
Appeal Decision

Site visit made on 22 February 2022

by D.R McCreery MA BA (Hons) MRTPI

An Inspector appointed by the Secretary of State

Decision date: 23 February 2022

Appeal Ref: APP/C5690/H/21/3280164

Advertising Right Side Of 363 Sydenham Road, London SE26 5SL

- 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 Richard Page (Wildstone Group Limited) against the decision of the Council of the London Borough of Lewisham.
 - The application Ref DC/21/121597 is dated 23 April 2021. The conditions in dispute are Nos 3 and 4 which state that:
 - [3] (a) The minimum duration of each image to be no less than 60 seconds. (b) The maximum interval between successive advertisements is to be less than 1 second. (c) Successive advertisements shall be non-sequential, in that they should not contain additional information to the previous message. (d) Advertisements shall not contain: phone number(s); email address(es); internet address(es); or, 5 digit 'text message only' numbers. (e) Advertisements shall not depict any images that resemble road signs or traffic signals; (f) Images shall be entirely static and contain no moving images. (g) In the event of a failure, the display will default to an output level no higher than that which has been conditioned to be the acceptable maximum under normal operation. If this default position cannot be achieved, then the display should be required to default to an "off" position until the issue can be resolved. (h) No intermittent light source or exposed cold cathode tubing.
 - [4] Illumination for the digital LED poster sign hereby granted must not exceed 600cd/m² for the day, and 300cd/m² at night as set out in the Institute of Lighting Professionals (ILP) publication: "The Brightness of Illuminated Advertisements" (PLG05, January 2015).
 - The reasons given for the conditions are:
 - [3] To control the display in the interests of public safety and in accordance with the objectives of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007.
 - [4] To control the display in the interests of public safety and in accordance with the objectives of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. On 21 June 2021 the Council granted consent under the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 to upgrade the existing display on the side of the site to an internally illuminated digital LED poster sign. The consent was subject to a number of conditions, both nationally and locally prescribed.

3. For consistency, and as the matter isn't disputed, I have used the description as it appears on the Council's decision notice.

Main Issue

4. The main issue is whether conditions 3 and 4 are reasonable when regard is paid to public safety.

Reasons

5. The site in question is the flank wall of a 2 storey end of terrace property. It is located on Sydenham Road, in proximity to Bell Green junction, a busy and relatively open stretch of highway and thoroughfare that includes a number of traffic lights.
6. That conditions in some form seeking to control the duration and level of illumination of the advertisement are necessary is not a main area of dispute between the Appellant and the Council. Carefully reviewing the evidence, and having visited the site, this is a matter I would also take no issue with. The question instead relates to the reasonableness of the specific standards/requirements imposed by conditions 3 and 4.

Condition 3

7. There is an absence of documented policy or guidance to support the position in favour of a 60 second or 10 second duration requirement. The Appellant's reference to industry standards is not extensively evidenced. Nor are the instances where a 10 second duration is said by the Appellant to have been used set out in the sort of depth that allows for meaningful comparison to the present site. As such, the appropriateness of the Council's chosen requirement is one of judgement.
8. I have paid regard to the comments from the Council's Highways Officer and note the collision data relating to the last five years. The source of the data is not well explained and it appears to come from a third party. As its robustness is difficult to verify, I am only able to treat the data as indicative.
9. Nevertheless, I accept that the nature of the busy junction, with its multiple lanes and signals is one that self evidently carries risks. There is no evidence to confirm that the static advertisement that has been in this location was a source of, or even contributing factor to, vehicle collisions. However, a static advertisement has different characteristics to an LED digital screen where images change and there is greater potential for driver distraction to result.
10. Due to the visibility of the advertisement and road layout at this point, the area facing the site approaching from Stanton Way is particularly sensitive. It is here that 4 lanes approach the traffic lights from the east and diverge onto Sydenham Road (left) and Bell Green (right). At this approach the site forms part of the background to the traffic lights and is extensively visible during the left and right turn due to the open nature of the surroundings.
11. At the traffic lights and turns discussed above I accept that drivers primarily need to obey the signals and that there is no oncoming traffic turning ahead. However, the multiple lanes, lack of road markings at some points, and extensive nature of the turns (particularly to the right) calls for driver care. I do not agree with the Appellant's view that the highway in this location is

uncomplex or, notwithstanding the 20 mph limit, that traffic is consistently slow moving.

12. Carefully considering all the evidence on this matter and the factors described above, I judge that an illuminated sign in this location with an image that changes a number of times while drivers approach from Stanton Way and perform a turn onto Sydenham Road or Bell Green poses a risk to public safety by virtue of the additional distraction it is likely to cause to drivers.
13. The appropriateness of managing this issue, for example through real time regulation of lighting and timing clocks, is not demonstrated in sufficient depth to allow this consideration to be given significant weight.
14. On this basis, there are sufficient site specific and relevant planning reasons to justify the Council's 60 second requirement as a reasonable one. There is no evidence to demonstrate that it effectively invalidates the site in the manner asserted by the Appellant.
15. In reaching a view on this issue, I have paid regard to the Transport for London Guidance from 2013 that has been brought to my attention. However, the status of this guidance in the consideration of advertisement consent matters is unclear from the evidence presented. As such, I have treated the contents of the guidance as informative only.
16. In conclusion on this matter, condition 3 is reasonable when regard is paid to public safety.

Condition 4

17. The Appellant and the Council both draw my attention to guidance contained in PLG 05. I have paid regard to the guidance, whilst also noting that it is not intended to provide a fixed set of standards and encourages designers to pay regard to context. As such, I have treated the guidance as informative only.
18. The Appellant sets out a number of reasons as to why a higher luminance than the 600cd/m² in condition 4 is required in order to ensure that the advertisement is visible in daytime, including the specific technical differences between digital and non digital displays. The evidence appropriately demonstrates that a digital advertisement limited to 600cd/m² would be difficult to see, particularly in brighter conditions. I am not persuaded that the Council have fully appreciated the effect of their chosen requirement in reaching a view on whether it is a proportionate, and therefore reasonable, response to the risks relating to public safety.
19. In conclusion on this matter, Condition 4 is not reasonable when regard is paid to public safety.

Conclusions

20. I am satisfied that condition 3 is reasonable when regard is paid to public safety.
21. Although condition 4 is unreasonable, I do not have sufficient site specific evidence to conclude that the Appellant's suggestion of a 5000cd/m² maximum daytime level is appropriate. However, given my reasoning in relation to condition 3 it is not necessary for me to conclude further on this matter.

22. Although I am not duty bound to do so, I have considered whether it is appropriate to make a split decision under s79(1)(b) of the Town and Country Planning Act 1990 Act to allow variation to condition 4. Given the close relationship between luminance and duration and the uncertainty in the evidence about an appropriate lighting level, it would not be appropriate to do so in this instance.
23. For the above reasons, and paying regard to all other matters raised, the appeal is dismissed.

D.R. McCreery

INSPECTOR