



An  
Bord  
Pleanála

## Inspector's Report

### ABP-308499-20

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<b>Development</b>	Change of use of retail shop unit to amusement and entertainment centre.
<b>Location</b>	Duke Street, Castlebar, Co. Mayo
<b>Planning Authority</b>	Mayo County Council
<b>Planning Authority Reg. Ref.</b>	20/547
<b>Applicant(s)</b>	Sean Coleman
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse
<b>Type of Appeal</b>	Third Party vs. Refusal
<b>Appellant(s)</b>	Sean Coleman
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	13 <sup>th</sup> January 2021
<b>Inspector</b>	Stephen Ward

## **1.0 Site Location and Description**

- 1.1. The site is located off Duke Street in the town centre of Castlebar and fronts onto a small courtyard that is used as a service access for surrounding commercial properties. The wider surrounding area forms the commercial core of the town and mainly consists of retail and related commercial uses.
- 1.2. The existing building is 3-storey to the front of the site and has a raised single-level return to the rear lying over a lower ground floor store in separate ownership. The existing vacant retail unit at ground floor level has a stated area of 129 sq.m. The front façade of the unit does not have an attached shopfront. There is a former apartment layout at first floor level and an existing apartment at second floor level.

## **2.0 Proposed Development**

- 2.1 Permission is sought for the change of use of the existing retail shop unit to amusement and entertainment centre with associated site works. The drawings submitted with the application relate to the existing arrangements only and there is no indication of proposed alterations to the building.
- 2.2. The application documents state that the proposal would be a professionally managed 'Amusement & Entertainment Centre', where a range of electronic games would be provided for customers. It is stated that there would be a 'strict over 18s policy in place at the venue'.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

By order dated 29<sup>th</sup> September 2020, Mayo County Council (MCC) issued notification of the decision to refuse permission. In summary, the decision outlines that the development would be contrary to the proper planning and sustainable development of the area for the following reasons:

- 1) The proposed use would contravene policy RP1 of the Development Plan for Castlebar, which seeks to resist the conversion of the ground floor of premises on the principal shopping streets to non-retail uses.

- 2) The proposed development does not comply with Zoning Matrix of the Development Plan for Castlebar, where gaming arcades are normally not permitted.
- 3) The proposed development would seriously injure the amenity and value of existing residential properties in the vicinity due to increased noise disturbance and general nuisance.

## 3.2. Planning Authority Reports

### 3.2.1. Planning Reports

The planner's report can be summarised as follows:

- The games referenced by the applicant involve gambling / slot machines, which is in line with gaming arcade use.
- In accordance with the Development Plan for Castlebar, gaming arcade use is not normally permitted in town centre locations, or any location for that matter.
- A refusal of permission is recommended in accordance with the reasons outlined in the MCC notification of decision.

### 3.2.2. Other Technical Reports

- Executive Architect: The report questions the nature of the use and concludes that it is in line with a gaming arcade use. It is recommended to refuse permission in line with development plan policy.

## 3.3. Submissions / Observations

None.

## 4.0 Planning History

### 4.1 The following applies to the appeal site:

**P.A. Ref P19/265:** Permission granted (17<sup>th</sup> September 2019) for alterations to existing retail/apartment building to provide a reduced ground floor retail unit and two apartments within the existing building together with elevational changes including

signage, other minor alterations, and all associated site works and connection into existing services.

**P.A. Ref P.D. 03/903114:** Permission granted (11<sup>th</sup> February 2004) for first floor extension to rear of existing premises.

- 4.2 I also note that there is a current appeal before the Board (ABP Ref. 307948-20) relating to a building on Ellison Street, located c. 30 metres east of the subject site. This appeal relates to the decision of MCC to refuse permission for the subdivision of an existing vacant retail unit and change of use from retail to Betting Office.

## 5.0 Policy Context

### 5.1. Development Plan

- 5.1.1. The lifetime of the Castlebar & Environs Development Plan 2008 – 2014 was automatically extended in accordance with the provisions of section 11A of the Planning and Development Act 2000 (as amended) and it remains the operative Development Plan for the area.
- 5.1.2. The subject site is zoned as 'Town Centre' in the plan (Land Use Zoning Objective E), the objective for which is to *'enhance the special physical and social character of the existing town centre and to provide for new and improved ancillary services'*. Section 15.3 further outlines that that major consideration will be given to the protection of the character of the existing town centre, which includes many land uses ranging from shops, offices, houses to public open space and some industry. The objective governing the area delineated as town centre means that this land use mix will continue.
- 5.1.3. An 'amusement and entertainment centre' is not specifically listed in the 'use class' column of the Development Plan 'zoning matrix'. However, it is noted that a 'gaming arcade' is listed as 'not normally permitted' in the 'town centre' zone.
- 5.1.4. Chapter 11 of the development plan specifically relates to retailing and outlines the priority of the Council to maintain the town centre as the principle shopping area for the town and the wider region. Policy RP1 states that it is the policy of the Council to resist the conversion of the ground floor premises of the principal shopping streets to non-retail uses.

- 5.1.5. Chapter 12 deals with 'The Town Centre' and section 12.5 outlines that entertainment / leisure uses attract people in large numbers and maintain the town centre's position as the focal point for community life. Policy TCP2 seeks to facilitate and promote the town centre as the most appropriate location for such uses.
- 5.1.6. Section 12.11 states that the Council will encourage proposals, including change of use proposals, which add social vibrancy to the town centre. Such proposals may include entertainment venues. Policy TP4 seeks to encourage the reuse of under-utilised sites and buildings within the plan area.
- 5.1.7. In terms of 'Development Management', section 14.11.7 deals with 'Bars / Night-clubs / Disco bars / Amusement Centres' and states that the Council will prevent an excessive concentration of such uses in any area and seek to ensure that the intensity and design of such proposals protects the character of the area.

## 5.2. **Natural Heritage Designations**

There are no designated sites in close proximity to the appeal site.

## 6.0 **The Appeal**

### 6.1. **Grounds of Appeal**

The MCC decision to refuse permission has been appealed by the applicant. In summary, the grounds of appeal are as follows:

- The proposed use is suitable given the location of the site on a 'side street' with very few premises close by.
- Notwithstanding policy RP1 of the Development Plan, the planning authority permitted the 2019 application for change of use of the ground floor retail unit to residential use.
- There were no observations or objections to the application.
- The proposed entertainment facility would add to the mixed function of the town centre in accordance with Development Plan policies.

- There is one existing amusement centre, located on the opposite side of the town centre, and the proposed development would not lead to a dominance of such uses in the area.
- The proposed development would cause less disruption / nuisance than a public house use, which is common in the town centre.
- The only residential properties in the area are those above the subject unit, which are unoccupied and are unlikely to be occupied in the immediate future. In the event that they become occupied, soundproofing will be considered where required. There are no other properties or amenities that would be affected by noise disturbance.
- The proposal would eliminate a unit which has been vacant for 10 years due to lack of interest and would increase footfall in the town centre, which includes 16 vacant commercial premises on nearby streets.
- In a recent case (ABP Ref. 306432-20) An Bord Pleanála ordered the grant of permission for a similar development.
- There is no correlation between the type of games included in the proposed development and the internet games referenced by MCC. The proposed development would operate as an Amusement and Entertainment centre in accordance with the regulations of the Gaming and Lotteries Act 1956.

## 6.2. **Planning Authority Response**

None.

## 6.3. **Observations**

None.

## 7.0 **Assessment**

- 7.1 Having regard to the documentation submitted in connection with the application and the appeal, and having inspected the site, I consider that the main issues for assessment are as follows:

- Legislative background;
- The principle of the development; and
- The amenity of the area.

## 7.2 Legislative Background

7.2.1. The application describes the development as an ‘amusement and entertainment centre’, which is not a specifically recognised ‘use class’ in planning legislation. Meanwhile, the planning authority has deemed the proposal to be a ‘gaming arcade’ involving ‘gambling/slot machines’. The appeal contends that this is based on an inaccurate comparison to ‘online casino websites’ and that the development would operate as an ‘Amusement and Entertainment centre in accordance with the Gaming and Lotteries Act 1956’. In order to clarify the question about the nature of the application, I believe it is appropriate to firstly examine the relevant aspects of gaming and planning legislation.

7.2.2. The 1956 Act was most recently amended by the Gaming and Lotteries (Amendment) Act 2019, which is widely seen as an interim measure pending the implementation of the Government’s commitment to the modernisation of the licensing and regulatory environment for gambling, including the appointment of a new independent gambling regulator.

7.2.3. I note that ‘gaming’ is defined as ‘*playing a game (whether of skill or chance or partly of skill and partly of chance) for stakes hazarded by the players*’, and it is my understanding that a ‘gaming permit’ is required for events like pool tournaments, card games, pub quizzes etc. However, ‘gaming machines’ are treated differently and require a ‘gaming licence’. The Act makes it an offence to accept a gaming machine stake from a person under the age of 18 years, which is relevant given that the applicant proposes an over-18s policy.

7.2.4. Part III of the Act provides for the process of the licensing of ‘Amusement Halls and Funfairs’, which involves both gaming machines and premises. The process requires a local authority resolution to permit gaming under licence in respect of the whole or a specified part of its administrative area. If such a resolution is in place, a person may apply to the relevant District Court for a certificate authorising the issue of a licence permitting gaming at an amusement hall or funfair. The Court shall have

regard to a range of issues in considering the application, including the number of licences already in force in the locality. The Court may set out conditions limiting the hours of operation and the types of gaming permitted. Once a certificate has been issued by the District Court, the applicant may apply to the Revenue Commissioners for a licence for both gaming machines and premises.

7.2.5. Having regard to the legislative terms outlined above, and to the details submitted with the application, including the description of the proposed 'electronic games' and the application of an over-18 age policy, I am satisfied that the proposed development would involve the operation of 'gaming machines', and that the licensable premises for the operation of such machines would include an 'amusement hall'. Furthermore, I note that section 15(2) of the Act states that a certificate shall not be granted for an 'amusement hall' unless forms of entertainment, other than gaming, are also provided. Accordingly, within the terms of gaming legislation, I consider that the description of the proposed development as an 'amusement and entertainment centre' would be an accurate description of a premises licenced for 'gaming machine' use.

7.2.6. In terms of planning legislation, it should be noted that the Planning and Development Regulations 2001 (as amended) defines an 'amusement arcade' as '*premises used for the playing of gaming machines, video games or other amusement machines*'. This definition clearly includes the use of 'gaming machines', and while the current application has been described as an 'amusement and entertainment centre' rather than an 'amusement arcade', I am satisfied that the two descriptions are consistent. In this regard, I consider that the important point is the mutual reference to the use of the premises for 'amusement' purposes. Whether the host unit is described as an 'arcade' or a 'centre' is not of critical importance.

7.2.7. Having regard to the above provisions relating to both gaming and planning legislation, I am satisfied that the proposed development would relate to the use of the premises for the playing of 'gaming machines' and other forms of related entertainment, and that this has been adequately described in the planning application as an 'amusement and entertainment centre'.



### 7.3 The principle of the development

- 7.3.1 As outlined in section 5 of this report, I acknowledge the retail policies of the Development Plan, including RP1 which aims to '*resist the conversion of the ground floor of premises on the principal shopping streets to non-retail uses*'. While I accept that this policy outlines a general aversion to the cumulative loss of such units on town centre streets, I do not consider that it should amount to an outright prohibition for each and every unit. Such a strict interpretation of the policy would be unreasonable, particularly in light of the existing multitude of town centre uses and the content of the Development Plan which consistently highlights the value of the mix of uses in the town centre. Section 15.3 of the Plan outlines that the 'town centre' zoning objective aims to protect the character of the area, including the retention of its mix of many uses.
- 7.3.2 Furthermore, section 12.5 of the Plan, relating to 'entertainment and leisure' uses, clearly outlines that the town centre should be the primary venue for such uses, and this is supported by policy TCP2. While amusement centres / arcades are not specifically mentioned, this section does refer to evening / night-time activities including pubs, nightclubs, restaurants, cafes, theatres and cinemas. I consider that the proposed development is of a similar entertainment / leisure nature and, accordingly, policy TCP2 aims to facilitate, where appropriate, such uses within the town centre.
- 7.3.3 I note that the 'zoning matrix' of the Plan specifically refers to 'gaming arcade' use and states that it is 'not normally permitted' within the 'town centre' zone. Consistent with my views on the similarities between the terms 'amusement and entertainment centre' and 'amusement arcade', as outlined in section 7.2.6 of this report, I am satisfied that the term 'gaming arcade' can also be accurately used to describe the proposed development.
- 7.3.4 The Development Plan outlines that the Zoning Matrix illustrates the acceptability or unacceptability of various uses for each of the zoning objectives. It is intended to provide guidance to potential developers and not to supplant the normal planning process. It states that individual applications are a matter for the Planning Authority to decide and the final decision rests with them, taking into consideration the merits of individual cases and circumstances that may be relevant at a specific time or at a

specific location. A use that is indicated as 'not normally permitted', is one which will not be entertained by the Local Authority except in exceptional circumstances.

- 7.3.5 Accordingly, I acknowledge that the zoning matrix deems the proposed use to be 'not normally permitted' in the town centre, except in exceptional circumstances. Indeed, the zoning matrix applies a 'blanket' approach towards 'gaming arcades' whereby they are classified as 'not normally permitted' in all zones. The reason for this approach is not explicitly stated in the Plan, although I note that section 14.11.7 outlines concerns in relation to an excessive concentration of uses like 'amusement centres', including issues relating to amenity, noise, litter, parking and facade design.
- 7.3.6 On balance, I consider that it would be unreasonable to entirely prohibit the conversion of retail units at ground floor level to non-retail use, and that the proposed development constitutes an entertainment / leisure use which, despite the indications in the zoning matrix, should be facilitated within the town centre, where appropriate. The proposed development would facilitate the occupation of a long-standing vacant unit and would be in accordance with Development Plan policy TP4 which aims to encourage the reuse of under-utilised buildings. Ultimately, a reduction in vacancy rates should be the primary aim in the path towards achieving a vibrant town centre and I note that section 12.11 of the Plan acknowledges that entertainment venues can add to social vibrancy. And while the aim of retaining active retail use is certainly well-placed, I believe that the reuse of the unit as currently proposed must be considered as a viable alternative, particularly having regard to the challenged nature of the retail sector in recent years and the apparent levels of vacancy in Castlebar.
- 7.3.7 I am conscious of the stance of the 'zoning matrix' on 'gaming arcades', as well as wider societal concerns about the impacts of gambling. However, I consider that these concerns are largely beyond the scope of the planning process and I refer the Board to the various other regulatory measures outlined in section 7.2 of this report. Otherwise, I consider that the proposed development constitutes an entertainment / leisure use that would have similar characteristics to other common uses such as a public house, betting office etc. The town centre is the appropriate location for such uses and, accordingly, I have no objection in principle to the proposed development, subject to further assessment of impacts on the amenity of the area.

## 7.4 The amenity of the area

7.4.1 The subject building fronts onto the north-western side of a small courtyard that is used as a service access to the adjoining retail properties to the southeast and southwest, both of which incorporate roller doors fronting onto the space. The subject unit, therefore, represents the only realistic opportunity to provide some level of active frontage onto this otherwise 'dead' space. The long-standing vacancy of the unit would raise concerns about the impact on the vibrancy and vitality of the area. Furthermore, the low level of passive surveillance of this concealed space raises concern about anti-social behaviour and security in the town centre. The proposal would provide increased footfall to the area, particularly in the evening and night-time, which I would consider to be an improvement in terms of the vibrancy and amenity of the area.

7.4.2 In terms of visual amenity, it should again be noted that the building is quite concealed from the street and does not have a prominent visual impact on the surrounding public realm. The drawings submitted relate to existing arrangements only and there is no indication of alterations to the building façade to include a shopfront, signage or otherwise. The public notices and fees submitted with the application make no reference to signage / advertising and it can only be taken that, other than exempted development, any such works would need to be the subject of a separate application. This matter can be adequately clarified by condition.

7.4.3 The subject building appears to be bound on all neighbouring sides by commercial properties. The nearest residential property appears to be the existing apartment on the second-floor level of this building. The first-floor level, a former apartment, is restricted to storage use in accordance with condition no. 13 of its permission (P.A. ref. no. PD 03/903114) and would provide a suitable buffer between the proposed development and the second-floor apartment. I note that refusal reason no. 3 of the MCC decision related to the impact of noise and nuisance on existing residential properties but the local authority reports did not identify any specific properties of concern. I consider that the development would be adequately separated from residential properties and would not detract from amenity by reason of noise or nuisance. The proposed use would be consistent with the established mix of commercial uses in the area and accordingly I have no objections in this regard.

7.4.4 I note that Development Plan guidance set out in section 14.11.7 seeks to prevent an excessive concentration of night-time uses in a particular area, including bars / night-clubs / disco bars / amusement centres. In this regard, I note that 'The Irish House Bar' is located on the opposite side of Duke Street and 'Cannon's Bar' is located on the far side of Shamble Square (c. 50 metres away). Otherwise the nearest of such uses appears to be Mulroy's Bar, Main Street (c. 100 metres to the northeast). I also note that 'Castle Card Club' occupies an upstairs unit further past Mulroy's, and there is a current appeal before the Board involving the provision of a Betting Office on Ellison Street (ABP Ref. 307948-20). However, having regard to their limited number and dispersed locations, I am satisfied that the proposed development would not result in an excessive concentration of such uses in the area, and that the primary retail function of the town centre would not be adversely affected by the proposed development.

## 7.5 Other issues

7.5.1 The Development Plan does not set out specific parking standards for the proposed development. However, I do not consider that the proposal is likely to generate parking or traffic requirements over and above those of the existing retail unit. It is proposed to connect to the existing water and wastewater services, and I have no objections in this regard.

7.5.2 I note that refusal reason no. 1 of the MCC decision stated that '*the proposed use would contravene policy RP1*' of the Development Plan, while reason no. 2 stated that the development '*does not comply with the Zoning Matrix*'. However, the decision does not go as far as to say that the development would 'materially contravene' the development plan and, accordingly, the Board should not consider itself constrained by the terms of Section 37(2)(b) of the Planning and Development Act 2000 (as amended).

7.5.3 Having regard to inherent concerns associated with night-time entertainment venues, as well as the stated Government intentions to modernise and regulate the gambling industry, I consider that a temporary permission of three years would be appropriate in this case. This will allow for the appropriate monitoring and review of the operation of the development in light of any significant changes that may occur.

## 8.0 **Appropriate Assessment**

Having regard to the nature and scale of the proposed development, and the nature of the receiving environment together with the proximity to the nearest European site, 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.

## 9.0 **Recommendation**

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

## 10.0 **Reasons and Considerations**

Having regard to the town centre zoning objective relating to the subject site, the character and pattern of development in the area, and the modest scale of the proposed development involving the occupation of a vacant unit, it is considered that, subject to compliance with the conditions set out below, the proposed development would not detract from the character or mix of uses in the area, would not seriously injure the amenities of the area or the amenities of property in the vicinity, and would not adversely impact on the retail function of the town centre of Castlebar. 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. This permission shall be for a period of three years from the date of this order. The use of the unit as an amusement arcade shall then cease unless, prior to the end of the period, permission for its retention shall have been obtained.

**Reason:** To allow for a review of the development having regard to the circumstances then pertaining and in the interest of visual amenity.

3. Other than that which is permitted as exempted development under the provisions of the Planning and Development Regulations 2001 (as amended), no signage, advertisements, banners, flags, canopies or other projecting elements 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.

4. The windows to the unit shall be kept clear and devoid of any coverings. Any roller shutters, roller shutter boxes or other security shuttering for the premises shall be of the open grille type, dark coloured and installed internally behind the line of glazing.

**Reason:** In the interest of visual amenity

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. 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:** 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. Water supply and drainage arrangements, including the disposal and attenuation of surface water, shall comply with the requirements of the planning authority for such works and services.

**Reason:** In the interest of public health.

8. 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.

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Stephen Ward  
Senior Planning Inspector

22 January 2021