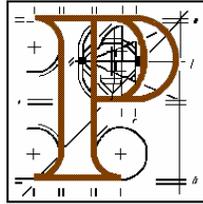


An Bord Pleanála



Inspector's Report

Referral Case: RL3118

Question: Whether the parking of a mobile sign for the purpose of advertising 'Carpets Direct' in the Little Island Business Park, Little Island, Cork, is or is not development and is or is not exempt development.

Referrer: Ger Neary

Planning Authority Cork County Council

PA Ref: D230/13

Date of Inspection: 16/10/13

Inspector: Philip Jones

1.0 Background

This is a review under Section 5(3) of the Act of the declaration made by Cork County Council, on the question as to whether the parking of a mobile sign for the purpose of advertising is or is not development and is or is not exempted development.

I carried out an inspection of the site on Wednesday October 16th 2013, during which I took some photographs that are included in a file pouch, attached to this report, as an Appendix.

A request for a declaration was submitted to the Council by a firm of planning consultants on behalf of referrer, Ger Neary of “Carpets Direct”, on 10th June 2013. The Council issued a declaration on 1st July 2013 which indicated that the parking of the sign constituted development and that it was not considered to be exempted development as it contravened a condition of a planning permission (condition 4 of file ref 06/9008). The review request was made to the Board on 11th July 2013.

2.0 Site Location and Description

The subject site forms part of the “Little Island Business Park”, an industrial park adjoining the N25 National Primary Road to the east of Cork City and to the south of Glounthaune. The business park consists of a number of industrial type units, with access off a large roundabout (called the ‘An Crompan’ roundabout), which roundabout also serves a retail park to the west (known as Eastgate village), and other industrial parks to the east. The southern leg of the roundabout goes onwards to Little Island, where there are extensive residential and other industrial areas. The northern leg of the roundabout runs onto a grade separated interchange with the N25.

The mobile sign is located in a green area immediately beside the roundabout, on lands which appear to be part of the curtilage of the nearby industrial units. It is a large “hoarding” type advertising sign, two sided, approx. 4 metres long and 1.8 metres high, located on top of a standard trailer, which has double wheels on each side. The trailer is affixed, by way of a lock and chain, to the roadside safety barrier, but is otherwise free-standing, on the grass (see photographs).

The sign is readily visible to motorists on the roundabout or approaching the roundabout from the south.

2.1 Planning History

The Planning Authority has referred, in its report on the declaration, to the planning permission for the adjoining business park - file ref. 06/9008. The subject sign is located within the site area of this business park. The details of this permission are as follows:-

Under file ref. **06/9008**, planning permission was granted on 19th December 2006 for the construction of 8 no. light industrial units in 1 no. block, ancillary landscaping, signage, provision of 61 no car parking spaces and site development works at Site 5A, Euro Business Park, Courtstown, Little Island, Co. Cork.

Condition 4 of the permission stated:-

Notwithstanding the exempted development provisions of the Local Government (Planning and Development) Regulations 2001, as amended, signs, symbols, emblems, nameplates or other advertising devices shall not be erected or displayed externally on the site/structures, save with a prior grant of planning permission.

Reason: To safeguard the amenities of the area and because it is considered that the erection of signs, emblems etc warrant the making of an application for and the grant of a planning permission/approval.

The Board will note that the drawings and particulars which were submitted as part of the application (full details of which have been supplied by the Planning Authority and are in a file pouch) indicate no signage at the location of the subject advertising trailer.

3.0 The Referrer's Case

The referrer states that the sign is located in a general area that is already "heavily signed" and that therefore it is not out of keeping or out of context. Some photographs are included showing signage on other areas adjoining the roundabout.

It is submitted that Section 4(1)(h) of the Act applies to the mobile sign, on the basis that the alterations 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.

It is submitted that the signage is completely in keeping with the character of the area, which consists of buildings of a light industrial nature, with and without signage, that are visible from the surrounding area and public roads.

3.1 The Planning Authority's Declaration

The Planning Authority's Declaration of 1st July 2013 states that it is considered that the parking of a mobile sign for the purpose of advertising constitutes development. It states that the Authority had regard to Sections 3 and 4 of the Act, and to Articles 6 and 9 of the Regulations. It also had regard to permission 06/9008 and stated that the sign was not exempted as it contravenes condition 4 of permission 06/9008.

The basis for this Declaration is set out in a report from the Planning Department, dated 28th June 2013. The Planner outlines the relevant legal provisions, and the planning history (noted above). She notes that the business premises advertised on the trailer is located elsewhere in the estate, c. 550m east of the sign, on site 20A Euro Business Park, and that there is no provision within Schedule 2, Part 2 of the Regulations for provision of signage outside of the premises on which the business being advertised is located.

The Executive Planner concludes that, under Section 3(2)(a), the use of the land for the exhibition of advertisements is considered to be development. She notes the referrer's submission regarding Section 4(1)(h), but states that this relates to works for the maintenance, improvement or other alteration of a structure, and does not relate to works being carried out on lands. On this basis, she concludes that Section 4(1)(h) is not a consideration as to whether or not the development falls within the remit of exempted development.

She also concludes that the erection of the advertising structure does not fall within Article 6 of the Regulations, in that the development does not comply with the conditions and limitations of Schedule 2, Part 2.

She then goes on to note that Article 9 of the Regulations specifies that development would not be considered to be exempted where it would contravene

a condition of a permission, and notes that condition 4 of the planning permission specified that any signs etc., had to be the subject of a prior grant of planning permission. She concluded that the parking of the mobile sign within the site was unauthorised development as it materially contravened this condition no. 4.

The Planner's conclusion was that the parking of the mobile sign constitutes development and that the development is not considered to be exempted development under Section 4(1)(h) as the development does not relate to the carrying out of works to a structure. She stated that it was not exempted development as it contravenes condition 4 of permission 06/9008.

3.2 Further Submissions

The referrer was asked by the Board to provide detailed plans and particulars of the mobile sign, a site location map with the sign located on it, and details of the referrer's interest in the lands upon which the sign is situated. In response, the referrer's agents, by letter received on 2nd September, provided such drawings, and stated that the referrer does not own the land, but that he located the sign on it with the landowners' consent. This response was circulated to the Planning Authority for comment, and it has responded (see letter submitted on 19th September) that, regardless of the dimensions of the advertising sign, the development is not considered exempted development, as reported in the Executive Planner's report dated 28/6/13.

4.0 The Question

The question that was put in the Declaration stated as follows:-

"Whether the parking of a mobile sign in the Little Island Business Park for the purpose of advertising 'Carpets Direct' constitutes development and if so, is it exempted development within the provisions of Section 4(1)(h) of the Planning and Development Act 2000".

However, it is evident that what the referrer is actually seeking to establish is whether or not the mobile sign is development and if it is development, whether or not it is exempted development. It would be unfair to him if the question were to be limited to a consideration, in terms of exemption, only to Section 4(1)(h), and accordingly I consider that it would be appropriate for the Board to consider the entirety of the issue. I note that the Planning Authority did not so limit itself

when making its Declaration, and since the Board has been asked to review the Planning Authority's Declaration, it is open to it to consider the matter in a similar way. I therefore consider that the question should be reformulated¹ by the Board, as follows:-

"Whether the parking of a mobile sign in the Little Island Business Park for the purpose of advertising 'Carpets Direct' is or is not development and is or is not exempted development."

5.0 Statutory Provisions

I consider the following to be the statutory provisions relevant to this referral case.

Section 2 (1) of the Act states as follows:-

"In this Act, except where the context otherwise requires –

'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) of the Act states as follows:-

"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 in the use of any structures or other land."

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

(a) where the context so admits, includes the land on, in or under which the structure is situate..."

¹ Note that the Board has power to reformulate the question, as determined by case law (Esat Digifone - v- South Dublin County Council [2002] IEHC 173)

Section 3 (2) of the Act states as follows:-

“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) (h) of the Act indicates that the following is exempted development:-

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

Article 6 (2) of the Regulations states as follows:-

(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 2....

(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 exhibitions 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....”

Article 9 (1) of the Regulations sets out circumstances in which development to which Article 6 relates shall not be exempted development, (a) if the carrying out of such 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.”*

There are no classes set out in Part 2 of Schedule 2 to the Regulations that relate to the subject of this referral (as the subject advertisement is not one that is wholly by reference to the business or other activity carried out on the business premises on which the sign is located).

5.1 Previous Board References/Referrals

I have checked the Board’s referral database, and can find no previous Board decision which relates to the type of advertisement sign – a “mobile sign” or advertisement structure located on a moveable trailer. It would appear that this is the first occasion on which this particular type of signage has been the subject of a referral to An Bord Pleanála.

6.0 Evaluation

6.1 Is the sign development?

The first issue to decide is whether or not the subject mobile sign constitutes development.

The referrer’s agent, in his referencing of Section 4 (1)(h), would appear to be arguing that the sign is a structure. That may indeed be the case, and if so, it is an advertisement structure, as defined by Section 2 (1) of the Act. However, it has not been erected on the site, but has been parked there. It is evident, from the planning history, there was no actual structure there before the trailer was parked on the grass – the grass is part of the overall land that was included within the site of the business park that was the subject of planning permission 06/9008, and is shown in that permission as open.

For there to have been development, there has – under the legislation – to either have been the carrying out of works, or the making of a material change of use of land. Clearly, the parking of a mobile trailer containing an advertisement structure does not involve the carrying out of works on the land in question. Indeed, it is often popularly understood that, because such advertisements are on trailers and are therefore “mobile”, they do not involve works. It is therefore popularly (and erroneously) assumed that they are immune from prosecution (the way a “static” advertisement structure would not be).

However, the Oireachtas has specifically provided for situations such as this, by the inclusion of Section 3 (2)(a). I consider that it is perfectly evident, by reason of this statutory provision, that the parking of the trailer here, on the land in question – which is the open green area to the west of the industrial park, and beside the roadway and roundabout – has involved the change in its use, and that the land in question has become used for the exhibition of advertisements. Therefore the use of the land, by operation of the statute, has to be deemed to have materially changed (from its previous use as a green area), and therefore this change constitutes a material change of use. The parking of the sign therefore constitutes development.

6.2 Is the sign exempted development?

For the sign to be exempted development, there has to be a specific statutory provision providing for such exemption. The referrer’s agent is essentially arguing exemption under Section 4(1)(h). The Planning Authority, in its declaration, has stated that Section 4(1)(h) does not apply here, and that the sign is not exempted under the Regulations, both because there is no suitable exempted provision and also because any claimed exemption would be nullified by condition 4 of the planning permission, pursuant to Article 9(1)(a)(i).

I propose to look at both aspects in turn.

Is the signage exempt under Section 4 (1)(h)?

For the signage to be exempted development, it would have to be within the scope of Section 4 (1) (h). As noted above, this states:-

“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.”

The referrer’s agent’s argument is somewhat opaque, but it would appear that he is arguing that the placing of the sign involved the carrying out of works, which were “alterations” to a structure (see page 4 of his submission), and that these did not materially affect the appearance of the structure so as to render its appearance inconsistent with the character of the structure or of neighbouring structures, as signage is plentiful at this particular location.

I do not feel that the referrer has fully understood the legislative provisions. For the development to be within the scope of Section 4 (1)(h), there has to already have been a structure in place that was subsequently the subject of works involving “maintenance, improvement or other alteration”. There was no such structure – as noted above, there was simply a plot of land, in grass, upon which the mobile sign was placed/parked.

Therefore, I agree with the Planning Authority that Section 4 (1)(h) relates to works being carried out to structures and does not relate to works being carried out on lands. Section 3 (2)(a) of the Act makes it clear that the use of land for the exhibition of advertisements is a material change of use of land, rather than works.

Accordingly, I am satisfied that the placing of the mobile sign is not within the scope of Section 4(1)(h).

Is the sign exempt under the Regulations?

The second issue is whether or not an exemption can be found under the Regulations for this sign. Having carefully considered the matter, I can find no such exemption. The relevant exemptions for signage relating to business premises and goods sold in such premises, set out in Part 2 of Schedule 2, all involve such advertisements being wholly by reference to the business or other activity carried out on the business premises, or the goods or services provided “on those premises” – i.e. on the premises where the advertisements are located. As noted by the Planning Authority, the sign in question advertises “Carpets Direct”, which is a business located some distance away - the Council states this to be some 550m east of the sign, at site 24A Euro Business Park.

However, even if the mobile sign were to advertise goods sold or business transacted within the immediate premises covered by permission 06/9008 – and

thereby could potentially come within the scope of Class 1 of Part 2 – such exemption would be nullified by the provisions of Article 9 (1)(a).

There are two restrictions on exemption involved here.

The first relates to Article 9 (1)(a)(i), which provides that a development that would otherwise be exempt is not exempt where “the carrying out of the development would contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act”. It is quite clear that this would be the situation here, in that the terms of condition 4 of permission 06/9008 requires that no signage, of whatever kind, is to be erected “or displayed externally on the site/structures, save with a prior grant of planning permission”. The effect of this statutory provision, and the wording of the condition, means that no exemption can apply to signage on these premises.

The second restriction on exemption relates to Article 9 (1)(a)(iii), which provides that a development that would otherwise be exempt is not exempt where “the carrying out of the development would “endanger public safety by reason of traffic hazard or obstruction of road users”. I am quite satisfied, from my inspection of the site, that the subject mobile sign is within this category. The sign is located in such a way as it is clearly visible to drivers on the roundabout, or approaching the roundabout from the south. If a driver’s attention is taken by the sign – which is, after all, the whole purpose of the sign, that is, to be read by passing motorists – then there is a very real danger that a traffic accident could take place, as the drivers would be manoeuvring on the roundabout and not be aware of crossing or entering traffic here. In addition, pedestrian traffic, crossing at the roundabout from the adjoining retail park (which is connected to the traffic islands at the entry to the roundabout by a footpath), might be missed as drivers’ attention is momentarily taken by the signage. Accordingly, I would consider that this restriction on exemption also applies to any advertising signage at this location (and the referrer has indicated that there are a number of such signs around the roundabout), as well as to any claimed exemption for the subject sign itself.

In terms of the Board’s Order, however, I consider that reference to Article 9(1)(a)(iii) need not be made, as it is a new issue that was not raised with the parties, and because the subject mobile sign is, in any event, not exempt for other reasons. [I make reference to this aspect for completeness.]

6.4 Conclusion

In the light of the above evaluation, I consider that the mobile sign in question is development, and is not exempted development.

7.0 Recommendation

Having regard to the above, I recommend that the Board should decide as follows:-

WHEREAS a question has arisen as to whether the parking of a mobile sign in the Little Island Business Park for the purpose of advertising 'Carpets Direct' constitutes development and if so, is it exempted development within the provisions of Section 4(1)(h) of the Planning and Development Act 2000.

AND WHEREAS Ger Neary requested a declaration of the said question from Cork County Council on the 10th day of June 2013, and the Council issued a declaration on the 1st day of July 2013.

AND WHEREAS the said Ger Neary referred the declaration to An Bord Pleanála for review on the 11th day of July 2013

AND WHEREAS An Bord Pleanála, in the light of the documentation on the file, and the content of the declaration, has reformulated the question as follows:-

“Whether the parking of a mobile sign in the Little Island Business Park for the purpose of advertising 'Carpets Direct' is or is not development and is or is not exempted development.”

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

- (a) Sections 2(1), 3(1), 3(2) and 4(1)(h) of the Planning and Development Act, 2000, as amended;
- (b) Articles 6(2), 9(1)(a)(i), and 9(1)(a)(iii) of the Planning and Development Regulations 2001, as amended;
- (c) the planning history of the site, and in particular planning permission ref 06/9008, and condition 4 of that permission.

AND WHEREAS An Bord Pleanála has concluded that -

(a) the parking of the mobile sign at this location for the purpose of advertising constitutes a material change of use of the land on which it is located, being the use of land for the exhibition of advertisements, pursuant to Section 3(2)(a) of the Act, and is therefore “development” within the meaning of Section 3 of the Act,

(b) the parking of the mobile sign would not come within the meaning of Section 4 (1)(h) of the Act, not being “development consisting of the carrying out of works for the maintenance, improvement or other alteration of a structure”,

(c) the mobile sign does not come within the scope of any of the exemptions provided for in Part 2 of Schedule 2 to the Regulations, and

(d) any potential exemption that might apply is nullified by the provisions of Article 9(1)(a)(i), as the parking of this sign for the purpose of advertising would contravene the terms of condition 4 of planning permission ref. 06/9008.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5(3) of the Act, hereby decides that the said parking of the sign is development and is not exempted development.

Philip Jones
Assistant Director of Planning
30/10/13