

Report on Case No CEP-22-3138

The investigation following a complaint against the lack of official markings for outdoor catering areas.

List of Abbreviations:

CMP	Complainant
LA	Lands Authority
PA	Planning Authority
MTA	Malta Tourism Authority
TM	Transport Malta

Case history

On 15 August 2022 this Office received a complaint alleging constant further incursions onto the public road and/or pavement from establishments with structures for tables and chairs with the Planning Authority's complete and utter disregard of Policy P13 of the Outside Catering Areas Policy which states that these areas have to be marked out in a very specific visible fashion - namely by steel plates, flush with the surface they are being applied to.

An investigation with the LA as the authority responsible for this state of affairs was opened and on 24 August 2022 this Office communicated with this authority the following:

"This Office opened an investigation regarding the lack of official markings for outdoor catering areas in order to control and eliminate incursions onto the public road and/or pavement.

According to policy P13 of the Policy, Guidance and Standards for Outdoor Catering Areas on Public Open Space (2016), "The permitted Outdoor Catering Area shall be marked by steel plates, flush with the surface they are being applied to. The fixing of

the steel markers shall be carried out by Contractors appointed by the permitting Authorities and all related costs shall be borne by the applicant.”

The Lands Authority is being asked to inform us what has and is being done in order to implement this policy to the full in its safeguarding role of public space.”

This letter was also copied to the MTA, the PA and TM to submit any comments they wish to add in order to find the right way forward and for the improvement of the state of affairs.

No reply from any of the above-mentioned Government entities was forthcoming.

Observations

This is yet another clear case of lack of co-operation from the LA when the authority again does not even collaborate with the Ombudsman institution in finding a proper way forward to enhance LA’s administrative role, particularly on similar recurrent and sensitive issues where commercial interests are mushrooming everywhere reaching uncontrollable levels.

Notwithstanding the Policy, Guidance and Standards for Outdoor Catering Areas on Public Open Space (2016) falling under the Development Planning Act and stating that permitted Outdoor Catering Areas shall be marked on site, as the administrator of public land the LA is bound to see for the establishment of boundaries defining the areas being transferred. In the case of concessions for outdoor catering areas this is even more important as:

1. it will reduce abuse and obstructions onto everyday use of footpaths by pedestrians;
2. control by the various authorities will be made easier and more efficient;
3. it eliminates disputes concerning adjoining concessions; and
4. unjustified complaints about incursions on public land are avoided.
- 5.

It is also relevant to note that certain concessions for outdoor catering areas are temporary in nature and hence it is evident that any type of markers should also relate to an expiry term very similar in nature to the number plates on transport vehicles.

It goes without saying that such markers shall follow established rules related to their shape, size and form and for their upkeep, particularly for safety reasons.

Conclusions and Recommendations

Recommendations:

1. The LA shall formulate rules and procedures for the fixing of markers defining all concessions for outdoor catering areas.
2. The LA shall enforce the fixing of these markers in line with the terms of each relative concession.

Alan Saliba
Commissioner for Environment and Planning
Office of the Ombudsman

16 November 2022