



An
Bord
Pleanála

Inspector's Report ABP-307426-20

Question

EXPP: PROTECTED STRUCTURE:
Whether the replacement of non-original existing signage (at nos. 72 & 73 Dame Street and the facade at Crampton Court), for 18 months is or is not exempt development.

Location

72, 73 Dame Street, and the facade at Crampton Court, Dublin 2.

Declaration

Planning Authority	Dublin City Council South
Planning Authority Reg. Ref.	0083/20
Applicant for Declaration	Olympia Productions Unlimited
Planning Authority Decision	Split Decision

Referral

Referred by	Olympia Productions Unlimited
Owner/ Occupier	Olympia Productions Unlimited

Observer(s)	None
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Date of Site Inspection

14th September 2020

Inspector

Irené McCormack

1.0 Site Location and Description

- 1.1. The subject site is located at the Olympia Theatre no. 72 Dame Street and the adjoining no. 73 Dame Street. The Olympia Theatre IS accessed through No.72 Dame Street, which expands out within the plots to the rear of Nos 71 and 73 and has elevations along Crampton Court to the west and Sycamore Street to the east.
- 1.2. The Theatre started as a Music Hall in 1879. The original entrance to the theatre was off Crampton Court. The site was previously occupied by a number of uses. The site has undergone numerous name changes, remodelling and alterations. In 1897 the new entrance from Dame Street was provided including a cast iron and glass canopy by the Saracen Foundry in Glasgow.
- 1.3. The Olympia Theatre is a protected structure, reference number is 2127.

2.0 The Question

- 2.1. The question to the Board is:

Whether the replacement of non-original existing signage (at nos. 72 & 73 Dame Street and the facade at Crampton Court), for 18 months is or is not exempt development.

3.0 Planning Authority Declaration

3.1. Declaration

The Declaration issued by the planning authority concluded:

A) It is considered that the proposed replacement of the present signage to the sides of the canopy to no. 72 Dame Street and to the shopfront at no. 73 Dame Street (only) for 18 months would comprise development which would come within the meaning of Section 4(1)(h) and Section 57 of the Planning and Development Act 2000 (as amended) and would not materially affect the character of the Protected Structure and therefore **would NOT require planning permission** when carried out in accordance with the Guidelines for Planning Authorities on Architectural Heritage Protection (2011) and in line with best conservation practice.

B) It is considered that the proposed replacement of wall mounted signage on the Protected Structure, comprising 2 no. signs to nos. 72 and 73 Dame Street and the

façade at Crompton Court for 18 months (or for any other period) would comprise development which would not come within the meaning of Section 4(1)(h) and Section 57 of the Planning and Development Act 2000 (as amended) as the proposed development would materially affect the character of the Protected Structure and therefore **would require planning permission.**

Note: The three wall mounted signs of the Protected Structure referred to in B above are considered by the Planning Authority to comprise development (individually and collectively) that is not exempted development, by virtue of their individual and collective material impact on the architectural character of the protected structure, and for which no grant of planning permission exists nor has been proven no provided by the applicant or agent upon request

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The initial report requested further information in relation evidence to the satisfaction of the planning authority, either in the form of a planning permission or other statutory declaration, which demonstrates that the wall mounted signage to the Dame Street and Crampton Court elevations is permitted.
- The report notes the applicant's response which makes reference to the mention of signage in Planning Reg. Ref. 4736/03 and concludes that the proposals which '*...have been in place since that time were deemed to be appropriate...*' particularly in light of the closure of the enforcement file on the glass canopy. The assessment also references the opinion of the applicant's agents that this particular signage has been in place for c.16 years and Articles 6 and 9 (specifically 9 (1)(viii) of the Planning and Development Regulations do not relate to and do not affect the exempted development provisions provided at Section 4 (1)(h) and Section 57(1) of the Planning and Development Act 2000 (as amended), under which the declaration is sought.
- In considering the information submitted as part of the additional information the PA were not satisfied that the applicant provided any evidence that the wall mounted signage has planning permission. These three signs are considered by the Planning

Authority to comprise development, by virtue of their individual and collective material impact on the architectural character to the protected structure, and for which no grant of planning permission exists.

- The Planning Authority is of the opinion like-for-like replacement of the present signage to the sides of the canopy to no. 72 Dame Street and to the shopfront at no. 73 Dame Street as outlined in the application would be considered exempted development under Section 4(1)(h) and Section 57(1) of the Act. However, Article 9 (1) of the Planning and Development Regulations states that: '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-
- (viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use'
- Split decision recommended.

3.2.2. Other Technical Reports

None

4.0 Planning History

The following is of relevance

4.1.1. Site

DCC Reg. Ref. 2879/20 -Permission was granted on 26th November 2020 for the removal of the existing established (c. 20.54 sq.m existing non-original) signage and its replacement with new signage (new lettering, colour and logos) within existing locations and extent (c. 20.54 sq.m) as follows: Dame Street Elevation: replacement of 2 no. double sided wall mounted signs onto first and second floors of no. 72 and 73 Dame Street. At ground floor level replacement of existing signage with new signage (over no.73 – Olympia Theatre Ticket Office) as well as 3 no. announcement signage at the entrance doors to the Theatre, and the replacement of the 2 no. modern insert signs in the canopy with new signs. Crampton Court Elevation: Replacement of a wall mounted sign with new signage (at first and second floors), as well as replacement of 2 no. entrance signs with new signage.

DCC Reg. Ref. 0358/15 – Exemption Certificate refused in November 2015 to remove the existing render to east elevation (Sycamore Street) and to assess the brickwork beneath to see if it can be sealed and pointed.

DCC Reg. Ref. 0226/11 - Exemption Certificate granted in February 2012 for works comprise the restoration of the slate roof over the Olympia stage.

DCC Reg. Ref. 5662/05 – Permission granted for a new fire door.

DCC Reg. Ref. 5880/03 – Permission granted for internal alterations works to the Protected Structure.

DCC Reg. Ref. 4736/03 - Permission granted in 2004 for the restoration of cast iron canopy and glazing to Dame Street Elevation. Increase to footpath of 1 metre at Dame Street entrance. Alteration of signage to Dame Street elevation. Painting to Dame Street Elevation. Restoration of sash windows to Dame Street Elevation. Alterations to central ticket office in entrance lobby. Enlargement of Stalls area. Removal of wcs to the rear of stalls. Alterations to Sheridan's Bar and Maureen's Bar. New Fire exit from Maureen's Bar to Sycamore Street. Demolition of single storey structure at Crampton Court. Erection of four storey structure at Crampton Court to include wc areas and storage. Alterations to Dressing Rooms & wcs at First Floor Level. General refurbishments internally.

4.1.2. Relevant Referrals

RL3144 - Whether the replacement of a LED light box sign with both static and interactive displays at the first floor external elevation of a property on the corner of Grafton Street and St Stephen's Green, Dublin is or is not development / exempted development.

The Board decided that the replacement sign was development and was not exempted development, as follows:

- the development would materially affect the external appearance of the structure and was of a materially different nature from the existing LED sign
- Given the location in an ACA and an area of Special Planning Control, the works would not be exempt per S.82(1) and 87(1) of PDA, 2000, respectively
- The Special Area of Planning Control expressly de-exempted signage and advertisements.

4.1.3. Relevant Case Law

Dublin Corporation v. Lowe and Signways Holdings Ltd [2000] IEHC 161 and [2004] IESC 106

The relevant element of this case concerned the question of **whether the removal of an advertising hoarding on the side of a building and its replacement with a similar hoarding (owned by a different company) was authorised**. The Applicants, Dublin Corporation, had sought Court Orders requiring the discontinuance of the unauthorised use of the flank wall of the premises for advertisement purposes and the removal of the advertising hoarding.

In the High Court Judge Morris considered that, although the period between removing the original structure and replacing it was short, amounting to no more than a few days, the relevant consideration was that the structure was removed deliberately and that what was erected in its place was not the original but a new structure owned by a different company.

The Judge determined that whatever permission or immunity existed prior to the removal of the hoarding (and which did not include a planning permission but may have included an established use of the flank wall of the premises for the display of an advertising hoarding since before 1 October 1964) perished with its removal. He considered that, in planning terms, there must be a significant difference between the temporary removal for repair and maintenance with the intention of reinstatement and the removal of such a structure with no such intention by its owner but the replacement of a different (or be it similar) structure by a third party. He further considered that it is irrelevant that the new structure corresponded in all respects with the original. He concluded that the removal of the original hoarding (by the original owner) without the intention on their part of replacing it must be regarded as an abandonment of any rights which they may have acquired up to that time.

The Respondents in the case successfully appealed this decision to the Supreme Court.

The appeal process involved the Supreme Court remitting the matter back to the High Court which subsequently dismissed the original application (effectively upholding the Respondents appeal). The Applicants (Dublin Corporation) then appealed this decision to the Supreme Court – this being the case referenced above.

The sole issue considered by the Supreme Court in this final appeal was the effect of the removal of the original advertising structure and its replacement by a new hoarding of identical dimensions (this fact having been established). It was noted that the Respondents in the case had accepted that what took place was not maintenance or improvement but had contended that it was alteration.

Judge McCracken determined that the operation constituted “works” and that it was “development”. By reference to Section 4(1)(g), Local Government Planning and Development Act 1963, as amended (the relevant operative legislation at the time of the development), and in consideration that the planning unit in the case consisted of the gable wall with the hoarding attached to it, the Judge determined that there had been an alteration to the planning unit by the substitution of one hoarding by another. The Judge also held that the word “alteration” must apply to something wider than a mere visual alteration.

The Judge concluded that what the Court was concerned with was the alteration of the hoarding by the substitution of a new hoarding and he was of the view that, in itself, this could not possibly be said to have materially affected the external appearance of the premises.

Accordingly, the Court dismissed the appeal. So, in effect the replacement advertising hoarding was deemed to be exempted development

5.0 Policy Context

5.1. Development Plan

- 5.1.1. The site is governed by the policies and provisions contained in the Dublin City Development Plan 2016 – 2022.
- 5.1.2. The subject site is zoned **Z5 City Centre**, which has the stated objective ‘to consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity’.
- 5.1.3. The Olympia Theatre is a protected structure, reference number is 2127. The site is located in a Conservation Area.

Policy of Dublin City Council: SC23: To actively seek the removal of unauthorised advertisements, fabric banners, meshes, banner or other advertising forms from private property and public areas.

Section 16.24.3 Signs of Shopfronts and Other Business Premises states that ‘...corporate signs will only be permitted where they are compatible with the character of the building, its materials and those of the adjoining buildings’.

19.6 Advertising Development Management Standards Applications for new advertising structures on private lands (adjacent to primary routes) will be considered having regard to the impact on the character and integrity of Architectural Conservation Areas, Protected Structures and Conservation Areas.

5.1.4. **Architectural Heritage**

Policy CHC2: To ensure that the special interest of protected structures is protected.

5.2. **Natural Heritage Designations**

The site is not located within or adjacent to a Natura 2000 site. Having regard to the nature and scale of the development, which relates to a use within a structure in an established and serviced area outside of and separated from any Natura 2000 sites, I am satisfied that no appropriate assessment issues arise and it is not considered that the development would be likely to have a significant effect individually or in combination with other plans or projects on a European site

6.0 **The Referral**

6.1. **Referrer’s Case**

- It is set out that the nature and extent of the proposals are exempt development, having regard to their nature and extent and that the proposal relates to the replacement of existing established (non-original) signage, within the same form and extent in a ‘like for like’ format.
- In terms of the appearance it is set out that the change in the colour of the background from bright red to a more understated black along with lettering cannot be considered to materially affect the character of the structures or be inconsistent with the established character of the street.
- It is stated that the applicant agrees with the PA’s opinion of the like for like replacements of the present signage to the sides of the canopy to no. 72 Dame Street and to the Shopfront at no. 73 Dame Street would be considered exempted development. However, it is submitted that the PA assessment report incorrectly applied article 9 of the Planning and Development

Regulations to the proposed signage. It is set out that Articles 6 and 9 do not relate to and do not affect the exempted development provisions provided at Section 4(1)(h) and Section 57 (1) of the Planning and Development Act 2000 (as amended).

- The Act is designed to allow for renewal repair of existing structures. It is set out that this is a long-established entertainment venue and over its c. 140 years the signage to promote the venue has undergone a number of iterations and predates the planning legislation in 1964.
- The submission includes four images of the Dame Street façade dating from the 1960's, 2011, 2004 and 2007. It is further stated that even if the signage was not pre 1964, it has been in place for c. 16 years it is current from and location.
- It is argued that it is unclear how the signage on Crampton Court façade could materially affect the appearance of the protected structure, particularly where the Crampton Court signage is not visible externally from Dame Street or the protected structure.
- Reference is made to the Conservation note submitted by the applicant stating that *“if these new graphic elements are fixed reusing the existing signage fixings, and do not require any new fixings into the building fabric, there should be no impact on architectural heritage”*.
- It is submitted that the replacement signage, is exempted development pursuant to Section 4(1)(h) and Section 57 (1) of the Planning and Development Act 2000 (as amended), as the proposed works would not affect the external appearance of the structure , so as to render the appearance inconsistent with the character of the structure or of its neighbouring structures.

6.2. Panning Authority Response

- The response states that the Conservation Unit within the Archaeology, Conservation and Heritage Section of Dublin City Council’s Planning and Property Development is an integrated, multi-disciplinary team comprising of architectural conservation officers and planners and that it is a long

established practice within the section that Section 5 applications relating to Protected Structures are dealt with by this unit. The application was considered by both an Architectural Conservation officer and Senior Executive Planner.

- The response reinitiates the contents of the planning assessment and recommendation

6.3. Further Responses

None

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

7.1.1. Section 2, Interpretation, includes:

“advertisement” means any word, letter, model, balloon, inflatable structure, kite, poster, notice, device or representation employed for advertisement, announcement or direction.

“advertisement structure” means any structure which is a hoarding, scaffold, framework, pole, standard, device or sign (whether illuminated or not) and which is used or intended for use for exhibiting advertisements or any attachment to a building or structure used for advertising purposes.

“exhibit”, in relation to an advertisement, includes affix, inscribe, print, paint, illuminate and otherwise delineate.

“Protected Structure” means

(a) a structure or

(b) a specified part of the structure, which is included in the Record of Protected Structures, and where that structure so indicates, includes a specified feature which is in the attendant grounds of the structure and would not be otherwise included in this definition.

“Structure” means any building, structure, excavation or other thing constructed or made on, in or under any land, part of any structure so defined and

(a) where the context so admits, includes the land on, in or under which the structure is situate and

(b) in relation to protected structures or proposed protected structures includes

(i) the interior of the structure,

(ii) the land lying within the curtilage of the structure,

(iii) any other structures lying within that curtilage and their interiors, and

(iv) all works and features which form part of the interior or exterior of the structure or structures referred to in sub-paragraph (i) or (iii). 7.1.2. Section 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 of use of any structures or other land.*

7.1.2. *“unauthorised structure” means a structure other than –*

a structure which was in existence on 1 October 1964, or a structure, the construction, erection or making of which was the subject of a permission for development granted under part IV of the Act of 1963, or deemed to be such under section 92 of that Act or under Section 34 of this Act, being a permission which has not been revoked, or which exists because of the carrying out of exempted development (within the meaning of section 4 of the Act of 1963 or section 4 of this Act).

7.1.3. *“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 any other material to or from the surfaces of the interior or exterior of the structure.*

7.1.4. Section 3, Development, includes:

Section 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.

7.1.5. Section 4, Exempted Development, includes:

Section 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.

7.1.6. Section 57 of the Act specifically relates to works affecting the character of a protected structure or proposed protected structures.

7.1.7. Section 57(1) states ‘that notwithstanding Sections 4(1)(h) and any regulations made under Section 4(2), the carrying out of works to a protected structure, or proposed protected structure shall be exempted development **only** if those works would not materially affect the character of (a) the structure or (b) any element of the structure which contributes to its special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest.

Part IV ‘Architectural Heritage’ of the Act as amended under Chapter 2 – ‘Architectural Conservation Areas and Areas of Special Planning Control’

7.1.8. Section 68 of the Act - The carrying out of any works specified in a notice under section 59 (1) or 60 (2) shall be exempted development.

7.1.9. Section 82 of the Act states as follows in regard to ‘*Development in Architectural Conservation Areas*’:

82.—(1) Notwithstanding section 4 (1)(h), the carrying out of works to the exterior of a structure located in an architectural conservation area shall be exempted development only if those works would not materially affect the character of the area.

(2) In considering an application for permission for development in relation to land situated in an architectural conservation area, a planning authority, or the Board on appeal, shall take into account the material effect (if any) that the proposed development would be likely to have on the character of the architectural conservation area.

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

7.2.1. Article 6 (1) Part 2 provides: 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.

7.2.2. 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-

(viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use.

(xii) further to the provisions of section 82 of the Act, consist of or comprise the carrying out of works to the exterior of a structure, where the structure concerned is located within an architectural conservation area or an area specified as an architectural conservation area in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan and the development would materially affect the character of the area,

7.2.3. 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.

7.2.4. 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

8.0 Assessment

8.1.1. The purpose of this referral is not to determine the acceptability or otherwise of the signage 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. Likewise, planning enforcement is a matter for the planning authority and does not fall within the jurisdiction of the Board.

8.1.2. The question posed is whether “the replacement of non-original existing signage (at nos. 72 & 73 Dame Street and the facade at Crampton Court), for 18 months is or is not exempt development”.

8.1.3. The Planning Authority assert that the replacement of the present signage to the sides of the canopy to no. 72 Dame Street and to the shopfront at no. 73 Dame Street (only) for 18 months would comprise development which would come within the meaning of Section 4(1)(h) and Section 57 of the Planning and Development Act 2000 (as amended) and would not materially affect the character of the Protected Structure and therefore **would NOT require planning permission**. However, the proposed replacement of wall mounted signage on the Protected Structure, comprising 2 no. signs to nos. 72 and 73 Dame Street and the façade at Crampton Court for 18 months (or for any other period) would comprise development which would not come within the meaning of Section 4(1)(h) and Section 57 of the Planning and Development Act 2000 (as amended) as the proposed development would materially affect the character of the Protected Structure and therefore **would require planning permission**

8.2. Is or is not development

8.2.1. The definition of works under Section 2 of the Act 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 any other material to or from the surfaces of the interior or exterior of the structure*”. 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 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).

8.2.2. The works include the removal of the existing signage and the replacement with new signage. The replacement signage is the same proportions as the existing signage and although it is proposed to revise the colours and include additional sponsor text the signage will still read the ‘Olympia’.

- 8.2.3. It is evident from the High Court Case, Dublin Corporation V Lowe (2000), that where signage is removed and replaced with new signage this is considered “works” and such works constitute “development”.
- 8.2.4. Therefore, I am satisfied that the external erection of replacement signage, where it involves alterations/modification to the original signage, the complete replacement of the original sign, constitutes the carrying out of works within the meaning of Section 2 of the Planning and Development Act, 2000, as amended, and therefore, and in accordance with case law, constitutes development under Section 3 of that Act.

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

- 8.3.1. The determining issue is, therefore, whether the erection of replacement signage in place of the existing signage is exempt development.
- 8.3.2. The Olympia Theatre is a protected structure, reference number is 2127 and Dame Street is located in a designated Conservation Area.
- 8.3.3. Development can be exempted from the requirement for planning permission by either section 4 of the Planning and Development Act, 2000 (the Act), or article 6 of the Planning and Development Regulations 2001 (the Regulations).
- 8.3.4. It is the referrers contention that the proposals are exempt development, having regard to their nature and extent in so far as the proposal relates to the replacement of existing established (non-original) signage, within the same form and extent in a ‘like for like’ format and the works would not materially affect the appearance of the structure and so would comply with the exemption in Article 4(1)(h) and Section 57 (1) of the Planning and Development Act 2000 (as amended).
- 8.3.5. It is of note that Section 57(1) of the Planning and Development Act 2000(as amended) states ‘that notwithstanding Sections 4(1)(h) and any regulations made under Section 4(2), the carrying out of works to a protected structure, or proposed protected structure shall be exempted development only if those works would not materially affect the character of (a) the structure or (b) any element of the structure which contributes to its special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest and Section 82 stipulates – Notwithstanding section 4(1)(h), the carrying out of works to the exterior of a

structure located in a conservation area shall be exempted development only if those works would not materially affect the character of the area.

- 8.3.6. I note the planning authority is of the opinion that the 'like-for-like' replacement of the present signage to the sides of the canopy to no. 72 Dame Street and to the shopfront at no. 73 Dame Street as outlined in the application would be considered exempted development under Section 4(1)(h) and Section 57(1) of the Act. I would agree in so far as the signage does 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.
- 8.3.7. The issue relates primarily to the planning status of the wall mounted signage to the Dame Street and Crampton Court elevations. The referrer was requested by the PA by way of a Further Information request to demonstrate evidence either in the form of a planning permission or other statutory declaration that this signage is permitted. In response the referrer argued that the signage was included in DCC Planning Reg. Ref. 4736/03 and concluded that the proposals which '*...have been in place since that time were deemed to be appropriate...*' and no enforcement action has been taken by Dublin City Council relating to the signage and that this particular signage has been in place for c.16 years.
- 8.3.8. Article 9 (1) of the Planning and Development Regulations states that: '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-
- (viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use'
- 8.3.9. It is the planning authority's contention that wall mounted signage constitutes unauthorised development with the meaning of the Planning Act. The three signs are considered by the Planning Authority to comprise development, by virtue of their individual and collective material impact on the architectural character to the protected structure, and for which no grant of planning permission exists.
- 8.3.10. It is the referrers contention that Articles 6 and 9 (specifically 9 (1)(viii)) of the Planning and Development Regulations do not relate to and do not affect the

exempted development provisions provided at Section 4(1)(h) and Section 57(1) of the Planning and Development Act 2000 (as amended), under which the declaration is sought.

- 8.3.11. I have reviewed the planning history files, in particular, DCC Reg. Ref. 4736/03 and I note that save for signage identified on the existing Dame Street elevation drawing dated 08.03 which incidentally does not include the wall mounted signage at first and second floor levels, no other signage was identified either existing or proposed on any elevation drawings submitted. Whilst it would appear that this permission was not taken up the drawings on file are the drawings of record and include 'existing elevation' drawings. The issue in my opinion relates to the planning status of the existing signage. In this regard, I would agree with the planning authority that the 'like-for-like' replacement of the existing signage to the sides of the canopy to no. 72 Dame Street and to the shopfront at no. 73 Dame Street as outlined in the application would be considered exempted development under Section 4(1)(h) and Section 57(1) of the Act as I am satisfied based on the planning history that this signage is authorised. However, the wall mounted signage to the Dame Street and Crampton Court elevations do not have the benefit of planning permission and by virtue of design, scale and visual impact materially alter the appearance of the Protected Structure and is therefore not exempted development within the meaning of the Act.
- 8.3.12. I further note that the advertisements/advertisement structures involved in this case are not covered by any exemptions provided for in Article 6 (2) of the Planning and Development Regulations, 2001, and Part II of the Second Schedule to these Regulations.
- 8.3.13. Therefore, in conclusion I would not consider that the replacement wall mounted signage to the Dame Street and Crampton Court elevations falls within the provisions of exempted development, 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 structure.
- 8.3.14. As a point of note, I would draw the Boards attention to the fact that planning permission was granted on 26th November 2020 DCC Reg. Ref. 2879/20 for the

removal of the existing established signage and its replacement with new signage as follows: Dame Street Elevation: replacement of 2 no. double sided wall mounted signs onto first and second floors of no. 72 and 73 Dame Street. At ground floor level replacement of existing signage with new signage (over no.73 – Olympia Theatre Ticket Office) as well as 3 no. announcement signage at the entrance doors to the Theatre, and the replacement of the 2 no. modern insert signs in the canopy with new signs. Crampton Court Elevation: Replacement of a wall mounted sign with new signage (at first and second floors), as well as replacement of 2 no. entrance signs with new signage.

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 the replacement of non-original existing signage (at nos. 72 & 73 Dame Street and the facade at Crampton Court), for 18 months is or is not exempted development.

AND WHEREAS Olympia Productions Unlimited requested a declaration on this question from Dublin City Council and the Council issued a declaration on the 16th June 2020 issuing a split decision.

AND WHEREAS the said question was referred to An Bord Pleanála by Olympia Productions Unlimited on the 24th June 2020.

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

- (a) Sections 2, 3 4(1)(h) and 57 (1) of the Planning and Development Act, 2000, as amended,
- (b) Articles 6 (2) and 9 of the Planning and Development Regulations, 2001, as amended,
- (c) Part 2 of the Second Schedule to the Planning and Development Regulations, 2001, as amended,
- (d) Relevant case law, and

(e) The planning history of the site and the documentation submitted with the referral.

AND WHEREAS An Bord Pleanála has concluded that –

- (a) The proposed replacement of the existing signage to the sides of the canopy to no. 72 Dame Street and to the shopfront at no. 73 Dame Street (only) for 18 months would comprise development which would come within the meaning of Section 4(1)(h) and Section 57 of the Planning and Development Act 2000 (as amended) and would not materially affect the character of the Protected Structure and therefore would not require planning permission.
- (b) Having regard to the planning history on the site the proposed replacement of wall mounted signage on the Protected Structure, comprising 2 no. signs to nos. 72 and 73 Dame Street and the façade at Crompton Court for 18 months (or for any other period) which does not have the benefit of planning permission would comprise development which would not come within the meaning of Section 4(1)(h) and Section 57 of the Planning and Development Act 2000 (as amended) as the proposed development would materially affect the character of the Protected Structure and therefore would require planning permission.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 of the 2000 Act (as amended), hereby decides that;

- (a) The replacement of the existing signage to the sides of the canopy to no. 72 Dame Street and to the shopfront at no. 73 Dame Street (only) for 18 months constitutes development that is exempted development.
- (b) The proposed replacement of wall mounted signage on the Protected Structure, comprising 2 no. signs to nos. 72 and 73 Dame Street and the façade at Crompton Court for 18 months (or for any other period) constitutes development that is not exempted development.

Irené McCormack
Planning Inspector

11th January 2021