



An
Bord
Pleanála

Inspector's Report ABP-313933-22

Question

Whether works which comprise the rebranding of external shopfront signage to the existing retail unit is or is not development or is or is not exempted development.

Location

Unit 3 & 4 Ballast House, 17-21
Westmoreland Street, Dublin 2

Declaration

Planning Authority	Dublin City Council
Planning Authority Reg. Ref.	0139/22
Applicant for Declaration	Circle K Ireland Energy Group Ltd
Planning Authority Decision	Is not exempted development

Referral

Referred by	Circle K Ireland Energy Group Ltd
Owner/ Occupier	Circle K Ireland Energy Group Ltd
Observer(s)	None

Date of Site Inspection

July 6th, 2023

Inspector

Lorraine Dockery

1.0 Site Location and Description

1.1 The subject site comprises Units 3 and 4 Ballast House, 17-24 Westmoreland Street, Dublin 2. It is located immediately south of O'Connell Bridge and fronts onto Westmoreland Street and Aston Quay.

2.0 The Question

2.1 Whether works which comprise the rebranding of external shopfront signage to the existing retail unit is or is not development or is or is not exempted development Planning Authority Declaration.

2.2 The subject signage is located on the eastern and northern elevations.

2.3 Declaration

Refuse Exemption Certificate- A declaration under Section 5 of the Planning and Development Act 2000 (as amended) that the proposed development is NOT EXEMPT from the requirement to obtain planning permission under Section 32 of the Planning and Development Acts 2000 (as amended)

2.4 Planning Authority Reports

2.4.1 Planning Reports

- Works seeking retention are NOT considered exempted development when assessed in accordance with the Planning and Development Act 2000 (as amended) and the Regulations made thereunder.

2.4.2 Other Technical Reports

None

3.0 Planning History

4052/17

Permission GRANTED for the replacement of 3 glazed shopfronts at units 1, 2 and 5 Ballast House, 18-21 Westmoreland Street.

4207/16

Permission GRANTED to amend shopfront.

Enforcement

There is an extensive history of enforcement on this site (incorrect address noted in Planner's Report)- please refer to Planner's Report for further details

4.0 Policy Context

4.1 Development Plan

The Dublin City Development Plan 2022-2028 applies

Zoning- 'Objective Z5' which seeks 'to consolidate and facilitate the development of the central area, and to identify, reinforce strengthen its civic design character and dignity'.

Section 15.17.5 Shopfront and Façade Design

Appendix 17: Advertising and Signage Strategy

Section 8.0 Advertising Development Management Standards

The subject site is located within the O'Connell Street Architectural Conservation Area

The subject is located with an area to which the Scheme of Special Planning Control, O'Connell Street and Environs, 2022 applies.

Section 3.4 Shopfront Signage

'... All signage and advertisements (both external and internal) require planning permission within the O'Connell Street Architectural Plan Area, notwithstanding Part 2 Exempted Development – Advertisements {Article 6} of the Planning &

Development Regulations 2001 (as amended) or any regulations revoking or re-enacting these regulations...’

4.2 Natural Heritage Designations

None

5.0 The Referral

5.1 Referrer’s Case

- Do not dispute the fact that the proposed works constitute development within the meaning of section 3(1) of the Planning and Development Act, 2000, as amended
- New replacement signage was erected at the store on foot of a change of operation comprising signage at the same location and of the same type, size materials, and illumination as was already placed at the store. The replacement signage is consistent with the established and permitted traditional character and style of the shop front, no material change has arisen.
- Acknowledges that Scheme of Special Planning Control, O’Connell Street and Environs, 2016 de-exempts signage and advertising normally afforded exemption under the Planning and Development Regulations 2001 (as amended). However contends that this does not de-exempt works carried out under section 4(i)(h) of the Act, which are entirely separate exemptions and are not impacted by the provisions of the Planning Regulations, notable Articles 6 and 9 of same. Contends that replacement signage benefits from exemption under S.4(i)(h) of the Planning Act
- Contends that O’Connell Street Scheme of Special Planning Control does not de-exempt works carried out under section 4(i)(h) of the Act, rather it de-exempts signage and advertising normally afforded exemption under Part 2 Exempted Development- Advertisements {Article 6} of the Planning and

Development Regulations 2001 (as amended) or any regulations revoking or re-enacting these regulations

- Building is not a Protected Structure so therefore provisions of Section 57 of the Act do not apply
- Cites a number of referrals including relating to Topaz, Dublin Port Service Station (0131/06) and Chadwicks, Malahide Road (RL3126), together with two others in Kildare in support of this referral
- On basis of above, submits that replacement of existing permitted signage with signage of a like for like nature and character is exempted development and does not require planning permission

5.2 Planning Authority Response

None

5.3 Further Responses

None

6.0 Statutory Provisions

6.1 Planning and Development Act, 2000

Section 2(1)

In this Act, except where the context otherwise requires –

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

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

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

Section 3(1)

In this Act, "development" means, except where the context otherwise requires, the carrying out of any works on, in, or under land or the making of any material change in the use of any such structures or other land.

Section 4(1)

The following shall be exempted developments for the purposes of this Act -

(h) development consisting of the use 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;

Section 5(1) of the aforementioned Act, states the following:

If any question arises as to what, in any particular case, is or is not development or is or is not exempted development within the meaning of this Act, any person may, on payment of the prescribed fee, request in writing from the relevant planning authority a declaration on that question, and that person shall provide to the planning authority any information necessary to enable the authority to make its decision on the matter.

6.2 Planning and Development Regulations, 2001

Schedule 2, Part 1 deals with Exempted Development- General

Article 9 of the Regulations sets out restrictions on exemption and includes the following:

(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,

(vi) interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of a development plan for the area in which the development is proposed 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,

(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,

(b) in an area to which a special amenity area order relates, if such development would be development:—

(ii) consisting of the use of a structure or other land for the exhibition of advertisements of class 1, 4, 6, 11, 16 or 17 specified in column 1 of Part 2 of the said Schedule or the erection of an advertisement structure for the exhibition of any advertisement of any of the said classes, or"

6.3 Other

The subject is located with an area to which the Scheme of Special Planning Control, O'Connell Street and Environs, 2022 applies.

Section 3.4 Shopfront Signage

'... All signage and advertisements (both external and internal) require planning permission within the O'Connell Street Architectural Plan Area, notwithstanding Part 2 Exempted Development – Advertisements {Article 6} of the Planning &

Development Regulations 2001 (as amended) or any regulations revoking or re-enacting these regulations...’

7.0 Assessment

7.1 I highlight to the Board that there is a concurrent referral (ABP-313936-22 at 49 Grafton St, Dublin 2) in the system for a similar proposal by the same referrer. In both referrals, there is a mix-up in the submitted appeal documentation, in that the documentation submitted for this current appeal makes reference to/deals with in part to the Grafton Street referral and part to the Westmoreland Street referral and vice versa. There is confusion in the documentation submitted. However, the two referral appeals are very similar in context, legal argument and the argument put forward in support of the referral, aside from specific site characteristics. Notwithstanding this, I was comprehensively able to assess the proposal before me.

7.2 The question under consideration in this referral is as follows: Whether works which comprise the rebranding of external shopfront signage to the existing retail unit is or is not development or is or is not exempted development at Unit 3 & 4 Ballast House, 17-21 Westmoreland Street, Dublin 2.

Is or is not development

7.3 I consider that the erection of rebranded external shopfront signage to the existing retail unit would involve works within the meaning of Section 3 of the Act. As such it constitutes development. This is accepted by all parties to the referral.

7.4 Is or is not exempted development/ Restrictions on exempted development

7.5 The second half of this question is whether rebranded external shopfront signage to the existing retail unit or not is or is not exempted development.

7.6 The referrer has set out in the submitted documentation that the subject works are exempted development and their case is outlined above. In summary, the referrer acknowledges that Scheme of Special Planning Control, O’Connell Street and

Environs, 2022 de-exempts signage and advertising normally afforded exemption under the Planning and Development Regulations 2001 (as amended). However contends that this does not de-exempt works carried out under section 4(1)(h) of the Act, which are entirely separate exemptions and are not impacted by the provisions of the Planning Regulations, notable Articles 6 and 9 of same. The referrer further contends that as the replacement signage benefits from exemption under s.4(1)(h) of the Planning Act that replacement of existing permitted signage with signage of a like for like nature and character is exempted development and does not require planning permission.

7.7 The planning authority are of the opinion that given that the site is located within the O'Connell Street Architectural Conservation Area and the Scheme of Special Planning Control, which states that all alterations to signage and advertisements requires planning permission, the proposed works are not exempt development and require planning permission. They further consider that Section 4(1)(h) of the Planning and Development Act is not considered relevant in this instance. The planning authority further state that it is evident from the material submitted that the replacement signage is not consistent with any permitted or established traditional character and style at the premises. They refer to Article 9(vi) and (xii) of the Regulations in this regard. They further considered the subject signage to be visually incongruous and have a detrimental impact on the O'Connell Street Architectural Conservation Area and the Area of Special Planning Control.

7.8 I have examined all of the information before me in this regard. In particular, I note that the site is located within the O'Connell Street Architectural Conservation Area and the Scheme of Special Planning Control, O'Connell Street and Environs, 2022 applies. This Scheme has been prepared in accordance with Section 84 of the Planning and Development Act 2000 (as amended). I also note the planning history of the site and that the previous signage, which has been replaced, had the benefit of a grant of permission.

7.9 The designation of O'Connell Street Architectural Conservation Area as an Area of Special Planning Control allows Dublin City Council to specify development objectives for the preservation or enhancement of the area that would further

strengthen its designation as an Architectural Conservation Area, in accordance with Section 84 of the Planning & Development Act 2000 (as amended). The extent of the Area of Special Planning Control is identical to that of the O'Connell Street Architectural Conservation Area.

7.10 I refer the Board to section 3.4 Shopfront Signage of the aforementioned Scheme which states that –

*'To actively encourage high quality shopfront displays, it is an objective of this Scheme that the following signage restrictions shall apply to all uses:
All signage and advertisements (both external and internal) require planning permission within the O'Connell Street Architectural Plan Area, notwithstanding Part 2 Exempted Development – Advertisements {Article 6} of the Planning & Development Regulations 2001 (as amended) or any regulations revoking or re-enacting these regulations'.* (emphasis on 'all' contained within the Scheme).

7.11 It appears to me that all parties acknowledges that the O'Connell Street Scheme of Special Planning Control states that all signage and advertisements require planning permission within the O'Connell Street Architectural Conservation Area and that the scheme de-exempts any exemptions set out in Part 2 Exempted Development Advertisement of the Planning and Development Regulations 2001, as amended. However the referrer contends that the proposed alterations should be assessed under Section 4(1)(h) of the Planning and Development Regulations. The planning authority do not agree with this assertion. I do not agree with this assertion.

7.12 Having read to written text of the O'Connell Street Scheme of Special Planning Control, it appears clear to me that the Scheme stipulates that *'all signage and advertisements (both external and internal) require planning permission...'*. That appears to me to be the intention/spirit of the Scheme. I would therefore be if the opinion that Section 4(1)(h) of the Act is not applicable in this instance and that the

replacement signage does not come within the scope of any exemption under 4(1)(h) of the Planning and Development Act, 2000, as amended.

7.13 Section 87 (1) of the Act states that 'Notwithstanding section 4 and any regulations made thereunder, any development within an area of special planning control shall not be exempted development where it contravenes an approved scheme applying to that area'. In this regard, I note that section 3.4 of the Scheme requires signage to form an integral part of the overall design for the shopfront; that the lettering employed shall either be painted on the fascia, or consist of individually mounted letters on the fascia board; size of the lettering used should be in proportion to the depth of the fascia board and in all cases shall not exceed 300mm in height. In this regard, the referrer does not give details as to the material of the subject signage but states that it comprises the same type, size, materials and illumination as was already in place at the store. They further contend that no material change has arisen and that the replacement signage is consistent with the established and permitted traditional character and style of the shopfront. I do not concur with this assertion. I consider that the subject signage is not in compliance with section 3.4 of the Scheme in that it does not form an integral part of overall design for the shopfront; the lettering employed is neither painted on the fascia, nor does it consist of individually mounted letters on the fascia board; the size of the lettering would appear to exceed 300mm in height (exact dimensions of same have not been specified). I do not consider that the replacement signage, (comprising of bright red signage, assumed to be PVC in material) to be consistent with the established and permitted traditional character and style of the shopfront.

7.14 I also note Article 9 of the Regulations, which sets out restrictions on exemption and includes the following (extracts included below):

(vi) interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of a development plan

(xii) 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 and the development would materially affect the character of the area.

In relation to Article 9 of the Regulations (cited above), the site is located within an Architectural Conservation Area and the works undertaken are considered to be visually incongruous and have a detrimental impact on the character of O'Connell Street Architectural Conservation Area and the Area of Special Planning Control. I consider that the existing signage negatively impacts on the character of the building itself and the streetscape as a whole.

7.15 I note the examples cited by the referrer in support of this referral. I do not consider these to be applicable or relevant to this case as none were located within the O'Connell Street Architectural Conservation Area and the Area of Special Planning Control, under which particular provisions apply. I consider a more comparable example to be RL3144 relating to No. 51 Grafton Street, Dublin 2 and I refer the Board to same.

7.16 Therefore, on the basis of all of the above, I am of the opinion that such signage is not exempted development and requires a grant of planning permission.

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 works which comprise the rebranding of external shopfront signage to the existing retail unit is or is not development or is or is not exempted development:

AND WHEREAS Circle K Ireland Energy Group Ltd. requested a declaration on this question from Dublin City Council and the Council issued a declaration on the 02nd day of June, 2022 stating that the matter was development and was not exempted development:

AND WHEREAS Circle K Ireland Energy Group Ltd. referred this declaration for review to An Bord Pleanála on the 29th day of June, 2022:

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

- (a) Sections 2(1), 3(1) and 4(1)(h) of the Planning and Development Act, 2000, as amended
- (b) Articles 6(1) and 9(1) of the Planning and Development Regulations, 2001, as amended, and,
- (c) Schedule 2, Part 1 of the Planning and Development Regulations, 2001, as amended,
- (d) the provisions of Part 3, section 3.4 of the written statement set out in the Special Planning Control Scheme O’Connell Street and Environs, 2022 in the context of sections 82, 84, 85 and 87 of the said Act
- (e) The submissions received by the Board and the report of the Inspector:

AND WHEREAS An Bord Pleanála has concluded that:

- (a) Works which comprise the rebranding of external shopfront signage to the existing retail unit at Unit 3 & 4 Ballast House, 17-21 Westmoreland Street, Dublin 2 entails “works” and so it constitutes development, under Section 3(1) of the Planning and Development Act, 2000 to 2017
- (b) This development would not come within the scope of Section 4(1)(h) not being 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;

- (c) The subject signage which is located in an Architectural Conservation Area, would comprise development which is not exempted development as set out in the provisions of as set out in Article 9 of the Planning and Development Regulations, 2001, as amended,
- (d) the provisions of Part 3, section 3.4 of the written statement set out in the O'Connell Street Architectural Conservation Area and the Special Planning Control Scheme in the context of sections 82, 84, 85 and 87 of the said Act
- (e) the provisions of section 87(1) of the said Act state that "any development within an area of special planning control shall not be exempted development where it contravenes an approved scheme applying to that area", and Unit 3 & 4 Ballast House, 17-21 Westmoreland Street is located within an area where such a Special Planning Control Scheme applies

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 of the 2000 Act, hereby decides that the rebranding of external shopfront signage to the existing retail unit is development and is not exempted development.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Lorraine Dockery
Senior Planning Inspector

10th July 2023