



An
Bord
Pleanála

Inspector's Report ABP-300447-17

Question

Whether the provision of an illuminated advertisement inside premises at no. 124-127 St Stephen's Green Dublin 2 is or is not development, or is or is not exempted development.

Location

124-127 St Stephen's Green West,
Dublin 2

Declaration

Planning Authority

Dublin City Council

Planning Authority Reg. Ref.

0404/17

Applicant for Declaration

Indeed Ireland Operations

Planning Authority Decision

Proposed Development Is Not
Exempted Development

Referral

Referred by

Applicant

Owner/ Occupier

Indeed Ireland Operations

Observer(s)

None

Date of Site Inspection

13th March 2018

Inspector

Una O'Neill

Contents

1.0 Site Location and Description	4
2.0 The Question	4
3.0 Planning Authority Declaration.....	4
3.1. Declaration.....	4
3.2. Planning Authority Reports	4
4.0 Planning History.....	5
5.0 Policy Context.....	5
5.1. Dublin City Development Plan 2016-2022	5
5.2. Natural Heritage Designations	5
6.0 The Referral.....	5
6.1. Referrer's Case	5
6.2. Planning Authority Response.....	6
6.3. Further Responses.....	6
7.0 Statutory Provisions.....	7
7.1. Planning and Development Act, 2000.....	7
7.2. Planning and Development Regulations, 2001 (as amended)	7
8.0 Assessment.....	8
8.4. Is or is not development	9
8.5. Is or is not exempted development	9
9.0 Recommendation.....	10

1.0 Site Location and Description

- 1.1. The subject site is located on Saint Stephens Green West in Dublin City Centre, opposite the Saint Stephen's Green Luas stop and adjoining the Fitzwilliam Hotel and Saint Stephen's Green shopping centre. An existing laneway, Glovers Alley, adjoins the southern side of the building, opposite which is the Royal College of Surgeons building.
- 1.2. The building in question presents as a four storey building to the street with upper floor set backs of two additional floors. The building has a fully glazed façade at street level onto Saint Stephens Green West and is also fully glazed at the southern façade onto the adjoining laneway. A coffee dock and seating area associated with the offices (not open to the public) is located at ground level adjoining the entrance door foyer to the building.

2.0 The Question

- 2.1. Whether the provision of an illuminated advertisement inside the premises at No. 124-127 St Stephen's Green West, Dublin 2, is or is not development or is or is not exempted development.

3.0 Planning Authority Declaration

3.1. Declaration

The Planning Authority decision states that the proposed works do not constitute exempted development and require planning permission.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The planning officer's report states the lettering subject of the section 5 referral is of such a scale and design that the proposal would materially affect the interior and external appearance of the structure so as to render the appearance inconsistent with the character of the structure and of neighbouring structures.

3.2.2. Other Technical Reports

None.

4.0 Planning History

None.

5.0 Policy Context

5.1. Dublin City Development Plan 2016-2022

The following zoning and designations apply to the subject site:

- Zoning Objective Z5 – ‘to consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity’.
- St Stephen’s Green (Park) and adjoining streets comes within an area designated as a Conservation Area in the Development Plan.

5.2. Natural Heritage Designations

None.

6.0 The Referral

6.1. Referrer’s Case

- The reasoning within the planner’s report is not clearly set out.
- The planner’s report has mixed up two different and separate exemptions. Class 2 of the regulations have been applied, as has section 4(1)(h) of the Act.
- In accordance with section 4(1)(h) the signage does not affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures.

- While the assessment is subjective, it would be a common sense interpretation that a modern well designed set of letters does not affect the external appearance of a modern building so as to render it inconsistent with the character of No. 124-127 St. Stephen's Green.
- With regard to the character of neighbouring buildings, the Fitzwilliam Hotel and St. Stephen's Green are modern structures. The ground floor shop front units adjoining the Fitzwilliam Hotel comprise illuminated shop front displays for St. Stephen's Green shopping centre. The RCSI building is separated from this building by Glovers Alley laneway. The RCSI is visually and physically separate from this building. The signage, which is internal to the building and stepped back from the frontage, will not materially affect the external appearance of the structure so as to render the appearance inconsistent with the RCSI building.
- The building in question is an infill contemporary building on a corner site fronted by a wide footpath and modern luas line with accompanying modern street furniture/signage.
- The development is considered exempt pursuant to section 4(1)(h) of the Planning and Development Act 2000 (as amended).
- There is no provision to apply Section 4(1)(h) if it is accepted that a development is exempted development under the regulations, unless the development falls foul of article 9, which it doesn't in this instance.
- It is considered that the illuminated advertisement comes within Class 2 of the regulations and is less than 25% of the overall window area. The window area is stated to be 35.79sqm and the area of the signage is considered to be 7.72 sqm.

6.2. Planning Authority Response

None.

6.3. Further Responses

None

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

Section 2(1) defines works as follows:

“works” includes 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.

Section 3 (1) defines development as follows:

“development” means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land.

Section 4(1)(h): the following shall be exempted development for the purposes of the Act...

(h) development consisting of the carrying out of works for the maintenance improvement further alteration of any structure being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or neighbouring structures’.

7.2. Planning and Development Regulations, 2001 (as amended)

Definitions, ‘Advertisement’: Any word, letter, model, balloon, inflatable structure, kite, poster, notice, device or other representation employed for the purpose of advertisement, announcement or direction.

Article 6(1) states ‘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’.

Article 6(2)(a) states as follows:

Subject to article 9, development consisting of the use of a structure or other land for the exhibition of advertisements of a class specified in column 1 of Part 2 of Schedule 2 shall be exempted development for the purposes of the Act, provided that—

(i) such development complies with the conditions and limitations specified in column 2 of the said Part 2 opposite the mention of that class in the said column 1, and

(ii) the structure or other land shall not be used for the exhibition of any advertisement other than an advertisement of a class which is specified in column 1 of the said Part 2 and which complies with the conditions and limitations specified in column 2 of the said Part 2 opposite the mention of that class in the said column 1.

Part 2 Schedule 2 of the Planning and Development Regulations 2001 (as amended) relate to Exempted Development – Advertisements.

Column 1 Description of Development	Column 2 Conditions and Limitations
CLASS 2 Illuminated advertisements exhibited as part of any shop or other window display on business premises and other advertisements affixed to the inside of the glass surface of a window of a business premises or otherwise exhibited through a window of such premises.	The total area of any advertisements so exhibited shall not exceed one quarter of the area of the window through which the advertisements are exhibited.

8.0 Assessment

8.1. The works relate to existing signage within the ground floor area of an existing building. The signage comprises self-illuminated, free standing, letters, set back from

the glazed frontage and exhibited on the ground floor of this modern office building. The letters, which spell the word 'indeed', have a maximum height of 2.45m and span a width of 8m. The letters are white in colour and are individually illuminated. Behind the letters the existing ground floor space is utilised as a coffee dock with seating associated with the existing office use.

8.2. St Stephen's Green (Park) and adjoining streets comes within an area designated as a Conservation Area in the Development Plan. I note it is not a statutory Architectural Conservation Area.

8.3. It should be stated at the outset that the purpose of this referral is not to determine the acceptability or otherwise of this contemporary approach to signage in respect to 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. Likewise, planning enforcement is a matter for the planning authority and does not fall within the jurisdiction of the Board.

8.4. **Is or is not development**

8.4.1. The erection of the free standing signage in question, spelling the word 'indeed', is considered to constitute works, as per Section 2(1) of the Planning and Development Act 2000 (as amended) and is therefore development, as per Section 3 of the Act.

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

8.5.1. Development can be exempted from the requirement for planning permission by either section 4(1) of the Planning and Development Act, 2000 (the Act) or article 6 of the Planning and Development Regulations 2001 (as amended).

8.5.2. With regard to section 4(1)(h) of the Act, I note that the provision relates to 'works for the maintenance, improvement or other alteration of a structure which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or neighbouring structures'. The works which have taken place relate to the positioning of moveable letters spelling out the name of the company within the ground floor unit of the building, with the purpose of advertising the company. I do not consider these works are for the 'maintenance, improvement or other alteration

of a structure' and therefore in my view section 4(1)(h) does not apply. Furthermore, given the oversized scale of the advertisement at 2.45m high within a window which is 3m high, in addition to the width of the advertisement at 8m, the proposal in my view materially affects the external appearance of the structure so as to render the appearance inconsistent with the character of the structure and therefore does not come within the latter part of section 4(1)(h) of the Planning and Development Act 2000 (as amended).

8.5.3. With regard to article 6 and Part 2 Schedule 2 of the Planning and Development Regulations 2001, the applicant states the signage comes within class 2 Illuminated advertisements. The applicant contends that the area of the signage is 7.72sqm and the area of the windows is 35.79sqm and therefore the signage complies with the conditions and limitations of Part 2 Schedule 2, which limit the area of any illuminated advertisement to one quarter of the area of the window. The applicant calculates the area of the signage by calculating each individual letter, excluding the area surrounding/within/and in between each letter. This is, in my view, incorrect as the signage can only be read when all six letters are laid out together in the order in which they appear, forming one word, therefore the area of the signage in my view is the width and height from the first letter to the last letter and not the area of the shape of each individual letter within the sign. The sign, by my calculations has an area of 20sqm, which exceeds one quarter of the area of the window through which the advertisement is exhibited (35.79sqm). The proposal in my view does not come within the limitations of Class 2.

8.6. In assessing the merits of the case I have reviewed the previous relevant declarations made by the Board.

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 an illuminated advertisement inside the premises at No. 124-127 St Stephen's Green West is or is not development or is or is not exempted development:

AND WHEREAS Indeed Ireland Operations requested a declaration on this question from Dublin City Council and the Council issued a declaration on the 20th day of November, 2017 stating that the matter was not exempted development:

AND WHEREAS Indeed Ireland Operations referred this declaration for review to An Bord Pleanála on the 13th day of December, 2017:

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

- (a) Section 2(1) of the Planning and Development Act, 2000, as amended,
- (b) Section 3(1) of the Planning and Development Act, 2000,
- (c) Section 4(1)(h) of the Planning and Development Act, 2000, as amended,
- (d) article 6(1) of the Planning and Development Regulations, 2001, as amended,
- (e) Part 2 of Schedule 2 of the Planning and Development Regulations, 2001, as amended,

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The development that has taken place does not come within the scope of Section 4(1)(h) of the Planning and Development Act 2000 (as amended) as it constitutes signage which involves works which are not for the maintenance, improvement or other alteration of a structure and are considered to be works which materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure.

(b) The development does not come within the scope of Class 2 of Part 2 of Schedule 2 of the Planning and Development Regulations 2001, having regard to the extent of the signage.

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 signage comprising an illuminated advertisement is development and is not exempted development.

Una O'Neill
Senior Planning Inspector

23rd April 2018