The Planning Inspectorate

Appeal Decision

Site visit made on 4 February 2020

by R E Walker BA Hons DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 February 2020

Appeal Ref: APP/E5900/Z/19/3240137
Central House, 61 Whitechapel High Street, London E1 7PF

- The appeal is made under Regulation 17 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 against a refusal to grant express consent.
- The appeal is made by Infinity Outdoor Limited against the decision of the Council of the London Borough of Tower Hamlets.
- The application Ref PA/19/01541, dated 28 June 2019, was refused by notice dated 26 September 2019.
- The advertisement proposed is the display of one 52m (length) x 10m (height) externally illuminated banner sign for a temporary period of 18 months from 1 September 2019 to 30 April 2021.

Decision

1. The appeal is dismissed.

Procedural Matters

2. The description on the application form and appeal form differ. The description on the application form indicates that the temporary period for which consent was sought for the advertisement was for a temporary period of 18 months from 1 September 2019 to 30 April 2021. The reference to these dates has been omitted in the description on the appeal form.

3. I am conscious that the appeal process should not be used as a means to progress alternatives to a scheme that has been refused. However, where amendments are proposed, regard should be had to whether the amendments would materially alter the nature of the application and whether anyone who should have been consulted on the changes would be deprived of that opportunity.

4. I recognise that this decision would be issued after the 1 September 2019. In this respect the amended description would in effect extend the period from that originally sought. However, I cannot be certain that there would not be any prejudice to any party should I accept the amended description at this stage. As such, in the interests of fairness and natural justice, I have used the description on the application form which formed the basis of the Council's decision.

Main Issues

5. The main issues in this appeal are the effect of the proposed advertisement on the visual amenity of the area and on public safety.

Reasons

Visual amenity

6. The appeal site is located at the junction of Whitechapel High Street and Commercial Road. This part of Whitechapel High Street is a busy, commercial area located adjacent to the Aldgate East tube station and the area appears to feature small-scale commercial enterprises and larger office and residential buildings.

7. Planning permission was granted in August 2019[1] for, amongst other things, a 6-storey upward extension at the appeal site. The implementation of that development has commenced and necessitates scaffolding for the external works. I saw that this scaffolding has been covered in a grey shroud.

8. The appeal site is located on the edge of, but outside, the Whitechapel High Street Conservation Area (CA). There are also several listed buildings within the area including the grade II* listed Whitechapel Art Gallery, and the grade II listed 88 Whitechapel High Street, Whitechapel Public Library, 32 and 34 Commercial Road.

9. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) requires that special attention shall be paid to the desirability of *'preserving or enhancing the character or appearance'* of a CA. The statutory duty under Section 66(1) of the Act requiring decision makers to have special regard to preserving listed buildings and their settings only applies to the consideration of whether to grant planning permission.

10. However, the Regulations[2] advise that factors relevant to 'amenity' include the general characteristics of the locality, including the presence of any feature of historic, architectural, cultural or similar interest, which would encompass listed buildings and CA's. Therefore, the location of the site in relation to the CA and listed buildings is relevant to the consideration of 'amenity'.

11. The advertisement would be clearly visible to traffic and pedestrians travelling north easterly along Whitechapel High Street. Due to the building's orientation and position at the junction with Commercial Road it would be particularly prominent when entering the CA and from upper floor windows of residential flats such as those at Aldgate Place.

12. It would also dominate the open views across the Commercial Road junction toward the CA and to the Whitechapel Art Gallery, Whitechapel Public Library and No 88 Whitechapel High Street. Moreover, it would also dominate views along Commercial Road looking toward No 32 and 34 Commercial Road.

13. On my site visit I saw many advertisements in the area around the appeal site. These are mostly small in scale and at a low level, associated with ground floor retail or commercial premises. I did also observe advertisements nearby on building sites and digital screen advertisements. However, I did not see any other advertisements of a similar scale to that proposed on the upper floors of buildings, particularly in such a prominent position in, or adjacent to, the CA.

14. No detailed design of the advert has been provided as part of the proposal, but I recognise that it would occupy less than 20% of the extended elevation.

[1] Application Reference: PA/18/01914/A1
[2] Regulation 3(1) of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007

However, it would still be a substantial advertisement. Due to its overall size and position it would be visually discordant and out of keeping with the character and appearance of the area, even having regard to the presence of existing signage.

15. I recognise that the level of illumination proposed has been kept to a relatively low level and the hours of illumination could be controlled by way of a condition. However, and although not determinative the illumination at night would, nonetheless accentuate the harm.

16. The proposal must be assessed having regard to the fallback of the scaffolding shroud. Although there are no specific details of the display proposed, an advertisement by its nature is designed to attract attention. In contrast the scaffolding shroud I saw has a dull, plain but tidy appearance. It effectively screens the scaffolding and has a somewhat neutral visual effect in the street scene. In my view, the effect on the visual amenity of the area from this fallback position would not be as substantial as the proposal before me.

17. The appellant refers to other advertisements on scaffolding which have been either allowed at appeal or granted by Council's including, amongst others, an appeal at Euston Road/Argyle Street[3]. However, that proposal related to a smaller non-illuminated advertisement banner, printed on a large 1:1 rectified image of the building on the shroud. Moreover, it is some distance away from the appeal site and is unrelated to this CA.

18. I do not have the full details of the other advertisements referenced by the appellant or the circumstances that led to them being accepted. As such, I cannot be sure that they represent a direct parallel to the appeal proposal in terms of scale and location. I am, in any event, required to consider the proposal on its own merits and my concerns relate, not to the principle of banner advertisements on scaffolding, but to the specific scale and location of the proposed advertisement.

19. Drawing the above together, the proposal would appear as an obtrusive feature in the street scene including in views to listed buildings, to and from the CA and from residential properties. I therefore conclude on the first main issue, that the proposed advertisement, even for a temporary period, would have a harmful effect on the visual amenity of the area.

20. The Council has cited policies SP09, SP10 of the LDF Tower Hamlets Core Strategy (CS) (2010), policies DM23, DM24, DM27 of the Local Plan Managing Development Document (MDD) (2013) and policies 7.1, 7.4, 7.5, 7.6 and 7.8 of the London Plan (LP) (2016) in the reason for refusal. The Regulations require that decisions are made only in the interests of amenity and public safety. Consequently, although I have taken these policies into account, they have not been decisive in my determination.

Public s*afety*

21. For traffic, cyclists and pedestrians travelling along Commercial Road, the proposed advertisement would be within the periphery of the field of view. However, the advertisement would be clearly visible to traffic, cyclists and pedestrians travelling north easterly along Whitechapel High Street including the Cycle Superhighway.

[3] Appeal Reference: APP/X5210/Z/16/3165497

22. The appellant advises that the advert would not feature elements that resemble a traffic sign. I recognise that the advertisement would be positioned high on the building, however it would be a dominant feature. Moreover, due to the distance to the junction, it would fall within the field of vision of vehicle users in combination with the traffic signals when travelling north easterly along Whitechapel High Street.

23. Due to the volumes of traffic and the traffic lights along the road, vehicles do travel along Whitechapel High Street at a relatively low speed. However, given the prominence of the advertisement proposed, even a short distraction would increase the risk of collisions between vehicles, cyclists or pedestrians which would cause significant harm to public safety.

24. I have had regard to the representation received from Transport For London (TFL). I recognise that the license arrangements for the scaffolding between TFL and the appellant are private matters and such matters have not had any material bearing in my determination. However, TFL advise that several accidents have occurred in the area. I do not attach significant weight to those statistics in the absence of precise details of the nature of those accidents. However, it does add to my concerns over the safety of introducing a potential distraction at this location.

25. As such, I conclude that the proposed advertisement would prejudice public safety in the area. My attention has been drawn to policies SP09 of the CS, DM20 of the MDD and 6.3 of the LP. For the reasons previously stated, whilst I have taken these policies into account as material considerations, they have not been decisive in my determination of this appeal.

Conclusion

26. For the reasons given above, the appeal is dismissed.

Robert Walker

INSPECTOR