
Appeal Reference:	2022/A0099
Appeal by:	Oasis Retail Services Ltd
Appeal against:	The non-determination of an application for full planning permission
Proposed Development:	Change of use from former bank (Class A2) to an amusement arcade/ adult gaming centre and alterations to shop front.
Location:	80-82 Market Street, Downpatrick
Planning Authority:	Newry, Mourne and Down District Council
Application Reference:	LA07/2022/1069/F
Procedure:	Written representations and Commissioner's site visit on 1 st November 2024
Decision by:	Commissioner Paul Duffy, dated 7 th November 2024

Decision

1. The appeal is allowed, and full planning permission is granted, subject to the condition set out below.

Reasons

2. The main issues in this appeal are whether the development would have a detrimental impact on the Primary Retail Core (PRC) and the wider neighbourhood.
3. Section 45(1) of the Planning Act (NI) 2011 (the Act) requires the Commission, in dealing with an appeal, to have regard to the Local Development Plan (LDP), so far as material to the application, and to any other material considerations. Section 6(4) of the Act states that where regard is to be had to the LDP, the determination must be made in accordance with the Plan unless material considerations indicate otherwise.
4. The Ards and Down Area Plan 2015 operates as the relevant LDP. In that plan, the site is located within the PRC within Downpatrick Town Centre as defined by Proposals DK 23 Town Centre and DK 24 PRC.
5. The ADAP points out that the Regional Development Strategy (RDS) requires the promotion of town centre vitality and viability. The means of achieving it include establishing a multi-functional role for town centres as prime locations for retail, service, administrative, leisure and cultural activities, making them physically attractive and distinctive, encouraging a diversity of economic activity. Within the

plan area, Downpatrick has been identified as a main hub. Reference is made to Planning Policy Statement 5: Retailing and Town Centres, but there are no operational plan policies therein in relation amusement arcades.

6. Volume 1 of the ADAP states that the purpose in identifying a PRC within a Town Centre is to provide control over development inside that area, to ensure the continuance of a compact, lively and attractive shopping environment, offering both choice and convenience. This is repeated in Volume 3 in relation to Downpatrick.
7. The Strategic Planning Policy Statement for Northern Ireland (SPPS) is material to all decisions on individual planning applications and appeals. This document indicates that until the Council adopts a Plan Strategy for its area there will be transitional arrangements that will operate where planning policy within retained documents and guidance will apply. In this Council area, no Plan Strategy has been adopted yet and the SPPS cancelled PPS 5 – Retailing and Town Centres. The SPPS therefore provides the prevailing regional policy for Town Centres and Retailing and Development Control Advice Note 1: Amusement Arcades (DCAN1) is a material consideration.
8. Paragraph 6.267 of the SPPS states that town centres are important hubs for a range of land uses and activities and notes that they provide a wide variety of retailing and related facilities, including employment, leisure and cultural uses. This is an acknowledgement that town centres are places with a mix of uses and activities as advanced within the RDS and ADAP. Paragraph 6.269 states that it is important that planning supports the role of town centres and contributes to their success. Paragraph 6.270 states that the aim of the SPPS is to support and sustain vibrant town centres through the promotion of established town centres as the appropriate first choice location of retailing and other complementary functions, consistent with the RDS.
9. The regional strategic objectives of town centres is set out in paragraph 6.271 of the SPPS which includes; 'Secure a town centre first approach for the location of future retailing and other main town centre uses; adopt a sequential approach to the identification of retail and main town centre uses in LDPs and when decision taking; amongst other things, protect and enhance diversity in the range of town centre uses appropriate to their role and function, such as leisure, cultural and community facilities. The footnote accompanying this paragraph confirms that town centre uses include cultural and community facilities, retail, leisure, entertainment and businesses. An amusement arcade/ adult gaming centre is a form of leisure and entertainment and therefore would constitute an appropriate town centre use.
10. The appeal building is currently vacant and was previously occupied by the Bank of Ireland. The bank closed in the summer of 2021. The building is two storeys in height with a 15m frontage. At ground floor level the building has limited active street frontage comprising mainly of a blank concrete block elevation with a 3.35m window display. At first floor level the frontage has a painted render with a balcony above the ground floor window display. The site is located in the southern part of the town centre within a mixed commercial area, opposite the Grove Shopping Centre and next door to a public house.

11. The Council's objection to the proposed development is twofold, firstly that the proposed change of use would break up a continuous shopping frontage along Market Street and secondly that it would have a detrimental impact on the wider neighbourhood, specifically community groups, churches and schools by virtue of an accumulation of adult gaming facilities in the area.
12. DCAN 1: Amusement Arcades, paragraph 5, acknowledges that in areas where shopping is the predominant use, an important consideration in decision making will be whether an amusement centre would break up an otherwise continuous shopping frontage. The proposed building is a former bank and does not have a traditional retail frontage and the neighbouring premises is a public house. The proposed building is located within a terrace of ten units. Of these, six are non-retail. The proposal will therefore not result in the breakup of a continuous shopping frontage along Market Street, and to this extent the council's refusal reason in relation DCAN 1 paragraph 5 has not been sustained.
13. Turning to its impact on the wider neighbourhood of Downpatrick town centre. Paragraph 4 of DCAN 1 states that as regards the location, amusement centres are not normally acceptable near residential property nor are they good neighbours for schools, churches, hospitals, or hotels. The council acknowledge that they are not aware of any residential properties in proximity to the site which could potentially be affected by associated noise, and they fail to identify any community groups, churches or schools which would be impacted by the proposed amusement arcade. In the evidential context, the council has therefore failed to substantiate and therefore sustain its reason for refusal.
14. The third party raises concerns that the proposal is close to the Journey Community Church (10/11 Market Street), Downpatrick Youth Initiatives (49-51 Market Street), and the South Eastern Regional College and St Patricks Visitor Centre. However, the third party has not qualified their objection by demonstrating how or why proposed development would have a negative impact on these groups. Therefore, I have not been persuaded that they could not co-exist and accordingly the objection in this regard has not been substantiated to the extent that would justify withholding planning permission.
15. It was also argued that given no details of any noise generating plant or equipment associated with the development have been provided nor any details on the quantum of gaming machines, that Environmental Health would not have been able to make a proper assessment of the impact of the development on two nearby residential properties, namely 94B Market Street and 19B St Patricks Avenue. However, the appellant has advised that there will be no new noise generating plant or equipment and that the existing air conditioning condenser units will be reused. Regardless of the amount of award with prize machines, gaming machines in themselves are quiet and there will be limited, if any, noise breakout because the machines are set behind a double door entry system. Furthermore, no. 94B Market Street is located above a public house whilst no. 19B St Patricks Avenue is located above shops and backs onto a bingo hall and amusement arcade which are much closer than the appeal development. Therefore, these concerns have not been sustained.

16. The third party disagrees with previous appeal decisions as to whether an assessment of need is required and points out that paragraph 6.274 of the SPPS requires Councils, when preparing LDPs, to undertake an assessment of the need or capacity for retail and other main town centre uses across the plan area. In the absence of an up-to-date LDP paragraph 6.282 requires applicants to prepare an assessment of need which is proportionate to support their application. However, the preceding paragraph 6.281 requires applications for main town centre uses to be considered using a sequential approach beginning with the PRC as the most preferable location for town centre uses, followed by the town centre, edge of centre before considering out of centre locations. In this case, the LDP has identified a PRC and as an amusement arcade is considered an appropriate town centre use, when applying the sequential approach, the PRC would be the preferred location. Therefore, a needs test would not be necessary and accordingly a quantitative or qualitative assessment is not required. Also, in support of the requirement for a needs assessment it was argued that the proposed development would displace retail income from other town centre shops in Downpatrick negatively impacting on the vitality and viability of the PRC and town centre. However, given that I have found that a needs assessment is not necessary in this case, the third-party concern regarding the lack of a needs assessment and concerns that the proposed development would displace retail income are therefore not sustained and in any event the planning system does not protect one town centre business from experiencing financial loss or competition from another town centre business.
17. It was also advanced that the explanatory text of ADAP Proposals DK23 and DK 24 when read together seek to control non-retail uses in the PRC which are negatively impacting the town centre through the casual erosion of retail floorspace. Although Proposal DK 23 acknowledges that the town centre image of Downpartick is adversely affected by property vacancy, and by non-retail uses, Proposals DK23 and DK24 do not constitute policy or amount to a policy prohibition on non-retail uses within the PRC. As such, the objection in this regard is misplaced and ignores the updated position in the SPPS which identifies leisure and entertainment as a main town centre use.
18. Third parties have also raised concerns with the cumulative impact of gambling outlets having a negative impact on the character, vitality and viability of Downpatrick town centre to an extent that the proposal would dissuade inward investment and therefore, if approved, it would create an unacceptable precedent for similar developments. Related concerns were also raised by Downpatrick Town Committee and a number of elected representatives claiming that the proposed development would be incompatible with the Councils Regeneration and Economic Development Strategy 2020-2025.
19. I have not been furnished with a copy of this document or directed as to how the proposed development would offend it. Nor have I been provided with demonstrable evidence of an over provision of amusement arcades in Downpatrick town centre. I note that there was no consensus between the parties as to the number of amusement arcades located within the PRC or town centre. In any event, the numbers referred to were low and given that they are considered as a town centre use, there is no policy limit on their numbers and although there would be a tipping point if there was an over concentration of this type of non-retail

use within the PRC and the council would be in the best position to decide when this is. Nonetheless, from my on-site observations, I only identified two current amusement arcades within Downpatrick town centre, neither of which were located within the PRC, and therefore I have not been persuaded that there is an excessive number of amusement arcades within the town centre. Accordingly, in light of the current policy direction within the SPPS and LDP for town centres to provide a multi-functional role as prime locations for a range of retail, leisure, entertainment and economic activity where diversity should be protected and enhanced the proposed development complies with policy and the third-party objections have not been sustained. In complying with policy no unacceptable precedent arises. Although not explicitly stated, it can be inferred from the objections, that the principle of gambling premises within the town centre was being opposed, however, value judgements on moral or ethical grounds are not relevant or material planning considerations.

20. Having considered the matters raised in this appeal, I have not been persuaded that the proposed amusement arcade/adult gaming centre would unacceptably impact on the PRC or negatively impact on the wider neighbourhood of Downpatrick town centre. To the contrary, the proposed development would increase diversity, extend the evening economy and reduce vacancy rates. The Council and objectors have failed to sustain the reason for refusal based on the SPPS and DCAN 1 paragraphs 4 & 5.

Conditions

- (1) The development shall be begun before the expiration of five years from the date of this permission.

This decision approves / is based on the following drawings:-

Drawing No.	Title	Scale	Date
22411NE2	Site Location Plan	1:1,250	01 July 2022
IDA 22/613.P4	Site Layout Plan	1:100	08 Sept 2022
IDA 22/613.P1	Ground Floor Plans	1:100	08 Sept 2022
IDA 22/613.P3	Site Location & Elevations	1:1000 & 1:100	08 Sept 2022

COMMISSIONER PAUL DUFFY

List of Documents

Planning Authority:-	Newry, Mourne and Down District Council Letter dated 10 March 2023 Rebuttal Statement dated 17 July 2023
Appellant(s):-	MBA Planning Statement of Case dated June 2023 Rebuttal Statement dated July 2023
Third Parties:-	Matrix Planning Statement of Case dated June 2023 Rebuttal Statement dated July 2023