



An
Bord
Pleanála

Inspector's Report

ABP-314829-22

Development	S254 street furniture licence
Location	The Fiddler's Bar, 3 O'Connell Street, Athlone, Co. Westmeath
Planning Authority	Westmeath County Council
Planning Authority Reg. Ref.	OSS22/06
Applicant(s)	Tracy Thompson
Type of Application	Section 254 Licence for Outdoor Seating
Planning Authority Decision	Grant with Conditions
Type of Appeal	First Party
Appellant(s)	Tracy Thompson
Observer(s)	None
Date of Site Inspection	26 th of April 2023
Inspector	Caryn Coogan

1.0 Site Location and Description

- 1.1. The Fiddler's Bar is located in central Athlone at 3 O'Connell Street, directly opposite a junction with Bastion Street, and Chapel Street. The Fiddler's Bar is located at the end of a terrace on the southern side of O'Connell Street. The structure is located on the edge of the footpath on the public road. There are double yellow lines on one side of the structure and a parking space on the other side.
- 1.2. The street slopes from west to east. The structure is nearly the full length of the front building line of the The Fiddlers bar.

2.0 Development

- 2.1. The development consists of a raised seating area to the front of the Fiddlers Bar located along the public road fronting the bar. The area includes a timber deck with a 2m timber and Perspex surround, creating a lean-to structure, which is open to the front of The Fiddlers. It includes timber seating and tables. The footpath fronting The Fiddlers is not obstructed by the development.

3.0 Planning Authority Decision

3.1. Decision

On the 14th of January 2022 the planning authority granted permission for licence of street furniture under Section 254 of the *Planning and Development Act 2000-2018*. There were 8No. conditions. The relevant condition is:

5. Licence is valid for the period from 1st of January 2022 to 30th of September 2022

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Clerk of Works submitted a report on 8th of July 2022 stating during the Covid pandemic there was a negative impact on local businesses, and in the best interest of supporting local businesses public spaces were utilised to facilitate the re-opening

of the hospitality sector in line with Government policy. A recommendation to grant the licence subject to conditions was made.

3.3. Third Party Observations

There appears to be no third party submissions received by the planning authority.

4.0 Policy Context

4.1. Development Plan

Athlone Town Development Plan 2014-2020

O-RET7 – To promote the development of street furniture and public art in the town centre, in order to ameliorate the retail environment.

4.2 Westmeath County Council – The Municipal District of Athlone-Moate –

Outdoor Seating and Signage Procedure (1st of May 2029)

Westmeath Co. Co. reserve the right to cancel, withdraw, suspend or vary the terms of the licence at any time.

5.0 The Appeal

5.1. Grounds of Appeal

The Fiddler's Bar was granted an outdoor/ signage licence on 12th of July 2021.

The licence was subsequently renewed on 14th of January 2022 in accordance with the plans and details on the 12th of July 2021 – the date of the original licence.

However the renewal date letter attempts to curtail to the operation of the licence to a specific timeframe by stating the licence is valid for the period from the 1st of January 2022 to 30th of September 2022 after which the structure shall be removed from the location and the area shall revert to its original use. The licence conditions have failed to ensure procedural fairness to those affected by the decision.

The Council has breached the terms of the original licence by seeking to impose a term limit on the renewal of the licence without explanation. Condition No. 5 states

the licence is valid from 1st of January 2022 to 30th of September 2022. The Council has failed to renew the licence without allowing an opportunity to renew the licence. By failing to new the licence the Council has fettered its own discretion in the matter.

The Council has now decided to end the licence without offering any reason, therefore it is difficult to present grounds of appeal to the Board. Procedural fairness requires that reasons should be provided, the Council cannot simply end the licence without good reason. The structure has not caused an obstruction or become dangerous. A reasoned decision would have allowed the applicant to be informed fully about the decision and allowed the applicant to consider a legal challenge and on what grounds. Case law states procedural fairness requires that the reasons for the decision should be provided.

In *Mallak V. Minister for Justice, Equality and Law Reform (2012)* IESC 52 stated in its judgement a public body is obliged in its duty to give reasons.

The Supreme Court decision in *Balz and Heubach v An Bord Pleanala and Cork Co. Co., Cleanrath Windfarms Ltd* further highlights the importance a public body give sufficient reasons for their decisions.

Under section 254(5) the planning authority in granting a licence is legally obliged to consider:

- (a) The proper planning and sustainable development of the area;
- (b) Any 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 users.

The structure has enhanced the area and it is worth noting the policy objective in Athlone Town Development Plan 2014 -2020 Volume 1 Written Statement (O-RET7) ‘*To promote the development of the street furniture and public art in the town centre, in order to ameliorate the retail environment*’.

The Fiddler’s Bar is located in a part of Athlone that has become known as the ‘Latin Quarter’ or West Bank of the town which contains Athlone Castle, together with a number of award-winning restaurants and other pubs.

It is clear the decision not to give the licence has been arrived at in an arbitrary manner and goes against the planning authority's own policies in *The Municipal District of Athlone-Moate Outdoor Seating and Signage Procedure May 2019*. .

Attached:

- Council Letter -Refusal Notification
- Original licence decision
- Licence decision extended
- Photos of outdoor structure

5.2. Planning Authority Response

Applications for Section 254 Licences are assessed in accordance with the Outdoor Seating & Signage Procedure for Athlone/ Moate Municipal District approved in 2019.

The Council is supportive of the provision of outdoor seating in Athlone which can greatly contribute to the vibrancy and ambiance of the town centre. Each case will be considered on its merits having regard to the location, intensity of pedestrian flow, contribution to streetscape, creation of a vibrant street and impact on the building fabric, residential amenity and public domain.

During the Covid restrictions in particular the period of the indoor dining restriction and in response to Circular PL06 2021, the Council made special provisions by licencing of parklet style outdoor dining on the public roadway to support businesses during the restrictions where there was insufficient pavement width to accommodate outdoor dining. This was a temporary emergency measure.

A Section 254 Licence was issued to The Fiddlers Bar for a raised platform area on the public roadway fronting the bar. It was subject to conditions and valid for a period from the 20th of July 2021 to the 31st of December 2021. The Licence was renewed in 2022 for a period from 1st of January 2022 to 30th of September 2022 after which time the structure was to be removed from the location and the area revert to its original use.

The Outdoor Seating and Signage Procedure states '*Outdoor seating areas must demonstrate best practice in design and layout in order to enhance the streetscape and to minimise pedestrian disruption. Outdoor seating areas should seek to integrate into the outdoor environment and the streetscape rather than trying to create an extension to the indoor environment.*'

The licencing of the structure was a temporary measure during COVID restrictions. The installation of the structure results in the public roadway becoming a private space for the duration of their existence. The space is no longer accessible to the public when it is not in use by the business, it is inaccessible to the public. The subject structure does not integrate into the street and is temporary in nature. The materials have degraded since its installation in 2021. The structure adversely impacts upon the streetscape character and visual amenity of the area, and the heritage value of the surrounding built form. It would set an undesirable precedent if permitted on a permanent basis.

6.0 **Assessment**

- 6.1 Applications for Section 254 Licences are assessed in accordance with the Outdoor Seating & Signage Procedure for Athlone/ Moate Municipal District approved in May 2019. During the Covid restrictions in particular during the period of the indoor dining restriction and in response to Circular PL06 2021, Westmeath Co. Co. made special provisions by licencing of outdoor dining areas on the public roadway to support businesses during the restrictions where there was insufficient pavement width to accommodate outdoor dining. This was a temporary emergency measure. In this instance, fronting The Fiddler's Bar, the provision of a temporary raised outdoor seating area was provided on the public street.
- 6.2 Originally, a Section 254 Licence was issued to The Fiddler's Bar for a raised platform area on the public roadway fronting the bar. It was subject to conditions and valid for a period from the 20th of July 2021 to the 31st of December 2021. The Licence was renewed in 2022 for a period from 1st of January 2022 to 30th of September 2022 after which time the structure was to be removed from the location and the area revert to its original use. This is Condition No. 5 of the Licence as issued by Westmeath Co. Co. on 14th of January 2022. The owner of The Fiddler's

Bar has taken this appeal regarding the expiration of the licence on the 30th of September 2022. Since this date has lapsed, and there would appear to be no facility under the legislation to appeal a condition only, I consider it prudent to examine the License in its entirety.

- 6.3 In his appeal, Ms Thompson states the Council failed to give reasons for its decision to impose a time limit on the renewal of the licence. I accept her grievance, there would appear to be no reason given by the planning authority on file to restrict the license from the 1st of January 2022 to the 30th of September 2022. She has cited a number of notable court cases whereby its was ruled a public body has an obligation to give reasons for its decision in a decision-making process.
- 6.4 The planning authority has clarified it's reasoning on appeal to the Board. The licencing of this structure was considered as a temporary measure only during the Covid restrictions.
- 6.5 Having regard to temporary nature of the structure on the public roadway, I consider the planning authority were justified in placing a time limit on the licence. However, this issue should have been made clear to the applicant at the time limit was being imposed. The terms of the adopted Westmeath County Council – The Municipal District of Athlone-Moate – *Outdoor Seating and Signage Procedure (1st of May 2019)* are clear in that Westmeath Co. Co. reserve the right to cancel, withdraw, suspend or vary the terms of the licence at any time without the payment of compensation. The Licence was originally granted in good faith to enable the business to continue during a time of indoor dining restrictions in line with government policy relating to the pandemic. These circumstances have since changed dramatically, and the restrictions no longer apply.
- 6.6 Although, the visual impact of the structure is a subjective issue, I concur with the planning authority's view that the structure adversely impacts on the streetscape qualities of the area, because it looks incongruous with the streetscape and resembles an extension to the indoor activities with the use of timber and Perspex jutting out onto the public road. It detracts form the streetscape qualities of the area.
- 6.7 Therefore, I am recommending the licence be revoked as it now exceeds the specified time limit of 30th of September 2022. The structure is a temporary structure, and the public area can revert to its original use, the public roadway.

7.0 Recommendation

7.1. I recommend the planning authority's decision to revoke the licence be upheld by the Board.

8.0 Reasons and Considerations

Having regard to:

- the temporary nature of the structure,
- the design and layout of the structure on the public roadway
- the original land use of the public area as a public roadway,
- the provisions of Athlone Town Development Plan 2014-2020
- Section 254 of the Planning and Development Act 200-2018,
- the Westmeath County Council – The Municipal District of Athlone-Moate – *Outdoor Seating and Signage Procedure (1st of May 2019)*,

it is considered that the location of the raised outdoor seating area compromises the streetscape and visual qualities of the area because it creates an incongruous feature along the streetscape which injures the visual qualities of the area and detracts from the heritage value of the existing built environment, and it is therefore considered that the proposal would 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.

Caryn Coogan
Planning Inspector

8th of May 2023