



An
Bord
Pleanála

Inspector's Report PL92.247445.

Development

Permission for amalgamation & change of use of units 1&2
Showgrounds Shopping Centre
Davis Road, Clonmel, Co Tipperary.
The change of use consists of a change from retail to restaurant and associated takeaway, together with associated external seating area and internal alterations.

Location

Showgrounds Shopping Centre,
Davis Road, Clonmel, Co Tipperary.

Planning Authority

Tipperary County Council.

Planning Authority Reg. Ref.

16/600709.

Applicant(s)

Chandos Investments Plc.

Type of Application

Permission.

Planning Authority Decision

Refuse Permission.

Appellant(s)

Chandos Investments Plc.

Date of Site Inspection

26th January 2017.

Inspector

Bríd Maxwell

1.0 Site Location and Description

1.1. The appeal site comprises two units 1 & 2 located at ground floor level within the Showgrounds Shopping Centre located on Davis Road to the east of Clonmel Town Centre. The combined units have a floor area of 268m² and are currently vacant, last¹ used for retail purposes. The units are located adjacent to the main entrance to the shopping centre / mall and are accessed via independent external doorways. Appeal documentation details that the showgrounds shopping centre has a floor space of 11,800 sq.m and is anchored by a Marks and Spencer retail store. Other stores include *Argos, Iceland, TK Maxx, Pamela Scott, The Edinburgh Woolen Mill, Sam McCauley Chemist, Easons, Sports Savers*. Food outlets include *Rockn' Joe's, BB's Coffee and Muffins and the M&S Café*. The Shopping centre has a small surface car park fronting onto the Davis Road while further parking is accommodated at rooftop level. At the time of my site visit (Thursday 26th January 2017, mid-morning), I noted a quiet shopping centre with approximately 13 units apparently vacant within the centre.

2.0 Proposed Development

2.1. The proposal involves the amalgamation and change of use of units 1 & from retail to restaurant / takeaway. An indicative floor plan demonstrates the proposed seating arrangement with accommodation for approximately 83 customers inside with terrace for 12 on the external terrace.

3.0 Planning Authority Decision

3.1. Decision

3.1.1 The Planning Authority decided to refuse permission for the following reason:

¹ According to first party appeal units have been vacant for the last 2 years.

“The site is located on lands zoned for Commercial use under the Clonmel and Environs Development Plan 2013 the objective of which is to provide for mixed commercial facilities that do not compete with the Town Centre function. The land use of a restaurant is not permitted within the Commercial land use zone and the Clonmel and Environs Development Plan 2013 encourages such uses within the town centre. The proposed development would materially contravene the land use zoning objectives of the Clonmel and Environs Development Plan 2013 and would be contrary to the proper planning and sustainable development of the area.”

3.2. Planning Authority Reports

3.2.1 The report of the area planner notes location on a defended site within Flood Zone A. The proposed restaurant use is not permitted in under the commercial land use zoning matrix. The proposed development would compete with the Town Centre function and would contravene materially the land use zoning objectives for the site. Refusal was recommended.

3.2.2 Area Engineer indicates no objection to the proposal.

3.3. Other Technical Reports & Third Party Observations

3.3.1 Environmental Health Officer notes relevant standards and requirements.

4.0 Planning History

4.1 I note concurrent application immediately adjacent units PL92.247444 which seeks permission for “subdivision of units 2 & 3 to facilitate change of use of units 3 and 4 from retail to coffee shop together with associated external seating area and internal alterations. This is a first party appeal of Council’s decision to refuse on the same grounds as the within appeal.

4.2 There is an extensive planning history on the appeal site including the following:

- 13/550006 Permission for the amalgamation of units 15, 17, 32 and conversion of mall area into a new retail unit with part mezzanine floor for retail and storage uses, Granted 30/4/20163
- 12/550041. Permission for valeting unit.
- 10/550126 Modification to unit no 25 consisting of a reduction in the permitted ground floor retail area and the inclusion of a ground floor café, the exclusion of the permitted mezzanine level and roof top parking area. An extension of the permitted unit to facilitate an 8 no screen cinema Granted March 2011.
- 09550096 Permission for subdivision and partial change of use of unit no 10 from retail use to take away restaurant use. Granted 24th March 2010.
- PL52.236192 (09/93) The Board confirmed decision to grant permission for change of use of previously permitted mall area to retail within the existing mixed use retail / commercial development.
- PL52.236190 (08550061) The Board overturned the decision of the local authority and refused permission for temporary overflow car park of 149 no car parking spaces.
- 09550069 Permission for subdivision and partial change of use of unit no 10 from retail use to takeaway restaurant use. Signage. Granted 23 November 2009.

- 09550027 Permission for modifications to include the subdivision of unit 24 into unit 23B and Unit 24 and change of use of unit 24 from retail to restaurant. Granted 16th July 2009.
- 09550020. Permission for modifications to include provision of medical centre. Granted 23 June 2009.
- 08/550124 Permission for modifications to previously approved permissions 065500132 and subsequent modifications permission to include change of use of Unit 14 from retail to coffee shop. Change of use of unit 2 from retail to bookmakers provision of off licence in unit no 1.
- 08/5500114 Permission to modify approved permission ref 06/5500132 and subsequent modification permissions to include a 608 sq.m. extension to unit 15 at ground floor level with 608 gross sq,m at mezzanine level and the provision of a mezzanine over previously permitted unit 15 of 789 gross sq.m 28 car parking spaces. Granted 10/3/2009
- 08/550107 Permission for modifications to previously approved permission PL06/5500132 and subsequent modification permissions to include relocation of previously permitted substations switch rooms, sprinkler pump house and underground sprinkler tank. Granted 7/1/2009
- 08/550052 for modifications to floor areas of retail units 2, 15, and 23 and change of use of unit 4 from retail to coffee shop management centre at mezzanine level storage mezzanines of units 12 & 19. Granted 24 June 2008.
- 07/550152 Permission for modifications to include reduction in overall net retail floor area to 7168.6 sq.m subdivision of anchor unit into 2 no anchor units comprising anchor unit no 1 (2,143 sq.m gross floor area) with net food sales 514 sq.m, non-

food sales with net 1,048 sq.m and coffee shop 112sq.m. Anchor it no 2 1, 896 sq.m gross floor area with net food sales 1,496 sq., m additional 8 no retail units. Granted 20 March 2008. Also reconfiguration of the internal floor area to incorporate an additional 8 no retail units ranging in size from 51 sq.m to 690 sq.m (total gross floor area 5,118) and 2 no

- 06/550132 for mixed use retail / commercial development with a total gross floor area of 12,057 sq.m including anchor retail unit (gross floor area 6,149 sq.m) , 16 retail units, bookies office, off licence video store, restaurant coffee bar and 2 no kiosks, parking at surface and first floor level for 296 vehicles, new roundabout on Davis Road Granted 1 February 2017.
- 05/550160 Refusal of permission 14th June 2006 for mixed use retail / commercial development with a gross floor area 17,878 sq.m, anchor retail unit, 17 no retail units, six screen cinema, bar, bookies, drop in crèche, off licence, video store, food court, 3 no restaurant units on first floor level and 1 no restaurant on the second floor level, parking at surface first floor level, second floor level and third floor level for 51 vehicles, signage and ancillary site works.

5.0 Policy Context

5.1 Development Plan

The Clonmel and Environs Development Plan 2013 refers. The site is located in an area zoned Commercial C. The objective is “to provide for mixed commercial facilities that do not compete with the Town Centre function”. The zoned town centre is immediately to the west of the Showgrounds Shopping Centre.

I note the land zoning matrix page 79 which sets out relevant uses within each class. I note that the only use permitted in principle within the commercial zone is warehousing. Retail warehouse is open for consideration, Neighbourhood shop is

open to consideration. A supermarket is not permitted. Restaurant is not permitted while takeaway is open for consideration.

6.0 Natural Heritage Designations

- The Lower River Suir SAC (Site Code 002137)

7.0 The Appeal

7.1. Grounds of Appeal

7.1.1 The appeal is submitted by Coakley O' Neill Town Planning on behalf of the First Party. Grounds of appeal are summarised as follows:

- The unit subject of the planning application has been vacant for two years having formerly been occupied by lower order uses; a discounter and an off licence and there are currently 13 vacant units within the centre representing 18.03% of the floor area. Half of this floorspace has never been let since the centre first opened in 2009.
- The retail market has undergone significant structural change over the last ten years, with significant negative competitive effects on all types of traditional retail centres. A failure to diversify and introduce new services and facilities to the shopping centre threatens to undermine its continued viability.
- Proposal involves the introduction of an entirely complimentary and appropriate use within the shopping centre and relates to units which have been vacant for a period of 2 years.
- Note that any practical distinction between cafes, restaurants and takeaways has become unclear.
- Despite not being explicitly zoned town centre in the LAP any reasonable review of the retail function of Clonmel Town will conclude that given its scale,

the mix and range of uses, the anchor stores and catchment the Showgrounds Shopping Centre functions as part of the existing town centre. In doing so it continues to support and promote a viable and vital retail sector in the town.

- Showgrounds Shopping Centre is significant in terms of strengthening the role of Clonmel as a Tier 3 Level 1 settlement as recognised within the retail strategy 2010.
- Fig 2.1 of the Clonmel and Environs Local Area Plan 2013 which sets out the core strategy for the town includes the shopping centre within the town centre and explicitly identifies it as a retail centre.
- Decision of the Council is based on an erroneous assumption and a flawed interpretation of the statutory plan that ignores the proposals planning and development context.
- Strategies and policy documents from national to local level strongly promote and support Clonmel's role as the primary location for future growth in population and employment within South Tipperary, and support its development as the primary retail centre.
- The original permission for the Showgrounds Centre was on the basis that it would be a welcome addition to the town's retail base.
- The proposed development is in accordance with the overall strategy for Clonmel as set out in the relevant policy documents.
- Successive planning permissions have sought to expand the range of uses within the footprint of the shopping centre and these have been supported by the Council on the basis that they were appropriate uses and did not undermine the primacy of the town centre and that they were in accordance with the proper planning and sustainable development of Clonmel.

- The Planning Authority arrived at a completely different conclusion in the consideration of a proposal for a restaurant / takeaway use at Poppyfields Retail Centre some 1.km to the west of the zoned Town Centre. 15/600793². Note also pending application 16600601³. Planning Authority approach is unreasonable and inequitable.
- Note Planning Authority reliance on policy Econ 3 and consideration that land use zoning intended as a guide in respect of planning application for extension of duration for service station development 15/601076⁴ which included a restaurant of 293 sq.m.
- Note a number of permissions related to change of use for retail to restaurant coffee shop. Many permissions lapsed including. 10/510126, 09/510096, 09/550069, 06/50027, 08550124,0 08550052 and 07/550152. Notably governing permission for the shopping centre permitted both a restaurant and coffee shop. Decision is entirely at odds with these permissions.
- Lands are sequentially extremely favourably located relative to the existing town centre. The proposed change of use will support the achievement of a compact urban form that encourages sustainable transport modes and supports national policies focussed on economic growth and renewal.
- Given the extent of vacancy within the centre the site is underutilised. Town plan seeks to ensure the development of underutilised lands and brownfield sites with the aim of promoting the vitality and vibrancy of Clonmel Town centre.
- Refute Planning Authority's assessment that the centre is presently well served with café restaurant facilities. To the contrary with just over 3% of the

² 15/600793 Permission for change of use of unit 8 Poppyfields Retail park from shop to takeaway for the sale of hot food. Granted 21/3/2016

³ 16/600601 Application at Lawlesstown for new petrol station and single storey building incorporating shop and restaurant. Further information requested on 18/8/2016.

⁴ 15/601076 Permission for extension of duration on redevelopment of Suirvale Service Station Davis Road Clonmel. Granted on 17/2/2016.

floorspace currently in non-retail food use, (*Rockin Joe's and BBs Coffee*), this is substantially below the food content of majority of shopping centres across the country. Recent CACI research puts the benchmark average at 22%. If the proposal is granted it will bring the total to 5%. Unreasonable to conclude that the centre is well served or that the proposal will lead to a proliferation.

- It is submitted that the extent of uses not permitted in principle within the commercial zone as set out in the plan's matrix is demonstrably at odds with the actual zoning objective itself which seeks to provide for mixed commercial facilities that do not compete with the Town Centre function.
- The only use permitted in principle in commercial zones is warehousing which is not in accordance with the overall objectives of the plan to provide for mixed commercial facilities, nor does it make any practical sense. Numerous uses (restaurants, public houses, crèches, betting shops, neighbourhood shops and supermarkets) which form ancillary and complimentary uses in retail centres across the country are not permitted under the zoning matrix.
- Shopping centre and permitted uses therein including shop restaurants and coffee shops must be considered non-conforming uses. Plan policy 4.55 and Policy ECON 3 Non-conforming uses refer. Where commercial / employment industrial enterprises exist as non-conforming but long established use it is the policy of the Council to facilitate their continued operation where appropriate.
- Should the Board consider the development to represent a material contravention of the development plan there is sufficient scope and merit in considering a grant of permission under Section 37(2)(b) of the Planning and Development Act in that there are conflicting objectives in the development plan and having regard to planning permissions granted in the immediate area.

7.2. Planning Authority Response

7.2.1 The Planning Authority's response to the appeal is summarised as follows:

- Relevance of overarching economic and population growth policies and objectives to the case at hand is questioned,
- The Clonmel and Environs Development Plan 2013 is the primary policy document.
- Showgrounds shopping centre is outside the town centre zone and subject to commercial zoning whereby restaurant use is not permitted.
- Previous permissions assessed in relation to Clonmel and Environs Development Plan 2008 and are of no relevance to the case in hand.
- 15/600793⁵ refers to a take away not restaurant. Proposal 16/600601⁶ has not been determined and is development on lands zoned for Light Industry and Employment Uses.
- While it is acknowledged that there are vacant uses within the Showgrounds Shopping Centre the Planning Authority note the land use zoning matrix of the development plan sets out a number of commercial use types considered open for consideration on lands zoned commercial within the plan area.
- The limitation of certain uses within the commercial zone was a deliberate plan led response to steer such uses into the identified town centre and to promote the health and vibrancy of same. The Clonmel and Environs Development Plan 2013 under Section 3 seeks to consolidate and enhance the role of the town centre for high value uses.

⁵ 15/600793 Permission for change of use of unit 8 Poppyfields Retail park from shop to takeaway for the sale of hot food. Granted 21/3/2016

⁶ 16/600601 Application at Lawlesstown for new petrol station and single storey building incorporating shop and restaurant. Further information requested on 18/8/2016

- The proposed development would compete with the town centre function and would therefore materially contravene the land use zoning objectives for the site. The Planning authority does not accept the arguments regarding non-conforming use.
- Maintain that the shopping centre is well served by café restaurant facilities. In this regard the appeal submission fails to refer to the existing café / restaurant operating within the Marks and Spencers and vacant unit 10 previously occupied by a take away outlet.

8.0 **Assessment**

- 8.1. I consider the key issues in determining this appeal relate to the question of material contravention of the development plan, the principle of the proposed development and appropriateness of the proposed change of use. The issue of Appropriate Assessment also needs to be addressed.
- 8.2. As regards the specific zoning, the site is within the area zoned “Commercial”. The objective is to provide for mixed commercial facilities that do not compete with the town centre function. The zoning matrix provides that restaurant use is not permitted within this commercial zoning whilst take-away use is open for consideration. On this basis it is clear that the proposed restaurant use would represent a material contravention of the zoning objective.
- 8.3. Section 37(2)(b) of the Planning and Development Act 2000 provides that where the planning authority has decided to refuse permission on the grounds of material contravention of the development plan, the Board may only grant permission where it considers:
- (i) The proposed development is of strategic national importance.
 - (ii) There are conflicting objectives in the development plan or objectives which are not clearly stated, insofar as the proposed development is concerned.

- (iii) Permission for the proposed development should be granted having regard to local, regional and Government policy and guidelines.
- (iv) Permission for the proposed development should be granted having regard to the pattern of development and permission granted in the area since the making of the development plan.

8.4 The proposed development is clearly not of strategic national importance. Having regard to the unique circumstances of the appeal site context and having reviewed the recent applications cited within the appeal I note no directly comparable applications and therefore find no suggestion of a specific pattern since the adoption of the development plan which might be considered to be at odds with the current case.

8.5 As regards the question of conflicting objectives or unclear objectives, insofar as the proposed development is concerned, I acknowledge the lack of clarity in terms of what is envisaged for the Showgrounds Shopping Centre having regard to the apparent conflict between the permitted and established uses (retail, supermarket, restaurant uses) the zoning objective (*to provide for mixed commercial facilities that do not compete with the town centre function*) and the zoning matrix (warehousing being the only use permitted in principle). I note that the Planning Authority indicates in response to the appeal states that the limitation of certain uses within the commercial zone was a deliberate plan led response to steer such uses into the identified town centre and to promote the health and vibrancy of same. I refer the strategic vision for Clonmel as stated within the Clonmel and Environs Development Plan 2013 which seeks to realise its potential as the County Town. Other specific objectives within the plan seek to enhance the retail function. I note Core Strategy Map, Figure 2.1, which identifies the appeal site within the Town Centre Area and as a retail centre. I note reference at 3.2.1 of the Clonmel and Environs Development Plan 2013 to the South Tipperary Retail Development Programme and the objectives identified therein aimed at improving the town centre. One such objective seeks to *“investigate connectivity between the Showgrounds Shopping Centre and the town centre to create a mutually beneficial synergy”*. It is stated at 3.2.1 that the Council will have regard to the objectives of the Retail Development Programme in exercising its development management function and will work

through the Retail Forum (Clonmel Borough Council, Clonmel Chamber of Commerce and Association of Clonmel Traders) and / or designated “Town Team” to realise the above objectives. I further note the adoption of opportunity site 2 Kickam Barracks and opportunity site 3 Davis Road which represent key methods to achieve the objectives of connectivity, improved visual character and synergy.

8.6 As regards local, regional and national guidelines, I would note that the wider policy context seeks to ensure that the planning process provides a clear framework for the retail sector, ensuring competitiveness nationally, regionally and locally promoting a plan led approach that is responsive to the needs of the retail sector. On the basis of my review I consider that the Clonmel and Environs Development Plan 2013 contains conflicting objectives insofar as the proposed is concerned and is at odds with wider policy context therefore the Board may grant permission notwithstanding the issue of material contravention.

8.7 On the question of the principle of development in the context of the relevant objective being “*To provide for mixed commercial facilities that do not compete with the town centre function*” I consider that the proposal is consistent with this objective. The nature and scale of the development proposed is not in my view such as to compete with the town centre function. I note that the proposal provides for an active frontage to the Showgrounds shopping centre and in this regards improves the visual character of the site and promotes connectivity with the town centre thereby promoting the overall viability and vitality of the retail sector within the town. I note that as outlined in the first party appeal the premises has been unoccupied for two years and clearly the occupation of the premises by a viable use is desirable in terms of vitality and vibrancy. I note that as set out in the appeal, half of the floor space at the Showgrounds Centre has never been occupied since the centre opened in 2009 and I would concur with the first party that flexibility is required given that change is constant in the retail market. The first party’s contention that a failure to diversify and respond to structural change in terms of provision of services and facilities will threatens the viability of the centre is in my view a valid one.

8.8 The Planning Authority asserts that there is no need for another restaurant at this location however I note that planning policy including the retail planning guidelines **PL92.247445**

2012⁷ provides that the planning system should not be used to inhibit competition, preserve existing commercial interests or prevent innovation. I consider the proposed development will enhance the retail services offer and support the existing range of activities and services within the Showgrounds Shopping Centre. On this basis I consider that the proposed use will have a positive impact on the vitality and viability of the Showgrounds Shopping Centre and the town of Clonmel at large.

- 8.9 On the issue of Appropriate Assessment, significant effects are not likely to arise either alone or in combination with other plans or projects that will result in significant effects to the integrity of the Natura 2000 network. Having regard to the nature and scale of the proposed development and the receiving environment, no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have significant effect individually or in combination with other plans or projects on a European Site.
- 8.10 Having regard to the foregoing, I am satisfied that the proposed development is in accordance with the objectives of the Clonmel and Environs Development Plan 2013 and that there will be no undue impact on the amenities of the locality. I recommend that permission be granted for the reasons and considerations set out below and subject to the conditions attached.

REASONS & CONSIDERATIONS

Having regard to the pattern of land use in the vicinity it is considered that, subject to the conditions set out below, the proposed development will not unduly impact on the amenities of the area or property in the vicinity will not undermine the vibrancy and vitality of Clonmel Town Centre and is therefore in accordance with the proper planning and sustainable development of the area.

⁷ Guidelines for Planning Authorities, Retail Planning. Department of the Environment Community and Local Government. April 2012.

CONDITIONS

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. Use of the premises shall be as in accordance with the details as submitted. No change of that use shall take place without a prior grant of planning permission notwithstanding the exempted development provisions of the Planning and Development Regulations, 2001 and any statutory provision amending or replacing them.

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

3. The developer shall control odour emissions from the premises in accordance with measures which shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of development.

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

4. Litter in the vicinity of the premises shall be controlled in accordance with a scheme of litter control which shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of development. The scheme shall include the provision of litter bins and refuse storage facilities.

Reason: In the interest of visual amenity.

5. Water supply and drainage arrangements, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health and to ensure a proper standard of development.

6. Details of all external shopfronts and signage shall be submitted to and agreed in writing with the planning authority prior to the commencement of development.

Reason: In the interest of the amenities of the area.

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

Reason: It is a requirement of the Planning and Development Act 2000 that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

30th January 2017