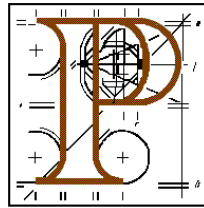


**An Bord Pleanála Ref. No.:**

**PL 04.RL3431**

**An Bord Pleanála**



**Inspector's Report**

**Development:** Whether the erection of decorative external lighting onto the front façade of the Pier Leisure Centre Amusement Arcade is or is not development or is or is not exempted development all at the Pier Leisure Centre Amusement Arcade, Kinsale, Co. Cork.

**Application:**

Planning Authority:	Cork County Council
Planning Authority Reg. Ref.:	EF/15/145
Owner / Occupier:	Jason Ealing, Pier Leisure Centre
Type of Application:	Section 5 Referral
Planning Authority Decision:	No decision

**Planning Referral:**

Referrer(s):	Cork County Council
Observers:	Kinsale Tidy Town Marcia Wrixon & Others
Date of inspection:	02/02/2016
Inspector:	A. Considine

## **1.0 BACKGROUND**

- 1.1 This is a referral by Cork County Council, under Section 5(4) of the Planning & Development Act, of the question as to whether the erection of decorative external lighting onto the front façade of the Pier Leisure Centre Amusement Arcade is or is not development or is or is not exempted development all at the Pier Leisure Centre Amusement Arcade, Kinsale, Co. Cork.
- 1.2 A complaint was initially made to Cork County Council regarding the erection of decorative lighting and signage to the front of the Pier Leisure Centre building in Kinsale, without the benefit of planning permission. This complaint was made to the Enforcement Section of Cork County Council in July, 2015. Following the serving of a Warning Letter, and reviewing the file, it was determined that that the lighting does not constitute development and the enforcement file was closed in August. The complainant was advised regarding the making of a S5 Declaration.
- 1.3 A Section 5 review was requested on the 7<sup>th</sup> October, and Cork County Council sought a determination on the matter from An Bord Pleanala on the 9<sup>th</sup> November, 2015.

## **2.0 THE SITE**

The site the subject of this referral, is located within the town of Kinsale, on Pier Road. The area comprises a well established mixed use urban area to the south of Kinsale Town Centre. The site occupies a prominent location in the town and overlooks the marina and public car park in the town. The site is also located within the defined Architectural Conservation Area of Kinsale, as identified in the Kinsale Town Development Plan, 2009-2015.

## **3.0 SECTION 5 DECLARATION REQUEST:**

- 3.1 The question arising in relation to this Section 5 Declaration request is presented as follows:

Whether the erection of decorative external lighting onto the front façade of the Pier Leisure Centre Amusement Arcade is or is not

development or is or is not exempted development all at the Pier Leisure Centre Amusement Arcade, Kinsale, Co. Cork.

- 3.2 The complainant has not agreed with Cork County Councils determination of the above question.

#### **4.0 REPORTS ON PLANNING AUTHORITY FILE**

- 4.1 The Board will note that the Planning Authority not made a formal determination in relation to this question. The Planning Authority considered the matter in terms of the enforcement question from which no action was considered necessary.

- 4.2 The Planning Report provides a brief description of the subject site, as well details of the site inspection. The report noted no recent planning history associated with the subject site and provides details of the relevant policy contained within the Kinsale Development Plan. The relevant legislative provisions are also presented. The assessment considers that the external lights are not considered to be development as they do not fit within the meaning of 'development' as defined under Section 3(1) of the Planning & Development Act 2000 as amended. It was further determined that there is no obvious exemption or exemption classes for such lights under the Planning & Development Regulations. The report notes that the Kinsale Tidy Towns Committee claim that the external lighting is development because the site is located within an ACA and would materially contravene a number of policies in the Kinsale Town Development Plan, ACA 3 and ACA 4. Reference to Article 9 of the Planning & Development Regulations, as amended to be a trigger for planning permission was also cited by the complainant but determined by the PA that Article 9 would only apply if the works are considered to be exempted development.

- 4.3 The complete question placed before the Board is recommended as follows:

'Whether the external lighting fixed to the front façade of an Amusement Arcade in Kinsale Town is or is not development or is or is not exempt development. It if is considered to be exempted development, would the restriction on exempted development apply particularly Article 9(1)(a)(xii) of the Planning & Development

Regulations 2001 as amended, given that the site is located within an Architectural Conservation Area.'

## **5.0 DECISION OF THE PLANNING AUTHORITY**

The Planning Authority has considered that the external lights are not considered to be development as they do not fit within the meaning of 'development' as defined under Section 3(1) of the Planning & Development Act 2000 as amended. It was further determined that there is no obvious exemption or exemption classes for such lights under the Planning & Development Regulations.

## **6.0 RELEVANT PLANNING HISTORY**

There is no relevant planning history associated with the subject site.

In terms of similar questions posed to the Board for consideration, I refer to the following RL06S.RL3307 which related, in part, to the removal of external lighting and signage. In other words, the reversal of what is currently proposed. In that instance, it was determined that the removal of 8 external lights constituted development, but given that the removal of the floodlights 'would be exempted development, which would not materially affect the character of the Rathfarnham Architectural Conservation Area and so it would not be de-exempted under Article 9(1)(a)(xii) of the Planning and Development regulations, 2001 – 2013.'

## **7.0 LEGISLATIVE CONTEXT:**

I consider the following to be the statutory provisions relevant to this referral case:

Planning & Development Act, 2000 - 2012

7.1 Section 2(1) of the 2000 Planning and Development Act states as follows:-

*"In this Act, except where the context otherwise requires – 'development' has the meaning assigned to it by Section 3 ..."*

In Section 2(1) of the Act “works” are interpreted as including “*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*”.

“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.*”

7.2 Section 3(1) of the 2000 Planning and Development 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.”*

7.3 Section 4(1) of the Planning and Development Act identifies what may be considered as exempted development for the purposes of the Act and S4(1)(h) states ‘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.

7.4 Section 4(2) of the Act provides that the Minister, by regulations, provide for any class of development to be exempted development. The principal regulations made under this provision are the Planning and Development Regulations, 2001.

7.5 Also of relevance is Section 82(1) of the P&D Act which states “*Notwithstanding section 4(1)(h), the carrying out of works to the exterior of a structure located in an architectural conservation area shall be exempted development only if those works would not materially affect the character of the area.*”

Planning & Development Regulations, 2001-2013

- 7.5 Article 6(1) of the Planning & Development Regulations, 2001 as amended states as follows:-

*“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.”*

- 7.6 Article 6(2)(b)(iv) of the P&D Regulations states as follows:-

*“further to section 82 of the Act, the advertisement structure is not located on 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 development plan, so as to materially affect the character of the area, save an advertisement structure referred to in Classes 5, 9 or 15 of column 1 of Part 2 of Schedule 2, and.....*

- 7.7 Article 9(1) of the Planning & Development Regulations, 2001 as amended, provides a number of scenarios whereby *development to which article 6 relates shall not be exempted development for the purposes of the Act.* In particular, Article 9(1)(xii) states

*“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,”*

- 7.8 Class 2 Part 2 of Schedule 2 - Exempted Development – Advertisements (subject to the conditions and limitations imposed under Column 2) relates to illuminated advertisements and states as follows:-

*Illuminated advertisements exhibited as part of any shop or other window display on business premises and other advertisements affixed to the inside of*

*the glass surface of a window of a business premises or otherwise exhibited through a window of such premises.*

Conditions and Limitations state-:

The total area of any advertisements so exhibited shall not exceed one quarter of the area of the window through which the advertisements are exhibited.

#### Kinsale Town Development Plan 2009-2015

- 7.9 The subject site is located within the development boundary of the town of Kinsale and is zoned for Town Centre purposes. The site is also located within the designated Architectural Conservation Area for the town.
- 7.10 Chapter 6 of the Development Plan includes policies and objectives relating to ACAs and policies ACA 1, ACA 2 and ACA 3 are considered relevant. Chapter 7 deals with Development Management and Land use Standards where section 7.13.19 – 7.13.20 deal with Amusement Centres. Section 7.14 deals with Advertising and Signage.

## **8.0 REFERRAL**

### Grounds of Reference:

- 8.1 The Referrer in this case is Cork County Council, who is responding to a third party who disagreed with Cork County Councils determination of the stated question. The Planning Authority report presents the PAs case as follows:
- The external lights are not considered to be development as they do not fit within the meaning of 'development' as defined under Section 3(1) of the Planning & Development Act 2000 as amended.
  - There is no obvious exemption or exemption classes for such lights under the Planning & Development Regulations.
  - Could not locate referrals to the Board involving the erection of decorative external lighting onto the front façade of any building.
  - The PA responded to the complainant advising the decision reached.

- The PAs decision is questioned because the site is located within the ACA and that the works would materially contravene a number of policies in the Kinsale Town Development Plan.
- Article 9 of the P&D Regulations 2001 as amended, as a trigger for planning permission, would only apply if the works were considered to be exempted development.

## 9.0 RESPONSES

### Owner / Occupier Response to the Referral:

9.1 The owner / occupier of Pier Leisure Centre has submitted a response in relation to the subject referral as follows:

- The installation / erection of external decorative lighting onto the façade of a building does not constitute development within the meaning of the Act.
- As the installation of the external lighting is neither construction, excavation, demolition, extension, alteration, repair or renewal, nor is the building a protected structure, then it cannot be described as ‘works’ as defined in the Act.
- The installation does not materially change the use of any structure.
- As the installation of the lighting does not constitute works and does not make any material change in the use of any structure, then it cannot be ‘development’ as defined by the Act.
- As the installation of the lights is not development, then any consideration of exempted development is moot as the exempted development presumes development in the first instance.
- Artificial light is not classed as development.
- If the Board find that planning permission is required in this instance, it may require that all external lighting, including festive and decorative lighting, requires planning permission.



## **10.0 OBSERVERS TO APPEAL**

Ms. Marcia Wrixon, following an invitation from the Board, made the following submission in relation to the lights. The submission is summarised as follows:

- The bright lights are a shock and an affront to all who see them. They are in a sensitive part of town, in a prominent location along the seafront.
- The Town Council and Tidy Towns Committee worked hard years ago to improve shop fronts, including signage and painting, and the town has looked very beautiful, until now.
- The lights on the Pier Centre contravene the Kinsale Town Development Plan, notably in relation to the protection of heritage.
- While the local planning officer has argued that the lighting 'does not constitute development, it is certainly development in the sense of modifying or materially changing a building, or the appearance of its façade. Photographs included of the subject building at night time.
- Comparing the lighting to 'Christmas lighting' is ridiculous.
- The Christmas lighting in Kinsale has been carefully planned to be tasteful and traditional. Photos enclosed to show no valid comparison.
- It is requested that the lights be removed, or at least turned off.

## **11.0 ASSESSMENT**

11.1 The question has been posed as to whether the erection of decorative external lighting onto the front façade of the Pier Leisure Centre Amusement Arcade is or is not development or is or is not exempted development all at the Pier Leisure Centre Amusement Arcade, Kinsale, Co. Cork.

11.2 The Board will note that the original complaint to Cork County Council also included a concern regarding signage, which does not appear to have been addressed by the Planning Authority. The issue of 'flashing signs' is also referred to in the Kinsale Tidy Towns submission to the Council seeking the Section 5 review to An Bord Pleanala. In the interests of completeness, I intend to address this issue as part of this report and suggest that the question before the Board be reformulated as follows:

Whether (i) the erection of decorative external lighting onto the front façade of the Pier Leisure Centre Amusement Arcade, and (ii) flashing signs in the front window of the Pier Leisure Centre Amusement Arcade, Kinsale, Co. Cork, is or is not development or is or is not exempted development.

In this regard, I consider it reasonable to address both issues separately.

#### Is or Is Not Development?

- 11.3 Section 2(1) of the 2000 Planning and Development Act defines “works” as including “*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*”.

In addition to the above, the Act defines “alteration” as including “(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.*”

Section 3(1) of the 2000 Planning and Development 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.*”

In terms of the above, the Board will note that ‘works’ include ‘alterations’. I consider that the erection of the external lighting represents an alteration to the exterior of the structure. I am satisfied that, in accordance with the above definitions, the works undertaken at the property being the installation of external lighting across the full expanse of the first floor façade of the building, including the covering of windows. While I acknowledge the findings of the Planning Authority in relation to this element of the declaration request, I consider that the works as described constitute development. This determined, consideration is required as to whether the ‘works’ would constitute “*exempted development*”.

#### Is or Is Not Exempted Development?

*Is the Development Exempt under the Act?*

- 11.4 Having established that the ‘works’ undertaken amount to ‘development’, the issue to be considered is whether the development is exempted development

or not. Section 4(1) of the Act defines certain types of development as being 'exempted development'. Of potential relevance is section 4(1)(h) which provides as follows;

*(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;*

There is no reference to the erection of external lighting, decorative or otherwise on behalf of a private party, within Section 4 of the Planning & Development Act. Section 4(2) of the Act provides that the Minister, by regulations, provide for any class of development to be exempted development. The principal regulations made under this provision are the Planning and Development Regulations, 2001.

Further to the above, Section 4(3) of the Planning & Development Act states 'A reference in this Act to exempted development shall be construed as a reference to development which is –

- (a) any of the developments specified in subsection (1), or*
- (b) development which, having regard to any regulations under subsection (2), is exempted development for the purposes of this Act.*

Again, there is no exemption or class of exemption for such lighting in the Planning & Development Regulations. The Board will note that the Planning Authority considered the issue in support of their case that the external lights are not considered to be development. I would not agree. In my opinion, the exclusion of lighting from Section 4 of the Planning & Development Act, and Schedule 2 of the Planning & Development Regulations, would suggest that there is no exemption for such lighting.

- 11.5 Also of relevance is Section 82(1) of the P&D Act which states "Notwithstanding section 4(1)(h), the carrying out of works to the exterior of a structure located in an architectural conservation area shall be exempted development only if those works would not materially affect the character of the area."

The subject site is located within the designated Architectural Conservation Area of Kinsale. I have considered the matter in terms of affecting the character of the area and there is no doubt that at night time, when the lights are on, the subject building is very prominent in the streetscape, and is significantly different from other buildings adjacent and indeed the wider ACA

area. The same is true for the two flashing signs which are located in two windows of the building, one over an entrance double doors and one in a window. In this regard, I consider that the lighting and signage materially affect the character of the area, and therefore, cannot be considered exempted development under Section 82(1) of the Planning & Development Act.

*Is the Development Exempt under the Regulations?*

Articles 6 and 9 of the Regulations are relevant in terms of this referral.

11.6 Article 6(1) of the Regulations states as follows:

*“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 a 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.”*

Further to the above, and with regard to the signage referred to in the third party referral question, Article 6(2)(b)(iv) of the P&D Regulations states as follows:-

*“further to section 82 of the Act, the advertisement structure is not located on 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 development plan, so as to materially affect the character of the area, save an advertisement structure referred to in Classes 5, 9 or 15 of column 1 of Part 2 of Schedule 2, and.....*

11.7 Article 9(1) of the Planning & Development Regulations, 2001 as amended, provides a number of scenarios whereby *development to which article 6 relates shall not be exempted development for the purposes of the Act.* In particular, Article 9(1)(xii) states:

*“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,”*

- 11.8 Class 2 Part 2 of Schedule 2 - Exempted Development – Advertisements (subject to the conditions and limitations imposed under Column 2) relates to illuminated advertisements and states as follows:-

*Illuminated advertisements exhibited as part of any shop or other window display on business premises and other advertisements affixed to the inside of the glass surface of a window of a business premises or otherwise exhibited through a window of such premises.*

Conditions and Limitations state:-

The total area of any advertisements so exhibited shall not exceed one quarter of the area of the window through which the advertisements are exhibited.

- 11.9 I have carefully considered the issues presented as part of the referral and I referred to the fact, above in Section 11.4 of this report, that there is no reference to the erection of external lighting, decorative or otherwise on behalf of a private party, within Section 4 of the Planning & Development Act. In addition, there is no exemption or class of exemption for such lighting in the Planning & Development Regulations. The Board will note that I have considered that the exclusion of lighting from Section 4 of the Planning & Development Act, and Schedule 2 of the Planning & Development Regulations, would suggest that there is no exemption for such lighting. As such, I conclude that the erection of the lights on the front façade of the building does not constitute exempted development

- 11.10 With regard to the question relating to signage, I would suggest that the two signs, one over an entrance door, and one in a window adjacent to an entrance, are significant in size and would not come within the limitations associated with Class 2 Part 2 of Schedule 2 of the Planning & Development Regulations. It is my opinion that total area of the advertisements signs exceed one quarter of the area of the window through which the advertisements are exhibited. This determined, then it can only be concluded that the development is not exempted under Class 2 Part 2 of Schedule 2 of the Regulations.

11.11 In light of the above, I am of the opinion, having due regard to the provisions of the Planning & Development Act, 2000-2013, and associated Regulations, the development works are constrained by the restrictions on exempted development detailed in Article 9 of the Planning & Development Regulations, 2001, and therefore, the works do not constitute exempted development.

## **12.0 CONCLUSION & RECOMMENDATION**

### Conclusion:

12.1 Having regard to the above, I am satisfied that the questions raised in this referral can be determined as follows:

- (a) The erection of decorative external lighting onto the front façade of the Pier Leisure Centre Amusement Arcade, Kinsale, Co. Cork, together with two flashing signs in two front windows of the building, constitutes “works” to the exterior of the structure which materially affects the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or neighbouring structures, and is therefore “development” within the meaning of Section 3 of the Act, and
- (b) Having regard to having regard to the location of the structure within the designated Architectural Conservation Area in the Kinsale Town Development Plan 2009- 2015, the erection of decorative external lighting onto the front façade of the building, together with two flashing signs in two front windows, materially affect the character of the area,
- (c) The total area of the two advertisements signs exceed one quarter of the area of the window through which the advertisements are exhibited and as such, are of a size that would not come within the conditions and limitations associated with Class 2 Part 2 of Schedule 2 of the Planning & Development Regulations 2001 as amended, and therefore the development is not exempted under said development Class.

Recommendation:

12.2 I recommend therefore that the Board find as follows:

**WHEREAS** a question has arisen as to whether the erection of decorative external lighting onto the front façade of the Pier Leisure Centre Amusement Arcade, Kinsale, Co. Cork is or is not development or is or is not exempted development;

**AND WHEREAS** the said question was referred to An Bord Pleanála by Cork County Council on the 9<sup>th</sup> day of November, 2015;

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

- (a) Sections 2, 3, 4 and 82 of the Planning and Development Act, 2000-2013,
- (b) Articles 6 and 9 of the Planning and Development Regulations, 2001, and
- (c) Class 2 Part 2 of Schedule 2 - Exempted Development – Advertisements, of the Planning and Development Regulations, 2001
- (d) The location of the site within the Architectural Conservation Area of the town of Kinsale as identified within the Kinsale Town Development Plan 2009-2015,
- (e) The submissions of the Planning Authority, owner / occupier and third parties.

**AND WHEREAS** in considering this referral the Board has reformulated the question posed in the following terms,

Whether (i) the erection of decorative external lighting onto the front façade of the Pier Leisure Centre Amusement Arcade, and (ii) flashing signs in the front window of the Pier Leisure Centre Amusement Arcade, Kinsale, Co. Cork, is or is not development or is or is not exempted development.

**AND WHEREAS** An Bord Pleanála has concluded that:

- (a) The erection of decorative external lighting onto the front façade of the Pier Leisure Centre Amusement Arcade, Kinsale, Co. Cork, together with two flashing signs in two front windows of the building, constitutes “works” to the exterior of the structure which materially affects the external appearance of

the structure so as to render the appearance inconsistent with the character of the structure or neighbouring structures, and is therefore “development” within the meaning of Section 3 of the Act, and

- (b) Having regard to having regard to the location of the structure within the designated Architectural Conservation Area in the Kinsale Town Development Plan 2009- 2015, the erection of decorative external lighting onto the front façade of the building, together with two flashing signs in two front windows, materially affect the character of the area,
- (c) The total area of the two advertisements signs exceed one quarter of the area of the window through which the advertisements are exhibited and as such, are of a size that would not come within the conditions and limitations associated with Class 2 Part 2 of Schedule 2 of the Planning & Development Regulations 2001 as amended, and therefore the development is not exempted under said development Class.

**NOW THEREFORE** An Bord Pleanála, in exercise of the powers conferred on it by Section 5(3)(a) of the Planning and Development Act, 2000-2013, hereby decides that the said development, being (i) the erection of decorative external lighting onto the front façade of the Pier Leisure Centre Amusement Arcade, and (ii) flashing signs in the front window of the Pier Leisure Centre Amusement Arcade, Kinsale, Co. Cork, is development and is not exempted development.

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A. Considine  
Planning Inspector,  
4<sup>th</sup> February, 2016