



An
Bord
Pleanála

Inspector's Report ABP-300216-17

Question

As to whether the proposed works to Unit G9 Pottery Business Park, Pottery Road, Dun Laoghaire, Co. Dublin comprising illuminated strip lighting on the north-western and north-eastern elevations, are or are not development, and whether the development constitutes exempted development or does not constitute exempted development.

Location

Unit 9G Pottery Business Park,
Pottery Road, Dun Laoghaire, Co.
Dublin.

Declaration

Planning Authority

Dun Laoghaire Rathdown County
Council

Planning Authority Reg. Ref.

11717

Applicant for Declaration

Celtory Limited

Planning Authority Decision

Is not exempted development

Referral

Referred by Celtory Limited

Owner/ Occupier Celtory Limited

Observer(s) None

Date of Site Inspection 17th April 2018

Inspector Emer Doyle

1.0 Site Location and Description

1.1. The site is located within the Pottery Road Business Centre, Dun Laoghaire, Co. Dublin. It is accessed from Pottery Road and contains a part three storey, part, four storey commercial unit. The subject site is located at the northwestern end of a mixed use office block, comprising commercial and office floorspace. The site is bounded by existing commercial properties including a three storey building to the west and a single storey Lidl store to the east.

2.0 The Question

2.1. Celtory Limited seeks the Board's determination as to 'Whether the installation of illuminated strip lighting to a building is or is not development or is or is not exempted development.'

3.0 Planning Authority Declaration

3.1. Declaration

The Planning Authority declared that the installation of illuminated strip lighting to the building does not constitute exempted development in accordance with Section 4(1)(h) of the Planning and Development Act 2000 (as amended).

3.2. Planning Authority Reports

3.2.1. Planning Reports

- It is considered that the installation of strip lighting would constitute the carrying out of works and can therefore be considered to comprise 'development' as defined in Section 3(1) of the Act.

- It is considered that the works materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure itself, and of neighbouring structures.
- The subject development would not therefore comply with the provisions of Section 4(1)(h) of the Planning and Development Act 2000 as amended.

4.0 Planning History

- 4.1. D14A/0483 - Permission granted at Unit G9 Pottery Business Centre, Pottery Road, for change of use of ground floor from office to use as a studio for yoga, meditation, Kigong, brain training, holistic healing and alternative treatments.
- 4.2. D06A/1092 – Permission granted at Unit 1-6 Dun Laoghaire Industrial Estate Pottery Road for construction of a part three, part four storey office building over basement car park with ancillary site works.
- 4.3. Enf.21317 – An enforcement file was opened by the Planning Authority on the 3rd June 2017 in relation to the provision of external illumination strips on the North West Elevation façade without the benefit of a valid planning permission.

5.0 Policy Context

5.1. Development Plan

The Dun Laoghaire Rathdown County Development Plan 2016-2022 applies. The site is zoned 'E' which seeks to provide for economic development and employment.

5.2. Natural Heritage Designations

None.

6.0 The Referral

6.1. Referrer's Case

- The subject works are considered to be exempt pursuant to Section 4(1)(h) of the Planning and Development Act 2000 (as amended) as the strip lighting will not materially affect the external appearance of the structure to such an extent that the appearance of the building is inconsistent with the immediate surrounding area.
- The installation of strip lighting has only sought to improve the aesthetic working/ operational environment of the area.
- The external effects from the lighting are considered trivial and peripheral to such an extent that they may be perceived as insubstantial in the context of the overall building.
- The referrer notes that a previous referral decided by the Board in relation to strip lighting at TGI Friday Blackrock is entirely different than the current referral having regard to the location of the building on a prominent corner site and the extent of the lighting on three sides of a thatched cottage.

6.2. Planning Authority Response

The response refers to the planning report.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

7.1.1. The following statutory provisions are relevant in this instance.

7.1.2. Section 2(1): In this Act, except where the context otherwise requires

"**works**" includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal ...;

"**structure**" means any building, structure, excavation or other thing constructed or made on, in or under any land, or any part of a structure so defined.

- 7.1.3. Section 3(1): in this Act, "**development**" means, except where the context otherwise requires, the carrying out of any works on, in, or under land or the making of any material change in the use of any such structures or other land.
- 7.1.4. Section 4(1): sets out developments that shall be exempted development for the purposes of this Act. Section 4(1)(h) development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures.

7.2. **Planning and Development Regulations, 2001**

Article 6(1) of the Planning & Development Regulations, 2001 as amended states as follows:-

"Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1."

8.0 **Assessment**

- 8.1.1. This referral seeks a determination in relation to whether the installation of illuminated strip lighting on the northwestern and northeastern elevation of Unit G9-10 Potter Business Centre is or is not exempted development under the Planning and Development Act 2000 (as amended) and the Regulations made thereunder.
- 8.1.2. It should be stated at the outset that the purpose of this referral is not to determine the acceptability or otherwise of strip lighting in respect of the proper planning and sustainable development of the area, but rather whether or not the matter in question constitutes development, and if so falls within the scope of exempted development.

8.1.3. **Is or is not development**

Section 2(1) of the 2000 Planning and Development Act defines “works” as including *“any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure”*.

In addition to the above, the Act defines “alteration” as including *“(a) plastering or painting or the removal of plaster or stucco, or (b) the replacement of a door, window or roof that materially alters the external appearance of a structure so as to render the appearance inconsistent with the character of the structure or neighbouring structures.”*

Section 3(1) of the 2000 Planning and Development Act states as follows:- *“In this Act, ‘development’ means, except where the context otherwise requires, the carrying out of works on, in, over or under land or the making of any material change in the use of any structures or other land.”*

8.1.4. In terms of the above, the Board will note that ‘works’ include ‘alterations’. I consider that the erection of the external strip lighting represents an alteration to the exterior of the structure. I am satisfied that, in accordance with the above definitions, the works undertaken at the property being the installation of external lighting strips constitutes development. The Planning Report also considers that the installation of illuminated strip lighting constitutes development. This determined, consideration is required as to whether the ‘works’ would constitute *“exempted development”*.

8.1.5. **Is or is not exempted development**

8.1.6. The referrer considers that the works are exempt under Section 4(1)(h) of the Planning and Development Act 2000 ‘as the strip lighting’ will not materially affect the external appearance of the structure to such an extent that the appearance of the building is inconsistent with the immediate surrounding area.’

- 8.1.7. The referrer makes the argument that the circumstances of the current site are entirely different to the referral for The Playwright Public House in Blackrock (Referral No. PL06D.RL2303) where the Board decided that ‘the erection of the neon strip lighting would materially alter the appearance of the structure so as to render this appearance inconsistent with the character of the structure.’
- 8.1.8. I accept that the site is in a less prominent location than the referral under PL06D.RL2303. Nevertheless, the site is visible from the nearby LIDL supermarket and other locations in the vicinity. In addition, there is no exemption or class of exemption for such lighting in the Planning and Development Regulations. In terms of Section 4(1)(h) of the Planning and Development Act, when the lights are on, the subject building is very prominent in the area. At present, some of the lights are not working and this perhaps lessens the impact of the lighting but also brings attention to the poor maintenance of the lighting.
- 8.1.9. I consider that the lighting materially affects the character of the area and therefore cannot be considered to be exempted development under Section 4(1)(h) of the Planning and Development Act.

8.2. **Restrictions on exempted development**

The proposed development would not require an EIS. Having regard to the nature and scale of the development proposed and to the nature and scale of the receiving environment, namely a fully serviced industrial area, no appropriate assessment issues arise.

9.0 **Recommendation**

- 9.1. I recommend that the Board should decide this referral in accordance with the following draft order.

WHEREAS a question has arisen as to whether or not the proposed works to Unit G9 Pottery Business Park, Pottery Road, Dun Laoghaire, Co. Dublin comprising illuminated strip lighting on the north-western and north-eastern elevations, are or are not development or are or are not exempted

development:

AND WHEREAS Celtory Limited requested a declaration on this question from Dun Laoghaire Rathdown County Council and the Council issued a declaration on the 23rd day of October, 2017 stating that the matter was was not exempted development:

AND WHEREAS Celtory Limited referred this declaration for review to An Bord Pleanála on the 16th day of November, 2017:

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

- (a) Sections 2(1), 3(1) and 4(1)(h) of the Planning and Development Act, 2000 (as amended),
- (b) the planning history of the site,
- (c) the pattern of development in the area:

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The erection of the illuminated strip lighting to the north-western and north-eastern elevations constitutes ‘works’ to the exterior of the structure which materially affects the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or neighbouring structures, and is therefore ‘development’ within the meaning of Section 3 of the Act.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3)(a) of the 2000 Act, hereby decides that the erection of illuminated strip lighting is development and is not exempted development.

Emer Doyle
Planning Inspector

21st June 2018