



An
Bord
Pleanála

Inspector's Report

ABP-320989-24

Development

Internal alterations to the ground floor of the existing premises and change of use of the ground floor from a vacant retail premises to an amusement centre.

Location

394 South Circular Road, Dublin 8,
D08 E796.

Planning Authority

Dublin City Council South

Planning Authority Reg. Ref.

WEB1913/24

Applicant

Kian McGuigan.

Type of Application

Permission.

Planning Authority Decision

Refuse Permission.

Type of Appeal

First Party.

Appellant

Kian McGuigan.

Observer(s)

Doug and Sandy Hazel; Councillor Michael Pidgeon; and Aengus O Snodaigh TD and Councillor Máire Devine.

Date of Site Inspection

28th January 2025.

Inspector

Ciarán Daly

1.0 Site Location and Description

- 1.1. The subject two storey end of terrace property faces directly on to the street and consists of a vacant retail unit at ground floor level and a single residential unit at first floor level. There is a part single and part two storey flat roof return to the rear. There are a number of adjacent retail units on the street to the north-west and adjacent to the south-east side is a vacant and derelict corner site where permission has recently been granted to redevelop the site including for a part two to 8 storey mixed use building. Directly opposite the site there is a commercial premises adjacent to two no. terraced houses which is adjacent to a line of retail premises diagonally opposite the subject site. The site is located within the city area defined by the canals.

2.0 Proposed Development

- 2.1. The proposed development, in summary, consists of:
- Change of use of the ground floor (93.3sqm) from a vacant retail premises to an amusement centre containing a mix of amusement machines totalling 29 no. machines (amusement with prize and amusement only machines).
 - Internal alterations at ground floor level including the provision of toilets, a cash dispensing counter and the creation of a storage area.

3.0 Planning Authority Decision

3.1. Decision

Dublin City Council (DCC) refused permission for one no. reason related to the high proliferation of residential uses in the vicinity and that the amusement centre at this location would be detrimental to the amenities of the area and would be contrary to Policy CCUV14 (Adult Shops, Betting Shops and Gaming Arcades) and Section 15.14.10 (Amusement Centres / Events) of the Development Plan which aim to limit amusement centres near residential areas and prevent excessive concentration of such facilities and this would set an undesirable precedent.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The DCC Planner's Report concluded that while the proposed use is permissible under the Z4 zoning objective, that the site's proximity to residential areas raises significant concerns. The development was found to be contrary to Policy on gaming arcades and amusement centres of the Development Plan which seek to limit such centres near residential areas to prevent negative impacts on amenities and prevent excessive concentration of such facilities. It was therefore recommended that permission be refused.

3.2.2. Other Technical Reports

- Drainage Division: No objection subject to conditions.
- Transportation Planning Division: No objection subject to conditions.

3.3. Prescribed Bodies

Uisce Éireann: No report received.

3.4. Third Party Observations

37 no. third party observations were received by the Planning Authority, in summary the main points included the following:

- The area is blighted by addiction in past years and such facilities are highly addictive and inappropriate close to Rialto Community Drug Team and in relation to vulnerable users.
- Safety concerns and it would make the area less attractive for businesses.
- Such use is contrary to policy in proximity to schools, residential areas and places of worship, the Grotto.
- The development is contrary to the development principles of SDRA 12 (Dolphin House).
- A community hub is required beside the existing retail units.
- The amusement sector is unregulated with little or no inspection.

- Negative impacts on the surrounding local residents as it would undermine positive, social and integration services and create anti-social problems.
- There are two bookmakers within 5 minutes walk.
- A gambling establishment would be a more accurate development description or betting office which is only 'open for consideration'.
- The application should be assessed in relation to hours of operation, signage and shop frontage treatment and such shopfronts are generally out of character in a residential area.
- The site should be use for affordable home provision.
- Amusement centres are closed off from the street and add nothing.
- The development will undermine the public and private investment in the area.

4.0 Planning History

6108/07: Permission granted by the P.A. for the provision of an off licence (19sqm) subsidiary to the main retail use.

Sites in the vicinity:

3581/24: Permission granted by the P.A. at site at the corner of South Circular Road, 33-37 Dolphin's Barn Street, for the demolition of the existing derelict buildings and the construction of a part two storey to part eight storey mixed-use building comprising: community/social enterprise use (Class 10) or retail use (Class 1) at ground and mezzanine floor levels and 25 no. residential units at the upper floors.

Work has not commenced on this development.

5.0 Policy Context

5.1. Dublin City Development Plan 2022-2028 (as varied)

The subject site is zoned under Objective Z4 (Key Urban Villages/Urban Villages) where the objective is "*To provide for and improve mixed-services facilities*".

'Amusement/leisure complex' use is listed as a permissible use. This is defined in

Appendix 15 as “a building, or part thereof, used for the playing of gaming machines, video games or other amusement machines as defined in Article 5 of the Planning and Development Regulations, 2001, as amended. It may also include a bowling alley, quasar complex, pool or snooker hall, or children’s indoor play centre.

Chapter 7 relates to The City Centre, Urban Villages and Retail.

Section 7.5.1 General Retail Policy

- Policy CCUV14 - Adult Shops, Betting Shops and Gaming Arcades

That there will be a presumption against adult shops, betting shops and gaming arcades in proximity to residential areas, places of public worship and schools and similarly, there will be a presumption against an excessive concentration of such uses having regard to the existing presence of such retail outlets in an area.

Section 7.5.3 Key Urban Villages, Urban Villages and Neighbourhood Centres

The development / consolidation / regeneration of Key Urban Villages with high density mixed use development and residential led intensification will be supported.

- Policy CCUV20 - Mixed Use Key Urban Villages/Urban Villages

To support the development, regeneration and or consolidation of Key Urban Villages/urban villages as appropriate, to ensure these centres continue to develop their mixed used role and function adding vitality to these centres including through the provision of residential development.

- Policy CCUV23 - Active Uses

To promote active uses at street level in Key Urban Villages and urban villages and neighbourhood centres.

Chapter 13 relates to Strategic Development Regeneration Areas

Section 13.14 SDRA 12 – Dolphin House

It is an objective of the development plan that the Dolphin Housing estate will be regenerated to provide an attractive and sustainable residential community, alongside appropriate community, commercial and leisure facilities.

Chapter 14 relates to Land-use Zoning

Section 14.3.1 Permissible and Non-Permissible Uses

There will be a presumption against uses not listed under the permissible or open for consideration categories in zones Z1, Z2, Z6, Z8, Z9, Z11, Z12 and Z15. Other uses will be dealt with in accordance with the overall policies and objectives in this plan.

Section 14.6 Transitional Zone Areas

In dealing with development proposals in these contiguous transitional zone areas, it is necessary to avoid developments that would be detrimental to the amenities of the more environmentally sensitive zones. For instance, in zones abutting residential areas or abutting residential development within predominately mixed-use zones, particular attention must be paid to the use, scale, density and design of development proposals, and to landscaping and screening proposals, in order to protect the amenities of residential properties (see also Appendix 3: Achieving Sustainable Compact Growth Policy for Density and Building Height in the City, Chapter 4: Shape and Structure of the City, and Chapter 15: Development Standards for guiding principles regarding criteria such as height, density, urban design).

Section 14.7.4 Key Urban Villages and Urban Villages – Zone Z4

Commercial/Retail: Promote the creation of a vibrant retail and commercial core with animated streetscapes. A diversity of uses should be promoted to maintain vitality throughout the day and evening.

Section 15.14.10 Amusement Centres / Events

Amusement centres will not be permitted in residential areas and will only be appropriate in mixed-use areas where the proposed use is in keeping with both the scale of the building and the pattern of development in the area. It is an objective of Dublin City Council to prevent an excessive concentration of amusement centres.

There will be a presumption against the development of further dog racing tracks in the city.

Appendix 15: Land Use Definitions - Amusement/ Leisure Complex (as above).

5.2. Planning Regulations

To note per the Planning and Development Regulations 2001 (as amended), Article 5(1) states ““amusement arcade” means premises used for the playing of gaming machines, video games or other amusement machines”.

5.3. Section 28 Guidelines

Having considered the nature of the proposal, the receiving environment, the documentation on file, including the submissions from the planning authority, I am of the opinion that the relevant Section 28 Ministerial Guidelines are:

- Retail Planning Guidelines for Planning Authorities, 2012.

5.4. Natural Heritage Designations

In relation to designated sites, the subject site is located:

- c.0.18km north-east of the Grand Canal Proposed Natural Heritage Area (PNHA) (site code 002104).
- c.3.75km south-west of the Royal Canal PHNA (site code 002103).
- c.4.5km south-east of Liffey Valley PNHA (site code 000128).
- c.4.8km south-west of North Dublin Bay PNHA (site code 000206).
- c.5.2km west of South Dublin Bay Special Area of Conservation (SAC) and PNHA (site code (000210).
- c.5.2km west of South Dublin Bay and River Tolka Estuary Special Protection Area (SPA) (site code 004024).

5.5. EIA Screening

See Form 1 appended to this report. The proposed development consist of an internal change of use and is not a project as it involves no construction works, demolition or interventions in the natural surroundings. The need for preliminary examination EIA screening can, therefore, be excluded.

6.0 The Appeal

6.1. Grounds of Appeal

One first party appeal has been lodged by Farry Town Planning Ltd on behalf of Kian McGuigan of 294 South Circular Road, Dublin 8, D08 E796. The grounds of the first party appeal can be summarised as follows:

- In terms of impacts on residential amenity, it is well established that amusement centres can satisfactorily co-locate with residential properties and precedent for this arises at Parnell Street, Dublin 1 (ABP ref. PL29N.309865).
- An amusement centre is suitable for Z4 zoned land. Section 15.4.10 restricting amusement centres in residential areas applies to Z1 and Z2 residential zonings where amusement centres are not permissible or open for consideration with a presumption against uses not listed per CDP Section 14.3.1.
- There has been no attempt to quantify the number of amusement centres in the vicinity or to define the applicable area to which this applies. The number of such activities in the locality is not excessive such that the development would offend relevant policy.

6.2. Observations

Three no. third party observations were received from Doug and Sandy Hazel; Councillor Michael Pidgeon; and from Aengus O Snodaigh TD and Councillor Máire Devine. These observations can be summarised as follows:

- The development will be in the middle of a primarily residential area with retail and services serving local demand.
- There is no vacancy in this area and no need for the unit to be vacant.
- The permissible uses under the zoning are “*subject to normal planning considerations, including the policies and objectives outlined in the plan*”.
- The Kildare permission referenced was for non-gaming machines within a licensed premises and is not comparable.

- A previous amusement/ pool hall at what is now Webb Motors attracted anti-social behaviour.
- The placement beside several addiction treatment centres should be a red flag.
- There are vibrant and active community groups and facilities for children's play in the area and the area deserves better.
- The application is attempting to designate a gambling establishment as an amusement centre and this would have a negative impact in a residential area.
- The comparison with Parnell Street is misleading as it is primarily a commercial street in the core city centre which is not the case here.
- A "residential area" is not exclusively an area solely zoned residential.
- Policy CCUV14 with its presumption against gambling business such as gaming arcades is key per the Planner's Report. This applies not just to residential areas but to areas in proximity to such areas.
- The appeal does not address the proximity to places of worship.
- The appeal in relation to overconcentration of such units was not a ground for refusal and is irrelevant.
- The reasons for refusal are clear cut and protect against the degradation that gambling dens bring upon local populations.
- The appeal attempts to deflects from the nature of the business by referencing the primary residential nature of the property.
- The CDP could not be clearer in relation to amusement centres.
- The harms to the community from this type of development are well known in the area.
- Public health specialists recommend tight control of gambling.
- Reference to a DCC area committee's opposition to such gambling developments.

7.0 Assessment

7.1. Having examined the application details and all other documentation on file, including all of the submissions received in relation to the appeal, the reports of the local authority, and having inspected the site, and having regard to the relevant local/regional/national policies and guidance, I consider that the substantive issues in this appeal to be considered are as follows (example):

- Principle of Development.
- Policy
- Residential Amenity and Precedent.
- Quantification of Amusement Centres.

7.2. Principle of Development

- 7.2.1. The subject site is zoned under Objective Z4 (Key Urban Villages/Urban Villages) where the objective is “To provide for and improve mixed-services facilities”. ‘Amusement/leisure complex’ use is listed as a permissible use. This is defined in Appendix 15 as “a building, or part thereof, used for the playing of gaming machines, video games or other amusement machines as defined in Article 5 of the Planning and Development Regulations, 2001, as amended...”. To note per the Planning and Development Regulations 2001 (as amended), Article 5(1) states ““amusement arcade” means premises used for the playing of gaming machines, video games or other amusement machines”.
- 7.2.2. In this context, I consider the proposed change of use to an amusement centre is permissible in principle but I note it does not automatically follow that the proposed change of use is not subject to relevant policy for such uses. I note that per Section 14.3.1 (Permissible and Non-Permissible Uses), the CDP states “*A permissible use is one which is generally acceptable in principle in the relevant zone, but which is subject to normal planning considerations, including the policies and objectives outlined in the plan*”.
- 7.2.3. I also note that while policy under the Z4 zoning objective seeks to provide a range of retail and commercial functions and to create a vibrant retail and commercial core with animated streetscapes, this is subject to other relevant policies.

7.3. Policy

- 7.3.1. I note Policy CCUV14 - Adult Shops, Betting Shops and Gaming Arcades states that *“there will be a presumption against adult shops, betting shops and gaming arcades in proximity to residential areas, places of public worship and schools and similarly, there will be a presumption against an excessive concentration of such uses having regard to the existing presence of such retail outlets in an area”*.
- 7.3.2. In relation to “residential areas”, I note that the appeal suggests that such areas apply to the Z1 and Z2 residential related zonings only as amusement centres are not permissible or open for consideration under these zonings. I do not accept this line of argument and I consider a residential area to be one where the predominant use is residential use regardless of the zoning classification. While the zoning of an area may relate to the existing land use of an area, it primarily relates to allowed future uses which can be different and which zonings can provide for a range of different uses.
- 7.3.3. In this context, while the subject site is located within a Z4 zoned area and is surrounded by such zoning, I note that there is permission for 25 no. residential units above ground level immediately to the south-east at the corner site (Reg. Ref. 3581/24) with residential use provided for under the Z4 zoning. I note the residential use on the first floor level of the subject site and the significant number of houses and apartments located either side of the line of retail units on both sides of the street and around the corners in close proximity. I also note that Policy CCUV14 refers to “*proximity to residential areas*”. In this context, I consider that the subject location can be considered to be subject to the presumption against gaming arcades in proximity to residential areas notwithstanding that the proposed use is permissible under the zoning.
- 7.3.4. I also note, as raised by third parties, the proximity to places of worship including Our Lady of Dolours Catholic Church, St Andrew’s Community Centre and Christian House of Rock Church, Church of Our Lady of the Rosary of Fatima and St Thomas Patoral Centre all along or close to South Circular Road within c.400m of the subject site and within less than a 5 minute walk. In this context, I also consider the site to be located in proximity to places of worship. I note no similar evidence has been put

forward in relation to proximity to schools which are generally located outside of a 500m radius of the site which I consider a reasonable basis to measure proximity.

- 7.3.5. I do not consider relevant the reference to the permission granted for a change of use of vacant retail unit at basement level to a gaming outlet at 185 Parnell Street, Dublin 1 (ABP ref. PL29N.309865) given the significantly different site context. Parnell Street, in my view, being located within the core city centre and constituting a significant retail/commercial area, is an area where, notwithstanding close proximity to residential uses/areas, the location and Z5 (City Centre) zoning merits a greater allowance for a range of commercial uses to be located in close proximity to residential uses and which is generally expected in the core city centre.
- 7.3.6. In this context, I note that the proposed change of use would not accord with the pattern of development in the area where such gaming machine facilities are not a feature of the immediate area. Moreover, such use would not contribute towards street animation or vitality being an inward facing use.
- 7.3.7. Accordingly, I do not consider the case put forward in the appeal to be persuasive that the proposed change of use to amusement centre will not be in proximity to residential areas and I note it is also close to places of worship. On both of these bases, I consider that Policy CCUV14 is highly relevant as there is a policy presumption against the proposed change of use in this instance. On this basis, I recommend that permission be refused for the change of use and the internal changes which are required to facilitate the change of use notwithstanding that the proposed change of use is acceptable under the zoning.

7.4. Residential Amenity

- 7.4.1. The appeal argues that it is well established that amusement centres can satisfactorily co-locate with residential properties. Section 15.14.10 (Amusement Centres / Events) states that *“Amusement centres will not be permitted in residential areas and will only be appropriate in mixed-use areas where the proposed use is in keeping with both the scale of the building and the pattern of development in the area. It is an objective of Dublin City Council to prevent an excessive concentration of amusement centres”*.
- 7.4.2. I note that the internal works alone would not result in any undue negative impacts on residential amenities. I note the prevalence of addiction services in the area as

raised by third parties, for example Daisy House at 368/ 370 South Circular Road and St Andrew's Community Centre where Rialto Community Drug Team are located.

- 7.4.3. Nevertheless, other than in relation to hours of operation, which can be regulated by condition, I note no identification of specific significant negative impacts on adjacent residential amenities such that I am satisfied in relation to impacts on residential amenity.

7.5. Quantification of Amusement Centres

- 7.5.1. The appeal states that there has been no attempt to quantify the number of amusement centres in the vicinity or to define the applicable area to which this applies. The appeals states that the number of such activities in the locality is not excessive. I note that while the reason for refusal referenced the policy to prevent excessive concentration of such facilities, it did not rely on this but rather relied on its location close to a high number of residential uses. I note that no evidence has been put forward for an existing concentration of such uses in the area and from my site visit I did not observe such a concentration in the immediate area. Arising from this, I am satisfied that the proposed development would not result in an excessive concentration of amusement centres requiring prevention.
- 7.5.2. For completeness, I note that per Policy CCUV14 there is a presumption against gaming arcades in proximity to residential areas and places of worship irrespective of whether or not there is an excessive concentration of such uses in an area.

8.0 Appropriate Assessment Screening

Appropriate Assessment Screening Determination

- 8.1. I have considered the proposed development in light of the requirements of Section 177S and 177U of the Planning and Development Act 2000 as amended. The subject site is located c.5.2km west of South Dublin Bay SAC site code (000210) and c.5.2km west of South Dublin Bay and River Tolka Estuary SPA. The proposed development comprises an internal change of use with no emissions.

8.2. Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment because it could not have any appreciable effect on a European Site. The reason for this conclusion is as follows:

- The absence of any external impacts.
- The distance to European sites.
- Taking into account screening determination by LPA.

8.3. I consider that the proposed development would not be likely to have a significant effect individually, or in-combination with other plans and projects, on a European Site and appropriate assessment is therefore not required.

9.0 Recommendation

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

10.0 Reasons and Considerations

1. The subject site is located in proximity to residential areas and places of worship where there is a presumption under Policy CCUV14 (Adult Shops, Betting Shops and Gaming Arcades)) of the Dublin City Development Plan 2022-2028 against development of gaming or other amusement machines such as that sought in this instance. Notwithstanding that the proposed change of use is acceptable under the zoning and in the absence of sufficient justification, the provision of an amusement centre at this location would be contrary to Section 15.14.10 (Amusement Centres / Events) of the Development Plan in that it would not be in keeping with the pattern of development in the area. The development would therefore, by itself and by the precedent it would set for other similar development in the vicinity, 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.

Ciarán Daly
Planning Inspector

17th February 2024

Appendix 1 – Form 1

EIA Pre-Screening

An Bord Pleanála Case Reference	ABP-320989-24		
Proposed Development Summary	Internal alterations to the ground floor of the existing premises and change of use of the ground floor from a vacant retail premises to an amusement centre.		
Development Address	394 South Circular Road, Dublin 8, D08 E796.		
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	
		No	X
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			
No			
3. Does the proposed development equal or exceed any relevant THRESHOLD set out in the relevant Class?			
Yes			
No			

4. Is the proposed development below the relevant threshold for the Class of development [sub-threshold development]?			
Yes			

5. Has Schedule 7A information been submitted?		
No		Pre-screening determination conclusion remains as above (Q1 to Q4)
Yes		Screening Determination required

Inspector: _____ Date: _____