



An
Bord
Pleanála

Inspector's Report ABP-318487-23

Question

Whether a c. 1.50 sq. m. illuminated digital commercial advertising sign is or is not development or is or is not exempted development.

Location

O'Connor Square, Tullamore, Co. Offaly.

Declaration

Planning Authority

Offaly County Council

Planning Authority Reg. Ref.

DEC 23/30

Applicant for Declaration

Fergal MacCabe

Planning Authority Decision

Is exempted development

Referral

Referred by

Fergal MacCabe.

Owner/ Occupier

Public Space

Observer

An Taisce

Date of Site Inspection

13th September 2024.

Inspector

Dolores McCague

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1.0 Site Location and Description

- 1.1.1. The structure on which the subject advertising panel is displayed is located in O'Connor Square, in the centre of Tullamore, Co. Offaly. O'Connor Square is the main public space in the town. It is a formal space surrounded by elegant buildings, many of which are protected structures, and the public area has recently been redeveloped. The structure on which the subject advertising panel is displayed is located at about the mid point of the southern side of the Square. The structure is free standing, rectangular, at right angles to the road, and the subject panel displays an internally illuminated advertisement on its eastern side. On its western side there is a wide, shallow roof projection and a phone. The subject structure is a prominent feature within the Square. On the date of inspection no advertisement was displayed on the panel and the internal workings were on view.

2.0 The Question

- 2.1. The question, the subject of the referral is whether a c. 1.50 sq. m. illuminated rolling digital commercial advertising sign in O'Connor Square, Tullamore, is or is not development and or is or is not exempted development.

3.0 Planning Authority Declaration

3.1. Declaration

- 3.1.1. The Planning Authority has declared that it is development and is exempted development.

3.2. Planning Authority Reports

- 3.2.1. Planning Reports
- 3.2.2. The Planning Report, unsigned and undated includes:

Evaluation:

Is the works considered development? Yes.

Is the works considered exempted development? Yes as the signage is an ancillary item to a telephone kiosk. Please see photos on next page. (photos are provided in the report).

Does the development require environmental impact assessment? No

Conclusion: is development and is exempted development.

Their declaration refers to:

Section 2 of the Planning & Development Act 2000, as amended.

Section 3(1) of the Planning & Development Act 2000, as amended.

Section 4(2) of the Planning & Development Act 2000, as amended.

Article 6(1) of the Planning and Development Regulations 2001, as amended.

Schedule 2, Part 1, Class 31 of the Planning & Development Regulations 2001, as amended.

and that the decision that the 1.50 sq. m. illuminated digital commercial advertising sign ancillary to a telephone kiosk is development and is exempted development.

4.0 **Planning History**

None given

5.0 **Policy Context**

5.1. **Development Plan**

Offaly County Development Plan 2021 – 2027 includes Tullamore.

Relevant provisions include:

A protected structure is a structure that the Planning Authority considers to be of special interest from an architectural, historical, archaeological, artistic, cultural, scientific, social or technical point of view. The Planning Authority in its Record of Protected Structures (RPS) includes details of protected structures. The list is included as an appendix to the plan.

Geashill Village is an Architectural Conservation Area (ACA) due to its distinctive architectural, historical, archaeological and social interest. Offaly County Council will

examine the need to designate further areas as Architectural Conservation Areas during the period of the plan.

10.11 - Built Heritage Policies - Protected Structures

BHP-01 It is Council policy to ensure the protection, sympathetic and sensitive modification, alteration, extension or reuse of protected structures or parts of protected structures, and the immediate surrounds included and proposed for inclusion in the Record of Protected Structures that are of special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest, together with the integrity of their character and setting.

BHP-02 It is Council policy to ensure the protection of the curtilage of protected structures or proposed protected structures and to prohibit inappropriate development within the curtilage or attendant grounds of a protected structure which would adversely impact on the special character of the protected structure including cause loss of or damage to the special character of the protected structure and loss of or damage to, any structures of architectural heritage value within the curtilage of the protected structure.

5.2. **Architectural Heritage Protection Guidelines for Planning Authorities**

- 5.2.1. These 2011 guidelines on Part IV of the Planning and Development Act 2000, as amended, for the protection of structures, or parts of structures, and the preservation of the character of architectural conservation areas, include:

Chapter 13 Curtilage and Attendant Ground

The notion of curtilage is not defined by legislation, but for the purposes of these guidelines it can be taken to be the parcel of land immediately associated with that structure and which is (or was) in use for the purposes of the structure. It should be noted that the meaning of 'curtilage' is influenced by other legal considerations besides protection of the architectural heritage and may be revised in accordance with emerging case law.

The attendant grounds of a structure are lands outside the curtilage of the structure but which are associated with the structure and are intrinsic to its function, setting and/or appreciation.

5.3. Natural Heritage Designations

- 5.3.1. Charleville Wood SAC (site code 000571), located c1.2km straight line distance from the structure, is the nearest Natura site.

6.0 The Referral

6.1. Referrer's Case

- 6.1.1. Fergal MacCabe, who submitted the question to Offaly County Council, has submitted the referral. It includes:
- O'Connor Square is recognised as Tullamore's principal civic space and contains the greatest concentration of protected structures in the town, including its oldest structure (1743) and its iconic Market House. The referrer attaches a map showing the location of the development and identifying the buildings and structures (giving their origin dates) which are protected structures and on the National Inventory of Architectural Heritage.
 - The text of the declaration and the planning report, which refer to the 'illuminated digital commercial advertising sign ancillary to a telephone kiosk'. This involved altering the question.
 - Despite the architectural and historical significance of O'Connor Square the advice of the County Conservation Officer was not sought.
 - No proposal of this kind was part of the Part 8 application for the Tullamore Street Enhancement Scheme, on foot of which the part pedestrianisation of the Square was carried out.
 - The County Development Plan is quoted.
 - Decisions by other planning authorities, and a Board decision, all related to protected structures, are referred to.

- The declaration request followed from a complaint made on the 13th February 2023 to which no reply was received.
- The referrer considers that the failure to take action on the complaint and the rewording of the declaration request, indicates bias.

Grounds:

- It is not within the powers of the planning authority to change the wording of the question. The question remains unanswered. The Board is requested to issue a declaration on the wording as presented.

Planning Considerations:

- Schedule 2, Part 2 of the Planning and Development Regulations 2001 as amended, by virtue of its size, location and character, the sign in question falls outside of the advertisements permitted.
- Policy DMS-89 of the Offaly County Development Plan 2021 – 2027 is referred to. It is stated that the sign is in material contravention to this policy.
- Policy DMS-92 of the Offaly County Development Plan 2021 – 2027 is referred to. It is stated that the sign is in material contravention to this policy.
- The impact on the built heritage of O'Connor Square. The perception of the architectural quality of the nine protected structures on two sides of the Square depend on and are enhanced by the space of the Square itself, which therefore forms an integral element of their curtilage and attendant grounds. The centre of the Square is occupied by the 1926 War Memorial also a protected structure. The sign, by virtue of its scale, location and constantly changing character is visually incongruous, disturbing and obtrusive and impacts negatively on the architectural quality of the Square. It is in material contravention of policy BHP-02
- The amenity of the glazed reading room of the County Library on the eastern side of the Square, which is a public space, is diminished by the view of the constantly scrolling sign.
- It is not ancillary to the phone. It's removal would have no impact on the phone box.

- It is not disputed that a telephone box is a permitted development within Schedule 2, Part 1, Class 31 of the Planning and Development Regulations, 2001. The VMS sign is not within any permitted Class and is specifically prohibited by Objective, DMS-92.
- It is an abuse of the statutory planning process to utilise permitted development rights granted for an entirely different purpose as a guise for the erection of VMS signs which are neither incidental or ancillary, particularly for proposals in architecturally sensitive locations.
- A UK Court of Appeal judgement of 2019 is referred to.

Precedents

- All of the Dublin authorities and several other planning authorities require proposals for this burgeoning form of advertising to be the subject of planning applications.
- The referrer quotes the Board reason for refusal:

Having regard to its location on a prominent location within the streetscape, and in proximity to historic and contemporary buildings, it is considered that the proposed development would be visually obtrusive, incongruous and out of scale and character with the existing pattern of development in the vicinity. Furthermore, it is considered that the digital format of the proposed advertising at this location, by reason of its illumination and extent of changing advertisements, would seriously injure the visual amenities of the area and would create an undesirable precedent for similar digital advertising at such locations. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

in the case of the planning appeal, ABP Case ID ABP-305650-19, for the 'replacement of static type light box advertising sign with LED display static advertising sign; the LED displays shall carry a series of static advertisements (6 per minute)', in Donnybrook, Dublin 4.

- Offaly County Council has not utilised Architectural Conservation Area designation to protect the urban heritage of its principal towns. Should the

Board agree with the Council's decision the installation of similar signs in equally if not more important architectural set pieces within the county can also be regarded as exempted development.

- The Board is requested to consider the wording as presented.

6.2. Planning Authority Response

6.2.1. The Planning Authority have response to the referral. Their response includes:

- Regarding the referrer's comments about changing the description of the works, they note that this is the practice used by both An Bord Pleanála and local authorities. An instance is referenced.
- They note that the referral made no reference to a telephone kiosk being part of the subject development.
- Offaly County Council as a land owner has control of development on public lands such as a public square.

6.3. Observer

6.4. An Taisce have submitted an observation, which includes:

- The referral should be decided strictly within the confines of the wording of the referral.
- It is remiss of Offaly County Council, two decades after the introduction of the architectural heritage provisions of the Planning and Development Act, 2000, Part IV, not to have designated Architectural Conservation Areas.
- Modern digital advertising displays are not appropriate to architecturally and historically sensitive locations such as O'Connor Square.
- An Taisce would note that the advent of mobile phone and smartphone in the 21st century has made public phones largely redundant. Since a public phone in this location is likely to receive very low usage, the question must be asked: what is the primary purpose of the fixture in O'Connor Square?
- By virtue of its location, scale and illumination, it impacts adversely on the civic character of O'Connor Square and the appreciation of the architectural

quality of the numerous protected structures within whose curtilage and attendant grounds it is located.

- It contributes to visual clutter and constitutes an obstacle to movement of pedestrians etc.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000, as amended

Section 2 Interpretation

(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.

Section 3 Development

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

(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, or

b) development within the meaning of Part XXI¹ⁱ.

Section 4 Exempted development.

4.(2) (a) The Minister may by regulations provide for any class of development to be exempted development for the purposes of this Act where he or she is of the opinion that—

i) by reason of the size, nature or limited effect on its surroundings, of development belonging to that class, the carrying out of such development would not offend against principles of proper planning and sustainable development, or

¹ Inserted by section 171 of the Maritime Area Planning Act 2021

ii) the development is authorised, or is required to be authorised, by or under any enactment (whether the authorisation takes the form of the grant of a licence, consent, approval or any other type of authorisation) where the enactment concerned requires there to be consultation (howsoever described) with members of the public in relation to the proposed development prior to the granting of the authorisation (howsoever described).

(b) Regulations under *paragraph (a)* may be subject to conditions and be of general application or apply to such area or place as may be specified in the regulations.

(c) Regulations under this subsection may, in particular and without prejudice to the generality of *paragraph (a)*, provide, in the case of structures or other land used for a purpose of any specified class, for the use thereof for any other purpose being exempted development for the purposes of this Act.

57.— (10) (a) For the avoidance of doubt, it is hereby declared that a planning authority or the Board on appeal—

(i) in considering any application for permission in relation to a protected structure, shall have regard to the protected status of the structure.

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

6. (1) 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.

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—

(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,

Schedule 2

Part 1

Exempted Development — General

Class 24 onwards - *Development by statutory undertakers*

CLASS 31

The carrying out by a statutory undertaker authorised to provide a telecommunications service of development consisting of the provision of—

c) telephone kiosks or other telephone facilities in a public place not being on, over or along a public road,

No such kiosk or facility shall be situated within 10 metres of the curtilage of any house, save with the consent in writing of the owner or occupier thereof.

Part 2

Exempted Development — Advertisements

18 classes of advertisement are listed as exempted development, none apply to the subject case.

7.3. **Other**

7.3.1. I have examined the referrals database and have found nothing which is similar to the subject question/referral.

8.0 **Assessment**

8.1. **Is or is not development**

8.1.1. There is no disagreement on this question. The advertising panel is development.

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

8.2.1. The Board must consider whether or not it is reasonable to change the question as presented to the planning authority, which was: whether a 'c. 1.50 sq. m. illuminated rolling digital commercial advertising sign is exempted development' to a question of whether the '1.50 sq. m. illuminated digital commercial advertising sign ancillary to a telephone kiosk is exempted development'. The planning authority changed the

question and found that the advertising panel ancillary to the telephone kiosk is exempted development.

- 8.2.2. Exemption under the planning legislation is available for the erection of a telephone kiosks or other telephone facilities in a public place by an authorised statutory undertaker. As pointed out by the observer this provision could be considered anachronistic. There is nowadays almost no use made of public phone boxes and authorised statutory undertakers have removed most phone boxes from streets over a decade ago. It appears to me that the only logical reason to erect a phone box would be if a commercial advertising sign were to be considered ancillary to the phone box. The argument that it was ancillary to the phone box was accepted by the planning authority. In my opinion the opposite is the case. The phone box is ancillary to the advertising sign.
- 8.2.3. The planning authority have pointed out that as a land owner Offaly County Council has control of development on public lands such as a public square. This may be the case and it is likely that the developer has consulted the local authority in relation to the placement of the structure. The location/orientation is different to that prior to the Tullamore Street Enhancement Scheme, which can be seen by comparing the current location and orientation to that on Google street view; currently showing images prior to the implementation of the Street Enhancement Scheme.
- 8.2.4. I also note that an advertisement structure, on, under, over or along a public road may be licensed by a planning authority under Section 254 of the Planning and Development Act, 2000, as amended. Such a license is subject to appeal.
- 8.2.5. No argument has been advanced by the planning authority that the advertisement structure is licensed.
- 8.2.6. There is no exemption, in Schedule 2, Part 2 to the Planning and Development Regulations, 2001, where exempted development categories for advertisements are set out, for a freestanding advertisement structure of this type.

8.3. Restrictions on exempted development

- 8.3.1. The referrer and observer refer to the impact on O'Connor Square, that it would impact adversely on the civic character of the Square and the appreciation of the architectural quality of the numerous protected structures which surround the

Square. It is argued that the location is within the curtilage and attendant grounds of these protected structures. They also note that this is not a conservation area.

- 8.3.2. I am not satisfied that the location could be described as within the curtilage or attendant grounds of any of these protected structures, or that impact on any of these protected structures would de-exempt the structure if it were otherwise exempted development.

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 a c. 1.50 sq. m. illuminated rolling digital commercial advertising sign in O'Connor Square, Tullamore, is or is not development and or is or is not exempted development.

AND WHEREAS Fergal MacCabe requested a declaration on this question from Offaly County Council and the Council issued a declaration on the 3rd day of November, 2023 stating that the matter was development and was exempted development.

AND WHEREAS Fergal MacCabe referred this declaration for review to An Bord Pleanála on the 16th day of November, 2023.

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

- (a) Section 2(1) of the Planning and Development Act, 2000, as amended,
- (b) Section 3(1) of the Planning and Development Act, 2000, as amended,
- (c) Section 4(1)(a) of the Planning and Development Act, 2000, as amended,

(d) article 6(1) and article 9(1) of the Planning and Development Regulations, 2001, as amended,

(e) Parts 1 and 2 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,

AND WHEREAS An Bord Pleanála has concluded that:

(a) The advertising panel involving both works and use is development.

(b) The advertising panel is not ancillary to the phone box.

(c) There is no exemption for an advertisement structure of this nature.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 of the 2000 Act, hereby decides that the 1.50 sq. m. illuminated rolling digital commercial advertising sign 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.

Planning Inspector

17th September 2024

Appendices

Appendix 1 Photographs

Appendix 2 Offaly County Development Plan 2021 – 2027, extracts