



An  
Bord  
Pleanála

## Inspector's Report

**Development:** Change of use of retail shop to amusement arcade with associated elevation changes at Unit 1, Blackwater Shopping Centre, Carrignagroghera, Fermoy, Co. Cork.

### Planning Application

Planning Authority: Cork County Council

Planning Authority Reg. Ref.: 16/05092

Applicant: Perks Funfair

Type of Application: Permission

Planning Authority Decision: Grant Permission

### Planning Appeal

Appellant(s): Cllr. Noel McCarthy  
Perks Funfair

Type of Appeal: Third Party V Grant  
First Party V Condition no. 2 and Condition  
no. 4

Observers: Liam McGahern, John Greehy and Kathleen  
Mahon.

Date of Site Inspection: 21<sup>st</sup> October 2016

Inspector: Kenneth Moloney

## **1.0 SITE DESCRIPTION**

- 1.1. The proposed development site is located within a fully built shopping centre, which is partially vacant. The shopping centre is situated at the northern edge of Fermoy Town.
- 1.2. The shopping centre is two-story in height and the established uses within the shopping centre include a butchers, a bookmakers and there are several vacant units. There is established car parking provision located within the established shopping centre.
- 1.3. The retail unit the subject of this appeal has never previously been occupied. The subject unit is an end unit and has a large floor area.
- 1.4. There are residential properties located to the rear and the side of the subject vacant unit.

## **2.0 PROPOSED DEVELOPMENT**

- Planning permission is sought for the change of use from retail to amusement arcade.
- The proposed development also includes associated elevation changes to the existing premises which is mainly signage provision.
- The proposed development also includes a new double door to the side which will replace an existing single door.
- Additional information was sought in relation to the following; (a) clarification of opening hours, (b) full details of lighting, signage and utilities, (c) detail proposals in relation to the management of car parking and (d) proposals to reactivate all flashing beacons on the installed zebra crossing.

## **3.0 PLANNING AUTHORITY'S DECISION**

### **3.1 Decision**

The Planning Authority decided to grant planning permission subject to 10 conditions. Notable conditions include;

- Condition no. 2 – Permission shall cease after a 5-year period.
- Condition no. 4 – The hours of operation shall be restricted between the hours of 1000 hours and 2200 hours.

### **3.2 Planning Authority Planner's Report**

- The operational Development Plan is the Fermoy Town Development Plan, 2009 – 2015, the site is zoned 'C-02' 'Commercial'.
- The location of the proposed development is not town centre and there is already a bookmakers operating in the shopping centre.
- The main consideration is the surrounding residential amenities.

### **3.3 Other Technical Reports**

Internal Reports: There are two internal reports on the file:

- Area Engineer; Additional information sought in relation to proposals to deal with management of all car parking on the subject site and submit proposals to reactivate all flashing beacons on the installed zebra crossings.
- Heritage Unit; No objections in principle. Additional information sought in relation to signage and lighting.

### **3.4 Third Party Observations**

Objections: There are four third party objections on the planning file.

Submission: There is a submission from Irish Water who has no objections to the proposed development.

## **4.0 PLANNING HISTORY**

There have been several planning applications on the appeal site. The most relevant planning history is as follows;

- L.A. Ref. 09/51002 – Permission **refused** on appeal (appeal ref. 233989) for the retention of the first floor rear wall on the northern elevation of unit no. 2. The sole reason for refusal relates to the adverse impact that the wall will have on adjacent residential amenities.
- L.A. Ref. 08/51027 – Permission **granted** on appeal (appeal ref. 231344) for a change of use of a previously permissioned first floor storage area of a retail unit, to an office, strong room, staff room and changing area. The change of use required the construction of 2 no. windows.
- L.A. Ref. 06/51036 – Permission **granted** to David Ryan for a neighbourhood centre consisting of 1083 sq. m. of retail and 640sq. m. of offices, restaurant 316 sq. m., 2 signage pylons, ESB substation and

switch room, refuse and car parking provision. The existing railway shed which is a protected structure is to be converted into office space.

## **5.0 DEVELOPMENT PLAN**

The operational development plan is the Cork County Development Plan, 2015 – 2021.

## **6.0 TOWN DEVELOPMENT PLAN**

The site is zoned CO2 'Commercial' within the Fermoy Town Development Plan, 2009 – 2015. This zoning objective includes *'shopping, commercial, residential and community development that integrates with the existing character of the town'*.

CO-02 states that *'existing commercial usage, having regard to the protected structures on or bordering the site and a portion of the sites status as an ACA'*.

## **7.0 GROUNDS OF APPEAL**

### **Third Party Appeal**

The following is the summary of an appeal submitted by Cllr. Noel McCarthy;

- The proposal will undermine the social fabric of the local community.
- Public opinion has opposed an amusement arcade in the past.
- Public opinion is as strong as ever in its opposition to an amusement arcade.
- The proposed development would result in anti-social behaviour on a considerable scale in close proximity to an established residential area.
- The applicant will be the only beneficiary of the proposed development.
- It is contended that there will be significant social cost to the town should the proposed development proceed.

### **First Party Appeal**

CLC Chartered Engineers lodged an appeal on behalf of the applicant Perks Funfair. The main grounds of appeal are summarised as relating to the following; -

#### **Condition no. 2**

- It is contended that this condition is too onerous having regard to Section 7.5 of the Development Management Guidelines for Planning Authorities, 2017.
- The application was made for a permanent application and at no point was an application made for a temporary period or was this issue highlighted by the local authority at further information stage.
- It is contended that the uses of the proposed use on the amenities of the area would be considered to be negated by the approval of a betting shop within the shopping centre.

- It is submitted that it will cost the applicant €400,000 to fit out the premises and this investment may not be fit for purpose after 5 years as a result of condition no. 2.
- Condition no. 2 is contrary to Section 7.5 of the Development Management Guidelines.

#### Condition no. 4

- It is contended that condition no. 4 is unreasonable having regard to Section 7.3.5 of the Development Management Guidelines, 2007, as the restriction in opening hours would make the proposed development economically unviable.
- It is noted that the issue of anti-social behaviour and effects on residential amenity are a concern for Cork County Council.
- The planning authority is concerned with loitering and amplified sounds.
- It is submitted that the applicant was not afforded the opportunity to provide information as to how it would intend to protect the residential amenities of the area.
- The previous use of retail was considered acceptable without any restriction on opening hours.
- The applicant has established amusement arcade businesses in other parts of County Cork with no history of anti-social behaviour.
- The following measures are proposed to prevent anti-social behaviour;
  - Restricting access to school going children within certain parts of the day.
  - Maintaining controlled access to the building at all times
  - Refusing access to persons who have consumed excessive amounts of alcohol
  - Security and strict supervision will be in place to prevent and resolve any issues that may arise.
- It is submitted that issues raised by the local authority in relation to anti-social behaviour are opinions rather than facts.
- It is contended that the applicant has similar businesses in Youghal and these businesses have not given rise to anti-social behaviour. The business in Youghal is located in a heavily concentrated residential area.
- The proposed development would feature a number of family orientated games in addition to amusements for use by people aged 18 and upwards.
- The applicant would consider the restriction of the areas suitable for people under the age of 18 to opening until 10:00pm to be acceptable and would request that the Board review this condition which restricts the operation of the proposed development to a 10:00pm closing time.

## **8.0 OBSERVATIONS**

The following is a summary of an observation submitted by Liam McGahern;

- It is contended that a 5-year permission is too long to subject the local residents to this type of development.
- The opening hours from 10:00 am to 10:00pm do not fit within the residential nature of the local area.
- The proposed development would be a nuisance to local residents.
- The proposed development is located in close proximity to a primary school which is a concern.
- The subject building was built for a commercial business and not an amusement arcade.
- It is contended that given the nature of the proposed development it would draw undesirables to the local area.
- It is submitted that big advertising signs will not conform with the character of this historic and residential area.
- There is insufficient car parking provision available in this car park as other businesses operate from this area.
- It is submitted that parking will take place on the residential cul-de-sac or on the road leading to the residential estate. This will be dangerous as drivers will not have a clear view when pulling out.
- It will also be dangerous for younger and older residents as they will not have a clear view when reversing out.

The following is a summary of an observation submitted by John Greehy;

- It is contended that the proposed development is out of order.
- It is submitted that the proposed amusement arcade is a form of gambling.
- The proposed security will be based on the age of patrons.
- The fact that the Council have given a 5-year permission seems to suggest that the Local Authority have reservations.
- In relation to sound there is no sound proofing of the subject building.
- It is submitted that the building was built in contravention of the original planning application and was refused by An Bord Pleanala.
- Car parking provision is totally inadequate.
- The location of the proposed zebra crossing is unclear.
- It is contended that the fire assembly point is an inadequate size.
- It is contended that there will be anti-social behaviour and crowd congregation to the immediate north of the existing building is in close proximity to existing houses.
- It is submitted that the proposed development is more suited to seaside resort than a town centre area surrounded by houses.

The following is a summary of an observation submitted by Kathleen Mahon and associated objectors;

- It is submitted that 6 houses to the back of the proposed development and 4 houses to the right of the proposed development will be impacted by the proposed development. These houses are now occupied by retirees.

- It is submitted that there will be an overflow of car parking from the proposed site into Beechfield estate, i.e. a nearby residential area.
- The subject building is not sound proofed and even should it be sound proofed it would result in an overwhelming noise factor in the area.
- It is submitted that the proposed development will result in adverse impacts on local residential amenities due to loitering. The proposal will also result in littering.
- It is submitted that the proposed development is located next to a store that sells low cost alcohol which will exacerbate the problem.
- It is submitted that there are a number of non-residential sites in the town that would be suitable to the proposed development.

## **9.0 RESPONSES**

- None

## **10.0 ASSESSMENT**

The main issues to be considered in this case are: -

- Principle of Development
- Impact on Established Amenities
- Car Parking Provision
- Condition no. 2
- Condition no. 4
- Conservation
- Appropriate Assessment

### **Principle of Development**

The proposed development is for a change of use from retail to amusement arcade.

In accordance with the Fermoy Town Development Plan, 2009 – 2015, the appeal site is zoned 'Commercial'. The commercial zoning objective provides for '*shopping, commercial, residential and community development that integrates with the existing character of the town*'. The specific zoning objective for the appeal site is C02 and the objective of this land-use zoning objective is '*existing commercial usage, having regard to the protected structures on or bordering the site and a portion of the sites status as a ACA*'.

There is a policy provision within the Fermoy Town Development Plan, 2009 – 2015, i.e. Objective 3.3.16, which precludes the granting of planning permission for amusement arcades on ground floor units of buildings located along the Main Street of the town centre. However this policy objective would not relate to the appeal site given the location of the appeal site outside of the town centre.

I would consider that having regard to the zoning objective of the appeal site, i.e. commercial, that the proposed development would be acceptable in principle provided that established amenities in the local area are not unduly impacted upon.

### **Impact on Established Amenities**

The submitted Urban Place Map, scale 1:1,000, outlines the location of the appeal site and its context. It is evident from this map and also from my site inspection that there are established residential uses located to the immediate north and to the immediate east of the appeal site.

Cork County Council in granting permission has issued a number of conditions to protect established residential amenities. Condition no. 2 stipulates that the permission shall cease after 5-years to allow for a review of any potential impacts. Condition no. 4 restricts the opening hours of the proposed use from 10am to 10pm. Condition no. 5 relates to sound and restricts any sound outside the building.

Overall I would acknowledge the concerns of the third party appellant and the observers in relation to the proposed use. These concerns relate to anti-social behaviour, noise and general adverse impacts on residential amenities due to the proposed development.

In relation to noise the submitted observations state that the existing building is not sound proofed and therefore any noise from within the building will be audible outside and thus impacting on adjoining residential amenities. This is an issue as the opening hours for the permitted development is between 10am and 10pm which is likely to impact on established residential amenities given the proximity of residential properties to the proposed development. I would consider that should the noise be contained within the building then it would be acceptable. I would acknowledge that amusement arcades have a tendency to emit some level of noise and I would consider that the onus is on the applicant to demonstrate that the noise from the proposed development can be contained within the building or to a level that will not adversely impact on adjoining residential amenities. On the basis of the information available and given the floor area of the proposed use I would not consider that the applicant has adequately demonstrated that the noise generated within the amusement arcade would be contained within the building of the subject site or to an acceptable level.

The submitted observations argue that the proposed development will attract a large number of young persons from a big catchment area and this will potentially result in anti-social behaviour. I would consider that some of these issues could be addressed by the management of the proposed use and a review of the use and its impacts as set out in condition no. 2. As such condition no. 2, in my view, is a tool to determine whether the location of the proposed use is suitable.



In my opinion planning permission could only be reasonably refused on the grounds of anti-social behaviour if the proposed use was to negatively impact on the adjoining residential amenities or if the proposed use was to result in an excessive number or frequency of such facilities in the area. I would note that there are no other amusement arcades in the locality. Overall I would recommend to the Board that given the zoning objective pertaining to the appeal site that in my view an amusement arcade would be acceptable subject to strong development management conditions in relation to noise, opening hours and a review of the potential impacts.

### **Car Parking Provision**

There is an established retail use on the appeal site and the applicants estimate that the proposed amusement arcade use will generate a similar amount of traffic and as such the proposed use is unlikely to result in any additional traffic.

In response to concerns by the Area Engineer the applicant has submitted proposals to manage car parking during the day and this includes restricting car parking to a three-hour limit. This would eliminate all day car parking at the shopping centre car park and free up car parking for the proposed use. Overall I would consider that the car parking provision and the management proposals are acceptable.

### **Condition no. 2**

Condition no. 2 stipulates that permission shall cease after a 5-year period to allow for a review of the proposed development.

The applicant argues that this condition is contrary to the Section 7.5 of the Development Management Guidelines for Planning Authorities, 2007. The applicant submits that the overall cost to implement the proposed use is approximately €400,000. I would acknowledge that this is a sizable cost for a 5-year permission.

Section 7.5 of the Development Management Guidelines sets out 3 no. tests to determine whether a temporary permission is acceptable. Firstly the guidelines state that a temporary permission will rarely be justified where a developer wishes to carry out a permanent development that conforms with the development plan objectives. Secondly it is advised that it is undesirable to impose a temporary condition where a structure or building will be demolished. Finally it is advised that a temporary condition cannot replace material considerations. I would consider that in favour of the applicants arguments that the developer wishes to carry out a permanent development which are consistent with the development plan objectives and on this basis a temporary permission would not be acceptable.

However the guidelines also advise that it may be possible to use a temporary permission to assess the impacts of the proposed development

on established uses. In this instance Cork County Council imposed Condition no. 2 in order to review the impacts of the proposed development on established uses in the local area and in particular the residential use. I would consider that condition no. 2 is reasonable given the nature of the proposed use, the proximity of the established residential amenities and the level of local opposition to the proposed development. Furthermore condition no. 2 is consistent with the advice offered in the Guidelines. I would recommend to the Board, should they favour granting permission, that condition no. 2 of the Local Authority permission is retained.

#### **Condition no. 4**

Condition no. 4 restricts the opening hours from 10am to 10pm for the proposed use.

The applicant argues in the appeal submission that condition no. 4 would be contrary to Section 7.3.5 of the Development Management Guidelines for Planning Authorities, 2007. The guidelines advise that it would be unreasonable to restrict the hours of an operation to effectively nullify a planning permission.

I would consider that the operating hours of 10am to 10pm would be beyond any of the established uses within the shopping centre and I would consider that the concerns of the local residents, as outlined in their submissions, are reasonable. I would recommend to the Board on the basis of the proximity of the proposed use to the established residential amenities and the lack of any genuine counter argument by the applicant that the building is adequately sound proofed that the opening hours are restricted further. I would recommend a condition to the Board that the opening hours of the proposed use are between 10am and 8pm in the interest of protecting established residential amenities.

#### **Conservation**

The report from the Heritage Unit outlines concerns in relation to the proposed signage and recommends that the proposed signage submitted with the additional information is revised by condition.

I note that the concern is the location of a protected structure which is located directly opposite the appeal site. The protected structure, which was a former railway shed, is unoccupied and in poor condition. I would consider, based on the submitted drawing (drawing no. L102) that the proposed shop front design and signage is not sympathetic to the character of the area and the stone built former railway shed. As such I would recommend to the Board, should they favour granting permission, that the proposed signage is revised by condition.

## **Appropriate Assessment**

Having regard to the nature and scale of the development proposed and to the nature of the receiving environment, namely an inner suburban and fully serviced location, no appropriate assessment issues arise.

### **11.0 RECOMMENDATION**

I have read the submissions on the file, visited the site, had due regard to the development plan and all other matters arising. I recommend that planning permission shall be granted for the reasons set out below.

### **12.0 REASONS AND CONSIDERATIONS**

Having regard to the zoning objectives of the Fermoy Town Development Plan, 2009 – 2015, and to the nature of the proposed development, it is considered that subject to compliance with the conditions set out below that the proposed development would not seriously injure the amenities in the area, would be acceptable in terms of traffic safety and convenience and would therefore be in accordance with the proper planning and sustainable development of the area.

#### **CONDITIONS**

1. The development shall be carried out in accordance with the plans and particulars lodged with the application as amended by drawings received by the planning authority on the 27<sup>th</sup> July 2016, except as may otherwise be required in order to comply with the following conditions.

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

2. The use of the building as an amusement arcade shall cease and the associated signage shall be removed on the expiration of a period of five years beginning on the date of the grant of this permission unless a further planning permission for the continuation of the use and development is granted.

**Reason:** To enable a review of the effect of the use on the amenities of the area.

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

**Reason:** In the interest of protecting the amenities of the Architectural Conservation Area.

4. Opening hours of the hereby permitted use shall be confined to between the hours of 8:00am to 8:00 pm.

**Reason:** In order to limit the hours of operation and in the interest of protecting the amenities of adjoining properties.

5. The noise level from the proposed development during operational stage shall not exceed 55 dB(A) rated sound level at the nearest noise sensitive location between 0800 and 2000 hours, Monday to Saturday inclusive, and shall not exceed 45 dB(A) at any other time. Procedures for the purpose of determining compliance with this limit shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** To protect the residential amenities of property in the vicinity of the site.

6. Notwithstanding the provisions of the Planning and Development Regulations 2001, or any statutory provision amending or replacing them, no advertisement signs (including any signs installed to be visible through the windows), advertisement structures, banners, canopies, flags, or other projecting elements shall be displayed or erected on the buildings or within the curtilage of the site, unless authorised by a further grant of planning permission.

**Reason:** To protect the visual amenities of the area.

7. Water supply and drainage arrangements, including the disposal of surface water, 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.

8. The requirements of the Area Engineer shall be ascertained and adhered to in the development which shall include car park management and pedestrian crossing facilities. Full details shall be submitted to and agreed in writing with the planning authority prior to commencement of development.

**Reason:** In the interest of traffic safety.

9. Prior to the commencement of development the developer shall submit, and obtain written agreement of the planning authority to, a plan containing details of the management of waste (and, in particular, recyclable materials) within the development including the provision of facilities for the separation and the collection of the waste and, in particular, recyclable materials, and for the ongoing operation of these facilities.

**Reason:** To provide for appropriate management of waste and in particular, recyclable materials, in the interest of protecting the environment.

10. The construction of the development shall be managed in accordance with a Construction Management Plan which shall be submitted to, and agreed in writing with the planning authority prior to the commencement of development. This plan shall provide details of intended construction practice for the development, including hours of working, noise management measures and off-site disposal of construction/demolition waste.

**Reason:** In the interest of amenities and public safety.

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Kenneth Moloney  
Planning Inspector  
29<sup>th</sup> November 2016