



An
Bord
Pleanála

Inspector's Report 29S.RL3588.

Question

Whether the proposed use of the top level (level 6) car park for a temporary event as an outdoor movie theatre is or is not development or is or is not exempted development.

Location

Top floor (level 6) St Stephen's Green Shopping Centre, D.2.

Declaration

Planning Authority

Dublin City Council

Planning Authority Reg. Ref.

0096/17.

Applicant for Declaration

Jacobs Anderson Ltd (t/a Outset agency).

Planning Authority Decision

Refuse.

Referral

Referred by

Jacobs Anderson Ltd (t/a Outset agency).

Owner/ Occupier

Jacobs Anderson Ltd (t/a Outset agency).

Observer(s)

None.

Date of Site Inspection

16th of August 2017.

Inspector

Karen Hamilton.

1.0 Site Location and Description

- 1.1. St Stephen's Green Shopping Centre is located at the northern end of Grafton Street, a principle shopping street in Dublin City Centre. The subject site is on the south-west portion of the roof top level (level 6), where retail occupies ground and first floor levels and the remaining levels, including level 6 are for associated car parking.

2.0 The Question

- 2.1. Whether the proposed use of the top level (level 6) at St Stephen's Green Shopping Centre Car Park for a temporary event as an outdoor movie theatre, with capacity for no more than 350 patrons per screening, together with associated facilities including the provision of a bar and food, being an event of recreational character, in which the said property shall not be used for the said purpose either continuously for a period exceeding 15 days or occasionally for periods exceeding an aggregate 30 days in any year, is, or is not, exempted development.

3.0 Planning Authority Declaration

3.1. Declaration

Under Section 5(1) of the Planning and Development Act 2000,

1. The planning authority considers the proposal for a temporary event as an outdoor movie theatre is NOT EXEMPT from the requirement to obtain planning permission under Section 32 of the Planning and Development Acts, as amended.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report of the area planner refers to Class 37 of the Planning and Development Regulations, in particular, the reference to a local event for the purposes any fair, funfair, bazaar or circus or any local event of religious, cultural, educational, political, social, recreational or sporting character, and considers by the additional inclusion of

food and drink and a musical performance before the theatre screening, the proposed development would lead to an intensification of the site due to the commercial nature of the event and therefore cannot be considered as exempt development under Class 37.

3.2.2. Other Technical Reports

None.

4.0 Planning History

2818/14

Permission granted for an amended to a previous permitted cinema (Reg Ref 3203/10) for the development of the upper and rood levels of St Stephens Green shopping centre to include a 11no cinema screen complex. The expiration date for this permission was 29th of March 2016 as per the previous permission, therefore it has expired.

A similar declaration was issues for lands at the M4 Interchange Park, Celbridge, County Kildare.

RL3309

A Section 5 declaration or an outdoor cinema “event” was determined to be development because of the placing of the cinema structures but exempted development because of compliance with Class 37 and the temporary nature of the use on the site.

5.0 Policy Context

5.1. **Dublin City Development Plan 2016-2022.**

The site is located within the Z5- “City Centre” zoning, where it is an objective “*To consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity*”.

Cultural, creative, artistic, recreational buildings and uses are permissible under the Z5 zoning.

The plan includes guidance to support the economy and tourism of Dublin City, in particular, reference to cinemas includes:

- CHC33: support for sustainable cultural infrastructure such as cinemas in the city centre.
- The development plan refers includes cinemas and other flexible outdoor spaces which encourage activity at different times of the day and night within the definition of cultural facilities.

6.0 The Referral

6.1. Referrer's Case

An agent on behalf of the applicant has submitted that it is not irrelevant if the proposed development is of a commercial nature and the proposed development complies with the terms and conditions of Class 37. This submission may be summarised as follows:

- The development is a temporary local recreational event and the erection of the screen and ancillary furniture constitutes development although is linked to the temporary use of the site.
- The event does not contravene a condition of any permission and would not endanger any persons by way of a traffic hazard.
- The proposed development can meet with the limitations of Class 37 of the Regulations.
- The proposal meets with the policies and objectives of the Dublin City Development Plan in relation to support for the mix of uses, vitality and viability of the city centre and business and tourism.
- Policies listed in relation to the city centre include CEE4, CEE5, CEE01, CEE12 and CEE16.

- Policies listed in relation to tourism of the city include CHC23, CHC24, CHC26, CHC32, CHC42 and CHC43.

6.2. **Planning Authority Response**

A response from the planning authority refers to the report of the area planner for the declaration.

6.3. **Owner/ occupier's response**

The owner occupiers are the same as the appellant.

7.0 **Statutory Provisions**

7.1. **Planning and Development Act, 2000**

Section 2, the following interpretation of "works":

"...includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal....."

Section 3 (1), states the following:

"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)(a)- (i) set out what is exempted development for the purpose of the 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.

Section 4 (2) provides for the making of the Regulations, Planning and Development Regulations, 2001.

Section 5 (3) (A) states the following:

“Where a declaration is issued under this section, any person issued with a declaration under subsection (2)(a) may, on payment to the Board of such a fee as may be prescribed, refer a declaration for review by the Board within 4 weeks of the date of issuing the declaration.”

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

Article (6) (1) Exempted development, states the following:

“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.”

Article (9) (1) Development to which article 6 relates shall not be exempted development for the purposes of the Act-

- a) If the carrying out of the development would-
 - i) Contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,
 - iii) Endanger public safety by reason of traffic hazard or obstruction of road users.

Part 1 of Schedule 2 of Exempted Development of the Regulations, states the following:

CLASS 37

“Development consisting of the use of land for any fair, funfair, bazaar or circus or any local event of religious, cultural, educational, political, social, recreational or sporting character and the placing or maintenance of tents, vans or other temporary or moveable structures or objects on the land in connection with such use,

Conditions and Limitations

1. The land shall not be used for any such purposes either continuously for a period exceeding 15 days or occasionally for periods exceeding in aggregate 30 days in any year.
2. On the discontinuance of such use the land shall be reinstated save to such event as may be authorised or required by a permission under the Act.”

8.0 **Assessment**

The question to be addressed under this referral is as follows:

“Whether the proposed use of the top level (level 6) at St Stephen’s Green Shopping Centre Car Park for a temporary event as an outdoor movie theatre, with capacity for no more than 350 patrons per screening, together with associated facilities including the provision of a bar and food, being an event of recreational character, in which the said property shall not be used for the said purpose either continuously for a period exceeding 15 days or occasionally for periods exceeding an aggregate 30 days in any year, is, or is not, exempted development.”

8.1. **Is or is not development**

The proposed development includes the use of the roof top level of St Stephens Green Shopping Centre Car park as a temporary movie centre. The temporary event will require the placing of a movie screen, astro turf and deck chairs for the theatre. The provision of the sale of food and drink is also included ancillary to the movie theatre with a kiosk style bar and pallet tables.

Section 3 of the Act refers to “development” as 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. I consider the placing of a movie screen within the existing carpark would be deemed as development. It is stated that the use of the site as a movie theatre will be for either a period exceeding 15 days or occasionally for periods exceeding in aggregate 30 days in nay year. Based on the temporary nature, I consider the use of this level will be retained primarily as a carpark, therefore I do not consider there would be a material change of use.

Therefore, based on the provision of facilities and furniture for the use of the site as a movie theatre I consider the proposal development.

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

Section 4 (1) (h) of the Act, allows exempted development for 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 proposed development is located on level 6 of St Stephens Green Shopping Centre and there are limited buildings within the vicinity which are of a similar height, therefore I do not consider the proposed screens and ancillary furniture will materially alter the appearance of the building.

8.2.1. Class 37 of the Regulations.

The applicant has submitted that the proposed development comes within the scope of Class 37 of the Regulations, therefore is exempted development. The planning authority argues that by the nature of the associated services for food and drink, the proposed development is a commercial venture and would lead to intensification of development on the site, therefore is not exempt development.

Class 37 includes an exemption on development for the use of land for any fair, funfair, bazaar or circus or any local event of religious, cultural, educational, political, social, recreational or sporting character. I am of the opinion that the provision of these events must not be solely for non-commercial ventures, therefore I do not consider the use of the temporary movie theatre must not be of a commercial nature, to enable compliance with Class 37. The planning authority also refer to the provision of food and drink on the site and I note the uses listed within Class 37 e.g. funfair, bazaar, circus, etc. would all include the provision of associated food and drink. Therefore, based on the nature of the uses permitted within Class 37, I consider the temporary movie theatre would of a comparable nature, therefore the proposed development would be exempted development.

8.3. Restrictions on exempted development

The proposed development will run from Thursday to Sunday, with no show on a Monday. The submission from the application envisaged the event to run from Thursday 16th of July until Sunday 16th of July and continue subject to demand for a continuous period of 15 day or occasionally for periods exceeding in aggregate 30 days per year. The restrictions and limitations of Class 37 include a time restriction on the use of the land either continuously for a period exceeding 15 days or occasionally for periods exceeding an aggregate 30 days in any year. I consider the proposed development complies with this limitation.

Other restrictions on exempted development, within the Regulations, include a materially contravene a condition of a permission (Article 9 (1) (a) (i)) or where a proposed development may cause a traffic hazard (Article 9 (1) (a) (iii)). I note a previous permission for cinema on the site (Reg Ref 2818/14) allowed the principle of the use on the site and this permission has expired, therefore is not relevant to this proposal. I also note the site is within the existing carpark of St Stephens Shopping Centre, which includes c. 4 floors of car parking. The proposal can accommodate approximately 350 patrons and will operate in the evening. I consider the existing parking can accommodate the visitors and based on the proposed evening time operation, I consider there should be no conflict with the existing uses.

Having regard to the proposed duration of the use, the current use of the site and level of existing car parking, I do not consider there are any restrictions on exempted development, therefore the proposed development may be classified as exempted development.

9.0 Recommendation

9.1. I recommend that the Board should decide this referral in accordance with the following draft order.

WHEREAS a question has arisen as to the proposed use of the top level (level 6) at St Stephen's Green Shopping Centre Car Park for a temporary event as an outdoor movie theatre, with capacity for no more than 350 patrons per screening, together with associated

facilities including the provision of a bar and food, being an event of recreational character, in which the said property shall not be used for the said purpose either continuously for a period exceeding 15 days or occasionally for periods exceeding an aggregate 30 days in any year, is, or is not, exempted development:

AND WHEREAS Jacobs Anderson Ltd (t/a Outset agency) requested a declaration on this question from Dublin City Council and the Council issued a declaration on the 24th of April, 2017 stating that the matter was development and was not exempted development:

AND WHEREAS referred this declaration for review to An Bord Pleanála on the 22nd day of May, 2017:

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

- (a) Section 2 of the Planning and Development Act, 2000, as amended,
- (b) Section 3(1) of the Planning and Development Act, 2000, as amended,
- (c) Section 4(1)(a) of the Planning and Development Act, 2000, as amended,
- (d) Article 9 of the Planning and Development Regulations, 2001, as amended,
- (e) Parts 1 and 3 of Schedule 2, with particular reference to Class 37 of Schedule 2, of the Planning and Development Regulations, 2001, as amended,
- (f) the referrers submission,
- (g) the planning authority's assessment,
- (h) the report of the inspector.

AND WHEREAS An Bord Pleanála has concluded that:

That the proposed use of the top level (level 6) at St Stephen's Green Shopping Centre Car Park for a temporary event as an outdoor movie theatre, with capacity for no more than 350 patrons per screening, together with associated facilities including the provision of a bar and food, being an event of recreational character, in which the said property shall not be used for the said purpose either continuously for a period exceeding 15 days or occasionally for periods exceeding an aggregate 30 days in any year, would by virtue of the said works constitute development, which would, under Section 4(1)(h) of the Planning and Development Act, 2000 – 2015 and Class 37 of the Planning and Development Regulations 2001, as amended, be exempted development.

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 temporary event as an outdoor movie theatre development is development and is exempted development.

Karen Hamilton
Planning Inspector

21st of August 2017.