

Appeal Decision

Site visit made on 20 March 2023

by P Eggleton BSc(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th April 2023

Appeal Ref: APP/X5210/Z/22/3312850

Bus Shelter outside 10 Pond Street, London NW3 2PS

- 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 Mr Martin Stephens on behalf of JCDecaux UK Limited against the decision of the London Borough of Camden Council.
 - The application Ref 2021/5505/A, dated 13 October 2021, was refused by notice dated 24 November 2022.
 - The development proposed is a single sided, internally illuminated digital screen to the inward face of an existing bus shelter structure.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect on amenity; and the effect on public safety.

Reasons

3. The application was amended before determination to propose a single digital advert to the covered, inner side of the existing bus shelter. This formed the basis of the Council's decision and has been the basis for this decision. The proposal is therefore to replace the existing static backlit paper display, on the inner side of the bus shelter, with a digital display, whilst retaining the backlit paper display on the outer facing advertisement that forms the outside end elevation of the existing bus shelter.
4. Reference has been made to other existing digital displays that have already been approved some of which I was able to view. The digital displays differ significantly from those of the paper backlit advertisements. The greater contrast between light and dark and the vibrancy of the colours of the electronic displays is much more noticeable. The changing adverts also draw greater attention to the advert screen. The comparison between light levels associated with backlit constant light source and a digital image is not particularly helpful given the very different and changing lighting and colour contrast characteristics. The digital screens do offer a neater advertising solution. They eliminate reflections from the front covers and avoid the sagging of the paper posters within the units which had occurred in a number of bus

- shelters viewed. Overall, they have a neater and more professional appearance but they are also significantly more noticeable and more strident.
5. Whilst they do attract much more attention, it has been suggested that the images could be turned off after midnight. Whilst this has not been included within the suggested conditions, it does form part of the appellant's submission. I also note that the appellant's statement suggests that the night-time brightness would be below the normal backlit maximum level of 600Cdm² for the paper posters with a maximum of 400Cdm². The appellant has also suggested that the display can be effectively operated at 250Cdm².
 6. The suggested condition relates to a maximum of 2500Cdm² during daylight hours. The display would be equipped with a mechanism which would constantly monitor ambient light conditions and adjust brightness accordingly. No submissions have been made on the settings for daytime levels other than the maximum limit. I viewed other existing part digital, part backlit paper displays, on a relatively dull day. The contrast and general relative brilliance of the digital adverts was significantly more noticeable and outstanding than the backlit paper adverts, certainly when within about 50 metres of the displays. The change in advert added significantly to this.
 7. This bus shelter is situated outside 10 Pond Street. This area of pavement is wide and provides access to a relatively large food store. Opposite is South End Green which is a designated open space within the Camden Local Plan 2017 (LP). This open space is in two parts, separated by a busy road. The part nearest the bus shelter includes mature trees, boundary hedges and seating areas. It is an attractive greenspace in an otherwise very urban context. The small park falls within the Hampstead Conservation Area whilst the bus shelter lies just outside it. There is a pedestrian crossing on Pond Street just to the west of the bus shelter.

Amenity

8. As the bus stop and signage are already in place, the proposal would not alter the physical make up of this area. As identified earlier, the digital display would have greater contrast and brighter colours, in effect being more brilliant. It would be much more noticeable because of this and the changing displays. The shelter is set back from the road and because of this, although the advert is internal to the open bus shelter, single directional and screened to a limited extent by the rear screen of the shelter, it is quite widely visible from the pavement area when approaching from the east. Because of the steps to the commercial unit, pedestrians are relatively close to the road and many walk between the road and the shelter when passing to the west. This ensures that many pedestrians have clear and uninterrupted views of this structure for the length of the road to the east. Other than bins and street lights there is little other street furniture which ensures that the shelter is already currently prominent in views despite the presence of some street trees.
9. Given the above characteristics, the existing backlit bus shelter signage is not a positive feature and it has a relatively dominant position within the pavement. The digital signage would be even more noticeable and more prominent than the paper display and its more strident images would make the shelter an even

more prominent feature of this area. The display would undoubtedly detract further from the existing character of this area.

10. Restricting the hours of use would be essential given that the changing digital adverts would be particularly noticeable when there was little other activity in the area. It would however offer a benefit over the existing display during those hours. Whilst it has been suggested that lighting levels could be restricted to 250Cdm² during the hours of darkness, given that this type of advert would be more noticeable and more dominant than the static display, the lighting levels should be the very minimum necessary for the adverts to be experienced. Whilst it has not been demonstrated to my satisfaction that this suggested lower figure represents that minimum, I acknowledge that this is significantly below other approved signs including the sign outside 140 Haverstock Hill which was allowed on appeal APP/X5210/Z/17/3171221 and has a condition imposing a maximum of 300Cdm².
11. Daytime brightness should similarly be the minimum necessary to experience the advertisement in order to limit the increase in its prominence. The digital adverts I viewed were of a brightness that would be particularly harmful in this location during daylight hours as the signage is already prominent and would become even more overly dominant in this setting. Whilst I note that daytime brightness was a matter that was left to be addressed by a condition in the above mentioned appeal, I consider this site to be more sensitive given the character of the area and the level of community use in the vicinity. I am not satisfied that even reduced daytime lighting levels, compared to those accepted elsewhere, would be able to achieve relative parity with the harm that the existing display already causes.
12. I conclude that the proposal would result in an unacceptable increase in the level of harm to the visual amenity of this area. The appellant's proposed condition would not address this; and I am not satisfied that a revised condition requiring further light level reductions would be sufficient either, given the prominence of the advert. The proposal would result in unacceptable harm to visual amenity.

Public safety

13. The council's concern relates to the nearest pedestrian crossing which they have measures as being 14 metres to the west on Pond Street. They advise that this lies within the recommended minimum 20 metres distance set out in Appendix A of the 'Guidance for Digital Roadside Advertising and Proposed Best Practice' (commissioned by Transport for London in March 2013).
14. As only the internal facing signage would be changed, it would only have an impact on westbound vehicles and would not be visible by pedestrians using the crossing. The length of Pond Street between the sign and the junction to the east is relatively short. This is a challenging area for drivers generally with busy crossroads, high numbers of turning vehicles, a high level of bus usage and large numbers of pedestrians. The need for care in this area is increased due to the proximity of the junction with South End Road which is adjacent to the crossing.
15. The existing sign is set back from the pavement so it is not as closely related to a driver's lines of view as many other such adverts. The road is straight with

nothing to reduce visibility of the crossing. The sign is already illuminated. The digital sign would be more noticeable because of its greater brilliance but given the care already required in the vicinity of these junctions and crossing, together with the limited distance in which this sign would be experienced, due to its proximity to the junction, I am not satisfied that it would change the existing road conditions to any degree. I have not been provided with any evidence that the existing relationship has resulted in highway safety concerns.

16. Overall, although more noticeable to approaching drivers, the proposal would not result in an increase in concern with regard to public safety.

Other relevant factors and the development plan

17. The Regulations, the *National Planning Policy Framework* and the *Planning Practice Guidance* require that the display of advertisements is controlled only in the interests of amenity and public safety, taking into account the provisions of the development plan, in so far as they are material, and any other relevant factors.
18. Reference has been made to the ability of the proposed displays to provide interactive functions and the capability of displaying live travel status updates and tourist information in addition to commercial messaging, including in the event of an emergency. It is suggested that the council would be able to override the commercial messaging to display important public information via a secure portal. No information has been provided as to how this would be controlled or what access to such a capability would be available to the council. This is not a matter covered by the appellant's or the council's suggested conditions. I am unclear if this facility is available or is being utilised within the existing approved digital displays elsewhere. Despite this uncertainty and lack of information, as the potential benefits have not been challenged by the council, I afford them significant weight. Similarly, the appellant advises that the proposal results in efficiency savings in operational costs and the reduction in waste generation.
19. I must consider whether the proposal would result in harm to the setting of the Hampstead Conservation Area as a relevant factor. The boundary of the conservation area runs along the opposite side of this road. When approaching from the east, the conservation area is first experienced from the junction of Pond Street and Fleet Road with views across the small park and up Pond Street. The trees along Pond Street complement those within the park in this view. Although set back, the screen sits in this view and will be more prominent, particularly when moving towards the park access in its western corner. It would result in harm to the setting of the conservation area and I am not satisfied that there is clear and convincing justification for this.
20. The council is concerned that the proposal would detract from the setting of the listed telephone boxes and drinking fountain within the small park. These contribute to the overall quality of the conservation area in this location and I agree that their setting would be harmed. The listed Tramwaymen's shelter and public toilets are too far distant for their setting to be harmed.
21. Given the harm to visual amenity, the proposal would be contrary to LP policy D1 (a & b) (Design). I have also found that there would be harm to the setting of the conservation area and nearby listed structures. Despite the potential for

information display and the neater form of the adverts which may be more sustainable, I am not satisfied that the public benefits of the proposal outweigh the harm to these heritage assets. The proposal would therefore also be contrary to LP policies D2 (Heritage) and D4 (Advertisements). The Hampstead Neighbourhood Area Plan 2018 includes similar policies DH1 (Design), DH2 (Conservation areas and listed buildings) and DH3 (The urban realm). I also find conflict with the similar requirements of national policy set out within the Framework. LP policy A2 seeks to resist development that would be detrimental to the setting of designated open spaces but having read the supporting text, I am not satisfied that this proposal would reduce the public's enjoyment of it.

22. Reference has been made to other decisions relating to advertisements. Those presented by the council that relate to telephone kiosks are not directly comparable as the presence of an existing similar sized advert is a key consideration in this case. I have found the dismissed appeals relating to 242 Haverstock Hill (APP/X5210/Z/17/3171237) and 176 Haverstock Hill (APP/X5210/Z/17/3171208) also to be materially different as the details indicate that the bus shelters did not include sides that contained adverts and represented entirely new adverts and side structures. I have already referred to the allowed appeal APP/X5210/Z/17/3171221 which has a number of similarities although that proposal was to replace a consent that allowed for rolling adverts which present greater similarities with a changing digital display. The setting of that bus shelter is however significantly different and experienced in a different manner compared to the more communal setting of the current proposal.
23. None of the decisions referred to suggest that a different conclusion should be reached in this case. Having viewed a number of bus shelters on the appellant's Upgrade List which already include a digital screen, I am also satisfied that this location differs significantly from the surrounds of those advertisements.

Conclusions

24. In conclusion, the proposal would result in unacceptable harm to visual amenity. It would not result in harm to public safety. Whilst I have considered the details put forward and the other considerations and relevant factors, there are no matters that outweigh my main concern. I therefore dismiss the appeal.

Peter Eggleton

INSPECTOR