
Appeal Decision

Site visit made on 7 June 2022 by G Sibley MPLAN MRTPI

Decision by L McKay MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 July 2022

Appeal Ref: APP/C4615/Z/22/3298099

91 High Street, Brierley Hill DY5 3AU

- 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 Wildstone Estates Limited against the decision of Dudley Metropolitan Borough Council.
 - The application Ref P22/0046, dated 23 December 2021, was refused by notice dated 11 March 2022.
 - The advertisement proposed is upgrade of existing advert to support digital poster
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Decision

1. The appeal is allowed and express consent is granted for the display of upgrade of existing advert to support digital poster as applied for. The consent is for five years from the date of this decision and is subject to the five standard conditions set out in the Regulations and the following additional conditions:
 - 1) The intensity of the illumination of the advertisement permitted by this consent shall be no greater than 5000 candelas per square metre (cd/m²) during the day and no greater than 100 cd/m² during non-daylight hours. The display panel shall be fitted with a light sensor, designed to adjust the brightness to changes in ambient light levels.
 - 2) The advertisement permitted by this consent shall not be illuminated by intermittent or flashing lighting and shall not display any moving, or apparently moving images at any time.
 - 3) Any sequential advertisements shall not change more than once every 10 seconds and shall have an instantaneous changeover between images of no greater than 1 second with no fading or other effects.

Appeal Procedure

2. The site visit was undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

Main Issues

3. The main issues are: the effect of the proposed advertisement on the amenity of the area and linked to this whether the proposal would preserve or enhance the character or appearance of Brierley Hill High Street Conservation Area (CA); and the effect of the proposed advertisement upon public safety.

Reasons for the Recommendation

Amenity and the CA

4. High Street is located within Brierley Hill Town Centre where commercial uses dominate the area. The CA derives considerable significance from the historic town centre, the survival of buildings and spaces and the architectural and historic interest of the buildings, including locally distinctive materials and detailing. This section of High Street includes red brick commercial buildings with traditional stall risers, pilasters and fascia's as well as architectural detailing and paint or render above the ground floor.
5. The signalised junction between High Street, Moor Street, Mill Street and Cottage Street creates an open area between the edge of the CA and the Moor Centre, a large modern development outside the CA. Advertisements are common in the CA at fascia level, but around the junction there are also some large adverts on the flank walls of buildings.
6. The Council has identified that the appeal building is designated on the Historic Environment Record (HER) but has not provided any further details of this designation. The Conservation Area Character Appraisal and Management Proposals Brierley Hill High Street (2009) identifies No 91 as a positive building in the CA but not as a locally listed building.
7. No 91 is a red brick end terrace building with cream render above the ground floor on the front elevation. The shop front has a relatively modern stallriser, pilasters and fascia. Whilst the architectural detail above this is limited, the front elevation of the building has retained elements that positively contribute to the significance of the CA. The flank wall of the building has windows on the ground floor which creates visual interest for this corner-turning building but much of this side is very plain. This elevation therefore reflects the simple form of the modern development opposite rather than the more detailed architecture of buildings on the High Street.
8. Above the ground floor windows is a non-illuminated advertisement of the same size and in the same position as that proposed. This advertisement has been in place for some years and the Council does not dispute that it now benefits from deemed consent. Given its location on the flank wall of the building it does not detract from the positive contribution the front elevation makes to the significance of the CA, and it is clearly visible on the approach to the CA from the south.
9. Although in a prominent location, in terms of its scale and position the proposal would have the same visual impact as the existing advertisement and therefore would not appear incongruous in this location. It would however be internally illuminated. The hi-definition screen would be designed to appear similar to a paper advert during the daytime. Inbuilt technology would reduce the brightness to react to ambient light levels, which would ensure the advert would not appear unduly prominent during the day.
10. At night however, illumination would make the proposal more visible than the existing advertisement. The appellant has suggested a condition limiting the luminance during non-daylight hours to 300 cd/m² or 100 cd/m² if necessary. The area is well-lit with street lighting and other illuminated signage, however I consider that in this prominent location at the entrance to the CA the lower

luminance level would be necessary to ensure that the advertisement would not dominate the appearance of this section of the CA, compared with the surrounding advertisements. I do not however consider that it would be necessary for it to be switched off entirely overnight, given the presence of other illumination in the vicinity.

11. The proposed display would change approximately every 10 seconds but would still be static images. These restrictions, when combined with the limits on luminance, would mean that the proposal would not be intrusive or visually strident. Therefore, subject to conditions to control the display and illumination, I find that the proposed advertisement would preserve the character and appearance of the CA in this location compared to the existing situation and would not harm the amenity of the area.
12. I have taken into account Policies D12 and S9 of the Dudley Borough Development Strategy (DS) (adopted 2017) and Planning Guidance Note 11: Advertisement Display Guide. These seek to protect amenity and the significance of heritage assets and so are material in this case. Given I have concluded that the proposal would not harm amenity, the proposal would not conflict with these policies. Nor would it be a poorly sited or designed advertisement which the National Planning Policy Framework (Framework) seeks to resist.

Public safety

13. When approaching the advertisement along High Street from the south the road is straight and the view across the junction is relatively free of visual obstructions. However, the road signs and traffic signals at this junction when turning left are partly positioned in front of the existing advertisement. As identified in the Highway Safety Report this layout has not been linked to any recent road accidents. Given the open view over the junction on the approach, drivers would have time to assimilate the advertisement as well as the traffic signs and signals prior to making any manoeuvres. Drivers have been able to make this distinction with the existing advertisement and there is no technical evidence that it has caused harm to public safety.
14. The proposed display would show static adverts and the control over the levels of luminance, especially during hours of darkness, and the steady change between them would ensure the adverts themselves would not be significantly more prominent than the existing paper advert when approaching the junction. Consequently, the proposal would not obscure or hinder the ready interpretation of any traffic sign or signal or cause a harmful distraction for drivers or cyclists when approaching along High Street from the south when compared with the existing situation.
15. Given the orientation of Mill Street, the traffic signs and signals would not be located directly in front of the proposed advertisement. Moreover, given the open layout of the junction drivers would again have time to assimilate the proposal and the traffic signs and signals before undertaking manoeuvres. From Moor Street the proposal would be located above eye level at an acute angle and would not be in the field of view of drivers as they approach the junction. This would diminish the potential for drivers to be distracted by the proposal. Cottage Street is a one-way road and vehicles cannot exit the road heading towards the proposed advertisement. Taking the above into consideration as well as the layout of this junction, drivers would have already

had time to assimilate the proposal before undertaking this manoeuvre. Therefore, the proposal would not raise any highway safety concerns in respect of these roads.

16. The signalised crossing points requires pedestrians to wait before crossing most of the roads in this location. As a result, pedestrians would have time to assimilate the advert before crossing the road without being distracted by it. Moreover, the advertisement would be located above the ground floor and would not obscure or hinder the ready interpretation of the low-level pedestrian crossing signals on the other roads. Cottage Street does not have a signalised crossing but is a narrow one-way road and pedestrians would be looking into the junction when crossing. Given the siting of the proposal above first floor and the associated traffic signals, the advertisement would not obstruct pedestrian sightlines when crossing this or the other roads.
17. Therefore, the proposed advertisement would not be detrimental to public safety. I have taken into account policy D12 of the DS which seeks to protect public safety and so is material in this case. Given I have concluded that the proposal would maintain public safety, the proposal would not conflict with this policy. The proposal would also not conflict with the general highway safety policies within the Framework.

Conditions

18. Further to the standard conditions set out in the Regulations the appellant has set out various ways in which the illumination and display of the proposed advertisement would be controlled. These measures are necessary in the interests of public safety and amenity. I have therefore amended the conditions suggested by the Council to include all of these measures.
19. A condition requiring the proposal be carried out in accordance with the submitted plans would not be necessary as express consent is granted only for the advertisement as applied for. That condition is used to facilitate applications for minor material amendments to planning permission and so is not relevant here.

Conclusion and Recommendation

20. For the reasons given above and having had regard to all other matters raised, the proposed advertisement would preserve the character and appearance of the CA and would not harm amenity or public safety. Consequently, I recommend that the appeal should be allowed subject to conditions.

G Sibley

APPEAL PLANNING OFFICER

Inspector's Decision

21. I have considered all the submitted evidence and the Appeal Planning Officer's report and, on that basis, I agree with the recommendation and shall allow the appeal subject to conditions.

L McKay

INSPECTOR