



An
Bord
Pleanála

Inspector's Report RL91.RL3600

Question

Whether erection of external 3 sq.m. advertising panel mounted on a metal frame advertising structure with negligible surface area is or is not development or is or is not exempt development.

Location

St. Nessian's Road, Limerick

Declaration

Planning Authority

Limerick City and County Council

Planning Authority Reg. Ref.

DC-239-15

Planning Authority Decision

None

Referral

Referred by

Limerick City and County Council

Owner/ Occupier

Unicorn Bar & Restaurant

Observer(s)

None

Date of Site Inspections

23/10/17 & 05/12/17

Inspector

Pauline Fitzpatrick

1.0 Site Location and Description

- 1.1. The Unicorn Restaurant and Bar is accessed from St. Nesson's Road to the south-west of Limerick City Centre. St Nesson's is a regional road which serves the south-west of the city where significant land uses include Dooradoyle Shopping Centre and Limerick Regional Hospital.
- 1.2. There is a steel mounted frame on a trailer with wheels positioned up against the northern boundary wall of the premises. The dimensions are approx. 2.44 metres by 2.5 metres giving an area of approx. 6 sq.m. On days of inspection an advertisement with dimensions of approx. 1.2 metres by 2.44 metres (2.9 sq.m.) was erected on the frame so as to be visible by traffic travelling in a northerly direction towards Limerick City. Further signage advertising upcoming events at the venue was noted on the freestanding column along the road frontage.

2.0 The Question

- 2.1. Whether the erection of an external 3 sqm advertising panel mounted on a metal frame advertising structure with a negligible surface area located within the boundaries of the Unicorn Bar and Restaurant at Nesson's Road Limerick is or is not development or is or is not exempted development.

3.0 Planning Authority Declaration

3.1. Declaration

The Planning Authority has referred the question to the Board for adjudication.

4.0 Planning History

The planning history on the overall site of the Unicorn Bar and Restaurant is set out in the planning authority's referral to the Board.

5.0 Policy Context

5.1. Limerick County Development Plan 2010 (as extended)

Section 10.7 sets out the development management requirements for advertising/advertisement signs. They are required to be sympathetic in scale, design, materials and colour and be sympathetic with their surroundings. It is policy to limit the number of signs where it is considered they would lead to a cluttered appearance on a building.

5.2. Natural Heritage Designations

None in the vicinity.

6.0 The Referral

6.1. Referrer's Case

The planning authority has referred the question to the Board for adjudication.

- The structure is used to support signs of varying sizes from time to time and enforcement proceedings were initiated against the owners on the grounds that the development is unauthorised.
- The sign was reduced in size but the support structure remained in place. The planning authority was not going to take any further action but an inspection on the 13/06/17 has shown a new sign erected on the support structure.
- In considering the question the Council had regard to:
 - (a) Section 2, 3 and 4 of the Planning and Development Act, 2000, as amended
 - (b) Articles 6 & 9 of the Planning and Development Regulations 2001 as amended and the classes set out in Part 2 of Schedule 2 of the Regulations as amended.
 - (c) The planning history of the site (details provided)

The planning authority's submission to the Board also includes correspondence between itself and the agent for the owner/occupier, summarised as follows:

- Warning letter dated 18/10/16 which states that the mobile sign is unauthorised.
- Letter from agent for the owner/occupier dated 16/11/16. It is their opinion that the advertising panel in question should be deemed a temporary sign ie. advertising sign that is in place for less than 1 month. The trailer on which the signage is mounted is secondary and incidental to the temporary signage. The subject company from time to time advertises events or upcoming functions at the venue but are minded not to exceed the 1 month period allowable so as not to trigger a requirement for consent or permission.
- Email correspondence dated 22/11/16 stating that the proprietor is willing to modify the existing signage in order to comply with the exemption offered under Part 2, Schedule 2 Class 1(3).
- Email correspondence from the planning authority dated 25/11/16 stating the proposal to be acceptable and seeking confirmation of when the replacement sign would be in place so it could be inspected to confirm that it meets the size requirements.
- Report from the Development Inspector dated 12/0/417 in which it was noted that a large mobile sign had been erected on the site and that the sign and its support structure exceeds the 3 sq.m. exemption.
- Enforcement Notice dated 21/04/17 requiring the removal of the unauthorised sign and support structure permanently.
- Letter from agent representing the owner/occupier dated 28/04/17 following the enforcement notice stating that the sign will no longer exceed the maximum allowable area. The planning authority had previously expressed satisfaction with the 3 sq.m. sign as proposed in an email dated November 2016. However with the recent enforcement letter there appears to be confusion and uncertainty again. Should the planning authority decide to continue with enforcement action on foot of having

changed their position on the exempt nature of the advertising panel it is requested that the case be referred to the Board.

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

No response received.

7.0 **Statutory Provisions**

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

Section 2

“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;

Section 3 (1)

“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.

(2) For the purposes of subsection (1) and without prejudice to the generality of that subsection—

(a) where any structure or other land or any tree or other object on land becomes used for the exhibition of advertisements, the use of the land shall be taken as having materially changed.

Section 4 (1) (a) – (l) sets out what is exempted development for the purposes of this Act.

Section 4 (2) provides for the making of Regulations. The main Regulations are the Planning and Development Regulations, 2001 (as amended).

7.2. Planning and Development Regulations, 2001

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 -

(i) such development complies with the conditions and limitations specified in column 2 of the said Part 2 opposite the mention of that class in the said column 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 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 1.

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

(i) the area of such advertisement structure which is used for the 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.

Article 9 (1) (a) sets out the instances where development, to which Article 6 relates, shall not be exempted development for the purposes of the Act.

Schedule 2, Part 2: Exempted Development – Advertisements

Column 1 Description of Development	Column 2 Conditions and Limitations
<p>CLASS 1</p> <p>Advertisements (other than those specified in classes 2, 3 or 5 of this Part of this Schedule) exhibited on business premises, wholly with reference to the business or other activity carried on or the goods or services provided on those premises.</p>	<p>3. The total area of such advertisements which are not exhibited on or attached or affixed to a building on the premises shall not exceed 3 square metres, of which not more than 1.5 square metres shall consist of advertisements which are illuminated.</p> <p>4. (a) No part of any such advertisement which is not exhibited on or attached or affixed to a building on the premises, or of an advertisement structure on which it is exhibited, shall be more than 2.5 metres in height.</p>

8.0 Assessment

In the absence of any drawings or specifications accompanying the referral I measured the metal frame support structure on site which I estimate to have an area of approx. 6 sq.m. An advertisement panel was erected on same when inspected which had an area of approx. 3 sq.m. Further advertisements for upcoming events at the venue were also noted erected on the freestanding column within the site curtilage.

8.1. Is or is not development

In the context of the definition of development as set out in Section 2 (1) of the Planning and Development Act, 2000, as amended, namely 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, and the consequent definition of works as 'any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal', I submit that the placement of the freestanding advertisement frame would have entailed an act or operation ie. manoeuvring the structure into position and ensuring it is secured. I therefore consider that works occurred and so development has occurred.

8.2. Is or is not exempted development

In view of the definitions as set out in section 2 of the Planning and Development Act, 2000, as amended, a differentiation is made between 'advertisement' and 'advertisement structure'.

I submit that the metal frame on the trailer would come within the definition of advertisement structure in that it is a framework/device which is used or intended for use for exhibiting advertisements. As noted above I estimate the structure to have an area of approx. 6 sq.m. (due to its position up against the boundary wall advertisements are placed on one site only).

Article 6(2)(b) of the regulations states that development consisting of the erection of such an advertisement structure for the exhibition of an advertisement of any one of the classes specified in column 1 of Part 2 of Schedule 2 shall be exempted development for the purposes of the Act, provided that the area of the structure to be 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 .

In terms of the exempted development provisions I consider that Class 1 is of relevance, namely an advertisement exhibited within business premises, wholly with reference to the business or other activity carried on or the goods or services provided on those premises. Condition 3 attached to the class restricts the total area of such advertisements not affixed to the building to not more than 3 square metres.

The question posed in the referral makes reference to a 'metal frame advertising structure with negligible surface area'. 'Surface area' could reasonably be defined as the area of a surface or of all of the outer surfaces of an object. There is no differentiation made between area and surface area in article 6(2)(b). As noted above the metal frame structure has an area of approx. 6 sq.m. As such the advertising structure does not comply with the size restriction as set out in Class 1 and is therefore not exempted development.

The fact that the advertisement erected on the structure may not exceed the 3 sq.m. limit does not negate the fact that structure, itself, is not exempted development.

I note that the metal frame, which is in the region of 2.5 metres in height, does not exceed the height restriction (2.5 metres) as stipulated in condition 4 attached to Class 1. As it is mounted on a trailer it has the benefit of additional height above the ground so as to be visible by traffic travelling in a northerly direction towards Limerick City.

As calculated on the days of inspection the respective advertisements on the metal frame had areas of approx. 3 sq.m. which complied with the limit referenced against class 1 above. However I consider that it is relevant to have regard to the other advertisement panels erected within the curtilage of the site but not affixed to the building, notably those erected on the freestanding column advertising upcoming events in the premises. These, coupled with that on the metal frame would exceed 3 sq.m. Therefore the advertising sign does not comply with condition 3 applicable to the exempted development class.

8.3. Recommended Rewording of Question

In view of the above assessment and the fact that there is no differentiation made in article 6(2)(b) between 'area' and 'surface area' the Board may wish to reword the question posed as follows.

Whether the erection of an external 3 sqm advertising panel mounted on a metal frame advertising structure located within the boundaries of the Unicorn Bar and Restaurant at Nessian's Road Limerick is or is not development or is or is not 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 whether the erection of an external 3 sqm advertising panel mounted on a metal frame advertising structure within the boundaries of the Unicorn Bar and Restaurant at St.Nessan's Road Limerick is or is not development or is or is not exempted development.

AND WHEREAS the said question was referred to An Bord Pleanála by Limerick City and County Council, Dooradoyle, Co. Limerick on the 30th day of June, 2017:

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

- (a) sections 2(1), 3(1), 3(2) and 4 of the Planning and Development Act, 2000, as amended,
- (b) the definitions of “advertisement”, “advertisement structure” as set out in section 2(1) of the Planning and Development Act, 2000, as amended,
- (c) Section 3(1) of the Planning and Development Act, 2000,
- (d) Section 4(1)(a) of the Planning and Development Act, 2000, as amended,
- (e) Articles 6 and 9 of the Planning and Development Regulations, 2001, as amended,
- (f) Class 1 of Part 2 of Schedule 2 to these Regulations,
- (g) the report of the Inspector

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The metal frame advertisement structure constitutes an advertisement structure within the meaning of section 2(1) of the Planning and Development Act, 2000, as amended,
- (b) The advertisement panel constitutes an advertisement within the meaning of section 2(1) of the Planning and Development Act, 2000, amended,
- (c) The installation of the metal frame advertisement structure required the carrying out of works which constitute development,
- (d) The area of the metal frame advertisement structure, which exceeds 3 square metres, does not comply with the conditions and limitations of Class 1, Part 2, Schedule 2 of the Planning and Development Regulations, 2001, as amended, in respect of total area,
- (e) The advertisement erected on the metal frame, coupled with the other advertisements within the curtilage of The Unicorn Bar and Restaurant but which are not exhibited on or attached or affixed to the building on the premises exceed 3 sq.m. and does not comply with the conditions and limitations of Class 1, Part 2, Schedule 2 of the Planning and Development Regulations, 2001, as amended, in respect of total area.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (4) of the Planning and Development Act, 2000, hereby decides that the metal frame advertisement structure and advertisement thereon at the Unicorn Bar and Restaurant, St. Nessian's Road, Limerick is development and is not exempted development.

Pauline Fitzpatrick
Senior Planning Inspector

December, 2017