



An  
Bord  
Pleanála

## Inspector's Report ABP.302458-18

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<b>Development</b>	A retractable canopy to define a smoking area facing onto Bedford Row only, extending to 16 square metres
<b>Location</b>	'Mejana Restaurant' Ground Floor unit. Corner Harvey's Quay & Bedford Row  Limerick City
<b>Planning Authority</b>	Limerick City & County Council
<b>Planning Authority Reg. Ref.</b>	18/588
<b>Applicant(s)</b>	Haidar El Mawla
<b>Type of Application</b>	Planning permission
<b>Planning Authority Decision</b>	Refuse
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Haidar El Mawla
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	24 <sup>th</sup> October 2018
<b>Inspector</b>	Mary Kennelly

## **1.0 Site Location and Description**

- 1.1.** The site is located in Limerick City Centre, in the heart of the retail/commercial area. Harvey's Quay is on the southern side of the River Shannon, just to the southwest of Sarsfield Bridge. The street is semi-pedestrianised with wide footpaths and high-quality paving and street furniture. It is a mixed-use street with cafes, restaurants, bars, offices and residential. The appeal site is located at the north-eastern end of the street, in a block closest to the bridge. It is a five storey building and has frontage to both Harvey's Quay and Bedford Row. This street is one-way and leads back to Henry Street. The Church of the Immaculate Conception and Limerick Museum are located further to the east on Bedford Row.
- 1.2.** The area has been the subject of considerable investment in the public realm in recent years with a board walk, seating areas, high quality paving and street furniture along the waterfront. On the north-western edge of the quay, there is a memorial set within an area of public realm with seating on a build-out and an island which accommodates rowing and boat clubs etc. Harvey's Quay Shopping Centre, with an associated large multi-storey car park which is accessed from Harvey's Quay, is located in the block to the southwest. There is a height restriction at Sarsfield Bridge and as a result, Harvey's Quay is quite narrow between Bedford Row and the under bridge. This section of the quay is also one-way.
- 1.3.** The building has a restaurant on the ground floor with active frontage to both streets, and four storeys above, which it is stated in the submissions are in mixed use. The entrance to the restaurant is located on the corner. The footpath adjacent to the building is wide with bollards defining the threshold with the street. At the time of my inspection, there were tables and chairs outside the premises on Bedford Row and Harvey's Quay, as well as two sandwich board signs. Just beyond the bollards on Harvey's Quay, there is a short row of parking spaces with a narrower pavement.

## **2.0 Proposed Development**

- 2.1.** Permission is sought for a retractable canopy to define a smoking area with outside tables and chairs. This area would face onto Bedford Road alone and would cover an area of 15.5 square metres. No changes are proposed to the internal floor area or layout of the restaurant.

## **2.2. The canopy would have the following features**

- Demountable/ retractable fabric canopy which would be motorised and operated by remote control, and would be open on the north-western side;
- Supported on an aluminium frame with integrated guttering, rear protective hoods, comprising 2 front posts, 2 lateral support beams and 2 side in-fill panels; and
- It would project 2.8m from the elevation and extend 6 metres along the footpath from the entrance.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

The planning authority decided to refuse permission for two reasons which read as follows:

1. Having regard to the design of the development which provides for the extension of the restaurant onto the public footpath, the location of the development over service manholes and the potential impact in terms of noise on the residential amenity of apartments overhead. It is considered that the proposed development would set an undesirable precedent at this location, would seriously injure the residential amenities and depreciate the value of properties in the vicinity and would therefore be contrary to the proper planning and sustainable development of the area.
2. The applicant has not demonstrated sufficient legal interest in the land to which the application relates. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

It was noted that the site is zoned City Centre and is located in the city centre retail area. It is the policy of the City Council to reinforce the role of the city centre in the retail hierarchy. Although retail is prioritized, other complimentary uses that promote

vibrancy are also encouraged. Regard was had to the policy on awnings, which should be retractable and of a traditional design.

The Area Planner noted that the works would cover manholes, would be semi-permanent with lateral support beams and that no licence had been issued under Section 254 of the Planning and Development Act 2000 (as amended) for use of the public footpath. It was also noted that permission had recently been refused for a similar proposal, but which had been for an enclosed, covered external seating area, which was also fronting onto Bedford Row only and extended to 16m<sup>2</sup>. It was concluded that there was no material difference in the current application and that it still provides for the extension of the restaurant onto the public footpath.

It was noted that there were no objections from internal or external sources. However, it was considered that the proposal would be contrary to proper planning and sustainable development in terms of the location over manholes, the noise impact on residential amenities and the precedent it would set. Refusal was therefore recommended.

### **3.2.2. Other Technical Reports**

**Fire Officer** – no objection subject to a condition requiring the canopy windbreaking material to be manufactured from flame/fire-retardant material.

**HSE** – no objections subject to conditions. These included that the use of the canopy area must comply with the Public Health Tobacco Acts, and the perimeter of the structure must be 50% open.

### **3.3. Third Party Observations**

None.

## **4.0 Planning History**

**18/37 – planning permission refused (March 2018) for a single storey enclosed covered external seating area, extending to 16 square metres.** The reasons for refusal are identical to those of the decision pertaining to the current appeal. The drawings submitted with that development proposal were also very similar to those currently before the Board. A review of the documents on the P.A. website indicate

that the property was in receivership and there is a letter on file from the Receiver advising awareness of the application for a canopy. There is a further letter on file from an objector, the management company for the apartments overhead (21/2/18). This raised several issues relating to alleged non-compliance with conditions of 14/1. Objection was also raised to the proposed canopy in terms of encroachment onto footpath, cigarette smoke and anti-social behaviour.

**14/1 – Permission granted March 2014 for change of use of ground floor to café and signage.** A review of the P.A. website indicates that condition 6 of this permission prohibited tables and chairs on footpath outside premises without a table and chair licence to the P.A. It is noted that Condition 7 required the provision of a cigarette receptacle on the front elevation. The reports relating to this permission made reference to previous planning permissions dating from 1990, 1991 and 1995. However, no information was obtainable in relation to these permissions other than the descriptions given in the planner's report.

## **5.0 Policy Context**

### **5.1. Development Plan**

#### **Limerick City and County Development Plan 2010-2016 (as extended)**

The site is zoned City Centre Area and is located in an area defined as CCRA (City Centre Retail Area). Chapter 13 indicates that the City Council is committed to reinforcing the city centre's role in the retail hierarchy by facilitating the development of a significant amount of floor space to meet projected demand and projected retail unit size.

#### Relevant policies include

**Policy ZO.1 City Centre Area** – To support the retention and expansion of a wide range of commercial, cultural, leisure and residential uses in the City Centre as defined in the City Centre Strategy.

**Policy ZO.1(A) City Centre Retail Area (CCRA)** – To provide for the protection, upgrading and expansion of higher order retailing, in particular comparison retailing, and a range of other supporting uses in the CCRA.

**Canopies/awnings** – planning permission is required for the erection of canopies. Canopies of a traditional design and retractable materials will be favoured. The development of innovative design for canopies and awning is encouraged by Limerick City Council. However, the obstruction and clutter of public footpaths by canopy use is strongly discouraged.

## 5.2. Natural Heritage Designations

The Lower River Shannon SAC (002165) is located approx. 30m from the site and the River Shannon and River Fergus Estuaries SPA is located approx. 250m from the site, to the southwest.

## 5.3. Grounds of Appeal

The first party appeal was submitted by Catherine O'Brien on behalf of the applicant. The main points raised may be summarised as follows:

- Previous proposal was refused – The proposal for an external seating area with monopitched roof was refused and the P.A. had subsequently advised the applicant to submit a revised proposal with a temporary, light-weight canopy and removeable with no sides. However, despite this, the proposal for a retractable fabric canopy has been refused.
- Extension of restaurant onto public footpath – The restaurant occupies the ground floor of a mixed-use development which was permitted by the P.A. The applicant has also been granted a licence by the L.A. for external tables and chairs (copy enclosed). It is unfair to now suggest that a restaurant would seriously injure the residential amenities of the apartments overhead. The seating area already exists and the application is merely for a canopy to act as a wind break. The statement that the applicant is extending the restaurant onto the public footpath is refuted.
- Service manholes – The canopy will in no way inhibit access to the manholes. The side panels have been removed and the canopy is 2.1m off the ground. If this was likely to be an issue, why was a licence for outdoor seating granted?

- Noise and its impacts on the apartments overhead – The restaurant opens from 11am to 9pm only and has an existing external seating area, which is used by patrons. The only difference that the canopy would make is to provide shelter from the wind, as the junction of the two streets is extremely windy. The canopy will not increase noise levels and if anything, it will act as a buffer to the apartments overhead.
- Insufficient legal interest – the applicant has a lease on the restaurant which includes permission for 3 tables and 12 chairs externally, and pays €4,000 annually. He is currently in negotiations to purchase the property and has paid a deposit. Copies of the licence for external seating and the lease have been enclosed with the grounds of appeal.

#### **5.4. Planning Authority Response to grounds of appeal**

The P.A. has not responded to the grounds of appeal.

### **6.0 Assessment**

**6.1.** It is considered that the main issues arising from the appeal are as follows:-

- Principle of development;
- Residential amenity impact in terms of noise from smoking area; and
- Other matters - Adequacy of legal interest and access to service manholes.

#### **6.2. Principle of development**

**6.2.1.** The location of the site in a city centre retail area on lands zoned for commercial, retail, cultural, leisure and residential uses, which is in mixed use means that the development comprising the erection of a canopy to define a smoking area is appropriate in principle. I note that the Area Planner raised the issue of creating a precedent, which was also included in the P.A. reason for refusal no. 1. However, I noted from my site inspection, that there is a similar canopy/awning at Milano's restaurant, further to the southwest on Harvey's Quay and yet another awning with planters outside a restaurant on Howley's Quay to the southwest. There are further canopies/awnings outside other restaurant premises in the general area.

- 6.2.2.** The Limerick City and County Development Plan refers to canopies and awnings in the Development Management Chapter (16.41) and states that traditional designs and retractable materials will be favoured, although encouragement is also stated for innovative designs. However, they must not obstruct or clutter footpaths and a licence under Section 254 of the P & D Act 2000 (as amended) must be applied for. The planning permission granted for the change of use of the ground floor of the premises to a café (14/1) also required (Cond 6) that no tables, chairs, windbreakers be placed outside without such an application for such a licence having been made. The applicant has provided evidence of the grant of such a licence for the premises with the grounds of appeal.
- 6.2.3.** Given the width of the footpath at this location (c. 6.4m) and the projection of the proposed canopy structure by 2.8m, together with the limited area (15.5m<sup>2</sup>) and length of the structure (6m), it is considered that it is unlikely to give rise to any significant level of clutter or obstruction of the pavement. It is further noticed that just beyond the church, there is a projecting stone raised platform with steps leading to the museum, which restricts the width of the footpath on Bedford Row.
- 6.2.4.** It is noted that this is an established use in a mixed-use area which has the benefit of a recent planning permission for a change of use. However, given the mixed-use nature of the site, it is considered important that the provision of such a facility does not result in a nuisance or serious injury to the residential amenities of nearby residential units. This matter will be addressed in the following sections.

### **6.3. Residential Amenity of occupiers of apartments**

- 6.3.1.** The appellant has pointed out that there is an existing outside seating area which has been the subject of a grant of a licence, and that the only difference that the canopy will make is the patrons using the seating area would be sheltered from the wind/rain. I would accept that the provision of a canopy would be likely to encourage more people to sit outside than a seating area without one. However, the existing seating area is in use at present, has the benefit of a licence and was anticipated as part of the change of use application (Condition 6 of 14/1). Thus, the use of this area as an external seating area associated with the restaurant is established.
- 6.3.2.** It is also unclear from the planning reports on the history files whether the upper floors are in use as individual apartments for permanent residential use or as a



hostel. Permissions granted in 1990/91 (Ref 90/446 and 91/304) referred to apartments, retail and restaurant uses, but it is not clear if these were implemented. A subsequent permission, 95/327 (which refers to a previous permission 91/304) was for a mixed-use development of 3 apartments, a 64-bed hostel, a café, retail use and a restaurant. Again, it is unclear if this was the permission that was implemented. I note that the management company for the residential use overhead had objected to the first application earlier this year (18/37) on the grounds of encroachment onto the footpath, and potential nuisance from cigarette smoke and anti-social behaviour. However, no third-party submissions were made in respect of the current application/appeal. It is further noted that the property was stated to be in receivership at the beginning of 2018, (letter from receiver dated January 2018 on file ref 18/37 advising awareness of application for canopy).

- 6.3.3.** Notwithstanding the foregoing, it is considered that the location of the site in the city centre, in an area where there is a vibrant mix of uses with cafes, restaurants and pubs in the general vicinity, together with the riverfront location, complete with Riverwalk and outdoor amenity areas with seating etc, it is considered that the provision of an awning over an existing set of licensed tables and chairs is not likely to give rise to a significant increase in noise nuisance to the detriment of residential amenity.
- 6.3.4.** The appellant has stated that the restaurant hours are 11am to 9pm and I note that this is consistent with the information provided by the applicant for the change of use application (14/1). It is further noted that the licence for the table and chairs has restrictions attached including hours of use (10am to 12.30am). Other restrictions attached to the licence include no tables and chairs beyond 3m distance from the external wall; sufficient supervision to be provided; area to be maintained in a clean and tidy condition; no outside amplification/speakers without prior consent from the Planning Dept.
- 6.3.5.** It is considered that in light of the above, the proposed development would not be likely to result in any serious injury to the residential amenities of the neighbouring residential occupiers. However, the Board could attach appropriately worded conditions to reinforce the hours of operation as stated by the appellant.

## **6.4. Other matters**

### **6.4.1. Adequacy of legal interest**

The appellant has furnished evidence of a licence granted by the Local Authority under the P & D Act 2000, (as amended). Evidence of the lease of the premises was also provided with the grounds of appeal. It is considered that the onus is on the applicant to ensure that he/she has adequate legal interest to implement any permission.

### **6.4.2. Access to manholes**

Given that the proposed canopy structure comprises a retractable awning with a motorised unit, it is unlikely that access to the manholes would be restricted. As the Council issues the annual licence for the tables and chairs, it can presumably insert a clause stating that access to the manholes shall be made available on request. Given that the seating area is already licenced and present, it is considered that this matter is not one that would prevent the Board from granting planning permission in this instance.

## **6.5. Environmental Impact Assessment**

- 6.5.1.** Having regard to the nature and scale of the development 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.

## **6.6. Appropriate Assessment**

- 6.6.1.** The site is located approximately 30m from a Natura 2000 site, namely, Lower Shannon SAC. Given the distances involved, that the use is an established one and as the site is located in an established urban area, on serviced lands, it is considered that no appropriate assessment issues are likely to arise.

## **7.0 Recommendation**

- 7.1.** It is recommended that planning permission be granted for the reasons and considerations set out below.

## 8.0 Reasons and Considerations

Having regard to the provisions of the Limerick City and County Development Plan 2010-2016 (as extended), to the nature and scale of the development and to the existing pattern of development in this central city location, it is considered that subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area, or of property in the vicinity and would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, 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.

**Reason:** In the interest of clarity.

2. The hours of operation of the external area covered by the canopy shall be between 0900 hours and 21.00 hours.

**Reason:** In the interests of the residential amenities of the occupiers of the adjacent residential units.

3. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the

Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine the proper application of the terms of the Scheme.

**Reason:** It is a requirement of the Planning and Development Act 2000 that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

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Mary Kennelly  
Senior Planning Inspector

21<sup>st</sup> December 2018