



Appeal Decision

Site Visit made on 6 July 2021

by Robin Buchanan BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 August 2021

Appeal Ref: APP/X2220/H/20/3254994

94-95 London Road, Dover CT17 0SH

- 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 Clear Channel against the decision of Dover District Council.
 - The application Ref 20/00206, dated 9 January 2020, was approved on 4 May 2020 and express consent was granted for the display of an advertisement subject to conditions.
 - The advertisement permitted is the display of a 48 sheet digital advertisement board.
 - The conditions in dispute are Nos 2 and 3 which state that:
 - 2) *'The illumination of the proposed advert visible from the carriageway shall not to be of a flashing type and the images should be static. There shall be no moving images or sequencing of images over more than one advert or no message sequencing where a message is spread across more than one screen image. The images shall not change more frequently than every 240 seconds and the change in images shall take place instantly.'*
 - 3) *'The maximum luminance from the signs or advertisements shall not exceed the value of 100cd/m² at any given point.'*
 - The reasons given for each condition are 2) *'In the interests of highway safety'* and 3) *'In the interests of highway safety and convenience'*.
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Preliminary Matter

1. In July 2021 the Government published a revised National Planning Policy Framework (the Framework). Having regard to the relevant paragraphs referred to by the main parties from the previous National Planning Policy Framework, published in February 2019, I am satisfied that there are no material differences in Government policy in this appeal.

Decision

2. The appeal is allowed and the advertisement consent Ref 20/00206 for the display of a 48 sheet digital advertisement board at 94-95 London Road, Dover, CT17 0SH granted on 4 May 2020 by Dover District Council is varied by deleting condition 2 and condition 3 and substituting for them the following conditions:
 - 2) The illumination of the proposed advert visible from the carriageway shall not to be of a flashing type and the images should be static. There shall be no moving images or sequencing of images over more than one advert or no message sequencing where a message is spread across more than one screen image. The images shall not change more frequently than every 10 seconds and the change in images shall take place instantly.

- 3) The maximum luminance from the signs or advertisements shall not exceed the value of 300cd/m².

Background

3. The appeal relates to the replacement of a static non-illuminated 'poster and paste' advertisement board. Consent was granted for an LED¹ illuminated digital sign with alternating adverts which would be switched off between midnight and 06:00 hours. However, the appellant considers that two conditions imposed are overly restrictive and sought modifications. Framework paragraph 136 and Planning Practice Guidance (PPG)² includes that advertisements should be subject to control only in the interests of amenity and public safety. PPG provides further advice on material considerations in these regards³.

Main Issues

4. The main issues are:
- the effect of modifying condition 2 on public safety on the highway; and
 - the effect of modifying condition 3 on the visual amenity of the area and living conditions of the occupiers of Nos 239, 240 and 241 London Road.

Reasons

Public safety

5. The appeal site is located in a mixed commercial and residential area. It is close to the corner of a signalised junction in London Road with Cherry Tree Avenue and Erith Street and incorporates crossing facilities for pedestrians. London Road is a busy main road leading out of Dover and this part has two lanes of traffic travelling one-way northbound. There are service roads running parallel to it, separated by traffic islands and guard railing. Buckland Terrace/Erith Street runs in a northerly direction whereas Coombe Valley Road turns into, and runs alongside, London Road in a southerly direction enabling vehicles to enter Cherry Tree Avenue.
6. The main parties have referred to guidance published and used by Transport for London when considering the acceptability of proposals for roadside digital adverts⁴. Although not formally adopted by the Council it provides a useful approach to assessing the appeal proposal and some of its principles are particularly relevant to this case. The guidance states that detailed analysis is required when digital adverts would be in proximity to traffic signals, major junctions or pedestrian crossings in urban areas. It advises that the minimum message display duration should ensure that a majority of approaching drivers do not see more than one or two messages, or not more than one message at sites where cognitive demand on approaching drivers may be higher.
7. However, the junction where this digital advert would be situated is not a standard crossroads and there are as a result more limited turn options for drivers and vehicle movements through it. The highest volume of traffic is

¹ Light emitting diode.

² PPG paragraph ID: 18b-001-20140306

³ PPG paragraphs ID: 18b-027-20140306 and ID: 18b-028-20140306.

⁴ Guidance for Digital Roadside Advertising and Proposed Best Practice, Transport for London, March 2013.

- northbound on London Road. A digital advert would not be in line of sight to these approaching drivers, including if slowing to the stop line which is when a greater risk of distraction could occur. Some waiting drivers may be able to look towards the digital sign, particularly those closest in the outside lane, but the view would be glimpsed at an oblique angle and stationary vehicles are not likely to cause an accident. Moreover, even if more than one or two adverts were observed during the peak timing delay of traffic signals, the attention of these drivers setting off would be forwards and away from the digital sign.
8. Traffic flows in other directions through the junction appear to be significantly less. Some waiting drivers in Erith Street may be able to look towards the digital sign. However, the circumstances here for waiting drivers, or just setting off, would be similar to London Road northbound. The only drivers that would have a clear view of a digital advert when approaching the junction, stationary at it or moving off, are those travelling south along the service road parallel with London Road who must turn left into Cherry Tree Avenue.
 9. In this case, the digital sign would be in the back-drop of a central traffic signal. However, there are other traffic signals on both sides of the service road which should remain clearly visible to these drivers. Furthermore, given the limited length of the service road to the stop line and turn (as opposed to the digital sign itself) it is unlikely that the industry standard of 10 seconds between messages would result in a majority of these drivers seeing more than one or two digital adverts. In any event these approaching vehicles are not likely to be moving at great speed and when stationary would not likely cause an accident, even if more than two adverts were observed by drivers during the peak timing delay of traffic signals, and when moving off attention would be towards the turn through the junction and away from the digital sign.
 10. As there is a guard rail around the corner adjacent to the service road stop line, no pedestrians are likely to be attempting to cross this road at this point. The digital sign will not be in direct line of the pedestrian crossing in an easterly direction on the south side of the junction on London Road or in a southerly direction across Cherry Tree Avenue. Pedestrians would therefore have no difficulty in noticing the red/green man when waiting to cross the street at either of these locations.
 11. The Council has referred to some personal injury road accidents. However, it is not clear if distraction was a cause. In any event, one was not actually in the junction and the others were in London Road northbound, in positions where drivers would have had no meaningful view of the digital sign. Moreover, it is not clear if a pedestrian was crossing London road towards the appeal site.
 12. Considering the above there is no need for the time between digital adverts to be 240 seconds to safeguard public safety on the highway⁵. However, all of the other controls imposed by condition 2 are necessary. Accordingly, I will impose a modified condition.

Amenity

13. An illuminated digital advert will be more noticeable than a non-illuminated paper advert. However, the vicinity of the appeal site is already lit at night by a number of streetlights and some illuminated signs or display windows

⁵ Framework paragraph 111.

associated with retail and commercial premises near the junction.

Consequently, operating the digital sign at the maximum luminance guide level for an urban location⁶ would not cause undue glare or significantly adversely affect the visual amenity of the area.

14. While the front elevations of the houses at Nos 239, 240 and 241 London Road contain ground and first floor habitable room windows that face towards the junction, the appeal site is off-set appreciably to one side. As a result, outlook would not be directly towards the digital sign. In addition, there would also be a separation distance of about 29m which would have a significant mitigating effect on the immediacy or intensity of luminance experienced. Furthermore, the occupiers are highly likely to draw curtains or close blinds or shutters at night. Consequently, whilst a digital advert could be observed by the occupiers of these houses, especially in views in one direction, it would not cause undue glare or unacceptable harm to their living conditions.
15. There is no substantive evidence before me to suggest that the proposed maximum luminance value at night would not be acceptable at all times of the day when the digital sign was switched on, nor has the appellant suggested any other daytime luminance value. Moreover, the words 'at any given point' make interpretation of condition 3 difficult. These can be removed in the interests of precision and enforcement.
16. Considering the above there is no need for the maximum luminance of the digital sign to be 100cd/m² to protect the visual amenity of the area or the living conditions of the occupiers of Nos 239, 240 and 241 London Road. However, it is necessary to set a reasonable limit on the luminance of a digital advert and this could be secured by a modified condition.

Conclusion

17. In light of the relevant tests and advice in Framework paragraph 56 and in PPG⁷, I find that the relevant stipulations of the disputed conditions are not necessary or reasonable. However, these conditions could be modified without harm to public safety on the highway or to the visual amenity of the area or living conditions of the occupiers of the nearby houses. I therefore conclude that the appeal should succeed, subject to the modified conditions set out in the formal decision.

Robin Buchanan

INSPECTOR

⁶ Professional Lighting Guide PLG 05 The Brightness of Illuminated Advertisements, Institution of Lighting Professionals, 2014.

⁷ PPG Paragraph ID: 21a-003-20190723.