



An
Bord
Pleanála

Board Direction 91.RL3569

The submissions on this file, and the report of the Assistant Director of Planning dated 21st July 2020, were considered at a Board meeting held on July 28th, 2020.

The Board, having considered the submissions on file, was satisfied that there was sufficient information on file, in the request made by Limerick City and County Council, received on April 7th, 2017, to enable the Board to decide the question put by the Council, pursuant to Section 5 (4) of the Act, and decided not to dismiss the referral, as had been requested in the submission made by Brannigan Fields solicitors, on behalf of JC Decaux Ireland Ltd, received on March 4th, 2020.

The Board decided, as set out in the following Order, that the erection of an internally illuminated billboard sign in place of a static/tri-vision billboard sign on the gable wall of premises at 23 Sarsfield Street, Limerick is development and is not exempted development.

Board Order as follows:-

WHEREAS a question has arisen as to whether the erection of an internally illuminated billboard sign in place of a static/tri-vision billboard sign on the gable wall of premises at 23 Sarsfield Street, Limerick is or is not development or is or is not exempted development.

AND WHEREAS Limerick City and County Council referred this question to An Bord Pleanála on the 7th day of April 2017.

AND WHEREAS An Bord Pleanála, in considering this referral, had regard particularly to:

- (a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended,
- (b) Articles 6(2) and 9 of the Planning and Development Regulations, 2001, as amended,
- (c) Part 2 of the Second Schedule to the Planning and Development Regulations, 2001, as amended,
- (d) The planning history of the subject site, and in particular condition number 1 of planning permission register reference number P.92/0884, for the erection of a trivision sign in place of existing sign at 23 Sarsfield Street, Limerick.
- (e) The documentation submitted as part of the referral, including photographs of the sign to which permission register reference number P.92/0884 relates, and photographs of the internally illuminated billboard sign that is the subject matter of this referral.
- (f) Relevant case law, and
- (g) The submissions on file, and the reports on file from the original Inspector and from the Assistant Director of Planning, including the results of their inspections of the subject internally illuminated advertising billboard and of the environs of the site.

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The erection of the subject internally illuminated advertising billboard, whether it involved alterations/modification to the original advertisement sign that was the subject matter of planning permission register reference number P.92/088, or involved the complete replacement of the original sign, involved the carrying out of works within the meaning of Section 2 of the Planning and Development Act, 2000, as amended, and therefore, and in accordance with case law, constitutes development under Section 3 of that Act;
- (b) The subject internally illuminated advertising billboard, while of the same height and width dimensions as the original advertisement sign that was the subject matter of planning permission register reference number P.92/088, is materially different to the original sign by reason of its increased depth and framing, and by reason of its form of illumination (which illumination projects outwards from the sign, whereas the original sign was required by condition 1 of that permission to shine solely inwards on to the sign);
- (c) The works to provide the subject internally illuminated advertising billboard would not come within the scope of Section 4(1)(h) of the Planning and Development Act 2000, as amended, because the subject billboard, by reason of its design and the form of illumination, materially affects the external appearance of the structure so as to render the appearance inconsistent of the character of the structure, and therefore would not be exempted development pursuant to Section 4(1)(h);
- (d) The subject internally illuminated advertising billboard would not come within the scope of any of the exemptions provided for in Part 2 of the Second Schedule to the Planning and Development Regulations, 2001, as amended, and is therefore not exempted development.

- (e) In any event, the provisions of Article 9 (1)(a)(iii) apply in respect of the subject development, as the development in question, by reason of its scale, illuminated nature and location adjoining a busy road junction, would result in a traffic hazard by reason of distraction of road users at or adjoining this junction.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by Section 5 (4) of the Planning and Development Act, 2000, as amended, hereby decides that the erection of an internally illuminated billboard sign in place of a static/tri-vision billboard sign on the gable wall of premises at 23 Sarsfield Street, Limerick is development and is not exempted development.

In not accepting the recommendation of the Assistant Director of Planning that the subject development is exempted development, the Board noted, and agreed with, his assessment that the subject billboard sign had the same height and width dimensions, but that its depth was not the same as the advertisement sign that had previously been authorised. This, in itself, confirms that the original advertisement structure and the billboard that is the subject matter of this referral are not identical. The Board also agreed with the Assistant Director of Planning that the provision of this billboard sign involved the carrying out of works and is therefore development, and agreed, in this regard only, with his interpretation of the case law.

However, the Board did not agree with the Assistant Director of Planning that the change in the form of illumination does not give rise to a material change in the external appearance of the structure to as to render this appearance inconsistent of the character of the structure, being (in this instance) the gable wall with the original advertising structure affixed to this building, as compared to the gable wall with the subject internally illuminated advertising billboard attached to it. In this regard, the Board took particular note of the terms of condition number 1 of planning permission register reference number P.92/088, which required that all illumination be so fixed as to be “capable of solely shining inwards on to the sign”. Therefore, the Board considered that this case can be distinguished from the case law to which the

Assistant Director of Planning refers, and did not agree with the Inspector's interpretation of this case law in this regard. The Board fully considered the Supreme Court decision in the case of Dublin Corporation v Lowe and Signways Holdings Ltd [2004] IESC 106, and noted that that case involved the replacement of one advertising hoarding with another of "identical" dimensions (as specifically noted in the judgement), whereas in the current case, the subject hoarding does not have identical dimensions to the original permitted hoarding, and – in particular by reason of the fact of the significant change in the method of illumination (which did not apply in the case of the replacement hoarding in the Dublin Corporation instance) – it is materially different, with implications for traffic safety having regard to the location of the subject development adjoining a busy road junction, where distraction of road users would be more likely than would have been the case if the illumination was directed only onto the structure rather than, as in this case, outwards towards such road users. In addition, the Board had regard to the night-time view of the present hoarding, as shown in photographs submitted by Limerick City and County Council, where the visual impact (and therefore the external appearance) is significantly different. The Board therefore considers that it is not bound by that Supreme Court decision, as the present case may be distinguished from the facts of that court case.

Board Member

Date: 31st July 2020

Philip Jones