



An
Bord
Pleanála

Inspector's Report

ABP-313437-22

Development	Section 254 License for outdoor seating area covering 2 public parking spaces on residential street.
Location	12 The Mall, Youghal, Co, Cork.
Planning Authority	Cork County Council
Planning Authority Reg. Ref.	EF/22/067
Applicant(s)	Ger Flanagan
Type of Application	Section 254 Licence
Planning Authority Decision	Grant Permission
Type of Appeal	Third Party
Appellant	Maria Burke
Date of Site Inspection	28 th July 2022
Inspector	Liam Bowe

1.0 Site Location and Description

- 1.1.1. The appeal site comprises 2 no. car parking spaces and part of the footpath at the front of 'Boardwalk Cafe', which has an address at 12 The Mall, Youghal, Co. Cork, P36 WY95. The cafe faces towards the council offices and The Mall beach, which are to the east of the premises. This section of the street is one-way and vehicular traffic runs in a north – south direction.
- 1.1.2. The street is primarily residential but also accommodates civic uses and is in close proximity to the main street where a mix of cafés/restaurants, commercial businesses, and other uses are prevalent. 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 currently comprises 2 no. car parking spaces, is 5m in width and 4.25m deep. An area along the front of the building, 1.1m in width, is proposed to accommodate 4 small tables and be removed each night.
- 2.3. The Council Order states that the validity period for S.254 Licence was due to expire on the last day of December 2022. 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 9th May 2022, subject to 13 no. conditions. Notable conditions include:

- The validity period for the licence will expire on the last day of December 2022 but can be revoked at any time for non-compliance with terms and conditions (No. 1).
- The street furniture shall be of robust and stable construction (No.11).

- The facility should not be occupied after 5pm daily and should be secured after close of business.
- No musical apparatus shall be used within the licensed area (No.13).

3.2. Planning Authority Reports

3.2.1. Planning Report

- No Planner's Report.
- Email was issued on 18th May 2022 stating no issue with the proposal.

3.2.2. Other Technical Report

Roads Engineer: Email dated 18th May 2022. No objection.

4.0 Policy Context

4.1. Cork County Development Plan 2022-2028

- 4.1.1. The County Development Plan states that Youghal is identified as a Ring Town in the settlement hierarchy for Cork.
- 4.1.2. Youghal is part of the Cork Ring Network of towns which all have a strong relationship with the Cork Metropolitan Area and have potential for sustainable employment led growth, consolidation, and enhancement.

4.2. Natural Heritage Designations

The appeal site is not located within any designated European sites. The closest Natura 2000 sites are Blackwater River SAC (site code: 002170) and Blackwater Estuary SPA (site code: 004028), which are located approximately 13m to the east and 500m to the northeast of the appeal site, respectively.

5.0 The Appeal

5.1. Grounds of Appeal

A third party appeal has been received from Maria Burke, The Mall, Youghal, Co. Cork. The main issues raised are as follows:

- Contends that no permission for change of use from offices to restaurant has been granted.
- Believes the licensed area will have a severe negative impact on her residential living conditions through overlooking, overshadowing and excessive noise.
- Concerned about the loss of 2 car parking spaces for residents, schools, District Court, the beach, the arts centre and the cinema.

The appeal is accompanied by photographs and a copy of the Enforcement Complaint Form that the appellant submitted to the Planning Authority.

5.2. Planning Authority Response

The Planning Authority lodged a response with the Board on the 29th day of June 2022. The main issues raised are:

- Several Section 254 licences such as this were granted during Covid to facilitate outdoor dining.
- The area is residential, but no other residents have objected.
- Temporary seating is already on the footpath.
- Parking is difficult to get in the area and the proposed structure would take up 2 spaces.

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 'Town Centre'. It is situated in Youghal town centre, a short distance south of the town's main street (90m approx.), which is the R634. 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.
- 6.1.2. The Mall accommodates one-way traffic only with parking perpendicular to the kerb available on the western side of the street and parallel parking available on the eastern side of the street. 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. There are footpaths on both side of the street, which would be unimpeded by the proposed street furniture within the car parking bays.
- 6.1.3. The Appellant has concerns about the loss of 2 car parking spaces for residents, schools, District Court, the beach, the arts centre and the cinema. On the day of my site inspection, I noticed that there were multiple unoccupied car parking spaces on both sides of the street and that there was a regular turnover of spaces as most stays were frequent, but short. Further to this, there is a large public car park at Nealon's Quay approximately 70m to the north of the appeal site. I am satisfied that the outdoor seating area would not significantly affect car parking capacity on the street and I did not observe any idling vehicles waiting for an opportunity to park or illegal parking behaviour.
- 6.1.4. 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 cafe itself is situated a short distance from the main street. Given the

proximity of residences to the appeal site, I consider it appropriate to attach a condition limiting the use of the outdoor area to 5pm each evening as conditioned by the Planning Authority.

- 6.1.5. A further concern raised within the third party appeal is the contention that no permission for change of use from offices to restaurant has been granted. In relation to these issues of an alleged/ongoing unauthorised development on the appeal site, it is of note that the Board does not have a role in enforcement, and, in this respect, regard is had to Section 10.1 of the Development Management Guidelines 2007 which provides that enforcement of planning control is the responsibility of the planning authority. I note that this issue was raised with the Planning Authority and nothing on the file indicates that the Planning Authority agree with this contention.
- 6.1.6. It is likely that the relatively small size of the internal seating area of the cafe means that the outdoor seating area has been of considerable value and it is has likely played a key role in attracting customers. 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.
- 6.1.7. 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 the proposed layout would result in any significant interference with pedestrian movement, and/or traffic safety, and note that the Council's Road Department did not raise any objection in this regard.
- 6.1.8. 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 '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 December 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 cafe, its urban setting, 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>Reason: In the interest of clarity.</p>
2.	<p>a) The outdoor seating space shall not be greater than 5m in width and not extend more than 4.25m in depth from the edge of the footpath</p> <p>b) No items are permitted to be placed outside of these areas.</p> <p>c) The facility shall not be occupied after 5pm daily and shall be secured after close of business.</p> <p>Reason: In the interest of clarity.</p>
3.	<p>The Licensee shall be required to have a Public Liability & Employers Insurance cover to a minimum value of €6.5 million indemnifying Cork County Council against third party claims. The name of the insurance company providing this cover together with the policy number and date of expiry shall be stated on the licence. The insurance policy shall be submitted to Cork County Council for inspection before the licence will be issued.</p> <p>Reason: In the interest of clarity.</p>
4.	<p>The licence shall be valid until the last day of December 2022. The outdoor seating and related ancillary structures shall then be removed, and the sites lands reinstated to their original condition unless, prior to the end of the period, continuance has been granted for a further period.</p> <p>Reason: In the interest of clarity.</p>

5.	<p>The tables, chairs, and all ancillary structures shall be stored indoors during times outside of the operational hours of the subject cafe.</p> <p>Reason: In the interest of traffic convenience and to protect the amenities of the area.</p>
6.	<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>Reason: In the interest of clarity.</p>

Liam Bowe
Planning Inspector

29th September 2022