



An  
Coimisiún  
Pleanála

## Inspector's Report

**ABP 321343-24**

<b>Development</b>	Section 254 licence for outdoor seating to be used within screen already in place
<b>Location</b>	Saint Mary Street, Dungarvan, Co Waterford
<b>Planning Authority</b>	Waterford City and County Council
<b>Planning Authority Reg. Ref.</b>	24/193
<b>Applicant</b>	Mark Jenkins
<b>Type of Application</b>	Section 254 licence
<b>Planning Authority Decision</b>	Refuse Section 254 licence
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Mark Jenkins.
<b>Observer(s)</b>	N/A.
<b>Date of Site Inspection</b>	08/08/2025
<b>Inspector</b>	Ann Bogan

## **1.0 Site Location and Description**

- 1.1. The site which is the subject of the Section 254 licence application is located in the town centre of Dungarvan on the public road, in a designated pay-parking area adjoining the footpath, outside No. 5 Saint Mary Street, which is in use as a café and retail outlet.
- 1.2. Saint Mary Street is a mixed commercial street with shops and other commercial premises and it adjoins the main commercial area of the town, centred around Grattan Square/ O'Connell Street/ Parnell Street.
- 1.3. There is two-way traffic on Saint Mary Street., with car parking spaces along the western side of the street and footpaths on both sides. The footpath on the northern side of the street adjacent to No. 5 is 1.8m in width. There were no outdoor tables/seating or screens present on the street or footpath at the time of the inspection.
- 1.4. There are designated outdoor dining areas laid out with raised platforms and matching canopies on two sides of nearby Grattan Square, used by restaurants and bars in the area.

## **2.0 Proposed Development**

- 2.1. The licence application form states the proposal consists of “outdoor seating area to be used within screens already in place” and refers to two tables to seat 10 people. A sketch on the form shows two tables and a parasol and refers to screens as “already in place”. A letter accompanying the application states the applicant is seeking “to retain the structure outside the premises already in use. The area is pre-existing and used as part of this business since put in place.” It appears that the licence application is confined to the seating and tables and does not include the screens or parasol.
- 2.2. The seating/tables are proposed to be located on the side of the road in a parking area, which is stated on the form to be 12m by 2m in area. They are to serve the applicant's café/retail business on the side of Saint Mary Street. The cover letter refers to retention but I note that no seating, tables or other street furniture or screens were in place at the time of the site inspection.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

#### **3.1.1. Permission refused for three reasons on 25<sup>th</sup> October 2024:**

1. Having regard to the haphazard and piecemeal nature of the proposal and the policies of the Waterford City and County Development Plan 2022-2028 which seeks to protect the character and streetscapes of the Architectural Conservation Area (ACA), it is considered the proposal forward of a number of Protected Structures represents disorderly development and would detract from the character of the ACA and therefore be contrary to the proper planning and development of the area.
2. It is considered that the seating area subject of the current licence application forward/east of the applicant's café would facilitate ongoing unauthorised development whereby the applicant's café does not have the necessary planning consent to operate from this retail premises and as such same would be contrary to the proper planning and sustainable development of the area.
3. It is considered that the proposed development by reason of its location relative to vehicular traffic lanes, on a busy thoroughfare, and parking bays constitutes a disorderly form of development which is not in accordance with the proper planning and sustainable development of the area.

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

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

- The planning report states the application lacks detail, is for tables and chairs, while the screens and parasol do not form part of the application. While during Covid the County Council allowed Section 254 licences where they would not otherwise be granted, a co-ordinated approach is now being taken by the Council to facilitating S254 licences in Dungarvan, whereby they are appropriate on the Quay and on Grattan Square or in limited other areas where the footpath width facilitates it. In this case the area to which licence relates is within a parking space and is not in designated areas. At present

there are tables, benches, parasol and enclosure at the site and no live Section 254 licence.

- Site is not within the designated area and results in the loss of a parking space
- The adjoining premises itself is a protected structure and the site is within an Architectural Conservation area and the piecemeal and haphazard nature of the proposal detracts from the ACA and views and vistas from Grattan Square and the wider ACA. The proposal would facilitate unauthorised development as the café does not have planning permission. Refusal of Section 254 licence recommended for conditions outlined above.
- AA Screening Report concluded the proposed development would not be likely to have a significant effect on a Natura 2000 site. It was considered that EIA is not required due to the nature, scale and location of the proposal.

#### 3.2.2. Other Technical Reports

- None

### 3.3. Prescribed Bodies

None

### 3.4. Third Party Observations

None

## 4.0 Planning History

None available, no indication whether or not there was a previous S254 licence granted in the location.

## 5.0 Policy Context

### 5.1. Waterford City and County Development Plan 2022-2028 adopted on Thursday 7<sup>th</sup> June 2022.

Site is within area zoned 'Town Core', with an objective to provide for the development and enhancement of town centre uses including, retail, residential, commercial civic and other uses

Premises to be served by the development is a Protected Structure, RPS Ref DV740101, and site is within an Architectural Heritage Area.

#### Built Heritage Policy Objectives:

##### BH 11 Maintaining and Enhancing Special Character

It is the policy of the Council to protect structures and curtilages included in the RPS or historic structures within ACA, from any works which would visually or physically detract from the special character of the main structure, any structures within the curtilage, or the streetscape or landscape setting of the ACA.

##### BH 12 Settings and Vistas

It is the policy of the Council to ensure the protection of the settings and vistas of Protected Structures, and historic buildings within and adjacent to ACAs from any works which would result in the loss or damage to their special character.

### 5.2. Relevant National or Regional Policy / Ministerial Guidelines (where relevant)

Section 254(5) of the Planning and Development Act 2000 as amended states that "in considering a licence under this section a 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 of the development plan or a local area plan,
- c) The number and location of existing appliances, apparatuses or structures on, under, or along a public road and
- d) The convenience and safety of road users including pedestrians".

### **5.3. Natural Heritage Designations**

Site is 200m south west of Dungarvan Harbour SPA.

## **6.0 EIA Screening**

- 6.1. The proposed development is not a class for the purposes of EIA as per the classes of development set out in Schedule 5 of the Planning and Development Regulations 2001, as amended (or Part V of the 1994 Roads Regulations). No mandatory requirement for EIA therefore arises and there is also no requirement for a screening determination. Please refer to Form 1 in Appendix 1 of report.

## **7.0 The Appeal**

- 7.1. Grounds of appeal submitted by applicant in relation to Planning Authority refusal:

- Seating area was removed two days before licence was refused, without any communication from the Council
- Community of Saint Marys Street support the proposal, petition with over 300 signatures attached
- Occupiers of building next door used the seating as waiting area, and it serves as a communal area for business in the area
- Seating area in the Square gives some businesses a lot of extra space and massive advantage over others
- Hazards are associated with the area in the Square, including: there is a step up, alcohol is consumed on the roadway, drivers are unable to exit spaces due to no visibility of oncoming traffic due to form of construction of seating areas, resulting in numerous traffic incidents, and food health and safety non-compliance
- Two other businesses three doors off Square have seating on much busier route and not protected from moving vehicles
- Two bookies and one barber shop currently availing of seating
- Notes a business not in Square was granted seating in the Square on appeal

- Applicant's business offers range of hemp and CBD products and also offers coffee, teas and confectionary. Coffees and pastry offer is less than 20% of the business area
- Café with retail is a global trend, believes the café use is exempt from change of use as part of a shop. References cases where café use as part of shop was not considered development and is exempt from need for planning permission (ABP Ref. No. RL54.RL2941 in Drogheda and ABP Ref. No. RL07.RL3023, Co Galway)
- Business had yawling (awning?) since 1950s that covered footpath and car space so creates precedent. Has now been replaced by modern umbrella to match businesses 30m away
- Location of the space with traffic has not been an issue
- The seating does not open onto road or sides and has lot less dangers than much of seating already provided, (cites seating area in Lismore on a corner, potential traffic risk and not visually appealing)
- Seating area is within a car space and is less a danger than if it was a parked car, as it does not move and is visible from 60m away at top of hill
- Space floods in winter so no car can park there, as drain is higher than road
- If planning approved wishes to raise one side of road to allow water to flow to drain
- Seating is not just for food offering business, as businesses with just alcohol offering can avail of it.
- We would not have been able to get previous grants for this area if we did not comply 3 years ago
- As screens were provided by Failte Ireland under grant scheme, would like them to be returned if planning approved
- Should be treated as equal as other businesses and should not be treated differently because sell CBD products.

- Images and copy of signatures on petition and letters of support from other businesses attached.

## **7.2. Applicant Response**

- N/A

## **7.3. Planning Authority Response**

- None

## **7.4. Observations**

- N/A

## **7.5. Further Responses**

None

## **8.0 Assessment**

8.1. Having considered the documentation submitted with the licence application and the appeal, the local policies and guidance, the provisions of S254 of the Planning and Development Act, as amended, and having inspected the site, I consider the substantive issues to be considered are as follows:

- Nature of the proposal
- Local policies
- Traffic and parking issues
- Unauthorised use



## **8.2. Nature of the proposal**

- 8.2.1. The licence application relates to outdoor dining facilities to serve a café/retail outlet at 5 Saint Mary Street. in the centre of Dungarvan. It appears that when the licence application was made there was seating, tables, a parasol, glass screens and also planters (although the latter may have been removed by the County Council before application was made), placed in a parking area at the side of the road outside No 5 Saint Marys Street and serving the users of the café. However, the licence application refers only to seating and tables, therefore the application is limited to these items. All the items had been removed and were not present during the inspection. If granted therefore, only seats and tables, without any screens etc would be covered by the licence. I note there is no documentation available to suggest a licence was in place in advance of the application for any of the items and this is confirmed in the planner's report. I concur therefore with the planner's report that this appears to be a somewhat piecemeal and haphazard proposal.

## **8.3. Local policies – suitability of the location**

- 8.3.1. No 5 Saint Marys Street. is a protected structure (RPS Ref DV740101) and there are other protected structures in the vicinity. The street is also within Dungarvan Architectural Conservation Area (ACA). Built Heritage objectives BH 11 and 12 in the Waterford City and County Development Plan seek to protect protected structures and their setting as well as buildings in ACAs from works that would visually or physically detract from the special character of structure, or the streetscape or landscape setting of the ACA or views or vistas of the structure or area.
- 8.3.2. There do not appear to be any specific policies on outdoor dining in the Development Plan. However, the planner's report states that while licences were granted to facilitate outdoor dining during the Covid emergency, which would not otherwise have been granted, "a coordinated approach is being taken to facilitating and managing Section 254 licences in Dungarvan and they are considered appropriate on the Quay, in Grattan Square and or in limited other areas where the footpath width facilitates same"
- 8.3.3. Outdoor dining can contribute to the vitality of town centres and help support businesses in the sector, if it is in a suitable location, well laid out and if the seating, and other items such as screens/planters and umbrellas/canopies are attractive and

of good quality. The approach to concentrating outdoor dining areas in designated locations in Grattan Square in Dungarvan is a positive and attractive example, which was busy and well used when I visited around mid-day on a Friday.

8.3.4. Apart from the Square, I observed only two other businesses with outdoor dining areas in the nearby town centre streets; one on a footpath on O'Connell Street near Grattan Square and one on the roadside at the eastern end of Parnell Street. I do not have information available as to whether they are operating under a current licence. However, the general absence of isolated examples of outdoor dining facilities, suggests that the County Council are actively implementing a co-ordinated policy and generally confining outdoor dining to a few selected locations, such as Grattan Square and the Quay which are considered to be most suitable.

8.3.5. There are no businesses with outdoor dining areas on Saint Mary Street at present and I note the footpath, at 1.8m wide, is not adequate to safely accommodate tables and chairs etc, without interfering with pedestrian traffic (the County Council website in addressing licences for outdoor dining states that there must be at least 2m unobstructed footpath remaining after installation.

<https://waterfordcouncil.ie/services/economic-development/licences-permits-2/>). In addition, the intermittent flooding of the street reported by the applicant is likely to further render the roadside in this location less than ideal for outdoor dining.

8.3.6. Taking account of the Development Plan objectives to protect the streetscape character of ACAs and the vicinity and setting of protected structures and the County Council approach of restricting outdoor dining facilities to suitable locations in a co-ordinated manner, I agree with the Planning Authority that the haphazard and piecemeal nature of the proposal is not in keeping with the Development Plan policies and could detract from the overall character of the streetscape of the ACA. It could also create a precedent for a proliferation of ad hoc outdoor dining areas in similar, less than ideal locations.

#### **8.4. Traffic and parking issues**

The proposed outdoor dining area is to be located in a parking space designated for pay parking, resulting in the loss of a town centre parking space. If part of an overall policy for outdoor dining this would not be unreasonable. However, I believe the

piecemeal application for only tables and chairs in a roadside parking bay, with no protection from vehicular traffic, could result in risk to public and traffic safety.

#### **8.5. Unauthorised use**

- 8.5.1. The Planning Authority states that the café does not have planning permission and that therefore the proposal would facilitate unauthorised development. I note in refusal reason No. 2 it refers to the premises as a retail premises without permission as a café and therefore considers retail use as the established use. The applicant submits that the development is both a retail outlet and a café and that the café use is exempt from planning as it is part of a shop and is a subsidiary part of the overall enterprise. He references two examples where a café use in part of a shop was considered exempted development by the Board. However, these examples cited would have been particular to the specific circumstances of the cases involved. In any case, it is not the remit of the Commission in this appeal to determine whether the café use at No 5 Saint Mary Street is exempted development.
- 8.5.2. I note that the Planning Authority consider the café use to be unauthorised. I observed during the inspection there were six tables inside the premises taking up a large proportion of the floor area, with a counter located to the rear of the premises. The four outdoor tables would add significantly to the overall space available for the café use. I accept the Planning Authority argument that permitting the outdoor seating would further facilitate an unauthorised use. However, should the Commission wish to exclude the Planning Authority reason for refusal relating to an unauthorised use, I am satisfied there are other valid reasons for refusal of the licence as outlined above.

#### **8.6. Other Matters**

- 8.6.1. As outlined in Section 5.2 above, the appeal is confined to considering the licence application based on the criteria set out in Section 254(5) of the Planning and Development Act 2000. Other matters raised, such as the removal of items of furniture etc by the Council, are not within the remit of the Commission to address in this appeal.

## **9.0 AA Screening**

- 9.1. I have considered the licence application in light of the requirements S177U of the Planning and Development Act 2000 as amended. The subject site is located on a roadside in Dungarvan town centre, 200m south west of Dungarvan Harbour SPA.
- 9.2. The proposed development comprises the placing of seats and tables for outdoor dining on Saint Marys St. Dungarvan.
- 9.3. Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment because it could not have any effect on a European Site. The reason for this conclusion is as follows:
- The very small scale and nature of the development
  - The distance from the nearest European site and lack of connections
- 9.4. I conclude, on the basis of objective information, that the proposed development would not have a likely significant effect on any European Site either alone or in combination with other plans or projects. Likely significant effects are excluded and therefore Appropriate Assessment (under Section 177V of the Planning and Development Act 2000) is not required.

## **10.0 Recommendation**

- 10.1. Refusal of the application for the licence is recommended

## **11.0 Reasons and Considerations**

1. Having regard to the provisions of Section 254(5) of the Planning and Development Act 2000, as amended, to the haphazard and piecemeal nature of the proposal and to policies BH11 and BH12 of the Waterford City and County Development Plan 2022-2028, which seek to protect the character and streetscapes of the Architectural Conservation Area (ACA), it is considered the proposal forward of a number of Protected Structures represents disorderly development and would detract from the character of the ACA and therefore be contrary to the proper planning and development of the area.

2. It is considered that the seating area subject of the current licence application forward/east of the applicant's café would facilitate ongoing unauthorised development whereby the applicant's café does not have the necessary planning consent to operate from this retail premises and as such same would be contrary to the proper planning and sustainable development of the area.

3. It is considered that the proposed development by reason of its location relative to vehicular traffic lanes, on a busy thoroughfare and parking bays, could result in a risk to public and traffic safety and constitutes a disorderly form of development which is not in accordance with the proper planning and sustainable development of the area.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

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Ann Bogan  
Planning Inspector

12/09/2025

## Appendix 1 - Form 1 EIA Pre-Screening

<b>Case Reference</b>	ABP-321343-24
<b>Proposed Development Summary</b>	Section 254 licence for tables and seating
<b>Development Address</b>	Outside 5 Saint Marys Street, Dungarvan, Co Waterford
	<b>In all cases check box /or leave blank</b>
<b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b>  (For the purposes of the Directive, "Project" means: - The execution of construction works or of other installations or schemes,  - Other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources)	<input type="checkbox"/> Yes, it is a 'Project'. Proceed to Q2.  <input checked="" type="checkbox"/> No, No further action required.
<b>2. Is the proposed development of a CLASS specified in <u>Part 1</u>, Schedule 5 of the Planning and Development Regulations 2001 (as amended)?</b>	
<input type="checkbox"/> Yes, it is a Class specified in Part 1.  <b>EIA is mandatory. No Screening required. EIAR to be requested. Discuss with ADP.</b>	State the Class here
<input type="checkbox"/> No, it is not a Class specified in Part 1. Proceed to Q3	
<b>3. Is the proposed development of a CLASS specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) OR a prescribed type of proposed road development under Article 8 of Roads Regulations 1994, AND does it meet/exceed the thresholds?</b>	
<input type="checkbox"/> No, the development is not of a Class Specified in Part 2, Schedule 5 or a	

<p>prescribed type of proposed road development under Article 8 of the Roads Regulations, 1994.</p> <p><b>No Screening required.</b></p>	
<p><input type="checkbox"/> Yes, the proposed development is of a Class and meets/exceeds the threshold.</p> <p><b>EIA is Mandatory. No Screening Required</b></p>	<p><b>State the Class and state the relevant threshold</b></p>
<p><input type="checkbox"/> Yes, the proposed development is of a Class but is sub-threshold.</p> <p><b>Preliminary examination required. (Form 2)</b></p> <p><b>OR</b></p> <p><b>If Schedule 7A information submitted proceed to Q4. (Form 3 Required)</b></p>	<p><b>State the Class and state the relevant threshold</b></p>

<p><b>4. Has Schedule 7A information been submitted AND is the development a Class of Development for the purposes of the EIA Directive (as identified in Q3)?</b></p>	
<p><b>Yes</b> <input type="checkbox"/></p>	<p><b>Screening Determination required (Complete Form 3)</b>  <i>[Delete if not relevant]</i></p>
<p><b>No</b> <input type="checkbox"/></p>	<p><b>Pre-screening determination conclusion remains as above (Q1 to Q3)</b>  <i>[Delete if not relevant]</i></p>

Inspector: Ann Bogan\_\_\_\_\_

Date: 12 /09/25\_\_\_\_\_