



An
Bord
Pleanála

Inspector's Report ABP301616-18.

Development	Change of use of public house to amusement arcade with associated signage and alterations to front façade of protected structure.
Location	45 Lower Cork Street, Brigown, Michelstown, Co. Cork.
Planning Authority	Cork County Council.
Planning Authority Reg. Ref.	177400.
Applicant	Perks Promotions Michelstown Ltd.
Type of Application	Permission.
Planning Authority Decision	Grant.
Type of Appeal	Third Party
Appellant	Martin Lane.
Observer	Denis McGrath.
Date of Site Inspection	30 th July 2018.
Inspector	Mairead Kenny.

1.0 Site Location and Description

- 1.1. The appeal relates to a mid-terrace three storey town centre site in Michelstown. The ground floor front façade is presented with what has been identified as a modern shopfront and the upper floors retain the original decorative plasterwork details around the windows.
- 1.2. The premise was closed at the time of my inspection, which took place at mid-day on a weekday. The use of the premises as a public house would appear to be ongoing or recent. The adjacent uses would be described as restaurant / take-away, one being a Supermacs outlet, the other a Chinese restaurant called Blue Ocean, above which there is stated to be residential use.
- 1.3. I was able to enter the lands adjacent the rear of the site from a laneway which connects to Robert Street. I did not gain access to the rear of the site but I note from the application drawings that there is stated to be a gated paved area and an area covered by a canopy to the rear. This would appear to be what is referred to on the file details as a 'beer garden'. The southern site boundary is separated from the adjacent site by a stone wall above which is a fire escape. Sheds are located to the rear of the main body of the site and close to the entrance to Robert Street.
- 1.4. Robert Street is a residential street where houses all appear to be occupied and in good condition. There is on-street parking at that location which was almost fully occupied at the time of inspection. The site benefits from a separate connection to Robert Street which would provide for vehicular entrance. There are houses at either side of the laneway which connects to the rear of the commercial unit. The lane is shown to be in the applicant's ownership and part of the site defined for the purpose of this application.
- 1.5. Photographs of the site and surrounding area which were taken by me at the time of my inspection are attached.

2.0 Proposed Development

- 2.1. Permission is sought for a change of use from public house to amusement arcade. The works involved would be very limited in nature comprising only minor internal modifications and new signage at the fascia of the existing shopfront.
- 2.2. The applicant drawings show that the use would be restricted to ground floor, with no change to the upper floors, the use of which is not specified.

3.0 Planning Authority Decision

3.1. Decision

The planning authority decided to grant permission subject to conditions including a restriction on the hours of operation and noise control and monitoring.

The decision followed a request for additional information relating to noise impact assessment.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The planner's final report dated the 18th April 2018 includes the following comments:

- The hours of operation can be appropriately managed by condition.
- The noise assessment report indicates that the criteria of the daytime and night time periods set by the EPA can be met.
- The area engineer's second report in response to the further information request raised the issue of pedestrian safety. It is not considered reasonable to raise this new issue at this time.
- The senior executive engineer has indicated in his comments, dated 16th of April, 2018 that the proposed change of use will not in itself generate a traffic hazard or impact on traffic safety - there is on and off street parking available and a safe environment for pedestrians. There are no engineering issues why this application should be refused.

- Matters which are identified in the report of the conservation officer can be dealt with by way of condition.
- Having regard to the situation of the site in the town centre and mindful of the previous commercial use, the neighbouring uses and the siting of the site within a larger area to which the specific objective T – 01 applies. There are no land-use objections to a grant of permission, subject to compliance with conditions.
- A matter raised by one of the third party submissions which refers to the gaming and lotteries act is not a planning matter.
- Matters raised relating to gambling and addiction and similar including proximity to schools are not planning matters.
- A grant of permission is appropriate, subject to compliance with conditions.
- No contribution arises in this case.
- A temporary permission is not warranted as the proposed change of use will give rise to a new active use and will not give rise to a proliferation of such uses in the town centre and constitutes a land-use which is acceptable at this location.

3.2.2. Other Technical Reports

3.2.3. Environmental Officer Final Report

This refers to the noise impact assessment report received by way of further information. Conditions are recommended – no further objection.

3.2.4. Conservation Officer

The site is an Architectural Conservation Area. The only changes proposed relate to new signage and the proposal is acceptable in this regard, subject to conditions.

3.2.5. Engineers' reports

The Engineer's report dated 16th April notes the contents of previous reports from other officials including the Area Engineer. The introduction of a casino at this location would not impact on traffic safety as there is on and off street parking as well as adequate and suitably lit footpaths.

The Area Engineer's report dated 5th April recommends refusal on the basis that the development would generate pedestrian traffic across a busy road and would endanger public safety by reason of traffic hazard and obstruction of road users.

3.3. **Prescribed Bodies**

Irish Water – no objections.

3.4. **Third Party Observations**

A large number of third party observations were received by the planning authority and are on the appeal file. The issues raised in the submissions relate to:

- A prohibition on licencing under the Gaming and Lotteries Act in Michelstown since 1984
- Negative impact on local businesses
- Three bookies within 200m of site
- Oversupply of gambling houses
- Addictive nature of the activity
- Not needed or wanted.

Letters are also on file from the applicants and land owner, which responds to the above and notes that entry to under 18s will be prohibited. The development will bring business to the town and support petrol stations, shops and restaurants.

4.0 **Planning History**

There is no relevant planning history related to the site or the immediate area.

The Board has recently considered an appeal at Fermoy town for a similar use. A town centre policy pertaining to Fermoy town relates to gaming and gambling units, which facilities are considered not to be suitable to street level usage in order to protect the ambience and character of the streets. This policy was referenced in the Inspector's report, who also noted that it would be anticipated that such uses would be expected to be located in town centres. The subject site was located outside of

the town centre, in a neighbourhood centre and stated to be close to schools. Permission was refused for reason of its location in a neighbourhood centre, in an established residential area and close to schools, would constitute an incompatible land use which would have potentially negative impacts on the local community and conflict with the zoning objective.

5.0 Policy Context

5.1. Development Plan

Under the Cork County Development Plan 2014 Objective TCR 9-1 is to reduce town centre vacancy in core retail areas by 50% with half of the area being occupied by retail use and the remainder by non-retail use. Policy also provides for consideration of returning more peripheral parts of the town centre to residential areas and to promote use of upper floors for residential use. A car parking requirement for Commercial Leisure (amusement centres, play centres, etc) applies at a rate of 1 space per 50 sqm.

Objective TRC 2-1 includes to:

- maintain, strengthen and reinvent the role of town centres as dynamic attractive and inclusive environments and enhance their mixed use character by encouraging the retention and development of general office, retail, housing, office based industry, community, civic and entertainment uses
- support proposals for development involving evening and night-time commercial, retail or entertainment uses where it can be demonstrated that the development will enhance the character and function of the area.

Problems with town centre vacancy are set out in section 7.9 and objective TRC 9-1.

Under the Fermoy Municipal District Local Area Plan 2017 the site is in an area zoned MH-T-01 which objective covers the full extent of the retail core of the town. The site is also in an ACA.

The building is identified as a protected structure and is included in the National Inventory of Architectural Heritage for reason of the extent and quality of the render decoration to the upper floors.

5.2. **Natural Heritage Designations**

There are a number of Natura 2000 sites about 7km from the town centre.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

The appellant refers to the legal provisions relating to gaming and lotteries and the adoption in 1984 by the elected members of a motion to exclude relevant provisions from application in the town of Michelstown.

6.2. **Applicant Response**

None.

6.3. **Planning Authority Response**

None.

6.4. **Observations**

The observation submitted by the owner of the premises includes the following points.

- The appellant is not a legal entity, as far as my search is revealed.
- A number of comments made in the appeal are refuted, including in relation to people being paid to sign a petition which I never said.
- No attempts were made to use politicians influence in the planning process.
- A simple application was made for a change of use.
- The appeal is a delaying tactic.
- The appeal should be rejected as baseless and irrelevant.

6.5. **Further Responses**

None.

7.0 Assessment

7.1. In terms of the key planning issues in this case I consider that the significant issues fall under the following headings:

- Principle and planning policy
- Impact on amenities of the area
- Other issues.

Prior to considering the planning issues I note that the matter of the validity of the appeal has been raised. I consider that there is merit to the argument that the grounds of appeal relate to legal issues only, that being the nature of the licencing which would be available in the town of Michelstown and the stated adoption of a motion by the elected representatives on that matter. The Board may wish to consider whether this appeal should be deemed to be invalid and dismissed for that reason.

My assessment of the merits of the proposed development is presented for the Board's consideration in the event that the appeal is deemed to be valid.

7.2. Principle and Planning Policy

Having regard to the town centre location, the existing use of the site and the mix of uses which is available in the general vicinity I consider that the development proposed is acceptable in principle and in accordance with the planning policy for the town.

In support of the above conclusion I have taken the following into account:

- The commercial / entertainment use is acceptable in principle under the zoning objective.
- There is no specific policy which prohibits gaming in the development plan although I note the point made in the appeal relating to the motion by the elected representatives in 1984. It would not be appropriate to determine this planning application on the basis of matters related to future licencing under a separate code.

- There is no evidence of a dominance of similar uses in the vicinity and as such I do not consider that the proposed development would undermine the vitality or vibrancy of the commercial area. There is one bookmakers a few doors away and there are others within the general area but these are all small premises of a type common to town centre locations and the proposed development would not differ significantly. In the context of the strong commercial core I do not consider the presence of 3 no. bookmakers to constitute a dominance or proliferation of similar uses.
- The use is not dissimilar to use as a public house insofar as it would be restricted to adults and would be likely to be most intense in the evening hours. It is a use which is in my opinion most appropriately located in the town centre.
- From inspection I formed the view that there is a good mix of retail and commercial uses in the area and I do not consider that the proposed development would undermine the town centre function or detract from the vibrancy of the retail core.
- Finally, I consider it relevant to note the size of this facility. It is not of a scale which would give it prominence in the region, attract customers from long distances and dominate the use and character of the town centre.

7.3. I have outlined the basis of my consideration, which is in line with the conclusions drawn by the planning authority. I consider that the development is acceptable in principle and in keeping with the policy provisions.

7.4. **Impact on amenities of the area**

It is relevant to note that the town centre of Michelstown retains a strong residential community including in the side streets just off the commercial core. Having regard to the character of the area and the potential for adverse impacts arising from the proposed development, the planning authority requested a noise impact assessment and queried the hours of opening proposed.

The noise report is satisfactory in my opinion and I accept its conclusion which is that the standard daytime and night time noise levels can be adhered to. The planning

authority response included a condition which requires follow up monitoring of the development to demonstrate that the limits are met. I consider that a condition of that nature should be reiterated by the Board. I also note that the existing floor plans refer to an existing Beer Garden for which I found no evidence of any planning permission. In this regard I refer the Board to the attached information from which is taken from the Council's website. In the interest of residential amenity it would be appropriate to require that any use of the open space to the rear of the premises be regulated by a planning permission.

Regarding the opening hours I consider that it is appropriate that the hours be limited as per the decision of the planning authority, which required that business cease at 23.00 hours.

On the matter of a temporary permission and whether that would be appropriate or necessary, I concur with the planning authority and consider that this is not a reasonable or necessary condition in this case.

7.5. Other issues

The matters of traffic safety and parking are addressed in the report of the senior engineer of the planning authority and I agree with the conclusions therein. The development would be located in the town centre and at a location where the pedestrian environment is satisfactory. The availability of car parking in the evening hours would be likely to be adequate and based on the development plan requirements there is no difference in car parking demand. I conclude that the development is acceptable in terms of roads and traffic issues.

There will be no adverse impact on the character of the protected structure which is of particular interest for its upper floor render detailing. The only modification to the front façade is the installation of new fascia lettering. I recommend that the conditions of the planning authority decision relating to control on further advertising be upheld.

8.0 Recommendation

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

9.0 Reasons and Considerations

Having regard to the town centre zoning of the site in the current Fermoy Municipal District Local Area Plan 2017, the existing commercial nature of the building within which the change of use is proposed, and the pattern of development in the vicinity, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area or of property in the vicinity, would not result in an excessive concentration of similar-type uses and would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted on the 27th day of March 2018, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. (1) During the operational phase of the proposed development, the noise level from within the premises, measured at noise sensitive locations in the vicinity, shall not exceed -
 - (a) an $L_{Ar, 30min}$ of 55 dB(A) during the period 0800 to 2200 hours from Monday to Saturday (inclusive), and
 - (b) an $L_{Aeq, 15min}$ of 45 dB(A) at any other time.
- (2) All sound measurements shall be carried out in accordance with ISO Recommendations R 1996, "Assessment of Noise with Respect to Community Response" as amended by ISO Recommendations R 1996/1, 2 and 3, "Description and Measurement of Environmental Noise", as appropriate.
- (3) Within one month of the commencement of operation the applicant shall submit a noise monitoring survey to the planning authority. The report which

shall be prepared by a suitably qualified person and in accordance with the requirements of the planning authority shall confirm that the noise mitigation measures have been satisfactorily completed and that the development is in compliance with the limits specified in this condition.

Reason: To protect the amenities of properties in the vicinity of the site.

3. The opening hours of the amusement arcade shall be confined to the following period between 10.00 and 23.00 hours Monday to Sunday inclusive.

Reason: In the interest of orderly development.

4. Patrons visiting these premises shall do so by way of the main entrance at Lower Cork Street only. The Robert Street access to the site shall be used for emergency access/egress, delivery/collection, waste handling or staff access/egress purposes only. There shall be no use by patrons of any external area to the rear of the permitted amusement arcade as a smoking area or for any other purpose.

Reason: In the interest of residential amenity.

5. The opening hours of the amusement arcade shall be confined to the period between 10.00 and 23.00 hours Monday to Sunday inclusive.

Reason: In the interest of orderly development.

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

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

7. Prior to commencement of development, details of the signage, which shall be externally illuminated and of a high quality design, and of all proposed lighting shall be submitted to and agreed in writing with the planning authority.

Reason: In the interest of visual amenity.

8. 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 building 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.

9. Water supply and drainage arrangements shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

Mairead Kenny
Senior Planning Inspector

3rd September 2018