



An
Bord
Pleanála

Inspector's Report ABP-300166-17

Development	Retain enclosure and canopy to seating area fronting café onto The Green
Location	Donnybrook Fair, New Street, Malahide, County Dublin
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	F17A/0504
Applicant(s)	Donnybrook Fair 6 Ltd.
Type of Application	Retention Permission
Planning Authority Decision	Refuse
Type of Appeal	First-Party
Appellant(s)	Donnybrook Fair 6 Ltd.
Observer(s)	Barry Sheridan Nuala Burke
Date of Site Inspection	19 th February 2018
Inspector	Colm McLoughlin

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1.0 Site Location and Description

- 1.1. The appeal site has a stated area of 0.083ha and relates to a convenience shop and off-license with associated café overlooking a public green within the centre of Malahide village in north County Dublin. The subject premises comprises an 'L-shaped' building with entrances off New Street and The Green. The building line along New Street sits onto the back edge of the public footpath. The entrance along The Green is recessed back from the footpath by approximately 7m to 9m, under a 5.5m-high pergola canopy structure. Adjacent to this entrance is a seating area fronting the café on site built up to the footpath. This seating area is enclosed by balustrades and screens and covered by a canopy and is the subject matter of this appeal. There are also additional seating areas under the pergola canopy structure and to the front of this entrance along The Green. At first floor along New Street there is a barber shop, and to the rear of the premises at first-floor level there are ancillary storage and staff areas for the convenience shop and café on site.
- 1.2. Directly to the north of the premises is a public green area, which bounds Malahide marina. The surrounding village centre is characterised by a variety of commercial, retail and related services. The historical core of the village is primarily formed by two-storey buildings fronting onto a grid of tree-lined streets. Adjoining to the east of the site along The Green is a two to three-storey building, which accommodates a restaurant at ground level, Siam Thai, with both an external and a covered seating area to the front of this. Adjoining to the west is a hairdresser's premises. Land levels in the area drop gradually from New Street northeast towards the coast.

2.0 Proposed Development

- 2.1. The development for retention comprises the following:
- Enclosed and covered seating area along The Green, with a stated area of 60sq.m, and comprising a fixed canopy structure, fixed balustrades and removable frames and panels.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. The Planning Authority decided to refuse retention permission for three reasons:

- R.1** visually incongruous design, forward of the established building line;
- R.2** development would not positively enhance the character of the Architectural Conservation Area (ACA);
- R.3** would set an undesirable precedent.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report of the Planning Officer (October 2017) noted the following:

- Warning letter issued in relation to the subject development under Enforcement Ref. 17/27A. Enforcement action has been initiated by the Planning Authority regarding the covered terrace structure to the front of the adjacent restaurant premises to the east, Siam Thai (Enforcement Ref. 16/90A - Nos.1-3 The Green);
- A non-retractable canopy has been installed on the northern side over the previously permitted external seating area, which was to be served by a retractable canopy;
- The site is within the Architectural Conservation Area (ACA) for Malahide historic core and the development is in a visually-prominent location;
- The development is considered to form an extension to the front of the existing commercial facility;
- Visual balance and quality finishes, as provided for under the previous permission to redevelop the site (Reg. Ref. F14A/0375), are obscured consequent to the addition of the seating area;

- Low quality design and materials create visual clutter along the streetscape and the encroachment forward of the established building line has a detrimental impact on the character of the ACA and the immediate vicinity.

3.2.2. Other Technical Reports

- Water Services - no objection;
- Air Pollution & Noise Control Unit (Environmental Health Officer) – no objection subject to conditions;
- Environmental Health Officer – no objection subject to conditions;
- Transportation Planning Section – no objection;
- Conservation Officer – Development is not acceptable.

3.3. Prescribed Bodies

- Irish Water – no objection.

3.4. Third-Party Submissions

3.4.1. Four submissions were received during consideration of the application, three from neighbouring residents and one stated to be from the adjacent restaurant, Siam Thai. The issues raised are largely covered within the observations on the appeal below, but also included the following:

- Reference made to a previous refusal to grant planning permission for an ice-cream kiosk fronting a premises to the east of the appeal site along The Green/Townyard Lane (Planning Reg. Ref. F16A/0344).

4.0 Planning History

4.1. Appeal Site

4.1.1. In June 2016, pre-planning consultation regarding 'steel frames, pvc sides and a timber structure' was undertaken by representatives of the appellant with the Planning Authority under Ref. PPC104547. The Planning Authority advised the representatives of the appellant that the proposals required planning permission and that they had concerns regarding the visual impact of the proposals. The Planning Authority also flagged to the appellant's representatives that the fixed and enclosed

structure on the adjacent Siam Thai restaurant was unauthorised development, which should not be used as a baseline. The appeal site has been subject to the following recent planning applications:

- Fingal County Council (FCC) Ref. F14A/0375 - permission granted (December 2014) for demolition, extension and upgrade works, change of use of former hardware store to retail with the sale of hot food and drinks for consumption on and off the premises and an external seating area to The Green with retractable canopy and glass balustrades;
- FCC Ref. F15A/0298 – permission granted (September 2015) for provision of an off-license to the retail shop.

4.2. Surrounding Sites

4.2.1. There have been other recent applications for external seating areas and similar developments on neighbouring properties, including the following:

- No.14 Townyard Lane – FCC Ref. F16A/0344 – permission refused (October 2016) for a single-storey ice-cream kiosk fronting the building. Reasons for refusal related to the visual impact of the development, forward of the established building line and the detrimental effect this would have on the character of the ACA;
- Nos.1-3 The Green – FCC Ref. F05A/1784 – retention permission refused (January 2006) for two canopies to the front of a bar and restaurant. Reasons for refusal related to concerns regarding noise impacts, parking demand and the visual impact on the ACA.

5.0 Policy Context

5.1. Development Plan

5.1.1. The appeal site and surrounding area has a zoning objective 'TC – Town & District Centre' within the Fingal Development Plan 2017-2023, with a stated objective to 'protect and enhance the special physical and social character of town and district centres and provide and/or improve urban facilities'. A café or restaurant is permitted in principle on 'TC'-zoned land. The Plan states that the vision for 'TC'

zoned land is 'to maintain and build on the accessibility, vitality and viability of the existing urban centres in the County'. Chapter 6 of the Plan notes that there should be a good range of cafés and restaurants in centres, such as Malahide.

5.1.2. The Planning Authority has prepared a document entitled 'Malahide Public Realm Strategy', with a stated purpose to guide the future development of the area and this is supplemented with a 'Design Guide for Shopfronts'. The Development Plan states that the Strategy will seek to strengthen and enhance the attributes of the village, which contributes to the distinctive physical and social character of the area. Section 12.3 of the Development Plan referring to 'Design Criteria for Urban Development', includes a specific section under the heading 'shopfronts' highlighting the 'Malahide Public Realm Strategy - Design Guide for Shopfronts'. In this section, the Plan states that 'all shopfront design, whether it be modern or traditional, should consider the streetscape, the building itself and the design detail of the shop unit'.

5.1.3. The site is within an ACA that includes the historic core of Malahide village. Objective DMS157 requires any alteration of a building within or adjoining an ACA to positively enhance the character of the ACA. There is an objective in the Development Plan to preserve the view onto the park to the front of the site. A route for the Greater Dublin Area cycle network is located along the road directly to the front of the site.

5.1.4. Other relevant objectives and sections of the Plan including the following:

- Objective Malahide 5 - implement and progress the Public Realm Strategy for Malahide, including measures related to car-parking, in order to facilitate a vibrant retail, commercial and residential core;
- Objective ED58 - promote and facilitate tourism as one of the key economic pillars of the County's economy, including cafés and restaurants;
- Objective DMS07 - new shopfronts should respect the character and architectural heritage of the streetscape;

5.1.1. Table 12.8 outlines that a norm of one car parking space per 15sq.m is required for restaurants and cafés.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. The principal grounds of the first-party appeal can be summarised as follows:

- The subject application has been submitted on foot of an enforcement notice from the Planning Authority, and the appellant considers that the development, as constructed, is substantially in compliance with the parent permission;
- The seating area, canopy and balustrade sited forward of the building line, have been previously permitted by the Planning Authority. The temporary and removable side panels that sit on the balustrade do not significantly alter this;
- The parent permission allowed for an external seating area between the café and the public footpath, served by a 1.4m-high glass balustrade and a retractable canopy. The scheme which included these elements was well-received during various stages of the planning process for the parent development (FCC Ref. F14A/0375);
- During the compliance process for the parent permission, the Planning Authority's Conservation Officer signed off on a 1.8m-high glass balustrade, while the existing balustrade is only 1.4m in height;
- The canopy has been designed based on the expert advice and in response to environmental conditions, including the weather. It would not be possible to install a retractable cantilevered canopy in this coastal context;
- High-level polycarbonate (transparent) panels over the balustrade are removable. Video evidence showing removal and replacement of the panels is included with the grounds of appeal. These panels would not remain in place during summer months or periods of good weather;
- Wall-mounted heaters previously installed have been removed;
- There is a similar development to Siam Thai restaurant, adjacent to the appeal site, and the appellant is not aware of any proceedings against this;

- The parent permission provides scope for the subject development and refusal of retention permission would impact on trading for the café and local employment.

6.1.2. Computer-generated images of the permitted seating area and associated structures are included.

6.2. Planning Authority Response

6.2.1. The response of the Planning Authority to the grounds of appeal raised the following:

- Contrary to the claim of the appellant, permission for a 1.8m-high glass balustrade was not granted by the Planning Authority;
- Documentation from the appellant's compliance submission (Ref. F14A/0375/C1) for the parent permission is attached to the response, and this illustrates a canopy/awning structure suspended by steel cable or similar, or a large parasol structure, serving the external seating area. Side panels (above the balustrade) were not previously proposed, permitted or agreed;
- An integral seating area fully protected from the elements was not granted in the parent permission and the grounds of appeal serve to support the Planning Authority's position that the external seating area forms an extension of the café use, rather than a subsidiary area;
- The impact of the proposed development has been addressed in the Planning Officer's report (Chief Executive's Order) and the Board is requested to uphold the Planning Authority's decision to refuse retention permission;
- Section 48 levies are requested to be attached, should the Board grant retention permission for the development.

6.3. Observations

6.3.1. Two observations to the appeal were received, both from residents of Malahide and supporting the decision of the Planning Authority to refuse retention permission.

Matters raised within the observations included the following:

- Concerns raised regarding the haphazard manner in which the seating area evolved and that the development is not in accordance with the parent permission (Ref. Ref. F14A/0375);

- The side access area permitted off The Green was for a market space and is no longer used for this purpose, but is used as an external seating area;
- Development is out-of-character with the architecture of the area, including the established building line and could set a precedent for similar development;
- Strict controls would be needed to address potential noise impacts and the residential amenities of the area should be protected;
- The existing development is a de-facto extension of the café on site, which should have been subject of a change of use application;
- Glare from the red-light to the heaters is proving dangerous to motorists;
- Reference is made to enforcement proceedings issued by the Planning Authority regarding development at the adjacent restaurant, Siam Thai.

6.3.2. Observations were requested from the Department of Culture, Heritage & the Gaeltacht, the Heritage Council, An Taisce, The Arts Council and Fáilte Ireland. No responses from these bodies were received.

7.0 **Assessment**

7.1.1. In December 2014, planning permission was granted by the Planning Authority under FCC Ref. F14A/0375 for development on the appeal site including demolition, extension and upgrade works, change of use of a former hardware store to retail with the sale of hot food and drinks for consumption on and off the premises and an external seating area to The Green with retractable fabric canopy and glass balustrades approximately 1.4m in height. The Planning Authority has stated that compliance details provided in response to conditions of the parent permission did not provide for an increase in the balustrade to this seating area. Since receipt of the previous permission, a glass balustrade, along with fixed canopy and removable glazing panels have been installed in the area originally permitted as a seating area fronting the café onto The Green. The Planning Authority has stated that they issued a warning letter regarding the subject development (Enforcement Ref. 17/27A), and the appellant has stated that it was this warning letter that led to the lodgement of the subject planning application. The application proposes to retain this fully enclosed

and covered seating area. The Planning Authority decided to issue a notification of a decision to refuse to grant retention planning permission for the development for three reasons, primarily relating to the visual impact of the proposals, set forward of the established building line, the impact on the character of the ACA and the precedent the development would set. The grounds of appeal assert that the development is substantially in compliance with the parent permission, with the exception of the removable panels above the balustrade, which would not always be in situ.

- 7.1.2. Having regard to this, I consider the substantive issues for assessment in determining the subject appeal relates to the design and the visual impact of the development on the streetscape and the ACA.
- 7.1.3. The seating area on the appeal site overlooks a public park and the marina area, and as such is within a visually-prominent location. Within the original planning application, the Planning Officer assessing the development welcomed the partially enclosed seating area, as it would add visual interest and vibrancy to the street. As noted in the reasons for refusal, the appeal site is also within an ACA and this covers the historic core of Malahide village. Objective DMS157 of the Development Plan outlines that any alteration of a building within or adjoining an ACA should positively enhance the character of the ACA. The Planning Authority has also prepared the 'Malahide Public Realm Strategy', which is to be used as a guide the future development in the area and is supplemented by a 'Design Guide for Shopfronts'. The 'Design Guide for Shopfronts' includes a section dealing with 'Street Furniture', including the need for barriers around external seating areas to be lightweight and no higher than 1m. It also seeks to avoid the use of fixed enclosed barriers with canopies, as they can result in an overly enclosed feeling within a streetscape. Objective 'Malahide 5' of the Development Plan seeks to implement and progress guidance contained in the 'Public Realm Strategy' for Malahide. The Development Plan also includes an objective (DMS07) that requires new shopfronts to respect the character and architectural heritage of the streetscape.
- 7.1.4. The grounds of appeal assert that the new seating area and associated features enclosing and covering this, have been designed based on expert advice and in response to local environmental conditions. It is also asserted in the grounds of appeal that the principal for the retention of the proposed development situated

forward of the established building line, has been provided for under the parent permission. In response to this, the Planning Authority considers that the seating area and associated canopy, panels, frames and balustrades form an extension of the café on site. The appellant claims that the panels sitting between the balustrade and canopy can be removed and remounted at ease and that they would not be in situ during periods of fine weather and during the summer months.

- 7.1.5. During my visit to the site and surrounding area, the panels were in place and the seating area was in use. There was also seating to the front and under the timber pergola entrance off The Green. Within the village core, I also noted an array of external seating areas, some of which were covered and one of which was fully enclosed. The fully enclosed external seating area is situated to the front of a restaurant, Siam Thai, adjacent to the appeal site, and the Planning Authority has stated that this is unauthorised and that this was flagged to the appellant's representatives during pre-planning discussions for the subject application. I also note that a recent application for a kiosk structure to the front of the established building line on a site 70m to the east on Townyard Lane, was refused planning permission due the visual impact of the proposals on the ACA (FCC Reg. Ref. F16A/0344). It is clear that there is pressure for development forward of the established building line in the immediate area.
- 7.1.6. Whilst I acknowledge that the primary purpose for installing the removable panels and fixed canopy to the seating area, is in response to the weather elements, and that the panels can be readily removed when required. Nevertheless, upon viewing the subject seating area, it clearly reads as an extension to the front of the host building, projecting forward of the established building line, in a visually-prominent location. The canopy and panels and related features form an insensitive addition that obscures views of the primary shopfront to the appeal site along The Green, and the development has introduced a discordant, overly-dominant and obtrusive feature into a streetscape, with very limited capacity to absorb same. The Development Plan is quite explicit in support of using the Public Realm Strategy as a means of strengthening and enhancing the attributes of the village, as well as in requiring new development to positively enhance the character of the ACA. The Design Guide for Shopfronts supplementing the Public Realm Strategy is also explicit in seeking to restrict fixed canopy structures and balustrades above 1m in height. I consider the

requirements of the Development Plan to be reasonable, including the use of the Public Realm Strategy document as a design guide for development in Malahide village centre. The subject canopy and panels do not add to the character of the ACA and the surrounding streetscape, and they do not conform to the guidance contained in the 'Malahide Public Realm Strategy - Design Guide for Shopfronts'. Furthermore, there is significant potential for the subject development to set an undesirable precedent for similar development along The Green and Townyard Lane, which would not contribute in a positive manner to the preservation of a high quality village centre.

- 7.1.7. In conclusion, the proposed development for retention fails to enhance the character of the ACA, fails to strengthen and preserve the streetscape, is contrary to the provisions the Development Plan, including the detailed design guidance, and would set an undesirable precedent for similar development. Accordingly, I recommend that retention permission should be refused.

8.0 Appropriate Assessment

- 8.1.1. Having regard to the minor nature of the proposed development for retention and the location of the site in a serviced urban area and the separation distance to the nearest European site, no Appropriate Assessment issues arise, and it is 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.

9.0 Recommendation

- 9.1. I recommend that retention permission is refused in accordance with the following reasons, considerations.

10.0 Reasons and Considerations

1. Having regard to the planning history of the appeal site, the existing character and the prevailing pattern of development in the area, the visually-prominent site location within an Architectural Conservation Area and the objectives and provisions of the Fingal Development Plan 2017-2023, it is considered that the proposed development for retention, by

reason of its siting forward of the established building line, would form an obtrusive, dominant and discordant feature in the streetscape and would not respect or complement the character of the shopfront on site.

Furthermore, the proposed development for retention fails to enhance the character of the Architectural Character Area and Malahide village centre, would seriously injure the visual amenities of the area and would set an undesirable precedent for similar development. The proposed development for retention would, therefore, be contrary to the proper planning and sustainable development of the area.

Colm McLoughlin
Planning Inspector

22nd February 2018