



An  
Bord  
Pleanála

## Inspector's Report ABP-319773-24

<b>Development</b>	Continued use of existing amusement and entertainment centre and associated site works, as previously granted under P20/547 ABP 308499-20.		
<b>Location</b>	Duke Street, Castlebar, Co. Mayo.		
<b>Planning Authority Ref.</b>	23450.		
<b>Applicant(s)</b>	SAF Leisure Ltd.		
<b>Type of Application</b>	Permission	<b>PA Decision</b>	Refuse permission.
<b>Type of Appeal</b>	First Party	<b>Appellant</b>	SAF Leisure Ltd.
<b>Observer(s)</b>	Mairead Connelly		
<b>Date of Site Inspection</b>	2 <sup>nd</sup> August 2024	<b>Inspector</b>	Des Johnson

### Context

#### 1. Site Location/ and Description.

1.1 The site is located to the south-west side of Duke Street in Castlebar town centre; it fronts on to a small courtyard that is used as a service access for surrounding commercial properties. The surrounding area forms the commercial core of Castlebar, and consists mainly of retail and related commercial uses.

1.2 The appeal premises is 3-storey to the front and has a raised single level return to the rear lying over a lower ground floor store in separate ownership.

At ground floor level there is an amusement and entertainment unit, consisting primarily of rows of gaming machines. There is a small porch and doorway giving access to the ground floor gaming machines. Window displays advertise the amusement and entertainment use of the ground floor of the premises.

1.3 I was unable to gain access to the upper floors of the appeal premises at the time of inspection.

## **2. Description of development.**

2.1 The proposal is for the continued use of an existing amusement and entertainment centre and associated site works as previously granted under P20/547 ABP 308499-20. The application is stated to be for a period in excess of the 3 years previously granted.

2.2 The gross floor area of the existing building is stated to be 133.7sqm, and the gross floor area of 'proposed works' is stated to be 129 sqm.

## **3. Planning History.**

3.1 Register Reference P20/547 – permission refused for change of use of existing retail unit to amusement and entertainment centre with associated site works. Permission granted by An Bord Pleanála on appeal under Reference ABP 308499-20, dated 3<sup>rd</sup> February 2021, subject to 8 conditions.

Condition 2 of ABP 308499-20 is as follows:

*This permission shall be for a period of three years from the date of the Order. The use of the unit as an amusement arcade shall then cease unless, prior to the end of the period, permission for its retention shall have been obtained.*

**Reason:** *To allow for a review of the development having regard to the circumstances then pertaining and in the interest of visual amenity.*

Condition 4 reads as follows:

*Notwithstanding the provisions of the Planning and Development Regulations 2001, or any statutory provision amending or replacing them, no signage, advertisements, banners, flags, canopies, or other projecting elements shall be erected or displayed on the building (or within the curtilage of the site) in such a manner as to be visible from outside the building, unless authorised by a further grant of planning permission.*

**Reason:** *In the interest of visual amenity.*

Condition 5 restricts noise level during operation phase to 55 dB(A) rated sound level at the nearest sensitive location between 1000 and 2200 hours, Monday to Saturday inclusive, and not to exceed 45 dB(A) at any other time.

Condition 6 requires no public opening hours to between 23.00hrs and 09.30hrs on any day, except allowing for the following opening hours:

Friday 09.30hrs until 09.30hrs Saturday, and

Saturday 09.30hrs until 09.30hrs Sunday.

The reason for this condition is 'in the interest of visual amenity.'

Condition 8 required a Financial Contribution.

#### **4. Planning Policy**

4.1 Mayo County Development Plan 2022-2028 became effective from 10<sup>th</sup> August 2022. Relevant Policies and Objectives include the following:

##### **Policies**

- EDP 10 To support the vitality and viability of existing town and village centres and facilitate a competitive and healthy environment for the retailing sector into the future, by ensuring that future growth in retail floorspace responds to the identified settlement hierarchy, the sequential approach, the appropriate protection of the built environment and the needs of the projected population of the settlement area.
- EDP 12 To promote the reuse of vacant floorspace. Alternative uses shall be assessed on their own merits against the requirements of the proper planning and sustainable development of the area.
- EDP 14 To promote the reuse or reactivation of vacant underutilised properties/shop units, in order to assist with the regeneration of streets and settlements in the county

##### **Objectives**

- EDO 5 To encourage enterprise and employment development to locate in brownfield sites or unoccupied buildings in town centres or where appropriate in existing industrial/retail parks or other brownfield industrial sites in preference to undeveloped zoned or unzoned lands.

- EDO 42 To promote and reinforce all town centres in the county as primary shopping areas
- EDO 46 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.
- EDO 50 To adopt a presumption in favour of the reuse, and restoration of town centre buildings for use as retail space, subject to satisfying other planning criteria and standards.

4.2 Castlebar Town & Environs Local Area Plan 2023-2029 came into effect on 17<sup>th</sup> January 2024.

The site is zoned Town Centre, with the objective to maintain and enhance the vitality, viability and environment of the town centre for appropriate town centre uses.

Amusement Arcade is 'not normally permitted under this zoning objective (or any other zoning in the LAP).

## **5. Natural Heritage Designations**

5.1 The River Moy SAC is c.5.5 km to the south east. There is no direct pathway between the appeal site and the SAC.

## **Development, Decision and Grounds of Appeal**

### **6. PA Decision.**

6.1 The planning authority refused permission for 2 reasons relating to the following:

1. Non-compliance with zoning objective LUZ 1 of the Draft Castlebar Town & Environs Local Area Plan 2023-2029, where amusement arcades are not normally permitted. Continued use would impact on the vitality, viability, and environment of the town centre and would not be an appropriate town

centre use. Material contravention of an objective of a local area plan for the area.

2. Serious injury to residential amenity and value of existing residential properties in the vicinity due to noise disturbance and general nuisance.

6.2 The Planners Report states that amusement arcades are not permissible within any land use categories within the Draft LAP. Four submissions were received relating to contravention of Plan policy, noise, impact on vibrancy of the town centre, impact on residential amenity, proliferation of betting and gambling facilities in the town, and incorrect floor plans. Following a request and submission of Further Information, the planning authority concluded that the continued use of the amusement and entertainment centre at this location would not add to the range of services within the town centre, or add to the vitality or vibrancy of the town centre. There are mixed uses in the area including residential, and continued use of the premises would result in noise and general disturbance, and would be seriously injurious to the residential amenities of the area.

6.3 Further Information was requested on 29<sup>th</sup> September 2023, and submitted on 28<sup>th</sup> March 2024. The information submitted included the following:

- Internal floor plans
- Statement that the amusement centre commenced trading in February 2022
- Scheduled opening hours are midday to 11pm on Sundays through Thursday, and midday to midnight on Friday and Saturdays.
- Services include the use of a variety of gaming machines. It is concluded that these are not gambling machines, as defined in the Gaming and Lotteries Act.
- There are negligible noise levels from the premises when in operation. Compliance submissions were made in relation to the conditions attached to ABP 308499-20, and it was understood that the planning authority agreed with these.
- There is no exterior signage for the business, and no business name above the premises.

- This is a modest amusement centre similar to others found in most town centre locations. It adds to the diverse range of services and facilities in the town. It occupies an otherwise vacant premises.

## **7. First Party Appeal & Observer Submission.**

7.1 The grounds of appeal may be summarised as follows:

- The planning authority is refusing permission for similar reasons to 3 years ago. The development is completed to a very high standard, and has successfully traded problem-free for the past 3 years. It has brought increased activity, footfall, lighting, and employment into this part of the town centre.
- Castlebar is designated a Key Town in the RSES. It has potential for growth and employment. The subject development has created 5 jobs. It is the policy of the planning authority to promote economic development, enterprise, and employment, and to prioritise the town centre for retail and services. The proposed development satisfies this policy. It provides a recreation service in the town centre for locals and tourists.
- The subject development complies with a range of objectives set out in the draft LAP.
- The Planner's Report incorrectly specifies that the amusement centre is "Not Permissible" under the zoning objective. The correct terminology is "Not Normally Permitted". This allows for exceptional circumstances. The draft LAP does not allow for amusement arcades within any land use category, but betting offices are 'open for consideration'.
- The development does not affect residential, amenity or the value of existing residential properties. There have been no problems, especially with regard to noise or nuisance. It is not clear what location could be more favourable for this type of development than the town centre. The development neighbours exclusively only commercial properties that are daytime occupied. The only residential unit is above the subject site on the second floor, and is in the same ownership. It is currently not occupied.
- There is precedent for this type of development on Rush Street. These are the only venues of their kind in the region of Castlebar.

7.2 The Observation submission (Mairead Connelly) may be summarised as follows:

- This premises has negatively impacted the town centre of Castlebar since it opened. The proliferation of non-retail uses in the town centre is of concern. Castlebar has reached its capacity for such uses, resulting in the erosion of retail activity. The loss of retail frontage and floorspace at ground level has had a negative impact on the retail environment in the immediate area, and represents a lost opportunity to consolidate the main retail centre.
- The continued use of the site as another gambling establishment is not only harmful to the vibrancy of the town centre, but will result in a proliferation of such uses in the vicinity.
- The subject development is not in accordance with the policies and objectives set out in the CDP, LAP and Draft LAP. Duke Street is identified as being within the 'Town Centre'. Policies in the Draft LAP aim to support the expansion of retail economy in Castlebar, and to manage the proliferation of certain uses including gambling establishments. There are already several bookmakers/gambling establishments within a short walking distance.

## **8. PA Response**

8.1 None on file.

## **Environmental Screening**

### **9. EIA Screening**

Having regard to nature and scale of development on this town centre site, and the absence of any significant environmental sensitivity in the vicinity of the site, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

### **10. AA Screening**

Having regard to modest nature and scale of development, location in an urban area, connection to existing services and absence of connectivity to European sites, it is concluded that no Appropriate Assessment issues arise as the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

## 2.0 **Assessment**

- 2.1. The proposal is for the continued use of an existing amusement and entertainment centre and associated works as previously granted permission under Reference ABP 308499-20. The previous permission, granted by Order dated 3<sup>rd</sup> February 2021, included a condition (No.2) limiting the consent to a period of three years from the date of the Order, and the reason for the condition was “to allow for a review of the development having regard to the circumstances then pertaining and in the interest of visual amenity”. As such, the permission granted expired on 3<sup>rd</sup> February 2024.
- 2.2. I submit that the key planning issues to be addressed in this appeal are as follows:
- Site history and use
  - Policy context
  - Planning Authority decision and legal considerations
  - Visual and residential amenity
  - Environmental assessments

### **Site History and Use**

- 2.3. The appeal site is centrally located in Castlebar. It fronts on to a small courtyard off Duke Street, which provides access to adjacent commercial premises to the south-east. The courtyard is not of any particular design merit. The appeal site is occupied by an amusement and entertainment centre at ground floor level, previously permitted on appeal for a three-year period; this permission has now expired but the use continues. Drawings submitted with the application indicate that the ground floor was previously a vacant retail unit, and that there is a second floor apartment, stated to be in the same ownership but currently unoccupied.

### **Policy Context**

2.4. Policy circumstances have changed over the 3-year period previously permitted. At the time of the previous decision (ABP 308499-20), the Castlebar & Environs Development Plan 2008-2014 was the operative Plan for the area. The site was zoned 'Town Centre' with the objective *to enhance the special physical and social character of the existing town centre and to provide for new and improved ancillary services*. The Mayo CDP 2022-2028 became operative from 10<sup>th</sup> August 2022, and includes policies supporting the vitality and viability of town and village centres, and the promotion of the reuse of vacant floorspace. Objectives include the promotion and reinforcement of town centres as primary shopping areas, and maintaining an appropriate mix of uses and the role of the town centre and preventing an excessive concentration of particular single type uses, such as bookmakers/betting offices and licensed premises. The Castlebar Town & Environs LAP 2023-2029 came into effect on 17<sup>th</sup> January 2024, and the subject site is in an area zoned 'Town Centre', with the objective to maintain and enhance the vitality, viability, and environment of the town centre for appropriate town centre uses. Amusement Arcade is 'not normally permitted' under this zoning objective or under any other zoning objective included in the LAP.

#### **Planning Authority decision and Legal Considerations**

2.5. The planning authority has refused permission for two reasons. The first reason for refusal states that the proposed development would be non-compliant with zoning objective LUZ 1 of the Draft Castlebar Town & Environs Local Area Plan, where amusement arcades are not normally permitted, that continued use would impact on the vitality, viability, and environment of the town centre and would not be an appropriate town centre use. The development would materially contravene an objective indicated in a local area plan for the area. The planning authority's decision is dated 22<sup>nd</sup> April 2024. The operative Local Area Plan for the area was the Castlebar Town & Environs LAP 2023-2029, which came into effect on 17<sup>th</sup> January 2024.

2.6. Having regard to the wording of Reason 1 for refusal, consideration should be given to the provisions of Section 37(2)(b) of the Planning & Development Act 2000, as amended. Section 37(2)(b) of the Act states as follows:

(b) Where a planning authority  
has decided to refuse

permission on the grounds that a proposed development materially contravenes the development plan, the Board may only grant permission in accordance with *paragraph (a)* where it considers that—

- (i) the proposed development is of strategic or national importance,
- (ii) there are conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned, or
- (iii) permission for the proposed development should be granted having regard to regional planning guidelines for the area, guidelines under [section 28](#), policy directives under [section 29](#), the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government, or
- (iv) permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan.

I submit that Section 37(2)(b) is applicable to Local Area Plans, as they form part of the statutory County Development Plan.

- 2.7. The Board must decide if the proposed development is in material contravention of Objective LUZ 1 of the LAP 2023-2029. I conclude that it is not in material contravention of Objective LUZ 1. Amusement Arcades are stated to be ‘Not Normally Permitted’ under the zoning objective for this site. I submit that this implies that there are circumstances under which amusement arcades may be permitted in the town centre, and that it is appropriate to consider the current proposal on its own merits, having regard to the specific circumstances relating to the site and the proposed use.

2.8. The Reason 1 for refusal states that the continued use of the development would impact on the vitality, viability and environment of the town centre. The Planner's report states that the proposed development at this location would not add to the range of services within the town centre. In the grounds of appeal, the appellants contend that the development is completed to a very high standard, and has successfully traded problem-free for the past 3 years, bringing increased activity, footfall, lighting, and employment into this part of the town centre. The planning authority has not responded to the grounds of appeal, and there is no information on file to indicate demand for retail use of the subject premises.

The location of the site is set back from Duke Street and is not on any retail thoroughfare. The subject premises is in a predominantly commercial area, and fronts on to small courtyard with no particular design merit, but which provides access to the adjacent commercial premises. The adjoining premises to the north-east is on the corner of Duke Street and is in retail use.

#### **Visual and Residential Amenities**

2.9. The appeal site is set back from Duke Street and off the pedestrian route along Duke Street. The subject premises fronts on to a small courtyard in an area of no specific visual or amenity value. The existing premises does not have any external advertising, and the window display does not detract from the visual or amenity value of the area. Notwithstanding these comments, I draw the attention of the Board to the reasons stated for Conditions 2, 3, 4 and 6 of the permission granted under ABP 308499-20, all of which refer to the interest of visual amenity.

2.10. Reason 2 for refusal states that the nature of the development to be continued, if granted, would injure the residential amenity and value of existing residential properties in the vicinity due to noise disturbance and general nuisance. It is not clear which residential properties are being referred to by the planning authority. The town centre area is in predominantly commercial use, and the second floor apartment, as part of the appeal premises, is stated to be in the 1<sup>st</sup> party's ownership. There is no convincing information on file to indicate that the use of the subject premises has given rise to noise nuisance or general disturbance over the past 3 years. In these circumstances, having regard to established pattern of development in this town centre location, I conclude that the proposed continued use

of the premises as an amusement and entertainment centre would not seriously injure the residential amenities and value of existing residential properties in the vicinity. I note the grounds of appeal refer to opening hours which are more restrictive than those permitted under Condition 6 of ABP 308499-20.

### **Environmental Assessments**

- 2.10.1. Having regard to nature and scale of development on this town centre site, and the absence of any significant environmental sensitivity in the vicinity of the site, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.
- 2.11. Having regard to modest nature and scale of development, location in an urban area, connection to existing services and absence of connectivity to European sites, it is concluded that no Appropriate Assessment issues arise as the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

## **3.0 Recommendation**

- 3.1. I recommend that planning permission be granted.

## **4.0 Reasons & Considerations**

Having regard to the nature and scale of the development, the town centre location, the established pattern of development in the area, and to the provisions of the Castlebar Town & Environs Local Area Plan 2023-2029, it is considered that the proposed development, subject to compliance with the attached conditions, would not materially contravene Objective LUZ 1 of the Local Area Plan, would not be seriously injurious to the residential amenity or value of residential properties in the vicinity due to noise and general nuisance, would provide for an acceptable use on this site, and would be in accordance with the proper planning and sustainable development of the area.

### **Conditions**

1. The development shall be carried out in accordance with the plans and particulars lodged with the application, as clarified and amended by Further Information submitted on 28<sup>th</sup> March 2024, 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 within 3 months of the date of this Order.

**Reason:** In the interest of clarity.

2. Notwithstanding the provisions of the Planning and Development Regulations 2001, or any statutory provision amending or replacing them, no signage, advertisements, banners, flags, canopies, or other projecting elements shall be erected or displayed on the building, unless authorised by a further grant of planning permission.

**Reason:** In the interest of visual amenity.

3. The windows to the unit shall be kept clear and devoid of any coverings. Any roller shutters, roller shutter boxes or other security shuttering for the premises shall be open grille type, dark coloured and installed internally behind the line of the glazing. Details of any such fittings proposed shall be agreed in writing with the planning authority.

**Reason:** In the interest of visual amenity.

4. The noise level from the proposed development during operational hours shall not exceed 55 dB(A) rated sound level at the nearest noise sensitive location between 1000 and 2200 hours, Monday to Saturday inclusive, and shall not exceed 45 dB(A) at any other time.

**Reason:** In the interest of protecting the amenities of the area.

5. The amusement and entertainment centre hereby permitted shall not be open to the public for use outside the hours of midday to 2300 hours Sunday to Thursday (inclusive), and midday to 2400 hours on Friday and Saturday.

**Reason:** In the interest of protecting the amenities of the area.

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Des Johnson

Planning Inspector

29<sup>th</sup> August 2024.

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.