



Appeal Decision

Site visit made on 28 February 2023

by J Moore BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 APRIL 2023

Appeal Ref: APP/G4620/Z/22/3311360

Advertisement Hoarding 174801, 96-98 High Street, Smethwick B66 1AQ

- 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 Sandwell Metropolitan Borough Council.
 - The application Ref DC/22/6810A, dated 10 August 2022, was refused by notice dated 12 October 2022.
 - The advertisement proposed is upgrade of existing 48 sheet advert to digital poster.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The address of the proposed advertisement as detailed on the planning application form did not include a property number. I have therefore used the address as it appears on the decision notice, in the interests of clarity.
3. The Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (the Regulations) stipulate that control may only be exercised in the interests of amenity and public safety. The development plan policy put forward by the Council in its reason for refusal is not determinative, but I have taken this into account insofar as it relates to amenity and public safety.

Main Issue

4. The main issue is the effect of the proposal on public safety.

Reasons

5. The appeal site is located within Smethwick Town Centre, where commercial frontages are located along the south westerly side of the B4149 High Street. The proposed digital poster would replace an existing externally illuminated 48 sheet poster advertisement sited on the gable elevation of an end terraced property on High Street. From the appellant's own evidence, the proposed advertisement is situated in a busy and active urban environment. At the time of my site visit, I saw that the area was heavily trafficked with vehicles and pedestrians, and that the area is well served by public transport, with a number of bus routes and frequent services.
6. The proposed digital poster would directly face north westerly bound traffic along the High Street, at a 'T' junction with Stony Lane. A zebra crossing sits directly in front of the appeal site serving Stony Lane. A further zebra crossing sits about some 10m further along High Street towards the north-west. It was

apparent at my visit that vehicles on occasions failed to stop when pedestrians had stepped on to these zebra crossings.

7. A bus stop is located on the north-westerly approach to the junction, about some 50m before the appeal site, with a further bus stop located on the opposite side of the single carriage way. While the bus stops are not aligned, their marked stopping areas on the road surface significantly overlap, close to the appeal site. At my visit, the stopping of buses occurred at frequent intervals, and I saw vehicles overtaking buses at the bus stops.
8. These above factors combine to inform my judgement that the appeal site is at a point on the highway where drivers need to take more care, as set out in Planning Practice Guidance: Advertisements¹. In order to navigate safely along High Street and be alert to and accommodate various road users, drivers would be required to have high levels of concentration on the approach to the junction to Stony Lane.
9. The proposed digital poster would display multiple static advertisements on rotation, and it would be internally illuminated. Due to its siting, internal illumination and changing images, the proposed digital poster would comprise a distraction to drivers approaching the junction to Stony Lane from the north westerly direction, and to pedestrians using the zebra crossing at Stony Lane. It would also be a distraction to drivers while they perform overtaking manoeuvres on the approach to the junction due to the siting of the bus stops and marked stopping areas.
10. Furthermore, accident data submitted by the appellant² demonstrates three accidents at or close to the zebra crossing at Stony Lane in the period 2017-2021 inclusive, all resulting in injury. Two of those accidents involved collisions with pedestrians. Such data reinforces my judgement that the proposed digital poster would be located at a junction where high levels of concentration are required by all road users.
11. The appellant contends that there is no indication that accidents occurred as a result of driver or pedestrian distraction due to the presence of the existing 48 sheet advertisement at the appeal site. However, the Council's Highways Officer notes that a failure to look properly has been recorded by the police as a causation factor. Therefore, the proposed digital poster would provide a distraction that would undermine the concentration of all road users in an area where accident data demonstrates injury and collision.
12. Despite the appellant's assurances that images displayed would be static; and that changes between advertisements would be instantaneous with a frequency of no more than 10 seconds, a digital poster would provide additional movement and changes to images and colours which would pose a significant distraction to road users. Such a distraction in this locality, at a point where considerable concentration is required, would cause danger to other road users and heighten the risk of collision. The proposed digital poster would therefore not be in the best interests of highway and public safety.
13. I acknowledge that the existing 48 sheet poster advertisement has been in place for some 10 years, with external illumination. The appellant also argues

¹ Paragraph: 067 Reference ID: 18b-067-20140306, Revision date: 06 03 2014; and Paragraph: 068 Reference ID: 18b-068-20140306, Revision date: 06 03 2014

² Highways Technical Note 01

that the presence of street lighting in the area demonstrates that illumination itself is not an unusual feature in the area. However, the proposed digital poster would rotate static images with internal illumination, and this would be markedly more distracting than any street lighting or the existing static poster display, regardless of compliance with the guidance of the Institute of Lighting Professionals.

14. The appellant draws my attention to case studies relating to digital advertisements in Portsmouth, Bristol and Manchester. The full details of these cases are not before me, and I cannot therefore consider to what degree they may be comparable to the case before me. Those in different areas will have their own unique contexts, and as such, they have a limited bearing on my consideration of this appeal. I have considered the appeal before me in light of the evidence presented and my own observations.
15. I therefore conclude that the proposal would result in an unacceptable risk to public safety. The proposed advertisement insofar as it relates to public safety would therefore conflict with Policy DM2 of the Sandwell Metropolitan Borough Council Site Allocations and Delivery Development Plan Document 2012 which states, amongst other matters, that applications for poster panels will be considered with regard to public safety, together with any potential impact on highway safety.
16. The proposed advertisement would conflict with paragraph 111 of the National Planning Policy Framework (the Framework), insofar as it is relevant that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety. However, it would be in conflict with paragraph 136 of the Framework, which references the control of advertisements only in the interests of amenity and public safety.

Other Matters

17. The proposal is located within the Smethwick Town Centre Conservation Area, designated for its commercial and historic significance. Given the commercial nature of the area, the proposal would, insofar as being relevant to amenity, preserve the character or appearance of the conservation area as a whole. The appeal site is opposite two locally listed buildings (Blue Gates Inn and Smethwick Library), designated for their historic and/or architectural significance. Neither of the main parties advocate any harm to amenity as a result of the proposed advertisement, and I find no reason to disagree. These matters form a neutral consideration in my decision.
18. The appellant draws my attention to guidance published by Transport for London, in that digital advertising should be no more or less acceptable than traditional forms of advertising, subject to suitable controls. However, this document has not been provided to this appeal, and as such I cannot consider how relevant it may be to the case before me.
19. I note that there would be social, economic and environmental benefits associated with an efficient and modern digital display. However, under the Regulations, I am confined to matters that relate to public safety or amenity. Even if I were to take account of such benefits, they would be of limited scale and would not outweigh the unacceptable harm to public safety that I have identified. Although the appellant contends that the proposal would upgrade and improve the existing advertising site, and thus have a positive effect upon

amenity, the existing poster advertisement is not unappealing and does not have a negative effect upon the amenity of the area.

Conclusion

20. For the reasons given above, I find that the proposed advertisement would unacceptably harm public safety, and I therefore conclude that the appeal should be dismissed.

J Moore

INSPECTOR