



An
Bord
Pleanála

Inspector's Report ABP-305610-19.

Development	Permission for the change of use from a gaming and amusement arcade use to an internet cafe.
Location	Former Hibernian Bank, 46 Leinster Street, Athy, Co.Kildare.
Planning Authority	Kildare County Council.
Planning Authority Reg. Ref.	19/809.
Applicant(s)	Coalquay Leisure Ltd.
Type of Application	Permission.
Planning Authority Decision	Refuse.
Type of Appeal	First Party
Appellant(s)	Coalquay Leisure Ltd.
Observer(s)	None.
Date of Site Inspection	20/12/2019.
Inspector	A. Considine.

1.0 Site Location and Description

- 1.1. The subject site is located within the town centre area of the town of Athy in Co. Kildare. Leinster Street is one of the main streets in the town and the site lies within the designated Architectural Conservation Area of the town. The building the subject of this appeal, no. 46 Leinster Street, is a five bay, mid terraced, three storey building, with two dormer windows in the mansard roof and is constructed with granite and brick. The ground floor level of the buildings' façade includes 5 granite arches and a decorative stone surround at the first-floor central window.
- 1.2. The building is identified on the list of Protected Structures and has been used as a bank and offices in the past, with the most recent use being as a gaming amusement arcade. The building was closed on the date of my site inspection and the windows are frosted / finished so as to prevent views into the building.
- 1.3. The site has a stated area of 0.0515ha and the existing building on the site has a stated floor area of 414m². The works proposed affect only the ground floor which has a floor area of 162m².

2.0 Proposed Development

- 2.1. Permission is sought, as per the public notices for change of use and internal and external alterations at the Former Hibernian Bank, (Protected Structure, RPS ref. AY036), 46 Leinster Street, Athy, Co. Kildare. The proposed internal alterations at ground floor level will facilitate the proposed change of use from a gaming and amusement arcade use to an internet café with ancillary use of gaming terminals to the rear. The proposed external alterations consist of the replacement of the ground floor windows; replacement of the front door; new signage; and repairs and refurbishment of the façade. The proposed development consists of or comprises the carrying out of works to a protected structure, at former Hibernian Bank, 46 Leinster Street, Athy, Co. Kildare
- 2.2. The application included a number of supporting documents including as follows;
 - Plans, particulars and completed planning application form
 - Planning Statement

- Architectural Heritage Impact Assessment prepared by John Cronin & Associates, dated January, 2012.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to refuse planning permission for the proposed development for the following stated reasons:

1. The building is located within the Core Retail Area of Athy Town where it is the Policy of the Council, as stated under Policy RP26 of the Athy Town Development Plan 2012-2018 to discourage non retail and lower grade retail uses in the Core Retail Area and other principle streets in the town centre in the interest of maintaining and sustaining the retail attraction of Athy Town Centre.

It is considered that the proposed internet café use is not complimentary and supportive of the retail uses in the vicinity and thus would seriously injure the vitality and viability of the street as a retail area, would set an undesirable precedent, would contravene Policy RP26 of the Athy Town Development Plan 2012-2018 and would be contrary to the proper planning and sustainable development of the area.

2. It is the policy of the Planning Authority, as set out in the Athy Town Development Plan 2012-2018 '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) and it is also the policy of the Planning Authority, as set out in the Kildare County Development Plan, 2017-2023 to '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' (Policy R59). It is considered that the proposed use of the building as a gaming and amusement arcade (8 no. gaming machines and console gaming area) 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 Council Policy, as expressed in RP25 and R59 of the Athy Town Development Plan 2012-2018 and would be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planning report considered the proposed development in the context of the details submitted with the application, internal technical reports, planning history and the County Development Plan policies and objectives. The report also includes an Appropriate Assessment Screening Report.

The planning report concludes that proposed development is not acceptable. The Planning Officer recommends that permission be refused for the proposed development, for reasons relating to the same issues as previous decisions to refuse relating to the site, notably, the location of the site within the Core Retail Area of Athy and the policy to discourage non retail and lower grade retail uses in such areas. The report considers that the previously permitted use as a café is compatible and complimentary with retail uses, but the proposed internet café where the dominant use will be a computer and gaming facility rather than a café, is contrary to Policy RP26 of the Athy TDP and Policy RP26 of the Kildare CDP.

This Planning Report formed the basis of the Planning Authority's decision to refuse planning permission.

3.2.2. Other Technical Reports

Environment Section: Further information required.

Environmental Health Officer: No objection.

Athy Municipal District Engineer: No objections subject to compliance with conditions.

Chief Fire Officer: No objection.

Roads, Transportation & Public Safety: No objection.

Conservation Officer: No objection.

Water Services: No objection subject to compliance with conditions.

3.2.3. Prescribed Bodies

None.

3.2.4. Third Party Submissions

There are no third party objections/submissions noted on the planning authority file.

4.0 Planning History

The following is the relevant planning history pertaining to the subject site:

PA Ref: 18/388: Permission sought for the subdivision of the ground floor, external and internal alterations at the former Hibernian Bank (Protected Structure, RPS ref. AY036). The proposed internal alterations at ground floor level will facilitate the proposed change of use to a café and the retention and relocation of the existing gaming and amusement arcade, to the rear of the building. The proposed external alterations consist of the replacement of the ground floor windows; replacement of the front door; new signage; and repairs and refurbishment of the facade

Kildare County Council granted permission for the subdivision of the ground floor and the change of use to a café but refused permission the retention and relocation of the gaming arcade to the rear of the building.

ABP ref ABP-302614-18 (PA ref: 18/842): The planning authority refused permission for the partial retention of existing gaming and amusement arcade use. The Board upheld the decision to refuse for the following reason:

The proposed development relates to a Protected Structure which is located within the Core Retail Area of Athy, as identified in the Kildare County Development Plan 2017-2023 and in the Athy Town Development Plan 2012-2018 and is located on lands zoned town centre and within an area designated an Architectural Conservation Area, as identified in the Athy Town Development Plan 2012-2018. Having regard to the policy of the planning authority on non- retail uses in Core Retail Areas and Other Main Streets, including Policy R59 (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) and Policy R60 (discourage where possible within its statutory powers the introduction of non-retail and lower grade retail uses in Core Retail Areas and other streets, in the interests of maintaining and sustaining the retail attraction of the county's centres) as set out in the Kildare County Development Plan 2017-2023, it is considered that the proposed development would detract from the vitality and vibrancy of the town centre and would seriously injure the amenities of property in the vicinity. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

ABP ref PL09.248727 (PA ref: 17/94): The planning authority refused permission for retention of the ground floor for café and gaming arcade and internal and external alterations. The Board 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.

ABP ref PL.246606 (PA ref 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.

ABP ref PL09.245547 (PA ref: 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 which is almost identical to the reason under ABP ref PL.246606 (PA ref 16/175).

ABP ref PL09.240508 (PA ref: 12/300004): Athy Town Council refused permission for the change of use of premises at ground floor level from Insurance Officers to games and amusement arcade, all at 46 Leinster Street, Athy, County Kildare. (Formerly Hibernian Bank) Protected Structure, RPS Reference AY036. On

appeal, the Board granted a temporary permission for a period of three years as it would contribute to the maintenance of a protected structure.

5.0 Policy and Context

5.1. Development Plan

The Kildare County Development Plan 2017 – 2023, is the relevant policy document relating to the subject site. The following policies are relevant in that they relate to 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. The following is relevant in this regard:

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 site is not located within any designated site. The closest Natura 2000 site is the River Barrow and River Nore SAC (Site Code 002162) which is located approximately 150m to the west of the site, and the Ballyprior Grassland SAC (Site Code 002256) is located c.9.5km west of the site.

5.4. EIA Screening

Having regard to nature and scale of the development, together with the brownfield nature of the site, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

This is a First party appeal against the decision of the Planning Authority to refuse planning permission for the proposed development. The issues raised are summarised as follows:

- The subject application for a change of use to an internet café acknowledges Kildare Co. Cos consistent determination that amusement / gaming arcades are not an acceptable use in the Core Retail Area.
- The proposed change of use to an internet café aims to target the evolving e-commerce and retail leisure experience market in town centres and will incorporate virtual reality technology, PCs, gaming consoles and ancillary gaming terminals and a refreshment / service counter.
- The appellant is disappointed that the PA persisted in considering the now proposed use of the building as a gaming and amusement arcade and it is submitted that this misinterpretation is based on confusion over terminology. It is considered that the Councils policies which discourage or prohibit amusement / gaming arcades in the Core Retail Area apply.
- The gaming element accounts for 25% of the proposed computers and reference is made to an ABP decision in Laois PL11.239132 refers.
- It is submitted that:
 - The principle of an internet café use at this location is appropriate.
 - The proposed gaming area is an ancillary use to the internet café.

- The proposed use is compatible with a protected structure and the proposed development would secure the future of a vacant building by way of a viable use.
- The proposed use will not be detrimental to the business and commercial environment of centres in the county.

6.2. **Planning Authority Response**

The Planning Authority responded to the first party appeal advising no further observations and request the Board to uphold the Councils decision to refuse permission.

6.3. **Observations**

None.

7.0 **Assessment**

The Board will note that there is a significant planning history associated with the subject site and the use of the ground floor as an amusement arcade. The Board has issued a number of refusals for such use in the protected structure and in this regard, I am satisfied that the principle of the use of the building as an gaming arcade has been clearly determined as being inappropriate and unacceptable.

In addition, I refer the Board to their most recent decision under ABP-302614-18, where the applicant sought permission for the partial retention of existing gaming and amusement arcade use at the rear of the ground floor area, which was also refused by the Board. Separately, permission has been granted by Kildare County Council for part of the ground floor to be used as a café. The current proposal for the building is for an Internet Café with ancillary use of gaming terminals to the rear PA ref 18/388 refers.

Having undertaken a site visit and having regard to the relevant policies pertaining to the subject site, the nature of existing uses on and in the vicinity of the site, the nature and scale of the proposed development and the nature of existing and permitted development in the immediate vicinity of the site, I consider that the main

issues pertaining to the proposed development can be assessed under the following headings:

1. Principle of the development
2. Other Issues
3. Appropriate Assessment

7.1. Principle of the development:

7.1.1. The proposed development seeks permission to change the use from a gaming and amusement arcade use to an internet café with ancillary use of gaming terminals to the rear. The development will include as follows:

- 16 no high-spec PCs;
- 8 no. PlayStation 4s / Xbox One X gaming consoles;
- Virtual Reality (VR) technology facilities;
- Ancillary use of gaming terminals (8 no.) to the rear of the premises;
- Refreshment / service counter with seating area.

7.1.2. In the context of the development description, the Board will note that the definition of 'gaming terminals' is 'a video lottery terminal (VLT), also sometimes known as a video gaming terminal, video slots, or the video lottery, is a type of electronic gambling machine. They are typically operated by a region's lottery, and situated at licensed establishments such as bars and restaurants.'

7.1.3. It is noted that a valid planning permission remains for the development of a café in the subject building. No works have been carried out to date. The subject site lies within the town centre area of Athy, within the Core Retail Area of the town, within the designated Architectural Conservation Area and within a Protected Structure.

7.1.4. In this regard, the following is relevant:

Kildare County Development Plan, 2017-2023

It is the stated policy of the Council:

- Policy 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.
- Policy R 60: Discourage where possible within its statutory powers the introduction of non-retail and lower grade retail uses in Core Retail Areas and other streets, in the interests of maintaining and sustaining the retail attraction of the county's centres.

Athy Town Development Plan, 2012-2018

- Section 6.7.8 of the Plan deals with Non Retail Uses in the Core Retail Area and Main Streets and it is the policy of the Council

Policy 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.'

Policy 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.

- Section 10.5.1 of the Plan deals with Young People and Children and notes the need to recognise the recreational needs of teenagers and young adults identifying a number of facilities including multi-purpose play areas which would typically provide a hard surfaced area allowing for basketball and other hard court sports, skate parks, youth clubs and internet cafes.

It is the policy of the Council

- Policy YPC2: To support and encourage the establishment of facilities for young people at appropriate locations within the town.
- Section 15.9.7 of the Plan deals with Fast Food Outlets / Take-Aways / Amusement Arcades / Gaming Clubs Bookmakers where the Council seeks to prevent the excessive concentration of 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. Proposals for such developments will be

considered having regard to the need to safeguard the vitality and viability of shopping areas in the town centre and to maintain a suitable mix of retail uses.

- 7.1.5. To the rear of the premises, and the provision of the gaming terminals, I am satisfied that this issue has been clearly and comprehensively dealt with by the Board in the recent past. The provision of gaming terminals within the building essentially amounts to a gaming 'arcade' as the term arcade refers to the building in which the games are placed and not the gaming terminals themselves. I am satisfied that such use is not permissible given the location of the site and the relevant policies of the County Development Plan 2017-2023 and the Athy Town Development Plan, 2012-2018. The Board will note the references to a number of similar type developments which have been permitted in other areas of Co. Kildare and other local authorities. I am satisfied that the situations arising in the cited cases are not relevant to the subject case and inconsistencies in decision making should not result in further inappropriate permissions.
- 7.1.6. In terms of the remaining elements of the proposed development, the layout presented provides for a gaming console area in the middle of the floor, with PCs – internet café element – to be located around the game consoles. Having regard to the location of the site within the Core Retail Area of Athy, together with the relevant policies as cited above, and the fact that the building is a protected structure, I am not satisfied that the proposed non-retailing business is appropriate for the subject building and location within the town of Athy. I further consider that if permitted, the development would contravene the relevant policy objectives for the area and would be contrary to the proper planning and sustainable development of Leinster Street and the wider Core Retail Area and ACA of the town.

7.2. Other Issues

7.2.1. Development Contribution

The subject development is liable to pay development contribution, a condition to this effect should be included in any grant of planning permission.

7.2.2. Appropriate Assessment

The site is not located within any designated site. The closest Natura 2000 site is the River Barrow and River Nore SAC (Site Code 002162) which is located approximately 150m to the west of the site, and the Ballyprior Grassland SAC (Site Code 002256) is located c.9.5km west of the site.

Overall, I consider it is reasonable to conclude on the basis of the information available that the proposal individually or in combination with other plans or projects, would not adversely affect the integrity of a Natura 2000 site having regard to the nature and scale of the proposed development and separation distances involved to adjoining Natura 2000 sites. It is also not considered that the 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

I recommend that planning permission be refused for the proposed development for the following stated reason:

9.0 Reasons and Considerations

The proposed development relates to a Protected Structure which is located within the Core Retail Area of Athy, as identified in the Kildare County Development Plan 2017-2023 and in the Athy Town Development Plan 2012- 2018 and is located on lands zoned town centre and within an area designated an Architectural Conservation Area, as identified in the Athy Town Development Plan 2012-2018. Having regard to the policy of the planning authority on non- retail uses in Core Retail Areas and Other Main Streets, including Policy R59 (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) and Policy R60 (discourage where possible within its statutory powers the introduction of non-retail and lower grade retail uses in Core Retail Areas and other streets, in the interests of maintaining and sustaining the retail attraction of the county's centres) as set out in the Kildare County Development Plan 2017-2023, it is considered that the proposed development would detract from the vitality and vibrancy of the town centre and would seriously injure the amenities of property in the vicinity. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

A. Considine

Planning Inspector

14th January, 2020