



An  
Bord  
Pleanála

## Inspector's Report ABP.317222-23

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<b>Development</b>	Application for street furniture licence under Section 254
<b>Location</b>	'Sweet O'Clock' 18 Liffey Street Upper Dublin 1
<b>Planning Authority</b>	Dublin City Council
<b>Planning Authority Reg. Ref.</b>	SF678
<b>Applicant(s)</b>	Erol Basak
<b>Type of Application</b>	Section 254 Licence Street Furniture Licence for Seating Area
<b>Planning Authority Decision</b>	Refuse Licence
<b>Type of Appeal</b>	First Party v Refusal of Licence
<b>Appellant(s)</b>	Erol Basak
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	11 <sup>th</sup> September 2023
<b>Inspector</b>	Mary Kennelly

## **1.0 Site Location and Description**

- 1.1.** The site is located in Dublin City Centre on Liffey Street Upper, which connects Henry Street and Mary Street to Abbey Street. Liffey Street Upper is a relatively narrow street (stated width of 6.5 metres) which is primarily retail in use. There is a mix of uses with mainly shops and cafés at ground floor level. There is an entrance to Arnotts' Department Store and to Marks and Spencers from Liffey Street Upper at the southern end of the street. The Luas runs along Abbey Street Middle and Abbey Street Upper, with the Jervis Street Stop located on the latter, just around the corner from Liffey Street Upper.
- 1.2.** The site is located at the northern end of Liffey Street Upper, close to the junction with Henry Street/Mary Street. It is located between IMEND and ALDO. The ground floor of the premises is in use as a café. The shopfront has a centrally located entrance which is recessed behind the glazed shopfront panels.
- 1.3.** At the time of my inspection (10<sup>th</sup> September 2023), Liffey Street Upper was in the process of being repaved with granite paving blocks. The area immediately outside the shopfront had been repaved but the area in the centre of the street opposite the café was still cordoned off and partially completed. A raised masonry planter box had been erected outside ALDO which extended to outside the Sweet O'Clock café. Photographs are on the file.

## **2.0 Proposed Development**

- 2.1.** Permission is sought for the establishment of street furniture on the public footpath outside the Sweet O'Clock Café situated at 18 Upper Liffey Street.
- 2.2.** The proposed street furniture would have the following features :-

  - An enclosure comprising 4 no. windbreakers which would be 1500mm in length by 1000mm in height. The windbreakers would have a printed logo.
  - Four tables and eight chairs. The tables would be 600mm x 600mm.
  - 1 display board (no dimensions)
  - Proposed total seating area of 10.5m<sup>2</sup> (5.24m in length x 2m in depth).
  - The proposed hours of operation are 0800 to 22.00 hours.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

- 3.1.1.** The planning authority decided to refuse permission on the 28<sup>th</sup> February 2023 for one reason as follows:

The placement of street furniture on the footpath at this location would leave only 1m clearance which would cause an obstruction to pedestrians and result in pedestrians walking on the road.

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

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

A copy of the application for a Licence under Section 254 is on the file. The application was for “an annual street furniture licence for 4 tables and 8 at the front of the premises on the footpath”. It was stated that the total area would be 10.5sq.m comprising a length of 5.24m and a depth of 2.0m. It was noted that there were no objections from the Fire Dept subject to the caveats outlined in their report being appended as conditions to the licence. However, it was noted that the Roads and Traffic Division had recommended refusal as there would be only 1 metre clearance on the public footpath which it was considered would cause an obstruction to pedestrians and result in people walking on the road.

#### **3.2.2. Other Technical Reports**

**Dublin Fire Service (10/11/22)** – no objection in principle provided that certain caveats, as outlined in Appendix 1 attached to the report are appended as conditions to the licence and are adhered to by the applicant. These included requirements that the placement of furniture is not to extend beyond the footpath onto the roadway and that the width of the roadway was to remain as a 3.5m clearway at all times for Emergency Services vehicle access.

**Transportation Planning Division (17/10/22)** – it was noted that Liffey Street Upper has a mix of commercial units with a high daily footfall due to its proximity to Henry Street, Jervis Street shopping Centre and a Luas Stop. The street in front of the premises was stated to be 6.5 metres in width and the footpath as 3.0m in width. It

was further noted that informal on-street parking occurs on the street as there are no parking restrictions in place, and that the street is also used as a loading area for some of the retail units in the vicinity.

It was noted that the proposed development would occupy 2 metres of the width of the footpath, thereby leaving only 1 metre for pedestrian movement. It was considered that the placement of street furniture on the footpath at this location would cause an obstruction and result in pedestrians walking on the road. Having regard to these matters and that the proposed development would take more than 50% of the public footpath in a high footfall area, it was recommended that the licence be refused.

### **3.3. Third Party Observations**

None.

## **4.0 Planning History**

**3908/21 – 18 Liffey Street Upper** - Permission granted on 21/04/22 for change of use from retail shop to restaurant.

## **5.0 Policy Context**

### **5.1. Dublin City Development Plan 2022-2028**

**5.1.1.** Dublin City Development Plan 2022-28 came into effect on the 14<sup>th</sup> December 2022.

**5.1.2.** The site is zoned **Z5 City Centre** for which the objective is to consolidate and facilitate the development of the central area and to identify, reinforce, strengthen and protect its civic design character and dignity. Liffey Street Upper is a **Category 2 Shopping Street** and Henry Street is a Category 1 Shopping Street.

**5.1.3. Chapter 7 – City Centre, Urban Villages and Retail** – includes vision to make retail centres into attractive and vibrant urban areas offering more space and comfort for pedestrians, a high-quality public realm, amenities, active travel opportunities etc. (7.1). One of challenges identified is ‘Retrofitting the Public Realm to Realise Opportunities for Healthy Placemaking’ which involves de-cluttering and re-

purposing the public realm and rebalancing space in favour of pedestrians and cyclists (7.3). The Strategic Approach (7.4) includes the following -

- Recognise the importance of placemaking and an attractive public realm and its contribution to supporting city centre retail, enhanced pedestrian amenities and developing the city centre and urban villages as key destinations.

**5.1.4. Policy CCUV16** seeks to protect the primary retail function of Category 1 streets in the city and to provide a mix of retail and other complementary uses on Category 2 streets. To promote active uses at street level on the principal shopping streets in the city centre retail core having regard to the criteria for Category 1 and 2 streets.

**Policy CCUV30** seeks to promote and facilitate the provision of cafes/restaurants in the city and support their role in making the city more attractive for residents, workers, and visitors and in creating employment.

**Policy CCUV33** states that 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.

**7.5.8 Public Realm** – The City Council is working to provide a city-wide public realm that is distinctive, attractive, safe, accessible, inclusive and well connected. Public realm projects in the city centre are guided by the Dublin City Public Realm Strategy ‘Your City Your Space’ 2012, which sets out guiding principles to support the delivery of a quality public realm which is safe and easy to navigate.

**Policy CCUV37 - Plan Active and Healthy Streets** – To promote the development of a network of active, healthy, attractive, high quality, green and safe streets and public spaces which are inviting, pedestrian friendly and easily navigable.

**Policy CCUV38 – High Quality Streets and Spaces** - To promote the development of high-quality streets and public spaces which are accessible and inclusive in accordance with the principles of universal design, and which deliver vibrant, attractive, accessible and safe places and meet the needs of the city’s diverse communities regardless of age, ability, disability or gender.

## **Chapter 8 Sustainable Movement and Transport**

**8.5.3 Public Realm, Place Making and Healthy Streets** – the P.A. is committed to supporting the public realm enhancements as set out in the 2016 Public Realm

Masterplan for the City Core, the Heart of the City and plans for the Grafton Street quarter.

**Policy SMT8** – To support public realm enhancements that contribute to place making and liveability and which prioritise pedestrians in accordance with Dublin City Council’s Public Realm Strategy (‘Your City – Your Space’), the Public Realm Masterplan for the City Core (The Heart of the City), the Grafton Street Quarter Public Realm Plan and forthcoming public realm plans.

## **5.2. Dublin City Public Realm Strategy**

- 5.2.1.** Dublin City Council adopted ‘**Your City, Your Space: Dublin City Public Realm Strategy**’ in 2012 which initially applied to the historical, cultural and commercial core of the city between the canals. This strategy established a series of guiding principles to support the delivery of a quality public realm. These included application of Universal Design principles, achieving ‘Living Streets’ providing opportunities to linger, Improving standards of quality materials, decluttering streetscapes and providing for a modal hierarchy. Since then, the Council has incorporated the principles of this strategy into several other strategies including the ‘**Heart of the City Masterplan**’, which focuses mainly on the city core itself.
- 5.2.2.** The agreed vision for the **Public Realm Strategy** (3.1 of Heart of the City document) is for a **Pedestrian-Friendly Core**, where there is greater balance between pedestrians and vehicles, an expanded pedestrian space and more opportunities for pedestrians to move through the city core. The Masterplan identified the gaps that needed to be filled in order to deliver a unified pedestrian friendly core within the city and the specific and detailed street-by-street list of projects required to deliver this. **Liffey Street Upper Public Realm Project** is included as a Phase I project with key recommendations to improve the public realm, upgrade paving, lighting and furniture.

## **5.3. Natural Heritage Designations**

- 5.3.1.** The site is not situated within any European Sites. There are no designated European Sites in close proximity to the site.

## **5.4. Grounds of Appeal**

**5.4.1.** The first party appeal was submitted by Erol Basak. The main points raised may be summarised as follows:

- The P.A. decision noted that the proposed furniture would leave only 1000mm clearance between the furniture and the edge of the footpath. However, as clearly noted in the application drawings, it is proposed to leave 1210mm on the footpath between the proposed furniture and the edge of the footpath. (Drawing enclosed).
- It is requested that the matter be reconsidered, in light of the above.

## **5.5. Planning Authority Response**

**5.5.1.** The Planning Authority has not responded to the grounds of appeal.

## **6.0 Assessment**

**6.1.** It is considered that the main issues arising from the appeal are as follows:-

- Legislative context / Section 254
- Development Plan Policy
- Public Realm Strategy
- Convenience and safety of road users

### **6.2. Legislative context / Section 254**

**6.2.1.** Section 254(1)(g) of the Planning and Development Act, 2000 (as amended), states that a person shall not erect, construct, place or maintain any other appliance, apparatus or structure which may be prescribed as requiring a licence under this section, on, under, over or along a public road save in accordance with a licence granted by a planning authority under this section.

**6.2.2.** Section 254(6)(a) states that any person may appeal to the Board in relation to the granting, refusing, withdrawing or continuing of a licence. Section 254 (5) states that, in considering an application for a licence, the planning authority, or the Board on appeal, shall have regard to:

- (a) The proper planning and sustainable development of the area,
- (b) Any relevant provisions in 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.

**6.2.3.** I consider the site is along the public road, as defined in section 2(1) of the Roads Act, 1993 (as amended). The site is located on the footpath and a 'footpath' is included in subsection (a) of the definition of 'road'. I therefore consider that section 254 is the appropriate mechanism for the proposed development.

### **6.3. Compliance with Dublin City Development Plan 2022-2028**

**6.3.1.** The Licence application was submitted to the City Council on the 22<sup>nd</sup> September 2022, at which time the Development Plan that was in force was the Dublin City Development Plan 2014. However, a new Development Plan for the City was adopted on the 2<sup>nd</sup> of November 2022 and it became operative on the 14<sup>th</sup> of December 2022.

**6.3.2.** The site is located in the heart of the retail core of Dublin City Centre on a Category 2 Shopping Street, but just 20 metres from Henry Street, which is a Category 1 Shopping Street. These streets are identified as having a very high footfall. There is a strong emphasis in the Development Plan on improving and enhancing the public realm in order to make the city centre more attractive and to encourage people to linger. Liffey Street Upper is located on one of the routes which it is sought to improve in terms of connectivity as it links the southside and northside retail core areas, via the Ha'penny Bridge and Liffey Street Lower and Upper.

**6.3.3.** The provision of outdoor seating associated with a café/restaurant where trading is extended into the street is generally supported in the Development Plan where it would not harm local amenity or compromise pedestrian movement, accessibility needs or traffic conditions (Policy CCUV33). Other related policies seek to promote the creation of active and healthy streets (CCUV37) and high quality accessible and inclusive streets (CCUV38). It is considered that the provision of outdoor seating is therefore considered to be acceptable in principle, provided that it would not undermine the overarching policy objectives of creating pedestrian friendly,



attractive, accessible and safe places which meet the principles of universal design. This will be discussed further below.

#### **6.4. Public Realm Strategy**

- 6.4.1.** There is a comprehensive public realm strategy for the city which is set out in the Heart of the City Masterplan, and which includes a specific project for upgrading the public realm of Liffey Street Upper and Lower as part of the first phase of street projects. I noted when I inspected the site on the 10<sup>th</sup> September 2023, that this project had commenced on the ground. The street is currently undergoing significant construction works which involve the repaving and installation of street furniture, planters etc.
- 6.4.2.** The area outside the café in question has been repaved for the most part but the upgrading works have not yet been completed. Bollards have been placed along the approximate line of the former footpath edge, both the ground levels have been altered and regraded as part of the new design. A large planter comprising a raised stone plinth surrounding a large mound of earth has been placed immediately outside the premises the subject of the licence application. It would appear that the street is likely to be pedestrianised, as bollards have been placed along the junction with Henry Street.
- 6.4.3.** In principle, the pedestrianisation of the street would favour the introduction of the proposed outdoor furniture. However, as no information has been presented regarding the overall design for the upgrade of the street, it is not possible to determine whether the introduction of an outdoor seating area associated with a restaurant would be appropriate or how it would fit in with the new design for the public realm. From a practical viewpoint, the permanent planter that has been placed outside the ALDO retail unit and extends to an is partially outside the front of the subject site, is likely to interfere with the proposals and create a pinch point which would be obstructive to pedestrians. It would also be unlikely to comply with the principles of universal design as it would hinder access for people with mobility issues.
- 6.4.4.** Thus, the public realm upgrade project for Liffey Street Upper, which appears to have commenced following the submission of the appeal against the refusal of the

licence application has significantly altered the street environment. As no information has been presented regarding this project by either of the parties, and as it is not clear what the final design will be for this section of the street, it is considered that the proposed placement of street furniture at this location is likely to be at the very least premature, pending the final layout of the street, and is likely to interfere with the design of the public realm improvements in the vicinity of the restaurant.

## **6.5. Convenience and safety of road users, including pedestrians**

- 6.5.1.** The planning authority refused the licence on the basis that the proposed furniture would result in only 1 metre of footpath remaining, which would obstruct passers-by and necessitate pedestrians going onto the street. The reports on file noted that the street was used for informal parking and deliveries, which meant that it would be dangerous for pedestrians to have to go onto the road. I note that the applicant, in the grounds of appeal, had pointed out that there would in fact be 1.21 metres of footpath available. This is now immaterial as the footpath edge no longer exists. Notwithstanding this, it is considered that a 1200mm passageway would not have been sufficient from a comfort and safety point of view.
- 6.5.2.** From my observations on site, it would appear that the full length of the shopfront (5.24m) would no longer be available for the placement of furniture, or if it was, it would abut the stone planter and make it very difficult, if not impossible, for pedestrians to get through. This would mean that pedestrians would have to walk onto the central section of the roadway. This would be more difficult for people with a wheelchair, walking aid or buggy/pushchair. Although it is quite possible that this roadway may be pedestrianised as part of the public realm works, it would probably be made available to delivery trucks during certain times of the day. Thus, it is not clear that the hazardous nature of the arrangements would be fully addressed, even if it were to be pedestrianised.
- 6.5.3.** It is considered, therefore, that the proposed development would obstruct the public footpath and force pedestrians onto the public road, which would result in potential conflict between pedestrians and vehicles. This would cause considerable inconvenience to pedestrians and would give rise to a traffic hazard and a dangerous environment for pedestrians. This would be inconsistent with the policy approach in the City Development Plan and in the Public Realm Strategy for the city and would

therefore be contrary to the proper planning and sustainable development of the area.

## **6.6. Environmental Impact Assessment**

- 6.6.1.** Having regard to the nature and scale of the development there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

## **6.7. Appropriate Assessment**

- 6.7.1.** The site is not located within or adjacent to any Natura 2000 site. As the use is an established one and as the site is located in an established urban area, on serviced lands, it is considered that no appropriate assessment issues are likely to arise.

## **7.0 Recommendation**

- 7.1.** It is recommended that the licence should be **refused** for the reasons and considerations set out below.

## **8.0 Reasons and Considerations**

Having regard to the provisions of Section 254 of the Planning and Development Act 2000 (as amended), to the nature and extent of the development, to the poor pedestrian environment and restricted footpath width that would result from the proposed placement of the outdoor furniture in the vicinity of the site, it is considered that the proposed development would obstruct the public footpath and force pedestrians onto the public road, thereby causing a potential conflict between pedestrians and vehicular traffic. The Board is not satisfied, therefore, that the proposed placement of street furniture and associated structures at this location would not endanger pedestrian safety and interfere with the free movement of pedestrians in the vicinity of the site, which would give rise to a traffic hazard, and would not be in accordance with the policy objectives of the Dublin City Development Plan 2022-2028 which seek to create high-quality streets and public spaces in the city centre which are accessible and inclusive in accordance with the principles of universal design. The

proposed development would, therefore, 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.

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Mary Kennelly  
Senior Planning Inspector

10<sup>th</sup> September 2023