



Question

Whether erection of 2 No. Pharmacy signs at O' Donnells Total Health, Shankill Shopping Centre, Corbawn Lane, Shankill, Dublin 18 is or is not development, or is or is not exempted development.

Location

Shankill Shopping Centre, Corbawn Lane, Shankill, Dublin 18.

Declaration

Planning Authority

Dun Laoghaire Rathdown County Council

Planning Authority Reg. Ref.

Ref2719

Applicant for Declaration

Lidl Ireland Gmbh

Planning Authority Decision

Is not exempted development

Referral

Referred by

Lidl Ireland GmbH

Owner/ Occupier

O'Donnells Total Health

Date of Site Inspection

No site visit

Inspector

Colin McBride

1.0 Site Location and Description

1.1 The appeal site is located to the north of Shankhill Village. The site is occupied by a mixed use development consisting of a two-storey structure and housing a café, pharmacy and medical centre. The site is part of a neighbourhood centre that also has discount food store and childcare facility. The neighbourhood centre is on a triangular site defined by Beechfield Manor to the north, Shanganagh Road (R119) to the west and Corbawn Lane to the south east. The vehicular access serving the neighbourhood centre is located off Beechfield Manor.

2.0 The Question

2.1 Whether erection of 2 No. pharmacy signs (each 750mm x 500mm) on the northern and southern elevation of an existing structure is or is not development, or is or is not exempted development.

3.0 Planning Authority Declaration

3.1 Declaration

3.1.1 A section 5 declaration was submitted to Dun Laoghaire Rathdown County Council. A determination was issued on the 10th of May 2019 with it determined that the erection of 2 no. pharmacy signs at O'Donnells Total Health, Shankhill Shopping Centre, Corbawn Lane, Shankhill, Dublin 18 is development and would not be exempted development.

3.2 Planning Authority Reports

3.2.1 Planning Reports

Planning report (10/05/18): It is noted that the works in question constitute development under Section 3(1) of the Planning and Development Act 2000 (as amended). It is noted the signage in question would come under Class 6 of Part 2 of the Planning and Development Regulations, 2001. The provisions of Article 9 (1)(a)(i) was noted where development shall not be exempted if it contravenes a

condition attached to a permission under the Act. It is noted that Condition no. 5 of permission ref no. PL06D.249380 prohibits the erection of any signage unless a grant of permission for such has been acquired. The signage was considered to constitute development and is not exempted development.

4.0 Planning History

4.1 PL06D.249380: Permission was granted for a mixed use development which includes a discount food store and ancillary off licence, cafe, medical centre, crèche and all associated site works.

5.0 The Referral

5.1 Referrer's Case

5.1.1 A referral has been submitted by McCutcheon Halley Planning Consultants on behalf of Lidl Ireland GmbH.

- The subject signage is 2 no. pharmacy signs (each 750m x 500mm) and are on the northern and southern elevations of a recently constructed structure.
- The referrer notes that the purpose of exemptions is to avoid controls on development of a minor nature and it is noted that this signage is such a type of development. The reason attached to condition no. 5 of ref no. PL06D.249380 is 'in the interest of visual amenity'. It is noted that the signage in question is modest in scale and unobtrusive.
- It is noted that the spirit of Condition 5(b) was not intended to de-exempt the type of signage subject to this referral and the provision of exempted development are applicable.

5.2 Planning Authority Response

5.2.1 No response.

5.3 Owner/occupier's response

5.3.1 Response from O'Donnells Pharmacy.

- The response is from the occupiers of the structure on which the signage is located.
- It is noted that the regulatory body for pharmacies requires that the business is easily identified to the public. The signage in question has been erected for such purpose.
- The owner/occupier notes that their understanding that this type of signage normally does not require planning permission.

6.0 Statutory Provisions

6.1 Planning and Development Act, 2000

Section 2(1)

“Works” includes any act or operation of construction, excavation, demolition, extension, alterations, repair or renewal and

Section 3 provides definition of Development.

3(1) In this Act “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 provides for Exempted Development

4(1) The following shall be exempted developments for the purposes of this act

(h) development consisting of the carrying out of works for the maintenance, improvement or other 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 of neighbouring structures.

4(2) (a) The minister may by regulations provide for any class of development to be exempted development for the purposes of this Act

6.2 Planning and Development Regulations, 2001

Article 6 includes provisions under which certain advertisements may be deemed to be exempted development.

Article 9 specifies 'Restrictions on Exemption'

9 (1) Development to which article 6 relates shall not be exempted development for the purposes of the Act –

(a) if the carrying out of such development would-

(i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act ...

Part 2 Class 1

Advertisements (other than those specified in classes 2, 3 or 5 of this Part of this Schedule) exhibited on business premises, wholly with reference to the business or other activity carried on or the goods or services provided on those premises.

Conditions and Limitations

1. The total area of such advertisements exhibited on or attached or affixed to the front of any building on the premises shall not exceed an area equal to 0.3 square metres for every metre length of such front, less the total area of any such advertisements exhibited on the premises but not exhibited on or attached or affixed to a building, and in any event shall not exceed 5 square metres.

2. The total area of such advertisements exhibited on or attached or affixed to any face of a building on the premises other than the front thereof shall not exceed 1.2 square metres and the total area of any such advertisements on such face which are illuminated shall not exceed 0.3 square metres.

3. The total area of such advertisement which are not exhibited on or attached or affixed to a building on the premises shall not exceed 3 square metres, of which not more than 1.5 square metres shall consist of advertisements which are illuminated.

4. (a) No part of any such advertisement which is not exhibited on or attached or affixed to a building on the premises, or of an advertisement structure on which it is exhibited, shall be more than 2.5 metres in height.

(b) No part of any such advertisement which is exhibited on or attached or affixed to a building on the premises shall be more than 4 metres in height above ground level.

5. Where any such advertisement projects more than 5 centimetres over any public road, the sign or other advertisement structure on which it is exhibited shall not be less than 2 metres above the level of such road and shall not project more than 1 metre over such road.

6. Where any such advertisement consists of a circular sign and projects more than 5 centimetres over any public road, the diameter of such sign shall not exceed 1 metre and no other such advertisement shall be exhibited on a sign or other advertisement structure projecting more than 5 centimetres over such road.

7. Where any one or more such advertisements are exhibited on a swinging or fixed sign or other advertisement structure (other than a circular sign) projecting more than 5 centimetres from any external face of a building, the total area of such advertisements shall not exceed 1.2 square metres and the area of any face of any such advertisement shall not exceed 0.4 square metres.

8. No such advertisement shall contain or consist of any symbol, emblem, model, logo or device exceeding 0.6 metres in height or any letter exceeding 0.3 metres in height.

9. No such advertisement shall cover any part of any window or door of any building on which the advertisement is exhibited or to which it is attached or affixed.

7.0 **Assessment**

7.1 The question at issue is whether the erection of 2 no. pharmacy signs (each 750mm x 500mm) on the northern and southern elevation of an existing structure is or is not development, or is or is not exempted development within the meaning of the Act. The signs are located on the northern and southern elevation of a recently

constructed mixed use development granted permission under ref no. PL06D.249380.

7.2 Is or is not development

7.2.1 Firstly the question is whether the works in question constitute development. The definition of works under Section 2 of the Act includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal. The definition of 'development' under Section 3 of the Act includes the carrying out of any works on, in, or under land. The provision of a new signage which is static and internally illuminated attached to an existing structure would require a level of construction on land and I would conclude that this is development in accordance with Section 3 of the Planning and Development Act, 2000 (as amended).

7.3 Is or is not exempted development

7.3.1 The second part of the question is whether the works in question is or is not exempted development. There are no specific exemptions for the erection of advertisement structures set out in Section 4 (1) of the Act, and the works could not, in my view, be construed as falling within the definition of "works for the maintenance, improvement or other alteration of any structure subject to Section 4(1)(h) of the Act as they constitute the erection of a new structures. The advertisements consist of two identical signs, one on the front elevation (north) and one on the rear elevation (south) of an existing pharmacy which is part of a two-storey mixed use development (medical centre, café, pharmacy). Both signs are 500m height x 750m in width (I have calculated the area as being 0.21sqm with the sign being cross shape with the horizontal portion 0.2m height by 0.750m width and the vertical section 0.5m height be 0.2m width). Article 6 (2) of the Planning and Development Regulations, 2001, and Part II of the Second Schedule to these Regulations set out the exemptions for advertisements. The relevant Section is Class 1, which is outlined above including the conditions and limitations of such. Given the dimensions, area and location of the signage on the front and back and its location relative to the public road. The signage in this case would fall under Class 1 and would also conform to the conditions and limitations set out under that class that would render it exempted development.

7.4 Restrictions on exempted development

7.4.1 Article 9 specifies 'Restrictions on Exemption' under the Planning and Development Regulations, 2001 (as amended). Under Article 9 (1) Development to which article 6 relates shall not be exempted development for the purposes of the Act –

(a) if the carrying out of such development would-

(i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act ...

In this case condition no. 5(a) and (b) of the permission granted under ref no. PL06D.249380 state the following...

(a) Advertisement and corporate signage shall be as shown on the drawings submitted to the planning authority on the 18th day of August 2017, except that the elevational signage on the northern (signage type number 5) and eastern elevation of the discount food store shall be omitted. The proposed signage to be fixed to the projecting canopies of the mixed use building shall be reduced to 3 number signs only. Revised drawings showing compliance with this requirement shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

(b) No additional advertisement, advertisement structure, freestanding sign, or other projecting elements including flagpoles or banners, shall be erected or displayed on the buildings or within the curtilage of the site, unless authorised by a further grant of planning permission.

This condition is clear regarding the signage permitted on the development, which does not include the signage subject to this declaration. Despite falling under the class of exempted development under Article 6 (2) of the Planning and Development Regulations, 2001, and Part II of the Second Schedule (Class 1) to these Regulations, the provision of Condition no. 5(b) clearly states that "no additional

advertisement, advertisement structure, freestanding sign, or other projecting elements including flagpoles or banners, shall be erected or displayed on the buildings or within the curtilage of the site, unless authorised by a further grant of planning permission”. The provision of such signage without the relevant grant of permission would contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act. The signage subject to this declaration falls under Article 9(1) of the Planning and Development regulations and shall not be exempted development for the purpose of the Act.

8.0 Recommendation

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

WHEREAS a question has arisen as to whether erection of 2 No. pharmacy signs (each 750mm x 500mm) on the northern and southern elevation of an existing structure is or is not development or is or is not exempted development:

AND WHEREAS Lidl Ireland GmbH requested a declaration on this question from Dun Laoghaire Rathdown County Council and the Council issued a declaration on the 10th day of May, 2019 stating that the matter was development and was not exempted development:

AND WHEREAS referred this declaration for review to An Bord Pleanála on the 20th day of May, 2019:

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)(a) of the Planning and Development Act, 2000, as amended,
- (d) article 6(1) and article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (e) Parts 1 and 3 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (f) the planning history of the site.

AND WHEREAS An Bord Pleanála has concluded that:

- (a) the erection of 2 No. pharmacy signs (each 750mm x 500mm) on the northern and southern elevation of an existing structure is development;
- (b) the works constitute development pursuant to section 3 of the Planning and Development Act, 2000;
- (c) the development does come within the scope of Class 1 of Part II of Schedule 2 to the Planning and Development Regulations 2001;
- (d) the restrictions on exemptions outlined in Article 9(1)(a)(i) are applicable in this instance.

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 2 No. pharmacy signs (each 750mm x 500mm) on the northern and southern elevation of an existing structure is development and is not exempted development.

Colin McBride
Planning Inspector

29th August 2019