



An
Bord
Pleanála

Inspector's Report ABP 310670-21.

Development	Change of use of ground floor from retail to gaming use, internal reconfiguration and fit out, new access and lobby area to multi storey carpark, signage, branding & associated works
Location	Fairgreen House, Fairgreen Road/Bothar Pairc An Aonaigh, Galway
Planning Authority	Galway City Council.
P. A. Reg. Ref.	20/351.
Applicant	Cwc Fairgreen
Type of Application	Permission
Decision	Refuse Permission.
Type of Appeal	First Party x Refusal
Appellant	Cwc Fairgreen
Observers	Seaport Leisure (Paul Freeney) Fairgreen Road Office Ltd..
Date of Site Inspection	15 th September, 2021
Inspector	Jane Dennehy.

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1.0 Site Location and Description

- 1.1.1. The site comes within the overall site area of 4,456 square metres for Fairgreen House a five-storey mixed use development with a multi storey carpark at Bothar Pairc An Aonaigh and Fairgreen Road and it has a stated area of 463 square metres. There are multiple occupants which include a language school and some offices on the upper floors of the building accessed from pedestrian entrances off the Station Road frontage.
- 1.1.2. The proposed application site area for gaming use is to be located in former retail space on the ground floors in the space with frontage along Station Road, facing south and in the double height space extending along part of the Fairgreen Road frontage and there are entrances on both facades within the area of current application.
- 1.1.3. An entrance to a four hundred space public mutli storey carpark serving the Fairgreen House Development is located at the northern end of the Fairgreen House on Fairgreen Road. To rear, west side of Fairgreen House facing onto Station Road is and entrance to a Ceannt Station
- 1.1.4. The area along Fairgreen Road between Forster Street and Lough Atalia Road is mainly characterised by commercial developments mostly in new buildings with an apartment development, "The Elms" at the south eastern end overlooking Lough Atalia Road. A private coach carpark is opposite Fairgreen House on Fairgreen Road.

2.0 Proposed Development

- 2.1.1. The application lodged with the planning authority indicates proposals for change of use of the vacant ground floor from retail (the former car sales use) to use as a gaming centre. The proposal includes internal reconfiguration, raising of the floor level in the space facing onto Faigreen Road, fit out and construction of an access and an associated lobby area adjacent to the multi storey carpark, external signage and branding along with associated site works. The proposed main entrance is the entrance to the ground floor off Station Road with a secondary entrance being the entrance facing onto Faigreen Road.

A further information request was issued on 14th April, 2021 in respect of five issues outlined below along with the applicant's response in the submission of 15th April, 2021: -

(1) clarification as to consistency with the City Centre (CC) zoning objective and encouragement of viability and vitality in that the proposal involves loss of a retail unit at ground level and would result in a substantial expanse of dead street frontage where it is desirable that active street frontage be maintained. It is submitted that the retail use should not be a constraint on the proposed development and the streets are not principal shopping streets: It is submitted that:- there could be limited expectation only of substantial active frontage even it put to retail use; Significant proportions of facades may be screened by retailers for example Brown Thomas and TK Maxx; Some amount of screening should therefore be totally acceptable and there is precedent to be taken from the adjoining Fairgreen building; It is commonplace to screen facades at entertainment type uses and revisions proposed are for additional footprint for the shopfront with a visually animated feature presented on the facade.

Similar arrangements for compliance by condition with regard to details was acceptable in the grant of permission under P. A. Reg. Ref. 02/525 for a bar nightclub and live venue. The proposed use is a valuable function in town and cities as demonstrated in ABP decisions for Castlebar. (ABP 308499 and 307948 refer. And with regard to a development in Galway under PL 242694. Extracts are provided.

(2) Clarification of the precise nature of use proposed having regard to the Gaming and Lotteries Act: -. The precise layout of equipment is outside planning scope. Machines will vary from gaming or amusement functions including broadcast of live sports for adult use only and laid out according to licensing spacing requirements the applicant will comply with any requirements as to forms of entertainment other than gaming would be complied with

(3) Clarification as to hours of operation: - It is pointed out that the CDP provides for encouragement of public and private recreation and leisure and amenities with the city having a significant night-time economy. No facilities for smoking are to be provided and noise generated would be no different to that generated by retail

stores. Noise levels have been shown to be below the levels generated in bars, night clubs and live venues as demonstrated under P.A. Reg. Ref. 02/525. The application would accept a condition for control of noise levels.

(4) Clarification as to possible sale of alcohol: - It is confirmed that it is not intended to sell alcohol for consumption on the premises and is willing to accept a condition to that effect.

(5) Clarification as to the status of compatibility with implementation of a grant of permission for a multi sports facility at basement level which includes a café and entrance at ground level: - (P. A. Reg Ref 17/91 refers.) use of the basement area. The applicant confirms that it is not intended to implement the grant of permission under P. A. Reg. Ref. 17/01 as it is no longer appropriate and compatible with regard to the proposed removal of access from the ground level.

3.0 Planning Authority Decision

Decision

- 3.1.1. By order dated, 2nd June, 2021 the planning authority decided to refuse permission based on two reasons. According to reason no 1, the proposed development could be accommodated at upper or lower levels would result in twenty metres of dead or inactive street frontage on Fairgreen Road and twenty-five metres on Bothar ar An Aonaigh and the use would be contrary to Policy 10.2 of the CDP
- 3.1.2. According to reason no 2, the proposed development, with no restriction on hours of operation is likely to result in noise and disturbance in noise sensitive receptors including apartments overhead and student accommodation, notwithstanding the location within the area zoned City Centre and it would be contrary to the CDP

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- 3.1.3. Further to consideration of the original application, and the submitted further information response to the requested additional information the planning officer having reviewed the nature of developments provided for in the planning history indicated concerns as to the precise nature of the proposed use based on review of the plans, as to loss of potential retail use for the premises at ground floor level, loss of active and animated street frontage and potential adverse impact on regeneration

and the vitality and viability of the area and as to negative impact on residential amenities due to noise and disturbance

Third Party Observations

- 3.1.4. Submissions were lodged by three parties indicating objections based on the nature of use, anti-social behaviour and, impact on the area, dead street frontage contrary to the retail strategy for the city,

4.0 Planning History

The overall Fairgreen House development has an extensive planning history over the past twenty-three years, a full account of which has been included in the submissions lodged on behalf of the applicant. With regard to the space at ground floor level subject of the current application, the following prior planning history is of relevance.

Under P. A. Reg. Refs 98/943 and 01/85 Permission was granted for retail use for the ground floor space subject of the current application.

Under P. A. Reg. Ref. 02/5254 (PL 202039) permission was granted for change of use from retail to bar nightclub and live venue. The grant of permission was not taken up.

Under P. A. Reg. Ref. 17/90, Permission was granted for change of use of part of the unit from retail to co working space along with an additional mezzanine level and signage

Under P. A. Reg. Ref. 17/92, Permission was granted for change of use of the basement and part of the round floor unit from retail use to multi-functional sports arts and events space with a café and incidental retailing along with a new fire exit and completion of a façade and signage to Bothar Pairc An Aoinagh.

5.0 Policy Context

Development Plan.

The operative development plan is the Galway City Development Plan 2017-2023 according to which the site is subject to the zoning objective CC – City Centre Uses:

To provide for city centre activities and particularly those which preserve the city centre as the dominant commercial area of the city.

6.0 The Appeal

Grounds of Appeal

6.1.1. An appeal was lodged by The Planning Partnership on behalf of the applicant on 28th June, 2021. It is submitted that the reasoning for the decision for refusal of permission is unwarranted and that the context of the premises and location especially the extent of long-term vacancies was disregarded. It is requested that the proposed development be considered on its own individual merits and its potential positive contribution to the environment on the area. According to the appeal: -

- The site is not on principal shopping streets and is distant from the retail core. the unit has been vacant for some time and there is no high demand for retail in the area. The proposed use is permitted under the zoning objective and there should be a presumption in favour, there being no significant or tangible negative impact. The gaming use is *sui generis* having regard to the compatible uses for the zoning objective “CC” provided for in the CDP and it would come within “recreational use” Gaming was considered to come within the category of commercial leisure/indoor recreation under P. A. Reg. Ref. 17/112 the location being in the C1 zone area.
- The concerns of the planning authority as to dead or inactive street frontage are not sufficient to warrant a refusal of permission and they are addressed in mitigation proposed in the further information submission. (It provides for an animated feature on the façade with plating lighting providing for a visual screen. Many uses require substantial screening including retail use and this is evident along the street. Details can be agreed by condition as was the case in the grant of permission for the premises under P. A. Reg. Ref. 02/525 for bar night club and live venue use. The building has an established pattern of screening along the glazed façade including the adjoining premises and the street is at a considerable distance from the main shopping streets in the city core.

- The planning authority view that the upper floor areas of basement level is a more suitable alternative location, would be contrary to section 10.2 of the CDP is not accepted. The policies (which are set out in Table 1 of the submission) along with comments with regard to the proposed development, generally do not relate to the proposed development. The proposal will enhance the city centre in occupying and bring into use a vacant unit in accordance with the zoning objective; it will not result in proliferation of gaming use or dominate the area and will assimilate into it. The legibility of the street will improve and the façade treatment will enhance the building and the street character. The location is functionally removed from the Ceannt Station and from the Harbour Area the regeneration of which will not affect the premises subject of the application.
- The location is a centre environment with night-time use is not out of place is the area has established night-time and late-night economy and use mix, which is encouraged in central city areas, with Galway city being part of the Purple Flag Network. and it is adjacent to the station which operates on a twenty-four basis. It is therefore not necessary or appropriate to impose restrictions on opening hours which is a function of licensing. The applicant is willing, by condition to submit for details of licensing, which would include hours of operation to the planning authority.
- Noise and disturbance are not at issue as the use does not generate high noise volumes that are greater than retail stores or a bar, nightclub or live venue as previously permitted under P. A. Reg. Ref. 02/515. A similar condition to that imposed under P. A. Reg. Ref. 02/515. for control of noise levels is acceptable to the applicant. The applicant intends the development to be a “good neighbour” in providing for communication with other occupants of the building in the event of concerns arising.

Planning Authority Response

6.1.2. A submission was lodged by the planning authority on 28th July, 2021 according to which: -.

- The proposed use would be more suited to the upper floors rather than the ground floor retail unit as the location is on the edge of the city core. The proposed use would result in extensive inactive street frontage on both streets in a newly developed area in which new retail use is being encouraged.
- The examples in Castlebar provided in the appeal relate to smaller retail unit for which the duration of the grant of permission was limited to three years.

Observations

6.1.3. A submission was received from Paul Freeney on behalf of Seapoint Leisure on 26th July, 2021 according to which:

- The proposed development could lead to a proliferation of gaming in Galway as gaming machines are banned in other cities.
- The proposed development could adversely affect Seaside Arcades in Salthill which has always been vigilant about problem gambling.
- Forms of entertainment other than gambling should be provided according to the Gaming and Lotteries Act, 1956.

6.1.4. A submission was received from Fairgreen Road Office Ltd, owner/occupier of an adjoining ground floor unit to the site, on 26th July, 2021 according to which the submission is also supported by Atlantic Language school Galway Ltd, Fairgreen House and Ramutan O'Neill Foley, Kilkenny. According to the submission:

- The proposed development could lead to uncontrolled gambling and casino use.
- The proposed use would result in extensive inactive or dead street frontage degrading the public realm and leading to public safety concerns at Fairgreen Road which has in recent years improved and is an important linkage between the core and Ceannt station and inner harbour.
- The references in the further information submission are not comparable for purposes of taking precedent.
- The proposed development would contravene the zoning objective and viability and vitality of the city centre in undermining the commercial function.

Gaming use is not listed as compatible with or contributing to the zoning objective according to section 11.2.7 of the CDP. It is a use more appropriate to locations in the C1 zoning objective.

- There is no justification in for the proposal in the unit being vacant or in references to high commercial vacancy rates. An alternative use cannot be ruled out given the location beside the station which is a mixed-use development and recent take up in tourism and café use.
- The proposed development could lead to uncontrolled gambling and casino use.
- The proposed use would result in extensive inactive or dead street frontage degrading the public realm and leading to public safety concerns at Fairgreen Road which has in recent years improved and is an important linkage between the core and Ceannt station and inner harbour.
- The references in the further information submission are not comparable for purposes of taking precedent.
- The proposed development would materially contravene the strategic retail objective of the CDP for protection and reinforcement of the strategic role of the city centre as the prime retail area in the city, County and Western region.
- The proposed development is contrary to Policy 10.2 of the CDP for reinforcement of the dominant commercial, shopping, tourism, cultural and leisure roles in enhancing the vitality of the city centre and its environmental quality
- The proposed development is an uncontrolled gaming casino use in an unsound proofed space and which might allow for loud music and might exacerbate late night activities in the public realm and late-night drinking. IT may affect the learning environment of the Atlantic Language School which is based above the unit.

7.0 Assessment

- 7.1.1. Having regard to the City Centre zoning objective: CC *“To provide for city centre activities and particularly those which preserve the city centre as the dominant commercial area of the city”* the associated objective of the planning authority as referred to in the planning officer report, namely, to encourage and facilitate a ground floor retail use at this prominent location which brings with it live and active street frontage is supported in principle and is appreciated. Equally, the applicant’s case as to the location being somewhat peripheral to the core retail area and its central shopping streets within the city centre and as to the desirability of occupancy at this long vacant ground floor level retail space at Fairgreen House is also reasonable. It is not evident, having regard to the details of uses permissible and open to consideration within the CDP, that the proposed use would be in material contravention of the City Centre zoning objective.
- 7.1.2. Furthermore, the location is somewhat transitional owing to its location at the edge of the area subject to the ‘city centre’ zoning objective in an area in a mixed-use area in a range of commercial and services uses including specifically travel related activities associated with the bus depots and stops and the bus station, tourist accommodation cafes and bars and tourist accommodation, mainly along Forster Street and residential use. While the proposed use does not deliver the active and animated street frontage associated with retail use, a high-quality design and selection of materials and finishes which is aesthetically pleasing within views from the public realm would be reasonable.
- 7.1.3. The planning officer contends that the precise nature of the proposed use from the submissions made in connection with the application is unclear. However, it is considered reasonable for there to be reliance on the description in the notices accompanying the application, and that the reference to *“uses such as this gaming facility...”* within reason No 1 attached to the planning authority decision is not disputed in the appeal. Further clarification as to full details for the internal layout of the gaming area could be addressed by condition.
- 7.1.4. It is not apparent from the planning officer report that a gaming business, with patrons using slot machines, which would come within recreational and leisure and entertainment would generate a serious problem of noise and disturbance within the

immediate vicinity, particularly given that the mixed-use character of the area. Separately, it is not evident based on the information available that there is a basis for concern as to likelihood that the introduction of gaming or similar entertainment use which appears to be proposed would undermine, interfere with or adversely affect the operation of business by other tenants (such as a permitted café or gym at ground level and basement levels and current the Language School and daytime office uses in the building or residential development in the vicinity, for example at the Elms, to the south-east. In this regard it is of note that the site location is not an area in which night-time use such as nightclubs, entertainment bars and takeaway restaurants are clustered and predominant.

- 7.1.5. As regards hours of business, for which the applicant seeks no restrictions but suggests that the matter which is subject of the Gaming License which would be required, it is considered reasonable for restrictions on hours of operation, if determined to be warranted on planning grounds to be taken into consideration and if warranted, for conditions to be imposed in this regard. Matters as restriction of use to adults only and as to the sale of alcohol are licensing matters to be addressed under the separate licences to be obtained by the applicant. However, if warranted on planning grounds it would be reasonable, if permission is granted, to attach a condition omitting bar facilities and consumption of alcohol on the premises for the purpose of clarity and the amenities of the area by way of avoidance of potential for noise and disturbance within the public realm by patrons.

Environmental Impact Assessment Screening.

- 7.1.6. Having regard to the nature of the proposed development and its location in a serviced urban area, removed from any sensitive locations or features, there is no real likelihood of significant effects on the environment. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

Appropriate Assessment Screening.

- 7.1.7. Having regard to and to the nature of the proposed development and the serviced inner urban site location, no Appropriate Assessment issues proposed development

would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

In view of the foregoing, it is considered reasonable for permission to be granted but that it would be advisable for the duration of the grant of permission to be limited to a five-year period so as to allow for a further planning review in the interest of the amenities of the area and the proper planning and sustainable development. Reasons and Considerations and Conditions follow.

9.0 Reasons and Considerations

Having regard to the transitional nature of the site location at the edge of an area subject zoning objective: CC *“To provide for city centre activities and particularly those which preserve the city centre as the dominant commercial area of the city”* according to the Galway City Development Plan, 2017-2023 and peripheral to the city centre’s principal shopping streets and to the mix and range of uses in the existing Fairgreen House building and the immediate vicinity, it is considered that subject to compliance with the conditions set out below, the proposed development would not be in conflict with and would not seriously injure the amenities of the adjoining properties and the amenities of the public realm in the surrounding area, would be consistent with the development objective for the location as set out in the development plan and, would be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions.

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars lodged on 15th April, 2021 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 duration of the grant of permission shall cease five years from the date of the order and the premises shall be cleared of all furnishings, equipment and signage and vacated unless, a prior grant of permission for continuation of the use has been obtained.

Reason: In order to allow for further planning review in the interests of the amenities of the area.

3. Prior to the commencement of development, the applicant shall submit and agree in writing with the planning authority, full details all external finishes, inclusive off elevation and section drawings of the materials, colours, textures and finishes of any proposals for screening for the glazed façade and the entrances. Security or roller shutters, awnings and projecting signs are not permitted.

Reason: In the interest of visual amenity.

4. Prior to the commencement the development, the applicant shall submit and agree with the planning authority, a floor plan at a scale of not less than 1:100 showing full details of the internal layout for the proposed gaming use and full details of the machines to be installed for use by patrons. No additional mezzanine floor gaming use shall be permitted unless authorised by a prior grant of planning permission.

Reason: In the interest of clarity.

5. Signage shall be restricted to single fascia signs over the two entrances individually mounted or hand painted lettering. Adhesive signs on glazing or other signs displayed in or visible through the glazing are not permitted.

Reason: In the interest of the protection of the visual amenities of the building and the area.

6. The premises shall not be used for the sale or the consumption of alcohol on or off the premises unless authorised by prior grant of planning permission.

Reason: In the interest of clarity and the protection of the amenities of the area.

7. The following requirements shall be provided for in the development: -

All entrance doors in the external envelope shall be tightly fitting and self-closing.

All windows and roof lights shall be double-glazed and tightly fitting.

Noise attenuators shall be fitted to any openings required for ventilation or air conditioning purposes.

Reason: In the interest of clarity and the amenities of the area.

8. Prior to commencement of development the applicant shall submit and agree with the planning authority, full details of proposed arrangements for fulfilment of these requirements.

Reason: In the interest of clarity and the protection the amenities of development in the vicinity.

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

Reason: In the interest of public health.

10. The developer shall enter into water supply and wastewater connection agreements with Irish Water, prior to commencement of development.

Reason: In the interest of public health.

11. Notwithstanding the exempted development provisions of the Planning and Development Regulations, 2001, and any statutory provision amending or replacing them, the use of the proposed development shall be restricted to gaming use as specified in the lodged documentation, unless otherwise authorised by a prior grant of planning permission.

Reason: In the interest of residential amenity.

12. 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.

Jane Dennehy
Senior Planning Inspector
October, 2021.