



An
Bord
Pleanála

**Board Direction
29S.RL3588**

The submissions on this file and the Inspector's report were considered at a Board meeting held on April 26th 2018.

The Board decided, as set out in the following Order, that the proposed use of the top level (Level 6) at St. Stephen's Green Shopping Centre Car Park for a temporary event as an outdoor movie theatre, with capacity for no more than 350 patrons per screening, together with associated facilities including the provision of a bar and food, being an event of recreational character, in which this property will not be used for this purpose either continuously for a period exceeding 15 days or occasionally for periods exceeding an aggregate 30 days in any year, is development and is not exempted development.

Board Order as follows:-

WHEREAS a question has arisen as to whether the proposed use of the top level (Level 6) at St. Stephen's Green Shopping Centre Car Park for a temporary event as an outdoor movie theatre, with capacity for no more than 350 patrons per screening, together with associated facilities including the provision of a bar and food, being an event of recreational character, in which this property will not be used for this purpose either continuously for a period exceeding 15 days or occasionally for periods exceeding an aggregate 30 days in any year, is or is not development, and is or is not exempted development.

AND WHEREAS Jacobs Anderson Ltd (t/a Outset Agency), requested a declaration on this question from Dublin City Council, and the Council issued a declaration on the 24th day of April 2017 stating that the matter was development and was not exempted development.

AND WHEREAS Jacobs Anderson Ltd (t/a Outset Agency) referred this declaration for review to An Bord Pleanála, on the 22nd day of May 2017.

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

- (a) Sections 2, 3, 4 and Part XVI of the Planning and Development Act, 2000, as amended,
- (b) Articles 6, 9 and 183 of the Planning and Development Regulations, 2001, as amended,
- (c) Class 37 of Part 1 of the Second Schedule to the Planning and Development Regulations, 2001, as amended, and
- (d) the documentation on file and the report of the Planning Inspector,

AND WHEREAS An Bord Pleanála has concluded that:

- (a) the erection of a proposed outdoor cinema screen on a temporary basis constitutes works as defined under Section 2 (1) of the Planning and development Act 2000, as amended, and is therefore development;
- (b) the use of the car park on a temporary basis as an outdoor cinema, with ancillary associated facilities including the provision of a bar and food, constitutes a change of use of the car park, and such change of use would raise material issues relating to the proper planning and development of the area, including impact on traffic in the area, and potential for impacts on the

residential amenities of nearby properties, and is therefore a material change of use and is development;

- (c) Having regard to the scale of the development, including the number of patrons outlined in the documentation on file, the development would not come within the scope of the provisions of an event for which licensing is required, pursuant to Article 183 of the Planning and Development Regulations, 2001, as amended, and therefore would not come within the scope of Part XVI of the Planning and Development Act, 2000, as amended.
- (d) The development would not come within the scope of Class 37 of Part 1 of the Second Schedule to the Planning and Development Regulations, 2001, as amended, as it has not been demonstrated that the event in question is a local event.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by Section 5 (3)(a) of the Planning and Development Act, 2000, as amended, hereby decides that the proposed use of the top level (Level 6) at St. Stephen's Green Shopping Centre Car Park for a temporary event as an outdoor movie theatre, with capacity for no more than 350 patrons per screening, together with associated facilities including the provision of a bar and food, being an event of recreational character, in which this property will not be used for this purpose either continuously for a period exceeding 15 days or occasionally for periods exceeding an aggregate 30 days in any year, is development and is not exempted development.

In not accepting the Inspector's recommendation that the development would constitute exempted development, the Board was not satisfied, based on the documentation submitted with the referral, that the event in question, while it was of a recreational character, was a local event, and noted that, to come within the scope of Class 37 of Part 1 of the Second Schedule to the Planning and Development Regulations, 2001, as amended, the event in question has to be a local event. The Board noted that this aspect was not part of the Inspector's assessment of the case.

The Board further considered, in accordance with case law, that the onus of proof is on the party seeking the exemption, and not on the Planning Authority (or the Board) to disprove it, and noted that no evidence that the subject event was a local event had been submitted by the referrer in this instance.

Board Member

Date: 3rd May 2018

Philip Jones