received by the planning authority have been forwarded to the Board and are on file for its information. The issues raised largely pertain to legal interest, building line, vehicular access and layout and impact on public health.

4.0 Planning History

PL30.212827 (04/583) – permission granted in 2006 for mixed retail/commercial including 8 no.retail warehouse units, motor showroom with a roundabout junction and surface parking. 13 conditions were attached to the decision by the Board.

5.0 Policy Context

5.1. Limerick City Development Plan 2010-2016

The site is zoned Z5B District Centre the objective of which is to provide for and/or improve district centres as mixed use centres, with a primary retail function which will also act as a focus for a range of services.

Restaurant/café and take away are permitted in principle.

In order to maintain an appropriate mix of uses and protect night time amenities in a particular area it is an objective to prevent an excessive concentration of takeaways... and to ensure that the intensity of any proposed use is in keeping with both the scale of the building and the pattern of development in the area. The provision of such facilities will be strictly controlled having regard to the following, where appropriate.

- The effects of noise, general disturbance, hours of operation, litter and fumes on the amenities of nearby residents.
- The need to safeguard the vitality and viability of shopping areas in the City and to maintain a suitable mix of retail uses.
- Traffic considerations.
- The number of such facilities in the area.
- Litter control measures
- With regard to takeaways the need to integrate the design of ventilation systems into the design of the building.

Table 16.1 sets out the parking requirements. In terms of a restaurant 1 space per 20 sq.m. is required.

5.2. Natural Heritage Designations

The Lower Shannon SAC (site code 002165) is located c.1.1km to the south-east of the site.

6.0 The Appeal

6.1. Grounds of Appeal

Two 3rd Party appeals refer:

6.1.1. Damien Ryan (submission by Connellan & Associates)

Traffic hazard and Obstruction of Road Users.

- By reason of the proposed occupant (KFC) it is likely that much of the use will be of a take away nature.
- Passing traffic on the Ennis Road are more likely to park on the Ennis Road and access the development via the existing grassed area or the pedestrian path rather than the circuitous access through the retail park. Double yellow lines will not prevent such type activity.
- Ennis Road is heavily trafficked and narrow at this location with a multiplicity of accesses.
- The previously permitted motor showroom on the site would not have had implications for traffic safety.
- The Traffic and Transport Assessment did not comment specifically on the issue of the pedestrian access and likelihood of illegal parking on the Ennis Road. A Road Safety Audit which may have highlighted this issue was not submitted.
- The development was not assessed in the light of the Development Plan policy TR.17 in terms of road safety.

Over Concentration of Take Away Facilities

- The retail park area is much smaller than the Jetland shopping centre and would not support a restaurant/drive thru/takeaway of this scale from trade on

this side of the district centre. The proposal is not a supporting service to the district centre but a major development in its own right positioned to take maximum passing trade from the Ennis Road. It adds nothing of any planning value to the centre.

- There are 4 established takeaways (2 with drive thrus) within 500 metres of the site. A 5th will negatively impact on the amenity of the area.
- Whilst having a sit down element it is effectively a large take away facility. A standard sit down restaurant of a more limited scale would be more focussed on trade in the retail park and would be more complementary and ancillary to the district centre.

Adverse Impact on Residential Amenity

- The proposal would have an adverse impact on Ashbrook Gardens. It will compound the unsightly laneway which runs directly behind the house.
- Vehicular movements at night would give rise to noise.
- Servicing will be concentrated in the area close to the residential development.
- Odours will also be problematic.

Legal Interest

- The applicant does not have sufficient legal interest.

6.1.2. Keelside Ltd.

The appeal states that the applicant has not secured the landlord's consent in respect of the application and the planning authority has erred in its decision.

6.2. Applicant Response

Two separate submissions by Stephen Little & Associates on behalf of the applicant in response to the two 3rd Party appeals refer. The responses can be summarised as follows:

Traffic Hazard

- The concerns raised are not based on any empirical evidence but on unsubstantiated assumptions.
- Parking is illegal along the Ennis Road frontage and would be a matter for the Garda Síochána.
- Sufficient and safe car parking within the retail centre provides a more attractive car parking option.
- There have been no reported incidences of illegal parking on the Ennis Road in the vicinity of the site.
- There is an existing footpath connection between the car parking area and the Ennis Road footpath which facilitates pedestrian connectivity. The proposed alterations to the footpath alignment will not result in a significant change in pedestrian or driver behaviour.
- A comparable access arrangement was constructed at the Douglas Village shopping centre in Cork. No issues of users parking on the main road have been noted or highlighted.
- The submitted TTA fully assesses the development.
- The proposed development does not require a road safety audit given that no changes to road or roadside layout are proposed. The TII document GE-STY-01024 Road Safety Audit sets out standards to which such audits should be carried out.

Concentration of Take Away Facilities

- The development of a restaurant/café and/or takeaway is permitted in principle in the Z5B zone.
- The proposal provided for c.111 sq.m. seating area. It is not primarily a take away.
- The proposal does not conflict with the scale of its retail centre setting.
- It will serve to enhance the choice of retail service amenities and food offering at this location.

- It offers a different menu to the other fast food restaurants in the vicinity.
- The design and layout is in keeping with the established character of the district centre. It will serve to finish out the development to the Ennis Road edge.

Impact on Residential Amenity

- The active use will bring additional animation and passive surveillance to this location including the laneway that separates the site from the neighbouring houses to the east.
- The hours of use are limited by the conditions of the planning permission.
- Potential for noise and emissions have been mitigated in the design. The baseline noise conditions on the Ennis Road is likely to be greater and of longer duration than the proposal.
- The associated service yard lies within the envelope of the proposed building.
- It is adequately separated from neighbouring housing.

Legal Interest

- The applicant has sufficient legal interest in the application site to make the planning application and carry out the works proposed. Copy documents demonstrating same are provided. Further dispute on the matter is a civil rather than a planning matter.
- It is confirmed that the red line includes a hard surface area where it is proposed to finish out with necessary modifications, resurfacing works, footpath facilities, delineated car parking and road markings, similar to the original permission. While not part of the site owned by the applicant the applicant benefits from works licence to carry out these surface works which have not yet been completed by the landowner.
- The car parking spaces form a component part of the wider shared surface car parking serving the centre and may be used by the customers of other outlets.
- The number of spaces to be accommodated exceeds the development plan requirements.

Note: The agent for the appellant queries the validity of both appeals.

6.3. **Planning Authority Response**

None

6.4. **Observations**

None

7.0 **Assessment**

I consider that the issues arising in the case can be assessed under the following headings:

- Applicant's Interest in the Site
- Principle of development and concentration of fast food outlets
- Vehicular and Pedestrian Safety
- Amenities of Adjoining Property
- Miscellaneous Issues
- AA- Screening

7.1. **Applicant's Interest in the Site**

The appellants contend that the applicant does not have sufficient legal interest to carry out the development and associated works in terms of carparking, paths, lighting and signage. The applicant in its appeal response provides documentation in support of its claim of sufficient legal interest and asserts that it has sufficient interest under licence to carry out surface works on lands immediately west of the proposed restaurant within the red line boundary.

On balance I consider that the applicant has provided sufficient detail of interest to make the application. In this regard I note Section 5.13 of the Development Management Guidelines for Planning Authorities which states that the planning system is not designed as a mechanism for resolving disputes about title or rights

over land and is a matter for resolution through the appropriate legal channels. Should the Board be disposed to a favourable decision, the applicant should be advised of section 34(13) of the Planning and Development Act, 2000, as amended and that a person is not entitled solely by reason of a permission to carry out any development.

7.2. Principle of Development and Concentration of Fast Food Outlets

The site is located within lands zoned Z5B - District Centre, the objective of which is to provide for and/or improve district centres as mixed use centres with a primary retail function which will also act as a focus for a range of services. Restaurants/café and take away are permitted in principle in such a zone.

The current Limerick City Development Plan also seeks to prevent an excessive concentration of takeaways and to ensure that the intensity of any proposed use is in keeping with both the scale of the building and pattern of development in the area.

The proposal for a restaurant with a seating area of 111.43 sq.m. in addition to takeaway and drive through facilities, is located along the roadside frontage of the Ennis Retail Park onto the Ennis Road which is a well trafficked road. The said district centre zoning straddles both sides of the road with the Jutland Shopping Centre to the west and a mix of retail and commercial units opposite including Lidl, a filling station, an entertainment centre, Supermacs restaurant and drive through in addition to further two restaurants/takeaways (Shamrock Chinese and Rios Italian). McDonalds restaurant and drive through is located to the south-west, accessed via the access road serving the Ennis Retail Centre and Jutland Shopping Centre.

In the context of the extent of the district centre zoning and current mix of uses I consider that the addition of a further restaurant with takeaway and drive through facilities, coupled with the existing comparable provision in the area, is acceptable and would not give rise to a concentration of such uses which would have an adverse impact on the mix of uses or detract from the primary retail function of area.

7.3. Vehicular and Pedestrian Safety

Whilst having frontage onto the Ennis Road vehicular access is proposed through the existing retail centre accessed from the internal road serving it and the Jutland

Shopping Centre to the west. The said road extends south from the Ennis Road and connects with the Clonmacken Road to the south- west. Its junction with the Ennis Road is signalised which also controls vehicular movements from the Lidl and Supermacs developments to the north of the junction.

Its location and access via the retail centre in proximity to the Jutland shopping centre and other retail and service outlets in the vicinity will afford the opportunity for linked or shared trips, as well as enabling pedestrians to access the restaurant. The access arrangements to the development from the car park of the retail centre and the proposed alterations to the footpath alignment connecting the Ennis Road to the retail centre to facilitate the development will ensure both vehicular and pedestrian safety. 24 no. new and use of 7 no. existing car parking spaces are delineated which materially exceeds the development plan parking requirements for such a facility.

Whilst Mr. Ryan considers that the takeaway facility will encourage parking on the Ennis Road along the site frontage rather than access via the retail centre, double yellow lines prohibit such parking and enforcement of same is a matter for the relevant authorities. No evidence of on road parking was noted in the vicinity on day of inspection.

I consider that the proposed access arrangements to be acceptable and will not give rise to traffic hazard or obstruction of road users on the Ennis Road.

I note that the application is accompanied by a Traffic and Transport Assessment which concludes that the impact of the proposed development on the local road network is expected to be minimal. I note that the results from an Oscady assessment of the existing Ennis Road signalised junction shows the junction in the Opening year + 15 (2033) will be operating over capacity both with and without the development and that this would be replicated at many of the junctions along the Ennis Road.

7.4. Amenities of Adjoining Property

As noted above the site is within the Ennis Retail Centre with frontage onto the well trafficked Ennis Road which is characterised by a mix of retail and commercial uses. The site is to the west and separated from the Ashbrook housing estate by an

overgrown and fenced off lane. Whilst I would accept that the lane is unsightly and, most likely, does not add to the amenities of the adjoining dwellings, I submit that the proposed development would not exacerbate the current situation. I would also submit that as the houses already back onto the site and the service yards of the units within the retail centre, the proposed development would not give rise to material issues in terms of servicing and associated vehicular movements and the related impacts associated with same.

Taking into consideration the site context and setback from the nearest residential properties to the east I do not consider that the residential amenities would be adversely impacted and the proposal will not give rise to any material changes in ambient noise levels. Odour and litter control can be appropriately addressed by way of condition.

7.5. Miscellaneous Issues

The design of the unit is generally acceptable subject to appropriate conditions. The Board is advised that the application is accompanied by photographs of a comparable unit with the corporate signage of the proposed occupant (KFC) shown thereon.

The site is serviced. The flood risk map included in the City Development Plan identifies the development area as Flood Zone A. The more recent CFRAM mapping shows that the site will not be affected by the any direct significant tidal or fluvial risk. The finished floor levels are to be set at 3.6mOD which is 150-300mm above surrounding ground levels and is in line with the FFLs elsewhere in the park. An 87.08m³ attenuation tank is proposed which will discharge to the drainage system at a maximum rate of 5 l/sec.

7.6. AA -Screening

The site is accompanied by an Appropriate Assessment Screening Report

The site is located c.1.1km to the north-west of the Lower Shannon SAC (site code - 00265). Having regard to the location of the fully serviced site on the Ennis Road and the intervening land uses no Appropriate Assessment issues arise and it is not

considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

- 8.1. Having regard to the documentation on file, the grounds of appeal, the responses thereto, a site inspection and the assessment above I recommend that permission for the above described development be granted for the following reasons and considerations subject to conditions.

9.0 Reasons and Considerations

Having regard to the zoning of the site for District Centre uses in the current Limerick City Development Plan, to the mix of uses and pattern of development in the area and to the access and parking provision set out in the application, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area or of property in the vicinity, would be acceptable in terms of traffic safety and convenience, would not be prejudicial to public health, and would be in accordance with the provisions of the Limerick City Development Plan. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 30th day of March 2017, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

3. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including hours of working, noise management measures and off-site disposal of construction/demolition waste.

Reason: In the interest of public safety and residential amenity.

4. Details of the materials, colours and textures of all the external finishes to the proposed development, including the windows, canopies and doors, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of the visual amenities of the area.

5. No advertisement or advertisement structure other than those shown on the drawings submitted with the appeal shall be erected or displayed on the building or within the curtilage of the site in such a manner as to be visible from outside the building, unless authorised by a further grant of planning permission.

Reason: In the interest of visual amenity and to protect the residential amenities of the area.

6. The hours of operation, including service deliveries, shall be between 0800 hours and 2300 hours on any day.

Reason: In the interest of the amenities of the area.

7. Litter in the vicinity of the premises shall be controlled in accordance with a scheme of litter control which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This scheme shall include the provision of litter bins and refuse storage facilities.

Reason: In the interest of visual amenity.

8. The developer shall control odour emissions from the premises in accordance with measures including extract duct. Details in this regard shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of public health and to protect the amenities of the area.

9. A plan containing details for the management of waste/recyclable materials within the development, including the provision of facilities for the storage, separation and collection of the waste/recyclable materials including waste oil and for the ongoing operation of these facilities shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, the waste shall be managed in accordance with the agreed plan.

Reason: To provide for the appropriate management of waste/recyclable materials in the interest of protecting the environment.

10. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the

area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission

Pauline Fitzpatrick
Senior Planning Inspector

July, 2017