



An
Bord
Pleanála

Inspector's Report ABP-309865-21

Development	Change of use of vacant retail unit at basement level to a gaming outlet (containing amusement-with-prize machines).
Location	185, Parnell Street, at the corner of Dominick Street Lower, Dublin 1
Planning Authority	Dublin City Council North
Planning Authority Reg. Ref.	2079/21
Applicant(s)	Royal Amusements Ltd.
Type of Application	Permission
Planning Authority Decision	Refuse
Type of Appeal	First Party v Refusal
Appellant(s)	Royal Amusements Ltd.
Observer(s)	Transport Infrastructure Ireland
Date of Site Inspection	May 7 th 2021
Inspector	Paul Caprani

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1.0 Site Location and Description

1.1. The subject site relates to a basement area beneath a 5-storey building (no. 185) on the corner of Parnell Street and Dominick Street Lower in North Dublin City Centre. The existing building accommodates a basement level, retail units at ground floor, some occupied some vacant, level with residential accommodation overhead. The basement currently contains a number of storage rooms and an office area as well as ancillary staff accommodation. The ground floor level accommodates a vacant retail unit (which has recently been granted planning permission for a restaurant / take away facility) and an adjoining newsagent shop. The floors above ground level are exclusively residential in nature. The adjoining building to the north facing onto Dominick Street Lower comprises of a 5-storey block of flats. There is a direct entrance to the basement of the appeal site via a side door entrance on Dominick Street.

2.0 Proposed Development

2.1. Planning permission is sought for a change of use of the existing basement, which formed part of the previous ground floor retail unit, to use as a gaming arcade. The basement occupies an area of 237.6 sq.m. Direct access to the gaming arcade is to be provided via the Dominick Street entrance at the north -eastern corner of the building. The basement is also to accommodate ancillary accommodation including staff areas and managers office.

3.0 Planning Authority Decision

3.1. Decision

Dublin City Council refused planning permission for a single reason which is set out in full below:

1. Having regard to the location of the site in the central shopping core of the city, on a category 2 shopping street, the proposed lower order retail use would adversely affect this designation, would be setting a precedent for such a use and would result in a proliferation of such uses in the retail core. Therefore, the proposed

development would be contrary to policy RD12 and Appendix 3 of the Dublin City Development Plan 2016- 2022, which seeks to promote higher order retail and complementary active uses on the principal shopping streets in the central shopping core, and would be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Report

- The planning report sets out details of the zoning provision relating to the site as well as the site description, the proposed development, and the site planning history. It goes on to set out policies contained in the development plan which are relevant to the application. It notes that planning permission was previously refused for a gaming outlet at basement level (under register reference 2781/20). It is noted that ‘gaming’ is a use that is not listed in the city development plan. The report does note however that amusement arcades will be assessed on their merits and will only be permitted for such development would not result in a predominance non-retail frontage onto the street.
- Parnell Street is a ‘Category 2’ retail Street, the purpose of which is to protect the primary retail function of the street emphasising higher order comparison retail uses. Having regard to the current proportion of non- retail uses on Parnell Street, the planning authority is not satisfied that the proposed development would lead to a further erosion of the primary retail use on the street and would result in a further proliferation of non-retail and lower order uses. There are also concerns that the use would result in a loitering and antisocial behavior on Parnell St and Lower Dominick St. On this basis it is recommended that planning permission be refused.

3.2.2. Other Technical Reports

- A report from the Engineering Department Drainage Division stated that there is no objection to the proposal subject to standard conditions.

3.3. **Prescribed Bodies**

- A report from Transport Infrastructure Ireland notes that the site is located in close proximity to a Luas Line. In this regard it is recommended that standard protocols for construction works in close proximity to Luas Lines be adhered to. Furthermore, it is noted that this site falls within the catchment of the Luas Cross City Line and therefore the Section 49 Supplementary Levy Scheme applies.

3.4. **Third Party Observations**

No third-party observations were submitted.

4.0 **Planning History**

4.1. One planning history file is attached, ABP – 308709 -20. Under this application planning permission was sought for a change of use of the existing vacant ground floor and basement level retail unit on the subject site, to use as a restaurant/ take away at ground floor level and change of use to a gaming outlet at basement level. Dublin City Council issued a split decision. It granted planning permission for the change of use from a retail unit to restaurant/ takeaway. Planning permission was refused for the proposed change of use a basement level for the gaming arcade for the same reason as in the case of the current application. The decision of Dublin City Council was appealed to An Bord Pleanála. The appeal was invalidated on the basis of an invalid fee.

5.0 **Policy Context**

5.1. **Development Plan**

5.1.1. The site is governed by the policy and provisions contained in the Dublin City Development Plan 2016-2022. The subject site is zoned Z5, the objective of which is to consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity. Amusement/Leisure complex is a permissible use under the Z5 zoning objective. Section 7.6.1 of the Plan states that in order to maintain and strengthen the retail

character of the city center retail core, which can be adversely affected by dead frontage and lower order retail uses. The Premier shopping streets in the city centre retail core are designated as category 1 and category 2 shopping streets.

- 5.1.2. Appendix 3 of the development time sets out more details in relation to the retail strategy. It states that Category 1 and Category 2 shopping streets relate to Premier shopping streets within the city retail core. The purpose of this designation is to protect the primary retail function of these streets as principal shopping streets in the retail core and to strengthen the retail character of the central shopping core with emphasis on higher order comparison retail and a rich mix of uses. This designation seeks to control the extent of the provision of non-retail uses at ground floor level, but also allows for uses which are complementary to the main shopping focus, such as cafes, bars, restaurants and galleries. The Category 1 designation restricts the non-retail uses at ground floor level of the main shopping streets with emphasis in favor of higher order retail use at ground floor level.
- 5.1.3. Policy RD 13 seeks to affirm and maintain the status of the city centre retail core as the premier shopping area in this state, affording a variety of shopping, cultural and leisure attractions and having regard to relevant objectives set out in the retail core framework plan (2007).
- 5.1.4. Policy RD 17 seeks to promote active uses at street level on the principle shopping streets in the city centre retail core and in the Z4 District Centres having regard to the criteria for Category 1 and Category 2 streets and Special Areas of Planning Control.
- 5.1.5. Section 16.26 relate to amusement centres, it states that amusement centres will not be permitted in residential areas and will only be appropriate in mixed used areas where the proposed use is in keeping with both the scale of the building and the pattern of development in the area. It is the objective of Dublin City Council to prevent an excessive concentration of amusement centres.

5.2. **Natural Heritage Designations**

The subject site is not located within or adjacent to a Natura 2000 site. The nearest Natura 2000 site is the South Dublin Bay and River Tolka Estuary SPA (Site Code 004024) which is approximately 2.4 km to the east of the subject site.

5.3. EIA Screening

A change of use is not a class of development for which an EIAR is required.

6.0 The Appeal

6.1. Grounds of Appeal

A first party appeal was lodged on behalf of the applicant by Farry Town Planning Ltd. The grounds of appeal are outlined below.

- A gaming development is a permissible use in this area as the development falls squarely within the zoning provisions.
- Contrary to what was suggested in the planning report, there are remarkably few amusement arcades or gaming halls in the immediate area.
- The proposal will not result in the predominance of non-retail uses in the area. While the Planning Authority expresses concerns about the predominance of non-retail uses on the street, all the activities along Parnell Street have been the subject of grants of planning permission.
- There is no prospect of the basement use being viable as a retail unit. The greatest threat to the viability of Parnell Street is the existing vacancy rates at ground floor level along the Street.
- Parnell Street's status as a Category 2 Shopping Street primarily relates to ground floor usage, not to upper or basement floors. A gaming arcade is eminently suitable for a basement level.
- Parnell Street is a busy commercial street, and it cannot be argued that the amusement arcade will impact on residential amenity.

6.2. Appeal Responses

6.3. Planning Authority

Dublin City Council have not submitted a response to the grounds of appeal.

6.4. **Observations**

A report from Transport Infrastructure Ireland notes that the site is located in close proximity to a Luas Line. In this regard it is recommended that standard protocols for such works in close proximity to Luas Lines be adhered to. Furthermore, it is noted that this site falls within the catchment of the Luas 'Cross City' Line and therefore the Section 49 Supplementary Levy Scheme applies.

7.0 **Assessment**

- 7.1. The decision to refuse planning permission was primarily predicated on concerns that the use of the basement for a gaming or amusement arcade would erode Parnell street's status as a primary retail shopping street. A critical consideration in adjudicating on the application relates to the zoning provisions of the site. The subject site is in an area governed by the zoning objective Z5. Amusement and leisure complexes are listed as a permissible use under this land-use zoning objective. Therefore, subject to qualitative criteria, it is the planning authority's objective to encourage such uses on lands covered by the Z5 zoning objective. Section 16.26 endorses this approach by stating that amusement centres will not be permitted in residential areas and will only be appropriate in mixed used areas where the proposed use is in keeping with both the scale of the building and the pattern of development in the area. The principle of the use in this city centre location is therefore acceptable in my opinion.
- 7.2. The development plan also seeks to avoid an excessive concentration of amusement centres in any one location. I noted from my site inspection that presently there is no overconcentration of such facilities on Parnell Street. Uses in the vicinity of the site include ground floor retail units, convenience stores and a number of restaurants and fast-food takeaway facilities. I therefore do not consider it appropriate to refuse planning permission on this basis of excessive concentration.
- 7.3. It is also clear that the Development Plan seeks to protect and enhance the primary retail function of Category 2 shopping streets. Concern is expressed in the planner's report that the proposal represents a non-retail use and the lower order use which is not complementary to the primary retail function of the street. A key consideration in determining the application in my opinion relates to the fact that the proposed

change of use relates to a basement area and not a ground floor unit. While it could be argued that were proposed use to be located a ground floor level, this could result in somewhat dead frontage and arcade/ gaming use may not contribute to any significant extent to the enhancement of the vitality and vibrancy at street level. However, the same could not be argued at basement level. A retail unit at basement level will not significantly enliven the street frontage along Parnell Street. In this regard it can be argued that if an amusement/gaming arcade were to be located within the street, basement level is probably most suitable in ensuring that the establishment of such a use does not undermine the primary retail function of the street at street level. I am also inclined to agree with the appellant that it may prove somewhat difficult to attract a retail use at basement level along this section of Parnell Street at present. In this regard any commercial use at basement level would be more preferable than a vacant use.

- 7.4. Finally, I do not agree that the proposed development will be unsuitable from a residential amenity perspective. While the building may be predominantly residential, this use is confined to the upper floors. Parnell Street is a commercial city centre street and therefore the commercial use proposed is a compatible use for such an area. While the development plan clearly states that amusement centres will not be permitted in residential areas, Parnell Street is a mixed-use predominantly commercial street and not an exclusively residential area.

8.0 Recommendation

- 8.1. Having regard to the zoning objective of the site where amusement/ leisure complex uses are permissible, together with the location of the use at basement level, it is considered that the proposed development would not undermine the primary retail function of Parnell Street as a Category 2 retail street. On this basis, it is considered that the decision of the planning authority should be overturned and that planning permission be granted for the proposed development.

9.0 Appropriate Assessment

Having regard to the nature and scale of the proposed development and 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.

10.0 Decision

Grant planning permission for the proposed development based on the reasons and considerations set out below:

11.0 Reasons and Considerations

- 11.1. Having regard to the zoning objective of the site where an 'amusement/ leisure complex' is a permissible use, together with the location of the proposed use at basement level, it is considered that the proposed development would not undermine or erode the primary retail function of Parnell St as a category 2 retail street. Therefore it is considered that, subject to the conditions set out below, the proposed development would not seriously injure the residential amenities of the area or property in the vicinity and would therefore be in accordance with the proper planning and sustainable development of the area.

12.0 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. The proposed basement use shall be completely separate from the restaurant use at ground floor level with completely separate access arrangements.

Reason: In the interest of orderly development.

3. Details of the operating hours of the amusement/gaming arcade shall be agreed in writing with the planning authority prior to the commencement of development. In default of such agreement, the matter shall be referred to An Bord Pleanála to determine.

Reason: In the interest of residential amenities.

4. No advertisement or advertisement structure, the exhibition or erection of which would otherwise constitute exempted development under the Planning and Development Regulations 2001, or any statutory provision amending or replacing them, shall be displayed or erected (on the building unless authorised by a further grant of planning permission.

Reason: In the interest of visual amenity.

5. Details of all external shopfronts and signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of the amenities of the area/visual amenity.

6. 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.

7. The developer shall pay to the planning authority a financial contribution in respect of the Luas Cross City Line in accordance with the terms of the Supplementary Development Contribution Scheme made by the planning authority under section 49 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 Supplementary Development Contribution Scheme made under section 49 of the Act be applied to the permission.

Paul Caprani
Senior Planning Inspector

May 8th 2021