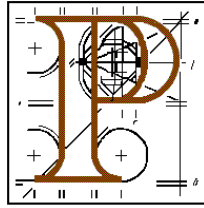


An Bord Pleanála



Inspector's Report

Reference Case: RL06D.RL3550

Question: Whether: (a) a back-lit, motorized sign 3.45m x 3.2m high, and (b) two illuminated static signs in shelter 1.35m x 1.95m high at Seapoint Dart Station, Blackrock, County Dublin is or is not development or is or is not exempted development.

Referred by: Dominic Sheehan

Owner/Occupier: Córas Iompair Éireann

Planning Authority: Dun Laoghaire-Rathdown County Council

Inspector: Kevin Moore

1.0 BACKGROUND

- 1.1 Dominic Sheehan submitted a request to Dún Laoghaire-Rathdown County Council for a declaration under section 5 of the Planning and Development Act to determine whether the erection of a motorized backlit sign, measuring 3.45m x 3.2m, and two illuminated static signs in shelter, measuring 1.35m x 1.95m, constituted development that is exempted development. The Council issued a declaration that determined the signage constituted development that was exempted development.

2.0 THE QUESTION

- 2.1 The question before the Board is:

Whether the erection of a motorized backlit sign, measuring 3.45m x 3.2m, and two illuminated static signs in shelter, measuring 1.35m x 1.95m, constitute development and whether they constitute exempted development.

3.0 THE REFERRER'S SUBMISSION

- 3.1 The Referrer notes the exempted development provisions under Part 2, Class 8 of the Planning and Development Regulations. It is submitted that the signs are clearly visible from outside the station from Ardenza Terrace and Park and Tobernea Terrace. It is further submitted that the issue of visibility and impact is not a function of distance in view of the intensity and flicker effect of the internally illuminated structure and it is noted that the Regulations do not mention distance. It is stated that the larger structure in particular stands out boldly in the evening and at night. It is

further contended that, as the motorized sign is backlit to a high intensity, it causes the pattern of the sign to be projected onto Ardenza Terrace. It is refuted that the signs were rendered visible in Ardenza Terrace only as a result of removal of vegetation in front of No. 2 Ardenza Terrace. The Referrer submits details on the impact the signage has within his home in relation to flicker, nuisance and upset and refers to concerns relating to light spill and light pollution at this coastal location. Reference is made to a separate section 5 reference made by Iarnród Éireann and a decision made prior to the decision on the referral at hand. The Board is asked to determine that the signage requires planning permission.

4.0 THE POSITION OF THE PLANNING AUTHORITY

- 4.1 The Planner recommended further information be sought from the applicant seeking the declaration (Dominic Sheehan) and this information was received on 5th January 2017. It was noted that in the interim period a grant of a Certificate of Exemption had been issued to Iarnród Éireann under P.A. Ref. 143/16 for the same signage. The Planner considered that the most prominent and pertinent views of the signage are from the green space and roadway fronting Ardenza Terrace/Park. Reference was also made to distances from kerbs onto green space to the signage, to the steep drop in ground levels to the station platforms, to bushes on the green space restricting views of the signage, and to intermittent views from the roadway fronting the terrace and green space. It was stated that it was not considered that views taken from public or private lands are a factor with regard to Class 8 of Part 2 of Schedule 2 of the Planning and Development Regulations. An opinion was offered as to how one should consider the visibility of the signage. It was also considered reasonable to note that views during the time of the signage installation would have been further restricted or entirely blocked before the removal of vegetation. Furthermore, the addition of illuminated signage was not

considered to be a material change. It was concluded that the three signs the subject of the section 5 application are not considered to be readily visible generally from outside the premises. It was recommended that the signage be deemed development that constitutes exempted development.

- 4.2 The planning authority issued an order on 25th January 2017 stating the signage is considered development and exempt development under Class 8, Part 2, Schedule 2 of the Planning and Development Regulations, 2001 (as amended).

5.0 SUBMISSION BY IARNRÓD ÉIREANN

- 5.1 Iarnród Éireann provided details of its application for a section 5 declaration from the planning authority relating to whether works to an advertisement structure at Seapoint railway station is or is not exempted development. The Board was asked to have regard to that application and the decision of the planning authority. The response to the appeal may be synopsisized as follows:

Nature of the Works

- An advertising structure has been in place at the location of the works on the southern platform for approximately 20 years. Works were carried out in February 2015. The sign is internally illuminated and has a scrolling advertising copy. The sign is smaller in width and height from the previous sign.
- In October 2015 there was extensive cutting of vegetation on the southern end of lands surrounding Ardenza Terrace facing the railway platform and sea.
- The two static signs in the shelter unit have been in place for over 20 years. The shelters were upgraded around 2008/2009. The signs

contain two low wattage fluorescent bulbs internally. These works were carried out under Class 23 of Part 2 (*sic*) of the Planning and Development Regulations 2001. There is no link between these static signs and the works relating to the static signs carried out in February 2015.

- Before trees and vegetation were cut down all views of the station platform from Ardenza Terrace were blocked out. Photographs are attached to demonstrate same.

Exempted Development – Class 8

Iarnród Éireann is of the view the advertising structures are exempted development under Class 8 of Part 2 of Schedule 2 of the Planning and Development Regulations. It is submitted:

- There is no definition of “readily visible” under the Regulations. It is submitted that “*readily*” visible is a much higher test than merely being visible.
- The time for assessing whether the works are exempted development under Class 8 is at the date the works were carried out. The fact that an advertisement structure becomes readily visible because of changes in the surrounding environment such as demolishing buildings or cutting down vegetation does not mean that the structure ceases to fall within Class 8.
- In considering whether an advertisement structure is readily visible from outside the railway station, the totality of views or vantage points may be taken into account.
- If the public do not have a right of access to the location of a vantage point, this is a material consideration in considering whether the structure is “readily” visible.

- The advertisement structures have no visibility whatsoever from numerous vantages, which include the public road and the seaward side of the platform.
- The only position where it is contended that it is visible is from certain particular vantage points from Ardenza Terrace and the lane owned by Iarnród Éireann, which may be deemed to be part of the railway station and not outside of the premises. The vantage points from Ardenza Terrace are at some remove from the structures. Where visible in Ardenza Terrace, the lands are private property and there are no public rights of access. As there are restrictions of access, the structures could not be said to be “readily” visible. Most of the vantage points in Ardenza Terrace provide only partial views of the structures. There is only one full view and this arose due to cutting of vegetation.
- The works to the scrolling advertisement, reducing it in width and height, had the effect of reducing overall visibility of an advertisement structure.
- Similar to the advertisement structure, the two static signs are not “readily visible” from outside the premises. Also, they are smaller and are contained within a shelter. They were not visible at all prior to residents cutting back vegetation in October 2015.

Exempted Development - Section 4(1)(h)

It is submitted that the works are exempted development under section 4(1)(h) of the 2000 Act, having regard to the following:

- Reference is made to *Dublin City Council v. Lowe* (2004) 4 IR 259. The works in the case now before the Board involved replacement in exactly the same location, smaller in dimensions for the advertisement structure and similar static signs. Similar to *Dublin City Council v. Lowe*, it is submitted the planning unit could be said to be the platform

or even the railway station by analogy with the gable wall in the legal case referenced.

- The works to the advertisement structure may be described as an alteration of the structure by a replacement of a new advertisement, smaller in scale, and so could not be described as having materially affected the external appearance of the premises.
- The fact that works in February 2015 involved dismantling the previous advertisement and erecting another does not mean that the works will not fall within section 4(1)(h) as the meaning of works for these purposes can include acts of demolition and renewal. As steel rather than a timber frame for the advertisement was used, this could be described as either maintenance or improvement. The visual impact of the current structure is less owing to its smaller size. Reference is made to *Michael Cronin Readymix Ltd. v. An Bord Pleanála* (2009) 4 IR 736 and *Rossmore Properties Ltd v. Electricity Supply Board*, Unreported, High Court, August 28, 2014 in support of the argument made.

Photographs and details relating to Iarnród Éireann's section 5 application are attached to the submission.

6.0 EVALUATION

A. Statutory Provisions

1. Local Government (Planning and Development) Act 1963

Section 2(1)

In this Act, save where the context otherwise requires—

“advertisement” means any word, letter, model, balloon, 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;

“works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal.

Section 3(1)

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

Section 4(1)

The following shall be exempted developments for the purposes of this Act—

(g) 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.

2. Local Government (Planning and Development) Regulations, 1994

PART III - Exempted Development

Article 9

(2)(a) Subject to article 10, 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 II of the Second Schedule 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 II opposite the mention of that class in the said column 1, and
- (ii) the structure or other land shall not be used for the exhibition of any advertisement other than an advertisement of a class which is specified in column 1 of the said Part II and which complies with the conditions and limitations specified in column 2 of the said Part II opposite the mention of that class in the said column.

(b) Subject to article 10, development consisting of the erection of any advertisement structure for the exhibition of an advertisement of any of the classes specified in column 1 of Part II of the Second Schedule

shall be exempted development for the purposes of the Act, provided that –

- (i) the area of such advertisement structure which is used for the exhibition of an advertisement does not exceed the area, if any, specified in column 2 of the said Part II opposite the mention of that class in the said column 1,
- (ii) the advertisement structure is not used for the exhibition of advertisements other than advertisements of the class to which the exemption relates, ...

Article 10(1)

Development to which article 9 relates shall not be exempted development for the purposes of the Act –

- (a) if the carrying out of such development would –
 - (viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use.

Second Schedule

Part II Exempted Development – Advertisements

<i>Column 1 Description of Development</i>	<i>Column 2 Conditions and Limitations</i>
CLASS 8 Advertisements exhibited within a railway station, bus station, airport terminal or ferry terminal and which are not readily visible from outside the premises.	

3. Planning and Development Act 2000 (as amended)

Section 2(1)

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;

“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(1)

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

Section 4(1)

The following shall be exempted developments for the purposes of this Act—

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

4. Planning and Development Regulations 2001 (as amended)

PART 2 - Exempted Development

Article 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.
- (2) (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 –
- (iii) 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 1, and
 - (iv) the structure or other land shall not be used for the exhibition of any advertisement other than an advertisement of a class which is specified in column 1 of the said Part 2 and which 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.

- (b) Subject to article 9, development consisting of the erection of any advertisement structure for the exhibition of an advertisement of any 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 exhibition 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,
 - (ii) the advertisement structure is not used for the exhibition of advertisements other than advertisements of the class to which the exemption relates,
 - (v) further to section 57 of the Act, the advertisement structure is not erected on a protected structure or a proposed protected structure save an advertisement structure referred to in Classes 5, 9 or 15 of column 1 of Part 2 of Schedule 2,
 - (vi) 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 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 as an advertisement structure referred to in Classes 5, 9 or 15 of column 1 of Part 2 of Schedule 2, and
 - (vii) where the advertisement structure is within a Gaeltacht area, any advertisement exhibited is –
 - (l) in Irish, or

- (II) in Irish and other languages, with prominence given to the Irish text, and identical content in all versions of the text.

Article 9(1)

Development to which article 6 relates shall not be exempted development for the purposes of the Act –

- (b) if the carrying out of such development would –
- (ix) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use.

Schedule 2

Part 1 Exempted Development – General

<i>Column 1 Description of Development</i>	<i>Column 2 Conditions and Limitations</i>
<p><i>Development by statutory undertakers</i></p> <p>CLASS 23 The carrying out by any railway undertaking of development required in connection with the movement of traffic by rail in, on, over or under the operational land of the undertaking, except –</p> <p>(a) the construction or erection of any railway station or bridge, or of any residential structure, office or structure to be used for manufacturing or repairing work, which is not situated wholly within the interior of a railway station, or</p> <p>(b) the reconstruction or alteration of any of the aforementioned</p>	<p>Any car park provided or constructed shall incorporate parking space for not more than 60 cars.</p>

structures so as materially to affect the design or external appearance thereof.	
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Part 2 Exempted Development – Advertisements

<i>Column 1 Description of Development</i>	<i>Column 2 Conditions and Limitations</i>
CLASS 8 Advertisements exhibited within a railway station, bus station, airport terminal or ferry terminal and which are not readily visible from outside the premises.	

B. Assessment

(i) The Question of ‘Development’

The matter before the Board relates to the replacement of advertisement structures and signage. The erection of the original signage and its replacement would involve the carrying out of “works” by way of construction and alteration which would have been carried out on, in and over land. The original erection of signage and its replacement would, thereby, constitute “development” in accordance with the provisions of section 3 of the Planning and Development Acts of 1963 and 2000.

(ii) The Question of ‘Exempted Development’

Relevant provisions relating to the Advertisement Structures

The motorized advertisement structure and two static signs are replacement signs for advertisement structures that have been at the railway platform for some 20 years according to Iarnród Éireann. The original advertisement structures would have been subject to the exempted development provisions as set out at the time under the Local Government (Planning and Development) Act 1963 and the Local Government (Planning and Development) Regulations 1994. The replacement structures are subject to the exempted development provisions under the Planning and Development Act 2000 and the Planning and Development Regulations 2001. It is acknowledged that similar relevant exempted development regulations applied for the original structures, albeit there are variations to some section and article references.

I note that Iarnród Éireann has submitted that the upgrading of the shelter that contains the two smaller signs was carried out under Class 23 of Part 2 (*sic*) of the Planning and Development Regulations 2001. Class 23 of Part 1 of the Regulations applies to the carrying out by any railway undertaking of development required in connection with the movement of traffic by rail in, on, over or under the operational land of the undertaking. It is understood that the signs themselves are not a development *required in connection with the movement of traffic*. However, it is accepted that the shelter within which they are placed could reasonably be viewed as constituting such development to meet passenger needs.

Section 4(1)(h) of the Planning and Development Act

Iarnród Éireann seeks a declaration that the works in question are exempted development under Section 4(1)(h) of the Planning and Development Act 2000. Section 4(1)(h) relates to development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures.

The works carried out relating to the advertisement structure and signs culminated in the replacement of structures – around 2008/2009 for the signs and in February 2015 for the motorised structure. It is reasonable to determine that the former structures were, thus, not maintained, improved or altered as they were replaced. Furthermore, there were material differences arising from the replacements. Iarnród Éireann informs the Board that the former stand-alone structure was larger than the replacement structure, timber-framed, and the advertisement was wet-posted to it. The replacement is smaller in size, steel-framed, with a glass façade, with scrolling advertising and is internally illuminated. Iarnród Éireann further informs the Board that the former shelter that was replaced in 2008/2009 had two six-sheet advertising signs at either end. The replacement shelter contains signs within it (to the rear) which contain bulbs internally that light the adverts. These are material changes that are inconsistent with the character of the structures that were replaced.

Having regard to the above, I consider that the exempted development provisions under section 4(1)(h) of the Planning and Development Act do not apply in this instance.

Class 8, Part 2 of Schedule 2 of the Planning and Development Regulations

Class 8 of Part 2 relates to advertisements exhibited within a railway station, bus station, airport terminal or ferry terminal and which are not readily visible from outside the premises. The advertisements the subject of the referral are located on Seapoint railway station's southern-bound platform and can reasonably be determined to be advertisements exhibited within a railway station, as the platform is an integral part of the railway station complex.

The advertisements can avail of Class 8 subject to them not being readily visible from outside the premises, i.e. beyond the railway station. No other conditions or limitations apply. From the details provided by the parties to the referral and from my inspection, it is evident that, at this time, the signs are readily visible from Ardenza Terrace and lands on and in the vicinity, i.e. outside the premises. The exempted development provision and the conditions and limitations make no reference as to whether the visibility applies to public or private lands or any other such designation or categorisation of location from which such advertisements are to be determined to be viewable from. Furthermore, there is no reference to the illumination of advertisements or to any specified distance from which advertisements may be viewed. Class 8 relates solely to the visibility of the advertisement itself beyond the premises, with no other limitation or restriction placed.

Notwithstanding the visibility of the advertisements outside of the railway station at this time, the issue to determine is whether or not the advertisements were readily visible at the time they were erected as this would have been a determining factor on their status as exempted development. With regard to this, I consider that it is important to note that the advertisement structures, including the shelter, constituted replacement structures. From the submissions received by the Board, there is no record that, up to the time of the replacement of the previous structures, there was any issue arising as to whether those previous

structures did or did not constitute development that was or was not exempted development. Furthermore, there is no record of any issue arising from the impact of the visibility of the replaced structures on the wider environment beyond the railway station. I note for the Board that the relevant exempted development provisions that would have applied at the time of the erection of the original advertisement structures under the Local Government (Planning and Development) Act 1963 and the Local Government (Planning and Development) Regulations 1994 were similar to those now in place.

Ardenza Terrace and adjoining properties are located on elevated lands to the south of Seapoint railway station, including its associated platforms. There has been extensive clearing of vegetation in recent times along the north-facing, steep slope in front of Ardenza Terrace. This clearing of the land leaves the railway line and platform exposed to views from Ardenza Terrace/Park and other locations. From the details provided in the referral and the lack of any known public concern about previous advertisements since replaced, it may reasonably be determined that advertisements on the railway platform were not likely to have been readily visible from outside the premises to the extent that they caused public concern about their impact, certainly from the public realm or the circulation areas and amenity areas associated with Ardenza Terrace/Park. It is not possible to determine if such signage was readily visible from within any of the properties forming Ardenza Terrace or other residential properties and the Board are not in any position to make a determination on this.

On balance, I conclude that the removal of vegetation to the north of Ardenza Terrace in recent times is most likely to have permitted the visibility of the advertisement structures from beyond the premises to the south. Details have been provided by Iarnród Éireann attempting to show how the previous vegetated bank blocked views of the advertisements, while there are no details provided to demonstrate that advertisements were visible from Ardenza Terrace or elsewhere in the vicinity at the time when the vegetated bank was in place. I

am satisfied to accept that at the time of the erection of the replacement signage that a densely vegetated bank was in place that resulted in the advertisements not being readily visible from the south beyond the railway station. This replacement of original advertisement structures at the established locations can reasonably be considered to be exempted development.

6.0 CONCLUSION AND RECOMMENDATION

I recommend as follows:

WHEREAS a question has arisen as to whether the erection of a motorized backlit sign, measuring 3.45m x 3.2m, and two illuminated static signs in a shelter, measuring 1.35m x 1.95m, at Seapoint Dart Station, Blackrock, County Dublin constitute development and whether they constitute exempted development

AND WHEREAS the said question was referred to An Bord Pleanála by Dominic Sheehan on the 20th day of February, 2017:

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

- (a) sections 2, 3 and 4 of the Local Government (Planning and Development) Act, 1963,
- (b) articles 9 and 10 of the Local Government (Planning and Development) Regulations 1994

- (c) Class 8 of Part II of the Second Schedule to the said Regulations and the conditions and limitations to this Class
- (d) sections 2, 3 and 4 of the Planning and Development Act, 2000,
- (e) articles 6 and 9 of the Planning and Development Regulations, 2001,
- (f) Class 23 of Part 1 of Schedule 2 to the said Regulations and the conditions and limitations to this Class, and
- (g) Class 8 of Part 2 of Schedule 2 to the said Regulations and the conditions and limitations to this Class

AND WHEREAS An Bord Pleanála has concluded that -

- (a) the advertising motorized sign and static signs constitute replacement advertisement structures,
- (b) the replacement of the original signage by the advertising motorized sign and static signs constituted works which would come within the scope of Section 3(1) of the Planning and Development Act, 2000,
- (c) the advertisements are exhibited within Seapoint railway station, and
- (d) the advertisement structures were nor readily visible from outside the premises at the time of their replacement and would come within the scope of the exemption provided in Class 8 of Part 2 of Schedule 2 of the Planning and Development Regulations, 2001:

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 motorized backlit sign, measuring 3.45m x 3.2m, and two illuminated static signs in a

shelter, measuring 1.35m x 1.95m, at Seapoint Dart Station, Blackrock, County Dublin is development and is exempted development.

Kevin Moore
Senior Planning Inspector
May, 2017.