



An
Bord
Pleanála

Inspector's Report

ABP-304015-19

Development

The installation of double sided digital Metropanel advertising display including all associated site works and service.

Location

On the public footpath, on the Western side of Dawson Street, in front of No.51 Dawson Street, Dublin 2

Planning Authority

Dublin City Council South

Planning Authority Reg. Ref.

WEB1688/18

Applicant(s)

JC Decaux Ireland Ltd.

Type of Application

Permission.

Planning Authority Decision

Grant Permission subject to conditions

Type of Appeal

Third Party

Appellant(s)

FL Partners.

Observer(s)

Transport Infrastructure Ireland.

Date of Site Inspection

10/06/2019

Inspector

Brid Maxwell

1.0 Site Location and Description

- 1.1. The appeal site is located on the public footpath on the western side of Dawson Street, to the front of No 51 Dawson Street in Dublin 2. The site relates to a stated area of 0.4m² on the public footpath on the block between Duke Street and Ann Street south fronting the building currently occupied by the Marco Pierre White Restaurant at street level which includes an dining terrace enclosed by screens at street front.

2.0 Proposed Development

- 2.1. The proposal as set out in public notices is described as “the installation of double sided digital ‘Metropanel’ advertising display including all associated site works and services. The proposed structure has an overall height of 2.882m, a depth of 0.255m and a width of 1.438m.
- 2.2. The proposal is described in detail in the documents accompanying the application which includes a planning report by Future Analytics. The proposed digital metropanel comprises two 86” screens. The advertisements in the digital display will be remotely changed at intervals of 10 seconds with a smooth transition. The luminosity of the digital metropanel typically ranges between 150-300 candelas per m².

3.0 Planning Authority Decision

3.1. Decision

By order dated 26th February Dublin City Council issued notification of its decision to grant permission subject to the following conditions of note.

Condition 2. The mechanism of changing the digital advertising display here approved shall be by means of fade transition of the display at intervals of 10 seconds or more. Any change to the nature of the advertising display including to a flick or scroll transition between advertisements shall be subject to a prior grant of planning permission.

Condition 3. Maximum illuminance between dusk and dawn shall not exceed 300 candelas per square metre. Review of luminance level within 12 months and in any event not later than 31 January 2020. Only static images without movement shall be permitted.

Condition 5. Arrangements for maintenance repair and upkeep. Removal if necessary for road widening reconstruction or repair or replacement of services in public footpath. Any illumination generated by the Metropanel advertising display shall not cause excessive glare or distraction of road users or adjoining property owners.

Condition 11. Developer to ensure no adverse impact on Luas operation or safety. Compliance with TII Code of Engineering Practice for works on near or adjacent to Luas.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Planning officer asserts that the proposed digital advertising display is a well-established part of Dublin's Street furniture and an integral element of the city's public realm strategy. The location on the outer edge of the public footpath is considered appropriate and will unlikely interfere with safety of pedestrians, the accessibility of the public footpath or roadway and safety and freeflow of traffic nor will it obscure road signs. Permission was recommended subject to conditions.

3.2.2. Other Technical Reports

Engineering Department - Drainage division. No objection subject to compliance with the Greater Dublin Regional Code of Practice for Drainage Works. Version 6.0.

3.3. Prescribed Bodies

3.3.1 Transport Infrastructure Ireland Section 49 Levy - if applicable. Compliance with Code of Engineering Practice for works on near or adjacent to the Luas light rail system.

3.4. Third Party Observations

3.4.1 Submission from Blade Restaurants Ltd. trading as Featherblade at 51 Dawson street, strongly objects to the proposal. Notes continuous disruption over the last 2 years arising from Luas works. Proposed advertising structure diminishes the public perception of the surrounding businesses and reduces aesthetic appeal of the area. Application does not accurately reflect the layout of the sidewalk. Congestion with electric metres, luas cabinets and outdoor dining area.

3.4.2 FL Partners, 51 Dawson Street. Proposal is contrary to public realm strategy. Application documentation is substandard. Proposal results in safety hazard and is contrary to NDA 'Building for Everyone' Guidelines.

4.0 Planning History

4.1 The following recent cases in respect of recent permissions for similar structures in city centre locations are noted:

1453/17 Permission granted on the public thoroughfare at the eastern end of King Street South Dublin 2 for "replacement of existing internally illuminated double sides, scrolling metropanel advertising display with a double sided digital 'Metropanel' advertising display. Overall height 2.882m depth 0.255m & width 1.438m

1454/17 Permission granted on public thoroughfare at northern side of King Street South, for "replacement of existing internally illuminated double sides, scrolling metropanel advertising display with a double sided digital 'Metropanel' advertising display. Overall height 2.882m depth 0.255m & width 1.438m

1451/17 Permission granted on public footpath on southern side of Nassau Street for "replacement of existing internally illuminated double sides, scrolling metropanel advertising display with a double sided digital 'Metropanel' advertising display. Overall height 2.882m depth 0.255m & width 1.438m.

4.2 Notably the initial cross city light rail luas layout included a proposal for a north bound stop at the location of the current appeal site and this was subsequently relocated northwards on Dawson Street to its current location. The following Board decisions refer:

PL29N.NA0004 St Stephen's Green to Broombridge Light Railway Line – Line BXD. Railway Order under Section 37, Transport (Railway Infrastructure) Act 2001 [as amended by the Planning and Development (Strategic Infrastructure) Act 2006.

PL29N.NA0008 Luas Cross City Light railway St Stephen's Green to Broombridge Line, Dawson Street Northbound Stop. Railway Order (RO) under Section 37, Transport (Railway Infrastructure) Act 2001 [as amended by the Planning and Development (Strategic Infrastructure) Act 2006.

5.0 Policy Context

5.1. Development Plan

5.1.1 The Dublin City Development Plan 2016-2022 refers.

- As public realm the site is unzoned. The surrounding lands are zoned Z5 "City Centre".
- The site is located within the South City Retail Quarter Architectural Conservation Area.
- Dawson Street is a category 2 Shopping Street within the city centre retail core.
- Section 4.5.6 Outdoor Advertising Strategy. Based on an analysis of how sensitive different parts of the city are to advertisement structures.
- SC22 *"To consider appropriately designed and located advertising structures primarily with reference to the zoning objectives and permitted advertising uses and with secondary consideration of the Outdoor Advertising Strategy. In all such cases, the structures must be of high-quality design and materials, and must not obstruct or endanger road users or pedestrians, nor impede free pedestrian movement and accessibility of the footpath or roadway."*
- Appendix 19 Outdoor Advertising Strategy.

"In order to manage an effective programme of outdoor advertising, the city council has developed a policy based on geographical zones. These zones cover all parts of the city, ranging from areas of architectural historical and cultural sensitivity, to residential area, to areas of little architectural or historic significance. Based on these zones a range of controls and policies have been developed from each zone ranging

from the prohibition of outdoor advertising in the most sensitive areas to more general controls in less sensitive areas where certain type of advertising will be considered”

The site is within Zone 2. *“This Zone of significant urban quality comprises retail and commercial uses. In this zone, outdoor advertisement may be permitted subject to special development management measures.*

- 19.2 Public Realm: A coordinated approach.

“The preferred location for outdoor advertising panels in the city is on public thoroughfares, distributor roads and radial routes contained within Zones 2, 3 and 5 as indicated showing zones of Advertising Control. The provision of outdoor advertising panels in the public realm will enable the city council to adopt a co-ordinated approach to the management of the city’s advertising activity and to encourage better quality signage in more appropriate locations.

Any upgrading of existing outdoor advertising (e.g. trivision, scrolling, electronic) will only be permitted if it is acceptable in amenity/safety terms and an agreement is made to decommission at least one other display panel in the city and to extinguish the licence for that panel. The purpose of this measure is to ensure that other operators do not use the site.”

- Section 19.6 Advertising Development Management Standards.

“The provision of all advertising in the city centre will be monitored and controlled in order to prevent the creation of undesirable visual clutter and to protect environmentally sensitive areas and buildings.”

“Advertising signs, separately, or more particularly in groups, can often cause injury to visual amenities, and can detract from the appearance of an area or a building; this is especially so when they are out of scale and character with their surroundings. They can also be a major distraction to road users and frequently result in traffic hazard. It is the policy of the planning authority to strictly control all advertising signs in relation to their location, design, materials, function and operation.”

- 19.3 Illuminated Signs.

“Illuminated signs in appropriate locations can provide both information and colour in the townscape after dark.

- 19.5 Implementation of the Outdoor Advertising Strategy.

Dublin City Council will evaluate all planning applications for signs in relation to the surroundings and features of buildings on which they are to be displayed, to the number and size of signs (both existing and proposed) and the potential for the creation of undesirable visual clutter.

Permissions for outdoor advertising in certain instances, where appropriate as determined by the planning authority, may be limited to a maximum of three years in the first instance to enable the position to be reviewed by Dublin City Council in the light of changing circumstances at the end of that period.

Non-essential advertising structures, or any advertising structures which would impact injuriously on amenity, the built environment or road safety, and to secure the removal of unauthorised signs will be restricted.”

- Advertising Development Management Standards.

Applications for new advertising structures on private lands will be considered having regard to a number of factors:

“Advertising panels will not be permitted where they interfere with the safety of pedestrians, the accessibility of the public footpath or roadway, the safety and free flow of traffic or if they obscure road signs.

Impact on the character and integrity of Architectural Conservation Areas, Protected structures and Conservation Areas.

Proposals must meet the safety requirements of the Transport Infrastructure Ireland TII where appropriate.”

5.2. Natural Heritage Designations

None

5.3. EIA Screening

5.3.1 Having regard to the nature of the proposed development, the proposal does not constitute an EIA project. The need for EIAR or Preliminary Examination is not therefore required.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1 The appeal is Submitted by Reid Associates on behalf of FL Partners, 51 Dawson Street. Grounds of appeal are summarised as follows:

- Permission is inconsistent with decision to refuse permission for north bound Luas stop at same location due to pedestrian congestion on the footpath.
- North bound stop subsequently located to the north on the street and notably advertising totem omitted in Board order.
- Environmental character and consequent impact on business dependent on attractive pedestrian environment of paramount significance in the Board's decisions.
- Planning report submitted with the application and report of planning authority failed to take account of the planning history.
- Material contravention of Development Plan Policy given nature of site as unzoned public realm.
- Visually obtrusive and dominant in Architectural Conservation Area.
- Land use conflict between the amenity of the terrace to the Marco Pierre White Restaurant and the proposed advertising signage with changing panels every 10 seconds and strong luminance of 300 candelas per square meter directly beside the terrace. Obstruction of entrance to restaurant.
- Site notice location on a lamp post inadequate.
- Plans fail to accurately show the contextual relationship of the proposed sign in respect of the entrance to Marco Pierre White's entrance, loading bay existing street furniture, steps, lamp poles, luas furniture, luas stop, bus stops, traffic lights and pedestrian crossings.

- Exact location impossible to interpolate.
- Adjacent loading bay is a focal point for activity serving needs on business in the street and bus passengers.
- Notably corner of Dawson street and Nassau street was location of a fatal accident involving a pedestrian.
- Adverse impact of the proposed sign on pedestrian safety comfort and movement is at variance with Dublin City Centre Public Realm Strategy which highlights the need for pedestrian priority.
- Sign would take up to 40% of the available width of the path unjustifiably reducing space available for pedestrian use.
- Proposal will block access by wheelchair users on Dawson street and create potential safety hazard for visually impaired persons.
- Fundamental flaw in the analysis of suitability on the basis of the Z5 zoning. Location on public footpath is neither permissible nor open for consideration. Land use strategy highlights need for pedestrian priority which necessitates the retention of public footpath space for pedestrian use.
- Decision of the Planning Authority reflects a perception of objective bias on the part of Dublin City Council.
- Cumulative impact on ACA where threshold and limit of impact is considered.
- Omission of totem associated with the Luas stop Cross City NA0008 clearly sets out that the advertising structure be excluded “in the interest of environmental protection and visual amenity”.

6.2. Applicant Response

6.2.1. The response submitted by Future Analytics on behalf of the first party is summarised as follows:

- Precedent for metropanel displays in Dublin City Centre. Dublin City Council granted permission to upgrade/replace 22 metropanels in 2017. Note that permission granted to upgrade/install four Digital Metropanels in March 2019. The application at Dawson Street is the only display out of 26 applications to be appealed to the Board.

- Fig 1.1 and 1.2 attached provide photographic plates of recently installed Digital Metropanel Displays on South King Street and Henry Street.
- Proposed metropanel at Dawson Street is appropriate, supports the high-quality nature of the environment and will not have any negative impact on the street or its users
- Luas Cross City Railway Order is incomparable and unrelated to the development before the Board.
- Inclusion of grossly misleading visualisations and factually incorrect assertions regarding the planning application and analysis of planning policy.
- Site notice was deemed to be valid by Dublin City Council and is consistent with an approach for over 50 planning applications for metropanel displays in public realm area.
- Plans prepared in accordance with the Regulations.
- No negative impact on Marco Pierre White Restaurant.
- Location of the display carefully considered to allow disabled pedestrian movement.
- Allegation of objective bias by local authority strongly rejected and inappropriate.
- No negative impact on ACA.
- Foreboding claims in relation to luas stop and potential impact on proximate restaurant were completely misunderstood and overstated.
- Footpath in front of the appellant's premises has been significantly widened in recent years.
- View of the display in front of the restaurant would only show the narrow side of the display (0.255m in depth).
- Careful siting in front of the loading bay, removed from the pedestrian flow channels provides no interference with the street or adjoining uses.
- Consideration of the display in the context of the Z5 City Centre Mixed Use zoning entirely in accordance with the Dublin City Development Plan Policy.

6.3. Planning Authority Response

6.3.1 The Planning Authority did not respond to the grounds of appeal.

6.4. Observations

6.4.1 Observations are submitted by Transport Infrastructure Ireland (TII). Developer to ensure no adverse impact on Luas operation and safety. Compliance with TII Code of Engineering Practice for works on, near, or adjacent to the Luas light rail system. Note location within area for the adopted Section 49 Supplementary Development Contribution Scheme.

6.5. Further Responses

6.5.1 Response to cross circulation of first party response by Transport Infrastructure Ireland (TII) reiterates initial observations.

6.5.2 Response by Reid Associates on behalf of FL Partners the third-party appellant reiterates initial appeal grounds, asserting:

- First Party fails to address grounds of appeal.
- Public notification seriously flawed.
- Artists representation shows that the footpath will be impeded not just for the extent of the metro panel itself but also the 750mm between it and the road. Extent of impedance of pedestrian movement is therefore in the order of 2.2m.
- Luas Planning history demonstrates the issue of pedestrian footpath congestion. Luas mitigation strategy is undermined.
- Public realm strategy intended to control advertising in the interest of protecting the public realm.

7.0 Assessment

7.1 On the question of validity of the application, I note the third-party appellants criticisms of plans submitted with regard to the level of detail and the accuracy of the site layout plan, lack of contiguous elevation to demonstrate the contextual relationship to established structures and features in the context of Article 23 of the Planning and development Regulations as amended. I note that the plans submitted derive from, ordnance survey base mapping which are not up to date in the context of city centre location and the recent alterations in connection with luas works. I note that the details provided including photographic depiction submitted in response to the appeal clearly demonstrate the proposed location and context of the structure. I am satisfied that the submitted satisfy the requirements of Article 23 and enable the consideration of the proposed development on its planning merit.

7.2 As regards the site notice location, on the pole outside but adjacent to the appeal site, I note that the requirements of Article 19 of the Planning and Development Regulations 2001, as amended are that the site notice is *“Securely erected or fixed in a conspicuous position on or near the main entrance to the land or structure concerned from a public road, or where there is more than one entrance from public roads, on or near all such entrances or on any other part of the land or structure adjoining a public road, so as to be easily visible and legible by persons using a public road, and shall not be obscured or concealed at any time.”*

I note Article 19(1)(2) *“Where the land or structure to which a planning application relates does not adjoin a public road, a site notice shall be erected or fixed in a conspicuous position on the land or structure so as to be easily visible and legible by persons outside the land or structure, and shall not be obscured or concealed at any time.”*

7.3 I am satisfied that the location of the site notices on the lamp post within approximately 3m of the site is the appropriate location for the site notice in the circumstances and context. Clearly, having regard to the third-party submissions received the site notice achieved its objective in terms of informing the public and is in my view in accordance with the regulations.

7.4 On the question of the principle of the proposed development, I note the Council's strategy with regard to outdoor advertising and particularly the policy with regard to a co-ordinated approach in the public realm. Whilst I would express apprehension

regarding the overstatement of the significance of such advertising structures as “an integral part of the public realm strategy”, I consider that the Development Plan recognises that such structures can provide both illumination and colour in the townscape after dark and the plan acknowledges that the provision of outdoor advertising panels in the public realm enables the adoption of a co-ordinated approach to the management of city’s advertising activity and the encouragement of better quality signage in more appropriate locations. I consider therefore that it is appropriate to consider the proposal on its merit with particular reference to the context of impact public safety and amenity and the visual amenities of the area. As regards location within an Architectural Conservation Area, I consider that the designation would not preclude the provision of such a structure. On the issue of impact on the adjacent terrace, I consider that given the design, layout and orientation of the structure, the impact on patrons would not be significant. As regards allegations of objective bias I note that these are entirely unsubstantiated and without foundation.

- 7.5 On the question of the relevance of the planning history in relation to the Luas Cross City Railway Orders, I have reviewed the relevant Board decisions (NA0004 and NA0008) and note that the Inspector considered that a profound and negative impact would arise as a result of the proposed Dawson northbound stop on the Marco Pierre White Restaurant. This resulted in the relocation of the proposed stop. The question of pedestrian permeability and movement featured within the analysis of both cases. Mitigation measures were included in the interest of pedestrian safety and convenience including the avoidance of shelters, the use of minimal stop furniture . Having conducted my site visit and considered the context and level of pedestrian movement on Dawson Street I consider that pedestrian movement is a significant issue in this case. I note concerns with regard to pedestrian safety and convenience in an area where there are a number of existing structures in the vicinity of the site including the lamp post, litter bin, electric and luas cabinets and loading bay signage and traffic lights. The location of the terrace for the Marco Pierre White Restaurant which includes screens and awning and planters further animates the street at this location. In terms of the approaching pedestrian the extent of activity coupled with fixed barriers including result in a degree of visual clutter and potential impediments to comfortable pedestrian flow, of course more pronounced in terms of the impact on vulnerable road users such as those in wheelchairs or the visually impaired. In my view the proposal would give rise to unnecessary clutter and detract

from and impede pedestrian movement at this location and would therefore be injurious to amenity and road safety and would therefore be contrary to the proper planning and sustainable development of the area.

- 7.1. Having regard to the nature of the development and nature of the receiving environment, and proximity to nearest European Site no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European Site.

8.0 Recommendation

- 8.1. Having regard to the foregoing I recommend refusal for the following reasons and considerations.

Reasons and Considerations

Policy SC22 of the Dublin City Development Plan 2016-2022 seeks *“to consider appropriately designed and located advertising structures primarily with reference to the zoning objectives and permitted advertising uses and with secondary consideration of the outdoor advertising strategy. In all such cases, the structures must be of high-quality design and materials, and must not obstruct or endanger road users or pedestrians, nor impede free pedestrian movement and accessibility of the footpath or roadway.”* Having regard to the siting of the proposed Metropanel on the western side of Dawson Street, to the pattern of pedestrian movement in the vicinity and the number of existing structures located on the footpath in the vicinity, it is considered that the proposed development would give rise to unnecessary visual clutter and would impede and obstruct pedestrian movement in the area. It is considered the proposed development would be contrary to the provisions of the Dublin City Development Plan 2016-2022 and would be contrary to the proper planning and sustainable development of the area.

Bríd Maxwell
Planning Inspector

12th June 2019