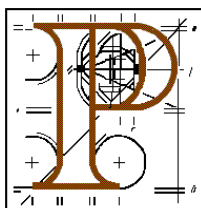


## An Bord Pleanála



## Inspectors Report

**Development:** Retention of the continued use of the Adelaide Casino as a gaming arcade and private membership club and all associated works at Ted Nealon Road, Sligo, Co. Sligo.

### Planning Application

Planning Authority: Sligo County Council  
Planning Authority Reg. Ref. 15/322  
Applicant: Brendan Kilcullen  
Type of Application: Retention Permission  
Planning Authority Decision: Grant

### Planning Appeal

Appellant(s): Irish Amusement Trades Association

Observers: None

Type of Appeal: Third Party

Date of Site Inspection: 19/02/2016

Inspector: Gillian Kane

## **1.0.0 SITE LOCATION AND DESCRIPTION**

- 1.0.1 The subject site is located on the southern side of Ted Nealon Road, a short mixed use street in the centre of Sligo's urban area. Currently on site is a single storey premises with parking to the front, occupied by the Adelaide Casino. A small retail unit 'Easy Money' occupies floor space to the front of the building. This retail unit is not included in the application site.
- 1.0.2 The premises has an office and reception area to the front, a series of amusement / gaming machines in clusters in the centre and five card tables with seating to the rear. The arrangement of the gaming machines does not exactly match that shown on the submitted plans, but the differences are minor. A small tea room and toilets are located to the rear.
- 1.0.3 Photographs and maps in Appendix 1 serve to describe the site and location in further detail.

## **2.0.0 PROPOSED DEVELOPMENT**

- 2.0.1 Retention planning permission was sought for the continuation of the use of the premises as gaming arcade and a private members club . The planning statement submitted with the application states that the description of the proposed development has been amended to address the previous reason for refusal issued by An Bord Pleanála. The applicant states that the condition limiting the life of the use presents operational difficulties.
- 2.0.2 One objection to the proposed development was submitted to the Council. The First party submitted unsolicited further information to the Council requesting that the grounds of the objection be disregarded as they are not valid planning considerations.
- 2.1.0 Reports on File following submission of application**
- 2.1.1 **Planning Report:** No listing of gaming arcade / private members club in the zoning matrix of the development plan. Proposed use comparable to recreation – leisure facilities and amusement arcade, which are open for consideration in city centre zones (C1). Revised development description addresses previous An Bord Pleanála reason for refusal as it proposes a “gaming arcade and a private members club”. Floor plans have been revised to accurately reflect the full extent of the premises and uses. Development has been monitored since parent permission, with no ongoing problems

recorded. Due to the location of the site on the edge of established city centre area, further monitoring is recommended by way of a temporary permission,

### **3.0.0 PLANNING AUTHORITY DECISION**

3.0.1 By order dated 05/11/15 a notification of decision to **GRANT** permission for 4 no. conditions. Condition no. 4 stated: "Retention planning permission is hereby granted for the continued use of the Adelaide Casino as a gaming arcade and private members club for a period of 5 years only. Upon expiration of this period the use shall cease unless planning permission has been granted by the Planning Authority to extend its use for a further period. Reason: To allow the Planning Authority to reassess the ongoing operation and impact of the proposed development."

### **4.0.0 PLANNING HISTORY**

4.0.1 **PL21.244475** (Planning Authority reg. ref. PL14/374): Permission was sought for the continued use of existing amusement arcade and all associated site works, in excess of the three year period granted in accordance with condition number 7 of planning register reference number PD 11/70052 at Adelaide Casino. Permission was refused for the following reason:

*"It is considered that the development that is sought to be continued does not reflect the existing development on the subject site. Furthermore, it is considered that the description of the development proposed to be continued is misleading or inadequate for the information of the public. It would not be appropriate to consider a grant of permission in these circumstances. The development proposed to be continued would be contrary to the provisions of the Planning and Development Regulations 2001, as amended, as it does not properly set out a description of the nature and extent of the development as provided for in article 17 of the said Regulations and would, therefore, be contrary to the proper planning and sustainable development of the area."*

4.0.2 **Planning Register Reference No PD11/70052** pertained to the grant of planning permission on the 26<sup>th</sup> October 2011, on the appeal site for retention of (a) change of use from gymnasium to amusement arcade and associated signage affixed to the building and (b) permission for change of use of retail unit to office use and all associated site works. Condition No 7 limited the condition for a period of three years only.

## **5.0.0 LOCAL POLICY**

### **5.1.0 Sligo and Environs Development Plan 2010 - 2016**

5.1.1 The subject site is located in the centre of Sligo town and is zoned C1- City centre. The zoning objective for C1 is 'to protect and upgrade the retail function, supported by a range of complementary functions, within the city's commercial / retail core and encourage the establishment of commercial; / retail activities in the areas reserved for the centres expansion'.

5.1.2 The zoning matrix in chapter 16 list 'amusement arcade' and 'recreation – leisure facilities' as being open for consideration.

5.1.3 Policies reacting to the city centre include:

**GP-CC-3** Encourage activities that enliven the evening economy, including culture and entertainment uses as well as late-night shopping.

**GP-CC-8** Restrict the provision of amusement arcades on the ground-floor frontage of city centre streets.

## **6.0.0 GROUNDS OF APPEAL**

6.0.1 The grounds of the third party appeal can be summarised as follows:

- There is no definition of 'gaming arcade' in the planning act. The common definition is a premises for the operation of i-gaming and not gaming machines. The definition that permits the operation of gaming machines is "Amusement Arcade" as described in the 2001 Planning Act.
- The decision of the Council should prohibit the use of gaming or amusement machines by way of condition.
- On the 14<sup>th</sup> January 1985, Sligo Borough Council rescinded section 13(1) of the 1956 Gaming and Lotteries Act, banning the use of gaming machines in the Council administrative area. Therefore the operation of such machines in the Adelaide Casino is illegal.
- The decision without a condition prohibiting gaming and amusement machines creates uncertainty as to the proper use of the premises.
- The operation of a private members club without a condition permitting only live card tables and lives games, could be interpreted as being a casino.

## **7.0.0 RESPONSES**

### **7.1.0 Planning Authority Response**

7.1.1 The Planning Authority is satisfied that the description of the development is an adequate and accurate description of its nature and extent. The Planning Authority does not consider it necessary to include a condition prohibiting the use of gaming or amusement machines or restricting the use to live card tables and live games only. The current development plan does not prohibit gaming use. The licensing of such should be controlled by the appropriate licensing authorities in accordance with relevant gaming legislation.

### **7.2.0 First Party Response to Third Party Appeal**

7.2.1 The response of the First Party to the issues raised in the third party appeal can be summarised as follows:

- The Planning Officer of the Council was satisfied that the amended development description and amended floor plans addressed the concerns of An Bord Pleanála
- Condition no. 4 of the Council's decision is unambiguous. Neither the subject application nor the history applications had conditions prohibiting the use of gaming or amusement machines.
- Neither the previous planning inspector nor the Council planning officer questioned the suitability of the subject premises for gaming or amusement machines.
- There is no logical basis for the Board to restrict operations to live card games.
- Section 13 of the Gaming and Lotteries Act is not a planning matter
- The Planning Authority has had sufficient time to assess the ongoing operation and impact of the proposed development so there is no need for a temporary permission.
- It is unreasonable for the First Party to endure uncertainty where the Planning Authority are not clear that future development will occur.
- The Board is requested to amend condition no. 4.

## **8.0.0 OBSERVATIONS**

8.0.1 None on file.

## **9.0.0 ASSESSMENT**

9.0.1 On reading of all documentation submitted with the appeal, I consider the issues to be:

- Principle of the Proposed Development
- Compliance with Development Plan
- Gaming and Lotteries Act 1956
- Appropriate Assessment

### **9.1.0 Principle of the Proposed Development**

9.1.1 As noted in section 4.0 above, in 2011 planning permission was sought and granted for a change of use to an “amusement arcade”. Condition no. 7 limited the life of the permission to three years. Permission for the use of site as an amusement arcade was granted on the 26.10.11 and the life of that permission ceased on 25.10.14. An application for the continued use of “existing amusement arcade” was made in 2014. The report of the Planning Inspector stated that the operations on the site aligned more closely with a private members club and not the generally accepted understanding of an amusement arcade and therefore the wording of the application was incorrect. The Inspector felt that the Board was precluded from granting permission as the established use on site did not match that for which the premises was granted retention planning permission. Permission was refused on that ground but also on the ground that the description of the development was misleading.

9.1.2 The current application before for the Board cannot be read as compliance with condition no. 7 of the previous permission, being outside the lifetime of that permission. The use of the subject site is currently unauthorised and so retention permission is being sought. The application before the Board will be assessed entirely on its own merits, without reference to the parameters of the previous applications.

9.1.3 In the previous application, a change of use from the permitted ‘amusement arcade’ to the current ‘private members club and gaming arcade’ had occurred but that change of use was not acknowledged in the public notices or the plans submitted with the application. Permission was refused for the development for the reasons noted above. Permission is now being sought for the retention of the *private members club and gaming arcade*. The submission of the First Party, is that the description of the development to be retained has been amended to be retention of

“gaming arcade and private members club” and therefore the Bord can grant permission.

## **9.2.0 Development Plan Compliance**

9.2.1 The terms ‘private members club’ and ‘gaming arcade’ are not listed in the zoning matrix or defined as a use class of the development plan. Nor are they defined in the 2001 Planning and Development Regulations. As noted by the planning inspector in the previous application, the Board has previously considered a private members club to be a leisure or entertainment activity (RL28.3010 refers). The Board has concluded in a different referral that a gaming hall comes within the definition of an amusement arcade as defined in Article 5(1) of the Planning and Development Regulations 2001 (RL54.3108 refers). As noted above, both leisure facilities and amusement arcades are open for consideration in C1 zones.

9.2.2 Relevant development plan policy on city centre uses includes policy **GP-CC-3** which seeks to encourage activities that enliven the evening economy, including culture and entertainment uses as well as late-night shopping and policy **GP-CC-8** which seeks to restrict the provision of amusement arcades on the ground-floor frontage of city centre streets. The proposed gaming arcade does not include amusement arcades on the ground floor frontage and so therefore complies with policy GP-CC-8. Regarding policy GP-CC-3, the use of the subject premises occurs largely in the evening and so complies with policy GP-CC-3. The surrounding area is largely commercial with no residential use. I do not consider that the proposed development will seriously injure the amenities, or depreciate the value of property in the vicinity of the site.

## **9.3.0 Gaming and Lotteries Act 1956**

9.3.1 The Appellants claim that permission for gaming and amusement arcades cannot be granted due to the resolution of Sligo Borough Council in 1985 that rescinded section 13(1) of the 1956 Gaming and Lotteries Act.

9.3.2 Part III of the Act refers to the licensing of Amusement Halls and Funfairs. Section 12 of the Act requires all Local Authority’s to adopt Part III to allow gaming, whilst section 13 allows a Local Authority to rescind provision for licencing in all or part of their administrative area. According to the Government Review of the Gaming and Lotteries Acts 1956-86, Sligo County Council adopted such a resolution on the 30<sup>th</sup> June 1956 for part of the County, with

other parts of the County following at later dates (see appendix). Whilst I can find no details of a rescind of the adoption by Sligo Borough Council in 1985 as submitted by the Appellant, that is not to say it does not exist.

9.3.3 Section 14 of Part III of the Act states that gaming shall not be unlawful if it is carried on in accordance with a licence. A rescind of section 13 does not ban the use of gaming machines, rather it results in no-provision for the licensing of amusement halls or funfairs. Nor does it preclude the Board or a Local Authority from granting permission for such use. The licensing consent process for the use of gaming machines must still be complied with.

9.3.4 Notwithstanding the above and as noted by the previous planning inspector, the licencing of gaming machines is not a planning consideration and shall not be taken into account by the Board. If the Appellant is aware of a resolution prohibiting the grant of a licence within Sligo County Council, they must seek remedy through the appropriate channels – one of which is not An Bord Pleanála.

9.3.5 The appellant submits that the omission of a condition restricting use to live card tables and live games only may be interpreted as allowing a 'casino'. The Board will note that permission is being sought for a 'private' members club, which restricts entry to the premises to members only. Casinos, which are prohibited under current gaming legislation in Ireland, are open to the public with no such restrictions. The subject development, therefore cannot be compared to a 'casino'.

#### **9.4.0 Temporary Permission**

9.4.1 The First party has requested that the use be permitted on a permanent basis. The Planning Authority, noting the expansion of the town centre, attached a condition limiting the life of the permission to three years. The Casino has been in existing for a number of years and the Planning Authority have admitted that no issues have arisen. The proposed development is in accordance with the proper planning and sustainable development of the area, therefore I see no reason for a temporary permission to issue.

#### **9.5.0 Appropriate Assessment**

9.5.1 Having regard to the nature and scale of the proposed development, the nature of the receiving environment, and or



proximity to the nearest European site, no appropriate assessment issues arise and it is considered that the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects, on a European site.

#### **10.0.0 RECOMMENDATION**

**10.0.1** I have read the submissions on file, visited the site, and have had due regard to the provisions of the Sligo County Development Plan 2010 - 2016, the planning history of the site. Having regard to the above, it is considered that, subject to compliance with the conditions set out below, the proposed development would be in accordance with principles of the development plan, would not injure the amenities of the area and would be in accordance with the proper planning and sustainable development of the area. I recommend permission be GRANTED subject to the following conditions:

#### **11.0.0 REASONS AND CONSIDERATIONS**

**11.0.1** Having regard to the nature of the proposed private members' card club use, to the mixed-use nature of the existing building, to the location of the premises within the area zoned objective 'C1- City Centre', where entertainment and leisure uses are encouraged under the Sligo and Environs Development Plan 2010 -2016, it is considered that the proposed development would not unduly injure the amenities of property in the vicinity, would be consistent with the policy of the planning authority regarding the development of the town centre and would accord with the proper planning and sustainable development of the area.

#### **CONDITIONS**

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions.  
**Reason:** In the interest of clarity.
2. (a) No unlawful gaming as defined under the Gaming and Lotteries Act 1956, as amended, shall be permitted to take place within the premises.

(b) The use hereby permitted shall not include the installation of slot machines or similar devices.

**Reason:** To clarify the extent of this decision to grant planning permission having regard to the terms of the planning application

- 3 The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine the proper application of the terms of the Scheme.

**Reason:** It is a requirement of the Planning and Development Act 2000 that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

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**Gillian Kane**  
**Planning Inspector**  
**22/02/16**