



An
Bord
Pleanála

Inspector's Report ABP315638-23

Development	Application for street furniture licence for 8 tables and 32 chairs under section 254.
Location	Downeys Bar, Main Street, Dungarvan, Co. Waterford.
Planning Authority	Waterford City and County Council.
Planning Authority Reg. Ref.	22/764.
Applicant	John McGrath.
Type of Application	Section 254 Licence.
Planning Authority Decision	Refuse.
Type of Appeal	First Party v Refusal
Appellant	John McGrath.
Observers	None.
Date of Site Inspection	14 March 2024.
Inspector	Mairead Kenny.

1.0 Site Location and Description

- 1.1. The site is located close to the heart of the commercial core in Dungarvan town at 52/53 Main Street. The subject area to which this application for a licence for street furniture refers comprises lands within the carriage way of Main Street. The lands are shown as being in the ownership of the applicant.
- 1.2. The traffic arrangement along Main Street involves one-way circulation of vehicles from the west / Grattan Square direction. In terms of the street layout and urban character there is a landmark building, the old market house, located to the east of the site at the junction of Main Street and Castle Street / Quay Street.
- 1.3. The public carriageway along Main Street is divided into two lanes. The northern part of the public road which is adjacent Downey's public house is designated for vehicular flow. The southern part of the public road is reserved for loading / parking.
- 1.4. Within the vehicular traffic lane (northern lane) and separated from the associated public house by a footpath is the area subject to the street furniture licence.

2.0 Proposed Development

- 2.1. Permission is sought under section 254 for a licence for street furniture involving an area of 8m length and 2.9m width. The relevant lands comprise part of the vehicular carriageway where it is proposed to erect 8 tables and 32 chairs according to the submitted public notices and the application form details. The application form indicates that the table dimensions would be 70 cm by 60 cm. The total area involved is stated to be 23.2 square metre. No structures would be erected on the footpath immediately adjacent the public house.
- 2.2. The drawings submitted with the appeal indicate that the northern and southern boundaries of the relevant licenced area would be finished with a fixed glazed panel and the western and eastern sides are described as having an adjustable glazed panel with a countertop. A 3-dimensional image submitted shows 3 no. tables located within this area, 3 no. small umbrellas and a total of 12 no. stools. At the western and eastern side boundaries the appeal images show a wide finish to the top of the panel, which would function as a countertop. Based on the 3-D drawings

the overall height of the glazed panels would be in the region of 1.4 metre. No dimensions are presented.

3.0 Planning Authority Decision

3.1. Decision

Permission refused for one reason as summarised below:

- The proposal would be contrary to policies of the development plan to protect the character and setting of the streetscape in an ACA, would contribute to visual clutter and disorderly development and establish a most undesirable precedent and therefore be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The licence issued in 2021 was during the pandemic where the policy relating to licences for outdoor seating reflected social distancing requirements. This led in some instances to temporary measures being supported which might not ordinarily have been accommodated.

The current proposal would result in haphazard development and lead to visual clutter on Main Street and detract from the character and setting of Main Street, an ACA.

Refusal of the application is recommended as the proposed development would be contrary to policies of the development plan which seek to protect the character and setting of the streetscape in an ACA. The proposed development would contribute to visual clutter and disorderly development and set a most undesirable precedent.

The planner's report is endorsed by the Senior Executive Planner.

The AA Screening table presented does not identify potential significant impacts.

3.2.2. Other Technical Reports

None.

3.2.3. Third party submissions.

3.2.4. None.

4.0 Planning History

21420 refers to an application by John McGrath for street furniture licence under section 254, which was **granted** on 23/06/2022 subject to conditions. Condition 2 limited the duration of the permission to one year. Conditions 3 and 4 set out details regarding hours of use and removal of all structures outside of these hours. The planner's report states that the proposal is 'dependent on the relocation of the vehicular carriageway, a proposal which has recently been put on public display by the Council'.

20582 refers to an application by John McGrath for street furniture licence under section 254, which was **refused** on 15/10/2020.

5.0 Policy and Context

5.1. Development Plan

Under the Waterford County Development Plan 2022-2028 the site is within Dungarvan Core Retail Shopping Area and an Architectural Conservation Area (ACA).

Policy BH05 states that within ACAs it is the policy of the Council to:

- Achieve the preservation of the special character of places, areas, groups of structures setting out ACAs
- protect the special heritage values, unique characteristics and distinctive features such as shopfronts from inappropriate development which would detract from the special character of the ACA.

Policy BH 12 refers to settings and vistas stating that it is the policy of the Council to ensure the protection of the settings and vistas of protected structures, and historic buildings within and adjacent to ACAs from any works which would result in the loss or damage to their special character.

DM 19 sets out the policy relating to street furniture including the avoidance of visual clutter.

TC town core zoning is to provide for the development and enhancement of town core uses.

5.2. Natural Heritage Designations

The site is not within or immediately proximate to any European Sites.

5.3. EIA Screening

5.4. The proposed development is not one to which Schedule 5 of the Planning and Development Regulations, 2001, as amended, applies and therefore, the requirement for submission of an EIAR and carrying out of an EIA may be set aside at a preliminary stage.

6.0 The Appeal

6.1. Grounds of Appeal

- Last year permission was granted for a 254 licence. An outdoor umbrella supplied by the Council. I constructed a surround and a floor and painted the structure to match the public house and to look well on the street.
- This structure helped to slow traffic.
- The outside area has allowed me to increase turnover by 30% and to pay off debts. Customers may still prefer to sit outside when the choice is offered.
- In the town there are 14 public houses of which 50% have been approved an outside area for a further year and only 21% refused. Some did not apply. Other public houses in the immediate area have outside areas approved. The refusal is unfair in terms of competition and puts me at a serious disadvantage.
- Dungarvan has become a tourist town and I support the nighttime economy including through the provision of traditional music sessions. The public house

is unique including by reason of the visit of all four members of U2 as seen in enclosed photograph.

6.2. **Planning Authority Response**

The response received on 22nd March 2023 states:

- The planner's report noted that the previous licence was granted was in a time of social distancing requirements.
- The planning authority is not favourably disposed to the retention of the outdoor seating arrangement and urges the Board to uphold its decision to refuse for reasons of visual clutter, haphazard development, adverse setting on streetscape within an ACA.

6.3. **Observations**

None.

6.4. **Further Responses**

None.

7.0 **Assessment**

7.1. I consider that the matters arising in this case can be considered under the following headings:

- Legislative context
- Development plan policy
- Safety and convenience of road users
- Proper planning and sustainable development.

7.2. **Legislative Context**

7.2.1. Section 254 sets out the requirements relevant to licences which may be granted by a planning authority in relation to the erection, construction, placement or

maintenance of appliances, apparatus or structures on, under, over or along a public road. I am satisfied that this is the relevant legislation for the making of this application. As such in considering an appeal the matters which the Board shall have regard to are as specified in section 254(5) namely:

- The proper planning and sustainable development of the area
- Any relevant provisions in the development plan, or a local area plan,
- The number and location of existing appliances, apparatuses or structures on, under, over or along the public road, and
- The convenience and safety of road users, including pedestrians.

7.2.2. These matters are addressed in the remainder of this assessment section.

7.3. **Development plan policy**

7.3.1. In terms of the matters to be considered by the Board relevant provisions related to protection of architectural heritage are a key aspect of policy in this case.

7.3.2. The decision of the planning authority referenced the location of the property within an Architectural Conservation Area and the associated policies, which it was considered would be contravened. Waterford City and County Development Plan 2022-2028 defines a very large area, including much of the commercial core as an ACA. Within the ACA are a large number of protected structures including some which are close to Downey's public house. Downey's public house is not itself a protected structure. A noteworthy feature to the east of the site is the old market house, a detached building dating to 1690, which is a pleasing, distinctive and prominent feature in the streetscape.

7.3.3. Following site inspection, I am satisfied that the conclusions drawn by the planning authority in relation to the impact on the ACA are reasonable. The erection of street furniture at this location would impede views to protected structures in the vicinity and significantly detract from the character of the ACA in my opinion. The existing structure impedes views along the street and to the old market house. I emphasise that a different design of panel and umbrellas is proposed to be put in place. I am satisfied that the proposed panels and umbrella arrangements which are presented in the 3-dimensional images submitted with the appeal would constitute a less

intrusive form of development than that presently in situ. Nevertheless, due to their location and scale I agree with the conclusion drawn by the planning authority that the proposed development would fail to protect the character and setting of the streetscape, on protected structures and thereby on the overall ACA.

- 7.3.4. My conclusion is that a grant of permission for this street furniture licence would be contrary to the development plan provisions relating to architectural heritage.

7.4. Safety and Convenience of Road Users

- 7.4.1. The proposed development would not directly impede the use of the footpath by pedestrians. The selected area however is in the middle of the area previously devoted to vehicular traffic and cyclists. It appears from the planning history that special arrangements were adopted to re-direct traffic on the southern side of the road. This arrangement is unconventional and requires vehicles to change lanes mid way along the street. I note that the appellant states that the parking should all be on the southern side of the road. That is a matter for the local authority to determine. Having regard to the current arrangements in place the I consider that the application for a licence for street furniture should be refused on the basis that it is disorderly as it inconveniences road road users.

7.5. Proper planning and sustainable development

- 7.5.1. Various matters fall to be considered under the broad heading of proper planning and sustainable development. For completeness I present some further brief comments below.
- 7.5.2. The appellant references other licence applications and commercial disadvantage. The number and location of existing appliances, apparatuses or structures on, under, over are along the public road, is a matter for the Board to consider in this appeal. There are no similar structures in the immediate vicinity and commercial considerations are not a matter for this appeal.
- 7.5.3. The proposed development intervenes with the flow of traffic and is prominently positioned in the middle of a public road and constitutes disorderly development and by reason of this and the adverse effect on architectural heritage the proposed

development is not in accordance with the proper planning and sustainable development of the area.

- 7.5.4. I agree with the planning authority that a grant of a licence in this case would establish a most undesirable precedent and that permission should be refused.

.Appropriate Assessment Screening

- 7.6. Having regard to the nature and scale of the proposed development, to the absence of emissions therefrom and the nature of receiving environment as a built-up urban area and the distance from any European site it is possible to screen out the requirement for the submission of an NIS and carrying out of an AA at an initial stage.

8.0 Recommendation

I recommend that the decision of the planning authority to refuse permission be upheld for the reasons and considerations below.

Reasons and Considerations

1. Having regard to the location of the proposed development within an Architectural Conservation Area and its prominent siting in the streetscape and in vistas to protected structures, it is considered that the proposed development would detract from the character of the Architectural Conservation Area and, therefore, would not be in accordance with the proper planning and sustainable development of the area.
2. It is considered that the proposed development by reason of its location relative to vehicular traffic lanes and parking bays constitutes a disorderly form of development, which is not in accordance with 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.

Mairead Kenny
Planning Inspector

15 April 2024