



An  
Bord  
Pleanála

## Inspector's Report ABP 313018.

<b>Development</b>	Primary Health Care Centre.
<b>Location</b>	Caherdavin, Ennis Road, Limerick.
<b>Planning Authority</b>	Limerick City and County Council
<b>Planning Authority Reg. Ref.</b>	211741
<b>Applicant</b>	Philip Doyle Valley Healthcare Fund
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse permission
<b>Type of Appeal</b>	First Party
<b>Appellant</b>	Philip Doyle Valley Healthcare Fund
<b>Observers</b>	(1) John & Mary Mortell (2) Liam O'Connell (3) Frank Larkin (4) Gerald McCormack (5) Jackie Grace

**Date of Site Inspection**

17<sup>th</sup> of June 2022

**Inspector**

Siobhan Carroll

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## **1.0 Site Location and Description**

- 1.1. The appeal site at Caherdavin, Limerick is situated circa 250m to the south of the Ennis Road and circa 80m to the east of the roundabout at Clonmacken Road, Caherdavin, Limerick. The Jetland Road bounds the site to the north and provides road frontage of 110m. The R527 the Clondell road links the north-western side of the Limerick with the city centre. It is located 590m to the south-west of the site. Junction 3 of the N18, Coonagh West is situated circa 2.3km to the west of the site.
- 1.2. Jetland shopping centre and retail park is located immediately to the north and east of the site. Jetland shopping centre contains Dunnes Stores supermarket and a mix of other retail/commercial units including clothing stores, pharmacy, barbers, book store and post office. The centre and retail park is served by cafes and fast food restaurants including a Drive-Thru fast food outlet. Jetland retail park situated immediately to the east of the shopping centre contains a mix of comparison bulky good retail units including a toy store, pet store, furnishing store and DIY, home and garden store. There is a cinema and Drive-Thru fast food outlet also located within the retail park.
- 1.3. The site has a stated area of 1.4766 hectares there is palisade fencing along the northern boundary. The site contains a section of hard surfaced area adjacent to the roadside boundary the remaining area is grassed and an arterial drainage channel runs along a large section of the eastern site boundary for circa 117m. The Ashbrook housing estate is situated to the east of the site. Properties within Ashbrook Gardens lie closest to the site with rear gardens located a minimum of 11m to the eastern site boundary. The neighbouring property to the west of the site is a detached dwelling situated 36m from the site boundary. There is another detached dwelling to the south-west situated 74m from the site boundary.

## **2.0 Proposed Development**

- 2.1. Permission is sought for the construction of a Primary Health Care building consisting of 4 storeys, with part 5 storeys above undercroft carparking with raised entrance podium to include a pharmacy retail unit gross floor area 99sqm at

entrance level, internal access road, surface carparking, totem sign, associated building signage, roof mounted solar panels, boundary treatment, connection to public services and all ancillary and associated works.

2.2. The application is accompanied by the following reports/documentation;

- Planning Statement
- AA Screening Report
- Sun study
- Tree Protection Plan
- Landscape Masterplan
- Aboricultural Impact Assessment
- Stage 1 Road Safety Audit
- Site Specific Flood Risk Assessment
- Traffic and Transportation Plan
- Outline Workplace Travel Plan
- Engineering Planning Report
- 3D views

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

Permission was refused by the Planning Authority for the following reasons.

1. Having regard to the location of the proposed development in an area at risk of flooding and as such would be contrary to Policy WS.9: Flood Risk as set out in the Limerick City Development Plan 2010-2016 (as extended) and the Planning System and Flood Risk Management, Guidelines for Planning Authorities 2009. The development would, therefore, be contrary to the proper planning and sustainable development of the area.

2. The proposed development is considered premature pending the adoption of the draft Limerick Development Plan 2022-2028 in relation to the proposed zoning and any determination of a future road layout for the area.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

- The report of the Planning Officer concluded that the proposal does not meet the requirements of national guidelines on flood risk, that it would be contrary to Policy WS.9 of the Limerick City Development Plan and that it would therefore be contrary to the proper planning and development of the area.

#### 3.2.2. Other Technical Reports

**Physical Directorate Section** – The Draft Strategic Flood Risk Assessment prepared for the Draft Limerick Development Plan includes a Development Plan Justification Test for this site (prepared in response to a submission on the draft zoning). The Justification Test concludes that Part 2 of the Justification Test has not been passed and that the zoning of the site should follow the sequential approach in avoiding vulnerable development in Flood Zone A and that the site should retain a water compatible use.

**County Archaeologist** – The proposed development is located on a large 1.74 hectare greenfield site and is adjacent to a Recorded Monument, LI005-053, a possible enclosure. Further information is requested in relation to the submission of an Archaeological Assessment.

**Heritage Officer** – The Heritage Officer agrees with the conclusions of the AA screening report which states that the site is at some distance from the Natura 2000 sites and ex-situ effects are not likely to be significant from a distance perspective. It is recommended that in event of a grant of permission that a number of conditions be attached.

**Chief Fire Officer** – No objection subject to conditions.

**Active Travel Department** – Further information requested in relation to cycle storage facilities. It is recommended that in event of a grant of permission that a condition should be attached requiring the provision of a Mobility Management Plan.

**Environment** – No objection subject to conditions.

**Operations Department** – Central Services request further information in relation to traffic and pedestrian issues, public lighting and surface water disposal.

### 3.3. **Prescribed Bodies**

**Transport Infrastructure Ireland** – It is requested that the Planning Authority abide by office policy in relation to development on/affecting national roads as outlined in DoELCG Spatial Planning and National Roads Guidelines for Planning Authorities (2012).

**Irish Water** – No objection in principle subject to pre connection agreement and commercial watermeter to be to Irish Water specifications.

**HSE** – No objection subject to conditions.

**OPW** – No object subject to the attachment of a condition requiring that a 5m wide strip of land running parallel with Channel C1 in order to facilitate access and maintenance activities by them.

### 3.4. **Third Party Observations**

- 3.4.1. The Planning Authority received 11 no. submissions/observations in relation to the application. The issues raised concerned site being located in the flood zone, under the draft Limerick City and County Development Plan the site is rezoned agriculture, adequate health care facilities are available on the north side of the city, height and design of proposal, overshadowing, impact upon residential amenity, traffic impacts and that the site is not served by public transport.

## 4.0 **Planning History**

Appeal Site



- None

#### Adjacent Site

Reg Ref 21560 & ABP 312534-22 – Application for the construction of a multi-storey build to rent residential development comprising of 50 no. apartments. The decision to refuse permission by the Planning Authority is subject to a first party appeal. The site is located circa 106m to the west of the subject site.

## **5.0 Policy Context**

### **5.1. Project Ireland 2040 - National Planning Framework**

- 5.1.1. National Strategic Outcome 10 refers to Access to Quality Childcare, Education and Health Services.

#### Healthcare Services in the Community

- 5.1.2. Facilitating the transformation of healthcare delivery by investing in ICT infrastructure, to facilitate the flow of information across and within various care settings, and increasing the capacity of primary care, including:
- Provision of primary care centres on a national basis to match population changes including new builds and refurbishments of existing buildings;
  - Expansion of community diagnostics and minor surgery.

### **5.2. Limerick Development Plan 2022 – 2028**

- 5.2.1. The Limerick Development Plan 2022-2028 was adopted by the Elected Members of Limerick City and Council's at a Special Meeting on the 17th of June 2022. The Plan came into effect six weeks from the date of adoption on the 29th July 2022.
- 5.2.2. Under the provisions of the plan the appeal site is located on lands which are zoned Agriculture.
- 5.2.3. Objective: To protect and improve rural amenity and provide for the development of agricultural uses.

- 5.2.4. Purpose: Protect rural amenity and agricultural lands from urban sprawl and ribbon development and provide a clear demarcation to the adjoining built up areas. Uses which are directly associated with agriculture or rural related business activities which have a demonstrated need for a rural based location and which would not interfere with rural amenity are open for consideration. Compliance is required with the criteria for Small-Scale Home-Based Businesses.
- 5.2.5. Under the Agricultural zoning as set out in Section 12.4 of the Development Plan – Land Use Zoning Matrix a Health Centre is generally Not Permitted = X
- 5.2.6. A generally not permitted use is one that would be incompatible with the zoning policies or objectives for the area, would conflict with the permitted/existing uses and would be contrary to the proper planning and sustainable development of the area.
- 5.2.7. During the Development Plan preparation a proposed material alteration of the zoning of the subject site from Agricultural to District Centre was sought. This proposed alteration of zoning was not implemented when the Plan was adopted.

### **5.3. Natural Heritage Designations**

- 5.3.1. Lower River Shannon SAC (Site Code 002165) lies to the south, east and west of the appeal site at the closest point it is located circa 842m from the site.
- 5.3.2. River Shannon and River Fergus Estuaries SPA (Site Code 004077) lies to the south, east and west of the appeal site at the closest point it is located circa 842m from the site.

### **5.4. EIA Screening**

- 5.4.1. The development is not of a class of development set out in Part 1 or Part 2 of Schedule 5 of the Planning and Development Regulations 2001 (as amended). Accordingly, I am satisfied that EIA or EIA screening is not required in this case.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

A first party appeal has been submitted by HRA Planning on behalf of the applicant Philip Doyle Valley Healthcare Fund. The issues raised are as follows.

- The appeal includes a number of revised drawings prepared by the project Architects, John Halligan Architects. These are PL002 – Site Plan Main Entrance Level, PL010 – Undercroft Floor Plan, PL011 – Ground & First Floor Plan, PL012 – Second & Third Floor Plan, PL013 – Fourth & Roof Plan, PL020 – Overall Elevations, PL022 – Contextual Elevations and PL025 – 3D Views.
- The revised plans are submitted to address the issues raised in the technical reports on file including the need for additional shower facilities to encourage Smarter Travel and amendments to the western elevations to effectively break the appearance of the building with well considered materials and building fabric.
- Punch Consulting Engineers have provided revised drawings to address the potential concerns regarding Smarter Travel including the location of bicycle parking in the undercroft and pedestrian and cycling facilities within the development.
- The Planning Authority refused permission for two reasons.
  1. Having regard to the location of the proposed development in an area at risk of flooding and as such would be contrary to Policy WS.9: Flood Risk as set out in the Limerick City Development Plan 2010-2016 (as extended) and the Planning System and Flood Risk Management, Guidelines for Planning Authorities 2009. The development would, therefore, be contrary to the proper planning and sustainable development of the area.
  2. The proposed development is considered premature pending the adoption of the draft Limerick Development Plan 2022-2028 in relation to the

proposed zoning and any determination of a future road layout for the area.

- Policy WS9 states that “it is the policy of Limerick City Council to ensure that development should not itself be subject to an inappropriate risk of flooding nor should it cause or exacerbate such a risk at other locations.”
- A detailed Site Specific Flood Risk Assessment (SSFRA) has been carried out by Punch Consulting in order to assess the potential flood risk to the site. The SSFRA provides a number of measures that are proposed for the Primary Care Centre as a precautionary approach to the risk of flooding on the site and concludes that with the implementation of the said measures, the site will be at low risk of flooding and will not increase the risk of flooding to any adjacent or nearby area.
- The application submitted to the Planning Authority provided the Plan making Justification Test for consideration having regard to the fact that the City Development Plan was prepared in 2010 and the council had expressed concern that the zoning of land may not have gone through the full rigours of the Plan making Justification Test.
- The SSFRA also undertook the Development Management Justification Test. It is stated that both tests support the existing zoning on the subject lands and demonstrate why the principle of the development on the site can be advanced in full compliance with the Justification Test and Planning System and Flood Risk Management Guidelines.
- It is stated that the new Development Plan is being prepared for Limerick and a Draft Plan has been published. Pending the making of a new development plan consequent on the preparation of that plan, the development plan within the Planning Authority’s administrative area shall continue to apply to the extent provided.
- The site is zoned for a development purpose in the Limerick City Development Plan 2010-2016 (as extended). The Plan shall continue to have effect until such time as the Draft Limerick Development Plan 2022 – 2028 is

adopted. It is submitted that the proposed development cannot be deemed premature pending the making/adoption of a new development plan for the area.

- It was highlighted that save for the reasons for refusal set out in the Notification of Decision to refuse planning permission, the Planning Authority had not expressed any concerns with the development in terms of the height, design and layout of the primary care centre.
- In relation to traffic generation, it is stated that the traffic surveys were obtained and the junctions were each assessed for the proportion of generated development traffic against the existing background traffic. Where the generated development traffic accounted for less than 5% (TII Threshold for traffic congested areas) of the existing background traffic it was determined that junction capacity modelling of that junction was not required as the predicted development trips generated are deemed to have very little impact on the existing junction. Junctions referred to by the Council did not exceed the TII 5% threshold. It is stated that should the Board decide to grant permission a condition could be attached requesting that revised modelling be undertaken with mitigation measures if necessary to be agreed with the Council prior to commencement of development.
- The further information sought by the Operations Department included the submission of a cross section of the Link Road to ensure sufficient width for the cycle and access track. It is stated that details of this road cross section can be dealt with as a condition of a grant of permission.
- It is submitted that the proposed development would be in accordance with National Policy Objective 26 of the National Planning Framework which seeks to “support the objectives of public health policy including Healthy Ireland and the National Physical Activity through integrating such policies, where appropriate and at the applicable scale with planning policy.”
- The proposed primary care centre is intended to function as a headquarters for the Ballynanty, Thomond and Westbury Community Healthcare Network serving a population of approximately 37,000 people.

- The proposed development of a Primary Care Centre in the northern environs of Limerick City has been identified as necessary to ensure the provision of an integrated primary health facility with the necessary services and support structure to provide medical and community services to the city of Limerick and the surrounding area.
- The Regional Spatial & Economic Strategy for the Southern Region (RSES) is a strategic plan and investment framework to shape the future development of the Southern Region to 2031 and beyond.
- It is stated in the Plan that “gaps in the national healthcare infrastructure, in particular the demand and capacity for primary care, acute care and social care services need to be addressed to meet this objective.
- The National Development Plan 2018 – 2027 details a range of health care infrastructure investment. The RSES supports this investment programme including transition of patients to the most appropriate care settings ranging from acute care to primary and community services.
- In relation to the Limerick City Development Plan 2010 – 2016 (as extended) it is stated that the lands where the site is located is zoned 5B District Centre to the north, R2 for Residential to the south and 6A Public Open Space in the east. A Medical Centre is acceptable in principle on district centre zoned lands, is open for consideration on residential zoned land and is not permitted in principle on public open space land.
- The proposed building is located on the western “half” of the site, on land that is solely zoned for District Centre use and Residential use. The eastern part of the site accommodates part of a proposed Link Road, as provided for in the City Development Plan along with dedicated cycling and pedestrian paths. Much of the Link Road is provided on land zoned for a development purpose, the road does encroach on circa 191sq m of land zoned as open space.
- It is submitted that the height and design of the proposed building is in accordance with the provisions of Urban Development and Building Height

Guidelines for Planning Authorities (2018) and specifically Section 3.2 of the Guidelines.

- In relation to the matter of flooding, Punch Consulting Engineers prepared a Site Specific Flood Risk Assessment (SSFRA).
- The SSRA reviewed the Office of Public Works (OPW) Flood Hazard Mapping website. It is indicated that there have been historical instances of flooding in an area adjacent to the site but not on the subject site.
- The site is located on lands marked as “Arterial Drainage Schemes Benefit Lands”. As detailed in the SSFRA the subject site is located within Flood Zone A in an undefended scenario and is located within Flood Zone B when flood defences are taken into consideration.
- The definition of the Flood Zones is based on an undefended scenario and does not take into account the presence of any flood protection structures such as flood walls or embankments.
- The location of the site within Flood Zone A and the associated flood extents are a worst case scenario based on all flood defences in Limerick not being operational and ignored entirely.
- In the Flood Risk Management Plan for the Shannon Upper & Lower River Basin it identified two potential breach locations within the embankment which is located approximately 1.5km south of the site.
- The findings of the Flood Risk Management Plan were mapped by Punch Consulting it was found that any overland flows resulting from a potential breach to the flood defences along the northern banks of the Shannon will not encroach on the subject site. It was found that flood levels on the land are unlikely to increase in the event of a breach.
- A residual risk of flooding remains and therefore the sequential approach and the Justification Test applies to this defended area.

- It is noted that the proposed development a Primary Care Centre is not specifically classified under Table 3.1 of the Planning System and Flood Risk Management Guidelines.
- The closest classification is “Buildings used for: retail, leisure, warehousing, commercial, industrial and non-residential institutions which is categorised as a less Vulnerable Development.
- The UK Flood Risk Guideline provide four vulnerability classes in contrast to the three provided in the Planning System and Flood Risk Management Guidelines. Medical Practices are referred to in the UK Guidelines as “more vulnerable development”. Under the provisions of the UK Guidelines development classified as “more vulnerable development” are considered acceptable in Flood Zones B and C with justification being required if they are located in equivalent Flood Zone A.
- As the development will not provide critical patient care or overnight care it is considered that the development could be classified as “Less Vulnerable”. This will apply the same classification and zone criteria as the UK Guidelines.
- The site is located in Flood Zone A and the development is considered “Less Vulnerable” development can only be permitted if the development complies with the requirements of the Justification Test.
- The application submitted to the Planning Authority offered the Plan making Justification for consideration having regard to the fact that the City Development Plan was prepared in 2010 and the Council had concerns that the zoning of land may not have gone through the full rigours of the Plan Making Justification Test.
- Section 4.4 of the SSFRA sets out a number of mitigation measures that are proposed for the Primary Care Centre as a precautionary approach and concludes that with the implementation of the said measures the site will be at low risk of flooding and will not increase the risk of flooding to any adjacent or nearby area.



- The report of the Planning Authority expressed two particular concerns regarding the potential loss of flood storage and not satisfying the Justification Test.
- In relation to the flood storage it is stated that flooding mechanism in the area is coastal and it is generally required as best practice to compensate for the loss of coastal flood storage. This is due to the relative volume of flood storage lost due to the proposed development in comparison to the ocean/coastal flooding that is causing the flooding.
- Mitigation Measures no. 2 in Section 4.4 of the SSFRA noted that the finished floor level of the proposed undercroft parking level will mostly match the existing ground levels to ensure that existing flow paths are undisturbed and in order to minimise filling in the defined flood zone. Boundary treatment of the undercroft area will also allow floodwaters flow at the base of the proposed structure to ensure existing flow paths are undisturbed.
- The area is already defended therefore it is only a restricted risk of coastal flooding at the site that is a low risk. In the unlikely event that flood defences are overtopped and the site experiences flooding to the level of 4.7m AOD (0.5% AEP) floodwaters can fill the undercroft area via open flow paths. It is stated that the loss of flood storage is only in the form of columns and lift shafts which is significantly minor in relation to the coastal flood volumes that would be experienced and would not increase the flood risk elsewhere as required in response to Item 2.1 of the Box 5.1 Justification Test.
- It is noted that it is stated in Section 5.8.1 of the Draft Strategic Flood Risk Assessment completed by JBA Consulting as part of the preparation for the Draft Limerick Development Plan 2022 – 2028 the projection of instream water levels across the floodplain are very onerous. Water levels across the flood plain would be lower than in the channel. The proposed development is located at the edge of the inundated area, the flood levels predicated at the site can be considered very conservative.
- Punch Consulting Engineers are satisfied that the loss of coastal flood storage at the proposed development site is not significant enough to warrant

providing compensatory storage within the development and the proposed development would not increase flood risk elsewhere.

- Punch Consulting Engineers consider that with the implementation of the proposed mitigation measures including in Section 4.4 of the original SSFRA that the site will be at low risk of flooding and will not increase the risk of flooding to any adjacent or nearby area.
- The Flood report on the planning file states that the zoning provides under the current Limerick City Development Plan that it was established without full implementation of the Planning System & Flood Risk Management Guidelines and without a Development Plan Justification Test.
- The Flood report does not assess the Development Plan Justification Test provided in the planning report accompanying the planning application but relies on an assessment undertaken as part of the Draft Strategic Flood Risk Assessment prepared for the Draft Development Plan. It is concluded in the Flood report on file that Part 2 of the Justification Test has not been passed.
- It is stated that having reviewed the Material Alterations to the Strategic Flood Risk Assessment, a part of the Draft Limerick Development Plan 2022-2028 in relation to lands zoned District Centre, existing residential and enterprise and employment at Caherdavin that it does not state that Part 2 of the Justification Test has not been passed.
- It is stated in the Planner's report that "in the Draft Development Plan the site has been rezoned to 'agriculture' as it did not pass the Strategic Flood Risk Assessment undertaken as part of the Draft Development Plan 2022-2028".
- It is stated in response to this that the statement was not correct and was out of date that the subject land has been rezoned District Centre in the amendment to the Draft Plan which is currently on public display.
- It is submitted that the subject site does comply with the Justification Test.
- It is stated that the subject site which is located within a designated District Centre which is within walking distance of services and facilities and which is serviced by utilities and that the zoning of this land would complete the

development within the District Centre with the provision of a new primary care centre.

- The Flooding Guidelines makes it clear that “in the case of Gateway planning authorities, where a number of strategic growth centres have been identified within the overall area of the authority, the Justification Test may be applied for vulnerable development within each centre.”
- The core of an urban settlement is defined in the Guidelines as “the core area of a city, town or village which acts as a centre for a broad range of employment, retail, community, residential and transport functions.”
- The Jetland Centre is identified as a ‘District Centre’ in the existing Development Plan and in the Draft Plan where it is an objective to “provide for a mixture of retail, residential, commercial, civic and other uses.”
- Its purpose as stated in the Draft Plan is to “facilitate a district level centre consisting of a compatible mix of uses complimentary to the City Centre having regard to the principles of compact growth, consolidation and densification.”
- In accordance with the Flooding Guidelines, the subject land is located within and adjoins one of the identified cores within the established urban settlement and having regard to the principles of sequential assessment, it is a spatially centrally located development site. Therefore, it is submitted that the subject site does comply with the Justification Test.
- The proposed development is not and cannot be considered premature pending the adoption of the Draft Limerick Development Plan 2022 – 2028 in relation to the proposed zoning and any determination of a future road layout for the area.
- It is acknowledged that a new Development Plan is being prepared for Limerick and that a Draft Plan has been published, it is important to note that the statutory Limerick City Development Plan 2010-2016, as extended remains in full legal effect until such time as it is the Draft Limerick Development Plan 2022 – 2028 is adopted.

- It is submitted that the proposed development cannot be deemed premature pending the making and adoption of a new development plan for the area.
- It is requested that the Board overturn the decision to refuse permission by Limerick City and County Council and that permission is granted for the proposed primary care centre.

## 6.2. Planning Authority Response

- None received

## 6.3. Observations

Observations to the appeal have been received from (1) John & Mary Mortell (2) Liam O'Connell (3) Frank Larkin (4) Gerald McCormack (5) Jackie Grace.

(1) John & Mary Mortell

- Concern is expressed that the scale of the development with 204 staff, customers, patients, visitors, delivery and service vehicles would give rise to additional traffic and congestion in the area
- It is stated that the observers have concerns at the usefulness of the applicant's sun study. They state that an area of their rear garden and 50% of their property would be in shadow after the proposed scheme is built. They consider that their property will be engulfed in shadow at 09:00 from October – March every year.
- The matter of Flood Risk is raised. The proposed development and site works required for a six storey building will involve significant ground disturbance to existing water storage channels. This will result in the reduction in the rate of absorption, which would have a disastrous impact on the adjoining local housing that already have to deal with surface/storm water and high watertable. It is stated that with climate change there is a greater likelihood of high tides, flood events, heavy downpours and flash flooding impacting vulnerable areas in the locality.

- No screening is provided on the western elevation/western perimeter of the site. The proposed boundary treatment is not considered suitable. The observers state that it would not be appropriate to use their 2.7m site end wall as the boundary.
- A number of proposed windows are looking north. The observers consider, in order to negate overlooking the windows should be rotated 180 degrees and looking south.
- The observers state that they strongly object to the proposed development in its current configuration.

(2) Liam O'Connell

- The site of the proposed development is located immediately behind the observer's property.
- The site is located in an area designated Flood Zone A. The observer states that he has lived at his home for the past 36 years and he has observed from the first floor of his home that the site has previously been water logged.
- It is noted that the area is generally low lying and that the water table is high. The observer states that his back garden and the back gardens of his neighbours are frequently water logged and that in the past there was a serious risk of flood water entering these dwellings.
- In September 2019 there was a breach in the flood defences on the bank of the Shannon at the Na Pairsaig Club grounds which is very close to the application site.
- Section 3.11 of the Flood Risk Assessment submitted with the application states that the existing flood defence embankment located approximately 900m south of the site are "legacy structures" which were constructed historically to protect agricultural land and were not designed to modern day engineering standards. Therefore, this clearly identifies a serious risk of flooding from the possibility of further breaches.

- If a development was to be given serious consideration on this flood plain, it should be considered only after the sub-standard flood defences are improved.
- It is stated in the applicant's Flood Risk Assessment that "the proposed development is at a low risk of flooding and is deemed appropriate provided the residual risk of coastal flooding is addressed by implementing the measures discussed in Section 4.4 Flood Risk Mitigation Measures.
- It is stated in the assessment that floor levels will be required to be raised. The proposal for mitigation measures indicates that there is an acceptance that a real risk of flooding exists. The observer is concerned that flood mitigation measures are not available for his property and the residents of surrounding properties at Ashbrook Gardens, Ashbrook Crescent and Bracken Gardens.
- Policy WS.9 of the Limerick City Development Plan refers to Flood Risk and states that "It is the policy of Limerick City Council to ensure that development should not itself be subject to an inappropriate risk of flooding nor should it cause or exacerbate such risk at other locations."
- Concern is expressed in relation to climate change. The site is designated as the most severe risk of flooding. The site is located at the lowest area of the flood plain. Many large pylons are required to support the plinth of the building and combined with the surface area of the car park could cause a high volume of water to be displaced.
- It is not considered that the site is suitable for the proposed development having regard to the flood risk.

(3) Frank Larkin

- The observer supports the decision of Limerick City and County Council to refuse permission in respect of flood risk and that it was considered premature pending the adoption of the Draft Limerick Development Plan 2022-2028 in relation to the proposed zoning and any determination of a future road layout for the area.

- Regarding flood risk the observer states that he can personally confirm that the site has previously flooded to a depth of 3-4 feet in 1961 and that there have been other occurrences of flooding in the intervening years.
- The 2018 CFRAM study has confirmed that the subject lands are in the highest category of flood risk, Flood Zone A. The zoning under the Draft Plan was revised from Residential to Agriculture or Open Space zoning. It is stated that these zonings are not compatible with the development of a primary care centre.
- The appeal refers to a proposed Link Road from the Caherdavin District Centre to the Condell Road. The Limerick Development Plans up to and including the Limerick City Development Plan 2010-2016 (as extended) have included in their “Roads Objectives” and indicative link road from the Caherdavin District Centre to a four way junction on the Condell Road aimed at opening up to the lands north and south of the road for development at the time the lands were zoned residential.
- Following the publication of the CFRAM study, the lands between Caherdavin District Centre and the Condell Road is entirely within Flood Zone A lands. Therefore, the observer considers that the Council were correct to change the zoning from residential to agriculture in the Draft Limerick Development Plan 2022-2028.
- In relation to access to these lands, it is noted that Formation Homes were granted permission under Reg. Ref. 21276 for a revised entrance to their development from higher ground within their site. This supersedes the permission Reg. Ref. 17470 where access to the site was from the north side of the four way junction on the Condell Road indicated in the Limerick City Development Plan 2010-2016 (as extended).
- In the current SHD application south of the Condell Road, ABP 312683 – Clonmacken Partnership have abandoned plans to access the development from the south side of the proposed four way junction on the Condell Road and access it via the lands currently under development with a Part 8 Housing Scheme.

- The observer states that the 'indicative link road' serves no useful purpose and that it has correctly not been included in the Draft Limerick Development Plan 2022-2028.

(4) Gerald McCormack

- The site is located on lands designated Flood Zone A.
- It is stated that the rear gardens of the adjacent housing estates of Ashbrook Gardens, Ashbrook Crescent and Bracken Crescent have experienced surface water logging in winter and also in summer following prolonged rainfall. It is stated that residents have difficulty getting home insurance due to the area being located within Flood Zone A.
- It is considered that any development on the site would exacerbate flooding due to the need for foundation piling and extensive infilling to create hard paving for roads and car parking. Any such development would raise water table levels. It is considered that the construction of the building on a raised podium would not mitigate the potential flood risk.
- It is stated that the OPW and the applicants do not consider that the existing flood defences from the Shannon are not up to the required standard.
- The site is not a brownfield site as it has never previously been developed.
- The site is located at the lowest point of a narrow valley between Clonmacken on the west and North Circular Road on the east and running south to north from the Condell Road to the Jetland Centre and future flooding is considered already likely without flood defence improvements by the OPW.
- The observer states that a healthcare facility in the west of the city would be most welcome, however the subject site is not suitable and that there are other more suitable locations available in the surrounding areas of Coonagh, Frendale and Moyross.

(5) Jackie Grace

- The observer strongly objects to the proposed development as it would be located directly to back of her property which is located in Ashbrook Gardens.



- The subject lands have always been at risk of flooding and it is stated that it is difficult to get house insurance in the area due to the flooding issue.
- It is considered that the proposed development would negatively impact upon the character of the area.
- Concern is expressed in relation to the issue of noise which would be generated during construction.
- Concern is expressed in relation to the additional traffic which the scheme would generate and the impact it would have upon the capacity of the surrounding roads.

## 7.0 **Assessment**

The main issues in this appeal are those raised in the grounds of appeal and the observations to the appeal. The issue of appropriate assessment also needs to be addressed. The issues can be dealt with under the following headings:

- Policy Context and zoning
- Flood Risk
- Access and traffic
- Impact on residential amenity
- Appropriate Assessment

### 7.1. **Policy Context and zoning**

- 7.1.1. The Limerick Development Plan 2022 – 2028 was adopted by the Elected Members of Limerick City and Council's on the 17th of June 2022 and the Plan came into effect on the 29<sup>th</sup> of July 2022. On the 28<sup>th</sup> July 2022, Limerick City and County Council received notification from the Minister for Housing, Local Government and Heritage of his intention to issue a Direction pursuant to Section 31 of the Planning and Development Act 2000 (as amended). In accordance with Section 31(4) of the

Planning and Development Act 2000 (as amended), those parts of the Limerick Development Plan 2022-2028 referred to in the notice shall be taken not to have come into effect, been made or amended. Having regard to this notice from the Minister for Housing, Local Government and Heritage, I note that it refers to a number of specific zonings and that it does not refer to the subject site at Caherdavin, Limerick. Accordingly, I am satisfied that the provisions of the Limerick Development Plan 2022 – 2028 apply to the subject site.

- 7.1.2. Refusal reason no. 2 states the proposed development is considered premature pending the adoption of the draft Limerick Development Plan 2022-2028 in relation to the proposed zoning and any determination of a future road layout for the area.
- 7.1.3. When the Planning Authority issued the decision to refuse permission the Limerick Development Plan 2022-2028 had not yet been adopted and the proposed development was subject to the provisions of the Limerick City Development Plan 2010-2016 (as extended). While I note case put forward by the appellant in respect of the zoning provisions under the Limerick City Development Plan 2010-2016 (as extended) as detailed above this plan has now been superseded by the current plan which is the Limerick Development Plan 2022-2028.
- 7.1.4. In relation to the subject lands at Catherdavin, Ennis Road, Limerick, during the Development Plan preparation a proposed material alteration of the zoning of the subject site from Agricultural to District Centre was sought. This proposed alteration of zoning was not implemented when the Plan was adopted. Map 3 of the Limerick Development Plan 2022-2028 is the zoning map of Limerick City and Suburbs (in Limerick), including Mungret and Annacotty. As illustrated on Map 3 the appeal site at Caherdavin is located on lands zoned – Agriculture.
- 7.1.5. Accordingly, the subject site is located on lands zoned Agriculture under the provisions of the Limerick City and County Development Plan 2022-2028, which has the objective “to protect and improve rural amenity and provide for the development of agricultural uses”. In relation to the purpose of this zoning it is set out in the development plan that it is to protect rural amenity and agricultural lands from urban sprawl and ribbon development and provide a clear demarcation to the adjoining built up areas. Uses which are directly associated with agriculture or rural related

business activities which have a demonstrated need for a rural based location and which would not interfere with rural amenity are open for consideration.

- 7.1.6. Chapter 12 of the development plan refers to Land Use Zoning Strategy and Section 12.4 of the plan refers to the Land Use Zoning Matrix. As set out in the Land Use Zoning Matrix under Agricultural zoning a Health Centre is generally not permitted. A generally not permitted use is defined in the plan as a use that would be incompatible with the zoning policies or objectives for the area, would conflict with the permitted/existing uses and would be contrary to the proper planning and sustainable development of the area.
- 7.1.7. Therefore, having regard to the zoning of the lands on which the subject site is located I conclude that the proposed primary health care centre is not permitted within these lands zoned Agriculture. Therefore, the proposed development would, contravene materially the Agriculture development objective indicated in this development plan for the zoning of land, and would, therefore be contrary to the proper planning and sustainable development of the area.
- 7.1.8. In conclusion, I am satisfied that the proposal is contrary to the zoning objective and policies of the Limerick Development Plan

## **7.2. Flood Risk**

- 7.2.1. The first reason for refusal refers flood risk. It stated that having regard to the location of the proposed development in an area at risk of flooding and as such would be contrary to Policy WS.9: Flood Risk as set out in the Limerick City Development Plan 2010-2016 (as extended) and the Planning System and Flood Risk Management, Guidelines for Planning Authorities 2009. The development would, therefore, be contrary to the proper planning and sustainable development of the area.
- 7.2.2. The site at Caherdavin, Ennis Road, Limerick is located within an area designated as flood zone A. The application was accompanied by a Flood Risk Assessment (FRA). The FRA was prepared by Punch Consulting Engineers.
- 7.2.3. The report of the Council's Physical Directorate Section in relation to the subject application referred to the Draft Strategic Flood Risk Assessment which was

prepared for the Draft Limerick Development Plan includes a Development Plan Justification Test for this site. It is stated in the report that it is concluded that Part 2 in the Justification Test has not been passed and that the zoning of the site should follow the sequential approach in avoiding vulnerable development in Flood Zone A.

- 7.2.4. In response to this it is argued in the appeal that the application submitted to the Planning Authority provided the Plan making Justification Test for consideration having regard to the fact that the City Development Plan was prepared in 2010 and the council had expressed concern that the zoning of land may not have gone through the full rigours of the Plan making Justification Test. The first party submit that the Site Specific Flood Risk Assessment (SSFRA) also undertook the Development Management Justification Test. It is stated that both tests support the existing zoning on the subject lands and demonstrate why the principle of the development on the site can be advanced in full compliance with the Justification Test and Planning System and Flood Risk Management Guidelines.
- 7.2.5. The appeal site at Catherdavin, Ennis Road, Limerick as indicated on Map 5: Limerick and Suburbs (in Limerick), including Mungret and Annacotty – Flood Map of the Limerick Development Plan 2022-2028, is located within lands which are within Flood Zone A. The appeal site is located on lands which are zoned ‘Agriculture’. Volume 4 of the Limerick Development Plan 2022-2028 refers to Strategic Flood Risk Assessment. Section 7.3 refers to Caherdavin/Moyross, it notes that areas fall within Flood Zone A and B and are designated for several different zoning objectives including Agriculture, Education and Community Facilities, Enterprise and Employment, District Centre Zoning and Existing Residential and Open Space and Reaction. It states that areas of open space and recreation with Flood Zones A and B water compatible and should be maintained and where other areas of less vulnerability are within Flood Zones A and B, flood risk should be managed by following the sequential approach guided by appropriately detailed FRA.
- 7.2.6. It is highlighted in the SSFRA that the site is identified as being in lands marked as “Arterial Drainage Schemes Benefit Lands”. It is identified in the report that there are several instances of flood events in the area. It is noted that in January 1995 that flooding occurred at Ashbrook Gardens to the east of the appeal site.

- 7.2.7. In relation to the CFRAM mapping it is stated in the SSFRA that there is a 0.1% AEP Coastal Flood Extent, however that the majority of the site is located in a 'Defended Area'. It is set out in the SSFRA that based on the assessment of the CFRAMS flood mapping that the flood level is assumed to be 2.5mAOD for the 0.1% AEP Coastal Flood Extent and 4.7mAOD.
- 7.2.8. In relation to the existing flood defences, flood defence embankments are located along the River Shannon from Barrington's Pier to Co. Clare. The flood defences consist of earthen embankments which are maintained by the Office of Public Works. These embankments protect the Limerick area bound by the River Shannon estuary which includes the Toll Road. It is noted in the SSFRA that these embankments are part of the OPW's Shannon North Embankment Scheme and are legacy structures which were constructed to protect agricultural lands and were not designed to modern day engineering standards.
- 7.2.9. The breach analysis carried out as part of the Shannon CFRAM indicates that any overland flow resulting from a potential breach to the flood defences along the northern bank of the Shannon will not encroach on the appeal site. In relation to the Draft Strategic Flood Risk Assessment prepared by JBA Consulting as part of the Draft Limerick Development Plan 2022-2028 it is noted in the SSFRA that the appeal site is located in Flood Zone A. It is noted that the definition of the Flood Zones is based on an undefended scenario and that it does not take into account the presence of any flood protection structures and that the flood extents shown are a worst case scenario which are based on all flood defences not being operational and ignored entirely.
- 7.2.10. Regarding the sources of flooding, it set out in the SSFRA that the site is not deemed to be at risk of fluvial flooding. The site is considered to have a low residual risk of coastal flooding due to the existing flood embankment defences located on the Shannon River. Regarding pluvial flooding it is stated in the SSFRA that the southern section of the site is noted as being at risk from pluvial flooding. In response to this it is highlighted that the provision of a suitable surface water drainage system for any proposed development on the site will mitigate against any possible pluvial flood risk as a result of the impermeable areas associated with the development. In relation to groundwater flooding it is stated in the assessment that

there is no risk of groundwater flooding at the site and that the development does not include proposals for a basement.

7.2.11. Regarding the site vulnerability it is highlighted in the assessment that the proposed development a Primary Care Centre is not specifically classified under Table 2-1 of the Planning System and Flood Risk Management Guidelines. It is noted that in the UK Guidelines on flooding that there are four vulnerability classes while the Irish Guidelines have three vulnerability classes. Medical Practices are classified in the UK Guidelines as “more vulnerable”. Under the UK Guidelines developments classified as “more vulnerable” are considered acceptable in Flood Zone B and C with a justification test required for Flood Zone A. It is stated in the SSFRA that the proposed health care facility will not provide critical patient care or overnight care and therefore it is put forward that the development could be classified as “less vulnerable”.

7.2.12. In relation to the matter of climate change it is set out in the assessment that to mitigate the residual risk of flooding on the site it is proposed that the finished floor levels of the development would be above the flood level with an allowance for climate change. The minimum finished floor level for the development is proposed to be set at 5.50mAOD this is based on the setting the finished floor level above the undefended 0.5% AEP flood level and providing freeboard and providing for climate change. The site is situated 1km from the Shannon and therefore it is stated that there is no risk of storm surge or wave action to the site and that a freeboard of 300mm should be used.

7.2.13. Flood Mitigation Measures are set out in section 4.4 of the SSFRA. The measures include that the finished floor level of the building will be set at 5.50mAOD it is set out in the assessment that this will mitigate against any potential residual risk to the proposed building. Regarding the undercroft parking level, it is proposed that this will match the existing ground levels to ensure that the existing flow paths remain undisturbed. In relation to the proposed surface water drainage, it is designed to a 1 in 100 year storm event. It is stated in the assessment that the surface water drainage system will mitigate any pluvial flood risk. An emergency plan for the development is recommended by Punch Consulting Engineers to include an evacuation plan in the case of a significant flood event. It is stated in the unlikely

event that the building cannot be evacuated in response to flooding the building provides a place for safe refuge during floods due to the finished floor level being set above the 0.5%AEP. Emergency access is available from the north should flooding occur from the south. A high water alarm is proposed to be installed to facilitate evacuation requirements. The development should include water compatible construction where relevant. As part of the site maintenance all future proprietors should inspect all road gullies in the vicinity and report any blockages to the Local Authority and Irish Water. It is concluded in section 4.4 of the SSFRA that with the implementation of the proposed mitigation measures that the site will be at a low risk of flooding and will not increase the risk of flooding to any adjacent or nearby areas.

7.2.14. The Planning System and Flood Risk Management Guidelines (DoEHLG/OPW, 2009) provide guidance in respect of development and flood risk. Table 3.2 of the Guidelines advises the restriction of types of development permitted in Flood Zone A to that are 'appropriate' to each flood zone, as set out in the Guidelines. In Flood Zone A, highly vulnerable development and less vulnerable development is required to meet the Justification Test. 'Justification Test for Development Management', is set out in Box 5.1 of the Guidelines. In relation to the subject development a Primary Health Care Centre it is not specifically set out in table 3.1 of the Guidelines which refers to Classification of vulnerability of different types of development. It is argued in the appeal and also put forward in the SSFRA that the proposed health care facility will not provide critical patient care or overnight care and therefore the development could be classified as "less vulnerable". I note that hospitals are classified as highly vulnerable development and therefore a primary health care centre where there is no overnight care or critical care could be categorized as "less vulnerable". If the proposed development is classified as "less vulnerable" development, it still is required to meet the Justification Test based on the location of the site within Flood Zone A.

7.2.15. The following criteria must be satisfied in respect of the 'Justification Test for Development Management' that (1) The subject lands have been zoned or otherwise designated for the particular use or form of development in an operative development plan, which has been adopted or varied taking account of these Guidelines. (2) The proposal has been subject to an appropriate flood risk

assessment that demonstrates: The development proposed will not increase flood risk elsewhere and, if practicable, will reduce overall flood risk.

- 7.2.16. Having regard to the 'Justification Test for Development Management', I note that the appeal site is located on lands which are zoned 'Agriculture', under the provisions of the Limerick Development Plan 2022-2028. The proposed development is a Primary Health Care Centre. Accordingly, the subject lands at Catherdavin, Ennis Road, Limerick are not zoned or otherwise designated for the subject use which is currently proposed. On that basis the proposed development does not fulfil this requirement of the Justification Test.
- 7.2.17. In relation to the SSFRA submitted with the application, I would note that the justification test as set out in the assessment relies upon the previous zoning objectives set out under the Limerick City Development Plan 2010-2016 (As Extended), which has now been superseded by the Limerick Development Plan 2022-2028.
- 7.2.18. Accordingly, I conclude that the proposal does not pass the justification test to be located on lands which are zoned 'Agriculture' and located within Flood Zone A under the zoning provision of the Limerick Development Plan 2022-2028.

### **7.3. Access and traffic**

- 7.3.1. A number of the observers raised the issue of the level of traffic that the proposal would generate. The second refusal reason issued by the Planning Authority stated that the proposed development is considered premature pending the adoption of the draft Limerick Development Plan 2022-2028 in relation to the proposed zoning and any determination of a future road layout for the area.
- 7.3.2. Firstly, in respect of the traffic which the scheme would generate a Traffic and Transport Assessment (TTA) was prepared by Punch Consulting Engineers and was submitted with the application. In relation to trip generation as detailed in the TTA, during the AM peak 79 no. vehicles would leave the development and 77 no. vehicles would arrive. During the PM peak 56 no. vehicles would arrive at the development with 54 no. departure.



- 7.3.3. The report of the Operations Department sought further information on a number of matters including the submission of a revised TTA to include the approved residential development to the south that will eventually in part access out on the Link Road Junction with the Jetland Road, the Ennis Road-Jetland-Lidl Junction and the Ennis Road-Clonmacken Road Junction. A revised Site Layout Plan of the Link Road and a cross section of the Link Road were also required to indicated that the road width would be wide enough to accommodate passing cyclists and pedestrians.
- 7.3.4. The first party responded to these matters in the appeal. Regarding the matter of traffic generation, it is stated in the appeal that the traffic surveys were obtained and that the junctions were each assessed for the proportion of generated development traffic against the existing background traffic. In relation to the issue of certain junctions not been included in the TTA the first party stated that where the generated development traffic accounted for less than 5% (TII Threshold for traffic congested areas) of the existing background traffic it was determined that junction capacity modelling of that junction was not required as the predicted development trips generated are deemed to have very little impact on the existing junction. It is highlighted in the appeal that the junctions which the Council referred to did not exceed the TII 5% threshold. It is put forward in the appeal, that should the Board decide to grant permission for the proposed development that a condition could be attached requesting that revised modelling be undertaken with mitigation measures if necessary to be agreed with the Council prior to commencement of development.
- 7.3.5. In relation to the results from the PICADY modelling as detailed in the TTA, I note each junction which was assessed is far below the design capacity threshold and there would be minimal delays with the development in place and operating. The junctions were considered to work satisfactorily for both the increased traffic in the design year and the development traffic. Therefore, it was concluded in the TTA in term of traffic generation that the proposed development will have little impact on the current operational capacity of the surrounding network of roads and junctions.
- 7.3.6. Accordingly, having regard to the details provided in the TTA it is reasonable to conclude that the relatively modest level of traffic arising from the proposed development will not give rise to any significant impact upon the existing road network and junctions in the vicinity of the site.

- 7.3.7. Regarding the requirement from the Operations Department for the submission of a cross section of the Link Road to ensure sufficient width for the cycle and access track, the first party state that the matter can be dealt with as a condition should the Board decide to grant permission.

#### **7.4. Residential amenity**

- 7.4.1. A couple of the observations to the appeal has raised concerns in relation to potential impact to their residential amenity in terms of potential overlooking and overshadowing.
- 7.4.2. Firstly, in relation to the issue of overlooking the report of the Planning Officer noted in their assessment of the proposal that the daylight analysis submitted with the application indicates that there will be minimal impact on adjacent sites. It was noted that the only occurrence of shadowing generated by the proposed development to the neighbouring to the north-west was at 9am on the Winter Solstice.
- 7.4.3. Secondly, regarding the issue of potential overlooking the report of the Planning Officer noted that the windows along the northern extent of the west elevation of the proposed building have been designed in a projecting sawtooth arrangement so as to negate against any overlooking of the residential properties to the west and the north-west. As indicated on the Site Layout, the location of the building on site is to the north-western corner of the site, therefore the building would be located away from the housing within Ashbrook Gardens to the east and Ashbrook Crescent to the south.
- 7.4.4. It was noted in the report of the Planning Officer that the building was considered to have an adequate setback from the western boundary and that the height of the building was reduced to four storeys which would mitigate potential negative impacts in terms of overlooking and overshadowing. Having reviewed the relevant drawings and details on file, I would concur with the assessment of the Planning Officer in relation to the design. Accordingly, I consider having regard to the proposed siting and design of building, the relative separation distances to the existing dwellings to the east and west and that it would not result in any undue overlooking or overshadowing of the neighbouring residential properties.

## 7.5. Appropriate Assessment

### Stage 1 Screening

- 7.5.1. Accompanying this application is an Appropriate Assessment Screening Report prepared by Paul Neary, Environmental Consultant.
- 7.5.2. In accordance with the obligations under the Habitats Directive and implementing legislation, to take into consideration the possible effects a project may have, either on its own or in combination with other plans and projects, on a European site; there is a requirement on the Board, as the competent authority, to consider the possible nature conservation implications of the proposed development on the Natura 2000 network, before making a decision, by carrying out appropriate assessment. The first stage of assessment is 'screening.'
- 7.5.3. The project description is given as the construction of a Primary Health Care building consisting of 4 storeys, with part 5 storeys above undercroft carparking with raised entrance podium to include a pharmacy retail unit gross floor area 99sqm at entrance level, internal access road, surface carparking, totem sign, associated building signage, roof mounted solar panels, boundary treatment, connection to public services and all ancillary and associated works.
- 7.5.4. It is proposed to connect to the existing mains water supply and wastewater from the scheme will discharge to the public sewer. It is proposed that surface water from the scheme will be discharge to the drain to the southern section of the site. Attenuation is proposed on site which will provide for a 1:100 year storm event and this will discharge to the drain.
- 7.5.5. The screening report identified the following European sites:
- Lower River Shannon SAC (Site Code 002165) circa 802m to the south of the site.
  - River Shannon and River Fergus Estuaries SPA (Site Code 004077) circa 802m to the south of the site.
  - Glenomra Wood SAC (Site Code 001013) circa 10.75km to the north-east of the site.

- Ratty River Cave SAC (Site Code 002316) circa 12.86km to the north-west of the site.
- Danes Hole Poulnalecka SAC (Site Code 000030) circa 13.38km to the north of the site.
- Tory Hill SAC (Site Code 000439) circa 13.36km to the south-south-west of the site.
- Askeaton Fen Complex SAC (Site Code 002279) circa 12.98km to the south-west of the site.

7.5.6. I am satisfied that 5 no. of these sites can be screened out of any further assessment due to the separation distances between the European sites and the proposed development site, the absence of relevant qualifying interests in the vicinity of the works, the absence of an aquatic connection between the European sites and the proposed development and to the nature and scale of the proposed development. Accordingly, I consider, due to the proximity of the proposed development site circa 800m to the Lower River Shannon SAC (Site Code 002165) and the River Shannon and River Fergus Estuaries SPA (Site Code 004077) that these are the only European sites that could potentially be affected by the proposed development.

7.5.7. The European site Lower River Shannon SAC (Site Code 002165) is located 802m from the appeal site at the closest point. The European site River Shannon and River Fergus Estuaries SPA (Site Code 004077) lies 802km from the appeal site at the closest point.

7.5.8. Lower River Shannon SAC comprises very large site stretches along the Shannon valley from Killaloe in Co. Clare to Loop Head/ Kerry Head, a distance of some 120 km. The site thus encompasses the Shannon, Feale, Mulkear and Fergus estuaries, the freshwater lower reaches of the River Shannon (between Killaloe and Limerick), the freshwater stretches of much of the Feale and Mulkear catchments and the marine area between Loop Head and Kerry Head. Rivers within the sub-catchment of the Feale include the Galey, Smearlagh, Oolagh, Allaughaun, Owveg, Clydagh, Caher, Breanagh and Glenacarney. Rivers within the sub-catchment of the Mulkear

include the Killeenagarraiff, Annagh, Newport, the Dead River, the Bilboa, Glashacloonaraveela, Gortnageragh and Cahernahallia.

7.5.9. This site is of great ecological interest as it contains a high number of habitats and species listed on Annexes I and II of the E.U. Habitats Directive, including the priority habitats lagoon and alluvial woodland, the only known resident population of Bottle-nosed Dolphin in Ireland and all three Irish lamprey species. A good number of Red Data Book species are also present, perhaps most notably the thriving populations of Triangular Club-rush. A number of species listed on Annex I of the E.U. Birds Directive are also present, either wintering or breeding. Indeed, the Shannon and Fergus Estuaries form the largest estuarine complex in Ireland and support more wintering wildfowl and waders than any other site in the country. Most of the estuarine part of the site has been designated a Special Protection Area (SPA), under the E.U. Birds Directive, primarily to protect the large numbers of migratory birds present in winter.

7.5.10. The qualifying interests/special conservation interests of the designated site, are summarised as follows:

<b>Lower River Shannon SAC</b>
<p>Sandbanks which are slightly covered by sea water all the time [1110]</p> <p>Estuaries [1130]</p> <p>Mudflats and sandflats not covered by seawater at low tide [1140]</p> <p>Coastal lagoons [1150]</p> <p>Large shallow inlets and bays [1160]</p> <p>Reefs [1170]</p> <p>Perennial vegetation of stony banks [1220]</p> <p>Vegetated sea cliffs of the Atlantic and Baltic coasts [1230]</p> <p>Salicornia and other annuals colonising mud and sand [1310]</p> <p>Atlantic salt meadows (<i>Glauco-Puccinellietalia maritimae</i>) [1330]</p> <p>Mediterranean salt meadows (<i>Juncetalia maritimi</i>) [1410]</p> <p>Water courses of plain to montane levels with the <i>Ranunculion fluitantis</i> and <i>Callitriche-Batrachion</i> vegetation [3260]</p> <p><i>Molinia</i> meadows on calcareous, peaty or clayey-silt-laden soils (<i>Molinion caeruleae</i>) [6410]</p>

Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (Alno-Padion, *Alnion incanae*, *Salicion albae*) [91E0]

*Margaritifera margaritifera* (Freshwater Pearl Mussel) [1029]

*Petromyzon marinus* (Sea Lamprey) [1095]

*Lampetra planeri* (Brook Lamprey) [1096]

*Lampetra fluviatilis* (River Lamprey) [1099]

*Salmo salar* (Salmon) [1106]

*Tursiops truncatus* (Common Bottlenose Dolphin) [1349]

*Lutra lutra* (Otter) [1355]

- 7.5.11. The Conservation Objective for Lower River Shannon SAC (Site Code 002165) is to maintain and/or restore the favourable conservation condition of the Annex I habitats and the Annex II species for which the SAC has been selected which are defined by lists of attributes and targets.
- 7.5.12. River Shannon and River Fergus Estuaries SPA comprises the estuaries of the River Shannon and River Fergus form the largest estuarine complex in Ireland. The site comprises the entire estuarine habitat from Limerick City westwards as far as Doonaha in Co. Clare and Dooneen Point in Co. Kerry. The site has vast expanses of intertidal flats which contain a diverse macro-invertebrate community, e.g., *Macoma-Scrobicularia-Nereis*, which provides a rich food resource for the wintering birds. Salt marsh vegetation frequently fringes the mudflats and this provides important high tide roost areas for the wintering birds. Elsewhere in the site the shoreline comprises stony or shingle beaches.
- 7.5.13. The site is a Special Protection Area (SPA) under the E.U. Birds Directive, of special conservation interest for the following species: Cormorant, Whooper Swan, Light-bellied Brent Goose, Shelduck, Wigeon, Teal, Pintail, Shoveler, Scaup, Ringed Plover, Golden Plover, Grey Plover, Lapwing, Knot, Dunlin, Black-tailed Godwit, Bar-tailed Godwit, Curlew, Redshank, Greenshank and Black-headed Gull. It is also of special conservation interest for holding an assemblage of over 20,000 wintering waterbirds. The E.U. Birds Directive pays particular attention to wetlands and, as these form part of this SPA, the site and its associated waterbirds are of special conservation interest for Wetland & Waterbirds.

7.5.14. The qualifying interests/special conservation interests of the designated site, are summarised as follows:

<b>River Shannon and River Fergus Estuaries SPA</b>
<p>Cormorant (<i>Phalacrocorax carbo</i>) [A017]</p> <p>Whooper Swan (<i>Cygnus cygnus</i>) [A038]</p> <p>Light-bellied Brent Goose (<i>Branta bernicla hrota</i>) [A046]</p> <p>Shelduck (<i>Tadorna tadorna</i>) [A048]</p> <p>Wigeon (<i>Anas penelope</i>) [A050]</p> <p>Teal (<i>Anas crecca</i>) [A052]</p> <p>Pintail (<i>Anas acuta</i>) [A054]</p> <p>Shoveler (<i>Anas clypeata</i>) [A056]</p> <p>Scaup (<i>Aythya marila</i>) [A062]</p> <p>Ringed Plover (<i>Charadrius hiaticula</i>) [A137]</p> <p>Golden Plover (<i>Pluvialis apricaria</i>) [A140]</p> <p>Grey Plover (<i>Pluvialis squatarola</i>) [A141]</p> <p>Lapwing (<i>Vanellus vanellus</i>) [A142]</p> <p>Knot (<i>Calidris canutus</i>) [A143]</p> <p>Dunlin (<i>Calidris alpina</i>) [A149]</p> <p>Black-tailed Godwit (<i>Limosa limosa</i>) [A156]</p> <p>Bar-tailed Godwit (<i>Limosa lapponica</i>) [A157]</p> <p>Curlew (<i>Numenius arquata</i>) [A160]</p> <p>Redshank (<i>Tringa totanus</i>) [A162]</p> <p>Greenshank (<i>Tringa nebularia</i>) [A164]</p> <p>Black-headed Gull (<i>Chroicocephalus ridibundus</i>) [A179]</p> <p>Wetland and Waterbirds [A999]</p>

7.5.15. The Conservation Objective for River Shannon and River Fergus Estuaries SPA is to maintain and/or restore the favourable conservation condition of the Annex I habitats and the Annex II species for which the SPA has been selected which are defined by lists of attributes and targets.

- 7.5.16. In terms of an assessment of Significance of Effects of the proposed development on qualifying features of Natura 2000 sites, having regard to the relevant conservation objectives, I would note that in order for an effect to occur, there must be a pathway between the source (the development site) and the receptor (designated sites). As the proposed development site lies outside the boundaries of the European Sites, no direct effects are anticipated. In terms of indirect effects, and with regard to the consideration of a number of key indications to assess potential effects the following matters, habitat loss / alteration / fragmentation and disturbance and / or displacement of species and water quality should be considered.
- 7.5.17. In relation to the matter of habitat loss / alteration / fragmentation, the subject site lies at circa 802m from the closest point of the boundaries of the designated sites. Accordingly, there would be no direct or indirect loss / alteration or fragmentation of protected habitats within any Natura 2000 site.
- 7.5.18. In relation to the matter of disturbance and / or displacement of species the appeal site lies within the Limerick City, the immediate area to the north and east of the subject site contains retail/commercial uses with residential developments to the east, west and south of the appeal site. The environs of the site, therefore, can be described as being urban. No qualifying species or habitats of interest, for which the designated sites are so designated, occur at the site. As the subject site is not located within or immediately adjacent to any Natura 2000 sites and having regard to the nature of the construction works proposed, there is little or no potential for disturbance or displacement impacts to land based species or habitats for which the identified Natura 2000 sites have been designated.
- 7.5.19. Regarding the issue of water quality, the proposed development relates to the development of a Primary Health Care centre on lands within the Limerick City. The development will connect to existing public water services. If the development is permitted, I consider that it is unlikely to impact on the overall water quality of any Natura 2000 site in proximity to the site due to connection to public services or during the operational phase of the development.
- 7.5.20. There is an indirect hydro geological link between the subject site and Lower River Shannon SAC and the River Shannon and River Fergus Estuaries SPA in the form



of the drain/watercourse along the eastern boundary. In relation to the construction phase I am satisfied that there is limited potential for contamination on the adjacent watercourse arising from the construction works and an increase in sediment load.

- 7.5.21. No direct discharges to surface water are proposed. Surface water generated on site during the operational phase is proposed to drain via a series of petrol interceptors to a suitably sized tank fitted with a hydro brake and then to surface water. Accordingly, it is considered that there is no risk that pollutants could reach the European sites in sufficient concentrations to have any likely significant effects on their qualifying interests.
- 7.5.22. In relation to the matter of in combination/cumulative effects, I note that under Reg. Ref. 17/470 permission was granted for a residential scheme comprising 110 no. residential units the site is located circa 324m to the south of the subject site. The Planning Authority in their assessment of the application concluded that the development would not be likely to have a significant effect on the qualifying interests of any European Sites and that there was no possibility of cumulative effects. I also note that under ABP 312683-21 a Strategic Housing Development was granted by the Board for a scheme containing 165 residential units and a creche facility. The report of the Senior Planning Inspector concluded that there is no potential for the proposed development to contribute to any cumulative adverse effects on any European Site when considered in-combination with other plans and projects.
- 7.5.23. Accordingly, I consider that any potential for in-combination effects on water quality in the River Shannon and River Fergus can be excluded. In addition, I would note that all other projects within the wider area which may influence conditions in the Lower River Shannon SAC and River Fergus Estuaries SPA via surface water features are also subject to AA.
- 7.5.24. Accordingly, I am satisfied that the potential for likely significant effects on the qualifying interests of the identified Natura 2000 sites can be excluded having regard to the distance to the site, the nature and scale of the development and the lack of a hydrological connection.

#### AA Screening Conclusion

7.5.25. It is reasonable to conclude that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on European Site No. (Site Code 002165) and European Site No. (Site Code 004077), or any other European site, in view of the site's Conservation Objectives, and a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required.

## **8.0 Recommendation**

8.1. I recommend that permission be refused for the reasons and considerations set out below.

## **9.0 Reasons and Considerations**

1. The subject site is located on lands zoned Agriculture under the provisions of the Limerick City and County Development Plan 2022-2028, which has the objective "To protect and improve rural amenity and provide for the development of agricultural uses". A Primary Health Care Centre is not permitted within lands zoned Agriculture. The proposed development would, therefore, contravene materially the Agriculture development objective indicated in this development plan for the zoning of land, and would, therefore be contrary to the proper planning and sustainable development of the area.
2. Having regard to the nature of the proposed development a Primary Health Care Centre, the location of the subject site on lands zoned Agriculture under the provisions of the Limerick City and County Development Plan 2022-2028 and the location of the site within Flood Zone A, the Board is not satisfied that the proposal would be in accordance with the provisions of 'The Planning System and Flood Risk Management Guidelines (DoEHLG/OPW, 2009)'. On the basis of the submissions made in connection with the planning application and appeal and despite the Site Specific Flood Risk Assessment and Justification Test carried out the Board concluded that the proposed

development failed the Justification Test as set out in Box 5.1 of the Guidelines. Accordingly, the proposed development, would constitute an unacceptable risk of flooding would conflict with the Ministerial Guidelines and would be contrary to the proper planning and sustainable development of the area.

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Siobhan Carroll  
Planning Inspector

24<sup>th</sup> August 2022