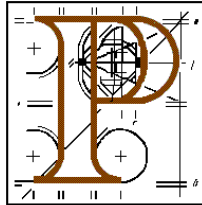


An Bord Pleanála



Inspector's Report

Development: Continuation of existing Gaming & Amusement Arcade at Ground Floor permitted under Board reference PL35.240508 at 46 Leinster Street, Athy, Co. Kildare.

Planning Application

Planning Authority:	Kildare County Council
Planning Authority Reg.	15/580
Applicant:	Coalquay Leisure Ltd.
Type of Application:	Permission
Planning Authority Decision:	Refuse

Planning Appeal

Appellant(s):	Coalquay Leisure Limited
Type of Appeal:	1 st Party – V- Decision
Observers:	None

Date of Site Inspection: 01/ 12 /2015

1.0 SITE LOCATION AND DESCRIPTION

- 1.1 The site is located along the northern side of Leinster Street in Athy, Co. Kildare. Leinster Street is the main spine through Athy from Dublin or north Kildare. This is the commercial core of the town. The building in which the use exists was formerly known as Hibernian Bank, and then it was used as insurance offices. It is a five bay three storey terrace building with an ornate design and granite finish.
- 1.2 The gaming and amusements hall is located on the ground floor of the building. There is signage on the windows of the building and at the entrance door.

2.0 DEVELOPMENT

- 2.1 The continuation of the gaming and amusement arcade on the ground floor of the building permitted under appeal reference PL35.240508
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3.0 SUBMISSIONS RECIEVED

There were no third party submissions received.

4.0 TECHNICAL REPORTS

The technical reports on the planning file had no objection to the continuation of use. However the Planning Report recommended a Refusal as detailed below.

Planning Report

Summary of key assessment points is as follows:

- There has been no change in planning policy since the original grant of permission in 2012
- Site is located within a designated Core Retail Area, and amusement arcade is open for consideration
- Policy RP25 as outlined in section 6.7.8 of the Athy Town Development Plan states it is policy to discourage amusement and gaming arcades in Core Retail Areas as they are considered to be an undesirable use and potentially detrimental to business and commercial environment of the town.
- The applicant has failed to comply with condition. No. 4 regarding signage. There was an enforcement noticed on the subject matter. The existing signage does not comply with 15.10.3 of the Town Plan relating to Advertising, as it discourages covering over shop front windows. The proposed signage is to effectively screen views into the building from the street. The Conservation Officer raised no concerns over the signage.

5.0 PLANNING AUTHORITY'S DECISION

Kildare Co. Co. refused the continuation of use for two reasons:

1. The proposed development is contrary to RP25 of the Athy Town Development Plan 2012-2018.
2. The proposed signage would detract from the streetscape at this location and would result in a dead frontage which is contrary to the requirements of Section 15.10.2

6.0 APPEAL GROUNDS

A summary of the first party appeal is as follows:

The development was refused by Kildare Co. Co. for two reasons:

- Planning Policy Grounds
- Window Signage

The following are the grounds of appeal:

1. The proposed development is an appropriate town centre use and would not be contrary to the policies and objectives of the Athy Town development Plan 2012-2018
2. The proposed development will not injure the amenities or depreciate the value of property in the area.
3. The proposed signage is appropriate and reflects both the nature of the proposed structure and the permitted use of the buildings.

Site and Proposed Development

The permitted gaming and amusement use has been operating in compliance with its planning permission, and the application to continue the use was made well in advance of the existing permission expiring. There has been on-going effort to secure agreement on Condition No. 4 of the permission between the applicant and the planning authority. Under the current proposal a partially frosted window with minimal signage is proposed.

Current Planning Policy

Kildare County Development Plan 2011-2018

Athy Town Development Plan 2012-2018

No. 46 Leinster Street, Athy is located within an area zoned Town centre as identified on Map 5.1 . The site is located within an Architectural Conservation Area, and the building is a protected structure (RPS AY. 036) and featured in the National Inventory of Architectural Heritage, 11505286.

Larges sections of the Athy Development Plan are quoted in the appeal which the appellant considers to be relevant to the appeal relating to town centre development, broad range of uses, compact urban form, high standard of design, mix of uses, reduction in vacancies rates and policies relating to core centre landuses.

Precedent

The Board has consistently considered that amusement arcades where they do not result in an undue proliferation, are appropriate town centre uses. There are examples cited:

PL35.240508- Athy

The existing use was granted by the Board for three years.

PL09.244599 – Newbridge

An extension to an existing amusements arcade was granted permission in Newbridge in an area zoned Town centre and Kildare Co. Co. had refused permission for the development.

PL26.235527 Bunclody

Change of use form a restaurant to a licenced amusement arcade within a town centre. Wexford Co. Co. had refused the development proposal however the Board granted permission for it.

Grounds of Appeal

The proposed development is an appropriate town centre use and would not be contrary to the policies and objectives of the Athy Town development Plan 2012-2018

The development plan promotes a wide range of uses in the Town centre of Athy. It is sustainable to utilise an existing building and this is in line with conservation policies.

The policies in relation to amusement arcades are contradictory in that the general policies promote a wide range of uses within the town centre. Chapter 16 recognises Leinster Street suffers from dereliction and vacancy. Therefore a diversity of uses is required to ensure the vitality of the town. The planning authority's policy opposing amusement arcades may be as a result of the poor contribution they make to the general streetscape. However, the use ensures the use and viability of a protected structure, which continues to make a valuable contribution to Leinster Street streetscape.

This is the only amusement arcade in Athy, therefore its continuation of use will not result in an overconcentration of such uses in the town. The Conservation Officer had no objection to the original change of use and there was no submission from An Taisce or the Department.

The Board has consistently deemed amusement arcades to be appropriate town centre uses. The overall policies of the development plan support the use and the planning authority has take a narrow approach in its assessment.

The gaming and amusement arcade has been operating for three years now. There have been no incidences occurred which could be considered detrimental to the town centre. An active use has contributed positively to the streetscape and the protected structure. It does not injure amenities or depreciate the value of properties in the area.

The reports on the file fail to identify what impact the proposed continuation of use may have to cause injury to amenities or depreciate property values. There were no third party objections to the proposal.

Proposed Signage

Details of the proposed signage are included in the planning application. The applicant has attempted to agree the terms of Condition No. 4 of the 2012 decision with Kildare Co. Co., many times.

The current proposal involves a small sign in each of the 4No. windows, and the remainder of the lower window would be frosted. It is an attractive finish that will enable movement of light. It is similar to the window treatment and signage used by the insurance broker that occupied the building prior to the amusement arcade.

7.0 RESPONSES

7.1 The planning authority confirms its decision and had no further comment.

8.0 PLANNING HISTORY

8.1 12/00004 – PL35.240508

Coolquay applied for planning permission for a change of use from an insurance office to a gaming arcade on the ground floor of the former Hibernian Bank. Kildare Co. Co. refused the development which was later overturned by An Bord Pleanála who granted a temporary permission of three years for the development.

8.2 UD6322

Enforcement Notice served in respect of non-compliance with Conditions 4 and 6 of PI 35.240508.

8.3 35RP.2082

The developer and the planning authority could not agree on Condition 4 of PL35.240508. The matter was referred to the Board who decided the signage would detract from the Protected Structure and result in a dead frontage.

9.0 DEVELOPMENT PLAN

Athy Town Development Plan 2012-2018

The site is located within an area zoned A: Town centre.

Amusement Arcades are Open for Consideration under this land use zoning.

Paragraph 6.7.8 relating to non-retailing developments within the core area of Athy.

As with many Centres in the County, Athy Town Centre has witnessed the introduction of non-retail and lower grade retails uses in its Core Retails Area and other main streets. To maintain the integrity, critical mass and potential for quality retails activity and the vitality and viability of the Core Retail Area and other main streets, the Council will seek to discourage an overconcentration of Non-retail and lower grade retail uses in prime retail areas.

RP25: To Discourage amusement/ gaming arcades in the Core retail Area as they are considered to be an undesirable use and potentially detrimental to the business and commercial environment of the town.

RP26: To discourage non-retail and lower grade retail uses eg takeaways and betting offices in the Core Retail Area and other principle streets in the town centre in the interests of marinating and sustaining the retail attraction of Athy Town Centre

Chapter 15 Development Management Standards

The cumulative impact of the number of takeaways, amusement arcades, fast food outlets and turf accountants in any particular area will be considered in the assessment of the planning application. Impacts such as noise, litter, disturbance and traffic will also be taken into consideration.

12.0 ASSESSMENT

- 12.1 The subject development has been the subject of a previous planning appeal, reference PL35.240508 which was 'a change of use of premises at ground floor level from insurance office to gaming and amusement arcade' at 46 Leinster Street, Athy, Co. Kildare. The planning authority had refused permission which was appealed to the Board by the applicant. The decision was overruled and planning permission was granted by the Board for a period of three years only. This current application is for a continuation of use because the temporary planning permission has expired. During the intervening period the current

development plan for Athy has remained in place i.e. **Athy Town Development Plan 2012-2018**. There has been no change in planning policy governing the area since the previous decision.

- 12.2 The subject site is a Protected Structure in the development plan. It is a commanding three storey building with five bays. The building makes a strong architectural statement along the northern side of Leinster Street in Athy. It is located within the designated **Core Retail Area** and an **Architectural Conservation Area**. The main landuses within the vicinity of the site are retailing with a number of vacant units. The units are mainly narrow shop units. 46 Leinster Street is located at the northern end of Athy on approach from Dublin/ Kildare, and there are a number of small shops generating the footfall, whereas the supermarket and greater amount of footfall is to the southern and central end of the Core Retail Area.
- 12.3 The appeal has cited a number of cases which the applicant indicates are relevant to the current proposal. The first being the previous appeal on the subject site PL35.240508. The second is in Newbridge, Co. Kildare, PL09.244599 which I do not consider to be relevant as it involved additional gaming machines to an existing amusement arcade. The third case was in Bunclody, Co. Wexford whereby the Board overturned the planning authority's decision to refuse a change of use from a restaurant to a licenced amusements hall. I do note the prevalence of refusals by the Board within inner city areas of Dublin trying to prevent a predominance of non-retail frontages on prime Category 2 retailing streets such as Capel Street and Parnell Street.
- 12.4 Having examined the development in the context of the streetscape in Athy, I consider the subject site at 46 Leinster Street, provides an attractive 3 storey 5-bay neo-Georgian architectural style to the overall legibility of the streetscape. It is a dominant building due to its height, width, high equality specification and elegant design. I consider it makes a very positive contribution to the streetscape when viewed from the north and south of Athy. It was designed by Ralph Henry Byrne during the 1920s, and was used as a bank up until the mid-1970s. It is included on the Recoded of Protected Structures, and its streetscape qualities warrant such conservation measures. It is also listed on NIAH as a building of *Regional Importance* with a special interest listed as been 'technical' and 'Architectural'. The site as stated is located within an ACA. I note the Council's Conservation Officer and the statutory bodies made no comment opposing the development on conservation grounds or principles.
- 12.5 Unfortunately there have been a number of unsympathetic additions to the front façade which I consider have had a detrimental material impact on the building. Those include the uPVC windows/ door and the mixed signage and light fittings on the ground floor particularly those within the windows. The existing signage associated with the gaming and amusement arcade is appalling, considering the architectural quality of the building. I do accept the uPVC door and windows pre-date the current development. However, the current proposal and use do very little to enhance the exterior of the building, in fact the existing lighting signage and proposed signage will detract from the visual qualities of the building

as the proposals are tasteless, cheap and demeaning to the architectural statement created by the elevation of the building. The submitted drawings are scant, vague and uninformative in terms of specification and detailing, and are totally unacceptable given the significance of this issue under the previous Board' decision. There is frosted glass proposed for the four ground floor windows with the word *Casino* included midway on the glass. It is incredible the applicant would view these proposals as been consistent with the elegance of the front elevation, especially given the planning history associated with the signage issue under Board reference RP35.RP2082. Therefore I agree with the planning authority's second reason for refusal and I recommend the Board uphold it. The proposed signage will deaden the shopfront, because the aim of the frosted glass is to prevent views into the building. In addition, the applicant should be seeking to enhance the front of the building and not degrade it further.

- 12.6 As stated earlier in the report, the subject site is located within the designated Core Retail Area of the town. Apart from occupying the building, the amusement and gaming arcade contribute nothing to the vitality of the street. I refer to Policy RP25 in the Athy Town Development Plan which states '*To discourage amusement/ gaming arcades in the Core Retail Area as they are considered to be an undesirable use and potentially detrimental to the business and commercial environment of the town.*' The Board stated when granting temporary permission for the development under appeal reference PL35.240508 (over-ruling the recommendation to refuse by the Board's Inspector), that although the policy to discourage gaming and amusement arcades is acknowledged, it considered favourably a temporary permission in order to ensure maintaining a use within the building, a protected structure. Unfortunately, during that three year period granted by the Board the applicant has done nothing to enhance the protected structure other than to occupy it, and the applicant had the opportunity to comply with the planning conditions imposed by the Board but he failed to do so. There were enforcement proceedings and a referral to the Board over a disagreement regarding compliance with a condition, which ruled against the applicant in favour of the planning authority. I recommend the Board uphold the governing planning policy and the planning authority's decision to refuse the continuation of use as a gaming and amusement arcade.

13.0 RECOMMENDATION

I recommend the permission be refused for the following reasons and considerations.

REASONS AND CONSIDERATIONS

1. The development would comprise of a continuation of a permitted gaming and amusement arcade use which was granted a temporary permission by the Board under appeal reference number PL35.240508 in the Core Retail Area of the town of Athy, as designated under the Athy Town Development Plan, 2012-2018. It is the policy of the planning authority, as set out in the development plan "To discourage amusement/gaming arcades in the Core Retail Area, as they are considered to be an undesirable use and potentially detrimental to the business and commercial environment of the town" (Policy RP25). This designation and this policy are considered to be reasonable. It is considered that the development would consolidate and perpetuate the non-retail use of a prominent and architecturally significant building which is a protected structure and located within an Architectural Conservation Area. The proposed development would detract from the primary retail use of the street and from the vitality and vibrancy of the town centre. The proposed development would, therefore, seriously injure the amenities of property in the vicinity and would be contrary to the proper planning and sustainable development of the area.
2. Having regard to the Protected Structure designation of the building and its location within a visually sensitive Architectural Conservation Area, it is considered that the proposed signage, which is reliant on opaque screening, directly affixed to the fenestration and door of the protected structure, would detract from the quality of this building and result in dead street frontage. The signage proposed would detract from the visual amenities of the area and the preservation of the character of the building and would be contrary to the proper planning and sustainable development of the area.

Caryn Coogan

Planning Inspector

21/01/2016