

OFFALY COUNTY COUNCIL  
DECLARATION UNDER SECTION 5 OF THE  
PLANNING & DEVELOPMENT ACT 2000, AS AMENDED

AN BORD PLEANÁLA

EDG- 068139-23  
ABP-

16 NOV 2023

Fee: € 220 Type: CHG

Time: 15:30 By: HAND

REFERENCE: DEC 23/30

NAME OF APPLICANT: Fergal Mac Cabe

ADDRESS: 4 Summerhill Parade, Sandycove, Co. Dublin. A96 OC6.

ADDRESS FOR CORRESPONDENCE: 4 Summerhill Parade, Sandycove, Co. Dublin. A96 OC6.

NATURE OF APPLICATION: Request for Declaration under Section 5 of the Planning & Development Act 2000, as amended as to whether 1.50 sqm illuminated digital commercial advertising sign is/ is not development and is /is not exempted development.

LOCATION OF DEVELOPMENT: O'Connor SQ Tullamore, Co. Offaly.

WHEREAS A question referred to Offaly County Council as to whether 1.50 sqm illuminated digital commercial advertising sign.

- O Connor Square, Tullamore, Co Offaly

AND WHEREAS Fergal Mac Cabe has requested a declaration on the said question from Offaly County Council.

AND WHEREAS the Planning Authority, in considering this declaration request, had regard particularly to-

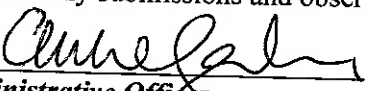
- Section 2 of the Planning & Development Act 2000, as amended.
- Section 3(1) of the Planning & Development Act 2000, as amended.
- Section 4(2) of the Planning & Development Act 2000, as amended.
- Article 6(1) of the Planning and Development Regulations 2001, as amended. Schedule 2, Part 1, Class 31 of the Planning and Development Regulations 2001, as

AND WHEREAS Offaly County Council has concluded that -

- The work is considered development and is exempted development.

NOW THEREFORE Offaly County Council, in exercise of the powers conferred on it by Section 5(2)(a) of the Planning and Development Act 2000 (as amended), hereby decides that the 1.50 sqm illuminated digital commercial advertising sign ancillary to a telephone kiosk is development and is exempted development at O'Connor SQ Tullamore, Co. Offaly.

MATTERS CONSIDERED In making its decision, the Planning Authority had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

  
Administrative Officer

Date

3<sup>rd</sup> November 2023

Note: Any person issued with a Declaration may on payment to An Bord Pleanála, 64 Marlborough Street Dublin 2 of such fees as may be described refer a declaration for review by the board within four weeks of the issuing of the Declaration.

An Bord Pleanála  
64 Marlborough Street  
Dublin 2

15 Nov. '23

**Re: Whether a c. 1.50 sq. m illuminated rolling digital commercial advertising sign in O'Connor Square, Tullamore is or is not development and is or is not exempted development (S. 5 Reference APPEAL)**

A Chara

I wish to appeal the Declaration of Offaly County Council (DEC 23/30, copy attached) on the 3rd November that the above development is development and is exempted development. I attach a cheque for €220, being the required fee. My grounds of appeal are as follows.

### **1.0 Site location**

1.1 The freestanding sign is located on the footpath on the southern side of O'Connor Square in the centre of Tullamore. The Square is recognized as Tullamore's principal civic space<sup>1</sup> and contains the greatest concentration of Protected Structures in the town, including its oldest structure (1743) and its iconic Market House.

1.2 I attach a map of the Square showing the location of the development. I have also identified the buildings which are included in the Record of Protected Structures and on the National Inventory of Architectural Heritage listings and their relevant dates.

### **2.0 The Development the subject of the Referral**

2.1 The Referral relates to an electronic variable messaging sign commonly known as a 'VMS sign' which is affixed to the back of a phone box. The providers or installers of the sign are unknown. The sign and its messaging is not related to any business operating within the Square.

### **3.0 Planning Authority Declaration**

3.1 The text of the Planning Authority Declaration states that it 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 (2) of the Planning and Development Act 2000, as amended.
- (d) Article 6 (1) of the Planning and Development Regulations 2001, as amended.

<sup>1</sup> The Buildings of Ireland Central Leinster' Andrew Tierney Yale University Press 2019

Schedule 2, Part 1, Class 31 of the Planning and Development Regulations 2001, as amended.

3.2 In its Declaration, the Planning Authority concludes that 'the 1.50 sqm illuminated digital commercial advertising sign **ancillary to a telephone kiosk** is development and is exempted development in O'Connor Square, Tullamore County Offaly'

#### **4.0 Planning Authority report**

4.1 The assessor firstly determines that the work constitutes 'development' and then asks if it is exempted development and replies '*Yes-as the signage is an ancillary item to a telephone kiosk*'.

4.2 The assessor then proceeds to alter the text of the question posed to one which accords with this preformulated answer.

4.3 I note that despite the architectural and historical significance of O'Connor Square, the advice of the County Conservation Officer on the Referral was not sought.

#### **5.0 Planning History**

5.1 The site has no previous planning history. The Part 8 application for the Tullamore Street Enhancement Scheme on foot of which the part pedestrianisation of the Square was carried out, contained no proposals for development of any kind on the subject site.

#### **6.0 Policy Context**

##### *6.1 County Offaly Development Plan 2021- 2027*

The provisions of the adopted Development Plan relevant to the subject matter of this appeal are:

##### **BHP-02 Built Heritage**

'It is Council policy to ensure the protection of the curtilage of protected structures or proposed protected structures and to prohibit inappropriate development within the curtilage or attendant grounds of a protected structure which would adversely impact on the special character of the protected structure including cause loss of or damage to the special character of the protected structure and loss of or damage to, any structures of architectural heritage value within the curtilage of the protected structure.'

##### **DMS-89 Outdoor Advertising Signs**

'...outdoor advertising signage will not generally be permitted within the county whether freestanding or attached to buildings.'

##### **DMS-92 Electronic Variable Messaging Signs**

'The use of electronic variable messaging signs commonly known as "VMS signs" shall be reserved strictly for use in roadwork activities, hazard information and or as part of an approved event traffic management plan. Advanced written consent of Offaly Council will be required prior to installation and usage of such signage.'

10.3 'Built Heritage'.

'No works which would adversely affect the character of the Protected Structure or any element of it, which contributes to its special interest may be carried out without planning permission'.

## **7.0 Relevant Planning Decisions**

7.1 I suggest that several recent decisions by the Planning Authority and the Bord are relevant to the consideration of this appeal

22/671

This application for a change of use and alterations to Woodchester House a Protected Structure (RPS 23/023), which adjoins the subject site, resulted in a split grant of permission on the 26th October 2023. The application was accompanied by an Architectural Heritage Impact statement.

The Council granted permission for the change of use but rejected the signage on the grounds that it would result in visual clutter and detract from the character of the Protected Structure.

21/351

This application for the change of use of the former Post Office, a Protected Structure (RPS 23/023), directly beside the subject site, was accompanied by an Architectural Heritage Impact Statement and was granted subject to a condition excluding the signage which was to be the subject of a separate application in the interests of visual amenity.

ABP-309705-21

The Bord deemed the removal by the Council of the raised kerb and wreath laying space of the nearby War Memorial (which is also a Protected Structure RPS / 221) not to be exempted development as claimed by the Council. An Architectural Heritage Impact Statement was not provided to justify the work.

## **8.0 Reason for initiating the Declaration**

8.1 A Planning Enforcement Complaint in relation to the VMS sign was made by me to the Council on the 13th February 2023. Apart from an acknowledgement (UD23/ 009), no further correspondence has been received to date relating to the Complaint. The lack of any communication whatsoever thirty eight weeks after its lodgement necessitated this application for a Declaration.

8.2 I submit that the refusal of the Planning Authority to make a decision on the original Complaint together with the rewording of the text of the Referral in order to justify the development, exhibits bias. I invite the Authority in its response to the Bord to explain why, if

it now deems the development to be exempted, it did not reach the conclusion earlier and avoid the €300 charges and administrative burden necessary to now decide it.

## **9.0 Grounds of Appeal**

### **9.1 Invalid Declaration**

9.1.1 S. 5(2) (a) of the Planning Act 2000 as amended requires that a Planning Authority shall issue a Declaration on the question that has arisen and the main reasons and considerations on which its decision is based. In this instance the Planning Authority has not issued a Declaration based on the question submitted to it but on an entirely different question. I submit that it is not within the powers of the Planning Authority to change the wording of a Referral submitted to it.

9.1.2 As the question as submitted therefore remains unanswered, I ask the Bord to issue a Declaration on the wording of the Referral as presented and not that which the Planning Authority has conveniently asked itself.

### **9.2 Planning Considerations**

#### *9.2.1 Schedule 2, Part 2 of the Planning and Development Regulations 2001 as amended.*

By virtue of its size, location and character, the sign in question falls outside of the advertisements permitted under Schedule 2, Part 2.

#### *9.2.2 Policy DMS-89 of the County Plan.*

The sign is in material contravention of this policy

#### *9.3.3 Policy DMS-92 of the County Plan.*

The sign is in material contravention of this policy.

### **9.4 The impact of the development on the built heritage of O'Connor Square.**

9.4.1 Two sides of the Square consist of nine Protected Structures, the perception of whose architectural quality is enhanced by and dependent upon the space of the Square itself which therefore forms an integral element of their curtilage and attendant grounds. The centre of the Square is occupied by the 1926 War Memorial, itself a Protected Structure of Regional Importance (RPS 23/221).

The Square was recently refurbished and partly pedestrianised on foot of the Tullamore Street Enhancement Scheme.

9.4.2 I attach a drawing of the Square showing the Protected Structures and dates of their erection. As the two attached photographs show, the sign the subject of this Declaration is within the space which forms the curtilage and attendant grounds of all of these Protected Structures. Undeniably the sign by virtue of its scale, illumination and constantly changing character is visually incongruous, disturbing and obtrusive and impacts negatively on the architectural character of the Square.

9.4.3 The sign is therefore in material contravention of Policy BHP-02.

9.4.4 Possibly the most attractive interior space in Tullamore is the glazed Reading Room of the County Library which occupies the eastern side of the Square and looks out onto it. Its west facing sunlit room is a popular location for browsing and reading newspapers. The nearby constantly scrolling VMS sign which is oriented to face directly towards the Reading Room creates a distracting feature and diminishes the amenity of this interior, but nonetheless public, space.

## **10.0 The assessment of the Planning Authority**

10.1 The author of the Planning Authority's report believes the VMS sign the subject of this Declaration to be ancillary to the telephone box behind it.

10.2 'Ancillary' is defined as '*Providing necessary support to the primary activity or operation of a system*'. Clearly, were the VMS sign to be removed tomorrow it would have no impact whatsoever on the working or availability of the adjoining phone box. The VMS sign therefore does not provide any actual ancillary operational support to the phone box and is a stand alone element to be judged on its own merits or demerits.

10.3 It is not disputed that a telephone box is a permitted development within Schedule 2, Part 1, Class 31 of the Planning and Development Regulations 2001. However, the VMS sign the subject of this Referral is not within any permitted Class and is specifically prohibited by Objective DMS- 92 of the County Development Plan.

10.4 I submit that it is an abuse of the statutory planning process to utilise permitted development rights granted for an entirely different purpose as a guise for the erection of VMS signs which are neither incidental or ancillary- particularly for proposals in architecturally sensitive locations.

10.5 This form of development has been the subject of much controversy and litigation in the UK leading to a decision by the Court of Appeal in 2019 that while a public call box is permitted within Part 10 Class A of Schedule 2 to the GPDO, the electronic display panel was not within the permitted class.<sup>2</sup>

10.6 I believe that the planning authority's view that the VMS sign is ancillary to the telephone kiosk is an error.

## **11.0 Precedents**

11.1 I note that all of the Dublin authorities and several other planning authorities require proposals for this burgeoning form of advertising to be the subject of planning applications

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<sup>2</sup> New Word Payphones Ltd v. (1) Westminster City Council (2) The Secretary of State for Housing, Communications and Local Government (2019) EWCA Civ 2250

and to be judged on their merits and this has been accepted by the promoters of such developments. I believe that the development the subject of this referral is the first VMS sign to be introduced to County Offaly.

11.2 I note that Bord has refused permission (29S- 305650) for a recent proposal for a VMS sign in Donnybrook, Dublin having similar characteristics to the circumstances of the present appeal in the following terms:

*' Having regard to its location on a prominent location within the streetscape, and in proximity to historic and contemporary buildings, it is considered that the proposed development would be visually obtrusive, incongruous and out of scale and character with the existing pattern of development in the vicinity. Furthermore, it is considered that the digital format of the proposed advertising at this location, by reason of its illumination and extent of changing advertisements, would seriously injure the visual amenities of the area and would create an undesirable precedent for similar digital advertising at such locations. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area. '*

A somewhat similar conclusion by the Bord would be appropriate in this instance.

## **12.0 Consequences of the Bord's decision**

12.1 Unique amongst Irish planning authorities, Offaly County Council has not utilised Architectural Conservation Area designation to protect the urban heritage of its principal towns- the sole ACA in the entire county being the tiny village of Geashill.

12.2 Should the Bord agree with the Council's decision, the installation of similar VMS signs in other equally if not more important architectural set pieces within the county, such as Emmet Square and St John's Mail in Birr can be regarded as exempted development also, with consequent significant deterioration in the quality of its built heritage.

## **13.0 Conclusion**

13.1 I ask the Bord to consider the Referral on the basis of the wording as presented and to determine that while it is development, it is not exempted development.

Should a submission be received by a third party I would ask for the right to respond.

Mise le meas

Fergal Mac Cabe

4 Summerhill Parade

Sandycove

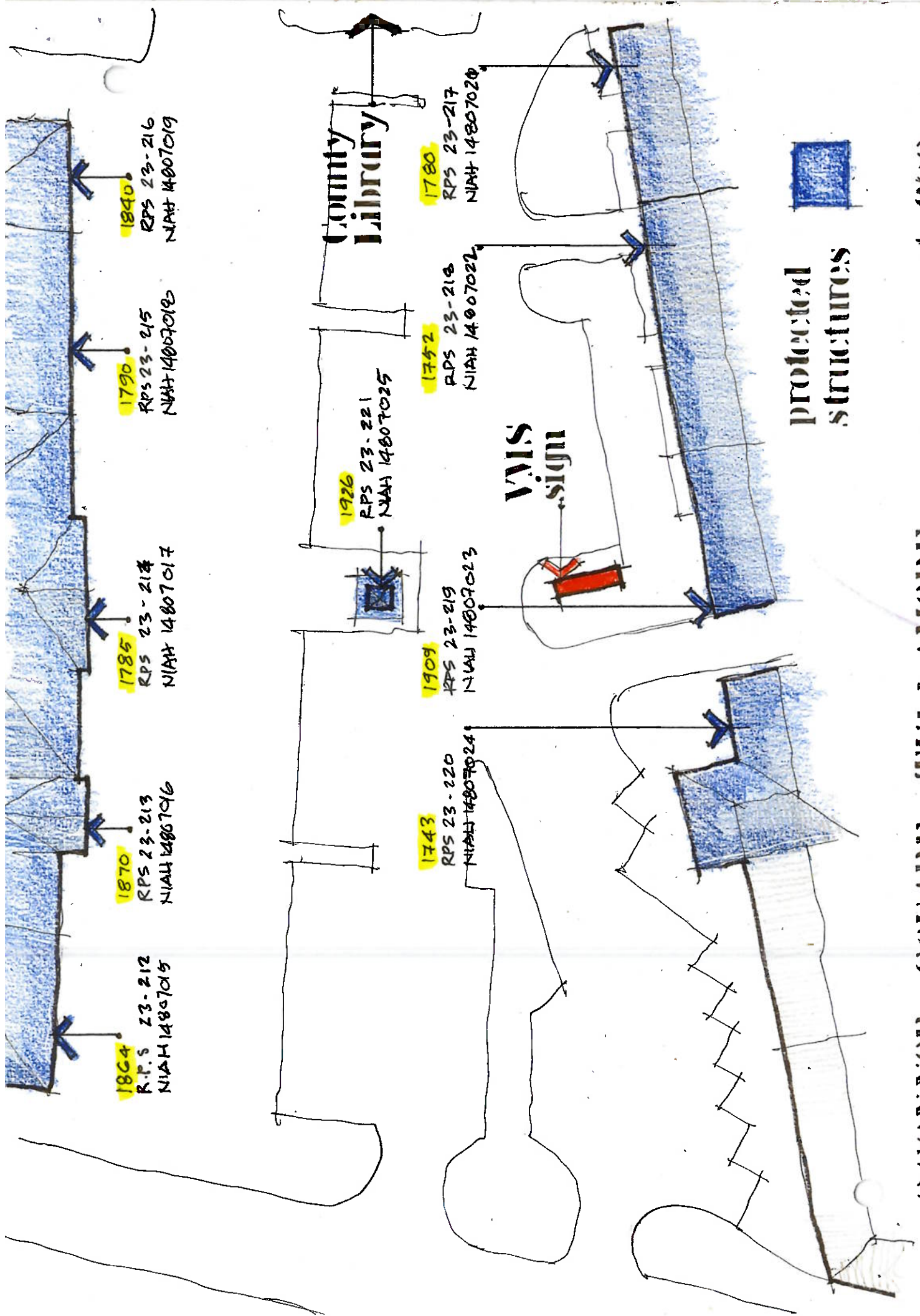
Co. Dublin

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O'CONNOR SQUARE TULLAMORE