
Appeal Decision

Site visit made on 20 June 2023

by K Williams MTCP (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 July 2023

Appeal Ref: APP/T5150/H/23/3315350

141 Ealing Road, Wembley HA0 4BP

- 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 Wildstone Estates Limited against the decision of the Council of the London Borough of Brent.
- The application Ref 22/3954 dated 8 November 2022 was approved on 13 January 2023 and express consent was granted for the display of an advertisement subject to conditions.
- The advertisement permitted is 'Removal of existing advertising hoarding and installation of internally illuminated digital advertising hoarding to side of 141 Ealing Road'.
- The condition in dispute is No 1 which states that: This permission is granted subject to the requirements of Regulation 14(7)(b) of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 which states that every grant of express consent shall operate for a period of five years from the date of consent and is subject to the following standard conditions stipulated in Schedule 2 to the said Regulations: -
 - (i) No advertisement is to be displayed without the permission of the owner of the site or any other person with an interest in the site entitled to grant permission.
 - (ii) no advertisement shall be sited or displayed so as to endanger persons using any highway, railway, waterway, dock, harbour or aerodrome (civil or military).
 - (iii) no advertisement shall be sited or displayed so as to obscure, or hinder the ready interpretation of, any traffic sign, railway signal or aid to navigation by water or air.
 - (iv) no advertisement shall be sited or displayed so as to hinder the operation of any device used for the purpose of security or surveillance or for measuring the speed of any vehicle.
 - (v) any advertisement displayed, and any site used for the display of advertisements, shall be maintained in a condition that does not impair the visual amenity of the site.
 - (vi) any structure or hoarding erected or used principally for the purpose of displaying advertisements shall be maintained in a condition that does not endanger the public
 - (vii) where an advertisement is required under the Regulations to be removed, the site shall be left in a condition that does not endanger the public or impair visual amenity.Following the expiration of the period of five years, to which this permission relates, the advertisement(s) and all fixtures and fittings associated with it (them) shall be removed.
- The reasons given for the conditions are: To conform with the requirements of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007.

Decision

1. The appeal is allowed and the advertisement consent Ref 22/3954 for 'Removal of existing advertising hoarding and installation of internally illuminated digital advertising hoarding to side of 141 Ealing Road' at 141 Ealing Road, Wembley HA0 4BP granted on 13 January 2023 by the Council of the London Borough of Brent is varied by deleting condition 1 and substituting for it the following condition:

- 1) This permission is granted subject to the requirements of Regulation 14(7)(b) of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 which states that every grant of express consent shall operate for a period of five years from the date of consent and is subject to the following standard conditions stipulated in Schedule 2 to the said Regulations:-
- i. No advertisement is to be displayed without the permission of the owner of the site or any other person with an interest in the site entitled to grant permission.
 - ii. No advertisement shall be sited or displayed so as to endanger persons using any highway, railway, waterway, dock, harbour or aerodrome (civil or military).
 - iii. No advertisement shall be sited or displayed so as to obscure, or hinder the ready interpretation of, any traffic sign, railway signal or aid to navigation by water or air.
 - iv. No advertisement shall be sited or displayed so as to hinder the operation of any device used for the purpose of security or surveillance or for measuring the speed of any vehicle.
 - v. Any advertisement displayed, and any site used for the display of advertisements, shall be maintained in a condition that does not impair the visual amenity of the site.
 - vi. Any structure or hoarding erected or used principally for the purpose of displaying advertisements shall be maintained in a condition that does not endanger the public.
 - vii. Where an advertisement is required under the Regulations to be removed, the site shall be left in a condition that does not endanger the public or impair visual amenity.

Preliminary Matters

2. In the interests of precision and accuracy and for the avoidance of doubt, I have amended the address in the banner heading and decision above to reflect that on the decision notice.

Background and Main Issue

3. Consent to display a digital 48 sheet digital advertisement display on the gable of No 141 Ealing Road was granted by the Council subject to a conditions. In this case, the Council has specified that consent shall expire 5 years from the date of its decision notice, the advertisement(s) and all fixtures and fittings associated with it shall be removed. The reason given for this is to conform with the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (as amended) (the Regulations). The appellant wishes to vary condition 1 by deleting the final sentence in condition 1: Following the expiration of the period of five years, to which this permission relates, the advertisement(s) and all fixtures and fittings associated with it (them) shall be removed.
4. Accordingly, the main issue is whether the condition is reasonable or necessary having regard to requirements of the Regulations.

Reasons

5. Advertisements granted consent are subject to the standard conditions set out in Schedule 2 of the Regulations. Regulation 14(7) within Part 3 also states that an express consent shall be subject to the condition that it expires at the end of: (a) such period as the local planning authority may specify in granting the consent; or (b) where no period is specified, a period of 5 years.
6. After the expiry of the relevant period the advertisement can continue to be lawfully displayed as it will have the benefit of deemed consent under Class 14 of Schedule 3 of the Regulations. However, a non-standard condition requiring that an advertising display is removed at the end of the relevant period can be attached to a consent where it is evident that it is likely that the display will have become unacceptable by that point.
7. The National Planning Practice Guidance (PPG) details that all advertisements, whether they require express consent or not, are subject to the five standard conditions. If a local planning authority decides to impose additional conditions, these must be supported by specific and relevant planning reasons¹. The PPG specifically states that conditions should never be imposed because the local planning authority wishes, as a matter of general policy, to prevent the operation of Class 14 of Part 1 of Schedule 3 of the Regulations. This grants deemed consent to any advertisement that has been displayed with express consent once the express consent expires.
8. The Council has found that the digital display would be in keeping, in terms of scale and location, with the context of the mixed-use area. This is due to the advertisement being sited in this location previously. Nor do the Council consider the level of luminance would affect nearby residents. Although I note the Council's Highway team commented on the proximity of nearby pedestrian crossings, it would be out of the eye-line of approaching drivers and would not restrict other road warnings or signs. Therefore, noting that there were no objections from the Council's Highway and Environmental Teams, on the basis of my site visit I agree with the assessment of the Council on these matters.
9. As such, it has not explained why the digital advertisement that is deemed to be currently acceptable would not be in five years' time. There is no evidence before me that the surrounding area will be so different by January 2028 or that the advertisements will harm visual amenity or public safety. Nor is it clearly justified within the reason for the condition.
10. The Council has the power under the Regulations to serve a discontinuance notice in relation to the display of the advertisement if, at any time following the expiry of the express consent, it is found to cause substantial injury to the amenity of the area or danger to the public. This process would address actual harm at the time, rather than any perceived harm. For these reasons, I conclude that the existing condition in its current form is reasonable or necessary in the interests of amenity or public safety.
11. I have taken into account policy DMP1 of the Brent Local Plan 2019-2041 (February 2022) which seeks to protect amenity and so is material in this case. Given I agree the proposal would not harm amenity, or highway safety the variation of the proposal does not conflict with this policy. For the same

¹ Paragraph: 034 Reference ID: 18b-034-20140306

reasons, the proposals would not conflict with the guidance contained within the Council's Supplementary Planning Documents (SPD) SPD3 Shopfronts, and SPD8 Advertisements.

Conditions

12. The appellant seeks to vary condition No 1 to remove the requirement to remove the advertisement and all fixtures and fittings associated with it. I agree with this for the reasons given above. The consent is subject to a number of further conditions. I have received no correspondence with regard to these, or the unvaried elements of condition No 1 and there is nothing before me that suggests that these were not properly imposed for the reasons set out in the decision notice.

Conclusion

13. For the reasons given the appeal is allowed and express consent varied to remove condition 1 and substitute it for a new condition with the statement in dispute removed.

K Williams

INSPECTOR