



An
Bord
Pleanála

Inspector's Report PL.91.3570

Question	Whether the erection of an internally illuminated billboard sign in place of a static tri-vision advertising panel at the gable wall of premises is development or exempt development.
Location	105 O'Connell Street, Limerick
Referrer	Limerick City and County Council
Planning Authority	Limerick City and County Council
Planning Authority Reg. Ref.	DC-413-15
Owner / Occupier	JC Decaux Ireland Ltd. / Roberts Pharmacy
Date of Site Inspection	13 th June 2017
Inspector	Kenneth Moloney

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1.0 Site Location and Description

- 1.1. The referral site is located in Limerick city centre.
- 1.2. The subject billboard is situated on the gable of an existing building which faces onto Lower Cecil Street. The front elevation of the subject building faces onto O'Connell Street.
- 1.3. The billboard signage is located at first floor level, and at ground floor level there is a pharmacy with frontage onto O'Connell Street and Lower Cecil Street.
- 1.4. Lower Cecil Street is characterised by a mix of modern buildings and some vacant sites. O'Connell Street, in the immediate vicinity of the referral site, is characterised by Georgian terraces and a mix of modern buildings.
- 1.5. The advertising billboard is static.

2.0 The Background

- 2.1. Limerick City and Council issued a Warning Letter and Enforcement Notice to JC Decaux in relation to alleged unauthorised billboard advertising signage.
- 2.2. As JC Decaux did not comply with the Enforcement Notice the local authority prior to undertaking legal proceedings decided to establish whether the erection of an internally illuminated billboard sign in place of a static tri-vision advertising panel at the gable wall of premises is development and/or exempt development.
- 2.3. Accordingly, the planning authority decided to refer a question to the Board in accordance with 5(4) of the Planning and Development Acts 2000 (as amended) as to whether the subject development is or is not development or is or is not exempted development.

3.0 The Question

“Whether the erection of an internally illuminated static billboard sign in place of a tri-vision advertising panel at the gable wall of premises, 105 O'Connell Street, Limerick, is or is not development and is or is not exempted development”.

4.0 Policy Context

4.1. Development Plan

The operational Development Plan is the Limerick City Development Plan, 2010 – 2016. (extended until 2019).

The referral site is zoned '*A, B, C' City Centre Area*'.

The subject property is not a protected structure.

5.0 The Referral

The following is the summary of the referral;

- The Council have had regard to (a) Section 2, 3, and 4 of the Planning and Development Acts, 2000 – 2015, (b) Article 6 of Part 2 of Schedule 2 of the Planning and Development Acts, 2000 – 2015, and (c) the history of the site.
- At an unknown date two 6m x 3m gable mounted static billboards signs were erected at the site.
- On the 14th June 1998 planning permission (L.A. Ref. 97/770354) was granted for the replacement of two static advertising panels with a 6m x 3m tri-vision advertising panel.
- Condition no. 2 of this permission required that the signage be removed within a 5-year period.
- The sign remained in place until December 2015 without a further planning permission granted.
- In December 2015, the existing sign was replaced by an internally illuminated 6m x 3m static billboard sign.
- The change in the signage and the resultant increase in the intensity of light is not appropriate for the location and may result in a traffic hazard.

- The owner has been issued with warning letter and enforcement notice but has failed to respond.
- This matter was referred for prosecution and the case is now listed for 7th September 2017.
- The Council require a declaration from An Bord Pleanala as to whether the erection of an internally illuminated billboard sign in place of a static tri-vision advertising panel at the gable wall of premises is development or exempt development.

6.0 Respondent

The following is the summary of a response submitted by Branigan Feddis, Solicitors on behalf of J.C. Decaux Ireland Limited.

- An application was made on the 6th of February 2017 to the District Court, by Limerick City and County Council, for an issue of a summons to an alleged offence about a billboard sign.
- A trial date has been allocated for the 7th September 2017.
- It is submitted that the question in the reference touches on, in a material way, the issues to be addressed by the District Court trial.
- The reference is inappropriate and it is inappropriate for An Bord Pleanala to seek a submission.
- It is submitted that a determination of this matter by An Bord Pleanala, in advance of the prosecution hearing, is prejudicial to J.C. Decaux's right and entitlements.
- In addition, the provision of an observation or submission in the reference in advance of the prosecution is prejudicial also.
- It is submitted that the reference is invalid as it contains no grounds or grounds of substance, directed to the question.

- It is considered that further consideration of this reference should be stayed, until the conclusion of the prosecution in respect of the matter of complaint in the summons.

7.0 Evaluation

7.1. The Facts of the Case

The facts of the matter include the following;

- At an **unknown date** two 6m x 3m gable mounted static billboards signs were erected at the site.
- On the **14th June 1998** planning permission (L.A. Ref. 97/770354) was granted for the replacement of two static advertising panels with a 6m x 3m tri-vision advertising panel.
- This permitted sign was replaced in **December 2015** by an internally illuminated 6m X 3m static billboard sign.
- A Warning Letter was issued to owner on the **2nd February 2016**.
- An Enforcement Notice was issued on **10th June 2016** requiring removal of the sign. There was no compliance with the Enforcement Notice.
- On the **7th April 2017**, An Bord Pleanála received a referral from Limerick City and County Council, in accordance with the provisions of Section 5(4)(a) of the 2000 Act.

7.2. Statutory Provisions

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

Planning and Development Act, 2000

Section 2 states: -

“*advertisement*” means any word, letter, model, balloon, inflatable structure, kite, poster, notice, device or representation employed for 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.

“*structure*” means any building, structure, excavation, or other thing constructed or made on, in or under land, or any part of a structure so defined.

“*unauthorised structure*” means a structure other than –
a structure which was in existence on 1 October 1964, or
a structure, the construction, erection or making of which was the subject of a permission for development granted under part IV of the Act of 1963, or deemed to be such under section 92 of that Act or under Section 34 of this Act, being a permission which has not been revoked, or which exists because of the carrying out of exempted development (within the meaning of section 4 of the Act of 1963 or section 4 of this Act).

‘*development*’ has the meaning assigned to it by Section 3, and ‘develop’ shall be construed accordingly;

“*use*”, in relation to land, does not include the use of the land by the carrying out of any works thereon;

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

Section 3 (1) states: -

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 of use of any structures or other land.

Section 4 (1) sets out various forms and circumstances in which development is exempted development for the purposes of the Act.

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

Part II of the Second Schedule to Planning and Development Regulations, 2001 (as amended) sets out exemptions in relation to advertisements.

7.3. **Relevant Related Cases**

31.RL2579

In this referral case the question arose whether the erection of two static billboards after the expiry of a permission to erect one number tri-vision billboard is or is not exempted development. The subject property had previously two existing static billboards on the gable elevation of the property and obtained planning permission from Waterford City Council (L.A. Ref. 01/08) for the replacement of two 6m x 3m static advertising panels with one 6m x 3m tri-vision advertising panel for a temporary 3-year period. The reporting Planning Inspector concluded that erection of two billboards in place of one tri-vision billboard would represent a material change to an existing building and is therefore development. The report states that there are no available exemptions for billboard advertising. However, the Board decided, having regard to the fact that two static billboards had been in place on this site prior to the appointed day, 1st day of October, 1964, and having regard to Section 39(3)(a) of the Planning and Development Act, 2000. Section 39(3)(a) requires that where

permission to develop land is granted for a limited period only, there is no requirement to obtain planning permission for the resumption of the normal use of the land after the expiration of the temporary permission.

In terms of the current referral before the Board I would conclude that although both cases relate to billboards, the detail in the two cases are quite different. In the current case planning permission was obtained in 1998 and there is no documentary evidence of a pre-63 use and in addition no temporary permission was granted.

28.RL2892

In this case the question was asked whether the erection of a static billboard is or is not development and whether it is or is not exempted development. In terms of background a static advertising billboard was originally in place and it was replaced by an illuminated tri-vision billboard. Retention permission for this change in signage was sought but refused by both the Planning Authority and An Bord Pleanala. The tri-vision billboard was subsequently removed and replaced with the static billboard for which this referral related to. The board decided, having regard to the planning history including the replacement of the static billboards 14 months after the removal of the original static billboards, that the erection of a static billboard of this site is development and is not exempted development.

High Court Case - Dublin Corporation V Lowe (2000).

This case centred on the whether the removal of existing billboard signage on the side of building and its replacement with billboard signage, of the same dimension, is unauthorised. The High Court ruling determined that although the period between the removal of the existing signage and the replacement of the new signage was short, possibly a matter of days, it is relevant to note that the signage was removed deliberately and that whatever permission existed prior to the removal of this signage perished with the removal of the signage. Judge Morris considered that in planning terms there is a significant difference between a temporary removal for repair and maintenance with the intention of the original or repaired structure being reinstated

after such repair and the removal of such a structure with no intension of its reinstatement by its owner but the replacement of a different structure. Judge Morris concluded that it is irrelevant that the new structure corresponded in all respects with the original structure. It is considered that the removal of the original signage without the intension of replacing it must be regarded as an abandonment of any rights.

7.4. **Assessment**

I will now consider whether development has taken place and should development have taken place whether this development is or is not exempted development.

7.4.1. The question of development

The definition of works under Section 2 of the Act includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal. The definition of 'development' under Section 3 of the Act includes the carrying out of any works on, in, or under land. The provision of a new billboard which is static and internally illuminated would require a level of construction on land and I would conclude that this is development in accordance with Section 3 of the Planning and Development Act, 2000 (as amended).

A second question that arises in considering whether development has occurred is whether the new advertising billboard is materially different than that which was permitted under L.A. Ref. 97/770354. In considering this question, I would note that the key differences with the existing billboard compared with the permitted billboard is that the advertising sign is static as opposed to tri-vision and the existing billboard is internally illuminated. The internal illumination of the billboard is likely to intensify the light spillage from the billboard. The previous lighting for the tri-vision billboard was an overhead mounted lighting. The change in lighting, in my view, is materially different from the permitted use and therefore represents a material change to the existing building and the existing permission.

Finally, it is evident from the High Court Case, Dublin Corporation V Lowe (2000), that signage that is removed and replaced with new signage, particularly when the reason for removal is not for maintenance, renewal or repair must be regarded as an abandonment of rights.

Therefore, having regard to the act of construction required to facilitate the billboard advertising sign, the material change in terms of the structure from that which was permitted and the judgement by J. Morris (Dublin Corporation V Lowe (2000) I would consider that development has taken place.

7.4.2. The question of exempted development

The determining issue is, therefore, whether the erection of the current advertisement structure in place of the previously permitted advertisement structure is exempt development.

There are no specific exemptions for the erection of advertisement structures set out in Section 4 (1) of the Act, and the works could not, in my view, be construed as falling within the definition of “works for the maintenance, improvement or other alteration of any structure subject to Section 4(1)(h) of the Act as they constitute the erection of a new structure.

In addition, the advertisements/advertisement structures involved in this case are not covered by any exemptions provided for in Article 6 (2) of the Planning and Development Regulations, 2001, and Part II of the Second Schedule to these Regulations. Therefore, in conclusion I would not consider that the new internally illuminated static advertising billboard falls within the provisions of exempted development.

8.0 Recommendation

8.1. Conclusions and Recommendations

It is considered that the erection of a static internally illuminated advertising billboard in place of a tri-vision advertising billboard is development and would not be exempted development in accordance with the provisions of the Planning and Development Act, 2000 (as amended) and the Planning and Development Regulations, 2001 (as amended).

Accordingly, I would recommend a draft order along the following lines: -

WHEREAS *a question has arisen whether the erection of an internally illuminated static billboard sign in place of a tri-vision advertising panel at the gable wall of premises, 105 O'Connell Street, Limerick, is or is not development and is or is not exempted development.*

AND WHEREAS *the said question was referred to An Bord Pleanála by Limerick City and County Council, Dooradoyle, Limerick, on the 7th April 2017.*

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

- a) Section 3 of the Planning and Development Act, 2000,*
- b) Section 4 (1) of the Planning and Development Act, 2000,*
- c) Article 6(2) of the Planning and Development Regulations, 2001*
- d) Part 2 of the Second Schedule of the Planning and Development Regulations, 2001,*

e) *The planning history of the site*

AND WHEREAS *An Bord Pleanála has concluded: -*

that the erection of 1 no. static internally illuminated advertising billboard in place of 1 no. tri-vision advertising billboard does not come within the scope of Section 4 of the Planning and Development Act, 2000, nor under Article 6 (2) of the Planning and Development Regulations 2001.

NOW THEREFORE *An Bord Pleanála, in exercise of the powers conferred on it by section 5 (4) of the 2000 Act, hereby decides that the said erection of 1 no. static internally illuminated advertising billboard in place of 1 no. tri-vision advertising billboard is not exempted development.*

Kenneth Moloney
Planning Inspector

23rd June 2017