



Appeal Decision

Site visit made on 8 March 2022

by R E Jones BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 June 2022

Appeal A Ref: APP/T5150/W/21/3279241

Boxpark Wembley, 18 Olympic Way, Wembley, London HA9 0JT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Open Outdoor Media against the decision of London Borough of Brent.
 - The application Ref 21/0379, dated 1 March 2021, was refused by notice dated 28 May 2021.
 - The application sought planning permission for erection of a food and beverage and retail mall to provide restaurant/café, drinking establishment and shop units (use classes A1/A3/A4), an event space (use class D2), external food units (use class A5), ancillary management and storage units, associated servicing areas, provision of cycle parking and placement of signage for a temporary period of 10 years without complying with a condition attached to planning permission Ref 17/4877, dated 19 February 2018.
 - The condition in dispute is No 13 which states that: *Moving images shall not be displayed on the Fulton Road façade and the northern section of the Olympic Way façade of the building (within the area marked as 'Zone A' on drawing no. A00_MIC_01 P2007903) at times when Fulton Road is open to vehicular traffic, unless otherwise agreed in writing by the Local Planning Authority.*
 - The reason given for the condition is: *In the interests of highway and pedestrian flow and safety.*
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Appeal B Ref: APP/T5150/H/21/3279236

Boxpark Wembley, 18 Olympic Way, Wembley, London HA9 0JT

- 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 Open Outdoor Media against the decision of London Borough of Brent.
 - The application Ref 21/0427, dated 8 February 2021, was refused by notice dated 17 June 2021.
 - The advertisement proposed is use of existing vinyl graphics banner/art work/ LED screen on Fulton Road and vinyl; graphics branding banner on Olympic Way to include full motion images (previously restricted under condition 3 of 18/1796)
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Decision

1. Appeal A is dismissed.
2. Appeal B is dismissed.

Preliminary Matters

3. On 24 February 2022 the Council adopted the "Brent Local Plan 2019-2041" (Local Plan). This supersedes several documents including the Brent Development Management Policies 2016 (DMP). In relation to these appeals the Council have confirmed that Policy DMP1 of the Local Plan supersedes Policy DMP1 of the DMP and is relevant to the determination of the appeal.
4. The guidance in the Council's Supplementary Planning Guidance 8 (1994) (SPD) is still relevant, and I have had regard to this in my determination.

Background and Main Issues

5. Appeal A relates to an application in which the Council refused to vary condition 13 of LPA Ref 17/4877, while Appeal B relates to the Council's refusal of advertisement consent LPA Ref 21/0427.
6. Both Appeals relate to the same building and are seeking to display full motion advertisement images on its north east corner elevation where it faces Fulton Road and Olympic Way. Currently there are restrictions in place with regard to the display of those images.
7. The appellant proposes the following condition for both appeals: *"Moving images shall not be displayed on the Fulton Road façade and the northern section of the Olympic Way façade of the building (within the area marked as 'Zone A' on drawing no. OPEN200-1) at times when Fulton Road is open to vehicular traffic, unless otherwise agreed in writing by the Local Planning Authority."*
8. From all the representations submitted, and my inspection of the site, I find that the main issue in both appeals is the effect of the proposal on the safety of vehicular and pedestrian traffic using Olympic Way and Fulton Road.
9. With regard to Appeal B, there is an additional main issue of the effect of the proposed signage on the amenity of the neighbouring occupiers.

Reasons

Highway safety

10. The appeal site comprises a large entertainment complex containing food and drink, leisure and retail uses located in a vibrant and busy commercial area close to Wembley Stadium.
11. A vast LED screen displaying digital advertisements wraps around the majority of the appeal building's exterior. These screens are all capable of displaying moving images. However, as indicated earlier restrictions are in place prohibiting the display of motion images along the Fulton Road frontage and a northern section of the Olympic Way elevation, when Fulton Road is open to vehicular traffic. Road closure generally occurs during periods spanning about 90 minutes before and after major events at Wembley Stadium.
12. The proposed advertisement would be displayed on the north east corner of the building where it faces Fulton Road and the pedestrianised Olympic Way. These roads carry a significant number of pedestrian and vehicular traffic, particularly when there are events at Wembley Stadium and the SSE Arena.

13. The proposed adverts would be about 2.7m from Fulton Road and a short distance from a light controlled pedestrian crossing that controls movements along Olympic Way. The screen facing Olympic Way would be elevated and positioned above the ground floor of the building. With a height of around 6.9m and a width of approximately 6.5 the proposed moving images would be highly visible to drivers from short and long-range views when travelling westward along Fulton Road.
14. The screen's prominence would be accentuated by its ability to display moving images likely to comprise a range of colours, branding and text. The speed in which those images are displayed is also likely to be variable. In this context the advert display would form an expansive and distracting backdrop to the left-side traffic signal head on Fulton Road, that would significantly impair a driver's ability to follow the signal's light sequence.
15. In addition to the scale and elevated position of the advert, the proposed moving images are likely to be vibrant in colour and would obscure the clarity of the red, amber and green lights on the traffic signal. In this area of high pedestrian activity, the added distraction of large, colourful, imagery moving at different speeds could lead to driver error when approaching the traffic signal / pedestrian crossing from the east, either through late braking or not being fully aware of other vehicles or pedestrians crossing the street. Accordingly, I consider that the proposal would have significant and unacceptable safety implications on both drivers and pedestrians in the area around the signage.
16. The studies into driver distraction submitted by the Council, refer to evidence that video adverts caused significantly greater impairment to driving performance than static adverts¹, that roadside advertising contributes to over-complexity of the visual field and that this may result in excessive driver distraction² and that the presence of advertising increased mental workload and eye fixations, drawing attention away from the driving task³. I appreciate that there are limitations to these studies in terms of sample size and in one case a simulated driving task, nevertheless they add weight to my findings.
17. The appellant indicates that drivers would already be alert to distractions and unexpected occurrences. As such, in their view, the moving images would be unlikely to have a significantly adverse additional effect on the attention of drivers. Also, the various studies do not suggest that full-motion LED screens result in any discernible impact on highway safety.
18. I acknowledge that in urban environments drivers would be more attentive. However, the specific circumstances in this case relate to a highly vibrant area containing one of the country's largest sports venues, associated entertainment uses and a significant amount of pedestrian activity. The added addition of LED motion signs of the scale proposed in such proximity to a highway, traffic signal and pedestrian crossing would in this instance be a very unwelcome and dangerous distraction to motorists, especially those travelling westward along Fulton Road.
19. There is no evidence of any road traffic accidents caused by the existing LED signage at the appeal site. It is acknowledged that accident data can be a

¹ Transport Research Laboratory Report PPR409

² B Wallace report

³ Brunel University Study

useful indicator of the safety of a highway, however, it does not account for vehicle collisions where no injury has been accounted for.

20. The appellant has presented a number of case studies where similar proposals have been allowed, including at appeal⁴. Although I have not visited those sites, the images presented appear to show those signs set further away from traffic signals or at an angle, while the backdrop of those signs does not appear as immediate as the proposal would to the signal head at Fulton Road. I have no specific details of pedestrian movements, or the land uses in and around those other sites, nonetheless, from the images none appear to be comparable to the appeal site and its unique setting close to a large sport and entertainment complex. Accordingly, I do not consider that the case studies cited are comparable to this appeal or add any significant weight to the appellant's case.
21. I note the appellant's suggestion of a monitoring condition and that such a provision was used in relation to the Liverpool Media Wall case study. However, this would not be a reasonable approach as it would not address any road traffic incidents that could occur prior to monitoring taking place.
22. I conclude that the alterations to the signage proposed by both Appeal A and B would cause harm to safety of vehicular and pedestrian traffic using Olympic Way and Fulton Road. It would be contrary to Policy DMP1 of the Local Plan and the guidance within the SPD, where they require proposals to protect the highway safety of road users and prevent unacceptable impacts arising from the size and positioning of signage.

Amenity

23. A large retail store is located opposite the appeal building where it faces Fulton Road. Outline planning permission is in place⁵ to demolish the building as part of a large re-development that would include housing on upper floors at the site.
24. The Council has indicated that there are no details in place of the location or proximity of the proposed residential uses, nevertheless it could be possible that windows of dwelling units would face the appeal building's north-east elevation. Future occupiers could therefore be exposed to direct views of the proposed moving advertisement images a short distance to the south.
25. It is acknowledged that the appeal building's Fulton Road frontage can already display static digital images that would appear vibrant and colourful, while moving images would be visible for short periods when the road is closed. However, moving images would be ever changing and result in a more intensive visual environment. With the possibility of future occupiers living close by and with windows facing the signage's very large display screen, some residents could be exposed to prolonged and intrusive levels of kinetic illumination that would harm their amenity.
26. Notwithstanding the above, when the Council approved the appeal building⁶ it imposed a condition that would review the display of moving images on the south elevation given the proximity of residential occupiers nearby. A similar

⁴ Appeal Decision Refs: APP/B4215/H/13/2203371 and APP/B4215/H/13/2203370 (Portland Street)

⁵ LPA Ref 17/3059

⁶ LPA Ref 17/4877

condition that would enable future control of luminance levels and operational arrangements could be imposed in respect of the proposal. This would significantly reduce the impact it may have on future occupiers to the north and lead to more satisfactory levels of amenity.

27. Therefore, subject to the condition described above, the proposal, as it relates to Appeal B, would have an acceptable effect on the amenity of neighbouring occupiers. It would accord with Policy DMP1 of the Local Plan which requires proposals to, amongst other things, ensure that residents are not exposed to unacceptable levels of pollution and general disturbance. The provisions of the PPG where they require proposals to protect amenity would also be met.

Conclusion

28. I have found that the proposed signage in Appeal A and Appeal B would have unacceptable effects on the safety of vehicular and pedestrian traffic using Olympic Way and Fulton Road. The fact that there would be no harm to the area's amenity does not overcome my concerns on the first main issue.
29. For the reasons set out above and having regard to all other matters raised I conclude that both Appeal A and Appeal B should not succeed.

RE Jones

INSPECTOR