



An
Bord
Pleanála

Inspector's Report ABP-303476-19

Development	Two-storey restaurant with ancillary takeaway and drive-thru, vehicular and pedestrian access, landscaping, groundworks and surface parking
Location	Port Road, Letterkenny, County Donegal
Planning Authority	Donegal County Council
Planning Authority Reg. Ref.	17/51831
Applicant(s)	Atlantic Enterprises Limited
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third-Party
Appellant(s)	1). Lindat Limited 2.) Declan Mac an Fhailghigh
Observer(s)	None
Date of Site Inspection	10 th April 2019
Inspector	Colm McLoughlin

Contents

1.0 Site Location and Description.....	3
2.0 Proposed Development.....	4
3.0 Planning Authority Decision	5
4.0 Planning History.....	7
5.0 Policy & Context.....	7
6.0 The Appeal.....	8
7.0 Assessment.....	11
7.1. Introduction.....	11
7.2. Zoning & Land Use	11
7.3. Design & Siting.....	13
7.4. Traffic, Access & Parking.....	14
7.5. Flood Risk	16
7.6. Legal Matters	17
8.0 Appropriate Assessment	18
9.0 Reasons and Considerations	18
10.0 Conditions	19

1.0 Site Location and Description

- 1.1. The appeal site has a stated area of 0.3ha and comprises a former fuel depot and an area maintained as landscaping at the junction of Port Road (R229 regional road) and the Station roundabout, on the east side of Letterkenny town centre in County Donegal. The former fuel depot on the southeast side of the site is covered by a concrete apron and is enclosed by concrete walls on all sides with two gated vehicular entrances onto Port Road. A 2m to 3m-high retaining wall separates the former fuel depot with the landscaped area and the car park to Letterkenny Shopping Centre to the north. A storage shed with a stated gross floor area (GFA) of 138sq.m and setback distance of 33m from Port Road is situated in the northeast corner of the site. The landscaped area on the northwest side of the site features extensive areas of cut lawn and a totem pole advertisement sign for Letterkenny Shopping Centre facing onto the roundabout. The lawn area is raised above the adjoining roads to the west and south and is bordered by a retaining stonewall on these boundaries. According to details submitted by the applicant, two public sewers run through this landscaped area in a northeast to southwest direction.
- 1.2. The immediate area is characterised by a range of uses typical of a town centre and edge-of-town centre location, including a bus depot, a shopping centre, offices, a fuel-filling station, car showrooms, a drive-thru restaurant, a third-level institute and various industrial and retail services. Port House opposite the site consists of five storeys with commercial and other uses on the lower floors and apartments on the upper floors. Letterkenny Shopping Centre, situated to the north of the appeal site, is anchored by Tesco and Penneys and features an extensive car park immediately to the north of the appeal site. Port Road accommodates a lane of traffic in both directions, as well as a shared cycle track and footpath on the northern side adjacent to the appeal site. Along the frontage of the appeal site Port Road features a painted central median strip and unbroken white line, and there is a right-turning lane onto Isle Lane to the front of the site proximate to Station roundabout. Ground levels drop steadily from the landscaped area and former fuel depot onto Port Road in a southeast direction.

2.0 Proposed Development

2.1. The proposed development comprises the following:

- demolition and removal of a shed structure, retaining wall to landscaped area and boundary wall along Port Road and the relocation of flagpoles;
- construction of a two-storey restaurant with GFA of 452sq.m with ancillary takeaway use and drive-thru facility, including seating, preparation and storage areas at ground floor, and seating area, washroom, staff and storage areas at first floor;
- provision of service set-down areas and a parking area for 22 no. car parking spaces, two coach parking spaces, four cycle parking spaces, widened and redesigned vehicular entrance off Port Road and two separate pedestrian accesses off the entrance road to Letterkenny Shopping Centre;
- landscaping, lighting, advertisement signage, including a 6m-high totem pole sign onto the Port Road entrance, relocation of four existing flag poles onto the Port Road boundary, connections to services and a stormwater attenuation tank.

2.2. In addition to the standard planning application documentation and drawings, the application was accompanied by a traffic and transport assessment report, a road safety audit, a drainage report and drawings, a landscape plan and a flood risk assessment.

2.3. The proposed development, including the layout and restaurant building, was revised in response to a further information request from the Planning Authority, with the totem pole sign and coach parking omitted. The further information submission was accompanied by revised Road Safety Audit (Stage 1), revised Report on Storm and Foul Drainage, a Design Statement, computer-generated images (CGIs) of the proposed development and correspondence from a legal representative.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. The Planning Authority decided to grant permission subject to 21 conditions, the majority of which are of a standard nature, but also including the following requirements:

- C.2** various servicing, road safety and access measures;
- C.3** details of measures to address traffic, pedestrian and cycle movement along Port Road;
- C.9** provide a replacement natural stone boundary wall along Port Road;
- C.18** signage in Irish or bilingual.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The initial report of the Planning Officer (January 2018) noted the following:

- there is no objection in principle to the commercial redevelopment of this brownfield site;
- the subject redevelopment constitutes a mono-use that is incompatible with the creation of a vibrant, compact and high-quality town centre, in an area that is somewhat saturated with restaurants / fast food / takeaway outlets;
- the proposed building lacks architectural quality and has an undesirable relationship with Port Road, particularly given the depth of setback;
- extensive areas (c.75%) of the site are proposed for surface parking;
- proposals fail to meet the urban design and form aspirations of the Town Centre Strategy and the Urban Design Framework;
- notwithstanding the recommendations of the Roads Services section, traffic congestion and road safety concerns arise, particularly with regard to the free flow of traffic on the heavily-trafficked Station roundabout, restriction of right-turn vehicular movements at the entrance, pedestrian and cyclist movement fronting the site and autotrack analysis for service vehicles.

The second report of the Planning Officer (November 2018) noted the following:

- a meeting took place between the applicant's representatives and the Roads Services Section to address traffic, movement and related matters;
- the revised layout of the proposed development addresses the urban design and architectural form concerns previously raised and would now contribute positively to the streetscape;
- details of legal interest in the site have been confirmed;
- the information submitted, including revised scheme, is significant and should be re-advertised.

The final report of the Planning Officer (December 2018) noted the following:

- matters raised within the further information request have been addressed and development contributions should be attached to the permission.

3.2.2. Other Technical Reports

- Sanitary Services – no response;
- Road Design –initial and final reports recommend conditions to be attached;
- Roads & Urban Spaces Section (Executive Engineer) – agrees with the initial comments of the Road Design section;
- Fire Officer – no objection, subject to conditions.

3.3. Prescribed Bodies

- Environmental Health Officer (HSE) – no comment;
- Irish Water – no objection, subject to conditions;
- Office of Public Works (OPW) – no response.

3.4. Third-Party Submissions

- 3.4.1. Six submissions were received during the initial consideration of the application by the Planning Authority and a further two submissions were received in response to the receipt of significant further information by the Planning Authority. The issues raised are covered in the grounds of appeal below.

4.0 Planning History

4.1. Appeal Site

4.1.1. The appeal site has been subject to the following recent planning application:

- ABP Ref. PL05E.240741 / Donegal County Council (DCC) Ref. 11/80084 – permission granted by the Board (February 2013) for the demolition of a shed and construction of a four-island fuel-filling station with separate access and egress off the shopping centre car park to the north. The duration of this permission was extended under DCC Ref. 17/51486 until February 2023.

4.2. Surrounding Sites

4.2.1. Reflective of this inner-urban location, there have been numerous recent applications for development on neighbouring properties, including the following application, which relates to a similar use:

- DCC Ref. 10/80016 – permission granted (June 2010) for extensions to the existing KFC drive-thru restaurant on Port Road (300m to the southeast of the appeal site).

5.0 Policy & Context

5.1. Donegal County Development Plan

5.1.1. Statutory planning policies and objectives for Letterkenny are contained within the Donegal County Development Plan 2018-2024. It is understood that a Local Area Plan is to be prepared for the town. The appeal site has a land-use zoning 'town centre', where it is a stated objective 'to sustain and strengthen the core of Letterkenny as a centre of commercial, retail, cultural and community life.' The urban design framework for the town centre area indicates a 'future development block' extending from the southeast corner into the site along the Port Road. Port Road is also identified as a 'primary linkage' and no specific transport objectives are indicated within the immediate area of the appeal site. The southeastern portion of the site and part of the landscaped area are included within a 'flood risk area', where it is a stated objective 'to identify an area that will be carefully managed so as to protect the flood plain and avoid exacerbation of flood risk'.

5.1.2. Planning policies and objectives for the ‘town centre’ area are set out under Section 12.3 within Part C of the Development Plan and these aim to develop a consolidated, vibrant, accessible, multifunctional and high-quality urban environment in the town centre. Relevant planning policies, objectives and standards for retailing are contained within Section 4.2 (County Retail Strategy) of Part B to the Development Plan and also within Section 12.3.3 of Part C to the Development Plan. Appendix 3 to the Development Plan outlines specific ‘Development Guidelines and Technical Standards’ for commercial development, including reference to the standards contained within the ‘Design Manual for Urban Roads and Streets’ (DMURS) and parking standards.

5.2. National Guidelines

5.2.1. The TII document ‘Traffic and Transport Assessment Guidelines’ (2014) are relevant. The Guidelines include criteria to be used when considering whether or not a development should be subject of a Traffic and Transport Assessment.

5.2.2. Volume 5, Section 2 of the Design Manual for Roads & Bridges refers to Road Safety Audits and outlines that a development should be audited at design stages, where it would result in a change to the road or roadside layout.

5.3. Environmental Impact Assessment - Preliminary Examination

5.3.1. Having regard to the limited nature and scale of the proposed development and the absence of any connectivity to any sensitive location, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. Two third-party appeals were received, one from a resident of Letterkenny and another from an adjoining landowner, whose appeal was accompanied by a copy of a lease agreement relating to the landscaped area of the site. The principal grounds of appeal can be summarised as follows:

Planning Context

- proposals submitted at further information stage provide for a significant increase in commercial floorspace (541sq.m) when compared with that previously permitted (139sq.m) under ABP Ref. PL05E.240741 / DCC Ref. 11/80084;
- the area is adequately served by restaurants, takeaways and cafés, with two drive-thru facilities in Letterkenny, one of which is located along Port Road;

Traffic & Road Safety

- proposals raise significant road safety and traffic congestion concerns along a busy route and in an area that attracts extensive vehicular traffic;
- a previous application for development on this site was refused permission given the implications for traffic along Port Road;

Legal Matters

- part of the site is only leased to the applicant and the freeholder (an appellant) has not given consent for the application or the proposed development, which would not comply with conditions of the lease agreement;

Other Matters

- the difference in ground levels between the appeal site and Letterkenny Shopping Centre raises stability concerns given the extent of groundworks proposed;
- the proposed development would lead to waste and litter management concerns, as well as anti-social behaviour, particularly as a result of late-night activity and the proximity to neighbouring residents, including those in Port House opposite the site.

6.2. Planning Authority Response

- 6.2.1. The Planning Authority responded to the grounds of appeal to state that they have no additional comments to make and that they wish to rely on the previous assessments of the proposed development, as contained in the Planning Officer's reports.

6.3. Applicant's Response

6.3.1. The applicant's response to the grounds of appeal can be summarised as follows:

Planning Context

- the design, form, appearance, scale and height of the proposed building appropriately addresses the local context and streetscape, with extensive landscaping provided for throughout the site;
- the proposed development would enhance the appearance of the streetscape and strengthen the commercial and retail activity of the town centre, in redeveloping a vacant brownfield town centre site;
- there are numerous food outlets in the immediate area, as with all town centres, and the proposed development would provide further diversification in this offer, while being complementary to the context;

Traffic & Road Safety

- proposals provide for the omission of one access onto the Port Road and the provision of a pedestrian access off Station roundabout, which would improve connectivity from the site to the town centre;
- the applicant's traffic engineer has responded on traffic and road safety concerns flagged in the grounds of appeal. Traffic would not be impacted along Port Road, given the left-in and left-out vehicular access arrangements, while road safety would not be compromised, with the recommendations of the Road Safety Audit being implemented, including a pedestrian island on the access junction;

Legal Matters

- the applicant has resubmitted correspondence submitted at further information stage from their legal representative confirming that they have sufficient legal interest in the appeal site;
- a determination of legal matters relating to land ownership are not part of the function of the Board;

Other Matters

- the proposed hours of operation are 8am to midnight, as outlined in the planning application form. There are other commercial and recreational businesses within the immediate and wider area that offer similar or longer opening hours, while bus services at the bus station often arrive post-midnight. Furthermore, the previous extended planning permission (ABP Ref. PL05E.240741 / DCC Ref. 11/80084) allows for a 24-hour fuel-filling station;
- waste and litter management proposals were conditioned as part of the Planning Authority decision and proposed as part of the development, including bin locations;
- the applicant operates numerous similar drive-thru facilities nationally, where anti-social behaviour is not tolerated and is not a problem.

6.3.2. **Observations**

6.3.3. None received.

7.0 **Assessment**

7.1. **Introduction**

7.1.1. I consider the substantive planning issues arising from the grounds of appeal and in the assessment of the application and appeal, relate to the following:

- Zoning & Land Use;
- Design & Siting;
- Traffic, Access & Parking;
- Flood Risk;
- Legal Matters.

7.2. **Zoning & Land Use**

7.2.1. The proposal is for the redevelopment of a vacant former fuel depot, including demolition of a shed and the construction of a two-storey restaurant with ancillary drive-thru and takeaway elements. The Planning Authority initially stated that they

had no objection in principle to the commercial redevelopment of this brownfield site, but that the singular use of the site was incompatible with the creation of a vibrant, compact and high-quality town centre. The grounds of appeal assert that the area is adequately served by restaurants, takeaways and cafés. The grounds of appeal also refer to the potential for the development to conflict with the amenities of local residents. In response the applicant highlights that there are numerous food outlets in the immediate area and that the proposed daily opening hours of 8am to midnight, as detailed in the application form, would be typical for a town centre location and the development would be less obtrusive than the previously permitted fuel-service station (ABP Ref. PL05E.240741 / DCC Ref. 11/80084) granted planning permission by An Bord Pleanála in 2013 which did not include a restriction on opening hours.

- 7.2.2. The site is located within 'town centre' zoned lands according to the Donegal County Development Plan 2018-2024, where it is a stated objective 'to sustain and strengthen the core of Letterkenny as a centre of commercial, retail, cultural and community life.' There are two similar drive-thru facilities in the town, one of which is located 300m to the southeast on Port Road, while the immediate town centre area accommodates a variety of commercial and retail uses, including eateries. In order to develop a consolidated, vibrant, accessible, multifunctional and high-quality urban environment with a critical mass of development, the Development Plan outlines that a higher density and greater diversity of development should be promoted through backland, infill and mixed-use development.
- 7.2.3. I am satisfied that the proposal to redevelop this vacant town centre site would support the objectives of the Development Plan aimed at densifying development in the town centre and the proposed use would be complementary to the town centre context. Having regard to the above, including the planning history of the site, the existing development on site and the zoning objective for the appeal site in the Development Plan, I am satisfied that the proposed use of the site would be acceptable and would not conflict with surrounding uses. The proposed restaurant would incorporate a drive-thru element, which presents distinct traffic and road safety concerns, and this is specifically considered in Section 7.4 below.

7.3. Design & Siting

- 7.3.1. In initially assessing the proposed development, the Planning Authority considered that the proposed restaurant building lacked architectural quality and that it had an undesirable relationship with Port Road. The Planning Authority also considered that the proposed development failed to meet the urban design and urban form aspirations of the Town Centre Strategy and the Urban Design Framework, as contained in the operative Plan at the time; the Letterkenny & Environs Development Plan 2009-2015. The proposed development was revised in response to a request for further information and the restaurant building was redesigned and repositioned onto the Port Road frontage. The Planning Authority was subsequently satisfied that the revised layout and design addressed the urban design and architectural form concerns that they had previously raised, and that the revised development would contribute positively to the streetscape and would comply with the urban design objectives of the Donegal County Development Plan 2018-2024. The applicant asserts that the revised design, form, appearance, scale and height of the restaurant building appropriately addresses the local context and streetscape, with extensive landscaping provided throughout the site.
- 7.3.2. Views of the proposed development would be largely restricted to the approaches along Port Road. With the exception of Port House opposite the appeal site, the building line along Port Road is staggered and set back 15m to 25m from the roadside, while the urban design framework contained in Map 12.1A of the Development Plan indicates a clear intention to address this set back by requiring the formation of a 'future development block' fronting and running parallel with the northside of the Port Road. This 'future development block' extends into the southeast corner of the appeal site. A Design Statement accompanied the further information response, with CGIs of the proposed development from two locations provided. Details of landscaping and lighting for the site were also included as part of the application.
- 7.3.3. The CGIs submitted appear to accurately present the proposed scheme and reveal that the proposal would introduce a contemporary building adding activity to the street frontage. Scope to position the building along the southeastern boundary to precisely align with the illustration in the Development Plan, is constrained by the

need to provide an achievable and safe vehicular access to serve the development from Port Road. The demolition of the shed on site, the removal of the boundary wall along Port Road and the redevelopment of the site with a contemporary commercial building and landscaped areas would serve to enhance the streetscape, as well as contribute to the urban design and form in this town centre area. At ground level, I consider that the development would make a positive contribution to the public realm along Port Road, particularly in introducing active uses during daytime hours. Having regard to the town centre location and the surrounding context, I am satisfied that the scale, height, layout and form of the proposed development would be acceptable. Accordingly, I am satisfied that permission should not be withheld for the proposed development for reasons relating to design or siting.

7.4. Traffic, Access & Parking

- 7.4.1. The grounds of appeal assert that the proposed use of the site would undermine existing traffic congestion problems experienced along Port Road and Station roundabout, as well as presenting road safety concerns. The existing site includes two vehicular entrances onto Port Road, while the previous extended planning permission (ABP Ref. PL05E.240741 / DCC Ref. 11/80084) for a fuel-service station closed these vehicular entrances and provided separate exit and egress routes off the car park to the north. The Port Road previously had status as a national road (N14), but was downgraded to regional status (R229) with the opening of a bypass route serving the town. Along the 100m frontage of the appeal site, the Port Road comprises a two-way traffic-flow system with painted intermediary strip, an unbroken white line and a right-turning lane for road-users crossing onto Isle Lane to the southwest. A shared cycle and pedestrian path also runs along the frontage of the site. As part of the revised proposals it is proposed to omit the northwestern entrance to the site and provide a 14m-wide vehicular entrance at the southeast side of the site frontage. A pedestrian route would be provided from the northwest off the entrance road to the shopping centre and the shared cycle and pedestrian path would remain. Internal circulation routes and parking for the drive-thru and restaurant traffic are also proposed.

- 7.4.2. A traffic and transport assessment (TTA) was included with the application, addressing parking, servicing and the capacity of the road network, including the five-arm roundabout. The TTA predicts that the Station roundabout junction would operate at 93.3% of capacity in the AM peak period in 2033 without the development and would operate at 94.3% with the development. For the PM peak period in 2033 the junction would operate at 90.4% without the development and 90.8% with the development. The TTA also sets out that the development would be accessed by a left-in/left-out T-junction, although this is not reflected on the proposed site layout plan submitted (see Drawing No. P-01 18-149 dated Oct-18).
- 7.4.3. Volume 5, Section 2 of the Design Manual for Roads & Bridges refers to Road Safety Audits (RSAs) and outlines that a development should be audited at design and completion stages, where it would result in a change to the road or roadside layout, including where alterations to road signage, markings or barriers are proposed. An RSA (Stage 1) prepared by the applicant's representatives addressing TII standards and including a revised swept path diagram (Drawing No.116211-006 Rev. P3) for a heavy goods vehicle (HGV) entering and exiting the site via the proposed revised site layout. The revised RSA lists seven items in specific locations on site that require addressing.
- 7.4.4. To address the requirements of the TTA and the RSA the Planning Authority decided to attach conditions to the permission addressing servicing, parking and access requirements, including restricting the development to a left-in access and left-out egress and the inclusion of a splitter island at the entrance (condition 2e) and all items raised within the RSA (condition 2a). Based on the information submitted, including the assessments undertaken by the Planning Authority and the applicant's representative, I am satisfied that there is a need to restrict the development to left-in access and left-out egress and the proposed development would not be likely to significantly intensify or impact negatively on traffic movements along Port Road or on the Station roundabout. The 14m-width of the proposed vehicular access is considered excessive and provision for a pedestrian island splitting this crossing point, along with other improvements itemised in the RSA, would be necessary from a road safety perspective. Subject to attachment of conditions to address the junction improvements and address the internal roads and parking layout, including a stage 3 'completion of construction' RSA, I am satisfied that the details submitted by

the applicant would suitably address the potential for conflicting movement between pedestrians, cyclists and motorists and follow the principles set out in relation to RSAs in the DMURS.

7.4.5. Policy T-P-13 of the Development Plan requires an assessment of parking and servicing arrangements when considering development proposals. Minimum car parking standards for restaurants are outlined in Table 6 of Appendix 3 to the Development Plan, which requires one car parking space for every 9sq.m of publically-accessible floor space. Based on the revised drawings submitted, the gross floor area of the development would amount to 541sq.m with approximately 340sq.m of the space publically-accessible. Accordingly, in principle a minimum of 38 spaces would be required, while the proposed development, as revised, would provide for 24 spaces including two disabled bays. Motorbike spaces and bicycle parking spaces are also proposed. The Planning Authority attached a planning condition requiring the omission of two parking spaces and their replacement with a service bay and the applicant has not objected to same. Policy T-P-13 of the Development Plan also allows for a reduced number of car spaces in specific circumstances, including where a site is located in an area that contains car parks with capacity and open to public use. Notwithstanding the shortfall in car parking proposed, considering the town centre and surrounding context, including extensive surface parking in the immediate area, I am satisfied that the number of car parking spaces proposed to serve the facility would be suffice and would not conflict with the provisions of the Development Plan.

7.4.6. In conclusion, I am satisfied that due consideration for traffic and pedestrian movements and the free flow of traffic along Port Road and Station roundabout has been addressed in the design and layout of the proposed development and the proposed parking and service provision would be adequate to serve the development. Accordingly, I am satisfied that with the attachment of conditions, the proposed development should not be refused for reasons relating to traffic and road safety, access arrangements or parking provision.

7.5. **Flood Risk**

7.5.1. Development Plan maps indicate that the former fuel depot on the southeast portion of the appeal site and part of the landscaped area are within a 'flood risk area'. To

address flood risk the applicant has submitted a site specific flood risk assessment for the proposed development. No flood incidents are identifiable from the OPW indicative river and coastal flood maps for the site. Several flooding incidences are recorded for the surrounding area, including recurring river flood events, approximately 120m to the north of the site at a culvert under the R940 regional road associated with the Sprackburn, a tributary of the Swilly river.

- 7.5.2. Based on the Catchment Flood Risk Assessment and Management (CFRAM) mapping (available at floodinfo.ie), the appeal site is not identified as being currently within a river or coastal flood area. Therefore, based on the OPW document titled 'The Planning System and Flood Risk Management Guidelines for Planning Authorities' (November 2009) the proposed development would be located entirely in Flood Zone C with regard to flood risk, where the probability of flooding is low. For the purposes of flood risk assessment a restaurant would fall into a 'commercial' development category and, as such, would be a 'less vulnerable' appropriate development in Flood Zone C based on Tables 3.1 and 3.2 of the Flood Risk Guidelines. This suggests that the site is suitable for the proposed development from a flood-risk perspective. A similar conclusion was reached in the site specific flood risk assessment submitted with the application and I note the recommendations set out in the applicant's assessment regarding surface water drainage, including on-site attenuation, have been incorporated into the proposed development.
- 7.5.3. In conclusion, I am satisfied that the proposed development would not lead to a risk of flooding of lands outside the subject site, would be at a low risk of flooding and would be appropriate for this site. Accordingly, the proposed development should not be refused permission for reasons relating to flood risk.

7.6. Legal Matters

- 7.6.1. Section 10 of the planning application form states that the applicant is the owner of the site. The grounds of appeal assert that part of the site is only leased to the applicant and that the freeholder (an appellant) has not given consent for the application or the proposed development, which would not comply with conditions of the lease agreement.

- 7.6.2. In addressing 'issues relating to title to land', Section 5.13 of the Development Management Guidelines (2007) outlines that the planning system is not designed to resolve disputes regarding title to land. The Guidelines also advise that where there is doubt in relation to the legal title of an applicant, and following the clarification sought in additional information, some doubt still remains, the Planning Authority may still decide to grant permission. However a grant of permission is the subject to the terms of Section 34(13) of the Planning and Development Act 2000, as amended, which states that 'a person shall not be entitled solely by reason of permission under this section to carry out any development'. Clarification on legal ownership has been provided by the applicant as part of their response to the grounds of appeal.
- 7.6.3. As per the Development Management Guidelines, I am satisfied that it would not be reasonable to withhold planning permission in this case for reasons relating to the legal interest of the applicant in the site. Should the Board decide to grant planning permission, the onus is on the applicant to ensure that they have adequate legal interest to carry out the proposed development.

8.0 Appropriate Assessment

- 8.1.1. Having regard to the nature of the proposed development, the existing development on site and the location of the site in a serviced urban area and the separation distance to the nearest European site, no Appropriate Assessment issues arise, and it is not considered that the development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

9.0 Reasons and Considerations

- 9.1.1. Having regard to the existing development on site and the pattern of development in the area, the nature and scale of the proposed development and the zoning objectives for the site and the surrounding area, as set out in the Donegal County Development Plan 2018-2024, it is considered that subject to compliance with the conditions set out below, the proposed development would constitute an appropriate development at this location, which would be acceptable in terms of its design and siting, 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 lead to a risk of flooding of lands outside the subject site and would be at low risk of flooding onsite, and would be in accordance with the provisions of the Donegal County Development Plan 2018-2024. 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 to the planning authority on the 23rd day of October 2018, 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. The proposed development shall be amended to implement all the recommendations of the Road Safety Audit submitted to the Planning Authority on the 23rd day of October 2018 and as follows:
 - (a) vehicular entrance and exit arrangements shall accommodate a central pedestrian island and shall be reconfigured to provide a left-in and left-out only arrangement, prohibiting right-hand turning movements in and out of the entrance/exit with an appropriate physical barrier;
 - (b) car parking spaces 23 and 24, shall be omitted and replaced with a designated loading bay;
 - (c) a defined pedestrian crossing point and refuge coloured corridor / raised table shall be provided from the north corner of the restaurant

building across the drive-thru lane and both adjoining traffic lanes in a northerly direction;

(d) the stop line at the junction exit onto the public road shall be relocated to the outer edge of the carriageway;

(e) a 'yellow box' shall be provided in front of the yield junction with the adjoining public road.

Revised drawings showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. The proposed works shall be implemented in accordance with the agreed scheme and implemented prior to the operation of the restaurant and drive-thru.

Reason: In the interests of traffic safety.

3. The internal road network serving the proposed development, including turning bays, junctions, parking areas, footpaths and kerbs, shall be in accordance with the detailed standards of the planning authority for such works. A Stage 3 Road Safety Audit of the completed development, prepared by an independent and suitably qualified person shall be submitted to the Planning Authority prior to the operation of the restaurant and drive-thru. Should any improvement measures be required these should be completed within two months following submission of the Stage 3 Road Safety Audit.

Reason: In the interest of traffic and pedestrian safety.

4. The hours of operation of the restaurant with ancillary takeaway and drive-thru, hereby permitted, shall be between 0800 hours and 2400 hours only, Monday to Sunday inclusive.

Reason: In the interest of the residential amenity.

5. Details of all external finishes to the proposed development, shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of development.

Reason: In the interest of the residential and visual amenity.

6. A comprehensive boundary treatment and landscaping scheme shall be submitted to and agreed in writing with the planning authority, prior to commencement of development. This scheme shall include the following:-
 - (a) details of all proposed hard surface finishes, including samples of proposed paving slabs/materials for footpaths, kerbing and road surfaces within the development;
 - (b) proposed locations of trees and other landscape planting in the development, including details of proposed species and settings;
 - (c) details of proposed street furniture, including bollards, lighting fixtures and seating;
 - (d) details of proposed boundary treatments at the perimeter of the site, including heights, materials and finishes, to include a natural stone boundary wall along Port Road between the proposed disabled parking bays and the roundabout.

The boundary treatment and landscaping shall be carried out in accordance with the agreed scheme.

Reason: In the interest of visual amenity.

7. Lighting shall be provided in accordance with a scheme, which shall include lighting along pedestrian routes, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Such lighting shall be provided prior to the operation of the development.

Reason: In the interests of amenity and public safety.

8. 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 the commencement of development.

Reason: In the interest of visual amenity.

9. (a) All entrance doors in the external envelope shall be tightly fitting and self-closing;
- (b) All windows shall be double-glazed and tightly fitting;
- (c) Noise attenuators shall be fitted to any openings required for ventilation or air conditioning purposes;
- (d) Audio equipment/speakers shall not be operated from the external seating area, and no live music shall be played in the seating area nor in any part of the external or open areas of the overall site.

Details indicating the proposed methods of compliance with the above requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: To protect the residential amenities of property in the vicinity.

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

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

11. No additional development shall take place above roof parapet level, including lift motor enclosures, air handling equipment, storage tanks, ducts

or other external plant, telecommunication aerials, antennas or equipment, unless authorised by a further grant of planning permission.

Reason: To protect the amenities of property in the vicinity and the visual amenities of the area.

12. 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 arising from the operation of the restaurant, 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.

13. (a) No LED, neon or similar lighting shall be erected on the proposed premises, or within the site. No digital displays or similar illuminated streaming media shall be erected or displayed on the proposed premises, or within the site.
- (b) Details of signage, including provision to ensure the use of the Irish language in such signage, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of protecting and enhancing the visual amenities of the area, to comply with the provisions of the Donegal County Development Plan 2018-2024 in relation to the use of the Irish language, and in order to prevent excessive signage.

14. Notwithstanding the exempted development provisions of the Planning and Development Regulations, 2001, or any statutory provision amending or replacing them, no advertisement signs (including any signs installed to be

visible through the windows), advertisement structures, banners, canopies, flags, or other projecting elements shall be displayed or erected on the building or within the curtilage of the site, unless authorised by a further grant of planning permission.

Reason: To enable the planning authority to assess the impacts of any such changes on the amenities of the area.

15. Water supply and drainage arrangements, including the 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 and to ensure a proper standard of development.

16. Prior to commencement of development, the developer shall submit a construction and demolition waste management plan to the planning authority for agreement prepared in accordance with the Best Practice Guidelines on the Preparation of Waste Management for Construction and Demolition Projects published by the Department of the Environment, Heritage and Local Government in July 2006. This shall include details of wastes to be generated during site clearance and construction phases and details of the methods and locations to be employed for the prevention, minimization, recovery and disposal of this material in accordance with the provisions of the Waste Management Plan covering this region.

Reason: In the interests of orderly development and sustainable waste management.

17. Prior to the commencement of development, a Construction Management Plan shall be submitted to, and agreed in writing by, the Planning Authority. This shall include a construction programme for the works, car parking, a traffic management plan, noise and dust mitigation measures, groundwater monitoring, wheel-washing facilities and details of construction lighting.

The Construction Management Plan shall indicate the measures proposed to mitigate the impact of the construction activities (and associated activities, including vehicle movements) on the amenities and operation of premises in the vicinity at all times during each phase of the construction of the proposed development.

Reason: In the interests of the amenities of the area and of property in the vicinity.

- 18.** Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In order to safeguard the residential amenities of property in the vicinity.

- 19.** 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.

Colm McLoughlin
Planning Inspector

15th May 2019