



An
Bord
Pleanála

Inspector's Report

ABP-315739-23

Development	Retention of illuminated signage (fascia and projecting types) and a 1.2m high timber boundary fence
Location	Massey Brothers Funeral Home, 88B Cabra Road, Dublin 7
Planning Authority	Dublin City Council (North)
Planning Authority Reg. Ref.	5281/22
Applicant(s)	Massey Brothers (Funerals) Ltd
Type of Application	Retention Permission
Planning Authority Decision	Split decision – fence and fascia signage granted and projecting sign and circular fascia panel sign refused
Type of Appeal	First Party against Condition No. 3
Appellant(s)	Massey Brothers (Funerals) Ltd
Observer(s)	Committee of Connecting Cabra + Annamoe Environmental Group

Date of Site Inspection

7th June 2023

Inspector

Bernard Dee

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1.0 Site Location and Description

- 1.1. The appeal site is located at the junction of Old Cabra Road (east-west orientation) and Annamoe Terrace (north-south orientation) and is located approximately 0.6km north of the Grangegorman Technical University campus. The funeral home is a two storey building dating from the 1920s or 1930s and has a chamfered corner facing onto the junction of the two roads. The building is used as a funeral home on the ground floor and office use on the first floor.
- 1.2. The building is located at the northern end of a row of commercial/office/retail units. There are terraces and semi-detached dwellings to the east (on the other side of the Annamoe Terrace road) and west of the appeal site and to the north on the opposite side of Cabra Road.
- 1.3. During the site visit on 7th June 2023 it was noted that there was one car parked in the designated parking space for the funeral home and there were boxes of greenery placed along the foot of the wooden fence for its entire length and several hanging baskets of flowers affixed to the fence.

2.0 Proposed Development

- 2.1. The application relates to the retention of the following items:
 - A timber side boundary fence (2.1 metres high) along the western boundary of the forecourt.
 - Signage including:
 - (i) a circular internally illuminated projecting sign (750 mm diameter) on the east elevation;
 - (ii) a fascia panel lightbox (800mmx 2000mm) on the bull-nose elevation;
 - (iii) a fascia panel lightbox (900mm x 2303mm) on the east elevation of the front extension, and
 - (iv) a circular fascia panel sign (1200mm diameter) on the west elevation of the front extension.

3.0 Planning Authority Decision

3.1. Decision

A split decision was issued by the Planning Authority on 27th January 2023.

3.2. The western 2.1m high timber boundary fence and Items (ii) and (iii) of the signage retention application were granted permission subject to 5 no. conditions.

3.3. Items (i) and (iv) of the signage retention application were refused permission for the following reason:

The development is located in an area zoned residential Z1 with the objective 'to protect, provide and improve residential amenities' under the Dublin City Development Plan 2022 – 2028. The retention of the circular fascia panel sign (1200mm diameter) on the west elevation would, by virtue of its nature, scale and location, fail to appropriately relate to the scale of the abutting residential buildings and streets and would result in an undue negative impact on the residential and visual amenity of the surrounding area. In addition to this, the circular internally illuminated projecting sign on the eastern elevation of the building would fail to achieve compliance with the requirements of Shopfront Design Guide, 2001 and would lead to visual clutter. Accordingly, the retention of these signs would seriously injure the residential and visual amenities and depreciate the value of property in the vicinity and would set an undesirable precedent for similar developments in the city. The proposal would therefore be contrary to both the provisions of the Dublin City Development Plan 2022-2028 and the proper planning and sustainable development of the area.

3.4. Planning Authority Reports

3.4.1. Planning Reports

The Planner's Report notes that amendments to an existing funeral home is not a class of development falling within the Z1 or Z3 zoning of the application site and that the retention application therefore would be judged on its own merits.

The Planner's Report references Section 15.17.5 of the Dublin City Development Plan 2022-2028 which states that corporate signage will only be permitted where are compatible with the design of the host building and neighbouring properties.

The Planner's Report notes that the circular fascia panel sign (1200mm diameter) on the west elevation of the front extension (sign iv) would have an adverse impact on the residential amenity of the Z1 zoned area especially at night due to its internal illumination. The Planner's Report also feels that this sign would be incompatible with the character of the area especially to the west of the funeral home.

With regard to the a circular internally illuminated projecting sign (750 mm diameter) on the east elevation (sign i) the Planner's Report notes that this projecting sign should be omitted as it contributes to the visual clutter of the streetscape.

The other two signs, a fascia panel lightbox (800mmx 2000mm) on the bull-nose elevation (sign (ii) and a fascia panel lightbox (900mm x 2303mm) on the east elevation of the front extension (sign iii), are deemed acceptable for retention in the Planner's Report.

Regarding the 2.1m high timber boundary fence between 88B and 90 Cabra Road, the Planner's Report comments that the fence is reasonable in this context and does not have an undue impact on the character of the area. Condition No. 3 requires soft landscaping along this western boundary and this condition is the subject of the First Party appeal.

3.4.2. Other Technical Reports

The Drainage Division responded that there was no objection to the items for retention subject to appropriate conditions being applied.

3.4.3. Prescribed Bodies

TII responded that if retention permission were granted then a Section 49 levey should be conditioned as the site lies within the defined LUAS line levy area.

3.4.4. Observations

A submission was received from Scott Bryan who objected to the retention of the illuminated signage on grounds of light pollution, adverse impact on the character and visual amenity of the area and the excessive amount of signage on the building. In addition, the submission stated that the timber fence is unsightly and that planting would be a more appropriate boundary treatment.

4.0 Planning History

4.1. On the Appeal Site

- Ref. 3023/20: Permission granted subject to conditions for proposed amendments to an existing ground floor funeral home, amendments to an existing first floor apartment and the installation of new external signage.
- Ref. 3257/00: Permission granted subject to conditions for the change of use of 1st floor to offices together with a new single storey entrance lobby.

4.2. In the Vicinity of the Site

- None relevant in close proximity to the appeal site.

5.0 Policy and Context

5.1. Development Plan

The Dublin City Development Plan 2022-2028 is the statutory plan for the area within which the appeal site is situated.

The appeal site has a split zoning. The southern portion of the site (where the main building is located) is zoned Z3 *'To provide for and improve neighbourhood facilities'* and the northern portion (where the parking area, wooden fence and front two storey extension is located) is Z1 *'To protect, provide and improve residential amenities'*.

A funeral home is deemed a 'Permissible Use' under the Z3 zoning objective.

15.17.5 Shopfront and Façade Design

Shopfront design plays a key part in contribution to the quality of the public realm. Attractive facades and shopfronts have the ability to rejuvenate the streetscape and create an attractive public realm environment. Shopfront signage should:

- Be located at fascia level.
- In the case of shop blinds, comprise traditional retractable canvas awning signs of Shopfronts and Other Business Premises.
- The signage relating to any commercial ground floor use should be contained within the fascia board of the shopfront.

- The lettering employed should be either on the fascia, or consist of individually mounted solid letters mounted on the fascia. The size of the lettering used should be in proportion to the depth of the fascia board.
- Signage internal to the premises, including interior suspended advertising panels, which obscure views into the shop or business and create dead frontage onto the street shall not normally be permitted.
- Corporate signs will only be permitted where they are compatible with the character of the building, its materials and colour scheme and those of adjoining buildings.
- Advertisements and signs relating to uses above ground floor level should generally be provided at the entrance to the upper floors, in a form and design which does not detract from or impinge upon the integrity of the ground floor shopfronts, or other elevation features of the building.

Shopfronts sponsored by commercial brands will generally not be permitted.

Proposals for shopfront signage shall have regard to the contents of the Retail Design Manual, 2012, Dublin City Council's Shopfront Design Guide, 2001 and the O'Connell Street Area Shopfront Design Guidelines, 2003, where appropriate.

Appendix 11, Section 3.0 Illuminated Signs

Illuminated signs in appropriate locations can provide both information and colour in the townscape after dark. Accordingly, the following guidelines will apply, in conjunction with the provisions of the general outdoor advertising strategy and with regard to the zones of sensitivity:

- The type of illuminated signs, internally or externally illuminated, individual letters, and neon tubes should be determined by consideration of the design of the building/ site and its location, as well as the potential for low-energy options.
- The design of an illuminated sign should be sympathetic to the building on which it is to be displayed and should not obscure architectural features such as cornices or window openings in the area; on new buildings they should be part of the integral design.
- The daytime appearance when unlit will be considered.

- Sky signs i.e. signs that project in any part above the level of a building parapet or obtrude on the skyline, are not acceptable in principle and will not be permitted.
- Internally illuminated scrolling signs, or signs with exposed neon tubing (except for established historic/ culturally significant signs), are generally not acceptable.
- Illuminated signs with the use of electronic visual display technology such as LED (light emitting diode) and LCD (liquid crystal display) will be considered having regard to the Advertising Management Standards.
- The number of illuminated signs in the vicinity of the site will be taken into consideration when assessing proposals.

5.2. Natural Heritage Designations

There are no natural heritage designations located in the vicinity of the appeal site.

5.3. EIA Screening

Having regard to the limited nature and scale of the proposed development and the absence of any significant environmental sensitivity in the vicinity/ the absence of any connectivity to any sensitive location, 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.

6.0 The Appeal

The First Party appeal prepared by Armstrong Planning relates only to Condition No. 3 which states:

3. Within 12 weeks of any final grant of planning permission the applicant shall submit for the written agreement of the planning authority details showing soft landscaping with planting along the western boundary with No.90 Cabra Road. The landscaping shall be implemented in the first planting season following agreement, and any trees and shrubs which die or are removed within 3 years of planting shall be replaced in the following planting season.

Reason: In the interests of amenity having regard to the 'proposed east elevation' submitted under plan ref. 3023/20.

The grounds of appeal are, in summary, as follows:

- The boundary landscaping required by Condition No. 3 is not reasonably related to the permitted development and is being imposed for ulterior reasons and is therefore ultra vires – see *Pyx Granite Co. Ltd. v. Minister for Housing and Local Government* [1958, 1 QB. 554] for reference.
- The condition is unreasonable and constitutes an unauthorised planning gain – see *Ashbourne Holdings v. An Bord Pleanála* [2003, 2 IR. 114] for reference.
- The reason cited for imposing Condition No. 3 - *In the interests of amenity having regard to the 'proposed east elevation' submitted under plan ref. 3023/20* – relates to a separate planning permission and it is not appropriate to enforce a previous permission by means of imposing a condition on a grant of permission for application Ref. 5281/22.
- The Planning Authority has enforcement powers to ensure compliance with the terms of permission Ref.3023/20 and this is the correct way of ensuring compliance.
- The condition imposed is not “necessary” to the granting of retention permission for the 2.1m timber boundary fence which is one of the requirements for imposing a condition – see Sections 7.3.1 and 7.3.2 of the ‘Development Management Guidelines for Planning Authorities’ (2007) for reference.

6.1. Applicant Response

Not applicable.

6.2. Planning Authority Response

No response has been received from the Planning Authority.

6.3. Observations

A joint Observation has been received from the Committee of Connecting Cabra and the Annamoe Environmental Group. Their observation, which relates largely to parking and traffic hazard issues, can be summarised as follows:

- The removal of the railings separating the funeral home from the footpath on Annamoe Terrace has encouraged illegal parking on the footpath which is public land by patrons of the funeral home.
- The appropriation by Massey Brother Funeral Home of the public realm for customer parking is contrary to Sections 5.5.8, 8.5.4 and 8.5.7 which support the provision of multi-functional community infrastructure, improving pedestrian circulation via improved footpath networks and implementing strong parking controls respectively.
- The signage for which retention is sought is excessive in quantity, size and illumination in a village setting.
- The western boundary fence is too high and visually inappropriate at this corner location.
- Section 10.1 of the Dublin City Development Plan 2022-2028 seeks to promote greening the city and high quality placemaking and the development as built is in contravention of this Development Plan objective.

6.4. Further Responses

Not applicable.

7.0 **Assessment**

7.1.1. Having examined all the application and appeal documentation on file, and having regard to relevant local and national policy and guidance, I consider that the main issues in this appeal are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise. The assessment below therefore addresses whether or not Condition No. 3 was properly attached by the Planning Authority in the Notification of Decision to Grant Permission issued on 27th January 2023.

7.1.2. The issue of AA Screening is also addressed in this assessment.

- 7.1.3. Condition No. 3
- 7.1.4. The First Party argument in favour of the omission of Condition No. 3 requiring landscaping works in front of the timber fence for which retention permission was sought, rests on the belief that this condition is not “necessary” or “reasonable” in order to grant permission for the timber fence and is therefore an invalid condition. Furthermore the First Party feels that it is procedurally incorrect to reference permission Ref.3023/20 in the retention permission under appeal, and if the Planning Authority wishes to implement aspects of Ref.3023/20 then they have enforcement powers at their disposal.
- 7.1.5. I am of the opinion that there is no impediment in planning law to reference a parent permission when attaching conditions to subsequent planning permissions at the subject site. It is a common practice where modifications to previous permissions are granted permission by a Planning Authority to attach conditions which reference previous permission(s) on the same site in the interests of clarity. This is exactly what Dublin City Council have done in this instance as stated in the reason for Condition No. 3 - *Reason: In the interests of amenity having regard to the ‘proposed east elevation’ submitted under plan ref. 3023/20* – as aspects of the permission granted under Ref.3023/20 needed to be reiterated in the conditions attached to Ref.5281/22.
- 7.1.6. The Proposed East Elevation (Drawing No. PL-301) and the Proposed West Elevation (Drawing No. PL-302) submitted on 4th November 2022 show the development as permitted under Ref.3023/20 as well as the timber fence for which retention permission was sought. Both drawings show landscaping on the western boundary of the site where the 2.1m high timber fence is located. The landscaping in the form of a hedge appears to have been in situ before works took place to implement Ref.3023/20 and there is no annotation on these drawings indicating any timber fencing at this location or indeed what treatment was proposed regarding the existing hedge.
- 7.1.7. I feel therefore that it is both reasonable and necessary for the Planning Authority to attach Condition No. 3 as worded and this is reflected in the list of conditions contained in the Second Schedule below. This condition is neither ultra vires nor represents an unauthorised planning gain as contested by the First Party.

- 7.1.8. The court judgements cited by the First Party are noted but are incidental and not directly relevant to this appeal.
- 7.1.9. As an aside, and with reference to the Observer submission in relation to this case, I note that the Proposed East Elevation (Drawing No. PL-203) of Ref.3023/20 shows the plinth and iron rail fence defining the eastern boundary of the subject site (separating the public footpath area from the parking area serving the funeral home) being retained, whereas during the site visit on 6th June 2023 I noted that this railing has been removed in its entirety contrary to the plans and particulars of permission Ref.3023/20 – Condition No. 1. The plinth and rail fence defining the northern boundary of the appeal site has been retained. As An Bord Pleanála has no enforcement remit, this is an issue that Dublin City Council may wish to pursue with the First Party by way of enforcement action.

7.2. AA Screening

Having regard to the relatively minor development proposed within an existing housing estate and the distance from the nearest European site, no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

I recommend a **grant** of retention permission for the timber side boundary fence (2.1 metres high) along the western boundary of the forecourt and signage including (ii) a fascia panel lightbox (800mm x 2000mm) on the bull-nose elevation and (iii) a fascia panel lightbox (900mm x 2303mm) on the east elevation of the front extension for the reasons and considerations set out in the First Schedule, and subject to the conditions set out in the Second Schedule.

I recommend that permission be **refused** for signage including (i) a circular internally illuminated projecting sign (750 mm diameter) on the east elevation and (iv) a circular fascia panel sign (1200mm diameter) on the west elevation of the front extension for the reasons and considerations set out in the Third Schedule. .

First Schedule

Having regard to the provisions of the Dublin City Development Plan 2022-2028, including the mixed zoning objective for the site (Z1 and Z3), which seek "to protect, provide and improve residential amenities" and "to provide and improve neighbourhood facilities" respectively, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the visual or residential amenities of the area, or of property in the vicinity. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

Second Schedule

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application on the 24th November 2022, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>Within 12 weeks of any final grant of planning permission the applicant shall submit for the written agreement of the planning authority details showing soft landscaping with planting along the western boundary with No.90 Cabra Road. The landscaping shall be implemented in the first planting season following agreement, and any trees and shrubs which die or are removed within 3 years of planting shall be replaced in the following planting season.</p> <p>Reason: In the interests of amenity.</p>
3.	<p>Notwithstanding the exempted development provisions of the Planning and</p>

	<p>Development Regulations, 2001, or any statutory provision amending or replacing them, any change to the signage on this property, including any increase in the number of signs to be displayed, or the internal/external illumination of same, shall be the subject of a separate application for permission to the planning authority.</p> <p>Reason: To enable the planning authority to assess the impacts of any such changes on the amenities of the area.</p>
4.	<p>The developer shall pay to the planning authority a financial contribution in respect of the LUAS Cross City (St. Stephens Green to Broombridge Line) in accordance with the terms of the Supplementary Development Contribution Scheme made by the planning authority under section 49 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. The application of any indexation required by this condition shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine.</p> <p>Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Supplementary Development Contribution Scheme made under section 49 of the Act be applied to the permission.</p>

Third Schedule

The proposed signage indicated in the 'Recommendation' would be incongruous and inconsistent with the surrounding development by reason of its size, location and internal illumination. It is considered that the signage would detract from the visual amenity of the area and would seriously injure the amenities of the area and of property in the vicinity and would, therefore, be contrary to the proper planning and sustainable development of the area.

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.

Bernard Dee
Planning Inspector

9th June 2023