



An
Bord
Pleanála

Inspector's Report ABP-302096-18

Development	Change of use from retail to restaurant
Location	Sky Court Shopping Centre, Shannon Co. Clare
Planning Authority	Clare County Council
Planning Authority Reg. Ref.	18273
Applicants	OBSF (1) Limited
Type of Application	Permission
Planning Authority Decision	Grant Permission
Type of Appeal	Third Party
Appellant(s)	Damien Ryan
Date of Site Inspection	27 th September 2018
Inspector	Dolores McCague

1.0 Site Location and Description

1.1. The appeal site is a ground floor unit within the Sky Court Shopping Centre, Shannon Town Centre. It is currently vacant, comprising frontage onto both the mall in the shopping centre and the public road, Bealach Bru, on the east side of the shopping centre. In the mall the interface is a large glazed area, and a roller shutter door / entrance and to the public road is framed glazing, and a double glazed entrance with glazing to either side.

1.1.1. The site is given as 0.0104ha.

2.0 Proposed Development

2.1. Permission is being sought for a change of use from retail to restaurant with both sit down and take away facilities, and all associated works.

2.2. The floor area involves is 104 sq m.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. Grant permission. Conditions of note include:

- Condition No. 2 – the opening hours of the restaurant and takeaway facility shall be between 09:00 and 23:00 hours each day except as follows:

Friday 0900 hrs until 0100 hrs Saturday.

Saturdays 0900 until 0100 hrs Sunday

Sundays of bank holiday weekends only: Sundays 0900 until 0100 hrs Monday

Reason: To protect the amenities of the surrounding area.

3.1.2. The decision was in accordance with the planning recommendation.

3.2. Planning Authority Reports

3.2.1. Planning Reports

3.2.2. The planning report includes:

- Zoned Mixed Use
- Flood Zone A.
- Town Centre
- SEVESO consultation zone
- Shannon Airport Consultation Zone and IAA referral area.
- Unsolicited further information.
 - An extension of time was requested and unsolicited further information was later submitted including:
 - A revised ground floor plan showing a wheelchair accessible customer bathroom, a relocated staff bathroom and a reduction in the number of customer seats from 22 to 20. A first floor plan showing the location of the extractor ducts serving the kitchens at ground floor.
- Flood risk – existing town centre development. Proposed development is of low vulnerability in terms of flood risk. No further flood risk assessment required.
- No objection in principle having regard to the zoning, objectives for town centre and the established mix of commercial uses.
- Sufficient parking to serve the development.
- No impact on surrounding amenity.
- Public health – there are bathrooms available to customers in the overall shopping centre however the business hours may be later than that of the adjoining shopping centre. Concerns were raised in a third party observation in this regard. The revised drawings include the provision of a customer bathroom, and addresses these concerns.
- Traffic - Concerns were raised in a third party observation regarding parking. The car parking area to the north of Skycourt is the closest to the premises, approx.

44m walking distance to the exterior entrance, and considered sufficiently close to offer convenient short-term parking to facilitate the collection of orders.

- Development Contribution – none to be levied.

3.3. Prescribed Bodies

- 3.3.1. IAA – no observations.
- 3.3.2. HSA (re COMAH) - does not advise against.

3.4. Third Party Observations

- 3.4.1. Two observations – one from Shannon Service Station Ltd re lack of parking and use of the forecourt of the filling station for parking; also provision of toilets; one from Softdrive, requesting to be kept informed of the planning authority's decision.

4.0 Planning History

- 4.1.1. None pertaining to this particular unit. There is a current appeal (Ref 302313-18) which relates to change of use from retail to restaurant at ground floor unit Unit A16.

5.0 Policy Context

5.1. Development Plan

- 5.2. The Clare County Development Plan 2017-2023 is the operative plan, it includes: Chapter 19 Land Use and Zonings - diverse range of day and evening uses is encouraged in mixed use zones.

- 5.3. Shannon Town and Environs Local Area Plan 2012-2018, applies to this area. The Shannon Local Area Plan was extended, 12th June 2017, for a period not exceeding 5 years i.e. up to September 2022.

- 5.4. The LAP includes:

- The site is zoned 'Mixed Use/Town Centre'.

- LAP Objective 2.1: To increase the appeal of the central areas, the town centre and the town park.
- Chapter 5 refers to Shannon Town Centre and Retail. A goal of the LAP is to secure a vibrant and viable town centre. Objectives include:
 - Objective 5.4 – viable and vibrant town centre, growth in retail floor space and evening uses.

5.5. Natural Heritage Designations

- 5.5.1. The River Shannon and River Fergus Estuaries SPA site code 004077 and River Shannon SAC site code 002165, are the nearest Natura sites, located c 1.2km away.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. The appeal has been submitted by Connellan & Associates Planning & Energy Consultants on behalf of the third party.
- 6.1.2. The grounds includes:
- Deficiencies in the application:
 - OBSF (1) does not appear to own the property, named on the application form as owner.
 - Company and land direct search done. Nominee company with no interest in any land or structure. Copy of director's report provided.
 - Extract from relevant folio lists owners, applicant is not listed / no consent has been lodged with application.
 - Location description as ground floor unit A1 & A2 incorrect. Unit A2 was apparently subsumed into unit A3. Insomnia cafe now occupies the former unit A2, behind the lifts.
 - Unsolicited further information:

- The additional material – floor plan layout and fumes extraction, was material, as evidenced by the fact that it was taken into account by the Planning Authority and its inclusion in condition no 1. There were two third party submissions on the file at this stage but neither was given an opportunity to make a submission, nor was the wider public informed; as notice of the amendments was never published.
- The extraction system is only shown on plan, no sections or elevations are given.
- The public toilets in the centre are not usually available after 6pm. The development can be open for 5 hours most days, at times when the shopping centre is closed, and for 7 hours on Fridays and Saturdays and the Sundays of bank holidays. The provision of one combined public/disabled unisex toilet is a very poor provision and prejudicial to public health/amenity. A separate male and female public toilet should be required, each with disabled access, or with a separate unisex disabled toilet.
- Injury to amenities/lack of parking:
 - Location is opposite to residential areas, late night opening would be detrimental to residential amenity.
 - An objection was lodged by Shannon Service Station Ltd based on lack of parking and the fact that people use the forecourt of the filling station for parking.
 - While there is good parking for SkyCount Centre as a whole the facilities do not favour this site. Other take away facilities are located immediately adjacent to the car park.
 - A sit down restaurant might be acceptable, a take away facility would not.
- Attached are copy of Director's report for OBSF(1) Ltd; and copy of land registry folio details.

6.2. Applicant Response

6.2.1. Brendan McGrath & Associates, Planning Consultants has responded to the grounds of appeal on behalf of the first party.

6.2.2. The response includes:

- The property manager of Supermacs is the appellant and the owner of Supermacs is a director of Soft Drive – the company associated with this appeal. The appeal is motivated by commercial considerations.
- Deficiencies in the application:
 - A letter from corporate and commercial law firm Beauchamps is attached which shows that OBSF (1) is the site owner as stated in the application.
 - Address A1 and A2 - Skycourt used this address in its letting brochures. The map in the mall refers to A1 only. This is a conscious decision by the shopping centre management to simplify several of the mall addresses on the board to a single letter and numeral to make the signage user friendly and facilitate wayfinding. There is no substance to any of the deficiencies raised.
- Public health and toilet provision.
 - A revised layout incorporating toilets for staff and customer use was submitted as further information. This addresses the third party concerns.
- Injury to amenities/lack of parking.
 - Parking is 44m away.
 - The nearest houses are more than 50m away. The proposal will have a net positive impact on residential amenity.
- Attached is a letter and other details from Beauchamps.

6.3. Planning Authority Response

6.3.1. The Planning Authority has responded to the grounds of appeal.

6.3.2. The response includes:

- The site is zoned mixed use, the development is acceptable in principle.

- The distance of 46m from the nearest dwelling, across a road and green, and, subject to the limitations of late night opening hours, there will be no negative impact on residential amenities.
- On site bathroom facilities are available to customers after hours.
- The parking, 44m walking distance to the exterior entrance, is sufficiently close to offer convenient short-term parking to facilitate the collection of orders.

7.0 **Assessment**

- 7.1.1. The issues which arise in relation to this appeal are: appropriate assessment, environmental impact assessment, the principle of the development, procedural Issues, amenities of the area, flood risk and other issues and the following assessment is dealt with under those headings.

7.2. **Appropriate Assessment**

- 7.2.1. Having regard to the nature and scale of the proposed development and nature of the receiving environment no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect, individually or in combination with other plans or projects, on a European site.

7.3. **Environmental Impact Assessment**

- 7.3.1. Having regard to the nature and scale of the proposed development and the nature of the receiving environment 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.

7.4. **Principle of Development**

- 7.4.1. The site is zoned Mixed Use under the LAP and the use is permissible within this zone. The buildings on the site have previously been in retail use. There is no objection in principle to residential development on this site.

7.5. Procedural Issues

- 7.5.1. The third party states that the application is inaccurate in describing the site as units A1 and A2 of Sky Court Shopping Centre, whereas only unit A1 is involved; that unit 2 was subsumed into unit 3; and that the published notices are inaccurate. The third party explains this with reference to the letting brochures. From the floor layout displayed within the Mall, (photo provided by the third party), where unit 3 is a large unit adjoining unit 1 without any intervening unit 2, it appears likely that unit 2 may have been subsumed into unit 3 as claimed. I note that per the application details, notices were displayed on the subject unit on both the external elevation and the elevation internal to the Mall. For this reason, although the location description may or may not be fully accurate regarding the involvement of 1 rather than 2 units, in my opinion this does not mislead; anyone with an interest in this application referring as it does to units 1 & 2 would be equally likely to take an interest in an application referring only to unit 1 and vice versa; and would find fuller details on inspecting the application. The accuracy of the building layout drawings is not contested.
- 7.5.2. The third party states that the applicant is not the owner of the Shopping Centre and no letter of consent has been submitted with the application, from the owner. The first party response is that the applicant is the owner and evidence is provided in this regard. However, in any case the Board cannot make a determination on issues in relation to title. Section 34(13) of the Planning and Development Act 2000, as amended, states 'a person shall not be entitled solely by reason of a permission to carry out any development'.
- 7.5.3. The third party states that the unsolicited further information is significant further information and that notices of its receipt should have been published. Per Article 35 (1) of the Planning and Development Regulations, it is a matter for the planning authority to consider whether or not further information is significant, requiring publication of further notices. In this case the planning authority did not consider the unsolicited information significant.

7.6. Amenities of the Area

- 7.6.1. The third party states that the proposed development is inadequately supplied with car parking. The planning authority points to the availability of parking 44m from the

premises. In my opinion there is sufficient parking within the shopping centre car park to accommodate the proposed development.

- 7.6.2. The third party states that the proposed development will impact on residential amenity. The first party states that the nearest houses are more than 50m away and that the proposal will have a net positive impact on residential amenity.
- 7.6.3. The planning authority states that the distance from the nearest dwelling is 46m, across a road and green, and that, subject to the limitations of late night opening hours which they have imposed by condition, there will be no negative impact on residential amenities. In my opinion due to the distance removed from the residential properties and the separation therefrom by a main town centre road there will be no impact on residential amenity.
- 7.6.4. The third party states that the proposed provision for public toilets is inadequate. I note the availability of toilets within the shopping centre, for use by the proposed development, and the provision of a single unisex disabled access toilet which will be available for use by patrons when the shopping centre is otherwise closed. The planning authority have accepted this provision. In my opinion it is acceptable.

7.7. Flood Risk

- 7.7.1. I note that the site is located within Flood Zone A. I accept that as set out in the planner's report this is an existing town centre development; that the proposed development has no greater vulnerability in terms of flood risk than the existing retail use and is therefore acceptable.

7.8. Other Issues

- 7.8.1. I note that the front elevation to the roadside is currently glazed and that the proposal is for 'existing glazing and frame to be retained', notwithstanding that the internal floorspace will comprise a WC and a cold room. A drawing submitted to the planning authority on 9th April 2018 includes a photograph from a retail unit elsewhere which appears to indicate a proposal to utilise this entire glazed panel for advertising. Condition no 3 as drafted would accept this advertising. I consider that further control of the advertising should be exercised by the planning authority.

8.0 Recommendation

- 8.1.1. In the light of the above assessment I recommend that planning permission be granted for the following reasons and considerations.

9.0 Reasons and Considerations

Having regard to the policies and objectives of the Clare Country Development Plan 2017-2023 and the Shannon Town Centre and Environs LAP 2012-2018, and having regard to the location and nature of the proposed use, it is considered that, subject to compliance with the conditions set out below, the proposed development would be an appropriate form of development at this location, would not seriously injure the amenities of the area or of property in the vicinity and would be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application [as amended by the further plans and particulars submitted on the 20 day of June 2018 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. Condition No. 2 – the opening hours of the restaurant and takeaway facility shall be between 09:00 and 23:00 hours each day except as follows:

Friday 0900 hrs until 0100 hrs Saturday.

Saturdays 0900 until 0100 hrs Sunday

Sundays of bank holiday weekends only: Sundays 0900 until 0100 hrs
Monday

Reason: To protect the amenities of the surrounding area.

3. Other than two name signs, one over the existing glazing and frame and one over the door frame, shall be erected externally on the premises without a further grant of permission. Details of the proposed name signs shall be submitted for the prior written agreement of the planning authority.

Reason: To protect the visual amenities of the area.

4. Adequately sized grease traps shall be provided within the curtilage of the premises.

Reason: In the interest of public health and development control.

Planning Inspector

29 November 2018

Appendix 1 Photographs

Appendix 2 Extracts from the Clare County Council Development Plan 2017-2023

Appendix 3 Extracts from the Shannon Local Area Plan 2012-2018, extended to
2022