



An  
Bord  
Pleanála

## Inspector's Report ABP-311421-21.

---

<b>Development</b>	Construction of a permanent catering unit for the sale of hot food and beverages within the car park of Morrisons Licenced premises.
<b>Location</b>	Milltown, Ballysimon, Co. Limerick.
<b>Planning Authority</b>	Limerick City & County Council.
<b>Planning Authority Reg. Ref.</b>	21/919.
<b>Applicant(s)</b>	Leo Morrisson.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Refuse.
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Leo Morrisson.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	01/10/2022.
<b>Inspector</b>	A. Considine.

## 1.0 Site Location and Description

- 1.1. The appeal site is located to the east of, and approximately 5km from Limerick City Centre with frontage onto the Old Ballysimon Road. The site is located to the south of the railway line which runs between Limerick City and Limerick Junction and the N24 lies to the north of the site. The M7 motorway, Junction 29, is located to the west of the site with Peafield Road comprising the immediate western boundary of the site. There are a number of one off houses to the south of the Old Ballysimon Road.
- 1.2. The Old Ballysimon Road comprises the southern boundary of the site, and the long established Morrisons of Ballysimon, Bar and Restaurant occupying the subject site. The site has a stated area of 0.435ha. The existing public house building rises to two storeys and occupies a stated floor area 312m<sup>2</sup>. There are two access points into the site, one each on the Old Ballysimon Road and Peafield Road and there are two storage buildings located on the north eastern corner of the carparking area.

## 2.0 Proposed Development

- 2.1. Permission is sought, as per the public notices for the construction of permanent catering unit for the sale of hot food and beverages within the car park of Morrisons Licenced premises all at Milltown, Ballysimon, Co. Limerick.
- 2.2. The application included a number of supporting documents including as follows:
  - Plans, particulars and completed planning application form
- 2.2.1. The Board will note that the applicant submitted after the application was lodged nominating Niall Collins T.D to the application.

## 3.0 Planning Authority Decision

### 3.1. Decision

The Planning Authority decided to refuse planning permission for the proposed development for the three following reasons:

1. The location of proposed stand alone commercial unit within the car park of an existing premises would result in a haphazard and disorderly form of development and detract from the setting of the established use on site leading to an intensification and overdevelopment of this unzoned site.
2. On the basis of a site visit and also site history, the development for which permission is sought is located within a site which facilitates ongoing unauthorised development. Accordingly, it is considered that it would be inappropriate for the Planning Authority to consider the grant of permission for the proposed development in such circumstances. The development for with permission is sought would be contrary to the proper planning and sustainable development of the area.
3. The applicant has failed to demonstrate that adequate car parking has been provided for in line with the standards set out in the Limerick City and County Development Plan 2010 as amended and extended having regard to the multiple commercial units operating on site. Having regard to the failure of the applicant to demonstrate compliance with these requirements and the precedent that a grant of permission for the proposed development would create it is considered that the proposed development would endanger public safety by reason of traffic hazard or obstruction of road users.

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

The Planning report considered the proposed development in the context of the details submitted with the application, internal technical reports, the planning history of the site and the Development Plan policies and objectives. The report also includes an Appropriate Assessment Screening section.

The Planning Report notes that the site is located in an area where no zoning is attributed, and that the coffee container business was opened in response to covid restrictions. The report notes that there are other unauthorised businesses operating on the site. The location of the standalone coffee structure is considered to detract from the rural setting and reduces available car parking within the site. The report

notes the comments of the Roads Engineer and considers the proliferation of signage and advertisements.

Ultimately, the report recommends that the applicant should consider reorganising the existing building / premises on the site and that permission be refused for the proposed development. This Planning Report formed the basis of the Planning Authority's decision to refuse planning permission.

### 3.2.2. Other Technical Reports

**Environmental Services:** Further information required in terms of details of proposals for controlling potential odour and noise nuisance as well as the storage and disposal of fats, oils and greases.

**Roads, Traffic & Cleansing Services:** Further information required in relation to car parking arrangements, proposed road markings and sightlines, and surface water disposal proposals.

### 3.2.3. Prescribed Bodies

**Mid-West NRDO:** No observations

**TII:** No observations

### 3.2.4. Third Party Submissions

There are no third-party objections/submissions noted on the planning authority file.

## 4.0 Planning History

4.1. The following planning history relates to the subject site:

**PA ref: 21/429:** Permission refused by the Council for the retention of existing steel structure catering unit for the sale of hot beverages for the following stated reasons:

1. The temporary nature of the steel structure would result in a haphazard and disorderly form of development and detract from the setting of the established use on site leading to an intensification and over development of this unzoned site.

2. The design, finish and siting of the steel structure would detract from the visual amenities of this rural area and set an undesirable precedent for future similar such developments. The retention of the steel structure would be injurious to the visual amenities of the area. Accordingly, it would be contrary to the proper planning and sustainable development of the area.

**Enforcement:**

**DC-057-21:** Enforcement proceedings were taken in relation to a timber structure on the site. The enforcement status is noted to be 'Take Enforcement Proceedings'.

Following my site inspection, I can advise that the offending structure has been removed from the site.

**Pre-Planning:**

None noted.

## 5.0 Policy and Context

### 5.1. Development Plan

- 5.1.1. The Board will note that the application the subject of this appeal was submitted under the previous Limerick Development Plan 2010-2016 as extended, where the site was unzoned and is located within the rural area on the outskirts of Limerick City.
- 5.1.2. The current applicable Limerick City & County Council Development Plan 2022-2028 is the relevant policy document pertaining to the subject site. This Plan was adopted by the Elected Members of Limerick City & County Council on the 17<sup>th</sup> of June 2022 and the Plan came into effect on the 29<sup>th</sup> of July 2022, six weeks after the date of adoption.
- 5.1.3. The subject site lies in an area which is not zoned and is within a rural area. The site comprises an area of the existing car park associated with the established public house and restaurant business which is present on the site. The following policy objectives are considered relevant in terms of the proposed development:

- **Objective ECON O35: Rural Development**

It is an objective of the Council to:

- a) Facilitate the development of acceptable rural enterprises and to minimise pollution from agricultural and industrial sources by means of development management and water pollution legislation.
- b) Encourage the redevelopment of vacant commercial units for enterprise and industry creation including Kantoher Business Park, Castlemahon and other identifiable rural commercial brownfield sites, subject to normal planning and environmental criteria.
- c) Promote the development of our rural Towns and Villages as an important focus of restaurant, leisure and evening uses - subject to the safeguarding of surrounding residential amenity and environmental criteria.

The Plan seeks to support employment and careers in rural areas and Development Management policy provides for the development of rural enterprise, related to the area's amenity potential and many enterprise/employment uses are either 'Open for Consideration' or 'Permitted in Principle' in the rural areas of the County. The Planning Authority will balance the requirement to protect the sensitive nature of the rural area with the requirement to enable enterprise development.

- Section 11.6.2.2 of the Plan sets out the development management standards of Takeaways/Restaurants/Kiosk/Popup (Container) Trading Units and notes that such premises are often of concern to people who live close by and indeed those living in the wider area, when noise and disturbance is generated by increased pedestrian and vehicular traffic drawn into an area. The Council recognises the rise in 'container' takeaway cafés across the City and County. The container café is a permanently 'portable development' with its own water supply and power generation. The provision of such facilities will be strictly controlled.

The Board will note that the subject proposed development, while reflecting similarities to the above container takeaway cafés, the proposed building is to be a permanent structure which will connect to the existing water supply serving the bar and restaurant on the site.

## 5.2. Natural Heritage Designations

- 5.2.1. The site is a brownfield site, in that it comprises part of the car parking area associated with an established public house and restaurant business and is not located within any designated site. The closest Natura 2000 site is the Lower River Shannon SAC (site code 002165) which is located approx. 2.6km to the north east of the site, and the River Shannon and River Fergus Estuaries SPA (site code 004077) located approx. 5.5km to the west of the site. The Slievefelim to Silvermines Mountains SPA (Site Code 004165) lies approximately 10.7km to the east.

## 5.3. EIA Screening

- 5.3.1. The application was submitted to the Board after the 1<sup>st</sup> September 2018 and therefore after the commencement of the European Union (Planning and Development) (Environmental Impact Assessment) Regulations 2018. Having regard to the nominal scale of the proposed development to be located within the car park of an existing commercial business, I consider that the development does not fall within any class of development requiring mandatory EIA.
- 5.3.2. In accordance with section 172(1)(b) of the Planning and Development Act 2000 (as amended), EIA is required for applications for developments that are of a class specified in Part 1 or 2 of Schedule 5 of the 2001 Regulations but are sub-threshold where the Board determines that the proposed development is likely to have a significant effect on the environment. For all sub-threshold developments listed in Schedule 5 Part 2, where no EIAR is submitted or EIA determination requested, a screening determination is required to be undertaken by the competent authority unless, on preliminary examination it can be concluded that there is no real likelihood of significant effects on the environment.
- 5.3.1. Having regard to:
- (a) the nature and scale of the development,
  - (b) the built nature of the site,
  - (c) the location of the development outside of any sensitive location specified in article 109(3) of the Planning and Development Regulations 2001 (as amended),

It is concluded that 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. This is a first-party appeal against the decision of the Planning Authority to refuse planning permission for the proposed development. The Board will note the change in agent for the applicant / appellant and the grounds of appeal are summarised as follows:

- The proposed development is an integral part of the overall development on the site and will function and operate as part of the existing business activity associated with the bar and restaurant.
- The separate building is specifically intended to segregate customers who wish to dine in and those who wish to take out. It is an extension of the existing business and is not a stand-alone commercial unit.
- The unauthorised container has been removed from the site and there is no unauthorised development operating at the site. The reference to the energy company is incorrect and only advertising signage was located at the site. This has now been removed.
- There are no cooking facilities proposed within the proposed unit and it will have a coffee machine and a kitchen sink. The unit will be served by existing services associated with the bar / restaurant.
- The 2022 CDP (Draft at the time of the appeal submission) provides for the development of rural enterprise and Section 11.6.2.2 of the plan recognises the rise in 'container' takeaway cafes across the city and county, stating that the provision of such facilities will be strictly controlled. There are no policies or objectives prohibiting or preventing the expansion or intensification of an existing business in a rural area.



- While the site does not benefit from an existing landuse zoning, it benefits from an existing established commercial use.
- The proposed development does not comprise haphazard or disorderly development.
- With regard to car parking, it is submitted that
  - presently there are 50 car parking spaces
  - The proposed development will absorb 2 spaces
  - The proposed development will require 1 car parking space
  - The existing premises has a parking demand of 39 spaces
 There is adequate car parking provided.
- The Roads Section did not require the refusal of permission, rather clarification on sightlines and parking. The development will not endanger public safety by reason of traffic hazard or obstruction of road users.

It is requested that permission be granted for the proposed development.

## 6.2. Planning Authority Response

None.

## 6.3. Observations

None.

## 7.0 Assessment

Having undertaken a site visit and having regard to the relevant policies pertaining to the subject site, the nature of existing uses on and in the vicinity of the site, the nature and scale of the proposed development and the nature of existing and permitted development in the immediate vicinity of the site, I consider that the main issues pertaining to the proposed development can be assessed under the following headings:

1. Principle of the development

2. Roads & Traffic Issues
3. Other Issues
4. Appropriate Assessment

## 7.1. Principle of the development

- 7.1.1. The proposed development seeks to construct a single storey building which will be a permanent feature in the car park of the existing Morrisons Bar and Restaurant in Ballysimon, Co. Limerick. The building, with a stated floor area of 18.75m<sup>2</sup> will rise to a maximum height of approximately 4.5m in height and will be finished with a natural blue/black slate and a rugged faced Cedar sheeting to all elevations. The layout of the building will provide for an access door and two timber framed service hatches to the western elevation (facing the car park) and the area immediately outside the hatches will be covered by an open canopy.
- 7.1.2. The submitted information suggests that the proposed unit will be used for the purposes of selling take-away food, ancillary to the primary operation of the existing bar and restaurant operation on the site. The takeaway facility will operate between 8am and 6pm and will be operated by the existing staff in the bar / restaurant. It is submitted that the building will have a coffee machine and kitchen sink and that there are no cooking facilities proposed within the building. The appellant further submits that the location of the building separate from the main commercial building is intentional in order to maintain separation and social distancing between visiting customers and take-away customers and to enable the takeaway facility to operate in an 'outside' environment. The proposed development was also considered as an alternative to the construction of an extension to the existing building.
- 7.1.3. In terms of what is proposed, together with its intended use, I am concerned that the scale of the building proposed might suggest otherwise. While it is indicated that the unit will operate as a takeaway for hot food, ancillary to the primary operation of the existing restaurant, the floor area proposed for just a coffee machine is very excessive being 6.05m x 3.1m internally. No floor plan is provided with the application, and while I accept that there are no stated proposals to include cooking facilities, if it is intended that takeaway pick-ups will be from the unit, some form of equipment will likely be required to keep food prepared in the restaurant kitchen

warm. The separation distance between the existing bar / restaurant building also gives rise to concerns as to the future use of the structure should permission be granted for a permanent building for the purposes of selling take-away food.

- 7.1.4. In this regard, I concur with the findings of the Planning Authority and agree that the proposed standalone unit, at a remove from the established premises on the site, would result in a haphazard and disorderly form of development on unzoned land. Given the separation distance between the existing established business on the site, I would not accept that the proposed development would read as part of that established use and would represent an intensification of use on the site. As such, I recommend that the PAs first reason for refusal should stand.

## **7.2. Roads & Traffic**

- 7.2.1. I note that the Planning Authority raised some concerns in terms of car parking and road safety issues. Having undertaken a site inspection, I would be satisfied that the existing parking provision at the site is adequate to accommodate the existing and established business. I am further satisfied that if permitted, adequate car parking appears to be available to serve the proposed development. Given that the entrance to the car park, both from the Old Ballysimon Road and Peafield Road, are long established, I do not consider that a grant of permission would give rise to a traffic hazard. That said, I note the issues raised by the Roads, Traffic & Cleansing Section of Limerick City and County Council in terms of the absence of road markings and demonstration of sight distances. Should the Board be minded to grant permission in this instance, I consider that these matters can be dealt with by way of condition.
- 7.2.2. As such, I am satisfied that the PAs reason for refusal no. 3 can be omitted.

## **7.3. Other Issues**

### **7.3.1. Unauthorised Development**

The Board will note that the PAs second reason for refusal related to the unauthorised development at the site. Having undertaken a site inspection, I can confirm that there does not appear to be any unauthorised development or activity being carried out at the subject site. The previous coffee container has been

removed from the site and the indicated use of a store by a separate business has been clarified by the appellant. It is submitted that no separate business has operated from the store as suggested, rather, the wall of the store was used for advertising purposes for the said business. The advertising signage has been removed from the site.

As such, I consider that any unauthorised developments at the site have been removed.

#### **7.3.2. Water Services & Flood Risk**

In terms of water services, the Board will note that the applicant has indicated that the proposed catering unit will connect to the existing water supply which serves the existing bar and restaurant on the site. I note no objections in this regard.

#### **7.3.3. Development Contribution**

The subject development is liable to pay development contribution under Section 48 of the Planning and Development Act 2000, as amended. A condition to this effect should be included in any grant of planning permission.

#### **7.4. Appropriate Assessment**

- 7.4.1. Under Article 6(3) of the Habitats Directive, an Appropriate Assessment must be undertaken for any plan or programme not directly connected with or necessary to the management of a European site but likely to have a significant effect on the site in view of its conservation objectives. The site is not located within any Natura 2000 site and the development the subject of this application and appeal is not directly connected with or necessary to the management of a European site. The applicant did not submit an AA Screening or Natura Impact Statement.

#### **Consultations**

- 7.4.2. With regard to consultations, the Board will note that no issues relating to AA were raised by any party.

## **Screening for Appropriate Assessment**

- 7.4.3. The site is a brownfield site, in that it comprises part of the car parking area associated with an established public house and restaurant business and is not located within any designated site. The closest Natura 2000 site is the Lower River Shannon SAC (site code 002165) which is located approx. 2.6km to the north east of the site, and the River Shannon and River Fergus Estuaries SPA (site code 004077) located approx. 5.5km to the west of the site. The Slievefelim to Silvermines Mountains SPA (Site Code 004165) lies approximately 10.7km to the east.
- 7.4.4. In terms of AA, the Board will note that the development is not directly connected or necessary to the management of a European Site. The three mentioned Natura 2000 Sites are the only sites occurring within a 15km radius of the site.
- 7.4.5. I am satisfied that the above sites can be screened out in the first instance, as they are located outside the zone of significant impact influence because the ecology of the species and / or the habitat in question is neither structurally nor functionally linked to the proposal site. There is no potential impact pathway connecting the designated sites to the development site and therefore, I conclude that no significant impacts on the above-mentioned sites is reasonably foreseeable and that they can all be excluded at the preliminary stage for the following reasons:
- Site is located entirely outside the EU site and therefore there is no potential for direct effects.
  - No habitat loss arising from the proposed development.
  - No disturbance to species.
  - No pathways for direct or indirect effects.

## **In Combination / Cumulative Effects**

- 7.4.6. Given the nature of the proposed development, being the construction of a permanent catering unit for the sale of hot food and beverages, with a floor area of 18.75m<sup>2</sup> within the carpark of an established bar and restaurant in a rural area, and at a remove from any designated site, I consider that any potential for in-combination effects on water quality of any of the Natura 2000 sites can be excluded. In addition, I would note that all other projects within the wider area which may influence

conditions in any of the identified Natura 2000 sites via rivers and other surface water features are also subject to AA.

### **Conclusion on Stage 1 Screening:**

- 7.4.7. I have considered the NPWS website, aerial and satellite imagery, the scale of the proposed works, the nature of the Conservation Objectives, Qualifying and Special Qualifying Interests, the separation distances and I have had regard to the source-pathway-receptor model between the proposed works and the European Sites. It is reasonable to conclude that on the basis of the information available, that the proposed development, either individually or in combination with other plans or projects, would not be likely to have a significant effect on the European Sites identified within the zone of influence of the subject site. As such, and in view of these sites' Conservation Objectives a Stage 2 Appropriate Assessment is not required for these sites.

## **8.0 Recommendation**

I recommend that planning permission be **Refused** for the proposed development for the following stated reason:

Having regard to the proposed site layout, and the location of the proposed standalone catering unit at a remove from the established commercial building on the site, and within the designated car park for the bar and restaurant on site, the Board is satisfied that the development, if permitted would result in a haphazard and disorderly form of development on unzoned land within the rural area. Given the separation distance between the existing established business on the site, it is considered that the proposed development would not read as part of that established use and as such, would represent an intensification of use on the site.

The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

---

A. Considine  
Planning Inspector  
24<sup>th</sup> October 2022

**ABP-311421-21**

**Inspector's Report**

**Page 14 of 14**