



An  
Bord  
Pleanála

## Inspector's Report ABP-309073-21

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<b>Development</b>	Change of use of part of ground floor of existing premises from retail shop to indoor sports and recreation centre, including internet café and console gaming stations.
<b>Location</b>	33 Church Street, Listowel, Co. Kerry
<b>Planning Authority</b>	Kerry County Council
<b>Planning Authority Reg. Ref.</b>	20/927
<b>Applicant(s)</b>	BM Funworld Ltd
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refusal
<b>Type of Appeal</b>	First Party -v- Decision
<b>Appellant(s)</b>	BM Funworld Ltd
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	30 <sup>th</sup> May 2021
<b>Inspector</b>	Hugh D. Morrison

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## 1.0 Site Location and Description

- 1.1. The site is located mid-way along the south-eastern side of Church Street (N69) in the town centre of Listowel. Church Street is one of the principal shopping streets within this town centre. Within the immediate vicinity of the site, retail uses predominate. Other uses include cafes, restaurants, public houses, publicly accessible offices, a hostel, dwelling houses, and upper floor residential accommodation.
- 1.2. The site is of elongated rectangular shape and it spans the distance between Church Street and a back lane further to the south-east. This site extends over an area of 0.022 hectares. The principal building on the site is a mid-row one. It is street-fronted and of three-storey form. This building has a vacant shop unit on its ground floor and separate residential accommodation above. It is accompanied by a succession of single storey extensions to the rear, a covered yard, a freestanding single storey building, and a rear yard, which is accessible from the back lane. In total, the ground floor area is stated as being 123.5 sqm.
- 1.3. The submitted plans show the initial extension as being a retail area, which is continuous with the original shop unit, with ancillary facilities in the form of an office, kitchenette, and w.c. off it. The freestanding building is also shown as a retail area.

## 2.0 Proposed Development

- 2.1. Under the proposal, the original shop area and the retail area in the initial extension, which together form a continuous space extending over 60.75 sqm, would be the subject of a change of use from retail shop to indoor sports and recreation centre, including internet café and console gaming stations.

## 3.0 Planning Authority Decision

### 3.1. Decision

Permission was refused for the following reason:

*The proposed development would be contrary to the Listowel Town Development Plan 2009 – 2015 (as amended), specifically Key Retail Objective 3 “To actively promote the*

*vitality, viability and vibrancy of Listowel Town Centre as the primary focus for retail and associated commercial activity” and Objective LUZ 5 “It is an objective of the Council that irrespective of land use zoning that planning permission shall be dependent on the protection of the overall health (vitality and viability) of Listowel Town Centre.” The proposed development would result in the loss of a retail unit within the Core Retail Area of Listowel Town Centre, result in a “dead frontage use” and would, by itself and the precedent that it would set, have a negative impact on the viability and vitality of the town. The proposed development, if permitted, would be at variance with policy adopted by Variation No. 3 for Listowel Town where it is stated of land zoned M2 – “Development that does not support or threatens the vitality or integrity of the primary use of these existing built up areas shall not be permitted.” The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.*

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

See decision.

#### **3.2.2. Other Technical Reports**

- TII: No observations.
- Kerry County Council:
  - Archaeologist: No mitigation needed.
  - Roads: No objection, subject to standard conditions.
  - Fire: No objection.

### **4.0 Planning History**

- 00/401857: Commercial unit on ground floor and a ground floor extension: Permitted.
- 02/402002: Demolish existing store and build an ancillary store in a new position: Permitted.

## 5.0 Policy and Context

### 5.1. Development Plan

Under Variation 3 of the Listowel Town Development Plan 2009 – 2015 (TDP), which was adopted in 21<sup>st</sup> September 2020, the site is zoned M2, town centre facilities and mixed-use development, wherein amusement arcades are “open for consideration”. The following policy pertains to this zone:

*It is the policy of the Local Authority to facilitate development that supports in general the primary land use of the surrounding existing built up area. Development that does not support or threatens the vitality or integrity of the primary use of these existing built up areas shall not be permitted.*

Variation 3 also refers to the Listowel Town Centre Health Check (Nov. 2017), which revealed “an occupancy rate of 91% in the town centre of the units surveyed as “retail”. This Health Check identified very problematic vacancy rates on William Street and Upper Church Street, and it states as an imperative that these “unused commercial, retail and office units are redeveloped in order to increase vibrancy.”

The site is also shown as being in the retail core of the town centre. Policy 2 addresses the retail core as follows:

*It is the policy of the Retail Strategy that the loss of convenience or comparison floorspace within the core retail area should be resisted. Where necessary the amalgamation or significant alteration of retail units along William Street, Upper William Street, Church Street, Main Street and Market Street should be facilitated in order to provide viable, modern retail units while respecting Listowel’s unique historical texture and built environment.*

### 5.2. Natural Heritage Designations

- Lower River Shannon SAC (002165)

## 6.0 The Appeal

### 6.1. Grounds of Appeal

- The applicant begins by outlining the context of its proposal in terms of current challenges that are being experienced by the town centre and the key retail objectives cited by the TDP.
- It specifically cites the undertaking in the TDP's zoning of the site with respect to "Development that does not support or threatens the vitality or integrity of the primary use of these existing built up areas shall not be permitted." However, contrary to the Planning Authority's position, the applicant states that its proposal would widen the retail offer of the town centre and so increase footfall, and it would return a vacant unit to active use, all to the benefit of the town centre.
- The case planner's critique of the description of the proposal is challenged on the basis that it is not, as suggested, a proposed casino gambling type business, but an internet café with console gaming stations. As such, it would reflect a wider trend away from gambling, which now occurs largely on-line, to on-line gaming and virtual reality activities in indoor entertainment premises.
- The Board has previously deemed uses, like the one proposed, to be inappropriate in residential areas, but appropriate to town centre locations.
- The applicant considers that the proposed use would be acceptable within the town centre, subject to conditions pertaining to noise, hours of opening, and a review of potential impacts. Signage could, likewise, be conditioned.
- The proposal would be the first use of its kind within the town centre and so concerns over a concentration of such uses are mis-placed.
- While not a retail use in itself, the proposed use would, like certain other non-retail uses do, complement retail uses in the town centre.
- Traffic generation and parking demand arising from the use of the premises would be of a lesser order than under the previous use.

- The proposal was not the subject of any third-party objection. Only the Planning Authority has taken exception to it.

## 6.2. **Planning Authority Response**

None

## 6.3. **Observations**

None

## 6.4. **Further Responses**

None

## 7.0 **Assessment**

7.1. I have reviewed the proposal in the light of the Town Development Plan 2009 – 2015 (TDP) and Variation 3 to the TDP, which was adopted on 21<sup>st</sup> September 2020, relevant planning history, the submissions of the parties, and my own site visit. Accordingly, I consider that this application/appeal should be assessed under the following headings:

- (i) Land use, zoning, and retail strategy,
- (ii) Streetscape,
- (iii) Amenity,
- (iv) Parking,
- (v) Water, and
- (vi) Appropriate Assessment.

### **(i) Land use, zoning, and retail strategy**

7.2. The ground floor of the extended building on the site is presently vacant having last been in use as a retail shop. Under the proposal, its use would change, and it would be reused as an indoor sports and recreation centre, including internet café and console gaming stations. The submitted plans show the front portion of the original

shop unit laid out as the internet café and the rear portion of this shop unit and the rear extension, with which it is continuous, laid out as the console gaming area.

- 7.3. Under Article 5(1) of the Planning and Development Regulations, 2001 – 2020, an “amusement arcade” means “premises used for the playing of gaming machines, video games or other amusement machines”. An amusement arcade does not come within the definition of shop, cited under the same Article. Furthermore, under Article 10(2)(b)(i) of these Regulations, use as an amusement arcade is expressly excluded from inclusion in any of the Classes of Use set out under Part 4 of Schedule 2 to this Article. Accordingly, the change of use envisaged by the proposal from a Class 1 shop to an amusement arcade is a materially change of use and so planning permission is necessary.
- 7.4. The parties to this appeal have discussed the term “console gaming stations”. The Planning Authority has stated that the use is similar/the same as an amusement arcade use and it draws attention to the applicant’s existing business in Tralee, which offers casino, bingo, and snooker playing activities. The applicant has responded by stating that the proposed use would not entail gambling activities, which have moved largely on-line, but console gaming, which is “a form of video game, consisting of manipulable images (and usually sounds) generated by a video console and displayed on a television or similar audio-video system.”<sup>1</sup>
- 7.5. Under the TDP as varied, the site lies within Listowel town centre (Zone M2) and within the retail core. Policy pertaining to this zone opposes development that does not support or threatens the vitality or integrity of the primary retail use of the town centre. Policy pertaining to this designation opposes development that would entail the loss of convenience or comparison floorspace, thereby contravening the retail strategy for the town centre.
- 7.6. The Planning Authority in refusing the proposal is concerned that it would entail the loss of a shop unit within the retail core of the town centre and it would result in a “dead frontage”, which by itself and by the precedent that it would establish would have a negative impact upon the viability and vitality of the town.
- 7.7. The applicant has responded by stating that, while its proposal is not for a shop, it would complement existing shops in the town centre, and so it would widen the retail

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<sup>1</sup> Wikipedia definition accessed 17<sup>th</sup> May 2021.



offer of the town centre. Furthermore, footfall would increase, and it would return a vacant unit to active use, all to the benefit of the town centre.

- 7.8. The applicant states that the Board has previously deemed uses such as that proposed to be appropriate in town centres, as distinct from residential areas, although no specific cases are cited in this respect. It also states that this use would be the first of its kind in Listowel town centre and so any concern about over concentration is mis-placed.
- 7.9. I concur with the applicant insofar as I consider that the proposed use is one that is appropriate, in general, to town centre locations and it is capable of complementing town centre shops with the increase in footfall that it would generate.
- 7.10. A comparison of the retail core, as depicted in Figure 7.1 of the TDP and dated 2008, and a more recent land use survey carried out as part of the Listowel Town Centre Health Check<sup>2</sup> in November 2017 indicates that the distribution of shops within the town centre has not changed significantly within the intervening period, although vacancy rates are noticeably higher at the fringes of the retail core. Within this core, the site lies at one end of a continuous line of retail shops and services on Church Street and towards the confluence of this Street with Main Street and William Street, wherein shops predominate.
- 7.11. Revision 8 of Variation 3 to the TDP, which was adopted on 21<sup>st</sup> September 2020, replaces Figure 7.1 of the TDP with Map 2. A comparison of the retail core, as depicted in this Figure and in this Map, shows a significant contraction in the extent of the designated retail core towards its centre. Thus, for example, on Church Street, this area no longer extends as far as Courthouse Road, but terminates in the vicinity of Colbert Street. The underlying approach would thus appear to be one of seeking to ensure that retail floorspace is safeguarded within a smaller area, presumably in a bid to maximise upon the synergies that can arise from the clustering of retail uses within a compact area. The corollary of this approach would appear to be that additional complementary uses are to be sited outside of this revised retail core.
- 7.12. Policy 2 of the TDP, which seeks to resist the loss of convenience and comparison floorspace within the retail core, now pertains to the contracted retail core and so it

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<sup>2</sup> See [www.heritagecouncil.ie/content/files/Listowel-Town-Centre-Health-Check.pdf](http://www.heritagecouncil.ie/content/files/Listowel-Town-Centre-Health-Check.pdf) accessed 17th May 2021

takes account of the higher vacancy rates referred to above. Accordingly, as the proposal would entail the loss of such floorspace to a complementary use, I consider that it would run contrary to the Planning Authority's recently updated approach to retailing in the town centre. In this respect, I consider that it is significant that Variation 3 was adopted last September within the context of on-going changes in town centre retailing, not least those changes that have been quickened by the current pandemic.

- 7.13. The Planning Authority expresses concern that the proposed use would have a deadening effect upon the streetscape, insofar as it would not present an active shop front to Church Street and it might entail a darkened window.
- 7.14. The submitted plans show that the width of the shop front to Church Street is 6.38m, although this includes a door to the upper floor residential accommodation as well as the shop door and shop window. The shop front is, therefore, relatively narrow. Behind this front, which would face north-east, the submitted plans show that the internet café would be sited. The need to darken the shop window to prevent sunlight glare on screens would be unlikely, given the shop front's orientation, and so there would appear to be no reason to expect that this front would not prevent, during the hours of opening, an active frontage comprising human activity. Admittedly, after hours, the shop front would lack interest, but that could be partially compensated for by attractive signage and paintwork to this frontage.
- 7.15. The Planning Authority also expresses concern that the proposed use would form an adverse precedent. The applicant has stated that it would be the first example of such usage in the town centre and so I consider that the question of precedent is relevant. Insofar as the use would be capable of complementing town centre retail uses, its presence would not constitute an adverse precedent. Nevertheless, insofar as it would be in the revised retail core, the proposed use would be an adverse precedent for the loss of retail floorspace and the Planning Authority's strategy of consolidating retailing within this core for the reasons discussed above, all of which serve to promote the town centre's viability and vitality.
- 7.16. I conclude that the proposal would be for essentially an amusement arcade and that, while this use would ordinarily be appropriate in a town centre location, the site is within the retail core where the Planning Authority is seeking to ensure that there is

no further loss of retail floorspace. Accordingly, notwithstanding any complementary role that it would have to retail uses, the proposal would contravene the Planning Authority's strategy for the retail core of Listowel town centre.

### **(ii) Streetscape**

- 7.17. The Planning Authority expresses concern that the proposal may lead to the installation of inappropriate signage on the ground floor frontage of the subject building.
- 7.18. During my site visit, I observed the attractive character of Church Street and the contribution that carefully considered paintwork and signage makes to this character. Under the first heading of my assessment, I discussed how such paintwork and signage could serve to partially compensate for any deadening effect that the frontage might otherwise have upon the streetscape.
- 7.19. I conclude that, if the Board is minded to grant permission, then conditions should be attached requiring (a) the submission of a scheme for any signage and painting of the ground floor frontage that may be proposed by the applicant and (b) the removal of advertisement exempted development rights from the site.

### **(iii) Amenity**

- 7.20. The Planning Authority expresses concern that the proposal may result in dis-amenity. The applicant has responded by inviting that the hours of opening be conditioned and by appearing to signal that a temporary permission might be appropriate so that any affect upon the amenities of the area can be reassessed in the future.
- 7.21. I consider that the hours of opening should be conditioned in the interests of safeguarding the amenities of residential accommodation on the upper floors of the subject building and other residential accommodation within the vicinity of the site. The applicant has not suggested any hours of opening for conditioning and so I consider that a daily opening of 09.00 and closing of 18.00 would be reasonable.
- 7.22. Under Section 7.5 of the Development Management Guidelines, temporary permissions are addressed. While the case of a "bad neighbour" use is a potential candidate for a temporary permission, I consider that the proposal, restricted to the

above cited hours of opening is unlikely to fall into this category and so I do not consider that, if the Board is minded to grant permission, this should be time-limited.

7.23. I conclude that, subject to day time hours of opening, the proposal would be compatible with the amenities of nearby residential accommodation in the town centre.

#### **(iv) Parking**

7.24. The proposal would be likely to generate vehicular traffic movements and a demand for car parking. In these respects, it would not differ from its preceding retail use of the subject building. As the site lies within the town centre, parking is provided communally either on-street or in public car parks.

7.25. I conclude that the proposal would raise no parking issues.

#### **(v) Water**

7.26. The subject building is served by the public water mains and foul and surface water sewerage system.

7.27. Under the OPW's Flood Maps, the site is not the subject of any recognised flood risk.

7.28. I conclude that the proposal would raise no water issues.

#### **(vi) Appropriate Assessment**

7.29. As the proposal is for a change of use of the ground floor of an existing building only, no Appropriate Assessment issues arise.

## **8.0 Recommendation**

8.1. That permission be refused.

## 9.0 Reasons and Considerations

Having regard to Retail Policy 2 of the Listowel Town Development Plan 2009 – 2015, as extended and varied, particularly by Revision 8 of Variation 3, which was adopted on 21<sup>st</sup> September 2020, the Board notes that the site lies within the recently contracted retail core area in Listowel town centre within which, under Retail Policy 2, the Planning Authority undertakes to resist the loss of retail floorspace, in the interests of the viability and vitality of the town centre. This policy is considered reasonable. Under the proposal, existing retail floorspace within the retail core area would be lost and so Retail Policy 2 would be contravened. Furthermore, such loss would establish an adverse precedent for the loss of retail floorspace within the recently contracted retail core area. The viability and vitality of retailing within the town centre would thus be jeopardised by this proposal and other non-retail proposals that may ensue. Accordingly, it would be contrary to the proper planning and sustainable development of the area.

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Hugh D. Morrison  
Planning Inspector

18<sup>th</sup> May 2021