



An  
Bord  
Pleanála

## Inspector's Report

### ABP-310161-21

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<b>Development</b>	Change of use of part of existing ground floor restaurant use to amusements and gaming use with alterations to provide new toilets for the existing restaurant.
<b>Location</b>	The Forum (Licensed Premises), The Glen, Waterford.
<b>Planning Authority</b>	Waterford City and County Council
<b>Planning Authority Reg. Ref.</b>	21136
<b>Applicant(s)</b>	Coherent Enterprises Ltd
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant with Conditions
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Jason Murphy
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	23 <sup>rd</sup> of September 2021.
<b>Inspector</b>	Caryn Coogan

## **1.0 Site Location and Description**

- 1.1. The Forum in Waterford City is a well known entertainment building located west of the city centre hub at The Glen. It was formerly a cinema, then a theatre, and is now a licenced restaurant, with a bingo hall on the first floor and associated offices and bar area. There is an adjoining off licence and storage units.
- 1.2. Part of The Forum building is currently utilised and leased for theatrical use. There is a vehicular side entrance with service yard areas to the west of the building within the overall curtilage of The Forum.
- 1.3. The site which is the subject of this appeal is 157sq.m. on the ground floor of building, and it is currently a dining area associated with an existing restaurant and toilet area.

## **2.0 Proposed Development**

- 2.1. The proposed development is for a change of use of part of the existing ground floor restaurant to amusements and gaming use (127sq.m.) and to provide new toilets for the existing restaurant (30sq.m.).
- 2.2. The existing pedestrian entrance door at the front of the building will provide access to the proposed gaming area, this entrance door will be shared with the bingo hall on the first floor. The restaurant will retain its existing separate entrance at the front of the building.
- 2.3. There is no additional parking provision proposed because the reduction in restaurant floorspace to make way for the amusement arcade negates the need for additional car parking.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

Waterford City and County Council granted planning permission for the proposed change of use subject to 7No. conditions.

2. The proposed change of use is limited to five years from the date of the final grant of this permission.
7. Development Contribution payable of €270

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

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

The previous reason for refusal has been addressed under the current proposal, and the development is in keeping with the City Centre zoning objective for the site.

A temporary permission is to be granted for 5 years only.

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

None

### 3.3. **Prescribed Bodies**

None

### 3.4. **Third Party Observations**

The appellant objected to the proposed changed of use on the following grounds:

- Contrary to the proper planning and development of the area.
- Loss of a social outlet for the surrounding community
- Dilute the retail function of Waterford City
- Many elderly residents, the proposal will lead to antisocial behaviour

## 4.0 **Planning History**

4.1 Under Planning Registration Number 20301 the planning authority granted permission for the following at the Forum, the building where the subject site is located:

- (i) Change of use of ground floor restaurant to hair and beauty salon;

- (ii) Change of use of first floor offices previously ancillary to the existing bingo hall to offices;
- (iii) Installation of ATM at ground floor;
- (iv) erection of new signage
- (v) Retention of change of use of former first floor concert hall dressing room area to studios.

The overall decision was a split decision with the proposed gaming area been refused because the proposed access was off the western elevation of The Forum onto a yard area the planning authority had the potential to cause antisocial behaviour.

## 5.0 Policy Context

### 5.1. Development Plan

#### ***Waterford City Development Plan 2013-2019***

The subject site is zoned **City Centre Commercial**, which is '*To protect, provide and improve City Centre Commercial uses*'.

Permissible uses under this zoning objective include: **Amusement/leisure complex**.

### 5.2. Natural Heritage Designations

The Lower River Suir SAC is approx. 100 metres north of the site.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

Mr. Jason Murphy of 275 Larchville, Brownes Road, Waterford City has taken this third party appeal against the decision to grant planning permission for the proposed change of use. The following is a summary of the grounds of appeal submitted.

- **Introduction:** The proposed change of use is not proper planning and sustainable development. The Waterford City Development Plan does not

promote or encourage gaming outlets, and there is a greater need for retailing.

- **Previous reasons for Refusal:** The planning authority recently refused a gaming centre at the location under planning reference 20301, and the reason for refusal has not changed. The planning report does not address this issue.
- **Zoning and Land-Use :** Section 5.4.1 of the development plan states '*permission will not normally be granted for non-retail uses on ground floors of properties fronting streets*'. The proposed development can locate at basement or upper floor level, but not on the ground floor. There is a strong presumption against street-level gaming outlets. The Board should assess and adjudicate the proposal on the basis of this policy.
- **Retail Function of Waterford City** The Council seeks to promote a range of outlets in terms of the retail function of the City Centre. There is an addiction to gambling and an amusement centre is at variance with the statutory objectives and goals of Waterford City and County Council. Developments of this nature are undesirable uses which are potentially detrimental to the businesses and commercial environment of town and city centres, and it is for this reason most planning authorities discourage the introduction of amusement centres in mixed use, shopping and residential areas. The proposal will detract from the vitality and vibrancy of the city centre.

The appellant cites a case in Athy for a gaming facility, reference P109.245547 as been relevant to the current proposal as it was refused by the Board.

Street level gaming activities are, incompatible with retail uses especially where physically incorporated in a restaurant.

- **Future Changes of Use:** This proposal could be part of a bigger project. The location of the proposed gaming outlet relative to the kitchen and dining area of the restaurant. It will also result in a notable reduction in the restaurant area, and children under 16 using the restaurant cannot use the gaming facility. The adjoining uses are incompatible and exclude part of the community.

- **Sufficiency of Existing Amusement Centres** : There are 2 amusement arcades in the City centre, and Tramore has a multitude of gaming halls. There are existing adequate facilities to cater for the citizens of Co. Waterford
- **A Temporary Permission**: Although we are strongly opposed to the development, in the event the Board is mindful of granting it, it may be more appropriate to issue a temporary consent.
- **Restrictions of the Type of Machines**: There are gaming machines whereby prizes are paid to people, and those which are played for recreational purposes. Recreational machines would enable a broader population to enter the facility as opposed to those machines under the jurisdiction of the gaming laws.
- **Hours of operation** : Due to the co-location with dwellings at The Glen, the proposed amusement centre is to cease trading after 10pm on all days of the week.

## 6.2. Applicant Response

The letter is contradictory. The goals of the development plan are achieved through the Plan policies and objectives. The site is zoned 'City Centre Commercial', and it is not located within the prime shopping core of the city centre. It is within the 'Upper Town' secondary shopping area. The reference to 'gaming centres' at street level relates to amusement arcades in the prime shopping core of the city centre and refers to ground floor frontage, not ground floors per say. Having misunderstood the location of the restriction relates to the prime shopping area, the agent misquotes the policy and excludes ground floor frontage. The two existing gaming centres in the City are located a considerable distance from the site. There are 4No. amusement centres in Tramore however, Tramore has only a fraction of the population of Waterford City. The appellant's agent has read the drawings incorrectly, and it should be clarified the restaurant floor space is physically divided from the gaming hall and it will be a stand-alone unit with its own facilities and access and is not dependent on any other business operations within the Forum Complex.

There is a high level of repetition in the response so I will summarise the submission without undue repetition:

- **Introduction** The planning authority refused the amusement arcade previously because the proposed access was from the side of the building and it may result in anti-social behaviour. The planning authority had no objection to the proposed use. The proposed entrance is to the front of the building and is to be shared with the bingo hall on the upper floor. The alternative access arrangement fully overcame the previous reason for refusal.
- **Report Layout :-** No comment
- **The site and Environs:** The Forum and proposed amusements are 450metre from the prime retail core area. The Forum is a licenced premises which contains a restaurant and bingo hall, an off-licence and is within walking distance of large and small scale retail outlets, bars and restaurants, takeaway, offices etc
- **Select Planning History :** The premises has always been a commercial entertainment venue serving the local community, it has had to adapt to changes in the industry over time to keep the venue viable. In denying the amusement arcade under 20/301, the planning authority was only concerned about the proposed entrance to the use and not the actual use.
- **The proposed development –** The agent has misread the documents and drawings if he is suggesting patrons of the amusement arcade will have to walk through the restaurant. The floor area of the arcade is only 127sq.m.
- **Retail Planning Guidelines –** Not relevant
- **Future Changes of Use –** There is a valued tenant in the restaurant which the applicant wishes to retain. The restaurant covers 160No. diners and its too big for the number of orders received, and is consistently under-occupied and is not viable with the current floor area. Condition No. 2 of the Council's decision limits the life of the permission for 5years whereby, the proposed change of use can be monitored.
- **Community Inclusion** -the case is Athy was a town centre location, within a ACA and Protected structure, and the age of patrons was not a consideration on appeal.

- **Restriction on the Type of Machines** – This is a matter the licencing authority.
- **Hours of operation** – There are uses within The Forum that occur beyond 10pm, and the two existing amusement arcades have unrestricted hours of operation.

### 6.3. **Planning Authority Response**

There is nothing further to add on appeal.

## 7.0 **Assessment**

7.1. The appeal is considered under the following headings:

- Development Plan Policies
- Compatibility with existing land uses
- Potential Impacts
- Appropriate Assessment

### 7.2 **Development Plan Policies**

7.2.1 The current development plan for the area is ***Waterford City is the City Development Plan 2013-2019***. The subject site (157sq.m.) is located on the ground floor of The Forum building which is a long established entertainment building and is zoned ***City Centre Commercial***. The zoning objective is '*To protect, provide and improve City Centre Commercial uses*', and Amusement/Leisure complex uses are permitted in principle.

7.2.2 The proposed change of use from a dining area of the restaurant to an amusement arcade is 127sq.m. floor area. Access to the proposed gaming area is via a front door that currently serves the bingo hall on the first floor of the building. The proposed amusement and gaming area has no street frontage and it is located between the kitchen area and dining area of the restaurant, but there will be no link between the existing and proposed uses, i.e. the patrons of the restaurant do not have to go through the amusement arcade.



7.2.3 The third-party appellant has cited Section 5.4.1 of the development plan stating '*permission will not normally be granted for non-retail uses on ground floors of properties fronting streets*'. There is a strong presumption in the development plan against street-level gaming outlets. However, having considered the context of the referenced development plan policy, relates to the retail core area of Waterford city, and the subject site is located outside of that designation. In addition, the subject site is a site located internally of the ground floor of The Forum and it has no street frontage. I conclude the cited policy is not relevant to the current proposal.

7.2.4 In my opinion, the proposed development complies with development plan policies and zoning objective as it is located within a long-established entertainment building, it is modest in scale, and is compatible with the existing uses within The Forum building and along the contiguous streetscape, which is dealt with in more detail in the next section.

### 7.3 ***Compatibility with existing land uses***

7.3.1 The planning authority has recently granted a larger development at The Forum under Planning Reference Number 20301, as per Section 4 above. Under the previous planning permission the gaming centre use was omitted by split decision, because the proposed access the amusement arcade was from a side entrance off a yard area of the building, which was considered to be remote from the main entrance to the building. It was considered the proposed access from the yard area to the west of the building would result in anti-social behaviour, and injure residential amenities of the area. Under the current proposal the gaming room will be accessed from the front of the building which currently provides access to the bingo hall on the first floor.

7.3.2 The appellant argued the proposed use is incompatible with the restaurant use and that people attending the restaurant could not use the gaming facility due to age restrictions imposed. This is not a planning matter and the age restrictions form part of the gaming licence process. There are uses throughout the city such as public houses and other licenced facilities that have legal age restrictions, and these uses are compatible with mixed commercial uses. I consider this issue is not relevant to the appeal.

7.3.3 The Forum building was formerly a cinema, a theatre and currently accommodates a mix of commercial uses to maintain its viability. The applicant claims the large seating area associated with the restaurant is too extensive to be viable, hence the reason for the proposed change of use to change part of the dining area to a gaming room. The proposed gaming room is 127sq.m. which is modest in scale. There is a bingo hall within the building on the first floor. I consider the proposed use to be compatible with the existing uses within The Forum.

7.3.4 I conclude the proposed change of use is modest and is internal. I do not foresee any negative impact to the existing uses and amenities associated with The Forum building, and subsequently the impact to the wider neighbourhood in The Glen area will be negligible.

#### 7.4 **Potential Impacts**

7.4.1 The third-party appellant cites negative retail impacts to the retail function of Waterford City as a consequence of the proposed development. I consider this is not a relevant issue as The Forum is not a retail outlet, and the existing and proposed uses are not retailing. The appellant cites An Bord Pleanála case PL09.245547 in Athy as been relevant to the current proposal. Having been the reporting inspector on two occasions to the cited case in Athy, I consider there is no comparison between the current appeal and the case in Athy, which was located in a statement building on the ground floor of a protected structure with a notable street frontage and façade along the Main Street of Athy.

7.4.2 The appellant also cites the proposed use is undesirable and potentially detrimental to business and commercial environment of Waterford City. There is no evidence to suggest this. Within the city centre there are currently two amusement arcades which are located a considerable distance from the subject site. In Tramore, there are 4No. amusement arcades catering for a much smaller population than Waterford City. Therefore, the appellants argument that Waterford is adequately catered for in terms of amusement arcades is not substantiated.

The planning authority has limited the lifetime of the permission to five years, which the applicant did not appeal. I recommend the lifetime of the permission be limited to five years in line with the authority's decision in order to review the impact of the proposed change of use during the operational phase.

The type of gaming machines to be used is beyond the remit of the Board and is not relevant to the appeal. This issue will be addressed by the relevant licencing body.

7.4.3 The hours of operation are determined by the closing times of The Forum building. It would be prudent to impose a 10pm restriction on the closing time of the amusements arcade. I accept the existing amusements arcades in Waterford City have no time restrictions, however, there is no indication when these developments were permitted and its unlikely they share a floor area and entrances with other uses.

## 7.5 **Appropriate Assessment**

Having regard to the small nature and scale of the proposed development, comprising of minor alterations within an existing building and a change of use of a modest floor area on the ground floor of the building which is located in the built up urban area of Waterford City, 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 the conservation objectives of any European site.

## 8.0 **Recommendation**

8.1. The planning authority's decision to grant planning permission for the development should be upheld.

## 9.0 **Reasons and Considerations**

Having regard to the nature and scale of the proposed change of use within an established commercial and entertainments building on a site which is zoned as City Centre Commercial in the current development plan for the area, where the proposed use is permissible, it is considered, subject to compliance with the conditions set out in the Second Schedule, that the proposed development would be in accordance with the proper planning and development of the area.

## 10.0 Conditions

1.	<p>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.</p> <p><b>Reason:</b> In the interest of clarity.</p>
2.	<p>This permission shall be for a period of Five (5) years from the date of this order.</p> <p><b>Reason:</b> To allow for a review of the development having regard impact of the development on the area</p>
3.	<p>Notwithstanding the provisions of the Planning and Development Regulations 2001, or any statutory provision amending or replacing them, no advertisement signs (including any signs installed to be visible through the windows), advertisement structures, banners, canopies, flags, or other projecting elements shall be displayed or erected on the buildings or within the curtilage of the site, unless authorised by a further grant of planning permission.</p> <p><b>Reason:</b> To protect the visual amenities of the area.</p>
4.	<p>The proposed amusement and gaming facility shall not operate outside the period of 0900 to 2200 hours Monday to Saturday inclusive except public holidays, and shall not operate on Sundays or public holidays.</p> <p><b>Reason:</b> In the interest of general amenity.</p>
5.	<p>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</p>

<p>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.</p> <p><b>Reason:</b> 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.</p>
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Caryn Coogan  
Planning Inspector

8<sup>th</sup> of November 2021