



An
Bord
Pleanála

Inspector's Report ABP-301062-18.

Development	Change of use of existing vacant retail unit at ground floor to recreation, sport amusement arcade with ancillary signage.
Location	8 Barrack Street, Johns Court, Kilkenny.
Planning Authority	Kilkenny County Council.
Planning Authority Reg. Ref.	17/783.
Applicant(s)	Seamus Morrissey.
Type of Application	Permission.
Planning Authority Decision	Refusal.
Type of Appeal	First Party V. Decision
Appellant(s)	Seamus Morrissey.
Observer(s)	None.
Date of Site Inspection	29 th May 2018.
Inspector	Susan McHugh.

1.0 Site Location and Description

- 1.1. The appeal site is located along Barrack Street within a mixed-use development known as St. John's Gate. St. John's Gate is located to the south and west of the R712 Castlecomer Road and to the north east of Kilkenny City Centre. The MacDonagh Junction Shopping Centre and apartments at the former railway station platform, are located approx. 300m to the south east at the Castlecomer New Road roundabout. James Stephen's Barracks are located approx. 100m to the north.
- 1.2. Landuses in the vicinity include 'The Arches' mixed commercial and residential development which is located along the Castlecomer Road to the east and backs onto the appeal site and surface car park to the rear.
- 1.3. Directly opposite the appeal site to the west is the entrance to the former Kilkenny Mart site which is now a construction site. There are a number of two storey commercial and residential buildings to the north and south along Barrack Street. Further to the south is John's Green from which Gas House Lane connects back to the Castlecomer New Road.
- 1.4. The unit which has a stated area of 108sqm is one of eight no. commercial units located at ground floor with residential units on two levels over. The unit was formerly in retail use with overhead signage still in place, and is currently unoccupied. Pedestrian access to the apartments overhead is located via a doorway and stairs adjacent to the unit to the south, adjoining which is the vehicular access to the surface car park serving the development. The rear elevation of the unit to the car park includes an access door and two windows. The commercial unit to the north is vacant.
- 1.5. Barrack street is a one-way street northbound with signalised junction on Castlecomer Road. Barrack Street is accessed from John's Green beneath a metal girder bridge of the former line from Kilkenny to Ballyragget. There is designated pay and display car parking located on alternate sides of Barrack Street.

2.0 Proposed Development

- 2.1. Permission is sought for the change of use of the existing vacant retail unit to recreation, sport amusement arcade with signage.

- 2.2. The amusement centre will include an entrance lobby, staff kiosk, three pool tables gaming consoles and toilet.
- 2.3. The proposed signage is to replicate the existing signage in materials and font size.
- 2.4. The application was accompanied by a letter of consent from the owner to the applicant to apply for planning permission.

3.0 **Planning Authority Decision**

3.1. **Decision**

The Planning Authority decided to **refuse** permission for one reason as follows;

1. The proposed change of use from a retail unit to a recreational / sport / amusement arcade will, by virtue of its incongruous nature and location amidst an established primarily residential apartment block, seriously injure the residential amenity of properties in the vicinity and would set an undesirable precedent for further such developments in the area. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

3.2. **Planning Authority Reports**

3.2.1. **Planning Report** (dated 29th January 2018)

Basis for the planning authority decision. Includes:

- The proposed development will be accessible for those over 21 and the arcade will be supervised at all times. Opening hours will be 10.00am to 12.00pm.
- The applicant is a member of the Leisure and Gaming Association of Ireland IATA and the operation will comply with all relevant rules and regulations.
- The premises will contain 3 no. pool tables and approx. 31 amusement machines.
- There will be no alcohol or cooked food served on the premises.

- A total of 5 no. staff will be employed through managerial, receptionist and cleaning staff.
- A car parking requirement calculated on the basis of 1 space per 20sqm retail use would require a total of 5 no. spaces. There is no specific car parking requirement for the proposed use and therefore is at the discretion of the planning authority. On the basis of that the development was working at full capacity 5 no. spaces would not be sufficient.
- Acknowledges the premises is currently vacant and reinstating it as a vibrant premises would be looked upon favourably.
- The main cause for concern is noise from the slot machines and persons using the premises. Notes that a retail or an office would not attract the same levels of noise/social gathering.
- Negative impact on the residential amenity of the apartment dwellers in the immediate vicinity especially those above the premises.

3.2.2. **Other Technical Reports**

Chief Fire Officer – No objection subject to a fire certificate being obtained.

3.3. **Prescribed Bodies**

Irish Water – No objection.

3.4. **Third Party Observations**

Five submissions were lodged from the following parties;

- Aodhan Breen, Dublin 18.
- Donal O'Dwyer, Johns Gate Apartments, Barrack Street.
- Mary Rafter, Johns Gate Apartments, Barrack Street on behalf of residents of Block 2.
- Mary O'Neill, St. Johns Junior School, Michael Street.

- Brian de Roiste and Maise Powell, St. Johns Senior School, Ballybough Street.

Issues raised can be summarised as follows;

- Potential for increase in anti-social behaviour, and addiction.
- Long opening hours required to acquire sufficient footfall.
- Inappropriate development for the area, and not in keeping with other properties within quiet residential street.
- Late night noise will interfere with residential amenity.
- Substantial increase in motor vehicles, and already a parking issue in the area.
- Question the location between St. Johns Junior School and Senior Schools both designated disadvantaged schools, negative impact for both parents and children attending these schools.

4.0 Planning History

4.1. *Parent Permission*

P.A. Reg. Ref. 04/990070: Permission **granted** 14/09/2004 for alterations to existing permission granted for mixed use development at Castlecomer Road/Barrack Street permitted under Reg. No. P55/03. The alterations comprise –

- Extension of Block A into site No. 8, provision of 11 No. apartments on 1st and 2nd floors (4 No. 1 bed, 6 No. 2 bed and 1 No. 3 bed),
- 2 No. commercial units at ground floor in a 3 storey block,
- Provision of open space (podium slab) and bin storage to serve Block A, relocation of ESB substation,
- Modifications to site and car parking layout to incorporate site No. 8 and all ancillary site works at 6-8 Barrack Street:
- Change of use of ground floor units 1 and 2 in block C from office to retail.
- Demolition of No. 8 Barrack Street, a habitable house.

4.2. *Site Opposite Appeal Site*

P.A. Reg. Ref. 15/76 ABP PL10.245155: Permission **granted** 16/11/2015 for demolition of a commercial building and construction of a 10-screen multiplex cinema including 85 car parking spaces and 55 bicycle parking spaces and all ancillary site development works. This permission is currently being implemented.

5.0 **Policy Context**

5.1. **Development Plan**

5.1.1. The **Kilkenny City and Environs Development Plan 2014-2020** refers.

5.1.2. **Chapter 3** Core Strategy and Zoning. The strategic aim is to implement the provisions of the Regional Planning Guidelines and to target the growth of Kilkenny City in a compact urban form to advance sustainable development.

The site is within the **General Business** Zoning, the objective of which is “to provide for general business.” Permissible uses include:

“Dwellings, retailing, retail warehousing, wholesale outlets, offices, public buildings or places of assembly, cultural or educational buildings, recreational buildings, halting sites, hotels, motels, guest houses, clubs, private garages, open spaces, public service installations, medical and related consultants, restaurants, public houses, coffee shops/ cafes, petrol stations, car parks, halls or discotheques, and other uses as permitted and open for consideration in residential zoning.”

5.1.3. **Chapter 4** refers to Economic Development.

Section 4.7.1.2 relates to Edge of Centre, and identifies the Kilkenny Mart site as providing the basis for the second phase expansion of the city centre.

5.1.4. **Chapter 7** refers to Recreation, Tourism and the Arts.

Section 7.2 relates to Provision of Public Open Space and Recreational Facilities. It states that ‘The Council will endeavour to make provision for a hierarchy of parks, open spaces and recreation areas within the County so that the population can participate in a wide range of active and passive recreational pursuits within easy reach of their homes and places of work.’

Objective: 7A states that ‘The Council shall seek the preservation and improvement of amenities and recreational facilities, and shall facilitate and provide for the extension of recreational amenities in the county where appropriate, subject to environmental and heritage considerations.’

Section 7.7.2 relates to Noise Generating Sports. It states that ‘in certain cases it may be considered appropriate to only grant a temporary permission to allow the impact of noise and any potential disturbance or nuisance to be more fully assessed’. It also states that ‘The Council will not normally permit development proposals for sport or recreational uses generating high levels of noise’ unless certain criteria are met including that ‘there will be no unacceptable disturbance to local residents’.

5.1.5. **Chapter 10** relates to Transport

Table 10.5 refers to car parking standards, with Shops requiring 1 space per 20sqm gross floor area.

5.2. Natural Heritage Designations

The following European sites are within a 15km radius of the appeal site.

Site Name	Designation	Site Code	Distance
River Nore	SPA	004233	300m W
River Barrow and River Nore	SAC	002162	300m W

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. The first party appeal against the decision to refuse permission by the planning authority has been lodged by Noel Murphy Architectural Services Ltd. acting on behalf of the applicant Seamus Morrissey.

6.1.2. It was accompanied by a photographic survey, a letter from estate agents DNG, and acoustic consultants Irwin Carr. In summary, it states:

- Disputes the assertion that the subject site is located in an established primarily residential block and that it is inappropriate for the proposed development, given the zoning objective for the site, previous permissions granted on Barrack Street and immediate area for restaurant and take away facilities (P.A. Reg. Ref. 13990064).
- Highlights the commercial nature of the area which includes Barrack Street, Castlecomer Road development, Gas House Lane development, New Cinema car park, Johns Green car park and Wolf Tone Street car park.
- Cites examples of permitted restaurants on Barrack Street/Gas House Lane, which remain open till 23.30pm and 22.30pm respectively. The former includes a take away, while the later includes an outdoor seating area, neither of which were deemed 'incongruous by nature' or 'seriously injurious to residential amenity'.
- *Car Parking* - In terms of off street car parking requirements, it is contended that most patrons would be local and therefore provide mostly for pedestrian traffic. There is sufficient parking with approx. 155no. car parking spaces located within 150m of the appeal site, and an additional 1,100 car parking spaces within 300m.
- *Hours of Operation* - Propose an earlier closing time of 23.30pm in line with permitted restaurant/takeaway uses. The clientele catered for are adults over 21years of age this eliminating any perception of anti-social behaviour.
- *Vacany Levels* - Confirmation from estate agent that the unit has been vacant since 2015, with 4 other vacant units on Barrack Street and 3 large vacant units on Castlecomer Road. Significant difficulty in finding tenants for the commercial units of Johns Gate and The Arches development with at least 4 unit vacant for in excess of 6 years despite being advertised on the open market.
- *Noise* - Propose to provide insulated sound panels to all walls and ceiling area and dispute the claim by the planning authority that noise from machines and people using the premises may be a problem as the machines referred to are in fact Windows based PC terminals and cabinets and cannot use an amplified sound system. Concerned that the planning authority may be

adopting a cautious approach. Retail unit No. 8 is contained within a reinforced concrete building, it has no proposed opening windows to the front and as such would result in negligible noise for residents. Would accept a condition setting a maximum decibel range and that works be carried out prior to commencement of business and certified by the Acoustics Consultant.

- *Planning Policy* - Building is a mixed-use building addressing a secondary commercial street where such uses are permissible and where the Councils vision includes the further appropriate intensification of commercial uses at such location whilst balancing the quality of life for residents.
- *Regeneration* - Castlecomer New Road and in general Barrack Street considered quite dilapidated with 50% of the retail units vacant in excess of 6 years. The proposed development would encourage retail regeneration and vitality. Compatible and complimentary to the new 10 screen cinema complex and proposed pedestrian plaza on lands immediately opposite the appeal site.

6.2. **Planning Authority Response**

No further comments.

6.3. **Observations**

None.

7.0 **Assessment**

7.1. The main issues in this appeal are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise. The issue of appropriate assessment also needs to be addressed. The issues can be dealt with under the following headings:

- Compliance with Development Plan Policy
- Impact on the Amenities of the Area

- Car Parking Provision
- Appropriate Assessment

7.2. Compliance with Development Plan Policy

- 7.2.1. The submitted appeal argues that the proposed amusement arcade is an appropriate use particularly given previous permissions granted on Barrack Street (including the 10-screen multiplex cinema directly opposite) and in the immediate area particularly for restaurant and take away facilities.
- 7.2.2. In planning terms, the principle question arises whether the proposed recreation, sport amusement arcade is consistent with the zoning objective of the appeal site.
- 7.2.3. Under the Kilkenny City and Environs Development Plan 2014-2020, the site is zoned General Business the objective is “*To provide for general development*”. Permissible uses include cultural and recreational buildings.
- 7.2.4. Section 7.2 of the Plan states that ‘*The Council will endeavour to make provision for recreation areas within the County so that the population can participate in a wide range of active and passive recreational pursuits within easy reach of their homes and places of work.*’
- 7.2.5. I would consider that the proposed development could be classified as a recreational use. It is considered that recreation, sport amusement arcade uses are permissible in principle within this zoning objective.
- 7.2.6. Land uses in the vicinity are mixed including residential development. I also note the nature of the other uses some of which are non-retail frontages. Considering the proposal on its own merits whilst clearly having due regard to its potential impact on the vitality and vibrancy of the edge of centre site, I do not consider that the proposed development is incongruous in nature.
- 7.2.7. I noted from my site inspection the location of a betting office at the junction between Barrack Street and the Castlecomer New Road approx. 100m to the north east of the appeal site. There is also a Bowling Alley located within the MacDonagh Junction Shopping Centre which includes ancillary gaming machines. Notwithstanding these, I do not consider that the proposed change of use would give rise to a proliferation of such uses in the area.

- 7.2.8. While I acknowledge that the proposed use does not comprise a retail development per se rather a leisure use, I concur with the applicant that the proposed change of use would complement the permitted cinema located opposite.
- 7.2.9. I note the appeal unit is currently vacant. Vacancy in the area is detailed by the applicant in the appeal and I can confirm from my site inspection that of the eight units along Barrack Street five appeared vacant.
- 7.2.10. Clearly vacancy or abandonment is entirely detrimental to the area. The proposal, to provide a use on the site, would in my view, contribute towards the ultimate goal of ensuring that the vibrancy and vitality of the immediate area is enhanced. On this basis, I consider that the proposed development is consistent with the adopted policy of the Council and is in accordance with the proper planning and sustainable development of the city.

7.3. Impact on the Amenities of the Area

- 7.3.1. I note the concerns raised in submissions received and by the planning authority that the proposed development would seriously injure the residential amenity of properties in the vicinity. While I do accept that the predominant land use in the area is residential, the appeal site itself and the residential units over are located within a mixed-use development and the area has recently undergone, and is currently undergoing, significant mixed use and commercial redevelopment.
- 7.3.2. I also note that the appeal site is not located in a protected structure or in an Architectural Conservation Area. I consider the scale of the unit of 108sqm to be relatively modest given its context.
- 7.3.3. It is proposed to operate the proposed development between the hours of 10.00am and 12.00pm. The applicant has outlined in their appeal the nature of existing uses in the vicinity and associated opening hours. They reference two restaurants on Barrack Street/Gas House Lane which remain open till 11.30pm and 10.30pm respectively. The applicant has proposed in the appeal an earlier closing time of 11.30pm in line with permitted restaurant/takeaway uses.
- 7.3.4. I noted on my site inspection that the betting office in the vicinity operates between the hours of 10.00am to 9.30pm Monday to Saturday and 10.30am to 6.00pm on

Sundays. I also noted that the Bowling Alley located within the MacDonagh Junction Shopping Centre operates between 11.00am to 10.00pm.

- 7.3.5. I consider that the opening hours of 10.00am to 11.30pm would be beyond many of the established uses at ground floor level. The concerns of the local residents, as outlined in their submissions, are reasonable.
- 7.3.6. The applicant states that it is proposed to provide insulated sound panels to all walls and ceiling areas. They also dispute the claim that noise from machines and people using the premises may be a problem, as the machines proposed are in fact Windows based PC terminals and cabinets and cannot use an amplified sound system. I also note that the unit has no proposed opening windows to the front.
- 7.3.7. I would recommend to the Board on the basis of the proximity of the proposed use to established residential properties and the lack of any genuine counter argument by the applicant, that the building be adequately sound proofed that the opening hours be restricted further. I would recommend a condition restricting that the opening hours to between 10am and 10pm in the interest of protecting residential amenities. I also recommend that a condition be attached setting a maximum decibel range and that appropriate works be carried out prior to commencement of business and agreed with the planning authority.
- 7.3.8. Section 7.7.2 of the Kilkenny City and Environs Development Plan 2014-2020 refers to Noise Generating Sports. It states that 'in certain cases it may be considered appropriate to only grant a temporary permission to allow the impact of noise and any potential disturbance or nuisance to be more fully assessed'. It also states that 'The Council will not normally permit development proposals for sport or recreational uses generating high levels of noise' unless certain criteria are met including that 'there will be no unacceptable disturbance to local residents'.
- 7.3.9. Section 7.5 of the Development Management Guidelines advise that it may be possible to use a temporary permission to assess the impact of a proposed development on established uses. In this instance, I consider it reasonable to grant a temporary permission given the nature of the proposed use, the proximity of the established residential amenities and the level of local opposition to the proposed development. I would recommend to the Board, should they favour granting permission, that a temporary permission for a period of three years be conditioned.

7.4. Car Parking Provision

- 7.4.1. There was formerly an established and permitted retail use on the appeal site. The applicants assert that most patrons would be local and that there is sufficient parking proximate to the site. I noted the existing designated pay and display parking areas along Barrack Street on the date of my site inspection, around midday, and that they were not all occupied.
- 7.4.2. I accept the case presented by the applicant with regard to the quantum of car parking provision in the immediate area. Overall, I would consider that the car parking provision is acceptable.

7.5. Appropriate Assessment

- 7.5.1. Having regard to the nature and scale of development within a fully service urban location, 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.

8.0 Recommendation

- 8.1. I recommend that permission be granted, subject to the conditions for the reasons and considerations set out below:

9.0 Reasons and Considerations

Having regard to the pattern of development in the area, it is considered that, subject to compliance with the conditions set out below, the proposed development would be in accordance with the provisions of the Kilkenny City and Environs Development Plan 2014-2020, would not seriously injure the amenities of the area or of property in the vicinity, and would be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be carried out, 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, completed and retained in accordance with the agreed particulars

Reason: In the interest of clarity.

2. This permission shall apply for a period of three years from the date of this order. The use of the building as an amusement arcade shall cease and the associated signage shall be removed unless, prior to the end of the period, planning permission shall have been granted for their retention for a further period.

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 prior to commencement of development.

Reason: In the interest of visual amenities.

4. Opening hours of the hereby permitted use shall be confined to between 1000 hours and 2200 hours.

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 the operational phase shall not exceed 55 dB(A) rated sound level at the nearest noise sensitive location between 1000 and 2200 hours, Monday to Saturday

inclusive, and shall not exceed 45 dB(A) at any other time. Details of works to achieve this and 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.

Susan McHugh
Planning Inspectorate

18th June 2018