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## Appeal Decision

Site visit made on 11 September 2024

**by Victor Callister BA(Hons) PGC(Oxon) DipTP MRTPI**

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

**Decision date: 27 September 2024**

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**Appeal Ref: APP/U5360/Z/24/3346371**

**29a Upper Clapton Road, Hackney, London E5 8AY**

- 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 Wildstone Estates Limited against the decision of The London Borough of Hackney Council.
  - The application Ref is 2023/1892.
  - The advertisement proposed is the upgrade of an existing internally illuminated 48 sheet advertisement to a digital display.
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### Decision

1. The appeal is dismissed.

### Main Issues

2. The Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (as amended) sets out that powers under those Regulations shall be exercised only in the interests of amenity and public safety, taking into account the provisions of the development plan, so far as they are material, and any other relevant factors.
3. From my reading of the material submitted for the purposes of this appeal the main issues are the effect of the advertisement screen on:
  - The character and appearance of the local area,
  - The living conditions of neighbouring residential occupiers; and
  - Public safety as it relates to road users.

### Reasons

#### *Character and Appearance*

4. The existing advertisement is an internally illuminated deep box fixed to the side elevation of the two storey appeal property at first floor and roof level and extends upwards to approximately the same height as the roof of the appeal property. The existing installation accommodates a standard 48 sheet advertising poster installation.
5. Advertisement consent is sought to change this to a digital advertising screen of the same area and height, but with a considerable reduction in depth. The

- proposed screen would display adverts that the appellant has proposed would change almost instantly no less than every 10 seconds. The levels of illumination could be controlled by time of day and ambient light conditions, reducing considerably at night, ensuring that the luminance remains within guidelines set out by the Institute of Lighting Professionals (the ILP).
6. Although both the Council and Appellant have made reference to the existing internally illuminated deep box not displaying advertisements, on the day of my site visit it was evident that it is currently in use and displaying internally illuminated 48 sheet posters.
  7. The part of the street within which the appeal property is located is made up of properties of varying scale with commercial uses at ground level with residential above. Along with the shopfront signage and adverts associated with these commercial uses there are also a number of non-illuminated and illuminated signs and advertising at first and second floor levels, including digital advertising screens. This results in the character of the area of the appeal property being generally commercial in character and appearance.
  8. The slimmer profile of the proposed digital advertising screen would result in a structure of significantly less visual weight than existing, which would present itself as tidier and less overbearing than the existing deep box. As internally illuminated advertisements on flank walls are part of the existing streetscape, along with other shop and commercial signage, the proposal would reflect this existing character, along with the improvement in visual appearance of the proposal that I have identified.
  9. For these reasons I find that the installation of the proposed advertisement would not result in an incongruous, discordant and unduly prominent feature. Rather the proposal would accord with local character, with an improvement in visual appearance. As such, the proposal would not result in any significant harm to the character and appearance of the local area. In this regard, the proposal would accord with Policies PP1, PP5, PP7, LP1 and LP7 of the Hackney Local Plan (2020) (The Local Plan), Policy D3 of the London Plan (2021) (the London Plan) and Section 12 of the National Planning Policy Framework (2023) (the Framework). Collectively, these seek to ensure the quality and character of places, and that advertisements have regard to the local context and character of an area and its visual amenity.

### *Living Conditions*

10. The appellant has confirmed that the proposed digital advertising screen would conform to current guidance from the ILP with regard to the brightness of illuminated advertisements and the luminance would respond to time of day and ambient light conditions. However, the proposal would be in close proximity to first floor windows to dwellings at 25 and 27 Upper Clapton Road.
11. Although the ILP standards include a reduction in luminance at night, the changing nature of the proposal and the concomitant immediate change in levels of illumination between advertisements, would cause a degree of disturbance to the occupiers of these dwellings at night that would be experienced as intrusive. To overcome these impacts on the living conditions of occupiers of these dwellings during the hours of darkness and during the night, the appellant has proposed that a condition could be applied to an

approval for advertisement consent that would further control night-time luminance.

12. The appellants proposed condition would limit the luminance of the proposed digital advertising screen in the evening to 100cd/m<sup>2</sup>, a substantial reduction from the standard nighttime level of 300cd/m<sup>2</sup>. The appellant has also proposed that a condition could be imposed for a night-time curfew, requiring the proposed screen be switched off between 23:00 to 06:00 hours.
13. Such limiting conditions have been applied by an Inspector in allowing an appeal<sup>1</sup> for a digital advertising screen in the Council area, for a very similar proposal for a digital advertisement screen on a flank wall at first floor level at 262 Stamford Hill. I am satisfied that in this instance conditions, which would limit luminance and times of display, would result in the proposal causing no significant disturbance to occupiers of nearby dwellings.
14. For these reasons, I find that the proposal would not result in any significant harm to the living conditions of occupiers of nearby dwellings. In this regard, the proposal would accord with Policies LP2 and LP7 of the Local Plan, Policy D8 of the London Plan and Section 12 of the Framework. Collectively, these seek advertisements that are not harmful to public amenity, including through light pollution into nearby residential properties.

#### *Public Safety*

15. Planning Practice Guidance (PPG) states that all advertisements are intended to attract attention, however, those proposed at points where drivers need to take more care are more likely to affect public safety. It advises further that the main types of advertisement which may cause danger to road users are those that are illuminated and those subject to frequent changes of the display.
16. The proposed type of digital advertising screen are becoming common features of road corridors, and there are other existing illuminated advertisements in the local area including digital advertising screens. The proposed screen with its changing advertisements would constitute a prominent feature in the streetscape. Particularly so when looking north and approaching the light controlled pedestrian crossing on Upper Clapton Road, located directly adjacent the appeal property.
17. Whilst the existing 48 sheet internally illuminated poster advertisement is currently viewed in conjunction with the pedestrian crossing, this is a static feature. The proposed digital advertising screen would be subject to changing displays, up to every 10 seconds, which would change instantly between static advertisements. Consequently, this would increase the prominence of the advertisement display compared to existing, drawing the eye of road users and increasing their visual interaction with the display.
18. The Highways Technical Note<sup>2</sup> provided by the appellant acknowledges that the location of the proposal is in a busy and active urban environment. Using data provided by Transport for London, this note shows that there have been a number of road traffic collisions near the junction of Upper Clapton Road and Brooke road, just to the south of the appeal site and the light controlled

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<sup>1</sup> Appeal Ref: APP/U5360/Z/23/3316155

<sup>2</sup> AXIS P.E.D Ltd Ref: 3759-01-HTN01 (June 2024)

crossing. This shows 13 incidents in the last 5 years with 2 resulting in serious injury. Although there is no indication that the existing sign played any part in the causes of the collisions, it is visible in the background of the junction and the pedestrian crossing when heading north up Upper Clapton Road from the Lee Bridge Roundabout.

19. Whilst the proposal would replace an existing internally illuminated poster site, the combination of internal illumination with intermittent changing of the advert display, albeit with an almost instant transition, has the potential to create visual confusion for road users in the area. This would be particularly the case in the dark winter mornings and evenings. The proposal therefore has the potential to distract motorists heading north up Upper Clapton Road, which, from my site visit and the data included in the appellant's highway note, appears to be busy, with significant numbers of buses, cyclists and pedestrians. This would pose a risk, particularly at the junction with Brooke Road and the approach to the light controlled pedestrian crossing adjacent to the appeal site.
20. The appellant has drawn other approvals for digital advertising screens of similar scale in similar locations in other locations, including other council areas to my attention. These would have been determined with regard to road safety on their own individual merits. I have, therefore, given these only limited weight in my considerations and I have considered the proposal on its own individual merits, as is required of me.
21. I find that, as a result of the transition between illuminated advertisements, the proposal has the ability to distract road users at a time when they should be paying due care and attention to the road related activity in its vicinity. Consequently, the risk to highway safety would be likely to increase from the existing situation. This would lead to an increase in the number of collisions in this area, and potentially their severity, especially to vulnerable road users, thereby conflicting with the PPG.
22. For these reasons, I find that the proposal would be significantly harmful to public safety as it relates to highway safety and would, in this regard, conflict with Policies PP1, PP5, LP7, LP41 and LP42 of the Local Plan, Policy D8 of the London Plan and Paragraph 141 and Sections 9 of the Framework. Collectively these seek to ensure that advertisements do not constitute a road safety hazard and are not harmful to public safety.

### **Other Matters**

23. The appellant has drawn my attention to the decision notice for refusal of a previous application<sup>3</sup> for advertisement consent for a replacement digital advertisement screen for the existing internally illuminated box installation. The reasons for refusal are not given in this decision. The appellant has consequently raised the issue of whether the decision was therefore indeed refused, as the decision notice does not comply with the requirements of Regulation 16(2) of the Town and Country Planning (Control of Advertisements) (England) Regulations (2007), which requires reasons for refusal to be given. This is not a matter for me to determine as part of this appeal, and I have considered the appeal proposal on its own merits, which is a key tenet of the planning system.

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<sup>3</sup> Planning Ref: 2016/4716

## **Planning Balance and Conclusion**

24. The appellant has drawn to my attention the benefits of the proposal including the environmental benefits of reduced vehicle movements and waste resulting from changing poster displays and the energy use savings of using newer lighting technology. The social benefits indicated for public, or emergency messages are possible but not definite. The economic benefits of the potential for an increase in rent for the location and concomitant increase in business rates are also only potential rather than definite benefits of the proposal. The ability to integrate additional hardware to meet 'Smart City Objectives' is also a potential and not definite benefit. As these benefits are potential, marginal or limited, I have only afforded them limited weight in my considerations.
25. Whilst I have not agreed with the Council with regard to the character and appearance and living conditions reasons for refusal, in this instance lack of harm relating to these reasons is a neutral factor in my considerations. I find, therefore, that the benefits of the proposal do not outweigh the harm to public safety that I have identified and, having regard to all other matters raised, the appeal is dismissed.

*Victor Callister*

INSPECTOR