



An
Bord
Pleanála

Inspector's Report

ABP-314897-22

Development	Change of use of ground floor restaurant kitchen to Class 4 Use production kitchen and change of use of the main ground floor restaurant to amusements and gaming use.
Location	The Forum (Licensed Premises), The Glen, Waterford.
Planning Authority	Waterford City and County Council
Planning Authority Reg. Ref.	22522
Applicant(s)	Coherent Enterprises Ltd.
Type of Application	Permission.
Planning Authority Decision	Refuse Permission.
Type of Appeal	First Party versus Decision.
Appellant(s)	Coherent Enterprises Ltd.
Observer(s)	Stephen O'Leary.
Date of Site Inspection	15 July 2023.

Inspector

Stephen Rhys Thomas

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1.0 Site Location and Description

- 1.1. The Forum in Waterford City is an entertainment based 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, studios and bar area. There is an adjoining off licence and storage units. 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.
- 1.2. The site which is the subject of this appeal is the ground floor of building, and it is currently a dining area associated with an existing restaurant and toilet area. Though permission has been secured to use part of the ground floor as an amusements and gaming area.

2.0 Proposed Development

- 2.1. The proposed development comprises:
 - The change of use of the ground floor restaurant kitchen to a Class 4 Light Industrial Use for a production kitchen and,
 - The change of use of the main ground floor restaurant area to an amusements and gaming use.

Further information was requested with regard to operational details, the proposed development was not altered in any way.

3.0 Planning Authority Decision

3.1. Decision

Waterford City and County Council issued a notification to refuse permission for two reasons, as follows:

1 Considering the location of the application site located within Waterford City centre, on land zoned for Town Core Zone use in the current Waterford City and County DEvelopemtn plan 2022-2028, and given the proximity of the appliction site to

existing residential areas, the Planning Authority considers that the proposed change of use to production kitchen (Class 4 Light Industrial as per the Planning and Development Regulations 2001 as amended), would not be an appropriate use at this location, would have the potential to have a negative impact on residential amenity of adjoining residential properties particularly in relation to deliveries and collections and the proximity to neighbouring development and thus would be contrary to the proper planning and sustainable development of the area.

2 It is considered that the proposed change of use to amusement/gaming would, given the size and scale of the amusement/gaming area proposed, be contrary to Development Management DM 26, Development Management Standards, Waterford City and County Development Plan 2022-2028, which seeks to restrict such uses as amusement/gaming. It is further considered that given the scale of the proposed amusement/gaming area that it would be out of keeping with existing uses in this Town Core Zone area, would negatively impact on the vitality and viability of the Town Core Zone and would therefore be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

3.2.2. The Planning Authority decided to refuse permission for two reasons, the basis of their decision can be summarised as follows:

Report 1

- The planning history of the site is outlined, with special attention given to PA ref 20/301, the planning authority's split decision to refuse permission for the

amusement/gaming element, the subsequent appeal and judicial review proceedings yet to conclude.

- Class 4 light industrial (kitchens) and amusement arcade are open for consideration in the Town Core zoning, of the Waterford City and County Development Plan 2022-2028.
- Production kitchen use may present issues, further information required.
- Permission for 127 sqm of amusement/gaming area is noted, but its status is uncertain. Details are required with reference to hours of operation and staffing.
- Advertising, signage and car/cycle parking details are required.

Further information was requested in accordance with the Planner's recommendation.

Report 2

- Matters that concern the kitchen proposal are acceptable to the Environment Section, conditions are recommended. However, concerns are still expressed by the planning authority and a refusal based upon residential amenity impacts is recommended.
- The scale of the amusement/gaming area is still a concern, DM 16 refers, refuse permission.
- Cycle/car parking and signage details are acceptable subject to conditions.

All items of further information submitted were noted, however, permission was refused in accordance with the Planner's recommendation.

3.2.3. Other Technical Reports

1.Environment Section: No objections subject to conditions.

3.3. Prescribed Bodies

None.

3.4. **Third Party Observations**

None.

4.0 **Planning History**

4.1. **Site:**

PA ref: 21136 and ABP-310161-21 - 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.

PA ref: 20301 – Permission for the following:

- (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 split with the proposed gaming area refused because the proposed access was off the western elevation of The Forum onto a yard area and the planning authority anticipated the potential for antisocial behaviour.

5.0 **Policy Context**

5.1. **Development Plan**

The site is governed by the policies and provisions contained in Waterford City and County Development Plan 2022-2028.

The appeal site is located on lands subject to zoning objective TC Town Core - provide for the development and enhancement of town core uses including retail, residential, commercial, civic and other uses.

Amusement use is Open for Consideration.

Industry Light use (kitchens) is Open for Consideration.

Relevant policies/objectives include:

W City 10 - We will have regard to the following when considering development proposals for evening and night-time uses:

Avoidance of an undue proliferation of fast-food take-away outlets, pubs, nightclubs, casinos/ gaming arcades, betting offices and similar uses in any particular area.

Proposals for new night-time uses such as fast-food take-away outlets, pubs, nightclubs, casinos/gaming arcades, betting offices and restaurants or the enlargement of such uses existing the following material issues apply:

- The effect of the proposed development on the amenities of the area, including residential amenity.
- The effect of the proposed development on the existing mix of land uses and activities including the retail function, in the particular locality.
- The size, scale and location of existing similar type and mix of uses in the vicinity.

Table 3.4

Zone 1 – Proposals for amusement arcades and casinos will be discouraged at ground floor level.

Zone 2 – Applications for amusement arcades at ground floor level will be assessed on their merits, and may only be permitted where such development would not result in a predominance of such similar non-retail frontages on the street.

Other Areas - Applications for amusement arcades will be assessed on their merits, and may only be permitted where such development would not result in a proliferation of such similar frontages/uses on the street.

Volume 2, section 5.16 Take-Aways, Amusement Centres, Night Clubs/Licensed Premises/Public Houses, Off-Licences, Betting Offices, Casino's/ Private Member Clubs

Development Management DM 26

The provision of any of the above will be strictly controlled, having regard to the following, where appropriate:

- The amenities of nearby residents, i.e. noise, general disturbance, hours of operation, and litter.
- Location of vents and other external services and their potential impact on adjoining amenities in terms of noise/odour/visual impact.
- The need to safeguard the vitality and viability of shopping areas in the city and county and to maintain a suitable mix of retail uses.
- Traffic considerations.
- The number/frequency of such facilities/events in the area.
- The scale of the development proposed in keeping with the scale of the building and the pattern of development in the area.
- The treatment of shopfront advertising and window display.
- The operators come to a satisfactory arrangement with the Council in relation to litter control.

The larger leisure complexes which contain a mix of uses, e.g. cinema, bowling, and restaurant will be treated on their merits.

5.2. Natural Heritage Designations

- 5.2.1. None relevant to this site.

5.3. EIA Screening

- 5.3.1. Having regard to the nature and scale of the proposed development, comprising a change of use, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environment impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

The background to the various uses and permissions over the past are outlined and the proposed development is explained. The grounds of appeal relate to the reasons for refusal and can be summarised as follows:

- Given the nature of the further information requested, it was assumed permission would be forthcoming, paragraph 5.5 of the Development Management Guidelines 2006 refer.
- With reference to the commercial kitchen, classed as a Class 4 (light industry) Kitchen, this is a use open for consideration under the TC zoning. The Environment section of the Council did not oppose the kitchens and recommended conditions to protect residential amenity. There are no residential units adjoining the kitchens and no complaints have been raised by other nearby residential units with reference to the restaurant kitchens that have operated since 2007. Two residential units do overlook the yard area, but proposed operations will be less frequent than those that served the restaurant.
- With reference to refusal reason 2 and DM26, there are no residential units near the entrance to the proposed arcade, no external services are proposed, the site is outside the Prime Retail locations (figure 7,2 of the development plan) and change of use is from restaurant not retail, the site is not proximate to other similar establishments at 16 Merchants Quay and 9 O'Connell Street, no objections were raised with regard to signage and litter and no reduction in the range of uses in the former cinema complex will result. The proposed amusement/gaming element of the scheme responds to each of the criteria set out in DM26 and is therefore acceptable.
- The restaurant use is still in operation despite market and external forces. If the recent permission to turn over part of the floorspace to amusement/gaming use then a food production business could have been operated from the restaurant.

- Since establishment in 1937 as a cinema, the premises has continued to provide entertainment uses and this will continue if permission is granted.

6.2. Planning Authority Response

The planning authority prepared a submission that can be summarised as follows:

- Further information was requested to clarify details of the application, the request was made in accordance with Article 33 of the Planning and Development Regulations 2001 (as amended).
- The use of the site for a production kitchen is more appropriately located in an industrial estate away from residential units.
- Notwithstanding the previous permission for an amusement/gaming area, the increased scale of the proposed development is not acceptable at this location and is contrary to DM 26.
- Permission should be refused.

6.3. Observations

An observation has been received on behalf of Stephen O'Leary, Funfair Casino, Arklow, and includes a detailed planning assessment and observations, the observations can be summarised as follows:

- The floor areas to do with amusement/gaming areas differ between the previous application and the current one, that is much larger, from 127 sqm to 430 sqm. The scale of increase must be considered as inappropriate for this residential location.
- The current proposal should be assessed under the 2022 plan and not the previous plan that the previous application was considered under. The current plan does not support amusement/gaming uses in the TC zoning.
- Amusements and restaurants are now open for consideration and not permitted in principle under the TC zoning.
- A dilution of retail function will result if permitted, as ground floor retail space will be lost.

7.0 Assessment

7.1. The main issues in this appeal are those raised in the grounds of appeal, and I am satisfied that no other substantive issues arise. The issue of appropriate assessment also needs to be addressed. The issues can be dealt with under the following headings:

- Amusement Centre
- Commercial Kitchen
- Other Matters
- Appropriate Assessment

7.2. Amusement Centre

- 7.2.1. The appeal site refers to the ground floor of a former cinema building erected in the 1930s. The overall complex has a range of uses including restaurant, bingo hall, film/audio studios, offices and service yards. There are additional uses that have been recently permitted, including a nail bar and ground floor amusement and gaming area, PA ref 21/136 and ABP ref PL93.310161 refer. The wider area is characterised by a mixture of commercial and residential uses, with a large area of surface car parking to the front of the former cinema. The planning authority are not satisfied that this is the correct location for an amusement centre of the scale proposed, this is demonstrated by condition 2 of the previous permission limiting the duration of the amusement centre use, PA ref 21/136 refers. Under a newly adopted Development Plan, the planning authority are now not convinced that an amusement centre should be established here. Hence, the planning authority consider that the size and scale of the amusement/gaming area now proposed would be contrary to Development Management DM 26 and the criteria listed to assess the appropriateness of such a use. The Town Core Zoning also presents an issue and the vitality and viability of the area is at risk, given the out of character use proposed.
- 7.2.2. The applicant disagrees and applies the tests set out by DM 26 with reference to amusement centres and concludes that none of the nine points apply. The principle of an amusement centre has already been established by the permission issued by the Board, though an observer disputes this point because that decision was made under a different Development Plan. The applicant explains that the site is outside

the retail core detailed in Development Plan figure 7.2 and that the range of uses at the Forum will still be numerous and diverse.

- 7.2.3. I note that an observer has raised similar issues to those set out by the planning authority and thinks that permission should be refused. With relevance to the appeal on hand, the observer reminds the Board to refer to the new Development Plan and that fact that amusement centres and light industrial uses are now only 'open for consideration' under the TC land use zoning and no longer 'permissible' as previously stated in the last plan.
- 7.2.4. Firstly, the site is located on land use zoning TC, Town Core, the objective of which is to provide for the development and enhancement of town core uses including retail, residential, commercial, civic and other uses. This is a diverse zoning objective and its aim is to support a variety of uses in the city centre to ensure its future vitality and viability. I note that figure 3.6 of the current development plan outlines the retail core area of Waterford City and the appeal site falls well outside this zone. The Town Core zoning is also supported by DM 26, reproduced in full at section 5.1 of my report above. DM 26 sets out development management standards to consider when an application for amusement centres and other entertainment type uses are proposed. The appellant has considered all of the relevant considerations and concludes that the Forum is the right location for an enlarged amusement centre and passes all of the standards set out in DM 26. I find the appellant's analysis to be fairly balanced.
- 7.2.5. According to the current Development Plan the location of amusement centres is carefully controlled, it is a use that is open for consideration in the TC zoning and a use that should be prevented if it will impact retail viability, table 3.4 refers. Specifically, table 3.4 states that as location defined as 'Other Areas', amusement centre is a use that can adversely affect the character of an area. Thus, such a use will be assessed on their merits, and may only be permitted where such development would not result in a proliferation of such similar frontages/uses on the street. Finally, DM 26 sets out a test for amusement centres. I accept that the current Development Plan is cautious about certain entertainment uses that could challenge the amenities or retail viability of an area. That is why the planning authority refused permission because they believed that the size and scale of amusement/gaming use now proposed would be contrary to DM 26 and negatively impact the TC zoning.

- 7.2.6. The Board granted permission for a change of use from restaurant to amusement and gaming area of 127 sqm, ABP ref PL93.310161 refers. The applicant, planning authority and observer all point out that this decision is the subject of a judicial review. However, I can find no trace of any judicial review proceedings either on file or on the Board's own appeal management database. In any case, the decision to grant permission for the previous proposal was set against the previous Development Plan and now different criteria refer. I have considered the current proposal under the policies and objectives of the Waterford City and County Development Plan 2022-2028. The appeal site has been the centre of evening and entertainment uses for nearly a hundred years and arguably underpins a variety of activities and uses at this location of the city centre. There are commercial enterprises either side of the former cinema, including an off licence and takeaway, In the wider area there are delicatessens, public houses and other commercial uses. There is a significant residential character to the area around the edge of the Glen too. I note that a bingo use operates from this location and a restaurant operates from the ground floor of the building. All of these activities appear to operate in harmony and without aggravation to the area as a whole. I form this opinion on the basis that there were no submissions on the planning application that opposed the proposal.
- 7.2.7. The current proposal is to do away with the restaurant use and provide an amusement and gaming area together with a commercial kitchen. The total floor area that will be devoted to an amusement and gaming area will amount to 430 sqm. There are no similar facilities in the immediate or wider area and so proliferation of amusement/gaming at this location is not an issue. I am satisfied that the appeal site has an established entertainment bias and actually defines the area of The Glens as such. The combination of former and current entertainment based uses have coexisted with the wider residential area quite well and with careful management can do so in to the future. That being the case, I am satisfied that the provision of a ground floor amusement and gaming area would do much to ensure the commercial and employment potential of this area in the city. Subject to conditions that control operating hours, signage and litter, I am satisfied that an amusement and gaming area would not adversely impact upon the character of the area and would accord with the standards set out in DM 26.

7.3. Commercial Kitchen

- 7.3.1. The proposed development also comprises the change of use of the existing restaurant to a Class 4 (light industry) kitchen, to include the preparation of food for sale and delivery off site. The floor area to be devoted to the commercial kitchen will be 204 sqm, the balance of the ground floor of the former cinema building. The kitchen will be serviced via a side yard that opens out onto the street to the north. The planning authority are concerned that the introduction of a light industrial use (production kitchen) would not be an acceptable use in close proximity to residential units and would not be appropriate in the TC zoning. Permission was refused on the basis that such a use have a negative impact on residential amenity.
- 7.3.2. The applicant explains that because further information was requested regarding issues to do with the production kitchen, an assumption was made that permission would be forthcoming. All the issues outlined in the further information request were satisfactorily addressed and outstanding issues could have been dealt with by condition. The applicant makes the point that the restaurant already operates a kitchen that operates late into the evening and that the proposed production kitchen will have limited operating hours and so will be less harmful to residential amenity than the current situation.
- 7.3.3. The plans showing the existing ground floor regarding the restaurant and its kitchen are not to be found on the current application. However, I can see from the drawings submitted on the history file (21/136) drawings that the kitchen area associated with the existing restaurant is broadly the same as the commercial kitchen now proposed. In my view, the overall scale of any kitchen at this location will be limited by the building envelope. In this instance it is proposed to remove the restaurant use, more or less retain its kitchens and use them to prepare food for consumption elsewhere. Thus, the kitchens will become a production area and would consequently be considered a light industrial use. The appellant has set out that the term light industrial means that such a use should have regard to residential amenity if it is to be located in such an area and they are confident that the production kitchen will be less of a nuisance than the existing restaurant kitchens. To this end the Environment Section of the Council have no objections to the production kitchens and recommend conditions to control its use and operation.

7.3.4. Like many inner city areas, residential zones were historically punctuated by bakeries, kitchens and butchers. Over time these uses have moved out to industrial estates, become more intensive and larger in scale. Waterford city is fortunate in so far as some bakeries still remain in the city centre and the move towards sustainable food production means producers are keen to locate among their customer base. The scale of the production kitchen proposed is no greater than the existing restaurant kitchen and the production of foodstuffs is not such a light industry that cannot be controlled by conditions, as demonstrated by the report of Environment Section dated 26 September 2022. The TC zoning objective allows for light industry uses to be open for consideration and in this instance, I am satisfied that a production kitchen is at the more sensitive end of light industrial uses that could be comfortably accommodated at this location. From a servicing perspective, I can see that a side yard already performs such a function and being an urban streetscape, it would not be unusual for delivery vehicles to enter and exit the site. If staffing number are high, then there are many alternatives to commuting by car and if necessary there is sufficient on street parking to the front of the site. I am satisfied that a production kitchen at this location can be safely accommodated and will not impact upon residential amenity subject to the attachment of appropriately worded conditions.

7.4. Appropriate Assessment.

7.4.1. Having regard to the minor nature and scale of the development under consideration, the site location within an existing built-up area outside of any protected site, the nature of the receiving environment, the availability of public services, and the proximity of the lands in question to the nearest European site, it is my opinion that no appropriate assessment issues arise and that the development would not be likely to have a significant effect, either individually or in combination with other plans or projects, on any Natura 2000 site.

8.0 Recommendation

8.1. Having regard to the above assessment, and based on the following reasons and considerations, it is recommended that permission be granted subject to conditions.

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 TC Town Core in the Waterford City and County Development Plan 2022-2028, where the objective is to provide for the development and enhancement of town core uses including retail, residential, commercial, civic and other uses, and where the proposed uses are open for consideration, it is considered that, subject to compliance with the conditions set out below, the proposed development would be acceptable in accordance with the zoning objective for the site, would not detract from the visual amenity of the area, and would not seriously injure the residential amenity of surrounding properties and would not endanger public safety or convenience by reason of traffic generation or otherwise. The proposed development would, therefore, 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 submitted on the 12th day of September 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. Details of all external elevations 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.

3. The noise level shall not exceed 55 dB(A) rated sound level (that is, corrected sound level for a tonal or impulsive component) at the nearest noise sensitive residential location between 0700 and 1900 hours, Monday to Friday inclusive, and shall not exceed 45 dB(A) at any other time.

Reason: To protect the residential amenities of property in the vicinity of the site.

4. A noise monitoring programme shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development, to include an annual review undertaken by a qualified acoustic engineer at the nearest noise sensitive location. The developer shall carry out any amendments to the subject development requested by the planning authority subject to the review.

Reason: In the interest of protecting the amenity of the nearby residential properties.

5. The developer shall control odour emissions from the premises in accordance with measures including extract duct details which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of public health and to protect the amenities of the area.

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.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Stephen Rhys Thomas

Senior Planning Inspector

18 July 2023