



Appeal Decision

Site visit made on 5 April 2022

by Paul Cooper MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 April 2022

Appeal Ref: APP/P4605/H/21/3285086

Pavement Outside Bull Ring Indoor Market, Dudley Street, Birmingham B5 4RQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by New World Payphones (Mr Richard Wilson) against the decision of Birmingham City Council.
- The application Ref 2021/05946/PA, dated 1 July 2021, was approved on 23 August 2021 and planning permission was granted subject to conditions.
- The development permitted is Display of internally illuminated digital advertising panel on telephone kiosk.
- The condition in dispute is No 3 which states that: The advertisement hereby approved shall be displayed in accordance with the following:-
 - - Intensity of the illumination of the digital sign shall not exceed 600cd/m² in the daylight hours and no greater than 300cd/m² at night
 - - Interval between successive displays to be instantaneous (0.1 seconds).
 - - No special visual effects of any kind to be permitted to accompany the transition between any two successive messages. Must not include fading, swiping or other animated transition methods.
 - - No special visual effects of any kind to be permitted during the time that any message is displayed. Must not include animated, flashing, scrolling, intermittent or video elements.
 - - Minimum display time of 8 seconds. The complete screen display must change instantly. There must not be any changing light patterns. Shall be limited to a two dimensional display only.
 - - Message sequencing must be prohibited.
 - - No advertisement will be allowed to emit noise, sound, smoke, smell or odours. To include a default mechanism that will freeze the sign in one position if a malfunction occurs.
 - - Shall not include features/equipment which would allow interactive messages/advertisements to be displayed
 - - Shall be equipped with a dimmer control and a photo cell which shall constantly monitor ambient light conditions and adjust sign brightness accordingly.
- The reason given for the condition is: In order to safeguard the visual amenity of the area and ensure that the advertisement will not cause distraction to drivers using the adjacent highway in accordance with Policies PG3 and TP44 of the Birmingham Development Plan 2017.

Decision

1. The appeal is allowed and the planning permission Ref 2021/05946/PA for display of internally illuminated digital advertising panel on telephone kiosk at Pavement Outside Bull Ring Indoor Market, Dudley Street, Birmingham B5 4RQ granted on 23 August 2021 by Birmingham City Council is modified by varying Condition 3. A revised Condition 3 is shown in the Schedule at the end

of this decision. All other conditions remain as originally approved and are not replicated in that schedule.

Background and Main Issue

2. The application was approved subject to conditions. The appeal is against a section of Condition 3 which restricts daytime illumination to 600 candelas per sq.metre (cdm.sq). No other part of that condition or any other condition is queried. I shall determine the appeal on that basis.
3. Therefore, the main issue of the appeal is the effect that varying the condition would have on the visual amenity of the area and highway safety.

Reasons

4. The section of the condition which is being appealed relates to the daytime illumination of the advertisement. The Council seek to restrict this to a maximum of 600 cdm.sq
5. The appellant is contesting this, as the Institute of Lighting Professionals Professional Lighting Guide 'The Brightness of illuminated Advertisements' (PLG05) sets out levels of luminance, but does not specify a level for daytime use, except that it should not exceed 5,000 cdm.sq.
6. In all other respects, the display would be illuminated in line with the levels recommended by the Institute of Lighting Professionals. It would display static images on rotation with each advertisement changing instantly no more than once every 10 seconds.
7. The proposal is sited within a major city, situated within a retail/commercial context with large buildings forming the character of the area. There are considerable amounts of illuminated and non-illuminated signage in the locality as well as high levels of street furniture of various types.
8. The advertisement would closely relate to the commercial activities and signage of the locality, even adjacent the highway. Moreover, the level of illumination is conditioned to be reduced at night. The addition of one additional illuminated advertisement when viewed in the context of the existing signage in the locality would not appear as visual clutter or be overly prominent within this commercial context, nor would it prejudice highway safety, given the level of external illumination in the locality.
9. Indeed, conditions should be imposed to address specific problems, rather than imposing broad unnecessary controls. The context of the advertisement does not generate a specific problem, given the commercial location. There is often a need to deal with a specific problem where this approach as set out would be acceptable, such as a more urban residential location.
10. As such I find that in relation to this specific issue in relation to the condition, I find that it is not reasonable to set the limit to daytime illumination given the context of which the proposal is set in. Also, the condition is already setting a dimmer and photocell to control the level of illumination, where circumstances dictate.

11. For the reasons outlined above, I find that the section of the disputed Condition 3 is not reasonable or necessary from a visual amenity or highway safety point of view. I find that the modification of Condition 3 of planning application 2021/05946/PA would not lead to any material conflict with the Birmingham Development Plan (2017).

Conclusion

12. For the reasons given above, and taking into account all other matters raised, I conclude that the appeal should succeed. I will vary the planning permission by modifying the disputed condition and have set out the revised Condition 3 below.

Paul Cooper

INSPECTOR

SCHEDULE

Revised Condition 3 to approved planning application 2021/05946/PA

The advertisement hereby approved shall be displayed in accordance with the following:-

- The maximum luminance level of advertisements displayed on the panel shall not exceed 300 cdm.sq during non-daylight hours.
- Interval between successive displays to be instantaneous (0.1 seconds).
- No special visual effects of any kind to be permitted to accompany the transition between any two successive messages. Must not include fading, swiping or other animated transition methods.
- No special visual effects of any kind to be permitted during the time that any message is displayed. Must not include animated, flashing, scrolling, intermittent or video elements.
- Minimum display time of 8 seconds. The complete screen display must change instantly. There must not be any changing light patterns. Shall be limited to a two dimensional display only.
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- Shall not include features/equipment which would allow interactive messages/advertisements to be displayed
- Shall be equipped with a dimmer control and a photo cell which shall constantly monitor ambient light conditions and adjust sign brightness accordingly.

SCHEDULE ENDS