



An
Bord
Pleanála

Inspector's Report ABP315281-22

Question

Whether

1. The erection of signage on the façade of the property facing Whitworth Road.
- 2 The alteration to the façade of the property facing Prospect Road and provision of a point of sale for takeaway items.
- 3 The installation of a trailer and structure on the area facing Prospect Road.
- 4 The provision of 3 no. Covered picnic benches, 8 no. picnic bench style seating and street furniture consisting of planters and sandwich board signs on the area facing Prospect Road.
- 5 The erection of 15 No. Windbreaker screens with signage placed along the boundary facing Prospect Road and Whitworth Road.

Is or is not exempted development

Location

The Bernard Shaw, Whitworth Road,
Dublin D09 XW44.

Declaration

Planning Authority	Dublin City Council.
Planning Authority Reference.	0335/22
Applicant for Declaration	Liacondar Limited
Type of Application	Planning permission.
Planning Authority Decision	Is not Exempted Development.

Referral

Third Party

Referred by

Liacondar Limited

Owner Occupier

Liacondar Limited

Observer(s)

None.

Date of Site Inspection

30th June 2024.

Inspector

Derek Daly.

1.0 Site Location and Description

- 1.1. The proposed site is located to the north of the central area of Dublin to the north of the Royal Canal.
- 1.2. The site is a corner site bounded by Prospect Avenue to the west, Charleville Lawn Tennis Club to the east, Whitworth Road to the south and a railway line to the north. The land represents the southern extent of a strip of commercial buildings generally in Prospect Avenue / Botanic Avenue area with recreational uses and residential areas to the north and east
- 1.3. On the site is a single storied building which is gable fronted facing onto Prospect Road and which is currently in use as a licenced premises and restaurant and which also has a beer garden to the east of the building. The outside area facing onto the public roads is used for outdoor dining.

2.0 The Question

- 2.1. The question before the Board relates to whether the following;
 1. The erection of signage on the façade of the property facing Whitworth Road.
 - 2 The alteration to the façade of the property facing Prospect Road and provision of a point of sale for takeaway items.
 - 3 The installation of a trailer and structure on the area facing Prospect Road.
 - 4 The provision of 3 no. Covered picnic benches,8 no. picnic bench style seating, and street furniture consisting of planters and sandwich board signs on the area facing Prospect Road.
 - 5 The erection of 15 No. Windbreaker screens with signage placed along the boundary facing Prospect Road and Whitworth Road.Is or is not exempted development.

3.0 Planning Authority Declaration

- 3.1. **Declaration**

- 3.1.1. Dublin City Council issued a declaration (Ref: 0335/22) that the proposal as described is development and is not exempted development for the following reason; the proposal as described is development, and is not exempt development, comprising a material change of use which does not have the benefit of any exemption, and including works which do not have the benefit of any exemption, within the meaning of the Planning and Development Act 2000, as amended.

3.2. Planning Authority Reports

- 3.2.1. Planning Report (Dated 27th October 2022 and endorsed by A/Senior 28th October 2022 refers to provisions of the city development plan, relevant legislative provisions, planning history and an assessment of the five matters raised in the referral with a recommendation that the development is development and not exempted development.

4.0 Planning History

- 4.1. The site has an extensive planning history and is recorded in the planning report. The property was converted from its former light industrial/retail warehouse use to public house use (Porterhouse North) on foot of a 2001 planning application. In the subsequent period numerous amending applications were submitted though not all were implemented. Relevant applications include;
- 4.2. P.A. Ref. No.4821/19 Permission granted for conversion of part of existing basement to be used as a games room/function room/bar subject to 11 conditions, including condition no. 10. *Any new signage, aside from those that are exempted development, shall be the subject of a separate planning application. Reason: In the interest of visual amenity and orderly development.*
- 4.3. ABP Ref. No PL29N.204256/ PA. Ref. No. 2981/03 This was an application for retention and completion of roof light, retention of yard wall, boardwalk to Whitworth Road, internal and basement alterations. Conditions in the decision to grant permission were appealed by First Party to An Bord Pleanála (and permission with amended conditions was granted. Relevant conditions included the following:
- Condition no. 3. The five car parking spaces to the front of the structure to be omitted and the area landscaped. Revised plans to be submitted for the written agreement of*

the Planning Authority and this work to be completed to the satisfaction of the Planning Authority prior to the opening of the premises to the public. This landscaped area is not to be used as a seating out area in connection with the pub or restaurant without the prior grant of planning permission. Reason: In the interest of visual amenity.

Condition no.4. The boardwalk to be used solely for fire escape purposes and is not to be used as a seating out area in connection with the public house and restaurant. Reason: In the interest of residential amenity.

Condition no.5. Details of all signage to be agreed in writing with the Planning Authority prior to the opening of the premises to the public. Reason: In the interest of visual amenity.

- 4.4. P.A. Ref. No. 1859/02 Permission Granted for amendments to reg. ref. 1025/01 for reconfiguration of existing service area to include a new basement incorporating a new kitchen, stores, toilets, and internal reconfiguration. No increase to trading area. Permission granted with 7 conditions which included the following:

Condition 2. Details of signage and security devices to be agreed in writing with the Planning Authority prior to the commencement of development. Reason: In the interest of visual amenity. 3. Details of all finishes including roof to be submitted for the written approval of the Planning Authority prior to commencement of development. Reason: In the interest of visual amenity.

- 4.5. P.A. Ref. No.1025/01 This was a permission for change of use from retail warehouse/offices/storage to licensed café/lounge/bistro with associated ancillary works and alterations, including car parking and landscaping. Permission granted with 6 conditions, including the following:

Condition no 2. Details of signage and security devices to be agreed in writing with the Planning Authority prior to the commencement of development. Reason: In the interest of visual amenity.

Condition no. 3. Details of all finishes including roof to be submitted for the written approval of the Planning Authority prior to commencement of development. Reason: In the interest of visual amenity.

- 4.6. There is also a history of enforcement on the site

P.A. Enforcement Ref. No: E1111/19 in relation to it is alleged that development has been carried out without the benefit of planning permission in relation to the erection of signage on the façade of the property facing Whitworth Road; the alteration to the facade of the property facing Prospect Road and is in use for the point of sale for takeaway items; the installation of a trailer and structure on the area facing Prospect Road; the 3 No. Covered picnic benches 8No picnic bench style seating and street furniture consisting of planters and sandwich board signs on the area facing Prospect Road; the erection of 15 No Windbreaker screens with signage placed along the boundary facing Prospect Road and Whitworth Road; the erection of mural on the cable wall, visible from the Whitworth Road. It is further alleged that there has been carried breach of Condition 4 of the planning reference 2981/03 states;- “The boardwalk to be used solely for fire escape purposes and is not to be used as a seating out area in connection with the public house and restaurant. Reason: In the interest of residential amenity.”

5.0 Policy Context

5.1. Local Planning Policy

The relevant plan is the Dublin City Development Plan 2022-2028.

The site is zoned Z3 Neighbourhood Centres, with the objective ‘To provide for and improve neighbourhood facilities’. There are no specific objectives in the Development Plan or in any Local Area Plan specific to the site. The site is not a protected structure, is not within an Architectural Conservation Area, or any conservation area as designated in the Development Plan.

- 5.2. The building was surveyed by the National Inventory of Architectural Heritage (NIAH) Reg no 50130199. The survey contains a description of the building referring to it “as *a detached single-storey trapezoidal-plan former garage, built c. 1930. Now in use as public house. Shallow pitched seamed zinc roof having raised central lantern with shallow pyramidal roof, glazed to sides. Parapet gutters to solid stepped rendered parapeting, metal downpipes, raised gables to east and west, stepped to latter. Replacement glazed tiled walling in black and white, painted smooth rendered walls to east and north, west elevation having feature rendered panel over entrance breaking into gable pediment and having three vertical stepped projections to*

stepped head, and similar rendered panel to south elevation breaking parapet with gabled profile and having three vertical stepped projections to apex. Square-headed full-height window openings with tiled reveals, and multiple-pane aluminium-framed windows. Square-headed glazed aluminium framed doors inset into wider window openings to west and south”.

The NIAH appraisal refers to “*prominently located at Crossguns Bridge, this unusual building was erected about 1930 as a garage, but served as the headquarters of Ireland's first commercial airline, Iona Airways, which operated between 1931 and 1995. The enterprise was started here by the entrepreneur, Hugh Cahill, who initially had a motor company. Aircraft were serviced here, although the aerodrome was located three miles (5km) away at Kildonan House. The building was converted to a public house in 2004 and although it has undergone substantial changes with its new use, including replacement of the original banded render with glazed tiles, it retains its original form and massing, and linear detailing typical of its period. It is of interest as early infrastructure associated with air travel in Ireland*”.

5.3. Natural Heritage Designations

None relevant. The site is not within a Natura Site or directly connected with a Natura Site.

6.0 The Referral

6.1. Referrer's Case

- 6.1.1. In relation to the erection of signage on the façade of the property facing Whitworth Road the referrer contends that the provision of signage does not materially alter the external appearance of the structure as to render the appearance inconsistent with the character of the structure or of neighbouring structures in accordance with section 4(1)(h) of the Planning and Development Act and is therefore exempted development. Reference is made to photograph 1 of the submission.
- 6.1.2. In relation to the alteration to the façade of the property facing Prospect Road and provision of a point of sale for takeaway items the referrer has given an undertaking not to use this as a point of sale for takeaway items. However, it is also submitted that the associated alteration to the façade does not materially alter the external

appearance of the structure as to render the appearance inconsistent with the character of the structure or of neighbouring structures in accordance with section 4(1)(h) of the Planning and Development Act and is therefore exempted development. Reference is made to photograph 2 of the submission.

6.1.3. In relation to the installation of a trailer and structure on the area facing Prospect Road it is indicated that this was provided in the Covid period and intended as a temporary takeaway service and was exempted under S.I No.92/2020. It is also submitted that this trailer/structure is of temporary nature and also consists of the use of the land for the purposes of a casual trading area and is therefore considered exempted development in accordance with section 4(1)(k) of the Planning and Development Act. Reference is made to photograph 3 of the submission.

6.1.4. In relation to the provision of 3 no. Covered picnic benches, 8 no. picnic bench style seating, and street furniture consisting of planters and sandwich board signs on the area facing Prospect Road it is indicated this provision is temporary in nature, not fixed and movable. However, it is also submitted that the associated alteration to the façade does not materially alter the external appearance of the structure as to render the appearance inconsistent with the character of the structure or of neighbouring structures in accordance with section 4(1)(h) of the Planning and Development Act and is therefore exempted development. Reference is made to photograph 4 of the submission.

6.1.5. In relation to the erection of 15 No. Windbreaker screens with signage placed along the boundary facing Prospect Road and Whitworth Road it is indicated that this provision was erected to separate the referrer's lands from the area which is taken in charge by Dublin City Council and is temporary in nature, not fixed and movable. However, it is also submitted that this does not materially alter the external appearance of the structure as to render the appearance inconsistent with the character of the structure or of neighbouring structures in accordance with section 4(1)(h) of the Planning and Development Act and is therefore exempted development. Reference is made to photograph 5 of the submission.

6.2. Planning Authority Response

6.2.1. No response received.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

Section 2 – Interpretation

“advertisement” means any word, letter, model, balloon, inflatable structure, kite, poster, notice, device or representation employed for the purpose of 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

“alteration” includes— (a) plastering or painting or the removal of plaster or stucco, or (b) the replacement of a door, window or roof, that materially alters the external appearance of a structure so as to render the appearance inconsistent with the character of the structure or neighbouring structures;

“development” has the meaning assigned to it by section 3 and ‘develop’ shall be construed accordingly.

“exempted development” has the meaning specified in section 4.

“unauthorised use” means, in relation to land, use commenced on or after 1 October 1964, being a use, which is a material change in use of any structure or other land and being development other than-

(a) Exempted development (within the meaning of section 4 of the Act of 1963 or section 4 of this Act), or

(b) Development which is the subject of a permission granted under Part IV of the Act of 1963 or under section 34, 37G, 37N or 293 of this Act being a permission which has not been revoked, and which is carried out in compliance with that permission or any condition to which that permission is subject.

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

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

Section 3 – Development

In this Act, except where the context otherwise requires, "development" means—

(1) (a) the carrying out of any works in, on, over or under land, or the making of any material change in the use of any land or structures situated on land,

(2) For the purposes of subsection (1) and without prejudice to the generality of that subsection—

(a) where any structure or other land or any tree or other object on land becomes used for the exhibition of advertisements, or

(b) where land becomes used for any of the following purposes—

(i) the placing or keeping of any vans, tents or other objects, whether or not moveable and whether or not collapsible, for the purpose of caravanning or camping or habitation or the sale of goods,

(ii) the storage of caravans or tents, or

(iii) the deposit of vehicles whether or not usable for the purpose for which they were constructed or last used, old metal, mining or industrial waste, builders' waste, rubbish or debris,

the use of the land shall be taken as having materially changed.

Section 4 – Exempted Development

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;

(k) 'Exempted Development' of the Planning and Development Act 2000 (as amended) states: The following shall be exempted developments for the purposes of this Act: - "development consisting of the use of land for the purposes of a casual trading area (within the meaning of the Casual Trading Act, 1995);"

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

Section (4A) Notwithstanding subsection (4), the Minister may make regulations prescribing development or any class of development that is— (a) authorised, or required to be authorised by or under any statute (other than this Act) whether by means of a licence, consent, approval or otherwise.

7.2. Planning and Development Regulations, 2001

7.2.1. Part 2 – Exempted Development

7.2.2. Article 6

Article 6 refers to exempted development and Article 6(1) indicates

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.

7.2.3. Article 9

Article 9 sets out a number of restrictions on exempted development.

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 (relevant excerpts referenced)

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

(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.

7.3. Article 10.

Article 10 sets out the conditions in which a change of use does not require planning permission as follows:

10(1) Development which consists of a change of use within any one of the classes of use specified in Part 4 of Schedule 2, shall be exempted development for the purposes of the Act, provided that the development, if carried out would not –

(a) involve the carrying out of any works other than works which are exempted development,

(b) contravene a condition attached to a permission under the Act,

(c) be inconsistent with any use specified or included in such a permission, or

(d) be a development where the existing use is an unauthorised use, save where such change of use consists of the resumption of a use which is not unauthorised and which has not been abandoned.

7.4. Class 14 of Part 1 of Schedule 2 refers to change of use and outlines changes of use which are considered to be exempted development.

7.5. Part 4 of Schedule 2 of the Regulations Exempted development outlines Classes of Use which and exemptions within each individual specified class.

7.6. Schedule 2, Part 2: Exempted Development in relation to Advertisements outlines 18 classes subject to conditions and limitations. Relevant to this referral is;

7.6.1. 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 advertisements 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.

7.7. S.I. No 92 of 2020 (Planning and Development Act 2000 (Exempted Development) (no. 2) Regulations 2020. The Regulations amend the Planning and Development Regulations 2001, to provide exemptions for restaurants to operate a service to enable the temporary sale of food for consumption off premises (i.e. takeaway/delivery) that previously did not provide this service, during a period

specified in the Regulations during the lockdowns due to the Covid 19 pandemic. Upon the expiration of the relevant period stated the 31st March 2022, the exemption expired.

The Regulation provides for;

3. Part 1 of Schedule 2 to the Planning and Development Regulations 2001 shall have effect during the relevant period as if, in column (1) under the heading Class 14, the following paragraph were inserted after paragraph (a):

(aa) from use for the sale of food for consumption on the premises to use for the sale of food for consumption off the premises.

4. Where a premises is used during the relevant period for the sale of food for consumption off the premises in accordance with Article 3, then, upon the expiration of the relevant period

(a) the premises may be used for the sale of food for consumption on the premises in accordance with the permission that applied in respect of that premises immediately before the commencement of the relevant period, and

(b) the use of the premises for the sale of food for consumption off the premises shall not be exempted development.

8.0 Assessment

8.1. The purpose of this referral is not to determine the acceptability or otherwise of the development referred to in the question but rather whether or not the matter in question constitutes development, and if so, falls within the scope of exempted development. It is proposed to address the five questions in turn.

It is proposed to address each of the five questions in turn.

8.2. The first question put forward by the referrer relates to the erection of signage on the façade of the property facing Whitworth Road.

8.2.1. Is or is not development.

8.2.2. Based on the definition of development

Section 3(1) (a) the carrying out of any works in, on, over or under land, or the making of any material change in the use of any land or structures situated on land,

(2) For the purposes of subsection (1) and without prejudice to the generality of that subsection—

(a) where any structure or other land or any tree or other object on land becomes used for the exhibition of advertisements,

the use of the land shall be taken as having materially changed.

The placing of advertisement structures is therefore development.

8.2.3. Is or is not exempted development

The referrer has indicated and submitted that the signage does not materially alter the external appearance of the structure as to render the appearance inconsistent with the character of the structure or of neighbouring structures in accordance with section 4(1)(h) of the Planning and Development Act and is therefore exempted development.

The planning authority has contended that under the planning legislation all signage, including shop signage is considered under the heading of advertisements. It is not entirely clear what signage is referred to. A vertical sign is shown in the foreground of the photograph advertising Eatyard, navy blue with multi-coloured lettering, partly cropped by the photograph. A more substantial nameplate over the central window is lettered 'The Bernard Shaw' and there may be further signage affixed to the elevation however it is not clear, due to the angle of photography. Section 4(1)(h) provides an exemption for certain works to structures, provided they are for the maintenance, improvement, or other alteration of a structure, and provided they affect only the interior, or they 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. It is the view of the planning authority that the affixing or addition of advertisements cannot be considered to fall under Section 4(1)(h) and does not fall under the category of maintenance or improvement of the structure and as such, the intent of Section 4(1)(h) would appear to be to allow for the kind of works required for repairs and refurbishments, not to provide a general purpose catch-all for developments that are addressed elsewhere in the planning legislation. Given that advertising is tightly controlled by both the Act and by the Regulations, (Part 2 of the Planning and Development Regulations 2001 (as amended) is devoted to the regulation of advertisements and signage by providing

detailed exemptions under 17 use classes), that is the appropriate mechanism to assess whether the signage is exempt or not.

Class 1 of Part 2 of the Planning and Development Regulations 2001 (as amended) it is indicated provides an exemption on advertising signage, it is difficult to assess whether a single advertisement sign to a property is exempt in isolation; as the conditions and limitations include cumulative limitations. However, given that the sign in the photograph submitted is located at least partly at a height of greater than 4 metres above ground level, the exemption does not apply. Furthermore, it is noted that condition 10 of application 4821/19, condition 2 of application 4837/07, condition 5 of application 2981/03, condition 4 of application 2982/03, condition 2 of application 1859/02, condition 2 of application 1025/01, all set limits on signage, and as such the restrictions of Article 9(1)(i) would appear relevant.

In relation to this question there were at the time of site inspection three signs on the Whitworth Road elevation, an Eatyard sign which is a vertical sign, navy blue with multi-coloured lettering and a nameplate over the central window which is lettered 'The Bernard Shaw'. There is also another sign Eatyard Motel on and over the arch to the beer garden.

The contention of the referrer that the erection of signage on the falls under Section 4(1)(h) is not accepted. Section 4(1)(h) provides for maintenance or improvement of the structure and works required for repair and refurbishment. It does provide for a wider application of arrange of development and works and emphasises 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. I do not consider that that interpretation of Section 4(1)(h) applies irrespective of considering the question of materially affecting the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures.

It is noted that advertisement are specifically referred to in Schedule 2, Part 2: Exempted Development of the Planning and Development Regulations 2001 as amended in relation to advertisements which outlines 18 classes subject to conditions and limitations including class 1 which refers to business premises and

notwithstanding the provisions as set out in class 1 there are restrictions outlined in Article 9(1)(a)(i) where development shall not be exempted development if it contravenes a condition attached to a permission under the Act and the planning history does outline the use of such a condition in permissions granted on the site.

I would also consider that the level of signage on the Whitworth Road frontage would exceed the conditions and limitations outlined in Class 1 as 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.

The signage therefore is not exempted development.

- 8.3. The second question put forward by the referrer relates to the alteration to the façade of the property facing Prospect Road and provision of a point of sale for takeaway items.

8.3.1. Is or is not development.

8.3.2. Based on the definition of development

Section 3(1) (a) the carrying out of any works in, on, over or under land, or the making of any material change in the use of any land or structures situated on land,

The alteration to the façade of the property I consider is development.

8.3.3. Is or is not exempted development

8.3.4. The referrer contends In relation to the alteration to the façade of the property facing Prospect Road and provision of a point of sale for takeaway items the referrer has given an undertaking not to use this as a point of sale for takeaway items.

Notwithstanding this undertaking, it is also submitted that the associated alteration to the façade does not materially alter the external appearance of the structure as to render the appearance inconsistent with the character of the structure or of neighbouring structures in accordance with section 4(1)(h) of the Planning and Development Act and is therefore exempted development.

8.3.5. The planning authority contend that it is not entirely clear what alterations are referred to and note that a large number of alterations have been undertaken to the front elevation in recent years. Reference is made to the NIAH record which records that although it has undergone substantial changes with its new use. The planning authority also note that the front elevation has had changes and that one of the large

multi pane floor to ceiling window openings has been altered to create a shopfront, the works are alterations to the structure, and as such, it is appropriate to consider them under 4(1)(h). As such, at issue is whether the works 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.

In this regard the planning authority consider that the alterations to the front elevation render the appearance of the structure inconsistent with its character. The character of the building (prior to the alterations the subject of this query) is that of a converted and renovated Art Deco style industrial building, gable-fronted and symmetrical, with pedimented breakfronts with bold decoration to both elevations, flanked by large square floor-to-ceiling multi-pane windows, with all materials having a monochrome colour palette. The alterations to one window to provide a shopfront beside the front door instead of a window, and the application of multiple colours and lettering, renders the appearance of the structure inconsistent with its character. The works are not exempt under Section 4(1)(h).

- 8.3.6. In relation to this question, it is noted that the referrer has given an undertaking not to use this as a point of sale for takeaway items but the question primarily relates to the alteration to the façade of the property facing Prospect Road.
- 8.3.7. I have examined the National Inventory of Architectural Heritage reg no 50130199 survey and appraisal and the current elevation at the time of site inspection.
- 8.3.8. In relation to Section 4(1)(h) this provides for exemption for 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.

The Prospect Road elevation has altered from its original and these include an alteration to the central window and door and signage which materially affect the external appearance of the structure to render the appearance of the structure inconsistent with its character and I consider works are not exempt under Section 4(1)(h).

The alterations referred to therefore are not exempted development.

8.4. The third question put forward by the referrer relates to the installation of a trailer and structure on the area facing Prospect Road.

8.4.1. Is or is not development.

8.4.2. Based on the definition of development

Section 3(1) (a) the carrying out of any works in, on, over or under land, or the making of any material change in the use of any land or structures situated on land.

The installation of a trailer and structure on the area facing Prospect Road I consider is development.

8.4.3. Is or is not exempted development.

8.4.4. The referrer contends In relation to this question that this was provided in the Covid period and intended as a temporary takeaway service and was exempted under S.I No.92/2020. It is also submitted that this trailer/structure is of temporary nature and also consists of the use of the land for the purposes of a casual trading area and is therefore considered exempted development in accordance with section 4(1)(k) of the Planning and Development Act.

8.4.5. The planning authority contend S.I. No 92 of 2020 (Planning and Development Act 2000 (Exempted Development) (no. 2) Regulations 2020 were enacted to amend Class 14 of the Planning and Development Act 2000 for a temporary period to allow for an exemption for a change of use from use for the sale of food for consumption on the premises to use for the sale of food for consumption off the premises, during the lockdowns due to the Covid 19 pandemic. Upon the expiration of the relevant period (31 March 2022), the exemption expired. The planning authority also contend that the exemption did not refer to any works, or erection of new structures or extensions, but merely the use of existing premises and under Section 3(2)(b) it is specified that the placing of such an object for the sale of goods constitutes a material change of use of the land. No exemption exists for such a change of use under Class 14 of Part 1 of Schedule 2, or under Part 4 of Schedule 2 of the Regulations.

Regarding the exemption under Section 4(1)(k) of the Act, a casual trading area means land standing designated by bye-laws under Section 6 of the Casual Trading

Act 1995 as an area where casual trading may be carried on. There are a number of such areas designated by Dublin City Council. This is not such an area.

8.4.6. In relation to installation of a trailer and structure on the area that this was provided in the Covid period and intended as a temporary takeaway service and was exempted under S.I No.92/2020 the relevant period for the exemption was temporary under S.I No.92/2020 and has expired so any use as a temporary takeaway service has expired. The regulation provided for the sale of food for consumption on the premises to use for the sale of food for consumption off the premises and infers an existing premises and not erecting an additional structure specifically for that purpose and the placement of a trailer and structure is not provided for as exempted development.

8.4.7. In relation to the provision of Section 4(1)(k) which provides for development consisting of the use of land for the purposes of a casual trading area (within the meaning of the Casual Trading Act, 1995), the site is not designated for the purposes of a casual trading area and the exemption under Section 4(1)(k) does not apply.

The installation of a trailer and structure on the area facing Prospect Road referred to therefore is not exempted development.

8.5. The fourth question put forward by the referrer relates to the provision of 3 no. Covered picnic benches, 8 no. picnic bench style seating, and street furniture consisting of planters and sandwich board signs on the area facing Prospect Road.

8.5.1. Is or is not development.

8.5.2. Based on the definition of development

Section 3(1) (a) the carrying out of any works in, on, over or under land, or the making of any material change in the use of any land or structures situated on land, the installation of a trailer and structure on the area facing Prospect Road I consider is development.

8.5.3. Is or is not exempted development

8.5.4. The referrer contends that the provision of 3 no. covered picnic benches, 8 no. picnic bench style seating, and street furniture consisting of planters and sandwich board signs on the area facing Prospect Road is temporary in nature, not fixed and

movable. It is also submitted that the associated alteration to the façade does not materially alter the external appearance of the structure as to render the appearance inconsistent with the character of the structure or of neighbouring structures in accordance with section 4(1)(h) of the Planning and Development Act and is therefore exempted development.

- 8.5.5. The planning authority contend Section 4(1)(h) refers to certain works to a structure itself. The provision of additional structures in the vicinity of a structure could not be considered exempt under Section 4(1)(h). It is also contended that the change of use of this forecourt to use as an outdoor dining area is a material change of use and no exemption exists for such a change of use under Class 14 of Part 1 of Schedule 2, or under Part 4 of Schedule 2 of the Regulations. The planning authority also noted that condition 3 of application 2981/03 specifically prohibits the use of this area as a seating area and as such, no exemption under the Regulations could be availed of, due to the restrictions imposed by Article 9(1)(a)(i).
- 8.5.6. In relation to the question contention of the referrer that the provision of 3 no. covered picnic benches, 8 no. picnic bench style seating, and street furniture consisting of planters and sandwich board signs on the area facing Prospect Road is temporary in nature, not fixed and movable and falls under Section 4(1)(h) is not accepted having considered the statutory provisions.
- 8.5.7. Section 4(1)(h) provides for maintenance or improvement of the structure and works required for repair and refurbishment. It does provide for a wider application of arrange of development and works and emphasises 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. Additional structures external to the premises for use as an outdoor dining area constitutes a material change of use and no exemption exists for such a change of use within the provisions of the Planning and Development Regulations 2001 as amended. It is also noted that condition 3 of application 2981/03 specifically prohibited the use of this area as a seating area and as such, no exemption under the Regulations could be availed of, due to the restrictions imposed by Article 9(1)(a)(i).

The provision of 3 no. covered picnic benches, 8 no. picnic bench style seating, and street furniture consisting of planters and sandwich board signs on the area facing Prospect Road is not exempted development.

8.6. The fifth question put forward by the referrer relates to the erection of 15 No. Windbreaker screens with signage placed along the boundary facing Prospect Road and Whitworth Road.

8.6.1. Is or is not development.

8.6.2. Based on the definition of development

Section 3(1) (a) the carrying out of any works in, on, over or under land, or the making of any material change in the use of any land or structures situated on land.

The erection of 15 No. windbreaker screens with signage placed along the boundary facing Prospect Road and Whitworth Road I consider is development.

8.6.3. Is or is not exempted development

8.6.4. The referrer contends in relation to the erection of 15 No. windbreaker screens with signage placed along the boundary facing Prospect Road and Whitworth Road this provision was erected to separate the referrer's lands from the area which is taken in charge by Dublin City Council and is temporary in nature, not fixed and movable. It is also submitted that this does not materially alter the external appearance of the structure as to render the appearance inconsistent with the character of the structure or of neighbouring structures in accordance with section 4(1)(h) of the Planning and Development Act and is therefore exempted development.

8.6.5. The planning authority contend Section 4(1)(h) refers to certain works to a structure itself. The provision of additional structures in the vicinity of a structure could not be considered exempt under Section 4(1)(h). There are exemptions for fencing under Schedule 2, Part 1, Class 11 of the Planning and Development Regulations 2001 (as amended). The fencing was measured on the site visit on 27 October 2022, and measures c. 1.5 metres in height, and therefore is not exempt.

8.6.6. In relation to the 15 windbreaker screens, they adjoin the inner edge of the public footpath and comprise of solid panels on the lower section and a form of clear Perspex in the upper section along the Prospect Road frontage and there is a more varied construction and use of materials along the Whitworth Road frontage and is

variable in height in particular along the Whitworth Road frontage due to the variation in road levels along this frontage.

- 8.6.7. I note that there is reference to exemptions for fencing under Schedule 2, Part 1, Class 11 of the Planning and Development Regulations 2001 (as amended) in the planning authority assessment but this exemption applies in relation to the construction, erection, lowering, repair or replacement, other than within or bounding the curtilage of a house and the site in question is not a house and conditions and limitations specified do not apply and there is no stated exemption in the Regulations for other structures.
- 8.6.8. As previously stated, Section 4(1)(h) provides for maintenance or improvement of the structure and works required for repair and refurbishment. It does provide for a wider application of arrange of development and works and emphasises 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. The windbreakers are external to the structure and do not comply with the requirements of Section 4(1)(h) and no other exemption exists for the erection of these structures within the provisions of the Planning and Development Regulations 2001 as amended.
- 8.6.9. The provision of 15 No. windbreaker screens with signage placed along the boundary facing Prospect Road and Whitworth Road is not exempted development.

8.7. Environmental Impact Assessment (EIA) Preliminary Examination

- 8.7.1. Development in respect of which an environmental impact assessment or appropriate assessment is required cannot be exempted development (Section 4(4) of the Planning and Development Act 2000 (as amended)). Schedule 5, Part 1 and Part 2 of the Planning and Development Regulations, 2001 (amended) sets out specified development for which EIA is mandatory and development which requires screening for EIA.
- 8.7.2. Having regard to the limited nature and scale of development and the absence of any significant environmental sensitivity in the vicinity of the site, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

8.8. Appropriate Assessment

- 8.8.1. Having regard to nature and scale of the development and the nature of the receiving environment and the distance and lack of connections to the nearest European sites, it is concluded that no Appropriate Assessment issues arise as the development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

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

1. The erection of signage on the façade of the property facing Whitworth Road.
- 2 The alteration to the façade of the property facing Prospect Road and provision of a point of sale for takeaway items.
- 3 The installation of a trailer and structure on the area facing Prospect Road.
- 4 The provision of 3 no. covered picnic benches, 8 no. picnic bench style seating and street furniture consisting of planters and sandwich board signs on the area facing Prospect Road.
- 5 The erection of 15 No. windbreaker screens with signage placed along the boundary facing Prospect Road and Whitworth Road.

Is or is not exempted development: AND

WHEREAS Liacondar Limited requested a declaration on this question from Dublin City Council and the Council issued a declaration on the 7th day of November 2022 stating that the matter was development and was not exempted development: AND WHEREAS Liacondar Limited referred this declaration for review to An Bord Pleanála on the 6th day of December 2022: 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 of the Planning and Development Act, 2000:
- (c) Section 4 of the Planning and Development Act, 2000, as amended:

- (d) articles 6, 9 and 10 of the Planning and Development Regulations, 2001, as amended:
- (e) Part 1 of Schedule 2 of the Planning and Development Regulations, 2001, as amended:
- (f) Part 4 of Schedule 2 of the Planning and Development Regulations, 2001, as amended:
- (g) Part 2 of Schedule 2 of the Planning and Development Regulations, 2001, as amended:
- (h) S.I. No 92 of 2020 (Planning and Development Act 2000 (Exempted Development) (no. 2) Regulations 2020:
 - (i) the planning history of the site:
 - (j) the pattern of development in the area:

AND WHEREAS An Bord Pleanála has concluded that:

(a)

1. The erection of signage on the façade of the property facing Whitworth Road.
- 2 The alteration to the façade of the property facing Prospect Road and provision of a point of sale for takeaway items.
- 3 The installation of a trailer and structure on the area facing Prospect Road.
- 4 The provision of 3 no. covered picnic benches, 8 no. picnic bench style seating and street furniture consisting of planters and sandwich board signs on the area facing Prospect Road.
- 5 The erection of 15 no. windbreaker screens with signage placed along the boundary facing Prospect Road and Whitworth Road.

constitutes development as defined under section 3(1)(a) of the Planning and Development Act 2000 (as amended),

(b) it is not exempted development as it does not come within the scope of Section 4 (1) (j) and (k) of the Planning and Development Act, 2000, as amended or Parts 1, 2 and 4 of Schedule 2 of the Planning and Development Regulations, 2001 (as amended),

(c) there are no exemptions provided for in the said Planning and Development Act, 2000 (as amended) and the Planning and Development Regulations, 2001 (as amended), and

(d) restrictions on exemptions provided for in Article 9 (1)(a)(i) would apply and carrying out of such development would contravene a condition attached to a permission under the Act and be inconsistent with any use specified in a permission under the Act.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3) (a) of the 2000 Act (as amended), hereby decides that;

1. The erection of signage on the façade of the property facing Whitworth Road.

2 The alteration to the façade of the property facing Prospect Road and provision of a point of sale for takeaway items.

3 The installation of a trailer and structure on the area facing Prospect Road.

4 The provision of 3 no. covered picnic benches, 8 no. picnic bench style seating and street furniture consisting of planters and sandwich board signs on the area facing Prospect Road.

5 The erection of 15 no. windbreaker screens with signage placed along the boundary facing Prospect Road and Whitworth Road.

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.

Derek Daly
Planning Inspector

14th August 2024