



An
Bord
Pleanála

Inspector's Report ABP-302614-18

Development	Partial retention of existing gaming and amusement arcade use
Location	Former Hibernian Bank, 46 Leinster Street, Athy, Co.Kildare
Planning Authority	Kildare County Council
Planning Authority Reg. Ref.	18842
Applicant(s)	Coalquay Leisure Ltd.
Type of Application	Permission for Partial retention
Planning Authority Decision	Refuse
Type of Appeal	First Party
Appellant(s)	Coalquay Leisure Ltd
Observer(s)	None
Date of Site Inspection	18 th of December 2018.
Inspector	Caryn Coogan

1.0 Site Location and Description

- 1.1. The subject site is located in the centre of Athy town, Co. Kildare, within an Architectural Conservation Area of the town. It is located along Leinster Street, which is one of the principle streets in Athy on the main approach from Dublin.
- 1.2. The subject building, 46 Leinster Street, is currently on the list of Protected Structures for Co. Kildare. It is a three storey five bay terraced building, with an imposing front of granite stone and a mansard roof. It was formerly used as a bank, then an insurance office, and more recently a gaming/ amusement use.
- 1.3. The ground floor of the building is the gaming amusement arcade. The ground floor windows are blackened out from public view. There is a rear access to the carparking area. The carpark is accessed from a narrow lane off Chapel Lane.
- 1.4. There are photographs of the site in the Appendix of this report.

2.0 Proposed Development

- 2.1. The application is for the partial retention and relocation of an existing amusement arcades business to the rear of an existing building which is a Protected Structure in order to accommodate a permitted café (Ref. 18/388) to the front of the building.
- 2.2. Drawings show there are no changes proposed to the first, second and third floors. The ground floor shows a 'New Café' which was permitted under planning reg. no. 18/388. There is a gaming arcade included to the rear of the café which is to be accessed from the rear of the building.
- 2.3. The corridor, toilets and existing boiler room are retained as existing within the building on the ground floor.

3.0 Planning Authority Decision

3.1. Decision

Kildare County Council refused the proposed development for one reason.

The proposed development which comprises of the retention of a gaming and amusements arcade, and its relocation to the rear of a Protected Structure within the

Core Retail Area of Athy, as designated under the Athy Town Development Plan 2012-2018 and the Kildare County development Plan 2017-2023 is considered an inappropriate use. Policies RP25 and RP26 seek to discourage amusement/ gaming arcades in the Core Retail Area. Furthermore Policy R59 of Kildare County Plan states applications for amusements arcades will be refused if considered to be an undesirable use and potentially detrimental to businesses in the town centre.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The planning report is the basis for the Planning authority's decision. It includes:

- Planning history is cited at length. It is noted a Warning Letter was issued to the applicant on 28/03/18 in relation to non-compliance of Condition No. 2 of PL35.240508.
- The site is zoned A 'Town Centre', and a gaming arcade is open for consideration under this zoning
- A substantial number of non-retailing uses prevails along Leinster Street.
- The proposed gaming arcade is the same as proposed under 18-388, and although it states the gaming arcade will be accessed from the rear of the building, it is still accessible from Leinster Street
- The gaming/ arcade is within the Core Retail Area.
- The cumulative assessment of the case with other non-retail uses has not been carried out.
- It is contrary to policies RP25 and RP26.

3.2.2. Other Technical Reports

Roads and Transport had no objection.

District Engineer had no objection.

Water Services had no objection.

3.3. Third Party Observations

There were no third-party objections to the proposed development.

4.0 Planning History

4.1 Planning Reference 18/388

Kildare Co. Co. granted planning permission for the subdivision of the ground floor, external and internal alterations at the former Hibernian. Bank. However, the Council refused the retention and relocation of the gaming arcade.

4.2 PL09.248727 (17/94)

The planning authority refused permission for retention of the ground floor for café and gaming arcade and internal and external alterations. The Bord upheld the decision.

- 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, and the gaming arcade, would 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 and 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 would 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.*

4.3 **PL.246606 (16/175)**

Planning authority refused retention of the existing gaming and amusement arcade use of the ground floor level and permission for upgrades to the façade at the former Hibernian Bank (Protected Structure, RPS Reference AY0361). The refusal was upheld for the following reason:

The proposed development relates to a Protected Structure located within an area zoned 'town centre' and within an area designated an Architectural Conservation Area in 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). The Board previously granted planning permission for the proposed development on a temporary basis for a period of three years only on the basis that the use would contribute to the maintenance of the Protected Structure. Notwithstanding this previous grant of planning permission, it is considered that the continued use of the premises as a gaming and amusement arcade would detract from the primary retail use of the street and from the vitality and vibrancy of the town centre and would contravene development plan policy RP25. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

4.4 **PL09.245547 (15/580)**

The planning authority refused the following development (a) The continuation of the existing gaming and amusement arcade at ground floor level permitted by An Bord Pleanála under appeal reference number PL 35.240508 (Athy Town Council planning register reference number 12/300004) and (b) the proposed signage associated with the use, all at 46 Leinster Street, Athy, County Kildare. (Formerly Hibernian Bank) Protected Structure, RPS Reference AY036. The Board upheld the decision to refuse.

5.0 **Policy Context**

5.1. **Development Plan**

Kildare County Development Plan 2017-2023

Policies: Athy and Kildare Town

It is the policy of the Council to:

R 22 Promote and encourage major enhancement and expansion of the retail offer and town centre functions of Athy and Kildare Town to sustain and enhance their importance as Sub-County Town Centres within the South Sub-Area of the county.

R 23 Support and implement appropriate development of lands for the future expansion of Athy Town Centre and specifically those facilitated by the expansion of the Core Retail Area and the designation of those lands as the Town Centre Retail Expansion Area in the forthcoming Athy Local Area Plan.

9.5.11 Non-Retail Uses in Core Retail Areas and Other Main Streets

While the retail offer and attraction of Kildare's main centres has witnessed a significant improvement over the last fifteen years, the parallel introduction of nonretail and lower grade retail uses in Core Retail Areas and other main streets has changed the characteristics and ambience of these centres. Such uses may include amusement/gaming arcades, bookmakers, fast food outlets, budget shops, charity shops, telephone/ mobile shops and business and financial services. It is recognised that in the majority of the county's main centres the retail footprints do not meet the requirements of national and international operators and the space provides the opportunity for the introduction of alternative occupiers, often without a planning application for a change of use being required. To maintain the integrity, critical mass of quality retail activity, viability and vitality of Core Retail Areas and other main streets, the Council will seek to discourage an overconcentration of the aforementioned uses in prime retail areas.

Policies: Non Retail Uses in Core Retail Areas and Other Main Streets

It is the policy of the Council to:

R 59 Refuse planning applications for amusement/ gaming arcades as they are considered to be an undesirable use and potentially detrimental to the business and commercial environment of centres in the county.

17.13.7 Fast Food Outlets/Take-Aways Amusement Arcades/Turf Accountants

In order to maintain the appropriate mix of uses and protect the amenities in a particular area, it is the policy of the Council to prevent the excessive concentration of fast food outlets, take-aways, amusement arcades and turf accountants. The provision of any of the above will be assessed having regard to the following:

- The number and frequency of such facilities in an area and their cumulative impact in association with the proposed development;
- The need to safeguard the vitality and viability of shopping areas in the town centre and to maintain a suitable mix of retail uses;
- The proximity of such uses to other vulnerable uses, e.g. residences, schools, open space;
- The likely impact on general and residential amenity in terms of noise / disturbance, traffic, parking, litter and fumes;
- Proposed façade design, the type and degree of any advertising / signage and lighting, and the visual appearance of vents / extractors; and
- Reinforcement of the town centre as a priority location for coffee shops and restaurants.

The design shall be required to respect the character of the street and the buildings. Noise insulation measures will be required at the time of the submission of the planning application and ongoing noise monitoring may be required. Adequate provision for refuse disposal, storage and collection must be indicated in both new and existing buildings. Fast food facilities should include proposals for on-street bins (with appropriate design for boxes / packaging) and a plan for their maintenance. Proposed opening hours must be specified; these will be controlled by the Planning Authority.

5.2 Athy Development Plan 2012-2018

The site is located within a Town Centre zoning objective whereby gaming/ arcade use is open to consideration.

6.7.8 Non Retail Uses in the Core Retail Area and Main Streets

As with many centres in the County, Athy Town Centre has witnessed the introduction of non retail and lower grade retail uses in its Core Retail Area and other main streets. To maintain the integrity, critical mass and potential for quality retail 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.

It is the policy of the Council:

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 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.

5.3 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

HWP Planning has taken this appeal on behalf of the applicant Coalquay Leisure Ltd. The site which is a viable gaming/ amusement arcade has been the subject of a number of applications and appeals.

PL09.248727 was for a change of use of the front building to a café and retention and relocation of the gaming/ arcade to the rear of the building. The Board did not grant it due to insufficient details regarding the proposed café and its impact on the protected structure. A new planning application was submitted, 18/388, and the café

use was granted but the relocation of the gaming activity to the rear of the building was refused.

The current application, 18/842 is for the partial retention and relocation of the existing gaming room and arcade use. The planning authority's refusal did not have full regard to the Board's previous decision on the case, and it considered the proposal to be contrary to Policies RP25 and RP 26 of the Athy Town Development Plan 2012-2018. In addition, the Council said the proposal would be contrary to policy R59 of the Kildare County Development Plan 2017. The Council concluded that the proposal would be contrary to the vitality and vibrancy of the town.

A large number of arcade uses on Athy have recently ceased trading, therefore the cumulative impact of the remainder is not excessive when compared to other towns the size of Athy. There are no other existing amusement arcades in Athy, the retention of the existing use, reduced in size will not contribute towards a potential excessive concentration of gaming arcades.

Two precedent applications, 17/431 and 16/527 which Kildare Co. co. granted permission for within a Core Retail Area.

6.2 *The relocated gaming use would effectively be peripheral to the Core Retail Area, the boundary of which is indicative at best.*

The applicant considers the Core Retail Area as defined by the Kildare County Development Plan, is a concept that cannot be rigidly delineated by an arbitrary line. The significantly reduced gaming area will have no presence along Leinster Street. Access to the gaming area will be via the rear of the premises where the existing carpark serving the building is located. This is access from Chapel Lane which is not included in the Core Retail Area. The proposed location is peripheral and not within the core Retail Area. Therefore, Policy RP 59 of the Kildare CDP and Policy RP25 no longer apply.

The gaming arcade use should be assessed on the general town centre policies and objectives. The zoning matrix found in table 16.5 of the Athy Town Development Plan indicated the use Amusement Arcade is 'Open to Consideration'.

6.3 *The relocation of the gaming arcade to the rear of the permitted café will not detract from the vitality or vibrancy of the town centre and will not injure the*

amenities of properties in the vicinity. Conversely, it will enhance the undeveloped backlands areas to the rear of the site via Chapel Lane.

The Core Retail section, 14.4.2 of the Athy Town Development Plan 2012-2018s recognises that the retail element within the town has shifted from Leinster Street to Duke Street. Leinster Street has suffered as a result there are many derelict or vacant buildings. Athy is increasingly under performing in its retailing role, as evidences from the increasing number of vacancies.

Policies such as R59 and R60 which seek to restrict non-retail uses in vicinity of the Retail Core may contribute towards increased vacancy rates which in turn would be detrimental to the vibrancy and vitality of the town. The subject property was vacant prior to the commencement of the amusement arcade.

Section 5.5 of the Athy TDP describes where the gaming use will now be the focus as a considerable undeveloped backland areas to the rear of buildings on Duke street and Leinster Street with significant development potential and notes they can accommodate a mix of uses. Access to the arcade will be from Chapel Lane.

There were no third-party submissions or observations. The existing use is a longstanding use, and the occupiers and owners of property in the vicinity of the site have no objection to the use. Overall, the reduced and relocated gaming/ amusement use to the rear of the café permitted under 18/388 is not contrary to the policies of the Athy LAP or Kildare County Development Plan but will increase the footfall along Chapel Lane.

This view is supported by a recent Board decision, (ABP 300921), relating to change of use from retailing to gaming and leisure with Cork City Retail Core, whereby the inspector concluded that the presence of the gaming function would not be harmful to the retailing function of The Quay.

6.4 The retention of the gaming use will not result in an excessive concentration of such uses in the town centre use and will not be detrimental to the business and commercial environment of the town centre.

Figure 4 in the appeal submission highlights the distribution of Amusement/ Gaming/ Bookmaker/ Fastfoods/ Takeaways within the Core Retail area. The number is not excessive compared to other towns of similar scale, and they do not detract from the Core Retail Area. There has been a reduction in the number of fast-food outlets in

Athy as opposed to an increase. The existing amusement arcade on Leinster Street is the only amusement arcade in the town. Therefore, its retention will not contribute to the overconcentration of such uses in the Core Retail Area.

6.5 The Board will note the two precedents in which Kildare Co. Co. granted planning permission for similar developments in the Core Retail Area.

17/431: Kildare Co. Co. granted planning permission for retention of the change of use of a ground floor retail unit to a gaming/ amusement arcade at 4 Fairgreen, Naas. The site was within the Core Retail Area, however the planner does not refer to Policy R59 of the Kildare Development Plan 2017-2023.

16/527: Kildare Co. Co. granted permission for the relocation of a betting office from Stanhope Street, off the Core Retail Area, to Leinster Street, in the Core Retail Area. The site formed part of the Emily Square ACA.

Conversely, in the subject application it is proposed to relocate form within the Core Retail to outside of the Core Retail Area.

6.6 Response from Planning authority

There are no further comments to the Planner's Report on file.

7.0 Assessment

7.1 There is a long planning history associated with the subject site and subject use as an amusement arcade. The subject site is the former Hibernian Bank building on Leinster Street in Athy, Co. Kildare. The building is a Protected Structure. The address is 46 Leinster Street, and it is a terraced five-bay three-storey French Empire style former bank building with a mansard attic. It was built around 1929, with a three storey rear extension. There is a surfaced carpark area to the rear of the building which is accessed from a laneway off Chapel Lane to the east of site.

7.2 The Board should note, the current proposal is similar to a development refused on appeal under **PL09248727** for the following reasons:

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, and the gaming arcade, would 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 and 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 would 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.*

Having regard to the number of refusals in the past associated with the subject development, namely the above and PL09.246602, PL09.245547, I wish to examine the current proposal to determine whether there is material evidence and material changes to warrant overturning previous refusals for the current proposal.

- 7.3 The site is zoned subject to a Town Centre zoning objective in the Athy Town Development Plan (which has expired since the planning authority's decision). Amusement arcades are 'open for consideration' under the zoning objective. The planning authority has granted permission for the café to the front of the building which has not been carried out to date. The partial retention of amusement arcade was refused for one reason as it was considered to be :

- *An inappropriate use within a Protected Structure;*
- *Contrary to policies RP25 and RP26 of the Athy Town Development Plan;*
- *And Contrary to Policy R59 of the Kildare County Development Plan.*

In my opinion, the current use of the entire ground floor area of the Protected Structure as an amusement arcade is inappropriate. I accept the planning authority has permitted a partial change of use of the ground floor area to a café, however this

development has not been carried out to date. The windows are still blackened out along the front façade of the building and there is no active frontage along the streetscape. I consider the partial retention of the Protected Structure as an amusement arcade as inappropriate, because, these are incompatible uses within the same ground floor area of the building. The patrons of the café will be families including children under the age of sixteen whereby children under the age of sixteen cannot engage in gaming at an amusement hall. I note there is access from Leinster Street via the building alongside the proposed café to the amusement arcade. Notwithstanding the proposed rear access from the carpark area to the amusement arcade, I do not consider the partial retention of the amusement arcade alongside a permitted café to be appropriate within a Protected Structure of this calibre, the former bank building is one of the finest buildings in architectural terms along the streetscape. It is a three storey five bay building with a granite exterior and a mansard roof, and it stands out along the street.

- 7.4 Policy RP25 of the Athy Town development Plan seeks to discourage amusement/gaming arcades within the Core Retail Area of Athy. The applicant argues there is no other amusement arcade in Athy, and number of non-retailing businesses within the Core Retail area have gone out of business, therefore the partial retention of the gaming area on site will not be detrimental to the Core Retail Area or excessive gaming uses in the town. It is also argued that the amusement arcade is outside of the Core Retail Area and will be located to the rear of the building and accessed from Chapel Lane.

In my opinion, the amusement arcade can still be accessed from Leinster Street as per the floor plan drawings, in addition the main legibility of the subject site is Leinster Street. It is highly unlikely patrons will use a narrow laneway which is solely to serve the rear of buildings along Leinster Street, as the main access to the amusement arcade. There is limited passive surveillance of the laneway or public lighting to encourage patrons of the premises to use the rear access. Having regard to the development plan maps illustrating the Core Retail Area, it is reasonable to conclude the site is within the Core Retail Area. The applicant has tried to demonstrate the floor area of the amusement arcade is outside of the Core Retail Area. In my opinion, the delineation is not an precise line a zoning objective line in a

development plan, it an arbitrary delineation indicating the main retailing stretch along Leinster Street and Duke Street of Athy. It is unacceptable to purposely divert the footfall from the Core Retail Area of Athy to back lanes at the rear of buildings solely to access an amusement arcade that is not prohibited under the current development plan policies. This is a highly undesirable precedent. Notwithstanding, the applicant's manipulation accesses and floors plan in order to try an remove part of the amusement arcade from the designated Core Retail Area, the fact remains, the main access and legibility of the building is along Leinster Street, the front façade, which is within the designated Core Retail Area.

Therefore the following policies are relevant to the current proposal.

***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 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.*

As, assessed and previously determined by the Board, the partial retention of the amusement arcade as currently proposed does not comply with the stated policies or **Policy R 59 of Kildare County Development Plan**, '*Refuse planning applications for amusement/ gaming arcades as they are considered to be an undesirable use and potentially detrimental to the business and commercial environment of centres in the county*'.

Furthermore, I note from the planning histories relating to the site the applicant had stated previously they did not own the car parking spaces to the rear of the building even though the carparking area is within the site boundaries. It is unclear also the right of way or ownership over the laneway from Chapel Lane.

There are no new issues raised on this current appeal, since the previous Board's decision to refuse under PL09.248727, to warrant permitting the development. The relevant policies remain unchanged and the planning authority's decision regarding the amusement arcade remains unchanged. There is no material change in the current proposal apart from the fact the café to the front of the building has been permitted independently of the amusement arcade. I have concerns regarding both of these uses co-habiting on the ground floor of the building as per the proposed floor plans, in terms of the communal use of toilets, corridors and doors, lack of details regarding ventilation and ducting, staff facilities, disabled access within a Protected Structure.

7.5 I note the two cases cited by the applicant as precedent for granting permission for an amusement arcade within the Core Retail Area, 17/431 and 16/527. It is not clear from the evidence presented the nature of the sites and the planning histories associated with each case. It would appear from the appeal submission, that the planning authority was inconsistent in its approach regarding implementation of Kildare County Development Policy R59, however, approach should not be adopted by the Board in this instance given the planning history of the site.

8.0 Appropriate Assessment

9.0 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.

10.0 Recommendation

10.1. I recommend the planning authority's decision to refuse permission for the partial retention of the amusement arcade be upheld for the following reasons and considerations.

11.0 Reasons and Considerations

The proposed development relates to a Protected Structure located within an area zoned 'town centre' and within an area designated an Architectural Conservation Area in 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). It is considered that the continued partial use of the premises as a gaming and amusement arcade 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, be contrary to the proper planning and sustainable development of the area.

Caryn Coogan
Planning Inspector

30/01/2019