



An
Bord
Pleanála

Inspector's Report ABP-308892-20

Development	Permission for change of use of a rear section of a retail unit to Bookmakers Office at ground floor level while maintaining the retail use to Market Square, internal alterations, removal of sections of party wall all within a protected structure, alterations to bookmaker's office shopfront and signage.
Location	Market Square and Claregate Street, Kildare, Co. Kildare
Planning Authority	Kildare County Council
Planning Authority Reg. Ref.	20/1083
Applicant	Boyle Sports.
Type of Application	Permission
Planning Authority Decision	Refuse Permission
Type of Appeal	First Party v. Grant
Appellant(s)	Boyle Sports
Observer(s)	None
Date of Site Inspection	12th February 2021
Inspector	Fergal O'Bric

1.0 Site Location and Description

- 1.1. The appeal site comprises a three-storey Boyle Sports bookmakers office which fronts onto Claregate Street and Market Square and the building immediately north of it known as Southwells, a two storey mid-terrace building, comprising a vacant retail unit at ground floor level, that fronts onto Market Square. The Southwells building has three access doors exiting onto Market Square at street level, two of which access the retail unit, the other being the access to the first-floor level. The retail unit has a traditional timber shop front with two large display windows facing onto Market Square.
- 1.2. Southwells is identified as a protected structure (reference number B22-48) as per the Kildare County Development Plan 2017-2023 and also included within the National Inventory of Architectural Heritage. The site is also located within the Kildare Town centre Architectural Conservation Area (ACA). The appeal site is part of a wider terrace of commercial buildings within the identified retail core area of Kildare town. There is on street paid parking available on Market Square.

2.0 Proposed Development

- 2.1. The development would comprise the following: -
 - a. Change of use of a rear section of the ground floor area of a protected structure (RPS number B22-48) from a retail unit with associated storage to use as a Bookmakers Office while maintaining the retail use facing onto Market Square.
 - b. Internal alterations including removal of sections of the party wall and refurbishment works
 - c. Minor alterations to the existing Bookmakers office shopfront, signage and all associated site works.
 - d. No works or additional signage to the existing Market Square elevations are proposed.

- 2.2. The planning application was accompanied by a Conservation Statement.
- 2.3. Two letters of consent have been submitted from the owners of the Boylesports and Southwells buildings consenting to the proposed change of use and works.

3.0 Planning Authority Decision

3.1. Decision

Planning permission was refused for one reason as follows:

Policy R43 of the Kildare County Development Plan 2017-2023 seeks to Protect and enhance the amenities and character of town centres in accordance with the principles of proper planning and sustainable development while policy R60 of the Kildare County Development Plan 2017-2023 seeks to 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. The proposed development by reason of subdivision and part change of use of an existing large retailing unit with a resulting (i) increased retail floor area of a non-retail land use, and (ii) smaller retail unit which does not provide sufficient usable floorspace to accommodate higher grade retail uses in the designated Kildare Town Core Retail Area, would negatively impact the vibrancy and sustainability of Kildare town centre and by extension would be contrary to the Draft Kildare Town Renewal Plan 2020 and would adversely affect an Architectural Conservation Area. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the town.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planners report stated that the aim of the Kildare town Local Area Plan and the Kildare County Development Plan is to promote town centre vibrancy, vitality and attractiveness and that the development would not contribute to those goals by increasing the floor area of a lower grade retail use, of which there is a proliferation of

lower grade retail uses within the town centre already. The proposed development would retain a separate retail unit addressing the Market Square streetscape, however the usable retail floor space of this unit, at approximately 70 square metres (sq. m/) is not of a scale that is considered conducive to attract retail investment to the town. A recommendation to refuse planning permission was issued.

3.2.2. Other Technical Reports

Municipal District Engineer: No objection, subject to conditions.

Water Services: No objection, subject to conditions.

Transportation Department: Further information sought in relation to bicycle parking

Strategic Projects and Public Real team: No objections, did raise point in relation to lack of proposals to use protected structure.

Fire Office: No objection, subject to conditions.

Environmental Report: No objection, subject to conditions.

Heritage Officer: No objection.

3.3. **Prescribed Bodies**

None received

3.4. **Third Party Observations**

None received.

4.0 **Planning History**

Subject Site:

Planning Authority reference number 20/670-In 2020, Kildare County Council refused planning permission for a change of use of the full extent of the ground floor level from retail use to use as a bookmaker's office within protected structure (RPS number B22-48) for two reasons, which can be summarised as follows:

Reason 1: The development by reason of the increased floor area of a non-retail land use, lack of active street frontage, proliferation of similar existing premises and lack of retail offering in the Kildare Town Core retail area would negatively impact on the vibrancy and sustainability of Kildare Town.

Reason 2: The proposed development would detract visually and socially from Market Square and contravene specific policy ACA2 of the Kildare Development Plan which seeks to ensure that any modifications, alterations or extensions within the Architectural Conservation Area are sited and designed appropriately.

5.0 Policy and Context

5.1. Kildare Town Local Area Plan, 2012-2018

The appeal site is zoned 'Town Centre' with the associated objective: To provide for the development and improvement of appropriate town centre uses including retail, commercial, office, residential, amenity and civic use. The stated purpose of this zone is: To protect and enhance the special character of Kildare town centre and to provide for and improve retailing, residential, commercial, office, cultural and other uses appropriate to the centre of a developing town. It will be an objective of the Council to encourage the full use of buildings, backlands and especially upper floors. Warehousing and other industrial uses will not be permitted in the town centre.

Bookmakers/betting offices are not specifically provided for within the list of uses set out within the zoning matrix of the Plan.

5.2. Kildare County Development Plan, 2017-2023

Section 9.5.11 refers to non-retail uses including Bookmakers Offices as follows:

“While the retail offer and attraction of Kildare’s main centres has witnessed a significant improvement over the last fifteen years, the parallel introduction on non-retail 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 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.

Policy R60 – Discourage where possible within its statutory powers the introduction of non-retail and lower grade retail uses in the core retail area and other streets, in the interests of maintaining and sustaining the retail attraction of the county’s centres.

Policy R43 – Protect and enhance the amenities and character of town centres in accordance with the principles of proper planning and sustainable development. The Council will encourage the further improvement and development of commercial, service, social and cultural facilities which its town and village centres perform, while ensuring the protection of the important heritage and architectural quality of their streetscapes. This will apply to the skyline, shopfronts and advertising structures.

Section 12.7 of the Plan pertains to Architectural Conservation Areas

Policy ACA2 – Ensure that any development, modifications, alterations or extensions within an ACA are sited and designated appropriately, are not detrimental to the character of the structure or to its setting or to the general character of the ACA and

are in keeping with the Architectural Conservation Area Statement of Character Guidance Documents prepared for the relevant ACA”.

Section 17.13.7 pertains to non-retail uses including turf accountants and sets out the following:

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/turf accountants and states 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 primary location for coffee shops and restaurants.

5.3. ***National Guidance***

- Architectural Heritage Protection Guidelines for Planning Authorities (2011)- Department of Arts, Heritage and the Gaeltacht.

5.4. **Natural Heritage Designations**

None relevant.

5.5. Environmental Impact Assessment - Preliminary Examination

Having regard to the limited nature and scale of the proposed development works and the fact that a change of use is proposed that the site is fully serviced, the absence of any connectivity to any sensitive location, 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. An EIA - Preliminary Examination form has been completed and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

A first-party appeal was submitted by EHP Services on behalf of the applicants Boylesports. The issues raised in the appeal are summarised below.

Architectural Heritage:

- The development has been designed with due regard to the provisions of the Architectural Heritage Protection Guidelines (AHPG's), 2011 and with the objectives set out within Chapter 12 of the Development Plan pertaining to development in Architectural Conservation Areas.
- Section 1.5.4 of the AHPG's set out guidance and principles relating to the exterior of a building within an ACA, not the interior or extensions to the rear of buildings.
- The reinvigorated and reformatted Southwells shop would accord with key conservation principles as set out within Sections 7.3 and 8.3 of the AHPG's in terms of keeping a building in use and minimal intervention, the use of appropriate materials and the reversibility of the works so as to protect the historic fabric of the building.
- No physical or qualitative impact upon the external façade of Southwells is proposed.

- The Conservation Statement prepared by Dowdall architects states that “Many of the original external features thankfully have survived in-situ and they will not be impacted upon within the proposals. None of the internal ground floor features or fit remains in-situ”.
- The works would not have a negative impact on the special interests of the building and would allow the sustainable and on-going use and occupation of the rear section of the protected structure. The existing retail use facing onto Market Square would be retained.
- The Council has provided no explanation as to how the proposed change of use and minor internal alterations would adversely affect the Kildare ACA.
- The Heritage Officer within Kildare County Council expressed no objections to the development proposals. Therefore, the Council’s conclusion that the development would adversely affect the ACA is baseless and un-supported by national or local policy.
- The appellants would be amenable to any condition that the Board may deem appropriate to refine the proposed development and provide further protection of the ACA and protected structure.

Suitability of Use:

- Policy R43 seeks to protect and enhance the amenities and character of town centres and that the Council will encourage the further improvement and development of commercial and social functions. The existing Boylesports business provides an important commercial and social role within the town.
- Bookmakers are an accepted and ubiquitous component to many High Streets within this Country.
- Annex 2 of the Retail Planning Guidelines, 2012, centres on diversity of uses and the extent of floorspace in use for varying commercial functions.

- The Board are invited to observe how many non-retail and lower grade retail uses comprise and support the town centre.
- Boylesports have operated from the current premises for many years and is considered an integral component of the town centre retail offer.
- It is not a business that is out of character with the mix of surrounding retail and non-retail business or out of character within the Kildare town centre retail area.
- The development represents an opportunity to revitalise and reuse a vacant commercial property within the town core retail area and would not have a detrimental impact on the town centre as claimed by the Council within their decision.
- Proposals would comply with Policy R52 of the Development Plan “To pursue the potential of suitable, available and viable land and buildings for retail and other town centre uses”.
- Proposals would be in compliance with retail objectives RT09 and RT013 of the Development Plan “To encourage and facilitate the re-use and regeneration of derelict land and buildings for retail and other town centre uses” and “Support a diversity of the retail offer in the county”.
- The business provides a vital and necessary service to the population of Kildare Town and its hinterland.
- The valuable social function provided by the business has not been appreciated by the Council in its assessment of the proposals against Policy R43.
- Policy R60 pertains to the introduction of non-retail and lower grade retail uses, however the current proposals pertain to the expansion or enhancement of an established commercial use and therefore, would not be detrimental or result in an adverse impact in terms of enhancing the town centre attractiveness.

- The proposed development would not be in breach of policies R43 nor R60.
- The Planning Authority have no basis to make the assumption that the remaining retail floor space of Southwells facing onto Market Square “would not provide sufficient usable floorspace to accommodate high grade retail uses”.
- The appellants do not consider that the remaining area of retail floorspace within Southwells (approximately 86 square metres gross floor area) to be of insufficient size or unusable. It would provide for a moderately sized retail unit of comparable size to other ground floor commercial properties within the town retail core.
- The remaining retail unit frontage facing onto Market Square would be made more enticing to potential interested parties, as it be more manageable and less costly to run and suitable for a variety of retail uses, or commercial services as advocated within the Retail Planning Guidelines and the Development Plan.

6.2. Planning Authority Response

Response received by the Board in the 19th day of January 2021 which raised the following issues:

- The Planning Authority recognise the service provided by the appellants to the town.
- The proposal to alter and modify the street elevation signage are welcomed.
- Proposals would result in inappropriate quantum of retail and non-retail floorspaces in the town centre aggravated by the specific location of the development on a strategic corner facing onto Market Square which has recently undergone public realm improvement works.

- It is therefore, considered that the development is inappropriate at this particular location.

6.3. Further Submissions

Further submissions were invited by the Board from the Development Applications Unit, Fáilte Ireland, The Arts Council, The Heritage Council and An Taisce and no comments were received from any of the parties.

7.0 Assessment

7.1. The main planning issues in this appeal relate to the impact upon the Architectural Heritage, given the sites location within an Architectural Conservation Area, and part of the site being included on the Record of Protected Structures and the suitability of the commercial use within a rear section of the retail unit. Appropriate Assessment requirements are also considered. I am satisfied that no other substantial planning issues arise. The main issues can be dealt with under the following headings:

- Principle of Development
- Architectural Heritage
- Suitability of Use
- Appropriate Assessment.

7.2. Principle of Development

7.2.1. The appeal site is zoned 'Town Centre' within the Kildare Town Local Area Plan where the objective is "To provide for the development and improvement of appropriate town centre uses including retail, commercial, office, residential, amenity and civic use. The stated purpose of this zone is "to provide for and improve retailing, residential, commercial, office, cultural and other uses appropriate to the centre of a developing town. Although Bookmakers are not specifically listed within the zoning matrix, as a commercial service, the principle of the expansion of the bookmaker's business is considered acceptable, subject to adhering to a number of

development management criteria. In this instance, these criteria would include respecting the architectural heritage of the site/ACA and considering the suitability of the commercial use on the site, given its prominent location within the town centre retail core area, within an ACA. These will be addressed in the subsequent sections within this report.

7.3. Architectural Heritage

- 7.3.1. The appeal site is located within the Kildare Town ACA and part of the appeal site (Southwells shop) facing onto Market Square is identified as a protected structure (reference number B22-48) within the Kildare County Development Plan and is also included within the National Inventory of Architectural Heritage (NIAH). Within the NIAH, the building is described as being a “Terraced five bay two-storey house, circa 1820, renovated circa 1840 with timber shopfront inserted to ground floor having cast iron rainwater goods on the eaves course. The house is an attractive and important component of the streetscape, framing Market Square to the west while contributing to the regular roofline of the terrace”. Well maintained, the shopfront ought to be preserved in any future renovation works to the structure. The house retains many further important early or original salient features, including a timber panelled door, multi-pane timber sash fenestration to the first floor and a slate roof. The retention of an early external aspect suggests that the interior may also retain early features and fittings of significance. The house is an attractive and important component of the streetscape, framing Market Square to the west”.
- 7.3.2. Given the architectural significance of the Southwells structure within a prominent location, the impact of the proposals on the architectural integrity of the appeal site and the wider ACA will be duly considered. The rear section of the existing retail unit, which is subject to the change of use and alterations, is slabbed out with stud wall partitions and comprises metal shelving. The works would involve breaking through the dividing party wall between the existing bookmakers into the rear section of the Southwells retail unit, alterations to the walls and floors to facilitate the extension of the bookmaker’s premises, removal and replacement of sanitary facilities and re-wiring works. The Conservation impact of the works is deemed neutral as per the Conservation Statement submitted.

- 7.3.3. The Conservation and re-instatement works would be carried out in accordance with best architectural conservation practice as per the recommendation and conclusions of the Conservation Statement. No adverse impact on the Market Square façade or the first floor of the Southwells building would arise from the development. It is stated that none of the surviving external features would not be adversely impacted upon, and none of the original internal ground floor features in the rear section of the unit are stated as remaining in-situ. Therefore, I am satisfied that on balance the proposed works would not have an adverse impact on the architectural integrity of the Southwells building and would provide for keeping the rear section of the unit in use and that the existing retail use directly facing onto Market Square would be retained and remain available. The proposals are considered to accord with policy R43, in that the character of the area would be improved with the refurbishment of the shopfront and the removal of the decals from the fenestration and the development of commercial facilities within the town centre.
- 7.3.4. The applicants are also proposing to modify the existing signage of the existing Boylesports buildings facing onto Market Square and Claregate Street. These works would involve the refurbishment of the existing timber shop fronts and the removal of the decals detailing within the fenestration and the removal of the existing Pvc signage and the replacement with more traditional signage. This would result in an improvement to the town centre ACA and the frontage onto Market Square, thereby conforming with Policy ACA2 of the Development Plan, in terms of not adversely impacting upon the character of the ACA designation
- 7.3.5. The Heritage Officer within the Council did not outline any particular objections to the development proposals. The Heritage Officer acknowledged, that the removal of the decals from the fenestration of the existing Boylesports shopfront is to be welcomed.
- 7.3.6. In conclusion, I am satisfied that the works within the rear section of the retail unit, will not adversely impact upon the character of the ACA nor impact upon the integrity of the protected structure, given that the works would be carried out in accordance with best practice conservation principles as set out with the AHPG's, in terms of keeping a building in use, minimal intervention and reversibility and are therefore considered to be acceptable from an architectural heritage perspective.

7.4. Suitability of Use

- 7.4.1. The Bookmakers use proposed is identified as a non-retail use as per Section 9.5.1 of the Kildare County Development Plan. There are policies and objectives set out in the Development plan to limit and discourage the development of non-retail and lower order retail uses within the Kildare town retail core area, in which the appeal site is located. This policy is laudable within Kildare town centre, and especially at this location, where the Local Authority have expended significant resources on upgrading the public realm within the Market Square area.
- 7.4.2. However, the bookmakers use is not being introduced to the site for the first time in this instance. An established bookmakers use within part of the appeal site would be expanded under the current proposals, within a rear section of the Southwells Shop. The front retail section of the Southwells retail unit would remain available, with a floor area of approximately 80 sq. m. Therefore, a retail unit of moderate size would be made available fronting onto the Market Square under the current proposals. There are a high level of occupancy of retail uses, food and beverage uses, public houses and a number of non-retail commercial units in the form of Bookmakers and take-aways within this part of the retail core area. I would not accept that there is a proliferation of non-retail or low-grade retail uses within the Market Square area, and the extension of the bookmakers to the rear of a vacant retail premises, will not add to the extent non-retail uses fronting onto the Market Square area. Therefore, I am satisfied that the proposals would not detract from the character or visual amenities of the Market Square area, nor indeed the wider Kildare town retail core area.
- 7.4.3. The proposals would not be contrary to the R60 policy of the Development Plan, as they would not involve the introduction of a lower grade retail use, but an expansion of an existing bookmakers use, which is stated to be long established at this location, and its expansion will be off-street and removed from any street frontage.
- 7.4.4. In Conclusion, I am satisfied that the expansion of the bookmakers within the rear section of the Southwells retail unit, is an appropriate use in this instance. The remaining front section of the Southwells retail unit provides an opportunity for potential clients to open up a moderate sized retail unit within the Kildare Town retail core area, fronting onto Market Square, consistent in scale and character with many of the neighbouring retail units fronting onto Market Square,

7.5. **Appropriate Assessment.**

Having regard to the nature and modest scale of the proposed development which pertains to a change of use and some signage upgrades, within a serviced urban area and the distance from the nearest European site, 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. It is recommended that permission be granted subject to conditions.

9.0 **Reasons and Considerations**

Having regard to the 'Town Centre' zoning objective of the subject site, the pattern of development in the area, it is considered that, subject to compliance with the conditions set out below, the proposed development, as described, would not adversely impact upon the architectural heritage of the building/area nor excessively impact upon the retail quality within the town centre. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

Conditions

Fergal O'Bric
Planning Inspector

19th March 2021