



Appeal Decision

Site visit made on 15 August 2023

by R Gee BA (Hons) Dip TP PGCert UD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th September 2023

Appeal Ref: APP/P4605/Z/23/3316666

338 Soho Road, Birmingham B21 9QL

- 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 Clear Channel UK against the decision of Birmingham City Council.
 - The application Ref 2022/08005/PA, dated 24 October 2022, was refused by notice dated 20 December 2022.
 - The advertisement proposed is single illuminated 48-sheet digital poster display.
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Decision

1. The appeal is allowed and express consent is granted for the display of single illuminated 48-sheet digital poster as applied for. The consent is for five years from the date of this decision and is subject to the five standard conditions set out in the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (the Regulations) and the following additional conditions:-
 - 1) The intensity of the luminance of the advertisement hereby approved shall be no greater than 2500 cd/sqm between sunrise and sunset and shall be no greater than 300 cd/sqm between sunset and sunrise. The advertisement shall be equipped with a dimmer control mechanism and a photo-cell which shall constantly monitor ambient light conditions and adjust brightness accordingly.
 - 2) Images displayed on the approved advertisement shall not change more frequently than once every 10 seconds. The interval between successive displays shall be instantaneous (0.1 seconds or less).
 - 3) Advertisements shall be a series of static images, which shall not feature any flashing, moving or apparently moving images of any kind.
 - 4) The advertisement shall be switched off between the hours of 00.00 and 05.00.

Preliminary Matters

2. The Regulations, the National Planning Policy Framework (the Framework) and Planning Practice Guidance (PPG) all make it clear that advertisements should be subject to control only in the interests of amenity and public safety, taking account of cumulative impacts. The Council identifies Policy PG3 of the Birmingham Development Plan (BDP), Policy DM7 of the Development Management in Birmingham DPD (DPD), Design Principle 3 of the Birmingham Design Guide 2022 (Design Guide) and the Framework in their reason for

refusal. I have taken the policies into account as material considerations in so far as they are relevant to amenity and public safety.

3. The Council has indicated that there is no record of permission being granted for the existing advertisement. There is however no evidence before me to demonstrate that the Council has sought to secure its removal, and I note that it is agreed that it has deemed consent through the passage of time. I am therefore satisfied on the evidence before me that I should consider the proposal on the basis that it replaces an existing advertisement rather than introduces a new one.
4. The Council has raised no concerns in relation to the appeal proposals potential impact on public safety. On the basis of the evidence before me, I have come to the same conclusion.

Main Issue

5. The main issue is the effect of the proposed advert on the amenity of the area, including the living conditions of the occupiers of nearby flats and offices.

Reasons

Amenity

6. The appeal site comprises the flank wall of No. 338 Soho Road which is located on a corner plot at an intersection with Rookery Road. In the vicinity of the appeal site, Soho Road is predominantly characterised by traditional two and three storey, terraced buildings, with shops, bars and restaurants at street level. The area is commercial in character, and displays a wide range of advertisements, some of which are illuminated. Rookery Road exhibits a more residential character as you head away from the appeal site. However, the part of the road at which the appeal site is situated is more commercial in nature.
7. Whilst the proposed advert would be digitally illuminated, owing to its similar dimensions and positioning on the side wall of the building, the proposed advert would not be a significant contrast to the existing advertisement display and would not be intrusive or overbearing. As a replacement display the proposal would not result in a material increase in visual clutter. The signage, although visible from long-ranging views as you travel along the busy Soho Road, would be viewed in the context of surrounding uses and development which includes a broad range of signage associated with commercial properties.
8. The proposed display would enable the advertisement to show changing static images, changing approximately every 10 seconds. The nature of the proposal with changing of static advertisements displayed would differ from the existing non-illuminated advertisement and would likely draw the attention of road users and passers-by to a greater degree. However, the appeal site is within a busy, predominantly commercial area. In this context and taking into account the overall scale of the buildings and the long-established presence of the existing advertisement, I am satisfied that the display would not adversely harm the visual amenity of the area.
9. Turning to the matter of living conditions, I acknowledge that the sign would face towards first-floor windows at No. 336 Soho Road, and that by virtue of its proximity on the opposite side of the road and its scale the proposed illuminated sign would result in some light spill. It is unclear whether this first-

floor accommodation relates to residential or office space, however, given the commercial nature of the site, and its immediate surroundings, in particular, that there is already an apparent level of illumination from street lighting, glazed shopfronts, and other signage in the area, the advertisement would not give rise to unacceptable impacts on the living conditions of neighbouring occupiers opposite the appeal site.

10. Furthermore, the appellant has suggested planning conditions which would require the signage to be turned off between 00:00 and 05:00 and to reduce the illumination to 300cd/m² during sunset and sunrise. An appropriately worded condition would ensure that the illumination level of the screen is restricted to avoid light pollution during hours of darkness, in accordance with the guidance prepared by the Institute of Lighting Professionals. Accordingly, subject to the imposition of a suitable planning condition, I find that the proposed advertisement would not cause harm to the living conditions of nearby occupiers.
11. For the reasons previously given, the proposed advertisement would not appear unduly prominent, dominant, or out of place in this particular location. On this basis, I find that the display would not have a significant detrimental impact upon the visual amenity of the area or the living conditions of nearby occupiers.
12. I therefore conclude that the proposal would not have a harmful effect on amenity. I have taken into account Policy PG3 of the BDP, Policy DM7 of the DPD and Design Principle 3 of the Design Guide and the Framework. Given I have concluded that the proposal would not harm amenity, the proposal would not conflict with these policies.

Other Matters

13. The Council raises concerns that the advertisement would be unrelated to any premises or business in the locality. Advertisements are not uncommon on flank walls in urban areas and in this regard, there is no requirement set out in the Regulations for any advertisement to be directly related to a business or premises in the vicinity.

Conditions

14. As previously mentioned, conditions in addition to the five standard conditions as set out in the Regulations are necessary in the interests of visual amenity and to ensure that public safety is not harmed.
15. I have imposed a condition to control the level of illuminance and the requirement for the advertisement to be switched off between the hours of 00:00 and 05:00. These conditions are necessary in the interests of protecting the living conditions of neighbouring occupiers and to ensure public safety is not harmed.
16. I have also imposed a further condition to ensure that the advertisements are displayed for a minimum amount of time, that the change between advertisements is instantaneous, and that the displayed advertisement is static. This condition is necessary to ensure that public safety is not harmed and to ensure the advertisements do not harm the safe operation of the highway network.

Conclusion

17. For the reasons given above, I conclude that the display of the proposed advertisements would not be detrimental to the interests of amenity or public safety. The appeal should, therefore, be allowed and express consent granted subject to the conditions set out.

R Gee

INSPECTOR