

# SUPPORTING STATEMENT

Relocation of Amusement Permit

19 North Street to 73-75 North Street, Belfast

Oasis Retail Services Limited

May 2022

**MBA** Planning

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## 1.0 INTRODUCTION

1. This statement assesses an application by Oasis Retail Services ('Oasis') for the provisional grant of an amusement permit on the front part of a former retail unit at 73 – 75 North Street, Belfast.
2. The application seeks consent to use the premises wholly for the provision of gaming machines with a maximum all cash prize of £25 as defined by Article 108 (1)(ca) of the Betting, Gaming, Lotteries and Amusements (NI) Order 1985 (hereinafter 'The 1985 Order').
3. Oasis' long-established premises at 19 North Street which has operated as an amusement arcade for more than 45 years will close **(Appendix 1)**.
4. That building will be substantially demolished to facilitate the comprehensive redevelopment and regeneration of this area through the proposed scheme formerly known as 'Royal Exchange' now known as 'Tribeca'.
5. It means this proposal is essentially a relocation of the long-established amusement arcade use to a new site about 150m away. The existing use of No 19 will be extinguished by way of a planning agreement between Oasis, their current and prospective landlord and the Council **(Appendix 2)**.



Figure 1: The North Street Context

6. The statement is structured in the following way:
- I explain the background to the proposal in **Section 2.0**;
  - I describe the location of the proposal in **Section 3.0**;
  - I assess the relevant issues in **Section 4.0**;
  - I set out the principal conclusions in **Section 5.0**.
7. It is accompanied by the following plans and appendices:
- **Appendix 1:** Historical Permit for No 19 North Street;
  - **Appendix 2:** The Planning Agreement;
  - **Appendix 3:** Typical Interior of an Oasis Premises;
  - **Appendix 4:** Previous Judgements: 7 Wellington Place and Richmond Centre;
  - **Appendix 5:** PAC Decision for 7 Wellington Place, Belfast;
  - **Appendix 6:** Business Tenancy Notice;
  - **Appendix 7:** Planning Approval;
  - **Appendix 8:** Planning Case Officer's Report and Building Control Officer's response;
  - **Appendix 9:** Hazeldene Enterprises Court of Appeal Decision;
  - **Appendix 10:** Environmental Health Officer's Consultation Response.

## **2.0 BACKGROUND TO THE PROPOSAL**

8. Oasis is an established amusement/ gaming centre operator that was formed in 1968 but has now expanded into a significant enterprise employing in the region of 140 people.
9. The business is wholly owned and operated in Northern Ireland. It currently holds 15 amusement permits.
10. Their current premises in North Street was one of its first facilities. It has been in existence on the site for more than 45 years.
11. Since then, Oasis has traded successfully at this location. No issues have arisen in respect of its compliance with the 1985 Order and particularly age control. The applicant is not aware of any complaints whatsoever regarding any element of its operation. Its permit has been renewed annually, most recently in June 2021.

12. For more than 50 years, Oasis has been at the forefront of raising standards within the local Gaming industry. In particular they have confronted the 'stigma' associated with Gaming Centres that have often been characterised by mis-management and poor presentation by offering a genuine alternative.
13. As a result, Oasis business model is to operate high quality, well managed gaming centres in high street locations. Units are fitted out to exceptional standards.
14. Oasis is dedicated to the promotion of 'Responsible Gambling' and train all management in social responsibility measures including age control and effective self-exclusion policies. All of this seeks to provide the best levels of customer experience and care.
15. While entrance is restricted to over 18s only, Oasis applies a 'Think 21' policy in relation to age control of their customers. This will apply to all the proposed floorspace.
16. The premises and offering are deliberately designed to cater for a mature customer. This creates an adult leisure environment that co-exists and complements other neighbouring businesses **(Appendix 3)**.
17. Its offer is distinct (compared to the majority of other amusement arcades) and a material consideration that the Courts have had particular regard to in the determination of previous Oasis permit applications at Wellington Place in Belfast and the Richmond Centre in Londonderry **(Appendix 4)**.
18. The Planning Appeals Commission (PAC) has also had regard to Oasis' position at the '*quality end of the amusement centre business*' as a reason why it would require '*a quality location*' in the determination of the planning appeal into what would become the Wellington Place premises in Belfast City Centre **(Appendix 5)**.
19. In line with its desire to improve its customer offer and experience at North Street, planning permission was sought in 1998 to extend the unit into the adjacent retail premises at No 21. This received planning permission in September 2000.



20. However, those modernisation and expansion plans were abandoned when Ewarts announced their intentions to comprehensively redevelop this part of Belfast (the forerunner of the scheme that would eventually become Royal Exchange and latterly Tribeca).
21. As an interim measure, Oasis refurbished their existing unit in or about 2004.
22. Oasis has now been served with a notice to vacate this unit under the Business Tenancy Order by the new landowner – Castlebrook Investments or Project Goat Ltd (**Appendix 6**). This is to enable them to proceed with their development ambitions for the regeneration of this area.
23. Castlebrook has told Oasis that they must vacate their unit as soon as possible.
24. An application for planning permission to relocate the business to the proposal site was made in December 2017. The recommendation to approve planning permission was accepted by the Town Planning Committee in April 2018, subject to a legal agreement to extinguish the gaming centre use at their existing unit.
25. Planning permission was eventually granted by Belfast City Council on 21 April 2022. (**Appendix 7**). The long delay has been caused by extensive negotiations to settle the terms of the planning agreement between Castlebrook, the prospective landlord and the applicant.
26. No letters of objection were received in response to the planning application, from any member of the public or other commercial interest.
27. The permit application has, therefore, been made to facilitate the orderly relocation of Oasis' established business to a unit in close proximity.
28. The proposed unit contains a floorspace of 368sqm. In addition to the area for gaming, there will also be a lounge/ relaxation area, coffee making facilities, kitchen, ancillary office space, staff rooms and toilet provision. It will have a single customer access onto North Street and will be fully accessible for disabled members of the public.

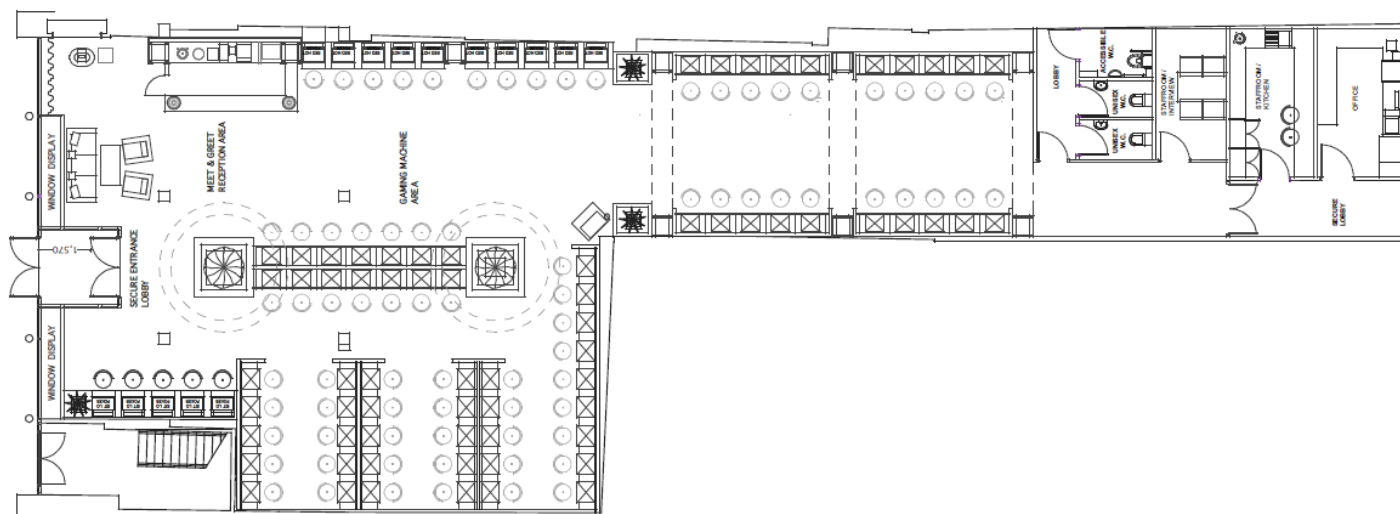


Figure 2: Indicative Floorplan

29. Shopfront alterations are also proposed to the building but these will be sympathetic to ensure they integrate and blend seamlessly into the existing streetscape. They comprise a painted hardwood shopfront with decorative hardwood doors, sidelights, columns and fascia panel.



Figure 3: The alterations to the shopfront

30. It is anticipated that the premises will operate seven days a week between the hours of 9am and midnight on Monday to Saturday and 11.30am to midnight on Sunday.
31. The proposal represents an additional investment of over £500,000 into the area and will secure jobs for the ten members of staff who are currently employed at Oasis' existing premises.

### 3.0 THE LOCATION

32. North Street is within the North East Quarter of the City Centre. It consists of a one-way street for vehicular traffic and runs between the junction of Bridge Street and Royal Avenue with on street parking.
33. The North East Quarter is one of the most historical parts of the City and functioned as the commercial core during the 17<sup>th</sup> and 18<sup>th</sup> centuries. By the 19<sup>th</sup> century, the planned growth and shifting of the City's commercial focus to centre on Royal Avenue relegated this area's importance and its retail attraction suffered as a result.
34. By the 1970s, the physical character began to deteriorate as its retail importance declined as a consequence of poor global economic conditions, the rise in popularity of out-of-town shopping and the IRA's sustained bombing campaign that left many buildings derelict or completely destroyed.
35. Those factors were widely acknowledged and efforts to reverse these trends included the introduction of the Urban Development Grant in 1983 to encourage investment and the publication of the Belfast Urban Area Plan in 1989 that identified a series of regeneration proposals for the City Centre.
36. North Street was one area that was recognised as specifically requiring investment. While there have been a number of schemes proposed for the area since 2000, none have materialised.
37. It means the principal characteristic of this area is of run-down tertiary retail and service use appearance. It has suffered from years of decline and underinvestment, resulting in a significant drop off in retail uses from primary or premier retail pitch at Royal Avenue to service uses within only a few metres.
38. Despite these characteristics, the draft Belfast Metropolitan Area Plan (dBMAP) proposes that this area should be included within the Prime Retail Core (PRC) under **BMAP Designation**

**CC05.** dBMAP indicates that it is designated to ensure the continuance of a compact and attractive shopping environment, offering both choice and convenience.

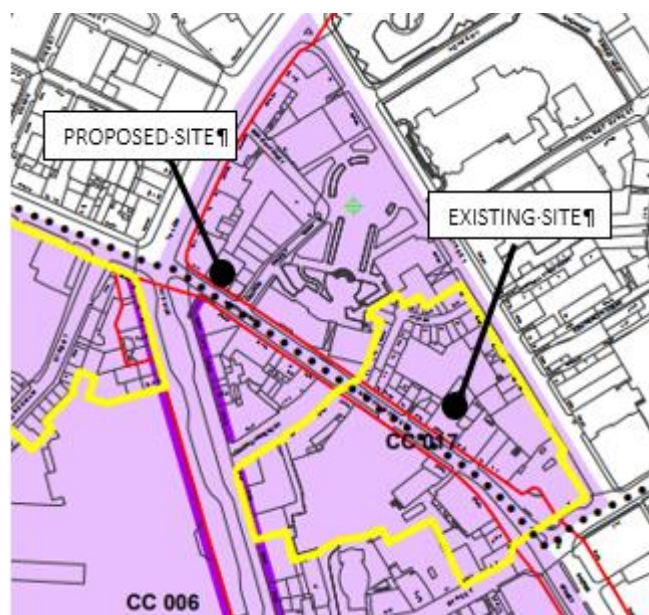


Figure 4: Extract from dBMAP

39. The area contained within the PRC is broadly consistent with the Main Shopping Area (MSA) that was defined in the Belfast Urban Area Plan (BUAP) 2001 – the statutorily adopted area plan for Belfast following the Court of Appeal’s judgement that the decision to adopt BMAP was not lawful.
40. The existing Oasis premises is also proposed for inclusion within the boundary of a Development Opportunity Site known as Cathedral Way (**BMAP Proposal CC017**).
41. While it has no statutory force and is not taken into account for the purposes of determining planning applications, the draft plan strategy for Belfast (dPS) (which is currently at post public examination stage), gives a general indication of the way planning policy might develop for this area.
42. **dPS Para 8.2.1** indicates that the Strategy is creative and permissive to adapt to changing trends and promote resiliency whilst maintaining the function of core areas for retailing. It says it will build upon complementary creative and cultural uses and enable its evening and night time economy to grow and diversify.

43. Its policy is focused on promoting the sustainable growth, and facilitating mixed use regeneration schemes within the city centre character areas to strengthen and diversify the overall offer of Belfast (**dPS Para 8.3.4**).
44. The application building is at the north western end of North Street close to its junction with Royal Avenue. It is a three-storey brick and stone building built in the early 1990s. Its architecture is of its time and is an unremarkable modern building.

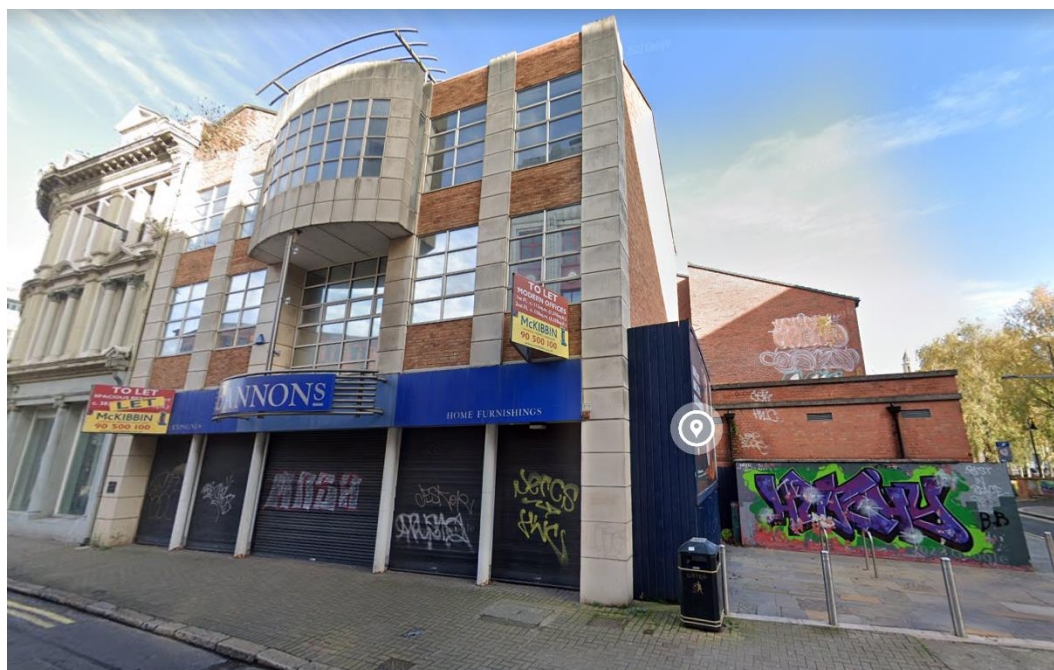


Figure 5: The Application Building

45. It was last used as a furniture showroom until December 2015 when it closed citing depleting sales over the last 15 years as the main reason. Eleven jobs were lost as a result.
46. The premises have remained vacant since then with no interest from any other retailer. The building has now been subdivided and a new ground floor unit has been created facing onto William Street.
47. The building sits as a single block in the street and is bounded by a gap site adjacent to Church Street. It is beside a vacant unit that was last used by The Money Shop (although the frontage of that building and point of public access is onto Royal Avenue).

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48. The building is not listed and has no heritage interest despite its location within the Cathedral Conservation Area.

#### **4.0 ISSUES FOR CONSIDERATION**

49. The Belfast City Council Amusement Permit Policy (BCCAPP) was published in May 2013 and so postdates the grant of the existing amusement permit at No 19 North Street.
50. BCCAPP identifies six matters:
- Whether the proposal is appropriate for the location;
  - Impact on the retail vitality and viability of Belfast City;
  - Cumulative build-up of amusement arcades in a particular location;
  - Impact on the image and profile of Belfast;
  - Proximity to residential use; and
  - Proximity to schools, youth centres and residential institutions for vulnerable people.
51. Many of these issues overlap with planning considerations and it is instructive to consider the Planning Authority's assessment of the planning application in addition to the planning policy framework for that decision. In line with this, BCCAPP page 2 indicates that the Council should be slow to differ from the views of the Planning Authority.
52. BCCAPP page 3 notes that the policy is framed to be broadly consistent with regional planning guidance on amusement arcades but it is tailored to take into account considerations specific to Belfast including the *'location of existing amusement arcades in the City'*.
53. As noted above, this is not an application for a new amusement arcade. It is the relocation of an established facility that has been necessitated through the Business Tenancy Order as a result of the Tribeca scheme coming forward.
54. Thus, for the purposes of the BCCAPP, its presence as an *'existing amusement arcade in the City'* is a significant material consideration, the existence of which, is an important fall-back position that should be taken into account in the assessment of this application.



55. The amusement centre at No 19 North Street is therefore, a very established part of the street frontage in this part of the City Centre. There is no evidence to suggest that its operation or existence has had any harmful impact on the shopping or retail function of the street.



Figure 6: Oasis' Existing Premises

56. The planning agreement aims to facilitate the relocation of the amusement arcade/ gaming centre from this property (property A) to the proposal site (property B). It expressly states *'that the existing arcade at property A does not at any time operate concurrently with any part of property B as an amusement arcade/ gaming centre'*.
57. That proposed relocation is also in line with the emerging **dPS Policy TLC 2** which deals with existing leisure facilities. It says that the Council will protect existing leisure provision from being adversely affected (from) new development. The policy provides that the loss of these facilities be considered acceptable in certain exceptional circumstances (amongst these) that similar or better replacement is made elsewhere within the same catchment area, which is readily accessible by public transport, pedestrians and cyclists.
58. The justification and amplification makes it clear that existing leisure facilities should be protected from pressure for new development. The intention is to ensure that if alternative development is proposed that replacement provision is made to maintain the choice of facilities available in the plan area to maximise visitor numbers and spend.
59. The proposed relocation is entirely consistent with this emerging direction of planning policy.

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60. Further the existing amusement permit predates the publication of both DCAN1 and the designation of the Cathedral Conservation Area.
61. It means that the relocation will have no more harmful impact on the Conservation Area compared to the existing situation. In fact, the proposal will have a positive impact by bringing into beneficial use, an otherwise long-term redundant building within this area.
62. It follows that the proposal site is an entirely suitable location and the use is appropriate in the area.

### **Impact on the retail vitality and viability of Belfast City**

63. BCCAPP criterion 1 says an application for an amusement permit in Belfast City Centre's prime retail core will only be granted if it is:
- A renewal of an existing amusement permit; or
  - Part of a major, retail-led mixed-use development; or
  - An upper storey development.
64. It also says that an amusement permit will not be granted where it would break up an otherwise continuous shopping frontage.
65. The amplification text explains the rationale is to promote retail vibrancy and regeneration of Belfast. It says that encouraging retailing in the retail core is in accordance with retail planning policy in **PPS5 paragraphs 11 and 25**.
66. Criterion one was considered by the Building Control Officer in his consultation response to the planning application (**Appendix 8**). This asserted the proposal did not comply with the criterion.
67. In more detail:
- 'The application involves the relocation of an existing amusement arcade on the same street, from 19 North Street to 73 – 75 North Street. The application site is a vacant retail unit, formerly occupied by Bannon's home furnishings.'*



*The application premises are situated within the Belfast City Centre Retail Core as defined in the draft Belfast Metropolitan Area Plan 2015 (dBMAP). It is bordered on one side by an entrance to first floor offices and on the other by the 'Money Shop'. The proposal would not therefore break up a continuous shopping frontage.*

*However, the Council's Permit Policy indicates that, outside of renewal applications, there is a presumption against granting permits for amusement arcades in the Retail Core unless they are related to a major, retail-led mixed-use development or an upper storey development. Viewed in this context the application runs contrary to the Council's Amusement Permit Policy.*

68. Since BCCAPP was published, the SPPS has superseded the retail policies of PPS5. The SPPS introduces a general 'town centre first' approach to all main town centre uses (that are not confined to just retail). This means that leisure and entertainment uses (and so amusement arcades) are now also encouraged and promoted in town and city centres.
69. In line with this **SPPS para 6.280** introduces a sequential test and requires planning authorities to consider applications for main town centre uses (such as leisure and entertainment uses) in the following order of preference: primary retail core, town centres, edge of centre; and out of centre locations only where sites are accessible by a choice of good public transport modes.
70. This shift in regional policy (that expands the role of town and city centres compared to the narrow role that was envisaged by PPS5) was not known at the time BCCAPP was drafted. It follows that criterion 1 would now be inconsistent with regional policy.
71. This shift in regional policy is however picked up by the **dPS Policy RET5** which deals with Primary Retail Areas and recognises that to support and sustain the centre's long-term viability is unlikely to depend on retail use alone. As a result, it increases the amount of floorspace that can be used for non-retail purposes within these areas.
72. The justification and amplification at **dPS Para 8.2.26** says that '*this policy seeks to enhance the diversity, quality and viability of offering in the city ... by managing the retail and non-retail uses so that less than 40% are in non retail use, the policy provides flexibility for diversity of*

*use to supplement retailing provision with leisure, hospitality and entertainment and support the evening and night-time economy’.*

73. However, notwithstanding this, the relocation can be considered as part of a major, retail led mixed use development because the vacation of the existing unit will assist in the facilitation and realisation of the Tribeca development.

74. It follows that this application is also consistent with the **BMAP Proposal CC017** because it will help to bring forward the circumstances to unlock this development opportunity site.

75. This unusual factor was identified through the Building Control Officer’s advice which says:

*‘notwithstanding the above it is noted that the application relates to the relocation of an existing amusement arcade at 19 North Street, the necessity for which is linked to a wider regeneration initiative for the northeastern part of the City Centre. This requirement to relocate may be a factor the Licensing Committee wish to consider should an application for an amusement permit be made to the Council’.*

76. Furthermore, the proposal is consistent with **SPPS Paragraph 6.271** because it protects and enhances diversity in the city centre by securing a new location in relatively close proximity for an established leisure and entertainment use that has existed for many years in this part of the centre.

77. Loss of retail floorspace within the prime retail core, however, remains a relevant factor and it is considered by **dBMAP Policy R1**.

78. This issue was considered by the Planning Authority in relation to the proposed relocation of the gaming use to the proposal site. It said (accurately):

*‘Policy R1 of BMAP Plan Strategy refers to retailing in city and town centres. It states that non-retail development will be restricted in designated PRC (and PRF) so that no more than 25% of the frontage of the shopping street(s) to which it relates is in non-retail use and no more than three adjacent units are in non-retail use.*

*According to the applicant, the proposed Oasis amusement arcade is relocating to the site from 19 North Street, which is to be demolished to facilitate the mixed use Royal Exchange development granted under Z/2010/1532. In this regard the proposal is not for a new amusement arcade but rather the relocation of an established facility. However planning permission runs with the land, a formal mechanism will be needed to*

*make sure that the existing and proposed premises do not operate concurrently as amusement arcades. The applicant has been asked to put forward a mechanism. One option would be a Section 76 Planning Agreement to require that on first occupation of the new premises, the existing premises at 19 North Street shall not at any time be used as an amusement arcade. The recommendation of this report is subject to an appropriate mechanism being put in place.*

*The retail composition of North Street currently falls below the 25% R1 threshold. The relocation of the non retail use floorspace, subject to the appropriate mechanism, will therefore not materially harm the implementation of this policy. However, once the Royal Exchange scheme is implemented the amount of non-retail frontage on North Street will reduce considerably. It is therefore considered that there will be no harmful impact upon the retail character of the area by the proposed change of use’.*

79. Furthermore, the Building Control officer noted that the proposal would not break up a continuous shopping frontage.
80. As Deeny LJ recently warned in the Hazeldene case, the Council should be careful not to fetter its own discretion in the application and implementation of BCCAP policy.
81. BCCAPP policy does not address the situation that arises here, where it is proposed to relocate the location of one permit to another within a relatively short distance. This is a policy lacuna that should weigh in favour of the applicant.
82. The policy lacuna in relation to the loss of retail floorspace has, however been filled by dBMAP and the SPPS which seeks to protect and enhances diversity of uses in the city centre. This has been considered by the Planning Authority who has concluded that the proposed development is not inconsistent with it.
83. Thus, the proposal is not inconsistent with criterion 1. While the proposal involves the loss of ground floor retail floorspace, it also involves the transfer of an existing permit which will allow that area to be used for another purpose and so either the policy does not apply or the proposed development does not offend criterion 1.

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**Cumulative build up in a particular location**

84. Criterion 2 says that *‘the Council will limit the number of amusement permits it grants to one per shopping or commercial frontage and one per shopping centre. Where this number of permits has already been granted, or exceeded, no more amusement permits will be considered. Under this criterion, 2 or more amusement arcades in adjacent ground floor units will not be allowed (except for those already existing), including the ground floor extension or merger of an existing establishment into an adjoining unit’.*
85. This was also considered by the Building Control Officer. He said:  
*‘in addition to the existing Oasis Gaming Centre arcade at 19 North Street, which this application seeks to relocate, there is another amusement arcade located nearby at 13 North Street. In the desire to promote retailing in the City Centre, the Council is keen to avoid a clustering of such uses at a given location. Whilst the proposed arcade at 73-75 North Street may be in the general vicinity of the existing premises at 13 North Street it is not located on the same commercial frontage as this existing arcade’.*
86. From this, the officer concluded that the proposal complied with this criterion.
87. This analysis ignores the fact that there will be no net increase in the number of permits in the vicinity because the Section 76 ensures the planning use at No 19 North Street will be extinguished upon the applicant’s occupation of the new site.
88. It follows from this that there will be no material change to the amount of non-retail frontage of the street or the cumulative build-up of amusement arcades in a particular location when compared to the existing situation.
89. The proposal therefore complies with this criterion and it would be an unreasonable misinterpretation of the policy to conclude otherwise.

**Impact on the image and profile of Belfast**

90. Criterion 3 of the BCAPP says that amusement permits will not be granted at locations that are regarded as tourism assets and at gateway locations in Belfast City Centre.

91. The explanatory text describes a 'tourist asset' as *'any feature associated with the built or natural environment that is of intrinsic interest to tourists'*. A 'gateway' is a key entrance point into the City Centre which is *'considered suitable for landmark development capable of raising the profile of Belfast'*.
92. In both cases, the explanatory text confirms that clarification on what is considered to be a tourism asset or a gateway can be obtained from the Council.
93. In this regard, it is highly significant that the Building Control officer through its consultation response to the planning application confirms that the *'application premises have no neighbouring property which is a tourism asset, nor are they located at a gateway location'*. It is concluded that the proposal complies with this criterion.
94. The Planning Authority added to this and noted:  
*'the proposed location for the amusement centre is near to the retail core of Royal Avenue and adjacent to a mixture of uses including commercial offices, cafes and restaurants. There is no residential use in the immediate vicinity. Both the University of Ulster Belfast campus and St Annes Cathedral are considered sufficiently distanced from the site to be affected by the proposal. While the site does fall within a Conservation Area as there are no significant changes to the appearance of the building it is not considered that there will be any adverse impact on the character of the area'*.
95. There has been no material change in circumstances since the consultation response issued that would justify an alternative conclusion on this issue.

#### **Proximity to residential use**

96. There are no residential properties immediately adjacent to the premises.
97. According to the Building Control Official's assessment:  
*'the application premises are located at ground floor level, along the commercial frontage of North Street, where there is a mix of uses including cafes, restaurants, offices and retail units. The application premises are located inside the Retail Core and this area can therefore be viewed as a mixed-use area and not one that is predominantly residential in character'*.

98. The Council's Environmental Health Office are the competent authority in relation to issues of residential amenity. They raised no objections in relation to the proposal and its impact on general amenity (**Appendix 10**).
99. The Building Control official has also confirmed through his consultation response to the planning application that the proposal satisfies this criterion.

**Proximity to schools, youth centres and residential institutions for vulnerable people**

100. Consistent with the Building Control Officer's advice to the Planning Authority, there are none of these facilities within a 200m radius of the application premises.
101. There has been no material change in circumstances that would justify an alternative conclusion.

## **5.0 CONCLUSION**

102. All of the issues identified above have been considered in the planning process. The Planning Authority concluded that *'having considered the Amusement Permit Policy, in view of the planning issues taken into account under the SPPS and DCAN1, it is considered that the proposal is acceptable, provided that a mechanism is put in place to ensure that the existing and proposed amusement arcade premises do not operate concurrently'*.
103. That mechanism is provided by the Section 76 planning agreement which ensures that the use of the amusement arcade at the existing premises is extinguished upon the commencement of the new amusement arcade use at the proposal site.
104. The standard of test to be applied to permit applications is no higher than that applied to planning applications.

105. The location of the proposed gaming centre is entirely suitable and for the reasons set out above either the BCCAPP does not apply or the proposal does not offend the criteria within it.
106. For all of these reasons, the Council are respectfully invited to grant the amusement permit for the building.

## Appendix 1





BELFAST CITY COUNCIL

PLACE AND ECONOMY DEPARTMENT

BUILDING CONTROL SERVICE

CECIL WARD BUILDING, 4-10 LINENHALL STREET

BELFAST BT2 8BP

02754

TEL: 02890 270650

## AMUSEMENT PERMIT

Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985: Article 115

Permit Authorising Gaming by Means of Gaming Machines

### PART 1

#### AMUSEMENT PERMIT

The permit is granted to:

Applicant: **Oasis Retail Service Limited**

Of: **Oasis House , Mallusk Drive, Newtownabbey, BT36 4GX**

Premises: **Oasis Gaming Centre, 19 North Street, Belfast, BT1 1NA**

For the purposes of Article 108 (1)(ca) of the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985 authorising gaming by means of gaming machines in accordance with the conditions specified in Article 108 of that Order is granted.

This permit is granted on condition that these premises are not to be used for an unlawful purpose or as a resort of persons of known bad character.

(Stephen Hewitt)

**Building Control Manager**

**Issued Date: 5th November 2020**

**Permit No: LN/200500247**



**PART 2**  
**DETAILS AS TO GRANT OF PERMIT**

The permit specified in Part 1 hereof was issued by Belfast City Council from: **1st July 2020** and shall, subject to Article 117 of the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985 remain in force until **30th June 2021**.

The Council issues this permit, granted for the purposes of Article 108 (1)(ca) of the said Order subject to the conditions:

**Where entrance is restricted to persons aged over 18:**

- (i) That no person under 18 is admitted to the premises; and
- (ii) That at any entrance to, and inside the premises there are prominently displayed notices indicating that access to the premises is prohibited to persons aged under 18.

**Where entrance is not restricted to persons aged over 18:**

- (i) That any machine in respect of which that condition mentioned in Article 108 (8) of the of the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985 is observed is located in an area of the premises which is separated from the remainder of the premises by a physical barrier which is effective to prevent access otherwise than by means of an entrance designed for the purpose;
- (ii) That only persons aged 18 or over are admitted to an area of the premises in which any such machine is located;
- (iii) That access to an area of the premises in which any such machine is located is supervised;
- (iv) That any area of the premises in which any such machine is located is so arranged as to permit all parts of it to be observed; and
- (v) That at any entrance to, and inside any such area there are prominently displayed notices indicating that access to the area is prohibited to persons aged under 18.

## Appendix 2

13<sup>th</sup> April

2022

OASIS RETAIL SERVICES LIMITED

And

PROJECT GOAT LIMITED

And

GOOSE LANE PROPERTY LIMITED

And

SPARROWHAWK PROPERTIES 606 LIMITED



THIS DEED is dated 13<sup>th</sup> day of April 2022

**BETWEEN**

- (1) **BELFAST CITY COUNCIL** of City Hall, Belfast, BT1 5GS ( the **Council**); and
- (2) **OASIS RETAIL SERVICES LIMITED** a company registered in Northern Ireland with company number NI007191 whose registered office is at Oasis House, Mallusk Drive, Newtownabbey, County Antrim, BT36 4GX, to include any successors in title, assigns, lessees or any other party that acquires an interest in the Property (the **Developer**); and
- (3) **PROJECT GOAT LIMITED**, a company incorporated and registered in England & Wales under company registration number 09806108, having its registered office at 49 Berkeley Square, London, W1J 5AZ, (**Owner A**); and
- (4) **GOOSE LANE PROPERTY LIMITED**, a company registered in Northern Ireland under company number NI070023 whose registered office is at 688 Shore Road, Newtownabbey, Northern Ireland, BT37 0PS, (**Owner B**); and
- (5) **SPARROWHAWK PROPERTIES 606 LIMITED**, a company incorporated and registered in Jersey, the registered office of which is at 9 Castle Street, St Helier, Jersey, Channel Islands JE4 2QP is the owner of a charge registered on the 5th January 2017 on Property A (the **Mortgagee**).

**BACKGROUND**

- a) The Council is the local planning authority for the purposes of the Planning Act (Northern Ireland) 2011 (the **Planning Act**) for the area in which the properties are situated.
- b) Owner A (as owner of Property A) has agreed to enter into this Agreement and is the owner of Property A which is subject to a charge registered by the Mortgagee.
- c) Owner B has agreed to enter into this Agreement and is the unencumbered owner of Property B.
- d) The Developer is the tenant/occupier of Property A has control of the Planning Application and is proposing to carry out the Development to Property B.
- e) The Mortgagee is the registered owner of a Charge on Property A and has agreed to enter into this Agreement and to give its consent to the terms of this Agreement.
- f) The Council, having regard to the provisions of the Local Plan and to all other material considerations, resolved at its meeting on 17<sup>th</sup> April 2018 that Planning Permission should be granted for the Development of part of Property B subject to the contemporaneous implementation of this agreement.
- g) This Agreement aims to facilitate the relocation of an amusement arcade/gaming centre from Property A to part of Property B to facilitate the mixed use Royal Exchange Scheme (Z/2010/1532/F). As planning permission runs with the land it is therefore necessary to enter

into this Agreement to ensure that the existing arcade at Property A does not, at any time, operate concurrently with any part of Property B as an amusement arcade/gaming centre.

## **AGREED TERMS**

### **1. INTERPRETATION**

The following definitions and rules of interpretation apply in this agreement:

#### **1.1 Definitions:**

**Agreement for Lease:** means the Agreement for Lease dated 20 November 2017 and made between Owner B (1) and the Developer (2) in relation to part of Property B.

**Commencement of Operations:** the operation of an amusement arcade/gaming centre at Property B, **Commence** and **Commences** shall be construed accordingly.

**Development:** the development of part of Property B authorised by the Planning Permission.

**Lease:** means a lease of Property B which may be granted pursuant to the Agreement for Lease.

**Plan 1:** the plan attached as Annex A. (Property A)

**Plan 2:** the plan attached as Annex B. (Property B)

**Planning Application:** the application is for change of use to an amusement arcade/gaming centre from retail use (relocation of existing amusement arcade from 19 North Street) and alterations to shop front at the application site which is situate at 73-75 North Street, Belfast, BT1 1NL pursuant to planning reference LA04/2018/0098/F

**Planning Permission:** the planning permission to be granted by the Council in respect of the Planning Application.

**Property A:** means the freehold property situate at 19 North Street, Belfast as shown indicatively edged red on Plan 1 registered at Land Registry contained under Folio AN 112407 Co Antrim and subject to a charge registered by Sparrowhawk Properties 606 Limited.

**Property B:** means that part of Folio AN173965 Co. Antrim as is intended to be demised by the Lease, being part of the ground floor at 73-75 North Street, Belfast.

**Planning Act:** Planning Act (Northern Ireland) 2011.

There is no reference to this definition in the body of the Agreement

**Working Day:** any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in Northern Ireland.

1.2 Clause headings shall not affect the interpretation of this agreement.

1.3 A **person** includes a natural person, corporate or incorporated body (whether or not having separate legal personality).

- 1.4 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to other genders.
- 1.7 A reference to any party shall include that party's personal representatives, successors in title, assigns, or any other persons deriving title in respect of the Property and in the case of the Council the successors to its respective statutory functions.
- 1.8 Unless the context otherwise requires, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.9 Unless the context otherwise requires, a reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 1.10 A reference to **writing** or **written** excludes fax and email.
- 1.11 A reference to **this agreement** or to any other agreement or document referred to in this agreement is a reference to this agreement or such other agreement or document as varied and novated (in each case, other than in breach of the provisions of this agreement) from time to time.
- 1.12 References to clauses and Schedules are to the clauses and Schedules of this agreement.
- 1.13 An obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.14 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.15 Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.

## 2. STATUTORY PROVISIONS

- 2.1 This agreement constitutes a planning agreement for the purposes of section 76 of the Planning Act, and any other enabling powers.
- 2.2 The covenants, restrictions and obligations contained in this agreement are planning obligations for the purposes of section 76 of the Planning Act and are entered into by the Owners and the Developer with the intention that they bind the interests held by those persons in the Property and their respective successors and assigns.
- 2.3 The deed shall not be enforceable against any utility provider after the transfer or lease of apparatus to it.

- 2.4 Insofar as any of the covenants, restrictions and obligations contained in this agreement are not planning obligations for the purposes of section 76 of the Planning Act they are entered into freely by the Owners, Developer and by the Council by virtue of Article 8 of the Local Government (Miscellaneous Provisions) (Northern Ireland) Order 2002, Article 79 of the Local Government Act (Northern Ireland) 2014 and all other enabling powers with the intention that they bind the interests held by those persons in the Property and their respective successors and assigns.
- 2.5 The Council is the local authority by which the covenants, restrictions and requirements imposed upon the Owners and the Developer under this agreement are enforceable.

### **3. CONDITIONALITY**

This agreement shall come into effect on the date hereof with the exception of the covenants, undertakings and obligations contained within the Schedules hereto which shall bind the Properties and every part of the Properties upon the date of issue of the Planning Permission.

### **4. COVENANTS TO THE COUNCIL**

- 4.1 Owner A covenants with the Council to observe and perform the covenants, restrictions and obligations contained in Schedule 1 on behalf of itself and its successors in title and all persons claiming through or under it so as to bind each and every part of Property A.
- 4.2 Owner B covenants with the Council to observe and perform the covenants, restrictions and obligations contained in Schedule 2 on behalf of itself and its successors in title and all persons claiming through or under it so as to bind each and every part of Property B PROVIDED THAT the Council acknowledges and confirms that:
- 4.2.1 subject to the conditions of the Agreement for Lease, Owner B and the Developer propose to enter into the Lease; and
- 4.2.2 during such time as the Lease (or any renewal(s) thereof) subsist, neither Owner B nor its successors in title as owners of Property B will have any liability whatsoever under this Agreement to the Council or any other party as a result of the use of Property B (or any part thereof) as an amusement arcade/gaming centre;
- 4.2.3 if, during such time as the Lease (or any renewal(s) thereof) subsist, Property A is used as an amusement arcade/gaming centre then the Council shall have no remedy against Owner B (or its successors in title) under this agreement nor shall the use of Property B as an amusement arcade/gaming centre be required to cease.
- 4.3 The Developer covenants with the Council to observe and perform the covenants, restrictions and obligations contained in Schedule 3 on behalf of itself and its successors in title and all persons claiming through or under it so as to bind each and every part of the Developer's interest in Property A and Property B.

### **5. COVENANTS BY THE COUNCIL**



The Council covenants with the Owners and Developer to observe and perform the covenants, restrictions and obligations contained in Schedule 4.

## **6. MORTGAGEE'S CONSENT**

- 6.1 The Mortgagee consents to the completion of this deed and declares that any interest which it may in future hold in respect of Property A shall be bound by the terms of this deed as if it had been executed and registered as a land charge prior to the creation of the Mortgagee's interest in the Property.
- 6.2 The Mortgagee shall not be personally liable for any breach of the obligations in this deed unless committed or continuing at a time when the Mortgagee is in possession of all or any part of the Property.
- 6.3 For the purposes of this deed the Mortgagee will be deemed to be in possession of Property A if it has appointed an administrator, liquidator or any other insolvency practitioner to enforce its contractual rights in relation to the Property.

## **7. RELEASE**

No person or party shall be liable for any breach of a covenant, restriction or obligation contained in this agreement after parting with all of its interest in the Property, except in respect of any breach subsisting prior to parting with such interest for which that person or party was responsible prior to parting with such interest.

## **8. DETERMINATION OF AGREEMENT**

- 8.1 The obligations in this agreement, shall cease to have effect if before the Commencement of Operations the Planning Permission:
  - (a) expires;
  - (b) is varied or revoked other than at the request of the Owner; or
  - (c) is quashed following a successful legal challenge.
- 8.2 The obligations in this agreement shall cease to have effect if a planning permission is granted in relation to Property A which is for any use other than use as an amusement arcade/gaming centre and such permission is implemented.

## **9. STATUTORY CHARGE**

This deed is registrable as a statutory charge in accordance with section 76 and section 245 of the Planning Act and shall be registered as a charge on the Statutory Charges Register by the Council and shall not be registered against the title to Property A or Property B or at Companies House.

## **10. OWNERSHIP**

- 10.1 Owner A warrants that no person other than Owner A, the Developer and the mortgagee, has any legal or equitable interest in Property A. Until the covenants, restrictions and obligations in Schedule 1, 2 & 3 have been complied with, Owner A

will give to the Council within 15 Working Days, the following details of any conveyance, transfer, lease, assignment, mortgage or other disposition entered into in respect of all or any part of the Property A:

- (a) the name and address of the person to whom the disposition was made; and
- (b) the nature and extent of the interest disposed of.

10.2 Owner B warrants that no person other than Owner B and the Developer has any legal or equitable interest in Property B. Until the covenants, restrictions and obligations in Schedule 1, 2 & 3 have been complied with, Owner B will give to the Council within 15 Working Days, the following details of any conveyance, transfer, lease, assignment, mortgage or other disposition entered into in respect of all or any part of the Property B:

- (a) the name and address of the person to whom the disposition was made; and
- (b) the nature and extent of the interest disposed of.

## **11. REASONABLENESS**

Any approval, consent, direction, authority, agreement or action to be given by the Council under this agreement shall not be unreasonably withheld or delayed.

## **12. CANCELLATION OF ENTRIES**

12.1 If this agreement is determined pursuant to clause 8 or otherwise (and subject to the payment of the Council's reasonable and proper costs) the Council will upon the written request of Owner A issue a written confirmation of such performance or will within 10 Working Days of receipt of such written request lodge the appropriate application to cancel all entries made in the statutory charges register in respect of this agreement and furnish a copy of this application to the Owner A's solicitors.

12.2 If this agreement is determined pursuant to clause 8 or otherwise (and subject to the payment of the Council's reasonable and proper costs) the Council will upon the written request of Owner B issue a written confirmation of such performance or will within 10 Working Days of receipt of such written request lodge the appropriate application to cancel all entries made in the statutory charges register in respect of this agreement and furnish a copy of this application to the Owner B's solicitors.

## **13. NO FETTER OF DISCRETION**

Nothing (contained or implied) in this agreement shall fetter or restrict the Council's statutory rights, powers, discretions and responsibilities.

## **14. WAIVER**

No failure or delay by the Council to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

## **15. AGREEMENTS AND DECLARATIONS**

The parties agree that:

- (a) nothing in this agreement constitutes a planning permission or an obligation to grant planning permission; and
- (b) nothing in this agreement grants planning permission or any other approval, consent or permission required from the Council in the exercise of any other statutory function.

## **16. NOTICES**

16.1 Any notice to be given under this agreement must be in writing and must be:

- (a) delivered by hand; or
- (b) sent by pre-paid first class post or other next Working Day delivery service.

16.2 Any notice to be given under this agreement must be sent to the relevant party as follows:

- (a) to the Director of Planning and Building Control, Belfast City Council, Cecil Ward Building, Linenhall Street, Belfast, Belfast BT2 8BP;
- (b) to the owner of Property A at its registered office address;
- (c) to the owner of Property B at its registered office address;
- (d) to the Developer c/o DWF (NI) LLP Jefferson House, 42 Queen Street, Belfast

or as otherwise specified by the relevant party by notice in writing to each other party.

16.3 Any notice or other communication given in accordance with clause 16.1 and clause 16.2 will be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt provided that if delivery occurs before 9.00 am on a Working Day, the notice will be deemed to have been received at 9.00 am on that day, and if delivery occurs after 5.00 pm on a Working Day, or on a day which is not a Working Day, the notice will be deemed to have been received at 9.00 am on the next Working Day; or
- (b) if sent by pre-paid first class post or other next Working Day delivery service, at 9.00 am on the second Working Day after posting.

16.4 A notice given under this agreement shall not be validly given if sent by fax or email.

16.5 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

## **17. THIRD PARTY RIGHTS**

A person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

**18. GOVERNING LAW**

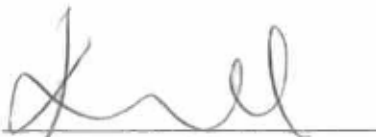
This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of Northern Ireland.

**19. VALIDITY AND ENFORCEABILITY**

If any clause in this agreement is found to be invalid, illegal or unenforceable then such invalidity, illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this agreement.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

**PRESENT** when the **CORPORATE SEAL**  
of the Council was affixed hereto  
in the presence of:-

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke at the end, positioned above a horizontal line.

Lord Mayor

A handwritten signature in black ink, featuring a large, sweeping loop on the left side and several smaller loops and strokes to the right, positioned above a horizontal line.

Chief Executive

**EXECUTED** as a **DEED** by  
**OASIS RETAIL SERVICES LIMITED**

acting

by a director

In the presence of:



Director

Martin Trouble



Witness

Name EUGENE DORAN

Address 14 ROSEVILLE CRESC.  
RANDALSTOWN

Occupation ACCOUNTANT

EXECUTED as a DEED by  
PROJECT GOAT LIMITED

Acting

by a director, Neil Young,

In the presence of:

  
Director

Witness

Name

Gregory Martin

Address

19-21 Fountain Street, Belfast

Occupation

Solicitor

EXECUTED as a DEED by  
GOOSE LANE PROPERTY LIMITED  
acting  
by a director  
In the presence of:



Director



Witness *CHRIS RICE*

Name

Address *MURRAY ST, BOKFORD*

Occupation *SOLICITOR*



**EXECUTED** as a **DEED** by  
SPARROWHAWK PROPERTIES 606 LIMITED,  
acting  
by a director  
In the presence of:



Director

  
Witness

Name EMMA GUILLADINE

Address 28 ESPLANADE ST HELIER  
JERSEY, JE2 3QA

Occupation ADMINISTRATION

## **Schedule 1**

### **COVENANTS TO THE COUNCIL**

Owner A covenants with the Council as follows:

#### **NOTIFICATION**

- 1.1 To notify the Council of any disposal of its interest in Property A and of the name and address of the new owner and the date of disposal within 15 Working Days of such disposal.
- 1.2 To notify the Council, within 15 Working Days of the cessation the use of Property A as an amusement arcade/gaming centre.
- 1.3 Subject to paragraph 1.4 below, not to use, permit, cause or suffer the use of Property A as an amusement arcade/gaming centre which would require the grant of an Amusement Permit pursuant to Section 110 of the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985 during such time as Property B is being used as an amusement arcade/gaming centre which would require the grant of an Amusement Permit pursuant to Section 110 of the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985 from and including the Commencement of Operations at Property B.
- 1.4 The use restriction in paragraph 1.3 above shall not include the following uses (subject to obtaining planning permission and other necessary permits):
  - 1.4.1 use as a casino; or
  - 1.4.2 use as a bookmakers; or
  - 1.4.3 use as a bingo hall.

## **Schedule 2**

### **COVENANTS TO THE COUNCIL**

Owner B covenants with the Council as follows:

- 1.1 To notify the Council of any disposal of its interest in Property B and of the name and address of the new owner and the date of disposal within 10 Working Days of such disposal.
- 1.2 Subject to the proviso in clause 4.2 of this agreement, not to use, permit, cause or suffer the use of Property B as amusement arcade/gaming centre which would require the grant of an Amusement Permit pursuant to Section 110 of the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985 whilst Property A is being used for the same purpose.

### **Schedule 3**

#### **COVENANTS TO THE COUNCIL**

The Developer covenants with the Council as follows:

- 1.1 To notify the Council of any disposal of its interest in either Property A and/or Property B and of the name and address of the new owner and the date of disposal within 10 Working Days of such disposal.
- 1.2 To notify the Council on or before the date of Commencement of Operations at Property B.
- 1.3 Upon Commencement of Operations at Property B as Amusement Centre/ gaming centre which would require the grant of an Amusement Permit pursuant to Section 110 of the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985 the Developer will cease and desist from using the premises at Property A as an amusement centre / gaming centre which would require the grant of an Amusement Permit pursuant to Section 110 of the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985. Any existing amusement permit in respect of Property A will also be surrendered (without compensation) to the Council.
- 1.4 Not to use permit, cause or suffer the use of Properties A and B concurrently as amusement arcades/gaming centres which would require the grant of an Amusement Permit pursuant to Section 110 of the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985.

#### **Schedule 4**

#### **COVENANTS BY THE COUNCIL**

The Council covenants with the Developer:

- 1.1 To grant the Planning Permission on completion of this agreement without reasonable delay.

## Annex A. Plan 1



Date: 06 Jul 2018  
County: Antrim  
Folio: AN112407  
Scale: 1:1250  
Our Ref: 2018/500631  
Your Ref: JG/JAMcC/O38/14  
Map Ref(s): 13013NE3,13013NE4

Sheet 1 of 1

Key to folio labels:

a - 4N112407 No.1  
b - 4N112407 No.2

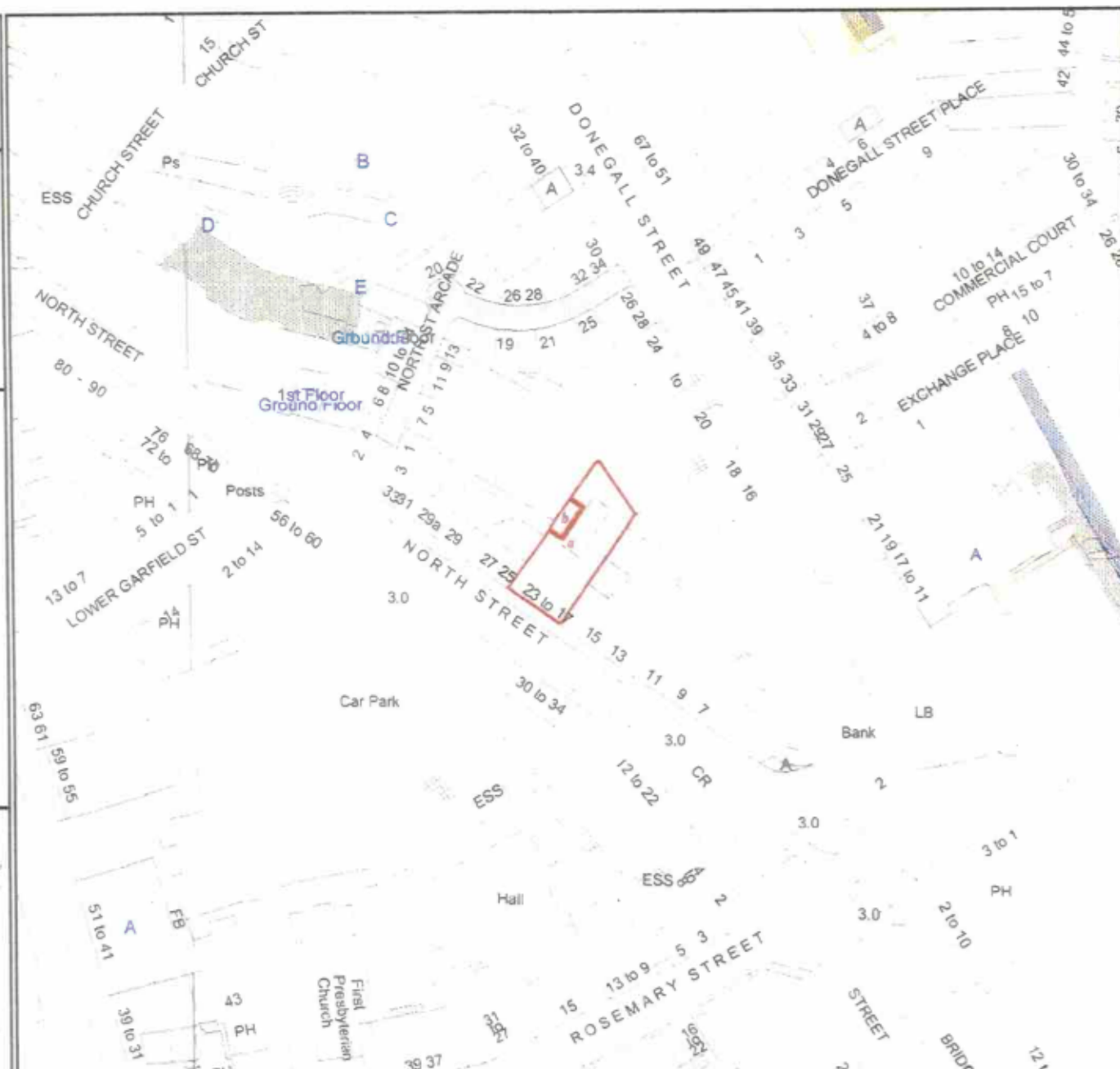
This map is for illustrative purposes only. (Page 14) Part of the Land Rights Amendment (Northern Territory) 1994 is amended by paragraph 11 of the Schedule to the Amendment Bill, 2000. Past boundaries are not guaranteed. (Schedule of the Land Rights Amendment (Northern Territory) 1994). The boundaries of Land Rights, mining, and other features may have been affected by transfers, or the OGA, map subsequent to legislation.

The map has been prepared using the largest scale world map that was available for the area. Any future work may also be based on the largest scale USGS map that was available for the area.

The green flag shows the reason of the error comprised in this red flag above.

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PLAN I

## Annex B. Plan 2



Map 1: The Demised Premises and Escape Corridor  
Ground Floor

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PLAN 2

## Appendix 3









## Appendix 4

Oasis Retail Services Ltd( appellant)

V

Derry City and Strabane Council ( respondent)

Before Her Honour Judge McCaffrey

1.This is an appeal by the appellant company , Oasis Retail Services Ltd. (“Oasis”) against a decision of Derry City and Strabane District Council (“ the Council”) to refuse their application for an amusement permit under Art. 108(1) (ca) of the Betting, Gaming, Lotteries and Amusements (NI) Order 1985 (“the 1985 Order”) in respect of premises at Unit 23, Richmond Centre, Londonderry. In the course of the hearing, I heard evidence from a number of witnesses for both the appellant and the respondent and had various documents , including minutes of Council meetings, plans for the premises and planning documents , opened to me.

### **Background and Evidence**

2.The history of the matter is as follows. The Richmond Centre, where the unit the subject of this application is sited, is a shopping centre in Londonderry which gives onto Shipquay Street and Ferryquay Street within the historic walled city and close to the Diamond in the centre of the city. There is also access via a pedestrianised area on to Orchard Street and to the neighbouring Foyle Side Shopping Centre. It was built in the 1980’s and is very much a building of its time, having a brown concrete façade.

3. While the Richmond Centre is now operating at virtually full capacity, Unit 23 has lain vacant since Dunnes Stores relocated their city centre store to Foyle Side in 2001. Following this the premises were internally reconfigured and access to unit 23 was then no longer possible from within the Richmond Centre, but only from Shipquay Street. This may, in the view of the centre manager, have contributed to the challenge of finding a suitable tenant for the premises. Shipquay Street runs from the Guildhall Square to the Diamond and is distinctive because it is probably one of the steepest city centre streets in these islands. In recent years, the Council has sought ,through the Townscape Heritage Initiative, to restore buildings around the top of Shipquay Street in a way they consider compatible with its location as a key thoroughfare within the city walls. While Mr Monaghan, the Regeneration Manager with the Council, considered that the unit should be a primary commercial frontage, but he said that THI said they had no plans for regeneration/redevelopment regarding unit 23.

4. In March 2014, Oasis applied for planning permission for change of use for unit 23 to an amusement/gaming centre for persons aged 18 and over. That application was refused by DOE Planning Service on 4 December 2014 and Oasis appealed. The ground for refusal at the time was that the proposed use was contrary to the policy set out in the Derry Area Plan 2011 ("DAP"), in that the change of use would result in a loss of retail floor space in Shipquay Street, erosion of choice and convenience of shopping. By the time the appeal was heard by the Planning Appeals Commission ("PAC") in June 2015, responsibility for planning had passed to the local authorities, in this case, the Council. The Council therefore defended the appeal. The PAC decided to grant the appeal and in so doing, considered the DAP, which had to be given primacy in planning law from April 2015. In particular, the PAC found that, given that Shipquay Street had 60% of ground floor frontage either in retail use, or last used as retail, change of use for Unit 23 would not cause the area overall to be dominated by non-retail uses and there would not thereby be a significant loss of ground floor retail space.

5. Oasis made its application for an amusement permit to the Council on 10 December 2015. That application envisaged that the premises would operate 7 days a week from 9am to 12 midnight Monday to Saturday and 11.30am to midnight on Sundays. There would be 12 jobs created and a total investment of £.75 million. Plans were submitted which showed there would be approximately 70 seats within the centre and that the facilities would include provision of sandwiches, snacks and tea and coffee for customers. A subsequent plan was submitted which showed 100 machines. Mr Trimble, for Oasis, indicated that this was because of the time lapse between the application and the appeal and changes in design layout. It was his evidence that when opening new premises, Oasis would not start with a huge number of machines. He said their typical operation was in the range of 70-80 machines. He also stressed that Oasis fitted out their premises to a high standard and maintained them accordingly. He said he had been round all the local offerings in the city and he considered that there was nothing of a similar standard.

6. In accordance with the regulations, Oasis was required to advertise its application in local newspapers and following this, 3 letters of objection and a petition (treated as one objection) were received by the Council. Because of the objections, the matter was referred to the Health and Community Committee of the Council, which met on 11 February 2016. None of the objectors attended the meeting. There was no police objection to the proposed amusement permit. There was no statutory reason for the application to be refused, as the application by Oasis met all the requirements in Art.111 of the 1985 Order.

7. The Council wrote to Oasis on 24 February 2016, stating that the Health and Community Committee had decided that the application should be refused for 4 reasons :

1. The location of the proposed arcade was unsuitable and did not fit with the City Centre Development Plan ;
2. The proposed arcade is in close proximity to an area where youth congregate;
3. The proposed arcade is in close proximity to a similar development at Bank Place.
4. They also noted that in the view of the Committee there were adequate facilities within the City Centre Locality and no need for further provision of gaming facilities.

8. Oasis was given the opportunity to be represented at a meeting of the Committee before a final decision was taken and made its representations to the Committee on 10 March 2016. Their application was however refused. No additional reasons for the refusal were given.

9. It is relevant to note that on 11 December 2015, an application had been received for an extension to the existing amusement premises at 5 Bank Place. That application was in relation to premises at 1-2 Bank Place, owned by a Mr Heaney, who also owns the premises at 5 Bank Place. There were no objections and so the matter did not come before the Health and Community Committee, but was dealt with administratively under delegated powers and a provisional grant of licence was given. The Health and Community Committee does not seem to have been made aware that an application made after that of Oasis was in fact passed without it coming before the Committee and prior to Oasis' application being refused, in part at least on grounds of adequacy of provision in the City Centre location. Indeed, when the Committee was provided with a report of licensing activity in December 2015 and January 2016, the application was referred to as an amusement permit application and a renewal application, not an application to extend premises or for new premises, which may have caused some confusion. The Council ratified the decision to make a provisional grant of an amusement permit in relation to the Bank Place Premises, apparently without being expressly advised that another application had previously been received for the city centre and was recommended for refusal.

10. One of the grounds on which the Council turned down Oasis' application was that the Council felt there were adequate gaming facilities within the City centre and no need for such further provision. It was outlined to me at



the hearing that there are 5 licensed gaming premises within the city centre, including the existing premises at Bank Place. Two of these are located at William Street, one in Strand Road and one in Duke Street. A sixth is at The Bellagio, part of the Brunswick Complex in the Pennyburn area. I was also advised that there are two premises at Bridgend in Co Donegal which house amusements and which have slot machines which accept sterling coins, pay prizes in sterling and which also change currency for customers. I am advised that the cars parked in the car park of those premises shows the bulk of the customers are from Northern Ireland. Ms Thompson, who gave evidence for Oasis, said that on inspection, the Bridgend premises were superior in terms of their finish, fixtures and fittings. She gave an evaluation of each of the existing premises in the city and provided photos of them. They were mostly much smaller than the premises proposed by Oasis and the facilities were limited. I was also shown photos of the type of development proposed by Oasis and, without going into a comparative assessment of each venue which may involve criticising any other premises, it is fair to say that the standard of presentation proposed by Oasis and the amenities they propose would be of a superior standard. In addition, it was suggested that the proposed development would enhance the appearance of that part of Shipquay Street: While the signage for the proposed premises and windows would be discreet and opaque, there would be increased lighting on the street and the premises would be occupied, rather than shuttered and closed, as at present.

11. At the hearing, the main emphasis of the Council's objections seems to have altered from the original grounds. At their meeting with Oasis in March 2016, they focused on their concerns about losing retail frontage in Shipquay Street, concerns that young people who were in and around the shopping centre would be drawn into the proposed amusement premises and that the premises may also attract vulnerable people who were using other advisory services in and around the area of the Diamond. They were also concerned about the number of other less prestigious premises in the city centre. At the hearing, the evidence given by Alderman McClintock, the Mayor, focused on the city's tourist industry and said that Shipquay Street was in fact the main route for tourists walking from the Guildhall Square to the Diamond and on to St Columb's cathedral and the city walls. As such, she considered that the use of Unit 23 as an amusement arcade was not in keeping with plans for the walled city area. She accepted that there were other places to access the walls and that anyone walking round the walls could also see Bank Place.

12. As regards the vulnerability of young people to be drawn into the premises, they would only be open to persons aged 18 and over. Mr Trimble

gave evidence that all staff are trained to enforce this rule strictly and also that their research showed that their average customer tended to be in the thirty-plus age bracket. I am also satisfied from Mr Trimble's evidence that Oasis takes its responsibilities to keep to the law very seriously.

## **Relevant Law**

13. Article 111 of the 1985 Order, which governs the grant of amusement permits, states as follows:

- "1. An application for the grant of an amusement permit shall be made by the person who is, or by any person who proposes to be, the occupier of the premises for which the amusement permit is sought to the district council for the district in which those premises are situated and the applicant shall –*
  - (a) attach to the application a fee of £8.50; and*
  - (b) serve a copy of the application upon the sub-divisional commander of the Police sub-division in which those premises are situated.*
- 2. Subject to paragraphs (3) and (4), where an application is made for the grant of an amusement permit, the district council, after hearing representations, if any, from the sub-divisional commander upon whom notice is required by paragraph 1 to be served –*
  - (a) may grant the amusement permit; or*
  - (b) may refuse to grant the amusement permit.*
- 3. A district council shall refuse an application for the grant of an amusement permit, unless it is satisfied –*
  - (a) in a case where there is in force a resolution passed by the council as mentioned in Article 110(2)(a) or (b) which is applicable to the premises to which the application relates, that the grant of the permit will not contravene that resolution; and*
  - (b) that the applicant is a fit person to hold an amusement permit; and*

- (c) *that the applicant will not allow the business proposed to be carried on under the amusement permit to be managed by, or carried on for the benefit of, a person other than the applicant who would himself be refused the grant of an amusement permit; and*
  - (d) *that there is in force in respect of the premises a fire certificate.*
- 4. *Without prejudice to its power to refuse to grant an application for an amusement permit on any ground, a district council may refuse to grant an amusement permit in respect of premises, other than premises used wholly or in respect of premises, other than premises used wholly or mainly for the provision of amusements by means of gaming machines, if it is satisfied that, by reason of the purposes for which, or the persons by whom, or any circumstances in which the premises are or are to be used, it is undesirable that gaming machines should be used for providing amusements on those premises.*
- 5. *A district council shall grant the amusement permit subject to the condition –*
  - (a) *that the premises are not to be used for an unlawful purpose or as a resort of persons of known bad character; and*
  - (b) *where there is in force a resolution passed by a district council as mentioned in Article 110(2)(c) which is applicable to the premises to which an application for the grant of an amusement permit relates, that the number of gaming machines which may be made available for gaming on the premises shall not exceed such number (being a number not exceeding the number specified in the resolution) as the council may determine.*
- 6. *A district council may grant the amusement permit, subject to the condition –*
  - (a) *in the case of an amusement permit in respect of premises other than premises used wholly or mainly for the provision of amusements by means of gaming machines, that the number of gaming machines which may be made available for gaming on the premises shall not exceed such number as the council may determine;*

- (b) *in the case of an amusement permit in respect of premises used wholly or mainly for the provision of amusements –*
  - (i) *that the premises are illuminated in the manner specified by the council; or*
  - (ii) *that advertising of, and window displays on, the premises are in the form specified by the council; or*
  - (iii) *that such notices are displayed and such information given on the premises as the council specifies in relation to any condition to which the amusement permit is subject.*
- 7. *The grant of an amusement permit shall not be invalidated by any failure to comply with paragraph 3(a) or 5(b) and no duty of a district council to comply with paragraph (3)(a) or (5)(b) shall be enforceable by legal proceedings.*
- 8. *The Department may, by order subject to affirmative resolution, substitute for the fee specified in paragraph (1)(a) such other fee as may be specified in the order”.*
- 2. *By Art. 119, appeals against the refusal of grant of an amusement permit lie to the county court, whose decision is final. Case law confirms and the parties agreed that the appeal is a hearing de novo and accordingly, the parties could- and did- raise additional issues other than those raised in the initial application.*
- 3. *The other relevant legislation is contained in regulations under the Order.*

*The Amusement Permit (Prescribed Premises) Regulations (Northern Ireland) 1986, state inter alia:*

- 2. *The premises in which gaming by means of a gaming machine in accordance with the conditions of Article 108 of the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985 is authorised by an amusement permit shall be –*
  - (a) *premises used wholly or mainly for the provision of amusements by means of gaming machines; or*
  - (b) *.....”.*

*The Amusement Permit (Additional Grounds for Refusal) Regulations (Northern Ireland) 1993 state, inter alia –*

2. *These regulations shall apply to an application for the grant of an amusement permit for premises within the meaning of regulation 2(a) of the Amusement Permit (Prescribed Premises) Regulations (Northern Ireland) 1986(b).*
3. *These regulations shall apply to an application for the provisional grant of an amusement permit as they apply to an application for the grant of such a permit.*

*Failure to comply with procedure*

2. *Where a district council is not satisfied that the applicant for the grant of an amusement permit has complied with the procedures set out in the Schedule, it shall refuse to grant that permit.*

*Representations from third parties*

3. *A district council may refuse to grant an amusement permit after hearing any representation in relation to the application for the grant of that permit which may be made by any person to the council not later than 28 days after the date that application.*

14. Both Counsel have helpfully referred me to the relevant caselaw. In this case issues arose about the matters of which the Council could take account when deciding to grant or refuse an amusement permit, the question of adequacy of provision and identification of “need” and also about the weight to be given to the decision of the PAC in deciding on the appropriate use of the premises and in particular, the suitability of the location of an amusement premises within the historic walled city.

15. Taking the first of these issues, Mr McCollum referred me to the decision of Maguire J in the case of **Re Oasis Retail Services Ltd** (13/1/2017), where it was confirmed that it is not necessary to establish need for amusement premises, although the presence of other premises and the facilities provided by them is relevant. In **Re O’Connor’s application**, [1991]NI 77, Murray LJ stated as follows:

2. *The council must consider each individual application on its merits and must not adopt a blanket decision, eg a decision to refuse all applications on the basis that gaming machines are undesirable and should not be permitted.*
3. *The sub-divisional commander is unrestricted as to the grounds on which he may object to the proposed application, eg traffic, moral danger to young people, adequacy of existing gaming facilities, unsuitability of premises etc.*
4. *Likewise, the council is unrestricted as to the ground upon which it may refuse an application and it may do so even if the sub-divisional commander makes no representation, but the council's decision is, in general, subject to the "Wednesbury" principles ie the well-known principles enunciated in the case of Associated Provincial Picture Houses Limited –v- Wednesbury Corporation [1948] 1 KB 223. The effect of these, put shortly, is that the Council must not take into account a matter which the law does not allow to be taken into account and it must not leave out of account a matter which the law says is to be taken into account. Finally, even if the Council keeps within the four corners of its legal powers its decision is liable to be quashed by the Court if it comes to a conclusion so unreasonable that no reasonable authority could ever have come to it.*
5. *Whether the application relates to an amusement arcade or pleasure fair premises, the Council has no discretion to grant the application and must refuse it if it is not satisfied about the fitness of the Applicant or any other matter referred to in Article 111(3).*
6. *If the application relates to pleasure fair premises but not if it relates to an amusement arcade, the Council, before deciding to grant the application, should, inter alia, consider in particular whether it is undesirable that gaming machines should be used in the premises in question on any of the grounds specified in Article 111(4), for example, the persons who are to use the premises. If it is satisfied that such undesirability exists, it may refuse the application".*

16. The appellant argued that the issue raised by the Council, suggesting that the proposed use of Unit 23 for an amusement premises was "unsuitable" and did not fit with the City Centre Development plan, had effectively been resolved by the PAC decision. The Council argued it was not and it was open to the court to come to a different conclusion to that of the PAC. Both counsel had referred me to the comments of Carswell LCJ, as he then was in *Re Ava Leisure Ltd's application for Judicial Review* [1991] NI 203, where he said :

*"I consider rather that the conclusion of the Deputy County Court Judge was right when he held that the local authority may take into account planning considerations and is not bound to accept in its entirety the decision of the planning authority on the issue of premises for the purpose of an amusement arcade. That is not to say that it should be anything but slow to differ from the views of the planning authority, to which such decisions are entrusted because of its expertise in that field".*

17. In **Donnelly v Regency Hotel Ltd [1985] NI 144**, the same judge commented:

*"I do not think the Court ought to absolve itself of its own statutory task of deciding upon suitability by placing complete reliance on the determination of a statutory agency, however skilled and experienced in a technical field the latter may be. It may, however, legitimately take the view that it will be slow to reach a conclusion which is at variance with the considered decision of a competent agency such as a planning authority acting within its own sphere, even if in principle it is entitled to do so".*

18. Mr Foster urged me to take account of the fact that the decision to refuse the application had been taken by the elected City Council on a cross-community basis and without any objection. He referred me to the judgment of Goddard CJ in the case of *Stepney Borough Council v Joffe* [1949] 1 KB 599, where he said :

*"That does not mean to say that the court of appeal....ought not to pay great attention to the fact that the duly constituted and elected local authority have come to an opinion on the matter, and it ought not lightly of course, to reverse their opinion. It is constantly said (although I am not sure that it is always sufficiently remembered ) that the function of a court of appeal is to exercise its powers when it is satisfied that the judgment below is wrong, not merely because it is not satisfied that the judgement was right."*

## **Judgment**

19. Having considered all the arguments put in this matter, there are a number of points which concern me about the refusal of this amusement permit.

20. The first is that the process by which the application was refused was, in my view, flawed. The application lodged by Oasis was referred to the Health and Community Committee of the Council, because there were objections to it. This delayed the whole process and allowed the application lodged by Mr Heaney for 1-2 Bank Place, in which there were no objections, to be dealt

with under delegated powers. It was referred to in a report to the Council as a renewal application and an application for an amusement permit. Significantly, the Health and Community Committee was not advised that this application had been lodged after the Oasis application which they intended to refuse and one of the grounds for refusal of the Oasis application was the existence of other gaming premises at 5 Bank Place. Mrs McClintock agreed that she would expect that each application should be dealt with in turn. Mr Gallagher, another councillor, agreed that he would expect the Councillors to be made aware if another application was to be approved under delegated powers when an earlier, similar application was potentially being refused. Neither was clear if there was a procedure for delegated decisions to be deferred pending any resolution of an application where there were objections. I consider that the provisional grant of a permit for the extended premises at Bank Place should not have been used, even in part, as a ground for refusal of the amusement permit for Unit 23, given that the latter application was lodged first.

21. Secondly, in relation to the planning considerations and the council's argument that the proposed development is not in keeping with the City Centre Plan, this is at odds with the decision of the PAC, which was decided in accordance with the Derry Area Plan. The PAC was satisfied that planning permission for an amusement arcade at this location would not adversely affect the retail character of Shipquay Street, which is already 60% retail. During the planning process, it was noted by the case officer that the NI Environment Agency considered that the proposed use would not have a detrimental impact to the character of the historic conservation area. As Counsel has reminded me, I am not obliged to follow the views of the Planning Appeals Commission, but they do have particular expertise in this area and so I would depart from their views on a planning issue only for the most compelling reasons. It does not seem to me that the reasons put forward by the Council are most compelling. They suggest in effect that the use of premises in a modern, concrete building for an amusement arcade would not be in keeping with the Council's plans for the historic walled city. First of all, most of the buildings within the historic walled city were built well after the walls themselves, in many cases hundreds of years after, so the suggestion that the city will be "restored" is not feasible. While the aim of regenerating this part of the city is laudable, and tourism is certainly to be encouraged, one must bear in mind the reality that all city centre streets in this city -and in most others- will have many and diverse businesses and uses. Mr Monaghan conceded that the Heritage Initiative had no plans for unit 23 and he agreed it was not a particularly attractive building. He



pressed the case for retail use, although it has lain empty for the last 16 years. In these circumstances where the Council cannot show a good reason to depart from the views of the PAC, I do not consider it proper to depart from its finding. It seems to me completely desirable that city centre premises should be occupied and open for business, rather than shuttered and closed. I am satisfied on the basis of what I have heard that Oasis would ensure that its signage and shop front are appropriate for the area and that the overall effect will be positive for the street frontage.

22.. I note also Mr McCollum's suggestion that the Council, being now the planning authority, is effectively seeking to usurp the role of the PAC by its refusal of an amusement permit, which would effectively overturn the PAC decision on change of use for unit 23 . I make no comment on that, save to say that it would of course be undesirable and indeed improper for a Council to use the licensing process for such a purpose, if it were indeed the case.

23. The premises are located in proximity to an area where youths congregate and vulnerable people may be in the vicinity seeking advice at a number of venues or living in housing nearby. I accept the case made by the appellant that its policy and practice in running an adult business with strict adherence to the age limit would address this concern. It is also unclear that there is any real problem with youths congregating in the area, apart from times when catching buses or visiting the Richmond Centre, which has no direct access to the subject premises.

24. Adequacy of existing provision and Need. Given what I have said above about the premises at 1-2 Bank Place and that application, I consider that that it should not be taken into account in considering the question of need. I remind myself that there is no statutory requirement to consider the adequacy of the current provision or for the appellant to demonstrate need before an application can be granted, although other facilities in the area can be taken into account in deciding if the permit should be granted. I do not accept the argument put by Mr Foster that the appellant must demonstrate need or prove that the existing provision is inadequate. Unlike other licensing regimes applicable to liquor licensing, bookmakers and so on, there is no such requirement and no binding authority which would compel me to require it. There has been no detailed study done by the appellant or the Council on the question of need. The Council view seems to have been more that they did not consider more gaming premises were morally desirable. However I also take on board that there are premises in Bridgend, Co. Donegal, which attract a considerable percentage of their trade from Northern Ireland customers and it would be preferable if that

business remained in local businesses on this side of the border. Given the sort of service offered by Oasis, the scale of the proposed operation and the high standard of its premises, I consider that it will provide a different type of offering to that currently available and accordingly I grant the appeal. I order that Oasis Retail Ltd shall be granted an amusement permit for the premises at Unit 23, Richmond Centre, Londonderry, for a centre with a maximum of 70 gambling machines.

HHJ E M McCaffrey

23 June 2017

NOTICE OF APPEAL TO BELFAST RECORDER'S COURT

IN THE MATTER OF THE BETTING, GAMING, LOTTERIES  
AND AMUSEMENTS (NI) ORDER 1985

IN THE COUNTY COURT FOR THE DIVISION OF BELFAST  
BELFAST RECORDER'S COURT

BETWEEN:

OASIS RETAIL SERVICES LIMITED  
of Trench Road, Mallusk, Newtownabbey, Co Antrim

Appellant:

- and -

BELFAST CITY COUNCIL  
of The City Hall, Belfast

Respondent:

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This is an Appeal under Article 119 (4) of the Betting, Gaming and Amusements (NI) Order 1985 against a refusal by Belfast City Council to grant an amusement permit to the Appellant, Oasis Retail Services Limited in respect of premises at 7 Wellington Place, Belfast (hereinafter called "the premises").

The granting of an amusement permit is governed by the provisions of the 1985 Order, Articles 108 – 121.

Under the 1985 Order an amusement permit is required for the use of gaming machines on premises other than certain specified categories. By Article 109 (1),

the grantee of the permit is to be the occupier of the premises. The District Council is the granting authority under Article 111, paragraphs (1) and (2) of which provide:

- "111-(1) An application for the grant of an amusement permit shall be made by the person who is, or by any person who proposes to be, the occupier of the premises for which the amusement permit is sought to the District Council for the District in which those premises are situate and the Applicant shall:
- (a) attach to the application a fee of £8.50 and
  - (b) serve a copy of the application upon the Sub-Divisional Commander of the Police Sub-Division in which those premises are situated.
- (2) Subject to paragraphs (3) and (4), where an application is made for the grant of an amusement permit, the District Council, after hearing representations, if any, from the Sub-Divisional Commander upon whom notice is required by paragraph (1) to be served:
- (a) may grant the amusement permit. Or
  - (b) may refuse to grant the amusement permit."

Application may be made under Article 113 for the provisional grant of a permit where premises are about to be constructed, altered or extended, and the provisionally granted permit may subsequently be made final when the conditions attached to it have been fulfilled.

Appeals against the refusal of amusement permits are dealt with in Article 119.

"119-(1) Not less than 14 days before District Council:

- (a) refuses to grant or renew an amusement permit or
- (b) grants an amusement permit subject to a condition specified in Article 111(6) or renews an amusement permit subject to a condition specified in Article 115(7); or
- (c) imposes a requirement under Article 118.

The Council shall serve notice of its intention to so refuse, grant or renew or impose the requirement on the Applicant, or as the case may be, the holder of the amusement permit.

- (2) Every such notice shall state the grounds on which the Council intends to so refuse, grant, renew or impose the requirement under Article 118 and shall contain an intimation that if, within 14 days after service of the notice, the Applicant, or, as the case may be, the holder of the amusement permit informs the Council in writing of his desire to show cause, in person or by a representative, why the Applicant should not be refused or granted or renewed, subject to a condition or the requirement not imposed, as the case may require, the Council shall, before so refusing, granting, renewing or imposing the requirement, afford him an opportunity to do so.
- (3) If the District Council, after giving the Applicant or, as the case may be, the holder of the amusement permit an opportunity of being heard by it, decides to refuse the application or to grant or renew the application subject to a condition or to impose a requirement under Article 118, it shall serve notice of the decision on the Applicant or, as the case may be, the holder of the amusement permit, and such notice shall inform him of his right of appeal under paragraph (4) and of the time within which the appeal may be brought.
- (4) A person aggrieved by a decision refusing an Applicant for the grant or renewal of an amusement permit, or granting such an application subject to a condition specified in Article 111(6), or renewing such an application subject to a condition specified in Article 115(7) or imposing a requirement under Article 118

may, within 21 days from the date on which notice of the decision is served on him, appeal to the County Court.

- (5) The decision of the County Court on an appeal brought under paragraph (4) shall be final, and the District Council shall give effect to that decision."

Number 7 Wellington Place is situated between the junctions of Fountain Street and Queen Street on the same side of Fountain Street. The premises are vacant at the moment and had been occupied by Kentucky Fried Chicken take-away and restaurants and previous to that, were occupied by Wimpy. Planning permission for change of use of the premises was refused on the 22<sup>nd</sup> July 1998 and an appeal to the Planning Appeals Commission was heard on the 10<sup>th</sup> November 1998. After a full hearing and a visit to the site, Mr G R B Farrington presented his report and recommendation with regard to the premises.

### RECOMMENDATION

"I recommend that the Appeal be allowed and that planning permission be granted for the change of use including a new ground floor façade subject to the following conditions:

1. Before the change of use hereby permitted is commenced, the ground floor façade shall be constructed in accordance with detailed proposals shown on drawing AW317WD01 received by the Commission on the 24<sup>th</sup> November 1998.

2. There shall be no gaming and amusements of a sessional nature and the premises shall be used only for the playing of amusements with prizes machines together with ancillary snack bar and ancillary retail sales.
3. The use hereby permitted shall not commence until self-closing front doors have been installed and sound proofing carried out in accordance with a scheme to be submitted to and approved in writing by the Department.
4. No music, public address system or any other amplified sound shall be used other than background music which is not to be audible outside the premises.
5. The front windows of the premises shall at all times contain a display.
6. The development hereby permitted shall be begun before the expiration of 5 years from the date of this permission."

Mr Farrington's recommendation appears to have been duly endorsed by the Planning Appeals Commission.

The application for amusement permit to Belfast City Council was made on the 25<sup>th</sup> January 1999. It was considered by the Health and Environmental Services

Committee which resolved to recommend to the Council that, in its capacity as licensing authority it refused the application on the grounds that:

1. The Young Men's Christian Association was situated almost directly across the street and Church House, Headquarters of the Presbyterian Church in Ireland and the Belfast City Mission was situated almost 200 metres south of the premises.
2. Two centres of education ie: a Grammar School and a Technical College lay about 250 metres directly to the west of the premises;
3. The City Hall, the main focal point of the City Centre, was situate about 150 metres east of the premises. The City Hall, which was rightly regarded as one of the main Civic points of the city was a popular tourist attraction and its grounds were widely used by the public as an informal gathering place and meeting point.
4. The Linenhall Library, one of the oldest subscription libraries in the United Kingdom, was located less than 100 metres to the east of the premises, on the same side of the street and opposite to the City Hall. The building also housed the Belfast Society, a learned society for the investigation of natural history in Ireland. The Library was a cherished



landmark, frequented by members, students, scholars, literati and foreign visitors and reinforced the civic and cultural bearing of the area.

5. The premises were situated adjacent to the City Centre terminus bus stops, some of which were discharging and collection points for school children.
6. There were already thirteen amusement premises within ten minutes walk from the premises, one of which was situated in Queen Street which was some two minutes walk from the subject premises, though none of the existing premises licensed to provide amusement, were situated in prime retail streets or important secondary locations. Without exception, the premises currently licensed for the provision of the amusement were located in either tertiary retail locations or non-retail locations; and
7. The siting of an amusement type premises in the proposed location would have an adverse and detrimental effect on the surrounding area, the perception of the area as a whole and the future development of the area.

The Council had, at its meeting on the 1<sup>st</sup> December, adopted this recommendation.

The Appellant, in his appeal, cited the following grounds:

1. The Appellant proposed to offer facilities for Adults only and the Respondent's references to the Young Men's Christian Association, Centres of education and bus stops used by school children have little relevance to the application.
2. Church House is out of sight of the proposed premises.
3. The premises are situate in an area where leisure facilities such as pubs and restaurants abound. The adult gaming machine centre which the Appellant proposed, would complement the other leisure facilities.
4. The premises at 7 Wellington Place were formally a Kentucky Fried Chicken outlet and currently lies vacant. The high standard of shop fit proposed by the Appellant and the attractive shop front to be installed would improve the appearance of the building out of all recognition and improve the surrounding area generally.
5. The Appellant proposes to offer facilities very different from those afforded by the existing amusement premises to which the Council refer. They are situated in tertiary locations and are quite different in character from the adult gaming machine centre proposed by the Appellant.

6. Notice of the Application was advertised in three newspapers, the News Letter, the Irish News and Belfast Telegraph. No objections were received from any source. Evidence to substantiate the Council's grounds of refusal is lacking.

Mr Steinberg, Managing Director of Oasis Retail Services Limited indicated that they had seven amusement centres in Northern Ireland with planning permission. He indicated they had never any problem from the Police or the local Councils in relation to same. They had high level of management control in their operation. These premises were different to what has existed in Northern Ireland, but similar premises had been extensively established in England, Scotland and Wales. The expenditure on these premises will be £250,000 approximately. He described the exterior as having modest display windows, the frontage will fit in well with the existing retail premises in the area. This is great improvement from the previous occupation by Kentucky Fried Chicken and before them a Wimpy Bar. The premises will have toilets, air-conditioning, wood panelling, carpeted extensively. One cannot see into the premises from the street or from the premises out onto the street. The age imposed limit is 21 years and this is done by free choice of the company. In this type of premises adults do not wish to be in the company of young people. Tea, coffee, soft drinks and sandwiches will be available. An automatic closing door insulates the premises so that no sound is emitted.

A similar premises owned by Oasis has now been opened in Newry at the Market Square at Hill Street which is the prominent shopping area in Newry.

Photographs of the Newry premises are produced. Mr Steinberg indicated that in the North Street premises which Oasis have he is waiting on the general redevelopment of the whole of the North Street area before entering into a reconstruction of the premises there, which will in due course be comparable to what is proposed at 7 Wellington Place. He indicated that the average age of customers in these type of premises would be 35 years of age and older.

In his company he is the Chairman and there is an Operations Director, Operations Manager, Area Managers, Branch Managers and Operators.

The witness explained how he had taken over the lease from Kentucky Fried Chicken paying a similar rent. This was with the assent of the Landlord and how he had to pay no additional premium in respect of the take over. The existing amusement centres in Belfast were in tertiary or fringe shopping locations or back streets, one might say. Many of these premises were poorly fitted out and maintained. Many contained amusement games, video games, pin tables.

The evidence on behalf of the Appellant in respect of the present application was based on a completely different standard of amusement centre. The only existing one in Northern Ireland was in Newry but an impressive display of evidence in similar amusement centres in England was put before the Court.

These were shown to be in main shopping streets, many in the primary retail areas. The machines operating in them appeal to a mature clientele. The premises had a window display and a restriction of view into the interior or from the interior out and the display was to blend with the ordinary retail premises. Sound insulation was an important factor and there should be no cause for noise or disturbance to passers by. Proper customer facilities as already mentioned by Mr Steinberg was clearly visible from the display of 12 different locations in England showing photographs of the premises and their surrounding area. All of them seem to be in primary locations or even pedestrian precincts and there would seem to have been no restriction on the location. Records were also produced showing about over 160 odd premises similar to this application which had been located and granted planning permission in conservation areas in England, Scotland and Wales and of those number, approximately 19 were located in listed buildings.

A video recording was shown indicating how the premises would appear when completed. It showed an attractive frontage with a heavy mahogany doorway and reception. When I visited the Newry premises on the 31<sup>st</sup> May at 12 noon, it reminded one of the video which had been produced at the Court. There is an automatic side door which opened as one approached and one was immediately conscious of the carpeted premises. Outside the door there was no sound of music and when one entered, it was into a quiet atmosphere with background

music. The automatic door is made of heavy mahogany and opened and closed in a smooth operation.

There were three customers in the premises and one Operator who was on a rostrum and who had a clear view of the entrance. There is subdued lighting and one could only describe the premises as a fresh, pleasant place. The three customers were male and in the middle age range.

The Newry premises can only be described as superior quality to the other amusement centres visited. At the Newry premises there were three large notices indicating no person under 21 years of age is permitted to enter in each display windows. In addition, outside the premises there was a sandwich display indicating the amusement centre and again containing the notice no person under 21 permitted to enter. It was felt such a billboard advertisement might not be suitable in Wellington Place but when I next visited it was noted that seven similar billboards were situated outside premises in Wellington Place. These indicated sandwiches, ice-cream, café, lottery tickets, camera films and mobile phones.

Plans prepared by Alan Wheeler and Associates were produced and show the existing frontage of 7 Wellington Place and also show the proposed new frontage when complete. The front elevation would be returned to its original height. The plans had received approval of the Planning Authority.

Mr Kevin Milhench gave evidence on behalf of Oasis and Mr Kenneth Crothers gave evidence on behalf of the Belfast City Council. Both were experienced Chartered Surveyors. Mr Milhench expressed the view that Wellington Place had declined as a retailing destination in the last decade. This resulted from the growth of Belfast Primary and secondary zones such as Castle Court. The rental growth in Wellington Place is very low whereas before Castle Court was established, it was good. Retailers who would have occupied Wellington Place in his opinion, were now moving to locations like Bloomfield Avenue and the Lisburn Road. He said that Wellington Place no longer opens for trading with the rest of the City Centre on Thursday evenings and Sunday afternoons. He explained that Wellington Place is a main traffic route into the city centre and an amusement centre such as this, will improve the premises and the vicinity and enhance consumer's choice. He felt that it would not in any way prejudice existing or future occupiers, retail service sector or office and will not affect investment in any form. Static or declining values are the main deterrents to investments.

When questioned in relation to amusement centres in the new shopping areas where a landlord has control of the class of tenant, Mr Milhench indicated that there were amusement centres at York Gate, in the mall of the bus station and in the Ards Shopping Centre. He felt they were becoming increasingly acceptable in shopping areas.

Mr Crothers agreed with Mr Milhench that in recent time rents had not increased in Wellington Place. He would say, however, that Wellington Place was in the secondary class of shopping standard. He detailed each of the shops on Wellington Place and did not agree that speciality shops were moving to the Lisburn Road and Bloomfield Avenue as Mr Milhench had indicated. His view was that Belfast City Centre needs to have speciality shopping in order to attract people. If specialist positions were lost to the Belfast City Centre, it would be detrimental. He cited four investments from property owners in recent years in Wellington Place. He felt that the character and role of Wellington Place would be compromised if a development, like an amusement centre was permitted. A development like this would have an adverse affect on the retail and office property perspective. It is not a proper place for such a centre.

In cross examination Mr Crothers agreed that his evidence to the Court today was similar to that given to the Planning Appeals Commission with some slight amendments. Mr Crothers was not familiar with the situation in England and Scotland as given in evidence to the Court. He had made no investigation of the situation in England or Scotland. He agreed his evidence was rejected at the Planning Appeal.

Katherine Toner gave evidence of a report presenting the findings of a research survey conducted on behalf of Oasis by Ulster Marketing Surveys Limited. Two fully trained members of their company were allocated points and randomly



approached every third pedestrian who passed by on Wellington Place on three different days at different times. The witness was a Director in the company with 32 years experience. The questions put to these pedestrians were biased in favour of a positive answer.

Belfast City Council had engaged a survey to be carried out by Belfast City Management Staff Members. The Chief Executive of it was Mike McCann and Development Director Joanne Jennings. They canvassed the views of the retailers in Wellington Place, but their instructions were received only a day or so before the hearing at Court. Indeed, Mr McCann admitted that his survey had taken place on the 6<sup>th</sup> April, the day before the third day's hearing of the application at Court. I came to the conclusion the questions appeared to be loaded for favourable answers.

It is felt that the survey evidence from each side was not convincing and of little assistance to the Court.

A considerable amount of time was given to the consideration of children with regard to this amusement centre. Campbell McKinstry of Royal Belfast Academical Institution advised that there were 1,033 pupils of whom 274 were in sixth form. Sixth form had freedom to go into the town at lunch break. They had the option of going to the school canteen or to go out on the town for their lunch. Lunch break was from 12.50 to 1.35 pm. School ended at 3.25 but between 3.25

and 5.00 pm there were often extra activities, sports and following sports, the pupils returned to the school. Wellington Place was a direct route for the pupils to obtain transport, both in Wellington Place and in Donegall Square. They had an experience of some of their boys attending at 147 Club which is the amusement club in Queens Street. If boys got access to this type of centre, it would cause concern to the school authorities as well as the parents. A question of gambling was addressed in tutorial at the school. There was one occasion in which one of their boys was involved in debt as a result of gambling. The management of the School were opposed to this development.

In cross examination Mr McKinstry agreed that gambling, drinking and betting was common to many schools and advice was given accordingly in relation to these. It was put to the witness that Club 147 was a gaming centre which is run down and tacky and badly managed, whereas the present development would restrict admission to anyone under 21 years. The witness agreed that the pupils at school were in uniform and would be easily identified. He advised that a week before the Court hearing the Principal had been approached by Belfast City Council and a request made for someone to attend the Court hearing. The witness was not aware of any objection raised by the school authorities when the Planning Applications were advertised in relation to the premises. He also agreed that in Castle Street, quite a number of girls and boys board buses leading to the Falls Road where a number of Catholic schools are located.

A Mr Mayne, Building Control Surveyor for Belfast City Council, visited Shaftesbury Square premises which belong to Oasis in the morning at 11.00 am and there were five people all under 18 present. There were two staff there. A colleague was with him and they played the machines for 10 – 15 minutes. These five people were in the area where under 18 years of age were forbidden and they were playing machines, they were visible to the members of staff but no check was made by the staff. Two of those five were in school uniforms. On one other occasion on visiting the premises there was one person under 18 years of age seen and on four other occasions when they visited the premises, there were no other children there. This witness agreed there was a notice restricting admission to anyone under 18 years of age.

Mr Steinberg who had given evidence at the commencement of this application, was recalled on the second day to give an explanation of his investigation into this incident. He said he was extremely concerned and was taking steps to ensure that this just could not recur. He repeated that there was a restriction notice measuring 18 inches by 24 inches posted at their Shaftesbury Square premises and also at their North Street premises, but it was put to him in cross examination that a notice is ineffective if people can walk past it. He said that his staff are trained to ensure that they ask for identification if they are in doubt as to the age of a customer.

Frank E Caddy, Chief Executive of the Chamber of Trade, on behalf of Belfast City Council indicated that he would be opposed to the location of the amusement centre at 7 Wellington Place. He said there were plenty of other locations more suitable.

Councillor Carmel Hanna, explained that she was a member of Belfast City Council for a number of years and on the Committee who dealt with the refusal of the permit. She said it was unanimously agreed that the permit should be refused. This decision was ratified by the Council. The witness said that if an entertainment permit was granted in this case, then it would be difficult to control future applications in the same area.

Mr McSparran QC, Counsel for the Appellant submitted that the 1995 Order at 111(4) confers unfettered discretion in the granting of a permit to premises such as this amusement centre. There is no question of opening the flood gates if the permit was granted in the present case. Complete control rests with the Belfast City Council. A licence is for 12 months and is renewable annually. It was also pointed out that the Belfast City Council seems to have no reservation about granting entertainment permits in Castle Street.

It was submitted by Mr Weir QC on behalf of the Belfast City Council that there was no desire or need for this amusement centre. No one was called who said he wanted an amusement centre such as this or that there was a need for same.

I was impressed by the Appellant's submission that on the grounds for the refusal of the permit set out in the letter of the 3<sup>rd</sup> December 1999 no representative appeared from the YMCA or from the Headquarters of the Presbyterian Church and no-one appeared from the Linenhall Library and no objections were raised by any of these bodies when the Planning Applications were advertised and neighbourhood notices served. Not one of the retailers or staff from their premises in Wellington Place appeared or raised objections at the Planning Applications and no-one appeared from them at the Court hearing, despite the canvassing of Michael McCann.

I visited Queen Street which is not far from the premises in question and noted a high quality Ladies and Gents Outfitters, O'Hare and Company is located beside the 147 club and appears to be trading quite successfully. They have been there now for 3½ years. I also visited the Twilight Zone amusement premises on the Dublin Road. I had often passed these premises on foot and had not noticed them until my attention was focused by this application.

It seems clear from the evidence that a well designed, expensively equipped premises such as in this application has not previously been established in Northern Ireland. The premises referred to in Newry are something of the same standard but not as extensive as this application. The high quality of premises shown in the photographs located in England clearly show them to be situated in prime retail areas. Many of the English retail outlets are now in Belfast in large

numbers and it would appear from the evidence submitted that amusement centres do not damage existing retailers. This expensively equipped centre is shown to be popular in England and the UK. There are planning approval conditions attached to the operation of the premises. The management has voluntarily agreed to an age limit of 21. Their evidence is that young people would tend to deter the type of clientele which these premises are clearly designed to attract.

Having considered all the evidence and having visited all the sites in question on a number of occasions, I am satisfied that this application is of a different standard to anything previously made in Northern Ireland and I grant the appeal.

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## Appendix 5

(1) 1998/A196  
(2) 1998/A231  
(3) 1998/A232

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**on appeals to the Commission by Oasis Retail Services Ltd under Article 32 of the Planning (Northern Ireland) Order 1993, Regulation 12 91) of the Planning (Control of Advertisements) Regulations (Northern Ireland) 1992 and Article 45 of the Planning (Northern Ireland) Order 1993 in connection with (1) the refusal of planning permission for the proposal change of use of a restaurant to a gaming machine centre for over 21 year olds, including alterations to the ground floor façade; (2) the refusal of consent for the proposed erection of an illuminated fascia sign and (3) the refusal of listed building consent for a proposed new ground floor façade at No 7 Wellington Place, Belfast.**

The Commission has considered the attached reports by Mr G R B Farrington, the Member appointed to hear the appeals. It has taken account of the representations made and evidence provided by, or on behalf of, the Department of the Environment, the appellant, interested third parties and it has also taken account of the views of Belfast City Council.

Commissioner E Kinghan took no part in the discussion on or the deciding of this appeal.

The premises in question form part of a four storey building and are comprised of floorspace on the ground and first floors. The remainder of the property is in office use. No 7 Wellington Place forms one of a group of three Georgian buildings which are listed and lie within the Belfast City Centre Conservation Area.

The Commission, in agreement with the appointed Member, has not been persuaded that the reasons for refusal and objections raised by third parties in respect of these proposals have been sustained. In so concluding it has attached particular significance to the following points:-

- (1) Planning Policy Statement 5 (PPS5) Retailing and Town Centres, which sets out the broad framework or approach to town centre development, acknowledges the diversity of town centre uses and seeks to promote and encourage, where appropriate, a range of non-



- retail uses, including leisure. The objective is to ensure that such uses contribute to the diversity and vitality of centres without encroaching on primary retail cores (which are to be identified in development plans) at ground floor level;
- (2) the development plan for the area, the Belfast Urban Area Plan 2001 (BUAP), while defining the main shopping area within which the appeal premises lie, does not identify a primary retail core. Although the Belfast City Centre Vision for the Future (BCCV) and Development Guidance Note 8a on the Control of Non-Retail Uses in Belfast's Main Shopping Area. (DGN 8a shows a prime shopping frontage) the former is a consultation document and the latter sets out guidance and they cannot be accorded the same weight as the BUAP or the more recently published PPS5. In effect there is no development plan definition of a primary retail core for Belfast City Centre as referred to in PPS5 (paragraphs 11 and 40);
  - (3) in any event the guidance of paragraph 4.3 that planning permission for amusement centres within the main shopping area is likely to be refused is set in the context of such development having an adverse effect on the character and function of existing commercial uses. The Department produced no specific evidence to demonstrate that the proposal would have such adverse effects and the arguments presented on behalf of Belfast City Council on this point were essentially anecdotal in nature or based on "perceptions" of the impact of the proposal, rather than being based on specific examples of the detrimental impact of amusement centres on the viability and vitality of shopping areas;
  - (4) the proposal would not result in the loss of a retail unit, given the former use of the premises as a restaurant;
  - (5) in terms of visual impact, in the context of the building being listed and its location within the Belfast City Centre Conservation Area, it was generally agreed that the proposed alterations to the façade and signage would represent an improvement on what exists at present;
  - (6) in terms of the impact of the proposal on the character of Belfast City Centre Conservation Area it is not considered that the proposal will have any more detrimental effect than the former carry-out restaurant use and, in overall terms, having regard to the proposals to improve the façade, its impact would be positive.

Accordingly, the decisions of the Commission on these appeals are as follows:-

1998/A196 – proposed change of use to gaming machine centre for over 21 year olds and alterations to ground floor façade.

- (1) Before the change of use hereby permitted is commenced the ground floor façade shall be constructed in accordance with the detailed proposals shown on drawing AW317WD01 received by the Commission on 24 November 1998.
- (2) There shall be no gaming and amusements of a sessional nature and the premises shall be used only for the playing of amusement with prizes machines together with ancillary snack bar and ancillary retail sales.

- (3) The use hereby permitted shall not commence until self-closing front doors have been installed and sound proofing carried out in accordance with a scheme to be submitted to and approved in writing by the Department.
- (4) No music, public address system or any other amplified sound shall be used other than background music, which is not to be audible outside the premises.
- (5) The front windows of the premises shall at all times contain a display.
- (6) The development hereby permitted shall be begun before the expiration of 5 years from the date of this permission.

1998/A231 – Proposed erection of an illuminated fascia sign.

Allowed subject to the following condition:-

- (1) This consent relates solely to the revised fascia signage proposed on drawing AW317WD01 received by the Commission on 24 November 1998.

1998/A232 – Listed Building Consent for proposed alterations to ground floor façade.

Allowed subject to the following conditions:-

- (1) This consent relates solely to the revised proposals shown on drawing AW317WD01 received by the Commission on 24 November 1998.
- (2) The alterations shall be begun before the expiration of 5 years from the date of this consent.

**R S HAWTHORNE**  
Chief Commissioner

15<sup>th</sup> January 1999

**THE PLANNING (NORTHERN IRELAND) ORDER 1991  
APPEAL UNDER ARTICLE 32  
REPORT TO COMMISSION BY MR G R B FARRINGTON**

**FILE REF NO: 1998/A196IG REF NO: 33368 37410**

**DPO REF NO: Z/98/2118**

**Appeal to the Commission by Oasis Retail Services Ltd (previously Joyland Amusements (NI) Ltd) in respect of the refusal of permission in connection with the proposed change of use from restaurant to gaming machine centre for over 21 year olds including new ground floor façade at 7 Wellington Place, Belfast.**

**1.0 BACKGROUND AND PRELIMINARY MATTERS**

- 1.1 I heard this appeal on 10 November 1998 in Park House, 87-91 Great Victoria Street, Belfast and, having visited the site, now present my report and recommendation.
- 1.2 The Department issued a notice of decision on 22 July 1998 refusing permission for the following reasons:-
  - “01 The Department considers that the use of these premises for a gaming machine centre (for over 21 year olds) is inappropriate in this main shopping area within Belfast City Centre. If permitted it would prejudice the provision of retail and shopping related uses and create a precedent for similar developments elsewhere to the detriment of the established shopping area.**
  - 02 The Department considers that the use of these premises for a gaming machine centre (for over 21 year olds) is inappropriate in this Conservation Area in that it would not enhance the character of the Conservation Area by virtue of physical appearance and land use.”**
- 1.3 Belfast City Council was consulted by the Department on 21 May 1998 with an opinion to refuse. The Council agreed with this opinion.
- 1.4 The Commission received the appeal on 10 August 1998 and advertised it in the local press on 21 August 1998. Five representations were received from third parties, objecting to the proposed change of use; one of these was from Belfast City Council.
- 1.5 This appeal under Article 32 was heard concurrently with appeals against the refusal of listed building consent for the ground floor façade and the refusal of advertisement consent for an illuminated fascia sign – see separate reports 1998/A232 and 1998/A231 respectively.

- 1.6 Since the kernel of the Department's objection was in relation to the principle of the change of use it was agreed that this should be addressed first.

## **2.0 SITE AND SURROUNDING AREA**

- 2.1 The appeal premises form part of a four storey building and are comprised of 229 m<sup>2</sup> on the ground floor together with 23m<sup>2</sup> and 27m<sup>2</sup> respectively on the first and second floors. The balance of the accommodation in the rest of the building consists of professional offices. The ground floor is vacant and was last used as a Kentucky Fried Chicken outlet.
- 2.2 The building forms one of a group of three, numbers 7, 9 and 11, Georgian four storey buildings (c. 1830), sandwiched between two modern buildings fronting Wellington Place between Fountain Street and Queen Street. All three Georgian properties are listed and Wellington Place lies within the recently designated (May 1998) Belfast City Centre Conservation Area (BCCCA).

## **3.0 PLANNING HISTORY**

- 3.1 Copies of the Department's planning history schedule and key map are attached to this report. The key map also shows existing and approved amusement arcades, the main shopping area boundary (BUAP 2001) and the BCCCA boundary.
- 3.2 The history schedule was criticised by the appellant for omitting the following history of the appeal premises which post-dated the listing of the building (1979).
- Planning permission for alterations to shop front (Z/85/1945).
  - Advertisement consent for KFC fascia and projecting sign (Z/85/1960).
  - Listed building consent for alterations to shop front (Z/86/0509).

All three were granted when the ground floor was converted from a Wimpey Bar to a KFC outlet (C.1985).

## **4.0 DEPARTMENT'S CASE**

- 4.1 The Department drew attention to various consultations carried out in its determination of the application. Roads Service, Water Service and the Fire Authority had had no objections. The Divisional Environmental Health office had requested that the applicant be advised to ensure that all plant and equipment is so situated, operated and maintained as to prevent the transmission of noise to nearby premises.

- 4.2 The HMBB consultation reply regarding the application for listed building consent reads as follows.

"The ground floor of this unit is already a mess and so HB would have no objection in principle to this scheme.

The drawing is however very basic and we will require detailed drawings of the proposed alterations before commenting."

- 4.3 Various policies were cited by the Department. The gist of these is as follows.

- The site is inside the Main Shopping Area as defined in the BUAP 2001 and “Belfast City Centre Vision for the Future” (BCCV). BUAP policy S1 states that city centre shopping will be concentrated in the Main Shopping Area and policy CC3 is to develop the city centre as a major centre for leisure and tourism by strengthening the entertainment function.
- DGN8A was published in December 1994 on the foot of concern in the BCCV regarding the need to control the overall number of non-retail ground floor uses on prime shopping streets. This document highlights the danger that non-retail uses could begin to dominate shopping frontages within parts of the main shopping area. One of the objectives of the DGN is to ensure that the vitality of the shopping area is not adversely affected by the uncontrolled spread of non-retail uses (3.3). It identifies an area of “prime shopping frontage”. The appeal site is not within this area. The guidelines relating to the remainder of the main shopping area (4.2 and 4.3) include the advice that amusement centres do not complement and support shopping uses and are normally inappropriate in a shopping area. Applications for amusement centres are likely to be refused within the main shopping area because of their adverse effect on the character and function of existing commercial uses (DGN8A 4.3).
- Development Control Advice Note 1 (DCAN1) on amusement centres published in 1983 is concerned with their effects on the amenity and character of an area and highlights as an important consideration whether an amusement centre will break up an otherwise continuous shopping frontage. Although this can be mitigated through design of the façade and entrance it may be a serious objection in some streets. The note also states that amusement centres are out of place in Conservation Areas.
- Although the BCC Conservation Area had not been designated when the application was submitted it was a material consideration in determining it.

4.4 Statement on behalf of the Department, including replies during questioning, may be summarised as follows.

- (1) The land use survey (“B” available on file) highlights the importance of both sides of Wellington Place east of Upper Queen Street as a shopping street. Six out of nine properties in the frontage containing the appeal site were in retail use. DGN8A refers to the complementary role of service uses such as banks and restaurants. The KFC restaurant was a shopping related use in contrast to amusement centres which the DGN categorised as normally being inappropriate in a shopping area. Castle Street and North Street illustrated the problems associated with them, such as the vacancy and run-down appearance of neighbouring properties, the garish signage and unattractive facades. Most amusement centres had shop fronts but passers-by could still see the machines inside.
- (2) The proposal would prejudice the provision of retail and shopping related uses in this main shopping area within Belfast city centre and it would set a serious precedent for similar developments elsewhere to the detriment of the established shopping area.
- (3) There was no evidence in Belfast of an improvement in the image of amusement centres. The proposals to upgrade the appellant’s North Street premises had only very

recently been submitted (see Schedule item 11) but it should not be inferred from this that Oasis was seeking disingenuously to influence the current appeal decision.

- (4) Wellington Place was not prime retail core in the sense that it is not shown as prime shopping frontage on the map on page 52 of the BCCV.
- (5) In the hierarchy of plans the BUAP 2001 was at the apex. The essence of policy S1 was to concentrate shops in the main shopping area but there was no specific policy restricting non-retail uses in the main shopping area. The proposal would contribute in strengthening the entertainment function of the city centre for the purposes of BUAP policy CC3. No policy in the BUAP was offended by the proposal but the DGN guidance had been issued after its adoption.
- (6) The Department had not referred to Planning Policy Statement 5 (PPS5). Paragraph 22 indicated that diversity of uses makes an important contribution to the vitality and viability of town centres. According to paragraph 25 entertainment uses were to be encouraged where they contribute to the diversity and vitality of a centre, without encroaching on the primary retail core, where defined, at ground floor level. Within primary retail core areas the Department controls non-retail uses (paragraph 23). Wellington Place was in the heart of the city but a primary retail core had not been defined for the city centre.
- (7) DCAN1 (1983) was now a dated document. The reference it amusement centres being a bad neighbour use did not apply in this case. The advice that amusement centres were best sited in districts of mixed commercial use was applicable and the appeal proposal would not break up a retail frontage because the previous use as a restaurant was non-retail. Likewise, the concern in the advice note regarding sessional entertainments does not apply.
- (8) DGN8A was a non-statutory guidance note which owed its origins to the non-statutory BCCV document and would have to be accorded much less weight than PPS5. Its main concern, the supplanting of retail uses by non-retail uses does not apply in this case. The Department has no specific evidence that the appeal proposal would adversely affect the retail function of the shopping area except for the visual aspects cited in respect of the company's premises in Castle Street and North Street. Nevertheless, the Department remains concerned that the proposal, if permitted, would adversely affect the vitality and viability of Wellington Place as a retail location and its ability to attract investment.

## **5.0 BELFAST CITY COUNCIL**

5.1 In preparing for the appeal the City Council commissioned retail experts Crothers Dean & Curry (CDC) to undertake a study of the property market in Wellington Place. The gist of the expert evidence, including replies to questioning, was as follows.

- (1) More than any other location in the city centre Wellington Place (east of Upper Queen Street) and Fountain Street is perceived as an "up market" retail location. This role is distinct and widely recognised in the retail property market. It is reflected in and enhanced by the presence of higher calibre retailers of fashion, footwear, giftware and other higher value items.

- (2) Whilst the value of ground floor units rose in line with the average increase for Belfast shops over the period 1976 to 1995 there has been a distinct arrest in retail growth in Wellington Place in recent years leaving it lagging far behind the growth of prime city centre retail rents.
- (3) Although Wellington Place enjoys a high level of ground floor occupancy this appears to be at the expense of rental growth which, on the whole, has not even kept pace with inflation over the past 5 or 6 years. This reflects a certain fragility which should not be disturbed or prejudiced by the introduction of inappropriate or incompatible uses.
- (4) Perhaps conversely, Wellington Place has attracted very considerable investment from property owners over the last couple of years, but further investment of this calibre would be prejudiced if the character and role of Wellington Place were to be compromised.
- (5) Because the prime city centre retail pitch is so concentrated and expensive, it is essential that locations such as Wellington Place are allowed and encouraged to flourish as secondary retail locations.
- (6) From the design proposals for the premises, it is evident that the appellant is seeking to present a benign external appearance with the intention of blending into the retail streetscape. This has been a developing trend for amusement centres in recent years. However, the retail property market associates amusement centres with locations which have failed or are inappropriate in which to locate. Amusement centres portray a negative image. Without exception in Belfast City Centre they are located in tertiary retail locations or non-retail locations as adduced in evidence to appeal 1997/A100 concerning premises in Ann Street.
- (7) An amusement centre in Wellington Place would create an adverse perception of the street from a retail and office property perspective and is likely to be a deterrent to investment in both sectors. From a commercial property points of view this is an inappropriate location for an amusement centre. It would also create a precedent which would be detrimental to the vitality and viability of Wellington Place as a retail and service location.
- (8) In commercial terms the concern is with the use rather than the quality of the building. The presence of KFC, notwithstanding the perceived problems with hot food bars, did not appear to have had a significant impact on the up market image of adjacent retail properties. However, a restaurant use is a complementary use to shopping, whilst an amusement centre is the “obverse”. The removal of the inappropriate KFC signage and an improved façade would make a positive contribution in aesthetic terms. Irrespective of external aesthetics, however, there was a negative view of the use among retailers.
- (9) In the last 10-15 years some amusement centre operators have expanded into a different market from the traditional shabby arcades, shooting galleries and sessional bingo businesses. There is now a wide band of provision. It would make sense for an operator to seek to locate a quality product in a quality location.

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- (10) There may have been many amusement centres allowed on appeal in conservation areas in England and Wales but one would have to have undertaken a qualitative assessment of the location to derive anything of significance from this in retail terms.
- (11) Apart from one instance involving a client in Cathedral Square, the Council's retail consultant could not cite any specific evidence of retailers or office occupiers incurring difficulties due to a nearby amusement centre. However, there remained a general adverse perception of the use which would deter retailers from locating in Wellington Place.
- (12) Viewed in PPS5 "health check" terms currently Wellington Place had an ability to attract investment and the recent opening of the Centra shop represented a significant increase in vitality as perceived in retail property terms.
- 5.2 Commissioners should note that to assist the Council's retail expert's early release the parties agreed to his evidence being heard at the start of the hearing before the Department presented its case.
- 5.3 The essence of the City Council's planning arguments, including replies to questioning, is as follows.
- (1) The CDC evidence on the property market supports reason 01 in that the proposal use would prejudice the provision of retail and office uses to the detriment of the established shopping area. A land use which is a deterrent to investment in the area would conflict with the shopping policy objectives set out on page 75 of the BUAP 2001.
- (2) Based on the CDC evidence the appeal proposal would also conflict with DGN8A paragraph 4.3
- (3) There was a duty under Article 50 of the Order for special attention to be paid to the desirability of preserving or enhancing the character or appearance of BCC Conservation Area. The appeal proposal would neither preserve nor enhance the character of the area because it would act as a deterrent to investment in the area. This was a particularly sensitive location in conservation terms close to the City Hall and Donegall Square. The terrace at 7-11 Wellington Place is one of the few remaining examples of Georgian architecture in the city.
- (4) As a matter of law the "preserving or enhancing" provision in Article 50 necessitated a test that a proposal, to be accepted, should effect an improvement in the character or appearance of the conservation area.
- (5) Amusement centre uses are inappropriate in sensitive locations within conservation areas. If they must be in a conservation area they should be confined to tertiary retail locations or non-retail locations which are least sensitive in terms of townscape and buildings of architecture and historic interest.
- (6) By implication land use can affect the external appearance of a building. The aesthetics of this particular proposal were unexceptionable but there remained the implications of the proposed use as a disincentive for investment in the vicinity. In "health check" terms it could be viewed as a "cuckoo in the nest".



- (7) In the hierarchy of policies PPS5 had precedence over all except the BUAP and the conservation area document. The importance accorded in PPS5 paragraph 22 to diversity of uses had to be balanced with the presumption in favour of development that would make a positive contribution to ensuring existing town centres continue to provide a focus for shopping.

## **6.0 OTHER OBJECTIONS**

- 6.1 The written representations from commercial objectors (Tom Jones (Belfast Ltd); Parsons & Parsons Ltd; and Alliance & Leicester PLC) raise similar issues to those identified by the City Council. In addition fears are expressed that the appeal proposal will encourage undesirables and gangs of youths looking for opportunities to shop lift and that “quality shoppers” will be deterred from entering the area. The objection from a private individual is directed at the inappropriateness of the use in a city centre shopping area.

## **7.0 THE APPELLANT’S CASE**

- 7.1 The amplification of the appeal proposal by the appellant’s witnesses is summarised as follows.
- The centre will comprise amusement with prizes only. There will be no video games, pool tables etc. Amusement with prizes outlets operate within a strict legal code under the Gaming Acts and are controlled by the licensing authority. Payouts are limited to £15 in cash. Winnings can also be taken in vouchers exchangeable for goods in the centre and in shops with which trading arrangements are made.
  - Adult gaming machine centres have evolved into sophisticated operations involving high levels of investment and a high quality image. The majority of non-resort based amusement centres are now amusement with prizes outlets. The typical modern centre has a well designed façade with shop window displays which are regularly maintained and changed. The Wellington Place proposal will follow this format with a luxury interior, including air conditioning, seating and electrically operated lobby doors preventing noise leakage. Patrons will be over 21 with only one player per machine. The over 21 rule is strictly enforced in the company’s own interests employing staff training, management and vigilance.
  - The applicant is introducing this type of facility for the first time to Northern Ireland. The emphasis is on high quality management. The high level of investment in premises, outfitting, machines and management precludes the old style of amusement centre or of an outlet reverting to that style. It also requires an accessible location in a major centre to justify the investment.
  - The appellant’s investment in Wellington Place will be in the region of £250,000 and the unit will employ about 10 people. The company plans to expand its operations creating 20 higher “spec” new units throughout the Province over the next 5 years.
- 7.2 Many of the points advanced on behalf of the appellant were already thoroughly aired during cross-examination of earlier witnesses. The essence of the balance of the case, including replies to questioning, may be summarised as follows.

- (1) A distinction was drawn between statutory policies (BUAP 2001, BCC Conservation Area, PPS1 and PPS5) and non-statutory policy and guidance (BCCV, DCAN1 and DGN8A), it being argued that the former carry greater weight.
- (2) The proposal accords with BUAP policy CC3. The plan does not have specific policies restricting non-retail uses within the Main Shopping Area and the appeal proposal has not been found to run counter to any other policies in the Plan.
- (3) PPS1 (paragraph 23) states the Department will seek to promote and retain mixed uses, particularly in town centres, and encourages them in areas accessible by public transport. The precautionary principle does not disturb the PPS1 presumption in favour of development except in cases where there is demonstrable harm to matters of acknowledged importance. A primary objective of the applicant is to develop a high quality frontage in keeping with the building's listed status and position in the conservation area in keeping with the quality initiative espoused in PPS1.
- (4) PPS5 paragraph 23 deals with proposals for non-retail uses in town centres and distinguishes between primary retail cores and the rest of town centres outside the core. The PPS does not rule out non-retail uses even within the primary retail core and has no objection to non-retail uses outside the core subject to individual assessment of each proposal. The proposal is supportive of many of the PPS5 policies and does not run counter to any of them.
- (5) The 1998 Conservation Area designation document makes no reference to amusement centre outlets but the Minister's foreword refers to "leisure activities" being part of a vibrant centre. The enhancement strategy aims to encourage "a variety of land uses including offices, retailing, cultural, recreational and residential". There is no policy objection to leisure/entertainment uses within the Conservation Area and it is recognised that the policies must allow for new and changing forms of commercial outlet.
- (6) Appendix II of the BCCCA document sets out various environmental objectives and development control guidelines. These include the advice that changes of use that are likely to have an adverse effect on land or buildings which contribute significantly to the character of the Conservation Area will not normally be permitted. The ground floor façade together with the advertisement had been designed to complement and enhance the building and the Georgian terrace in which it forms a part. Any reasonable amendment required by HMBC will be fully complied with. The existing insensitive façade will be replaced with a traditionally styled shop front complementing the character of the building and enhancing the appearance of the Georgian group. The proposed use is at least as appropriate as the previous hot food bar use and would be an environmental improvement by the elimination of litter, short term parking and cooking odours.
- (7) Well-established management techniques will prevent loitering occurring inside and outside the premises. The absence of amusement only machines, the provision of self-closing automatic doors and no external loudspeakers or playing of loud music inside will all contribute to ensuring that there will be no noise disturbance. The premises are likely to be open during normal shopping hours only but longer opening would not damage the amenity of the area. The operation will add to the attractions

and diversity of uses in the area and the high quality shop window display will contribute visual interest.

- (8) The proposal is considered to be in keeping with the policies and objectives of the Conservation Area and will in time become a welcome addition to the area.
  - (9) As regards the non-statutory policies, the proposal contributes positively to the policies and objectives of the BCCV document and DCAN1 does not present any basis in its guidance which would oppose the subject proposal.
  - (10) DGN8A followed from the Vision statement's land use policy section which wished to see non-retail uses within prime shopping streets, not prohibited but controlled so that their proliferation or grouping would not damage the retail character of the prime shopping streets. The DGN has grossly exceeded its remit in 4.3 by presuming to exclude all forms of amusement centre from the total main shopping area. There is no justification for this blanket ban and this was dealt with by the Commission in appeal 1997/A100 for 35 Ann Street.
  - (11) The Commission's attention is drawn to the appeal decisions allowing amusement centres at 5 High Street, Bangor (1995/A236), 1 Hibernia Street, Holywood (1996/A145) and 35 Ann Street (1997/A100) (Document "G"). The Commissioner in the Ann Street appeal referred to the "Twilight Zone" chain of amusement centres having been "granted permission in a number of key sites in shopping streets and conservation areas throughout the Province". The current proposal for the amusement with prizes variety of outlet had at least as strong a case as these appeal proposals which have been allowed.
  - (12) Document "H" provides a selection of appeal decisions in Great Britain illustrating that modern amusement centres, such as the one proposed in Wellington Place.
    - Can be sited within prime and secondary town centre retail frontages;
    - Can be sited within conservation areas and within listed buildings; and
    - Are looked upon as complementary and supporting retail and retail related activities in town centres.
  - (13) The appellant had not consulted an expert in the local property market to assess the impact of the appeal proposal. If the retail and office functions of neighbouring properties went down market and through lack of investment the area slipped from secondary to tertiary the disimprovement would detract from the Conservation Area.
  - (14) Since planning permission goes with the land there could be no assurance that the proposal would not be sold on but it was unlikely that a down market operation would be run in an expensive property. The company was not investing the amount of money it had in the property to close it.
- 7.3 When the question of planning conditions was canvassed, without prejudice to the principle, it was indicated that the appellant would regard the following restrictions as reasonable.

- A condition preventing gaming and amusements of a sessional nature.
- The retention of a shop window display.
- Arrangements preventing any view of the machines by passers-by outside the premises.

Since this was a city centre site a restriction on hours of opening was not applicable.

## **8.0 POST-HEARING SUBMISSION**

- 8.1 At the hearing, it emerged that subject to the submission of satisfactory drawings, the Department was not opposed to the details of the proposed ground floor façade and was confining the prosecution of its case to the principle of the change of use. The submitted drawing was criticised for lack of detail and I was asked to rule whether an amended drawing could be accepted in the absence of re-advertisement. It was conveyed to me that agreement was possible on the necessary amendments and I ruled that since it appeared that the overall impact of the amendments would be less than the original I did not see how any third party interests would be prejudiced if the appeals were determined on the basis of revised drawings.
- 8.2 On 24 November 1998 the Commission received four copies of drawing AW317WD01 together with an accompanying letter from the Department indicating that the revised details had been agreed by the Divisional Planning Office, Built Heritage and the appellant. A copy has been forwarded to the City Council for information.

## **9.0 CONSIDERATION**

- 9.1 At the hearing the Department's objection was shifted from a broader based concern with the use and the appearance of the building to focus more narrowly on the implications of the change of use on the retail and shopping related functions of the city centre and on the conservation area. In short, whilst the Department has conveyed its satisfaction with the revised details for the alterations and signage of the listed building, the principle of the change of use remains in contention.
- 9.2 From the evidence presented and my own observations I can confirm that, whilst it was agreed that this section of Wellington Place may be categorised as "a secondary retail location" its ambience is generally one of quality shopping. Moreover, the terrace 7-11 Wellington Place, which is singled out in the commentary and photographs on page 42 of the Conservation Area document, is closely intervisible with Donegall Square. One is therefore conscious that while this may not be prime frontage in retail terms, the location is a very sensitive one at the heart of the city. Given the importance of the site in civic shopping and conservation terms, the concerns of the Department and the City Council are readily understandable. It remains to be considered, however, whether these concerns are sufficiently well grounded having regard to the relevant policies and the other material considerations to outweigh the normal presumption in favour of granting planning permission (PPS1 paragraph 59).
- 9.3 The first matter of importance for the Commission to bear in mind is the duty under Article 50(5) of the Order for special attention to be paid to the desirability of preserving or

enhancing the character or appearance of BCC Conservation Area. This will be applicable in the consideration of the appeal generally and the second reason for refusal in particular.

- 9.4 Next, it is necessary to examine the hierarchy of policy and advisory documents in order to determine the weight that should be accorded to individual policies, guidance and advice.
- 9.5 PPS5 sets out the Department's policies for town centres and retail developments for all of Northern Ireland (paragraph 4) and will take precedence over existing development plans, in relation to retail planning policy and general principles for town centres (paragraph 9). The PPS, which underwent a process of widespread consultation, is rooted in Article 3 of the Order. The BUAP 2001 was prepared under Part III. Both policy and plan are therefore grounded in statute and are an important basis for deciding planning applications (PS5 paragraph 9). I consider the appellant was correct in drawing a distinction between statutory policies and non-statutory policy and guidance which carry less weight. BCCV was only published as a consultation document and DCAN1 is non-statutory and dated. DGN8A is non-statutory guidance issued in 1994, two years before the publication of PPS5. Some weight was accorded to this document in the Commission's determination of appeal 1997/A100, but it should be noted that the significance of PPS5 was not aired as an issue at that hearing.
- 9.6 Unlike the BUAP 2001, PPS5 includes general guidelines, within primary retail core areas, for the control of non-retail uses at ground floor level (paragraph 23). However, a primary core has not been defined for the city centre. Outside core areas proposals for leisure and entertainment are encouraged "where they contribute to the diversity and vitality of the centre" (paragraph 25). According to the PPS, the diversity of uses in town centres makes an important contribution to their vitality and viability. However, one has to take into account also the presumption in favour of development that would make a positive contribution to ensuring town centres continue to provide a focus for shopping (paragraph 22). Clearly, a proposed entertainment use which would prejudice and be a deterrent to investment in an area of the town centre would conflict with sustaining and enhancing the vitality and viability of town centres which is a general objective of the PPS (paragraph 5).
- 9.7 In addressing this balance, Commissioners will have noted that, except for the visual problems with the appellant's operations in Castle Street and North Street, the Department had no specific evidence that the proposal would adversely affect the retail functions of the area. In Wellington Place the enhanced façade and the shop window display would overcome the visual problem and, indeed, would effect a radical improvement over the current unsightly KFC presentation. I attach more significance to the evidence on behalf of the City Council, the essence of which is that, irrespective of the merits of the external aesthetics which were acknowledged:-
- There is a negative view of amusement centres in the retail and office property markets; and
  - An amusement centre at the appeal premises would create an adverse perception of the street in property terms and would be a deterrent to investment.
- 9.8 This expert evidence was not rebutted by evidence of similar standing on behalf of the appellants. However, considered in its entirety including replies to questioning, I have the following concerns with and observations regarding this evidence.

- Apart from an anecdotal reference to an incident in Cathedral Square, no evidence of actual negative impact by way of specific examples of reduced property values or deterrence of prospective tenants was provided.
- Similarly, no evidence of a specific nature was adduced to enable the Commission to compare the implications in property terms of continued hot food bar use of the premises with the appeal proposal.
- The acknowledgements that there is now a quality end of the amusement centre business addressing the requirements of a different market from the traditional arcades and that such an operator would seek a quality location are worthy of note.
- Given the absence to date of the new generation of amusement centres in Belfast the perception in the local property market is likely to have been largely influenced by the traditional arcades in marginal tertiary retail locations.
- The evidence that the pattern of rental growth in Wellington Place in recent years compared with prime city centre retail locations “reflects a certain fragility” lies uneasily with the evidence that recently the street has attracted very considerable investment.

- 9.9 All in all, I judge the CDC evidence insufficiently well grounded with specific arguments to provide a reasonably secure assessment of the implications of the appeal proposal in property terms on the commercial well-being of Wellington Place. Viewed in broader terms, I am not persuaded that the proposed change of use of itself would have a significant impact on the retail and office functions of this area of the city centre. Whilst the issue of precedent was argued, I believe the appellant is correct in pointing out that other applications would be judged on their merits including the implications of each in relation to cumulative impact.
- 9.10 The Department put considerable emphasis in its case on DGN8A and paragraph 4.3 in particular which indicates that amusement centres are unlikely to receive permission in the Main Shopping Area. The guidance note was issued on the foot of a concern with non-retail incursion in retail frontages in the consultative BCCV document. It has been overtaken by PPS5 which contains general guidelines for ground floor non-retail uses in core shopping areas. The appeal proposal is neither in a designated retail core nor, given its present use, does it involve a change to non-retail use. The statement in paragraph 4.3, which is specific to amusement centres is advisory in status and has to be weighed accordingly within the current policy framework for town centres which inter alia seeks to encourage diversity of uses in town centres.
- 9.11 DCAN1 issued in 1983 predates the broadening of the amusements business which has occurred in recent years and therefore is directed primarily at the traditional arcades and video game centres. The bad neighbour issues relating to residential areas, churches, schools etc do not apply in this case.
- 9.12 Taking all these factors together I am not persuaded that reason 01 has been sustained.
- 9.13 Turning to reason 02, setting aside the aesthetic merits of the proposal which it was agreed were positive, there was a more generally based objection that the amusement centre would be an inappropriate use in the Belfast City Centre Conservation Area recently in May 1998. The City Council was correct in drawing attention to the duty under Article 50 for special

attention to be paid to the desirability of preserving or enhancing the character or appearance of a conservation area. The matter of character raises issues wider than the external appearance of the proposal and land use characteristics are therefore relevant.

- 9.14 Based on the evidence, including the submitted drawings, I discern the appeal proposal as clearly distinguishable from the open fronted traditional arcade or video game centre characteristically relying on a garish overt presentation to the street often accompanied with the emission of intrusive noise. Internal activity is proposed to be enclosed from external view and the property will have a traditional shop front façade broadly complementary with the listed building. With self-closing doors and a lobby the activity and noise inside will be contained mainly in the building with minimal impact on passers-by. This has to be contrasted with the current carry-out restaurant use with its garish signage and general ambience of the conservation area and this listed Georgian terrace which is a significant landmark building in Wellington Place.
- 9.15 Mann L. J. in the Court of Appeal case of *SOS Env –v-South Lakeland District Council* (654 [1991] JPL) in interpreting the equivalent section to Article 50(5) said that the statutorily desirable object of preserving the character or appearance of an area was achieved either by a positive contribution to preservation or by development which leaves the character or appearance unharmed, that is to say, preserved.

In the case of the current appeal I would judge the implementation of the proposal as outlined at the hearing and specified in the amended drawings to represent a significant improvement in the appearance of the listed building and in conservation terms a preferable land use compared to the existing situation. Consequently, I would find it satisfying both the preserving and enhancing limbs of Article 50.

- 9.16 For the reasons I have outlined in 9.13-15 I conclude that the second reason for refusal cannot be sustained.

### **RECOMMENDATION**

- 9.17 I recommend that the appeal be allowed and that planning permission be granted for the change of use including a new ground floor façade subject to the following conditions.
- (1) Before the change of use hereby permitted is commenced the ground floor façade shall be constructed in accordance with the detailed proposals shown on drawing AW317WD01 received by the Commission on 24 November 1998.
  - (2) There shall be no gaming and amusements of a sessional nature and the premises shall be used only for the playing of amusement with prizes machines together with ancillary snack bar and ancillary retail sales.
  - (3) The use hereby permitted shall not commence until self-closing front doors have been installed and sound proofing carried out in accordance with a scheme to be submitted to and approved in writing by the Department.
  - (4) No music, public address system or any other amplified sound shall be used other than background music which is not to be audible outside the premises.
  - (5) The front windows of the premises shall at all times contain a display.

- (6) The development hereby permitted shall be begun before the expiration of 5 years from the date of this permission.

**G R B FARRINGTONDATE: 14 December 1998**



**List of Appearances**

Department of the Environment (NI):-	Mr P Hamill, Planning Service; Mr M Jeffries, Planning Service; and Mr A Turkington, Environment and Heritage Service.
Appellant:-	Mr D Morgan QC instructed by T G Menary & Co Solicitors, 19 Windsor Avenue, Lurgan, who called Mr J Casey, Urban and Rural Planning Associates; Mr A Wheeler, Chartered Architect; and Mr I Perris, Oasis Ltd.
Belfast City Council:-	Dr D Singleton, Chartered Town Planner; Mr P McNaney, Director of Legal Services; and Mr K Crothers, Chartered Surveyor.

**List of Documents**

Department of the Environment (NI):-	“A” Mr Hamill’s statement of evidence; “B” Land use survey; “C” Photographic appendix “D” Planning history map and schedule; “E” Loose photographs (2) of existing Joyland premises.
Appellant:-	“F” Mr Casey’s statement of evidence; “G” NI Planning Appeal Decision (1995/A236; 1996/A145; 1997/A100); “H” GB Planning Appeal Decisions 1993-1998; “I” Copy of letter dated 5 November 1998 from Buttery and Watson; “J” Mr Wheeler’s statement; “K” Mr Wheeler’s computer simulation and photographs; “L” 1:20 scale drawing of revised shopfront elevation (annotate) compared with KFC façade; “M” Planning permission (Z1945/85); listed building consent (Z/86/0509) and consent for advertisement (Z/1960/85) for KFC façade; “N” Mr Perris’s CV; and “O” Mr Perris’s statement
Belfast City Council:-	“P” Dr Singleton’s statement; “Q” Mr Crother’s statement.

**Post-hearing Submission (received 24 November 1998).**

Revised ground floor façade (drawing number AW317WD01) agreed between the Divisional Planning Office, Built Heritage and the appellant received under cover of a letter dated 24 November 1998.

## Appendix 6



**CARSON  
McDOWELL**

Carson McDowell LLP  
Murray House, Murray Street  
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DX 403 NR BELFAST

Tel: +44 (0)28 9024 4951  
Fax: +44 (0)28 9024 5768  
law@carson-mcdowell.com  
www.carson-mcdowell.com

Oasis Retail Services Limited  
Oasis House  
Mallusk Drive  
Newtownabbey  
BT36 4GX

Our ref: EC/AL/09486/0015  
Your ref:

20 May 2016

**RECORDED DELIVERY**

Dear Sirs

KX 8074 1169 6GB

Our Client: Project Goat Limited  
Premises: 17/23 North Street, Belfast

Please find enclosed Form 3 Notice under the Business Tenancies Order by way of service upon you.

Yours faithfully

Carson McDowell LLP  
emma.cooper@carson-mcdowell.com

FORM 3

BUSINESS TENANCIES (NORTHERN IRELAND) ORDER 1996  
(S.I. 1996/725 (N.I.5)) ("the Order")

**Landlord's Notice to Determine Business Tenancy  
under Article 6 of the Order**

Name and address of tenant: **Oasis Retail Services Limited, Oasis House, Mallusk Drive,  
Newtownabbey, BT36 4GX**.....

Premises situate at and known as: .

**19 North Street, Belfast situate on the ground floor of the building known as 17/23 North  
Street, Belfast**  
.....

Name and address of landlord: **Project Goat Limited, .....**

**49 Berkely Square, London, W1J 5AZ**.....

1. I/We hereby GIVE YOU NOTICE TERMINATING YOUR TENANCY  
ON THE DAY OF 200

2. I am/We are willing that the tenant should have a new  
tenancy on the following general terms:-

The property proposed to be comprised in the tenancy (being either the whole or part of the property  
comprised in the current tenancy) (*here state the property*):

**19 North Street, Belfast situate on the ground floor of the building known as 17/23 North  
Street, Belfast**

The proposed rent to be payable under the new tenancy:

**£17,500 per annum**

The proposed date of commencement and duration of the new tenancy:

**18 months from 1<sup>st</sup> April 2016**

The other terms of the new tenancy: .....

**..Same terms as the lease dated 1<sup>st</sup> October 1992 between A.S. & D Enterprises Limited (1)  
Joyland Amusements (NI) Limited (2)**  
.....  
.....  
.....  
.....

OR

2. I/We would oppose a tenancy application by the tenant on the following ground(s) mentioned in Article 12 of the Order:-

.....

.....

.....  
YOU SHOULD SEEK PROFESSIONAL ADVICE ON THIS NOTICE AS SOON AS POSSIBLE.

Your particular attention is drawn to Articles 6, 10, 12 and 13 and 14 to 15 of the Order

Signed  ..... Landlord/ Agent of landlord

Date 20 May 2015 .....

## Appendix 7



**APPROVAL OF PLANNING PERMISSION**

**Planning Act (Northern Ireland) 2011**

Application No: **LA04/2018/0098/F**

Date of Application: **14th December 2017**

Site of Proposed Development: **73-75 North Street  
Belfast  
BT1 1NL**

Description of Proposal: **Change of use from retail to amusement arcade and alterations to shop front**

Applicant: Oasis Retail Services Ltd  
Address: Oasis House  
Mallusk Drive  
Newtownabbey  
BT36 4GX

Agent: MBA Planning Ltd  
Address: 4 College House  
Citylink Business Park  
Belfast  
BT12 4HQ

Drawing Ref: 01, 02, 03, 04

The Council in pursuance of its powers under the above-mentioned Act, hereby

**GRANTS PLANNING PERMISSION**

for the above-mentioned development in accordance with your application subject to compliance with the following conditions which are imposed for the reasons stated:

1. The development hereby permitted shall be begun before the expiration of 5 years from the date of this permission.

Reason: As required by Section 61 of the Planning Act (Northern Ireland) 2011.

**Informatives**

1. **This approval should be read in conjunction with the Legal Agreement under Section 76 of the Planning Act (Northern Ireland) dated 13<sup>th</sup> April 2022.**





2. CLEAN NEIGHBOURHOODS AND ENVIRONMENT ACT (NORTHERN IRELAND)  
2011

The applicant is advised to ensure that all plant and equipment used in connection with the development is so situated, operated and maintained as to prevent the transmission of noise to nearby retail accommodation.

Should any unforeseen ground contamination be encountered during the development, and in order to protect human health, all works on the site should immediately cease. Belfast City Council should be informed and a full written risk assessment in line with current government guidance (Model Procedures for the Management of Land Contamination-CLR11) that details the nature of the risks and any necessary mitigation measures and verification (if required) should be prepared and submitted for appraisal.

3. AMUSEMENT PERMIT

In accordance with the Betting, Gaming, Lotteries and Amusement (Northern Ireland) Order 1985, the applicant must apply to Belfast City Council, Building Control for an application form to apply for an amusement permit.

4. The drawing refs referred to above correspond with those drawings submitted to the Authority in respect of this application and published to the Planning Portal NI on: 18/01/2018, Drawing Nos 01, 02, 03 and 04.

A handwritten signature in black ink, appearing to read 'Keri Bently'.

**Authorised Officer**

**Dated: 21<sup>st</sup> April 2022**



## Appendix 8

Chief Executives Department  
Building Control



Belfast  
City Council

Our reference:

Being dealt with by: Stephen Hewitt

Your reference:

Ext: 2435

Date: 9 April 2018

Belfast Planning Service  
The Cecil Ward Building  
4-10 Linenhall Street  
Belfast BT2 8BP

Dear Sirs

**Location:** 73-75 North Street, Belfast, BT1 1NL  
**Proposal:** Change of use to amusement arcade from retail use (relocation of existing amusement arcade from 19 North Street) and alterations to shop front.

The Service has assessed the above Planning application against the five criteria relating to the suitability of a location for an amusement arcade (that is for the granting of an amusement permit), given in the Council's Amusement Permit Policy which was adopted by Council on 1 May 2013.

The Policy, as agreed through formal consultation with DOE (NI) Planning, is now a material consideration for Planning Service in determining planning applications for amusement arcades in Belfast.

Our comments against each of the assessment criteria are as follows:

**(a) Retail vibrancy and viability of Belfast:**

This application involves the relocation of an existing amusement arcade on the same street, from 19 North Street to 73-75 North Street. The application site is a vacant retail unit, formerly occupied by Bannon's home furnishings.

The application premises are situated within the Belfast City Centre Retail Core as defined in the draft Belfast Metropolitan Area Plan 2015 (dBMAP). It is bordered on one side by an entrance to first floor offices and on the other by the 'Money Shop'. The proposal would not therefore break up a continuous shopping frontage.

However, the Council's Permit Policy indicates that, outside of renewal applications, there is a presumption against granting permits for amusement arcades in the Retail Core unless they are related to a major, retail-led mixed use development or an upper storey development. Viewed in this context the application runs contrary to the Council's Amusement Permit Policy.

Notwithstanding the above it is noted that the application relates to the relocation of an existing amusement arcade at 19 North Street, the necessity for which is linked to a wider regeneration

Stephen Hewitt  
Building Control Manager

Ian Harper  
Building Control Manager

Belfast City Council, Chief Executive's Department  
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INVESTORS  
IN PEOPLE

initiative for this northeastern part of the City Centre. This requirement to relocate may be a factor the Licensing Committee wish to consider should an application for an amusement permit be made to the Council.

***Does not comply with this criterion.***

**(b) Cumulative build-up of amusement arcades in a particular location:**

In addition to the existing Oasis Gaming Centre arcade at 19 North Street, which this application seeks to relocate, there is another amusement arcade located nearby at 13 North Street. In the desire to promote retailing in the City Centre the Council is keen to avoid a clustering of such uses at a given location. Whilst the proposed arcade at 73-75 North Street may be in the general vicinity of the existing premises at 13 North Street it is not located on the same commercial frontage as this existing arcade.

***Complies with this criterion.***

**(c) Impact on the image and profile of Belfast:**

The application premises have no neighbouring property which is a tourism asset, nor are they located at a Gateway location.

***Complies with this criterion.***

**(d) Proximity to residential use:**

(i) - predominantly residential in character

The application premises are located at ground-floor level, along the commercial frontage of North Street, where there is a mix of uses including cafes, restaurants, offices and retail units.

The application premises are located inside the Retail Core, and this area can therefore be viewed as a 'mixed use' area and not one that is predominantly residential in character.

(ii) – non-residential property that is immediately adjacent to residential property

There are no residential properties immediately adjacent to the premises.

***Complies with this criterion.***

**(e) Proximity to schools, youth centres, and residential institutions for vulnerable people:**

There are no schools, youth centres, or residential institutions for vulnerable people within 200m of the application premises.

***Complies with this criterion.***

Stephen Hewitt  
**Building Control Manager**

Ian Harper  
**Building Control Manager**

**Belfast City Council**, Chief Executive's Department  
Ground Floor, Cecil Ward Building, 4-10 Linenhall Street, Belfast BT2 8BP  
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## **Conclusion**

The Building Control Service considers that the application premises do not comply with all assessment criteria for the suitability of the location as laid down in Belfast City Council's Amusement Permit Policy.

As with any application for an amusement permit it will be considered on its own merits and it will be a matter for the Licensing Committee to take into account any matter which it deems relevant when assessing any application against the criteria laid down in the Policy.

Please do not hesitate to contact me should you require any further information.

Stephen Hewitt  
Building Control Manager

Stephen Hewitt  
**Building Control Manager**

Ian Harper  
**Building Control Manager**

**Belfast City Council**, Chief Executive's Department  
Ground Floor, Cecil Ward Building, 4-10 Linenhall Street, Belfast BT2 8BP  
DDI: 028 9027 0650 Fax: Email: [buildingcontrol@belfastcity.gov.uk](mailto:buildingcontrol@belfastcity.gov.uk)



## Committee Application

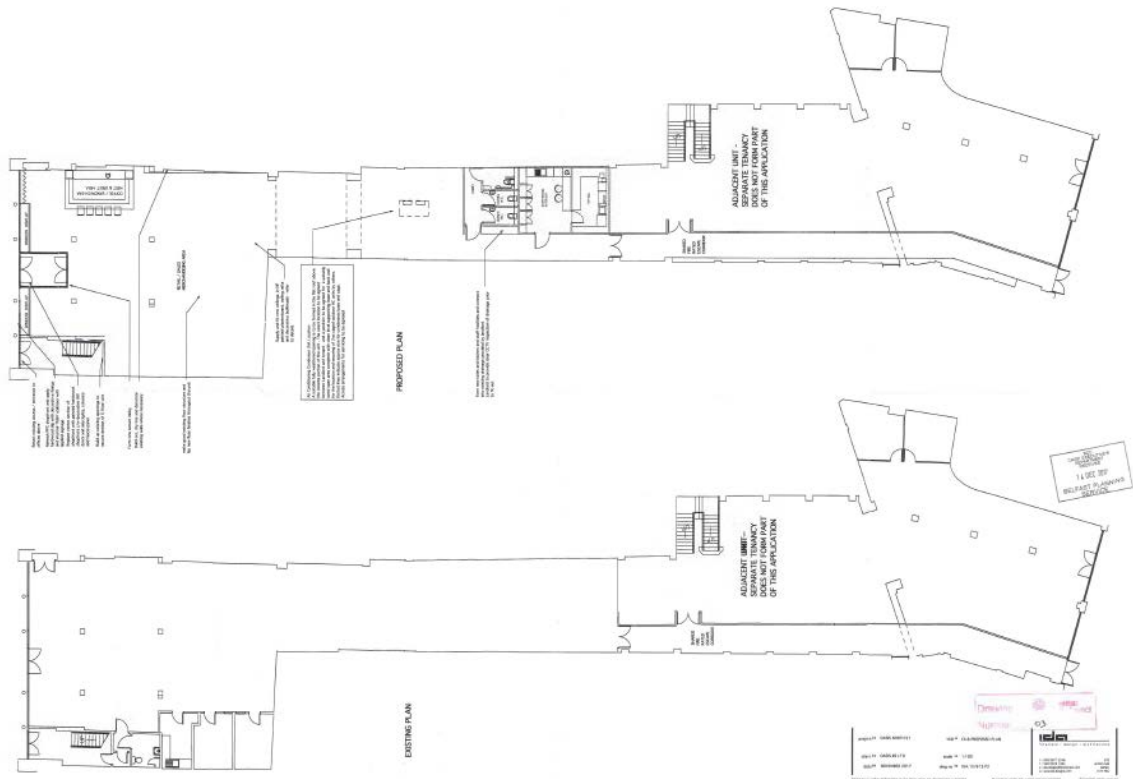
Development Management Report	
<b>Application ID:</b> LA04/2018/0098/F	<b>Date of Committee:</b> 17 April 2018
<b>Proposal:</b>  Change of use from retail to amusement arcade and alterations to shop front	<b>Location:</b>  73-75 North Street Belfast BT1 1NL
<b>Referral Route:</b> Amusement arcade	
<b>Recommendation:</b>	Approval
<b>Applicant Name and Address:</b>  Oasis Retail Services Ltd Oasis House Mallusk Drive Newtownabbey BT36 4GX	<b>Agent Name and Address:</b>  MBA Planning Ltd 4 College House Citylink Business Park Belfast BT12 4HQ
<b>Executive Summary:</b>  Full planning permission is sought for the change of use from retail to amusement arcade and alterations to shop front.  The key issues in assessment of the proposed development include: <ul style="list-style-type: none"> <li>The principle of an amusement arcade at this location</li> <li>Impact on amenity</li> <li>Impact on traffic flow</li> <li>Acceptability of elevation changes on Conservation Area</li> <li>Impact on the setting of listed buildings</li> </ul> <p>The site is located within the city development limits for Belfast as designated within the Draft Belfast Metropolitan Area Plan 2004. It falls within the Cathedral Conservation Area and is in the curtilage of a listed building.</p> <p>DfI Historic Environment Division, DfI Roads, BCC Environmental Health and BCC Building Control were consulted. There are no objections to the proposal.</p> <p>No representations were received.</p> <p><b>Recommendation</b></p> <p>It is recommended that the application is approved.</p>	

## Characteristics of the Site and Area

### 1.0 Description of Proposed Development

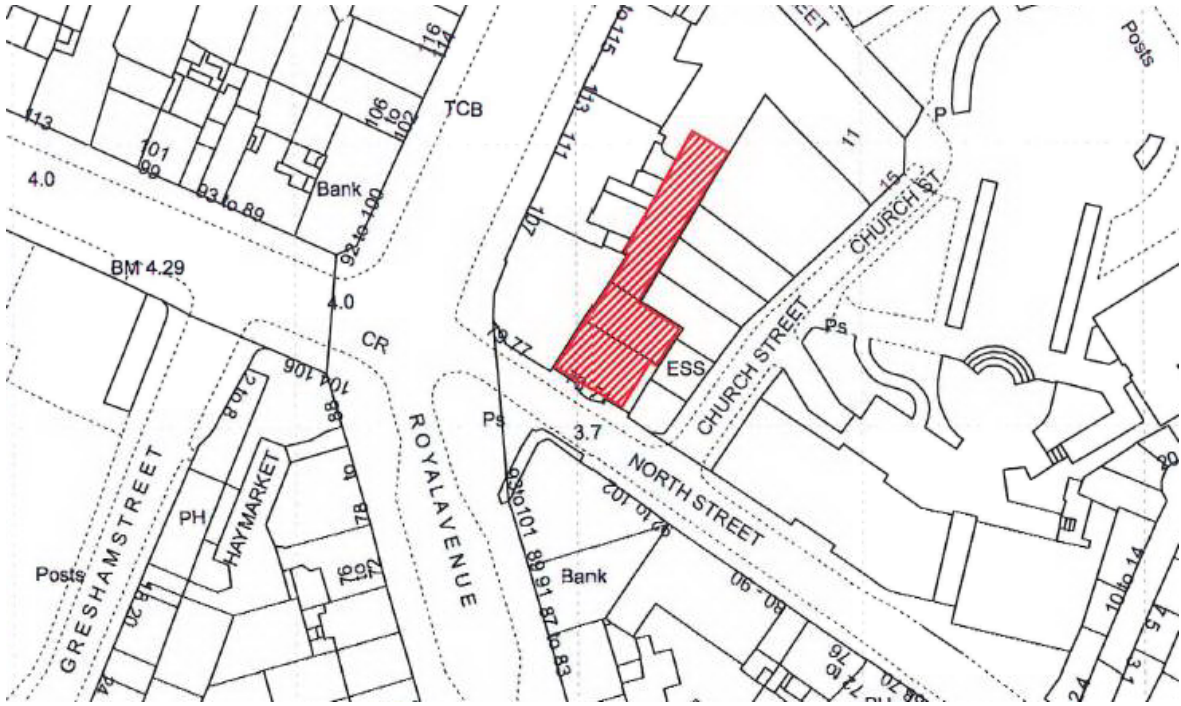
The proposal is for the change of use of the premises from retail an amusement arcade centre for persons of 18 years and over and is to include a lounge area, coffee making facilities, ancillary office space and toilet provision. It also includes alterations to the shop front.

### 1.1 Existing and Proposed Floor Plans



### 2.0 Description of Site

The site is located at 73-75 North Street, near the junction with Royal Avenue in Belfast City Centre. It consists of a 3-storey commercial building. The premises is currently vacant and was formerly in use as a furniture showroom. It falls within the Cathedral Conservation Area and is within the curtilage of a listed building. The character of the area is representative of the city centre, composed primarily of retail use.

2.1	<p><b>Site Location</b></p> 
<p><b>Planning Assessment of Policy and other Material Considerations</b></p>	
3.0	<p><b>Site History</b></p> <p>Z/1980/1718 - 71/73 LOWER NORTH STREET - SUB-DIVISION TO PROVIDE TWO SHOP UNITS - PERMISSION GRANTED</p> <p>Z/1987/2181 - 71/73 NORTH STREET - Refurbishment of shop/offices including new front façade - PERMISSION GRANTED</p> <p>Z/1991/2117 - 71/75 NORTH STREET - Erection of shop and offices - PERMISSION GRANTED</p> <p>Z/1992/2516 - 75 NORTH STREET - Reconstruction of a portion of existing building at rear - PERMISSION GRANTED</p> <p>Z/2010/1532/F – Demolition, redevelopment and part change of use of existing buildings to create mixed use development – PERMISSION GRANTED 11.10.12</p>
4.0	<p><b>Policy Framework</b></p>
4.1	<p>BUAP 2001  Draft Belfast Metropolitan Area Plan 2004  Version of Belfast Metropolitan Area Plan published 03.09.14  Strategic Planning Policy Statement (SPPS)  Planning Policy Statement 6: Planning, Archaeology and the Built Heritage</p> <ul style="list-style-type: none"> <li>- Policy BH11</li> <li>- Policy BH12</li> </ul> <p>DCAN 1: Amusement Centres</p>

<b>5.0</b>	<b>Statutory Consultees Responses</b>
5.1	None
<b>6.0</b>	<b>Non Statutory Consultees Responses</b>
6.1	BCC Environmental Health – no objection
6.2	BCC Conservation Officer – no objection
6.3	DfI Roads – no objection
6.4	DfC HED – no objection
<b>7.0</b>	<b>Representations</b>
7.1	The application has been neighbour notified and advertised in the local press. No comments have been received.
<b>8.0</b>	<b>Other Material Considerations</b>
8.1	None
<b>9.0</b>	<b>Assessment</b>
9.1	<u>Planning Policy</u>
9.2	Section 45 (1) of the Planning Act (Northern Ireland) 2011 requires regard to be had to the Development Plan, so far as material to the application and to any other material considerations. Section 6(4) states that where regard is to be had to the Development Plan, the determination must be made in accordance with the Plan unless material considerations indicate otherwise. The proposed site is located within the urban area of Belfast. The Belfast Metropolitan Area Plan 2015 (BMAP) has been quashed as a result of a judgement in the Court of Appeal delivered on 18th May 2017. As a consequence of this, the Belfast Urban Area Plan 2001 (BUAP) is now the statutory development plan for the area with draft BMAP remaining a material consideration.
9.3	<u>Principle of Amusement Arcade at Location</u>
9.4	Policy R1 of BMAP Plan Strategy refers to retailing in city and town centres. It states that non-retail development will be restricted in designated Primary Retail Cores (and Primary Retail Frontages) so that no more than 25% of the frontage of the shopping street(s) to which it relates is in non-retail use and no more than three adjacent units are in non-retail use.
9.5	According to the applicant, the proposed Oasis amusement arcade is relocating to the site from 19 North Street, which is to be demolished to facilitate the mixed use Royal Exchange development granted under Z/2010/1532/F. In this regard the proposal is not for a new amusement arcade but rather the relocation of an established facility. However, since planning permission runs with the land, a formal mechanism will be needed to make sure that the existing and proposed premises do not operate concurrently as amusement arcades. The applicant has been asked to put forward a mechanism. One option would be a Section 76 Planning Agreement to require that on first occupation of the new premises, the existing premises at 19 North Street shall not at any time be used as an amusement arcade.



	The recommendation of this report is subject to an appropriate mechanism being put in place.
9.6	<p>The retail composition of North Street currently falls below the 25% R1 threshold. The relocation of the non-retail use floorspace, subject to the appropriate mechanism, will therefore not materially harm the implementation of this policy. However, once the Royal Exchange scheme is implemented the amount of non-retail frontage on North Street will reduce considerably. It is therefore considered that there will be no harmful impact upon the retail character of the area by the proposed change of use.</p> <p><u>DCAN 1 Impact on Amenity/Character of Surroundings</u></p>
9.7	DCAN 1 states that the factors which call for consideration on a planning application for an amusement centre are its effects on the amenity and character of its surroundings, and its effects on road safety and traffic flow.
9.8	DCAN 1 states that the effects on amenity and the character of the surroundings depend on the location of the proposed amusement centre in relation to other development, its appearance, the kind of amusement to be provided, the noise likely to be produced and the hours of operation. As regards the location, amusement centres are not normally acceptable near residential property nor are they good neighbours for schools, churches, hospitals, or hotels. They are out of place in conservation areas or other places of special architectural or historic interest, except perhaps where these cover a really wide area. In areas where one amusement centre may not be out of place, it would be permissible to take into account the effect of larger numbers on the character of a neighbourhood.
9.9	The proposed location for the amusement centre is near to the retail core of Royal Avenue and adjacent to a mixture of uses including commercial offices, cafes and restaurants. There is no residential use in the immediate vicinity. Both the University of Ulster Belfast campus and St Anne's Cathedral are considered sufficiently distanced from the site to be affected by the proposal. While the site does fall within a Conservation Area as there are no significant changes to the appearance of the building it is not considered that there will be any adverse impact on the character of the area.
9.10	The Council's Environmental Health Unit was consulted for comments about the proposal in terms of potential adverse impact due to excessive noise etc. It has no objection to the proposal.
9.1	<u>Impact on Traffic Flow</u>
9.12	DCAN 1 states that consideration is called for where the premises front onto a busy traffic route or are near an awkward road junction, or are so sited that many visitors arriving on foot will have to cross a busy road or use an inadequate footway.
9.13	The site is located at the top end of a one way street and near to the pedestrianised part of Royal Avenue. It is not considered that customers of the premises would be in any excessive danger in accessing the venue.
9.14	No dedicated parking is provided within the scheme. The site will rely on street parking and the multi-storey provision in nearby facilities such as Castlecourt and Hi-Park. It is considered that these car parks will provide ample parking provision for staff and customers of the premises, which is in a central location.
9.15	DfI Roads was consulted about the proposal and have no objection.

9.16	<u>Acceptability of Elevation Changes on Conservation Area</u>
9.17	<p>The proposed shopfront alterations comprise a painted hardwood shopfront with decorative hardwood doors, side lights, columns and fascia panel. The Council's Conservation Officer was consulted for comment and advised:</p> <p><i>The host building dates from 1992-93 and is of limited architectural / historic merit.</i></p> <p><i>The existing building – like it or not – is an architecturally unified composition – governed by a single design idea.</i></p> <p><i>A traditional style / Victorian shopfront is therefore somewhat contrary to visual and architectural unity – it is contextually inappropriate to the host building.</i></p> <p><i>However it is appropriate to the area and contributes to the reading of the area in legibility terms as being a Victorian / Edwardian commercial district.</i></p> <p><i>It also provides a distinctive base to the building and is keeping with the traditional architectural paradigm of horizontal subdivision of facades into base, middle and attic. In this respect it would be better to extend the treatment to the final bay of the ground floor – i.e. as per the character of the Conservation Area – in part ascribed by buildings with visually unified bases – it would be preferable if the treatment was extended to the entirety of the base of the building.</i></p> <p><i>Therefore, subject to this, on balance in my opinion the proposal is acceptable in terms of the wider character of the Conservation Area.</i></p>
9.18	The proposed alterations to the shopfront are considered acceptable and compliant with BH 12 of PPS6. As the proposed alterations are minor and do not involve any structural demolition there is no requirement for additional conservation area consent.
9.19	<u>Impact on Setting of a Listed Building</u>
9.20	Historic Environment Division (HED) was consulted to consider whether the application for 73-75 North Street, Belfast affects HB26/50/068 103-107 Royal Avenue & 77-79 North Street, Belfast a Grade B1 listed building of special architectural or historic interest as set out in Section 80 and protected under the Planning Act (NI) 2011. It responded that it is content with the change of use and with the alterations to the shop. The proposal is therefore considered compliant with Policy BH11 of PPS6 – Development Affecting the Setting of a Listed Building.
9.21	<u>Building Control Consultation</u>
9.22	The Council's Amusement Permit Policy is a material consideration in determining applications for amusement arcades in Belfast. Amusement Permits are issued by the Council's Building Control (BC) section. In its consultation response BC advised that the proposal does not comply with the assessment criteria relating to retail vibrancy and regeneration of Belfast. The proposal did, however, comply with the criteria relating to the cumulative build-up of amusement arcades in a particular location, the impact on the image and profile of Belfast, proximity to residential use and proximity to schools, youth centres and residential institutions for vulnerable people.
9.23	BC advised that should an Amusement Permit application come before the Licensing Committee, consideration will be given to the fact that the application relates to the relocation of an existing amusement arcade at 19 North Street and that it will be a matter for

	the Licensing Committee to take into account any matter which it deems relevant when assessing any application against the criteria laid down in the Policy.
9.24	Having considered the Amusement Permit Policy, in view of the planning issues taken into account under the SPPS and DCAN 1, it is considered that the proposal is acceptable, provided that a mechanism is put in place to ensure that the existing and proposed amusement arcade premises do not operate concurrently.
9.25	<u>Conclusion</u>
9.26	Subject to a mechanism to ensure that the existing and proposed premises do not concurrently operate as amusement arcades, the proposed change of use to amusement arcade and external alterations are considered acceptable. Delegated authority is sought for the Director of Planning and Place to approve the application subject to conditions and the appropriate mechanism being put in place.
<b>10.0</b>	<b>Summary of Recommendation: Approval</b>
<b>11.0</b>	<p><b>Conditions</b></p> <ol style="list-style-type: none"> <li>1. The development hereby permitted shall be begun before the expiration of 5 years from the date of this permission.</li> </ol> <p>Reason: As required by Section 61 of the Planning Act (Northern Ireland) 2011.</p> <p><b>Informatives</b></p> <ol style="list-style-type: none"> <li>1. CLEAN NEIGHBOURHOODS AND ENVIRONMENT ACT (NORTHERN IRELAND) 2011</li> </ol> <p>The applicant is advised to ensure that all plant and equipment used in connection with the development is so situated, operated and maintained as to prevent the transmission of noise to nearby retail accommodation.</p> <p>Should any unforeseen ground contamination be encountered during the development, and in order to protect human health, all works on the site should immediately cease. Belfast City Council should be informed and a full written risk assessment in line with current government guidance (Model Procedures for the Management of Land Contamination-CLR11) that details the nature of the risks and any necessary mitigation measures and verification (if required) should be prepared and submitted for appraisal.</p> <ol style="list-style-type: none"> <li>2. AMUSEMENT PERMIT</li> </ol> <p>In accordance with the Betting, Gaming, Lotteries and Amusement (Northern Ireland) Order 1985, the applicant must apply to Belfast City Council, Building Control for an application form to apply for an amusement permit.</p>

<b>Notification to Department (if relevant)</b>
N/A
<b>Representations from Elected members:</b>
N/A

## Appendix 9

Neutral Citation No: [2018] NICA 32

Ref: DEE10675

*Judgment: approved by the Court for handing down  
(subject to editorial corrections)\**

*Delivered: 24/9/2018*

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

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2014 No 62897/01/A01

BETWEEN:

OASIS RETAIL SERVICES LIMITED

Appellant;

-and-

BELFAST CITY COUNCIL

Respondent.

BELFAST LEISURE COMPANY LIMITED

First Notice Party;

-and-

HAZELDENE ENTERPRISES LIMITED

Second Notice Party.

IN THE MATTER OF AN APPLICATION BY OASIS RETAIL SERVICES  
LIMITED FOR LEAVE TO APPLY FOR JUDICIAL REVIEW IN RESPECT OF A  
DECISION MADE BY THE BELFAST CITY COUNCIL (LICENSING  
COMMITTEE) ON 14 MARCH 2014 GRANTING AN AMUSEMENT PERMIT  
TO BELFAST LEISURE COMPANY LIMITED AT 24/28 BRADBURY PLACE,  
BELFAST

AND IN THE MATTER OF AN APPLICATION BY OASIS RETAIL SERVICES  
LIMITED FOR JUDICIAL REVIEW OF A DECISION MADE BY BELFAST CITY  
COUNCIL (LICENSING COMMITTEE) ON 6 OCTOBER 2014 GRANTING AN  
AMUSEMENT PERMIT TO HAZELDENE ENTERPRISES LIMITED FOR  
PREMISES AT 25/41 BOTANIC AVENUE, BELFAST

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Before: Sir John Gillen, Deeny LJ & Treacy LJ

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## **DEENY LJ (delivering the judgment of the court)**

[1] This is an appeal by Oasis Retail Services Limited (“Oasis”) against the judgment and orders of Maguire J dated 13 January 2017. That judgment related to two different decisions of the Licensing Committee of Belfast City Council (“the Council”) granting amusement permits in respect of two quite different applications but in the same area of Belfast.

[2] The first application of Oasis was filed with an Order 53 statement on 17 June 2014. The Order 53 statement records that Oasis is “a company owning and operating 13 amusement arcades in Northern Ireland. Included in this number are premises at the corner of Nos. 1-7 Donegall Road and 14 Shaftesbury Square in Belfast. The applicant has been operating amusement arcades since 1968.” Oasis sought an order of certiorari to bring into the High Court and quash the decision of the Council dated 19 March 2014 to provisionally grant an amusement permit to “Mavericks” a trading name for Belfast Leisure Company Limited for premises at 24-28 Bradbury Place, Belfast which is stated to be about 80 metres from the appellant’s premises identified above.

[3] On 27 November 2014 Oasis brought a further application for leave pursuant to Order 53 with regard to the decision of the same Committee and Council to grant an amusement permit on 6 October 2015 to Hazeldene Enterprises Limited (Hazeldene). This was in respect of premises at 25-41 Botanic Avenue, Belfast, the former Arts Theatre. It was said to be two minutes from the appellant’s premises and again certiorari was sought.

[4] These two leave applications were adjourned a number of times and then ultimately listed before Maguire J together on a rolled up basis i.e. he would decide whether leave should be granted for judicial review in either case and, if leave was granted, whether the court should grant the relief sought. On 13 January 2017 the judge upheld the decision of the Council with regard to Bradbury Place and refused leave to apply for judicial review in respect of that permission on the ground of delay on the part of Oasis.

[5] The judge did grant leave to apply for judicial review in respect of the Botanic Avenue permission but dismissed the challenge substantively saying the following at [101] (iii):

“The court simply is not satisfied that the respondent failed to consider the issue of the impact of cumulative impact/proliferation of permits in relation to the character and amenity of the area or the issue of the fitness of the second respondent to hold a permit. The ancillary issues referred to above,

such as the failure to grant an adjournment, are also dismissed.”

[6] The judge went on to indicate that he would have substantially have decided the Bradbury case in the same way even if there had been no delay.

[7] Oasis appeals both of these decisions and the consequent orders to this court. Before us the appellant was represented by Liam McCollum QC with Hugh O'Connor. The respondent was represented by David Scoffield QC with Ms Denise Kiley. The first named notice party was represented by Philip McAteer and the second named notice party by Stewart Beattie QC. We are obliged to counsel for their learned oral and written submissions.

### **Statutory and policy background**

[8] The statutory and policy background to these two amusement permits is admirably set out by Maguire J in his learned judgment. We are content to set out what he said in this connection.

“[4] The statutory regime at issue in these proceedings is that relating to the power of the respondent to grant or refuse amusement permits. This is governed by the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985 (“the 1985 Order”). Articles 109-121 deal specifically with amusement permits. Article 111 of the 1995 Order outlines the process for making an application for an amusement permit. Article 111(2) provides:

‘Subject to paragraphs (3) to (4B), where an application is made for the grant of an amusement permit, the district council, after hearing representations, if any, from the sub-divisional commander upon whom notice is required by paragraph (1) to be served, -

- (a) may grant the amusement permit; or
- (b) may refuse to grant the amusement permit.’



Paragraph 3 of Article 111 outlines the circumstances in which a district council shall refuse an application for a grant of a permit. It provides:

‘A district council shall refuse an application for the grant of an amusement permit, unless it is satisfied

–

- (a) in a case where there is in force a resolution passed by the council as mentioned in Article 110 (2) (a) or (b) which is applicable to the premises to which the application relates, that the grant of the permit will not contravene that resolution; and
- (b) that the applicant is a fit person to hold an amusement permit; and
- (c) that the applicant will not allow the business proposed to be carried on under the amusement permit to be managed by, or carried on for the benefit of, a person other than the applicant who would himself be refused the grant of an amusement permit; and
- (d) [repealed]
- (e) that, where the application is for the grant of an amusement permit for the purposes of Article 108 (1) (ca), the premises for which the permit is sought are premises used wholly or mainly for the provision of amusements by means of gaming machines.’

[5] Notably –

- (i) There is no statutory obligation requiring the decision maker to consider the effect of a grant of a permit on the surrounding neighbourhood;
- (ii) There is no provision requiring the decision maker to consider the issue of adequacy of demand for premises of this type in the locality – a requirement commonly found in other licencing schemes.

### The Respondent's Policy

[6] The respondent on or about 1 May 2013 put in place what it describes as its Amusement Permit Policy ('the policy'). It runs to some 15 pages. This notes that applicants for permits are normally required to first obtain planning permission for an amusement arcade before applying for an amusement permit. The policy is described as designed 'to serve as a guide for Elected Members, Council officers, applicants and the wider public on applications for amusement permits in the Belfast City Council area'. The idea behind the policy is to introduce greater clarity, transparency and consistency to the decision making process.

[7] The policy notes that the ground it occupies overlaps in terms of many of the issues, such as location, structure, character and effect on neighbours, with planning considerations. While the council would be slow to differ from the views of the planning authority, it was entitled to do so and was not bound to accept the decision of the authority. The policy outlines five criteria which the council will typically consider when assessing the suitability of a location for a proposed amusement arcade. Nonetheless, it is indicated that the council will take into account any matter which it deems relevant. Moreover, it is stated in the policy that '[t]he Council may also depart from the policy where it appears appropriate or necessary, although it is envisaged that this will only happen in exceptional circumstances'.

[8] The objectives of the policy are stated to be to:

- ‘1. Promote the retail vibrancy and regeneration of Belfast.
2. Enhance the tourism and cultural appeal of Belfast by protecting the image and built heritage.
3. Support and safeguard residential communities in Belfast.
4. Protect children and vulnerable persons from being harmed or exploited by gambling.
5. Respect the need to prevent gambling from being a source of crime and disorder.’

[9] To meet the above objectives the Council when determining applications will assess each application on its own merits. However, in particular, regard will be had to the legal requirements of the 1985 Order. Four matters in this connection are referred to in the policy. The first encompasses the character, reputation and financial standing of the applicant. The second relates to the nature of the premises and the activity proposed. The third involves consideration of the opinion of the police. The fourth requires consideration of the submissions from the general public. Under each of these heads, the policy contains passages dealing with justification and clarification. Unsurprisingly, the first factor has the aim of ensuring that players are protected from illegal or unscrupulous operators. As regards the second, specific reference is made to ensuring that the nature of the premises proposed is appropriate for the location in question. This is said to involve “careful consideration of the following matters: how premises are illuminated; the form of advertising and window display; and how notices are displayed on the premises”. The aim is to ensure that the premises do not openly encourage gambling. In relation to the third factor, the view of the police is said to command significant weight both as to the assessment of the

applicant and as to the location of the premises. The suitability of the area for an amusement arcade is expressly a matter on which the police view is to be ascertained. It is envisaged that the police opinion would be expressed by the completion of a short questionnaire on the applicant and the premises. Taking into account the views of the public, the fourth factor, is said to be consonant with the process of advertising the receipt of applications in the press with a view to enabling those who wish to respond to do so. Reference is made to the council carefully considering submissions received, 'from neighbouring properties ... residents, businesses or any other interested party'.

[10] The criteria for assessing the suitability of a location are, under the policy, five-fold. The following will typically be used in the assessment:

- (a) The impact on the retail vitality and viability of Belfast City.
- (b) The cumulative build-up of amusement arcades in a particular location.
- (c) The impact on the image and profile of Belfast.
- (d) The proximity to residential use.
- (e) The proximity to schools, youth centres and residential institutions for vulnerable people.

[11] Each of the above criteria is in the policy explained in more detail. Applications affecting the retail vitality and viability of Belfast City Centre are subject to strict control. It is unnecessary to say more about this as neither of the applications with which the court is concerned fall into this category. Under the heading of cumulative build-up, it is stated that 'the Council will limit the number of amusement permits it grants to one per shopping or commercial frontage and one per shopping centre'. This is reinforced by the statement in the policy that 'where this number of permits has already been granted, or exceeded, no more amusement permits will be

considered'. By way of justification and/or clarification, the policy indicates that as the council wish to promote retailing, it is anxious to avoid a cumulative build-up or clustering of amusement arcades in a particular location. Some definition is given in the policy as to what a shopping or commercial frontage amounts to. It can, the policy explains, be defined as 'a group of mainly ground-floor businesses that shares a continuous frontage and which is usually separated from other frontages by a different road or street name'. Reference is also made to a Planning Guidance Note DCAN 1 which refers to the need to consider the cumulative impact in terms of taking into account the effect of large numbers on the character of the neighbourhood as well as to PPS 5 on Retailing and Town Centres which refers to a requirement to avoid a 'clustering' of non-retail uses. The other three criteria in the list above are all largely self-explanatory. Under (c) *supra* it is stated that amusement permits would not be granted at locations that are regarded as tourism assets or as gateway locations in Belfast City Centre. In respect of (d) in the list reference is made to the council seeking to prevent amusement arcades opening in predominantly residential areas. Finally, as regards criterion (e), it is noted that the council believes that a precautionary approach is required in respect of applications made near locations where children, young persons and vulnerable people congregate.

[15] DCAN1 is a document which was promulgated by the Department of the Environment for Northern Ireland in 1983. It relates to the subject of Amusement Centres and provides planning advice and guidance. It consists of some 9 paragraphs. At paragraph 3 it refers to factors which call for consideration on a planning application for an amusement centre. The first factor mentioned is 'its effects on the amenity and character of its surroundings'. This is expanded on at paragraph 4 where reference is made to such effects which are described as diverse. The relevant passage goes on:

‘They will usually depend on the location of the proposed amusement centre in relation to other development, its appearance, the kind of amusements to be provided, the noise likely to be produced and the hours of operation’. Later in the same paragraph it is commented that “[i]n areas where one amusement centre may not be out of place, it would be permissible to take into account the effect of larger numbers on the character of a neighbourhood”. At paragraph 5, in the context of towns where there is no provision for areas for amusement or entertainment, the advice note goes on “amusement centres are usually best sited in districts of mixed commercial development’.”

## **Grounds of appeal**

[9] The appellant’s grounds of appeal are as follows:

[10] The principal ground of appeal was that the Council had been wrongly advised by officials and an expert retained by them as to the correct interpretation of the Council’s policy to avoid cumulative build-up of amusement arcades in a particular location. The appellant contended that the Committee had been misled by being told that this criterion was complied with because: “there are no other amusement arcades on this commercial frontage”. That was a report of Suzanne McCreesh, Senior Council Environmental Health Officer, dated 4 September 2013, (page 68, trial bundle 1) dealing with criterion 2 of the policy. It was contended that the Council had received such erroneous advice at both the Bradbury hearing and at the Botanic hearing.

[11] The judge saw that there was force in this application and concluded that the interpretation of the policy put forward by Oasis was the correct one i.e. that it could not be properly limited to a consideration of whether or not there was already an arcade on a commercial frontage. But he concluded at [91] that he was not persuaded “that it has been established on the balance of probability that the committee members failed to consider the case of the objector which was put to them in relation to the proliferation of permits and the accumulative build-up of permitted premises in the area. In the Bradbury case they had been addressed by a planning consultant. In the Botanic case they had been addressed by senior counsel. The court has no reason to believe that the members of the committee would either not have been interested in the submissions made to them or could not appreciate the

disadvantages which might arise in an area where the number of permits was proliferating. On the other hand it is not difficult to understand that the committee, while fully appreciating that in an area like this where there may exist evidence of a clustering of permits, might take the view that, in itself, this would not necessarily be fatal to an application for a further permit as the area may nonetheless be viewed as a mixed one not unsuitable for such activity. “

[12] With regard to the Botanic application only Oasis in its written skeleton argument emphasised the number of machines which were to be operated at the Botanic premises, if permitted. Oasis submitted that this issue of the numbers of the machines in a particular arcade was a material consideration, relevant to the decision of the Council but which had not been taken into account by it.

[13] Thirdly, and again relating only to the Botanic permission, Oasis contended that there had been procedural unfairness and bias in the hearing of the application in this regard on 6 October 2014. They were critical of a report which had been furnished to the Council. They said that their complaint of the unfitness of the application was not properly dealt with. The planning consultant was excluded from the meeting because they were only allowed three persons whereas five persons on behalf of the applicant were allowed into the hearing. Most importantly they complain that, contrary to a timetable which had been set up in advance the applicant, Hazeldene, had been permitted to produce “a whole series of surveillance reports” on a number of the objector’s premises at the last minute. Oasis sought but was refused an adjournment on this ground. Other matters were not pursued before us.

[14] It is convenient to deal with these three issues separately. In the case of each the court has taken into account the submissions of the applicant and of the respondents and the judgment of the court below.

[15] The court must also take into account with regard to the Bradbury Place appeal the finding of the learned judge that there was delay on the part of the then objector, Oasis, which separately grounded a refusal of its judicial review application.

### **Cumulative impact**

[16] A central thrust of the submissions of the appellant and Mr McCollum’s skilful exegesis of the policy and history of the matter, was that the Committee took into account an erroneous understanding of one of their five key criteria. They failed, in his submission, to appreciate that they had to consider the cumulative impact of the number and scale of additional permissions for amusement arcades. To put it another way they unlawfully fettered their discretion because they were, wrongly, advised as to the proper application of the policy. Support for his contention is to be found at several places in the papers. The minutes of the Special

Licensing Committee meeting held on Monday 6 October 2014 are to be found at trial bundle 2 pages 166ff. The Report of Council officers to the Committee is set out in extenso in the minutes.

[17] That report correctly records at para 2.34 that the Council in determining applications for amusement permits may take into account planning considerations but should be slow to differ from the views of the planning authority. The report goes on to address the five criteria in the Council's own policy which fell to be applied by the Committee on behalf of the Council.

At 2.39 we find the following.

“(b) Cumulative build-up of amusement arcades in a particular location: there are no other amusement arcades on this commercial frontage.

*Complies with this criteria.”*(sic) (emphasis added)

[18] The learned judge found at paragraphs [78] to [86] of his judgment that this was a misstatement of the policy. The presence or otherwise of another amusement arcade on a commercial frontage was a factor within assessing cumulative build-up but the reference to the Council was a strong one “which could be viewed as limiting criterion two and giving it a meaning restricting its application to the one per street frontage situation. The judge concluded that the policy, properly interpreted, required the issuing of the proliferation of permits and the effect of the same on the character and amenity of area to be more broadly considered.

[19] Having made that finding the judge proceeded to consider “whether the cumulative build up in the sense referred to by the court was considered by the respondent in these cases”. It is not now in dispute that the judge's view of the policy was correct. He was therefore required to consider whether the Council had been alerted to a correct view out of one of its own five criteria.

[20] He proceeded to consider that at paragraphs [87] to [91] and concluded that the court had not been persuaded on the balance of probabilities “that the Committee members failed to consider the case of the objector which was put to them in relation to the proliferation of permits and the accumulative build-up of permitted premises in the area”.

[21] With great respect, however, what the judge did not do was consider the other side of the coin - whether the Council Committee had taken into account a wrong interpretation of its policy constituting an irrelevant or improper consideration.

[22] If we go back to the *fons et origo* of modern judicial review, *Associated Provincial Picture Houses Limited v Wednesbury Corporation* [1947] 2 AER 680 one will



see that this is a necessary factor for the court to take into account. I quote from Lord Greene MR at page 682F:

“When an executive discretion is entrusted by Parliament to a local authority, what purports to be an exercise of that discretion can only be challenged in the courts in a very limited class of case. It must always be remembered that the court is not a court of appeal. The law recognises certain principles on which the discretion must be exercised, but within the four corners of those principles the discretion is an absolute one and cannot be questioned in any court of law.

What, then, are those principles? They are perfectly well understood. The exercise of such discretion must be a real exercise of the discretion. If, in the statute conferring the discretion, there is to be found, expressly or by implication, matters to which the authority exercising the discretion ought to have regard, then, in exercising the discretion, they must have regard to those matters. Conversely, if the nature of the subject-matter and the general interpretation of the Act make it clear that certain matters would not be germane to the matter in question, they must disregard those matters. Expressions have been used in cases where the powers of local authorities came to be considered relating to the sort of thing that may give rise to interference by the court. ... For instance, a person entrusted with discretion must direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to the matter that he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting ‘unreasonably’.”

[23] In this case we know that the Council was misled by its own advisers as to the meaning of one of its five key criteria. To lead to a quashing of the decision such an irrelevant consideration need not be the sole or dominant influence on the decision provided it is material and substantial: *De Smith Woolf and Jowell Judicial Review* 6-086 (1993): that is trite law. The correct question was not whether the Committee had also had the benefit, as the judge found, of the opinions of the planning consultant and the senior counsel acting for Oasis and the availability of location maps and

other information. The question was whether following the misleading opinion provided in writing to the Committee that was corrected at their meeting so that they correctly understood their own policy when they came to make a decision. As pointed out above the decision was not unanimous, certainly in the Botanic case.

[24] One therefore must look to see whether there was material to reach such a conclusion i.e. that the irrelevant and improper consideration had been excluded from their consideration as well as consideration given to the correct view of the policy advanced on behalf of the applicants.

[25] There is nothing in the judge's findings to justify such a conclusion. On the contrary he points out that the respondent did not in advance of the hearing before him file affidavit evidence, for example by the chairperson of the Committee, on the very point the court was now considering. Equally well he points out that the minutes of the respective meetings could have dealt with the issue but did not notwithstanding its obvious importance to the objector.

“While the court has read the affidavits of Mr Hewitt and Mr Downey filed by the respondent in this case they do not deal in a substantial way with a deliberative stage of the decision-making process”.

Given the judge's finding to that effect on a correct view of the law that is an end of the matter. He has found that an irrelevant and improper consideration i.e. the erroneous version of their policy recommended to them by their expert planner was put before them. It would be extraordinary if that did not carry weight with some or all of the Committee. They are, presumably, lay people in this regard and entitled, indeed obliged, to give weight to the expert advice they received. They were told, wrongly, that the cumulative impact criterion was met because there was no other arcade in the frontage. The judge did not find that there was evidence on the balance of probabilities that they had been disabused of that.

[26] We have taken into account the lucid submissions of Mr Scofield QC for the Council. To a large extent they echoed the findings of the judge as summarised above and to be found in his judgment.

[27] One of the points relied on there is that the witness for Oasis, Ms Diana Thompson of MBA, a leading planning consultant correctly stated the law to them, as Mr McCollum QC did in the Botanic hearing. However one cannot expect the Council's Committee to have concluded that those two persons retained by the objector were right and the advice they themselves were getting from neutral officials and a planner was wrong. There would have really had to have been a minute, as the judge said, or an affidavit from the Committee to prove such a conclusion.

[28] A development control office's professional planning report was drawn to our attention, signed by Mr P Kelly, relating to this application. But it was disputed that that report was before the Committee. Consequent to the hearing confirmation of what was before the Committee was sought. Initially the City Council offered to provide an affidavit setting that out. They then withdrew that offer. This court directed that it did require an affidavit verifying what was before the Committee at the two applications. Through some breakdown in communication this direction was not actually complied with until Ms Nora Largey, on behalf of the City Council, swore an affidavit received by the court on 14 June 2018. It then transpired that the control officer's report included in the papers before the Committee related to a completely different application at 22 Shaftesbury Square. The report by P Kelly (which did not repeat the error about cumulative impact) was not before the Committee. Mr Scofield also sought to rely on the affidavit of Dr Tony Quinn, of Braniff Associates, a planning consultant who was advising the Council. He admits at paragraph 15 that, as recorded in the minutes, the way in which he approached it was to deal with the restriction of one arcade per commercial frontage or shopping centre. At paragraph 19 he asserts that cumulative build up "was considered within the context of all the criteria stated in the permit policy, together with other considerations brought before the Council, including those raised by objectors".

[29] The need for wider consideration partly stems from the Department's advice note DCAN1. At paragraph 22 Dr Quinn says:

"I do not accept that there is a requirement for me to specifically direct councillors of the Licensing Committee to the contents of an advice note prepared by and intended for use by the planning authority."

At paragraph 27 he says:

"In my experience I have never encountered a situation when DOE planning restricted the number of amusement centres on the basis of concerns for cumulative build up."

It is clear therefore that Dr Quinn was not, at the time of the hearing before Maguire J, resiling from his earlier erroneous view of the Department's policy. He was defending it.

[31] The conclusion that the Council's officers had not resiled from their earlier erroneous presentation of the policy on cumulative impact is supported most graphically by the Council's own submission at first instance. At that stage they were still adhering to Dr Quinn's view of the policy. That is why the judge had to make a ruling on the matter. As Gillen LJ said *ex arguendo* the Council had undergone a Damascene conversion from its earlier misapprehension of its own

policy. But that did not take place between the time of the letter of Suzanne McCreesh or the statement of policy by Dr Quinn and the decision of each Committee. It only took place after the hearing at first instance. Neither the written submissions of counsel at that time nor the pre-trial correspondence made the case that was now being made to this Court of Appeal.

[32] It can be seen therefore that consistent with the judge's findings of fact but on a correct view of the law it is clear that this Committee were misdirected as to law by their own advisors and that misdirection was not resiled from by the time they made the decision.

[33] We will consider the appropriate remedy for this in due course.

### **Numbers of machines**

[34] The second ground of appeal on behalf of Oasis has been outlined above i.e. that the Committee had not taken into account the number of machines to be operated at the Botanic premises. Oasis submitted that the number of machines was a material consideration. We consider this a well-founded submission. The impact on the character of location is bound to depend to a significant degree on the size and scale of a proposed new amusement arcade. A café or restaurant which wished to put 2 or 3 of these machines upstairs for the entertainment of some of their clientele would need to get a permit but they would be entitled to argue that this would have no impact on the character of the location. How can one say the same about the Hazeldene proposal here to make 240 such machines available at their Botanic Avenue premises? Mr Beattie QC for Hazeldene, with his customary good judgment and candour, did accept that such was the case. He acknowledged that the nature of the permit issued by the Council expressly provides a maximum number of machines to be permitted in an arcade. He further acknowledged that the Committee had not received advice from officials or experts on their behalf on this point.

[35] However, he was able to draw our attention to the minute of the meeting of 6 October 2014 dealing with his client's application. At page 180 of trial bundle 2 there is an extensive minute relating to his own submissions on behalf of his client to the Committee. In the concluding paragraph we find this:

"In response to a number of questions from the Members, Mr Beattie confirmed that the amusement arcade would, if licensed, operate from 9.00 am to 11.30 pm from Monday to Saturday and from 12 noon to 11.30 pm on a Sunday. In terms of any reduction in the number of gaming machines, he pointed out that the allocation of 227 machines had been based upon the available floor space and that it would be unlikely

that all of the machines would be in use at any one time. He added that, whilst the Police Service of Northern Ireland had objected to the number of gaming machines stipulated within the application for the Bingo Club Licence it offered no objection in relation to that proposed within the amusement arcade.”

[36] Mr Beattie therefore submitted that it was clear that the Committee had actually considered this aspect of his client’s application. The issue in law is whether the decision-maker failed to take into account a relevant consideration or took into account an irrelevant consideration. On the evidence here the Committee was alert to this factor. We therefore reject this ground of appeal on behalf of Oasis.

[37] The third ground of appeal have been set out at paragraph 13 above and relate to the issues of procedural fairness with regard to the meeting of 6 October 2014. We have considered the submissions of counsel with regard to this matter. Mr McCollum complained that he had not been granted an adjournment on one of several grounds set out in the minutes of the meeting at pages 167 and 168. One of those was that surveillance reports which had been submitted by Hazeldene had been accepted after the date stipulated by the Building Control Service. However, it is clear from the minute of the meeting that the Committee properly considered this application and refused it on the grounds that it did not attach any weight to the content of the late submissions of Hazeldene and that sufficient time had already elapsed and excessive time would be lost if the matter was adjourned. We agree with the learned judge’s finding on this matter.

[38] Oasis complains that they were only permitted to have three persons present at the Committee hearing but an officer of the Council avers on affidavit that he was not aware that they had a fourth person and that there would not have been a difficulty about her attending either. At most this was a misunderstanding and not a ground for quashing the decision.

[39] It is important for a Committee to follow due process, particularly when they are acting in a quasi-judicial capacity as here. But we find no ground to differ from the judge’s conclusion in favour of the City Council.

### **Delay in bringing judicial review of Bradbury Place permit**

[40] On 13 January 2017 the judge refused leave to Oasis to bring an application for judicial review with regard to the Bradbury Place permit on the ground of delay. The application had been brought within three months but only two days before the three months provided by Order 53. The City Council and Mr McAteer’s client contended that there was delay on the part of Oasis; the application was not brought promptly and no explanation for this delay had been given. The judge addressed

this at paragraphs 58 and 71 to 75 and 99 to 101 of the judgment. He took the view that the judicial review applications before him in the context of compliance with Order 53 Rule 4 should be viewed as analogous to such applications in respect of the grant of planning permissions. He accepted the citation to him of *Musgrave Retail Partners (NI) Limited Application* [2012] NIQB 109 and *In Re Wilson's Application* [1918] NI 415. It was implicit in his findings that promptitude was of particular importance between commercial rivals and in a situation of this kind. "If disputes of the nature of the Bradbury case are to be litigated by judicial review the court expects full compliance with the need to act promptly".

[41] We have taken into account Mr McCollum's submissions with regard to this issue but we are not persuaded that there is any error in the conclusion reached by the judge. In any event the issue of delay is one decided by a judge in the exercise of his discretion where this court will be loath to interfere. We therefore reject the appeal against the judge's finding in favour of the Bradbury place permit, notwithstanding that the issue of cumulative impact was put before the Committee of the Council wrongly by those advising the Committee. The judge's decision was consistent with that of Gillen J in *Re McDonnell* [2007] NIQB 125 and my own decision *In Re SK (A Minor)* [2017] NIQB 9.

## **Remedy**

[42] Belfast City Council made a decision to grant an amusement permit to Hazeldene's application at Botanic Avenue on the basis set out in the report to the Council, that one of its five key criteria relating to cumulative impact was complied with because the application would lead to the only arcade on that particular shop frontage. It is now accepted that that is an erroneous interpretation of the Council's own policy.

[43] It bears, therefore, some close comparison with the facts of *In Re Barry Gilligan and Others* [2003] NICA 10. Carswell LCJ, delivering the judgment of this court, upheld the view of the judge that the interpretation of the policy by the decision-maker there was neither lawful nor reasonable. He concluded as follows:

"We accordingly hold, as did the judge, that the Department has misinterpreted and misapplied its policy in an important respect. It was clearly a material part of the Department's consideration in giving planning permission for the development, and it could not be regarded as having been so tangential or peripheral that it would have made no difference to the outcome if it had been correctly approached."

[44] Applying that decision to the situation before this court it cannot be disputed that the cumulative policy was of importance as it was one of the five key criteria

identified by the Council itself. Again it could not be regarded as so tangential or peripheral that it made no difference to the outcome if it had been correctly approached. The Committee divided in this decision. Some members may have reached a different conclusion if they had been properly advised of the meaning of the policy by officials.

[45] The recent decision in the Court of Appeal in the *Department of Education v Cunningham* [2016] NICA 12 is relevant:

“In the planning context, where very substantial sums of money may be at stake it is advisable to maintain a precautionary approach. The same might be said of public procurement. The price of probity is eternal vigilance. A test of ‘substantial doubt’, as formulated by Lord Brown on behalf of their Lordships is appropriate. No doubt that might also be appropriate in certain other situations. But this appeal is concerned principally with the allocation of resources: whether a very small school requiring enhanced subsidy be closed or could it be operated as an integrated school, where financial and economic considerations also play an important part.”

In my view a licensing matter of this sort with commercial objectors is the sort of ‘other situation’ contemplated by this court where a precautionary approach is appropriate. This is not to suggest that there was any impropriety disclosed here. In fact there is no criticism of the Council’s Committee here but only of the advice it received regarding a key policy.

[46] In all the circumstances we conclude that the proper course is to uphold the appeal of the appellant Oasis to the extent of quashing the decision of the City Council to grant a permit for the amusement facility at Botanic Avenue. In regard to the grant of permission for an amusement facility at Bradbury Place, as stated above, we uphold the decision of the judge.







Our ref ST/JM/ 429071

Being dealt with by: Conor Morgan

Your ref: LA04/2018/0098/F

Ext: 5275

Date: 13/02/18

Director of Planning & Place  
Belfast Planning Service  
Belfast City Council  
The Cecil Ward Building  
4-10 Linenhall Street  
Belfast  
BT2 8BP

Dear Sir / Madam,

**LOCATION: 73-75 NORTH STREET BELFAST BT1 1NL**  
**PROPOSAL: CHANGE OF USE FROM RETAIL TO AMUSEMENT ARCADE AND ALTERATIONS TO SHOP FRONT.**

The Environmental Health Service has examined the proposed plans and associated information submitted in support of the above development. This response considers the proposed development in terms of noise, air pollution, general amenity, ambient air quality and contaminated land and other considerations.

Should the Council deem to grant this application, this service would request that consideration be given to attaching the following informatives:

**CLEAN NEIGHBOURHOODS AND ENVIRONMENT ACT (NORTHERN IRELAND) 2011**

The applicant is advised to ensure that all plant and equipment used in connection with the development is so situated, operated and maintained as to prevent the transmission of noise to nearby retail accommodation.

Should any unforeseen ground contamination be encountered during the development, and in order to protect human health, all works on the site should immediately cease. Belfast City Council should be informed and a full written risk assessment in line with current government guidance (Model Procedures for the Management of Land Contamination-CLR11) that details the nature of the risks and any necessary mitigation measures and verification (if required) should be prepared and submitted for appraisal.

Continued....

**Siobhan Toland** M.Sc. , F.C.I.E.H  
Assistant Director

**Belfast City Council**, City and Neighbourhood Services Department  
The Cecil Ward Building, 4-10 Linenhall Street, Belfast BT2 8BP  
Tel: 028 9027 0428 Textphone: 028 9027 0405 Fax: 028 9027 0422  
Email: envhealth@belfastcity.gov.uk

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**AMUSEMENT PERMIT**

In accordance with the Betting, Gaming, Lotteries and Amusement (Northern Ireland) Order 1985, the applicant must apply to Belfast City Council, Building Control for an application form to apply for an amusement permit.

Yours sincerely,

Conor Morgan  
Environmental Health Officer  
Environmental Protection Unit

# BELFAST CITY COUNCIL

## PLANNING APPLICATION CONSULTATION CHECKLIST



**Belfast**  
City Council

Planning Application Ref No. LA04/2018/0098/F

Ref No 429071

Date Received: 19/1/18

Proposal: Change of use from retail to amusement arcade and alterations to shop front

	Y/N?	COMMENTS
<b><u>NOISE (includes vibration)</u></b>  Does the proposal have the potential to adversely impact on amenity due to noise?  Is the proposal likely to be adversely affected by noise?	 N  N	
<b><u>AIR POLLUTION</u></b>  Does the proposal have the potential to adversely impact on amenity due to air pollution (eg odour, dust)?  Is the proposal likely to be adversely affected by air pollution?	 N  N	
<b><u>GENERAL AMENITY</u></b>  Does the proposal have the potential to adversely impact on amenity due to vermin, insect or litter problems etc?  Is the proposal likely to be adversely affected by vermin, insects or litter etc?	 N  N	
<b><u>AMBIENT AIR QUALITY</u></b>  Does the proposal have the potential to have an adverse impact on ambient air quality?  Is the proposal likely to be adversely affected by ambient air quality?	 N  N	
<b><u>CONTAMINATED LAND</u></b> To the best of the officer's knowledge is the site potentially contaminated either as a result of: <ul style="list-style-type: none"> <li>• a previous use of the site</li> <li>• use, or a previous use, of adjacent land where there may be the possibility of migration of contaminants</li> <li>• naturally occurring levels of contamination, excluding Radon ?</li> </ul>	 N N N	

<b><u>OTHER CONSIDERATIONS</u></b>  Does the proposal have the potential to adversely impact on local amenity due to other Environmental Health considerations?	N	
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Is application for proposal accompanied by an Environmental Statement (ES)?	N	
Has ES been considered?	N	
Has 3 <sup>rd</sup> party (eg objector/CNS) comment been received?	N	
Has 3 <sup>rd</sup> party (eg objector/CNS) comment been considered?	N	
Should other agencies be involved as additional consultees eg CNS, Land Resources Unit, IPRI, HSENI, etc.	N	

**CITY AND NEIGHBOURHOOD SERVICES DEPARTMENT - RECOMMENDATION ON APPLICATION**

	Tick	Comment
No objection		
Further information required from applicant		
No objection with informative	X	
No objection subject to conditions		
Objection on EH ground		

Name: Conor Morgan

Signature: \_\_\_\_\_

Date: 09 May 2022

**NOTE:** Any consultation response provided by the City and Neighbourhood Services Department is based on:

- information supplied by the applicant, and
- other information currently available.