

TOWN AND COUNTRY PLANNING (CONTROL OF ADVERTISEMENTS)(ENGLAND)
REGULATIONS 2007

APPELLANT: MR S DAYEH of DAYLITE SIGNS

APPEAL SITE: 134/136 WEST END LANE, LONDON, NW6 1SB

APPELLANT REF: AdA/017.025/SD/016

LPA REF: 2017/3770/A

GROUND OFS OF APPEAL

1. Introduction & Opening Comments

- 1.1 This appeal is lodged against the decision by Camden London Borough Council to refuse a grant of consent to replace an existing 48 sheet internally illuminated advertisement display with a purposed designed LED display unit measuring 4.5m x 3.00m.
- 1.2 The reason(s) for refusal (shown below) encompass the relevant planning issues relating to the display of an advertisement, namely public safety and amenity.

1. The proposed sign, by reason of its size, prominent location and method of illumination would have a dominate appearance which would be detrimental to the character and appearance of the host building, the streetscene and wider area, contrary to policies A1 and D4 of the Camden Local Plan 2017.

2. The proposed sign, by reason of its size, siting and method of illumination would be likely to distract drivers and other road users, endangering pedestrian and highway safety, contrary to policies A1 and D4 of the Camden Local Plan 2017.

2. PROPOSAL

- 2.1 The replacement of a 48 sheet internally illuminated (luminance value 600cd/m²) advertisement display unit measuring some 6.4m x 3.4m (w x h) and associated structures that benefit from Deemed Consent - Class 13 within Schedule 3 to the 2007 Regulations.
by

an LED display unit measuring 4.5m x 3.00m (h x w); significantly smaller and less bulky than the deemed consent unit to be replaced. The proposed display will be internally illuminated and provide a luminance value of 300cd/m².

The proposal offers a circa 38% reduction in size against the previous deemed consent display, with a 50% decrease in the level of illumination.

- 2.2 Full details of the application, together with copies of the e-mail correspondence between the applicant and LPA, and the refusal notice are shown in the documents submitted with the appeal form.

(It will be noted from the e-mail correspondence that the planning technician has referred erroneously to Class 14 Deemed Consent not the applicable class - 13.)

3. The Application Site, its Location and Surroundings.

- 3.1 The appeal site is the north facing elevation of a substantial 5-storey red brick building with roof mansards to the rear. The building sits on the eastern side of West End Lane, flanked by the railway line to the north and Blackburn Road to the south. The north elevation of the property faces toward the adjacent railway line and High Street. The building has a mix of uses with commercial at ground floor level and residential at upper floors; it is not Statutory or local listed.
- 3.2 The appeal site is within an area where the surroundings present that of a commercial and business location. The locality has an assortment of building styles and ages; older and highly modern buildings co-exist in an interesting mix of styles and materials, where heights generally range from 1 to 5 storeys.
- 3.3 Given the commercial nature of the surroundings it is not surprising that the area around the proposal site is one of a busy business area that features shops, offices and leisure amenities including pubs and restaurants. The area has a mix of both day and night time activities with an eclectic mix of commercial outlets catering for a wide range of interests and services to both Londoners and visitors.
- 3.4 The appeal site is not within a Conservation Area, an Area of Special Advertisement Control or an Area of Special Archaeological Priority. There are no statutory or locally listed buildings in the near or wider surroundings that would be affected by the proposal; no Strategic Views would be affected by the proposal. There are no Article 4 or Regulation 7 Directions in place affecting the area. The proposal would not create any aural disturbance, or interfere with any traffic control or CCTV apparatus.

Site Background – 2003/04 to 2017

Following the refusal of the 2003 application and subsequent appeal for a 48 sheet internally illuminated advertisement display unit measuring some 6.4m x 3.4m; that application appeared to have been for the retention of that advertisement, the then incumbent advertising contractor did not remove the advertisement, possibly believing the site continued to enjoy deemed consent – detailed evidence of the site's history relating to the display of advertisements was presented at the 2004 appeal hearing. The 48 sheet continued to be displayed until earlier this year and thus it and the site benefit from deemed consent under Class 13 to the 2007 Regulations.

This year, following an annual safety inspection, the in-situ display and structures were removed for detailed safety checks; the removal was intended to be temporary and once any necessary safety works had been completed the display would have been re-installed, a procedure allowable under the Regulations and that course is still open to the appellant. However, the appellant decided that an improvement to property/site could be achieved by replacing the large and bulky 48 sheet and its' posting structure with a much smaller digital unit that would also reflect the vertical orientation of that particular section of the host property; the proposed change would also do away with the need for a posting platform. It is the proposed change of size and type of display that triggered the application subject to this appeal.

It is important to note that around 2003/04 the local authority commenced an initiative to rid the borough of all large scale commercial advertisements; in addition to its' own staff the LA engaged outside contractors to pursue a campaign against any and all commercial advertisements whether consented or not, and to police the borough in an ongoing drive against such advertisements. That campaign is believed to be ongoing.

Given that the LPA staff and any outside contractors would have been highly reactive to any advertisement deemed to conflict with the aims of the initiative and local plan it is eminently reasonable to assume that the local authority did not regard the continued existence of the 48 sheet advertisement and its associated posting access platform on the north facing wall of Tower Mansions as being in conflict with policy and initiative.

4. Appeal Issue

4.1 The issues in this appeal is considered to be:

- a) whether the proposal, which would replace the existing internally illuminated advertisement of 21.76 m² with an internally illuminated display of 13.50 m², would be so harmful to the character and appearance of its commercial location that it would have an unduly detrimental impact on local amenity;
- b) whether the proposal or its exact location would give rise to a danger to public safety.

5. Planning Considerations

- 5.1 The simplified National Planning Policy Framework ('the Framework') has largely superseded previous policy guidance. As stated in paragraph 2 of the Framework, this is a material consideration in planning decisions. The relevant policy advice relating to advertisements is contained in paragraph 67 of the Framework. This confirms, in line with the Statutory provision in Regulation 3 of the Regulations that advertisements should be subject to control only in the interests of amenity and public safety, taking account of cumulative effects. The Framework also provides - *'Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise.'*

However, as shown in 5.2 and 5.3 below, applications for advertisement consent do not have to comply with local plan policies.

- 5.2 Regulation 3 of the Regulations requires that the provisions of the development plan be taken into account, so far as they are material. Schedule 4 of the Regulations (as amended) by the Town and Country Planning (Control of Advertisements) (England) (Amendment) Regulations 2007 makes modifications to sections 78 and 79 of the 1990 Act. Section 79(4), which in turn applies section 70, is omitted. Amongst the omitted provisions of section 70 is 70(2) which requires that the local planning authority shall have regard to the development plan, so far as it is material to the application.
- 5.3 Because section 70(2) does not apply to applications and appeals under the Regulations, neither does section 38(6) of the Planning and Compulsory Purchase Act 2004, this latter provision only applying to determinations where regard is to be had to the development plan.
- 5.4. Thus, whilst the specific development plan policies to which the Council has referred may be material consideration in the current appeal, they cannot be given the same weight that would be the case if section 38(6) was applicable, i.e. the determining factor unless material considerations indicate otherwise. Therefore there is no material justification for making an application or appeal decision that is based on advertisement proposals that conflict with local plan policies.
- 5.5 It has been noted from very many past appeal decisions that Planning Inspectors continually take the view that local policies cannot be a deciding or decisive issue.

Local Policies

- 5.6 The council's own local policies are predominately aimed at new built developments – office blocks, new flatted residential blocks, civic and municipal buildings; changes to existing buildings within Conservation Areas, or affecting the setting of listed buildings; changes and alterations to buildings that will have a permanent impact on the wider area.
- 5.7 With regard to the Council's particular policies on advertisements (D1, D4 & T1) –
- the proposed display will be of a high quality, appropriate within its surroundings; it will contribute to and preserve the character and amenity of the commercial surroundings of the locality;
- it will not contribute to an unsightly proliferation or clutter of signage in the vicinity; the proposal removes a large, bulky display with its accoutrements, replacing it with a significantly smaller, lighter and less intrusive design and system that does away with the need for the substantial posting access platform;
- it will not cause visual intrusion by virtue of light pollution into any residential properties. It will avoid light pollution of any nearby wildlife habitats;
- it will not have flashing internal or external illumination, and it will be appropriate to the adjacent buildings;
- the proposal will not be a public safety hazard or contribute to clutter or a loss of amenity; it will not cause a hazard to pedestrians or road users. Additional comment on the road safety issues raised in the delegated report provided in section 6 below.
- 5.8 While the detailed advice on amenity in Circular 03/2007 has been superseded by the highly truncated information in Planning Practice Guidance, the Statutory Regulations make it clear that each advertisement display must be considered on its own merits, i.e. on a site specific basis, and in the interests of amenity and public safety only. Thus the Council's reference and reliance on its own policies does not, and cannot be considered to provide good reason to evidence that the replacement of a 21.76 m² internally illuminated advertisement display, with an 13.50m² internally illuminated advertisement display unit showing static, sequential images, would be so disadvantageous to the area that consent should be refused.
- The Council's policies cannot be a deciding or decisive issue.

6. Appellant Comments on the Delegated Report

- 6.1 References to the council's policies, their status and the weight to be attached to those policies, together with relevant national planning requirements, have been set out in section 5 above.
- 6.2 In support of the decision to refuse the application, the delegated report makes reference to a number of application refusals and appeals. However, unless those advertisements replicate the subject advertisement (size and type) of this appeal, and their exact locations are identical to the current case, little weight, if any, can be accorded to any of those decisions.
- 6.3 Mention has been made in the delegated report to TfL guidance and the appellant responds in the next paragraphs to that non-statutory guidance.
- 6.4 Facts - the proposal is located adjacent to a pedestrian crossing; the northern elevation of the host building faces the nearside carriageway; it is visible for some distance from the north along this straight section of road; it is only visible to south bound traffic.
(It is noted that the author of the delegated report seems to think the proposal will be on the offside to southbound motorists.)
- 6.5 Guidance produced by Transport for London (TfL) in relation to the display of digital advertisements notes that adverts in proximity to traffic signs or signals including pedestrian crossings require careful attention to ensure no conflict occurs. An assessment method is suggested which notes that where digital advertising is proposed within 20m of a pedestrian crossing adverts will not normally be permitted. However, it is not enough to say that digital displays would not *normally* be allowed in certain locations, indeed Guidance for Digital Roadside Advertising and Proposed Best Practice prepared by Waterman Transport & Development Limited for TfL essentially makes the point that all proposals should be looked at on a case by case approach.

The summary and conclusion in the Waterman report states:

Research indicates that digital roadside advertising is not inherently unsafe but should be operationally managed in accordance with the site specific constraints of the location.

Sites at locations with increased driver cognitive demand should not immediately be excluded or discounted, but should be subject to detailed assessment.

An assessment method similar to that adopted by TfL (Appendix A) should be used to assess the appropriateness of the location and the level of risk in a methodical rather than subjective manner.

Controls over the use of digital adverts should follow the best practice guidelines in this report and should be secured by special condition, with more careful management required in higher risk locations. As a minimum, the OMC roadside digital code ¹ should be complied with.

Not all sites will be appropriate for advertising, but with appropriate controls, digital advertising should be no more or less acceptable than traditional forms of advertising (i.e. backlight, poster and paste, vinyl etc).

Other relevant considerations from the TfL guidance include the suggestion that digital advertising is likely to be best located alongside the nearside carriageway, orientated to face the oncoming driver. It is also suggested that the minimum message duration should ensure that the majority of approaching drivers do not see more than one or two messages.

The proposal accords with those suggestions.

7. Appellant's Additional comments

- 7.1 The north facing elevation where the advertisement display is located is on a busy thoroughfare within a bustling, thriving commercial area, where advertisements including large scale commercial displays are well in evidence. The proposal is for an internally illuminated sign which would have a 50% reduction in illumination and would be around 2/3rds the size of the existing advert. The proposed replacement in its upright, portrait form would fit more appropriately within the frame of that section of the host property that has been utilised for advertising over many years than the currently permitted 48 sheet.
- 7.2 Additional to the matters set out in section 6 above, in any application and/or appeal the highway (public) safety issue must be looked at by reference to the basic tenet of whether a normal driver exercising reasonable care for his own and others' safety would be so distracted or so confused by the proposed display that consent should be withheld. In this case a driver's approach to the appeal site is straightforward, with excellent advance length of visibility, well in excess of the 45 metre sight line required for a highway controlled by a 30mph speed limit. The proposed 10 second change time accords with TfL guidance.

- 7.3 The road layout approaching and passing the appeal site is not so unusual as to present a special traffic hazard. The proposal will not obstruct or confuse a road user's view, or reduce the clarity or effectiveness of any traffic sign or signal; the display will not be seen behind TCA heads.
- 7.4 Whilst demanding concentration, the approaches to the site do not present drivers with a road layout, or conditions more difficult than those expected on any major city road route, or junction. The proposed display will not be a distraction to drivers taking reasonable care for their own and others' safety.
- 7.5 Conditions facing southbound West End Lane traffic are neither exceptional nor unusual. Motorists approaching the appeal site will have assimilated a host of different conditions, access and egress junctions, together with vast amounts of data alongside all road routes, including large advertising displays with their simple, direct messages, have all been absorbed without distraction from the road ahead, these are the motoring conditions for 21st century driving. The modern day motorist is well accustomed to seeing and assimilating vast amounts of road and roadside information without distraction from the highway layout and conditions.
- 7.6 Drivers are used to seeing large advertisements in urban areas, with digital displays having been in situ alongside major city highways since 2009. There is no evidence to suggest that replacing existing illuminated advertisements with digital displays, or installing digital displays in new, heavily trafficked or sensitive locations (roundabouts at Holland Road, Old Street etc.) has had an adverse effect on public safety.
- 7.7 There is no evidence that past and current advertisements have been the cause of any driver distraction or accident and it is contended that the proposal will not present any greater potential distraction than the current display.

8.1 Summary

- 8.1 The fact that the current proposal would replace a considerably larger illuminated advertisement with a more modestly sized display with lower level of illumination must be considered. It is noted that there is no suggestion that the current advertisement should be discontinued.
- 8.2 The application proposes a considerable reduction in size to that of the consented advertisement. The application will reduce the levels of illumination by 50%.
- 8.3 The proposal will present a high quality, energy efficient, low maintenance, low carbon, sustainable development that will be in scale with the adjacent building and the scale of its surroundings. The proposal would be appropriate within the commerciality of the immediate and wider locality.
- 8.4 The proposal meets the relevant expectations of National Planning Policy Framework; it will aid a competitive economy and provide support for the vitality of town and commercial centres;
- it will be of high quality;
- its low power consumption will address the need of modern businesses to meet the challenge of a low carbon economy;
- it will utilise sustainable materials and be recyclable.
- 8.5 Taking account of the reduction in size, its vertical orientation, the evidence of obvious commerciality of the immediate and wider surroundings, it is considered that the proposal will not cause undue harm the appearance of the building, harm the amenity of the surrounding area, or be a public safety hazard.

Given the circumstances outlined above the Inspector is respectfully requested to uphold this appeal and grant consent for the display of the advertisement display as applied for.

CONDITIONS

In regard to possible conditions, the standard conditions as set out in the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 are supported.

Suggested additional conditions are:

The maximum level of illumination during hours of darkness shall be no more than 300cd/m².

The luminance level of the display shall be controlled to track the light level changes in the environment throughout the day to ensure that the perceived brightness of the display is maintained at no more than 300cd/m² above ambient level.

The approved display shall contain at all times a feature that will turn the screen off (i.e. shows a black screen) in the event that the display experiences a malfunction or error.

No individual advertisement displayed on the LED screen shall contain moving images, animation, intermittent or full motion video images, or any images that resemble road signs or traffic signals.

There shall be a smooth, uninterrupted transition from one image to another. Transitions shall be of not less than one second between static images. No individual advertisement shall be displayed for duration of less than 10 seconds.

The proposed additional conditions are standard conditions often suggested by TfL for digital display consents and are considered to comply with requirement set out in Paragraph 206 of the National Planning Policy Framework.

APPENDICES

Street view 1

Street view 2