



An
Bord
Pleanála

Inspector's Report

ABP-321086-24

Development	Change of use from retail unit to gaming rooms; alterations to shopfront and associated works.
Location	Glebeview House, River Mall, Swords, Co. Dublin, K67 NN50 (formerly The Book Haven).
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	F24A/0340E
Applicant(s)	CQA Design & Build
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Paul Phelan
Observer(s)	None
Date of Site Inspection	23 rd January 2025
Inspector	Emma Gosnell

Contents

1.0 Site Location and Description	3
2.0 Proposed Development	3
3.0 Planning Authority Decision	4
3.1. Decision	4
3.2. Planning Authority Reports	4
3.3. Prescribed Bodies	7
3.4. Third Party Observations	7
4.0 Planning History	9
5.0 Policy Context	11
6.0 The Appeal	15
6.1. Grounds of Appeal	15
6.2. Applicant Response	16
6.3. Planning Authority Response	17
6.4. Observations	17
6.5. Further Responses	17
7.0 Assessment	17
8.0 AA Screening	26
9.0 Recommendation	27
10.0 Reasons and Considerations	27
Appendix 1 – Form 1: EIA Pre-Screening	

1.0 Site Location and Description

- 1.1. The appeal site is located at Glebeview House, River Mall on the west side of Main Street in the Townparks area of Swords Village, Co. Dublin.
- 1.2. The site is accessed off River Mall, a narrow laneway to the south, and is adjoined by mixed commercial development to the north and east (an ethnic food shop, beauty/ massage studios, a pharmacy and a bank), with a gated service lane running along its east side. To the west the site fronts directly onto a small car park which serves the residential and commercial units in Glebeview House, with a further surface car park serving the nearby Castle Shopping Centre. The Ward River & riverside amenity walk is located just beyond this. The upper floors of the River Mall building are in mixed use and contain 2 no. residential apartment units together with office units/ professional services.
- 1.3. Glebeview House is a small 3-storey mixed use building with dormer accommodation. The building's 3 no. ground floor (GF) units are accessible at grade, with stair access to a shared external terrace and 3 no. further floors of accommodation. The proposed works affect the GF and lower ground floor (LGF) only.
- 1.4. The c. 0.011ha site comprises of a 169sq.m vacant retail unit spread across two floors (55sq.m LGF level and 114sq.m at GF accessed via an internal staircase). The unit has shop frontage onto River Mall which serves as the shop's main customer entrance. This laneway is single carriageway in width (which caters for 2-way traffic) and features a narrow footpath on its south side together with a section of narrow kerb on the north side of the lane running the length of the unit subject of this appeal. There is also a smaller shopfront and secondary entrance from the aforementioned car park to the front of the building.
- 1.5. The application was accompanied by a letter of consent from the property owner.

2.0 Proposed Development

- 2.1. The development comprises of the change of use of the existing retail unit at GF and LGF levels to use as leisure virtual-reality gaming rooms, with minor internal alterations to provide a new lobby area, accessible WC and new partitioning around the internal staircase and staff/ back-of-house area, together with alterations to the

existing shopfront to River Mall to include new lighting, shop signage and opaque window decals, and all associated site works.

- 2.2. Further information (FI) was submitted on the 1st August 2024 and was not deemed to be significant. Clarification of Further Information (CFI) was submitted on the 11th September 2024. This latter response introduced additional noise control measures including new acoustic vents, suspended ceilings, plasterboard lining to party walls and a full-height stud partition wall inside the glazed business front onto River Mall.

3.0 Planning Authority Decision

3.1. Decision

Permission granted subject to 10 no. conditions.

3.2. Planning Authority Reports

3.2.1. Planning Reports

3 no. planning reports formed the basis of the planning authority's (PA) assessment:

Planner's Report (07/06/2024) – Initial Application Stage

The report sets out the relevant planning history, policy context, issues raised in the submissions/ observations, by prescribed bodies and in internal departmental reports, and undertakes a planning assessment, EIA Screening and AA Screening. Points of note raised include, inter alia:

- **Use/ Hours/ Clientele** - Inadequate detail provided in respect to typology of 'leisure-virtual reality gaming' proposed; the intended hours of operation; customer numbers; and, related concerns re: potential for proposal to give rise to anti-social behaviour, nuisance & local safety issues.
- **Noise** - Uncertainty around the nature/ level of noise generation from proposal. Need for a supporting noise report with mitigation proposals to prevent negative impacts on neighbouring residences.
- **Visual amenity** – potential for proposed decal shopfront alterations to create dead frontage etc. and lack of detail provided on proposed exterior signage, treatment

of existing traditional timber shopfront and location/ extent of illumination proposed. Proposal to retain existing internally mounted roller-shutter and related public realm animation/ passive surveillance concerns to be addressed via condition to omit.

- **Legal Ownership** - Uncertainty in respect to the legal ownership of the application site and need to clarify same prior to a determination being made on proposal.

A request for FI issued on the 07/06/2024 in relation to 3 no. items:

1. Submission of acoustics report with details of likely noise generation and mitigation proposals, together with intended hours of operation, estimated customer numbers and information on the specific type of leisure-virtual reality gaming proposed.
2. Documentary evidence in respect to the legal owner of the site and further details on the ownership of the retail unit/ the owner's consent for the change of use.
3. Details of the proposed exterior signage, exterior lighting plan and retention & refurbishment of the existing traditional style timber shopfront and timber windows with proposals for the backlighting of individual letters & window decals omitted.

Planner's Report (21/08/2024) - Further Information Stage

This report provided an assessment of the FI received and took into consideration 2 no. further submissions/ observations together with a further report from the Air & Noise Unit. Points of note include:

- Responses to FI items 2 & 3 deemed acceptable.
- Concerns raised about noise impacts on 2 no. residential apartments located directly above the retail unit - not satisfactorily addressed by noise report.
- Insufficient detail provided on volume of expected visitors/ customers and operational hours of the intended use.

A request for Clarification of FI (CFI) issued on the 22/08/2024 in relation to 2 no. items:

1. Proposed opening hours.
2. Revised acoustics report which addresses the operational noise impact on neighbouring apartments with details of mitigation measures.

The applicant's response to the CFI request was submitted on the 11th September 2024. It comprised of a cover letter setting out their response to the CFI together with a revised noise impact assessment report (dated 10/09/2024).

Planner's Report (04/10/2024) – Clarification of Further Information Stage

This report provided an assessment of the CFI received and took into consideration 2 no. further submissions/ observations together with a further report from the Air & Noise Unit. The PA were satisfied with the intended operating hours of the facility, which were given as 10am -10pm daily, and with the revised acoustics report which specified noise control measures (i.e. installation of new acoustic vents, new plasterboard lining to party wall & new suspended ceiling) which could be conditioned in the event of a grant of permission.

The report concluded by recommending that permission be granted.

3.2.2. Other Technical Reports

Initial Application Stage

- Environment, Air & Noise (14/05/2024) – sought the applicant provide an acoustic report detailing likely noise generation and noise mitigation proposals.
- Transportation Planning Section (TPS) (23/05/2024) - no objection to proposal.
- Parks & Green Infrastructure Division (27/05/2024) - no objection to proposal.
- Environment Section (Waste Enforcement & Regulation) (07/05/2024) – no objection to proposal.
- Water Services Department (15/05/2024) - no objection to proposal.

Further Information Stage

- Environment, Air & Noise (14/08/2024) – no objection subject to a condition requiring sufficient sound insulation within the building.

Clarification of Further Information Stage

- Environment, Air & Noise (01/10/2024) – no objection subject to a condition requiring implementation of recommendations of CFI noise report.

3.2.3. Conditions

I wish to draw the Board's attention to a number of conditions that were attached by the PA in order to protect the residential amenity of neighbouring properties, including condition No. 3 which restricted the facility's hours of operation to between 10am and 10pm; condition No. 4 which sought the pre-operation implementation of the recommendations in the noise impact assessment report; and, condition no. 5 which prohibited the external broadcast of music/ amplified sound.

3.3. Prescribed Bodies

Initial Application Stage

- Uisce Eireann (17/05/2024) – no objection in principle subject to conditions.
- Dublin Airport Authority (21/05/2024) – no comments on proposal.

Further Information Stage

No submissions.

Clarification of Further Information Stage

No submissions.

3.4. Third Party Observations

Initial Application Stage

2 no. third party submissions were received at application stage on behalf of the following observers (neighbouring property owners):

Paul Phelan, 2 Glebeview, River Mall – Secretary of/ on behalf of Glebeview Management Ltd. (the third party appellant)

- Raises query as to applicant's legal entitlement to make the planning application.
- Proposal breaches lease for retail unit which allows retail uses only.
- Proposal is purposely ambiguous and constitutes a casino arcade/ games hall (slot machines etc.) and will lead to future legal issues/ will necessitate enforcement.
- Proposal's young customer demographic, evening/ night operation and backland location will generate anti-social activity, making laneway unsafe and will undermine FCC's Liveable Laneways Project/ Sustainable Swords Strategy.

- Proposal would exacerbate existing traffic/ pedestrian safety/ uncontrolled parking issues on narrow River Mall laneway and in Glebeview House car park.
- Concerns raised about impact on residential amenities of existing properties re: noise, anti-social behaviour, laneway safety, displacement of residential parking.

Isa Phelan, Apartment 2, Glebeview, River Mall

- Raises concerns about change of use from retail to gaming room in terms of likely hours of operation, clientele, potential for loitering and further anti-social behaviour and, impact on safe access to their apartment via the rear car park and patio/ terrace area between the LGF & GF and safety & security within their apartment.
- Raises concerns about impact of noise from operation of proposed use on enjoyment of their apartment.

Further Information Stage

2 no. third party submissions were received at FI stage on behalf of the same observers (neighbouring property owners):

Paul Phelan, 2 Glebeview, River Mall – Secretary of/ on behalf of Glebeview Management Ltd. (the third party appellant)

- Failure to provide adequate details re: legal entitlement to make application.
- FI noise report is inaccurate on basis it fails to consider noise impact on adjoining residential units - one of which shares a party wall with the retail unit.
- Inadequate details provided on type of leisure virtual reality gaming proposed, on quantum/ nature of clientele and on hours of operation.
- Proposal to provide stud partition internal wall in place of window decals is unsuitable and will not provide for active frontage or passive surveillance.

Isa Phelan, Apartment 2, Glebeview, River Mall

- Questions the accuracy of information submitted by the applicant on the built relationship between their apartment and the commercial unit.
- Reiterates concerns in respect to future noise and impact on residential amenity given that noise within bookshop (previous use) could be heard from apartment.
- Nature of proposed use is unacceptable deviation from current land use profile.

- Considers implications of forthcoming gambling legislation on legality of proposal.

Clarification of Further Information Stage

2 no. third party submissions were received at CFI stage on behalf of the same observers (neighbouring property owners):

Paul Phelan, 2 Glebeview, River Mall – Secretary of/ on behalf of Glebeview Management Ltd. (the third party appellant)

- Reiterates points made in previous submissions and contends that proposal materially contravenes the Fingal Development Plan 2023-2029 (FDP).
- Raises concerns re: impact of proposed use on Glebeview House car park and patio/ terrace – particularly at evening times/ weekends/ during holiday periods.
- Considers implications of forthcoming gambling legislation on legality of proposal and raises concerns re: future planning enforcement.
- Questions the accuracy of information submitted by the applicant and raises issues with validity of FI/ CFI procedure followed by PA during assessment process and the extent to which 3rd party submissions were engaged with.
- PA fails to consider relevant Objectives CSO37 (High Quality Services), CSO38 (Swords Main Street), CSO42 (Enhanced Urban Environment) in their assessment.
- PA failed to consider applicant's planning compliance history in their assessment as per S.35 of the Planning and Development Act 2000 (as amended).

Isa Phelan, Apartment 2, Glebeview, River Mall

- Raises concerns about the applicant's commitment to installing the soundproofing measures recommended in the noise report/ the implement-ability of noise conditions.
- Proposal remains incompatible with existing residential uses and granting permission would set an undesirable precedent and would render continued habitation of the adjoining apartment unviable.

4.0 Planning History

4.1. Site

P.A. Ref. F05A/0034 (top dormer floor) – Permission granted on 12/04/2005 for change of use from office accommodation to apartment with 3 no. dormer windows to rear elevation, subject to conditions.

P.A. Ref. F04A/0997/E1 – Extension of duration refused on 01/09/2009 on basis that it did not comply with Section 42(1)(c)(ii) of the Planning & Development Act (2000).

P.A. Ref. F04A/0997 (Apartments at GF & LGF level) – Permission granted on 29/09/2004 for change of use of residential apartments at GF and LGF level to hairdressing salon, subject to conditions.

P.A. Ref. F02A/0183 – Permission granted on 10/04/2002 for proposed alterations to existing shopfront, subject to conditions. Condition No. 3 provided that *“Pilasters, window frames, doors, and fascia shall be of a hardwood timber only. The lettering on the fascia shall be either solid lettering directly affixed to the fascia board, or painted lettering only and lit by means of no more than three in number downlighters. Reason: In the interest of visual amenity. Reason: In the interest of visual amenity”* with condition No. 4 prohibiting the erection of further advertisements, signs or devices.

P.A. Ref. F99A/1563 – Permission refused on 12/06/2000 for the change of use from apartment (No.2) to office for 1 no. reason: intensification of commercial development on a restricted site would increase traffic/ pressure on off street parking facilities.

P.A. Ref. F99A/0111 (ABP Ref. PL.06F.111136) – Permission refused on appeal on 27/08/1999 for extension on upper GF balcony and change of use of adjoining apartment (No. 2) and proposed extension to retail/ commercial use for 1 no. reason: intensification of commercial development on a restricted site would increase traffic/ pressure on off street parking facilities.

P.A. Ref. F97A/0744 (Glebeview, River Mall) – Permission granted on 02/01/1998 for Attic conversion to office use and change of use of upper floor from residential to office, subject to conditions.

4.2. Neighbouring Site (Units 1-6 on opposite side of River Mall laneway)

P.A. Ref. 16A/0291 – Permission granted on 03/10/2016 for alterations to existing commercial units at ground and first floor. The redevelopment works included the extension of existing GF units 1 to 6 river Mall to include new shop fronts and signage. Alterations to existing window opening at first floor to Unit 6 River Mall. Construction

of an enclosed bin storage unit in the existing car park to the rear, subject to conditions. Conditions of note include the following:

“3. Prior to the commencement of development the following shall be submitted for the written agreement of the Planning Authority: a) Full details of the external wall finishes including proposed colours. b) Full details of all signage including colours and materials and all proposed lighting. Plastic fascias or projecting box signs shall not be provided. REASON: In the interest of visual amenity and the proper planning and sustainable development of the area.

4. No additional advertising signs or structures shall be erected externally or on the shopfront of the premises except those which are exempted development, without the prior approval of the Planning Authority or An Bord Pleanála on appeal. REASON: In the interest of the proper planning and sustainable development of the area.

5. No music or other amplified sound shall be broadcast externally from any premises. REASON: To protect the amenities of the area.

6. Any roller shutters, roller shutter boxes or other security shuttering for the premises shall be of the open grille type, dark coloured and installed internally behind the line of glazing. REASON: In the interest of visual amenity and that effective control be maintained.”

5.0 Policy Context

5.1. Local Policy

The Fingal Development Plan (FDP) 2023 – 2029 applies.

5.1.1. Zoning

- The site is zoned ‘Objective MC – Major Town Centre’ with the Objective ‘To protect, provide for and/ or improve major town centre facilities’.
- The site is located within the Core Retail Area of Swords.
- The site is located within a zone of archaeological notification and within Airport Noise Zone D.
- The adjoining pedestrian walkway which runs along the River Ward is zoned for ‘Open Space’ and is a designated greenway.

5.1.2. Swords Strategy

Policy CSP30 - Swords as a Vibrant Key Town

Objective CSO37 - High Quality Services

Objective CSO38 - Swords Main Street

Retain the Main Street as the core of the town centre, protect and enhance its character and ensure that any future new commercial and retail development reinforces its role by promoting the development of active GF uses and limiting the expansion of certain non-retail and inactive street frontages including financial institutions, betting offices, public houses and take aways/fast food outlets.

Objective CSO39 - Sustainable Swords Project

Support and promote the implementation of key recommendations arising from the Sustainable Swords' project including the implementation of the Swords Cultural Quarter.

5.1.3. Retail/ Non-Retail Uses

Sections 7.5.4.1 (Changing nature of retail) & 7.5.4.2 (Vacancy)

Objective EEO91 – Level 2 Centres

Objective EEO92 – Facilitate improvements to the retail offer and function in Level 2 Centres

Facilitate improvements to the quantum and quality of retail offer and function in Swords and Blanchardstown, and ensure their sustainable development by consolidating, intensifying and enhancing their existing core retail areas, and by directing new retail opportunities into the core retail areas identified for each.

Objective EEO103 – Use of Vacant Floor Space and Refurbishment and Replacement of Obsolete Units

Section 7.5.5 (Retail Hierarchy) - Non-Retail Uses, Fast Food Outlets, Takeaways, Off Licences and Betting Offices

In order to protect and enhance the vitality and viability of the County's urban and rural centres, the occurrence of non-retail uses (such as amusement centres and arcades), fast food outlets, off licences and betting offices needs to be monitored. An over-supply or dominance of these types of uses within the main streets, shopping centres and

local centres of Fingal's centres can have negative impacts on the amenities of these centres and their ability to perform their retailing functions in accordance with their classification in the Fingal Retail Hierarchy.

Objective EEO104 - Non-Retail Uses

Control the provision of non-retail uses, especially at GF level, in the main streets of towns and villages, shopping centres and local centres to ensure that injury is not caused to the amenities of these streets and centres through the loss of retail opportunities.

Objective EEO105 - Prevent Over-Supply of Specific Uses / Outlets

Prevent an over-supply or dominance of fast food outlets, takeaways, off licences, adult shops, gaming arcades and betting offices in the main streets of towns and villages, shopping centres and local centres to ensure that injury is not caused to the amenities of these streets and centres through the loss of retail opportunities.

Objective DMSO6 – Change of Use in Urban and Village Centres

Assess planning applications for change of uses in all urban and village centres on their positive contribution to diversification of the area together with their cumulative effects on traffic, heritage, environment, parking and local residential amenity.

Appendix 7 – Technical Guidance

Amusement Arcade

Premises used for the playing of gaming machines, video games and/or other amusement machines.

Recreational / Sports Facility

A building or part thereof or land which is available for use by the public on payment of a charge or free of charge for the propose of recreation and may include facilities to support indoor or outdoor physical activities in the form of structured games or active pursuits for the purpose of recreation or amusement.

5.1.4. Shopfronts/ Visual Amenity

Section 14.2.4 (Safety & Security)

Section 14.4.5 (Shopfront Design)

Table 14.1 Shopfront Design Guidance & Table 14.2 Shopfront Design Checklist

Objective DMSO8 – Contemporary Shopfront Design

Objective DMSO9 – Prevent the Use of Film / Screening in Shopfront Windows

Objective DMSO10 – Corporate Logos, Lighting, Design and Colour

Objective DMSO11 – Placement of Security Shutters

Objective DMSO12 – Evaluation of Signage Proposals

5.1.5. Car Parking

Section 14.17.7 (Car Parking) / Tables 14.18 (Car Parking Zones) & 14.19 (Car Parking Standards)

5.1.6. Noise

Section 4.20.17 (Noise).

5.2. **Natural Heritage Designations**

The appeal site is not located within or adjoining any designated site.

The nearest European Sites and Natural Heritage Areas in close proximity to the appeal site are as follows:

- Malahide Estuary SPA (Site Code 004025) – approx. 1.4km to the north-east.
- Malahide Estuary SAC (Site Code 000205) – approx. 1.4km to the north-east.
- Malahide Estuary pNHA (Site Code 000205) – approx. 1.4km to the north-east.
- Feltrim Hill pNHA (Site Code 001208) - approx. 2.6km to the south-east.

5.3. **EIA Screening**

Having regard to the limited nature and scale of the proposed development and the absence of any significant environmental sensitivity in the vicinity/ the absence of any connectivity to any sensitive location, 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. Refer to Form 1 in Appendix 1 of report - EIA Pre-Screening.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. A third party appeal submission was received on 18/10/2024 from Paul Phelan of Apartment No. 2, Glebeview, River Mall, Swords who states that he is acting on behalf of himself and Glebeview Management Ltd. – an owner's management company (OMC) which is involved in the management of the subject property. The appeal is accompanied by a photograph which shows the private car park and communal patio area to the front (west side) of the building. The appeal can be summarised as follows:

- Neither Mr. Phelan nor the OMC support the proposal.
- Applicant has misrepresented the intended use/ clientele of the unit which is not a virtual reality gaming room but is instead a gambling casino/ betting arcade (using online/ virtual technology) which does not equate to a leisure use.
- PA has misunderstood the true nature of the proposed use & has failed to properly assess it or to apply appropriate, enforceable planning conditions on same.
- Concerns raised about basis for & validity of the PA's decisions/ assessment procedure, legislative compliance and national precedent their decision has set.
- Decision is ultra vires/ change of use permitted by PA despite third party submissions highlighting legal contravention of unit's retail-only lease use restriction/ proposed encroachment on 3rd party property rights re: patio & car park.
- Proposed change of use from retail bookshop to gambling casino is unsuitable given site's location within small scale mixed-use building containing apartments.
- Concerns raised about the permitted operating hours and likely business demographic of young adults and negative implications for resident safety/ residential amenity.
- Proposal likely to give rise to additional traffic congestion and uncontrolled customer car parking in & around Main Street/ River Mall and within the private Glebeview House development - with related risks to pedestrian safety.
- Various concerns (re: nature of gambling use, ambiguous planning status, failure to adhere to planning conditions re: hours of operation etc.) raised in respect to the

applicant's existing businesses elsewhere – specifically their operation in Ashbourne, Co. Meath which was cited as a comparator for the proposal & used for their baseline noise assessment.

- Credibility of submitted noise impact assessment report(s) questioned and concerns raised about PA's reliance on same in coming to their decision to grant.
- Concerns raised about FCC's commitment to planning & development controls in respect to the gambling industry, with reference made to specific planning applications/ ongoing enforcement activity elsewhere in Fingal County.

6.2. Applicant Response

The applicant's response to the third party appeal was received on 12/11/2024. Points of note include:

- Proposed development is compatible with the proper planning and sustainable development of the area and Board should uphold the PA's decision on that basis.
- The proposed change of use from retail to leisure is compatible with mixed-use nature of Glebeview House building which is located in mixed-use town centre area which does not feature an over-supply of non-retail uses.
- Proposal to bring a vacant unit back into productive use would generate activity and mitigate anti-social behaviour on the lane.
- Refute appellant's claim that the proposed use was ambiguous/ misrepresented.
- States that the proposal falls within the definition of 'amusement arcade' provided in the 2001 Planning and Development Regulations and clarifies that the term 'gaming' involves activities such as amusement arcades and betting for prizes etc. i.e. rather than just amusement-only or video game machines, whilst the term 'virtual-reality' equates to digital/ un-manned machines.
- Contends that the noise impact assessment & baseline noise study undertaken in support of the application were sufficiently accurate, detailed, based on a suitable/ comparable proxy business & reflected the intended operating hours and proposed use/ activities (i.e. reel-based digital gaming machines).

- Genuine oversight in FI noise impact assessment report in respect to the location of/ noise impact on existing Glebeview residential units which was subsequently addressed by CFI report which concluded that the proposal would generate low noise levels and would not give rise to any additional noise nuisance.
- The applicant clarifies that the comparator business in Ashbourne Co. Meath has full planning permission and that they do not operate elsewhere in Swords.
- PA's 3-stage planning assessment process gave due consideration to proposal's noise & parking impacts and the PA fulfilled all its statutory responsibilities.
- Longstanding private/ civil conflicts between resident and commercial customer parking at Glebeview should have no bearing on the assessment of the proposal.
- The applicant satisfactorily addressed the legal entitlement/ ownership queries the PA had. Private leasehold agreements are not matters for the PA to adjudicate on.

6.3. Planning Authority Response

The PA, in their submission received 18/11/2024, state that they have no further comment to make in respect to the appeal and they request that the Board uphold their decision and apply S.48, bond/ cash security and tree bond/ contribution in lieu of children's play facilities where relevant in the event of a grant of permission.

6.4. Observations

None received.

6.5. Further Responses

None received.

7.0 Assessment

Having examined the application details and all other documentation on file, including all of the submissions received in relation to the appeal, the report(s) of the local authority, and having inspected the site, and having regard to relevant local policies

and guidance, I consider that the substantive issues in this appeal to be considered are as follows:

- Principle of Development
- Retail/ Shopfront Design
- Residential Amenity
- Traffic/ Parking
- Other Matters
- Conclusion

7.1. Principle of Development

7.1.1 The appellant takes issue with the description of the proposed use as a virtual-reality gaming arcade and contends that the applicant has misrepresented the true nature of the proposed use which instead operate as something akin to a gambling casino/ betting arcade – a use which they state is entirely unsuited to a small backland mixed-use building which also contains residential units. It is their opinion that that this misrepresentation has caused the PA to err in their interpretation of the proposal as being a leisure-related use i.e. which would be permitted in principle under the site's MC mixed town centre facilities land use zoning.

7.1.2. The applicant states that the intended leisure use falls within the definition of an 'amusement arcade' and would involve digital betting/ game playing on machines to win prizes. On this basis, they contend that the proposal is compatible with the existing mixed-use nature of Glebeview which is located in a mixed-use area off Main Street.

7.1.3. I note that the PA considered the proposed 'leisure' use, whilst not a distinct class of use provided for under the FDP's MC (Major Town Centre) land use zoning objective, to be akin to the 'Recreational/ Sports Facility' use class which is permitted in principle under the MC zoning. Having considered the use class definitions provided in Appendix 7 (Technical Guidance) of the FDP, I consider that the proposed 'leisure virtual-reality gaming room' use can be understood as an 'amusement arcade' as per Article 5(1) of the Planning and Development Regulations, 2001, as amended. Whilst these arcades are a distinct use class under the FDP, I note that they are not listed in the zoning matrix under the MC zoning. Where this arises, the plan states that such uses are to be assessed in terms of their contribution towards the achievement of the

zoning objective and vision and their compliance and consistency with the policies and objectives of the Development Plan (page 491 of the FDP refers). On this basis, I consider the principle of development to be acceptable - subject to the detailed considerations below.

7.2. Retail/ Shopfront Design

- 7.2.1. The grounds of appeal make the case that the PA failed to adequately assess the proposal's compliance with various relevant FDP retail policies and, as such, have not fulfilled their obligation to secure the objectives of the plan or determine whether any material contraventions arise.
- 7.2.2. The applicant states that the proposed change of use from retail to leisure is compatible with the current mixed-use nature of Glebeview which is in turn located in a mixed-use town centre area which does not have an over-supply of non-retail uses.
- 7.2.3. The appeal site is located within the designated core retail area of Swords and occupies, what I consider to be, a secondary/tertiary retail frontage off Main Street. Whilst Section 7.5.4.2 (Vacancy) and Objective EEO103 of the FDP encourage the re-use of vacant retail units, Section 7.5.5 (Retail Hierarchy) and Objectives CSO38, EEO104 & EEO15 of the FDP specifically seek to control and restrict the provision of non-retail uses such as amusement centres/ arcades and betting offices – particularly at GF/ street level - due to their potential to lead to the loss of retail opportunities and to negatively impact on the amenities of retail centres & their ability to deliver on their retail function.
- 7.2.4. It is apparent from my site visit that there are a number of existing betting offices, fast-food outlets and an off-license along Main Street/ in close proximity to the appeal site which suggests that the locality has been experiencing an incremental loss of retail use. This is undesirable in the context of policies seeking to consolidate & strengthen the retail base of the area. However, given that the FDP policy (which seeks to control/ restrict rather than to prohibit these non-retail uses) refers specifically to the need to monitor the proliferation of same (Section 7.5.5 refers). There is not sufficient information available to me to establish whether or not the provision of the proposed amusement arcade would, in itself or cumulatively when considered with other such proposals, undermine the retail function of the core area. Notwithstanding, given the GF location of the proposed non-retail use in a relatively small mixed-use building just

off Sword's main shopping thoroughfare and, the fact that the applicant did not provide any detail on the submitted floor plans in respect to the proposed layout of the gaming/ amusement/ slot machines etc., I would have a number of concerns in respect to the proposal's relationship with the River Mall laneway and adjoining uses.

7.2.5. The River Mall laneway forms part of Project 2: Swords Liveable Laneways Strategy under the Sustainable Swords Project, with the implementation of this project being supported by Objective CSO39 of the FDP which seeks to provide accessible, convenient, safe and desirable pedestrian access on seven laneways off Main Street in order to facilitate greater footfall, vibrancy, activity and investment in Swords Town Centre.

7.2.6. The applicant's FI proposals are stated to provide for a high-quality business shopfront elevation while conditions No. 6, 7 and 8 seek to ensure all the unit's windows remain clear and devoid of window graphics, that the proposed business front signage not be internally illuminated and, that security shuttering be only installed behind the line of the unit's glazing.

7.2.7. Having reviewed the FI drawings & CFI acoustic report on file, I note that the applicant proposes to provide for a full-height stud partition wall inside the line of the existing internal security shutter to be retained & setback c. 0.5m from the glazing fronting the laneway. The potential for the proposal to give rise to c. 12m of non-interactive dead-frontage which would detract from the daytime/ evening time vitality and vibrancy of the street is of particular concern, given the anti-social behaviour and public/ residential safety & security issues raised in the grounds of appeal. This stud partition wall would serve to completely screen and unacceptably obscure the activity taking place inside the unit and I am not satisfied that its impact on the visual amenity of the adjoining River Mall streetscape was adequately assessed by the PA. On this basis, I have serious concerns about the proposal's compliance with Sections 14.2.4 (Safety and Security) and 14.4.5 (Shopfront Design) of the FDP and the potential for a negative impact upon the River Mall streetscape in terms of the failure to provide for an active frontage and for passive surveillance.

7.3. Residential Amenity

7.3.1. The grounds of appeal raise significant concerns about the potential for the operation of the amusement arcade to give rise to adverse impacts on the amenities of

neighbouring properties. An issue is raised in relation to the 10am-10pm operating hours and related implications for resident access/ safety and amenity given the risk of noise and anti-social activity late at night. The appellant is also critical of the PA's reliance on, what they consider to be, a substandard noise impact assessment report and concerns are expressed with regard to impact of operational noise on neighbouring properties – particularly the adjoining apartments.

- 7.3.2. The applicant states that the noise assessment undertaken in support of the proposal was sufficient and representative of the intended operation of the proposed arcade. They argue that PA gave adequate consideration to the proposal's likely noise impact and it was concluded that the proposal would not give rise to noise nuisance. They also note that bringing the vacant unit back into productive use would have a positive local impact.
- 7.3.3. I consider the impact of the operation of the proposed use on the amenities of neighbouring properties, particularly the 2 no. residential apartments, in terms of noise, disturbance and perceptions of safety & security to be an important planning consideration, which I address in detail below.

Safety & Security

- 7.3.4. The apartments and other businesses on the upper floors of Gleveview House are accessed from a communal patio/ terrace at GF level which can be accessed from the west via two separate flights of stairs leading from either side of the scheme car park or via gated steps from River Mall to the south. This common area is an integral part of the mixed-use building, and I note that it serves as the only external amenity area for the apartments, with the living space of the apartment unit which borders the vacant unit (subject of this appeal) fronting directly onto this terrace. Whilst I note the appellant's concerns about the likely clientele of the arcade, having examined the proposed relationship between the amusement arcade and the terrace, I note that the arcade would have no open frontage onto the terrace area at GF level, with the only access on its western elevation being an existing doorway leading from the communal carpark at lower GF level (under the undercroft created by the terrace). On this basis, I do not consider that the proposed use would give rise to the potential anti-social matters raised by the appellant on the terrace – particularly given that its stepped accesses off River Mall is gated. In respect to the other more general public safety

and street security concerns raised in the grounds of appeal, I consider that these have been adequately addressed in Section 7.2 of this report and can also be addressed by the attachment of a condition, in the event of a grant of permission, to restrict the arcade's opening hours to 10am-10pm 7 days a week which would be generally in line with the operating hours of other non-retail businesses in the vicinity – as observed during my site inspection.

Noise Disturbance

- 7.3.5. The plans on file illustrate the relationship between the proposed amusement arcade and neighbouring properties – a residential apartment at GF level and another retail unit (ethnic grocery shop) at LGF level – with both neighbouring properties sharing party walls with the unit subject of this appeal. There are no details on file in respect to the layout of the first or second floor levels above – with the applicant stating in their CFI response letter that they understand these levels to be in office use.
- 7.3.6. In considering the relationship with the adjoining GF and LGF units, the CFI noise impact assessment report (dated 10/09/2024) states that noise from the previous operation of the unit as a bookshop has never adversely impacted on the offices overhead, with no comment made about the impact on the ground floor of the residential unit. I note that the resident of the apartment unit, who submitted a number of observations during the planning stages, confirms that noise from within the bookshop could be heard from their apartment.
- 7.3.7. The noise report provides an estimate of the estimated footfall/ client numbers and continuous/ peak noise levels likely to be generated by the proposal, based on assessment and monitoring carried out during the peak (weekend) operation of their existing amusement arcade facility at Ashbourne, Co. Meath. This existing facility is stated to feature a room size comparable to the proposed development which includes rows of reel-based digital gaming machines.
- 7.3.8. The noise report concludes that the baseline survey results indicate that the proposed use of the unit as an amusement arcade would generate relatively low levels of noise, i.e. below the ambient street noise levels in this area of Swords even prior to the application of proposed noise attenuation measures within the building envelope (which comprises of concrete block walls, a concrete floor above and a reinforced shopfront) which are designed to maximise the sound insulation performance of the

unit. I note that the recommended sound mitigation/ attenuation measures include an upgrade to the party wall insulation between the unit and the residential units, the provision of a suspended ceiling, the replacement of existing vents with acoustically rated passive vents, door servicing and seal upgrades, and the installation of an internal stud wall partition inside the glazed business front onto River Mall.

7.3.9. The report concludes by stating that the noise assessment of the proposal undertaken indicates that the proposed amusement arcade could operate without negatively impacting the pre-existing noise environment. However, notwithstanding this conclusion, I have significant concerns about the visual impact of one of the main noise mitigation measures on River Mall (i.e. the internal partition wall as outlined in Section 7.2) and also about the lack of detail provided by the applicant on the internal layout proposed for the unit in terms of the quantum, nature & layout/ placement of gaming machines and therefore, the intensity of the proposed use/ operation. Given this lack of adequate information being provided on the nature and extent of the proposed use, I am not satisfied that the baseline noise assessment carried out in the Ashbourne facility is a valid comparator for the proposal subject to this appeal and I am also not satisfied that the proposed amusement arcade would not be detrimental to the residential, environmental quality and the established character and function of the area. On this basis of this lacunae, I consider that permitting the change of use would set an undesirable precedent for similar development in such areas.

7.4. Traffic/ Parking

7.4.1. The grounds of appeal query the technical advice received from various Council Departments, and specifically the TPS, on the grounds that it was based on a misunderstanding of the nature of the proposed use/ its clientele (i.e. adult rather than young adult/ children and likely car divers over a wide catchment area).

7.4.2. The appellant is of the view that the PA's three-stage planning assessment process gave due consideration to proposal's parking impacts, and they consider that the PA fulfilled all its statutory responsibilities in this regard.

7.4.3. I note that the noise reports on file state that the River Mall, which is essentially a cul-de-sac, typically hosts one vehicle every 5 minutes which I would consider to be a relatively lightly trafficked. Having reviewed the assessment provided by the TPS, which notes that the proposal is located in parking zone 1 (i.e. proximate to high quality

public transport), I am of the opinion that the proposal for an amusement arcade was appropriately assessed under the land use macro category of 'leisure' as per Table 14.19 (Car Parking Standards) i.e. given that it does not fit into any of the other categories of residential, education, health & institutions, community, retail or employment uses listed in the table. It is also apparent to me the PA took account of the appellant's concerns regarding impact on the privately controlled parking at Glebeview House and traffic safety/ congestion and determined that the existing parking arrangements would satisfactorily cater for the proposal given the accessible location of the proposal in the centre of Swords and having regard to the fact that Table 14.19 provides for the maximum number of spaces allowed for the respective use i.e. rather than the quantum of spaces required to be provided. On this basis, I consider that the issues of destination parking/ traffic were adequately addressed by the PA in their reports on the application and I would have no concerns in relation to this matter.

7.5. Other Matters

7.5.1. Legal Matters

The grounds of appeal refer to various legal issues, including the proposal's alleged encroachment on OMC estate common areas/ 3rd party property rights and concerns that the PA's decision to grant permission for a non-retail use constitutes a breach of the terms of a private commercial lease. It is considered that such matters are civil matters to be resolved between the parties, having regard to the provisions of Section 34(13) of the Planning and Development (2000) as amended.

7.5.2. Validation/ Procedural/ Precedent Issues

The appellant raises various issues in respect to the description/ explanation of the proposed use and the PA's assessment of the proposal, and they question whether proper procedure was followed by the PA during the application/ FI/ CFI stages.

In respect to the nature & typology of the proposed use, I note that the PA sought clarity on this as part of FI item no. 1 and were satisfied with the response given by the applicant in respect to same. I also note that the applicant has provided further detail on the nature of the proposed use i.e. amusement only machines and amusement with prize machines etc. as part of their response to the third party appeal. Having considered the documentation on file, I am satisfied that the information before

me is of an adequate standard to allow me to continue to assess the principle and land use zoning compliance of the proposal as per Section 7.1 of this report.

With regard to the PA stage assessment/ procedural issues raised by the appellant, I would note that the PA followed the legislative provisions set out under Section 34 of the Planning and Development Act 2000 (as amended) and that the proposal subject to the appeal is assessed by the Board on a de-novo basis with all substantive issues being examined as part of this process.

The third party also raises procedural concerns in respect to the noise reports submitted by the applicant at application, FI and CFI stages and how the PA dealt with the replacement/ succession of same. Given that third party observations on the material submitted by the applicant were received and considered by the PA at all three stages, I am satisfied that no procedural/ validation issues arise in this case.

7.5.3. Applicant's Existing Businesses/ Compliance History/ Precedent

The appellant raises a number of concerns in respect to the planning/ compliance status of the applicant's existing gambling casino businesses – including the business in Ashbourne, Co. Meath that was used as a comparator for the baseline noise assessment undertaken. The grounds of appeal also raise a concern about the national precedent that was set by the PA's interpretation of, what the appellant understands to be, a 'gambling casino' proposal as being a leisure use akin to a recreational/ sports facility. The applicant seeks to clarify that their operation in Ashbourne is fully permitted since 2011 and that they do not currently operate elsewhere in Swords. Whilst I note the points raised by both parties, the proposal subject of this appeal has been assessed and determined on its own merits having regard to the sensitivity of the receiving environment and the specifics of the proposed development.

7.5.4. Role of FCC in Gambling Regulation/ Enforcement

The grounds of appeal raised concerns in respect to FCC's planning and development controls in respect to the gambling industry, with reference made to specific planning applications/ ongoing enforcement activity elsewhere in Fingal. Both planning enforcement and the formulation of county planning policy are matters which fall under the remit of the PA and are therefore not a relevant consideration for the Board in the context of this appeal.

7.6. Conclusion

Objective DMSO6 (Change of Use in Urban and Village Centres) requires that planning applications for change of use are assessed on their positive contribution to diversification of the area together with their cumulative effects on matters such as traffic, environment, parking and local residential amenity. Considering the concerns that I have raised about the proposal's potential to create dead frontage onto River Mall, lessening passive surveillance and public safety on the laneway, together with the uncertainty which remains around the internal layout/ intensity of use of the unit, and therefore the likely noise that would be generated and disturbance to adjoining occupiers, I recommend to the Board that permission for the proposed change of use is refused.

8.0 AA Screening

- 8.1. I have considered the proposal for permission at Glebeview House, River Mall, Swords in light of the requirements S177U of the Planning and Development Act 2000 (as amended).
- 8.2. The subject site is located in an established mixed-use area and on serviced lands, with a buffer of intervening land uses provided between it and the River Ward which is situated to the west. It is also located approx. 1.4km to the south-west of the nearest European Sites (Malahide Estuary SPA (Site Code 004025) and Malahide Estuary SAC (Site Code 000205)).
- 8.3. The proposed development comprises of the change of use from retail unit to gaming rooms/ arcade together with various internal alterations and alterations to the unit's shopfront together with associated works.
- 8.5. No nature conservation concerns were raised in the planning appeal.
- 8.6. Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment because there is no conceivable risk to any European Site. The reason for this conclusion is as follows:
 - The minor/ de minimus nature of the proposed development.

- The location-distance from the nearest European Site and lack of connections given its setback from the Ward River and the intermediate development/ land uses.
- Taking into account the findings of the AA screening assessment by the PA.

8.7 I conclude that on the basis of objective information, the proposed development would not have a likely significant effect on any European Site either alone or in combination with other plans or projects.

8.8 Likely significant effects are excluded and therefore Appropriate Assessment (stage 2) (under Section 177V of the Planning and Development Act 2000) is not required.

9.0 Recommendation

I recommend that permission be REFUSED for the reasons and considerations set out below.

10.0 Reasons and Considerations

1. It is considered that the proposed development, by virtue of the internal partition noise control wall which is proposed at ground floor level inside the shopfront glazing on the unit's south elevation onto River Mall, would give rise to an expanse of dead frontage and an unacceptable negative impact on the visual amenity, safety and security of the adjoining publicly accessible laneway at River Mall (which connects Sword's Main Street to the greenway along the River Ward) which would not be in compliance with Section 14.4.5 (Shopfront Design) or Section 14.2.4 (Safety and Security) of the Fingal County Development Plan 2023-2029. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
2. It is considered that the proposed change of use from retail to a 'leisure virtual-reality gaming rooms', by virtue of the lack of detail provided in respect to the proposed internal layout, quantum and nature of equipment, and therefore the intensity of use, could give rise to unacceptable levels of noise and disturbance to adjoining occupiers, and could seriously injure the residential amenity of

properties in the vicinity. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

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.

Emma Gosnell
Planning Inspector
30th January 2025

Appendix 1

Form 1

EIA Pre-Screening

An Bord Pleanála Case Reference	ABP-321086-24		
Proposed Development Summary	Change of use from retail unit to gaming rooms; alterations to shopfront and associated works.		
Development Address	Glebeview House, River Mall, Swords, Co. Dublin, K67 NN50 (formerly The Book Haven).		
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)		Yes ✓	Proceed to Q2.
		No	No further action required
2. Is the proposed development of a CLASS specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended)?			
Yes		State the Class here.	Proceed to Q3.
No	✓		No further action required
3. Does the proposed development equal or exceed any relevant THRESHOLD set out in the relevant Class?			
Yes			EIA Mandatory EIAR required
No			Proceed to Q4
4. Is the proposed development below the relevant threshold for the Class of development [sub-threshold development]?			
Yes		State the relevant threshold here for the Class of development and indicate the size of the development relative to the threshold.	Preliminary examination required (Form 2)
5. Has Schedule 7A information been submitted?			
No	✓	Screening determination remains as above (Q1 to Q4)	
Yes		Screening Determination required	

Inspector: _____ Date: _____