



An  
Bord  
Pleanála

## Inspector's Report ABP-312763-22

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<b>Development</b>	S254 Street Furniture Licence.
<b>Location</b>	Main Street, Malahide, Co. Dublin.
<b>Planning Authority</b>	Fingal County Council.
<b>Planning Authority Reg. Ref.</b>	SFL/016/22.
<b>Applicant(s)</b>	KOA.
<b>Type of Application</b>	S254 Licence.
<b>Planning Authority Decision</b>	Grant with Conditions.
<b>Type of Appeal</b>	Third Party.
<b>Appellant</b>	Jonathan Law.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	4 <sup>th</sup> day of April, 2022.
<b>Inspector</b>	Patricia-Marie Young.

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## 1.0 Site Location and Description

- 1.1. The appeal site is located on the southern side of Main Street (R106), c37m to the west of Main Streets intersection with New Street and Church Street (R124) and c25m to the east of its intersection with Old Street, in the heart of Malahide, in north County Dublin. The site relates to an 9m<sup>2</sup> area of paved pedestrian footpath in public ownership for the outdoor dining use by KOA (Kitchen of Asia), a restaurant that occupies the first-floor level of No. 4 Main Street. The rectangular shaped area would appear to be positioned to the east of its ground floor entrance and would immediately adjoin the frontage of an adjoining hairdresser's shop. The paved pedestrian footpath at this point is generous in its width, it has a slightly northerly slope, and it contains a mature tree in proximity to the north west of the subject area. Running parallel with the kerb and continuing in an easterly and westerly direction is on-street parking that also includes to the front of the site a loading bay. Main Street Malahide is a busy thoroughfare accommodating two-way traffic and containing a variety of retail through to commercial offer predominantly occupying the ground floor level of premises.

## 2.0 Proposed Development

- 2.1. By way of this application submitted by the Planning Authority on the 29<sup>th</sup> day July, 2021, the applicant sought approval for a Section 254 Licence. With this comprising of 3 tables with measurements of 54cm by 100cm; 4 tables with measurements of 72cm by 72cm; 16 wooden chairs and 8 plastic chairs; 2 parasols of 440cm diameter; 1 parasol of 340cm diameter; 3 barriers; 3 gas heaters in a 5m long by 1.8m wide area (Note; an area of 9m<sup>2</sup>) for use as outdoor dining by the applicant who operates a restaurant from the first-floor level of No. 4 Main Street, Malahide.

## 3.0 Planning Authority Decision

### 3.1. Decision

- 3.1.1. On the 9<sup>th</sup> day of December, 2021, the Planning Authority **granted** a Section 254 Licence, for a temporary duration of time expiring on the 31<sup>st</sup> day of December, 2021, subject to a minimum footpath clearance of 1.8m and subject to specific as well as general licence conditions pertaining to this licence as attached.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

None.

#### 3.2.2. Other Technical Reports

None.

### 3.3. Prescribed Bodies

#### 3.3.1. None.

### 3.4. Third Party Observations

#### 3.4.1. None.

## 4.0 Relevant Planning History

### 4.1. Site

- **Licence No. SFCOVID1959** permitted a 9m<sup>2</sup> in area with a width of 1.8m and length of 5m outdoor dining area which within this area accommodated 6 Tables, 12 Chairs and Outdoor Dining Equipment. The duration of this licence commenced on the 7<sup>th</sup> day of June, 2021 and expired on the 31<sup>st</sup> day of August, 2021. It was subject to a maximum occupancy of 12 persons and subject to a minimum footpath clearance of 1.8m and standard licence conditions. It was also accompanied by a letter of consent of the hair dressers to which this dining area adjoined.

## 5.0 Policy Context

### 5.1. National Planning Policy Provisions

- **Project Ireland 2040 – National Planning Framework, 2018.** This framework includes National Policy Objective 17 which reads as follows: “*enhance, integrate and protect the special physical, social, economic and cultural value of built heritage assets through appropriate and sensitive use now and for future*”

*generations*". Section 1.3 sets out a number of shared goals including but not limited to enhanced amenities and heritage.

- **Architectural Heritage Protection Guidelines for Planning Authorities, 2004, as amended.** These include guidelines for the protection of structures, or parts of structures and the preservation of the character of architectural conservation areas.

## 5.2. Local Planning Policy Provisions

### 5.2.1. Development Plan

The Fingal Development Plan, 2017 to 2023, is applicable and under which the site forms part of a larger parcel of land zoned with the stated objective to "*protect and enhance the special physical and social character of town and district centres and provide and/or improve urban facilities*" ('TC' – Town and District Centre).

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. Develop and consolidate these Centres with an appropriate mix of commercial, recreational, cultural, leisure and residential uses, and to enhance and develop the urban fabric of these Centres in accordance with the principles of urban design, conservation, and sustainable development. Retail provision will be in accordance with the County Retail Strategy, enhance and develop the existing urban fabric, emphasise urban conservation, and ensure priority for public transport, pedestrians and cyclists while minimising the impact of private car based traffic. In order to deliver this vision and to provide a framework for sustainable development, Urban Centre Strategies will be prepared for centres in accordance with the Urban Fingal Chapter objectives*".

Chapter 4 of the Development Plan states in relation to Malahide that: "*there is a strong built heritage with four Architectural Conservation Areas (ACAs) in the town*". The site lies within one of its designated Architectural Conservation Area (ACA).

Chapter 10 of the Development Plan defines ACAs as: "*a place, area, group of structures or townscape that is of special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest or value, or contributes to the appreciation of Protected Structures*". It further states that: "*ACAs could encompass, for example, a terrace of houses, a whole streetscape, town centre or a small cluster*

*of structures associated with a specific building such as a mill or country house. Most structures in an ACA are important in the context of their contribution to the streetscape or character of an area and so the protection status generally relates only to the exterior of the buildings or the streetscape, except for Protected Structures within ACAs where the protection extends to the interior and curtilage of these properties. Any works that would have a material effect on the special character of an ACA require planning permission”.*

Table 12.11 of the Development Plan which provides direction for proposed developments within ACA's is relevant in that it indicates that changes and development within ACAs should be conducted in a manner sympathetic to its distinctive character and so the following should guide proposed new works within them in relation to public realm works:

- Any new street furniture “*shall be of a high quality and consistent design with consideration give to their siting and location. Street furniture should be kept to a minimum and any redundant modern street furniture removed*”.
- “*In instances where the Council does not have direct control over street furniture, it will engage with the relevant agency/agencies, where possible to encourage them to comply with the Architectural Conservation Area policies*”.
- Works to improve the public realm shall respect and enhance the essential character of the ACA.

Objective DM158 of the Development Plan is also relevant as it requires: “*all planning applications for works in Architectural Conservation Area to have regard to the information outlined in Table 12.11*”.

Further, Chapter 12 of the Development Plan also states that: “*advertisements and signage on Protected Structures or on the exterior of structures within an Architectural Conservation Areas (ACAs) require planning permission (apart from very limited circumstances)*”.

Chapter 3 of the Development Plan deals with public realm and under Section 3.3 it notes that it has a key role to play and is a key component of a successful place. It states: “*the public realm acts as a stage upon which the life of the County is played out*” and that “*Fingal County Council is dedicated to enhancing and improving the*

*unique built and natural heritage that the County boasts and to provide well designed sustainable places". It further defines public realm as "those parts of the County where people can gain unrestricted access for the purpose of passing through, meeting, visiting and enjoying. It is where we come together as a community, not merely a place for functional movement". It further sets out that public realm strategies will be developed for different areas throughout the County including Malahide with such strategies seeking to strengthen and enhance the attributes of a town or village which contributes to the distinctive physical and social character of the area.*

Chapter 3 provides the agreed Mission Statement for the Malahide Public Realm. With this mission statement reading in part as follows: *"the Council wish to engage with the citizens, businesses and visitors of Malahide through an informal, open and flexible process to develop a Public Realm Strategy for the town"*. It indicates that this is the starting point. Of relevance Objective PM26 of the Development Plan states that the Council shall: *"prepare Public Realm Strategies, where appropriate, liaising closely with residents and other relevant stakeholders"*.

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

- 5.3.1. The nearest designated European sites are located in northerly from the site. This includes Malahide Estuary SPA (Site Code: 004025) which is located c245m to the north east at its nearest point and Malahide Estuary SAC (Site Code: 000205) which is located c259m at its nearest point in the same direction.

### **5.4. EIA Screening**

- 5.4.1. The development is not a class of development for which an EIA is required.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

- 6.1.1. The grounds of appeal can be summarised as follows:
- A number of procedural concerns in relation to the Planning Authority's recent handling of Section 254 licences in the town centre of Malahide and the manner in

which they carried out enforcement in relation to the placement of structures are raised.

- Concern is raised that this application, if permitted, would contravene the Development Plan provisions.
- There is a conflict in interest in a Planning Authority being decision maker on land in their ownership.
- These types of developments have an adverse impact on residential amenity of properties in their vicinity.
- This type of development has the potential to give rise to traffic conflict.
- There is an absence of consideration on environmental impact.
- There is no assessment on flooding impact.
- Permitting this application would set an undesirable precedent.
- It is sought that the Board consider applications P.A. Ref. No.s SFL/005/22', SFL021/22; SFL/009/22; SFL/014/22; SFL/019/22; SFL017/22; SFL/007/22; SFL/015/22; SFL/013/22; and, SFL003/22 together.
- Concerns are raised in relation to the financial implications in taking these appeals.
- The change of use of roads to outdoor hospitality areas is the subject of separate legal proceedings (Note: Byrne v Fingal Co Co).
- The public domain impacted by this application is separate from the use of the applicant.

## **6.2. Applicant Response**

- 6.2.1. The Applicant did not respond to the grounds of appeal.

## **6.3. Planning Authority Response**

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

## **6.4. Observations**

- 6.4.1. None.



## 7.0 Assessment

7.1. This appeal is made under the provisions of Section 254 of the Planning and Development Act, 2000, as amended. This section of the Act relates to licensing of appliances, cables, signs, street furniture and other items on, under, over or along a public road. In this regard, Subsection 5 of the Act 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.

7.2. By way of this application the applicant seeks a licence for an adjoining 9m<sup>2</sup> (Note: 5m long by 1.8m wide) outdoor dining area that was located to the immediate east of the ground floor entrance serving KOA restaurant at No. 4 Main Street, Malahide. This comprised of 4 tables, 24 chairs, 3 parasols, 3 barriers and 3 gas heaters (See: Section 2.1 above). This adjoining 9m<sup>2</sup> outdoor dining area forms part of the pedestrian footpath of Main Street and as such forms part of the public realm in the ownership of the Planning Authority.

7.3. There appears from the limited information provided by the Planning Authority with this application that they had no objection to the applicant seeking approval for an outdoor dining area, subject to safeguards of limiting its duration through to it not encroaching onto 1.8m width of the pedestrian footpath at this location (Note: this is summarised under Section 3.1.1 of this report above). With the Planning Authority having previously permitted such an application prior under Licence No. SFCOVID1959 for the same area but for a lesser occupancy of 12 persons maximum.

7.4. The planning history of the site in relation to outdoor dining on the public realm indicates that this 9m<sup>2</sup> outdoor dining area arose during the recent pandemic. During this time amendments were made to planning legislative provisions. With these amendments including planning measures that aimed at supporting Economic Recovery and Business Activity in urban areas, particularly aimed at supporting

hospitality, restaurants, and tourism due to the impact that Covid restrictions were having on their future viability.

- 7.5. In order to maintain a level of viability restaurants like this that had no access to private outdoor amenity spaces for patrons for dining and/or the safe operations of takeaway through to in the case of KOA who had limitations of access to their first floor premises, were subject to caveats able to avail of a temporary change in use exemption from a premises selling food for consumption on the premises to one providing food for consumption off the premises. These measures by the Government were an important life line for businesses and employees in these as well as related sectors.
- 7.6. This exemption was provided for under the amendments made to the Planning and Development Act, 2000, as amended, (Note: S.I. 210 of 2021) and amendments to the Planning and Development Regulations, 2001, as amended (Note: 208 of 2021).
- 7.7. In tandem, the scope of amendments also made provision for amendments to street furniture fees under S.I. 209 of 2021 and as part of Circular PL06/2021 guidance was provided on the consideration of Section 254 licences to facilitate outdoor dining. It is of relevance that these provisions expire on the 31<sup>st</sup> day of May, 2022, as does the licence which is currently applicable to the subject 9m<sup>2</sup> dining area subject of this licence.
- 7.8. Having regard to the site's town centre location, its established commercial uses and to the land use zoning objectives as well as vision of the Development Plan for Malahide's town centre there is general support for proposals to bring greater vibrancy and vitality to streetscape scene by way of creation of outdoor seating areas which has potential to positively contribute to the attractiveness and amenities of the area. Notwithstanding, such facilities are 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.
- 7.9. In relation to the applicant, their recent communications with the Planning Authority (22<sup>nd</sup> day of February, 2022) they indicate that they no longer require a street furniture licence this year in front to their restaurant at 4 Main Street, Malahide, and it also indicates that arrangements were being made to remove it.

- 7.10. At the time of inspections of this site I observed that there was no outdoor dining area located where indicated in the limited in nature and details drawings accompanying this licence application.
- 7.11. Whilst I generally consider that there is sufficient width along the adjoining stretch of Main Street to the front of No. 4 to accommodate outdoor dining in my view this is subject to a qualitative design resolution that does not impede the free flow of users of the pedestrian footpath at this location but also that it demonstrates that it is of appropriate quality in terms of its design and materials that is respective of and harmonises with its Architectural Conservation Area streetscape scene.
- 7.12. The drawings and details submitted with this application do not demonstrate that this is the case. I therefore consider to permit any continuation of outdoor dining at this location based on the information provided with this application alone would be contrary to Development Plan Objective DM158 that requires all planning applications for works in an Architectural Conservation Area to accord with Table 12.11 of the said plan.
- 7.13. In this regard, Table 12.11 of the Development Plan requires any new street furniture to be of a high quality and consistent design with consideration given to their siting and location and that works to improve the public realm shall respect and enhance the essential character of the ACA.
- 7.14. The documentation provided is limited in the information it provides and what does show in my view appears to suggest an *ad hoc* arrangement of tables, chairs and parasols of varying sizes as well of varying materials of potentially varying coherence and quality.
- 7.15. Further, the documentation provided provides no contextual relationship for the outdoor dining area in terms of its streetscape context. With this including no information showing how it would impact on the frontage of the commercial ground floor unit which comprises of a hair dresser shop.
- 7.16. Moreover, during my inspection of the site and its setting there appears to be an *ad hoc* and qualitatively variable approach to street furniture within the vicinity of the streetscape scene. The outdoor dining area as proposed under this application has the potential to add to this lack of coherence, piecemeal and lack of qualitative

approach for this type of development on what is an attractive, vibrant, and vital townscape centre.

- 7.17. Of further concern the applicant's restaurant is at first floor level with their ground floor frontage consisting of a modest in width frontage. With this comprised of an entrance that facilitates access for patrons and staff to a stairwell that provides access as well as egress to the functional restaurant space at first floor level. As such the outdoor dining area would be heavily reliant on the adjoining ground floor frontage of the hair dresser shop to its immediate east. Yet it would have no functional or land use relationship with this adjoining commercial unit. The presence of the outdoor dining area considering the quantum of tables, chairs, banners, parasols through to heaters would obscure the frontage of this business and in so doing diminish its legibility as appreciated from its streetscape scene.
- 7.18. Frontages like the hairdressers are part of the vitality, vibrancy and building rhythms of town centre locations streetscape scenes. In turn they play a vital role in a qualitative public realm.
- 7.19. As such the outdoor dining outside of the hours in which this commercial business would be in operational would have the potential to give rise to a fragmented and piecemeal development.
- 7.20. I also note that despite the previous licence granted being accompanied by a letter of consent from the operator/business owner of the hairdresser there is no such consent provided with this licence application.
- 7.21. On this matter whilst it is a primary consideration to ensure that such outdoor dining areas do not hinder the reasonable use of a public road, or any person entitled to use it or to create a hazard to its use. It is also a consideration that such outdoor dining spaces, particularly in this context, where the outdoor dining lies to the front of a separate commercial unit that it does not create a nuisance to the owner or occupier of adjacent premises adjacent to the public road.
- 7.22. I am not satisfied that this has been demonstrated by the information provided with this application by the applicant.
- 7.23. I also raise a planning context concern that not only would this proposal add to *ad hoc* and piecemeal streetscape clutter in this built heritage rich and visually attractive

streetscape scene. As such I raise a concern that if permitted it has the potential to be inconsistent with achieving a high-quality public realm for the town centre of Malahide and the Public Realm Strategy for Malahide which is advocated to be implemented under the current the Development Plan.

7.24. In my considered opinion in the absence of this Public Realm Strategy and taken together with the lack of demonstration that this outdoor dining area would positively contribute to the public realm without giving rise to unnecessary clutter to permit this application would be contrary to Objective PM27; Objective MALAHIDE 5 and Objective CH36 of the Development Plan.

7.25. In this regard I note that Objective PM27 of the Development Plan which states that the Council shall: *“enhance the visual amenity of existing town and village centres, minimising unnecessary clutter, and provide guidance on public realm design, including wirescape, shopfront design, street furniture and signage”*; Objective MALAHIDE 5 of the Development Plan states that the Council will: *“implement and progress the Public Realm Strategy for Malahide, including measures related to car-parking, in order to facilitate a vibrant retail and commercial and residential core”*; and Objective CH36 which states: *“sensitively design, locate and rationalise modern street furniture and elements”*.

#### 7.26. Other Matters Arising

##### 7.26.1. **Adequacy of the Documentation:**

As previously raised as a concern I am of the view that the documentation submitted with this application are inadequate to make an informed decision on this Section 254 Licence. I

On this matter I am cognisant that Section 254(3) of the Planning and Development Act, 2000, as amended sets out that: *“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”*.

Whilst I note that this is not raised as an issued by the Planning Authority in their determination of this licence application, I consider that given that this application will be determined by the Board at a time where the expanded exemptions for such

developments have expired, should the Board be minded to grant permission for this application for a Section 254 licence for temporary or permanent duration I advise that the adequacy of documentation issue is first addressed.

This I consider is necessary and reasonable to allow the Board to make an informed decision in terms particularly of potential impact on the ACA; the visual amenities of the streetscape scene that is informed by an attractive, accessible and vibrant public realm; that the outdoor dining area is of a width along its entire length that maintains a minimum of 1.8m width public footpath; full details including materials of all structures to be placed on the public footpath; whether any undue hinderance arises to adjoining property including their entrances on what is a busy pedestrian domain through to that it accurately sets out its spatial and contextual relationship within its immediate streetscape scene of Main Street.

I also consider that such information is also necessary for clarity for making any informed decision should any enforcement issue arise after such an application is permitted.

#### **7.26.2. *Setting of Protected Structures:***

This streetscape scene contains a number of Protected Structures as well as period buildings that whilst not designated specifically as Protected Structures; notwithstanding, they positively contribute to visual setting in terms of its intrinsic character, qualities, and attributes. I observed that there an evident absence of a coherent approach to street furniture and structures placed on the public realm. I also observed that there is a large variation in terms of quality of design through to materials and finishes used. In this context I consider that to permit this licence has the potential to add to the cumulative adverse impacts arising within the setting of Protected Structures and other ACA buildings not benefitting from specific protection but whose setting has also been eroded by inappropriate additions and insertions to their public realm setting.

#### **7.26.3. *Nuisances and Anti-Social Behaviour:***

The appellant raises concerns in relation to the nuisances arising from the use of the public realm as extensions of restaurants, public houses, and the like. They contend that the nuisances that have arisen include increased incidents of anti-social

behaviour. Together resulting in diminishment of the residential amenity for those who live within the centre of Malahide town.

I accept that there is potential for outdoor dining areas like that sought under this licence has the potential to give rise to a change in context that could if no reasonable balance is reached could despite the town centre location diminish residential amenity by way of noise nuisance particularly into the evening and night time hours.

It would be standard practice that conditions that deal with noise, music, litter through to hours of operation is imposed where this is a concern.

On the matter of anti-social behaviour, I consider that this is generally a matter for the Gardai and also the operator of the restaurant premise granted such a licence. Notwithstanding, I also accept that planning can play a role in ensuring high quality public open spaces that include in their design, treatment and maintenance consideration for lessening potential for anti-social behaviour.

#### **7.26.4. *Material Contravention:***

As discussed in the assessment this application as proposed does not demonstrate compliance with a number of the Development Plan objectives. Notwithstanding this conclusion, the development sought under this Section 254 licence is a type of development that is generally deemed to be acceptable in town centre locations like this subject to safeguards. Therefore, I do not concur with the appellant that to permit this application would materially contravenes the provisions of the Development Plan as is contended would be the case by the appellant.

#### **7.26.5. *Traffic Safety:***

At this location there is ample width on the pedestrian footpath to accommodate the Planning Authority's required 1.8m minimum public footpath width free of obstruction. This outdoor dining area does not seek to incorporate any on-street car parking spaces and publicly provided pay and display demarcated on-street car parking/loading area separates runs parallel with the roadside kerb. The town centre is a low-speed environment and contains ample road safety signs, public lighting, different surfacing with bollards also present in areas where pedestrians are more vulnerable. There is no evidence provided to support that the outdoor dining space proposed under this

application would give rise to a traffic inconvenience or other road safety issue that would support its refusal.

**7.26.6. Procedural:**

I am cognisant that the appellant raises a number of procedural concerns in relation to the Planning Authority's handling of this application in their appeal submission. Notwithstanding, the Board does not have an ombudsman's role on such matters and as such it would not be appropriate for the Board who does not have any authority on such matters to pass comment on them.

**7.26.7. Enforcement:**

In relation to the issue of alleged ongoing non-compliance planning legislation and the manner in which the Planning Authority have dealt with enforcement issues arising from outdoor dining areas and street furniture is of noted by the appellant as a concern in their appeal submission to the Board. On this matter I note that the Board does not have a role in enforcement. In this respect, I note the content of Section 10.1 of the Development Management Guidelines 2007 which provides that enforcement of planning control is the responsibility of the Planning Authority.

**7.26.8. Flooding:**

The development sought under this application proposes no amendments to the ground levels and consists of structures that are easily moved into place during the hours of business operations of the restaurant. It is usual that these structures are removed outside of business hours from the public domain. Such structures and the use of the outdoor dining area itself would not give rise to any flooding issues nor would they exacerbate any flooding issues in this locality. Further the site lies outside of land indicated in the OPW Maps as being vulnerable to flooding and there is no record of a flood event at this location or within its immediate vicinity.

**7.26.9. Conflict of Interest:**

Section 254 of the Planning and Development Act, as amended, sets out provisions for Section 254 licences which are required for the placement of appliances, cables, signs, street furniture of other items on public roads. A common example is applications like that applied for under this application, i.e., the placement of tables, chairs, parasols, and other related structures related to facilitating outdoor dining



outside of a restaurant on public roads which includes pedestrian footpaths they may contain.

Section 254(4) of the Act states inter alia that: *“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.”*

In addition, the Act makes provision for oversight of these decisions by Planning Authority's by way of appeal to the Board by any person, in relation to the granting, refusing, withdrawing or continuation of a licence under this section or to the conditions specified by the planning authority for such a licence.

This is provided for under Section 254(6)(a) of the Act. Moreover, Section 254(b) of the Act provides that: *“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”*.

On this basis and having regard to the documentation on file I do not concur with the Appellant that there is a conflict in interest in the Planning Authority. Who in this incident case is the roads Authority for Main Street, in them making a determination on this application for a Section 254 Licence.

**7.26.10. Examination of this case alongside other concurrent S254 Licence appeals for the Town Centre of Malahide:**

Whilst I consider that there is merit in the Board having regard to the similar issues that arise from the applications noted by the Appellant in their appeal submission, I am also of the view that this appeal case should be considered on its individual merits given that it occupies a streetscape scene that is visually remote through to this licence relates to a section of Malahide's town centre whose public domain attributes and intrinsic character are different. Through to the public realm being impacted is different to the majority of the other cases where once on-street car parking spaces, road

carriageways through to a cul-de-sac lane are the locations sought for the S254 Licences applied for and determined on by the Planning Authority. What is appropriate for the Board to have regard to in relation to the significant number of S254 Licences applications determined by the Planning Authority in the town centre of Malahide and now subject to Third Party Appeals is the potential for cumulative impact on this built heritage rich; highly vibrant in function as well as attractive town centre through to the coherence in approach to ensuring that such developments do not conflict with the positive enhance of this town centre's public realm in a manner that is consistent with the proper planning and sustainable development of the area. The latter as said is provided for in the Development Plan by way of the preparation and implementation of a public realm strategy.

#### 7.26.11. **Financial Costs:**

The financial burden of making this appeal case alongside the concurrent appeal cases relating to Section 254 Licences is not a matter that the Board can adjudicate upon as part of its *de novo* consideration of this case.

#### 7.27. **Appropriate Assessment**

- 7.27.1. The nearest designated European sites are located in northerly from the site. This includes Malahide Estuary SPA (Site Code: 004025) which is located c245m to the north east at its nearest point and Malahide Estuary SAC (Site Code: 000205) which is located c259m at its nearest point in the same direction. Having regard to the modest nature and scale of the proposed development which relates to on street furniture and associated structures and the nature of the receiving environment together with the 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 on combination with other plans or projects on a European site.

### 8.0 **Recommendation**

- 8.1. I recommend that a licence be **refused** for the following reasons and considerations.

## 9.0 Reasons and Considerations

1. Having regard to the provisions of Section 254 of the Planning & Development Act, 2000, (as amended); the Fingal Development Plan, 2017 to 2023; the existing character and the prevailing pattern of development in the vicinity; the site location on Main Street which forms part of a designated Architectural Conservation Area with the site also forming part of the visual curtilage of a number of Protected Structures, it is considered that the proposed development has the potential to result in a piecemeal form of development that would not respect or complement the character of its Architectural Conservation Area in a manner consistent with Table 12.11 and Objectives DMS158 of the Development Plan.

It would also be inconsistent in achieving a high quality public realm for the town centre of Malahide in a manner that would when taken together with the *ad hoc* placement of structures in this stretch of public footpath be inconsistent with Objective PM27 of the Development Plan which seeks to enhance the visual amenity of existing town and village centres by minimising unnecessary clutter, and seeks to provide guidance on public realm design which in turn is further added to in the case of ACA locations by the requirements of Table 12.11 which seeks street furniture qualitative design approach. In tandem, it would also be inconsistent with Objective CH36 of the Development Plan which also requires sensitive in design, location through to rationalisation of street furniture.

Moreover, in the absence of the proposed Public Realm Strategy for Malahide this outdoor dining area is premature. The provision of such a strategy is provided for in the Development including under Objective MALAHIDE 5.

Furthermore, based on the information submitted with this application the Board which in itself fails to demonstrate that the development would not seriously injure the visual amenities of the area as a standalone outdoor dining area or cumulatively in combination with other such installations in the public realm. Nor does the information submitted with this application demonstrate that it would not give rise to any under deterioration of established levels of residential amenity for properties in its vicinity or that it would not give rise to any undue hinderance of adjoining commercial properties.

On the basis of the above considerations, the proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

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Patricia-Marie Young  
Planning Inspector

30<sup>th</sup> day of May, 2022.