

Appendix 3 – Relevant considerations in relation to an application for the grant of an amusement permit for premises situate at 15 William Street, Derry, BT48 6EP.

Note: relevant documentation is attached as appendices to the previous Committee report HC194/21

Background - the premises

An amusement arcade has been operated at these premises since 2005.

Planning permission was granted for a “change of use from retail shop to amusement arcade” on 10 June 2002 (A/2002/0176/F).

Building Control received an application BR/2005/0595 for “Amusement Arcade” at 15 William Street, Derry on 25th May 2005 and records indicate Plan Approval was issued on 2 June 2005.

Background - the application

On 29 March 2001, Council received an application for the grant of an amusement permit in relation to premises situate at 15 William Street, Derry, BT48 6EP.

The applicant, Mr. Kevin Daly of **Address redacted**, certified that the application is being made for premises “used wholly or mainly for the provision of amusements by means of gaming machines”.

The type of amusement permit sought was one under Article 108(1)(ca) of the Order, permitting gaming machines with a maximum cash payout of up to £25.

The required fee of £250 was received in respect of the application.

Two public advertisements, which had appeared in local papers, during December 2018 were submitted to Council.

Other documentation received in relation to the application consisted of:

- Plans showing the proposed floor layout and front elevation of the premises
- Two references, one received from Bank of Ireland (Strand Road Branch) and one received from Hampson Harvey Solicitors.

Assessment of applications

The Betting, Gaming, Lotteries and Amusements (NI) Order 1985 provides that the Council may refuse a permit on any ground, provided it acts legally, reasonably and rationally.

The Amusement Permit Policy adopted by Derry City and Strabane District Council in March 2019 was developed to introduce greater clarity, transparency and consistency to the decision making process for assessing applications for Amusement Permits, by outlining those matters and criteria which Council may take into account in determining an application for an amusement permit.

The policy states that, when determining amusement permit applications, Council will assess each application on its own individual merits and will:

1. have regard to the requirements set out in the Betting, Gaming, Lotteries and Amusements (NI) Order 1985*; and
2. assess the suitability of the location for a proposed amusement arcade, typically using the five assessment criteria, set out in the policy.

[*in addition to the Order, the requirements of the Amusement Permit (Additional Grounds for Refusal) Regulations (Northern Ireland) 1993 are relevant and are considered.]

1. Legal requirements under the Betting, Gaming, Lotteries and Amusements (NI) Order 1985 and relevant statutory provisions

The primary legislation regulating amusement permits is the Betting, Gaming, Lotteries and Amusements (NI) Order 1985, Article 111 of which details requirements in relation to the grant of amusement permits.

Those relevant to this application are outlined below:

1.1 Requirement:	Comment / observation:
The application must be made by the person who is or proposes to be the occupier of the premises for which the amusement permit is sought. This requirement is satisfied.	The applicant has made the application as an individual and has stated that he is the owner of the premises and will be the occupier of the premises.
1.2 Requirement:	Comment / observation:
The application must be accompanied by the appropriate fee This requirement is satisfied.	The application is for the grant of a permit for the purposes of Article 108(1)(ca), for which the fee is £250. The required fee has been paid.
1.3 Requirement:	Comment / observation:
The Council must have regard to any representations made by the police, on whom the applicant is required to serve a copy of the application. This requirement is satisfied.	PSNI have been consulted in relation to this application and have not raised any objections to the grant of the permit.

After hearing any representations from the police, Council:

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

Grounds for refusal

Article 111 of the Order provides a number of mandatory grounds under which Council **must** refuse an application. An additional mandatory ground for refusing an application was introduced by the Amusement Permit (Additional Grounds for Refusal) Regulations (Northern Ireland) 1993.

In addition, the Regulations introduced discretionary grounds under which district councils **may** refuse to grant an amusement permit

These grounds for refusal are now considered.

Mandatory Grounds for Refusing an Application

Council must refuse an application for the grant of an amusement permit, unless it is satisfied that:

1.4 the applicant is a fit person to hold an amusement permit

[Article 110 (3) states that:

In considering the fitness of a person to hold an amusement permit, a district council shall have regard to the character, reputation and financial standing—

- a. of the applicant; and
- b. of any other person by whom the business which is or is proposed to be carried on under the permit would be managed, or for whose benefit that business would be carried on;

but may also take into consideration any other circumstances appearing to it to be relevant in determining whether the applicant is likely to be capable of, and diligent in, securing that the provisions of this Part and of any regulations made under it will be complied with.]

Comment / observations:

- References have been provided for the applicant.
- These references would suggest that the applicant is considered to be a fit person to hold an amusement permit.
- The police have raised no objections in relation to the applicant's suitability to hold an amusement permit.
- The applicant successfully operates several licensed premises within the city.

1.5 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

Comment / observations:

- The application has been made on behalf of an individual and no other person is named on the application.

1.6 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.

Comment / observations:

- The application has been made for the purposes of Article 108(1)(ca), which would permit up to £25 maximum cash prize pay-out.
- The applicant has certified on the application that the premises will be used wholly or mainly for the provision of amusements by means of gaming machines.

An additional mandatory ground for refusing an application for the grant of an amusement permit was introduced by the Amusement Permit (Additional Grounds for Refusal) Regulations (Northern Ireland) 1993.

1.7 Under the Regulations, Council must refuse an application for the grant of an amusement permit, if the applicant has not publicly advertised his application in accordance with Schedule to the Regulations.

The Schedule requires that:

An applicant for the grant of an amusement permit shall

- a) not later than 7 days after the date of the application, give public notice of the application by publishing an advertisement (in the prescribed form) in such newspapers circulating in the district as the council may require
- b) supply a copy of the advertisement to the, district council.

Comment / observations:

- Public notice was given in two local newspapers and cuttings from both newspapers containing the public advertisements have been submitted to Council.

Discretionary Grounds for refusing an application

The Regulations also introduced discretionary grounds under which district councils may refuse to grant an amusement permit.

1.8 The Regulations provide that Council may refuse to grant an amusement permit after hearing any representation made by any person to the council not later than 28 days after the date of that application.

Comment / observations:

- Two representations were received by e-mail
- Both representations were received within the 28 day period permitted for making representations.
- Both representations have been made on the grounds that there are already sufficient amusement arcades in the city.

2. Suitability of the location

Having considered the legal requirements and the mandatory and discretionary grounds for refusing to grant a permit, Committee should then assess the suitability of the location for an amusement arcade. However, given the fact that an amusement arcade has been operated at this location since 2005, some exceptional discretion may be appropriate when assessing the suitability of the location when determining this application.

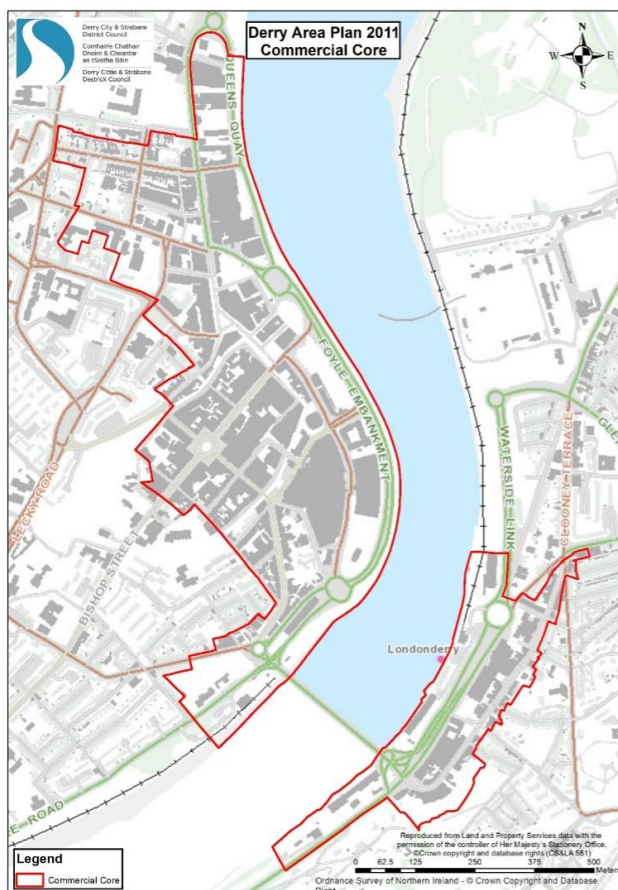
The Amusement Permit Policy sets out five criteria that will typically be used when assessing the suitability of a location for a proposed amusement arcade:

- i. Impact on the retail vitality and viability of Derry City and Strabane Town;
- ii. Cumulative build-up of amusement arcades in a particular location;
- iii. Impact on the image and profile of Council District;
- iv. Proximity to residential use; and
- v. Proximity to schools, youth centres and residential institutions for vulnerable people.

Notwithstanding the fact that an amusement arcade has been operated at the location for many years, each criterion is considered below in relation to this application.

2.1 Impact on the retail vitality and viability of Derry City and Strabane Town

The application relates to premises situate within Derry City Centre.



The policy states that, while each amusement permit will be assessed on its own merits, “an application for an amusement permit... in Derry City Centre... will only be granted... if it is [a] renewal of an existing permit; part of a major, retail-led, mixed use development; or an upper storey development.”

Viewed in this context it could be considered that the application runs contrary to the Council’s Amusement Permit Policy, because:

- it is **not** a renewal of an existing permit
- it is **not** part of a major development
- it is a ground floor development and **not** an upper storey development

However, while this is an application for the grant of an amusement permit for the premises to Mr. Kevin Daly, there has been an amusement arcade operating at these premises since 2005. In addition, the premises are single storey.



Street view image: The Amusement Arcade, 15 William Street, Derry

Under this criterion, the policy also states that “Council WILL NOT grant an amusement permit in any part of the Council area where an amusement arcade would break up an otherwise continuous shopping frontage or any contravention of the planning legislation”.

An application for an amusement arcade is deemed to break up a continuous shopping frontage where it proposes to replace a shop unit that is bordered by an adjacent shop unit either side of it. This may apply even if one or more of those shop units are vacant at the time of the determination. For the purposes of the policy, a shop unit is defined as one belonging to, Class A1 of the Planning (Use Classes) Order (Northern Ireland) 2015.

As the amusement arcade already exists and has been in operation since 2005, this issue is not considered to apply. In any event, as the proposed premises are situated adjacent to a hot food take-away premises on one side and a mews laneway on the other, and as premises for the sale of hot food for consumption off the premises are not deemed to be Class A1, the issue of breaking up a continuous frontage is not considered to not apply in this case.

2.2 Cumulative build-up of amusement arcades in a particular location

As the Council want to promote retailing, it is anxious to avoid a cumulative build-up or clustering of amusement arcades in a particular location.

The policy states that: "the Council will limit the number of amusement permits it grants to one per shopping or commercial frontage..." [and]... "Where this number of permits has already been granted, or exceeded, NO MORE amusement permits will be considered under this criterion".

For the purposes of the amusement permit policy, a "shopping or commercial frontage" can be defined as a group of mainly ground-floor businesses that share a continuous frontage and which is usually separated from other frontages by a different road or street name.

The nearest amusement arcade to the proposed premises on William Street is Winners, which is located at 38 William Street. The entrance to Winners Amusement Arcade is located approximately 85 m walking distance away from the entrance to the premises to which this application relates at 15 William Street.

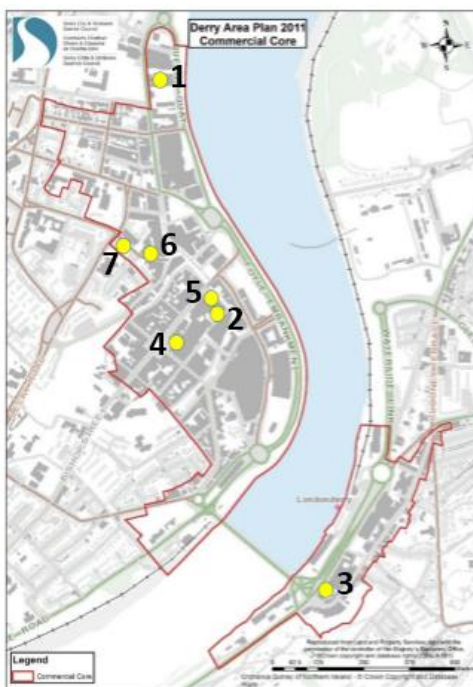
However, as the proposed premises and Winners Amusement Arcade are located on the opposite sides of the street they would not be considered to share a continuous shopping or commercial frontage. Under such circumstances, granting the permit would not be contrary to the provisions within the policy limiting the number of permits to one per shopping or commercial frontage.



When assessing cumulative build, up the Committee is also required to more broadly consider the issue of the proliferation of permits and the effect of the same on the character and amenity of area rather than simply whether there is more than one amusement arcade in a commercial frontage.

There are nine amusement arcades within the city, located at the following locations: 70c Strand Road; Brunswick Movie Bowl, Pennyburn; 5 Bank Place; 1-2 Bank Place; Unit 1b Pennyburn Industrial Estate; 100 Duke Street; Unit 23 Richmond Centre, Shipquay Street; 15 William Street; and 38 William Street.

The locations of the amusement arcade premises within the commercial core of the city centre are as follows:



1	Amusement Arcade	Strand Bingo 70c Strand Road
2	<u>Cityside Amusements</u>	5 Bank Place
3	ACE	100 Duke Street
4	Oasis Gaming Centre	Unit 23 Richmond Centre, <u>Shipquay Street</u>
5	Gaming Arcade	1-2 Bank Place
6	The Wynn	15 William Street
7	Winners	38 William Street

2.3 Impact on the image and profile of Derry and Strabane

The Amusement Policy states that “Council will not grant amusement permits at locations regarded as tourism assets and at key entrance junctions (Gateways) into Derry City or Strabane Town Centre.

The proposed premises have no neighbouring property which is considered to be a tourism asset and they are not located at a “Gateway” location.

2.4 Proximity to residential use.

Amusement permits will not be granted in areas that are predominantly residential in character, including local centres located within these areas. They will not be granted in non-residential property that is immediately adjacent to residential property.

The proposed premises are not located within a location that is predominantly residential in character.

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

The Council will not grant amusement permits in locations near schools, youth centres and residential institutions for vulnerable people, including children's care homes and hostels for the homeless.

For the purposes of the policy "near" may be considered as being "within at least 200 metres (easy walking distance) of a school, youth centre or a residential institution".

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