



An  
Bord  
Pleanála

## Inspector's Report ABP 312296-21.

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| <b>Development</b>                  | Relocation and refurbishment of Maxol Café/deli area, change of use of children's play area to restaurant use, provision of a second hot-food takeaway and all associated works. |
| <b>Location</b>                     | Maxol Service Garage, Ennis Road, Clarecastle, Co. Clare.  |
| <b>Planning Authority</b>           | Clare County Council.  |
| <b>Planning Authority Reg. Ref.</b> | 211045   |
| <b>Applicant</b>                    | Maxol Limited  |
| <b>Type of Application</b>          | Permission   |
| <b>Planning Authority Decision</b>  | Refuse permission  |
| <b>Type of Appeal</b>               | First Party  |
| <b>Appellant</b>                    | Maxol Limited  |
| <b>Observers</b>                    | (1) Muiriosa Connolly  |
| <b>Date of Site Inspection</b>      | 22 <sup>nd</sup> November 2022   |
| <b>Inspector</b>                    | Siobhan Carroll  |

## Contents

|  |    |
|--|----|
| 1.0 Site Location and Description .....    | 4  |
| 2.0 Proposed Development .....             | 4  |
| 3.0 Planning Authority Decision .....      | 5  |
| 3.1. Decision .....                        | 5  |
| 3.2. Planning Authority Reports .....      | 6  |
| 3.3. Prescribed Bodies .....               | 7  |
| 3.4. Third Party Observations .....        | 7  |
| 4.0 Planning History.....                  | 7  |
| 5.0 Policy Context.....                    | 9  |
| 5.1. Development Plan.....                 | 9  |
| 5.2. Natural Heritage Designations .....   | 10 |
| 5.3. Environmental Impact Assessment ..... | 10 |
| 6.0 The Appeal .....                       | 10 |
| 6.1. Grounds of Appeal .....               | 10 |
| 6.2. Planning Authority Response .....     | 18 |
| 6.3. Observations .....                    | 18 |
| 7.0 Assessment.....                        | 19 |
| 7.1. Policy context.....                   | 20 |
| 7.2. Access and traffic.....               | 24 |
| 7.3. Appropriate Assessment .....          | 29 |
| 8.0 Recommendation.....                    | 29 |
| 9.0 Reasons and Considerations.....        | 29 |

10.0 Conditions ..... 30

## 1.0 Site Location and Description

- 1.1. The appeal site is located at Ennis Road, Clarecastle, Co. Clare. It comprises the existing Maxol Service Station. The site has a stated area of 0.5846 hectares. The premises is situated circa 1.4km to the north of Clarecastle and circa 2km to the south of Ennis town centre. The site has frontage of 76m into the R458. The Clareabbey roundabout on the N85 is located immediately to the north of the services station. Junction no. 12 of the M18 Motorway which links Limerick and Galway is situated 2.5km to the east of the site.
- 1.2. The forecourt contains eight fuel pumps which provide petrol and diesel located on four islands. The forecourt has a branded canopy and totem sign with fuel prices. The store contains a convenience store, bakery, deli counter and seating area, children's play area and customer toilets. There are 42 no. surface car parking spaces located to the north and south of the premises. A one-way system is in operation in relation to vehicular access arrangements. The vehicular ingress is located to the southern end of the forecourt and the vehicular egress is located at the northern end of the forecourt.
- 1.3. The land immediately to the west of the site is undeveloped. The adjoining site to the south contains the premises of Clare Haven Services and a residential property. To the south and south-west of the site there is housing along Clonroadbeg.

## 2.0 Proposed Development

- 2.1. Permission is sought for the relocation and refurbishment of Maxol Café/deli area, change of use of children's play area to restaurant use, provision of a second hand hot-food takeaway and all associated works. The proposal comprises;
  - change of use of children's play area to restaurant use (Area 48.25sqm);
  - provision of a second hot-food takeaway offering including order/sales counters, kitchen and clean-up area, chiller/freezer rooms, store and supervisor office (Area 95.44sqm incorporating change-of-use area 48.25sqm);

- revised circulation area (Area 87.61sqm); revised seating area (Area 74.93sqm) and revised Maxol back-of-house area including ATM room, manager office, staff facilities and electrics room (Area 93.62sqm);
- sale of hot food for consumption both on and off the premises; provision of external customer seating area at northern elevation of forecourt building (26 seats); provision of additional external corporate signage to forecourt building on eastern elevation (Area 0.57sqm);
- installation of dedicated grease trap for the new hot-food area under previously approved parking area at rear of existing forecourt building; provision of an additional M&E switch room (Area 12.69sqm) and all necessary air-handling / ventilation / extract-air equipment at rear of existing building;
- lowering section of stone wall on northern and eastern boundaries to 450mm overall height around Maxol ID totem sign and all associated site works.

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

Permission was refused for the following reasons.

1. Having regard to the location of the site between Ennis and Clarecastle, and its proximity to the Clareabbey Roundabout and the N85, and having regard to the nature and scale of the proposed development which includes a restaurant with associated takeaway, the Planning Authority considers that the development as proposed would lead to further intensification of commercial uses on the subject site, which would have an adverse impact on the vitality and viability of Ennis and Clarecastle, and would constitute an unsustainable form of development which would be principally dependent on private car based transport. Accordingly, the proposal would result in an undesirable and haphazard intensification of use at this edge-of-town location and would be contrary to the objectives of the Planning Authority which seek to consolidate developments within town and village centres in order to protect the vitality and viability of such areas. The proposed development

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

2. Having regard to the location of the site in relation to the Clareabbey Roundabout and the intensification of use and associated increase in vehicular movements that would be generated onto the R458 Regional Road, relative to the established business at this location, the Planning Authority considers that the proposed development would interfere with the safety and free flow of traffic on the public road and would endanger public safety by reason of a traffic hazard. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

## **3.2. Planning Authority Reports**

### **3.2.1. Planning Reports**

- It is concluded in the report of the Planning Officer that in relation to the principle of the development it was considered that the proposed development is not plan led and by virtue of the scale and range of existing and proposed uses, it would generate a significant number of local trips which would compromise the strategic role and function of the national road network and its capacity and would threaten the viability of Ennis town centre and Clarecastle village centre. It was considered that the proposed development would therefore set an inappropriate precedent for other similar development, particularly within existing service stations on the outskirts of Ennis town centre.

### **3.2.2. Other Technical Reports**

- 3.2.3. Road Design Office – Report dated 24/22/21: A Traffic and Transport Assessment (TTA) is required to be submitted as the development falls within the sub-threshold details in PE-PDV-02045 Traffic & Transport Assessment Guidelines. Future development of drive-thru should be considered as part of this Traffic and Transport Assessment. Clarification should be sought as to the type of restaurant as it may have an effect on traffic volumes.

- 3.2.4. Chief Fire Officer – The Fire Authority have no objection to the proposed development provided.

### 3.3. Prescribed Bodies

- 3.3.1. Transport Infrastructure Ireland – No observations.
- 3.3.2. Irish Aviation Authority – No observations from the Safety Regulation Division Aerodromes on this application.

### 3.4. Third Party Observations

- 3.4.1. The Planning Authority did not receive any submissions/observations in relation to the application.

## 4.0 Planning History

- 4.1.1. There are a number of previous applications pertaining to the site which are detailed in the report of the Planning Officer. The most recent relevant planning history refers to the following;

**Reg. Ref. P20/830** – Permission was granted for (1) revised location of 3 no. underground double skin fuel tanks (1 x 60,000-litre and 2 x 40,000-litre tanks), revised tanker offloading location and all associated underground fuel pipework infrastructure; (2) revised surface water drainage layout including relocation attenuation tank; (3) 600mm reduction in floor level of the forecourt building and commensurate revised levels in all surrounding forecourt area; (4) revised layout of back of house area for ancillary uses (201.55sq.m); (5) change of use of part of second food offer area and ladies/gents wc area to children's play area (48.25sqm); (6) increased entrance porch floor area of 9.91sqm; (7) elevation changes to forecourt building exterior; (8) 6 no. free-standing advertising signs around forecourt area and 1no. fixed information sign at each of 4no. forecourt pump islands, from those previously approved under planning permission file ref no 16/764; and permission file ref no 16/764; and permission was granted for (9) an enclosed delivery off-loading yard plus 23 no. additional carparking spaces in a revised site layout to side and rear of the forecourt building on an enlarged site area; (10) additional attenuation chamber and drainage for enlarged site area; (11) additional directional and advertising signage; (12) additional and relocated light poles and CCTV cameras in the enlarged site area (13) all associated ancillary site works.

Condition no. 2 specified;

2 (a) Notwithstanding any drawings submitted under the subject application, the total net retail sales floor area, as defined in section 2.4.3 of the "Retail Planning Guidelines for Planning Authorities, issued by the Department of Environmental, Community and Local Government in April 2012, within the development shall not exceed 100 square metres. The floor area of the retail unit shall be operated as one single concession unit and shall not be sub-divided.

(b) The existing internal play area shall not be operated independently of the retail area and there shall be no change for admission to same.

Reason: In the interest of clarity, visual amenity and traffic safety.

**Reg. Ref. P16/764** – Permission was granted for the for redevelopment of the existing Maxol Service Station and lands of adjoining dwelling at Ennis Road, Clarecastle, Co Clare by Maxol Limited. The proposed development includes (1) demolition of existing forecourt building, canopy, fuel pumps, pump islands, fuel tanks and all associated structures; (2) demolition of adjoining disused dwelling, associated sheds, boundary walls & structures; (3) provision of new forecourt building with 100.0sqm retail shop including 20.0sqm off licence area ancillary to retail shop, 189.4sqm self-service café/deli food area comprising 3 no. food offers with 62.19sqm food preparation areas & 127.21spm seating area, office, stores & toilet facilities; (4) sale of specially prepared hot & cold food for consumption both on and off the premises from the self-service café/deli food area; (5) new forecourt layout including canopy, fuel pumps, 4no. underground fuel tanks, solid fuel store, water tank/pump room and bin compound; (6) ancillary signage, both illuminated and non-illuminated; (7) all associated site works and revised layout to R458 along site frontage and (8) boundary adjustments to adjoining retained dwelling.

Condition no. 2 specified,

2 (a) The total net retail sales space of the forecourt of the shop area shall not exceed 100 square metres. The floor space to be used as the retail shop shall be physically distinguished from the circulation and seating area/food counters, and shall be easily identifiable as such. Details in this regard shall be submitted to the Planning Authority for agreement and approval prior to commencement of development.



(b) The floor area of the seating area, food preparation area and circulation areas shall be in accordance with drawing no. P02-01-18 r4ev P1, as received by the Planning Authority on the 13<sup>th</sup> of December 2016 and at no stage shall be greater than 100m.

(c) The development shall be operated as a single unit and no part of the development shall be subdivided as a separate retail or commercial unit.

Reason: In the interest of orderly development and having regard to the vitality/viability and proximity of the subject site to Clarecastle and Ennis, it is considered appropriate to restrict the area of retail and commercial activity on site to the areas as indicated in the planning application drawings, in the interest of traffic safety having regard to the proximity to the roundabout and increased turning movements.

## 5.0 Policy Context

### 5.1. Development Plan

5.1.1. The operative development plan for the site is the Clare County Development Plan 2017 – 2023. The CDP incorporates the Ennis Municipal District Settlement Plan Volume 3a.

5.1.2. The appeal site is located on lands which are subject to two zoning objectives. The eastern side of the site is zoned “Mixed use”. The western side of the site is zoned “Existing Residential”.

#### 5.1.3. Section 7.6.5 – Petrol Filling Stations

Small shops associated with petrol filling stations can be a cost effective way of providing the equivalent services of a local shop. It is considered appropriate for petrol filling stations to provide limited retail facilities on-site, but such facilities should be of a small scale and ancillary to the main purpose of the filling station. The Council will consider proposals on an application-by-application basis and may limit the range of retail goods available for purchase at petrol filling stations in order to protect the viability and vitality of existing retail centres. Facilities will generally not be acceptable in rural areas where the maximum speed limit applies. See also Section 8.2.3.2 Motorway Service and Rest Areas.

## **5.2. Natural Heritage Designations**

- 5.2.1. Lower River Shannon SAC (Site Code 002165) is situated 772m to the east of the appeal site.
- 5.2.2. River Shannon and River Fergus Estuaries SPA (Site Code 004077) is situated 1.38km to the south-east of the appeal site.
- 5.2.3. Newhall and Edenvale Complex SAC (Site Code 002091) is situated 1.85km to the west of the appeal site.

## **5.3. Environmental Impact Assessment**

- 5.3.1. The proposal is for the relocation and refurbishment of Maxol Café/deli area, change of use of children's play area to restaurant use, provision of a second hand hot-food takeaway and all associated works.
- 5.3.2. For the purposes of EIA Schedule 5 of the Planning and Development Act 2001 (as amended) identifies projects that have a requirement for EIA under Part 1 and under Part 2. The proposed development does not fall within a class of development either under Part 1 or Part 2 of schedule 5 and does not require the carrying out of an EIA. The proposed development does not constitute a sub-threshold development within the classes identified under schedule 5. Having regard to the nature and scale of the proposed development and the absence of any significant environmental sensitivity in the vicinity of the site, 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**

A first party appeal was submitted by PABIA Consulting Ltd. on behalf of the applicant Maxol Limited.

- The rationale for the proposed development is to improve the customer offer at the existing established Maxol Petrol Filling Station and better cater for the needs of existing customers.
- The application principally proposes to introduce a second hot food/ quick service food offer within the existing Maxol Petrol Filling Station. It is proposed that the second food offer will be a franchise selling hot food to be consumed both on and off the premises.
- The proposal will involve the reorganisation of space within the foodhall area of the forecourt building without expanding the building footprint. It is proposed to remove the children's play area which has been closed since the Covid 19 restrictions introduced in March 2020.
- The existing deli area will be relocated with the foodhall it will be reduced in size to 65.55sq m and some of this area will be used to provide a hot food takeaway area. The new hot food area would have an area of 95.44sq m. The revised circulation area has a floor area of 87.61sq m and the seating area of 235.92sq m.
- In line with the parent permission Reg. Ref. P16/764 planning conditions each of the food offering areas, the circulation area and seating area will be less than 100sq m which will be less than the 100sq m maximum floor area as stipulated under condition no. 2(b) and the overall footprint of the proposed new food hall is reduced below that approved under Reg. Ref. P16/764.
- In relation to the planning context, it is noted that the subject site has two zoning objectives. The eastern side of the site has mixed use zoning objective. "The use of land for 'mixed use' developments shall include the use of land for a range of uses, making provision where appropriate for primary and secondary uses, e.g., commercial/retail development as the primary use with residential development as the secondary use. Secondary uses will be considered by the local authority having regard to the particular character of the given area. It is noted that on lands that have been zoned 'mixed use' in or near town or village centres, a diverse range of day and evening uses is encouraged and an over-concentration of any one use will not normally be permitted."

- The western side of the site is subject to “Existing Residential” zoning objective. “The objective for land zoned ‘existing residential’ is to conserve and enhance the quality and character of the areas to protect residential amenities and to allow for small scale infill development which is appropriate to the character and pattern of development in the immediate area and users that enhance existing residential communities. Existing residential zoned land may also provide for small-scale home based employment uses where the primary residential use will be maintained.”
- It is highlighted in the appeal that pre-planning discussions were held with the Area Planner. The following was the feedback received from the Planning Authority. ‘From a planning perspective, the Planning Authority would have serious concerns in relation to the proposed development, and notwithstanding that there would be no aggregate increase in floor space, as the development would result in an intensification of the existing use of the service station which would have the potential to result in a serious traffic hazard and detract from the viability and vitality of both Ennis and Clarecastle.
- In response to this it is stated that the planning application took full account of the advice and included a comprehensive Planning Assessment and Traffic assessment.
- In relation to the principle of the proposed development, it is stated that the principle of a petrol filling station with ancillary retail on the site has been long established for over 50 years.
- In relation to the matter of zoning the Planning Authority in their assessment stated “As there is no established residential use on the site and having regard to the established use on the site, I consider it reasonable to assess the subject application having regard to the “mixed use” zoning of the County Development Plan.
- Regarding the lands surrounding the site it is stated that the land immediately surrounding the existing development site is zoned as ‘Existing Residential’ zoned lands to the west and north are zoned ‘Agriculture’. It is stated that the lands zoned ‘Agriculture’ are not in the ownership of the applicant and do not form part the application site.

- Under the zoning matrix in the County Development Plan a take away use is 'permitted in principle' a café/restaurant use is open for consideration under the mixed use zoning objective. The café/quick food offer is a complementary element to the principle use of the site as petrol filling station. It is considered that the proposed food offer use is entirely compatible with the filling station and convenience retail offer and that it is consistent with the current trading formats of filling stations.
- It is noted in the appeal that there are many examples of this modern trading format. Photographs of the Maxol outlets at Ballycoolin, Co. Dublin, Dolphin's Barn, Dublin 12, Newbridge, Co. Kildare and Garryowen, Limerick.
- It is highlighted that the Maxol in Ballycoolin contains a retail shop, Maxol deli, Insomnia Coffee and Burger King. The Maxol in Newbridge contains a retail shop, Maxol deli, the Rotisserie and Burger King. The Maxol in Dolphin's Barn contains a retail shop, Maxol Deli and Burger King and the Maxol in Garryowen contains a retail shop, Maxol Deli and Abrakebara.
- In relation to the proposal, it is submitted that the proposed second food offer is ancillary to the permitted food offer within the forecourt building. It is submitted that this does not represent an addition to the uses permitted rather it represents an alternative offer to customers who are availing of food. The operator will provide fast food including the options for take away or to consume the food within the internal shared seating area.
- It is stated that the proposal is not materially different from what was approved by the planning authority under Reg. Ref. P16/764. Regarding condition no. 2(c) of Reg. Ref. P16/764 which requires the development be operated as a single unit. The reason for the condition stated, "In the interest of orderly development and having regard to the vitality and viability and proximity of the site to Clarecastle and Ennis, it is considered appropriate to restrict the area of retail and commercial activity on the site to the areas indicated in the planning application drawings...."
- It is submitted that there is no clear reason as to why the second food offer, which will be operated by a separate commercial entity from Maxol would be inappropriate as set out in the reason for this condition. It is stated that the

franchise counter is entirely functionally dependent on the rest of the building and is not a stand-alone use. There is no evidence to suggest that two food offers operating within the same forecourt building if operated by two different entities will have any additional impact then if they were operated by the same operator as the petrol filling station.

- It is set out that the existing petrol filling station primarily caters for the needs of those travelling on the N85. The commercial viability of roadside services such as the Maxol petrol filling station at Clareabbey is intrinsically linked to its location. The location guarantees continuous pass by vehicular trade. It is set out that the petrol filling station is heavily reliant on pass by trade. The report of the planning officer appears to suggest that the proposed development is only suitable to town centre locations.
- It is submitted that there is a 'locational requirement' for it to be accommodated alongside the N85 which has no other facilities of this kind. It is stated that the petrol filling station is not a destination and is not by definition a hot food/quick food restaurant and it is not a destination in itself as it is to specifically cater for motorists on the national road network.
- There is no increase in retail floor area. Given that the parent permission approved two food offers there is no intensification of use.
- The comprehensive assessment by Eamonn Loughrey of Inaltus Limited and Pabia Consulting demonstrates that the proposed development will not divert trade from Clarecastle. Any small diversion from Ennis town centre will not be significant to impact on the town centre in terms of its overall performance.
- It is highlighted that there is a very limited attraction to the site for locals just seeking to use the quick food counter offer due to the fact that it is principally a petrol filling station, it has very limited convenience retail floor space and the premises lacks the ambiance other cafes in the town centre would have.
- Regarding traffic Punch Consulting Engineers have provided a submission as part of the appeal which demonstrates that the proposed development will not generate additional level of traffic so as to interfere with the safety and free flow of traffic on the public road and therefore would not endanger public safety by reason of a traffic hazard as outlined in reason for refusal no. 2.

- It is stated that no substantial grounds in support of this reason were provided in the report of the planning officer. It is submitted that evidence in the appeal clearly demonstrates that any additional traffic volumes and traffic turning movements into and out of the site can be satisfactorily accommodated without any serious adverse impact in terms of traffic disruption or hazard to the surrounding road network and without any significant effect on the operational performance of the local road network.
- In relation to the parent permission P16/764 it included a sensitivity study on trip generation to the proposed development by assuming the entire foodhall/deli/seating area of 296sq m constituted a standalone drive-through hot food takeaway restaurant. The study also included the original car wash proposal which was subsequently removed by Maxol Ltd. during the application process. The Planning Authority in assessing the application were satisfied that the traffic figures would not pose problems at the redeveloped site and the parking provision was also accepted.
- It is submitted that the figures used in the study would still be overestimated for the current proposed development. It is submitted that the existing traffic management measures in place are operating effectively, and that traffic is well controlled. The operation of the dedicated right turn lane for southbound traffic on the R458 into the southern entry only crossover along with the left only exit arrangement from the northern crossover has been very successful and has improved traffic safety.
- The sales figures provided by Maxol Ltd. for the period 1/10/2021 to 13/12/2021 indicate that fuel sales represented 74.2% of all sales that shop sales excluding the deli sales represented 22.4% and the Maxol deli represented 3.4%.
- Regarding car parking the report of the planning officer had some concerns in relation to whether adequate car parking was provided. Under the permission granted Reg. Ref. P20/830 the provision of additional spaces was permitted. When this permission is enacted, it will provide more than sufficient car parking spaces to serve the existing and proposed development. It is envisaged that the proposed works of the subject application would be

completed in conjunction with the development approved under Reg. Ref. P20/830.

- Under Reg. Ref. P20/830 permission was granted for 63 no. car parking spaces, with 18 no. bicycle spaces and 2 no. motorcycle spaces. 8 no. short term car parking spaces are provided at the fuel pump islands and 3 no. disabled spaces are located close to the forecourt. There are 4 no. Electrical Vehicle charging point spaces. Based on the Development Plan requirements 8 no. spaces are required for convenience retail per 100sq m. Therefore 8 no. spaces are required. Petrol filling station requires 1 space per 100sq m gross floor area and 1 space per 2 staff. Therefore, with a gross floor area of 581.28sq m 6 car spaces would be required for customers and 8 car spaces would be required for staff. Regarding the restaurant/café/takeaway it requires 12.5 spaces per 100sq m net area. With a floor area of 237.25sq m a total of 30 spaces is required and an overall total requirements for car parking is 52 no. spaces.
- A total of 63 no. car parking spaces and 8 no. spaces at the fuel pumps is to be provided.
- Regarding bicycle parking 12 no. spaces are required under the development plan and 18 no. spaces are provided on the site.
- In relation to amenity considerations, it is stated that environmental effects such as noise, odour, general disturbance are already apparent within the development and will not significantly alter with the provision of a second food offer. No change in opening hours is proposed. The second food offer will operate within the approved hours which are 7am to 11pm Monday-Sunday.
- Therefore, it is not considered that the franchise offer is capable of generating material planning consequences in terms of traffic, noise and disturbance which were not considered in the planning permission for the redevelopment of the subject site which comprised of two food offers within the same building.
- Regarding visual amenities it is stated that no adverse impacts on visual amenities for the area are envisaged from the proposed development.



- Regarding signage it is highlighted that the Franchise operator is not known yet and that the Franchise operators have their own specific signage requirements. It is suggested that a condition could be attached to a grant of permission requiring that details of all signage to be agreed with the Planning Authority prior to commencement of development.
- In relation to appropriate assessment screening, it is stated that having regard to the nature and scale of development proposed which will be served by public water supply and sewer connections and to the nature of the receiving environment no appropriate assessment issues would arise and it is considered that the proposed development would be unlikely to have a significant effect individually or in combination with other plans or projects on any European site. It is noted that the Planning Authority were of the same opinion.
- Regarding the requirement for Environmental Impact Assessment, it has been considered in the context of the subject proposal. The proposed development does not fall within the threshold of any of the classes for development prescribed in Parts 1 or 2 of Schedule 5 of the Planning and Development Regulations 2001(as amended) and therefore EIA is not mandatory requirement with reference to Section 172(1)(a)(ii) of the Planning and Development Act, 2000(as amended).
- In respect of 'sub-threshold' developments having regard to the nature, scale and location of the development, by itself and in combination with other plans and projects, it is considered that the proposed development is not likely to have significant effects on the environment and that an EIA is not required and is not warranted. It is noted that the Planning Authority were of the same opinion.
- In conclusion it is submitted that there is no evidence to support the reasons for refusal issued by the Council that the proposed development would detract from the vitality and viability of Ennis and Clarecastle and create a traffic hazard by reason of intensification of use of the petrol filling station.
- It is demonstrated in the appeal that the customer base of the existing petrol filling station is principally 'pass-by' traffic from the N85 rather than residents

of Clarecastle and Ennis and its surroundings. Residents of these locations are fully expected to continue to rely upon the closer, larger and more varied offer of their town centre.

- Having regard to the much larger size of Ennis town centre and varied food offering it is submitted that there will be no significant adverse impact upon the vitality and viability of the town centre. It is submitted that there is no evidence to suggest that a franchised second food offer will change this to the extent outlined in the reason for refusal.
- It is highlighted that there are no similar businesses in Clarecastle for the proposal to impact upon. It is submitted that the details provided in the appeal demonstrate that the redeveloped Maxol petrol filling station has had no negative impact on Clarecastle since it opened.
- The evidence provided clearly demonstrates that the petrol filling station caters, primarily for 'long trip short stay customers as, opposed to 'short trip long stay customers.
- It is submitted that the proposed development would be consistent with the proper planning and sustainable development of the area.

## **6.2. Planning Authority Response**

- The Planning Authority would request that the issues and considerations as outlined in both the planners report and the notification to refuse planning permission are considered by the Board in deciding the subject application.
- The Planning Authority respectfully request that the decision of the Planning Authority is upheld.

## **6.3. Observations**

An observation to the appeal was submitted by Muiriosa Connolly. The issues raised are as follows;

- The observer states that they live close to the subject site. They have expressed concerns in relation to the potential negative impact the proposed development would have in terms of health and safety considerations.

- The recently developed Clareabbey roundabout has become an extremely busy roundabout where there is already an extremely busy roundabout. It is stated that there already exists a back-up of traffic at all junctions. The Maxol garage entrance is located very close to an extremely busy exit point of the roundabout. Concern is expressed that vehicles breaking and queuing to enter the garage create a traffic hazard.
- It is stated that the location of the subject garage including the entrance is not comparable to garage plazas which are located on motorways around the country.
- The observer notes that Maxol Ltd. advises that Transport Infrastructure Ireland do not have any objections to the proposed development. The observer states that numerous concerns regarding the safety of cyclists and pedestrians in the vicinity of the Clareabbey roundabout have been raised by local councillors.
- The observer states that as a nearby resident it is difficult for her to exit her driveway due to the speed and volume of traffic in the area.
- The observer does not consider that the existing location is suitable for the proposed additional food court area. They suggest that an alternative location should be sought where there is safe access and where sufficient car parking is provided.
- The observer states that they consider that the decision of Clare County Council was correct.

## 7.0 Assessment

The main issues in this appeal are those raised in the grounds of appeal, and it is considered that no other substantive issues arise. The issue of appropriate assessment screening also needs to be addressed. The issues can be dealt with under the following headings:

- Policy context
- Access and traffic
- Appropriate Assessment

## 7.1. Policy context

- 7.1.1. The appeal site, which comprises an established petrol filling station and with convenience shop, deli counter and customer seating area is located to the south Ennis circa 2km from the town centre and is located 1.4km from Clarecastle, on lands primarily zoned 'mixed use'. The appeal site lies immediately to the south of Clareabbey roundabout on the N85 and junction no. 12 of the M18 Motorway linking Limerick and Galway is situated circa 2.5km to the east of the site. Accordingly, the Maxol petrol filling station is lies at a strategic location.
- 7.1.2. The proposed development entails the relocation and refurbishment of Maxol Café/deli area, the change of use of children's play area to restaurant use and the provision of a second hand hot-food takeaway.
- 7.1.3. The first reason for refusal issued by the Planning Authority stated that having regard to the location of the site between Ennis and Clarecastle, and its proximity to the Clareabbey Roundabout and the N85, and having regard to the nature and scale of the proposed development which includes a restaurant with associated takeaway, that the Planning Authority considers that the development as proposed would lead to further intensification of commercial uses on the subject site, which would have an adverse impact on the vitality and viability of Ennis and Clarecastle, and would constitute an unsustainable form of development which would be principally dependent on private car based transport. The Planning Authority considered that the proposed development would result in an undesirable and haphazard intensification of use at this edge-of-town location and would be contrary to the objectives of the Planning Authority which seek to consolidate developments within town and village centres in order to protect the vitality and viability of such areas.
- 7.1.4. The appeal includes a Comparative Study of Retail Outlets in Clarecastle Village in 2010, 2015 and 2021 which was carried out by PABIA Consulting. The conclusion of the study found that Clarecastle Village is showing real signs of revival since August 2105. There is no evidence that existing business premises in Clarecastle

specifically the convenience retail stores, cafes, restaurants and public houses are demonstrating any discernible signs of leakage/loss of business to the redeveloped Maxol Clarecastle Service Station since it was reopened in Q3 in 2018.

- 7.1.5. Inaltus Limited prepared a detailed response to matters raised in refusal reason no. 1, specifically in relation to whether the proposal is contrary to the Retail Planning Guidelines or contrary to Development Plan objectives, whether the proposal would represent an unacceptable intensification of commercial uses on the subject site and whether the proposed development would have an adverse impact on the vitality and viability of Ennis and Clarecastle.
- 7.1.6. In relation to the Retail Planning Guidelines, it is stated in the response from Inaltus Limited that the guidelines do not contain any prescriptive policy to assess non retail proposals. The proposed use a Quick Service Restaurant (QSR) is not a retail proposal, and it is highlighted that the guidelines focus on retailing as opposed to QSR. It is stated that there is no evidence in the Guidelines that a single petrol filling station with two QSR is identified as a “destination.” In relation to potential impact on the vitality and viability of Ennis town centre it is submitted that a small increase of 11sq m in a QSR within the Maxol petrol filling station will not significantly impact the town centre of Ennis. Accordingly, it is submitted in the appeal that insofar as they are relevant the proposal remains compliant with the Retail Planning Guidelines for Planning Authorities.
- 7.1.7. Regarding the Clare County Development Plan 2017-2023, Ennis is identified as the County town and Clarecastle as a large village. It is noted that objective 6.25 of the Plan refers to the harnessing of the economic potential of retail development at suitable locations throughout the County. It is stated that, the proposed development will adhere to this by increasing employment. Objective 8.2 of the Plan sets out the role and function of motorways and national roads in Clare. It is highlighted in the response from Inaltus that the proposed development is not in conflict with the protection given to safeguard these roads. It is noted that, improved services in close proximity to motorways and national roads will improve safety by providing a rest stop and also remove potential conflict between ‘local’ and ‘through’ traffic.
- 7.1.8. In relation to whether the proposed development is compatible with the zoning, the site, specifically where the petrol filling station is located is zoned “mixed use” which

allows take aways to be permitted in principle and restaurants are open for consideration. Accordingly, the proposed second hot food counter to provide food for take away and consumption on the premises would be compatible with the zoning objective.

- 7.1.9. Regarding the matter of intensification of use and haphazard development as raised in the report of the Planning Officer, the response from Inaltus states that the proposed development will be located within a building which has been designed and built large enough to accommodate two quick service restaurants. It is highlighted that the proposal can be developed with minimal and only temporary customer disruption. It is submitted in the response that it does not represent a haphazard approach as it is responding to economic circumstances and customer demands.
- 7.1.10. A customer exit survey was conducted at the site in December 2021. The results of the survey indicated that the Maxol petrol filling station is attractive to high volumes of individual bypass customers who were stopping as part of their longer journey. It was found that most people were passing through the area with approximately 65% of people coming from outside the Ennis/Clarecastle area. It is set out in the response from Inaltus that there is no evidence that the premises is drawing disproportionately high volumes of customers from Ennis, Ennis town centre or Clarecastle.
- 7.1.11. In relation to the parent permission, Reg. Ref. P16/764 it is noted in the submission from Inaltus that the Council granted two quick service restaurants and restricted each to less than 100sq m in order to mitigate the potential that the premises would become a destination. It is submitted in the appeal that the nature of the proposal has not changed from the scheme permitted in 2016 and that the proposal would provide a quick service restaurant with an area of less than 100sq m. In respect of the subject restaurant, it is stated that it will not have the same ambience and experience that would be found in well-appointed cafes and restaurants in Ennis & Clarecastle. Therefore, it is argued in the appeal that the subject quick service restaurant would not become a destination.
- 7.1.12. It is highlighted in the response that the turnover in the existing Maxol premises is primarily from fuel purchases and shop purchases with fuel accounting for 74.2% of

turnover with retail sales accounting for 22.4% and the hot food counter providing 3.4% of the turnover.

- 7.1.13. Regarding the scale of the proposal, it is noted that the proposed second hot food counter area will be less than half the size of the Maxol Moreish food counter which has an area of 39sq m the proposed second hot food counter has an area of 15sq m. The proposed counter and back of house area has a total area of 95sq m which represents 18% of the total floor area of the existing building. Accordingly, it is submitted in the appeal that the proposal represents a small re-use of the previously approved quick service restaurant space which would not intensify the use of the site.
- 7.1.14. In relation to the potential impact on the viability and vitality of the Ennis and Clarecastle it is highlighted that the surveys carried out indicated that only 1% of customers came from Ennis town centre. It is reiterated that there is a quantitative need for the proposed quick service restaurant on the basis of the close proximity of the site to strategic road network. It is set out by Inaltus, that if all the turnover was diverted from Ennis town centre it would impact the whole town centre by 0.09% which is considered miniscule.
- 7.1.15. In relation to the composition of uses in Ennis town centre it is noted that there is a wide variety including shops, bars, restaurants, hotels, tourism facilities, housing and places of worship. It is noted that there are few vacancies and including along O'Connell Street and Abbey Street. Ennis town centre is found to be vibrant and vital and therefore it is submitted in the response from Inaltus that having regard to the limited turnover of the proposed development that it would not cause any significant adverse impact upon Ennis town centre.
- 7.1.16. In relation to Clarecastle, the village has a number of uses which include a pharmacy, Centra supermarket, Gala supermarket, antiques shop, café, two public houses and two takeaways. The response from Inaltus highlights that Clarecastle has maintained its role since the opening of the refurbished Maxol petrol filling station. It is noted that the subject quick service restaurant will open different hours to the takeaways in Clarecastle and that it will sell different food to the café in Clarecastle.

- 7.1.17. It is highlighted by the appellant that there is a very limited attraction to the site for locals just seeking to use the quick food counter offer due to the fact that it is principally a petrol filling station, it has very limited convenience retail floor space and the premises lacks the ambiance other cafes in the town centre would have.
- 7.1.18. Accordingly, having regard to details set out in the appeal and the foregoing assessment as discussed above I am satisfied that the appellant has demonstrated that the proposed quick service restaurant would not result in the creation of destination that would adversely impact upon the vitality and viability of Ennis and Clarecastle.
- 7.1.19. The parent permission (Reg. Ref. Reg. Ref. P16/764) which provided for the refurbishment of the existing Maxol petrol filling station included permission for two hot food counters with associated preparation areas. Accordingly, I would concur with the rationale provided by the appellant that the proposed development is in accordance with the parent permission and therefore I am satisfied that it would be acceptable on that basis. While I note that the subject quick service restaurant is proposed to be operated by a franchise separate to Maxol as confirmed in the appeal, franchise counter is entirely functionally dependent on the rest of the building and is not a stand-alone use. In relation to the opening hours, I note that no change in opening hours is proposed and that it is proposed that the second food counter will operate within the approved hours which are 7am to 11pm Monday-Sunday.
- 7.1.20. In conclusion, having regard to the foregoing assessment and the details provided with the appeal and on file I am satisfied that the first party has demonstrated that the proposed development is acceptable in terms of the policy context and having regard to the planning history on the site.

## **7.2. Access and traffic**

- 7.2.1. The second reason for refusal issued by the Planning Authority refers to the issue of traffic. The Planning Authority determined that having regard to the location of the site in relation to the Clareabbey Roundabout and the intensification of use and associated increase in vehicular movements that would be generated onto the R458 Regional Road and relative to the established business at this location that the



proposed development would interfere with the safety and free flow of traffic on the public road and would endanger public safety by reason of a traffic hazard.

- 7.2.2. In response to the refusal reason the first party stated that there is no increase in retail floor area and given that the parent permission approved two food offers there is no intensification of use. It is set out in the appeal that no substantial grounds in support of this refusal reason were provided in the report of the planning officer. The appellant states that the documentation provided with the appeal produced by Punch Consulting Engineers clearly demonstrates that any additional traffic volumes and traffic turning movements into and out of the site can be satisfactorily accommodated without any serious adverse impact in terms of traffic disruption or hazard to the surrounding road network and without any significant effect on the operational performance of the local road network.
- 7.2.3. The observation to the appeal raised concern at the level of traffic which the proposed development would generate and also its impact on the operation of the existing Maxol junction onto the R458.
- 7.2.4. The appeal is accompanied by a response prepared by Punch Consulting Engineers dated 20<sup>th</sup> December 2021. This response specifically addresses the second reason for refusal, and it is informed by updated Traffic surveys of the Clareabbey roundabout and existing Maxol Junction which were commissioned by Maxol Limited and carried out by IDASO Ltd on Thursday 2<sup>nd</sup> December 2021. A customer survey was also carried out by PUNCH Consulting Engineers at the existing premises.
- 7.2.5. PUNCH Consulting Engineers used the trip rates for Petrol Filling Station, Retail Store and Fast Food/Drive Through to apply to the relevant gross floor area in the existing building to establish the traffic generated by the premises. Table 1 of their document provides the estimated Weekday AM/PM peak hour traffic generated by the existing development. During the AM Peak the number of vehicles arriving at the premises is 81 and the number of vehicles leaving the site during the AM peak is 80. During the PM peak the number of vehicles arriving is 91 and the number leaving is 92. The results of the site specific traffic survey carried out on the 2<sup>nd</sup> of December 2021 found that 106 vehicles arrived and departed the premises during the AM peak and that 96 vehicles arrived at the site during the PM peak with 94 vehicles leaving the site during evening peak.

- 7.2.6. Table no. 3 of the PUNCH Consulting Engineers document details the estimated weekday AM/PM peak hour traffic generated by the proposed development. The proposed fast food use was projected to generate 30 vehicles arriving during the AM peak and 29 vehicles departing during the AM peak. During the PM peak 38 vehicles would arrive at the site with 39 vehicles departing during the PM peak. Using the TRICS data the total traffic generated by existing and proposed uses is 88 vehicles arriving at the AM peak with 87 vehicles departing during the AM peak. During the PM peak the total traffic generated by existing and proposed uses is 101 vehicles arriving and 102 vehicles departing.
- 7.2.7. Based on the traffic survey results additional traffic was then factored into these projected trip rates, and it was extrapolated that during the AM peak that a total of 115 vehicles would arrive at the premises with 115 vehicles departing. During the PM peak 106 vehicles would arrive at the premises and 103 vehicles would depart.
- 7.2.8. Table no.4 of the PUNCH Consulting Engineers document details the estimated increase in weekday AM/PM peak hour traffic generated by the proposed development. In relation to the AM peak it was found that the proposed development would generate an additional 9 vehicles arriving at the premises with 9 vehicles departing the premises and in the PM peak it was found that the proposed development would generate an additional 10 vehicles arriving at the premises with an additional 9 vehicles departing from the premises.
- 7.2.9. Regarding the potential impact of the additional traffic generated by the proposed development on Clareabbey roundabout as indicated on table no. 5 of the PUNCH Consulting Engineers document, during the AM peak a total of 18 no. vehicular movements would be generated by the proposed development. This represents 0.62% of the overall traffic during the AM peak. In relation to the PM peak, 19 no. vehicular movements would be generated by the proposed development and in relation to its impact on traffic volumes on Clareabbey roundabout it would represent 0.66% of the overall traffic during the PM peak.
- 7.2.10. In relation to the Maxol junction on the R458, the vehicular movements generated by the proposed development would represent 1.2% of the total traffic generated during the AM peak and 1.4% of the total traffic generated during the PM peak. The impact of additional traffic generated by the proposed development on the surrounding road

network was assessed as if the proposed development traffic is greater than 10% of the existing traffic in accordance with the requirements of the Traffic and Transport Assessment Guidelines, published by Transport Infrastructure Ireland in 2014.

PUNCH Consulting Engineers in assessing the traffic generated concluded that the proposed development will not result in a level of additional traffic which will affect the free flow of traffic on Clareabbey roundabout.

- 7.2.11. In relation to the impact of the additional traffic generated by the proposed development on the existing Maxol junction PUNCH Consulting Engineers concluded that the additional traffic which will be generated will not impact the free flow of traffic at this junction.
- 7.2.12. Regarding the matter of road safety at the Maxol junction at the R458. A one-way system is in operation in relation to vehicular access arrangements. The vehicular ingress is located to the southern end of the forecourt and the vehicular egress is located at the northern end of the forecourt. The vehicular entrance is served by a dedicated right turning box for vehicles turning into the premises from the right on the R458. In relation to the existing vehicular exit, it is restricted to the left out only due to the proximity to Clareabbey roundabout. The existing road layout includes bollards which restrict vehicular movement to ensure no illegal left turns at the exit. Therefore, it is submitted in the appeal that the existing traffic management measures in place are operating effectively, and that traffic is well controlled.
- 7.2.13. In relation to the matter of car parking it is noted in the appeal that the report of the planning officer had some concerns in relation to whether adequate car parking was provided. It is highlighted in the appeal that the permission granted under Reg. Ref. P20/830 provided for the provision of additional car parking spaces was permitted. Under Reg. Ref. P20/830 permission was granted for 63 no. car parking spaces, with 18 no. bicycle spaces and 2 no. motorcycle spaces. 8 no. short term car parking spaces are provided at the fuel pump islands and 3 no. disabled spaces are located close to the forecourt. There are 4 no. Electrical Vehicle charging point spaces. The existing layout provides 42 no. car parking spaces.
- 7.2.14. It is stated in the appeal that once this development has been carried out it will provide more than sufficient car parking spaces to serve the existing and proposed development. The appellant confirmed that if permission is granted for the subject

proposed development, it is envisaged that the proposed works would be completed in conjunction with the development approved under Reg. Ref. 20/830.

- 7.2.15. Car Parking Standards are set out in Appendix 1 – Development Management Guidelines of the Clare County Development Plan 2017 – 2023. In accordance with the Development Plan requirements, 8 no. spaces are required for convenience retail per 100sq m. Therefore 8 no. spaces are required to serve the existing retail element. Petrol filling station requires 1 space per 100sq m gross floor area and 1 space per 2 staff. The petrol filling station has a gross floor area of 581.28sq m. Accordingly, 6 no. car spaces would be required for customers and 8 no. car spaces would be required for staff. In relation to restaurant/café/takeaway it requires 12.5 no. spaces per 100sq m net area. With a floor area of 237.25sq m a total of 30 no. spaces is required and an overall total requirements for car parking is 52 no. spaces.
- 7.2.16. The car parking provision as approved under Reg. Ref. 20/830 provides a total of 63 no. car parking spaces with a total 8 no. spaces at the fuel pumps. Accordingly, having regard to the car parking requirements generated by the existing and proposed development and the overall car parking provision with the additional spaces as provided under the scheme permitted under Reg. Ref. 20/830, I am satisfied that adequate car parking will be available. In order to ensure that this additional car parking is in place in advance of the proposed development I would recommend the attachment of a condition requiring that the car parking layout as approved under Reg. Ref. 20/830 shall be constructed and operational prior to the opening and commencement of trading of the second hot-food counter.
- 7.2.17. Accordingly, having regard to the foregoing assessment of the potential traffic impacts of the proposed development, I would consider the surrounding road network has sufficient capacity to deal with level of traffic likely to be generated by the proposed development.
- 7.2.18. In conclusion, I am satisfied that the first party has demonstrated that the existing road network has sufficient capacity to accommodate the traffic which the proposed development would generate and that it would not interfere with the safety and free flow of traffic on the public road and would not endanger public safety by reason of a traffic hazard.

### **7.3. Appropriate Assessment**

- 7.3.1. Lower River Shannon SAC (Site Code Site Code 002165) is situated circa 772m to the east of the appeal site. The River Shannon and River Fergus Estuaries SPA (Site Code 004077) is situated 1.38km to the south-east of the appeal site.
- 7.3.2. The proposed development consists of primarily internal works within the existing Maxol petrol filling station with some ancillary ground works to the side and rear and the erection of signage. The premises is connected to the public foul sewer and public mains water supply and the surface water generated on site is attenuated on site. There is no hydrological connection to the European sites.
- 7.3.3. Accordingly, having regard to the nature and scale of the proposed development, the nature of the receiving environment and proximity to the nearest Natura 2000 sites 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 foregoing, I recommend that the decision of the Planning Authority be overturned in this instance and that permission be granted for the proposed development for the reasons and considerations and subject to the conditions set out below:

### **9.0 Reasons and Considerations**

Having regard to the location of the site on lands zoned 'mixed use' under the provisions of the Clare County Development Plan 2017-2023, the established pattern of development on the site, the planning history, specifically the parent permission Reg. Ref. P16/764, it is considered that, subject to compliance with the conditions set out below, the development would not endanger public safety by reason of traffic hazard or obstruction of road users and would not result in the creation of a destination that would adversely impact upon the vitality and viability of Ennis and Clarecastle. 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, 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. Prior to the opening and commencement of trading of the second hot-food counter, the car parking layout as approved under Reg. Ref. 20/830 shall be constructed and operational.

**Reason:** In the interest of the proper planning and sustainable development of the area.

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

**Reason:** In the interest of visual amenity.

4.

(a) The construction of the development shall be managed in accordance with a Construction Environmental 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 noise management measures and off-site disposal of construction/demolition waste.

(b) Site development and building works shall be carried out only between the hours of 08.00 to 19.00 Mondays to Fridays inclusive, between 09.00 to 14.00 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 the interests of public safety and residential amenity.

5. 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. The contribution shall be paid prior to the 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 the Board to determine the proper application of the terms of the Scheme.

**Reason:** It is a requirement of the Planning and Development Act 2000 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.

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Siobhan Carroll  
Planning Inspector

23<sup>rd</sup> December 2022