



Appeal Decision

Site visit made on 12 September 2022

by A Parkin BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 October 2022

Appeal Ref: APP/U5930/H/21/3279501

384 Lea Bridge Road, Leyton E10 7DY

- 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 Clear Channel UK Ltd against the decision of Waltham Forest London Borough Council.
 - The application Ref 210863, dated 16 March 2021, was approved on 17 June 2021 and express consent was granted for the display of an advertisement subject to conditions.
 - The advertisement permitted is described as *to update the existing display to a digital LED poster sign*.
 - The conditions in dispute are Nos 4 and 5 which state that:
4 The illumination of the advertisement permitted by this consent shall at no time exceed 300cd/m2.
5 The sign hereby granted consent shall not be illuminated between 23:00-07:00 hours on any day.
 - The reasons given for the conditions are:
4 In order to avoid glare that could impact on the amenity of surrounding residents and/or traffic safety, in accordance with Policy CS15 & CS16 of the adopted Waltham Forest Local Plan - Core Strategy (2012) and Policy DM29 and DM32 of the adopted Waltham Forest Local Plan - Development Management Policies (2013).
5 In order to protect the residential amenities of nearby properties in accordance with Policies CS15 and CS16 of the adopted Waltham Forest Local Plan - Core Strategy (2012) and Policies DM29 and DM32 of the adopted Waltham Forest Local Plan - Development Management Policies (2013).
-

Decision

1. The appeal is allowed and the advertisement consent Ref 210863 for a digital LED poster sign at 384 Lea Bridge Road, Leyton E10 7DY granted on 17 June 2021 by Waltham Forest London Borough Council is varied by deleting conditions 4 and 5 and substituting for them the following conditions:
 - 4A) The illumination of the advertisement permitted by this consent shall at no time exceed 500cd/sqm.
 - 5A) The illumination of the advertisement permitted by this consent shall not exceed 150cd/sqm between 23.00 and 07.00 hours on any day.

Preliminary Matters

2. I have made minor changes to the description of the advertisement in my formal decision to remove superfluous words
3. When I visited the appeal site, I noted that a digital advertisement was displayed. The appeal form states that the proposed advertisement is not

currently displayed, and I note that the design of the currently displayed advertisement hoarding is different to that shown on the submitted drawings and described in the application form. In particular, there is a centrally positioned metal projection above the advertisement, that projects over a metre from the advertisement and extends over the highway. From a plaque below the hoarding, the advertisement is operated by Clear Channel, who are the appellant in this case.

4. In determining this appeal, I have not considered the currently displayed advertisement. I have considered the advertisement for which the Council granted consent subject to conditions.

Main Issue

5. The main issue is whether Conditions 4 and 5 are necessary to protect amenity and public safety in the area.

Reasons

6. The appeal site is located on a traditional 3-storey building at the junction of Lea Bridge Road and Gloucester Road. The building forms the southwestern end of a 3-storey terrace along Lea Bridge Road, containing various commercial uses at ground floor level. I note that the Council states the site is within the Markhouse Corner Neighbourhood Centre, and I saw that there are ground floor commercial units on the opposite side of Lea Bridge Road for some distance in both directions.
7. The appeal advertisement would be positioned at first floor level on the Gloucester Road elevation of the building, at roughly 90 degrees to Lea Bridge Road. The appeal advertisement would face towards Lea Bridge Library, a Grade II listed building on the opposite side of Gloucester Road. It would be readily visible to pedestrians and traffic travelling north-eastwards along Lea Bridge Road.
8. Adjacent to the appeal building on Gloucester Road is an alleyway beyond which is a short row of 2-storey terraced houses. The houses face across Gloucester Road towards a pleasant, landscaped area containing mature trees and grass. There are some further terraced houses on Theobald Road, to the north of the appeal site, although these are some distance from its junction with Lea Bridge Road.

Condition 4

9. The appellant applied for an advertisement display with illuminance levels of 300 cd/sqm. Condition 4 restricts the illuminance level of the advertisement permitted so that at no time shall it exceed 300cd/sqm, in accordance with the application. Whilst the Council's justification for Condition 4 is somewhat vague, from the evidence I am satisfied this does not make the condition unreasonable, as is suggested by the appellant.
10. Whilst I note the appellant's comments as to the format of the application form and that they chose to provide the night-time illuminance levels, there is manifestly no restriction on what information could be provided here. If, as the appellant comments in their statement, 'Digital content requires Illumination up to 5000cd/sqm during daylight to maintain visibility in bright or direct sunlight conditions', it is unclear why this was not mentioned on the application form or

in the covering letter. I also note the appellant's comments that an image would not be visible or would be difficult to see during daylight hours if displayed at 300cd/sqm, which makes the wording on the application form even more surprising.

11. The covering letter accompanying the application does state that the illuminance levels 'will adjust according to ambient brightness' and reference is made to according with the Institute of Lighting Professionals (ILP) best practice guidance for the illumination of digital displays¹. However, this document is not in the evidence before me. Consequently, I can give the appellant's comments that daylight illuminance levels of 5000cd/sqm would meet the ILP best practice guidance, only very limited and non-determinative weight. It is not clear that such a level of illuminance would not have a detrimental impact on amenity or public safety.
12. Nevertheless, given the wording of the Council's appeal statement in relation to acceptable illuminance levels I sought to clarify whether a typographical error had been made by the Council in this regard. The Council responded that the figure stated in their appeal statement, up to 500cd/sqm during daylight hours, was the level they would consider acceptable, not 5000cd/sqm.
13. An illuminance level of 500cd/sqm would be greater than the current level specified by Condition 4. I am content that such a level of illuminance would be generally acceptable in terms of amenity and public safety and that Condition 4 should be replaced with a new condition accordingly. I have taken into account policies CS15 (well designed buildings and spaces) and CS16 (making Waltham safer) of the Waltham Forest Local Plan – Core Strategy (2012) and policy DM29 (design principles, standards and local distinctiveness) of Development Management Policies Local Plan (2013), which seek to protect amenity and public safety and so are material in this case. Given I have concluded that the proposal would not harm amenity or public safety, the proposal does not conflict with these policies.

Condition 5

14. Condition 5 prevents the illumination of the advertisement between 23.00 and 07.00 in order to protect the residential amenity of nearby properties. However, the Council's Appeal Statement does not identify any residential properties that would be protected in this way. Furthermore, the Council makes no reference to residential amenity to support its decision in its Appeal Statement.
15. Instead, the Council refers to the location of the proposed advertisement opposite the Grade II listed Lea Bridge Library, and that the illumination of the advertisement would affect the setting and visual amenity of this designated heritage asset.
16. The Council has granted advertisement consent for the display of this illuminated digital advertisement and so considers the effect of the proposal on amenity to be acceptable outside of the hours specified by Condition 5. It is not clear to me why the display of the advertisement between 23.00 and 07.00 would have a materially greater impact upon the setting of the listed building than at other times, including immediately before or after the threshold.

¹ The Brightness of Illuminated Advertisements PLG05 2015.

17. Furthermore, in late Autumn, Winter, and early Spring, dusk is much earlier than 23.00 and dawn somewhat later than 07.00. The effect of the advertisement during the time specified by Condition 5 would therefore be very similar to the effect for much of the time that the Council already considers acceptable.
18. The Council makes reference to Section 16 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) and the stated requirement for Local Authorities to have *special regard to the desirability of preserving the character of Listed Buildings and their setting or any features of special architectural and historic interest*.
19. However, Section 16 (1) of the Act simply concerns the determination of applications for listed building consent. Section 16 (2) concerns having special regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest, but only in relation to determining applications for listed building consent. As this is not an application for listed building consent, both these parts of the Act are irrelevant in this case.
20. Whilst Section 66 (1) of the Act provides for, amongst other things, a general duty for Local Authorities to have special regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses, the Courts have ruled that this duty only applies to a grant of planning permission and so does not apply to a grant of advertisement consent.
21. Whilst I note there are some residential properties in this area, on Gloucester Road and Theobald Road, the position and elevation of the proposed advertisement relative to these residential properties means it would be unlikely to cause significant harm to the amenity of these residents.
22. However, there is limited scope for the illuminated advertisement to affect the occupiers of these properties late in the evening or early in the morning. I note that the appellant has suggested reducing the maximum illuminance level of the advertisement to 150cd/sqm between 23.00 and 06.00. This would further reduce the likelihood of harm to the amenity of nearby occupiers during this time.
23. I note the appellant states that the change in hours from the condition would be necessary to ensure the viability of the site. However, the viability or otherwise of the site is not a matter of any concern to me. I am concerned with the effect of the advertisement on amenity and public safety only². There is no compelling evidence that would cause me to vary the hours as the appellant has suggested.
24. For these reasons I am content that a reduced illuminance level of up to 150cd/sqm between 23.00 and 07.00 would protect the amenity of nearby occupiers and that Condition 5 should be replaced with a new condition accordingly. I have taken into account policy CS15 (well designed buildings and spaces) of the Waltham Forest Local Plan – Core Strategy (2012) and policy DM29 (design principles, standards and local distinctiveness) of the

² Regulation 3(1) of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007; and, Paragraph 136 of the National Planning Policy framework (2021).

Development Management Policies Local Plan (2013), which seek to protect amenity and so are material in this case. Given I have concluded that the proposal would not harm amenity, the proposal does not conflict with these policies.

Conclusion

25. For the reasons given above, and taking into account all matters raised, I conclude that the appeal is allowed and the advertisement consent varied, as set out in my formal decision.

A Parkin

INSPECTOR