



An
Bord
Pleanála

Inspector's Report ABP-313491-22

Question

Whether the temporary closure of 6 roads in Galway City is or is not development or is or is not exempted development.

Location

Small Crane, Raven Terrace,
Dominick St Upper, William St West,
Forster St and Woodquay, Galway
City.

Declaration

Planning Authority

Galway City Council

Planning Authority Reg. Ref.

P/DC/3/8/22

Applicant for Declaration

Angela Casey

Planning Authority Decision

Is not development

Referral

Referred by

Angela Casey.

Observer(s)

None.

Date of Site Inspection

27th June 2023.

Inspector

Barry O'Donnell

1.0 Site Location and Description

- 1.1. The subject site comprises a number of streets in the centre of Galway City. Small Crane, Raven Terrace, Dominick Street Upper and William Street West are located in the western part of the city, west of the River Corrib and in an area marketed as Galway's Westend. Woodquay is located in the north part of the City and Forster Street is centrally located.

2.0 The Question

- 2.1. The question the subject of the referral before the Board is: -

'Whether the temporary closure of 6 roads (Raven Terrace, Dominick Street Upper, Small Crane, William Street West, Foster Street and Woodquay) within Galway City, for the period between 9th April 2022-31st October 2022 and for the purposes of allowing outdoor dining, festivals and events, is or is not development and is or is not exempted development.'

3.0 Planning Authority Declaration

3.1. Declaration

- 3.1.1. The Planning Authority issued a declaration dated 7th April 2022, which states that the closure of 6 roads within Galway City Centre for a temporary period between April and September 2022 is not development and is a facility provided for under Section 75 of the Roads Act 1993, providing the required procedures are carried out.

3.2. Planning Authority Reports

- 3.2.1. A Planning Report dated 6th April 2022 has been provided, which reflects the Planning Authority's determination. The Report states that the temporary closure of the roads in question is a facility provided for under Section 75 of the Roads Act 1993, providing the required procedures are carried out.

- 3.2.2. Other Technical Reports

None.

4.0 Planning History

4.1. I did not encounter any planning records pertaining to the subject site.

5.0 Policy Context

5.1. Galway City Development Plan 2023-2029

5.1.1. The roads in question are each in the centre of Galway City.

5.2. Natural Heritage Designations

5.2.1. The site is not located within or adjacent to any designated European site. The north end of Woodquay lies adjacent to Lough Corrib SAC (Site Code 000297). The River Corrib flows through Galway City, before discharging into Galway Bay, and it encroaches to within c.65m of Raven Terrace. Inner Galway Bay SPA (Site Code 004031) and Galway Bay Complex (Site Code 000268) lie further east within Galway Bay.

6.0 The Referral

6.1. Referrer's Case

- All traffic to be diverted as part of the proposed road closures will route through Munster Avenue. This will have a major impact on residents, with reference to road safety, traffic, unavailability of parking, anti-social behaviour and deterioration in the environmental quality of the neighbourhood.
- Munster Avenue cannot accommodate 2-way traffic and the junctions at both ends are sub-standard.
- Planning Authority decision
 - A facility, as referenced in the PA decision, can be interpreted as amounting to development.
 - The decision does not set out the main reasons and considerations on which it is based, as is required by the legislation.

- The decision does not address a material change of use.
- The decision does not consider the potential requirement for Part VIII approval.
- The referrer's ability to refer the decision was compromised by a delay in issuing the decision.
- The closure of 6 roads, for the purposes of permitting festivals/events/outdoor dining, amounts to a material change of use and thus constitutes development.
- The description of development (i.e., closure to allow for festivals/events/outdoor dining) is misleading as to the scale of the project, which is connected to the Purple Flag project.
- Planning Authority exempted development rights provided for under S4 of the Act are subject to restrictions under S178 and S179.
 - S178 requires that a council shall not effect development that contravenes materially the development plan. The subject development is a material contravention of the development plan.
- Part VIII requirements may apply as the estimated cost of the purple flag project must exceed the €126,000 threshold for local authority development.
- The application of the Roads Act 1993 is a mechanism to permit development without application of the principles of proper planning and sustainable development. If a consent were to be required, specified concerns regarding road safety, traffic, anti-social behaviour and local disruption could be addressed.

6.2. Planning Authority Response

6.2.1. The Planning Authority made a submission on the referral on 2nd June 2022, the contents of which can be summarised as follows: -

- With reference to a requirement for an event licence, this is a separate process under Part 16 of the Act. Outdoor dining/festivals on public streets, which are closed for temporary periods, do not constitute an 'Event' under S230 of the Act, which requires a minimum audience of 5,000 people.

- Temporary closure of roads by the City Council under the Roads Act 1993 does not constitute development. It is a separate discretionary facility under a separate legal code to the planning code. Section 75 of the Roads Act permits the Council to close roads for any purpose.
- The Galway Transport Strategy seeks to redress the balance in favour of pedestrians and cyclists and it is an objective of the Strategy to introduce marketing and education to raise awareness of walking and cycling options.
- Circular 04/22 dated 25th May 2022 included new Regulations that removed the fee for S254 (street furniture) licences and its intention is to support economic recovery and business activity in urban areas, in view of the legacy impact of the Covid 19 pandemic.
- The Council has complied with the requirements of Article 12 of the 1994 Road Regulations, with respect to temporary road closures.

6.3. **Owner/ occupier's response**

6.3.1. N/A.

6.4. **Further Responses**

6.4.1. None.

7.0 **Statutory Provisions**

7.1. **Planning and Development Act, 2000**

- 7.1.1. Section 3(1) of Planning and Development Act 2000, as amended (the Act), states – In this Act, “development” means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land.
- 7.1.2. Section 2 (1) of the act states - “works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation

involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.

- 7.1.3. Section 4(1)(aa) of Planning and Development Act 2000, as amended, states – The following shall be exempted developments for the purposes of this Act— development by a local authority in its functional area (other than, in the case of a local authority that is a coastal planning authority, its nearshore area)

7.2. **Planning and Development Regulations, 2001**

- 7.2.1. N/A.

7.3. **Roads Act, 1993**

- 7.3.1. Section 75 (Temporary Closing of Roads) states –

(1) A road authority may by order—

- (a) for the purpose of facilitating a road race, within the meaning of section 74, or any other event,
- (b) for the purpose of facilitating the carrying out of works, or
- (c) for any other purpose,

close a public road to traffic for such specified period and subject to such specified conditions (including the giving of security or the provision of an indemnity) as it thinks fit.

8.0 **Assessment**

8.1. **Is or is not development**

- 8.1.1. The question raised is as follows:

‘Whether the temporary closure of 6 roads (Raven Terrace, Dominick Street Upper, Small Crane, William Street West, Foster Street and Woodquay) within Galway City, for the period between 9th April 2022-31st October 2022 and for the purposes of allowing outdoor dining, festivals and events, is or is not development and is or is not exempted development.’

- 8.1.2. In referring the Planning Authority's determination to the Board, the referrer argues that the closure of the streets in question constitutes a material change of use and, therefore, development.
- 8.1.3. In its submission, the Planning Authority argues that the street closures do not constitute development.
- 8.1.4. Development is defined under Section 3(1) of the Act, as "*the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land.*" Works are defined under Section 2(1) of the Act as including "*any act or operation of construction, excavation, demolition, extension...*"
- 8.1.5. The street closures are associated with the provision of enhanced food and beverage facilities in Galway City. The exact nature of the measures employed as part of the street closures is not specified, however; I note that the grounds of referral indicate a security presence and the installation/removal of concrete bollards. They also indicate that the extent of the temporary road closures varied, with each of Raven Terrace, Dominick Street Upper and William Street West closed every evening between 9th April-31st October and Small Crane, Foster Street and Woodquay closed at all times between 9th April-31st October.
- 8.1.6. From the information provided, I do not consider the street closures involved any act of works.
- 8.1.7. Regarding the submission that a material change of use occurred, I do not agree with the referrer's submission. The roads were closed to vehicular traffic for a temporary period and at specified times but remained open to pedestrians at all times.
- 8.1.8. Moreover, and as the Planning Authority points out in its submission, the temporary closure of streets by a Road Authority is provided for under the Roads Act 1993, Section 75 of which states that a Roads Authority may, by Order, close a public road to traffic for such specified period and subject to such specified conditions (including the giving of security or the provision of an indemnity) as it thinks fit. The Planning Authority submission states that all requirements of Article 12 of the Roads Regulations 1994 (which provides the mechanism for any Order regarding proposed road closures) were complied with.

9.0 Recommendation

9.1. I recommend that the Board should decide this referral in accordance with the following draft order.

WHEREAS a question has arisen as to whether the temporary closure of 6 roads (Raven Terrace, Dominick Street Upper, Small Crane, William Street West, Foster Street and Woodquay) within Galway City, for the period between 9th April 2022-31st October 2022 and for the purposes of allowing outdoor dining, festivals and events, is or is not development and is or is not exempted development.

AND WHEREAS Angela Casey of 2 Munster Avenue, Galway, requested a declaration on this question from Galway City Council and the Council issued a declaration on the 7th day of April, 2022 stating that the matter was not development and is a facility provided for under Section 75 of the Roads Act 1993 providing the required procedure are carried out:

AND WHEREAS the applicant referred this declaration for review to An Bord Pleanála on the 3rd day of May, 2022:

AND WHEREAS An Bord Pleanála, in considering this referral, had regard particularly to –

- (a) Section 2(1) of the Planning and Development Act, 2000, as amended,
- (b) Section 3(1) of the Planning and Development Act, 2000,
- (c) Section 4(1)(a) of the Planning and Development Act, 2000, as amended, and
- (d) Section 75 of the Roads Act 1993.

AND WHEREAS An Bord Pleanála has concluded that:

The temporary closure of 6 roads (Raven Terrace, Dominick Street Upper, Small Crane, William Street West, Foster Street and Woodquay) within Galway City, for the period between 9th April 2022-31st October 2022 and for the purposes of allowing outdoor dining, festivals and events is not development.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5(3)(a) of the 2000 Act, hereby decides that the temporary closure of 6 roads (Raven Terrace, Dominick Street Upper, Small Crane, William Street West, Foster Street and Woodquay) within Galway City, for the period between 9th April 2022-31st October 2022 and for the purposes of allowing outdoor dining, festivals and events is not development.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Barry O'Donnell
Planning Inspector

17th July 2023.