



An
Bord
Pleanála

Inspector's Report PL09.248727

Development	Permission and retention for the subdivision of the ground floor, for café and gaming arcade uses, external and internal alterations of a Protected Structure.
Location	Former Hibernian Bank, 46 Leinster Street, Athy, Co. Kildare
Planning Authority	Kildare County Council
Planning Authority Reg. Ref.	17/94
Applicant(s)	Coolquay Leisure Ltd
Type of Application	Permission
Planning Authority Decision	Refuse Permission
Type of Appeal	First party
Appellant(s)	Coolquay Leisure Ltd.
Observer(s)	None
Date of Site Inspection	31 st August 2017.
Inspector	Ciara Kellett.

1.0 Site Location and Description

- 1.1. The appeal site is located in Athy town centre, Co. Kildare, within the Architectural Conservation Area of the town. It is located on the northern side of Leinster Street, which is one of the principle streets in Athy town.
- 1.2. The building is included in the current Record of Protected Structures for Co. Kildare. The building is an imposing five bay three storey terrace building with an ornate design and granite finish. It was formerly used as a bank and more recently as an insurance office.
- 1.3. The ground floor is currently in use as a gaming and amusement arcade, and the windows are screened off from public view. To the rear of the building there is a separate car park which is accessed off Chapel Lane.
- 1.4. Appendix A includes maps and photos.

2.0 Proposed Development

- 2.1. The proposed development includes the provision of a café to the front of the building facing Leinster Street. The existing gaming and amusement arcade will be reduced in size and relocated to the rear of the building. The café will be accessed from Leinster Street, and the gaming/amusement arcade will be accessed from the rear.
- 2.2. The drawings indicate that the net gaming arcade area is 34.6sq.m, and the net café floor area is 57sq.m.
- 2.3. The applicants intend to replace and repair missing slates from the roof, replace any broken glass units, remove old sign fixings to stone, install new timber Georgian windows, replace the front door and provide new signage. It is stated that the applicant intends to reinstate important elevational details which have been lost as a result of previous uses, and repair the building.
- 2.4. The application documentation was accompanied by a Planning Report and an Architectural Heritage Impact Assessment.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to refuse permission for one reason:

1. *It is the policy of the Athy Town Development Plan 2012 – 2018, namely policy RP25 and policy PS3, to discourage non-retail and lower grade retail uses e.g. takeaways and betting offices in the Core Retail Area and other principal streets in the town centre in the interests of maintaining and sustaining the retail attraction of Athy Town Centre and to promote and encourage the sensitive alteration of protected structures to safeguard their intrinsic character. The current application for the retention of a gaming arcade to part of the ground floor plan of the existing premises would materially contravene policy RP25 which seeks to provide higher-order uses in the core retail area, of which the existing premises forms part. The applicant has also provided insufficient information regarding the full nature of the proposed café use, and insufficient details regarding the associated works to the building, which is a protected structure (RPS ref. AY036), and therefore contrary to policy PS3. The proposed development therefore would be contrary to the proper planning and sustainable development of the area.*

3.2. Planning Authority Reports

3.2.1. Planning Report

The Planner's Report is the basis for the Planning Authority decision. It includes:

- Notes the existing use as a gaming arcade is unauthorised as the temporary 3-year permission granted on appeal has now expired.
- Notes the use in this location is discouraged under policy RP25, and applicant should be afforded an opportunity to address the concerns with the use in this prominent location and prominent building.
- Café vs. Takeaway: Considers applicant should be afforded an opportunity to outline the type of café proposed having regard to policy RP26.

- Considers that the Conservation Report submitted does not outline the historic referencing for the proposed window types, nor does it specify the proposed works for repair to the existing dormers.
- Further Information sought in March 2017 regarding the above. The applicant responded in April 2017. In summary, the applicant stated that the gaming use is confined to the rear of the premises, and is therefore, not in the core retail area; stated that as they have not obtained planning permission, they have not secured an operator for the café but are willing to accept a condition relating to same; applicant requested a condition be attached for full specification of the repair works to be agreed with the Planning Authority; will provide cycle spaces; and, in respect of parking the applicant states that the rear car park is not in their ownership, but most customers arrive on foot.
- Planner considers that the applicant has supplied inadequate information, and notes the existing use is unauthorised and not considered a desirable use in the core retail area. Notes the building is a protected structure and worthy of a more appropriate use.
- Recommends refusal of permission.

The decision was in accordance with the Planner's recommendation.

3.2.2. Other Technical Reports

- **Area Engineer:** No objection subject to conditions.
- **Transportation:** No objection subject to conditions.
- **Water Services:** No objection subject to conditions
- **EHO:** Requests additional information in relation to dedicated sanitary accommodation for workers, and details of mechanical ventilation for the café. No objection subject to conditions
- **CFO:** No objection subject to conditions

3.3. Prescribed Bodies

- **Irish Water:** No objection subject to conditions

- **Department of Arts, Heritage, Regional, Rural and the Gaeltacht, An Taisce, Heritage Council, Arts Council:** No response.

3.4. Third Party Observations

No submissions received.

4.0 Planning History

There are a number of planning applications associated with the subject site.

- **ABP Ref. PL09.246602, KCC Ref. Reg. 16/175:** Permission refused in September 2016 by the Board to retain the existing gaming arcade use of the ground floor and for upgrades to the facade. Reason for refusal referred to the Board's previous temporary grant of permission for three years, which was on the basis that the use would contribute to the maintenance of the Protected Structure, but it is considered that its continued use as a gaming arcade would detract from the primary retail use of the street, and would contravene policy RP25.
- **ABP Ref. PL09.245547, KCC Ref. Reg. 15/580:** Permission refused by the Board in February 2016, to retain the existing gaming arcade use of the ground floor and for upgrades to the façade for two reasons. Reason for refusal referred to the Board's previous temporary grant of permission for three years which was on the basis that the use would contribute to the maintenance of the Protected Structure, but it is considered that its continued use as a gaming arcade would detract from the primary retail use of the street, and would contravene policy RP25. The second reason referred to the signage. It was considered that the signage would detract from the quality of the building and result in dead street frontage, and would adversely affect the Architectural Conservation Area.
- **ABP Ref. 240508, KCC Reg. Ref. 12/300004:** Permission was granted by the Board in August 2012 for a change of use of premises from insurance offices to a gaming arcade, subject to 6 conditions including a condition that the use was for a period of only three years.

5.0 Policy Context

5.1. Athy Town Plan 2012 – 2018

Chapter 5 refers to the Town Centre, Chapter 6 to Retail, Chapter 12 to Architectural and Archaeological Heritage, Chapter 15 to Development Management Standards, and Chapter 16 to Land Use zoning.

The subject site is located in the Town Centre and is zoned 'Town Centre' on Map 5.1.

Chapter 6 includes policy **RS2**:

To promote the Core Retail Area (Refer to Map 6.1) and town centre as the primary focus and preferred location for new retail development.

Leinster Street is identified as part of the Core Retail Area.

Section 6.7.8 refers to Non Retail Uses in the Core Retail Area and Main Streets. It states "*the Council will seek to discourage an overconcentration of non retail and lower grade retail uses in prime retail areas*".

Policy RP25 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.

Policy RP26 states:

To discourage non retail and lower grade retail uses e.g. takeaways and betting offices in the Core Retail Area and other principal streets in the town centre in the interests of maintaining and sustaining the retail attraction of Athy Town Centre.

Section 12.6.1 refers to Alterations/Extensions/Change of Use to Protected Structures. It states "*It is recognised that the best method of conserving historic buildings and prolonging their functional and cultural life is to keep them in active use*".

Section 12.7 refers to Architectural Conservation Areas. The site is located within Area 2 ACA.

Policy PS3 states:

To promote and encourage the sensitive alteration/extension to Protected Structures so that they are in keeping with the character of the building and adjoining buildings.

Section 15.9.7 refers to Fast Food Outlets/ Takeaways/Amusement Arcades/Gaming Clubs/Bookmakers. It states: *“In order to maintain the appropriate mix of uses and protect night time amenities in a particular area, it is a policy of the Council to prevent the excessive concentration of the aforementioned uses and to ensure that the intensity of any proposed use is in keeping with both the scale and pattern of development in the area”.*

Table 16.2 in Chapter 16 states that the Land Use zoning of the Town Centre is *“To protect and enhance the special physical, historical and social character of the existing town centre and to provide for the development and improvement of appropriate town centre facilities and uses including retail, residential, commercial, cultural and civic uses”.*

Amusement Arcades are ‘Open for Consideration’ in Town Centre zoned lands.

5.2. **Natural Heritage Designations**

The River Barrow and River Nore SAC (Site Code 002162) is located c.150m to the west of the site. Ballyprior Grassland SAC (Site Code 002256) is located c.9.5km west of the site.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

A first party appeal has been lodged against the Council’s decision to refuse permission. In summary, it states:

- Reference is made to the long and detailed planning history of the site, and the efforts the applicants have made to address the issues relating to the appropriateness of the use, and restoration of the building.

- Consider that the proposals for the conservation and restoration of the building have been accepted by the Board, and consider the only outstanding issue remains the most appropriate use for the structure.
- Consider viability is a key issue to fund the investment required to restore, conserve and enhance the building. Gaming use is a viable use and applicants wish to retain the same, albeit at a reduced scale and relocated away from Leinster Street to the rear of the building where it has no frontage or entrance to the core retail area.
- A more vibrant use of a café fully addresses the Board's previous concern.
- Consider that a café use fronting Leinster Street, and a gaming use to the rear with no frontage or access to the core retail area are appropriate uses.
- Consider use is not contrary to policy RP25. Gaming use is to the rear and will have no presence on Leinster Street. Access to the gaming is from the rear car park and Chapel Lane. Chapel Lane is not included in the core retail area. Consider gaming use should be assessed on general town centre policy and objectives. Zoning indicates that 'Amusement Arcade' is a use open for consideration.
- The Council's policy is to prevent an excessive concentration of such uses – there are no other known existing amusement arcades in Athy.
- The former Hibernian bank has never been in use for retail purposes – therefore does not form part of the existing retail floorspace and has always been non-retail use.
- Request the Board to consider the precedent established by the Council's recent grant in Naas, Reg. Ref. 17/431. The approved change of use to gaming arcade is in the Core Retail Area and Architectural Conservation Area of Naas. Policy RP33 of the Naas Town Development Plan is identical to policy RP25 of the Athy Plan.
- Reference is made to another planning application which was refused permission by Naas Town Council but overturned by the Board (KCC Reg. Ref. 13/500064) for a temporary period of 3 years.

- Note that the use of Protected Structures can prevent the degradation and ultimately the loss of important structures. The short term nature of the previous permission (3 years) deterred the applicants from investing substantially in the upgrade and restoration of the building's façade. Current application seeks permanent permission, and seeks to make good any inappropriate alterations and additions.
- Consider scope of internal works to be minimum and has not arisen as an issue in any previous applications. Board considered that the proposed restoration in a previous assessment had merit and welcomed same.
- Consider Council's assessment of the application is disingenuous and does not reflect the effort made by the applicant to maintain and enhance the protected structure. Submitted Architectural Heritage Assessment but have not prepared construction drawings as permission is not yet granted, but will submit and agree full specification for the works with the Planning Authority prior to commencement of development.
- Proposed development has had full regard to the previous decision of the Board, and in response has reduced and relocated the gaming use to the rear of the Protected Structure with no frontage to, and access from, the core retail area.

6.2. **Planning Authority Response**

The Planning Authority responded stating that they reiterate their decision for refusal, having regard to Policy RP25 which discourages gaming arcades in the core retail area as they are considered an undesirable use, and PS3 which refers to promoting and encouraging the sensitive alteration/extension to Protected Structures. Proposed development would contravene materially policy RP25 and PS3.

7.0 **Assessment**

The main issues in this appeal are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise. The issue of appropriate assessment

also needs to be addressed. The issues can be dealt with under the following headings:

- Principle of Development
- Architectural Heritage
- Appropriate Assessment

7.1. Principle of Development

7.1.1. Following a number of refusals of permission by the Council and the Board, the applicants have amended their plans to incorporate a café to the front of the premises, and to relocate the gaming/amusement arcade to the rear. I consider that the applicant has attempted to address the previous reasons for refusal by the Board with the subject proposal. I have read the other files referred to by the applicant and have had regard to the Council and Board's decisions therein.

In chapter 16 of the Athy Town Development Plan (the Plan), restaurants are permitted in principle, and amusement arcades are open for consideration in Town Centre zoned lands.

7.1.2. Policy RP25 of the Plan, which formed the main reason for refusal by the Council, seeks to discourage amusement/gaming arcades in the Core Retail Area, of which Leinster Street forms a major part along with Duke Street. The applicant considers that as the gaming arcade has no frontage onto Leinster Street, it is not within the Core Retail Area as identified in Map 6.1.

The applicant states that access to the gaming arcade will be from the rear. I do not agree with the applicant that because the gaming arcade is to be accessed from the rear of the building, it is not within the Core Retail Area. It is occupying floorspace which makes up part of the core retail area of the town.

I note that in the response to the Further Information request of the Council, the applicant states that they do not own the car park spaces to the rear of the building, albeit the area appears to be within the red line boundary. Furthermore, it is unclear if the laneway to the rear of no's. 46 to 51 Leinster Street, off Chapel Lane, is a public right of way. It is unclear how access to the gaming arcade will be prohibited

via the café from Leinster Street. Therefore, I consider that a gaming arcade in this building is within the Core Retail Area.

- 7.1.3. Having regard to its location within the Core Retail Area, policy RP25 of the Plan needs to be examined to determine if a gaming arcade contravenes this policy, or if the existence of a café fronting onto Leinster Street mitigates it.

Policy RP25 of the Plan seeks 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. Section 6.7.8 of the Plan refers to Non Retail Uses in the Core Retail Area and Main Streets. It states *“the Council will seek to discourage an overconcentration of non retail and lower grade retail uses in prime retail areas”*.

Policy RP26 of the Plan seeks to discourage non retail and lower grade retail uses, e.g. takeaways and betting offices in the Core Retail Area.

- 7.1.4. I consider that the proposed use of a café fronting onto Leinster Street is an acceptable use in the Core Retail Area, and is not detrimental to the business and commercial environment of the town. However, I also have had regard to policy RP26 which specifically seeks to discourage takeaways.

The applicant stated, in response to the Further Information request, that they have not entered into negotiations with an operator for the café, but are willing to agree that the Council regulate hours and the nature of the service of the café by way of condition. I also note that the Environmental Health Officer concerns were not addressed for similar reasons.

In certain circumstances, conditioning this detail may be possible, and indeed the Board may consider that this is appropriate in this case.

The Athy Town Plan notes with respect to Fast Food Outlets/ Takeaways /Amusement Arcades/Gaming Clubs/Bookmakers *“it is a policy of the Council to prevent the excessive concentration of the aforementioned uses and to ensure that the intensity of any proposed use is in keeping with both the scale and pattern of development in the area”*. Having regard to its location in the Core Retail Area, an Architectural Conservation Area, policy RP26, and the applicant’s intention to maintain the use to the rear as a gaming arcade, I consider that the applicant should be expected to provide information in relation to the nature of the café, to prevent the

excessive concentration of aforementioned uses, and this important detail should not be left to be agreed via condition.

- 7.1.5. In addition, having regard to the fact that the building is a Protected Structure, and within the Architectural Conservation Area, I consider the fact that no information has been provided with respect to the location of vents and ducts and fabric interventions etc. which would be required for health and safety purposes for a café, to be unacceptable (I will consider this aspect further in Section 7.2 below).
- 7.1.6. I accept that while the gaming use is within the core retail area, the café does address other issues in the Town Plan, such as providing for an active frontage, and it is recognised that the best method of conserving historic buildings and prolonging their functional and cultural life is to keep them in active use.
- 7.1.7. I consider the proposed use of a café as acceptable in principle, but in the absence of information on the file it is unclear what type of café is being proposed by the applicant, e.g. coffee shop, takeaway or a fast-food outlet, and therefore, not possible to determine if the proposed café use, as well as the gaming arcade, would result in the excessive concentration of uses which the Council are seeking to discourage in the Core Retail Area.

The Board may consider that conditions restricting the hours of operation or the nature of the café may be appropriate, but having regard to policy RP25 and RP26, and in the absence of details, I am not satisfied that the proposal is in accordance with the policies of the Council.

7.2. **Architectural Heritage**

The building is a prominent and imposing 5 bay building along Leinster Street and is on the Record of Protected Structures of the town (Ref. AY36), and on the National Inventory of Architectural Heritage (Ref. 11505286).

I agree with the applicant, that it is preferable to keep the building in use to prevent degradation of the structure. The proposed refurbishments and repairs are welcome. However, as noted above the applicant has stated that they have not entered into negotiations with an operator of the café.

I note that the Architectural Heritage Impact Assessment (January 2012) submitted by the applicant does not refer to a change of use to a café. It notes that the change of use to an amusement arcade will not result “*in the loss of any historic fabric as redecoration and insertion of new furnishings and appliances is all that the planned development will entail*”. The revised proposal now includes a café, and the assessment has not addressed this change of use which is likely to incorporate mechanical ventilation, ducts, and various fabric interventions. Therefore, it is not possible to assess the impact this may have on the fabric of the Protected Structure.

I consider the use of the building as a café to be an acceptable use within the core retail area of the town, but in the absence of information on the file with respect to the details of the nature of the café, or the interventions that change would entail to the Protected Structure, an assessment of the impact on the structure cannot be undertaken.

In conclusion, in the absence of information on the file, I am not satisfied that the proposal is in accordance with the policies of the Council, in particular policy PS3 which seeks to promote and encourage the sensitive alteration/extension to Protected Structures.

7.3. Appropriate Assessment

Having regard to the nature and scale of development proposed and to the nature of the receiving environment, namely an urban and fully serviced location, no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

- 8.1. I recommend that planning permission should be refused permission, for the reasons and considerations as set out below.

9.0 Reasons and Considerations

1. It is the policy of the planning authority, in order to maintain the appropriate mix of uses and protect night time amenities in a particular area, to discourage an excessive concentration of gaming arcades/takeaways and fast-food outlets and to ensure that the intensity of any proposed use is in keeping with both the scale and pattern of development in the area. In the absence of details relating to the nature of use of the café, the Board is not satisfied that the café, as well as the gaming arcade, will not lead to an excessive concentration of such uses. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
2. The proposed development relates to a Protected Structure located within an area zoned 'town centre' and within the Core Retail Area, as well as being within an area designated as an Architectural Conservation Area in the Athy Town Development Plan 2012 – 2018. Having regard to the protected structure status of the building and in the absence of details relating to works to the interior required for café use, the Board is not satisfied that these works will not have a serious and detrimental impact on the internal layout and character of this protected structure. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Ciara Kellett
Inspectorate

22nd September 2017