



Appeal Decision

Site visit made on 2 December 2020

by M Seaton DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 August 2021

Appeal Ref: APP/P4605/Z/20/3260183

95-111 Tyburn Road, Birmingham, B24 8NQ

- 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 Mr Ian Bullingham (on behalf of Engage Outdoor Media) against the decision of Birmingham City Council.
 - The application Ref 2020/04525/PA, dated 17 June 2020, was refused by notice dated 13 August 2020.
 - The advertisement proposed is a free-standing monopole incorporating 2 x LED media screens each 5 m wide x 7.5 m high.
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Procedural Matter

1. There is a degree of variation in the wording utilised for the description of development between the application forms, the Notice of Decision, and the appellants appeal forms. Whilst all clearly relate to the appeal proposal, I am satisfied that the version incorporated by the appellant within the appeal form reflects the proposed advertisement most accurately.
2. The Government published on 20 July 2021 a revised version of the National Planning Policy Framework (the Framework). Whilst I have had regard to the revised national policy as a material factor, in this instance the issues most relevant to the appeal remain unaffected by the revisions to the Framework. I am therefore satisfied that there is no requirement to seek further submissions on the revised Framework, and that no party would be disadvantaged by such a course of action.

Decision

3. The appeal is allowed and consent is granted for a free-standing monopole incorporating 2 x LED media screens each 5 m wide x 7.5 m high at 95-111 Tyburn Road, Birmingham, B24 8NQ, as applied for. The consent is for 5 years from the date of this decision and is subject to the standard conditions as set out in the Regulations, as well as the following additional conditions as set out below:
 1. The advertisement shall not be illuminated during the hours of 00:00–06:00.
 2. The intensity of illumination of the advertisement hereby consented shall not exceed a luminance of 300 cd/m².
 3. The display of images on the LED media screens shall not incorporate any visual effects, animation, fading or gradual transition between each advertisement. The LED media screens shall also have a default mechanism

to freeze to a black screen in the event of any malfunction to avoid any flashing error messages or pixilation.

Main Issues

4. The Framework sets out at paragraph 136 that advertisements should be subject to control only in the interests of amenity and public safety, taking account of cumulative impacts.
5. In this instance, the Council has indicated within the Reasons for Refusal that it has concerns in respect of both the impact on the amenity of the area, and in respect of the impact on public safety as it relates to motorists on the M6 motorway. As a consequence, the main issues are;
 - the effect of the advertisement on the amenity of the area; and,
 - the effect of the advertisement on public safety, having regard to motorists.

Reasons

Amenity

6. The appeal site comprises a broadly rectangular parcel of land set between Tyburn Road and a part of the elevated section of the M6 Motorway. The site is occupied by a collection of industrial and commercial buildings, as well as associated yard and hardstanding. Immediately adjoining the southern boundary is the Tame Valley Canal.
7. The proposed advertisement would occupy, by design, a prominent and highly visible location. Whilst I observed there to be other structures and buildings of scale in the vicinity, these are predominantly located on the southern side of the M6, with buildings on the northern side of a lesser vertical scale. Although I noted there to be a number of electricity pylons of significant scale set further to the east, the solidity and scale of the proposed advertisement would nevertheless be visually prominent in this location.
8. Despite the above and the Council's assessment of the position of the proposed advertisement as being isolated, I consider that it would be unreasonable to regard the M6 as an impenetrable physical or visual divide. It is therefore of particular importance to acknowledge the context provided by Star City and the existing advertising hoarding on the opposite side of the M6 from the appeal site.
9. In this regard, I am satisfied that the scale of the proposed advertisement, whilst accepting it as defined by the need for visibility to the passing M6, would not be excessive in height or appear as an entirely uncharacteristic feature within either the existing or wider context. I note that the elevated section of the M6 passing the appeal site is illuminated during the hours of darkness by motorway lighting, and that the LED media screens would therefore be viewed within this context. Nevertheless, I would agree that the appellant's suggestion as being reasonable that the proposed advertisement be conditioned to not be in operation between the hours 0000 – 0600 and be restricted by the intensity of luminance.
10. Having regard to all these considerations, I am not persuaded that as a visual interjection into the existing urban and commercial environment within this

part of the M6 corridor, that there would be a resultant harmful effect on amenity.

Public safety

11. The Council, with detailed reference to the response from Highways England, has expressed concern over the impact on highway safety given the proximity of the proposed advertisements to the junction between the M6 and A38(M) Aston Expressway. In particular, reference has been made to the impact of the junction as a significant contributor with the geometry of lane gains and drops a key factor, as well as this section of the M6 being under Active Traffic Management (smart motorway) systems with overhead gantries including both speeds and when the hard shoulder may be used by traffic.
12. The proposed advertisements are located within the decision-making zones for both north and southbound traffic on the M6, with the northbound carriageway between Junctions 5 and 6 indicated to have a collision rate above the national average. Traffic conditions at weekday peak flow on the northbound carriageway are also indicated to be the subject of congestion, particularly for lane-drop/exit to the A38(M), with stop-start patterns of traffic.
13. I accept that the nature of traffic flows on the northbound carriageway would at times lead to a higher possibility of rear end shunt type accidents. However, no compelling or definitive evidence has been submitted to link such incidents to the presence of the existing advertisements in close proximity to the carriageway. The appellant's statistical evidence for the M6 over 500 metre distances either side of the sign provides a clear indication that in the 3 ½ year period from January 2016 – June 2019, the accident rate for northbound traffic only marginally exceeds the predicted accidents using national rates whilst no injury accidents occurred in a southbound direction. Furthermore, this analysis covers the period when the significantly larger advertisement at nearby Star City would have been operational.
14. By design, the proposed advertisements would be visible to motorists on the M6. However, such signage is no longer an unusual or unexpected sight for motorists on trunk roads or motorways within urban or metropolitan areas. I am not persuaded that their mere presence alone would be sufficient to startle or distract motorists to an extent that would lead to an unacceptable impact on public safety, particularly during traffic conditions which dictate the need for greater concentration. Furthermore, I am satisfied that the proposed conditions would ensure that the elements of digital advertising that would produce the greatest prospect of distraction, such as luminance, animation or the transition between images, would be managed in order to significantly reduce such a likelihood.
15. I have also considered the concern raised regarding the advertisement competing with the gantries over the M6 motorway but find that the extent of the physical separation of the proposed advertisement from the carriageway would be sufficient to not directly compete with the gantries.
16. I have noted that no objection has been received from the Highways Engineers at the Council regarding impact on roads managed by the Local Highway Authority, and I see no reason to disagree with this conclusion.

17. For the above reasons, I am not persuaded that the proposed advertisements would lead to an unacceptable or adverse impact on public safety.

Other Matters

18. Reference has been made by the Council and Highways Agency within the submitted evidence to recent advertisement applications and appeals having been refused along this section of M6. The appellant has also drawn my attention to the decision-making in the allowed appeals at Star City and Washwood Heath. However, whilst in all respects I recognise there to be certain similarities in the nature of the proposals, each case must be considered on its own merits premised upon the clear differences in scale, position and evidence as submitted. In light of my conclusions on the main issues, I have not therefore attached any significant weight to the previous decisions as a precedent. However, it is impossible to ignore the contribution that the significant advertisement as completed and operational at the nearby Star City is to the local context and the not dissimilar relationship which this advertisement has with the passing M6.

Conclusion

19. In considering the principal aspects and impacts of the proposed advertisement, I have concluded that the proposal would not result in an adverse impact on amenity and public safety, subject to the imposition of appropriate conditions as set out.
20. The Council's approach to advertisements is set out in Policy PG3 of the Birmingham Development Plan 2017, saved Paragraphs 3.14C & 3.14 D of the Birmingham Unitary Development Plan 2005, and in the guidance set out within the Location of Advertisement Hoardings Supplementary Planning Guidance, 1998. These policies and guidance, amongst other things, indicate that all advertisements must respond to local area context and have no adverse effect on amenity, and must not distract the attention of drivers to an unacceptable degree. Whilst not decisive, I have had regard to these in my decision-making, although I have concluded that the proposed advertisement would not result in either amenity or public safety concerns and would also accord with the Framework, which seeks to prevent the negative impact of poor advertisements.

Conditions

21. The Council has not suggested any additional conditions beyond the standard advertisement conditions. However, the appellant has suggested additional conditions within the Statement of Case. These relate to restrictions over the luminance of the screens, the prevention of animation, or the fading and gradual transition between images, as well as controls over the hours of operation of the illumination of the advertisement and the programming of the installation in the event of malfunction.
22. I have already addressed the necessity for restrictions related to luminance and the hours of operation in the interests of amenity. However, I note that the Highways Agency has advised that a luminance of 300 cd/m² during the night would be acceptable in contrast with the 30 cd/m² suggested by the appellant, and I have therefore adjusted the suggested condition accordingly. I also find that the inclusion of a further condition related to the prevention of animation,

control over the transition between images, and the programming of the installation would be necessary in the interests of public safety.

Conclusion

23. For the reasons above and subject to the listed conditions, and having regard to all matters before me, the appeal is allowed.

M Seaton

INSPECTOR