



Appeal Decision

Site visit made on 25 October 2017

by **S J Lee BA(Hons) MA MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 7th November 2017

Appeal Ref: APP/P4605/H/17/3179289

Land at 43-45 Small Heath Highway, Birmingham B10 0BT

- The appeal is made under Regulation 17 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 against conditions imposed when granting express consent.
 - The appeal is made by Mr Paul O'Sullivan of Insite Poster Properties Ltd. against the decision of Birmingham City Council.
 - The application Ref 2017/02840/PA is dated 9 March 2017. The condition in dispute is No 1(8) which states that: *A scheme for the control of the intensity of the luminance of the digital advertisement, to include a dimmer control mechanism and a photo cell which shall constantly monitor ambient light conditions and adjust brightness accordingly, shall be submitted to, and agreed in writing by the Local Planning Authority prior to the display of the advertisements hereby approved. The advertisements shall be displayed in accordance with the agreed scheme thereafter.*
 - The reasons given for the condition are: *In order to safeguard the visual amenity of the area and ensure that the advertisement will not cause distraction to drivers using the adjacent highway in accordance with TP44 of the BDP 2017 and the NPPF 2012.*
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Decision

1. The appeal is allowed and the advertisement consent Ref 2017/02840/PA for display of no. 1 internally illuminated hoarding sign at Land at 43-45 Small Heath Highway, Birmingham B10 0BT granted on 26 May 2017 by Birmingham City Council is varied by deleting condition 1(8).

Procedural Matter

2. There is some discrepancy between the description of development given on the original application form and the Council's decision notice. I have used the wording from the latter in my decision to ensure consistency with the terms of the consent.

Background and Main Issue

3. The Regulations, the National Planning Policy Framework (the Framework) and Planning Practice Guidance (PPG) all make it clear that advertisements should be subject to control only in the interests of amenity and public safety, taking account of cumulative impacts. The Council's decision notice refers to Policy TP44 of the Birmingham Development Plan (BDP)(2017). I have taken this policy into account only insofar as it relates to amenity and public safety.
4. The Council approved the replacement of an existing 96 sheet advertising hoarding for a 48 sheet electronic hoarding, subject to a number of conditions. The condition in dispute seeks to provide controls over the brightness of the

display in the interests of highway safety and visual amenity. The appellant contends that such controls are addressed adequately under condition 1(7) and thus the disputed condition is both unnecessary and unreasonable.

5. Having considered all of the evidence before me, the main issue in this case is whether the disputed condition is necessary or reasonable in the interests of public safety and amenity.

Reasons

6. Regulation 14(1) of the Regulations gives the local planning authority the power to grant express consent subject to the standard conditions and, subject to Regulation 14(7), to such additional conditions as it thinks fit.
7. There is no dispute between the parties that some form of control over the brightness of the display is necessary and reasonable to ensure the safety of drivers approaching the site. Condition 1(7) requires the hoarding to be equipped with a dimmer control and a photo cell which shall constantly monitor ambient light conditions and adjust sign brightness accordingly. This limits the level of luminance to be no greater than 600 candelas in daylight and 300 candelas during the night. It would be reasonable to assume therefore that the Council are satisfied that the maximum brightness of the display as required by this condition is not likely to result in any particular risk to public safety or unacceptably affect the amenity of the area.
8. Condition 1(8) also requires a scheme for the control of the intensity of the luminance of the advertisement which would constantly monitor ambient lighting conditions and adjust brightness 'accordingly'. There is clearly some overlap between conditions 1(7) and 1(8) in this regard. The implication of the Council's evidence is that in certain circumstances the content of the advert can result in something which appears overly bright and that additional controls are required to address this.
9. Clearly, it would not be acceptable for a condition to seek to control the content of an advert. While I do not consider this is what is being suggested by the Council, their evidence nevertheless does not make it clear why the controls required by condition 1(7), which also require the constant monitoring and adjustment of brightness to clearly and acceptably defined parameters, would not be sufficient. On the basis that the requirements of condition 1(7) would limit the actual maximum brightness to 600 or 300 candelas, it is not evident what additional controls would be expected or how they would be measured, monitored or enforced. In this regard, the general reference to adjusting brightness 'accordingly' is somewhat vague and imprecise and the Council's argument that both conditions are needed is unconvincing.
10. I have also noted that in discharging a similar condition on another consent, the Council accepted a scheme which appears to largely reflect the requirements of condition 1(7). This also raises significant concerns over the extent to which the disputed condition merely duplicates the requirements of another other condition and is thus not necessary. I recognise that in this example, there was another condition limiting the overall brightness of the display. However, that particular condition did not refer to the constant monitoring that is required under condition 1(7) and thus there was less of an overlap. If the additional information required by the Council would simply

serve to confirm the details as required under condition 1(7), then such a scheme would be considered unreasonable to request.

11. In conclusion, without any convincing evidence substantiating or justifying the Council's position, I am satisfied that the highway safety and visual amenity concerns highlighted by the Council would be adequately controlled and mitigated by condition 1(7). Consequently, when taking account of paragraph 206 of the Framework and the PPG, I find that condition 1(8) is neither necessary nor reasonable in the interests of public safety or amenity. Moreover, the deletion of this condition would not result in any conflict with BDP Policy TP44 in terms of highway safety or the Council's Location of Advertising Hoardings Supplementary Planning Guidance, which specifically seeks to control the brightness of hoardings.
12. While the decision notice is not clear as to what aspect of the Framework is relevant in this case, there would be no conflict with those elements relating to public safety or the effect of advertisements on the character of an area¹.

Other Matters

13. The Council has referred to complaints and concerns relating to other advertising hoardings in their area and that they are currently working with providers to address issues. However, no specific details have been provided about any of these examples and thus I cannot conclude with any certainty that they would be comparable to the proposal before me. This is particularly the case in terms of whether any comparable conditions have been imposed on such advertisements.
14. The Council has also referred to issues relating to the planning status of the existing hoardings. In light of the fact express consent for their replacement has already been granted this has had no bearing on my decision.

Conclusion

15. For the reasons given above, the appeal is allowed and express consent varied to remove the disputed condition.

S J Lee

INSPECTOR

¹ See paragraphs 17, 32, 66