



An
Bord
Pleanála

Inspector's Report

ABP-317097-23

Development	Section 254 Street Furniture Licence for outdoor seating on the carriageway.
Location	28 Fenian Street, Dublin 2
Planning Authority	Dublin City Council South
Planning Authority Reg. Ref.	SF722
Applicant(s)	David Smith c/o The Space Between
Type of Application	Section 254 Licence.
Planning Authority Decision	Refuse
Type of Appeal	First Party
Appellant(s)	David Smith c/o The Space Between
Observer(s)	None
Date of Site Inspection	03 rd September 2023
Inspector	Lorraine Dockery

1.0 Site Location and Description

- 1.1. The subject site is located within the carriageway to the front of The Space Between, 28 Fenian Street, Dublin 2. The outdoor seating area is located on the south of Fenian Street, close to its junction with Denzille Lane. A similar outdoor seating area, associated with The Node bar, is located opposite.
- 1.2. This is an area characterised by a number of uses.

2.0 Proposed Development

- 2.1. This is an application for a licence to place 3 tables and 12 chairs on an area of public roadway measuring a stated 14.16m² outside The Space Between, 28 Fenian Street, Dublin 2.
 - The seating area is stated as having an overall length of 9m (tapered width) and 2m in width. Table dimensions are 600mm in width.
 - The perimeter of the seating area comprises zebra barriers, acting as planter beds- currently in place.
 - Hours of operation- 7am-7pm

3.0 Planning Authority Decision

3.1. Decision

The Chief Executive Managers Order MO No. OCR SF 104/23 (dated 30/03/2023) states:

An application to place street furniture outside The Space Between, 28 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

Planner's Report: None on file

3.2.2. Other Technical Reports

Fire Prevention Officer:

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

Transportation Planning Division: Recommends refusal

Notes that the seating area availed of a Covid licence and that zebra barriers and bollards were put in place at this location by the DCC Covid Mobility Team.

Expresses concerns regarding the safety and proximity of the temporary seating area to live traffic and vehicular entrances at this location. 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.

3.3. Prescribed Bodies

None Received

3.4. Third Party Observations

There are two redacted emails on the file objecting to the granting of a licence for the outdoor seating at this location on grounds of traffic hazard and disruption, pedestrian safety and amenity concerns.

4.0 Planning History

No relevant history

5.0 Policy Context

Development Plan

The Dublin City Development Plan 2022 – 2028 is the operative statutory Plan.

Zoning: ‘Objective Z5’ which seeks ‘To consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity’.

The site is located within a Conservation Area

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.

The following policies are also of relevance:

Policy 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.

Policy 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.

5.1. Natural Heritage Designations

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

5.3. EIA Screening

5.4. 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 David Smith c/o The Space Between and is summarised as follows:

- Space in front of building has always been used for parking, therefore the conversion to a functional outdoor area is using the same footprint as has always been but in a more positive and collectively valuable use.
- Very little traffic on this stretch of roadway as it is flanked on both sides with major thoroughfares connecting the north and south of city; usage is therefore significantly lower than one would expect
- Aspirations to transform it into a holistic, calm contemporary environment
- Seating area is consistent with natural flow of oncoming traffic from both directions
- Boundary line of outdoor seating area is consistent with parking bay boundary of neighbouring building
- Considers location to be a safe placement for such a use; transformative for city areas is the provision of such outdoor seating areas
- Impacts commercial viability of business and quality of neighbourhood
- USB included
- Oral hearing requested

6.2. Applicant Response

N/A

6.3. Planning Authority Response

None

6.4. **Observations**

None

6.5. **Further Responses**

None

7.0 **Assessment**

7.1 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.

7.2 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
- Convenience and safety of road users including pedestrians.
- Appropriate Assessment

7.3 I note the request for an oral hearing. In this instance, I do not consider such an oral hearing necessary. I have undertaken a visit of the site and its environs. Together with the site visit, I consider that there is adequate information on file for me to compressively assess this licence application.

Proper Planning and Sustainable Development of the Area, Zoning and Compliance with Policy

- 7.4 The site is located within the carriageway to the front of The Space Between, 28 Fenian Street, Dublin 2. The area is zoned 'Objective Z5' City Centre in the operative City Development Plan, which seeks to 'consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity'. 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.
- 7.5 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 and I note a number of policies in this regard including Policy CCUV32 (outdoor dining) and Policy CCUV35 (Night-Time Economy).
- 7.6 I note the use of the premises as a yoga hub with other uses, the extent of the outdoor seating area (3 tables, 12 chairs) and hours of operation proposed (7am-7pm). I note that there were objections to the planning authority to the proposal from surrounding residents. I note the city location and surrounding uses which include residential, offices, hotels, bars and restaurants. There is one other outdoor seating area in the vicinity (concurrent s.254 appeal to ABP (ABP- 316914-22) at 26 Fenian Street). I note that the applicant was previously granted a licence for the outdoor dining area at this location during the Covid pandemic. I note the argument put forward by the first party including the volume of traffic, the impacts on his business and the positive impacts on visual amenity.
- 7.7 In principle, I do not have issue with the provision of the outdoor seating area at such city centre locations from a visual amenity viewpoint and I concur with the appellant that such outdoor seating areas can add vibrancy and vitality within a contemporary city centre location. I would welcome in principle the provision of such uses, in appropriate locations. However this opinion is on the assumption that any such seating area does not compromise the convenience and safety of road users including pedestrians.

The convenience and safety of road users including pedestrians.

- 7.8 I note the Chief Executive Managers Order No. OCR SF 104/23 (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 as set out in section 3.0 of this report above.

- 7.9 I note the conclusion of the Transport Planning Division Report which raises concerns regarding the safety and proximity of the temporary seating area to live traffic and vehicular entrances at this location. While they recognise that there may be potential to create a permanent solution in this area and create a more pedestrian scale environment, it is acknowledged that this is beyond the scope of this licence. The report continues by stating that 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.
- 7.10 I have had regard to all of the information before me and while I acknowledge the points put forward by the first party appellant in this regard, I too have concerns regarding the location of the seating area relative to live traffic. Traffic levels during the Covid pandemic were significantly lower than they currently are. I am not satisfied that, given the location of the seating area on the actual carriageway, that pedestrian safety will not be compromised. I also have concerns regarding the setting of a negative precedent in other such instances.
- 7.11 Having carried out a site visit and reviewed the information and submissions on file, I concur with the opinion of Dublin City Council that the placing of an outdoor seating area as proposed at this location is not appropriate and represents a pedestrian safety hazard in my opinion. There is potential for conflict and to confirm the licence would give rise to a hazard to vehicles and pedestrians, while the users of the street furniture would also be at risk.

Appropriate Assessment

- 7.12 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 Recommendation

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

9 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 The Space Between at 28 Fenian Street as per the layout in the submitted documentation, 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.

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.

Lorraine Dockery

Senior Planning Inspector

03rd September 2023