



An
Bord
Pleanála

Inspector's Report

ABP-318450-23

Development	Retention of change of use from entertainment area to games area.
Location	Sharks Entertainment Centre, Henry Street, Newbridge, County Kildare.
Planning Authority	Kildare County Council
Planning Authority Reg. Ref.	2360174
Applicant(s)	Paul Traynor
Type of Application	Retention Permission
Planning Authority Decision	Refuse
Type of Appeal	First Party v Refusal
Appellant(s)	Paul Traynor
Observer(s)	None
Date of Site Inspection	01 st October 2024
Inspector	Clare Clancy

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1.0 Site Location and Description

- 1.1. The appeal site is located in Newbridge town centre fronting onto Henry Street. The existing development comprises of a leisure / entertainment premises which includes for pool and snooker playing areas at ground floor and first floor levels, a reception area and a general seating area to the front of the premises. The site occupies part of the ground floor within the overall site.
- 1.2. Access to the premises is from Henry Street. It was noted at time of site inspection that there is means of emergency escape from the appeal site within the premises, to the rear yard of the premises. The site is adjoined by a funeral directors and an estate agents. There is on-street pay and display parallel car parking on the adjoining public road.

2.0 Proposed Development

- 2.1. Retention permission was sought for the part change of use of the existing entertainment centre / snooker hall at ground floor level, to ancillary electronic games area. The area for which retention is sought is 40.2 m² and is located within the existing building.
- 2.2. The description of development also notes that this change of use is within a permitted use granted under P.A. Ref. 10/541.

3.0 Planning Authority Decision

3.1. Decision

By Order dated 20th October 2023 Kildare County Council decided to refused retention permission for the subject development for the following 2 reasons:

1. *The site is zoned as 'A: Town Centre' in the Newbridge Local Area Plan 2013 – 2019 (as extended), where the objective is 'To provide for the development and improvement of appropriate town centre uses including retail, residential, commercial and civic uses' and under which zoning an electronic games area/ an amusement arcade use is not permitted. Accordingly, the proposed development would contravene materially the land use zoning objective of the*

site as set out in the New Bridge Local Area Plan and would therefore be contrary to the proper planning and sustainable development of the area.

2. *The development for which retention¹ would materially contravene condition 5 attached to permission (Reg. Ref. 10/541) which expressively omitted an amusement arcade and gaming machines or video machines within the premises. The development for retention is contrary to the proper planning and sustainable development of the area.*

3.2. Planning Authority Reports

3.2.1. Planning Reports

One planning report forms the basis of the assessment and the recommendation.

The following substantive points are noted:

- The Newbridge Local Area Plan 2013-2019 (as extended) provided the policy context for the proposed development.
- The principle of the proposed development was assessed having regard to the zoning for the site.
- The site was zoned Town Centre 'A' the zoning objective for which is 'To provide for the development and improvement of appropriate town centre uses including retail, residential, commercial and civic uses'.
- It was noted that the Land Use Zoning Matrix (Table 18) indicates that an amusement arcade is not a permitted use within the town centre zoning.
- Regard was had to the definition for an 'amusement arcade' in Part 2, 5(1) of the Planning and Development Regulations 2001 (as amended) and accordingly the subject development was considered to represent an amusement arcade.
- Having regard to planning history of the site (P.A. Ref. 10/541) the subject development was deemed to contravene condition no. 5 of this permission.
- It was concluded that the subject development materially contravened the zoning objective for the site, and also contravened condition no. 5 of P.A Ref.

¹ The wording of reason no. 2 is as per the final decision issued by the Planning Authority 20th October 2023.

10/541 and permission for retention was recommended to be refused on that basis.

3.2.2. Other Technical Reports

- Water Services (22nd September 2023) – No objection raised.
- Newbridge M.D Office (26th September 2023) – No objection raised subject to conditions relating to surface water management.
- Roads / Transportation / Public Safety (02nd October 2023) – No objection raised subject to conditions relating to the maintenance of the public road and road drainage, and hours of operation.

3.3. Prescribed Bodies

None.

3.4. Third Party Observations

None.

4.0 Planning History

4.1. Appeal Site

P.A. Ref. 10/541, ABP Ref. 237714-09 – relates to permission granted for (a) change of use of a furniture shop to snooker, pool and office use, (b) modifications to ground floor relating to provision of a disabled w.c, lobby area, enclosure of stairwells, (c) modify first floor to enclose stairwell. Condition no. 19 was appealed. (Managers Order dated 09th September 2021. Final Grant 11th February 2011).

The following conditions are noted:

- Condition 19 – Pre-development condition relating to development contributions.
- Condition 2 – restricts the snooker area, pool area and office to the areas indicated on the ground floor plans (DWG No. 4878-P-003). Any further increase in these areas will require a further grant of permission.

Reason: To regulate the use of the site in the interest of proper planning and sustainable development.

- Condition 5 – The site shall not be used as an amusement arcade, funfair or gaming arcade. No gaming machines or video machines of any kind shall be placed within the premises.

Reason: In the interests of amenity and the proper planning and sustainable development of the area.

P.A. Ref. 571/80, ABP Ref. 9/5/51228 – refers to permission granted for retention of funeral home.

P.A. Ref. 526/80 – refers to permission for a furniture store.

Enforcement

UD 5946 – Warning letter issued in relation to non-compliance with conditions 1, 2, 3, 4, 5, 6(a), 7 and 19 of P.A. Ref. 10/541.

5.0 Policy Context

5.1. Development Plan

5.1.1. Kildare County Development Plan 2023-2029 is the operative plan:

- Chapter 2 Core Strategy and Settlement Strategy:
 - Newbridge is identified as a ‘Self-Sustaining Growth Town’ in the Settlement Hierarchy.
- Chapter 8 Urban Centres & Retail:
 - Newbridge is designated in the County Retail Hierarchy as a Level 2 town centre. Level 2 refers to major town centres and county (principal) town centres: major convenience and comparison.
 - Newbridge Core Retail Area – Map Ref. V1-8.11 – the appeal site is noted to be located adjacent to the area designated as the existing core retail area.
 - Section 8.2.7 Town Centre First – Notes that the TCF policy seeks to respond to challenges experienced by town and village centres increasing the focus on ‘retail-

led experience' which includes a blend of retail services, leisure, entertainment and cultural uses. It further acknowledges that the development of new and alternative uses and functions for town centres that maximise new recreational, tourist, cultural, employment and residential opportunities will help to secure the long-term viability of the existing retail offer in the county's town centres.

- Section 8.17 Non-Retail Uses in Core Retail Areas and Other Main Streets – notes that non-retail and non-desirable retail uses / lower grade retail uses in Core Retail Areas and other main streets has changed the characteristics and ambience of such centres. The uses listed includes for amusement / gaming arcades. It is further stated that the council will seek to discourage an overconcentration of the listed uses in prime retail areas.

The following Development Plan Objectives are noted:

RET O84: Discourage the proliferation of non-retail uses in Core Retail Areas and other streets, in the interests of maintaining and sustaining the retail attraction of the county's centres.

RET O85: Prevent an over-supply or dominance of fast-food outlets, takeaways, off licences and betting offices along the main streets of the county's towns and villages, within shopping centres and local centres in order to ensure that a balance of all retail services is provided in creating sustainable and vibrant centres.

- Chapter 15 Development Management Standards:
 - Section 15.13.7 Fast Food Outlets Takeaways, Bookmakers, Budget Shops, Vape Shops, Charity Shops, Telephone / Mobile Shops and Amusement / Gaming Arcades – notes that the provision of any such uses will be assessed having regard to a number of criteria listed. In this regard, the following criteria is stated:
 - 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;
- The design shall be required to respect the character of the street and the buildings, particularly within Architectural Conservation Areas.
- The status of the existing unit i.e., is the building in a poor state of disrepair, has it been vacant for a prolonged period and is vacancy a sustained prolific issue in the surrounding area.
- Gaming arcades will not generally be considered other than where the proposal is part of a large tourist attraction.

5.2. Local Area Plan

5.2.1. The appeal site is located in the functional area of the Newbridge Local Area Plan 2013-2019² (NLAP) (extended to 22nd December 2021). No replacement plan has been adopted to date. However for context, the following is noted:

- The appeal site was zoned ‘A: Town Centre’ with the objective ‘To provide for the development and improvement of appropriate town centre uses including retail, residential, commercial and civic uses’.

The purpose of the zoning was to inter alia to protect and enhance the special character of Newbridge town centre.

- Table 18 Land Use Zoning Matrix
- Amusement Arcade – Not permitted in principle on lands zoned A – Town Centre.

5.3. Legislation

5.4. Planning and Development Regulations 2001 (as amended)

Part 2, Article 5(1) “amusement arcade” – means premises used for the playing of gaming machines, video games or other amusement machines.

² Newbridge Local Area Plan 2025-2031 appears to be still at pre-draft stage.

5.5. Natural Heritage Designations

SAC Pollardstown Fen Site Code 00396 – approx. 977 m to the west.

pNHA Pollardstown Fen Site Code 000396 – approx. 977 m to the west.

pNHA Curragh (Kildare) Site Code 00092 – approx. 2.3 m to the southwest.

pNHA Grand Canal Site Code 002104 – approx. 4.5 km to the northwest.

SAC Mounds Bog Site Code 002331 – approx. 3 km to north.

pNHA Mounds Bog Site Code 000395 – approx. 3 km to north.

pNHA Liffey Bank Above Athgarvan Site Code 001396 – approx. 4.2 km to the southeast.

5.6. EIA Screening

- 5.6.1. The development does not constitute a project for the purposes of EIA. Refer to Appendix 1.

6.0 The Appeal

6.1. Grounds of Appeal

The main grounds of the First Party Appeal can be summarised as follows:

- The basis for the application was to regularise the ancillary use consisting of an electronics game area with a floor area of 40.2 m².
- The proposed development is located within the established town centre.
- The proposed development supports the Town Centre First Policy as referenced in the Kildare County Development Plan 2023-2029 in terms of the delivery of recreational and leisure facilities which the Town Centre First policy supports.
- Refers to Section 7.3.6 of a similar planning file decided by the Board ABP Ref. 308499 – a similar zoning issue dealt with in the Inspector's report in relation to the 'blanket ban' on electronic games within the town centre zone, stating that such proposals should be facilitated within the town centre.

- The Gambling Regulation Bill 2022 now governs the impacts of gambling as opposed to the blanket ban approach use by the Planning Authority, the matrix table and the development plan process.
- A detailed summary report of the business is provided setting out the history of the business, the various clubs who visit the premises in relation to snooker and pool training and competitions and a diverse range of people who play snooker / pool including women, children, people with a disability or special needs, OAPs.
- It is submitted that granting permission does not automatically permit gambling in a premises as a license with strict conditions must be applied for and granted with strict monitoring and compliance conditions.
- The business plays a role in providing much needed recreational and sporting facilities in the community.
- It is submitted that a snooker / pool business is not viable without electronic games.

6.2. Planning Authority Response

The Planning Authority confirms its decision, refers the Board to the planning reports, internal departmental reports, and prescribed bodies reports in relation to the assessment of the application.

7.0 Assessment

Having examined the application details and all other documentation on file, including all of the submissions received in relation to the appeal, the report/s of the local authority, and having inspected the site, and having regard to the relevant local/regional/national policies and guidance, I consider that the substantive issues in this appeal to be considered are as follows:

- Principle of Development
- Planning History
- Material Considerations Associated with the Use

- Material Contravention

7.1. Principle of Development

- 7.1.1. Having regard to the planning history of the site, I note that the basis of this retention application seeks to regularise alleged unauthorised development, namely the use of part of the existing premises as an ‘amusement arcade’ which breached condition no. 5 of the parent permission for the overall site, P.A. Ref. 10/541.
- 7.1.2. Having regard to the meaning of “amusement arcade” as set out in the Planning and Development Regulations 2001 (as amended), I consider the type of activity taking place within the appeal site comes within the definition of an arcade for playing electronic gaming / slot machines.
- 7.1.3. The Planning Authority assessed this application and decided to refuse planning permission based on the zoning objectives set out in the Newbridge Local Area Plan (LAP) 2013-2019 (as extended). The Newbridge Local Area Plan (LAP) 2013-2019 (as extended) was adopted by Kildare County Council in December 2013. It was subsequently extended by a further two years, up to and including 22nd December 2021 in accordance with Section 19 of the Planning and Development Act 2000 (as amended).
- 7.1.4. Having regard to the foregoing, it is my consideration that the Newbridge LAP 2013-2019 (as extended) and all of its objectives no longer remain in force. The Kildare County Development Plan 2023-2029 (CDP) has been adopted and is the operative plan which has had regard to current national and regional policies and local policies. It is therefore a requirement to have regard to the policies and objectives as set out in the current CDP.
- 7.1.5. In relation to same, I note that the appeal site is located adjacent to but outside of the area designated as the ‘Existing Core Retail Area’ for the town centre, as identified on Map Ref. V1-8.11 of the CDP. The policy of the Council in relation to non-retail uses in town centres and in particular, designated Core Retail Areas and Other Main Streets, is to discourage an overconcentration of uses such as amusement / gaming arcades, bookmakers, takeaways, vape shops etc. This is set out in Section 8.17 of the CDP and Objective RET O84 reflects this policy statement. Furthermore, objective RET O85 seeks to prevent an over-supply of uses such as fast-food outlets,

takeaways, off licenses and betting offices along the main streets of towns and villages within the county, within shopping centres and local centres to ensure that a balance of retail is provided for.

- 7.1.6. In relation to the appeal site, the area for which retention is sought is located at ground floor level within the existing commercial premises known as Sharks Entertainment. It comprises of a small area of 40.1 m². I note from the details contained on the appeal file that this premises was established in 2010, providing a venue for cue sports (snooker, pool, billiards). The success of the business is demonstrated by the appellant's submission, and the appellant states that the reason for this proposal is to add to the overall business operation. I note that the premises fronts onto Henry Street and extends to the rear. It adjoins a funeral directors sharing a shopfront with the funeral directors that can be described as visually enhancing to the streetscape.
- 7.1.7. The CDP does not provide specific zoning objectives for Newbridge town and does not include a matrix listing specific uses that are permitted, not permitted, or open for consideration. Notwithstanding the lack of such guidance under the Development Plan, the Development Plan does not preclude specific uses from the town centre.
- 7.1.8. I consider that the nature of the use proposed is appropriate within the town centre, having regard to the sites' existing commercial nature and the permitted nature of the use that it already facilitates. I would therefore consider that the existing premises is an appropriate location for such a use and that it would not be contrary to the overall town centre objectives which are set out in Section 8.17 of the Plan, and in particular objectives RET O83 and RET O84. I would also contend that it does not give rise to the overconcentration of such a use, given that it is contained within an existing development which it is generally compatible with. It does not create a new unit on the main street and in that regard, I would consider the principle of the subject development to be acceptable at this location.

7.2. Planning History

- 7.2.1. A pertinent issue in relation to this appeal is the planning history of the overall site. The Planning Authority in its second reason for refusal, refused permission on the basis that the development for which retention was sought, contravened a condition of the parent permission. It was the consideration of the Planning Authority that the

subject development materially contravened condition 5 of P.A. Ref. 10/541. This permission is the principle planning permission for the site permitting the overall use as a snooker and pool playing venue at ground floor and first floor levels. It also included for internal layout modifications providing for office use, storage areas associated with the snooker and pool uses, accessible toilet and the enclosure of stairwells.

- 7.2.2. In relation to condition 5 of P.A. Ref. 10/541, I note that the condition states that the area to which this appeal relates to, shall not be used as an amusement arcade, funfair or gaming arcade. It also restricts the placement of gaming machines or video machines of any kind within the premises.
- 7.2.3. Having regard to the foregoing, while I note that the subject development was excluded in a previous planning permission by way of condition, notwithstanding, it is my consideration that the subject development can be assessed on its own merits and therefore the Board is not precluded from doing so.

7.3. Material Considerations Associated with the New Use

- 7.3.1. I note that the reason for condition 5 of P.A. Ref. 10/541 is not specifically addressed in the planning reports relating to this file. In considering condition no. 5 as a material consideration in the assessment of the development the subject of this appeal, I have already concluded that the principle of the use is acceptable, having regard to the sites' context and the location of the use within an established leisure / entertainment premises. I further consider the use to be subsidiary to the existing snooker hall / entertainment use.
- 7.3.2. The subject development is for a business operation which should be considered on its merits and not precluded on the basis that it may be viewed as an undesirable use in the town centre. I consider that the nature of the use would be a concern in the context of a proliferation of such uses within a town centre location. I do not consider this to be the case and would note that the principle is acceptable subject to the proposal being satisfactory in regard to the amenities of adjoining properties, visual amenity and traffic safety.

Traffic

- 7.3.3. I note that no car parking is provided or proposed. The floor area of the subject development amounts to 40.1 m². I note that the Roads / Transportation / Public Safety Department of the Council and Newbridge M.D. raised no issue in regard to the absence of same.
- 7.3.4. Parking standards are not specified for this particular use in the Kildare County Development Plan, however standards for similar uses can be applied. In any case, the subject development relates to a change of use within the existing development, it is not a new development, therefore there would be no requirement for same. I noted at time of site inspection that there is on-street parking which the businesses along the main street would utilise for customers and this would be the case for the Sharks premises also. Given the highly accessible location of this use within the town centre, I consider that the existing car parking arrangements available within the area is sufficient to cater for this use.

Adjoining Amenities

- 7.3.5. As noted earlier, the area in question is located within the centre of the building at ground floor level. Sharks Entertainment is located on a main street off the 'core retail area' which is characterised by commercial business at ground floor, and with some residential at first floor, but not immediate to the site. I am therefore satisfied that, given the town centre location and the uses present within the vicinity of the Sharks premises, that residential amenity will not be significantly affected by the subject development. I am satisfied that it will not generate nuisances or disturbances as it is contained within an existing leisure / entertainment premises. I note from the planning history in relation to P.A. Ref. 10/541 that there is no condition included in relation to governing the hours of operation of the existing Sharks Entertainment premises. I therefore consider it appropriate to include a condition managing the hours of operation of the subject development and accordingly recommend same, should the Board be minded to grant, in the event of a decision to grant planning permission.

Visual Amenity

- 7.3.6. The front elevation of the existing premises remains the same. No changes arose as a result of the subject development. I consider that advertising signage relating to the use can be addressed by condition and recommend inclusion of such a condition, in the event of a grant of planning permission.

7.4. Material Contravention

- 7.4.1. The Planning Authority in its first reason for refusal deemed that the subject development materially contravened the land use zoning objective of the site which was set out in the Newbridge Local Area Plan 2013 – 2019 (as extended). I note that the decision did not go as far to say that the development would materially contravene the Newbridge Local Area Plan.
- 7.4.2. As noted previously in Section 7.1.2 the status of the Newbridge Local Area Plan 2013 – 2019 (as extended) is that it is no longer in force. Section 37(2)(b) of the Planning and Development Act 2000 (as amended) sets out the criteria that allows the Board to grant permission in the event of a material contravention. As I do not consider that such a scenario arises in this case, I therefore submit that the Board is not constrained by the terms of Section 37(2)(b) of the Planning and Development Act 2000 (as amended).

8.0 AA Screening

- 8.1.1. I have considered the proposed development in light of the requirements of S177U the Planning and Development Act 2000 (as amended).

The subject site is not located within or adjacent to any European Site.

- The closest European Sites, part of the Natura 2000 Network are the Pollardstown Fen SAC Site Code 003969 located approx. 977 m to the west of the appeal site, and the Mounds Bog SAC Site Code 002331 located approx. 3 km to the north of the site.
- The subject site which is an existing developed site and is located in the town centre. The subject development entails the retention of the part change of use of the existing commercial premises from entertain / snooker hall to electronic games area. No significant construction or ancillary works were proposed as part of the application. The subject site is connected to adjoining foul sewer and water mains.
- No nature conservation concerns were raised at planning application stage or in the planning appeal.

8.1.2. Having considered the nature, scale and location of the subject development, I am satisfied that it can be eliminated from further assessment because it could not have any appreciable effect on a European Site.

The reason for this conclusion is as follows:

- The nature of the development which comprises of the retention of a part change of use of a ground floor within an existing commercial premises.
- The location of the development in a serviced urban area, that has the benefit of piped water and wastewater services, distance from European Sites and urban nature of intervening habitats, absence of ecological pathways to any European Site.
- Screening assessment of the Planning Authority.

8.1.3. I consider that the proposed development would not be likely to have a significant effect individually, or in-combination with other plans and projects, on a European Site and appropriate assessment is therefore not required.

9.0 Recommendation

Having regard to the above, I recommend that retention permission is granted.

10.0 Reasons and Considerations

Having regard to the provisions of the Kildare County Development 2023-2029, the existing established use of the site, the nature and limited scale of the subject development, and the existing pattern of development in the area, it is considered that subject to compliance with the conditions set out below, the proposed development would not detract from the character or mix of uses in the vicinity, would not seriously injure the amenities of the area or of property in the vicinity, and would not detract from the retail function of the town centre or impede the future development of a high quality vibrant town centre. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

1.	<p>The development shall be carried out and retained in accordance with the plans and particulars lodged with the planning application on the 24th September 2023 except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the Planning Authority, the developer shall agree such details in writing with the Planning Authority prior to commencement of development, and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>No advertisement or advertisement structure, the exhibition or erection of which would otherwise constitute exempted development under the Planning and Development Regulations 2001 (as amended), shall be displayed or erected on the building exterior without a prior grant of planning permission.</p> <p>Reason: To allow further assessment of the impact of the permitted advertisement on the amenities of the area.</p>
3.	<p>The amusement arcade hereby permitted shall only be open for use between the hours of 12:00 hours and 23:00 Monday to Sunday, unless otherwise agreed in writing with the Planning Authority.</p> <p>Reason: In the interest clarity.</p>

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Clare Clancy
Planning Inspector

14th October 2024

Appendix 1 - Form 1

EIA Pre-Screening

[EIAR not submitted]

An Bord Pleanála Case Reference	318450-23		
Proposed Development Summary	Retention permission for the part change of use of the existing entertainment centre / snooker hall at ground floor level to ancillary electronic games area. The area for which retention is sought is 40.2 m².		
Development Address	Henry Street, Newbridge, Co. Kildare.		
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)		Yes	
		No	✓ No further action required
2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?			
Yes		Class.....	EIA Mandatory EIAR required
No	✓		Proceed to Q.3
3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?			
		Threshold	Comment (if relevant)
No	✓	N/A	No EIAR or Preliminary Examination required

Yes		Class/Threshold.....		Proceed to Q.4
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4. Has Schedule 7A information been submitted?				
No			Preliminary Examination required	
Yes			Screening Determination required	

Inspector: _____ **Date:** _____