



Appeal Decision

Site visit made on 17 September 2024

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 September 2024

Appeal Ref: APP/W1850/Z/24/3336901

**The Phoenix Theatre, Palace Pound, St. Marys Street, Ross-On-Wye,
Herefordshire HR9 5HT**

- The appeal is made under Regulation 17 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (as amended) against a refusal to grant express consent.
 - The appeal is made by Mr Graham Russell of The Phoenix Theatre against the decision of Herefordshire Council.
 - The application Ref is 232665.
 - The advertisement proposed is described as 'Proposal is to replace the existing glass-fronted display cabinet with a waterproof digital display board to advertise posters relating to events at the theatre. It is anticipated that the board will be switched off overnight.'
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (as amended) (the Regulations) indicate that powers exercised under its jurisdiction are undertaken in the interests of amenity and public safety. This is confirmed by paragraph 141 of the National Planning Policy Framework (the Framework). It follows that these are the only matters within the remit of my determination.
3. Unlike planning applications, there is no requirement to determine such applications in accordance with the development plan. However, the Regulations allow development plan policies to be taken into account so far as they are material. I have followed this approach in making my determination.
4. The appeal site lies within the Ross-On-Wye Conservation Area (CA) and close to a concentration of listed buildings. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) contains a statutory duty requiring special attention to be paid to the desirability of preserving or enhancing the character or appearance of the CA. The statutory duty in section 66 of the Act in relation to listed buildings and their setting does not have the same widespread application to planning functions, and only applies to planning applications. Hence, the section 66 duty is not engaged in this case.

Main Issue

5. The main issue is the effect of the proposed advertisement on the amenity of the area.

Reasons

6. The Regulations indicate that factors relevant to 'amenity' encompass the general characteristics of the locality, including the presence of any feature of historic, architectural, cultural or similar interest. In taking account of the local characteristics of the neighbourhood, including any important historic, architectural or cultural features, Planning Practice Guidance¹ confirms it is appropriate to consider whether the advertisement would be in keeping with those features.
7. The CA covers a significant portion of the historic market town of Ross-On-Wye and includes a loop of the River Wye. Hence, it contains differing components spanning commercial, civic and domestic townscape as well as more natural features which together form its distinctive character and appearance as a town. Perhaps the most striking built element is the presence of the Grade I listed Church of St Mary the Virgin (the church). The large church is built at a central high point within the town, and the tall spire can be seen from many miles around, signalling a longstanding spiritual and community focal point.
8. The church possesses exceptional heritage interest owing to the quality of its architecture, striking presence and elevated hierarchy in comparison to its surroundings. Its significance is comprised of many components which include its considerable aesthetic and communal value as a historic religious building.
9. Along St Marys Street and around the green apron to the north of the church are a series of traditional buildings dating from the 17-19th centuries, most of which are listed buildings. Within the churchyard is a medieval standing stone cross which is both a Grade II* listed building and a Scheduled Monument. In addition, to the northwest of the church is a stone boundary wall and gate piers that signal an entrance to the churchyard. These structures are also Grade II listed buildings.
10. The architectural quality and concentration of these historic buildings enrich the appearance of the CA. Their deferential configuration around the church, and interrelationship with the open green space result in a solemn and dignified character and appearance to this part of the CA, thereby contrasting with busier more commercial areas of the town centre. Consequently, the church and its immediate environs undoubtedly make a very important contribution to the character and appearance of the CA as a whole.
11. The appeal site lies to the front of the Phoenix Theatre at a bend in St Marys Street, just north west of the listed church boundary wall and close to the entrance to the churchyard flanked by stone gate piers. As such, it lies in a conspicuous position within a sensitive historic context.
12. The proposal is for an illuminated digital rectangular screen measuring approximately 1m by 0.75m mounted on a freestanding metal post. The electronic components and nature of the illuminated screen would give the advertisement an uncompromising modern character and appearance. Even if the degree of illumination were limited and time controlled, when lit, it would starkly and adversely contrast with the more muted traditional building materials of the adjacent listed stone wall.

¹ Paragraph: 079 Reference ID: 18b-079-02140306

13. Furthermore, its presence in such a sensitive position would have a harmful jarring effect in views towards the church and churchyard. On approaching the church along St Marys Street from the north, it would appear in the foreground, broadly in vertical alignment with the position of the tower and spire. Consistent with its purpose, it would inevitably draw the eye.
14. Although relatively small, its brash qualities would attract attention towards an unsympathetic incursion into the CA, thereby undermining the hierarchy of the church and its surroundings. Consequently, I find that the position and nature of the advertisement lacks subtlety that would fail to sufficiently respect its historic context.
15. On that basis, it would fail to preserve or enhance the character and appearance of the CA and so, would be contrary to the expectations of the Act. For similar reasons, the proposal would run counter to policies LD1 and LD4 of the Herefordshire Local Plan Core Strategy 2011-2031, October 2015 and policies EN1 and EN2 of the Ross-On-Wye Neighbourhood Development Plan 2019-2031. Amongst other things, these policies seek proposals that respond positively to the historic environment and conserve and enhance heritage assets.
16. My attention is drawn to the valuable cultural and community benefits that the Phoenix Theatre provides, and the general support given in the Framework² for such facilities. The appellant and representations from the Theatres Trust generally outline the role that flexible and convenient digital advertising can play in securing audiences to sustain those activities. However, the digital sign proposed is unlikely to be the only means to raise awareness of theatre events. My finding in this respect is reinforced by the reference to the Council having permitted an illuminated display case at the appeal site. I observed this at my site visit.
17. To my mind the context is one where there would be a delicate balance between achieving appropriate signage whilst also respecting the historic environment. Designated heritage assets are also recognised by the Framework as providing public benefits, where it describes them as an irreplaceable resource³ and indicates that great weight should be given to their conservation.
18. Given the comparatively more harmful nature of the illumination, materials and appearance of the proposed advertisement, I am not persuaded that the degree of harm to the historic environment arising from it would be justified. Hence, it is not convincingly shown that the previous approved advertisement establishes a precedent for the proposed digital sign.
19. The appellant refers to other posters and illuminated advertisements within the CA, describing some as unsightly and tacky. Based on the limited information provided, it is not established whether all the examples cited required express consent under the Regulations, or if they did, successfully obtained it. In any event, I am not convinced that the presence of other advertisements that have a negative visual impact would provide support for more, rather the opposite.
20. Moreover, it is not shown that advertisements elsewhere within the CA have the same form, nature or intensity of illuminance and proximity to the listed church and its environs as the scheme before me. Therefore, none are shown

² Paragraph 97

³ Paragraph 195 & Paragraph 205

to be directly comparable in terms of their effect on amenity, and so carry little weight. The floodlighting of the church itself would be more likely to highlight its architectural and historic significance, unlike the circumstances of this case.

21. In reaching my findings, I have had regard to the representations made, including those in support, the substance of which I have addressed above. Ultimately, they do not raise matters which lead me to find otherwise overall.
22. Therefore, taking the above factors together, I find that the proposal would have an unacceptably harmful effect on the amenity of the area.

Other Matters

23. Notwithstanding some contradictory statements, the balance of evidence shows that the Council had no concerns in relation to public safety arising from the proposed advertisement. Neither do they raise any objections on ecological grounds. On the information provided, I have little basis to disagree. Nevertheless, this would not surmount the harm found in relation to the main issue.
24. The appellant raises concerns with the way the Council exercised its decision making. However, this is not a matter which lies within the remit of my determination, which has been made with reference to the Regulations and the relevant merits of the proposal.

Conclusion

25. For the reasons given above, the appeal should be dismissed.

Helen O'Connor

INSPECTOR