



An  
Bord  
Pleanála

# Inspector's Report

## ABP-311116

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<b>Development</b>	Street Furniture under S. 254 License
<b>Location</b>	Curragower Bar, Clancy Strand, Limerick.
<b>Planning Authority</b>	Limerick City and County Council
<b>Planning Authority Licence Ref.</b>	L21.70
<b>Applicant(s)</b>	Curragower Bar
<b>Type of Application</b>	S.254 Street furniture Licence
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	Third-Party
<b>Appellant(s)</b>	Tom Lewis
<b>Observer(s)</b>	
<b>Date of Site Inspection</b>	14 <sup>th</sup> January 2022
<b>Inspector</b>	Suzanne Kehely

## 1.0 Site Location and Description

- 1.1. The appeal site lies to the west of the River Shannon in a mature residential area at the north end of the medieval centre of Limerick City between Thomand Bridge and Sarsfield Bridge. The site is on a corner located at the junction of Clancy Strand and Reidy Park on the opposite corner to the public house premises – Curragower Pub. There is access through the site (with hatched markings and also marked as a right of way on the submitted maps) to a private gated area to the rear of a terrace of houses (Shannonview Terrace) fronting Clancy Strand. There is no structural boundary between Reidy Park carriageway and the site other than road markings. The site is bound to the north by an undeveloped strip of ground (on which 2 cars were parked) which is adjoined by a detached dwelling on Reidy Park. The frontage along Clancy Strand is marked by a white painted metal post and rail fence and there is a small triangular landscaped patch for bicycle parking between these railings and the public footpath.
- 1.2. The site is laid out as a car park with 3 parallel spaces on one side and 5/6 perpendicular spaces on the other and these spaces were substantially covered in green matting at time of inspection. Also at time of inspection most spaces were occupied.
- 1.3. Reidy Park is a very narrow residential street with the exception of the public house - Curragower Bar. The houses are mainly terraced and most have off street parking. There are double yellow lines on both sides. The road is a T shaped cul de-sac and there are some loading bays and a few parallel parking spaces at the top of the T. This parking is controlled by the council.
- 1.4. Clancy Strand in the vicinity of the is also characterised by residential housing and the side is bounded to the south by a dwelling. The alignment of the single carriageway along Clancy strand is narrow and curved with limited footpath space. There is a footpath on one side with intermittent use of bollards. The carriageway on the other side is defined by a low stone wall which separates the road from a riverbank promenade. Consequently there is no on street parking in the vicinity of the site and there is also very limited on street parking further along Clancy Strand in both directions.

1.5. The premises is a two-storey bar /restaurant with an outdoor covered terrace along the Clancy Strand frontage with extensive seating in addition to the interior. It appears to be an amalgamation of multiple plots but no plans have been submitted. There is a small ancillary yard and inner yard to the rear of the premises with access from Reidy Park. At time of inspection the public premises was open and partially occupied by patrons both inside and outside on the terrace.

## 2.0 Proposed Development

2.1. The proposed development consists of an outdoor seating area to occupy 5-6 car park spaces in a area of 24 sq.m. and includes:

- 5 -6 picnic benches, a chained perimeter and parasols.
- It is stated that all equipment is to be removed and stored off site.
- It is stated to end 30<sup>th</sup> September 2021.

## 3.0 Planning Authority Decision

### 3.1. Decision

3.1.1. On the 5<sup>th</sup> August 2021 the planning authority decided to grant a licence under section 254 of the Planning and Development Act 2000 for the installation of street furniture for the period 5<sup>th</sup> August 2021 to 30<sup>th</sup> September 2021 in the car park area at the junction of Clancy Strand and Reidy Park. This was subject to 5 conditions.

- 1) That a barrier and furniture be arranged and maintained in the car park so as not to obstruct pedestrians.
- 2) That the furniture only be placed between the hours 10am to 10pm and all items under licence to be removed before 10pm each evening. The hatched area which is not covered by the licence must be kept free of patrons of the Curragower Bar. The Curragower management must provide supervision of the outdoor area to ensure that they comply with these arrangements.

- 3) That the street furniture be maintained in a safe, clean and tidy condition. Adequate waste management facilities are to be maintained at the site by Curragower Bar.
- 4) That there will be no outside amplification/speakers/live entertainment in place without written consent from the Planning and Development Department

### **3.2. Planning Report**

- No report

### **4.0 Planning History**

There are no details of planning applications or decisions on the site. The appellant however provides a history of the leasing and licence arrangements by way of a schedule of correspondence between the council and the appellant and by also setting out the chronological events related to the use of the site as car park and for street furniture. This includes reference to enforcement proceedings and grievances of the local residents. This is set out in the grounds of appeal below.

### **5.0 Policy & Context**

#### **5.1. Legislative provisions**

##### **5.1.1. Roads Act 1993 as amended**

“road” includes—

- (a) any street, lane, footpath, square, court, alley or passage,
- (b) any bridge, viaduct, underpass, subway, tunnel, overpass, overbridge, flyover, carriageway (whether single or multiple), pavement or footway,
- (c) any weighbridge or other facility for the weighing or inspection of vehicles, toll plaza or other facility for the collection of tolls, service area, emergency telephone, first aid post, culvert, arch, gully, railing, fence, wall, barrier, guardrail, margin, kerb, lay-by, hard shoulder, island, pedestrian refuge, median, central reserve,

channelliser, roundabout, gantry, pole, ramp, bollard, pipe, wire, cable, sign, signal or lighting forming part of the road, and

(d) any other structure or thing forming part of the road and—

(i) necessary for the safety, convenience or amenity of road users or for the construction, maintenance, operation or management of the road or for the protection of the environment, or

(ii) prescribed by the Minister;

#### 5.1.2. Planning and Development Act 2000 as amended.

##### Section 254

(a) a vending machine,

(b) a town or landscape map for indicating directions or places,

(c) a hoarding, fence or scaffold,

(d) an advertisement structure,

(e) a cable, wire or pipeline,

(f) a telephone kiosk or pedestal, or

(g) any other appliance, apparatus or structure, which may be prescribed as requiring a licence under this section,

on, under, over or along a public road save in accordance with a licence granted by a planning authority under this section.

(2) This section shall not apply to the following—

(a) an appliance, apparatus or structure which is authorised in accordance with a planning permission granted under *Part III*;

(b) a temporary hoarding, fence or scaffold erected in accordance with a condition of planning permission granted under *Part III*;

(c) the erection, construction, placing or maintenance under a public road of a cable, wire or pipeline by a statutory undertaker.

(3) A person applying for a licence under this section shall furnish to the planning authority such plans and other information concerning the position, design and capacity of the appliance, apparatus or structure as the authority may require.

(4) A licence may be granted under this section by the planning authority for such period and upon such conditions as the authority may specify, including conditions in relation to location and design, and where in the opinion of the planning authority by reason of the increase or alteration of traffic on the road or of the widening of the road or of any improvement of or relating to the road, the appliance, apparatus or structure causes an obstruction or becomes dangerous, the authority may by notice in writing withdraw the licence and require the licensee to remove the appliance, apparatus or structure at his or her own expense.

(5) In considering an application for a licence under this section a planning authority, or the Board on appeal, shall have regard to—

(a) the proper planning and sustainable development of the area,

(b) any relevant provisions of the development plan, or a 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 users including pedestrians.

(6) (a) Any person may, in relation to the granting, refusing, withdrawing or continuing of a licence under this section or to the conditions specified by the planning authority for such a licence, appeal to the Board.

(b) Where an appeal under this section is allowed, the Board shall give such directions with respect to the withdrawing, granting or altering of a licence under this section as may be appropriate, and the planning authority shall comply therewith.

(7) Development carried out in accordance with a licence under this section shall be exempted development for the purposes of this Act.

(8) A person shall not be entitled solely by reason of a licence under this section to erect, construct, place or maintain on, under, over or along a public road any appliance, apparatus or structure.

(9) Subject to *subsection (10)*, any person who—

(a) erects, constructs, places or maintains an appliance, apparatus or structure referred to in *subsection (1)* on, under, over or along any public road without having a licence under this section to do so,

(b) erects, constructs, places or maintains such an appliance, apparatus or structure on, under, over or along any public road otherwise than in accordance with a licence under this section, or

(c) contravenes any condition subject to which a licence has been granted to him or her under this section,

shall be guilty of an offence.

(10) (a) A planning authority may, by virtue of this subsection, itself erect, construct, place or maintain, on, under, over or along a public road any appliance, apparatus or structure referred to in *subsection (1)*, and it shall not be necessary for the planning authority to have a licence under this section.

(b) Nothing in this subsection shall be construed as empowering a planning authority to hinder the reasonable use of a public road by the public or any person entitled to use it or as empowering a planning authority to create a nuisance to the owner or occupier of premises adjacent to the public road.

(11) Where a planning authority is not the road authority for the purposes of national or regional roads in its area, it shall not grant a licence under this section in respect of any appliance, apparatus or structure on, under, over or along a national or regional road or erect, construct or place any appliance, apparatus or structure on, under, over or along a national or regional road except after consultation with the authority which is the road authority for those purposes.

## 5.2. Development Plan

5.2.1. The site is in an area zoned Residential (2A) in Map no.1 of the Limerick City Development Plan 2010-2016 as extended. Objective ZO.2 (A) Residential is to provide for residential development and associated uses.

5.2.2. The surrounding area is also zoned residential with the exception of the Church and Parochial House and associated grounds to the north which is zoned for education community and culture.

5.2.3. The site is located within the Thomondgate district and is described as an Northern Suburban area covering St Munchin's Parish. It was declared a RAPID initiative area by Central Government in 2001 and largely comprises a variety of social housing estates developed largely by the City Council between 1930-90. In respect of recreational facilities, the area is dominated by the River Shannon, however the full potential of its use has not been realised.

### 5.3. **Natural Heritage Designations**

5.4. The nearest European sites are

- The Lower River Shannon SAC site code 002165
- The River Shannon and River Fergus Estuaries SPA – site code 004077

## 6.0 **Environmental Impact Assessment - Preliminary Examination**

6.1. Having regard to the limited nature and scale of the proposed development and absence of structural works and the absence therefore 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 at preliminary examination and a screening determination is not required.

## 7.0 **The Appeal**

### 7.1. **Grounds of Appeal**

7.1.1. A third-party appeal has been lodged by Tom Lewis who objects to the street furniture licence by reference to the history of the site and area and who makes the following submissions.

- The area is a settled residential area on the banks of the River Shannon. It is a scenic and historical part of the city.
- The Public House is the only licenced premises along Clancy Strand serving food and drinks to mostly tourists and some residents.
- The council has leased by way of a rollover licence the subject car park to Curragower Bar which is accessible to the bar only by crossing a public road.



- The car park was historically a temporary structure associated with drainage works but never returned to its original state.
- The residents who monitor anti-social behaviour in the area objected to the recent subject licence application.
- The provisions of section 254 are submitted to allow *cart blanche* rights to the council to permit licences irrespective of suitability and against the wishes of local residents.
- It is submitted that the council has adopted a forgiving approach to the applicant notwithstanding objections by residents.

7.1.2. The objections specifically relate to:

- Health and Safety: particular in regard to absence of details and measures addressing 1) serving of food and drink with an intervening public road and 2) conflict with the right of way.
- Car park spaces: The loss of 6 car park spaces will result in obstructive parking – blocking of access/ driveways and parking on double yellow lines. No alternatives have been proposed.
- Noise and Nuisance: Residents are experiencing noise late at night due to patrons using street furniture licenced to the applicant.
- Right to tender: The licence is understood to effectively rollover, and it is submitted that there should be a right to tender on the car park facility which accrues a rental charge of €750 pa.
- Adherence to licence terms: It is submitted that furniture has not under previous licences been removed from the site before 10pm and barrels have remained in situ all night. These remaining elements generate associated anti-social behaviour which keeps residents awake. A speaker was also installed outside the bar in further contravention of the licence conditions although it is acknowledged as having been since removed.
- Intimidation of elderly residents is an ongoing issue compounded by late night furniture.
- Residents have a right to peaceful enjoyment of property.
- The process lacks transparency and excludes residents. The appeal is the only way of addressing this.

7.1.3. The submission is supported the following Appendices:

- Appendix 1 – Map
- Appendix 2 – A copy of the original 12 month Licence Agreement from 13<sup>th</sup> Jan 2010 between the council and the application for the leasing of the land to use it for the provision of car parking spaces for patrons of the Bar and to erect a marquee on the lands subject to the Licensee obtaining any necessary Intoxicating Liquor Act Licence and obtaining the prior consent of an Garda Siochana and if necessary the CFO with the condition that such usage will not cause any such obstruction to any existing rights of way.
- Appendix 3 – Limerick Corporation letter (22<sup>nd</sup> June 2001) from project engineer of Limerick Main Drainage to solicitors of adjacent landowners which relates to the temporary car park use of the subject site and arrangements to accommodate access through layout and a hatched right of way .
- Appendix 4 – Letter (9<sup>th</sup> March 2021) of objection to a future license and statement of grievances in relation to ongoing use of car park for serving patrons, from the appellant to LCC. This supported by a chronological list of related events and correspondence relating to its use. It was initially a temporary car park for the Council drainage works and has evolved to a more permanent arrangement, notwithstanding the reference to a letter issued on 7<sup>th</sup> March 2016 by the council stating that a planning application was required.
- Appendix 5 – Letter (dated 6<sup>th</sup> 20<sup>th</sup> June 2021) from appellant to LCC thanking for hearing and objecting to the granting of the subject licence – requesting that the continuance be denied having regard to issues relating to overnight storage of furniture, conflict between residents and patrons regarding access to homes and general anti-social behaviour and also to the absence of continued need having regard to the relaxing of restrictions on indoor dining.
- Appendix 6 – Letter (6<sup>th</sup> May 2021) seeking clarification of the council's position regarding the its position to grant a licence for street furniture in the car park as it was stated to be private property. This is followed by a restatement of objections to the use of car park as an outdoor serving area. This includes a refence to a court case taken by the Council in executing an enforcement order allegedly ignored by the Bar regarding furniture in the car park.
- Appendix 7 – Email (26<sup>th</sup> July 2021) from resident of Reidy Park to LCC stating that that reduction from 9 to 3 car park spaces generates additional traffic issues.

‘there are times when the situation is so bad if an emergency vehicle should be required it would not be able to gain access. This causes great anxiety.

- Appendix 8 – Email (20<sup>th</sup> July 2021) from Dermot Frawley explain his representation on behalf of residents in place of Tom Lewis and seeking licence details following consultation on the appeal process with An Bord Pleanala. Response with licence reference details attached.
- Appendix 9 – Email from LCC explaining access to section 254 application documentation.

## 7.2. **First Party Response**

None

## 7.3. **Planning Authority Response**

None

## 8.0 **Assessment**

### 8.1. **Issues**

- 8.1.1. This is an appeal against a licence for street furniture permitted by the local authority under section 254(1) of the Planning and Development Act 2000 (as amended).

There are two matters in respect of the appeal process before assessing the merits of the case as provided for under section 245.

- 8.1.2. In the first instance I would query whether or not the provisions of section 254 apply having regard to the nature and description of the site as a car park and by reference to the definition of ‘road’ in the Roads Act 1993 as amended. The Council refers to the site in its permit as a public car park and not a public road. There is I consider a strong case that it does not fall within the definition of a public road . While there is a right of way over the site to a private entrance to private property, I do not consider the right of way amounts to a public road. However, while the Clancy Strand frontage is clearly railed off from the footpath and road, I note that part of the frontage is not defined by a footpath and the site could in part be interpreted to be ‘along’ part of the public road - namely Reidy Park. I note in the appellant’s

submission that the council is cited as previously considering the use of the car park for furniture in need of planning permission but evidently has adopted a different stance in considering the subject licence application, but without any explanation in its written response on the subject appeal. In the absence of further information, I am more inclined to consider this to amount to a change of use which is more appropriately addressed under a section 34 planning application, although this matter is ultimately more appropriately determined under section 5 of the Planning Act, as amended.

8.1.3. Secondly, the duration of the licence applied for has expired (5<sup>th</sup> August – 30<sup>th</sup> September 2021). In this regard I note that a licence lasts for one year and can be subject to conditions including duration. There is nothing I consider to preclude the Board from determining the appeal before it in a retrospective manner.

8.1.4. Accordingly, notwithstanding the potential grounds for withdrawing a licence, albeit limited in its duration, on the grounds of being ultra vires, should the Board decide to consider the matter further I set out the relevant considerations and recommendation.

8.1.5. In its consideration of the development, under section 254(5) of the Act, the Board is required to have regard to:

- the proper planning and sustainable development of the area,
- any relevant provisions of the development plan, or a local area plan,
- the number and location of existing appliances, apparatuses or structures on, under, over or along the public road, and
- the convenience and safety of road users including pedestrians.

Having regard to these requirements, local policy, the application details, all other documentation on file and my inspection of the site, I consider that the main issues for this appeal relate to **Residential amenity** and **Traffic safety**.

## 8.2. **Residential amenity**

8.2.1. The proposed development seeks the provision of up to six benches and parasols over an area of 24 sq.m. as an extension of the serving area for a licensed premises – public house in an established residential area. Access is reliant on crossing a narrow public cul-de-sac road along which there are rows of houses on each side. The site also includes a right of way that provides rear access to a private gated entrance to a terrace of houses that are adjacent to the site. The submissions on file

refer to late night disturbances generated by the outdoor activity during what appears to be repeated seasonal annual use of the car park as a seated and serving area for patrons of the Public House. The obstruction of the right of way and vehicular access to homes associated with the direct and indirect consequences of the use of the furniture also gives rise to conflict between the established residents and visiting patrons. The statements by the residents in this regard are not refuted by either the applicant or the council. In my judgment, given the proximity to residences, I consider the nuisances associated with the development are probable and likely to be injurious to residential amenities. Having regard to the strong residential character of the area and the residential zoning, the objections are therefore reasonable. In this case I also note that the proposal will essentially extend the premises considerably beyond its curtilage. I note that the premises already have a large external terrace within the curtilage where patrons can be accommodated outdoors and in this context the proposed furniture would amount to an unwarranted intensification of use and would not be in accordance with the overall proper planning and sustainable development of the area.

### **8.3. Traffic and safety**

- 8.3.1. The proposal relies on the removal of up to 6 car park spaces in an area where car parking is severely restricted. Having regard to the alignment of Reidy Park and access arrangements to the houses fronting this road and also the right of way to the private access serving the rear of Shannonview Terrace there is considerable potential for obstruction to private access and nuisance. This is particularly the case in relation to the potential obstruction of occasional or once-off visitors to the area which offers other river bank amenities.
- 8.3.2. Furthermore having regard to the alignment of the Reidy Park and its limited car parking and the combination of an increased serving area and loss of car parking, the proposal is likely to generate traffic that would obstruct road users and pose a serious traffic safety issue. The occurrence of this is supported in the submissions by the appellant. The issue is further compounded by the associated safety issues of staff and patrons of the Public House relying on crossing a public road to access the bar facilities. Accordingly I consider that having regard to the nature of the use, the loss of car parking and potential obstruction of vehicular and pedestrian traffic that the proposed development would compromise the convenience and safety of road

users including pedestrians and would be prejudicial to public safety by reason of traffic hazard.

#### **8.4. Appropriate Assessment**

- 8.4.1. Having regard to the nature of the development, its location in a serviced urban area, and the separation distance to any 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.

### **9.0 Recommendation**

I recommend that in exercise of the powers conferred on it under section 254 of the Planning and Development Act, 2000, An Bord Pleanála withdraws the licence for the proposed development based on the reasons and considerations set out below.

### **10.0 Reasons and Considerations**

Having regard to the residential character of the area and the adjacent residential dwellings reliant on the site for through access and also to the extremely limited car parking in the area and alignment of Reidy Park, it is considered that the use of the car park as an outdoor seating/serving area across the street from and associated with Curragower Bar would, by reason of noise and disturbance seriously injure the residential amenities of the area and furthermore would be prejudicial to public safety by reason of traffic hazard. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

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Suzanne Kehely

Senior Planning Inspector

26<sup>th</sup> January 2022