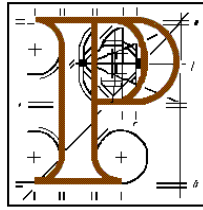


An Bord Pleanála



Inspector's Report

Declaration/Referral Sought: Whether the Temporary Siting of a Mobile Advertising Container Is or Is Not Development or Is or Is Not Exempted Development

Reference No.: PL93.RL3416

Planning Authority: Waterford City & County Council

Referrer: Patrick Behan

Site Inspection: 21 January 2016

Inspector: Juliet Ryan

1.0 INTRODUCTION

The subject referral relates to a vehicular trailer that is positioned in a rural field adjacent to a national route for the purposes of advertising. The trailer is situated just north of the small settlement of Lemybrien, and advertises an Apple Green station located therein. A related, similar referral has been made in respect of a second vehicular trailer being used for advertising to the south of Lemybrien (i.e. advertising the same services to those travelling in the opposite direction). The question was originally referred to the Planning Authority, who deemed it to be development and not exempted development. The First Party has thus submitted the question to the Board for review under S.5(3)(a). The origins of the referral appear to emanate from a Warning Letter issued to the First Party by the Planning Authority.

2.0 THE SITE

- 2.1 The subject site is an agricultural field located on the eastern side of the N25 road approximately 1 kilometre north of Lemybrien, County Waterford. .
- 2.2 A vehicular trailer is positioned adjacent to the southern field boundary (the latter being defined by a belt of mature deciduous trees). The trailer is set back from the roadside boundary of the field by some 10 metres, approximately and adjacent to an agricultural gate to the field. At the time of the site inspection there was no indication of any recent movement (i.e. tracks) of the trailer between the gate and its position in the field.
- 2.3 The northern elevation of the trailer is fully covered with advertising for a 'Subway' and 'Applegreen' service station one kilometre ahead (south).

3.0 REFERRAL HISTORY

3.1 Extant Permissions

There does not appear to be any planning history pertaining to the subject site.

4.0 Planning Authority Declaration

On 8th September 2015 the Planning Authority declared that the use was development and was not exempted development. The Planning Authority's conclusions may be summarised as follows:

- Parking of mobile sign for advertising constitutes material change in use of land and is development
- Parking of mobile sign not does not fall within provisions of S.4(1)(h)
- Mobile sign not within provisions of Schedule 2 Part 2 of Regulations

5.0 REFERRER'S SUBMISSION TO AN BORD PLEANÁLA

The main points of the submission made on behalf of the Referrer may be summarised as follows:

- Mobile advertising container parked on land does not involve any works or change of use
- Mobile advertising container is not a "structure"
- Planning permission is not required for the parking of the container in the field, and therefore development has not occurred
- Subject sign occupies small part of agricultural field and does not change the use of the overall field
- Predominant use of field continues to be agricultural
- Container is not a fixed structure and is temporary in nature
- Council's position would imply that any truck with advertising thereon that is parked for any period of time in a single place would require planning permission
- Requests Board to agree that no development has occurred

6.0 LEGISLATIVE CONTEXT

6.1 The Planning and Development Act, 2000 (as amended)

6.1.1 Section 2 (1) of the Act states as follows:-

'In this Act, except where the context otherwise requires –

"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.’

6.1.2 Section 3 (1) of the Act states as follows:-

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

6.1.3 Section 3 (2) of the Act states as follows:

‘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.’

6.1.4 Section 4(1) of the Act states that the following shall be exempted developments for the purposes of this Act:

“(h) development consisting of the use of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures”

6.1.5 Section 4 (2)(a) of the Act enables certain classes of development to be deemed exempted development by way of regulation.

6.2 The Planning and Development Regulations 2001 (as amended)

6.2.1 Article 6 (2) of the Regulations states as follows:-

‘(a) Subject to article 9, development consisting of the use of a structure or other land for the exhibition of advertisements of a class specified in column 1 of Part 2 of Schedule 2 shall be exempted development for the purposes of the Act, provided that –

(i) such development complies with the conditions and limitations specified in column 2 of the said Part 2 opposite the mention of that class in the said column 2....

(a) Subject to article 9, development consisting of the erection of any advertisement structure for the exhibition of an advertisement of any one of the classes specified in column 1 of Part 2 of Schedule 2 shall be exempted development for the purposes of the Act, provided that –

(i) The area of such advertisement structure which is used for the exhibitions of an advertisement does not exceed the area, if any, specified in column 2 of the said part 2 opposite the mention of that class in the said column 1....’

6.2.2 Article 9 (1) of the Regulations sets out circumstances in which development to which Article 6 relates shall not be exempted development, (a) if the carrying out of such development would:-

‘(iii) Endanger public safety by reason of traffic hazard or obstruction of road users.’

6.2.3 There are no classes set out in Part 2 of Schedule 2 of the Regulations that relate to the subject of this referral (as the subject advertisement is not one that is wholly by reference to the business or other activity carried out on the business premises on which the sign is located – this is discussed further in Section 7.3 below).

7.0 ASSESSMENT

I consider the main issues to be addressed in the subject referral are as follows:

- Is the mobile advertising trailer development?
- If development, is the mobile advertising structure exempted development under Section 4(1)(h) or under the Planning and Development Regulations (PDR)?

These issues shall be addressed in turn below.

7.1 Is the Mobile Advertising Trailer Development?

7.1.1 The Board is referred to Section 3(2)(a) of the Act, which expressly provides that where any structure or object on land becomes used for the exhibition of advertisements, then the use of the land is to be taken as having materially changed. The parking of the subject trailer on an agricultural site for the purposes of advertising therefore constitutes a material change in use of the land. The referral submission seeks to rely on the fact that the trailer is relatively constrained given the context of the wider agricultural field. The legislation, however, does not provide any exceptions to Section 3(2)(a); as such, the relative size of the land vis a vis the advertising structure / object are not pertinent. If an object or structure (of any size) on land (of any size) becomes used for advertising, then a material change of use has occurred.

7.1.2 The Referrer requests the Board to have regard to the fact that the trailer is merely parked on the land, and is not a fixed structure. Whilst this may be the case, Section 3(2)(a) does not concern itself with the nature of the structure / object used for advertising, but, rather, the effect it has on the use of the land. Further, and notwithstanding that Section 3(2)(a) is silent with respect to the nature of such advertising, I would reiterate that there was no sign of recent movement of the advertising trailer at the time of the site inspection.

7.1.3 Arising from the above, I would agree with the Planning Authority that the use of the agricultural field has materially changed and that the parking of the advertising trailer therefore constitutes development.

7.2 Is the Mobile Advertising Trailer Exempt under Section 4 (1)(h)?

Section 4(1)(h) provides that the carrying out of works for the maintenance, improvement or alteration of a structure may be exempted development provided such works only affect its interior or do not materially affect its exterior. There is no existing structure at the subject site, which is an agricultural field. As such, the parking of a mobile advertising trailer in the field cannot be exempted development under S.4(1)(h).

7.3 Is the Mobile Advertising Trailer Exempt under the Regulations (PDR)?

Schedule 2 Part 2 of PDR, 2000 set out various exempted development provisions in relation to advertisements. Signage relating to business premises and / or goods sold therein all involve the signage being on the premises that is the subject of the advertisement, which the subject sign is not (it advertises services some 2km to the north). The only such signage (i.e. announcement / direction) provided for by Schedule 2 Part 2 relates to a statutory undertaker or statutory undertaking, neither of which apply in the subject case. Accordingly, I can find no provision in Part 2 of Schedule 2 that would provide exemption for the subject advertising trailer.

7.4 Precedent ABP Determination - RL3118 – Decided November 2013

- 7.4.1 This referral related to a mobile sign (an advertising hoarding mounted on a mobile trailer), advertising a business premises some distance away. The Board decided that the parking of the mobile sign for the purpose of advertising constituted a material change of use of the land on which it was located, being the use of land for the exhibition of advertisements, pursuant to Section 3(2)(a), and was therefore development. It decided that the parking of the mobile sign did not come within the meaning of Section 4 (1)(h), not being development consisting of the carrying out of works for the maintenance, improvement or other alteration of a structure.
- 7.4.2 The Board decided that the mobile sign did not come within the scope of any of the exemptions provided for in Part 2 of Schedule 2 of the Regulations, and that any potential exemption that might apply was nullified by article 9(1)(a)(i), as the parking of this sign contravened the terms of a condition of a planning permission, and was also nullified by the provisions of article 9 (1)(a)(iii), as the parking of the sign at this location would endanger public safety by reason of traffic hazard.
- 7.4.3 I would consider RL3118 to be directly analogous to the subject referral save for the issues of article 9(1)(a)(i) (there are no extant permissions pertaining to the subject site) and article (9(1)(a)(iii) (I would not consider the subject advertising trailer located adjacent to a relatively straight stretch of a national route to constitute a traffic hazard nor has this been raised in the instant referral).

8.0 CONCLUSION

- 8.1 In considering this referral I have had regard to the Planning and Development Act 2000 (as amended) and the Planning and

Development Regulations 2001 (as amended); and to pertinent previous determinations by the Board. Arising from this, I conclude that the temporary siting of a mobile advertising container at the subject site is development and is not exempted development.

9.0 RECOMMENDATION

I recommend that the question referred to the Board on behalf of Patrick Behan be decided as follows:-

WHEREAS a question has arisen as to whether the temporary siting of a mobile advertising container is or is not development or is or is not exempted development:

AND WHEREAS Patrick Behan care of David Mulcahy Planning Consultants Ltd of 67 The Old Mill Race, Athgarvan, Co Kildare requested a declaration on the said question from Waterford City and County Council and the said Council issued a declaration on the 8th day of September, 2015 stating that the said matter was not exempted development:

AND WHEREAS the said Patrick Behan referred the declaration for review to An Bord Pleanála on the 5th day of October, 2015:

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

- (a) sections 2(1), 3(1), 3(2) and 4(1)(h) of the Planning and Development Act, 2000, as amended,
- (b) articles 6(2), and Part 2 Schedule 2 of the Planning and Development Regulations 2001, as amended, and
- (c) An Bord Pleanála's determination in respect of a previous referral reference RL04.3118

AND WHEREAS An Bord Pleanála has concluded that -

- (a) the parking of the mobile container at this location for the purpose of advertising constitutes a material change of use of the land on which it

is located, being the use of land for the exhibition of advertisements, pursuant to section 3(2)(a) of the Planning and Development Act, 2000, and is therefore “development” within the meaning of section 3 of that Act,

- (b) the parking of the mobile sign would not come within the meaning of Section 4 (1)(h) of the 2000 Act, not being “development consisting of the carrying out of works for the maintenance, improvement or other alteration of a structure”,
- (c) the mobile sign does not come within the scope of any of the exemptions provided for in Part 2 of Schedule 2 to the Planning and Development Regulations 2001, as amended, or any other provisions of the legislation

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3) (a) of the 2000 Act, hereby decides that the said temporary siting of a mobile advertising container at Lemybrien, County Waterford is development and is not exempted development.

Juliet Ryan
Senior Planning Inspector

17 February 2016