



An
Bord
Pleanála

Inspector's Report ABP-300542-18

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| Development | Change of use from ground floor retail unit to amusement arcade |
| Location | Corrin Court, Cork Road/Duntahane Road Junction, Fermoy, County Cork |
| Planning Authority | Cork County Council |
| Planning Authority Reg. Ref. | 17/6507 |
| Applicant(s) | Fun Junction (Fermoy) Ltd. |
| Type of Application | Permission |
| Planning Authority Decision | Refuse |
| Type of Appeal | First Party |
| Appellant(s) | Fun Junction (Fermoy) Ltd. |
| Observer(s) | Joe & Mary Rose Ronan Avril Spillane & Aris Pyrovolakis Padraig Conway & Others St. Colman's College Maureen Condon Pat & Maureen Hurley Frances Kerrigan |

Coláiste an Chraoibhín
Loreto Secondary School
Noel McCarthy
Fermoy Anti-Arcade Group
St. Vincent de Paul
Seán Sherlock TD

Date of Site Inspection

27th March, 2018

Inspector

Kevin Moore

1.0 Site Location and Description

1.1. The site of the proposed development is located at the southern end of the town of Fermoy in County Cork. It is located on the west side of the junction of the Cork Road and Duntahane Road. There is a commercial complex at this junction which includes a pizza facility, hairdressers, a beauty therapy outlet, a barbers and fitness facility. The location for the proposed development consists of a vacant ground floor retail unit within a two-storey structure. Other existing developments in the immediate vicinity comprise a mix of commercial uses on and adjoining the junction, inclusive of three public houses, and residential and educational uses.

2.0 Proposed Development

- 2.1. The proposed development would comprise a change of use of an existing ground floor retail unit within a commercial complex to an amusement arcade. It would have a floor area of 275 square metres with an open plan layout and change booth. The development would also include an office and toilets. Signage changes would be made to the fascia on the building's frontages onto the Cork and Duntahane Roads. The proposed operating hours are 12.00 to 23.30.
- 2.2. Details submitted with the application included a letter from the owner of the property permitting the making of the application.

3.0 Planning Authority Decision

3.1. Decision

On 21st November 2017, Cork County Council decided to refuse permission for the development for two reasons relating to inadequate off-road parking and traffic hazard arising from pedestrian movement across a busy road.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Assistant Planner noted the site's planning history, development plan provisions, reports received and third party submissions made. It was noted that the existing property is surrounded by well-established residential development and it was considered that the main issue was to what extent residential amenities may be affected by the development. It was concluded that the development was out of keeping with the character of the residential development and would injure amenities by way of noise disturbance and general nuisance, creating a precedent for unwelcome activities. The Area Engineer's concerns were also noted. A refusal of permission for three reasons was recommended relating to inadequate parking, traffic hazard, and impacts by way of an intrusion into a residential area.

The A/Senior Executive Planner submitted that some of the matters raised by third parties were not planning-related issues and it was noted that the facility was intended for over 18s only, rendering it inaccessible to the vast majority of students in schools in the area. Reference was made to another proposal in Fermoy granted by the Board under Appeal Ref. PL 04.247254. It was submitted that, as the site is within a larger site indicated in the town plan as commercial, there is no land use objections to the proposed change of use to an amusement arcade. Noting plan provisions relating to gambling and gaming uses, it was considered that the policy objective resisting such uses at ground floor level along the main streets in the town centre would not apply in this instance as the site is outside of the town centre and is not along one of the main streets in the town. There was no objection to the change of use from retail to another commercial/non-retail use. Restriction of hours of operation and control of noise were considered reasonable in the interest of residential amenity. The concerns of the Area Engineer were noted. A refusal of permission for two reasons, based on the concerns of the Area Engineer, was recommended.

The A/Senior Planner concurred with the A/Senior Executive Planner's recommendation.

3.2.2. Other Technical Reports

The Area Engineer raised concerns about reliance on on-street parking and concerns about loitering outside the premises at a busy road intersection. Non-

engineering concerns were in relation to the suitability of the use at the location proposed.

3.3. **Prescribed Bodies**

Irish Water had no objection to the proposal.

3.4. **Third Party Observations**

34 third party submissions were submitted to the planning authority. The observer submissions made to the Board address the principal planning issues raised in these submissions. The applicant responded to a number of the issues raised in a submission to the planning authority received on 14th November 2017.

4.0 **Planning History**

I note from the Planner's report that there were two previous applications relating to the site, namely the conversion of the supermarket to three apartments (P.A. Ref. 17/6543) and an extension to the supermarket (stated to be P.A. 74/51174). Both were granted permission.

5.0 **Policy Context**

5.1. **Fermoy Development Plan 2009-2017**

Zoning

The site is zoned 'Commercial'. This allows for shopping, commercial, residential and community development that integrates with the existing character of the town.

Gambling and Gaming Uses

The Plan states that gambling and gaming uses will be resisted at ground floor level of buildings situated along the main streets of the town centre in the interests of preserving the ambience and character of the main streets of the centre. (Para. 3.3.16)

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of the appeal may be synthesised as follows:

Parking

- There is a significant reduction in the parking requirements as set out in the development plan for the proposed use from that of the current permitted use of the retail unit.
- Most users of the entertainment facility will be attending between 1900 and 2200 when adjoining retail premises will be closed.
- Ample street parking is also available in the area.
- The parking provision is more than sufficient and will not result in any additional safety risk to road users.

Traffic Safety

- The footfall for the proposed use would be significantly less than that of the current use.
- The users of the arcade would be longer term users than a convenience store and would, therefore, result in a significant decrease in pedestrian traffic.
- Peak times of the schools would not coincide with peak times of the proposed development and the premises would not be available for people under the age of 18.

Noise Impact

- A Noise Impact Assessment is attached to support the appeal relating to an amusement arcade and casino in Midleton, County Cork. This concludes that the level of noise from the arcade would not result in any negative impacts on adjoining units and the construction of the separating floor would ensure there would be no noise impact on the overhead apartment.

Loitering/Nuisance

- Details of the applicant's management policy for prevention of anti-social behaviour is attached as part of the appeal.
- Restriction of opening hours to less than that proposed (1200 to 2330) would greatly reduce the viability of the proposal. The proposal is in the vicinity of three public houses and a fast food outlet that have permitted opening hours more than that proposed.
- The premises will require a Gaming Licence that would be reviewed annually and would require An Garda Síochána to confirm that no issues have arisen.

6.2. Planning Authority Response

I have no record of any response to the appeal from the planning authority.

6.3. Observations

Observations were received from Joe & Mary Rose Ronan, Avril Spillane & Aris Pyrovolakis, Padraig Conway & Others, St. Colman's College, Maureen Condon, Pat & Maureen Hurley, Frances Kerrigan, Coláiste an Chraoibhín, Loreto Secondary School, Noel McCarthy, Fermoy Anti-Arcade Group, St. Vincent de Paul, and Seán Sherlock TD.

The principal issues of concern raised relate to:

- Siting within a residential area and proximity to educational facilities
- Parking and traffic impact
- Noise and nuisance
- Proposed opening hours
- Inadequate pedestrian infrastructure

7.0 Assessment

- 7.1 From the outset, it is my submission to the Board that the planning authority's reasons for refusal completely miss the relevant planning issues. The proposed development seeks a change of use from a retail outlet to an amusement arcade. There could be no rational conclusion drawn that such a change of use would produce a greater demand for off-street parking or generate any comparable pedestrian movement at this location over the established retail unit. It is obvious that the proposed development would generate no increased traffic hazard over the use of the premises as a shop. This use requires significantly less car parking when compared to a retail outlet and the use of such a proposed outlet would be focused on evening and night-time use when demand for parking in the area is significantly less than for that of a shop. Furthermore, any deficiencies in the existing road junction, footpaths, etc. are matters that require the local authority to address independently, whether the proposed unit would be in retail, amusement arcade, residential, or any other use. It simply cannot be sustained as a reasonable argument to refuse the proposed development on parking and/or pedestrian safety grounds. The planning authority's conclusions are at best misplaced. The reality is that the principal issue at hand relates to 'Land Use' and the use of the established retail unit as an amusement arcade at this location.
- 7.2 In considering any planned new development, a principal planning issue is how a proposal would impact on the amenities of an area and to determine if it is an appropriate use within its physical context. I first acknowledge that the proposed development is not located within the town centre of Fermoy. What is of particular note, when one considers the provisions of the Fermoy Development Plan in relation to gaming and gambling uses, is the reference to such facilities not being suited to street level usage within the main town centre streets for reasons of protecting the ambiance and character of these streets. I put it to the Board that it is relevant, in land use planning terms, that there is an express policy approach for such uses in the town centre that is exclusive to the town centre streets and that is not applicable to areas beyond the town centre. The Board will note that a town centre is a commercial core of any town, a place where one would anticipate there would be a demand for such facilities as that now proposed and where one would generally expect such facilities to be located. Yet, it is apparent that the planning authority

require such uses in Fermoy to not be at street level in order to protect the ambience and character of the town centre streets. Having an express policy approach on such a use in the commercial core, where one would ultimately be expecting to find such a use, would raise very serious concerns, in my opinion, about the siting of such a development beyond the commercial core of the town, particularly in residential areas, where one has an equally important need to protect the character of such areas, that includes their ambience and their amenities. Further to this policy approach as set out in the Plan, it is key to note that the approach relates solely to betting shops, gaming and gambling uses. Thus, it is acknowledged that such uses carry with them different societal and community impacts that are not foreseen by other uses such as public houses or takeaway outlets for example. I, therefore, would impress upon the Board that the proposed amusement arcade cannot readily be determined to be the same as any other type of commercial use such as a shop, hairdresser, public house, etc. and dismiss the community concerns arising. The impact of the proposed development on the residents of the area cannot be ignored on social and community grounds.

- 7.3 The zoned commercial facilities at this location are clearly neighbourhood facilities. These neighbourhood facilities are located centrally within an extensive residential area and the unit in which the proposed development would be sited forms an integral part of these commercial facilities. It is reasonable to determine that, as a *neighbourhood* facility, the existing commercial development serves the needs of the local community. One must ask: is the proposed use compatible with this and if not where is it best placed? The planning authority clearly does not want such facilities at street level within the town centre in order to protect the ambience and character of the town centre's main streets. Thus, the planning authority does not consider it desirable to have such a use at street level within the commercial core of the town. Yet, in terms of land use, the planning authority appears to be of the view that such a use is properly compatible at street level within a residential suburb of the town. I would pose the next relevant question: What of protecting the ambience and character of this residential area? This is compounded when one understands that this is a densely populated part of the town in which many of the town's schools are located.

7.4 It is my submission to the Board that the proposed development would comprise a use that is more of an evening / night-time commercial use that should more appropriately be located within a town centre area. It is not a residential neighbourhood use. I acknowledge the existence of public houses in the immediate vicinity of the appeal site but I question if one should be promoting uses of the nature proposed in this residential area and a use that appears to be opposed by substantial numbers of residents and local schools on the basis of sound social and community concerns, concerns that can be attributed to likely unwanted impacts on the residents of the community. The proposed use is regarded as unsuited at street level within the town centre. Surely it follows that it is, therefore, not a use suited to a residential area. It is clearly not a use that residents, and parents with school-going children in particular, would wish to have in this residential area as it will entice interest in gambling and it will facilitate and make easier access to gambling in this residential community. This is a spatial planning issue, an issue about where best to locate uses that are not wanted by the local community because of the potential negative influences they are likely to have on members of that community. I submit that there is no community benefit arising from permitting this use at this location.

7.5 Spatial planning is about promoting suitable uses in suitable locations. This use is not a desirable use in this residential area. One is not protecting the character and ambience of this suburban location and one is not protecting the amenities of residents of this community by allowing the proposed use to be established at this location. With regard to issues such as noise, nuisance, loitering, etc., one can decide that these are matters that can be addressed beyond the planning code by different authorities or that within the code they can be controlled by condition. In reality, this is a use that would likely generate unwanted nuisance within the local community and is best placed within the town centre.

In conclusion, I note that the site is zoned 'Commercial' in the Fermoy Development Plan and that this zoning allows for shopping, commercial, residential and community development that integrates with the existing character of the town. The proposed development clearly is a use which does not integrate with the existing character of this part of the town of Fermoy, namely it is not a category of development which sits comfortably within a residential area. Thus, it could not be seen to satisfactorily comply with the requirements of the zoning provisions.

8 Recommendation

8.1 I recommend that permission is refused for the following reasons and considerations.

9 Reasons and Considerations

The proposed development would be located within a neighbourhood centre sited within an established residential area and in close proximity to a range of schools serving the local community in the town of Fermoy. The site is zoned 'Commercial' in the current Fermoy Development Plan where shopping, commercial, residential and community development that integrates with the existing character of the town is promoted. It is considered that the proposed amusement centre use would be incompatible with the range of neighbourhood commercial uses appropriate to this residential area by virtue of the nature of the use itself and the potential negative impacts on the local community by way of facilitating such a use within a residential area and the nuisance that would result. The proposed development would, thereby, constitute a use which would not satisfactorily integrate with the existing character of the area, would conflict with the zoning provisions for this area, and would, therefore, be contrary to the proper planning and sustainable development of the area.

Kevin Moore
Senior Planning Inspector

17th April 2018