



An
Bord
Pleanála

Inspector's Report

ABP-316914-23

Development	Section 254 Licence for 28 chairs with 12 tables.
Location	Note Bar, 26 Fenian Street, Dublin 2
Planning Authority	Dublin City Council South
Planning Authority Reg. Ref.	SF686
Applicant(s)	Ahmad Fakhry
Type of Application	Section 254 Licence.
Planning Authority Decision	Refuse
Type of Appeal	First Party
Appellant(s)	Ahmad Fakhry
Observer(s)	None.
Date of Site Inspection	02.08.2023
Inspector	Fiona Fair

1.0 Site Location and Description

1.1. The subject site is located within the carriageway on the western frontage of the Note Bar Bistro, at 26 Fenian Street, Dublin 2. The outdoor seating area (5m x 4.65m – 24 sq. m) is located between Fenian Street and Denzille Lane. Zebra barriers and bollards were put in place around the seating area and the seating area availed of a Covid Licence. The seating area comprises 4 long tables and 8 benches.

2.0 Proposed Development

2.1. This is an application for a licence to place 4 long tables and 8 benches / an outdoor seating area within the carriageway at the Note, Bar Bistro, 26 Fenian Street D2.

- The seating area is described as 6m in length and 4.65m in width (24 sq. m).
- The seating area perimeter, comprising zebra barriers and bollards, is an existing structure, put in place, at this location by the DCC Covid – 19 mobility team.

3.0 Planning Authority Decision

3.1. Decision

The Chief Executive Managers Order MO No. OCR SF 105/23 (dated 30.03.2023) states:

An application for annual street furniture licence to place street furniture outside, on the public footpath outside Note, 26 Fenian Street, Dublin 2 be refused on the grounds that the positioning of seating within the carriageway at this location is not considered appropriate.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planners report states: The provision of street furniture within the carriageway during the pandemic may have been acceptable however with business and traffic

levels back to normal, it is no longer considered appropriate to provide seating within the carriageway.

The PA has concerns with the visual impact of the proposed seating area, the zebra barriers and the bollards within the streetscape and therefore object to the granting of a licence for this outdoor seating area.

3.2.2. Other Technical Reports

Fire Prevention Officer: Report states:

Further information requested regarding the combustibility of materials used to construct the outdoor seating area.

Transportation Planning Division: Report states:

There are concerns regarding the safety and proximity of the temporary seating area to live traffic and vehicular entrances at this location. It is recognised that there may be potential to create a permanent solution in this area and create a more pedestrian scale environment however this is beyond the scope of this licence. While the provision of street furniture within the carriageway during the pandemic may have been acceptable in the context of outdoor only dining and little or no traffic, with business and traffic levels it is no longer considered appropriate to provide seating within the carriageway. Therefore, it is recommended that the application is refused.

3.3. Prescribed Bodies

- None Received

3.4. Third Party Observations

- There are two emails on the file objecting to the granting of a licence for the outdoor seating at this location on grounds of nuisance, noise pollution, traffic hazard and disruption, pedestrian safety and cigarette smoke permeation to local residents. The names and address of objectors are redacted.

4.0 Planning History

- None Relevant.

5.0 Policy Context

Development Plan

5.1.1. I note the planners report on file refers to the Dublin City Development Plan 2016. However, the City Development Plan has changed and the Dublin City Development Plan 2022 – 2028 is the current pertinent statutory Plan.

5.1.2. Subject site is located on un-zoned lands with lands to the north zoned Z4.

Section 14.3.2 states: “Unzoned Lands. Certain small areas of land within the city are unzoned or not covered by a specific zoning objective. These lands are illustrated in white on the zoning maps accompanying the plan and usually correspond with the location of the city’s roads, bridges, train lines, or other key infrastructure installations. Development proposals in respect of these unzoned lands will be considered in accordance with the policies and objectives of the plan. Regard will also be had to their compatibility with adjacent land-uses and zonings”.

5.1.3. Land-Use Zoning Objective Z4: Key Urban Villages and Urban Villages with the zoning objective, ‘To provide for and improve mixed-services facilities’.

5.1.4. Relevant sections and policy objectives with respect to the public realm, tourism and street furniture is set out in Chapter 4 ‘Shape and Structure of the city and Chapter 7 The City Centre, Urban Villages and Retail.

5.1.5. Also the following sections are of relevance:

Section 15.14.12 Licence Premises

Matters that shall be taken into account by the planning authority in assessing planning proposals for these uses and extensions to such uses include, but are not limited to the following:

The amenity of neighbouring residents and occupiers.

- Hours of operation.
- Traffic management.
- Shop frontage treatment and impact on streetscape.
- Proposed signage

Section 5.2.5 Restaurants

Cafes / Restaurants

CCUV30 To promote and facilitate the provision of cafés / restaurants in the city and support their role in making the city more attractive for residents, workers, and visitors and in creating employment.

Outdoor Dining

CCUV32 Proposals for outdoor dining / trading from premises extending into the street will be supported where they would not harm local amenity or compromise pedestrian movement, accessibility needs or traffic conditions.

Night Time Economy

CCUV35

To support and facilitate evening / night time economy uses that contribute to the vitality of the city centre and that support the creation of a safe, balanced and socially inclusive evening / night time economy.

5.2. Natural Heritage Designations

5.3. The site is not located within or adjacent to a Natura 2000 site.

5.4. EIA Screening

5.5. The proposed development is not of a type that constitutes an EIA project and environmental impact assessment is not required.

6.0 The Appeal

6.1. Grounds of Appeal

A First Party appeal has been submitted by Ahmad Fakhry. It is summarised as follows:

- The out door dining space is critical to the business.

- It in association with the outdoor space granted to ‘the space between’ neighbouring property enlivens this part of the city.
- The outdoor dining use was granted a licence during Covid and included two car parking spaces to the north of the building.
- While there has been some increase in traffic this is during the morning peak.
- The outdoor space is proposed to operate between the hours of 5 pm – 10 pm Wednesday – Friday and during the weekend, when traffic is particularly quiet from 12pm – 10 pm.
- This carriageway space is an exception.
- Willing to add additional high viz or striped lines if increased visibility is needed.
- Willing to include tall planters on the corners to improve visual impact of the space.
- Frustrated at having to wait 4 months for a decision.
- Open to an oral hearing if necessary.
- Photographs included.

6.2. Applicant Response

- None Relevant.

6.3. Planning Authority Response

- None on file.

6.4. Observations

- None Received.

6.5. Further Responses

- None Relevant

7.0 Assessment

7.1.1. The proposed development is brought forward under section 254(1) of the Planning and Development Act 2000 (as amended). In their consideration of the development, under section 254(5) of the Act, the Board is required to have regard to:

- a. the proper planning and sustainable development of the area,
- b. any relevant provisions of 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.

7.1.2. Having regard to these requirements, local and national planning policy, the application details, the appeal submitted, all other documentation on file and my inspection of the site, I consider that the main issues for this appeal relate to:

- **The Proper Planning and Sustainable Development of the Area, Zoning and Compliance with Policy**
- **The Convenience and Safety of Road Users Including Pedestrians.**
- **Appropriate Assessment.**

7.2. **The Proper Planning and Sustainable Development of the Area, Zoning and Compliance with Policy**

7.2.1. In terms of zoning, the site is located within the carriageway to the western frontage of the Note Bar and Bistro, this areas has an unclassified designation within the Dublin City Development Plan 2022 – 2028. Lands immediately adjoining are zoned 'Z4' To provide for and improve mixed-services facilities. Outdoor seating is not listed as either a 'Permissible Use' or 'Open for Consideration Use' in the land use zoning, chapter 14, of the Dublin City Development Plan 2022 -2028.

7.2.2. As set out under Development Plan Policy section 5.0 of this report above, outdoor dining and night time economy are encouraged within the city. The following policies set out in the DCC Development Plan are of significance.

- Outdoor Dining CCUV32 Proposals for outdoor dining / trading from premises extending into the street will be supported where they would not harm local amenity or compromise pedestrian movement, accessibility needs or traffic conditions.
- Night Time Economy CCUV35 To support and facilitate evening / night time economy uses that contribute to the vitality of the city centre and that support the creation of a safe, balanced and socially inclusive evening / night time economy.

7.2.3. I note that “Note” premises, is in use, as a bar and bistro, I note the number of tables and hours of operation proposed 17.00 until 22.00 pm (Wednesday - Friday); 12:00 to 22.00 hrs (weekends)). There have been objections to the proposal from surrounding premises, names and addresses are redacted from emails to DCC attached to the file. I note the city location and surrounding uses which comprise, residential, offices, a hotel, pubs and restaurants, peppered with other commercial premises. There is one other outdoor seating area in the vicinity. The applicant submits that there were previously granted a licence for the outdoor dining area at this location during the covid – 19 pandemic. It is argued that the outdoor seating area brings life to this part of the city, enlivens it and is necessary for business purposes and patrons.

7.2.4. Overall, I consider the extension to the useable area of the public house / bistro currently on site, in the form of an outdoor seating area for customers to be acceptable in principle at this location, subject to it not compromising the convenience and safety of road users including pedestrians.

7.3. **The convenience and safety of road users including pedestrians.**

7.3.1. I note the Chief Executive Managers Order MO No. OCR SF 105/23 (dated 30.03.2023) to refuse the licence application on the grounds that “the positioning of the seating within the carriageway at this location is not considered appropriate”. This decision is based upon the Transportation Planning Division report and the Planning Department reports as set out in section 3.0 of this report above.

7.3.2. The Transport Planning Division Report concludes that:

“There are concerns regarding the safety and proximity of the temporary seating area to live traffic and vehicular entrances at this location. It is recognised that there may be potential to create a permanent solution in this area and create a more pedestrian scale environment however this is beyond the scope of this licence. While the provision of street furniture within the carriageway during the pandemic may have been acceptable in the context of outdoor only dining and little or no traffic, with business and traffic levels it is no longer considered appropriate to provide seating within the carriageway.”

- 7.3.3. Regard is had to the applicant’s argument that this proposed seating area was previously granted a licence and operated successfully during Covid 19 pandemic. However, the transportation report raise significant material issues which the first party has failed to address. The street frontage comprises a carriageway hardstanding. I cannot agree with the argument by the first party that this situation is unique and acceptable in this instance. To permit a licence application on the carriageway hardstanding post covid, with attendant vehicular, cyclist and pedestrian traffic increase would set a negative precedent and would in my opinion not comply with safety requirements and give rise to a traffic safety hazard.
- 7.3.4. Having carried out a site visit and reviewed the information and submissions on file I concur with the Transport Planning Division and the Planning Department that placing of an outdoor seating area as proposed in the middle of the carriageway is not appropriate. There is potential for conflict and to confirm the licence would give rise to a hazard to vehicles, pedestrians and users of the street furniture would also be at risk.

7.4. Appropriate Assessment

- 7.4.1. Having regard to the minor nature of the development, its location in a serviced urban area, and the separation distance to any European site, no Appropriate Assessment issues arise, and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

It is recommended that the Board directs the planning authority to Refuse the licence subject to the following reason and consideration:

9.0 Reasons and Considerations

1. Having regard to consideration of the development, under section 254(5) of the Planning and Development Act 2000, as amended, it is considered that the proposal to place street furniture in the centre of the carriageway to the front of 'Note' Bar and Bistro at 26 Fenian Street as per the layout in the submitted 'Out Door Seating Area' that the proposal would compromise the convenience and safety of road users including pedestrians, vehicles, cyclist's and patrons / users of the street furniture. The proposed development would, therefore, not be in accordance with the proper planning and sustainable development of the area.

Fiona Fair

Senior Planning Inspector

03.09. 2023