



An
Bord
Pleanála

Inspector's Report

ABP-314867-22

Development	Section 254 licence for outdoor seating.
Location	The Snug Bar, 3 Fry Place, High Street, Athlone, Co. Westmeath.
Planning Authority	Westmeath County Council
Planning Authority Reg. Ref.	OSS 22/07
Applicant(s)	Michael Nugent
Type of Application	Section 254 Licence for Outdoor Seating
Planning Authority Decision	Granted with Conditions
Type of Appeal	First Party
Appellant(s)	Michael Nugent
Observer(s)	None
Date of Site Inspection	26 th of April 2023
Inspector	Caryn Coogan

1.0 Site Location and Description

- 1.1. The Snug Bar is located in central Athlone on High Street, directly opposite a busy junction with Main Street, and St. Peter's Port. The footpath widens in front of The Snug Bar, and there is a mix of paving between the front building line and the edge of the public road.

2.0 Development

- 2.1. The development consists of a seating area to the front of the Snug Bar located along the paved area fronting the front elevation. The area includes a timber deck with a 1m timber surround to ensure a boundary between the seating area and the public road.

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 Licence was renewed on 14th of January 2022. No report appears to be on the appeal file.

3.3. Third Party Observations

- A submission was made by the Irish Wheelchair Association stating the seating into front of the Snug Bar is located in a Disabled Bay. The organisation strongly discourages the use of disabled bays for outdoor dining, and it is not acceptable.

- The disabled parking bay on the Left Bank was granted a temporary permission during the first lockdown to enable The Snug Bar to operate. The pub has access to space at the rear of the premises, and the disabled parking space should be reinstated.
- The Snug Bar have a Beer Garden to the rear of their premises, and disabled people are being discriminated against by granting a licence for the continued use of a disabled parking bay as a seating area for the public house.

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 2020)

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 Snug Bar was granted an outdoor/ signage licence on 2nd of July 2021. A renewal letter was issued from Westmeath Co. Co. on 6th of December 2021. The licence was subsequently renewed on 14th of January 2022 in accordance with the plans and details on the 2nd 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 Council has breached the terms of the original licence by seeking to impose a term limit on the renewal of the licence without explanation. They have exceeded their own powers by introducing an arbitrary clause that has not been agreed with in advance between the licensee and the licensor.

The subject seating area has not caused an obstruction or become dangerous. The Council has not communicated such concerns to them. There have been no issues with the seating area since it came into effect on July 2021. The structure does not obstruct pedestrian access or other road users and in all circumstances has enhanced and added to the vibrancy of the street where outdoor dining is actively encouraged.

Thye 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.

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.

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 Snug 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.

There was no material change to the outdoor structure from the original application during the Winter period the emphasis on outdoor seating will remain, and it is imperative to facilitate this type of development in close proximity to other social outlets in the immediate vicinity.

Attached:

- Original licence decision
- Licence decision extended
- Licence Notification refused letter

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 Snug 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 licencing of this temporary structure required the relocation of a disabled parking bay 65m further down the street and beside another disabled parking bay. This was a temporary measure. Submissions were received in May 2021 regarding the initial licence application from the Irish Wheelchair Association and Athlone Access Awareness. Both organisations were supportive of the temporary measure to support businesses. Subsequent correspondence from Independent People with

disabilities, and the adjoining business, The Left Bank expressed concern about the relocation of the disabled parking bay and requested it be reinstated.

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 particular instance, fronting The Snug Bar, the provision of a temporary outdoor seating area was provided on a disabled parking area.
- 6.2 Originally, a Section 254 Licence was issued to The Snug 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 Snug 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, Mr. Nugent states the Council failed to give reasons for its decision to impose a time limit on the renewal of the licence. I accept his 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. He has cited a number of notable court cases whereby it 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 its reasoning on appeal to the Board. The licencing of this temporary structure required the relocation of a disabled parking bay 65m further down the street and beside another disabled parking bay. This was considered to a temporary measure during the Covid restrictions. Submissions were received in May 2021 regarding the initial licence application from the *Irish Wheelchair Association* and *Athlone Access Awareness*. Both organisations were supportive of the temporary measure to support businesses. Subsequent correspondence from *Independent People with Disabilities*, and the adjoining business, The Left Bank expressed concern about the relocation of the disabled parking bay and requested it be reinstated. I note the correspondence on file from The Irish Wheelchair Association (10th of January 2022), The Left Bank Bistro (21st of December 2021), Elected Representatives, Independent People with Disabilities (17th of December 2021), and Athlone Access Awareness (12th of December 2021). All of the correspondence are requesting the disabled parking space be reinstated at this location.
- 6.5 Having regard to the concerns expressed by Westmeath Co. Co. relating to the reinstatement of the disabled carparking space at the subject location, 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 on a disabled parking area 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 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, a disabled parking area in the interests of convenience and safe parking of the disadvantaged road users.

7.0 Recommendation

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

8.0 Reasons and Considerations

Having regard to:

- the temporary nature of the structure,
- the original land use of the public area as a disabled parking space,
- 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 outdoor seating area compromises the functioning of an existing disabled parking bay to the front of the subject premises which results in disruption to parking in the vicinity and compromises the convenience and parking safety of disadvantaged road users. 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

5th of May 2023