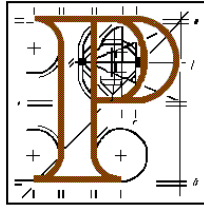


**An Bord Pleanála Ref. No.: PL 08.246491**

**An Bord Pleanála**



### **Inspector's Report**

**Proposed Development:** Permission sought for the change of use of part of ground floor of premises from bookmakers to indoor sports and recreational centre including ancillary gaming machines all at 5 High Street and Buckley's Lane, Killarney, Co. Kerry.

#### **Planning Application:**

**Planning Authority:** Kerry Count Council  
**Planning Authority Reg. Ref.:** 16/118  
**Applicant:** Tony Barry  
**Type of application:** Change of use Permission  
**Planning Authority Decision:** Refuse permission

#### **Planning Appeal:**

**Appellants:** Tony Barry  
**Type of appeal:** First Party against refusal  
**Observers:** Patrick Murphy  
**Date of Site Inspection:** 26<sup>th</sup> July, 2016

**Inspector:** A. Considine

## **1.0 THE SITE**

- 1.1 The site is located within the center of the town of Killarney on High Street. High Street is a primary retail street in Killarney and provides for a mix of uses, including retail, office, convenience stores, bars and restaurants with some residential. The subject site is located to the west of the street, approximately mid-way along its length.
- 1.2 The site comprises the ground floor of a three storey building which is bound by Buckley's Lane to the south. The unit is currently vacant but is advised that the last use of the site was as a bookmakers. The unit has a WC and appears to have a small kitchenette area.

## **2.0 PROPOSED DEVELOPMENT**

- 2.1 The application to Killarney Town Council was for permission for the change of use of part of ground floor of premises from bookmakers to indoor sports and recreational centre including ancillary gaming machines all at 5 High Street and Buckley's Lane, Killarney, Co. Kerry. From the submitted layout plans it is proposed to provide a darts area to the rear of the building, a snooker table and table tennis area along with a roulette table and 5 gaming machines. There are two access points proposed into the building, both from Buckley's Lane.

## **3.0 REPORTS ON PLANNING FILE**

- 3.1 There is 1 no. third party submission noted on the planning file from Mr. Patrick Murphy. The issues raised are summarised as follows:
  - The nature of the business is not reflected accurately in the statutory notices.
  - Questions are raised regarding the ownership of the site.
  - It is considered that the principle of the development conflicts with the retail policies as contained in the Killarney Town Development Plan. It is submitted that the proposed development is an amusement arcade with slot machines similar to other Gold Rush developments in Cork.
  - The subject site is adjoins a protected structure and that no details of signage have been provided. It is considered that the proposed nature of the development will give rise to concerns that the development will negatively impact on the protected structure.

- It is advised that there is precedent for refusing these types of developments in Killarney.
- 3.2 There are two submissions from elected members, Cllr. Donal Grady and Cllr. John Sheehan, both objecting to the proposed development. The issues raised are similar to those raised by Mr. Murphy as above as well as the following:
- The development would attract anti-social behaviour.
  - Opening hours
  - Gambling
  - The Lottery & Gambling Act was never passed for acceptance in the town of Killarney since its foundation.
- 3.3 There is 1 no. external report noted on the planning file from the following:
- NRA:** Submits that National Roads Guidelines should be adhered to.
- 3.4 There is 1 no. internal report noted from the Building Control Officer, advising no objection to the proposed development but notes that a Fire Safety Certificate and a Disability Access Certificate are required prior to opening, operating or occupying of the building.
- 3.5 The Planning Report considered the proposed development having regard to the requirements of the Town Development Plan, planning history/ precedent for similar type developments, and the plans and particulars submitted with the planning application. The report considers that the inclusion of the gaming machines within the proposed development would not be ancillary to the indoor sport and recreational centre and therefore, would contravene, materially, objective 12.3.5.1 of the Killarney Town Development Plan, 2009-2015. It is further noted that a grant of permission would give rise to an undesirable precedent for similar developments. The Planning Officer report concludes recommending that planning permission be refused for the proposed change of use.

#### 4.0 DECISION OF THE PLANNING AUTHORITY

The Planning Authority decided to refuse planning permission for the proposed development for the following reason:

The proposed development site is zoned “Town Centre Facilities” in the Killarney Town Development Plan, 2009-2015, where it is the objective to provide for and improve the development of the Town Centre. Within this land-use zoning, use as an “amusement arcade” is not permitted. It is considered that the inclusion of gaming machines within the proposed development is not ancillary to the proposed development and, therefore, the proposed development would materially contravene the development objectives as set out in the Killarney Town Development Plan.

It is considered that the proposed change of use would set an undesirable precedent for similar developments which, by virtue of their associated signage and possible anti-social behaviour, would detract from the character and appearance of the town centre.

Accordingly the proposed development would be contrary to the proper planning and sustainable development of the area.

#### 5.0 RELEVANT PLANNING HISTORY

The following is the relevant planning history associated with the subject site:

**PA Ref 15/717:** Permission granted for the change of use of part of ground floor of premises from Booking Office to retail use.

Other relevant decisions:

**ABP Ref PL63. 239948 (PA ref 11/5264):** Permission sought for Change of use of premises at ground floor level from bicycle shop to indoor sports and recreational centre including ancillary gaming machines, all at College Street & Clover’s Lane, Killarney, Co. Kerry. Killarney Town Council refused permission for the proposed development and on appeal, the Board refused permission for the following reason:

The proposed development site is zoned “Town Centre Facilities” in the Killarney Town Development Plan, 2009-2015, where it is the objective to provide for and improve the development of the Town Centre. These objectives are considered reasonable. Within this land-use zoning use as an “amusement arcade” is not permitted. The Board is of the view

that the inclusion of gaming machines within the proposed development is not ancillary to the proposed development and, therefore, the proposed development would materially contravene the development objectives as set out in the development plan and would be contrary to the proper planning and sustainable development of the area.

## **6.0 POLICY CONTEXT**

6.1 The Killarney Town Development Plan 2009 – 2015 is the statutory Development Plan for the town of Killarney. The subject site is located within an area of the town which has been zoned as ‘Town Centre Facilities’. The objective within such areas is to provide for and improve the development of the Town Centre. In accordance with Section 12.3.5.1 of the Plan, use as a ‘*recreational building*’ is permitted within this land use zoning whereas use as an ‘*amusement arcade*’ is not permitted.

6.2 Chapter 6 deals with Retail Development and the following sections are considered relevant:

- Section 6.5: *Strategic Objectives of the Council*:
  - To ensure that the “Town Centre Facilities” zoned area is the primary location for new retail development. Retail proposals within these areas will generally be encouraged, subject to normal Development Management Standards.
  - To continue to identify the Primary Retail Frontage (PRF), where proposals that result in the loss of Class 1 retail uses at ground floor shall generally be discouraged.

- Section 6.6.1 deals with Retail Core/Town Centre
- Section 6.8.1 deals with Primary Retail Frontage Area -

Policy RT-01 provides that ‘It is a policy of the Council:

- a) To maintain retail use as the primary use at ground floor level and to resist further changes of use to service and office use, use for financial services or use as a betting office/shop.
- b) To encourage proposals for convenience and comparison retail development in the Primary Retail Frontage Area to include high street retailing.

- c) To consider the extension of the retail core of New Street with Dunne's Stores being the 'anchor' at this end of the street.
- Section 6.8.2 deals with Town Centre – the Board will note that the subject site is located outside of the identified Primary Retail Frontage Area and the Core Retail Area boundaries. The site is located within the Town Centre zoned area.

Policy RT-02: It is a policy of the Council:

- a) To encourage proposals for retail development in the Town Centre so to maintain the vitality, viability and identity of the town centre.
- b) To facilitate new retail development in the town centre in a manner consistent with the Retail Planning Guidelines and the general objectives as stated in this plan for the town centre. This shall be informed by the Retail strategy and Urban Master Plan as part of the Development Plan.
- c) To ensure that proposals for retail development, contribute to a retail hierarchy that is efficient, equitable and sustainable and therefore meets the following strategic objectives:-
  - The facilitation of a competitive and healthy environment for the retail sector.
  - The vitality and viability of the town centre shall be retained and enhanced. Out of town centre developments will only be considered where there are no development sites, or potential sites within the town centre or on its edge or satisfactory transport accessibility cannot realistically be provided within a reasonable period of time.
  - To ensure convenience to all sectors of the community, in particular matching services to those who are less mobile and accessible by both public and private transport.
- Section 6.11 deals with Non-conforming Retail -

Policy RT-08: It is a policy of the Council:

- a) To prohibit the following non-conforming retail developments:
  - Adult Shops
  - Taxi offices etc.
  - Food takeaways
- Chapter 12 of the Plan deals with Land Use Zoning Objectives and Development Management Standards

## **7.0 GROUNDS OF APPEAL**

7.1 This is a first party appeal against the decision of Kerry County Council to refuse planning permission for the proposed change of use. The grounds of appeal are summarised as follows:

- The proposed development is not for an amusement arcade and the Board is asked to note that the majority of the floor area will provide for indoor sports such as snooker and table tennis, with ancillary gaming machines.
- It is considered that the development has been refused due to a stigma associated with unsuccessful amusement arcade developments of the past and the Killarney Town Development Plan policy not to permit them in their functional area.
- It is further considered that the development will not detract from the character and appearance of the town centre, but rather, provide an active use in a vacant unit.
- The subject site is located outside within an area zoned as town centre, but outside the Primary Retail Frontage Area and just north of the Core Retail Area boundary.
- It is considered that the reason for refusal directly contradicts the requirements of the Planning Act, S 34(10), in that it does not relate specifically to the particular development proposal and that the decision to refuse is overly influenced by a previous planning application, specifically mentioned in the report.
- It is requested that the Board note that given the size and narrow footprint of the premises, the applicant would be unable to include additional snooker or table tennis tables or dart boards. It is requested that the inclusion of the 5 gaming machines in peripheral locations be considered as an example of the owner maximising their potential income.
- The current proposal is much smaller than the previously refused development on College Street. It is submitted that the proposed development is for a recreational centre, a permitted use, with the gaming machine activity to be ancillary to this use, and not an amusement arcade.
- The proposed development seeks to provide an alternative evening entertainment venue without alcohol. The development would have more acceptable opening hours and there would not be an adverse impact in terms of anti-social behaviour that would detract from the character and appearance of the town centre.
- Concerns regarding signage could be dealt with by way of condition.

It is requested that permission be granted for the proposed development.

## **8.0 RESPONSES**

### **8.1 Planning Authority:**

The Planning Authority has not responded to this appeal.

## **9.0 OBSERVERS:**

There is 1 no observer noted in relation to this appeal, being Mr. Patrick Murphy. The observation is similar to the submission made to the Planning Authority during its assessment of the proposed development and is summarised as follows:

- Nature of the business is not reflected in the statutory notices.
- Ownership of the property questioned.
- Principle of the development conflicts with the Killarney Development Plan.
- Inappropriate shopfront.
- Precedent for refusal for similar type development in the town.

## **10.0 ASSESSMENT**

Having regard to the nature of this appeal, and having undertaken a site visit, as well as considering the information submitted, I suggest that it is appropriate to assess the proposed development under the following headings:

- The principle of the development
- Planning History & Impact on Town Centre.
- Appropriate Assessment



## 10.1 Principle of the development:

10.1.1 The subject site is located within the town centre area of Killarney, and in an area which is zoned as Town Centre Facilities in the current Killarney Town Development Plan, 2009-2015. The site, the subject of this appeal, comprises the ground floor of a three store building with a stated floor area of 112m<sup>2</sup>. The development seeks to change the use of the permitted Bookmakers use to an indoor sports and recreational centre including ancillary gaming machines. To this end, it is proposed to provide a snooker table, a table tennis table and a dart board as well as 5 no gaming machines and a roulette table. The Board will note that the use of the building as a 'recreational building' is acceptable in terms of the zoning afforded to the subject site. The proposed development however, also includes gaming machines which has given rise to concern.

10.1.2 The appellant (applicant) has submitted that the PA has not considered the proposed development on its own merits and have determined that it is an amusement arcade rather than a permissible recreational centre. The first party has submitted that the proposed gaming machines are ancillary to the primary sports and recreational use of the premises and are not the primary use and therefore, the proposal should not be considered as an amusement arcade. Given the limited area of the building, together with the limited sporting facilities proposed, being 1 snooker table, 1 table tennis table and 1 dart board, the Board is asked to consider the gaming machines as a means of improving the income from the centre for the owner. The Planning Authority has formed the opinion that the proposed development would actually comprise an '*amusement arcade*' which would materially contravene the town centre land use zoning objective applicable to the site.

10.1.3 For clarity, the Board will note that the 'Recreation Centre' definition as per the Oxford English Dictionary – online version - is 'a building that is open to the public, where meetings are held, sports are played, and there are activities available for young and old people'. An amusement arcade is defined as 'a covered area having coin-operated game machines'. For completeness, I would refer the Board to Section 2 of the Gaming and Lotteries Act, 1956, as amended, which defines "*gaming*" as the playing of a game (whether of skill or chance or partly of skill and partly of chance) for stakes hazarded by the players, and Section 5(1) of the Planning and Development Regulations, 2001, as amended, which defines an '*amusement arcade*' as meaning a premises used for the playing of gaming machines, video games or other amusement machines.

10.1.4 In terms of the above, and having regard to the arguments put forward by the first party, it is clear to me that the proposed development cannot be considered as a sports and recreational centre as it does not seem to accommodate young people as per the Oxford English Dictionary definition. The applicant has advised that the centre will be for over 21s and will operate only in the evenings/night time. In addition, the development proposes a roulette table which will facilitate gambling. The definition for an amusement arcade also indicates 'a premises used for the playing of gaming machines, video games or other amusement machines'. There is no indication of the use of such machines as an ancillary use and therefore, together with the fact that there are 5 machines proposed with a roulette table and 3 sporting uses, I am inclined to agree with the Planning Authority that the provision of gaming machines would seem equal to the intended primary use as a sports and recreational centre. In any case, I am of the opinion that all the relevant definitions clearly provide that the provision of gaming machines changes the use of the sports and recreational centre to an amusement arcade, a use which is not permitted within the town centre zoning of Killarney as per Section 12.3.5.1 of the Town Development Plan I am satisfied that the proposed development would materially contravene said Plan and as such, should be refused permission.

## 10.2 Planning History and Impact on the Town Centre:

10.2.1 The applicant has considered that too much emphasis has been placed on a previous decision in Killarney in terms of a similar, but larger proposed development. ABP Ref PL63. 239948 (PA ref 11/5264) refers and the Board refused permission for a change of use of premises at ground floor level from bicycle shop to indoor sports and recreational centre including ancillary gaming machines, all at College Street & Clover's Lane, Killarney, Co. Kerry. I have considered this contention and I would not agree.

10.2.2 The Killarney Town Development Plan seeks to consider all proposed developments and the potential impact of the proposed development on the wider vitality and viability of Killarney town centre and it is the policy of the PA, as set out in Section 6.8.2 of the Town Development Plan to protect and promote Killarney Town Centre as the primary centre for retailing in the area. In addition, I accept that while the subject site is zoned as 'Town Centre Facilities', where it is the objective is to provide for and improve the development of the Town Centre, it is situated outside of that area identified as 'Primary Retail Frontage' where it is the policy of the Planning Authority to maintain retailing as the primary use at ground floor level and to resist any

further changes to services and office use. The location of the site within the town centre, where it is the objective to provide a range of uses including commercial, community and social uses, would suggest that there is no specific policy reason to refuse the change of use of units outside of the 'Primary Retail Frontage Area' to non-retail uses. In this regard, it is reasonable to conclude that the proposed development could be considered acceptable in principle.

10.2.3 In terms of the potential impact of the proposed development on the amenity of the area, I consider that the impact would likely be minimal given the location of the site within a mixed use area in the town centre. In addition, there are a number of other late night uses in the area including restaurants, bars etc. In relation to the issues raised in terms of signage and the frontage of the property, together with the potential impacts on protected structures, I am satisfied that such matters could be adequately addressed by way of condition.

### 10.3 Appropriate Assessment:

The subject site is located within an urban area of Killarney Town Centre in Co. Kerry and pertains to the change of use of an existing premises. There is no proposed works on virgin ground. Having regard to the nature and scale of the proposed development and the nature of the receiving environment, being a town centre building, 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.

## 11.0 CONCLUSIONS & RECOMMENDATION

### 11.1 Conclusion:

11.1.1 Having regard to the provisions of the current Killarney Town Development Plan, the pattern of existing and permitted development in the vicinity and having regard to the information submitted as part of the planning application, together with the third party submissions and first party appeal, I consider that the proposed development of a sports and recreational centre may be considered as being acceptable in principle. However, there are valid concerns raised in terms of the gaming machines proposed.

## 11.2 Recommendation:

It is recommended that planning permission be **REFUSED** for the change of use of part of ground floor of premises from bookmakers to indoor sports and recreational centre including ancillary gaming machines all at 5 High Street and Buckley's Lane, Killarney, Co. Kerry, for the following reasons and considerations:

### **REASONS & CONSIDERATIONS**

The proposed development site is zoned "Town Centre Facilities" in the Killarney Town Development Plan, 2009-2015, where it is the objective to provide for and improve the development of the Town Centre. These objectives are considered reasonable. Within this land-use zoning use as an "amusement arcade" is not permitted. The Board is of the view that the inclusion of gaming machines within the proposed development is not ancillary to the proposed development and, therefore, the proposed development would materially contravene the development objectives as set out in the development plan and would be contrary to the proper planning and sustainable development of the area.

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A. Considine

Planning Inspector

30<sup>th</sup> July, 2016