

Kildare County Council

Licensing Outdoor Dining and Seating

Section 254

Planning and Development Act 2000, as amended

Guidance Document

September 2022

1. INTRODUCTION

The purpose of this document is to set out the guidelines with respect to Section 254 licensing of outdoor dining and seating areas and associated design components along a public car parking spaces or footpath. The provision of outdoor dining areas contributes to the vitality and vibrancy of our town and village centres. It enhances the experience of these centre and adds to the facilities offered to the public to boosts the local economy.

2. APPROPRIATE LOCATIONS AND LAYOUT GUIDELINES

There are a number of ways that a business can avail of outdoor dining and seating areas in close proximity to their premises: (1) within the existing public footpath and (2) within an existing car parking space/bay to form a parklet.

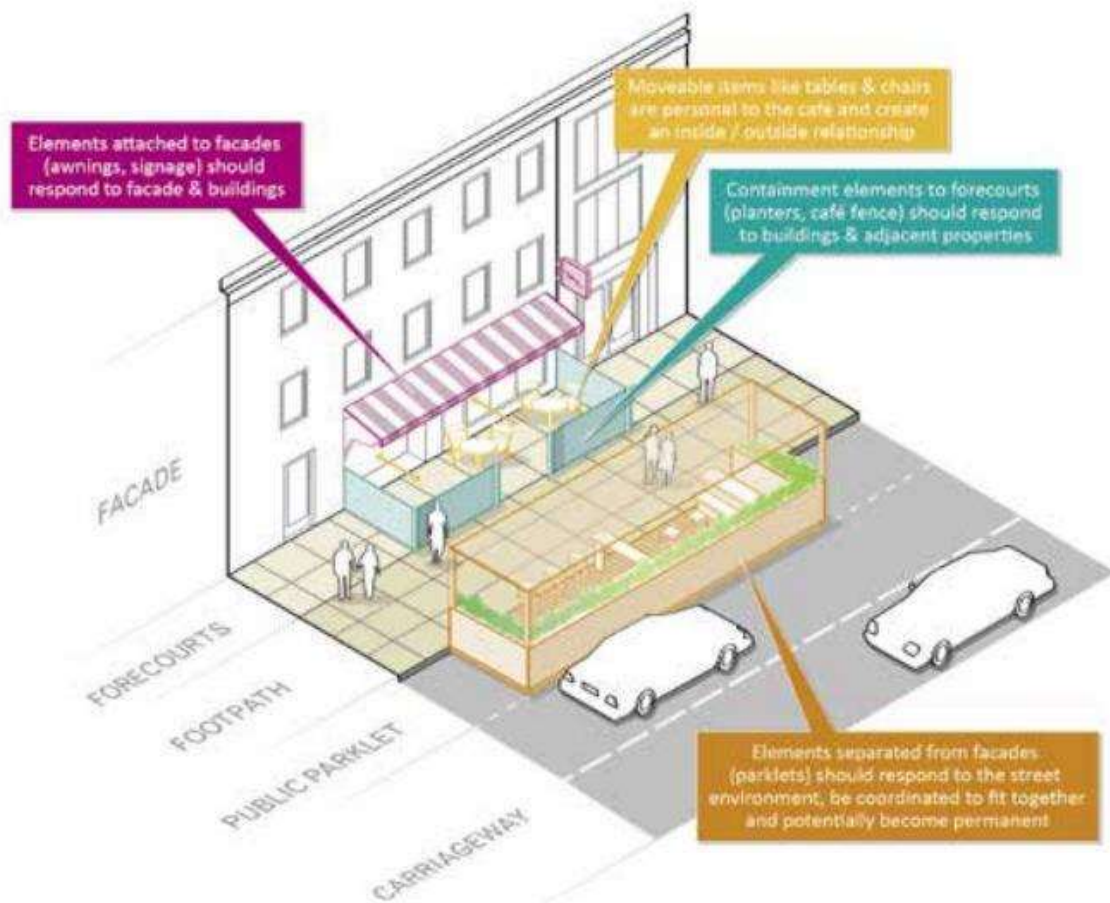


Fig 1 (Placeholder Image)

2.1 Existing Public Footpaths

As most of our town and village centres have footpaths of varying widths, often centred around historic laneways or shared spaces, it is important to ensure that the provision of outdoor dining and seating areas does not interfere with safe movement of pedestrians, cyclists and vehicles. The following parameters should be adhered to when considering outdoor dining and seating within the existing public footpath:

- Street interventions should be kept a **sufficient distance** from roadways to ensure users are kept safe and to ensure accessibility.
- The seating and dining area should be **located adjacent to the business premises**.
- **Accessibility** for all users including those with disabilities, children, and older people should be considered in the approach to design.
- A minimum **2m unobstructed width** must be maintained along the public footpath for safe pedestrian movement. This minimum width will be considered on a case-by-case basis, dependent on the width of the footpath.
- **Screening of a maximum of 1m in height** that can allow passive surveillance of the surrounding public area. Such screening should allow for passive surveillance and not act an enclosure from the wider public space.
- Tables and seating options should generally be spaced with a minimum of **1m between them** (subject to COVID-19 restrictions).
- A **2m wide obstacle free zone at business entrances and exit points** should be retained.
- The **surrounding character and context** of the wider area should also be carefully considered in the design.
- Where possible, a **collective approach to design** with other businesses in the immediate vicinity should be considered.
- Structures should be **easily set up, moved, disassembled and stored**.

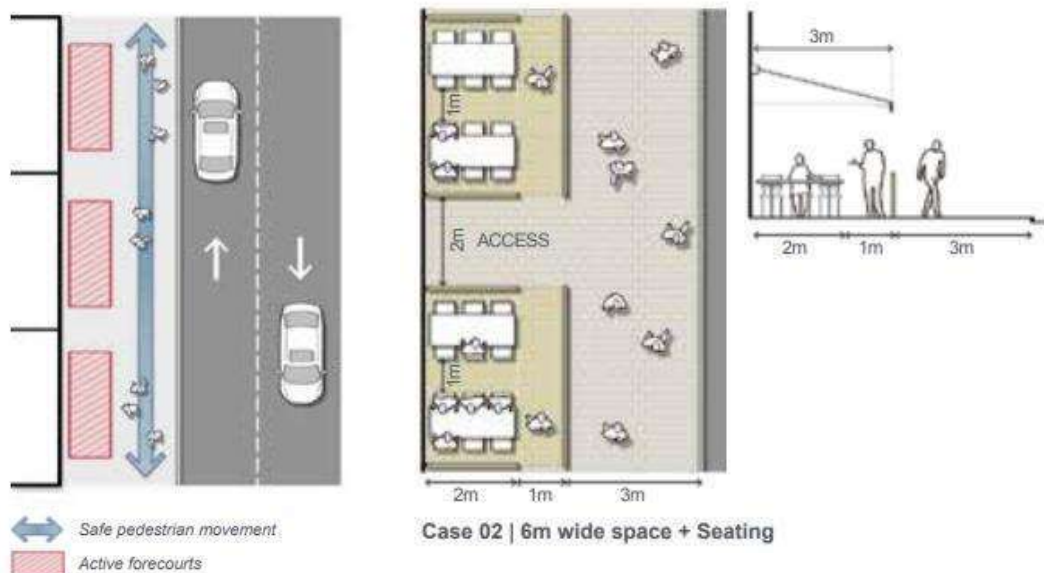


Fig 2: Example of Outdoor Dining and Seating Within the Public Footpath (Placeholder image)

Fig 3: Example of Outdoor Dining and Seating Within the Public Footpath (Placeholder image)



Main St, Maynooth, Outdoor Dining within the Public Footpath

2.2 Parklets Within Carparking Spaces

Parklets typically occupy the full width of a carparking space(s) alongside the kerb line of a footpath. In many instances, parklets extend over several car parking spaces to provide a generous area for outdoor seating and dining.

The following parameters should be adhered to when considering parklet type design:

- The seating and dining area should be located in the **carparking space or spaces adjacent to the business premises**.
- A **buffer zone of a minimum of 0.5m** shall be retained to allow sufficient space for vehicular movement at each end of the parklet.
- Parklets should be **located at least 1m from junctions and street corners** to avoid disrupting traffic and guarantee users' safety.
- Parklets should be **located away from active driveways, delivery and loading bays**, to allow the continued functional operation of streets.
- Parklet design should provide **screening of a maximum of 1m in height** to act as protection and noise barriers from adjacent street traffic, in the form of planters, barriers, wind breakers etc as indicated in Section 3.3 of this guidance document. Such screening should allow for passive surveillance and not act an enclosure from the wider public space.
- **Accessibility** for all users including those with disabilities, children, and older people should be considered in the approach to design.

- Tables and seating options should generally be spaced with a minimum of **1m between them** (subject to COVID-19 restrictions).
- The **surrounding character and context** of the wider area should also be carefully considered in the design (please see section X on design components)
- Where possible, a **collective approach to design** with other businesses in the immediate vicinity should be considered.
- Structures should be **easily set up, moved, disassembled and stored**.



Fig 4: Example of Parklet Design Within Existing Parallel Parking (Placeholder image)

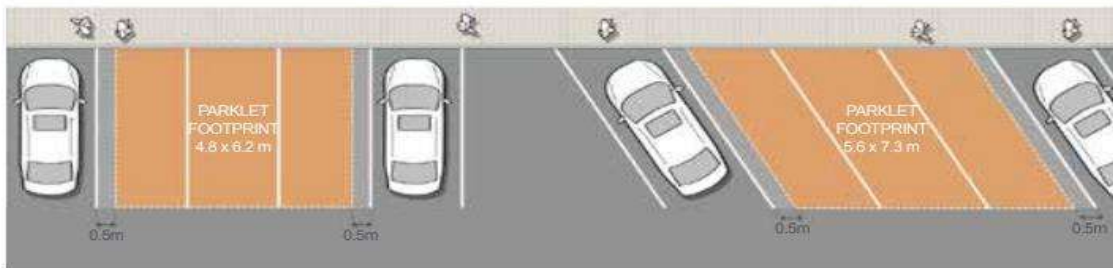


Fig 5: Example of Parklet Design Within Existing Angled and Perpendicular Parking Space (Placeholder image)



3. DESIGN COMPONENTS

3.1 Tables and Chairs

When selecting appropriate tables and chairs, the following should be taken into consideration:

- Outdoor furniture is required to make a **positive contribution to the urban environment**. The **character** of the surrounding area and street to ensure the style of the furniture is appropriate, particularly if it is an **Architectural Conservation Area** with significant numbers of **Protected Structures**.
- The design, colour, style should be **neutral in palette or be consistent with the shopfront of the premises**.
- Consideration should be given to the provision of adequate seating and tables for **people with specific needs**.
- Consideration should be given for the need to **store the seating off public areas**.



Examples of Outdoor Dining and Seating



3.2 Shelter

Canopies and umbrellas provide shelter for outdoor seating areas. The following should be taken into consideration when choosing the right shelter component:

- Impact on the **character of the streetscape** - The use of inappropriate material such as plastic and PVC with limited durability and inappropriate colours can have a significant negative impact on the street scene.
- All shelter should be **fit for purpose, installed correctly and safely**. Regular maintenance should be carried out to guarantee stability.
- Where the seating area is separated from the building façade, the use of **free-standing umbrellas or canopies** should be considered.
- **Advertising** associated with branding of the business shall only be permitted. The advertising of alcohol is not permitted.

Please note that in some instances awnings attached to the front façade of a building are an appropriate design solution for shelter and can add to the character of a streetscape. However, **planning permission is required** to install such a feature and is outside the scope of the Section 254 process.



Examples of Outdoor Dining Shelter

3.3 Screening

Screening is used to demarcate the boundary of a dining area or parklet. Their appearance, materiality and quality can have a great impact on the public realm and can significantly contribute to the creation of a vibrant and attractive atmosphere.

The following should be taken into consideration when choosing the right shelter component:

- Screening should not restrict the view for seated customers and should always allow **passive surveillance of adjacent public spaces**.
- Screening should **not obstruct the free movement of pedestrians** on the street. Generally, barriers should be a maximum of **1m high**.
- Screening should also **not obstruct the lines of sight of vehicles at junctions**.
- Different **screening measures** should be considered. For example, moveable planters could be used to demarcate outdoor dining.
- Screening should be **easy to install, move and disassemble** and they should be **stable and free-standing**.
- The use of **planters is considered to be a sustainable design** response. Green infrastructure can help to reduce carbon emissions as well as creating a pleasant and attractive natural environment for visitors to urban streets.
- In specific locations, the **Kildare County Council may require a particular design to be met** reflecting the special character of these areas, for example, Market Square, Kildare Town.



Examples of Screening

4. APPLYING FOR SECTION 254 LICENCE

The Planning and Development Act 2000, as amended, sets out the legal requirements for licensing along the public road or footpath. **For outdoor dining and seating areas within the private curtilage of a premises, planning permission will be required.** Under section 254(7), development that is carried out in accordance with section 254 of the Act is deemed exempted development for the purposes of the Act.

4.1 How to Apply for a Licence

An application for a licence may be made to the Planning Section, Kildare County Council, Aras an Chontae, Devoy Park, Naas, Co Kildare. Applications or renewal applications should be made a minimum 4 weeks in advance of the period for which the licence is being sought. Applications will be processed within 4 weeks. Structures should not be installed until the licence is granted and indemnity for Kildare County Council is in place. An application can be downloaded from the Council's website by clicking [here](#).

A fully completed application form must be accompanied by:

- Site plan at a scale of **1:500??** clearly identifying the proposed licence area in red and indicating the proposed tables and chairs and ancillary structures and any insitu structures such as lampposts, bollards, bins and utilities.
- Detailed specification including photographs of the tables and chairs and ancillary structures to be used;
- The appropriate fee, if applicable.

4.2 Issuing a Section 254 Licence

S254 of the Planning and Development Act 2000 sets out the provisions for licensing of outdoor seating and other apparatus. Under this section, Kildare County Council, in considering an application for a licence, shall have regard to:

- the proper planning and sustainable development of the area;

- any relevant provisions of the County Development Plan and Local Area Plan;
- the number and location of existing apparatus, appliances and structures on, under, over or along the public road, and;
- the convenience and safety of road users including pedestrians.

A licence will generally only issue to premises that are substantially compliant under the Planning Acts. This includes for use for the selling of food/drink and provision of seating for the purposes of consumption of food/drink at ground floor level.

The period of the licence will be as set out on the licence and can be for a maximum of one year. The granting of a licence does not automatically guarantee renewal for the following year. A change of use of the premises shall require a new application for a licence. The licence is personal to the licensee and is non-transferable.

A copy of the licence shall be prominently displayed on the premises where it can be inspected by officials from Kildare County Council.

Please note: Section 254(11) provides that, where a planning authority is not the road authority for the purposes of national or regional roads in its area, it shall not grant a licence under this section in respect of any appliance, apparatus or structure on, under, over or along a national or regional road or erect, construct or place any appliance, apparatus or structure on, under, over or along a national or regional road except after consultation with the authority which is the road authority for those purposes.

4.3 *Appealing a Decision of Kildare County Council*

Any person may, in relation to the granting, refusing, withdrawing or continuing of a licence or to the conditions specified by the planning authority for such a licence, appeal to An Bord Pleanála. An appeal may be made any time after a decision is given by the planning authority.

4.4 *Insurance*

Please note a public liability policy or cover note, indemnifying Kildare County for up to €6.5 million will be required before any final licence is issued.

The licensee shall be required to have a Public Liability and Employer Liability Insurance cover to a minimum value of 6.5 million Euros indemnifying Kildare County Council against third party claims. Kildare County Council shall be indemnified against all actions, suits, claims, demands by any person arising from injury or damage to person or property in consequence of the placement of the table, chair, sign or other structures on the public road/footpath/pedestrian area. The Insurance Company shall be notified of any accident/circumstances that give rise to a claim that occurs within the licensed area. The name of the Insurance Company providing this cover together with Policy Number and Date of Expiry shall be stated on the licence. The insurance policy shall be submitted for inspection before the licence will be issued.

4.5 *Monitoring and Enforcement*

The **Area Engineer** will undertake monitoring of the licensed areas. In the event of non-compliance with the conditions the outdoor seating/appliances may be removed by Kildare County Council and the licence forfeited.

Where street furniture is placed outside a premises without a licence or in contravention of the conditions of the licence, the owner/occupier of the premises will be requested by the **Development Management/Control Team** to remove this furniture and that failure to do so may result in removal of the furniture by the Council **under Section 71 of The Roads Act 1993**.

A Section 254 License will not be renewed where the applicant was previously in breach of a license and/or did not remove street furniture following an instruction from the Council to do so within 7 days. Where street furniture is removed by the Council, a request to retrieve same, will need to be made in writing to the Development Management/Control Team. Where any subsequent breach of the Section 254 license is made by a developer/landowner/applicant, the street furniture may be removed and confiscated without notification by the Council.

Where there is no Section 254 license to use the public domain, the street furniture shall be removed without any notification or any recourse to reclaim same.

5. POLICY CONTEXT (Gabriel Check)

The following legislation, policy and/or guidelines relate to the provision of outdoor dining areas:

- a. **Planning and Development Act 2000, as amended, Section 254 Licensing of appliances and cables, etc., on public roads** - is the primary legislation guiding the provision of outdoor dining structures which requires the granting of a license by the Planning Authority with regards to structures on, under, over or along a public road. Furthermore, Article 201(b), Part 17, Chapter 1, Miscellaneous and Transitional of the Planning and Development Regulations, 2001 as amended, prescribes what structures and situation which require a licence:

(b) tables and chairs outside a hotel, restaurant, public house or other establishment where food is sold for consumption on the premises.
- b. **Planning and Development Act 2000 (Exempted Development) (No. 3) Regulations 2021 (S.I. 208 of 2021)** - these Regulations provide that a temporary change in use from a premises selling food for consumption on the premises to one providing food for consumption off the premises will be considered an exempt development for the period up to 31 December 2021. This will have the effect of allowing restaurants which do not have a specific planning permission to operate as takeaways to operate for such purpose without having to apply for change of use of planning permission for the remainder of the current year. The use of the premises must revert to the original permitted use on the expiry of the specified period.
- c. **Planning and Development (Street Furniture Fees) Regulations 2021 (S.I. 209 of 2021)** - these new Regulations amend the fees chargeable for street furniture licences under section 254 of the Planning and

Development Act 2000, as amended, and Schedule 12, Part 1 of the associated Planning and Development Regulations 2001, as amended, in order to assist in reducing the cost burden for hotels, restaurants, public houses and other establishments where food is sold for consumption during the pandemic. In this regard, the street furniture licence fee €0 per table for the remainder of the current year. Otherwise, the fee is €125 per table.

- d. **Planning and Development (Amendment) (No. 2) Regulations 2021 (S.I. 210 of 2021)** - These Regulations provide for structures ancillary to table and chairs for outdoor dining to also be licensed under section 254 of the Planning and Development Act 2000, as amended, prescribed as the following;

(ba) Awnings, coverings, canopies, parasols, shades, windbreakers, heaters or other similar structure for the purpose of facilitating outdoor dining where tables and chairs are being provided under paragraph (b)

There is no fee associated with applying for a licence for these structures which are ancillary to a licence for tables and chairs under section 254 of the Act.

- e. **Design Manual for Urban Roads and Streets (DMURS) - Interim Advice Note – Covid-19 Pandemic Response** - The Interim Advice Note highlights a range of practical measures that can be implemented to address challenges posed by the current pandemic and in particular the immediate steps toward ensuring that town and village centres, can provide an environment that is safe to meet the needs of the most vulnerable of users, such as children, older people and those who have a visual or mobility-related disability. Furthermore, it requests that designers ensure that measures align with the principles of Universal Design and policies on accessibility for people with disabilities. More information is available [here](#).