



An
Bord
Pleanála

Inspector's Report ABP-304515-19

Development	Change of use and subdivision of unit from office/commercial use to separate restaurant/café and restaurant and take away.
Location	Shannon Town Centre, Shannon, Co. Clare
Planning Authority	Clare County Council
Planning Authority Reg. Ref.	18486
Applicant(s)	Doaz Hang He
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Skycourt Management Company
Observer(s)	None
Date of Site Inspection	18 th July 2019
Inspector	Irené McCormack

1.0 Site Location and Description

- 1.1. The appeal site is located in Shannon town, to the south of the Sky Court Shopping Centre, opposite the entrance to the multi-storey car park serving the shopping centre. The building is currently vacant and was previously used by the E.S.B. The general area comprises a mix of commercial, retail and office use. The public library is located to the east of the site.
- 1.2. The building is a single storey structure and occupies a corner site with yard area to the rear. The stated floor area of the building is 308sqm. The stated site area is 0.0799ha.

2.0 Proposed Development

- 2.1. The development will comprise the change of use and subdivision of the unit from office/commercial use into two separate units to accommodate:
 - Restaurant/café;
 - Restaurant and take away;
 - Associated site works.
- 2.2. The works will include alterations to the façade of the building to include alterations to window openings, introduction of full height glazing panels to the café element and associated signage, a new restaurant front and associated signage for the proposed restaurant and takeaway.
- 2.3. Further information received by the Planning Authority on 22nd March 2019 included a revised site layout indicating additional car parking, delivery and set down area details, details of rear boundary treatment and external finishes. In addition to land registry details setting out the applicant's legal interest in the property and associated infrastructure.
- 2.4. The response to the further information was deemed "Significant" by Clare County Council and revised public notices were submitted to the planning authority on 1st April 2019.

3.0 Planning Authority Decision

3.1. Decision

The planning authority decided to grant planning permission subject to 6 conditions.

The following are considered of relevance:

- Condition no. 2 stipulated a contribution of €5000 be paid in respect of car parking benefitting development in the area.....

Reason: It is considered appropriate that the developer/applicant should contribute towards the cost of car parking facilities benefitting the development, as provided for in the Councils prevailing Development Contribution Scheme, made in accordance with Section 48 of the Planning and Development Act 2000 as amended, and that the level of contribution payable should be adjusted at a rate in the manner specified in the scheme.

- Condition no. 3 stipulated the omission of car parking to the north and east of the site and a landscaping scheme to include hard and soft landscaping be submitted.

Reason: Having regard to the proximity of the site to Shannon Tow and the availability of parking in the vicinity of the site, the Planning Authority consider it appropriate to omit the proposed parking, as the layout and arrangements of same would endanger public safety by reason of a traffic hazard.

- Condition no. 4 refers to revised plans for the rear yard and access to same and details of proposed signage

Reason: In the interest of orderly development, adjacent amenities and visual amenities

- Condition No. 5 – the opening hours of the restaurant and takeaway facility shall be between 08:00 and 11:30pm Monday to Saturday and 10am to 11.30om on Sundays.

Reason: In the interest of adjacent amenities and orderly development.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planner's Report is the basis for the Planning Authority's decision. In summary, it includes:

- The relevant zoning and policy objectives applicable to the site. It is stated that the site is zoned for 'Mixed Use' and is located within the designated "Central Area". Restaurant/Café use is 'open for consideration' and use as Takeaway is 'permitted in principle'.
- The planning history in the vicinity of the site.
- It is set out that the development is not of a class for EIAR.
- The site is 1.1km from the Lower River Shannon SAC. Considers no appropriate assessment issues arise.
- It was concluded following receipt of further information that subject to certain conditions the development was acceptable and in accordance with the proper planning and sustainable development of the area having regard to the town centre area, the onsite mixed-use zoning, the brownfield nature of the development and availability of parking in the environs of the site.

3.2.2. Other Technical Reports

Chief Fire Officer – In his report dated 29th March 2019 the Assistant Chief Fire Officer raised no objection to the development.

Water Services - Report dated 27th March 2019 -No objection to the development.

3.3. Prescribed Bodies

Health & Safety Authority – In their report dated 25th May 2018 the HSA does not advise against the granting of planning permission.

Irish Water—In their report dated 9th July 2018 IW raised no objection subject to standard conditions.

Irish Airport Authority – In their report dated 5th July 2018 IAA stated that they had no observations.

3.4. **Third Party Observations**

A total of two submissions were made to Clare County Council. The following is a summary of the issues raised:

- Concern is expressed by an adjoining restaurant owner having regard to the proximity of the development to his restaurant.
- The level of existing vacancy level is Sky Court shopping centre noted.
- The expansion of the town centre in a southerly direction contrary to the Local Area Plan.
- The site is not served by public services.
- Road, parking and traffic issues.

4.0 **Planning History**

Site

None

Surrounding

ABP 302313 -18 (CCC 18/420) – Permission granted in 2018 for the change of use from retail to restaurant , Unit 16 Sky Court Shopping Centre.

ABP 302096 -18 (CCC 18/273) – Permission granted in 2018 for the change of use from retail to restaurant , Unit A1 and A2 16 Sky Court Shopping Centre.

5.0 **Policy Context**

5.1. **Development Plan**

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.

5.1.1. Shannon Town and Environs Local Area Plan 2012-2018.

The Shannon Local Area Plan was extended, 12th June 2017, for a period not exceeding 5 years i.e. up to September 2022.

The LAP includes:

- The site is located in the MU2 South of Town Centre zoning.
- LAP Objective 2.1: To increase the appeal of the central areas, the town centre and the town park.

Appendix 1 – Land Use Zoning definitions

- Town Centre / Mixed Use

The use of land as ‘Town Centre / Mixed Use’ shall include the use of land for a range of uses, making provision where appropriate, for primary and secondary uses e.g. commercial/retail development as the primary use with residential development as a secondary use.

A diverse range of both day and evening uses is encouraged and an over-concentration of any one use will not normally be permitted.

- Chapter 5 refers to Shannon Town Centre and Retail. A goal of the LAP is to secure a vibrant and viable town centre.

Section 5.5.2 - MU2 South of Town Centre (3.94ha) states:

A key element of future development on this site shall be a focus on preserving and enhancing the range of uses within this area and retaining the function of this area as an important link between the town centre and the town park. As with the town centre, there are opportunities for improvement of the physical appearance of this area through the redevelopment of certain key sites, such as in the vicinity of the library and at the bandstand.

Objectives include:

Objective 5.4 – viable and vibrant town centre, growth in retail floor space and evening uses.

5.1.2. Clare County Council Development Contribution Scheme 2017-2023

5.2. Natural Heritage Designations

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 1.3km away.

5.3. EIA Screening

Having regard to the nature and scale of the proposed development, the receiving environment, and to the nature, extent, characteristics and likely duration of potential impacts, I conclude that the proposed development is not likely to have significant effects on the environment and that the submission of an Environmental Impact Statement is not required. The need for environmental impact assessment can, therefore, be excluded at preliminary examination. An EIA - Preliminary Examination form has been completed and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

- The proposed development is contrary to the objectives of the Shannon Local Area Plan and would represent overdevelopment of the site.
- The development is not part of the core retail area as set out in the Shannon Town LAP and section 5.1 of the LAP states that is an objective to “consolidate the existing core retail area through the continuing improvement of the quality and range of retail offer, aesthetic improvements, the development of a streetscape onto Bothar Mor, improved access arrangements and by facilitating a growth in retail floor space that enhances the quality of service for the surrounding areas”.
- It is set out that the development is located on the opposite side to Bothar Mor. It is also set out that there is a high level of retail vacancy in the Sky Court Shopping Centre.
- The development was granted with no car parking. The requirement as per the development plan is 12 spaces. The condition imposed by the Council

regarding a contribution of €5000 in lieu of car parking is not legal as the council does not own the car parking in the vicinity of the site.

- There is limited on-street car parking in the vicinity of the site and as a result the proposed take away would be especially problematic. It is set out that the development would generate an unsafe parking demand on the main service road and in the vicinity of a busy junction.
- The applicant does not have sufficient legal interest to implement the permission because Skycourt Management Company and OBSF 1 who manage and own the relevant infrastructure do not consent to the development.

6.2. Applicant Response

- It is set out that the proposed development will result in the active use of a vacant property within the established commercial area adjacent to the Sky Court Shopping Centre and surrounding commercial uses.
- It is acknowledged that the appeal site is not located within the defined 'Town Centre' area but immediately south of the town centre and zoned 'MU2' mixed use in the Shannon Town LAP.
- It is set out that the proposed use as restaurant/café and restaurant/takeaway and not a retail use and therefore would not impact on the retail core or the retail vacancy levels in the Sky Court Shopping Centre.
- The development is consistent with Section 5.5 - MU2 and the land use provisions of the Shannon Town LAP and the provisions of the Clare County Development Plan 2017-2023 to encourage a diverse range of day and evening uses in mixed use zones.
- It is set out that the site is located in a central location within walking distance of residential, commercial and retail uses and notes the availability of car parking within the immediate town centre area. It is set out that the development will likely operate within context of duality of car trips with other town centre uses. It is also pointed out that the applicant had originally provided parking as part of scheme and this was omitted by the planning

authority in lieu of a development contribution having regard to the availability of car parking in the vicinity of the site and in the interest of sustainable development.

- It is set out that the applicant has sufficient legal interest in the subject site but notwithstanding same, this is not an issue for the Board to determine.

6.3. **Planning Authority Response**

The Planning Authority has responded to the grounds of appeal.

The response includes:

- The site is zoned mixed use, the development is acceptable in principle.
- The planning authority notes the availability of car parking in the wider environs of the site and sought a contribution towards the improvement of same.
- The issue of legal interest is a civil matter.

6.4. **Observations**

None

7.0 **Assessment**

7.1. **Introduction**

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

- Principle of Development
- Car Parking and Traffic Issues
- Legal Interest
- Appropriate Assessment

7.2. **Principle of Development**

- 7.2.1. The site is located within the defined central area of Shannon Town on lands zoned *MU2* immediately south of the *Town Centre* zoning. The *MU2* South of Town Centre zoning is identified as an intermediate space between the town centre and the town

park. The area contains a mix of uses including Shannon library, health centre, Garda Station, vehicle registration office, business premises, car parks and a petrol filling station and shop. The principle of the proposed development is acceptable having regard to the mixed-use zoning, given a restaurant is 'open for consideration' and a take-away is 'permitted in principle' under the land use zoning matrix set out in Appendix 2 of the LAP. As such the proposal is acceptable in principle.

7.2.2. It is the appellants contention that the development is contrary to objective 5.1 of the Shannon Town LAP which seeks to "consolidate the existing core retail area through the continuing improvement of the quality and range of retail offer, aesthetic improvements, the development of a streetscape onto Bothar Mor, improved access arrangements and by facilitating a growth in retail floor space that enhances the quality of service for the surrounding areas". In this regard, I note section 5.2 of the LAP seeks to encourage a mixed-use approach to all proposals throughout the town centre. The first party submission argues that the proposed use is restaurant/café and restaurant/takeaway and not a retail use and therefore would not impact on the retail core or the retail vacancy levels in the Sky Court Shopping Centre. I would agree.

7.2.3. I further consider that the proposal generally complies with the requirements of the MU2 South of Town Centre objectives which states that "a key element of future development on this site shall be a focus on preserving and enhancing the range of uses within this area..." . I also note that the Land Use Zoning definition states that 'Town Centre / Mixed Use' shall include the use of land for a range of uses, making provision where appropriate, for primary and secondary uses e.g. commercial/retail development as the primary use with residential development as a secondary use. A diverse range of both day and evening uses is encouraged within this zoning. The development will provide an active street front both during day and at night time, and I consider the proposed use is acceptable and will complement the existing town centre services and amenities. I am satisfied that a restaurant/café and restaurant/takeaway use will not detract from the retail viability of the shopping centre. I do not consider the development constitutes overdevelopment of the site.

7.2.4. I am satisfied that the redevelopment of a vacant site for use as restaurant/café and restaurant/takeaway located in the defined central area of the town, adjacent to the

town centre zoning is consistent with the zoning objective for the area and in accordance with proper planning and sustainable development of the area.

7.3. Car Parking and Traffic Issues

- 7.3.1. Condition no. 3 of the decision of the planning authority stipulated the omission of the proposed car parking on site. Condition no. 2 of the decision of the planning authority included a development contribution in lieu of the car parking on site to allow the local authority to carry out works to improve the existing car parking in the area. The planning authority is satisfied that the availability of car parking in the wider environs of the site can accommodate the development.
- 7.3.2. The appellant argues that the car parking in the vicinity of the site is privately owned and as such the planning authority cannot levy a development contribution. In this regard, I note a significant amount of public surface car parking including the Town Centre car park within 100m of the site. This car parking is independent of the Sky Court Shopping Centre.
- 7.3.3. The grounds of appeal also argue that the proposed development will result in the creation of a traffic hazard having regard to the limited on-street car parking in the vicinity of the site and as a result the proposed take away would be especially problematic. It is also set out that the development would generate an unsafe parking demand on the main service road and in the vicinity of a busy junction.
- 7.3.4. In this regard, I consider the additional traffic, including deliveries generated by the development will be minimal in the context of the location within the defined central area of Shannon town, and I agree with the first party submission that the development will likely operate within the context of duality of car trips with other town centre uses. I further note the ease of pedestrian connectivity between the site and the adjacent public car parks which includes a signal-controlled pedestrian crossing along the service access road fronting the site. Accordingly, I am satisfied that there is ample and accessible public car parking available in the vicinity of the site to service the development and the development will not represent a traffic hazard at this location.
- 7.3.5. Further to the above, I note the provisions of the Clare County Council Development Contribution Scheme 2017-2023 in relation to development charges where there is a

shortfall in car parking provision and where a development will avail of public car parking. Development Contribution Charges, Section (C) (1) *Car Parking* of the contribution scheme sets out a contribution for shortfall in car parking spaces at €1000 per space. The proposed development is required to provide 12 car parking spaces. An allowance of 7 spaces was offset by the planning authority to account for the previous office use on site. The shortfall of 5 spaces at a rate of €1000 per space equates to a development contribution of €5000. I consider a condition relating to a car parking development contribution should be re-imposed in this instance in accordance with the Clare County Council Development Contribution Scheme 2017-2023, as the development will avail of public parking in the vicinity of the site.

7.4. **Legal Issues**

- 7.4.1. The appellants challenge whether the applicant has sufficient **legal interest** to carry out the proposed development. It is argued by the appellant that Skycourt Management Company and OBSF 1 who manage and own the relevant infrastructure do not consent to the development and that the applicant has insufficient interest in the infrastructure to carry out necessary works to facilitate the development.
- 7.4.2. Further to the above I note that the planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution in the Courts. In this regard, it should be noted that, as section 34(13) of the Planning Act states, a person is not be entitled solely by reason of a permission to carry out any development. Should planning permission be granted, and should the appellants or any other party consider that the planning permission granted by the Board cannot be implemented because of landownership or title issue, then Section 34 (13) of the Planning and Development Act 2000 is relevant.

7.5. **Appropriate Assessment**

- 7.5.1. 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.

8.0 Recommendation

I recommend that planning permission be **GRANTED** for the proposed development having regard to the reasons and considerations and subject to conditions as set out below.

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 café/restaurant and restaurant/takeaway 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 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 development shall be revised as follows:

- a) The proposed car parking shall be omitted and replaced by appropriate hard and soft landscaping.

Revised drawings showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interests of visual and residential amenity.

3. Prior to the commencement of development, the developer shall pay the sum of €5000, to the planning authority in respect of car parking facilities benefitting development in the area of the planning authority that is provided for or intended to be provided by or on behalf of the planning authority in accordance with the terms of the development contribution scheme made under section 48 of the Planning and Development Act 2000 as amended .

Reason: It is considered appropriate that the developer should contribute towards the cost of car parking facilities benefitting the development, as provided for in the Councils prevailing Development Contribution Scheme, made in accordance with Section 48 of the Planning and Development Act 2000 as amended, and that the level of contribution payable should be adjusted at a rate in the manner specified in the scheme.

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

Reason: In the interest of the amenities of the area/visual amenity

5. 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 public health and development control.

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

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

7. Site development and building works shall be carried out only between the hours of 0800 to 1800 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and 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

Irené McCormack
Planning Inspector

2nd September 2019