



An
Bord
Pleanála

Inspector's Report ABP – 304753 – 19.

Development	Material change of use from existing retail unit to amusement arcade including all associated site works.
Location	Unit 16 Block C, Castlemill Shopping Centre, Balbriggan, Co. Dublin.
Planning Authority	Fingal County Council.
Planning Authority Reg. Ref.	F19A/0163.
Applicant	SDB Leisure Ltd.
Type of Application	Planning Permission.
Planning Authority Decision	Grant with conditions.
Type of Appeal	2 No.Third Party.
Appellant(s)	1. Pauline Doherty. 2. Cllr. Tony Murphy.
Observer(s)	New Haven Residents Association.
Date of Site Inspection	10 th September, 2019.
Inspector	Patricia-Marie Young.

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1.0 Site Location and Description

1.1. The appeal site comprises of Unit 16, Block C, of the Castlemill Shopping Centre. It is a ground floor unit that has a stated 0.00884ha (88.4m²) area within one of the three separate blocks that the Castlemill shopping centre complex is comprised of. The ground floor units within this block like other blocks within this shopping complex contain a mixture of retail and commercial uses with the two floor levels over containing a number of apartment units with basement car parking level below. A set of photographs of the site and its setting is attached.

2.0 Proposed Development

2.1. Planning permission is sought for a development described as “*the material change of use from existing retail unit to amusement arcade including all associated site works.*” According to a memorandum accompanying this planning application it indicates that as part of the design it is proposed to apply a film to the full external glazing to ensure that there is no view of the internal amusement arcade; that an entrance lobby would be provided; and, the operational hours would be 10am to 10pm.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. The Planning Authority **granted** planning permission subject to 8 no. conditions including:

Condition No. 3: Restricts the hours of operation.

Condition No. 4(i): Restricts the level of noise.

Condition No. 4(ii): Prohibits the emissions of malodours, gas, dust, fumes or other deleterious materials. It also deals with the matter of noise vibrations.

Condition No. 5: Deals with window treatments.

Condition No. 6: Restricts signage and external structures.

Condition No. 7: Restricts music and other forms of amplified sound.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planning Officers report is the basis of the Planning Authority's decision.

3.2.2. Other Technical Reports

Transportation: No objection.

Environmental Health Officer: Additional information recommended.

3.3. Prescribed Bodies

3.3.1. None.

3.4. Third Party Observations

3.4.1. There are 26 no. submissions received by the Planning Authority all raising similar objections to the proposed development as those set out by the appellants in their grounds of appeal.

4.0 Planning History

4.1. Site

4.1.1. None relevant

4.2. In the vicinity

P.A. Reg. Ref. No. F09/0297: Planning permission was **refused** for a change of use from retail unit to an amusement arcade at Castlemill Shopping Centre for the following stated reasons:

"1. *The proposed development is located on lands zoned as Residential 1 'RS1' in the Fingal Development Plan 2005-2011 and at a location identified as a 'Local Centre' within the adopted North West Balbriggan Action Area Plan. Such local or neighbourhood centres are intended to provide a restricted range of services and functions so as to meet the needs of the local*

population. *The proposed use, an amusement arcade which would potentially attract a clientele notably beyond the local populace, is not considered to be an appropriate use for a local centre or a use that would complement the restricted range of services and functions that exist at such centres. Therefore, permitted the proposed development would not be in accordance with the proper planning and sustainable development of the area.*

2. *The proposed development, by virtue of the loss of a retail unit, the creation of dead street frontage and the cumulative impacts with other commercial operations with late opening hours, is considered to be injurious to the amenities of Castlemills Local Centre, to the residential amenity of the residences at the Centre and to depreciate the value of property in the vicinity of the application site.”*

5.0 Policy and Context

5.1. Local Planning Policy Provisions

- 5.1.1. The Fingal Development Plan, 2017 to 2023, is applicable. Under the said plan the site is zoned ‘LC’ to: *“protect, provide for and/or improve local centre facilities”* and the stated vision for such land is to: *“provide a mix of local community and commercial facilities for the existing and developing communities of the County. The aim is to ensure local centres contain a range of community, recreational and retail facilities, including medical/ dental surgeries and childcare facilities, at a scale to cater for both existing residential development and zoned undeveloped lands, as appropriate, at locations which minimise the need for use of the private car and encourage pedestrians, cyclists and the use of public transport. The development will strengthen local retail provision in accordance with the County Retail Strategy.”*
- 5.1.2. Chapter 3 of the Development Plan in relation to ‘Local Centres’ describes their function as: *“these are usually small retail areas that serve a residential area within walking distance of these centres. Other services such as childcare and medical facilities may also be available with a limited amount of office space”*.
- 5.1.3. Table 6.1 of the Development Plan sets out the retail hierarchy for the Planning Authorities administration area. In relation to Local Centres (Level 4 Centres) it

indicates that these “*should generally provide for one supermarket ranging in size from 1,000-2,500 sq m with a limited range of supporting shops (low order comparison), supporting services, community facilities or health clinics grouped together to create a focus for the local population. This level of centre should meet the everyday needs of the local population and surrounding catchment*”.

- 5.1.4. Chapter 6 of the Development Plan on the matter of non-retail uses states: “*associated with protecting and enhancing the vitality and viability of the County’s urban and rural centres, is addressing the occurrence of non-retail uses (such as amusement centres and arcades), fast food outlets, off licences and betting offices. An over-supply or dominance of these types of uses within the main streets, shopping centres and local centres of Fingal’s centres can have negative impacts on the amenities of these centres and their ability to perform their retailing functions in accordance with their classification in the Fingal Retail Hierarchy*”.

5.2. Natural Heritage Designations

- 5.2.1. None relevant.

5.3. Environmental Impact Assessment

- 5.3.1. Having regard to the serviced nature of the site, the quantum of development sought under this application, the distance between the site and sensitive receptors and the lack of any direct hydrological connectivity from the site to any nearby sensitive receptors, I consider that there is no real likelihood of significant effects on the environment arising from the proposed development. Therefore, the need for environmental impact assessment can be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. The grounds of appeal submitted by Pauline Doherty can be summarised as follows:

- The description of the use as an ‘amusement arcade’ is considered misleading and the proposed development, if permitted, would not result in a family friendly premises. It will be for over 18s only.
- This type of premises is usually late night and attracts anti-social behaviour.
- The opening hours of 10am to 10pm are not enforceable.
- The applicant operates another arcade premises in the area. In this regard reference is made to Units 10 and 11, The Plaza, Main Street Swords. It is contended that this operation was permitted under a 2-year grant of permission. This permission ran out in March of 2014, but these premises are still being run as an arcade in the absence of permission. Of additional concern this premises had a stated opening hours of 10am to 10pm yet are currently open 24-hours a day.
- Any late-night activity would have a negative impact on the residential amenity of the apartments at Castlemill.
- If permitted, this development would be injurious to the amenity of the shopping centre and would deter other businesses from operating there.
- There is no smoking area provided, so customers would have to use the footpaths outside. This would result in further nuisances for the apartments overhead.

6.1.2. The grounds of appeal submitted by Cllr. Tony Murphy can be summarised as follows:

- Balbriggan has the youngest population in Europe, the fastest growing population in Ireland and has a low rate of employment.
- The description of the use as amusement arcade is considered to be disingenuous as the applicant proposes an over 18s poker hall or fixed odds betting terminals.
- Neighbourhood centres were not intended for such uses and such uses would not support a good retail mix at this shopping centre nor would it attract customers to the retail offering at this location.

- The placement of film over the windows is against the principles of having a retail unit and it would not positively contribute to the streetscape's vitality.
- This use is not listed as a permitted use at this location.
- An arcade at this location would not be compliant with Table 6.1 of the Development Plan which sets out Fingal's Retail Hierarchy.
- A previous application for an amusement arcade at Castlemill Shopping Centre was refused (Note: P.A. Reg. Ref. No. F09A/0297).
- Concern is raised in terms of the adequacy of the public notices in describing the proposed development. It is considered that an amusement arcade paints a picture of children and teenagers playing on pinball machines, air hockey tables and the like. Yet the documentation clearly indicate that the premises is for over 18s with security and a lobby entrance to restrict access to customers only approved by management. It is considered that what is proposed is a private members club with gambling machines inside.
- Balbriggan is one of the few areas in Ireland where Part III of the Gaming & Lotteries Act, 1956, is operational. This puts it under significant pressure for such uses to be located here.
- If this was an appropriate use there would be no need for the applicant to hide it away with filmed glass, security staff at the door and with a controlled lobby.
- Reference is made to the Boards decision for appeal case ABP Ref. No. 300542. The comparisons between this application and the previous application does not go far enough to justify a grant of permission for the proposed development.
- Reference is made to quality of buildings as well as the contribution that strong and positive retailing experiences can make to the public realm.
- Castlemill Shopping Centre already has a bookmaker, an off-licence, 3 takeaways and a public house. The use proposed under this application, if permitted, would contribute to the imbalance of non-retail uses at this neighbourhood centre.
- The proposed development would contribute towards anti-social behaviour at this location.

- Reference is made to several appeal cases dealt with by the Board in relation to the change of use from retail to amusement arcade.

6.2. Applicant Response

6.2.1. The applicant's response can be summarised as follows:

- The subject property is an existing retail unit and previously operated as a butcher shop but has been vacant for a number of months.
- The Castlemill Shopping Centre is currently occupied by a diverse mix of retail and non-retail uses.
- The Planning Authority considered the principle of the proposed change of use acceptable and Amusement Arcades are not listed as a non-permissible use for 'LC' zoned land.
- The applicant is happy to comply fully with any conditions deemed appropriate by the Board.
- This development would not result in or cause any noise disturbance equal to or greater than the operation of many of the existing units within this shopping centre.
- The proposed development would not result in or worsen current levels of anti-social behaviour.
- It is not proposed to allow youths or anyone under the age of 18 to enter or use the premises.
- The Planning Authority's grant of permission include conditions to protect the amenities of the shopping centre.
- The appellants have concentrated their examination of similar cases dealt with by the Board on those which were refused. This is misleading and contradictory as the Board has also granted similar applications to the proposed development now on appeal to the Board.
- Each planning application must be judged on its own merits.
- This development is consistent with the Development Plan.

- The proposed development would not result in the over-concentration of similar uses.

6.3. Observers

6.3.1. An observation was received from the New Haven Residents association which can be summarised as follows:

- The granting of permission for the amusement arcade in a local centre is not compliant with the local planning policy provisions.
- This is not a suitable location for such a use.
- There is continuous anti-social behaviour in the Castlemill shopping centre and the proposed amusement arcade would only add to this.
- A similar change of use within this local centre was refused permission.
- The proposed development would have a serious impact on this community.

6.4. Planning Authority Response

6.4.1. The Planning Authority's response dated the 4th day of July, 2019, can be summarised as follows:

- The overall development is considered acceptable subject to the conditions attached to their grant of permission notification.
- The issues raised by the appellant have been addressed in their Planning Officer's report and a number of conditions were attached in respect of opening hours and noise levels.
- Any non-compliance with planning conditions would be a matter for the Planning Authority to investigate.
- In the event that the decision of the Planning Authority is upheld it is requested that a Section 48 condition be included as part of the determination.

6.4.2. The Planning Authority's response dated the 16th day of July, 2019, raised no new issues.

7.0 Assessment

7.1. Introduction

7.1.1. I consider the main issues in this appeal case to be:

- Adequacy of the Public Notices and the Documentation Submitted
- Principle of the Proposed Development
- Impact on the Amenity of the Area
- Anti-social behaviour
- Devaluation

7.1.2. The matter of appropriate assessment also requires examination.

7.2. Adequacy of the Public Notices and the Documentation Submitted

7.2.1. The appellants raise concerns that the public notices do not provide an adequate description of the development sought under this application. In addition, the appellants further question that the proposed development is not an amusement arcade in the traditional form as it is indicated that access to the proposed use is for over 18s; is by invitation of management; and, is a use that requires the presence of security at its entrance. It is considered that the proposed amusement arcade would be a place for gambling like the other establishment run by the applicant in the Balbriggan area which contains slot machines and other gambling/gaming devices.

7.2.2. Having examined the documentation on file and having regard to the stated proposed development as set out in the public notices which simply states “*the material change of use from existing retail unit to amusement arcade including all associated site works*” I share the appellants concerns in this regard. Whilst I am cognisant that the Planning and Development Regulations, 2001, as amended, defines ‘amusement arcades’ as “*premises used for playing of gaming machines, video games or other amusement machines*” the facts that the premises would be over 18s; has proposed opening hours from 10am to 10pm; is a use that requires the presence of security at the door; and, whose custom is dependent on the invitation/consent of the management. In this instance the type of use that is proposed is one that is highly probable to be associated with gambling and casino type activities.

- 7.2.3. Outside of the area to which the proposed change of use relates, the design of the proposal to facilitate the proposed change of use which includes internal alterations to accommodate the provision of a lobby entrance and film applied to the principal window which addresses the courtyard area of the Castlemill Shopping Centre (Note: it is unclear whether this would also be provided on the sizeable window on the eastern elevation of the unit) there is no further clarity on the actual scope of the type of amusement arcade activities proposed.
- 7.2.4. In this case I consider that the description of the proposed development as set out in the public notices lacks clarity in terms of setting out the nature and extent of the actual use of the development sought at this location. I also consider that the accompanying documentation and the applicant's response to the grounds of appeal do not provide sufficient clarity either on the nature and extent of the type of amusement arcade operations and the extent of monetary gaming that would be provided on foot of any grant of permission.
- 7.2.5. In this case I consider that to grant permission in these circumstances would not be appropriate as it would be contrary to the provisions of the Planning and Development Regulations, 2001, as amended, as it does not properly set out a description of the nature and extent of the development as provided for under Article 17 of the said Regulations.

7.3. Principle of the Proposed Development

- 7.3.1. In relation to the zoning, the appeal site is located on land zoned 'LC' which has a stated objective to "*protect, provide for and/or improve local centre facilities*" and a stated vision "*provide a mix of local community and commercial facilities for the existing and developing communities of the County. The aim is to ensure local centres contain a range of community, recreational and retail facilities, including medical/ dental surgeries and childcare facilities, at a scale to cater for both existing residential development and zoned undeveloped lands, as appropriate, at locations which minimise the need for use of the private car and encourage pedestrians, cyclists and the use of public transport. The development will strengthen local retail provision in accordance with the County Retail Strategy*".
- 7.3.2. Under this land use zoning "*amusement arcade*" is a use which is neither listed as being 'permitted in principle' or 'not permitted'.

- 7.3.3. In such cases the Development Plan indicates that these uses will be assessed in terms of their contribution towards the achievement of the zoning objective and vision as well as against their compliance and consistency with the policies and objectives of the Development Plan.
- 7.3.4. Having regard to the zoning of the appeal site setting whilst the site itself forms part of 3 blocks that are zoned 'LC' with these three blocks making up the Castlemill Shopping Centre complex which has a design and layout that could be described as a courtyard, Block C and the unit itself, fronts onto Barons Hall Park road and its junction with Hall Rise.
- 7.3.5. In relation to the retail hierarchy set out in the Development Plan 'Local Centres (Level 4 Centres)' zoned land like that at Castlemill Shopping Centre is considered to provide the following function; i.e. they *"should generally provide for one supermarket ranging in size from 1,000-2,500 sq m with a limited range of supporting shops (low order comparison), supporting services, community facilities or health clinics grouped together to create a focus for the local population. This level of centre should meet the everyday needs of the local population and surrounding catchment"*.
- 7.3.6. This is further supported by Development Plan Objective ED45 which states that the Planning Authority in relation to developments in such areas shall ensure that the *"development of Level 4 Centres as sustainable, vibrant and prosperous Small Towns, Village Centres and Local Centres performing at a level within the Fingal Retail Hierarchy to meet the retailing needs of immediate local populations and catchment populations"*; Objective ED47 which states that the Planning Authority shall: *"ensure that the Level 4 Small Towns, Village Centres and Local Centres have a retail offer that is sufficient in terms of scale, type, and range without adversely impacting on or diverting trade from the higher order retailing locations"*; and, Objective PM66 which states that the Planning Authority shall: *"ensure provision of accessible, adequate and diverse community facilities and services in new and established areas to provide for the well-being of residents"*. The latter Development Plan objective I consider relevant considering that Castlemill Shopping Centre, the residential developments that predominate its environs and the community infrastructure also in its immediate environs are all recent additions with them spanning over circa the last two decades.

- 7.3.7. While I acknowledge that the proposed 'amusement arcade' would add to the diversity of land uses within this area in terms of meeting the retailing needs of the immediate population as well as catchment populations and not diminishing the retail potential of this local centre I am not convinced that this proposed change of use of a retail unit is a type of development that reconciles itself in a manner that is consistent with Objective ED47 and Objective ED45 of the Development Plan. Further, I am also not convinced that the proposed change of use is consistent with Objective PM66 which seeks to ensure that facilities and services in new and established areas provide for the well-being of residents not only through the actual type of use proposed but also how the proposed use would interact with its streetscape setting requiring security to control and limit access alongside film on retail unit windows to obscure views into the interior space of the unit itself.
- 7.3.8. In addition to this, having regard to the land use zoning of the site's setting i.e. the area to the north, north-east, east and south-east consists of land zoned 'RS' with the zoning objective for 'RS' zoned land "*to provide for residential development and protect and improve residential amenity*". This also includes the streetscape scene of the retail unit which has frontage onto Barton Hall Park and the intersection with Hall Rise. The streetscape on the eastern side of Barton Hall Park and its intersection with Hall Rise is not only zoned 'RS' it is visually characterised by the predominance of the residential units it contains. In addition to this Block C's frontage onto Barton Hall Park and its intersection with Hall Rise is dominated by entrances serving its apartment units, including but not limited to the apartment units above the subject unit, and this is what activates the streetscape scene at ground level with the upper floors of Block C being evidently predominated by residential use as appreciated from this public domain. I would therefore consider that the character of the Barton Hall Park and Hall Rise streetscape is principally informed by the predominant land use of its buildings which is residential.
- 7.3.9. In addition, to this the land to north and west of the Castlemill Shopping Centre are similarly residentially zoned in terms of land use with the land to the immediate south zoned 'C1' with the land to the south west and further south zoned 'RA'.
- 7.3.10. In relation to 'C1' zoned land, this land use zoning relates to the provision of 'Community Infrastructure' and has a stated land use objective to "*provide for and protect civic, religious, community, education, health care and social infrastructure*"

whereas the 'RA' land use objective seeks to *"provide for new residential communities subject to the provision of the necessary social and physical infrastructure"*.

7.3.11. Having regard to the setting of the subject site as set out above I consider that the site occupies land that can only be described as transitional in its land use character.

7.3.12. Section 11.4 of the Development Plan on the matter of transitional zoned land, indicates *"it is important to avoid abrupt transitions in scale and use in the boundary areas of adjoining land use zones"*. It further states that *"in dealing with development proposals in these contiguous transitional zonal areas, it is necessary to avoid developments that would be detrimental to the amenities of the more environmentally sensitive zone"*. It provides an example where zones abutting residential areas or residential development within predominantly mixed-use zones, particular attention must be paid to the use and scale of development proposals to protect the amenities of residential property.

7.3.13. Objective Z04 of the Development Plan in a manner consistent with Section 11.4 of the Development Plan states that the Planning Authority shall *"have regard to development in adjoining zones, in particular more environmentally sensitive zones, in assessing development proposals for lands in the vicinity of zoning boundaries"*.

7.3.14. Having regard to the land use zoning of the site and its setting I raise a concern that to permit the proposed change of use would be inconsistent with local planning policy objectives for both land zoned 'LC' but also in terms of the settings transitional zoning character. This consideration is primarily because of the following factors:

- 1) The proposed development would result in a further erosion of the limited retail space available within the Castlemill Shopping Centre complex. Objective ED53 of the Development Plan seeks to control the provision of non-retail uses, especially at ground floor level at local centres to ensure that injury is not caused to the amenities of its streets through the loss of retail opportunities. To permit the proposed development would therefore give rise to loss of retail opportunities at this local centre;
- 2) The proposed development lacks an appropriate level of synergy with the majority of existing and established retail through to other commercial operations present within this shopping complex and it would reinforce the

quantum of non-retail uses present within this local centre which includes betting office, public house through to takeaway. This would be inconsistent with Objective ED54 of the Development Plan which states that the Planning Authority shall seek to: *“prevent an over-supply or dominance of fast food outlets, takeaways, off licences, and betting offices in the main streets of towns and villages, shopping centres and local centres to ensure that injury is not caused to the amenities of these streets and centres through the loss of retail opportunities”*.

- 3) There is a lack of synergy between the proposed change of use and the local population as well as catchment population of this local centre. It is a type of land use that would attract custom beyond this.
- 4) The proposed hours of operation are significantly different to the hours of operational use which typifies the majority of businesses within this shopping centre complex. The hours of operation extend significantly beyond normally expected hours of retail business operations i.e. ceasing operations at 10pm with the likelihood of after this time staff doing whatever is required to close the operations and to get the premises ready for opening at 10am the next day.
- 5) The dead street frontage proposed does little to enliven the streetscape scene in a positive manner.
- 6) The proposed requirement for security to strictly control those who can enter and use the services that would be offered at the proposed amusement arcade is at odds with other business operations within this shopping centre complex. This would result in this unit having a different presence within the shopping centre's streetscape scene which arguably could reduce the attractiveness, vitality and vibrancy of the shopping centre's streetscape scene as a place.
- 7) This shopping centre complex already contains a Betting Office. The proposed development would add to the quantum of gambling uses already present in what is a limited in nature and extent local centre. This would not be consistent with the Development Plan objectives of seeking to provide

facilities and service that not only provide for the local population but also for the well-being of the new and established areas residents.

- 8) The proposed change of use and the way the proposed amusement arcade would be operated, its proposed hours of operation, has the potential to give rise to nuisance to residential units above it and within its setting in a manner that is not consistent with Objective Z04 of the Development Plan which seeks to protect the more environmentally sensitive zones.

7.3.15. Based on the above, the proposed change of use of a retail unit to an amusement arcade would consolidate the pre-dominance of non-retail uses in this local centre, it would give rise to a further loss of retail opportunities, it would erode the primary retail use of the Castlemill Shopping Centre Complex, it would be a type of use that would fail to synergise in a positive manner with the Development Plan zoning objective for 'LC' and transitional in character zoned areas, and it would be a use that would fail to contribute in a positive manner to the streetscape scene of Castlemill Shopping Centre and its immediate setting. Thus, in turn diminishing the attractiveness of this local centre for existing and future business operators as well as those who live and visit the Castlemill shopping centre mixed retail and residential complex.

7.4. Impact on the Amenity of the Area

7.4.1. I do not consider that the proposed development would give rise to a positive contribution to its streetscape setting, in particular, as appreciated from the public domain of the Castlemill Shopping Centre.

7.4.2. I also observed that the subject unit contains no physical entrance onto Barons Hall Park road, but it does include an area of glazing. There are no details contained in the documentation submitted with this application as to how this area of glazing would be treated if permission were granted.

7.4.3. In my view it is not likely that it would be treated in a manner dissimilar from the frontage facing onto the streetscape scene of the Castlemill Shopping Centre's inner courtyard setting, i.e. film to block views into the subject unit. Notwithstanding, I did observe that there is raised ground floor level addressing Barons Hall Park road with nose to kerb car parking at road level and there is little activation present in terms of Block's C elevation address onto this road with it being predominated by entrances

serving the apartment units it contains and window openings which provide light and air to the apartment units itself.

- 7.4.4. Moreover, I also observed that the previous use placed signage on the interior of this window that would have been visible from the public domain and due to the large dimensions of this window alongside its fitted transparent glass it is highly probable that when previously in use there would have been views from the public domain into this unit. Arguably this would have enlivened and added vitality to not only the raised ground floor level pedestrian access but also as appreciated from the public domain.
- 7.4.5. The lack of an entrance onto Baron's Hall Park from the subject retail unit would in my view lessen the amenity impact of the proposed change of use for residents both accessing apartment Block C and residents of properties along Baron Hall's Park.
- 7.4.6. In terms of potential noise nuisance this would effectively help attenuate noise generated from inside the subject unit but also it is unlikely that customers of the proposed amusement arcade would congregate to the rear of the subject unit. As such I do not consider that the noise and amenity impact would be as for residential spaces above this elevation when compared to the potential residential amenity impact directly above the principal façade of the subject unit. I also observed that the immediate upper floor levels over the principal façade that addresses the courtyard are served by windows and balconies. These units would in my view be adversely affected by the proposed amusement arcade that proposes to operate significantly beyond the hours of business one would normally expect of a retail unit, i.e. until 10am.
- 7.4.7. There is also a possibility that customers of the amusement arcade may congregate in its immediate vicinity which together with other non-retail uses that operate beyond normally business hours within the Castlemill Shopping Centre, i.e. takeaway, betting office and public house could add to the cumulative ambient noise levels within this courtyard setting.
- 7.4.8. I am not therefore convinced that conditions alone would be sufficient to protect the residential amenities of properties in the immediate vicinity of this unit and I am not convinced that the hours of operation Monday to Sunday from 10am to 10pm affords any significant rest bite for occupants of these properties.

7.4.9. In terms of other nuisances such as litter, amplified music and vibrations these are matters that I acknowledge can be dealt with by way of appropriate conditions.

7.5. Anti-social Behaviour

7.5.1. The appellants raise serious concerns that the proposed development would add to anti-social behaviour in this area, which they contend is already a serious cause of concern in this area.

7.5.2. I am cognisant that the courtyard setting of Castlemill Shopping Centre can accommodate vehicles and pedestrians unrestricted 24 hours 7 days a week and I observed that the majority of units within it close around normal business hours of 5 to 6pm. This would inevitably result in a lesser footfall of people and vehicles in the evening and night time hours. Thus, there is an argument that by providing a use that extends into the evening and into the early night time would increase the level of passive surveillance in this area. Alongside, the addition of security at the entrance to the proposed amusement arcade could potentially act as a deterrent to anti-social behaviour.

7.5.3. There is little evidence in my view that would support that the proposed change of use has the potential to add to the level of anti-social behaviour in its locality or otherwise and I am cognisant that the matter of policing such behavioural issues in the public realm falls directly on the Garda Siochana.

7.6. Devaluation of Properties.

7.6.1. Concern is raised that the proposed amusement arcade, if permitted, has the potential to devalue properties in its vicinity, with concern expressed by residential owners within the immediate vicinity of the proposed development. While I consider that this is a concern that is of merit, particularly for the owners of residential properties above the subject unit and for business owners on either side of it, this concern has not been supported by any substantive evidence of the same.

7.7. Appropriate Assessment

7.7.1. Having regard to the nature and scale of the proposed development and to the nature of the receiving environment, namely an urban and fully serviced location, I consider that 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 the proposed development is **refused** for the reasons and considerations set out below.

9.0 Reasons and Considerations

1. The proposed development would be contrary to the provisions of the Planning and Development Regulations 2001 as amended, as it does not properly set out a description of the nature and extent of the development as provided for in Article 17 of the said Regulations and would, therefore, be contrary to the proper planning and sustainable development of the area.
2. The proposed development would be located within a local centre which is dominated by retail units at ground floor level and residential at upper floor levels in a setting that in zoning terms has a transitional character that includes large recently established residential areas as well as land within its immediate vicinity that is zoned for community infrastructure as well as new residential development.

In local centres the current Fingal Development Plan, 2017 to 2023, seeks to protect, provide for and/or improve local centre facilities and as part of the vision for local centres, the said Development Plan, also seeks that developments will strengthen its local retail provision.

In addition to this the said Development Plan in relation to development proposals in transitional zonal areas indicates that it is necessary to avoid developments that would be detrimental to the amenities of the more environmentally sensitive zone.

It is considered that the proposed change of use of a retail unit to an amusement arcade would be incompatible with the function of this local centre by way of its diminishing the retail space and retail opportunities alongside add to the

cumulative proliferation of non-retail uses present and would result in the loss of active street frontage.

It is further considered that the proposed development would do little to add to the attractiveness, the vitality and vibrancy of the streetscape scene it would form part of and it would be a use that would not satisfactorily integrate in a positive manner with the quantum of uses within this shopping centre complex which includes its upper floor levels that are predominantly residential in their use.

The proposed development would seriously injure the visual and residential amenities of the area, it would conflict with the zoning provisions for this area as well as Objectives ED45; Objective ED47; Objective RD54; Objective PM66; and, Objective Z04 of the said Development Plan and it would be contrary to the proper planning and sustainable development of the area.

Patricia-Marie Young

Planning Inspector - 12th September, 2019.