



An
Bord
Pleanála

Inspector's Report ABP-313315-22.

Development	Modifications to KFC restaurant and construction of a new single storey drive through restaurant/café, net reduction of 109 car parking spaces, signage and ancillary works.
Location	Limerick One Shopping Centre, (Childers Road Retail Park) Childers Road, Limerick.
Planning Authority	Limerick City & County Council.
Planning Authority Reg. Ref.	21/1501.
Applicant(s)	Irish Life Assurance.
Type of Application	Permission.
Planning Authority Decision	Split Decision.
Type of Appeal	First Party v refusal of permission for the new drive through restaurant/café.
Appellant(s)	Irish Life Assurance.
Observer(s)	None.
Date of Site Inspection	03/10/2022.
Inspector	A. Considine.

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1.0 Site Location and Description

- 1.1. The appeal site is located approximately 2.5km to the east of Limerick City Centre in the Limerick One Shopping Park. This development was formerly known as the Childers Road Retail Park, which includes a variety of retail uses, including a Dunnes Store. Other businesses in the park include Argos, Boots, Mountain Warehouse, a pet shop and clothing and home furnishing stores. There is also a fitness club located within the development. In terms of food offering, the park includes a KFC and a Costa Coffee, both located to the south of the park development.
- 1.2. The site is accessed via 2 junctions, 1 signal-controlled junction off Childers Road to the west and a second access from Bloodmill Road to the north. There is a bus stop also located on Childers Road with a pedestrian access to Limerick One Shopping Park. There is an extensive car parking provision for the park development.
- 1.3. The subject site comprises 3 distinct areas within the Limerick One Shopping Park including the existing KFC building, the area of the primary access/egress onto Childers Road and an area of the existing car park which lies immediately to the east of Childers Road. The site has a stated area of 0.7551.

2.0 Proposed Development

- 2.1. Permission is sought, as per the public notices for
 - A) the development of a new single storey c.280sqm drive through restaurant/café in the northern part of the car park of the Limerick One Shopping Park, including the installation of signage on the structure's external elevations. This element of the development also includes the removal of c.125 parking bays and the installation of 4 accessible parking bays and 12 vehicular parking bays (net reduction of 109 parking bays), the installation of 8 cycle spaces, the installation of 2 signage panels c2.86m high x 1.68m wide, the installation of 2 speaker/order posts, the installation of a leader board sign c1.8m high x c0.9m wide, a servicing bay, and an outdoor seating area;
 - B) modifications of the existing KFC restaurant located in the southern part of the car park, including the installation of a new drive through window resulting in

an increase in floor space of the KFC unit from c 252m² to c255.4m², the installation of 2 no leader boards c 1.805m high x c 0.34m wide, a free standing menu board c 2.250m high and 2.400m wide, a banner sign c 2.200m high x 5.00m wide, a speaker post outside of the KFC unit c1.2m high and c0.6m wider, 4 entry/exit signs c1.805m high x c0.4m wide and 1 no vehicle height restrictor c3.0m high x c3.9m wide, the installation of 6 cycle spaces outside of the KFC unit, and modifications to the existing hard standing outside of the KFC unit to facilitate drive through use of the restaurant (resulting in the loss of 2 no. car parking spaces);

- C) minor enhancements to the main internal site access road in the central area of the car park to enhance the priority afforded to traffic entering the Limerick One Shopping Park from the Childers Road; and
- D) ancillary development to include all works above and below ground to facilitate the development described in A), B) and C) above

All at Limerick One Shopping Park (formerly known as Childers Road Retail Park), Childers Road, Limerick.

2.2. The application included a number of supporting documents including as follows:

- Plans, particulars and completed planning application form,
- Cover Letter
- Engineering Report and Drawings
- Flood Risk Assessment Report
- Outline Construction and Demolition Waste Management Plan
- Outline Construction Management Plan Report
- Transport Statement
- Traffic & Transport Assessment

2.2.1. Following receipt of the response to the FI request, the applicant submitted two scenarios – one which excluded the new drive through restaurant/café and one which included it. The submission includes a justification for the new restaurant and drive thru indicating that the proposed restaurant/café will be a coffee and baked

goods offering, so not a typical takeaway. While providing proposals for both scenarios, the applicant submits that they are continuing to seek permission for the proposed standalone restaurant/café.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to issue a split decision and grant planning permission for the proposed drive through for the existing KFC restaurant subject to 11 conditions and refuse permission for the proposed new restaurant/café and drive through for the following three stated reasons:

1. Having regard to the location, nature and concentration of commercial and retail activities in the vicinity of the site including takeaway facilities and given the car dependent nature of the use, it is considered that the proposed stand-alone restaurant and drive thru is contrary to the Objectives of the Limerick City Development Plan 2010 (as amended and extended) in relation to an excessive concentration of takeaway type developments in an area and would be contrary to the proper planning and sustainable development of the area as a whole.
2. The proposed development as outlined is considered to give priority to car infrastructure over more sustainable transport methods and as such would be contrary to National Policy Objective 27 which is to ensure the integration of safe and convenient alternatives to the car into the design of our communities, by prioritising walking and cycling accessibility to both existing and proposed developments, and integrating physical activity facilities for all ages and would thereby be contrary to National Planning Policy and sustainable development.
3. It is considered that proposed development in the absence of an overall parking assessment has not demonstrated to the satisfaction of the Planning Authority that there will be sufficient car parking to cater for the existing mixed use development on the site. Accordingly, the proposed stand-alone restaurant and drive thru would constitute a traffic hazard and would be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

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

The Planning Report notes that the proposed development seeks the loss of 109¹ car parking spaces with no calculations of the overall parking having been provided. In terms of the proposed 2 drive through facilities, it is considered that if permitted, this would result in a proliferation of takeaway facilities which would be contrary to the CDP policy. It is also noted that there is an existing vacant restaurant unit within the park. The proposal for 2 drive throughs prioritises car infrastructure over sustainable transport methods and is contrary to national policy. It is further considered that the proposal would result in significant trip generation. The report finally notes that there is currently queuing on Childers Road as a result of the multiplicity of retail uses within the park and that the site is zoned mixed use and is not a district centre.

Further information is required in relation to the issues raised above, as well as issues raised in the internal technical reports received in relation to accessible car parking spaces, covered cycle parking, demonstration of how deliveries will take place, waiting areas for customers and clear pedestrian routes. In addition, further information is required with regard to public lighting and surface water disposal arrangements.

Following receipt of the response to the FI request, the Planning Officer noted that the applicant submitted two scenarios – one which excluded the new drive through restaurant/café and one which included it. The submission includes a justification for the new restaurant and drive through indicating that the proposed restaurant/café will be a coffee and baked goods offering. The POs report submits that the proposed

¹ The Board will note that the net car parking loss cited in the Transport Statement dated February 2022 indicates 122 spaces and not 109 (pg. 38 of the report) with the loss of 12 spaces at the KFC restaurant and 110 at the location of the proposed new drive through restaurant.

drive through is likely to generate additional trips to the location and restates that there is an existing vacant restaurant unit within the Limerick One Shopping Park (former Pizza Hut) which could be used for the proposed Tim Hortons outlet.

In terms the loss of the parking spaces, the POs report submits that it has not been demonstrated that the loss of the spaces will not undermine the overall operation of the centre. In terms of the already congested nature of the existing access, the report concludes that to permit two drive through facilities would be contrary to the policies of the City Development Plan and National Policy. The drive through facility to the existing KFC restaurant is permitted as an ancillary facility and the proposed new restaurant and drive through is being recommended for refusal. The report concludes recommending a split decision. This Planning Report formed the basis of the Planning Authority's decision to issue a split decision.

3.2.2. Other Technical Reports

Fire Officer: No objections subject to compliance with Part M of the Technical Guidance Document with regard to Sanitary Facilities and Building Control regulations. Fire Safety Certificate and a Disability Access Certificate will be required.

Roads, Traffic & Cleansing Services: Further information required in relation to a number of roads and traffic issues including, access/exit and movement within the development, connection of footpath from bus layby and the exit point from the drive through, loss of car parking spaces, pedestrian access areas, issues with deliveries and bin storage/collection and customer waiting areas. In addition, further information is required with regard to public lighting and surface water disposal proposals. Following submission of the response to the FI request, the Section required that clarification be sought in relation to the issues raised in the initial report. In particular, a revised site layout plan is required that indicates how vehicles/motorists are expected to clearly access/exit and move within the development amongst other matters. Similar concerns are

raised regarding the response in relation to public lighting and surface water disposal.

Active Travel: It is requested that the applicant demonstrate that sufficient space would be maintained between the proposal and the Childers Road carriageway to ensure any future Active Travel Schemes can be accommodated. In addition, issues raised regarding the cycle storage proposals, in particular, staff cycle storage and staff changing rooms and showers should be provided to promote cycling to work. Further information required.

Following submission of the response to the FI request, no further report was submitted.

3.2.3. Prescribed Bodies

Irish Water: No Objection.

3.2.4. Third Party Submissions

None.

4.0 Planning History

4.1. There have been a number of applications for development within the Limerick One Shopping Park over the years. The most recent is as follows:

ABP ref: ABP-306623-20 (PA ref: 19/992): Permission granted on appeal for the subdivision of Unit 2 and removal of existing mezzanine.

There also have been a number of referrals to the Board relating to subdivision of units and change from Atlantic Home Care to The Range is or is not development.

5.0 Policy and Context

5.1. Development Plan

5.1.1. The Board will note that the application the subject of this appeal was submitted under the previous Limerick City Development Plan 2010-2016 as extended, where

the site was zoned for Mixed Use purposes, and Zoning Objective 5 refers. It is the stated objective of ZO.5 'To promote the development of mixed uses to ensure the creation of a vibrant urban area, working in tandem with the principles of sustainable development, transportation and self-sufficiency'.

5.1.2. The 2010 Plan further states:

This zoning objective facilitates the development of a dynamic mix of uses which will interact with each other creating a vibrant residential and employment area. A vertical and horizontal mix of uses should occur where feasible, including active ground floor uses and a vibrant street frontage on principle streets.

The range of permissible uses within this zone includes residential, general offices, conference centre, third level education, hospital, hotel, commercial leisure, cultural, residential, public institutions, childcare services, business and technology/research uses (including software development, commercial research and development, publishing, Back to contents Land Use Zoning Objectives 151 information technology, telemarketing, data processing and media activities) and in addition, local convenience stores/corner shops and community/civic uses.

5.1.3. The current applicable Limerick City & County Council Development Plan 2022-2028 is the relevant policy document pertaining to the subject site. This Plan was adopted by the Elected Members of Limerick City & County Council on the 17th of June 2022 and the Plan came into effect on the 29th of July 2022, six weeks after the date of adoption.

5.1.4. The subject site includes a number of zoning objectives as follows:

- Retail Warehousing – wider site including the car parking area
Objective: To provide for retail warehouse development.'
Purpose: To facilitate the sale of bulky household goods such as carpets, furniture, electrical goods and bulky DIY items catering mainly for car-based customers, in high quality and accessible locations subject to the requirements of the Retail Planning Guidelines and the Retail Strategy for Limerick Shannon Metropolitan Area and County Limerick.

- Mixed Use – in the area of the KFC building

Objective: To provide for a mixture of residential and compatible commercial uses.

Purpose: To facilitate the use of land for a mix of uses, making provisions, where appropriate for 'primary' uses ie residential and combined with other compatible uses e.g. offices as 'secondary'. These secondary uses will be considered by the Local Authority, having regard to the particular character of the area. A diversity of uses for both day and evening are encouraged. These areas require high levels of accessibility, including pedestrian, cyclists and public transport (where feasible). Opportunity sites set out in Chapter 3: Spatial Strategy, include Mixed Use zoned lands located at Towleron, Parkway Valley, Thomond Park and Pa Healy Road, which have been accounted for in the Core Strategy figures. In addition, the Retail Strategy has identified capacity for additional retail floor space in Moyross, which could be accommodated on the Mixed-Use lands at The Bays identified for employment uses only.

Compatible uses include residential, retail, community, civic, hotel, leisure and recreation, offices, professional services, etc.

5.1.5. The Board will note that the existing Dunnes Stores located within the Limerick One Shopping Park is identified as being a Local Centre.

5.1.6. In the context of the proposed development, the Board will note that restaurants / cafés and takeaway are identified as not generally being permitted on lands zoned for Retail Warehousing while such uses are open for consideration on Mixed Use zoned lands.

5.2. Natural Heritage Designations

5.2.1. The site is an urban brownfield site and is not located within any designated site. The site is not located within any designated site. The closest Natura 2000 site is the Lower River Shannon SAC (site code 002165) which is located approx. 1.3km to the north of the site, and the River Shannon and River Fergus Estuaries SPA (site code 004077) located approx. 2.6km to the west of the site.

5.2.2. Slievefeilm to Silvermines Mountains SPA (site code: 004165) lies approximately 13.1km to the east of the site and Tory Hill SAC (Site Code: 000439) lies approximately 14km to the south.

5.3. EIA Screening

5.3.1. The application was submitted to the Board after the 1st September 2018 and therefore after the commencement of the European Union (Planning and Development) (Environmental Impact Assessment) Regulations 2018.

5.3.2. Item (10)(b) of Schedule 5 Part 2 of the Planning and Development Regulations 2001 (as amended) provides that mandatory EIA is required for the following classes of development:

- Urban development which would involve an area greater than 2ha in the case of a business district, 10ha in the case of other parts of a built-up area and 20ha elsewhere.

(In this paragraph, “business district” means a district within a city or town in which the predominant land use is retail or commercial use.)

5.3.3. The proposed development comprises the construction of a stand-alone restaurant/café with drive thru facilities, the construction of a drive thru facility for the existing KFC restaurant within the site and enhancements to the main internal site access in the central area of the car park within the Limerick One Shopping Park. The development includes all the necessary infrastructure relating to the development of the two drive thru facilities as well as signage. The site is located in a built-up area within an established retail park and as such, I consider that the area is more akin to ‘other parts of a built-up area’. While the overall landholding extends to approximately 8ha, the site the subject of this appeal extends to 0.7551ha. In this regard, I am satisfied that the site is below the threshold of 2 ha for a ‘business district’ location, and substantially below the 10ha threshold for ‘other parts of a built-up area’. It is therefore considered that the development does not fall within the above classes of development and does not require mandatory EIA.

5.3.4. In accordance with section 172(1)(b) of the Planning and Development Act 2000 (as amended), EIA is required for applications for developments that are of a class specified in Part 1 or 2 of Schedule 5 of the 2001 Regulations but are sub-threshold

where the Board determines that the proposed development is likely to have a significant effect on the environment. For all sub-threshold developments listed in Schedule 5 Part 2, where no EIAR is submitted or EIA determination requested, a screening determination is required to be undertaken by the competent authority unless, on preliminary examination it can be concluded that there is no real likelihood of significant effects on the environment.

5.3.1. Having regard to:

- (a) the nature and scale of the development,
- (b) the built nature and urban location of the site,
- (c) the zoning afforded to the site and the availability of public services and infrastructure,
- (d) the location of the development outside of any sensitive location specified in article 109(3) of the Planning and Development Regulations 2001 (as amended),

It is concluded that there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. This is a first-party appeal, prepared by Sheehan Planning, against the decision of the Planning Authority to refuse planning permission for the proposed single-storey c280m² drive through restaurant/café in the northern part of the car park of Limerick One Shopping Park. The submission notes that Limerick City & County Council granted planning permission for the proposed modifications to the KFC restaurant in the southern part of the car park, including the provision of a drive thru, and enhancements to the main internal site access.

6.1.2. The appeal submits that as a separate Notification of a Decision to Grant Permission for the KFC element of the proposal, which is not being appealed, it is not clear to the writer if the Board can revisit the KFC element of the scheme.

6.1.3. The submission submits that there are two main grounds of appeal as follows:

No evidential basis for reasons for refusal and irrelevant matters considered

Relevant traffic data not considered.

6.1.4. The grounds of appeal are summarised as follows:

Preliminary Comment:

- Procedural issues raised as a Notification of Decision to Grant Permission for the entire development and a separate Notification of Decision to Refuse Permission for the entire development issued on the 16th March 2022, and both were received on the 22nd March.
- Clarification was sought by Sheehan Planning on receipt of the above.
- Two amended Notifications of Decisions were received by the applicants agent on 30th March 2022 –
 - One Notification records that permission was granted on the 16th March for alterations to existing KFC restaurant and other development.
 - The second Notification records that permission was refused for a new drive thru elsewhere on the site.
 - The notification of Decision to Grant permission included a cover letter advising of an error in the initial notifications.

No evidential basis for reasons for refusal and irrelevant matters considered:

- With regard to reason for refusal no. 1, it is submitted that
 - The site is zoned for mixed use development and restaurant and café uses are permissible.
 - Both KFC and the proposed new restaurant include seating for customers.

- There is no evidence in the planners reports demonstrating a concentration of takeaway facilities in the vicinity of the site.
- With regard to the reference to the car dependent nature of the use, it is submitted that the development is located in close proximity to residential development, cycle parking is proposed, the site lies adjacent to a bus stop and will benefit from shared trips to the Shopping Park.

The removal of car parking spaces will reduce the potential incentive for customers to use cars to access the restaurant and there are large seating areas proposed both inside and outside. The detailed transport report confirmed that the development will have no material impact on the operation of the local road network

- The reason for refusal is unclear in terms of what policies and objectives in the Development Plan have been contravened.
 - Consideration of the Draft Development Plan is irrelevant but would not preclude the continuation of the proposed use were it to be permitted.
 - The fact that coffee shops in other locations may have allowed for take away hot drinks is an irrelevant consideration in the context of this application.
 - The proposed development is not a take away in the ordinary meaning of the word as it has a sit-down element.
- Reason for refusal no 2;
 - The scheme does not give priority to car infrastructure over more sustainable transport and will give rise to a reduction in car infrastructure with the replacement of 122 car parking spaces.
 - National Policy Objective 27 is referred to in the Planners report, and the reference to this policy is not appropriate when considering the principle of use.
 - Reason for refusal no 3:

- With regard to the absence of an overall parking assessment to cater for the existing mixed-use development, it is submitted that this reason appears to be based on the roads section report.
- A 210 page traffic report was provided to the local authority as part of the response to the FI request which specifically assessed car parking on the site. There is no reference to this report in the Planners report.
- The traffic report submitted concludes that the development will not give rise to overspill car parking on the surrounding road network and the development is not deemed to constitute a traffic hazard.

It is requested that the Board grant permission for the proposed development.

6.2. Planning Authority Response

None.

6.3. Observations

None.

7.0 Planning Assessment

7.1. Introduction

- 7.1.1. The Board will note that the Planning Authority issued a split decision in relation to the proposed development the subject of this appeal. The first party has appealed against the decision of the Planning Authority to refuse planning permission for the proposed single storey c280m² drive through restaurant/café in the northern part of the car park of Limerick One Shopping Park. Limerick City & County Council granted planning permission for the proposed modifications to the KFC restaurant in the southern part of the car park, including the provision of a drive thru, and enhancements to the main internal site access. The KFC element of the proposal is not being appealed.
- 7.1.2. Having undertaken a site visit and having regard to the relevant policies pertaining to the subject site, the nature of existing uses on and in the vicinity of the site, the

nature and scale of the proposed development and the nature of existing and permitted development in the immediate vicinity of the site, I consider that the main issues pertaining to the proposed development can be assessed under the following headings:

1. Procedural Issues
2. Principle of the development
3. Roads & Traffic Issues
4. Water Services & Flood Risk
5. Other Issues

7.2. Procedural Issues

- 7.2.1. In the first instance, I would note the concerns raised by the first party appellant with regard to the issuing of the decision in relation to the proposed development, and in particular, the issuing of two notifications – one granting permission for the entire development and one refusing the entire development received by the applicant on the 22nd March 2022.
- 7.2.2. Two further amended Notifications of a Decision were received by the applicants agent on the 30th March 2022. The notifications included one which granted permission for alterations to the existing KFC restaurant and other development. The second refused permission for a new drive through elsewhere on the site. The appellant raises concerns that while Section 146a of the Planning and Development Act, a Planning Authority may amend a decision to grant permission where there is a technical error, but that there is no express power to amend a refusal in the same section.
- 7.2.3. I would acknowledge the confusion which arose due to the issuing of the two notifications of decision but would note that the issues relating to the proposed new standalone drive through restaurant in the northern part of the car park (the subject of the refusal) were highlighted during the PAs assessment of the proposed development and noted in the request for further information. The applicant, in response to the further information request and without prejudice to the provision of the restaurant, prepared drawings which omitted this element of the wider scheme. I

acknowledge that the applicant did request that permission be granted for this element of the development, in addition to the drive through to the KFC unit.

7.2.4. However, I would accept that the intention to refuse the proposed new drive through restaurant at the site is clearly provided for in the reasons for refusal issued by the Planning Authority. In any case, and in the context of this appeal, I propose to address all elements of the proposed development in order that a clear decision might issue.

7.3. Principle of the development

7.3.1. The proposed development essentially includes 4 elements as follows:

- A. the development of a new single storey c.280sqm drive through restaurant/café in the northern part of the car park of the Limerick One Shopping Park,
- B. modifications of the existing KFC restaurant located in the southern part of the car park, including the installation of a new drive through window resulting in an increase in floor space of the KFC,
- C. minor enhancements to the main internal site access road in the central area of the car park, and
- D. ancillary development to include all works above and below ground to facilitate the development described.

7.3.2. In terms of the principle of the proposed development, the Board will note that the site lies approximately 2.5km to the east of Limerick City Centre in the Limerick One Shopping Park. The wider site includes a variety of retail uses, including a Dunnes Store. Other businesses in the park include Argos, Boots, Mountain Warehouse, a pet shop and clothing and home furnishing stores. There is also a fitness club located within the development. In terms of food offering, the park includes a KFC and a Costa Coffee, both located to the south of the park development. The Board will also note that there is a third restaurant building located within the southern corner of the site which has recently been vacated by Pizza Hut. This unit was vacant on the date of my site inspection. I also note that there is a café within the Dunnes Stores building within the complex.

- 7.3.3. The subject site comprises 3 distinct areas within the Shopping Park. The site is accessed via 2 junctions, 1 signal-controlled junction off Childers Road to the west and a second access only from Bloodmill Road to the north. There is a bus stop also located on Childers Road with a pedestrian access to Limerick One Shopping Park. There is an extensive car parking provision for the park development.
- 7.3.4. In terms of the zoning objective afforded to the site, the Board will note that the application the subject of this appeal was submitted under the previous Limerick City Development Plan 2010-2016 as extended, where the site was zoned for Mixed Use purposes, and Zoning Objective 5 referred. The current applicable Limerick City & County Council Development Plan 2022-2028 is the relevant policy document pertaining to the subject site. This Plan was adopted by the Elected Members of Limerick City & County Council on the 17th of June 2022 and the Plan came into effect on the 29th of July 2022, six weeks after the date of adoption.
- 7.3.5. In terms of the development proposed, I consider it reasonable to address elements A independently and B, C and D together.
- 7.3.6. The subject site includes a number of zoning objectives as follows:
- Retail Warehousing – wider site including the car parking area and proposed location of the new single storey c.280sqm drive through restaurant/café in the northern part of the car park of the Limerick One Shopping Park:
Objective: To provide for retail warehouse development.’
Purpose: To facilitate the sale of bulky household goods such as carpets, furniture, electrical goods and bulky DIY items catering mainly for car-based customers, in high quality and accessible locations subject to the requirements of the Retail Planning Guidelines and the Retail Strategy for Limerick Shannon Metropolitan Area and County Limerick.
 - Mixed Use – in the area of the KFC building:
Objective: To provide for a mixture of residential and compatible commercial uses.
Purpose: To facilitate the use of land for a mix of uses, making provisions, where appropriate for ‘primary’ uses ie residential and combined with other compatible uses e.g. offices as ‘secondary’. These secondary uses will be considered by the Local Authority, having regard to the particular character of the

area. A diversity of uses for both day and evening are encouraged. These areas require high levels of accessibility, including pedestrian, cyclists and public transport (where feasible). Opportunity sites set out in Chapter 3: Spatial Strategy, include Mixed Use zoned lands located at Towleron, Parkway Valley, Thomond Park and Pa Healy Road, which have been accounted for in the Core Strategy figures. In addition, the Retail Strategy has identified capacity for additional retail floor space in Moyross, which could be accommodated on the Mixed-Use lands at The Bays identified for employment uses only.

Compatible uses include residential, retail, community, civic, hotel, leisure and recreation, offices, professional services, etc.

- 7.3.7. With regard to the works to the existing KFC building, I note that the Mixed Use zoning objective seeks to provide for a mixture of residential and compatible commercial uses. A diversity of uses for both day and evening are encouraged with such areas requiring a high level of accessibility. Restaurant / Café and fast-food outlet/takeaways are open for consideration on such zoned lands. In principle, I am generally satisfied that the proposed development in this regard is acceptable.
- 7.3.8. With regard to the proposed new drive through restaurant/café in the northern part of the car park, the Board will note that the site is zoned for Retail Warehousing, where it is the objective of such zoning to provide for retail warehouse development to facilitate the sale of bulky household goods, catering mainly for car-based customers. The proposed new restaurant is to be located within the car park area of the wider existing retail park. In the provision of the new development, the car park will see a net loss of 122 car parking spaces (refer to pg 38 of the Transport Statement dated February 2022). The Board will note however, that restaurants / cafés and takeaway are identified as not generally being permitted on lands zoned for Retail Warehousing.
- 7.3.9. Given the context of the subject site and the proposed location of the unit isolated from the existing built elements, and removed from the established 'restaurant/café' area to the south west corner of the wider Park, I am satisfied that the principle of an additional restaurant within the retail park, would not accord with the zoning afforded to this wider Shopping Park site. I further consider that the development of the additional detached drive through restaurant/café would result in the site becoming a

food destination in itself which would be car-based and would likely attract customers independently from the primary retail use associated with the site.

- 7.3.10. Having regard to the location and context of the subject site, on serviced lands, zoned for Retail Warehousing and Mixed Uses together with the proximity to public transport, it is reasonable to conclude that in principle, that some elements of the development as proposed are acceptable as detailed above. The principle, however, is subject to all other planning considerations including issues relating to roads and traffic, visual and residential amenities, and other considerations which I will address further below.

7.4. Roads & Traffic

- 7.4.1. The Board will note that the primary access to the wider retail park is via the Childers Road signal junction where there is a filter lane from Bloodmill Road to the north of the primary entrance which provides access to the Retail Park. From the Tipperary Roundabout to the south, there is also a right turn filter lane which provides access into the retail park. Given the nature of the wider uses associated with this site, together with the extensive surface car parking area, the Board will note that the car is prioritised.
- 7.4.2. With regard to the proposed works, which if permitted, will result in the provision of two drive through restaurants, there can be no argument that the prioritising of the car appears to continue. I also note that the primary concerns raised by the planning authority primarily relate to roads and traffic issues and in particular, the impact of the standalone restaurant with drive through.
- 7.4.3. In terms of the proposed works to the existing KFC unit, to include a new drive through element, I would accept that as the restaurant is already in existence, the drive through facility might reasonably be considered to be ancillary to this already established use.
- 7.4.4. In terms of the proposed minor works to the main internal site access road in the central area of the car park, the Board will note that the works are proposed to enhance the priority afforded to traffic entering the Limerick One Shopping Park from the Childers Road. In busy periods, I would note that there is queuing on both sides of the entrance on Childers Road and the Transport Statement submitted with the

application and response to further information, advise that the proposed minor amendments will revise how traffic will access the site, and in particular in the turning area for vehicles turning right into the southern area of the car park. Overall, the amended vehicular priority at the internal junction to the southern car park will ensure that all traffic accessing the site from Childers Road will have priority over egressing traffic. I have no objection to the amendments hereby proposed.

- 7.4.5. In terms of the proposed new restaurant / café with drive through facilities to be located in the northern car park area, and in the context of the wider site layout, I would agree with the Planning Authority that the internal road and parking layout is car-dominated, would not be conducive to pedestrian safety and would be inconsistent with the provisions of the Design Manual for Roads and Streets guidelines. The very nature of the retail park is car centric. The Board will note that the Planning Authority's second reason for refusal cites National Policy Objective 27 as detailed in the National Planning Framework. This objective seeks to ensure the integration of safe and convenient alternatives to the car into the design of our communities, by prioritising walking and cycling accessibility to both existing and proposed developments and integrating physical activity facilities for all ages.
- 7.4.6. In response to this issue, the appellant has submitted that the removal of car parking spaces will reduce the potential incentive for customers to use cars to access the restaurant, while also noting that there are large seating areas proposed both inside and outside. While I acknowledge the location of the proposed building, in proximity to the existing pedestrian access to the retail park, pedestrian movement through the site is hampered due to the extensive surface car parking area which includes a number of straight roads. In addition, I find it difficult to concur with the opinion of the appellant in terms of the potential customers using their cars given the proposed drive-through nature of the proposed restaurant. This very use promotes the use of the car within the retail park. The proposed development, therefore, enhances the car dominated nature of the site and is more likely to attract car-based trips, contrary to the thrust of National Policy Objective 27 as detailed in the National Planning Framework.
- 7.4.7. The submitted Transport Statement submits that it has not been possible to establish the quantum of linked trips empirically due to the lack of data, it has been conservatively assumed that 40% of current trips to and from the existing KFC – non

drive-through restaurant – would represent a linked trip. The report does acknowledge that drive through units have the potential to attract more non-linked trips and, in this regard, the report assigns 20% of the estimated trips as linked trips. The impact of the proposed development is estimated to give rise to an increase in traffic volume at the main entrance of 2.9% in the AM peak hour, 3.1% in the Interpeak peak hour and 6.9% in the PM peak hour.

7.4.8. In terms of trip generation, the submitted Transport Statement presents details relating to both Fridays and Saturdays and then the AM peak period and PM peak periods with evening figures also included. The proposed development is envisaged to generate the following traffic flows:

DAY	Peak Hour Period	No of Trips
FRIDAY	AM – 08.00-09.00hrs	32
	PM – 16.00-17.00hrs	129
	Evening – 18.00-19.00hrs	141
SATURDAY	AM – 11.00-12.00hrs	55
	PM – 13.00-14.00hrs	138
	Evening – 18.00-19.00hrs	141

7.4.9. The LinSig traffic modelling output for the main access to the site and the Bloodmill Road junction indicates that the maximum degree of saturation (DoS) at the main entrance, and across all arms and at peak times, is calculated at 61.8% on Friday and 66.7% on Saturday. The maximum DoS at the Bloodmill Road junction calculated at 66.2% on Friday and 66.7% on Saturday. This demonstrates a reserve capacity at both entrances. The Transport Statement concludes that the proposed development will have no material impact on the operation of the two signalised junctions within its immediate vicinity.

7.4.10. In terms of the provision of parking, the Board will note that there are ca. 1,173 no. car parking spaces within the existing site. The proposed provision of the drive-through at the existing KFC restaurant will see the removal of 12 spaces, while the proposed new drive-through restaurant will see the net removal of 110 car parking

spaces. A car park occupancy count within the Parks car park was commenced on Friday the 10th of January 2020 and completed in advance of traffic surveys. The peak occupancy figure on the Friday and Saturday counted were noted at 573 (49%) Friday and 831 (71%) Saturday, with low parking occupancy levels noted in the vicinity of the existing food and beverage pods as well as the proposed location of the new drive-through restaurant in the northern area of the car park.

- 7.4.11. In terms of the impact of the proposed development, the Transport Statement forecasts that the proposed development will increase the overall car parking demand by 3-4%% during the busiest period. This is considered minor. The Statement also carried out an analysis of the car parking provision at the site and determined that the peak parking occupancy rates will not exceed 66% on Friday and 89% on Saturday. The increase on both days, while considered significant, does not impact on the operation of the car park as long as the car park demand and occupancy rate does not exceed 90-95%.
- 7.4.12. The Planning Authority raised concerns regarding the lack of an overall parking assessment for the wider retail park. I would also note the concerns raised over the loss of the parking spaces given the nature, and out of town location, of the retail park, which by its nature is car-centric and car dependent. While I have no objections in principle to the conclusions of the Transport Statement with regard to car parking provision, the removal of the spaces has not been justified in my opinion. In addition, the nature of the proposed developments will increase car-based trips, which will impact on the traffic and parking offer within the site. I would agree that a more in-depth car parking assessment is required which is informed by DMURS.
- 7.4.13. Having regard to the location of the subject site within the Childers Road Retail Park, I consider that the proposed stand-alone drive-through restaurant/café development, if permitted as proposed would endanger public safety by reason of traffic hazard and would cause an obstruction to pedestrians, cyclists and other vulnerable road users, contrary to the proper planning and sustainable development of the area. The proposed drive-through associated with the KFC is considered acceptable on the basis that it is considered to be ancillary to this already established use.

7.5. Water Services & Flood Risk

- 7.5.1. In terms of water services, the Board will note that the applicant submitted an Engineering Report, prepared by Lohan & Donnelly Consulting Engineers, in support of the proposed development. This report sought to address how the development will be catered for in terms of water and drainage infrastructure. It is noted that this element of the proposed works will relate to the proposed new detached restaurant / café with drive thru.
- 7.5.2. Section 2 of the report presents details of the existing services and infrastructure in the vicinity of the site as well as the site characteristics and design parameters.
- 7.5.3. The Board will note that Irish Water raised no objections to the proposed development.

Storm Water Drainage:

- 7.5.4. The report notes that there is an existing surface water manhole to the north of the site, but it is not clear what diameter of pipe serves it – it is assumed to be at least a 150mm diameter storm pipe.
- 7.5.5. In terms of surface water management, the report sets out the details of SuDS measures considered, as well as those applied to the scheme. The stormwater drainage proposals for the site indicate that surface water will be attenuated on-site through the use of a Stormtech attenuation tank at below ground level, under the car parking spaces to the south of the site. The proposed tank will have a capacity of 163.3m³ and will be located to achieve in excess of the minimum 500mm freeboard to the lowest FFL. As per SuDS proposals, a flow control device is proposed to restrict the discharge flow to 2l/s and it is proposed that the SuDS system will be maintained at 6-month intervals, including all elements of the stormwater drainage system and SuDS devices. A petrol interceptor will be included as part of the system.

Foul Water Drainage:

- 7.5.6. The report submits that all foul water generated within the proposed development will discharge to the existing foul sewer at the north west corner of the site and which currently runs along Childers Road.

7.5.7. The Board will note that a Pre-Connection Enquiry application was submitted to Irish Water to confirm capacity in the receiving network. I note no objection to the development in terms of the proposed connections to the public services.

Potable Water:

7.5.8. The report notes that as the site is currently used as a car park, there are no watermains within the site boundary. The nearest watermain is located on Childers Road to the west of the site. It is proposed to connect to this watermain to serve the proposed restaurant / café.

7.5.9. The Board will note that a Pre-Connection Enquiry application was submitted to Irish Water to water supply. I note no objection to the development in terms of the proposed connections to the public services.

Flooding:

7.5.10. A site-specific Flood Risk Assessment was prepared by Lohan & Donnelly Consulting Engineers for the subject site and was submitted with the application. The subject site is not located within an area which is at risk of tidal, fluvial or pluvial flooding events. The report notes that the risk of flooding due to ground water ingress to the proposed development is deemed to be low and there is no historical evidence of groundwater flooding on the site.

7.5.11. With regard to the flood risk assessments, the FRA notes that the proposed development proposes the redevelopment of a brownfield site. The introduction of SUDs measures and the proposal to limit the outflow from the site to 2litres/second, together with the topography of the site are considered appropriate to repel, contain and control runoff in the event of overland flooding or similar type events in the vicinity of the proposed development.

7.5.12. It is concluded that as the location of the site within a Flood Zone C, the development is considered appropriate, and a Stage 3 Risk Assessment is not applicable. The Board will note that the FRA, Section 5.0 refers to a residential housing development, which I suggest is a typo and does not impact my consideration of the assessment presented.

7.5.13. I have consulted the available OPW flood maps for the area of the subject site, and I note that they do not indicate that flooding has occurred on the site. The closest

incident is identified at the Tipperary Roundabout / Ballysimon Road, approximately 350m to the south of the site, dated December 1999. The ground level at this point is noted to be approximately 12m below the ground level of the proposed development site. Overall, I am generally satisfied that the proposed development is not identified as a vulnerable use with regard to flood risk, and as such, the proposed development can be considered appropriate at this location of Limerick City in the context of flood risk.

Conclusion

7.5.14. The Board will note the initial concerns raised by the Roads, Traffic and Cleansing / Central Services section of Limerick City & County Council in terms of surface water disposal and other details relating to the proposed SUDs measures. Following a request for further information, the section highlighted a number of ongoing concerns relating to the proposed provision of the new restaurant building.

7.5.15. As discussed above, I have raised concerns in terms of the proposed new restaurant / café and will recommend its refusal.

7.6. Other Issues

7.6.1. Visual Impacts

Having regard to the nominal scale of the works proposed, I am satisfied that there are no issues relating to visual impacts arising.

7.6.2. Development Contribution

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

8.0 Appropriate Assessment

8.1. Introduction

8.1.1. The EU Habitats Directive 92/43/EEC provides legal protection for habitats and species of European importance through the establishment of a network of

designated conservation areas collectively referred to as Natura 2000 (or 'European') sites.

- 8.1.2. Under Article 6(3) of the Habitats Directive, an Appropriate Assessment must be undertaken for any plan or programme not directly connected with or necessary to the management of a European site but likely to have a significant effect on the site in view of its conservation objectives. The proposed development is not directly connected with or necessary to the management of a European site. The applicant did not submit a Natura Impact Statement with the application but did include an Appropriate Assessment Screening as part of the Planning Statement. The applicant concludes that there is no direct pathway to any identified Natura 2000 sites identified within 15km of the site and that a Stage 2 AA is not required.
- 8.1.3. In accordance with these requirements the Board, as the competent authority, prior to granting a consent must be satisfied that the proposal individually or in combination with other plans or projects, is either not likely to have a significant effect on any European Site or adversely affect the integrity of such a site, in view of the site(s) conservation objectives.

Consultations

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

8.2. Screening for Appropriate Assessment

- 8.2.1. The site is an urban brownfield site and is not located within any designated site. The site is not located within any designated site. The closest Natura 2000 site is the Lower River Shannon SAC (site code 002165) which is located approx. 1.3km to the north of the site, and the River Shannon and River Fergus Estuaries SPA (site code 004077) located approx. 2.6km to the west of the site.
- 8.2.2. For the purposes of AA Screening, I note that the following additional 2 sites are noted to be within 15km of the subject site:
- Slievefeilm to Silvermines Mountains SPA (site code: 004165) - 13.1km to the east of the site.
 - Tory Hill SAC (Site Code: 000439) -14km to the south.

8.2.3. Having regard to the lack of any hydrological connection between the subject site and the above identified Natura 2000 sites, together with the brownfield nature of the subject site, I am generally satisfied that the potential for likely significant effects on the qualifying interests of Natura 2000 sites in the River Shannon can be excluded given the distance to such sites and the nature and scale of the development. As such, I am satisfied that all 4 identified sites can be excluded as requiring further assessment.

8.3. In Combination / Cumulative Effects

8.3.1. Having regard to the location of the subject site, together with the nature of the proposed development, being modifications to KFC restaurant and the construction of a new single storey drive through restaurant/café, net reduction of 122 car parking spaces, signage and ancillary works on a 'brown-field' site, I consider that any potential for in-combination effects on water quality in River Shannon can be excluded. In addition, I would note that all other projects within the Limerick area which may influence conditions in River Shannon via rivers and other surface water features are also subject to AA.

8.4. Conclusion on Stage 1 Screening:

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

9.0 Recommendation

It is recommended that the Board issue a split decision as follows:

1. **Grant** planning permission for the following:

- B: modifications of the existing KFC restaurant located in the southern part of the car park, including the installation of a new drive through window resulting in an increase in floor space of the KFC unit from c 252m² to c255.4m², the installation of 2 no leader boards c 1.805m high x c 0.34m wide, a free standing menu board c 2.250m high and 2.400m wide, a banner sign c 2.200m high x 5.00m wide, a speaker post outside of the KFC unit c1.2m high and c0.6m wider, 4 entry/exit signs c1.805m high x c0.4m wide and 1 no vehicle height restrictor c3.0m high x c3.9m wide, the installation of 6 cycle spaces outside of the KFC unit, and modifications to the existing hard standing outside of the KFC unit to facilitate drive through use of the restaurant (resulting in the loss of 2 no. car parking spaces);
- C) minor enhancements to the main internal site access road in the central area of the car park to enhance the priority afforded to traffic entering the Limerick One Shopping Park from the Childers Road;
and
- D) ancillary development to include all works above and below ground to facilitate the development described in A), B) and C) above.

Subject to the stated conditions detailed in the Second Schedule attached;

AND

2. **Refuse** planning permission for the following:

- A. the development of a new single storey c.280sqm drive through restaurant/café in the northern part of the car park of the Limerick One Shopping Park, including the installation of signage on the structure's external elevations. This element of the development also includes the removal of c.125 parking bays and the installation of 4 accessible parking bays and 12 vehicular parking bays (net reduction of 109 parking bays), the installation of 8 cycle spaces, the installation of 2

signage panels c2.86m high x 1.68m wide, the installation of 2 speaker/order posts, the installation of a leader board sign c1.8m high x c0.9m wide, a servicing bay, and an outdoor seating area;

for the reasons set out in the Third Schedule attached.

10.0 Reasons and Considerations

Having regard to the location of the subject site within the established Limerick One Shopping Park, Childers Road, Limerick, the Mixed Use zoning objective afforded to the area of the site which houses the KFC Restaurant and the Retail Warehousing zoning objective afforded to the wider site, to the nature of the proposed works to the existing KFC restaurant to facilitate the provision of a drive through and the minor enhancements to the main internal site access road in the central area of the car park, it is considered that, subject to compliance with the conditions set out below, the proposed development would be acceptable and would not seriously injure the amenities of the area. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

11.0 Conditions – Second Schedule

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 18th day of February, 2022, 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. No permission is hereby granted for the development of a new single storey c.280sqm drive through restaurant/café in the northern part of the car park of the Limerick One Shopping Park, including the installation of signage on the structure's external elevations.

Reason: In the interest of clarity.

3. Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1600 hours on Saturdays and not at all on Sundays, Bank or public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

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

4. All necessary measures shall be taken by the contractor to prevent the spillage or deposit of clay, rubble or other debris on adjoining roads during the course of the works.

Reason: In the interest of orderly development.

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

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

7. No additional advertising signs, symbols, flags, emblems or logos, other than those indicated on the plans submitted as they relate to the KFC restaurant, shall be erected externally on the building or anywhere on site whether or not

such signs would constitute exempted development or not without a prior grant of planning permission. No internally illuminated or neon signage shall be permitted.

Reason: In the interest of visual amenity and in the interest of the proper planning and sustainable development of the area.

8. Prior to commencement of development, details of the following shall be submitted to, and agreed in writing with, the planning authority.
- (i) Details of the materials, colours and textures of all the external finishes to the proposed development.
 - (ii) All signage and lighting for the proposed drive-thru.
 - (iii) Precise details of the proposed opening hours.

Reason: In the interest of visual amenity and in the interest of the proper planning and sustainable development of the area.

9. All service cables associated with the proposed development (such as electrical and telecommunications) shall be located underground. All existing over ground cables shall be relocated underground as part of the site development works.

Reason: In the interest of visual and residential amenity.

10. During the construction phase, the developer shall provide adequate off-carriageway parking facilities for all traffic associated with the proposed development, including delivery and service vehicles/trucks. Parking along the public road shall not be permitted.

Reason: In the interest of traffic safety.

11. Prior to commencement of development, full details of road signage, warning the public of the entrance and details of proposals for traffic management at

the site entrance shall be submitted to, and agreed in writing with, the planning authority.

Reason: In the interest of traffic safety.

12. Prior to commencement of development, details of all roads, footpaths, pedestrian crossings, road markings and signage shall be submitted to, and agreed in writing with, the planning authority.

Reason: In the interest of traffic safety.

13. Comprehensive details of the proposed public lighting system to serve the development shall be submitted to and agreed in writing with the planning authority, prior to commencement of development. The agreed lighting system shall be fully implemented and operational, before the proposed development is operational.

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

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

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the

Development Contribution Scheme made under section 48 of the Act be applied to the permission.

12.0 Reasons for Refusal – Third Schedule

1. The proposed new single storey restaurant and drive thru proposed to the north western area of the site is located on lands zoned Retail Warehousing in the current Limerick City & County Council Development Plan 2022-2028, the objective of which is ‘to provide for retail warehouse development’. The proposed use is identified as use which is generally not permitted on such zoned lands.

Having regard to the existence of three units within the wider complex which are identified as offering restaurant/café facilities which include takeaway facilities, it is concluded that a grant of permission in this instance would materially contravene the zoning objective afforded to this area of the site and would be contrary to the Objectives of the current Limerick City & County Council Development Plan 2022-2028. The development would, therefore, be contrary to the proper planning and sustainable development of the area as a whole.

2. The proposed development would give priority to car infrastructure over more sustainable transport methods and as such would be contrary to National Policy Objective 27 which is to ensure the integration of safe and convenient alternatives to the car into the design of our communities, by prioritising walking and cycling accessibility to both existing and proposed developments and integrating physical activity facilities for all ages. The proposed development would, therefore, be contrary to National Planning Policy and to the proper planning and sustainable development of the area.
3. It is considered that proposed development in the absence of an overall parking assessment has not demonstrated to the satisfaction of the Planning

Authority that there will be sufficient car parking to cater for the existing mixed-use development on the site. Accordingly, the proposed stand-alone restaurant and drive thru would constitute a traffic hazard and would be contrary to the proper planning and sustainable development of the area.

A. Considine
Planning Inspector
11th January 2023