



An
Bord
Pleanála

Inspector's Report ABP-308108-20

Development	Change of use of bookmakers to amusement arcade with associated signage
Location	29A Lower Main Street, Letterkenny, County Donegal
Planning Authority	Donegal County Council
Planning Authority Reg. Ref.	20/50860
Applicant(s)	Conor Carey
Type of Application	Permission
Planning Authority Decision	Refuse
Type of Appeal	First-Party
Appellant(s)	Conor Carey
Observer(s)	Gerard Convie
Date of Site Inspection	10 th November 2020
Inspector	Colm McLoughlin

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1.0 Site Location and Description

1.1. The appeal site is located in the town centre of Letterkenny in County Donegal, fronting onto Fortwell access road, close to the junction with Lower Main Street. It contains a two-storey building, including first-floor residential use and the subject vacant split-level unit at ground floor, which previously accommodated a bookmaker's office. The immediate two to four-storey buildings along Fortwell and Lower Main Street generally accommodate retail and commercial uses at street level with residences above. The footpath abutting the site to the front rises steeply towards residential apartments and townhouses in the Fortwell Court cul de sac to the west.

2.0 Proposed Development

2.1. The proposed development comprises the following:

- change of use of a former bookmaker's office with a stated gross floor area of approximately 89sq.m to an amusement arcade with public and staff areas, as well as the installation of an associated external fascia sign.

2.2. In addition to the standard details, the planning application was accompanied by a letter of consent to allow the making of the planning application.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. The planning authority decided to refuse to grant permission for the proposed development for four reasons, which can be summarised as follows:

Reason 1 in combination with the adjoining permitted amusement arcade, proposals would detract from the town centre and would be contrary to the Development Plan objective to create a vibrant and mixed-use town centre;

Reason 2 in combination with the adjoining permitted amusement arcade, proposals would fail to create a high-quality sustainable and attractive town centre and would result in a concentration of lower-order uses, which would discourage trade and business in this area;

Reason 3 proposed use would be incompatible with neighbouring residential uses;

Reason 4 proposals would set an undesirable precedent contrary to the delivery of an emerging Local Area Plan and Masterplan for this area.

3.2. Planning Authority Reports

3.2.1. Planning Report

The report of the Planning Officer (August 2020) noted the following:

- while the principle of an amusement arcade in a designated town centre may be acceptable as part of a mix of suitable uses, further matters need to be considered regarding the appropriateness of the location, including the existing and permitted neighbouring uses;
- to permit another amusement arcade adjacent to the amusement arcade recently permitted by the Board under ABP ref. 306432-20, which had been initially refused by the planning authority (reg. ref. 19/51690), would set an undesirable precedent and would be contrary to various town centre objectives, including proposals to regenerate the town centre;
- proposals would result in an over-concentration of lower-order uses in this part of the town centre, which has struggled to attract higher-order retail uses;
- the arcade equipment would be visible from the front street area and would detract from the historic character of the area, close to a prominent street corner;
- proposals would fail to attract additional footfall to the area;
- due to their impacts on residential amenity, the proliferation of amusement arcades in other towns within the County is controlled by planning objectives;
- arcade machine noise and evening activity would impact on neighbouring residential amenities;
- precedent for refusing this permission is provided for by the Board's refusal of planning permission for an amusement centre in Fermoy, County Cork (ABP

ref. 300542-18), due to the impact of the development on the established residential character of the area and the proximity of the site to schools;

- there is ample car parking available for the development within the town centre.

3.2.2. Other Technical Reports

- Area Engineer – concerns raised regarding patron profile and the absence of a footpath;
- Chief Fire Officer – no objection, subject to a condition;
- Building Control – advice notes provided.

3.3. Prescribed Bodies

3.3.1. None consulted.

3.4. Third-Party Observations

3.4.1. During consideration of the application by the planning authority, one observation was received from a neighbouring business operator along Lower Main Street. The issues raised are similar to those raised in an observation to the grounds of appeal and they are collectively summarised under the heading 'Observations' below.

4.0 Planning History

4.1. Appeal Site

4.1.1. I am not aware of any recent planning applications relating to the appeal site.

4.2. Surrounding Sites

4.2.1. There is an extensive recent planning history associated with neighbouring sites, including the following case relating to an adjacent ground-floor premises to the southeast of the appeal site on the corner with Lower Main Street:

- ABP ref. 306432-20 (reg. ref. 19/51690) – permission was granted by the Board in March 2020 for a change of use of a ground-floor office measuring approximately 195sq.m to an amusement arcade, along with an external fascia sign.

5.0 Policy & Context

5.1. Donegal County Development Plan

- 5.1.1. Statutory planning policies and objectives for Letterkenny are contained within the Donegal County Development Plan 2018-2024. It is understood that a Local Area Plan is to be prepared for the town. The appeal site has a land-use zoning 'town centre', where it is a stated objective 'to sustain and strengthen the core of Letterkenny as a centre of commercial, retail, cultural and community life.' Planning policies and objectives for the town centre area are set out under Section 12.3 within Part C of the Development Plan and these policies and objectives aim to develop a consolidated, vibrant, accessible, multifunctional and high-quality urban environment in the town centre. Appendix 3 to the Development Plan outlines specific 'Development Guidelines and Technical Standards' for commercial development, including car parking standards.

5.2. National Heritage Guidelines

- 5.2.1. The closest European sites to the appeal site are the Lough Swilly Special Area of Conservation (SAC) and the Lough Swilly Special Protection Area (SPA), which are located approximately 1.5km to the east of the appeal site.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. The principal grounds of the first-party appeal, which was accompanied by various photographs of the site and the immediate area, can be summarised as follows:
- the planning authority's decision fails to adequately reflect that the unit is currently a vacant bookmaker's office, which is a critical factor in the assessment of the proposals;
 - considering the permission for an adjacent amusement arcade onto Lower Main Street (ABP ref. 306432-20), which is a more prominent main street within the town centre, this demonstrates that the subject site is even more suitable for the proposed use;

- the nearest similar use, a bookmaker's premises that had previously occupied the subject site, is located at 15 Lower Main Street and an overconcentration of such uses would not arise in this area arising from the subject proposed development;
- in December 2018 the Board granted permission for an amusement arcade in Mitchelstown, County Cork (under ABP ref. 301616-18), even though there were three bookmakers' premises located nearby. When comparing the subject proposals and context with this Mitchelstown case, this demonstrates that an over proliferation of this type of use would not arise;
- proposals would have no material impact on the town centre and if permission was withheld the unit would be likely to remain vacant;
- the proposed location of the amusement arcade off Main Street within the urban core and with a bookmakers having previously occupied the site, is the optimum location for this use;
- as recognised in the Inspector's report for the recently permitted adjacent amusement arcade (ABP ref. 306432-20), the proposed use is unlikely to generate significant additional noise that would impact on local residences, and conditions can be attached to control same;
- the proposed use would not create an additional car parking requirement in the town centre and supports the objectives of the Development Plan.

6.2. Planning Authority Response

6.2.1. In response to the grounds of appeal, the planning authority's response primarily reaffirms matters raised within their planning report for the application, while also referring to the following:

- the Regional Spatial and Economic Strategy (RSES) for the Northern and Western Regional Assembly includes an objective, RPO 3.7.26, to deliver a Masterplan addressing urban regeneration and linkages between the Main Street area and the new retail park area of Letterkenny town centre, with Lower Main Street identified as an opportunity site;

- while targeting vacancies is a factor in addressing town centre regeneration, occupation with suitable uses is of critical importance;
- a regeneration strategy is being prepared for this area and it is vital that only suitable uses are allowed into the area;
- to allow for two amusement arcades in the town centre, on adjacent sites and in close proximity to a bookmakers and a charity shop would be prejudicial to the regeneration objectives for Lower Main Street.

6.3. Observations

6.3.1. An observation was received from a neighbouring business operator along Lower Main Street and in conjunction with their third-party observation to the planning authority, this can be collectively summarised as follows:

- while there is no bar on amusement arcades in this location, the subject proposals would not fulfil a host of town centre objectives. Furthermore, the proposed development would undermine the existing town centre uses, would not improve the vibrancy of the town centre and would not add to the attractiveness of the area;
- the proposed recreational type of use is not appropriate in this location, as it would not provide an appropriate mix of uses or a sustainable use of the premises and it would undermine the planning authority's proposals for Lower Main Street;
- considering the recent Board decision (ABP ref. 306432-20), there is a chance that more amusement arcades would locate in the area if this development was permitted;
- proposals would be detrimental to neighbouring uses, including residences, with concerns regarding additional noise and the potential for anti-social behaviour;
- a temporary permission of two years should only be allowed for and the opening hours should be restricted in the event of a grant of permission;

- the application should have been declared invalid, as the development description omitted details, including licencing requirements and lighting proposals.

7.0 Assessment

7.1. Introduction

- 7.1.1. I consider the substantive planning issue arising from the grounds of appeal and in assessing the proposed development relates to compliance with land-use policy and the overall appropriateness of the use with respect to the site context.

7.2. Land Use Policy & Site Context

- 7.2.1. The reasons for refusal assert that the subject premises would not be a suitable location for an amusement arcade consequent to the Board's permission for an amusement arcade at an adjacent premises (ABP ref. 306432-20) and also based on town centre enhancement and regeneration strategies, impacts on neighbouring residential uses and the precedent that a permission would set for further similar development. The grounds of appeal assert that the proposed use would provide for a very similar use to that which had previously occupied the premises and that the subject premises is appropriate for the proposed amusement arcade, given its location off Lower Main Street and as an overconcentration of such uses would not arise.
- 7.2.2. The subject premises is currently vacant and while the application form site address refers to Lower Main Street, which is a primary shopping street within Letterkenny town centre, the subject premises fronts directly onto an access road off Lower Main Street and serving residences in the Fortwell area. The amusement arcade recently permitted by the Board (under ABP ref. 306432-20) for the ground-floor premises on the corner of this street with Lower Main Street was not in operation at the time of my site visit. There are no existing amusement arcades in the immediate vicinity and as noted by parties to the appeal, a bookmaker's premises is situated 55m to the north of the appeal site, while there are public houses in the area, including McGinley's on the opposite side of the street to the subject premises.

- 7.2.3. The appeal site has a land-use zoning 'town centre' within the Donegal County Development Plan 2018-2024, where it is a stated objective 'to sustain and strengthen the core of Letterkenny as a centre of commercial, retail, cultural and community life.' While the Development Plan does not include a land-use zoning matrix comprising a list of specific uses that are permitted, not permitted or open for consideration in land-use zones, within policy LK-TC-P-19 of the Development Plan certain uses that would not be permitted in the town centre are identified, but this policy does not include amusement arcades. The planning authority refer to specific policy controlling amusement arcades in the town of Bundoran, but this does not have specific relevance to the Letterkenny town centre area. In permitting the amusement arcade in an adjacent premises it was considered that the nature of the use would be appropriate within the town centre zoning having regard to its commercial nature. Both the planning authority and the observer accept that the principle of an amusement arcade in a designated town centre as part of a mix of uses is not precluded in principle by the Development Plan. I am satisfied that the proposed use in this area would not be restricted by land-use zoning objectives contained within the Development Plan and consideration of how the proposals would impact on the amenities of an area and provide for an appropriate use within the subject context is required.
- 7.2.4. The reasons for refusal state that the proposed use would detract from the achievement of a vibrant town centre and would impede the regeneration of the area. In addition, the planning authority assert that the proposed use would not encourage additional trade or footfall to the area and the use would be incompatible with the creation of a high-quality town centre environment. The Development Plan includes various policies aimed at strengthening and supporting the town centre, including policy LK-TC-P-4 addressing mixed-use development in the traditional town centre and supporting a mix of uses within this area. The subject premises is currently vacant and similar services to those which would be offered in the amusement arcade would have historically operated from the bookmaker's premises on site.
- 7.2.5. It is generally accepted that evening and night-time commercial uses such as amusement arcades are more appropriately located within town centres, as opposed to established residential areas. I recognise that there are residential uses in the

area, including the upper-floor to the subject building, and the Fortwell area to the west is recognised in the Development Plan as an important residential area within the town centre, although it is not identified as an 'established residential area' in the Plan. Notwithstanding this, the subject stretch of street is a secondary commercial street off a primary commercial street in the town centre and is defined by a mix of uses. I recognise that the planning authority has referred to a Board decision in July 2018 to refuse an amusement centre in Fermoy, County Cork (under ABP-300542-18), however, I note that the subject proposal differs in that the Fermoy site was not located within the town centre, but was within an established residential area and close to schools. I am not aware of any schools in the immediate area. With the attachment of appropriate conditions restricting noise levels and opening hours similar to the permitted adjacent amusement arcade, I am satisfied that the proposed development would not be detrimental to neighbouring residential amenities by way of nuisance. Furthermore, the premises would require a Gaming Licence, which are reviewed annually and would require An Garda Síochána to confirm that issues have not arisen.

7.2.6. While I note the planning authority's aspirations to regenerate the Lower Main Street area, there would appear to be a reasonable mix of town centre ground-floor uses in the immediate area, including retailers, commercial offices, retail services, cafés, public houses, a bookmakers and financial services, as well as vacant premises. I am satisfied that the operation of two amusement arcades in adjacent premises of modest floor areas (89sq.m and 195sq.m), which I note to have been proposed by the same applicant, would not reasonably result in a proliferation of such uses within this part of the town centre or within the town centre overall. Addressing vacancy should be a primary objective in creating a vibrant town centre and the proposed use on a street located off a primary retail street, replacing a similar type of use, would not unreasonably conflict with the other town centre uses. Any further proposals for amusement arcades can be assessed on their own merits and the prevailing planning policy.

7.2.7. In conclusion, I am satisfied that the proposed change of use of a vacant bookmaker's premises to an amusement arcade, would not be contrary to the proper planning and sustainable development of the area, given the character of the immediate and surrounding area, the modest scale of the development, the previous

use of the premises and the prevailing planning policy provisions, as outlined above. Furthermore, the proposed development would not have an adverse impact on the character and mix of uses in the area, would not lead to an overconcentration of such uses in this area and would not impede the planning authority's stated intentions to regenerate the Lower Main Street area. Accordingly, planning permission for the proposed development should not be refused for this reason.

8.0 Appropriate Assessment

8.1. Having regard to the existing development on site, the nature of the proposed development, the location of the site in a serviced urban area and the separation distance to the nearest European site, no Appropriate Assessment issues arise, and it is not considered that the development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

9.0 Recommendation

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

10.0 Reasons and Considerations

1. Having regard to the zoning objectives for the site, the provisions of the Donegal County Development Plan 2018-2024, to the pattern of development in the area and to the town centre location of the site, it is considered that, subject to compliance with the conditions set out below, the proposed development would not adversely impact on the character or mix of uses in the town centre, would not seriously injure the amenities of the area or of property in the vicinity and would not impede the vision to deliver a high-quality vibrant town centre. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

11.0 Conditions

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

Reason: In the interest of clarity.

2. Details of materials, colours and textures of all the signage to the proposed development, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.

3. The shopfront shall be in accordance with the following requirements: -
 - a) All external lights shall be adequately hooded and aligned to as to prevent direct spillage of light onto the public road;
 - b) No L.E.D., neon or similar lights shall be erected on the subject premises;
 - c) No awnings, canopies or projecting signs or other signs shall be erected on the premises without a prior grant of planning permission;
 - d) No digital displays or similar illuminated streaming media shall be erected or displayed on the subject premises.

Reason: In the interests of visual amenity and public safety.

4. No advertisement or advertisement structure (other than those shown on the drawings submitted with the application) shall be erected or displayed on the building (or within the curtilage of the site) in such a manner as to be visible from outside the building, unless authorised by a further grant of planning permission.

Reason: In the interest of visual amenity.

5. The sound levels from any loudspeaker announcements, music or other material projected in or from the premises shall be controlled so as to ensure the sound is not audible in adjoining premises or at two metres from the frontage.

Reason: In the interests of the amenities of the area.

6. The amusement arcade hereby permitted shall not be open to the public for use between 23:00 hours and 09:30 hours on any day except allowing for the following opening hours:

Friday 09:30 hours until 00:30 hours Saturday;

Saturday 09:30 hours until 00:30 hours Sunday.

Reason: In the interest of residential amenity.

7. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the

planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

Colm McLoughlin
Planning Inspector

21st December 2020