
Appeal Decision

Site visit made on 18 August 2021

by Hannah Ellison BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 September 2021

Appeal Ref: APP/M2372/H/21/3275389

Mayfield garage, Bolton Road, Blackburn BB2 3QN

- 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 Graeme Hughes (Alight Media) against the decision of Blackburn with Darwen Borough Council.
 - The application Ref 10/21/0243, dated 3 March 2021, was approved on 17 May 2021 and express consent was granted for the display of an advertisement subject to conditions.
 - The advertisement permitted is a freestanding 48-sheet sized digital LED advertising unit.
 - The conditions in dispute are Nos 8, 9, 10 and 11 which state that:
Condition 8) *'The development hereby approved shall not be brought into use unless and until, a scheme confirming exactly how luminance levels will be controlled, complete with the technologies and procedures involved, has first been submitted to and agreed in writing by the Local Planning Authority. The development shall thereafter proceed in strict accordance with the agreed details.'*
Condition 9) *'Prior to their construction, a scheme confirming how the foundations of the development hereby approved would be built, together with details showing a trief kerb system, shall have first been submitted to and agreed in writing by the Local Planning Authority. The development shall thereafter proceed in strict accordance with the agreed details.'*
Condition 10) *'None of the advertisements to be displayed as part of the development hereby approved shall feature red or green as a majority colour including the background, foreground, and any graphics or images displayed, unless otherwise agreed in writing by the Local Planning Authority.'*
Condition 11) *'Any interchangeable advertisements to be displayed as part of the development hereby approved shall change no more than once in every 60 second time interval. In addition, the changes shall take place in a single and instant motion with fading, interactive advertisements, prolonged motion, and special effects of any kind strictly prohibited, unless otherwise agreed in writing by the Local Planning Authority.'*
 - The reasons given for the conditions are:
8) *'In order to lessen light pollution for residential neighbours, minimise the dazzling and distraction of passing motorists, and comply with the requirements of Policies 8 and 10 of the Blackburn with Darwen Borough Local Plan Part 2.'*
9) *'To further agree the scope of the developments construction, in the interests of highway safety, and to comply with the requirements of Policy 10 of the Blackburn with Darwen Borough Local Plan Part 2.'*
10) *'To prevent the development interfering with adjacent traffic signals, in the interests of highway safety, and to comply with the requirements of Policy 10 of the Blackburn with Darwen Borough Local Plan Part 2.'*
11) *'To minimise distractions for passing motorists, in the interests of highway safety, and to comply with the requirements of Policy 10 of the Blackburn with Darwen Borough Local Plan Part 2.'*
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Decision

1. The appeal is allowed and the advertisement consent Ref 10/21/0243, for a freestanding 48-sheet sized digital LED advertising unit at Mayfield garage, Bolton Road, Blackburn BB2 3QN, granted on 17 May 2021 by Blackburn with Darwen Borough Council, is varied by deleting conditions 8, 9, 10 and 11 and replacing them with the following conditions:

8) The display panel shall be fitted with a light sensor which adjusts the brightness to changes in ambient light levels. The intensity of the illumination shall be within that recommended by the Institute of Lighting Professionals in its Professional Lighting Guide 05 (PLG 05) Brightness of Illuminated Advertisements (or its equivalent in a replacement Guide).

9) The advertisements displayed shall not change more frequently than every 10 seconds and the interval between advertisements shall be instantaneous and without visual effects.

10) The advertisements displayed shall not contain any moving, or apparently moving images, animation, sequencing of images over more than one advertisement, or images that resemble road or traffic signs.

11) A mechanism shall be in place so that if the installation breaks down or is not in use, it defaults to a black screen.

Preliminary Matters

2. In July 2021 the Government published a revised National Planning Policy Framework (the Framework) which replaced the previous iteration. The circumstances of this appeal are such that it has not been necessary to seek comments from the parties on the revised Framework. Paragraph 132 of the replaced Framework, concerning advertisements, has been unchanged in the revised Framework, albeit it is now paragraph 136.
3. I have taken into account the development plan policies which the Council has drawn my attention to, so far as they are material. However, the powers to control advertisements under the Regulations¹ may be exercised only in the interests of amenity and public safety. The Framework and the Planning Practice Guidance reiterate this approach.

Background and Main Issues

4. Advertisement consent was granted for a freestanding 48-sheet sized digital LED advertising unit, subject to a number of conditions. This appeal seeks to vary that consent by modifying conditions 8 and 11 and deleting conditions 9 and 10. The appellant has also suggested some additional conditions, which I will address below.
5. Having regard to the reasons for imposing the conditions set out in the banner heading, the main issues are:
 - the effect that varying condition 8 would have on public safety and amenity;
 - the effect that removing conditions 9 and 10 would have on public safety; and,

¹ The Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (as amended)

- the effect that varying condition 11 would have on public safety.

Reasons

Condition 8

6. The consented advertisement would be located adjacent to a main arterial route running through a predominantly commercial area. There are a range of businesses and advertisements in the immediate street scene and the locality appears to be well-lit, with streetlights at close intervals. As such, the area has a vibrant character.
7. Whilst the area is predominantly commercial, there are also some residential properties located on the opposite side of Bolton Road. However, the advertisement would be largely orientated at 90 degrees to the nearest residential properties thus occupiers would not get direct views of the display from habitable room windows. Moreover, the advertisement is not within close proximity given the significant width of the highway at this point. The nearest properties further south-west are a considerable distance away.
8. Condition 8 requires the submission of details on how luminance levels will be controlled. However, given the character of the immediate locality and the relationship between residential units and the advertisement, technology to monitor ambient light conditions and a dimmer control would be a sufficient measure to ensure that the displayed advertisements would not appear excessively bright so as to be visually discordant with the surrounding area or dazzling distractions for road users.
9. Ambient control technology would also ensure that the transition of luminance between day and night would be appropriate, based on daylight levels. Furthermore, the Institute of Lighting Professionals in its Professional Lighting Guide 05 (PLG 05) Brightness of Illuminated Advertisements (or its equivalent in a replacement Guide) sets out maximum luminance intensities for day and night time, appropriate for the location of the advertisement.
10. Accordingly, condition 8 is not necessary thus I will delete it and replace it with a condition which nonetheless ensures that the luminance levels are appropriately controlled, in the interests of amenity and public safety. Such an approach would be consistent with Policies 8 and 10 of the Local Plan Part 2, Site Allocations and Development Management Policies (December 2015) (the LP) which, although not decisive, together seek to ensure that proposals ensure a satisfactory level of amenity and safety for surrounding uses and occupants.

Condition 9

11. Travelling south west along Bolton Road, the consented advertisement would be positioned beyond an existing bus stop with raised kerb, a street light and other elements of street furniture. The advertisement would also be well set-back from the highway and the speed limit along this stretch of Bolton Road is low. Any vehicles travelling north east would have to travel a considerable distance across the central reserve and south west bound traffic before reaching the appeal site.
12. Accordingly, there would be very limited possibility of traffic colliding with the advertisement therefore the requirement of condition 9 to submit foundation and structural details is not necessary in the interests of public safety thus I

shall delete it. This approach would not conflict with Policy 10 of the LP which seeks to ensure that road safety and the safe, efficient and convenient movement of all highway users is not prejudiced.

Condition 10

13. The advertisement display would face north-east bound traffic travelling towards a signal-controlled crossroad junction beyond the appeal site. At the time of my mid-morning site visit I observed high levels of traffic passing the appeal site and using the junction. Given the classification of the highway there is nothing to suggest that my observations were unusual.
14. However, the signal-controlled junction is located a considerable distance beyond the appeal site. There is also a slight curve in the road thus the advertisement would be sited beyond the footway, a considerable distance from the north east bound carriageway. The siting of the advertisement will therefore ensure that the use of red or green as majority colours in any displayed advertisements would not result in colour washout with the existing signals.
15. Accordingly, I am satisfied that condition 10 is not necessary to safeguard the safety of road users and shall delete it in its entirety. This conclusion would accord with Policy 10 of the LP, so far as it is material.

Condition 11

16. At the time of my site visit I observed that the north east bound traffic was free-flowing. Given the lack of traffic lights leading up to the appeal site and the generous width of the carriageway which allows vehicles to turn right without hindering traffic travelling along Bolton Road, there is nothing to suggest that my observations were unusual. The stretch of carriageway leading up to the appeal site and along which the advertisement would be visible from is of a substantial distance, therefore drivers travelling at the speed limit would have a generous amount of time to fully assimilate the advertisement prior to observing the signals beyond.
17. By reducing the rate of change of the display to no more frequently than every 10 seconds it is likely that drivers approaching the appeal site will see no more than one or two advertisements. Whilst the changing display may provide a momentary distraction to drivers on the approach, the display would integrate into the immediate surroundings where other signage and methods to attract attention are present such that it would not attract the full attention of road users.
18. Therefore, I consider that restricting the rate of change to once every 60 seconds is unnecessary. I shall therefore vary condition 11 accordingly and consider that this would safeguard the safety of road users and thus does not conflict with Policy 10 of the LP, so far as it is material.

Conditions

19. The appellant has suggested two separate conditions relating to luminance however I consider it appropriate to combine them in this instance. Similarly, the suggested conditions relating to the method and rate of change of advertisements can be amalgamated.

20. In addition to the variation of conditions 8 and 11 as set out above, the appellant has suggested further conditions in relation to animated advertisements, the sequencing of messages and failure of the display. In the interest of amenity and public safety, and having regard to the tests set out in paragraph 56 of the Framework, I have attached these conditions, altering and combining them where appropriate.

Conclusion

21. For the reasons given above, I conclude that the advertisement consent should be varied as set out in the formal decision.

H Ellison

INSPECTOR