



An
Bord
Pleanála

Inspector's Report

ABP-318201-23

Development	Section 254 street furniture licence application for an extension area of public carriageway outside 'Devitts Public House'.
Location	'Devitts Public House', No. 74 Lower Camden Street and Pleasant Street, Dublin 2, D02 C642.
Planning Authority	Dublin City Council South.
Planning Authority Reg. Ref.	SF569.
Applicant(s)	'Devitts of Camden Street' (Eoghan and Paul Mangan).
Type of Application	S.254 Street Furniture Licence.
Planning Authority Decision	Refuse.
Type of Appeal	First Party.
Appellant(s)	Devitts of Camden Street (Eoghan and Paul Mangan).
Observer(s)	None.

Date of Site Inspection

1st day of February 2024.

Inspector

Patricia-Marie Young.

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1.0 Site Location and Description

- 1.1. This appeal case relates to the public domain adjoining Devitts Public House, with this public house occupying a corner site on the northwestern side of Lower Camden Street's junction with Pleasant Street and Camden Place, Saint Kevin's, Dublin 2.
- 1.2. At the time of inspection, the Lower Camden Street frontage of Devitts Public House together with a section of the public footpath to the immediate north, i.e., former Ulster Bank premises which is for sale, contained screening, seats and a signage board. Situated alongside the adjoining roadside edge is a signalised crossing and a period cast iron light standard.
- 1.3. There are traffic calming measures at the junction between Lower Camden Street and Pleasant Street. These measures effectively restrict the flow of traffic to one-way traffic flowing westwards from the junction of Lower Camden Street and Camden Place.
- 1.4. The footpath alongside the Pleasant Street frontage of the Devitts Public House is restricted in its width and in a poor condition. The subject premises frontage contains retractable benches. Running alongside the roadside edge there is an indented loading bay which runs alongside most of the roadside edge alongside the subject premises. At the time of inspection this was in use.
- 1.5. There is pay and display parking on Pleasant Street on its northern side and double yellow lines on the opposite side of this street which continue in a westerly direction towards the junction with Pleasant Place.
- 1.6. Camden Street is a vibrant street with a period character containing a mixture of different land uses and a heavy flow of traffic, steady pedestrian footfall and on the day of inspection I observed a moderate flow of cyclists.
- 1.7. Pleasant Street on the other hand is predominantly residential in its character. On the day of inspection there was a modest flow of vehicle and pedestrian traffic along it. Within the vicinity of the site, I observed no street furniture.
- 1.8. I note that the address is given in the submitted application as relating to No. 74 Camden Street Lower but Devitts Public House building is marked No. 78 Camden Street Lower and public maps of this location including OSI maps indicate that the subject premises occupies No. 78 Camden Street Lower.

2.0 Proposed Development

- 2.1. This is an application for a licence is depicted in the accompanying drawings is for an area 2m in width and 13m in length measuring 26m² on which it is proposed to accommodate 5 (800mm diameter) tables with 4 seats each, thus providing seating capacity for 20 people at any one time at the adjoining loading bay area on Pleasant Street for Devitts Public House. The location of this area is located immediately alongside Devitts Pleasant Street elevation with one of the tables and its four chairs located to the west of its secondary door serving the public house. With the other three tables and their four chairs located to the immediate east of the said door and with this linear strip bound by 1.2m high screens that are supported by stainless steel posts include an opening from the adjoining loading bay that lines up with the said door. The licence indicates that they would be in situ between the hours of 10.30 to 24.00.
- 2.2. It is of note that the **proposal was amended** during the Planning Authority's determination and a revised notice (29.04.2022) was issued in its respect with this now proposing five tables of the same diameter each with four chairs with this to be provided in a 2.32m in width and 9.9m in length area of the loading bay (Note: 22.6m²) and with is area on its southern side and part of its eastern as well as western end enclosed by planter box with a 1.6m high see-through screen. Additionally, the drawings indicate that additional railing would be provided to separate footpath user from seating area.
- 2.3. Originally the applicant sought a licence for an area 2.27m in width and 20.39m in length encompassing an area of 46.1m² on which 15 no. tables and 60 chairs were proposed. This area relates to a kerbside loading bay area on Pleasant Street.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The Executive Managers Order No. OCR 208/2023 dated the 27th day of July, 2023, states that:

"ORDER: The application for an annual street furniture licence to place street furniture on the public carriageway to the side of Devitt's on Pleasant Street, be refused on

various grounds including concerns regarding the use of the loading areas for outdoor seating as kerbside loading space is in high demand at this location. A significant number of complaints were also received from residents in the area. For these and the reasons, it is not considered appropriate to grant a Street Furniture Licence at this location.”

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planning Officer’s Report (Dated: 24/03/22) includes the following comments:

- Pleasant Street is predominantly residential comprising of terraces of residential dwellings including Protected Structures and is zoned ‘Z2’ to protect and/or improve amenities of the residential conservation area.
- During Covid 19 it was essential to facilitate outdoor dining and to actively support the hospitality industry.
- The provision of a 46.1m² area that can accommodate 60 people sitting at one time along Pleasant Street is unacceptable having regard to the zoning of the area.
- The Third-Party concerns in relation to noise pollution, disturbance and nuisances that arise from the continued use of this outdoor seating/smoking area is noted. This proposal would exacerbate this issue at this location.
- Previous outdoor licences have been refused at this location.
- There is no clear rationale provided for the continued use of the outdoor space.
- It has not been demonstrated that this development would not result in continuous loss to residential amenity in the area.

3.2.2. Other Technical Reports

Roads & Traffic Planning Division final report dated the 9th day of September, 2022, includes the following comments:

- They recommended a refusal of the original application as follows: *“this division has concerns regarding the use of the loading areas for outdoor seating as kerbside loading space is in high demand at this location. There is also concern regarding the impact of the outdoor seating on the usable pedestrian space adjacent as activity*

associated with the outdoor seating areas appears to overspill onto the footpath and cause an obstruction to pedestrians. The divergence of pedestrians around the seating area is also noted which can detract from the comfort levels of a pedestrian, especially pedestrians with mobility issues."

- Whilst the reduction in tables, chairs and area would reduce the impact on the loading bay it would still remove part of this loading bay in an area where it is considered that there is a high demand for loading space.
- Whilst the provision of street furniture on public road space may have been acceptable during the pandemic in the context of outdoor only dining it is no longer considered appropriate to provide private seating on public roadway as full indoor dining is back to normal. As such the Council should revert to normal practice whereby the privatisation of public areas is not permissible.
- A refusal is concluded upon.

Assistant Chief Fire Officer: No objection, subject to safeguards (16/05/22).

3.3. Prescribed Bodies

3.3.1. None.

3.4. Third Party Observations

3.4.1. Several Third-Party observations were received objecting to this application. The concerns raised in these observations can be summarised as follows:

- The applicants already outdoor seating serving this public house on Camden Street, and they persistently have operated outdoor seating area in breaches of their licences alongside appropriated for their own use additional areas of the adjoining and neighbouring public domain as an extension of their public house business.
- The use of the adjoining and neighbouring public domain has resulted in serious adverse amenity impacts and nuisances for residential properties in the vicinity including noise, litter, anti-social behaviours, use of the public domain for sanitation by patrons, injury from broken glass litter and the like.

- The use of the public domain by the applicant has resulted in blocked and unpleasant access to the adjoining stretch of pedestrian footpath along Pleasant Street as well as at its corner with Camden Street and the pedestrian junctions at these points.
- The outdoor seating and dining space is an eyesore.
- The outdoor seating and dining space often extends beyond the area indicated in this licence and results in blockages and conflicts with other users of the public domain in its vicinity including road users.
- Parking is an issue on Pleasant Street and the applicants often block the loading bay with their vehicles so that when needed the outdoor seating and accommodation of patrons can extend further onto the public domain during busy periods.
- The applicant has bolted permanently tables and screens to the public domain which is not permitted under any licence permitting such use in the past.
- The applicant consistently leaves the outdoor seating furniture in place after permitted hours and does not clear it away.
- The applicant fails to clean up the public domain from its use with several types of litter being an issue and with the litter extending away from this area into the wider streetscape setting.
- The public footpath is unpleasant to use as it is effectively corridor that is in busy times congested with people smoking and drinking.
- Loading Bays are needed to serve businesses in the area.
- Following a Circuit Court case taken against the applicants their alcohol licence was only permitted on the condition that included them not serving or selling alcohol on Pleasant Street.
- No public notice for the making of this licence application was placed on Pleasant Street and the public notice was placed at a location where it was not very visible.

4.0 Planning History

4.1. Site

- **P.A. Ref. No. 3608/12:** On the 12th day of February, 2013, planning permission was **refused** for the replacement of existing timber advertising signage on elevation facing Pleasant Street. New advertising sign will be 1.6m wide x 4.5m high x 180mm deep, internally illuminated with backlit text and logo.
- **P.A. Ref. No. 3536/05:** On the 17th day of August, 2005, planning permission was **granted** for 2 no. retractable awnings with manufacturer's logo fixed to the Camden St. Lower facade and 4 no. retractable awnings with manufacturer's logo fixed to the Pleasant Street façade.
- **P.A. Ref. No. 1012/95:** On the 22nd day of June, 1995, planning permission was **refused** for the change of use of second floor flat to lounge space for Devitts Public House.
- **P.A. Ref. No. 0378/94:** On the 5th day of May, 1994, planning permission was **granted** for change of use of first floor kitchen to lounge & part of second floor flat to kitchen at Devitts Public House.

5.0 Policy Context

5.1. Development Plan

- 5.1.1. The Dublin City Development Plan, 2022-2028, is applicable under which the site adjoins land on its northern side that forms part of a larger parcel of urban land that is zoned 'Z4 – Key Urban Villages/Urban Villages'. The stated land use zoning objective is: *"to provide for and improve mixed-services facilities."*
- 5.1.2. Section 14.7.4 of the Development Plan states that these areas: *"function to serve the needs of the surrounding catchment providing a range of retail, commercial, cultural, social and community functions that are easily accessible by foot, bicycle or public transport; in line with the concept of the 15-minute city"*. It also sets out that proposals for development within these areas should be in accordance with a number of principles in addition to complying with the land-use zoning. These include but are not limited to:
 - Transport: *"Provide improved access to these systems and incorporate travel plans, which prioritise the primacy of pedestrian and cyclist movement and address*

the issue of parking facilities and parking overflow. Ensure that enhanced connectivity and permeability is promoted.”

- Commercial/Retail: *“Promote the creation of a vibrant retail and commercial core with animated streetscapes. A diversity of uses should be promoted to maintain vitality throughout the day and evening.”*
- Built Environment: *“Ensure the creation of high-quality, mixed-use urban districts with a high quality public realm, distinctive spatial identity and coherent urban structure of interconnected streets and child-friendly, accessible public spaces and urban parks. Development should have regard to the existing urban form, scale and character and be consistent with the built heritage of the area.”*

- 5.1.3. In relation to unzoned land Section 14.3.2 of the Development Plan states: *“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.”*
- 5.1.4. The subject loading bay forms part of a red lined hatched area that is designated a Conservation Area with this extending to the north and south of it as well as encompassing either side of Camden Street Lower.
- 5.1.5. Section 11.5.3 of the Development Plan in relation to red lined conservation areas indicate that they are recognised as having *“conservation merit and importance and warrant protection through zoning and policy application.”* It also states that: *“these areas require special care in terms of development proposals. The City Council will encourage development which enhances the setting and character of Conservation Areas.”* The site’s setting forms part of a period urbanscape that contains several Protected Structures.
- 5.1.6. Section 15.14.12 of the Development Plan deals with Licence Premises. It sets out that the following matters will be considered when assessing planning proposals for these uses and extensions to such uses:

- The amenity of neighbouring residents and occupiers.
- Hours of operation.
- Traffic management.
- Shop frontage treatment and impact on streetscape.
- Proposed signage.

5.1.7. Section 15.17.4 of the Development Plan deals with Outdoor Seating and Street Furniture. It states: *“certain uses in the public realm, including elements of street furniture, can lead to problems of visual clutter and to obstruction of public footpaths for pedestrians, in particular people with disabilities. These elements include newspaper stands, telephone kiosks, traffic and bus signs etc. It is an objective of Dublin City Council to control the location and quality of these structures in the interests of creating a high-quality public domain”* and *“all street furniture provided by private operators including retailers, publicans and restaurateurs, etc., and utility companies should be to the highest quality, preferably of good contemporary design avoiding poor historic imitation and respect the overall character of the area and quality of the public realm and be so located to prevent any obstruction or clutter of all footpaths and paved areas including landings”*. It also sets out that in considering applications for outdoor furniture regard will be had to the following:

- Size and location of the facility.
- Concentration of existing street furniture in the area.
- The visual impact of the structure, particularly in relation to the colour, nature, and extent of advertising on all ancillary screens.
- Impact on the character of the streetscape.
- The effects on the amenities of adjoining premises, particularly in relation to hours of operation, noise, and general disturbance.
- Impact on access and visibility.

5.1.8. Chapter 4 of the Development Plan is titled: ‘Shape and Structure of the City’. It includes:

Policy SC2: This policy seeks to develop the city character in a number of ways including *“developing a sustainable network of safe, clean, attractive streets, pedestrian routes and large pedestrian zones lanes” ... “in order to make the city more coherent and navigable”*.

Policy SC5: This policy seeks in part to promote Dublin City Public Realm Strategy 2012.

5.1.9. Chapter 7 of the Development Plan deals with the matter of The City Centre, Urban Villages and Retail. It includes:

Section 7.5.6: *“Food and Beverage Sector / Markets Dublin City has a huge range of food and drink establishments. They play a vital role in supporting the visitor economy (day and evening), providing local employment opportunities and contributing to the city’s vitality.”*

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”*.

Section 7.5.7: Evening and Nighttime Economy

Section 7.5.8: Public Realm

“The quality of the public realm affects how people experience and perceive the city in terms of its attractiveness as a place to live, work and visit as well as influencing a range of health, wellbeing and social factors. The quality of the public realm is, therefore, vital to the liveability and health of the city and to its economic success.”

On the matter of comfort, it states:

“The public realm should be highly accessible and inclusive, designed for the comfort and ease of movement of people. A particular priority must be given to the needs of pedestrians and this would include the need to give pedestrians more space in the public realm / the need to expand the pedestrian network.”

- 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. The aspiration is to encourage walking as the preferred means of movement between buildings and activities in the city.”*
- 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 ...”.*
- Policy CCUV43: *“Public Realm - Key Urban Villages/Urban Villages: To provide environmental and public realm improvements in Key Urban Villages and urban villages around the city”.*
- Policy CCUV44: *“New Development: That development proposals should deliver a high quality public realm which is well designed, clutter-free, with use of high quality and durable materials and green infrastructure. New development should create linkages and connections and improve accessibility.”*

5.2. Design Manual for Urban Roads and Streets (DMURS), 2019.

- 5.2.1. Section 4.2.5 on the matter of ‘Street Furniture’ set out that their provision must be considered as part of the overall design of street and that they should be placed within a designated zone.
- 5.2.2. Section 4.3 deals with Pedestrian and Cyclist Environment and states that: *“studies have found that providing wider and better quality walking facilities can lead to an increase in walking. Well designed footpaths are free of obstacles and wide enough to allow pedestrians to pass each other in comfort.”*
- 5.2.3. Section 4.3.1 deals with Footways, Verges and Strips. It includes Figure 4.34 which sets out a minimum width of 1.8m for two people to pass comfortably in areas of low pedestrian activity; 2.5m being the desirable width for two people to pass comfortably in areas of low to moderate pedestrian activity and 3m as the minimum width for small groups to pass comfortably in areas of moderate to high pedestrian activity.

- 5.2.4. Section 4.4.9 deals with On-Street Parking and Loading. It states that: “*on-street parking and loading refers to spaces that are directly adjacent to and accessible from the main vehicular carriageway.*” It also provides dimensions of a loading bay of 2.8m x 6m to cater for large vans. Facilities for larger vehicles, such as trucks, should be located off-street and the width for general parking spaces as 2.4m.

5.3. Natural Heritage Designations

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

5.4. EIA Screening

- 5.4.1. The proposed development is not of a type that constitutes an EIA project and environmental impact assessment is therefore not required. The nearest Natura 2000 site is located c3.5km to the east of the site and is the South Dublin Bay & River Tolka Estuary SPA (Site Code: 004024) and the South Dublin Bay SAC (Site Code: 000210).
- 5.4.2. Also note that the site is located c0.6km to the north of proposed Natural Heritage Areas: Grand Canal (Site Code: 002104).

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. The First Party’s grounds of appeal can be summarised as follows:
- The subject licence relates to the placing of tables and chairs outside the Pleasant Street frontage of Devitts Public House.
 - A temporary Covid Licence was issued by the Council in respect of this premises, and it expired on the 31st day of March, 2022 (Note: Ref. No. CF0026). This licence related to an area measuring 26m long by 1.5m wide loading bay subject to a minimum clearance of 2m and it accommodated 15 tables with 4 seats at each table providing seating for 60 people at any one time.
 - This proposal was amended and reduced in scope which sought use of half of the loading bay.

- It is assumed that the reason for refusal relates to the loss of a loading bay.
- The introduction of seating areas outside pubs and restaurants was precipitated by Covid 19 but is also part of a wider trend in leisure/entertainment sector whereby seated areas and the enjoyment of food with drink is now much more commonplace with the move towards a more continental style bar culture that has taken root in Dublin.
- The loading area was completely removed for the period of the Covid 19 restrictions and there were no significant problems encountered with the servicing of Camden Street premises that rely on it during that period.
- Following the lifting of the Covid restrictions the Council sought to have some of the loading bay returned and c13m of the loading bay was reinstated leaving a smaller seating area than that which now exists.
- This loading bay is often used as parking for non-commercial vehicles during trading hours.
- The 13 meters length is adequate to accommodate rigid lorries in a city centre context and the double yellow lines remove the potential for obstruction from a parked vehicle at its end.
- There are no significant loading issues on Pleasant Street and the main issue on the street is illegally parked cars.
- Rigid lorries and vans do use Pleasant Street to serve Camden Street properties, but most deliveries are undertaken in the early morning directly from Camden Street and the side streets between 9am to 12pm. After this time loading largely ceases.
- Pleasant Street is a one-way system, and the street furniture has no negative impact on access to it.
- There are no other seating areas on Pleasant Street and none within the immediate vicinity on Camden Street.
- The location is just off the busy urban village of Camden Street whilst having the protection of being a side street.
- The complaints referred to by the Council pre-date the outdoor seating area.

- A reasonable balance needs to be struck between businesses and those residing in the area.
- Pleasant Street is not predominantly residential but reflects the 'Z4' land uses of the area.
- Residential land uses are at a distance from the seating area.
- The reduced application will reduce the level of noise and disturbance from the informal arrangement of patrons smoking on the street.
- The applicants manage the footpath to ensure that patrons do not block the passing pedestrian flow or cause any disturbance.
- Businesses in the area are supportive of the outdoor seating area.
- The Board is requested to overturn the decision of the Planning Authority and to allow the continuation of the outdoor seating area in its reduced form for a period of 3 years and subject to the same terms of the Covid Licence previously granted by the Council for the larger area.

6.2. Planning Authority Response

- 6.2.1. The Planning Authority response notes to the Board that they have received numerous complaints, objections and observations from the public who live in the vicinity of the premises.

6.3. Observations

- 6.3.1. None.

7.0 Assessment

7.1. Introduction

- 7.1.1. The proposed development is brought forward under section 254(1) of the Planning and Development Act, 2000 (as amended), and it specifically relates to an application for a street furniture licence under Section 254 of the Planning and Development Act, 2000, as amended to place street furniture on the public domain of Pleasant Street. With this as amended consisting of 5 No. 800mm diameter tables and 20 stools placed

in a 9.9m in length and 2.32m in width area, i.e., 22.6m² total area, of an existing loading bay that runs alongside the footpath edge of Pleasant Street Devitts Public House frontage to the west of this Pleasant Street's junction with Camden Street Lower and Camden Place, in Dublin 2, thus leaving a c10m length of loading bay remaining to the west of this proposed outdoor seating area. It is also proposed to enclose this area by planter boxes with 1.6m high see through screens on its southern and part of its eastern as well as western ends. It is further proposed to provide railings to separate the seating area from the pedestrian footpath running in between it and the Pleasant Street frontage of Devitts public house. At the northwestern corner and northeastern corner there are gaps indicated to allow for access into this area from the adjoining pedestrian footpath.

- 7.1.2. This licence was refused by Dublin City Council on the 27th day of July, 2023 (See: Section 3.1.1 Executive Managers Order No. OCR 208/2023) on the grounds of loading bay areas in this area is in high demand and the significant number of complaints received from residents in the area. For these reasons, the City Council considered it inappropriate to grant a street furniture licence.
- 7.1.3. The Applicant seeks that the Board overturn the decision of the Planning Authority under the provisions of Section 254(6)(a) of the said Act which states that any person may appeal to the Board in relation to the granting, refusing, withdrawing, or continuing of a licence. The basis for their appeal is that a larger scale outdoor seating area was permitted on this loading bay in the past for the applicants use. They also contend that it would not give rise to any undue residential disamenity, the use would not conflict with the times where most loading occurs, it would not give rise to any undue traffic inconvenience and/or road safety issue through to it is a type of development that is consistent with relevant local planning provisions.
- 7.1.4. I also note that the Board received a response from the Planning Authority's Street Furniture Unit to this appeal which notes to the Board that they have received numerous complaints, objections, and observations from members of the public who live in the vicinity of the premises to this development and object to the proposed development on several grounds. In this regard, I note that copies of these Third-Party submissions have been provided by the Planning Authority to the Board the content of these written submissions as well as the photographs also provided with them, I have had regard to. Copies of these submissions are attached to file and a

summary of their substantive points are provided under Section 3.4 of this report above.

7.1.5. I am cognisant that Section 254(5) of the said Act, states that, in considering an application for a licence, the Board on appeal, shall have regard to the following matters:

- 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.

7.1.6. Having regard to these requirements, relevant planning provisions (Note: Section 5 of the report above), the application details, all other documentation on file and my inspection of the site, I consider that the key issues for this appeal case can be considered under the following broad headings:

- Compliance with Planning Provisions
- Other Matters Arising

7.1.7. The matter of '*Appropriate Assessment*' also requires examination. This matter I propose to deal with separately at the end of this assessment below.

7.2. Compliance with Planning Provisions

7.2.1. The loading bay for which this application relates to an indented section of public road as defined under section 2(1) of the Roads Act, 1993 (as amended), and is an area of unzoned land not covered by a specific zoning objective under the Dublin City Development Plan, 2022-2028. In such circumstances Section 14.3.2 of the Development Plan states that development proposals in respect of these unzoned lands will be considered in accordance with its policies and objectives as well as its compatibility with adjacent land uses and zonings.

7.2.2. In this regard the site lies in close proximity to a parcel of urban land zoned '*Z4*' under the said Development Plan. The stated land use zoning objective for such lands is: "*to provide for and improve mixed-services facilities*" and I note that outdoor seating is not

listed as either a 'Permissible Use' or 'Open for Consideration Use' in the land uses listed for 'Z4' zoned land under Section 14.7.4 of the said Plan.

- 7.2.3. The adjacent land use to which this appeal case relates is a public house, with this use being a long-established historic use and is called 'Devitts Pub' as well as 'Devitts of Camden Street'.
- 7.2.4. I note that 'Public House' is a permissible land use listed under Section 14.7.4 of the Development Plan with the surrounding land zoned 'Z4' accommodating a mixture of land uses associated with its designation as a Key Urban Villages/Urban Village land use zoning within the city. Such areas are recognised as providing a range of retail, commercial, cultural, social and community functions that are easily accessible by foot, bicycle, or public transport. With this in line with the concept of the 15-minute city. This mixed land use character changes as one journeys westwards from Pleasant Street's junction with Camden Street Lower to being a streetscape scene that I concur with the Planning Authority is one that is predominated by residential land uses.
- 7.2.5. Section 14.7.4 of the Development Plan sets out a number of principles for proposed developments on 'Z4' zoned land. Including ensuring high quality, accessible public realm through to ensuring the primacy of pedestrian movements as well as the promotion of enhanced connectivity and permeability. This approach is also reflected under Policy CCUV38 of the Development Plan. With this policy seeking to promote the development of high-quality streets and public spaces that are both accessible and inclusive.
- 7.2.6. In addition to the above I note that Policy CCUV32 of the Development Plan supports outdoor dining and trading from premises extending into the street where they would not harm local amenity or compromise pedestrian movement, accessibility needs and/or traffic conditions. With Section 15.17.4 of the Development Plan on the matter of outdoor seating and street furniture also raising the concern that they can lead to problems of visual clutter and obstruction. It therefore sets out that it is an objective of the Council to control the location and quality of these structures in the interests of creating a high-quality public domain. It also sets out that in considering applications for outdoor furniture regard will be had to a number of factors including the size and location of the facility; the concentration of existing street furniture in the area; the visual impact of the structure; the impact on the character of the streetscape setting

through to the effects it could have on the amenities of adjoining premises, particularly in relation to hours of operation, noise, and general disturbance.

- 7.2.7. Having regard to the planning history of the subject public house an examination of this suggests that it operates over three floor areas with a floor area of 425m² (Note: P.A. Ref. No. 3608/12). Additionally, publicly available information on its website states that it is open 7 days a week between the hours of 10am to 12:30am Monday and Tuesday; 10am to 1:00am Wednesday and Thursday; 10am to 1:30am Friday to Saturday and 10am to 12:30am on Sundays. The details provided on its website sets out that during its operational hours it offers a full menu which consists of Breakfast, Lunch and A La Carte. With Breakfast available between 10am to 12pm Monday to Sunday; Lunch available between 12pm and 2:30pm Monday to Friday; A La Carte between 2:30pm to 9pm Monday to Friday and on Saturdays, Sundays as well as Bank Holidays from 12pm to 9pm.
- 7.2.8. At the time of my site inspection, I observed that the area to which this application relates contained no tables, seats nor was it cordoned off. It did however contain two timber retractable benches attached to its Pleasant Street frontage with the pedestrian footpath for most of its length of this frontage being circa 1.7m in its width, poorly surfaced and having a downward sloping gradient towards its kerbside edge. Immediate alongside this footpath there is an indented loading bay that at the time of inspection accommodated a parked van and car. The surface of this loading bay from what was visible also shows damage and patching.
- 7.2.9. I also observed that the Camden Street Lower frontage of the subject premises contained a timber folded sign at the main entrance to the Public House and in close proximity to the north an area of the pedestrian footpath was cordoned off. With this area also extending to part of the pedestrian footpath immediately to the north and outside of a former Ulster Bank building. Within this space there were three tables, 9 stools and an attached to the front elevation was a retractable timber bench.
- 7.2.10. I observed no other outdoor seating and tables in the immediate vicinity of the site including to the front of the café use located to the west of the site on Pleasant Street.
- 7.2.11. Before this application was made that during the Covid 19 pandemic the applicants were permitted to use the loading bay area adjoining their Pleasant Street frontage in

its entirety for outdoor seating/dining purposes. Under which they were permitted 15 tables (consisting of barrels 800mm in diameter) and accommodating 60 seats.

- 7.2.12. The information provided with this application indicates that the associated dimensions for this Covid Pandemic permitted outdoor seating/dining area was 2.27m in width of the adjoining loading bay and for a 20.39m length measuring a total area of c46.1m². Access to this outdoor seating area was over the restricted in width and poorly surfaced pedestrian footpath which was located in between.
- 7.2.13. The applicant is now seeking a revised proposal from that initially sought under this application for 5 number 800mm in diameter tables each with four seats and as such would give rise to a total number of 20 number chairs in an area that now relates to a 9.9m in length and 2.32m in width at its widest point area of the adjoining Pleasant Street loading bay (Note reducing in width to c1.3m at its easternmost end). Overall, the area of the public domain impacted by the outdoor seating area totals 22.6m² and leaving a c10m stretch of loading bay adjoining it on its western side. This area is for the most part enclosed by planter boxes and a 1.6m high see through screen on its southern and part of its eastern as well as western boundaries with railing proposed alongside the adjoining stretch of footpath that would bound its northern side (Note: the length of the railings is indicated as 9.04m). Access to the proposed outdoor seating space is dependent upon the adjoining Pleasant Street public domain and the space itself on its westernmost end aligns with the public house's public entrance onto Pleasant Street. Additionally, the westernmost end is located within close proximity to this public house's main entrance which opens onto Camden Street Lower.
- 7.2.14. The applicants contend that the much larger area operated by them previously gave rise to no undue residential amenity or traffic inconvenience and any nuisances or disturbances such a use would give rise to but would be much less due to the smaller area involved.
- 7.2.15. They also contend that any nuisances or disturbances arising from the proposed outdoor seating area must be balanced in the context of the site's key urban village context.
- 7.2.16. They also further contend that there would be sufficient loading bay space remaining for kerbside loading and that the loading bay affected by this proposal would still be

available for loading outside of the 12pm and 9pm hours. I note that these hours are reduced from what was originally sought in the initial application details.

- 7.2.17. In terms of the Planning Authority's determination of this application I note that their Road and Traffic Division not only noted concerns regarding the use of the loading bay for outdoor seating based on their being a high demand at this location for kerbside loading. But they also noted that the useable pedestrian space adjacent to this activity appeared to overspill onto the public footpath with this causing obstruction to pedestrians. On this point they noted observing pedestrians diverging around the seating area and this they considered detracted from the comfort levels of these pedestrians, especially pedestrians with mobility issues.
- 7.2.18. They further noted that whilst the provision of street furniture on the public road space may have been acceptable during the pandemic in the context of outdoor dining, it is no longer considered appropriate to provide private seating on public roadway when full indoor dining is back to normal. On this point it is noted that the normal practice of the Council is that privatisation of public areas is not permissible.
- 7.2.19. In addition to the concerns raised by the Planning Authority's Road and Traffic Division their Planning Officer in their report also noted that the disturbance and nuisance concerns raised by Third Parties as well as they note that previous refusal for outdoor licences at this location.
- 7.2.20. Having carried out an inspection of the site visit and reviewed the information on file I share the concerns raised by the Planning Authority's Roads & Traffic Planning Division and their Planning Officer. Additionally, I also raise a concern that whilst the area sought for the outdoor seats and tables has been reduced the applicant is effectively seeking the privatisation of a functioning loading bay in an area of the city where kerbside loading and parking provision is limited. This loading bay forms part of the public domain and as such it is not for the applicant's primary use but it an important publicly provided loading provision for businesses operating in its vicinity as well as other land uses that may require use of such provision.
- 7.2.21. The proposed outdoor seating area is also separated from the Pleasant Street frontage of the subject public house by a stretch of footpath that is restricted in its width (Note: circa 1.7m). Whilst I am cognisant that the pedestrian footpath is of a wider width between the easternmost end of the loading bay as the alignment of the

easternmost end of Pleasant Street changes to accommodate road calming measures associated with its junction with Camden Street Lower. I observed that this corner location was one that was a heavily trafficked pedestrian with it providing a focus for their crossings over Pleasant Street and Camden Street Lower.

- 7.2.22. Notwithstanding, the immediate access to the proposed outdoor seating area is dependent on this substandard in width and surface stretch of public footpath for the entirety of its length for access from the two entrances serving the public house ground floor area as well as to the two access points provided to the outdoor seating space itself for patrons of the subject public house.
- 7.2.23. As such the adjoining and corner public domain of Pleasant Street and Camden Street Lower would effectively function as a circulation and access space between the internal ground floor area of the public house and the outdoor seating area during the hours it is proposed to be *in situ*. There is nothing to suggest that there would be measures put in place by the applicants to reduce circulation of patrons between the private area of the public house and the outdoor seating area over the public domain of this heavily trafficked public domain. Nor is it made clear how effective would the proposed enclosure be for dismantling and for storing between the hours outside of the proposed 12:00 to 21:00 hours given the quantum of outdoor furniture, planter boxes, screening through to railings that are proposed.
- 7.2.24. Having regard to DMURS, Figure 4.34, sets out a minimum width of 1.8m for two people to pass comfortably in areas of low pedestrian activity. This loading bay is on unzoned land that the adjacent land use as said is 'Z4' and Camden Street Lower as well as Pleasant Street are not streets with low pedestrian activity. I therefore note that this DMURS Figure sets out more robust widths of 2.5m as being the desirable width for two people to pass comfortably in areas of low to moderate pedestrian activity and 3m as the minimum width for small groups to pass comfortably in areas of moderate to high pedestrian activity.
- 7.2.25. Additionally, not only would the associated movements with the use of part of the loading bay along the Pleasant Street frontage have the potential to give rise to additional nuisances, obstruction, and conflict with users of this restricted in width stretch of pedestrian footpath. This potential for conflict is further added to by the retractable benches contained on the Pleasant Street frontage which if used in tandem

with the outdoor seating area proposed. The use of these benches would further impede free movement of the adjoining stretch of this substandard footpath given that it would significantly reduce when in use the remaining footpath area. In such a circumstance users of the footpath on the northern side of Pleasant Street running alongside the subject premises are likely to avoid using it in preference of walking around it onto the adjoining loading bay if it were free or onto the public road carriageway to continue their journey. With this in turn giving rise to increased potential for conflict arising between the displaced users of the public footpath and the public road at a corner junction location. Including in terms of traffic movements associated with the reduced in length loading bay that would remain to the immediate west of the outdoor seating area sought.

- 7.2.26. On this point I note that in a consistent manner several of the Third-Party observers contend that this footpath is an unpleasant space and not comfortable to use during the busy periods of when the applicant has placed outdoor seating in the loading bay due to it being an extension of the public house with people drinking and smoking also on this space. Of further concerns to them is the lack of adequate custodianship of the applicant to clear up litter associated with this use. With several types of litter, including broken glass through to the public domain being used for sanitation purposes due to the lack of adequate toilets for the intensification of the public houses use onto large areas of the public domain of Pleasant Street and Camden Street Lower.
- 7.2.27. Moreover, the character of the adjoining 10m stretch of pedestrian footpath and the area to the immediate west and east of it would be altered by the presence of the outdoor area and would not only give rise to privatisation of part of the loading bay during the periods when it would be provided but it would also effectively result in this stretch of public domain having the appearance as a semi-privatised space associated primarily with the function of the subject public house.
- 7.2.28. As such it would not be a space in my view that could be considered to correlate in a consistent manner with Section 7.5.8 of the Development Plan. Which in part states that: *"the public realm should be highly accessible and inclusive, designed for the comfort and ease of movement of people. A particular priority must be given to the needs of pedestrians and this would include the need to give pedestrians more space in the public realm / the need to expand the pedestrian network."*

- 7.2.29. Similarly, it would not be consistent with the circumstances set out under Policies CCUV32 where proposals for outdoor dining areas and trading from premises are supported. As this policy clearly sets out that these should not compromise pedestrian movement, accessibility of traffic conditions. As well as in my view it conflicts with Policy CCUV38 which seeks to promote high quality streets and public spaces that are accessible and inclusive; Policy CCUV43 which seeks to provide public realm improvements in Key Urban Villages/Urban Villages and Policy CCUV44 which sets out that new developments should deliver a high quality public realm which is well designed, clutter-free through to creates linkages, connections and improved accessibility.
- 7.2.30. Further, the intensification of the public domain immediately alongside the Pleasant Street frontage would give rise to further deterioration of this public domain which would further compromise pedestrian movement along it.
- 7.2.31. On this point I again reiterate that the public domain immediately alongside the proposed area of loading bay to which this application, previously used for outdoor dining and alongside the retractable benches shows more excessive wear with cracking and uneven surfaces.
- 7.2.32. Moreover, the reduction in loading space would have the potential to diminish the vitality and vibrancy of this location which forms part of a larger parcel of land that is zoned as well as is functioning as a Key Urban Village. This loading space is already of a width that is substandard having regard to DMURS dimensions for such loading spaces of 2.8m (Note: Section 4.4.9) and there are no robust measures providing protection from the use of the public carriageway and vehicles using the remaining loading space.
- 7.2.33. I also consider that regard should also be had to the cumulative impact of the proposed intensification of outdoor seating area on the public domain to the front of Devitts public house. As said, there is an existing outdoor seating area situated alongside its Camden Street Lower frontage with this extending northward to part of the public domain adjoining the former Ulster Bank building that is currently for sale. This outdoor space also reduces the width of the public footpath alongside a pedestrian signalised crossing over the heavily trafficked Camden Street Lower regional road. There is no extant licence permitting the extension of the outdoor seating area to the front of the

subject premises on Camden Street Lower extending northwards to part of the front of the adjoining building.

- 7.2.34. The further privatisation of the public domain at this key urban village corner is also added to by the fact that there are retractable awnings extending from both street frontages. With the entirety of the adjoining footpath of Pleasant Street adjoining the proposed outdoor seating area containing awnings/canopy that extend out over its entire width. The proposed development would in my view have the potential to create further diminishment for its users with the two areas being tangibly operating as an outdoor extension of the public house during its opening hours of between 12pm and 9pm. It would be visible as non-public realm when in full use and when considered cumulatively with the other outdoor seating area as well as other features like the retractable seating and the awnings/canopy would in actuality result in a much larger area of public realm lost to the overspill of use of this public house and creating an unpleasant and unsafe pedestrian environment on the northern side of Pleasant Street in proximity to its junction with Camden Street Lower. Thus, giving rise to more movement of pedestrians around both the adjoining stretch of Pleasant Street footpath and this additional outdoor seating area onto Pleasant Streets public road carriageway and the remaining stretch of kerbside parking so that they avoid being in proximity to this outdoor seating area.
- 7.2.35. I also observed that whilst Camden Street Lower contained mainly mixed-use activities that Pleasant Street merged into mainly residential uses in proximity of the subject premises alongside there appeared to be buildings that accommodated mixed uses with a component being residential in nature.
- 7.2.36. Additionally, I observed that Pleasant Street outside of Devitts Public House was not characterised by late evening and/or night uses with residential land uses predominating as one journeyed along it westward. This residential nature is reflected in the change in land use zoning to 'Z2'.
- 7.2.37. I am therefore of the view that not only is the public domain in the immediate vicinity of the Pleasant Street frontage unsuitable for outdoor seating but also the residential land uses within the vicinity of it would be unduly diminished by its use as such. Given that it would result in additional noise and other disturbances for occupants of nearby residential properties.

7.2.38. I also consider in this context the hours of intended provision of the outdoor seating area in the context of this sensitivity would give little rest bite for residential properties given that the public house is likely to operate most days throughout the year with the hours of use given for the outdoor space as being 12pm to 9pm seven days a week.

7.2.39. My final comment relates to a civil matter, there is evidence provided by Third Party Observers that the applicant is effectively prohibited under their current alcohol licence to sell or serve alcohol on the pavement or road of Pleasant Street. There is no clarity provided by the applicant that the use of the outdoor seating/dining area would be one that would be operated as one where zero alcohol was served or sold for consumption by patrons of this public house.

7.2.40. Conclusion

7.2.41. Based on the above concerns to permit the proposed S254 Licence in this case would in my considered opinion give rise to a development that would conflict with the provisions of the Dublin City Development Plan, 2022-2028, in particular Section 15.17.4, the policies cited in my assessment above, and the public realm provisions set out in the Development Plan including those for land zoned 'Z4'. Moreover, the proposed development would endanger pedestrians and road users in the vicinity of the site as well as would cause considerable inconvenience in general to users of the adjoining public domain, especially those with mobility issues. Further, the adjoining stretch of public footpath would be of an insufficient width to cater for the intensification of public house use onto the outdoor public domain and the movements generated from the use of this space together with the presence of retractable benches on the Pleasant Street frontage would if used in tandem would effectively privatise the public domain adjoining the Pleasant Street frontage resulting in situations where pedestrians may not only block the adjoining stretch of Pleasant Street footpath but also potentially overspill into the public road carriageway. The proposed development would also seriously injure residential amenities in its vicinity by way of nuisances as well as other disturbances arising from the use of the outdoor seating area and would, therefore, be contrary to the proper planning and sustainable development of the area.

7.3. Other Matters Arising

7.3.1. **Visual Amenity:** The documentation submitted with this application does not demonstrate that the proposed outdoor seating area would be of a high quality and

that it would not give rise to additional clutter of the public domain by substandard street furniture when taken together with the existing outdoor seating area and signage to the front of the subject premises Camden Street Lower frontage.

On this point having regards to the provisions of the current Development Plan which collectively seeks to create attractive and accessible qualitative public realm, including in areas like key urban villages.

The demonstration of qualitative, well considered and appropriate materials for the outdoor seating area is further added to by the fact that any street furniture placed in the vicinity of the subject premises Pleasant Street frontage would be visible as part of a Conservation Area, as well as from the nearby Residential Neighbourhoods (Conservation Areas) – Zone ‘Z2’ to the west and would form part of the visual setting of a number of Protected Structures.

I am therefore not satisfied based on the information before me that the proposed development would not detract from the visual amenities of this sensitive to change historic urbanscape in a manner that would not be contrary to the proper planning and sustainable development of the area.

7.3.2. Impact on Business Premises Operating in the Vicinity: I am not satisfied based on the documentation provided with this application that servicing of other businesses in this locality would not be adversely impacted by further reduction in kerbside loading on a side street that accommodates less volumes of traffic than the heavily trafficked Camden Street. On this point I note that Camden Street along its length functions as an important Regional Route into and out of Dublin City (Note R114). It is also evident that there is also a lack of on-street car parking to cater for the parking needs of residents in this area given the information provided by the Third-Party Observers. As such I am not satisfied that the on-street car parking in this locality can compensate for the loss of kerbside car parking that would arise during the hours in which the proposed outdoor seating area would be *in situ*.

7.3.3. Loss of Public Realm: This application essentially seeks the loss of public realm during the hours of 12pm to 9pm seven days a week and in addition to the local planning policy provisions of concern raised above Section 4.5.6 of the Development Plan recognises that a “*a high-quality public realm makes the city a more attractive place to live, work and visit, and provides for an improved quality of life for all*”.

It also sets out that: “*accessibility is also a key issue, and ease of access to persons of all ages and abilities is a significant indicator as to how inclusive Dublin is as a city*”; and that: “*the key objective will be to ensure that the City Council endorses the principles of healthy placemaking and continues to develop public realm strategies and to invest in the urban environment, in order to ensure that a coherent and walkable city centre is created which allows for ease of movement and is inviting to persons of all abilities*”. This is further supported by Policy SC5 of the Development Plan which policy seeks in part to promote Dublin City Public Realm Strategy 2012.

I also note that Policy SC2 of the Development Plan seeks to develop the city character in a number of ways including developing a sustainable network of safe, clean, attractive streets, pedestrian routes as part of making the city more coherent and navigable.

I consider that this proposal, if permitted, would be contrary to the City Councils Public Realm Strategy.

Of further concern on this matter is the photographic evidence provided by the Planning Authority and Third Party’s show the overspilling of patrons at the corner of Camden Street Lower and Pleasant Street in the vicinity of Devitts Public House beyond that of the outdoor seating area sought.

I therefore raise it as a concern that the outdoor seating area, if permitted, would give rise to continuation of overspilling of patrons onto the public domain beyond that of the proposed outdoor seating area in a manner that would adversely impact upon the primarily function of the adjoining public domain which is to provide safe and unobstructed access for pedestrians and would reflect the significant intensification of this public house use beyond the floor area in which it operates onto and to the detriment of the adjoining public domain.

8.0 Appropriate Assessment

- 8.1. Having regard to the minor nature, scale and extent of the development sought, 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.

9.0 Recommendation

- 9.1. I recommend that the Board directs the Planning Authority to **refuse** the licence subject to the following reasons and considerations:

10.0 Reasons and Considerations

1. Having regard to the provisions of Section 254 of the Planning and Development Act, 2000, as amended, to the existing poor pedestrian environment running alongside the proposed outdoor seating area, having regard to the importance of kerbside loading on 'Z4' Key Urban Village zoned land, the location of the subject premises, and to the nature and extent of the proposed development, 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 close to a reduced in length loading bay and at a heavily traffic corner location at the junction of Camden Street Lower and Pleasant Street.

The Board is not satisfied, therefore, that the proposed placement of street furniture and associated structures at this location would not endanger pedestrian safety as well as interfere with the free movements of users of the public domain in the vicinity of the site.

Further, the Board is not satisfied that the proposed development would not diminish the amenities of residential properties in its vicinity by way of nuisances, disturbance, and that the proposed development would not diminishment of the visual amenity of the area.

Moreover, the proposed development would result in adverse privatisation of the public domain to the detriment of its users including those who require kerbside loading bay in the vicinity of Camden Street Lower and Pleasant Street.

For these reasons it is considered that the proposed development would not accord with the adjoining 'Z4' land use zoning, Sections 4.5.6, Section 7.5.8, Section 15.17.4, Policies CCUV32, CCUV38, CCUV43 and CCUV44 of the Dublin City Development Plan, 2022-2028, which together seek to provide high

quality accessible public realm alongside protect the character of this key urban village and sensitive to change setting whilst at the same time preventing any obstruction or undue clutter of footpaths and paved areas.

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.

Patricia-Marie Young
Planning Inspector

21st day of March 2024.

Appendix 1 - Form 1

EIA Pre-Screening

[EIAR not submitted]

An Bord Pleanála Case Reference	ABP-318201-23		
Proposed Development Summary	Section 254 street furniture licence application for an extension area of public carriageway outside Devitts Public House.		
Development Address	Adjoining Section of Loading Bay to the Pleasant Street frontage of Devitts Public House, at the corner of Camden Street Lower and Pleasant Street, Dublin 2.		
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)		Yes	<input checked="" type="checkbox"/>
		No	No further action required
2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?			
Yes		N/A	EIA Mandatory EIAR required
No	<input checked="" type="checkbox"/>		Proceed to Q.3
3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?			
		Threshold	Comment (if relevant)
No		<input checked="" type="checkbox"/> N/A	No EIAR or Preliminary Examination required
Yes		Not a Class	Proceed to Q.4

4. Has Schedule 7A information been submitted?

No	<input checked="" type="checkbox"/>	Preliminary Examination required
Yes	<input type="checkbox"/>	Screening Determination required

Inspector: _____

Date: _____