



An  
Bord  
Pleanála

## Inspector's Report ABP315743-23

<b>Development</b>	Application for street furniture licence for outdoor dining under section 254.
<b>Location</b>	Lady Belle, 13 Grattan Square, Dungarvan, Co. Waterford.
<b>Planning Authority</b>	Waterford County Council.
<b>Planning Authority Reg. Ref.</b>	22952.
<b>Applicant</b>	The Lady Belle Club.
<b>Type of Application</b>	S254 licence.
<b>Planning Authority Decision</b>	Refuse.
<b>Type of Appeal</b>	First v Refusal
<b>Appellant</b>	The Lady Belle Club.
<b>Observer</b>	None.
<b>Date of Site Inspection</b>	14 March 2024.
<b>Inspector</b>	Mairead Kenny.

## **1.0 Site Location and Description**

- 1.1. The subject lands adjoin the Lady Belle public house which is located at the junction of Crossbridge street (which adjoins the eastern façade) and Grattan Square (which is at the southern façade). At Crossbridge Street at the other side of the road is a large car park and a supermarket (SuperValu). The other land uses to the north of the public road ( along the western side of Crossbridge Street) include a bookmakers and fish shop. The main door to the public house is at the south. There is also a service / secondary access to the public house at the side where at the time of my inspection there were some kegs being stored on the footpath. To the south of the Lady Belle at Grattan Square proper there are outdoor dining areas associated with a number of commercial premises.
- 1.2. The application details do not include a detailed site location map and the proposed development is described on a hand drawn site layout. Based on that document it appears to me that the subject lands which comprise the site of the proposed development are positioned to the south and east of the public house. That would include an area to the front of the main entrance where there are two old benches set close to the façade and the adjacent footpath to the front and on the corner as well as the loading bay to the side of the public house.

## **2.0 Proposed Development**

- 2.1. The information relating to the detail of the proposed development is limited to the hand drawn site layout which shows measurements of the footpath at both sides of the public house but does not identify the limits of the area which would be used as a seating area. The description of the development states only 'outdoor dining area' to be located 'outside the Lady Belle pub'. The application form refers to the previous grant of permission in 2021 for 'outdoor dining section'.
- 2.2. I note that the Council's planner's report states that the application relates only to the south of the public house and not to the lay-by area / the area to the east.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

The planning authority decided to refuse permission for the reason summarised below:

- The seating areas subject to the current licence application forward and south of the public house as proposed adversely encroaches on the public footpath precluding the use of same by persons of all abilities or persons with mobility aids or buggies. The existing seating and associated furniture displaces users of the footpath onto the public road giving rise to potential hazards for footpath users and potential traffic hazard with resultant risk to public safety.

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

The planner's report includes the following points:

- Regarding the planning history – the development as existing does not comply with that proposed under the previous section 254 licence. The previous licence specifically precluded the placing of tables and chairs on the public path to the side or in front of the premises as now proposed and allowed the placing of tables and chairs in the loading bay on Crossbridge Street only.
- Regarding referrals – District Engineer – access / passing space on public footpath is generally prohibited / restricted for buggies / wheelchairs despite District Engineer discussions with owners to remove benches and blockages during the summer.
- The proposed seating will not detract from the character and setting of the building which is a protected structure.
- There are tables and benches in place as well as casks which are used as tables and including on the corner of Grattan Square and Crossbridge Street and these were specifically excluded from the section 254 licence relating to the premises. To the side on Crossbridge Street are 5 no. picnic benches and

2 no. large parasols which are similar to those granted in the previous licence but have not been included in the current licence application.

- Bins, kegs and benches on Crossbridge Street also encroach onto the public footpath.
- Refusal recommended having consulted with the Roads Section and District Engineer.
- AA Screening – no significant effects.
- EIA – not a class.

#### 3.2.2. Other Technical Reports

There are no other written reports on file. My conclusion is that the comments of the District Engineer as reported in the planner's report were verbal.

## 4.0 Planning History

Under reg. ref. 21/340 an application under section 254 for seating to the front and side of the public house was permitted in May 2021.

The development was to comprise the siting of 8 no. tables and wind screens and the proposal was that the area would operate between 10.30 AM and 11.30 PM with no street furniture to remain in situ after hours. The submitted drawings show the layout of the seating area, in 3 no. zones 2 no. of which were to be to the (eastern) side and one to the front (south).

The conditions attached by the planning authority included:

- Licence applies only to the loading bay along the length of the premises on Crossbridge Street and excludes the public footpath and public road located along the front (southern) façade.
- The licence relates to the placing of 6 tables and seating for a maximum of 24 people and the associated wind breakers / screens and umbrellas.
- Prior to any development a detailed layout and specification to be agreed.
- Permission for one year only.

- Table seating and other structures shall be in place only between 12.00 and 24.00 hours every day and shall be securely stored otherwise.
- The existing footpath and unlicensed area of the public street shall remain unobstructed and open for public use at all times.
- Other details.

Other planning history details are outlined in the planner's report – I consider that these are not of relevance to the issues in this case.

## **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).

The Lady Belle is a protected structure.

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**

- Regarding seating to the front - there was seating there for 60 years and the original seating has been reinstalled.
- The original reinstalled seating complies with planning rules. There is ample room for a double buggy and wheelchair users to remain on the path.
- I have always worked to secure the betterment of the town.
- Since purchasing the pub 30 years ago we have made various improvements and investments including a major investment to install a modern kitchen (120,000 euro) and we hope our outdoor seating area can remain in place.

### **6.2. Planning Authority Response**

No response received.

### **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.

7.2.3. Under section 254(3) a person applying for a licence under this section shall furnish to the planning authority such plans and other information concerning the position, design and capacity of the appliance, apparatus or structure as the authority may require. The planning authority did not request any details other than those submitted by the applicant and I consider therefore that the requirements of this section were met.

### **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. The site is within an ACA and the building is a protected structure. As such it would be expected that the application would be accompanied by sufficient information to enable the planning authority and the Board to make an assessment of the effect of the proposed development on architectural heritage, particularly on the setting of the building and the streetscape.
- 7.3.2. The proposed development is not described in detail in the application submissions or in the appeal. The planning authority determination that the application refers only to the southern side of the premises is not supported, in my opinion, by the facts of the case. The site layout presented appears to indicate that the public area around both facades would be used as an outdoor dining area and no detail is presented regarding the colour, materials and scale of the street furniture. As such there is insufficient information to enable the Board to determine that the proposed development would not detract from the character of the protected structure while the street furniture is in situ or that the proposed development would be acceptable in terms of its visual amenities and effect on the streetscape.
- 7.3.3. My conclusion is that a grant of permission for this street furniture licence may be contrary to the development plan provisions relating to architectural heritage and further information on this aspect of the proposed development could be requested. However as discussed below there are other substantive reasons for refusal based on the decision of the planning authority. For that reason I do not propose to further address architectural heritage.

### **7.4. Safety and Convenience of Road Users**

- 7.4.1. The proposed development would directly impede the use of the footpath by pedestrians. In particular the location of structures within the public area to the front of the premises would constitute a haphazard form of development and would result in pedestrians being forced to use the public road thus bringing them into conflict with vehicles. The effect on wheelchair users and the elderly would be to result in



significant inconvenience and potential safety concerns. The proposed use of this area for outdoor dining in the manner proposed is not acceptable.

- 7.4.2. I note that the planner's report addresses the planning history including the grant of permission during the pandemic for use of the parking lay-by. I have carefully examined the application and appeal details and have cross referenced the hard copy with the Council's website. I have found no information to support the conclusion presented in the planner's report that the applicant is not seeking permission to use the area to the east of the public house. Equally, however, I consider that there is some lack of clarity relating to the nature and extent of the proposed development.
- 7.4.3. Having regard to the current arrangements in place and the application and appeal submission I consider that the application for a licence for street furniture should be refused on the basis that it is disorderly development which interferes with the use of the public footpath by pedestrians.

## **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, including those raised above. For completeness I add further comments below.
- 7.5.2. The number and location of existing appliances, apparatuses or structures on, under, over or 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. I consider that notwithstanding the number of nearby public houses / cafes with outdoor seating areas at Grattan Square this site is distinctly separate and the potential for over-concentration of street furniture / outdoor licenced premises can be ruled out as a material planning issue.
- 7.5.3. In overall terms the placing of street furniture at prominent positions within the public footpath would, having regard to the effect on pedestrian mobility, not be in accordance with the proper planning and development of the area.
- 7.5.4. I conclude that a grant of a licence in this case would establish a most undesirable precedent and that permission should be refused.

## **8.0 Appropriate Assessment Screening**

- 8.1. 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.

## **9.0 Recommendation**

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

### **Reasons and Considerations**

Having regard to the location of the proposed development at the junction of two public roads and within the public footpath it is considered based on the information presented with the application and appeal that the proposed development would constitute a disorderly form of development, which would interfere with the free and safe movement of pedestrians and 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.

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Mairead Kenny  
Planning Inspector

16 April 2024