



An  
Bord  
Pleanála

## Inspector's Report

### ABP-311377-21

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<b>Development</b>	Section 254 Licence for outdoor seating associated with existing restaurant
<b>Location</b>	twocooks Restaurant, 5 Canal View, Sallins, Co. Kildare, W91 C786
<b>Planning Authority</b>	Kildare County Council
<b>Planning Authority Reg. Ref.</b>	000661
<b>Applicant(s)</b>	Nicola Zammit
<b>Type of Application</b>	Section 254 Licence
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Sharon Nolan and others
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	25 <sup>th</sup> May 2022
<b>Inspector</b>	Ian Boyle

## 1.0 Site Location and Description

- 1.1. The appeal site comprises 2 no. car parking spaces at the front of 'twocooks Restaurant and Wine Bar', which has an address at 5 Canal View, Sallins, Co. Kildare, W91 C786.
- 1.2. The restaurant faces towards the Grand Canal, which is the north of the premises, on the far side of Canal View. This section of the street is one-way and vehicular access is not permitted onto the R407 (Main Street) to the west. The R407 is the main throughfare for the town and it runs in a north – south direction.
- 1.3. The street accommodates a mix of cafés/restaurants, commercial businesses, and residential uses. There is on-street parking and footpaths on both sides of the street.

## 2.0 Proposed Development

- 2.1. The proposed development is for a Section 254 Licence for outdoor seating / furniture to facilitate outdoor dining.
- 2.2. The street area, which comprises 2 no. car parking spaces, is 10m in length and 2m deep.
- 2.3. The licence is for 4 to 6 no. tables and 18 no. chairs.
- 2.4. The Council Order states that the validity period for S.254 Licence was due to expire on the last day of November 2021. However, it is not clear if the Applicant has sought an extension to this date.

## 3.0 Planning Authority Decision

### 3.1. Decision

The Planning Authority granted the licence by Order on 14<sup>th</sup> July 2021, subject to 13 no. conditions.

Notable conditions include:

- The validity period for the licence will expire on the last day of November 2021 (No. 1).

- The proposed screens, tables and chairs must be temporary in nature and easily removed (No. 2).
- Planters in an L-shape shall be included to provide separation from cars and to define the space. (No. 7).
- All barriers to be removed when the area is not being used by the Applicant (No. 10).
- The Council may suspend the licence at any time by giving the Applicant two weeks' notice (No. 13).

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Report

- No Planner's Report.
- Email was issued on 29<sup>th</sup> June 2021 recommending that the licence be granted, subject to the conditions referenced above.

#### 3.2.2. Other Technical Report

Public Realm: Email dated 25<sup>th</sup> June 2021. No objection, subject to conditions.

Municipal District Engineer: Report dated 28<sup>th</sup> June 2021. No objection, subject to conditions, including that all tables, chairs, and coverings be removed when the area is not being used by the Applicant.

## 4.0 Policy Context

### 4.1. Sallins Local Area Plan 2016-2022

- 4.1.1. The site is zoned 'A1 – Town Centre' under the Sallins Local Area Plan 2016-2022 (LAP). The objective for this zone is 'to provide for the development and improvement of appropriate town centre uses including retail, residential, commercial and civic uses'.
- 4.1.2. The LAP states that the purpose of the zone is 'to protect and enhance the special character of Sallins town centre and to provide for and improve retailing, residential,

commercial, office, cultural and other uses appropriate to the town centre. The Council will encourage the appropriate re-use and regeneration of buildings, backlands and derelict/obsolete land. Innovative design approaches will be welcomed in the area, particularly with regard to the built environment. In designing new residential/infill houses in the town centre area, reference to the vernacular architecture (as evident in the Home Farm and Ferrybank houses) could be considered, where appropriate’.

#### **4.2. Kildare County Development Plan 2017-2023**

- 4.2.1. The Kildare County Development Plan 2017-2023 states that Sallins is identified as a Small Town in the settlement hierarchy for Kildare.
- 4.2.2. Section 1.1.1 of the Development Plan states that small towns have been designated to develop as key local centres for services, with levels of growth to cater for local need at an appropriate scale and to support local enterprise.

#### **4.3. Natural Heritage Designations**

There are no designations in the vicinity of the subject site.

The Grand Canal pNHA (Site Code: 002104) is roughly 12m to the north.

### **5.0 The Appeal**

#### **5.1. Grounds of Appeal**

A third party appeal has been received by Sharon Nolan (C/O Nolan Properties Sales and Rentals) for and on behalf of others.

- The in-situ planters take up two valuable car parking spaces on a public road, even when the business is closed from Sunday evening to Wednesday.
- The temporary furniture is overspilling onto adjoining properties and causing a nuisance (no adequate social distancing / enabling Covid 19 transmission, smoking, talking loudly, safety issues next to a public road, obstructing

residents views, and depriving property owners of privacy and access to car parking).

- Has a detrimental affect on business owners' ability to do business in the area.
- Further car parking will be removed in the town under the upcoming Local Area Plan / town renewal scheme.
- Dimensions / location of the street furniture on the S.254 Licence Form is unclear.
- Being unable to secure car parking close to their homes means residents are at risk of anti-social behaviour.
- Expresses support for the Applicant's business

## 5.2. Applicant Response

The Applicant lodged an Appeal Response with the Board on 15<sup>th</sup> October 2021. The main issues raised are:

- Have decided to continue outdoor dining at the café during daytime hours until the licence expires.
- Attached photos shows people parking cars in front of the restaurant during operation hours, which they have done so purposely so that tables and chairs cannot be put out in the morning.
- The outdoor seating has saved our business and has been a welcome addition to the village.
- So far all staff have remained employed with no layoffs.
- The outdoor seating area is required to survive the coming months and to stay in business.

### 5.3. **Planning Authority Response**

The Planning Authority lodged a response with the Board on 1<sup>st</sup> October 2021. The main issues raised are:

- The licence conditions require that the Applicant place planters around the 2 no. car parking spaces to provide separation between the seating area and vehicles.
- The planters are required to be removed when the restaurant is closed and the seating area not in use. However, the Applicant has failed to do this.
- The Planning Authority has sent emails and had phone calls with the Applicant requesting that all apparatus be removed when the restaurant is not in use, which is in line with the licence conditions.

## 6.0 **Assessment**

The main planning considerations relevant to this appeal case are:

- Removal of Car Parking Spaces and Amenity Impact
- Appropriate Assessment

### 6.1. **Removal of Car Parking Spaces and Amenity Impact**

- 6.1.1. The appeal site is zoned 'A1 – Town Centre'. It is situated in the Sallins town centre, a short distance east of the town's main street (30m approx.), which is the R407.
- 6.1.2. Both the immediate area, and wider surrounding vicinity, has a mix of uses that is typical of a town centre environment, including commercial businesses, cafés/restaurants, residential dwellings, and recreational facilities and amenities.
- 6.1.3. The appeal site is situated along a relatively quiet part of Canal View that accommodates mainly low flows of traffic. The western part of the street is closed to vehicles, making this stretch of the road one-way only. A footpath allows pedestrians to make their way onto Main Street, via the bridge passing over the Grand Canal, which is to the west.

- 6.1.4. There is a general absence of what might be considered 'street clutter' and there are no obvious physical obstructions that might impede pedestrians or vulnerable road users. The restaurant is, therefore, situated in a relatively quiet part of the town centre and has picturesque views of the canal waterway, passing pleasure boats, walkers, etc. There are footpaths on both side of the street, which are unimpeded by the proposed street furniture.
- 6.1.5. During my site inspection (c. mid-day, 25<sup>th</sup> May 2022), I noticed that there were multiple car parking spaces bays on both sides of the street and that there was a regular turnover of spaces as most stays were frequent, but short. I acknowledge that this was at a time when some residents would likely be at work and when demand for car parking on the street would potentially be less. However, notwithstanding this, the outdoor seating area / planters were not significantly affecting car parking capacity on the street during this time and I did not observe any idling vehicles waiting for an opportunity to park or illegal parking behaviour.
- 6.1.6. The Appellant argues that the placing of street furniture directly within the 2 no. car parking spaces gives rise to traffic safety issues and deprives residents of already scarce car parking in the town. It is also submitted that the outdoor seating has led to problems concerning increased Covid 19 transmission, nuisance in the form of smoking, patrons talking loudly outdoors, and reduced privacy for people living in the area. In relation to potential amenity impacts, I would note that outdoor dining is typically an activity one might expect within a town centre environment. I would not consider this to be unusual or inappropriate in such a setting, which is zoned town centre and that the restaurant itself is situated just off the main street.
- 6.1.7. A further key concern raised within the third party appeal is in relation to the Applicant's alleged failure to comply with the condition of the licence requiring them to remove the outdoor furniture and planter boxes from the car parking spaces when the restaurant is closed. I note also that the Planning Authority has indicated in their response that the Applicant has not complied with this requirement and that this has had to follow up with various emails and phone calls to them as a result.
- 6.1.8. Notwithstanding this, I note that enforcement matters are a function reserved solely for the relevant Local Authority. The alleged failure to comply with conditions of the

permitted licence, however, is not sufficient reason, in itself, to refuse the proposed development, in my opinion. [I note would as an aside, however, that Condition no. 13 permits the Planning Authority to suspend the licence at any time by giving the Applicant two weeks' notice.]

- 6.1.9. In relation to the Appellant's concern regarding the Council's alleged intention to remove further car parking spaces in the town as part of wider strategic plans, I consider this to be outside the scope of assessment for the subject appeal.
- 6.1.10. It is clear to me that given the relatively small size of the internal seating area of the restaurant that the outdoor seating area has been of considerable valuable and it is has likely played a key role in attracting customers since the licence was first granted by the Planning Authority in July 2021. The importance and prevalence of outdoor seating areas for such businesses has increased significantly in the recent past, considering the public health measures arising from the Covid-19 pandemic, and I consider that such areas will continue to play a key role in the recovery of the hospitality sector as the industry enters the summer season.
- 6.1.11. In summary, having regard to the town centre zoning and location of the site, the established commercial uses in the area, and that the proposal would positively contribute to the vicinity by way of providing for the development and improvement of appropriate town centre uses, I consider the proposed street furniture licence as appropriate. I do not consider that there would be any significant interference with pedestrian movement, and/or traffic safety, arising due to the proposal and note that the Council's Public Realm and Engineering Departments did not raise any objection in this regard.
- 6.1.12. Furthermore, I do not have any concerns regarding potential visual impact, or impact on the amenities of the area, and reiterate that the appeal site and its surrounds are zoned 'A1 – Town Centre', where the vision is to provide for and improve retailing, residential, commercial, office, cultural and other uses appropriate to the town centre. For these reasons, I consider that the granting of the license would be appropriate, subject to conditions, and that the appropriate time period for this should be until the end of November 2022, which is in accordance with recent government legalisation for such proposals.



## 6.2. Appropriate Assessment

Given the nature and scale of the development proposed, which is for an outdoor seating area to be used in conjunction with an existing restaurant, and the separation distance from the nearest Natura 2000 site, it is considered that the proposal would not be likely to have a significant effect individually or in combination with other plans and projects on a European site and there is no requirement for a Stage 2 Appropriate Assessment.

## 7.0 Recommendation

I recommend that a licence be granted subject to conditions, for the reasons and considerations as set out below.

## 8.0 Reasons and Considerations

It is considered that the location of the proposed street furniture would be consistent with the land use zoning for the area, and that, subject to the conditions below, it would not compromise the safety or movement of pedestrians, or other road users, or be visually intrusive or seriously injurious to the visual or residential amenity of the area, or of properties in the vicinity. It would therefore be in accordance with the proper planning and sustainable development of the area.

## 9.0 Conditions

1.	<p>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.</p> <p><b>Reason:</b> In the interest of clarity.</p>
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2.	<p>a) The outdoor seating space shall not be greater in length than 10m, not extend more than 2m in depth from the edge of the footpath and shall be limited to 6 no. tables and 18 no. chairs.</p> <p>b) No items are permitted to be placed outside of this area.</p> <p><b>Reason:</b> In the interest of clarity.</p>
3.	<p>The license shall be valid until the last day of November 2022. The outdoor seating and related ancillary structures shall then be removed and the site lands reinstated to their original condition unless, prior to the end of the period, continuance has been granted for their retention for a further period.</p> <p><b>Reason:</b> To enable the impact of the development to be re-assessed and in the interest of clarity.</p>
4.	<p>The tables, chairs, and all ancillary structures shall be stored indoors during times outside of the operational hours of the subject restaurant.</p> <p><b>Reason:</b> In the interest of traffic convenience and to protect the amenities of the area.</p>
5.	<p>a) The proposed tables, chairs, and ancillary structures must be temporary in nature and easily removed.</p> <p>b) The Applicant must ensure that a minimum of 2m clear footpath space remains for pedestrians and cyclists.</p> <p>c) Planters shall be included on the site to provide separation and demarcate the seating area from vehicles.</p> <p><b>Reason:</b> In the interest of clarity.</p>

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Ian Boyle  
 Planning Inspector

20<sup>th</sup> May 2022

