



An
Bord
Pleanála

Inspector's Report ABP.313561-22

Development	Application for street furniture licence under Section 254
Location	'OHK Cafe' The Glen, Kinsale County Cork
Planning Authority	Cork County Council
Planning Authority Reg. Ref.	142022
Applicant(s)	Carol & Sarah O'Brien
Type of Application	Section 254 Licence
Planning Authority Decision	Refuse Licence
Type of Appeal	First Party v Refusal of Licence
Appellant(s)	Carol & Sarah O'Brien
Observer(s)	None
Date of Site Inspection	25 th January 2023
Inspector	Mary Kennelly

1.0 Site Location and Description

- 1.1.** The site is located in Kinsale Town Centre. The Glen forms part of the R605 which links the town centre with the suburb of Rathbeg to the north. It leads north-eastwards from Pearse Street (Blue Haven Hotel) to the junction with Barrack Hill, where the R605 swings westwards (and uphill) and then northwards along New Road towards Rathbeg. The fine grain of the terraced properties on The Glen gives way to a more open townscape along New Road with a large Supervalu supermarket occupying the south-eastern section of the new road.
- 1.2.** The Glen is a street with a mixed-use character with several restaurants and bars intermingled with 2-storey houses. It is a narrow road with narrow footpaths and there is on-street parking with double-yellow lines for much of the western road frontage. The commercial premises on the western side of the street back onto 'Back Glen'/Chairman's Lane, which is characterised by high masonry walls and on-street parking to the rear of the premises. There is a steep embankment on the western side of this laneway as the ground levels rise steeply towards Cork Street.
- 1.3.** The site is located at the northern end of The Glen, close to the sharp bend with Barrack Hill/R605. It is one of a pair of 2-storey semi-detached properties, (with additional accommodation in the roof), which front directly onto the public footpath. The ground floor is a café and the adjoining premises to the north appears to be used as a B&B with a 'Turkish Barber Shop', while the property to the immediate south is used as an art gallery and B&B. The properties directly opposite comprise 2-storey dwelling houses. The site backs onto 'Back Glen' where access is gained from the R605 and where there is on-street parking. There is a ground floor door and a window which open directly onto Back Glen and a further door at first floor level which is accessed via a rear courtyard and external staircase.
- 1.4.** The OHK Café (O'Herlihy's) was closed at the time of my inspection. However, there is an external seating area on the public footpath directly outside the premises with a further set of bollards on the public road in front of the café. The external seating area is delineated by means of a small plinth with timber fencing on top which is located on the edge of the footpath and also returns towards the front façade at either end. There are 2 no. awnings which extend over the seating area and two narrow bench-seats on the public road inside the cordoned-off area.

2.0 Proposed Development

2.1. Permission is sought for the establishment of street furniture on the public footpath outside the front of OHK Café situated at The Glen, Kinsale.

2.2. The proposed street furniture would have the following features :-

- An enclosure comprising a plinth wall with timber picket fence which would be positioned along the edge of the public footpath, and would extend for c.4.0m along the footpath edge to the south of the front door and 2.0m out from the facade. The area to the north of the front door would extend 2.5m to the end of the frontage.
- The enclosure would also include 2 no. timber planters (positioned at right-angles to the façade) with a timber-framed Perspex sheet over the planter box structures. These planters-with-screens would project out from the front façade by c. 2.0m, one at either end of the frontage, and would be mobile.
- Demountable/ retractable fabric canopy which would be motorised and operated by remote control, and would be open on the front facade.
- The area of public road immediately adjacent to the proposed external seating area would be cordoned off with bollards to enable pedestrians to walk by.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. The planning authority decided to refuse permission on the 13th April 2022 for two reasons as follows:

1. In the interests of Road Safety.
2. On the advice of An Garda Síochána.

It was required that arrangements be made to have any structure and all street furniture removed by 30th April 2022.

3.1.2. It is noted that a second letter from the planning authority, also dated 13th April 2022, advised that the application for a licence under S254 was refused for the following reason(s):

- It is considered that the bollards in situ to facilitate covid restrictions be removed in the interest of road safety and as directed by An Garda Siochana.

3.2. Planning Authority Reports

3.2.1. Planning Reports

A copy of the application for a Licence under Section 254 dated 30th March 2022 is on the file. The application was for “4 tables at the front of the premises on the footpath”. It was accompanied by annotated photos of the premises with the decking, awnings and furniture as well as a sketch showing the layout of the proposal.

It is noted that no planning and technical reports have been provided relating to the period before the decision was made (13th April 2022). However, both the appellants and the planning authority have provided information regarding the background to the case, including history of previous licences granted on the site, and reports/correspondence from various parties regarding meetings and discussions held before and since the decision was made. The parties consulted included the Kinsale Roads Office, the Council’s Traffic Warden and An Garda Siochana.

The main elements of correspondence are as follows:

13th April 2022 Decision letter from P.A.

25th April 2022 Letter from appellants to P.A. in response to the decision letter of the 13th April 2022.

26th April 2022 Letter from P.A. to appellants setting out reason and justification for decision.

10th May 2022 Letter of appeal to An Bord Pleanala

11th May 2022 Letter from P.A. to appellants reiterating requirement to remove furniture and advising that an application for seating at the rear may be submitted.

11th May 2022 Email from Kinsale Roads Office setting out background to licensing at premises and outlining concerns regarding traffic and pedestrian safety. Request to remove furniture reiterated.

- 12th May 2022 Letter from appellants to P.A. following a meeting at the premises with the P.A., the Kinsale Roads Office and other Council officials and a Councillor Marie O’Sullivan.
- 18th May 2022 Email from An Garda Siochana (via Cork co. Co.) alerting the P.a. to their concerns regarding traffic conditions on The Glen.
- 22nd May 2022 Email from Turkish Barber Salon (adjacent) complaining about impact of external seating area on traffic and parking.
- 25th May 2022 Letter from P.A. to appellants (in response to letter of 12th May and the allegations regarding meeting on site).

The contents of this correspondence has been reiterated in the grounds of appeal and responses to the grounds, which are summarised below.

3.2.2. Other Technical Reports

None.

3.3. Third Party Observations

None.

4.0 Planning History

206/2020 – Permission granted for S254 Licence (July 2020) for external seating area at Back Glen, extending to 6 square metres. The application and sketch submitted indicate the placing of a number of seats and low tables on the front of buildings and a bench attached to the rear (Back Glen). However, the letter issued on the 29th June 2020 approved the front seating area for 3 months on a temporary basis (due to covid regulations) and a second letter (8th July 2020) granted approval for the bench at the rear (also on a temporary basis due to covid regulations).

187/2021 – Permission granted for Section 254 Licence (May 2021) for external seating area to the front of building extending to 16 square metres including a temporary decking frame, windbreakers and planters and a 6sq.m area of external seating at the back of the building includes sketch and an application form.

331/2021 – Permission granted for Section 254 Licence (July 2021) for 5m x 2m at the Back of the Glen. A sketch and an application form included showing 2-3 tables with parasols at rear.

Note these licences were granted on a temporary period for 3 months in May 2021.

5.0 Policy Context

5.1. Cork County Development Plan 2022-2028

- 5.1.1. Introduction:** - The application was considered and determined by the planning authority under the previous development plan for the area, namely the Cork County Development Plan 2014. However, a new Development Plan was adopted on the 25th of April 2022 and came into effect on the 6th of June 2022. Since the last Plan period, Kinsale Town Council has been dissolved and the Kinsale Town Development Plan (2009) is no longer operative. The County Development Plan sets out a single planning strategy for the town and its environs.
- 5.1.2. Chapter 9 – Town Centres and Retail** – includes vision to make town centres more people-centred and liveable, which includes making them more attractive with a better quality of life (9.4).
- 5.1.3. Kinsale** is a Main Settlement in the West Cork Volume 5 of the Cork County Development Plan. It is located within the Bandon-Kinsale Municipal District (Chapter 1). One of the main strategic aims for Kinsale is to provide for additional residential and employment development which reinforces the town's compact form.
- 5.1.4.** Another key objective is to protect and enhance the natural and built heritage assets and to facilitate the development of Kinsale as one of the County's principal tourist attractions. The development strategy for Kinsale is to focus new development within the existing built footprint, to maximise walking and cycling opportunities and to reinforce its compact urban form. There is a strong emphasis on improving active travel and easing traffic congestion.
- 5.1.5.** At 1.5.23 it is stated that

The compact form and permeable nature of the town promotes walking and cycling. There are opportunities, however, to further improve links between

residential areas and schools and through the implementation of traffic calming measures at key locations. POWSCAR figures illustrate that there are already high walking levels within the town as a “means of travel to work” and the plan wants to build on this positive walking culture and help encourage a greater proportion of green modes for school/ local shopping trips. This can help contribute to easing congestion at peak times and promote a healthier lifestyle for the population.

5.1.6. Objective KS-GO-07 is to Support the enhancement of walking and cycling facilities in the town.

5.1.7. The site is located in an area zoned as **Town Centre/Neighbourhood Centre**.

5.2. Natural Heritage Designations

5.2.1. The site is not situated within any European Sites. There are no designated European Sites in close proximity to the site.

5.3. Grounds of Appeal

5.3.1. The first party appeal was submitted by Carol O'Brien and Sarah O'Brien. The main points raised may be summarised as follows:

- Background – This is a family run business which was established over 160 years ago. The external seating area was established following receipt of a grant from the Council in August 2021 to develop and upgrade the outdoor seating area. The appellants have invested further in these upgrading works. A take-away food service was permitted in 2017 and has been very popular during Covid-19. There is a servery hatch at the front and it attracts queues outside the premises.
- Existing external seating area – The seating area occupies the footpath along the frontage extending across the full width of the building. It also incorporates 2-3 former on-street parking spaces, which were made available by the Council, which has been cordoned off by bollards to facilitate passing pedestrians. It is unfair to now require the removal of this external seating area which represents 30% of the custom.

- Economic impact – The demand for external seating areas, which increased significantly during covid-19, has not abated since the lifting of restrictions. It now forms an essential part of the business model. Many customers simply do not want to sit inside which would mean that this custom would be lost.
- Road safety and pedestrian movement – The removal of the bollards will not reduce the danger to pedestrians, nor will it address the traffic issue. It is acknowledged that there is a traffic pinch point at the northern end of The Glen, but it is not accepted that this is caused by the bollards. It is submitted that it relates to the lack of appropriate traffic management around The Glen and in particular, the absence of measures to address the location of the large Supervalu supermarket to the north of the junction.
- Alternative traffic solutions unworkable – the alternative traffic management solutions to bollards, such as the introduction of double yellow lines, would not solve the traffic issues. There is much ambiguity and a lack of clarity regarding what measures will be introduced. The suggestion that double yellow lines be introduced along the road would merely encourage further heavy traffic and would do little to discourage beach traffic from travelling through the town. An appropriate traffic management solution is required for the entire town to make it more pedestrian friendly.

5.4. Planning Authority Response to grounds of appeal (26th May 2022)

5.4.1. The P.A.'s response to the grounds of appeal outlined the background to the current Section 254 Licence application, the matters discussed at the various meetings with stakeholders and road safety representatives, and with the appellants. The main points may be summarised as follows:

- The Council has been very supportive of the need for street furniture since the beginning of Covid-19, but since the lifting of health restrictions, it has been trying to find the right balance between public safety, pedestrian movement, the use of outdoor spaces and the needs of businesses.
- Following the receipt of correspondence and a series of meetings with various representatives of road safety, including the County Council's Roads Engineer, An Garda Síochána, the Traffic Warden, a Local Councillor and

reps of the Municipal District, it became apparent that the issue of road safety and pedestrian safety at the 'pinch point' in The Glen had to be addressed. The meetings included multi-disciplinary meetings, site meetings/visits and meetings with the appellants.

- Serious concerns were raised by both An Garda Siochana and the Roads Engineers regarding the obstruction of the public footpath at a traffic pinch point which forces pedestrians onto the public road near a sharp bend. These concerns lead to the refusal of the Licence application and the request for removal of the furniture and structures.
- Alternative solutions were offered to the appellants at a site meeting whereby it was suggested that an application for an external seating area to the rear of the premises would be more acceptable. It was pointed out that the appellants had previously applied for seating at the rear on two occasions and that it had been granted by the Council.
- It was pointed out that the previous licences for seating at the front had been granted during Covid-19 when traffic was much lighter.
- Reference was made to a complaint from the Barber Salon to the north regarding inconvenience for customers due to the bollards.

5.5. Appellants' Response to Planning Authority's Repose to Grounds of appeal

- 5.5.1.** The appellants responded to a Section 131 Notice on the 21st of June 2022. The points made mainly reiterate those made previously.
- 5.5.2.** Much of the submission relates to suggested improvements to the traffic management system for the town.
- 5.5.3.** The alternative solution for an outdoor seating area to the rear of the premises was rejected as it was considered unsuitable for food service on the basis that it is the area that is used for deliveries and for bin collection and that there has been an issue with rodents following the commencement of construction works next door.

6.0 Assessment

- 6.1.** It is considered that the main issues arising from the appeal are as follows:-

- Legislative context / Section 254
- Development Plan Policy
- Convenience and safety of road users; and
- Other matters.

6.2. Legislative context / Section 254

6.2.1. Section 254(1)(g) of the Planning and Development Act, 2000 (as amended), states that a person shall not erect, construct, place or maintain 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.

6.2.2. Section 254(6)(a) states that any person may appeal to the Board in relation to the granting, refusing, withdrawing or continuing of a licence. Section 254 (5) states that, in considering an application for a licence, the 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 in 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.

6.2.3. I consider the site is along the public road, as defined in section 2(1) of the Roads Act, 1993 (as amended). The site is located on the footpath and a 'footpath' is included in subsection (a) of the definition of 'road'. I therefore consider that section 254 is the appropriate mechanism for the proposed development.

6.3. Compliance with Cork County Development Plan 2022-2028

6.3.1. As stated at 5.1 above, the Licence application was considered by the planning authority under the Cork County Development Plan 2014 and the Kinsale Town Development Plan 2009, which were in operation at the time. However, a new Development Plan for the County was adopted on the 25th April 2022 and it became operative on the 6th June 2022. The Kinsale Town Development Plan together with the former CDP have been replaced by the new single County Development Plan.

6.3.2. Kinsale is a Main Settlement in the Municipal District of Bandon-Kinsale (Volume 5 – West Cork of CDP 2022). It is an important service and tourism town Kinsale is a medieval walled town and has narrow winding streets. It is noted in the CDP (1.5.38) that

“Within the medieval town centre there are capacity and road safety issues along the streets due to the narrow pavements and high volumes of pedestrian traffic, which forces pedestrians onto the carriageway.

It is further noted (1.5.48) that the tourism function of the town attracts large numbers of tourists on a seasonal basis, increasing the population by 25% in the summer. This factor, together with the fact that access to nearby beaches is gained through the town, and the capacity issues on the medieval street network tends to make movement through the town difficult. In addition, many of the pavements have been identified as being of inadequate width to accommodate high volumes of pedestrian traffic, resulting in potential conflict between pedestrians and vehicles.

6.3.3. Although the site is not located in the heart of the medieval town centre, it is located in a historic part of the town centre. The footpath outside the premises is at most 2.0m wide, and the public road is narrowed by the bollards outside the premises as well as on-street parking, which creates a ‘pinch point’. The Glen terminates approx., 50 metres beyond the site and there is a sharp bend in the main road, at the junction with the R605.

6.3.4. The pedestrian environment is very poor, therefore, in the vicinity of the site due to a combination of the narrow road width and the limited footpath width at this location. The CDP states that opportunities to enhance the town centre pedestrian environment have been identified through the Kinsale Traffic and Transport Study and Active Town Strategy. It is reasonable to assume, therefore, that the existing poor-quality pedestrian environment at the northern end of the Glen will be enhanced as part of the overall approach to enhancing walking and cycling and public realm within the town centre, as set out in the Development Plan. In particular, it is considered that it would be contrary to Objective KS-GO-07, which seeks to support the enhancement of walking and cycling facilities.

6.3.5. It is considered, therefore, that the proposed development, which would occupy the entire width of the public footpath outside the premises, and would thereby create an

obstruction which would force pedestrians onto the public road, would give rise to a poor and dangerous pedestrian environment which would be inconsistent with the policy approach in the County Development Plan, as outlined above.

6.3.6. I am not aware of any other similar appliances/apparatuses/structures on The Glen.

6.4. Convenience and safety of road users, including pedestrians

6.4.1. The proposed structure is shown on the submitted sketches as extending 2.0m from the façade of the premises, and the implication is that it would occupy the full width of the footpath. However, it can be seen from the photographs on file that the structure comprising the timber deck and plinth project slightly beyond the edge of the footpath. As the structure is 'book-ended' by planters and Perspex screens (wind shields), this means that there is no public footpath available for pedestrians for the full length of frontage of the premises. As stated previously, the layout is such that pedestrians are forced onto the public road in order to pass the site. To facilitate this, a set of orange and white bollards have been placed within the carriageway.

6.4.2. The re-routing of pedestrians onto the public road is not very satisfactory, however, as the width of the pedestrian 'channel' is too narrow to accommodate more than one pedestrian at a time travelling in each direction or those with a buggy or wheelchair. It would also necessitate manoeuvring a buggy/wheelchair onto the public road before accessing the channel and would put such pedestrians in a vulnerable position. In addition, the placing of the bollards at this location creates a pinch point in the road just before the sharp bend at the junction with the R605. The combination of these factors, together with the high volume of pedestrian traffic passing the site, especially in the summer months, is likely to result in a hazardous environment for pedestrians.

6.4.3. The hazardous nature of the situation has been highlighted by both the County Roads Engineer and An Garda Síochána. The Roads Engineer (email of 11/05/22) stated that "it is no longer possible to allow the current arrangement to channel pedestrians onto the carriageway close to a blind bend". An Garda Síochána (email of 17/05/22) advised that "The Glen, Kinsale is historically a pinch point for traffic congestion and quickly becomes static, particularly in the high tourist months in the summer."

In light of these comments and my own observations on site, it is considered that the proposed development would obstruct the public footpath and force pedestrians onto the public road, which would result in potential conflict between pedestrians and vehicles. This would cause considerable inconvenience to pedestrians and would give rise to a traffic hazard and a dangerous environment for pedestrians.

6.4.4. The appellant has pointed out that there is an existing outside seating area at the front which has been the subject of a grant of a licence, that the owners have invested heavily in providing this facility, that the business has become reliant on this element of the use, that outdoor dining has become the norm since Covid -19 and that it would be unfair to have to remove the structure and facility at this stage. I would accept that the provision of the outdoor dining area has been facilitated by the Council, and was carried out during the health restrictions that were in operation during the Covid-19 pandemic. However, the P.A. has advised that the licences issued during the pandemic had been issued on a temporary basis and that they had since elapsed. It is acknowledged that the traffic environment and the degree to which restaurants/cafes have to rely on outdoor seating has changed considerably since the lifting of these restrictions. Thus, the necessity and justification for an outdoor dining area is no longer as compelling as it would have been in 2020 and 2021, as restaurants and cafes have generally opened fully.

6.4.5. It is also noted that there is an alternative solution to outdoor dining at this location, which would not obstruct the public footpath. The option to provide an outdoor seating area to the rear of the premises instead, has been suggested by the planning authority and discussed with the appellants. I note that the appellants have rejected the planning authority's suggestions in this regard, but I also note that this element had also formed part of the proposed outdoor eating areas in the previous licence applications. The reasons put forward for discounting this area, which relate to deliveries and bin collection, do not appear to be fatal and it is considered that alternative solutions such as this could be explored.

6.4.6. It is considered that in light of the above, the proposed development would be likely to result in a serious road hazard which would endanger pedestrians in the vicinity of the site and would cause considerable inconvenience to pedestrians. The proposal would therefore be contrary to the proper planning and sustainable development of the area.

6.5. Other matters

- 6.5.1. The appellant has criticised the traffic management system and policies in the area and for Kinsale in general, and has made several suggestions regarding the resolution of these matters.
- 6.5.2. I would accept that the traffic management and pedestrian environment in this area is in need of some amendment to address the issues discussed above and as highlighted in the current CDP (summarised above). These matters are likely to be reviewed by the planning authority, particularly in light of the national and local policies to increase active travel and to encourage walking and cycling. However, it is beyond the Board's remit to suggest changes to the traffic management arrangements. The Board must consider the application for a temporary licence that is currently before it on the basis of the existing circumstances and the information before it.

6.6. Environmental Impact Assessment

- 6.6.1. Having regard to the nature and scale of the development 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.

6.7. Appropriate Assessment

- 6.7.1. The site is not located within or adjacent to any Natura 2000 site. As the use is an established one and as the site is located in an established urban area, on serviced lands, it is considered that no appropriate assessment issues are likely to arise.

7.0 Recommendation

- 7.1. It is recommended that the licence should be **refused** for the reasons and considerations set out below.

8.0 Reasons and Considerations

Having regard to the provisions of Section 254 of the Planning and Development Act 2000 as amended, to the existing poor pedestrian environment and restricted road width in the vicinity of the site, and to the nature and extent of the development, it is

considered that the proposed development would obstruct the public footpath and force pedestrians onto the public road, thereby causing a potential conflict between pedestrians and vehicular traffic close to a sharp bend in the road. The Board is not satisfied, therefore, that the proposed placement of street furniture and associated structures at this location would not endanger pedestrian safety and interfere with the free movement of pedestrians in the vicinity of the site, which would give rise to a traffic hazard, and would not be in accordance with policy objective KS-GO-07 the Cork County Development Plan 2022-2028 which seeks to enhance walking and cycling facilities in the town. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

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.

Mary Kennelly
Senior Planning Inspector

27th April 2023