



An
Bord
Pleanála

Inspector's Report

ABP-313394-22

Development	Change of use of the existing commercial unit to an amusement and entertainment centre plus carry out all ancillary and associated works on site.
Location	Teeling Street, Ballina, Co Mayo
Planning Authority	Mayo County Council
Planning Authority Reg. Ref.	21746
Applicant(s)	Séamus Murphy.
Type of Application	Permission.
Planning Authority Decision	Refuse Permission
Type of Appeal	First Party
Appellant(s)	Séamus Murphy.
Observer(s)	None.
Date of Site Inspection	8 th February 2023.
Inspector	Bríd Maxwell

1.0 Site Location and Description

- 1.1. This appeal relates to an established vacant building located on the eastern side of Teeling Street N59 in Ballina, Co Mayo. The site 0.0462 hectares is occupied by a two storey building with single storey annex with a total floor area of 182sq.m. Documentation on the appeal file outlines that the building has been vacant for a number of years and was last used as a commercial printers. Immediately to the south of the site is the former Estoria Cinema currently in use as a Men's Shed. To the north of the site is a service access to the Aldi supermarket which was recently constructed on the site of the former Deanwood Hotel. This service access opens on the Aldi Car park and Teeling Street Public car park. There are a number of mixed uses in the immediate vicinity on Teeling Street including retail, commercial service uses and residential.

2.0 Proposed Development

- 2.1. The application seeks permission for change of use of the existing commercial unit to an amusement and entertainment centre and all ancillary and associated works. In response to a request for additional information it was outlined that the proposal will involve gaming machines and live card games with intended operational hours from 9am – midnight. It is predicted that there will be a maximum of 13 people in the premises at any time (3 employees and 10 customers).

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1 Following a request for additional information and a request for clarification of further information Mayo County Council ultimately, by order dated 25th March 2023, issued notification of the decision to refuse permission for the following reason:

“Having regard to the nature and extent of the development as proposed, if granted, would lead to a proliferation of similar type developments on Teeling Street and generally in Ballina town and would seriously injure the amenities or depreciate the value of property in the vicinity, due to increased noise disturbance and general nuisance arising and would therefore be contrary to the provisions of Section 2.13.5

of Ballina and Environs Development Plan 2009-2015 (as extended). Therefore, the proposed development would materially contravene an objective indicated in a local area plan for the area.”

3.2. Planning Authority Reports

3.2.1. Planning Reports

Initial Planner's report sought additional information to include a revision to the northern side elevation to improve aesthetic to the public realm and clarification regarding boundary treatment and right of way. Wastewater management details to be outlined. Clarification of the exact nature of the proposal, hours of operation and details of likely noise and noise mitigation proposals. Drop off and delivery area to be detailed. An advisory note outlined that the Planning Authority had concerns regarding proliferation of amusement facilities and potential for traffic hazard.

A second clarification request letter noted perceived conflicts with site layout permitted for the adjacent development 20/316. Site layout to indicate delivery access. Concerns were again highlighted regarding potential for traffic hazard and proliferation of such uses. Applicant was requested to consult with the Council's architect regarding signage and shopfront details.

Final planner's report notes that the proposal relates to a gaming arcade and that floor plans do not indicate the layout of facilities. It is asserted that based on the revised nature and extent of the development and opening hours from 9am to midnight the applicants have not demonstrated that the proposal will not lead to noise disturbance and general nuisances in the vicinity. Refusal was recommended as per subsequent decision.

3.2.2. Other Technical Reports

Report from Ballina Municipal District Engineer outlines concern regarding potential for parking on the adjacent right of way. Boundary treatment and signage will be important. Second report recommended seeking clarification regarding right of way where permission 20/316 shows landscaping along the right of way. A pedestrian crossing may be provided on the N59 Teeling Street as part of conditions 20/316.

Designated parking area to be clarified. Stopping alongside the development will not be permitted.

Ballina Municipal District Architect sought revisions to the side elevation to address Aldi Service Access.

3.3. **Prescribed Bodies**

No submissions

3.4. **Third Party Observations**

No submissions

4.0 **Planning History**

No planning history on the appeal site.

P20/316 Adjoining site to the north. Permission granted 15/02/2021 for demolition of 3 derelict buildings including the Deanswood Hotel and construction of discount foodstore Aldi. I note condition 10 which requires agreement of entrance details with Ballina Municipal District Engineer prior to commencement of development.

Condition 11 refers to the provision of a pedestrian crossing on the N59 Teeling Street to be subject to approval of Transport Infrastructure Ireland. A preliminary feasibility report to the TII to be completed. Condition 12. Pedestrian Crossing on the N59, (on approval by TII) to be constructed by the developer.

5.0 **Policy Context**

5.1. **Development Plan**

The Mayo County Development Plan 2022-2028 and Ballina Town Development Plan 2009-2015 as extended refer. I note from Mayo County Council Website [Draft Local Area Plans \(mayo.ie\)](#) that a pre-draft Ballina Issues Paper 2021-2027 was published on 16/03/2023 and it is envisaged that the draft Ballina Town and Environs Local Area Plan 2023-2029 will be going on public display in the near future.

Within the Ballina Town and Environs Plan 2009-2015 as extended, the site is zoned C1 - Commercial (town Centre) the objective being to protect the role of the town centre and provide for town centre uses.

In relation to zoning categories it is outlined that the categories set out the principle function of each use zone. Proposals for uses not referred to will be considered where they do not conflict with the stated purpose of the zone and where they do not undermine the primary function of another zone.

Primarily for Commercial Use (C1 & C2)

- To provide for shopping and retail stores
- To provide for office development
- To provide for other town centre uses including houses/apartments
- To preserve existing civic amenity, town centre character and heritage building sites
- To improve civic amenity by requiring high standards of civic design
- To retain retail/shop use on ground floor of principal shopping streets
- To retain character and use of existing predominantly residential streets
- To promote "Living over the Shop" and to protect the amenity of the residential community
- To promote the commercial and civic viability of the town by fostering a range of retail and other services within a well accessed environment

The lands on the opposite side of Teeling Street are zoned C2 Commercial Edge of Centre.

At 3.8.7 "Bars/Night-Clubs/Disco Bars/Amusement Centres

In order to maintain an appropriate mix of uses and protect night time amenities in the town, the local authority will, through the appropriate use of its development control powers, prevent an excessive concentration of any of the above uses in a

particular area and shall ensure that the intensity of any proposed use is in keeping with both the character of the area (i.e. residential, mixed use etc.) and with adjoining businesses, when development proposals are being considered. The following issues shall be taken into account in the assessment of applications for the above uses.

- Noise at the boundaries will be carefully monitored and noise insulation measures will be required at the time of the submission of the planning application. Other effects of the development on the amenity of nearby residents must be assessed prior to the granting of planning permission, (i.e. General disturbance, hours of operation, car parking and litter).*
- The importance of safeguarding the vitality and viability of the town centre and maintaining a vibrant mix of uses.*
- The Planning Authorities shall insist that proper litter control measures be in place prior to the opening of any premises.*

Façade design will be carefully controlled by the Planning Authorities and in particular the type and degree of advertising signage and lighting. The design shall respect the character of the streets and the buildings.”

At 2.13.5 Transitional Areas

“While the zoning objectives indicate the different uses permitted in each zone it is important to avoid abrupt transitions in scale and use at the boundary of adjoining land use zones. In these areas it is necessary to avoid developments that would be detrimental to amenity. In zones abutting residential areas, particular attention will be paid to the uses, scale and density and appearance of development proposals and to landscaping and screening proposals in order to protect the amenities of residential properties. Planning applications for new developments in transitional areas shall be assessed with particular reference to opening hours and the possible impact on the residential amenity of adjoining properties in terms of noise and general disturbance.”

At 2.3.6 Retail Strategy

It is also the policy of the Council to encourage the refurbishment and redesign of vacant and derelict buildings / sites in the town centre for reuse as retail and commercial units.

Objective TC2 Resist the conversion of ground floors of premises on the principal shopping streets from retail to non-retail uses. For these purposes, the principal shopping streets are Pearse Street, O’Rahilly Street, Tone Street, Tolan Street, Emmett Street and Market Road.

TC7 Assist and promote the redevelopment of underused/derelict sites in the town centre, starting with the block bordered by Emmet Street and Pearse Street in accordance with the design guidelines in Appendix A.

Within the Mayo County Development Plan 2022-2028 I note

Core Strategy Policy CP3 “To promote measures to reduce vacancy and the underuse of existing building stock and support initiatives that promote the reuse, refurbishment and retrofitting of existing buildings within all settlements in the Settlement Hierarchy and the rural countryside.”

Retail Objective EDO46 “To maintain an appropriate mix of uses and to maintain the role of the town centre as a dominant commercial and retail centre, and prevent an excessive concentration of particular (single type) uses with the town centre areas of Mayo’s towns and villages, for example bookmakers/betting offices; licenced premises, discount retail units, hot food takeaways, etc”

Regeneration Policy BEP 26, BEP 27 and BEP 29 as follows:

“To promote the regeneration of settlements by making better use of underutilised land and buildings, particularly within the existing built-up areas to achieve compact growth.

To support initiatives that promote the reuse, refurbishment and retrofitting of existing buildings within town and village centres

To promote the consolidation of town and village centres with a focus on the regeneration of underused buildings and strategic sites and on the establishment of a mix of uses to encourage greater vibrancy outside of business hours.”

Settlement Strategy Objective SSP3

“To require sustainable, compact, sequential growth and urban regeneration in Ballina, Castlebar and Westport by consolidating the built-up footprints of these towns through a focus on regeneration and development of town centre infill and brownfield sites, and encouraging regeneration of underutilised, vacant and derelict lands for residential development and mixed use to facilitate population growth.”

The Land Use Zoning Matrix for Tier II towns lists the uses generally permitted within the town centre including Shops (including supermarkets), off-licenses, offices, civic and public buildings, places of worship, public houses, hotels, restaurants, indoor leisure, car parks, apartments, houses, community facilities, parks and open spaces and retirement homes; along with uses that are considered ancillary to the aforementioned uses.

5.2. Natural Heritage Designations

The site is circa 350m west of the River Moy SAC. 600m from the Killala Bay / Moy Estuary SAC and 2.6km south of Killala Bay Moy Estuary SPA.

5.3. EIA Screening

Having regard to the nature of the development comprising change of use of an existing premises it is considered that there is no real likelihood of significant effects on the environment arising from the proposed development. The need for an environmental impact assessment can, therefore, be excluded by way of preliminary examination.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1 The appeal is made by HW Planning on behalf of the first party. Grounds of appeal are summarised as follows:

- The Planning Authority's decision failed to appropriately assess the information submitted in support of the application or the existing development context in Teeling Street and surrounding areas.
- Two further information requests issued to the applicant which included an advice note highlighting the issue of potential proliferation of such uses however the applicant was not requested to justify the principle of proposed development. Applicant committed additional resources to respond to the issues and was surprised at subsequent refusal.
- The Planning Authority mishandled the application and the decision is not in accordance with the guidance in the Development Management Guidelines. Section 5.7 where it is stated that requests for further information should not be sought if there is a fundamental objection to the proposed development on other grounds.
- Disagree that the proposal will result in proliferation of amusement arcades and similar type developments in the area and note there is only one other comparable amusement arcade premises in the entire town of Ballina which is approximately 130m north of the site.
- No evidence to justify assertion that the proposal would depreciate the value of property in the vicinity.
- No third party concerns were raised.
- Applicant is an experienced operator of gaming / amusement arcades with 'Goldrush Casinos' established in Cork Dublin and various town centres including Carlow, Naas, Athy and Wexford. All premises operate successfully and positively contribute to a broad mix of uses in these urban centres.
- Proposal is in accordance with Town Centre policies and objectives and reintroduces into active use an existing commercial premises which has been vacant for several years and will not result in any negative impacts on the amenities of the surrounding areas.
- There is an established precedent for the provision of gaming / amusement arcades within town centres.

- There are a broad range of uses in the vicinity and a notable presence of vacant and underutilised properties on Teeling Street many of which have been vacant for some time.
- Teeling Street is not identified within the principal shopping /retail area of Ballina as confirmed in Objective TC2 of the Ballina Town Development Plan which identifies Pearse Street, O Rahilly Street, Tone Street, Tolan Street, Emmet Street and Market Road as the principal shopping streets in the town.
- Planning Authority decision demonstrates biased negative associations relating to the use of gaming arcades.
- Noise levels from such establishments are low and would be imperceptible in the wider mixed use of Teeling Street. Noise mitigation measures will be implemented in building materials.
- Most recent use as a commercial printer was likely to generate a higher vehicular paring and trips than the proposed arcade use.
- Applicant is willing to accept a condition regarding levels and hours of operation as indicated in response to request for additional information.
- The proposal is in accordance with the sites C1 – Commercial zoning objective and all town centre policies and objectives of the Ballina Town development plan and County Development Plan.
- Proposal represents the reintroduction into active use of an existing vacant commercial premises and will not result in any negative impact on the amenities of the surrounding area.
- Strong precedent for granting permission for gaming and amusement arcades in town centres. A number of case references are noted PL26.23527 PL85.231296, PL42.225804 and PL70.222449.

6.2. Planning Authority Response

The Planning Authority did not respond to the grounds of appeal.

6.3. Observations

None

7.0 Assessment

7.1. I note that the first party appeal contends that the assessment of the application by the planning authority was mishandled, procedurally unfair, and injurious to the applicant's right to due process. I note that matters of procedure are beyond the remit of the Board in terms of the assessment of the appeal and I therefore consider it appropriate to progress to the evaluation of the appeal on its planning merit.

7.2. As regards zoning the site is within the area zoned C1 – Commercial (Town Centre) in the Ballina Town and Environs Development Plan 2009-2015 as extended where the objective is to protect the role of the town centre and to provide for town centre uses. I would concur with the first party that the proposed use as an amusement and entertainment centre is an appropriate use within this C1 zoning. At 2.13.6 of the Ballina and Environs Development Plan the zoning categories are set out and include shopping, retail office and other town centre uses including houses /apartments. The zoning objective seeks to promote the commercial and civic viability of the town by fostering a range of retail and other services within a well accessed environment. I consider that the town centre is the appropriate location for a use of this nature and therefore the principle of the proposed use is acceptable subject to detailed matters and in particular impact on the amenities of the area. I note that as referenced in Objective TC2 of the Ballina and Environs Development Plan the principal shopping streets are Pearse Street, O Rahilly Street, Tone Street, Tolan Street , Emmet Street and Market road whereas Teeling Street is a secondary retail area with a prevalence of retail services and other uses rather than higher order convenience and comparison retail. I also note a considerable level of vacancy on Teeling Street including a number of buildings in disrepair. I consider that the provision of a viable and sustainable use for the building would best protect the physical fabric and vitality of the area.

- 7.3. As regards allegations of a proliferation of such uses I note that *JC Amusements* which had been in operation at the time of the application to the local authority appeared to have ceased trading on Teeling Street on the date of my site visit 8/3/2023. I note that a more recently established premises *Majestic Entertainment* Poker and Slots had set up approximately 100m to the north of the appeal site on Teeling Street however I noted no apparent planning history in relation to this premises. In any case I consider that the allegations of a proliferation of this type of use are unfounded.
- 7.4. I note that the Local authority in its decision referred to Section 2.13.5 of the Ballina referring to transitional areas where it is stated that “*While the zoning objectives indicate the different uses permitted in each zone it is important to avoid abrupt transitions in scale and use at the boundary of adjoining land use zones. In these areas it is necessary to avoid developments that would be detrimental to amenity. In zones abutting residential areas, particular attention will be paid to the uses, scale and density and appearance of development proposals and to landscaping and screening proposals in order to protect the amenities of residential properties. Planning applications for new developments in transitional areas shall be assessed with particular reference to opening hours and the possible impact on the residential amenity of adjoining properties in terms of noise and general disturbance.*”
- 7.5. I consider that the provision of an amusement and entertainment centre involving gaming machines and live card games is acceptable having regard to the location of the site within a mixed use area. As regards the potential for noise and other disturbance with particular reference to residential uses in the vicinity, I observed on the date of my site visit that this location on a busy street (N59) and adjacent to the Aldi supermarket and car parking, traffic noise is significant and I consider that the level of noise arising from the proposed use is not likely to be significant in this context. I also note that as clarified by the first party in the response to the request for additional information it is intended that noise mitigation will be provided to include the use of insulation and sound proofing materials in building renovation

works. I consider that given the scale and location of the development no undue negative impacts on established residential and other amenities are predicted.

7.6 As regards visual impacts I note the modifications to the external design treatment during the course of the application to the council including the provision of a timber finish shopfront wrapping around the north-western corner of the building. I acknowledge that amusement centres have a tendency to result in dead frontages. I consider that a control in terms of simple high quality signage should be provided for to ensure a positive contribution to the streetscape. The avoidance of internally illuminated signage in particular should be addressed by condition. I consider that a restriction in terms of operating hours would also provide for suitable control in terms of potential for disturbance to the amenities of the area.

7.7 As regards traffic safety and car parking I consider that given the town centre location and the availability of parking facilities it is appropriate that a levy would apply with regard to parking. I note that Table 3.2 of the Ballina Town and Environs Development Plan sets out car parking standards. In relation to ballroom, dance halls, clubs, function rooms, conference centre the relevant standard is 1 space per 20m². I calculate that based on the floor area of the amusement centre of approximately 64sq.m a contribution for three spaces would apply.

7.8 Regarding the issue of Appropriate Assessment having regard to the minor nature of the proposed development and to the location of the site in a serviced urban area and the separation distance to the nearest European site, no Appropriate Assessment issues arise, and it is not considered that the development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 **Recommendation**

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

9.0 Reasons and Considerations

Having regard to the location of the site within the town centre of Ballina on a site zoned C1 – Commercial Town Centre it is considered that the proposed use as an amusement and entertainment centre will not result in an excessive concentration of such uses in the area, will not impact negatively on the vitality and viability of the town centre, would not have an adverse impact on the residential or other amenities of the area and therefore would comply with the proper planning and sustainable development of the area.

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 submitted on the 14th day of January 2022 and on 28th day of February 2022, 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. No advertisement or advertisement structure shall be erected or displayed on the building within the curtilage of the site without the prior approval of the planning authority whether or not such development would constitute exempted development under the Planning and Development Regulations, 2001.

Reason: In the interest of visual amenity.

3. Prior to commencement of development full details of the signage, which shall be externally illuminated and of a high quality design, and the details of all lighting proposed shall be submitted to and agreed in writing with the Planning Authority.

Reason: In the interest of visual amenity.

4. The noise level for this development shall not exceed 55dB(A) when measured at the nearest noise sensitive location. Procedures for the purpose of determining compliance with this limit shall be submitted to and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of the amenities of adjoining properties.

5. The opening hours of the amusement and entertainment centre shall be confined to the following: 9 am to 11 pm.

Reason: In the interest of orderly development

6. Prior to commencement of development the developer shall submit and obtain the written agreement of the planning authority to, a plan containing details for the management of waste (and, in particular, recyclable materials) within the development, including the provision of facilities for the storage, separation and collection of the waste and, in particular, recyclable materials, and for the ongoing operation of these facilities.

Reason: To provide for the appropriate management of waste and, in particular recyclable materials, in the interest of protecting the environment.

7. 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.

8. The developer shall pay to the planning authority a financial contribution as a special contribution under section 48(2)(c) of the Planning and Development Act 2000 in respect of the provision of parking facilities. The amount of the contribution shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board for determination. The contribution shall be paid prior to the commencement of the development or in such phased payments as the planning authority may facilitate and shall be updated at the time of payment in accordance with changes in the Wholesale Price Index – Building and Construction (Capital Goods), published by the Central Statistics Office.

Reason: It is considered reasonable that the developer should contribute towards the specific exceptional costs which are incurred by the planning authority which are not covered in the Development Contribution Scheme and which will benefit the proposed development.

Bríd Maxwell
Planning Inspector

16th March 2023