



An
Bord
Pleanála

Inspector's Report RL29N.RL3623

Question

Whether various elements of shopfront signage, projecting banner and electronic window display constitutes development and if so, whether it is or is not exempted development.

Location

19-22 Earl Street North, Dublin 1.

Declaration

Planning Authority

Dublin City Council.

Planning Authority Reg. Ref.

0258/17.

Applicant for Declaration

Heatons Unlimited Company.

Planning Authority Decision

Is not exempted development.

Referral

Referred by

Heatons Unlimited Company.

Owner/ Occupier

SportsDirect.com.

Observer(s)

None.

Date of Site Inspection

21 November 2017

Inspector

Una O'Neill.

Contents

1.0 Site Location and Description	4
2.0 The Question	4
3.0 Planning Authority Declaration.....	5
3.1. Declaration.....	5
3.2. Planning Authority Reports	5
4.0 Planning History.....	6
5.0 Policy Context.....	6
5.1. Dublin City Development Plan 2016-2022	6
6.0 The Referral.....	7
6.1. Referrer's Case	7
6.2. Planning Authority Response	9
7.0 Statutory Provisions.....	9
7.1. Planning and Development Act, 2000.....	9
7.2. Planning and Development Regulations, 2001 (as amended)	10
8.0 Assessment	11
8.2. Is or is not development.....	11
8.3. Is or is not exempted development	11
9.0 Recommendation.....	16

1.0 Site Location and Description

- 1.1. The subject site is located within Dublin City Centre, east of O'Connell Street and north of the River Liffey within the retail core of the city. The 3-4 storey building is t-shaped and has frontage onto three streets. The larger active frontage is onto the existing paved pedestrianised street at North Earl Street, which is a short distance from the junction with O'Connell Street. The building extends the depth of the block with its rear elevation/services entrance from Cathedral Street. The building also extends behind the adjoining buildings to the east with an additional active frontage onto Marlborough Street (doors to this elevation are permanently locked).
- 1.2. The site is bounded to the east by an existing four-storey building with a hairdressing salon at ground floor level, and to the west by an existing four-storey supermarket unit.

2.0 The Question

2.1. Whether ...

1. The blue, red and white Sports Direct.com lettering attached to the fascia board over the main entrance on North Earl Street
2. The brand names and logos on the fascia board over the main entrance on North Earl Street (namely Puma, Adidas, Nike and Under Armour)
3. The double sided projecting banner sign located at upper storeys denoting Sports Direct.com
4. The Sports Direct.com lettering at Marlborough Street
5. The Adidas and Nike brand name logos located on the fascia panel above the entrance and window display at Marlborough Street

And the:

6. Solid black panel located at 1st floor level with advertising including USC House of Brands
7. Black banner located between the 1st and 2nd floor level including Jack Jones, Luke, Henri Lloyd, Calvin Klein, Lyle & Scott, Pretty Green, Hilfiger Denim, Replay, Levi's and Emporio Armani

8. Small black advertising panel located to the right of the main entrance at ground floor denoting USC, House of Brands, Calvin Klein, Tommy Hilfiger, Emporio Armani, Levi's Replay, Converse, Vans, Off the Wall and Jack Jones

9. Electronic Window Display located to the left of the entrance at ground floor level on North Earl Street.

...constitutes development and if so, whether it is or is not exempted development.

3.0 Planning Authority Declaration

3.1. Declaration

The Planning Authority decision states that the following works do not constitute exempted development and require planning permission.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The proposed works do not fall within Part 2 Schedule 2 of the Planning and Development Regulations 2001 (as amended) in relation to exemptions for signage.
- The colours, quantum of signage and panels is far more extensive in comparison to the previous signage along this frontage.
- The Marlborough Street signage comprises of a black fascia with corporate signage and logos. The previous signage comprised of the name of the premises only with white lettering on a red background. The current arrangement comprises of extensively raised lettering of signage and logos with varying colours.
- The double sided projecting sign at upper floor level is materially different in terms of size and colour of the previous sign, and would materially affect the character of the building, streetscape and the wider architectural conservation area.

- The signage and shopfront alterations, erection of additional signage and panels of different colours, dimensions and materiality is development and is not exempted development by virtue of a change in the character of that signage that materially affects the character of the structure and the character of the architectural conservation area.

3.2.2. Other Technical Reports

None.

4.0 Planning History

4452/16: Permission REFUSED for erection of fascia signage, a new projecting banner sign, internal poster signage behind the main display windows and erection of new branded flags on flag poles on Earl Street North and erection of fascia signage on Marlborough Street elevation.

1888/08: Permission GRANTED for alterations to the existing elevations, consisting of amendments to existing shopfront including new canvas to existing awning, upgrading of fascia, new fascia signage with internally illuminated stainless steel lettering & projecting sign with internally illuminated stainless steel lettering to Earl Street North elevation, amendments to existing shopfront consisting of replacing existing customer entrance with new display window, upgrading existing fascia, new fascia level signage with internally illuminated stainless steel lettering & projecting sign with internally illuminated stainless steel lettering to Marlborough Street elevation, new fire escape door at ground floor level discharging into existing laneway between Boyers and No. 88 Marlborough Street and removal of fascia level signage to Cathedral Street elevation (development is within an Architectural Conservation Area).

E09777/16: Enforcement file open.

5.0 Policy Context

5.1. Dublin City Development Plan 2016-2022

The following zoning and designations apply to the subject site:

- Zoning Objective Z5 – ‘to consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity’.
- Architectural Conservation Area (ACA) of O’Connell Street and Environs 2001.
- Scheme of Special Planning Control for O’Connell Street and Environs 2016:
Key Objective: To redress the decline in quality and presentation of buildings and shopfronts within the O’Connell Street Area Special Planning Control Scheme.
Key Objective: The control of advertisement structures and the exhibition of advertisements.
Key Objective: It is an objective to ensure that all new advertisement structures erected in the area are well designed. Dublin City Council will permit only advertisements which are designed sensitively and which will enhance the appearance and vitality of the area.
- Earl Street is identified as a Category 1 premier shopping street and Marlborough Street is identified as a Category 2 premier shopping street.

RD15: To require a high quality of design and finish for new and replacement shopfronts, signage and advertising. Dublin City Council will actively promote the principles of good shopfront design as set out in Dublin City Council’s Shopfront Design Guidelines. (www.dublincity.ie) (see also 16.24.2)

6.0 The Referral

6.1. Referrer’s Case

- The improvements/alterations to the building which are a replacement of the former branding and signage used by Boyers does not impact on the character of the structure or on the surrounding structures.
- The pallet of colours, letters and logos as existed was extensive and set a certain character especially on Earl Street North. Boyers was marketed as a department store and fulfilled the role of anchor store for Earl Street North.

The current signage mirrors the character of the Boyers store and does not impact in a material way on the character of the structure or of the neighbouring structures.

- The changes contribute to the overall established character of the building as a department type store and is in keeping with the Boyers unit.
- The changes contribute to the overall established character of the building as a department type store and is in keeping with the Boyers unit.
- The character of Boyers as a Department Store and retail anchor incorporated extensive signage and window displays reflecting the substantive nature of its presence and anchor retail role. It is not simply a visual aesthetic but a functional retail anchor. To subdue the presence of the department store would change the character of the building which was bold in its signage and shopfront treatment, and would affect its role within the wider shopping street, materially altering its character in a negative and historically inaccurate manner.
- The appearance of neighbouring structures is not impacted as they remain retail in nature with their own shopfronts and signage.
- The Board is referred to Sections 6 and 7 of the Conservation Impact Assessment carried out by David Slattery which accompanied planning application ref 4452/16, which qualifies the character and role of Boyers. This assessment is available on DCC's search engine.
- The original signage and window displays have no intrinsic historic qualities.
- A retail survey of shoppers on Earl Street North was undertaken seeking information on people's shopping habits before and after Sports Direct arrived, opinions on the signage and the impact on the character of the street. Comments were generally positive. The referrer in conclusion to the survey states that the signage has directly contributed to the reestablishment of a major retail presence on Earl Street North thus re-establishing the buildings prominent role.
- Sports Direct is a department store with the large mix of brand names. The store will once again attract shoppers to this street, enhancing its footfall,

vitality and viability. That is the role of the department store, to be the main draw, off which other retail units feed. In this regard, the referrer considers the changes made by SportsDirect.com are a *prime facie* example of the purpose of Section 4(1)(h).

- A visual comparison of the existing and previous shopfronts has been undertaken and is set out within the report. The changes are not considered material.
- The true purpose of section 4(1)(h) is to allow the character of something that exists or existed to be revisited without a need to seek planning permission. The key is to capture the overall character of what went before. It is not an exercise of simple, slavish adherence to past dimensions, letter fonts and colours. If it were section 4(1)(h) would not have included the word character.

6.2. Planning Authority Response

No further comment.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

Section 2(1) defines works as follows:

“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 4(1)(h): the following shall be exempted development for the purposes of the Act

(h) ‘development consisting of the carrying out of works for the maintenance improvement further 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 neighbouring structures’.

Section 82(1) states:

Notwithstanding paragraph (a), (h), (i), (ia), (j), (k) or (l) of section 4(1), or any regulations made under section 4(2), 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.

Section 87 states as follows in regard to development in a Special Planning Control Area:

“87 – (1) F139 [Notwithstanding paragraph (a), (h), (i), (ia), (j), (k) or (l) of Section 4 (1), or any regulations made under Section 4(2)], any development within an area of special planning control shall not be exempted development where it contravenes an approved scheme applying to that area.”

7.2. **Planning and Development Regulations, 2001 (as amended)**

Part 2 Schedule 2 of the Planning and Development Regulations 2001 (as amended) relate to Exempted Development – Advertisements.

Article 6(2)(b) states the following:

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,

(iv) 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...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

Article 9(1) states the following:

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

(a) if the carrying out of such development would –

(xii) 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...and the development would materially affect the character of the area,

8.0 **Assessment**

8.1. The works relate to existing shopfront signage on the North Earl Street and Marlborough Street elevations of SportsDirect.com. The question is broken down by the applicant into 9 items. Items 1-5 relate to signage which replaced the previous signage that existed on the building and items 6-9 relate to new items of signage on the shopfront and front elevations at ground, first and second floor level. The building in question is located within O'Connell Street and Environs Architectural Conservation Area, but is not a protected structure. The Scheme of Special Planning Control for O'Connell Street and Environs 2016 applies to the subject site.

8.2. **Is or is not development**

8.2.1. The replacement of the former signage and branding and the application of additional signage to this building is considered to constitute works, as per Section 2(1) of the Planning and Development Act 2000 (as amended) and is therefore development. This issue is not contested by the parties.

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

8.3.1. Development can be exempted from the requirement for planning permission by either section 4 of the Planning and Development Act, 2000 (the Act), or article 6 of the Planning and Development Regulations 2001 (as amended).

8.3.2. With regard to section 4(1)(h) of the Act, I note that the provision relates to works for the maintenance, improvement or other alteration of a structure 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 neighbouring structures.

8.3.3. Section 82(1) of the Planning and Development Act (2000) states that notwithstanding paragraph section 4(2), 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.

8.3.4. Section 87 states as follows in regard to Development in Special Planning Control Area:

“87 – (1) F210 [Notwithstanding paragraph (a), (h), (i), (ia), (j), (k) or (l) of Section 4 (1), or any regulations made under Section 4(2)], any development within an area of special planning control shall not be exempted development where it contravenes an approved scheme applying to that area.”

8.3.5. The Scheme of Special Planning Control for O’Connell Street and Environs 2016 states the following development control standards will be applied to advertisement structures:

- Advertisements and signs relating to uses above ground floor level should generally be provided at the entrance to the upper floors, in a form and design which does not detract from, or impinge upon the integrity of the ground floor shopfronts or other original elevational features of the building...
- The provision of any additional advertisement panels, signage or advertising features at or above ground floor level on the facades or gables of buildings will not be permitted....
- The provision of lettering on upper floor windows for the upper floor uses should not exceed 25% of the glazed area (measured as a rectangle enclosing all letters). The remaining window area shall be clear glazing...
- Internally illuminated signs including box signs, illuminated scrolling signs, digital signs or signs using exposed neon tubing will not generally be permitted either on fascia board, shopfront, the façade (s) of a building or internally behind the glazing or shopfronts. Projected imagery or advertising

(internal and external) and the installation of projection film on glazing or facades will generally not be permitted.

Overview

- 8.3.6. The amended/replacement signage and new signage subject of this referral relates to the North Earl Street and Marlborough Street elevations of this building. The photos submitted as part of the referral include the former fascia and signage to the building when it was occupied by Boyers, with a comparison to the current signage relating to SportsDirect.com and associated brands, as well as new signage which has been added to the shopfront and elevations. I will assess each of the items hereunder.

Items 1 & 2

- 8.3.7. With regard to the North Earl Street elevation, the fascia panel was previously a red rectangular panel added to a wider shopfront fascia with painted lettering stating Boyer & Co. There was a projecting awning below the fascia panel and above it there were 5 flags. A square projecting sign was located at the end of the fascia panel. The current fascia panel has omitted the red panel, with the name of the shop and logos attached to the entire width and length of the previous background fascia. The change in signage is materially different to that which existed previously given the reduced definition of the fascia through the omission of the red panel, the scale of the lettering used, the additional use of logos on the fascia, and the materials used to form the lettering. The proposal in my view does not come within section 4(1)(h) of the Planning and Development Act 2000 (as amended) as it materially impacts on the character of the building so as to render the appearance inconsistent with the character of the structure, given the oversized scale of the lettering, the lack of a proportionately defined fascia panel onto which the lettering sits (which previously existed) and the use of logos onto the shopfront. The changes in my view also materially affect the external appearance of the existing building so as to materially affect the character of the ACA due to the scale and design of the signage and would therefore fall under the restriction set out in Section 82 of the Planning and Development Act 2000 (as amended). The proposal is also, therefore, not considered exempted development under article 6 of the Planning and Development Regulations 2001 (as amended), as the restrictions under Section 82 apply.

Item 3

- 8.3.8. With regard to the existing elongated projecting banner sign at first and second floor level, the existing sign is smaller and less obtrusive than that which previously existed. Therefore, with regard to section 4(1)(h) the existing replacement sign is not considered to be so materially different as the previous sign as to materially affect the external appearance of the existing building. However the amended signage does in my view materially affect the character of the Architectural Conservation Area given its visual impact on the streetscape and contribution to visual clutter, affecting the character of the area. As such any exemptions under Section 4 of the Planning and Development Act 2000 (as amended) or article 6 of the Planning and Development Regulations 2001 (as amended) do not stand having regard to Section 82 of the Planning and Development Act 2000 (as amended), which removes any exemptions to works to the exterior of structure in an ACA where those works would materially affect the character of the area.

Item 4 & 5

- 8.3.9. With regard to the Marlborough Street elevation, the fascia panel was previously a red rectangular panel added to the wider shopfront fascia with painted lettering stating Boyer & Co. There was also a small square projecting sign on this elevation. The current fascia panel has omitted the red panel, with the name of the shop and two logos attached to the entire width and length of the previous background fascia. The proposal in my view does not come within section 4(1)(h) of the Planning and Development Act 2000 (as amended) as it materially impacts on the character of the building given the oversized scale of the lettering, the lack of a proportionately defined fascia panel onto which the lettering sits (which previously existed) and the use of logos onto the shopfront. The changes in my view also materially affects the external appearance of the existing building so as to materially affect the character of the ACA due to the scale and design of the signage. As such any exemptions under Section 4 of the Planning and Development Act 2000 (as amended) or article 6 of the Planning and Development Regulations 2001 (as amended) do not stand having regard to Section 82 of the Planning and Development Act 2000 (as amended), which removes any exemptions to works to the exterior of structure in an ACA where those works would materially affect the character of the area.

Items 6-7

- 8.4. The solid black panel located at 1st floor level extends across the width of the building (approx. 12m in length) with an additional large sign beneath this which sits between this level and the shopfront fascia.
- 8.4.1. The proposal in my view does not come within section 4(1)(h) of the Planning and Development Act 2000 (as amended) as it materially impacts on the character of the building given the location of the signage above the ground floor, material used for the signage, and the scale of the lettering. The signs in my view also materially affect the external appearance of the existing building so as to materially affect the character of the ACA due to the scale and design of the signage. As such any exemptions under Section 4 of the Planning and Development Act 2000 (as amended) or article 6 of the Planning and Development Regulations 2001 (as amended) do not stand having regard to Section 82 of the Planning and Development Act 2000 (as amended), which removes any exemptions to works to the exterior of a structure in an ACA where those works would materially affect the character of the area.

Item 8

- 8.4.2. The rectangular shaped black advertising panel located to the right of the main entrance at ground floor addressing North Earl Street denotes a number of different brand names. The sign in terms of section 4(1)(h) materially affects the character of the building, in my view, being signage which is not contained within the normal fascia panel of the building. The proposal also in my view materially affects the external appearance of the existing building so as to materially affect the character of the ACA due to the scale and design of the signage. The proposal is therefore not considered exempted development under article 6 of the Planning and Development Regulations 2001 (as amended) having regard to Section 82 of the Planning and Development Act 2000 (as amended), which removes any exemptions to works to the exterior of a structure in an ACA, where those works would materially affect the character of the area.

Item 9

- 8.4.3. The Electronic Window Display located to the left of the entrance at ground floor level, which is located behind and occupies the width of one of the window panels,

materially affects the external appearance of the existing building and materially affects the character of the ACA due to the scale and design of the signage. The proposal is therefore not considered exempted development under section 4 of the Planning and Development Act 2000 (as amended) and article 6 of the Planning and Development Regulations 2001 (as amended), as Section 82 of the Planning and Development Act 2000 (as amended), removes any exemptions to works to the exterior of structure in an ACA where those works would materially affect the character of the area. The electronic window display is not in accordance with the Scheme of Special Planning Control for O'Connell Street and Environs 2016 as it will not enhance the appearance and vitality of the area, therefore section 87 of the Planning and Development Act 2000 (as amended) applies.

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:

1. The blue, red and white Sports Direct.com lettering attached to the fascia board over the main entrance on North Earl Street
2. The brand names and logos on the fascia board over the main entrance on North Earl Street (namely Puma, Adidas, Nike and Under Armour)
3. The double sided projecting banner sign located at upper storeys denoting Sports Direct.com
4. The Sports Direct.com lettering at Marlborough Street
5. The Adidas and Nike brand name logos located on the fascia panel above the entrance and window display at Marlborough Street

And the:

6. Solid black panel located at 1st floor level with advertising including USC House of Brands
7. Black ban located between the 1st and 2nd floor level including Jack Jones, Luke, Henri Lloyd, Calvin Klein, Lyle & Scott, Pretty Green, Hilfiger

Denim, Replay, Levi's and Emporio Armani

8. Small black advertising panel located to the right of the main entrance at ground floor denoting USC, House of Brands, Calvin Klein, Tommy Hilfiger, Emporio Armani, Levi's Replay, Converse, Vans, Off the Wall and Jack Jones

9. Electronic Window Display located to the left of the entrance at ground floor level on North Earl Street.

is or is not development and if so or is or is not exempted development:

AND WHEREAS Heatons Unlimited Company requested a declaration on this question from Dublin City Council and the Council issued a declaration on the 1st day of August, 2017 stating that the matter was not exempted development:

AND WHEREAS Heatons Unlimited Company referred this declaration for review to An Bord Pleanála on the 25th day of August, 2017:

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

- (b) Section 2(1) of the Planning and Development Act, 2000, as amended,
- (c) Section 4(1)(h) of the Planning and Development Act, 2000, as amended,
- (d) Section 82 of the Planning and Development Act 2000, as amended,
- (e) Section 87 of the Planning and Development Act 2000, as amended,
- (f) Article 6(2)(b) and article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (g) Parts 2 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,

- (h) the planning history of the site,
- (i) Scheme of Special Planning Control for O'Connell Street and Environs 2016
- (j) the pattern of development in the area:

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The amended signage constitutes signage which affects the external appearance of the structure so as to render the appearance inconsistent with the character of the structure and of neighbouring structures and are works which would materially affect the character of the O'Connell Street Architectural Conservation Area
- (b) The new signage and electronic window display constitutes signage which affects the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures and are works which would materially affect the character of the O'Connell Street and Environs Architectural Conservation Area
- (c) The proposed signage is contrary to the Scheme of Special Planning Control for O'Connell Street and Environs 2016

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 amended signage, additional signage, and electronic window display is development and is not exempted development.

Una O'Neill
Senior Planning Inspector

22nd January 2018