The Planning Inspectorate

# Appeal Decision

Site visit made on 28 June 2023

**by S Brook BA (Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 9 August 2023**

**Appeal Ref: APP/P4605/H/23/3315052**
**288-298 Tyburn Road, Birmingham B24 8LY**

- 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 against the decision of Birmingham City Council.
- The application Ref 2022/08074/PA, dated 27 October 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 Display of 1 no. internally illuminated 48-sheet digital poster.
- The condition in dispute is No 8 which states that: *The intensity of the luminance of the advertisement hereby granted consent shall be no greater than 600 candela per square metre during daylight hours and shall be no greater than 300 candela per square metre during evening/night time hours. The adverts shall be equipped with a dimmer control mechanism and a photo-cell which shall constantly monitor ambient light conditions and adjust brightness accordingly.*
- The reason given for the conditions is: *In order to safeguard the visual amenity of the area and ensure that the advertisement will not cause distraction to drivers using the adjacent highway in accordance with Policies PG3 and TP44 of the Birmingham Development Plan 2017 and the National Planning Policy Framework.*

## Decision

1. The appeal is allowed and the advertisement consent Ref 2022/08074/PA for the Display of 1 no. internally illuminated 48-sheet digital poster at 288-298 Tyburn Road, Birmingham B24 8LY granted on 13 January 2023 by Birmingham City Council is varied by deleting condition 8 and substituting it for the following condition:

   *8. The intensity of the luminance of the advertisement hereby granted consent shall be no greater than 2500 candela per square metre between sunrise and sunset and shall be no greater than 300 candela per square metre between sunset and sunrise. The adverts shall be equipped with a dimmer control mechanism and a photo-cell which shall constantly monitor ambient light conditions and adjust brightness accordingly.*

## Main Issue

2. The main issue is whether the condition is reasonable or necessary in the interests of amenity and public safety.

## Reasons

3. The appeal site is located at a Petrol Filling Station (PFS) adjacent to the A38, a dual carriageway route through the city. The consented digital poster will be positioned along the eastern edge of the forecourt, to the front of the onsite

shop and at the back of the pavement. It will project forward of the buildings extending to the east, which are predominantly in commercial use. Residential properties are located to the north and west, with industrial development to the south.

4. The parties agree that some form of restriction on the level of luminance of the consented digital poster is necessary for reasons of amenity and public safety. The restriction imposed by condition 8 on night-time luminance is not contested by the appellant. The main area of dispute between the parties relates only to what would be a suitable daytime level. The appellant originally sought 3000cd/m². Condition 8 subsequently imposed 600cd/m² and the appellant requests that this be varied to a daytime limit of 2500cd/m².

5. The appellant also seeks to substitute reference to daytime and evening/night time, with sunrise/sunset. The Council has raised no concerns with this change, and I have no reason to disagree. It would not fundamentally alter the consented scheme and it would be precise.

6. I am referred to the Institute of Lighting Professionals (ILP) publication - Professional Lighting Guide 05 (PLG05) "The Brightness of Illuminated Advertisements", 2015. This sets a maximum recommended luminance by area type during the night and states that daytime sign luminance should never exceed 5000cd/m². If mounting illuminated advertisements well above the building frontage height, it recommends that advertisements having an area greater than 10m² should have a maximum luminance of 1000cd/m².

7. The digital poster would face west, across the forecourt, and so would only be visible to vehicles and pedestrians approaching from the west. At the time of my site visit, the A38 was heavily trafficked, albeit the road is relatively straight where it passes the site, and views of the digital poster would not be restricted.

8. There are additional vehicle movements in the locality that raise the need for awareness from drivers, such as those entering and exiting the PFS itself, those parking to the front of the commercial premises to the east, and the traffic light-controlled junction with Jarvis Way. However, these circumstances are not particularly complex or unusual and there does not appear to be any compelling highway conditions that would warrant a limit of 600 cd/m². In recommending a restriction of 600cd/m² during the day, the response to the Council from Transportation Development provided no site-specific justification for this limit. Reference is made to an appeal decision at Warwick Road. However, the response provides no reasoning as to why the circumstances of that earlier appeal would be comparable and warrant the same controls as this scheme. As such, based on the evidence before me, a daytime limit of 2500cd/m² would not be unduly harmful to public safety.

9. Noting the location of the digital poster in relation to neighbouring dwellings, no occupiers would have a direct line of sight, and given the intervening distance, the proposed increase in luminance would not be harmful to the living conditions of occupiers of these properties.

10. Whilst the digital poster would extend higher than the building within the PFS, it would not be higher than the PFS canopy or the properties to the east. As such, its height above surrounding development does not warrant consideration of a lower level of luminance, as suggested by the PLG05. I appreciate that

given its position near to both the footpath and the carriageway, pedestrians and drivers would pass by in close proximity. Nevertheless, given the mixed character of the area and commercial nature of the site, the proposed increased level of luminance would not materially harm visual amenity at this location.

11. I observed the presence of other displays along Tyburn Road, which the Council indicates are restricted to 600cd/m². However, the intervening distance between the appeal scheme and these displays is sufficient to ensure that the appeal scheme would not appear overly bright or garish in comparison.

12. I have been provided with a number of appeal decisions by both main parties, where increased levels of illumination have been considered, within Birmingham and elsewhere. Some have been allowed, others dismissed. I have given consideration to these decisions, however, each site has a differing local character and highway context, requiring a judgement in each case. As such, I have reached my own conclusions on the individual merits of this case.

13. Accordingly, I am satisfied that the illumination of the digital poster as proposed by the appellant would not be unduly harmful to amenity or public safety in this location. As such, there would be no conflict with policies PG3 and TP44 of the Birmingham Plan 2031[1] as referenced on the Council's decision notice, which respectively, seek to protect amenity by ensuring that new development responds to site conditions and local area context, and public safety by ensuring the safe use of the existing transport network.

**Conclusion**

14. For the reasons given above, I conclude that the appeal should be allowed and the express consent should be varied by deleting condition No. 8 and substituting it with a new condition that specifies daytime luminance levels as set out in the formal decision above.

*S Brook*

INSPECTOR

[1] Birmingham Plan 2031, Birmingham Development Plan, Part of Birmingham's Local Plan, Planning for Sustainable Growth, January 2017