



An  
Bord  
Pleanála

## Inspector's Report ABP-302313-18

### Development

for development at ground floor Unit A16 Sky Court Shopping Centre. Permission is being sought for a change of use from retail to restaurant with sit down dining area, ancillary take away facility, and all associated works above and below ground

### Location

Sky Court Shopping Centre, Shannon, Co. Clare

### Planning Authority

Clare County Council

### Planning Authority Reg. Ref.

18420

### Applicant(s)

OBSF (1) Limited

### Type of Application

Permission

### Planning Authority Decision

Grant Permission

### Type of Appeal

Third Party

### Appellant(s)

Softdrive Ltd

### Observer(s)

None.

**Date of Site Inspection**

3<sup>rd</sup> October 2018

**Inspector**

Ronan O'Connor

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## 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.

## 2.0 Proposed Development

- 2.1. Permission is being sought for a change of use from retail to restaurant with sit down dining area, ancillary take away facility, and all associated works above and below ground

## 3.0 Planning Authority Decision

### 3.1. Decision

- 3.1.1. Grant permission. Conditions of note include:
- Condition No. 2 – Restaurant and Takeaway shall not be operated between 23:00 and 08:00 hours on any day.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

The report of the planning officer reflects the decision of the planning authority. Points of note are as follows:

- 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.

#### 3.2.2. Other Technical Reports

None.

### 3.3. Prescribed Bodies

3.3.1. IAA – no observations.

### 3.4. Third Party Observations

3.4.1. One observation requesting to be kept informed of the planning authority's decision.

## 4.0 Planning History

4.1.1. None pertaining to this particular unit. I note there is current appeal (Ref 302096-18) which relates to change of use from retail to restaurant at ground floor units A1 and A2.

## 5.0 Policy Context

### 5.1. Development Plan

Clare County Development Plan 2017-2023.

Also of particular relevance to this appeal are:

- Chapter 19 refers to Land Use and Zonings.

Shannon Town and Environs Local Area Plan 2012-2018

On the 12th June 2017 the elected members of Clare County Council resolved to defer the making of a new Shannon Local Area Plan for a period not exceeding 5 years i.e. up to September 2022. The Shannon Town and Environs Local Area Plan 2012-2018 sets out the land use plan for the proper planning and sustainable development of the settlement of Shannon and its environs. The site is zoned 'Mixed Use/Town Centre'.

Of most relevance to this appeal are:

- 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, evening uses.

## 5.2. Natural Heritage Designations

5.2.1. None.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

6.1.1. The Third Party Grounds of Appeal are as follows:

#### Deficiencies in the application

- OBSF (1) does not appear to own the property/owner not named on the application form.
- Extract from relevant folio lists owners/applicant is not listed/no consent has been lodged with application.

#### Proliferation of Restaurants/Takeaways in the Area

- Table submitted showing lists of restaurants/takeaways in and adjacent to Shannon Town Centre.
- Shopping centre is unique as it was developed and functions as a town centre for Shannon/Malls in the shopping centre are equivalent to the streets in a standard small town/units are equivalent of standard street shops.
- Overconcentration of restaurants/diminishes ranges of services that should be available at such a town centre location/reducing town centre function.
- Also impacts negatively on restaurants already there/will not increase footfall/existing custom will be shared between existing facilities.
- Concentration of takeaways can lead to a transient user experience for a shopping centre and can lead to anti-social behaviour.

#### Opening Hours

- Proposed opening hours are beyond what is permitted by Condition 2 of the planning permission for the shopping centre.
- The permitted opening hours do not reflect the opening hours of the shopping centre.

## 6.2. Applicant Response

### General

- Owner of Supermacs is a director of Softdrive – Company that is making this appeal
- Appeal is motivated by commercial considerations.

### Ownership

- OBSF (1) is the owner of Skycourt Shopping Centre and supporting documentation is attached.

### Proliferation of Restaurants/Takeaways in the Area

- Skycourt is a well-managed complex offering a broad range of shops and other services and facilities.
- Recent permission for a cinema on the first floor will replace the food court on the first floor of Skycourt – had included four restaurant/takeaway outlets.

### Opening Hours

- Two of the four restaurants that are making way for the cinema opened until 11pm.
- Opening hours of Skycourt Shopping Centre and Car Park will be extended when cinema is opened.
- No shortage of public toilets.

## 6.3. Planning Authority Response

- Acknowledge that a good mix of retail and other uses is desirable.
- LAP Objective 5.4 supports a growth in evening uses.

- Granting of the cinema will encourage more footfall in the evening.
- Was considered appropriate for the restaurant and takeaway to be open when the cinema is opened.

#### 6.4. **Observations**

6.4.1. None.

### 7.0 **Assessment**

7.1. The following assessment covers the points made in the appeal submissions, and also encapsulates my *de novo* consideration of the application. The main planning issues in the assessment of the proposed development are as follows:

- Procedural Issues
- Principle of development/Concentration of takeaways
- Opening hours
- Other Issues
- Appropriate Assessment
- Environmental Impact Assessment

#### 7.2. **Procedural Issues**

7.2.1. The appellant has stated that the applicant is not in fact the owner of the Shopping Centre and no letter of consent has been submitted with the application from the owner. The applicant has stated that the applicant is in fact the owner and has provided evidence in this regard. I note that the Board does not have a remit in determining issues in relation to land title. In this regard I noted the provisions of section 34(13) of the Planning and Development Act 2000, as amended, a person shall not be entitled solely by reason of a permission to carry out any development. Therefore, should the Board be minded to grant permission, the developers must be certain under civil law that they have all necessary rights in the land to execute the grant of permission.

#### 7.3. **Principle of development/ Concentration of takeaways**



- 7.3.1. The principle of the proposed development is acceptable having regard to the mixed-use zoning, given a take-away is 'permitted in principle' under the land use zoning matrix set out in Appendix 2 of the LAP.
- 7.3.2. In relation to the concentration of restaurants/takeaways in the area, I do not consider that there is an overconcentration of such uses, such that the provision of a wide diversity of uses is otherwise stymied. My observations were that the shopping centre itself had a wide variety of shops and services, as does the wider Shannon Town Centre Area, albeit there was a number of vacant units also. The appellants have submitted a table indicating the number of restaurant/takeaways in the area (21 in total with 12 providing a takeaway service). 2 of these are located on the first floor foodcourt, which is now closed to make way for the development of a cinema. One of the takeaways is listed is a deli as part of a service station which, in my view, is not comparable to traditional takeaway uses.
- 7.3.3. I do not consider that the contention of an over-concentration of takeaway uses is justified in this instance.

#### **7.4. Opening Hours**

- 7.4.1. I concur with the view of the planning authority that the opening hours go some way to promoting evening activity, in line with Objective 5.4 of the LAP, and that there will be a mutually beneficial relationship between the operation of the cinema and the operation of the restaurant takeaway, if the opening hours of the two services overlap, with a subsequent benefit to the viability and viability of Shannon Town Centre, as per the LAP objectives in this regard. I do not consider that the opening hours will give rise to anti-social behaviour, as contended by the appellant, having regard to the location of the unit within an established shopping centre and having regard to the proposed closing time of 23:00.

#### **7.5. Other Issues**

- 7.5.1. Parking - There is sufficient parking within the shopping centre car park to accommodate the proposed development.
- 7.5.2. Impact on amenity – There will be no impact on residential amenity having regard to the location of the shopping centre and the unit in question relative to the nearest residential units.

## **7.6. Appropriate Assessment**

- 7.6.1. Having regard to the nature and scale of the proposed development within a serviced area and separation distance to the nearest European site, 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 the conservation objectives of any European site.

## **7.7. Environmental Impact Assessment**

- 7.7.1. Having regard to the nature and scale of the proposed development, a change of use, and having regard to the separation distance to the nearest sensitive location, 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.

## **8.0 Recommendation**

- 8.1. Grant permission.

## **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 take-away 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 lead to an over-concentration of takeaway uses in Shannon Town Centre and would not seriously injure the amenities of the area or of property in the vicinity. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## **10.0 Conditions**

1. The development shall be carried out and completed in accordance with

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

**Reason:** In the interest of clarity.

2. The restaurant and takeaway facility shall not be operated between 23:00 hours and 08:00 hours on any day.

**Reason:** In the interest of protecting the amenities of property in the vicinity.

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

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

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Rónán O'Connor  
Planning Inspector

16<sup>th</sup> November 2018