



An
Bord
Pleanála

Inspector's Report

ABP-321659-25

Development	Section 254 Street Furniture Licence - 10 tables, 40 chairs, 2 awnings, 4 parasols and 8 windbreakers.
Location	Fowler's Pub, 12 New Street, Malahide, Co. Dublin
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	SFL/008/2025
Applicant(s)	Fowler's Pub.
Type of Application	.
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Majella Dunne Nicola Byrne Mary Lynch.
Observer(s)	None.
Date of Site Inspection	2 nd April 2025.
Inspector	Lucy Roche

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1.0 Site Location and Description

- 1.1. This Section 254 Licence application relates No.12 New Street, consisting of Fowler's Gastropub. No. 12 is located on the western side of New Street in Malahide, c30m to the north of its junction with Main Street, 'The Mall' and Church Street and c70m to the south of New Street's junction with 'The Strand'. The surrounding area of New Street comprises of a mix of mainly café, restaurants, public houses but also includes residential and retail land uses. In recent years New Street has benefitted from public realm improvements to pedestrianise the street. Such works include the provision of plant boxes and windbreakers etc which have facilitated businesses along the street to utilise parts of the public realm for outdoor seating and dining.
- 1.2. The licence relates to an area of the public domain that was historically used for car parking. This space is currently utilised for outdoor dining associated with Fowler's, and occupied by tables, chairs and plant boxes.

2.0 Proposed Development

- 2.1. On the 11th of November 2024, a licence under section 254 of the Planning and Development Act 2000, as amended, was sought for the placement of street furniture on the public domain to the front of No's 12 New Street, Malahide, occupied by Fowler's Public House.
- 2.2. The licence application covers an area of 53m² (16.86m length x 3.1m width) and includes for the provision of:
 - 10no. tables: - With given dimensions of 5no. at 80cm x 80cm and 5no. at 80cm x 60cm, in olive green.
 - 40no. chairs: - Described as 20no. in olive green and 20no. brown armchair
 - 4no. parasols: With a stated span of 3m x 3m
 - 8 windbreakers: - Described as metal base and stand with green FCC Panel Windbreaker
- 2.3. The licence application was accompanied by site plan of the licence area.

3.0 Planning Authority Decision

3.1. Decision

3.2. On the 18th of December 2024 - The Planning Authority granted a Section 254 Licence, for a temporary duration of time commencing on the 1st day of January and expiring on the 31st day of December 2025, subject to a minimum footpath clearance of 1.8m and subject to specific as well as general licence conditions pertaining to this licence. Of note the licence is described as relating to 10no. tables, 10no. chairs, 4no. parasols, 2no. awnings and 8no. windbreakers in an area given as 53.4m² area (Note: 3.1m width by 16.86m Length). The permitted hours of the licence are stated as 09:00hrs to 22:00hrs.

3.3. Planning Authority Reports

None

3.4. Prescribed Bodies

None

3.5. Third Party Observations

None

4.0 Planning History

4.1. Subject Site

- ABP-312656-22 (P.A. Ref. No. SFL/019/22) – Licence **granted** (2022) at 'Fowlers', 12 New Street, Malahide, Co. Dublin).

This S254 Licence permitted the placement of 10no. tables, 30no. chairs, 1no. awning, 4no. parasols and 8no. windbreakers on an area of 45.9m² subject to a minimum footpath clearance of 1.8m. The specified daily hours of the licence: 11.00hrs to 21.00hrs. The licence was to expire on the 31st of May 2022

- FCC Ref: SFCOVID1940: This S254 Licence permitted the placement of 10no. Tables, 40no. Chairs on an area of 45.9 sq. m (17m x 2.7m), subject to condition. The duration of this licence commenced on the 7th day of June 2021 and expired on the 31st day of August 2021.
- ABP-314846-22 – permission granted (dec. 2023) for new hardwood fire escape doors to replace existing metal gates to front elevation, new bar and seating area to first floor storage room, new outdoor lounge seating area with boundary line timber panelling, new unisex bathrooms to existing first floor storage room and all associated site works.

4.2. **Concurrent S254 Licence appeal:**

- ABP-321657-25 (P.A. Ref. No. SFL/003/2025) – ‘Gibney’s Pub’, 5, 6, 7 and 11 New Street, Malahide, Co. Dublin (To the east on the opposite side of New Street).

4.3. **Previous ABP Decisions in respect of S254 Street Furniture Licence applications on New Street:**

- ABP-312754-22: (P.A. Ref. No. SFL/005/22) - Licence **granted** (2022) at ‘Gibney’s Pub’, 5, 6, 7 and 11 New Street, Malahide, Co. Dublin
- ABP-312759-22 (P.A. Ref. No. SFL/014/22) - Licence **granted** (2022) at 1 Rosses Lane, New Street, Malahide, Co. Dublin.
- ABP-312761-22 (P.A. Ref. No. SFL/015/22) – Licence **granted** (2022) at ‘A Do’, Rosses Lane, New Street, Malahide, Co. Dublin
- ABP-312760-22 (P.A. Ref. No. SFL/009/22) – Licence **granted** (2022) at ‘Al Fresco’, New Street, Malahide, Co. Dublin
- ABP-312757-22 (P.A. Ref. No. SFL/009/22) – Licence **granted** (2022) at Unit 1, New Street, Malahide, Co. Dublin
- ABP-312755-22 (P.A. Ref. No. SFL/021/22) - Licence **granted** (2022) at 7 New Street, Malahide, Co. Dublin

5.0 Policy Context

5.1. Fingal Development Plan

5.1.1. **Zoning:** the proposed development site is zoned TC - Town and District Centre. The Objective for this area is to protect and enhance the special physical and social character of town and district centres and provide and/ or improve urban facilities

5.1.2. The site is within the **Core Retail Area** of Malahide

5.1.3. **Architectural Heritage Area:** The site is in the Malahide Historic Core ACA

Malahide Historic Core ACA centres on the planned space of The Diamond as its focal point and the four streets radiating from it of New Street, Church Road, Dublin Road and The Mall (the latter two now forming Main Street). The Talbot family of Malahide Castle influenced the evolution of Malahide through the planned arrangement of The Diamond, a layout common to several 18 th estate towns which contributes to its distinctiveness. It is characteristic of a planned estate town with its geometrically designed centre, and hierarchy of streets and mews lanes. It is the only example of this type of town in Fingal. The town's close links to the Talbot family and Malahide Castle and its coastal location contribute its special character.

Table 14.24 of the FDP provides direction for proposed developments within ACA's stating that changes and development within ACAs should be carried out in a manner sympathetic to its distinctive character and so the following should guide proposed new works within ACAs:

Public Realm Works

- Elements of existing street furniture such as original kerbing, paving, setts, post-boxes, railings, bollards etc. should be identified and retained.
- Any new street furniture (such as bins, lighting, signage-poles etc.) shall be of a high quality and consistent design with consideration given to their siting and location. Street furniture should be kept to a minimum and any redundant modern street furniture removed.

- In instances where the Council does not have direct control over street furniture, it will engage with the relevant agency/agencies, where possible, to encourage them to comply with the Architectural Conservation Area policies. "
- Works to improve the public realm such as new surfaces, dished pavements, traffic control measures including signage and ramps shall respect and enhance the essential character of the ACA.

5.1.4. **Section 14.4.7 Street Furniture**

The provision of street furniture, including tables and chairs on public footpaths may be subject to license by the Planning Authority under Section 254 of the Planning and Development Act 2000 (as amended). Such seating areas should not obstruct ease of movement by pedestrians, including those with mobility impairments, the young, or persons using buggies/prams. Barriers around such seating areas should be of a suitable material, lightweight and easily demountable.

Street furniture may also include other pieces of equipment such as seating, planters, litter bins, phone boxes, lamp posts, bus shelters and notice boards. It is important that the location of such installations is carefully considered and has a coordinated approach in order to avoid over proliferation or give rise to possible obstruction. Where street furniture becomes obsolete or is no longer fit for purpose it should be removed.

5.1.5. **Section 14.20.10 Section 254 Licences**

Items and equipment placed on, under, over or along a public road such as street furniture and overground telecommunications infrastructure, have the potential to significantly impact on the quality of the environment within a given area. This includes development works regulated through Section 254 licencing requirements.

In assessing applications under Section 254 of the Planning and Development Act 2000, (as amended), the Planning Authority must have regard to the relevant provisions of the Development Plan, any LAP in place and must give careful consideration to the impacts on public realm and visual amenity.

5.1.6. **Noted Objectives:**

Objective CSO63 – Pedestrianised Core Malahide: Continue to promote and facilitate the recently implemented pedestrianised core of New Street, Malahide.

Objective SPQHO5 – Amenity of Town and Village Centres: Enhance the amenity of existing town and village centres, minimising clutter and proliferation of street furniture and provide guidance on public realm design, including wirescape, shopfront design, street furniture, climate resilient and pollinator friendly planting, signage and the adequate provision of bins and recycling options.

Policy HCAP14 – Architectural Conservation Areas: Protect the special interest and character of all areas which have been designated as an Architectural Conservation Area (ACA). Development within or affecting an ACA must contribute positively to its character and distinctiveness and take opportunities to protect and enhance the character and appearance of the area and its setting wherever possible.

Development shall not harm buildings, spaces, original street patterns, archaeological sites, historic boundaries or features, which contribute positively to the ACA.

5.2. National Planning Policy and Guidelines

- Architectural Heritage Protection Guidelines for Planning Authorities, 2004, as amended. This document provides guidance for the protection of structures, or parts of structures and the preservation of the character of architectural conservation areas.

5.3. Natural Heritage Designations

The proposed development site is not within nor is it adjacent to any designated site. The Malahide Estuary designated as an SPA, SAC and pNHA, is located c.124m to the northeast of the subject site.

6.0 The Appeal

6.1. Grounds of Appeal

This is a third-party appeal lodged against the decision of Fingal County Council to renew a Street Furniture Licence at New Street Malahide. The appellants objection to the renewal of the licence is based on allegations of nuisance and incompatibility with the orderly or proper use of New Street, which is an ACA. The appeal also notes that the Licence was issued without prior public notice that would have afforded the opportunity for public participation in the decision making.

The issues raised in the appeal can be summarised as follows:

- ***Amenity Impacts (Nuisance):*** - Concerns are raised regarding the impacts of the placement of Street Furniture and associated serving of alcohol on a public road, on the amenities of residents and public, by way of noise, obstruction and the disorderly behaviour of intoxicated people. The lack of effective oversight / supervision on the use of this area is raised as a concern.
- ***Obstruction:*** - It is contended that the placement of street furnishings, commercial signage and alcohol advertisement restricts access to the footpath and gives rise to trip hazard. It is further contended that the placement of such structures impedes regular street cleaning leading to an unsightly appearance.
- ***Architectural Conservation Area:*** - It is contended that the appearance of associated street furnishings and commercial signage and alcohol advertisement are not in character with, nor compliant with the requirements for use and development within the Malahide ACA.
- ***Non-compliance:*** It is contended that the licence should not be renewed due to (alleged) non-compliance with statutory requirements (licencing, byelaws and planning). Concerns have been raised regarding the failure of the applicants to remove street furnishings, contrary to the conditions of the licence. The appellants have been unable to confirm compliance with the area of the licence.
- The appeal is supported by the following documentation:
 - A Map detailing the location of the application Site within the Malahide Historic Core conservation Area

- Notification of procedural error as referred to The Office of the Planning Regulator. This document refers to alleged inconsistencies and anomalies in the systems and procedures of planning authorities and An Bord Pleanála in relating to the granting of Street Licenses
- Copies of Objections to Renewal of intoxicating liquor licence
- Photographs
- Schedule of non-compliance with previous street licence conditions.

6.2. **Applicant Response**

The applicant's response to the issues raised in the third-party appeal can be summarised as follows:

- It is stated that Fowler's Public House has obtained a street furniture licence for 2025, and it is contended that this licence would not have been issued if Fingal County Council had any reservations or issues on how the licence is operated.
- It is stated that a street furniture licence has been issued to Fowler's for the past four years without objection or compliant. The applicant has held a Publicans licence for over 35 years without objection.
- It is stated that the applicants are fully compliant with planning, are insured and carry out their duties to the letter of the law.
- It is contended that the appellants claims are incorrect and out of date and that they represent a small group of people who oppose the pedestrianisation of New Street and object to businesses who utilise the pedestrianised street.

6.3. **Planning Authority Response**

None

6.4. **Observations**

None

7.0 Assessment

7.1. Introduction:

- 7.1.1. This appeal is made under the provisions of Section 254 of the Planning and Development Act, 2000, as amended. This section of the Act relates to licensing of appliances, cables, signs, street furniture and other items on, under, over or along a public road. Subsection 5 of the Act states that in consideration of an application for licence under 254 a planning authority, or Board on appeal, shall have regard to the following:
- a) The proper planning and sustainable development of the area,
 - b) Any relevant provisions of the development plan, or 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 uses including pedestrians.
- 7.1.2. It is I consider of relevance to note, in view of the comments made in the appeal, that Section 254 of the Act does not include provisions for public consultation.
- 7.1.3. Having undertaken a site visit and having examined the application details and all other documentation on file, including the submissions received in relation to the appeal, and having regard to relevant local/regional/national policies and guidance, I consider that the substantive issues pertaining to the proposed Section 254 licencing application can be assessed under the following headings:
- Background
 - Principle of Development
 - Impact on the Character of the ACA
 - Impacts on Residential Amenity
 - Obstruction of the Footpath / Public Realm
 - Issues of Non-compliance / Unauthorised Development

7.2. Background

- 7.2.1. This Licence application is for the placement of street furniture on part of the public realm to the front of Fowlers public house on New Street in Malahide for a temporary period of one year (2025). It would appear from a review of the known planning history of the area and from publicly available imagery, that the area concerned has been in use for outdoor dining, associated with Fowlers since (at least) June 2021, following the granting of a licence by Fingal County Council (FCC) under FCC Ref. SFCOVID1940. The use of this space, and other sections of the public realm along New Street, for outdoor dining was facilitated, initially, by changes in legislation introduced during the Covid pandemic to support the hospitality sector and through the pedestrianisation of New Street.
- 7.2.2. Initially introduced as a temporary measure, plans to permanently pedestrianise New Street were announced by FCC in 2021. On the 16th of January 2024, following a period of public consultation, the Council decided to proceed with public realm improvement works for a pedestrianised New Street. Details of the planned works can be found on Fingal County Council's website at [Public Realm New Street Malahide | Fingal County Council](#). It is I consider relevant to note that the planned works include for the provision of outdoor dining to the front of Fowlers. The implementation of the works has been delayed due to a high court challenge; however, I note that this challenge has been dismissed following a recent High Court Hearing.

7.3. Principle of Development

- 7.3.1. The licence area is zoned 'TC-Town Centre' in the Fingal Development Plan 2023-2029 with the objective to protect and enhance the special physical and social character of town and district centres and provide and/ or improve urban facilities. In my opinion, the provision of street furniture to facilitate outdoor dining, ancillary to an established commercial premises in the commercial centre of Malahide, would accord with the zoning objective in that it would serve to enhance the social character of the area and provide and/ or improve urban facilities. In my view, the

proposal would promote the use of the public realm at this location, would help to create a sense of place and would contribute to the vitality and viability of this urban centre.

7.3.2. As set out in sections 4 and 7.2 of this report, the precedence for outdoor dining at this location is well established and as evidenced by the granting of this Section 254 licence, and the planned public realm improvements works for New Street, the continued use of this space for outdoor dining is supported by the local authority.

7.3.3. In my opinion the granting of this licence and the continued use of this space for outdoor dining is acceptable in principle.

7.4. Impact on Architectural Conservation Area

7.4.1. New Street forms part of the Malahide Historic Core Architectural Conservation Areas (ACA). Policy HCAP14 seeks to protect the special interest and character of ACA's and states that development within or affecting an ACA must contribute positively to its character and distinctiveness and take opportunities to protect and enhance the character and appearance of the area and it's setting wherever possible. Development shall not harm buildings, spaces, original street patterns, archaeological sites, historic boundaries or features, which contribute positively to the ACA.

7.4.2. It is the contention of the third-party appellants, that the appearance of street furnishings, commercial signage and alcohol advertisement are not in character with, nor compliant with the requirements for use and development within the Malahide ACA.

7.4.3. As set out in section 2 of this report, this licence is for the placement of tables, chairs, parasols and windbreakers on part of the public realm to the front of an established commercial premises for a further temporary period of one year. The licence application does not include for any commercial signage or any alcohol related advertisement.

7.4.4. As previously established the placement of street furniture and the use of part of the public realm for outdoor dining is acceptable, in principle, at this location. The licence if permitted would, I consider, support the continued use of the public realm along New Street as a safe place for outdoor dining and would contribute to the vitality and vibrancy of the street. In my opinion, the current and proposed use of this space for outdoor dining, particularly when compared to its previous use for loading and the parking of vehicles, represents a positive contribution to the character and visual amenities of New Street and the ACA. The Licence does not include or necessitate any physical works or alterations to any building, structure or feature within the ACA. Given the temporary nature of the licence, I am satisfied that the proposal would not have a material effect on the special character of the ACA.

7.5. Impact on Residential Amenity

7.5.1. The appeal raises concerns of nuisance, by way of noise and anti-social / disorderly behaviour, resulting from the serving of alcohol on the public road outside of the licenced premises. It is contended that the creation of this direct nuisance adversely affects residents and the public. In response the applicants state that they have had no objections from Fingal County Council, An Garda Siochana, Fire authority or any other resident.

7.5.2. As previously established the use of part of the public realm to the front of Fowler's Public House for outdoor dining is acceptable in principle and would accord with the objectives for the area as set out in the FDP. Notwithstanding, I accept that the use of the public realm for outdoor dining etc has the potential to generate noise and general nuisance. In my opinion an appropriate balance needs to be struck between the need to promote and support the commercial development of New Street and residential amenity. I am satisfied that this can be achieved by way of condition. In this regard, I note that Fingal County Council restricted the hours of the Section 254 Licence to between the hours of 9:00 and 22:00. Such a restriction is I consider reasonable given the nature of the licence and its location.

7.6. Obstruction of the Public Footpath / Public Realm:

- 7.6.1. The third-party appellants contend that the placement of street furnishings as proposed results in the obstruction of the public footpath and gives rise to obstacles to regular street cleaning, leading to an unsightly appearance.
- 7.6.2. On the date of inspection, I noted that street furniture had been arranged generally in accordance with the licence agreement issued by FCC, I observed no obstruction of the footpath and that the public realm in the vicinity of the licenced area was well maintained free of litter. Notwithstanding, I acknowledge that the section of the footpath between Fowler's and the licence area is likely to become congested during periods of high usage. However, given that such instances would be limited due to seasonal and weather restrictions and given the current and planned permanent pedestrianisation of New Street, I am of this opinion that this matter could be adequately addressed by way of condition. In this regard I note that the licence agreement issued by FCC is subject to a minimum footpath clearance of 1.8m with accessibility to be maintained to all footpath users. I would recommend that the Board include a similar condition should it see fit to approve this section 254 licence application. I would also recommend the inclusion of a condition that requires the removal of all items of street furniture belonging to the licenced premises outside of designated hours to facilitate street cleaning.

7.7. Issues of Non-compliance / Unauthorised Development

- 7.7.1. Regarding the allegations of unauthorised development and non-compliance with the conditions of the Section 254 Licence raised in the appeal, I note that matters of planning enforcement fall under the jurisdiction of the local authority, who have saw fit to approve the renewal of the section 254 Licence. Therefore, I do not consider that the Board is in a position to draw any conclusions in relation to the matters raised.

8.0 AA Screening

- 8.1. I have considered the proposed development in light of the requirements S177U of the Planning and Development Act 2000 (as amended).

- 8.2. The subject site is located on New Street in the urban centre of Malahide. The site is not on nor is adjacent to any designated European Site. The closest sites are those within the Malahide Estuary, c120m to the northeast. The Malahide Estuary designated as an SPA, SAC and pNHA. This is a licence application made under section 254 of the Planning and Development Act 2000, as amended, for the placement of street furniture on the public domain to the front of No's 5, 6, 7 and 11 New Street, Malahide, occupied by Gibney's Public House. No nature conservation concerns were raised in the planning appeal.
- 8.3. 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 nature, scale and location of the works
 - The Planning / Licence history and established use of the site for commercial
 - The distance to the nearest European site, intervening land uses and the lack of connections.
- 8.4. 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.
- 8.5. Likely significant effects are excluded and therefore Appropriate Assessment (under Section 177V of the Planning and Development Act 2000) is not required

9.0 EIA Screening

The proposed development does not come within the definition of a 'project' for the purposes of EIA, that is, it does not comprise construction works, demolition or intervention in the natural surroundings. Refer to Form 1 in Appendix 1 of report.

10.0 Recommendation

I recommend that the Section 254 Street Furniture Licence be granted

11.0 Reasons and Considerations

Having regard to the nature and extent of the proposed development for which a street licence is sought, to the location of the site on New Street, in the commercial centre of Malahide and the objectives for the area as set out in the Fingal County Development Plan it is considered that subject to compliance with the conditions set out below, the temporary use of the street as an outdoor seating / serving area for Fowlers Public House would not seriously injure the amenities of the area, including the amenities of residential properties and would not have an adverse effect on the character and setting of the designated Architectural Conservation Area would not be prejudicial to public safety by reason of traffic hazard. The proposed development would therefore be in accordance with the proper planning and sustainable development of the area.

12.0 Conditions

1. Street Furniture may be placed on the western side of New Street adjoining Fowler's premises in an area measuring 53.4 square metres. The Street furniture shall be arranged and maintained so as to maintain a minimum footpath clearance of 1.8 metres and so as not to obstruct the free-flow of pedestrian traffic.

Reason: in the interest of public safety

2. Street furniture shall only be placed at the above location between 0900 hours and 2200 hours all items covered under this license shall be removed outside of these hours

Reason in the interests of the amenities of the area

3. Street furniture shall be maintained in a safe clean and tidy condition and adequate waste management facilities shall be maintained at the site by the applicant

Reason in the interests of the visual amenities of the area

4. No outside amplification speakers / live entertainment shall be permitted without prior written consent from the planning authority and no speaker or amplifier within these premises shall be configured in such a manner so as to project sound onto the public footway

Reason in the interests of the amenities of the area

5. All appropriate public liability insurances shall be in place for the duration of this licence.

Reason: in the interests of public safety

6. The license permitted by this order shall expire on the 31st day of December 2025

Reason: In the interests of the amenities 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.

Lucy Roche
Planning Inspector

28th April 2025

Form 1

EIA Pre-Screening

An Bord Pleanála Case Reference	321659-25		
Proposed Development Summary	Section 254 Street Furniture Licence- 10 tables, 40 chairs, 4 parasols and 8 windbreakers		
Development Address	12 New Street, Malahide, Co. Dublin		
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		
	No	X	
2. Is the proposed development of a CLASS specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended)?			
Yes		State the Class here.	Proceed to Q3.
No			No further action required
3. Does the proposed development equal or exceed any relevant THRESHOLD set out in the relevant Class?			
Yes		State the relevant threshold here for the Class of development.	EIA Mandatory EIAR required
No			Proceed to Q4
4. Is the proposed development below the relevant threshold for the Class of development [sub-threshold development]?			
Yes		State the relevant threshold here for the Class of development and indicate the size of the development relative to the threshold.	Preliminary examination required (Form 2)

5. Has Schedule 7A information been submitted?		
No	X	Pre-screening determination conclusion remains as above (Q1 to Q4)
Yes		Screening Determination required

Inspector: _____ Date: _____