



An
Bord
Pleanála

Inspector's Report

ABP-310888-21

Development	Section 254 to place street furniture for outdoor dining purposes at Market House café.
Location	Market House, New Market Street, Caherciveen, Co.Kerry.
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	S254
Applicant(s)	Jack Fitzpatrick & Tracey O Neill.
Type of Application	Section 254 Licence Application
Planning Authority Decision	Refuse
Type of Appeal	First Party
Appellant(s)	Jack Fitzpatrick & Tracey O Neill.
Observer(s)	None.
Date of Site Inspection	23 rd September 2021.
Inspector	Bríd Maxwell

1.0 Introduction

- 1.1 This case relates to a first party appeal against the decision of Kerry County Council to refuse permission for the placement of street furniture for outdoor dining purposes at Market House Café, Caherciveen, Co Kerry. The application is made under the provisions of Section 254 of the Planning and Development Act, 2000 (as amended).

2.0 Site Location and Description

- 2.1 The subject site is located at Market House, New Market Street in Caherciveen, Co Kerry. The site comprises a rectangular space (10m x 3m) located outside the established café / retail unit within the public car park. The established business which fronts onto the N70 New Market Street comprises a service station / retail and café and includes a car wash. The appeal site space is demarcated on the ground with a yellow box and road markings to the east from the car wash area direct drivers through the yellow box area for exit.

3.0 Proposed Development

- 3.1 The application seeks a street furniture license outside the established café premises for outdoor dining purposes and would provide for an extension of an existing outdoor seating area. A specific layout of intended furniture is not provided however photographs provided show the placement of 3 tables and seating for approximately eight persons within the license application area.

4.0 Planning Authority Decision

4.1 Decision

By order dated 24th May 2021 Kerry County Council issued notification of the decision to refuse license under Section 254 of the Planning and Development Act 2000 as amended. The refusal reason was as follows:

“The proposed location of street furniture comprising of (a) being placed in a yellow box in a public car park and (b) blocking vehicles from using the traffic lane designated for a car wash service would endanger public safety by reason of traffic hazard.”

4.2 Planning Authority Reports

4.2.1 Planning Reports

Report of Area Engineer Caherciveen recommends refusal. The proposed location for the provision of street furniture as per application would create a road safety hazard as the street furniture would be placed on a yellow box in a public car park. The proposed application would also have an adverse effect on the private car was service at the rear of Market House as it would block vehicles from using the traffic lane designated for this service.

Report of Kenmare Municipal District Engineer concurs with refusal recommendation.

4.3 Prescribed Bodies

No submissions

4.4 Third Party Observations

No submissions

5.0 Planning History

The Planning Authority did not provide historical planning records in relation to the site. I note from my online interrogation of electronic records in relation to the site the following applications and decisions. I note that the documentation available is limited in terms of detailed analysis of permitted development on the site.

1035 On 3/9/2010 Permission granted for fit out of off license.

09/1440 Incomplete application to fit out off license.

05/975 Permission granted 7/11/2005 for permission to retain forecourt canopy, fuel canopy island and statoil sign.

95/1249 Application for permission to retain and complete elevations to existing building to include 3 no retail units, car valet, fuel service station, retail outlet, retain existing service station consisting of new tank farm, canopy, car wash, sign forecourt and ancillary works. Further information was requested on 14/8/97 and no decision is recorded in respect of this application.

95/481 Permission granted for service Station 6/1/1995

6.0 Policy Context

6.1 Development Plan

The West Iveragh Local Area Plan 2019-2025 and Kerry County Development Plan 2015-2021 refer. The site is within an area zoned Town Village Centre within the Local Area Plan.

Built Environment Objective No. WI-BE-01 is the objective of the Council to support initiatives to strengthen and improve the physical environment of the towns and villages of the West Iveragh area with enhanced streetscapes, appropriate shopfront design and provision for improved street lighting, public footpaths and street furniture.

WI-BE-03 Promote a more pedestrian friendly environment through the provision of traffic calming measures and improved pedestrian infrastructure. Developments in

urban areas shall have regard to the 'Design Manual for Urban Roads and Streets' (March 2013) – Department of Transport, Tourism and Sport and the Department of the Environment, Community and Local Government.

CH-TC-08 Facilitate the preparation of a Town Centre Renewal Plan to address the issues pertaining to the development of the town centre. This Plan will address the physical enhancement and improvement of the town centre through urban design measures and improved traffic management in the town.

Development Management Standards are set out at Chapter 16 of the Kerry County Development Plan 2015-2021. At 13.6.10 Street Furniture it is noted that "*The footpath is primarily for pedestrian traffic, however the Council will consider the placing of tables and chairs on the footpath where they will not negatively affect pedestrian flows. A licence is required for this from Kerry County Council.*"

6.2 Natural Heritage Designations

None

6.3 EIA Screening

The proposed development is not of a class for the purpose of EIAR. The nature and scale of the development would not result in a real likelihood of significant effects on the environment.

7.0 The Appeal

7.1 Grounds of Appeal

7.1.1 The appeal is submitted by Diarmuid Twomey, Planning Engineering and Architectural Services, on behalf of the first party. Grounds of appeal are summarised as follows:

- Disagree that the placing of furniture would endanger public safety in fact the contrary is argued.
- Movement of cars through this area is hazardous given proximity to the café entrance and existing seating area and restricted visibility due to location of accessible car parking space opposite and alternative exit from the car wash through the centre aisle of the car park would be more appropriate.
- In light of the current situation regarding Covid 19 and the emphasis on outdoor dining it is imperative that every attempt is made to facilitate this type of development in close proximity to food outlets.

7.2 Planning Authority Response

The Planning Authority did not respond to the grounds of appeal.

7.3 Observations

No submissions

8.0 Assessment

8.1 The appeal is made under the provisions of Section 254 of the Planning and Development Act, 2000, which relates to licensing of appliances and cables etc., on public roads. Subsection 5 states that in consideration of an application for licence under 254 a planning authority, or Board on appeal, shall have regard to the following:

- a) The proper planning and sustainable development of the area,
- b) Any relevant provisions of the development plan, or local area plan,
- c) The number and location of existing appliances, apparatuses or structures, on under, over or along the public road, and

d) The convenience and safety of road uses including pedestrians.

8.2 Having regard to the town centre location of the site, the established commercial uses and to the zoning objectives of the Development Plan there is general support for proposals to bring greater vibrancy and vitality to the street by way of creation of outdoor seating areas which has potential to positively contribute to the attractiveness and amenities of the area. However, such facilities should only be supported where there is no significant interference with pedestrian movement and traffic safety and having regard to the considerations of visual impact, impact on architectural heritage and impact on the amenities of the area. In relation to visual impact or impact on architectural heritage no specific concerns arise. Having regard to the documentation and submission on the appeal file and the decision of the Planning Authority which was to refuse permission on the basis of traffic hazard I consider that it is appropriate that the assessment of the appeal is focussed on this issue.

8.3 The Council's reason for refusal was as follows: *"The proposed location of street furniture comprising of (a) being placed in a yellow box in a public car park and (b) blocking vehicles from using the traffic lane designated for a car wash service would endanger public safety by reason of traffic hazard."*

8.4 The first party contends that the proposal will improve the existing situation by eliminating the movement of traffic directly adjacent to the café and re-routing car wash traffic southwards through the central aisle of the car park. I acknowledge that the existing traffic arrangements for exit from the car wash are hazardous. I would however be of the view that the proposal as set out does not resolve the hazard and would require a more comprehensive arrangement and traffic management measures. The placing of street furniture directly within the car park gives rise to potential for further pedestrian vehicular conflict and would be contrary to the objectives of the Development Plan and the proper planning and sustainable development of the area. On this basis I consider that the refusal of the license application is appropriate.

8.5 On the issue of Appropriate Assessment I note that having regard to the nature and scale of the proposed development within a serviced area and separation distance to 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 the conservation objectives of any European site.

9.0 Recommendation

9.1 I recommend that this appeal be disallowed and the licence refused for the reasons and considerations set out below.

10.0 Reasons and Considerations

Having regard to the location of the site within an existing public car park and in close proximity to a car wash facility, it is considered that the placing of furniture within the car park area would result in increased pedestrian vehicular conflict and would result in additional traffic hazard and would therefore be contrary to the objectives of the West Iveragh Local Area Plan 2019-2025 and Kerry County Development Plan 2015-2021 and contrary to the proper planning and sustainable development of the area.

Bríd Maxwell
Planning Inspector

9th December 2021