



Appeal Decision

Site visit made on 23 May 2023

by John Gunn DipTP, DipDBE, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 June 2023

Appeal Ref: APP/B3410/H/22/3308550

Unit 1 and 2, Paget Street, Burton Upon Trent DE14 3TQ

- 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 Direct Posters Outdoor against the decision of East Staffordshire Borough Council.
 - The application Ref P/2022/00894, dated 7 July 2022, was approved on 14 September 2022 and express consent was granted for the display of an advertisement subject to conditions.
 - The advertisement permitted is the display of an internally illuminated digital poster sign (revised scheme).
 - The condition in dispute is No 2 which states that: The intensity of the illumination of the advertisement permitted by this consent shall be no greater than 100cd/m².
 - The reason given for the condition is: To avoid dazzle and in the interests of the visual amenities of the locality in accordance with East Staffordshire Local Plan Policy DP9 and the National Planning Policy Framework.
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Decision

1. The appeal is allowed and the advertisement consent Ref P/2022/00894 for Display of an internally illuminated digital poster sign (revised scheme) at Unit 1 and 2, Paget Street, Burton Upon Trent, DE14 3TQ granted on 14 September 2022 by East Staffordshire Borough Council is varied by deleting condition No 2 and substituting for it the following condition:
 2. The intensity of the illumination of the sign permitted by this consent shall be no greater than 100cd/sqm in the hours of darkness. In daylight hours, the advertisement display luminance shall be controlled in order to reflect ambient light conditions (to ensure it is neither too bright or too dull) and shall at all times be no greater than the recommended maximum daytime luminance values set out in Table 10.5 within the Institute of Lighting Professionals - Professional Lighting Guide 05/23 – 'The Brightness of Illuminated advertisements including digital displays' (or its equivalent in a replacement guide) in cd/m².

Preliminary Matters

2. The appellant seeks to vary the wording of Condition 2 as follows:

The intensity of the illumination of the sign permitted by this consent shall be no greater than 100cd/sqm in the hours of darkness. During the daylight hours the luminance shall be controlled by sensors and/or timers to reflect ambient light conditions and shall have an intensity of illumination no greater than 3,000 cd/sqm. At all times the display shall operate within that recommended

by the Institution of Lighting Professionals in its Professional Lighting Guide 05 (PLG 05) Brightness of Illuminated Advertisements (or its equivalent in a replacement guide).

3. Notwithstanding the above the appellant has indicated in their final comments that they would accept the model condition contained within Professional Lighting Guide 05/23 – The Brightness of Illuminated advertisements including digital displays (the Guide).
4. Section 38(6) of the Planning and Compulsory Purchase Act 2004 does not apply to advertisement appeals. Therefore, my starting point is the effect on 'amenity' and/or 'public safety' rather than whether the proposal accords with the development plan. That said I will take the provisions of the development plan into account if they are material.

Main Issue

5. The effect of the proposed advertisement on the amenities of the area.

Reasons

6. I concur with the findings of the Inspector appointed to determine the appeal referenced APP/B3410/Z/21/3289412 regarding the deemed consent for the existing un-illuminated 48 sheet advert. I also agree with her assessment of the context in which the display would be seen, with particular regard to its siting close to a light controlled junction on a busy main road, in a predominantly residential area. Furthermore, I accept her judgement with regards to the relationship with the windows serving the property at 302 Uxbridge Road, and her conclusion that, the tall street lights located along Evershed Way would mean that the area is likely to be well lit at all times of day and night.
7. I note that the Council raises no objection in principle to the re-siting of the digital display to a position higher from the ground and closer to the Evershed Way, subject to appropriate conditions.
8. I find that a level of luminance, higher than provided by condition 2, would be required for the display to be seen during daylight hours given the higher background ambient light levels. This view is consistent with the findings of 'the Guide' which indicates at paragraph 10.9 that during daytime the background ambient lighting level is considerably higher than at night, and therefore the recommended maximum permitted value of sign luminance needs to be increased.
9. The upper limit of illumination sought by the appellant would sit above the maximum limit for bright days with cloud cover and below the upper limits bright sunny days, as set out in Table 10.5 of 'the Guide.' That said, the guidance acknowledges that ambient lighting conditions will be variable depending on the time of day, time of year and weather. In this regard the appellant indicates that during the daylight hours the luminance would be controlled by sensors and/or timers to reflect the ambient light conditions.
10. I consider that the use of control systems would provide a mechanism that would limit luminance levels irrespective of ambient lighting conditions and as a result the prospect of dazzle would be significantly restricted. Moreover, it

would ensure that whilst the display would be legible, whilst also ensuring that it would not have a negative impact on local amenity or public safety.

11. In light of the above I consider that the variation of condition 2 to allow an increase in the intensity of illumination during daylight hours would not unacceptably harm the amenity of the area and, insofar as it is material, would accord with Policy DP9 of the East Staffordshire Borough Council Local Plan. This policy, amongst other things, states that advertisements will normally be granted where they do not impact on the amenity of immediate neighbours. I also consider that the proposal conforms with the National Planning Policy Framework which supports well sited and designed advertisements.

Other Matters

12. The Highway Authority indicated the scheme appeared for all intents and purposes to be identical to the scheme allowed on appeal and recommended the imposition of the same conditions as those previously imposed. However, I find, for the reasons given above, that the condition previously imposed to safeguard amenity exceeds what is necessary in the circumstances. That said, I have taken into account the relationship of the proposed display with the existing traffic signals and the potential impact on public safety.
13. In this regard I noted on my site visit that the appeal site is located a short distance from a traffic controlled junction. However, given the position of the proposed digital display it would only be viewed by drivers of vehicles approaching from the east.
14. Drivers approaching from the east would be driving towards the appeal site on a relatively straight road. The road has street lighting and a number of markings alerting drivers to the change in conditions. Whilst the proposed advertisement would be visible to drivers approaching the junction, I am satisfied that given the offset between the display and the traffic lights, the limited number of changes in its images, and the absence of moving or flashing images, would mean that it would be unlikely to distract drivers to a degree that would have an adverse impact on public safety. Moreover, it would be unlikely that the advertisement would confuse drivers or inhibit their ability to comply with the lights. Accordingly, I conclude that the proposed advertisement would not be harmful to public safety.

Condition

15. A condition restricting the level of illumination is necessary to safeguard amenity. I have taken the condition suggested by the appellant but amended it to reflect the provisions of the model condition in the recently published guide.

Conclusion

16. For the reasons given above I conclude that variation to condition No 2 as set out above would not be detrimental to the interests of amenity and public safety.

John Gunn

INSPECTOR