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7 February 2017

The Planning Inspectorate
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

Dear Sir / Madam

Town and Country Planning Act 1990
Town and Country Planning (Control of Advertisements) (England) Regulations 2007

Re: Appeal against the Refusal of Advertisement Consent

Please find enclosed completed appeal papers submitted under the provisions of Regulations 17 of the above Regulations and s78 of the above Act, as amended by part 3 Schedule 4 of the 2007 Regulations.

This appeal is one of 28 similar proposals relating to existing advertised bus shelter locations within Westminster. The applications were submitted on behalf of our client Transport for London (TfL) and seeks consent to replace the type of advertisement facing into the shelter from rear illuminated to digital display. In each case the advertisement display forms part of a new bus shelter structure, the detail for which is contained within the documentation submitted to the Local Planning Authority's (LPA) and enclosed with this appeal, together with a copy of the LPA's decision notice. The appeal is submitted against the refusal of consent for illuminated, sequential advertisement display.

Background Detail

The proposed change is part of a London wide programme by TfL and a stated commitment to continually improve public transport provision in London. Each day 6.5million people use buses in the Capital and the planned improvements will see the upgrading and replacement of existing shelters across the estate with Landmark London, a modern designed shelter that provides improved seating, better information display and an advertising screen. The shelter design features integrated stop identification information and options for solar powered lighting and other technologies including CCTV and Wi-Fi connectivity. Other innovations in the design

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include transport and pedestrian orientated information, part of the Legible London initiative, and improved openness and lighting within the waiting area.

The proposed screen is an integral part of the overall design and will replace many of the paper displays currently in use. The use of digital technology will provide interactive functions and be capable of displaying live travel status updates and tourist information in addition to commercial messaging. In the event of an emergency, TfL will be able to override the commercial messaging to display important public information via a secure portal. The ability to change messages remotely through a secure ISDN line and to synchronize messaging across the entire network, which is both time sensitive and area specific, offers an unparalleled opportunity to improve the experience for the travelling public. Of the 11,000 shelters operated by TfL across London approximately 650 of the integrated screens and shelter units will become operational from the 1st January 2016.

The ability to generate revenue through advertising is a key component in the delivery plans and all the income derived through advertising is reinvested in the network. The improvements apply to existing bus shelter locations, the majority of which are currently used to display illuminated advertisements behind glass. A limited number of the proposals, eight within Westminster, will however see the addition of advertisements to shelters which do not currently incorporate displays.

The Requirement for Advertisement Consent

The application, which is the subject of this appeal, relates to the change of an existing illuminated advertisement facing into the shelter from a static to a sequential display and from a printed back illumination display to a digital screen. In all cases the advertisement panel forms part of the bus shelter design, the structure for which is a permitted development which does not require separate planning permission. The shelter unit has been specifically designed as a modern, accessible and functional structure incorporating a display unit with one advertisement facing into the shelter and the other facing the footpath.

Advertisement control in England is operated through the 2007 Regulations. The 2007 Regulations states that all advertisements, other than certain exempted classes require consent before they can be lawfully displayed (**Reg. 4**). Consent may be granted expressly by the LPA or

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Secretary of State, or it may be granted by "deemed consent" by virtue of Regulation 6 of the 2007 Regulations. Class 9 deemed consent relates to advertisement displays on highway structures and would ordinarily permit this type of advertisement, save for condition 9(2) which prohibits illumination under this class. Deemed consent does not therefore apply to this proposal and express consent is therefore required. The advertisement will be illuminated and inward facing display will be sequential in nature to allow the automatic change of image or message being displayed. Neither advertisement will display moving content and the lighting level is capable of adjusting to ambient lighting levels and of being programmed to reduce during the hours of darkness.

The 2007 Regulations exist pursuant to s220 of the Town and Country Planning Act 1990. The 2007 Regulations create a separate self-contained code apart from mainstream planning controls. Regulation 3 states that;

'1. A local planning authority shall exercise its powers under these Regulations in the interest of amenity and public safety, taking into account –
a) The provisions of the development plan, so far as they are material; and
b) Any other relevant factors

2. Without prejudice to the generality of paragraph (1) (b)-
a) Factors relevant to amenity include the general characteristics of the locality, including the presence of any feature of historic, architectural, cultural or similar interest;
b) Factors relevant to public safety include-
(i) the safety of persons using any highway, railway, waterway, dock, harbour or aerodrome (civil or military);
(ii) whether the display of the advertisement in question is likely to obscure, or hinder the ready interpretation of, any traffic sign, railway signal or aid to navigation by water or air'

In respect of amenity impact the 2007 Regulations require an assessment of the character of the local area, which necessarily includes an examination of the nature and type of surrounding land uses and the existing built form within the particular locality where the proposed advertisement is to be displayed. It is the impact upon local character and any particular feature of interest in the local environment that the proposed advertisement is assessed.

On matters of public safety the primary consideration is the effect of an advertisement display on drivers and pedestrians upon seeing the advertisement in the particular location. It is accepted that roadside advertising is intended to be seen but this aspect in itself does not mean all roadside advertisements are a distraction. Advertising is often part of the fabric of main centres and busy routes where drivers have a degree of expectation of seeing commercial

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images and are able to adjust their driving accordingly. For the purposes of this exercise and in light of our client's commitment to improve the safety of London roads, all the applications to upgrade and install digital displays have been subject to formal review to ensure the location of the advertisement would not endanger drivers taking reasonable care for their own and other road users safety and that the footpath widths remain sufficiently wide enough to comfortably accommodate pedestrian volumes and flows. Furthermore, JCDecaux has followed guidance issued by TfL on bus stop accessibility, ensuring the position of the advertising panel does not compromise bus access for waiting or alighting passengers and that minimum distances of available footway width are maintained.

Details of Proposal Advertisement

The size of the proposed advertisement is equal to the industry standard "6 sheet" panel, which provides a display area of just under $2m^2$. This size of advertisement has long been considered an appropriate scale for the pedestrian environment and is the typical size of advertisement found in towns and Cities affixed to street furniture. In this appeal the shelter is already in use for the display of a back to back internally illuminated advertisement. Both current advertisements are displayed via an internal light source shining through a printed paper image, which is manually replaced every two weeks. The proposal in this appeal is to replace the internal advertisement which faces the waiting area beneath the canopy of the shelter with a screen of the same overall display area dimensions. The non-digital footpath display will continue to be rear illuminated however it will use the latest low energy and low carbon LED strip lighting.

The use of roadside digital technology is becoming an established alternative to the use of printed images and is increasingly commonplace in London and other World cities. The primary impetus for such change includes the unparalleled flexibility in display capability, efficiency savings in operational costs and a more sustainable answer to waste creation and energy consumption. Investment in the latest technology reflects a forward looking aspiration and the development of a more sustainable method of display.

Digital technology avoids the need to print and recycle the advertising material, which in turn reduces energy consumption and waste across the industry. Digital displays methods now represent a viable and sustainable alternative to printed advertisements. The digital SmartScreen product incorporates Power Factor Correction (PFC) technology to maximize the

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efficiency of all power connections. The units are RoHS approved and completely devoid of hazardous materials making them easier to recycle at end of life in accordance with the WEEE directive (Europe) on the recycling of electrical and electronic waste. The screen will be entirely operated using Green energy, providing a 50-70% reduction in electricity consumption compared with traditional fluorescent and incandescent lighting currently used across poster advertisement sites.

The lighting level mentioned in the application documentation refers to the maximum output capabilities rather than the operative level. During the hours of darkness the lighting level for the majority of the displays will be under 500Cdm2, which is below the maximum recommended by the Institute of Lighting Professionals (ILP) for advertisements under $10m^2$ in suburban and urban medium to high brightness districts. The operating level of the unit was clarified by the appellant in a letter dated 12th November 2015, a copy of which is contained within the appeal papers.

In respect of screens within close proximity to particularly sensitive locations, for example within predominantly residential and non-commercial parts of conservation areas or within the setting of a Listed Building, we would expect the lighting level to be further reduced by approximately 50% to be sensitive to the context. It is expected, should the appeal proposal be acceptable in all other respects, that the level be set by way of a condition of consent to accord with the ILP recommendations. The advertisement will not feature any flashing or intermittent lighting effect or animation and this too can be address through conditions [1].

Policy Considerations
National Guidance

National Guidance on the control of advertisements is provided within paragraph 67 of the National Planning Policy Framework (NPPF), which has superseded the more comprehensive advice contained within guidance PPG19. Whilst much of the detailed advice has been removed, the support for sustainable forms of development remains a fundamental part of the guidance. Advertising has always been seen as an important part of a diverse and vibrant market economy. Advertising promotes business and a vibrant advertising sector contributes to sustainable economic growth by encouraging consumer confidence and spending, a key component of

[1] Refer to Appendix A for a list of recommended additional conditions

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economic growth. In this respect the development of advertising locations is consistent with the aim of sustainability in supporting a viable and a vital market. The NPPF promotes the planning system as an enabling one with paragraph 19 emphasizing the role of the planning system to support economic growth.

> *"The Government is committed to ensuring that the planning system does everything is can to support sustainable economic growth. Planning should operate to encourage and not act as an impediment to sustainable growth. Therefore significant weight should be placed on the need to support economic growth through the planning system"*

In respect of advertisements and their display the NPPF states that;

> *"Poorly placed advertisements can have a negative impact on the appearance of the built and natural environment. Control over outdoor advertisements should be efficient, effective and simple in concept and operation. Only those advertisements which will clearly have an appreciable impact on a building or on their surroundings should be subject to the local planning authority's detailed assessment. Advertisements should be subject to control only in the interests of amenity and public safety, taking account of cumulative impacts."*

Improving the quality of the environment is one of the fundamental principles of the framework and an important element of sustainable development. The physical component of the proposal is arguably indivisible from the use; therefore it is appropriate and material for the consideration of merit, to include an assessment of the quality and appearance of the structure as a fundamental part of the whole. The NPPF states that;

> *"Pursuing sustainable development involves seeking positive improvements in the quality of the built, natural and historic environment, as well as in people's quality of life including (but not limited to):*
>
> - *replacing poor design with better design;..."*

Furthermore that:

> *"In determining applications, great weight should be given to outstanding or innovative designs which help raise the standard of design more generally in the area"*

On the ability of good quality design to make a positive contribution to the environment and ensure services and buildings are accessible to all the framework affirms that;

> *"The Government attaches great importance to the design of the built environment. Good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people.*

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It is important to plan positively for the achievement of high quality and inclusive design for all development, including individual buildings, public and private spaces and wider area development schemes."

Core planning principles in the NPPF which are relevant to the appeal proposals include, amongst other criteria, the advice that the planning process should;

- *" not simply be about scrutiny, but instead be a creative exercise in finding ways to enhance and improve the places in which people live their lives;*
- *always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings;"*

Under these and other core principles the Framework suggests that decisions should follow the following approach;

"Planning policies and decisions should aim to ensure that developments:

- *will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development;*
- *establish a strong sense of place, using streetscapes and buildings to create attractive and comfortable places to live, work and visit;*
- *create safe and accessible environments where crime and disorder, and the fear of crime, do not undermine quality of life or community cohesion;*
- *and are visually attractive as a result of good architecture and appropriate landscaping.*

The NPPF also recognises the importance of the communication infrastructure, which although not strictly germane to the advertisement appeal considerations, it nevertheless goes to the overall objective of the proposal which would see the installation of multifunctional apparatus that supports wider connectivity and improves the service to the public. The NPPF states that;

"Advanced, high quality communications infrastructure is essential for sustainable economic growth. The development of high speed broadband technology and other communications networks also plays a vital role in enhancing the provision of local community facilities and services"

Specific guidance relating to advertising developments and on the interpretation of the Regulations is contained within the **Communities and Local Government Planning Practice Guidance** ("PPG"), which contains the current guidance on this subject. Section 8 of the PPG explains in greater detail the criteria for considering amenity issues in advertising proposals. More specifically, on the matter of scale the guidance suggests that advertisements should respect the scale of the surroundings

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> *"for example, if the locality where the advertisement is to be displayed has important scenic, historic, architectural or cultural features, the local planning authority would consider whether it is in scale and in keeping with these features."*

It further advises that;

> *"This might mean that a large poster-hoarding would be refused where it would dominate a group of listed buildings, but would be permitted in an industrial or commercial area of a major city (where there are large buildings and main highways) where the advertisement would not adversely affect the visual amenity of the neighbourhood of the site."*

Regional Policy

The local planning authority does not refer to The London Plan within its reasons for refusal, nor are there any policies contained within it which are deemed relevant specifically to these applications.

Key Planning Considerations

This appeal relates to the display of an advertisement, as such the primary considerations relate to the likely impact of the advertisement display on visual amenity and public safety, as provided by the 2007 Regulations.

Visual Amenity

The main consideration in respect of visual amenity must be the difference between the effect of the existing illuminated display and its replacement, an illuminated advertisement of the same dimensions but with the ability to automatically change the displayed image remotely. Policy guidance requires applicants to have regard to the general characteristics of the area in which a proposal is sited, and is generally supportive of advertising within retail and commercial areas where advertising contributes to vitality without harm to visual amenity. The advertisement is located within a lit urban setting, alongside a busy thoroughfare and often adjacent to active and brightly lit commercial frontages such as retail outlets, cafes and large-scale office buildings where advertising material would not appear out of place. Given the urban setting and character the appeal site with continually passing pedestrians and traffic it is considered to be a suitable location for this type of sequential display. The proposed advertisement, which faces into the shelter unit will have limited effect on any residential accommodation that lie within the area, which is typically confined to upper floors, rather than the street level environment which is the immediate context for the advertisement.

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In such environments, on street advertising is a commonplace feature and part of local character, which is often reinforced by brightly coloured and strident shop fronts, fascia signs, banners, business premises and commercial signs. These aspects serve to serve to establish advertising as an acceptable and integral part of the environment fabric. The proposed advertisement would form part of a modern well designed bus shelter structure and an existing item of street furniture so is not likely to be seen as contributing to visual clutter. Within this context, the proposed advertisement would represent a relatively minor addition to the street scape that is considered to be visually neutral in impact, particularly in light of the localised context and scale of the surroundings.

Paragraph 67 of the National Planning Policy Framework states that;

> *"Only those advertisements which will clearly have an appreciable impact on a building or on their surroundings should be subject to the local planning authority's detailed assessment".*

The display would not be materially harmful to the surroundings, and would be proportionate to the scale of the shelter structure. The size of the advertisement is designed as a proportionate and integral part of the shelter structure rather than appear as an 'add-on' afterthought. In assessing impact, one must also consider the positive benefits associated with the advertisement display within a retail environment, which can enhance a shoppers experience and promote commercial enterprise. In addition, the new shelter provides added benefit though the improved functionality and visual improvements through better and safer design.

As stated above the proposed screen will display static images only and can be programmed to ensure the lighting levels fall within the recommended limits of the ILP and consistent with the level now experienced with the backlit displays. Should the Inspector consider a more restricted luminance level is necessary during the hours of darkness the appellant would accept a condition setting a maximum level of 300Cdm^2.

Impact on Conservation Areas

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Conservation area guidance exists to ensure the preservation and enhancement of the characteristics which make the area special, and may include measures which seek to restrict or define the extent or nature of new developments with this aim in mind.

Not all conservation areas are designated areas of special control of advertisements, nor does an area designation mean that all forms of advertisement is prohibited within such locations. Many conservation areas include predominantly shopping and business uses where poster advertising may be appropriate when particular care is taken to ensure the size and nature of the display is compatible with its surroundings. This approach has informed the selection of the shelters for conversion to digital format where the local context is vibrant and the commercial nature of the setting is a characteristic aspect of the conservation area. In such overtly commercial settings the public is used to and expects to see a range of commercial images, which serves to enhance the shopping experience and make it part of the areas character. The absence of advertising material from street furniture within such locations, where commercial imagery is part of the area's profile, would appear as an uncharacteristic element of the street.

Whilst the prevalence of historic assets in London means that conservation areas cover large parts of the Capital, it must be the impact of the proposed advertising on the characteristics of the individual conservation area that makes it *special* and *unique* which must be assessed, rather than simply considering the juxtaposition of an advertisement with any single building in isolation. In particular, it is considered that – positioned at ground level – it is the visual impact of the advertisements within the surrounding street scene which is the most important consideration. In most cases the street is largely defined by the presence of shops or other commercial premises with active frontages that form a high street or shopping parade within a busy urban context. In many instances buildings have retained original facades and architectural features on the upper floors with ground floor street level facades having been renovated to include more modern materials and advertising signage – something which is equally important in defining the characteristics of a conservation area.

Public Safety

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All of the proposals have been safety audited through TfL Planning to ensure the location of the advertisement would not endanger drivers taking reasonable care of their safety and that the footpath widths remain sufficiently wide enough to accommodate pedestrian volumes.

In matters of highway safety, the primary consideration is the likely behaviour of drivers on seeing the advertisement on the approach to the appeal site. In most cases an advertisement of the same size and position and degree of illumination as now applied for would have existed for many years without any evident harmful effect on public safety. In this case therefore the considerations are confined mainly to the effect of the change from an advertisement that does not change to one that would change every 10 seconds. The potential for distraction is less likely in areas where the presence of advertising is not uncommon. The application site is an existing use and the local area is a busy and vibrant setting. Drivers travelling through the City will be accustomed to seeing advertising imagery, including digital forms of displays associated with retailers and other commercial premises, such that is it less likely drivers will be easily distracted by any roadside display.

The appeal site, as with all the locations identified for conversion to a digital form of display screen, have be assessed in light of their position in the street and proximity to points in the road where drivers and pedestrians are required to take special care. For each of the locations applied for, most of which have been consented to, the assessment concluded that the approach to the site had a good safety record and that the position and manner of the advertisement display, subject to conditions, would be unlikely to have a negative impact on road safety or present a distraction to drivers.

Conditions

All consents for express advertisement consent are covered by the standard conditions set out in Schedule 2 to the Regulations and are acceptable to the appellant. Additional conditions, as suggested by TfL are attached as Appendix A and seek to limit the manner of use of the display screens in the interests of public safety. These also are acceptable to the appellant. The conditions in Appendix A include a maximum night time luminance level of 600Cdm^2, to accord with the ILP recommendations. As mentioned above, in relation to more sensitive areas, should the Inspector consider it necessary a more restrictive level of 300Cdm^2 would be acceptable to the appellant.

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Grounds of Appeal

The LPA's reason for refusing consent asserts that the advertisement display would unacceptably harm the amenity of the locality. No public safety objection was raised by TfL, the body responsible for highway safety on London roads.

The stated reasons for refusing consent also refer to conflict with development plan policies. Local policy and guidance is not decisive in advertisement applications but they can be material factors where the policy aims are applicable and related to amenity and public safety matters, the primary considerations in advertisement developments.[2] Nevertheless the Appellant submits that policy is supportive of the appeal proposal.

- The Appellant disagrees with the conclusions express in the decision notice and would reaffirm that the replacement of the advertisement with a sequential display of the same dimensions and in the same location as existing would neither harm public safety nor visual amenity. The proposed display is not so close to a heritage asset as to unacceptably harm its setting.

- The proposed advertisement display, forming part of a new Landmark London bus shelter would not result in unacceptable harm to the visual amenity of the local area but will deliver real benefits to the travelling public. The proposal accords with the relevant policies and guidance at national and local level.

- The investment in modern, cleaner and greener technology will meet the policy objective and principles of sustainable development.

Accordingly the Inspector is respectfully requested to uphold this appeal and grant consent for the development applied for.

Yours faithfully,

[redacted]

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[2] Regulation 3 of the Town and Country Planning (Control of Advertisements)(England) Regulations 2007/783

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APPENDIX A

1. No special visual effects of any kind are permitted during the time that any message is displayed. The displayed image must not include animated, flashing, scrolling, intermittent or video elements.
2. No visual effects of any kind to be permitted to accompany the transition between any two successive messages. The replacement image must not incorporate any fading, swiping or other animated transitional method.
3. The minimum time between successive displayed images shall be 10 seconds.
4. The sequencing of messages relating to the same product is prohibited.
5. The intensity of the illuminance of the advertisement shall be no greater than 600Cdm2 during hours of darkness.
6. The footway and carriageway on the TLRN and SRN must not be blocked during the installation and maintenance of the advertising panel. Temporary obstruction during the installation must be kept to a minimum and should not encroach on the clear space needed to provide safe passage for pedestrians, or obstruct the flow of traffic.

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