
Appeal Decision

Site visit made on 12 July 2022

by Stewart Glassar BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 July 2022

Appeal Ref: APP/P5870/Z/21/3282254

Land adjoining former refuse transfer station, Oldfields Road, Sutton SM3 9QS

- 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 Marc Cowley (Clipstone Investment Management Limited) against the decision of the Council of the London Borough of Sutton.
 - The application Ref DM2021/01066, dated 21 May 2021, was refused by notice dated 15 July 2021.
 - The advertisement proposed is a monopole with 2 x D48 panels each measuring 6.2m x 3.1m.
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Decision

1. The appeal is allowed and express consent is granted for a monopole with 2 x D48 panels each measuring 6.2m x 3.1m 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 panels hereby permitted shall not be illuminated or operate between the hours of 00:00 and 06:00.
 2. The panels hereby permitted shall incorporate a light sensor and dimmer control to monitor ambient light conditions and adjust brightness accordingly to enable the panels to operate at an illumination level no greater than 300cd/m² during the day and at an illumination level no greater than 30cd/m² during the hours of darkness.
 3. Each image displayed on the panels hereby permitted shall be displayed for a minimum of at least 10 seconds.
 4. The interval between successive images displayed on the panels hereby permitted shall be instantaneous (0.1 seconds or less). The complete screen shall change, with no visual effects (including fading, swiping or other gradual or animated transition methods) between displays.
 5. The panels hereby permitted shall display static images only, with no special effects such as changing light patterns, flashing, scrolling or intermittent video.
 6. The panels hereby permitted shall include a mechanism to shut down and not display any advertisement in the event of a malfunction.

Preliminary Matters

2. The site address used in the application form is preferable to that used in the decision notice and appeal form as it refers to Oldfields Road, which is the road on which the advertisement is located. The application form, Council decision notice and appeal form all use slightly different descriptions of the proposed advertisement. I have therefore taken the description from the application form, omitting the reference to a previous display as that is not a description relevant to the proposal.
3. However, for clarity I have included in the description a reference to the size of the panels, 6.2 m x 3.1 m. This was also used in the appeal form. The reason for including the size of the panels is because both the Officer Report and Decision Notice refer to the advertisements each measuring 6.5m x 6.1m. It is clear from all the submitted information that these stated measurements are incorrect. Accordingly, I have assessed the proposal on the basis of the panels each measuring 6.2 m x 3.1 m.
4. In accordance with the National Planning Policy Framework (the Framework) and the Regulations, my consideration of this appeal is confined to the issues of amenity and public safety, taking into account the provisions of the development plan, so far as they, and any other factors, are material.

Main Issues

5. The main issues in the appeal are the effects of the proposed advertisement on amenity and on public safety.

Reasons

Amenity

6. The immediate vicinity of the appeal site has a mixed character. To the north is a large commercial building occupied by Wickes and there is a surface level car park serving a Tesco superstore, together with a petrol filling station to the south and west of the site. To the east is Oldfields Road, a four-lane carriageway on the opposite side of which are residential properties. There are a range of advertisements and road signage within the vicinity of the site that also contribute to the character of the area.
7. When viewed from the south, the proposed advertisement would largely be seen against the backdrop of the end elevation of the Wickes building, which is on rising land. The tree planting along the western edge of the Tesco car park, would provide a containing foreground, that at certain times of the year would be likely to noticeably reduce the visual presence of the advertisement. When there is less foliage on the trees, views through to the commercial buildings on Kimpton Park Way and the Tesco petrol filling station would dilute the focus and views of the advertisement.
8. Whilst there are other advertisements and road signs in the vicinity of the appeal site, I am satisfied that there is not an excessive number. Furthermore, whilst views of the proposal on Oldfields Road from the south of the site will encompass the bus stop and the road sign for Kimpton Industrial Park, each would be visible in its own right. The position of the advertisement would not interfere with the existing signs, whose relationships with one another would not alter.

9. Given the incline in Oldfields Road, when the advertisement is viewed from the north, it is set at a slightly lower level and thus against a mixed urban background. The Wickes building and its fenced open storage area provides a containing foreground that limits seeing the advertisement within a significantly wider context. The advertisement would sit well below the highest part of the Wickes building. Furthermore, its height would not be significantly greater than those houses on the opposite side of Oldfields Road.
10. The advertisement would comprise two screens angled towards Oldfields Road. As such, views from houses opposite would be at some distance and at an angle. Nevertheless, the appellant proposes to limit the level of illumination emitted from the screens during the daytime (300cd/m²) and night-time (30cd/m²). The screens would also be switched-off between the hours of 00:00 - 06:00. Given these levels of luminance and timings, together with their size and appearance, I am satisfied that the effect of the advertisement on the amenity of residential neighbours would be appropriate in the context of the surrounding environment, having regard to the busy and well-lit nature of the road and the presence of commercial premises.
11. Overall, I find that the proposal would not have a harmful effect on the amenity of the area. Insofar as they are material considerations, I have taken into account Policies D4 and D8 of The London Plan 2021 and Policy 28 of the Sutton Local Plan 2018. These policies state that development, including advertisements, should be suitably located and designed to have no detrimental impact on the character and amenity of the surrounding area or public realm. Given I have concluded that the proposal would not harm amenity, the proposal does not conflict with these policies.
12. The Council's reasons for refusal also refer to Supplementary Planning Document 14 'Creating Locally Distinctive Places'. However, I have not been provided with a copy. Nevertheless, I am satisfied that as this document is guidance which must accord with development plan policy, and as I have found the proposal accords with such policy, sight of the document would not alter my conclusions.
13. Given the proposal would not cause harm to the amenity of the area, I find no conflict with Paragraph 136 of the Framework which, amongst other things, seeks to ensure advertisements are not poorly sited or designed.

Public Safety

14. All advertisements are intended to attract attention and so the Planning Policy Guidance¹ (PPG) sets out the main types of advertisements which may cause danger to road users. I have taken the guidance of the PPG into account.
15. The sign would be visible to pedestrians, cyclists and drivers travelling along Oldfields Road, which is relatively straight. As the advertisement would be located between two sets of traffic lights, traffic will often be moving quite slowly past the traffic lights and the advertisement.
16. Motorists would generally have good forward visibility of the advertisement, which would be positioned so that it would not interfere with or block drivers' line of sight towards other vehicles or signage. It would also not be in a position so elevated that it would draw a driver's attention away from the road.

¹ Paragraph: 068 Reference ID: 18b-068-20140306

Overall, I consider that the advertisement would provide adequate opportunity for drivers to assimilate the advertisement as they approach without distracting them from the road and other road users.

17. Similarly, the proposal would not adversely distract pedestrians as they walked past the advertisement or used the nearby crossings. Due to the relatively low speeds that cyclists would be travelling past the site and given that they are provided with a separate path to pedestrians and motor vehicles, there would not be harm to their safety either.
18. Transport for London (TfL) provided the Council with comments during consideration of the application. Unfortunately, these comments were not passed on to the applicant. Most of the points are in effect limitations TfL would like to see imposed on the operation of any advertisement or on the working practices during its installation. However, TfL did raise a more general point that the advertisement could distract bus drivers given the proximity of a bus stop just to the south of the appeal site. However, it is not clear whether there was anything specific concerning the advertisement nor the extent to which the list of limitations might mitigate their concerns.
19. The advertisement would be set behind and above the height of the bus stop. Furthermore, as a bus were to approach the stop, the slight curvature of the road would set the bus stop sign and red tarmacked bus stop area apart from views of the advertisement. As such, the advertisement would not hinder drivers viewing the stop, anyone waiting to board the bus or other road users. It is therefore unlikely that at this point the proposed display would be such a distracting feature.
20. The appellant has drawn my attention to accident data relating to this stretch of road when a previous advertisement hoarding was in place very near the appeal site. However, digital advertising may, in some circumstances, have a greater propensity to distract drivers than conventional hoardings, due to the intensity of illumination or the changing content of the display. However, factors such as controls on the time between changes of advertisement and the prevention of moving images can be used as factors to mitigate the potential for undue driver distraction from digital displays. The appellant proposes to incorporate such measures within the proposal.
21. I also note that the appellant's submissions indicate that the proposal would include the installation of light sensors and an auto dimming unit. In this way the illumination of the display would be controlled to prevent driver glare to approaching vehicles. There would also be an auto shut off facility installed if the screens were to become faulty.
22. I have previously noted that controls on the timing and level of illumination are necessary in the interests of amenity. They are also necessary in the interests of public safety. They would ensure that the advertisements do not appear unduly prominent, particularly at night, and therefore do not become a potential distraction to users of the adjacent carriageway.
23. I find that the above measures would broadly correspond to the operational limitations sought by TfL and having regard to the historical accident data provided, I am satisfied that these measures should be sufficient so as not to confuse or distract drivers, including bus drivers, at a point when they are

making important decisions. Accordingly, I conclude the proposal would not be harmful to highway safety.

24. Taking the above factors into account, the appeal scheme would not have an unacceptable effect in terms of public safety, and insofar as it would relate to the development plan, the proposal would accord with Policies T2, T3 and T4 of The London Plan 2021 and Policy 36 of the Sutton Local Plan 2018, where they require proposals to have regard to transport impacts and public safety.
25. Accordingly, I find no conflict with Paragraph 111 of the Framework, which amongst other things, seeks to ensure that developments are not permitted if there would be an unacceptable impact on highway safety.

Other Matters

26. I have not had further regard in this decision to concerns over how the Council handled the application as this is an administrative matter to be taken up directly with them. I have focused on the planning merits of the scheme in regard to the main issues of the case.

Conditions

27. In addition to the five standard conditions set out in the Regulations, the appellant has suggested a number of additional controls and limitations which would need to be addressed through conditions. I have reviewed these in accordance with the tests set out in the Planning Practice Guidance (PPG), revising where necessary to better reflect its requirements and guidance.
28. In the interests of highway safety and amenity, I consider that conditions to address the following matters are reasonable and necessary: operating times; luminance levels; minimum display times; absence of visual effects such as fading, swiping or other animated transition; the need for advertisements to be static with no special effects such as changing light patterns, flashing, scrolling or intermittent video; the installation of light sensor and auto-dimming unit so as to control the display and prevent driver glare to approaching vehicles. Furthermore, in the event of malfunction there shall be a mechanism to switch off the display entirely.
29. Matters relating to works to install the advertisement, such as the parking of vehicles or the blocking of footways and cycle paths would be controlled by other regimes outside the remit of this appeal.

Conclusion

30. For the reasons given above, and having regard to all other matters raised, the appeal is allowed.

Stewart Glassar

INSPECTOR