

Appeal Decision

Hearing held on 26 November 2013 and 14 January 2014

Site visits made on 26 November 2013 and 14 January 2014

by David Smith BA(Hons) DMS MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 22 January 2014

Appeal Ref: APP/F5540/H/13/2201090

Multimedia House, Kew Distribution Centre, Lionel Road, Brentford, TW8 9QR

- 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 Electricity Supply Nominees against the decision of the Council of the London Borough of Hounslow.
 - The application Ref 00505/U/AD19, dated 21 December 2012, was refused by notice dated 8 May 2013.
 - The advertisements proposed are two digital media screens on the east and west glazed elevation of the building and two totem signs at ground level.
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Decision

1. The part of the appeal that relates to two digital media screens on the east and west glazed elevation of the building is dismissed. The part of the appeal that relates to two totem signs at ground level is allowed and express consent granted for their display. The consent is for five years from the date of this decision and is subject to the five standard conditions set out in the Regulations and an additional condition that their maximum luminance shall not exceed 200 cd/sq m.

Preliminary Matters and Main Issues

2. Powers under the Regulations to control advertisements may only be exercised in the interests of amenity and public safety, taking account of any material factors. Therefore the various development plan policies cited are not decisive.
3. The proposal relates to a permitted but unimplemented building known as "The Hive". The Council has no objection to the proposed totem signs. These would be 2m in height and located adjacent to the site entrances to provide a way-marking function. Given their scale and the nature of the surrounding streetscape they would cause no harm to amenity.
4. Therefore the main issues are the effect of the digital media screens on the amenity of the area having particular regard to the design of The Hive, heritage assets and their setting, Metropolitan Open Land, other undesignated parts of the locality, the impact on outlook from residential properties to the west and the cumulative impact. In addition, their effect on the public safety of drivers along the adjacent raised section of the M4 and its associated slip roads.
5. The hearing opened on 26 November 2013 and heard evidence in relation to amenity but resumed on 14 January 2014 to deal with public safety issues. I made unaccompanied inspections of the site and the surrounding area on both

those days. This included driving along various stretches of the road network as requested. On another occasion I also drove along relevant sections of the M4 and its approaches during hours of darkness.

Reasons

Amenity

6. Various epithets have been attached to The Hive some of which are kinder than others. However, it has been deliberately designed as an eye-catching and original piece of architecture that is distinctive and innovative. As the name suggests part of its inspiration has been taken from the nest of a honey bee and it also incorporates hexagonal cladding. The digital screens would replace the louvres in the east and west elevations of the main 'pod' which would be supported on 'stilt-like' legs above the level of the adjoining raised section of the M4. Reception facilities for the offices above would be provided at ground floor level. It would replace a run-down commercial building of little merit.
7. Much is made of the scheme's history. The Council has been anxious to avoid the building becoming a support structure for advertisements but the appellant's specific intention is that the display would be for "corporate branding". Nevertheless, the proposal is for an advertisement and its content, subject and design can only be controlled in the interests of amenity and public safety. Indeed, the events leading up to the application have no real bearing on any assessment. Moreover, whilst the proposal is not a poster panel the principles in Appendix E of Circular 03/2007 are broadly applicable.
8. By fitting into the originally designed apertures the digital displays of 10m by 7m and 10m by 6m would be integrated into the building rather than cutting across its features. In this way it would be superior to the alternative options put forward to the Council. However, as Appendix E puts it, the most important criterion is the overall visual effect upon the entirety of the building and its surroundings. As referred to by other Inspectors purely supporting commercial interests alongside the M4 would create an inherent tension with environmental quality. It is nevertheless notable that the Council's policies for The Golden Mile of the M4/A4 corridor seek to retain a balance between economic and visual considerations.
9. There are polarised opinions as to whether The Hive would appear as a "TV screen" or as a branded pavilion if the proposal went ahead. From street level it would more obviously appear to be a building as the ground floor, stairs and lift would be visible. However, from the level of the motorway it would be more difficult to discern The Hive as a building rather than as a 'platform' for advertisements. Nevertheless, favouring one or other of these extremes is not especially helpful in deciding the appeal.
10. The iconic nature of The Hive stems largely from the curving, organic sculpting of the main body. In contrast, notwithstanding the 'honeycomb' cladding, the elevations are fairly plain and understated. To my mind, its 'wow' factor derives from its unusual style and position rather than its materials. However, all of this would change if the panels were introduced. They would occupy a significant proportion of the end elevations which are important components of the entire building. The large, coloured panels would be much more strident than the originally proposed finishes. Because of their size they would become main features in themselves that would divert attention away from and dilute

the architecture. In this way, an opportunity to achieve high quality design would be lost contrary to the aims of the National Planning Policy Framework and of the development plan.

11. In considering the effect on the wider area a few preliminary points can be made. Firstly, there are other advertisements nearby along the M4 which have been detailed by the Council. Any assessment should also take account of the situation both during the day and at night. In that regard, commercial buildings in the vicinity are likely to be lit for at least part of the evening. Furthermore, leaves are shown on the trees in the photographs and verified photographic images produced but these will be shed at other times of year.
12. The Hive itself would be a striking building whether or not the displays went ahead. It would also be lit internally and the appellant suggested that the proposal could be restricted to the same level of brightness. But from what I saw of other screens and buildings in the vicinity there is a distinct difference between the two. In particular, the panels would have a much more intensive visual quality due to the clarity of the images. To a degree this stands to reason as their purpose is to be seen from the outside rather than to light an interior. It was also suggested at the hearing that the screens could be recessed by up to a metre and that technology now limits the 'spread' of LEDs but these measures are unlikely to significantly reduce the overall impact.
13. The closest heritage asset is Gunnersbury Park and its listed gatehouse (known as West Lodge). This 2-storey building has a mock castle appearance and now sits a little forlornly close to the motorway. However, it retains significance as a feature designed to announce passage into and out of the Park. As the architecture is similar on both main elevations it is not just the front that is important as a device to attract people into the Park. Nevertheless the noise emanating from the motorway and its strong horizontal lines above the top of the gatehouse are compromising features.
14. That said, outward views encompassing West Lodge are framed by greenery and therefore retain a park-like quality. In this vista it is accepted that angled, filtered views of the western screen would be possible in winter months. Notwithstanding the permitted building the proposal would be a forceful visual element that would detract from the appreciation of the gatehouse. Moreover, as an obviously commercial intrusion, it would spoil this corner of the Park which is also a Conservation Area and a Grade II* listed park in itself. However, the analysis undertaken shows that from other places the screens would be too far away or too well hidden to have a similar impact.
15. Reference is made to 2 other listed buildings in the vicinity. Wallis House is an imposing Art Deco building alongside the motorway and the Victorian Pump House Tower at Kew Bridge lies to the south. These are both landmarks in their own right but would be well away from the proposed signs. They would be seen in the same context from very few places along the M4 and the buildings would remain clearly distinguishable from the proposal. Neither of the settings of these assets would therefore be impaired.
16. Carville Hall Park North and South are designated as Metropolitan Open Land. Policy ENV-N.1.7 of the Unitary Development Plan indicates that development conspicuous from within it should not detract from its open aspect or visual amenities. Although the senses are affected by the invasive sound of traffic Carville Hall Park South is still something of a green oasis with mature trees

and other planting. The buildings to the east within the Distribution Centre are a neutral backdrop but from this end of the Park the western panel would be intrusive. The Townscape Visual Impact Assessment (TVIA) suggests that the effect could be mitigated by semi-mature evergreen planting but this would take a while to provide a softening effect.

17. The northern section of the Park is more open and akin to a recreation ground. The TVIA describes the residual effect on it in longer views as minor negative. This is, however, on the basis that illumination is for set periods of time but that is not proposed. In closer views the density of existing vegetation would obscure the panel even in winter. Overall the impact from this direction would not be sufficient in itself to resist the proposal.
18. Close views of the panels would be possible from the A4 and from Lionel Road North and South. These are clearly urban places with roads and their infrastructure forming major parts of the townscape. Notwithstanding this, the height and size of the panels would be visually dominant for pedestrians and cyclists. The view from Lionel Road North towards the appeal site is not unpleasant being fringed by trees within Gunnersbury Park and Carville Hall Park North. However, the adverse effect that would occur is likely to be reduced if the Sunley Island development were to take place.
19. The Council highlighted residential properties within Carville Hall Park South, at Wallis House and in Carville Crescent. However, all of these would be well away from the proposal which would not intrude into their outlook to the extent that living conditions would be materially reduced.
20. The proposed screens would have the effect of spreading the existing array of advertisements between Junction 2 and the Chiswick Roundabout further to the west. To that extent it would result in a proliferation of visual clutter. The Framework also indicates that account should be taken of the cumulative impact and there would be 3 displays within about 250m. Nevertheless, these would not be clearly read in conjunction with one another and the proposal can be differentiated from the various towers. Therefore the cumulative impact does not materially add to the other disadvantages identified.
21. I am by no means the first Inspector to have to consider the effect on amenity of advertisements in this part of London. All those previous decisions would have been made on the basis of their particular circumstances including the nature of the surroundings and the type and scale of advertisement. My impression is that those that have been accepted are in more obviously commercial locations close to the M4/A4. The appeal site is located near to protected green spaces which provide a welcome contrast and this differentiates it from the other display locations that I saw.
22. There is uncontested evidence that the viability of the development opportunity relies on realising its brand potential. Moreover, that current rental levels in Brentford are unlikely to sustain a more conventional form of re-development or refurbishment of the site. The panels are portrayed as the only means by which the benefits associated with The Hive in terms of regeneration, investment, status and jobs can be secured. The Framework confirms that the Government is committed to securing growth but the economic role of sustainable development should not be undertaken in isolation. In this regard, paragraph 67 observes that poorly placed advertisements can have a negative

impact on the appearance of the built environment. That would be the case here and it is the interests of amenity that should be the determining factor.

23. Therefore on this issue the proposed digital media screens would harm the amenity of the area. In particular they would compromise the high quality design of The Hive and detract from the setting of heritage assets, of Metropolitan Open Land and the character and appearance of undesignated parts of the locality.

Public safety

24. The panels would be visible to drivers heading in both directions along the raised section of the M4 and also to those joining it at Junction 2 via the eastbound on-slip road. It is proposed that the displays would change no more frequently than every 30 seconds.
25. Appendix B of Circular 03/2007 observes that all advertisements are intended to attract attention. However, given its design and the plethora of other signage along the M4, some of it digital, the proposal is not of an "unusual nature". Furthermore, the means of illumination would not be directly visibly from any part of the road and the brightness of the sign could be controlled by condition. Therefore, having regard to paragraph 2 (b) and (d) of the Circular the proposed panels are not one of the main types of advertisements that may cause danger to road users.
26. However, the driving environment along this part of the M4 is not typical of other motorways. For instance, there is no hard shoulder, the margins between the lanes and the safety barriers are narrow and there are a series of fairly tight bends. There are also large buildings close to the road. Nevertheless, the volume of traffic is very high with a two way Annual Average Daily Flow of almost 80,000 vehicles in 2012. The speed limit is restricted to 40mph and enforced by cameras which suggest that safety is a concern.
27. In the 10 years to June 2013, 37 personal injury accidents were recorded in the stretch of the M4 around Junction 2. These have been less prevalent over the last 5 years but there is no compelling evidence to indicate why this is so or that their incidence is likely to increase in future. The majority involve collisions of the kind to be expected as traffic leaves and joins the motorway. There are other concentrations of accidents slightly further afield, such as around the curve in the road to the east. Indeed, there is nothing to suggest that conditions in the vicinity of Junction 2 are abnormally hazardous in comparison with other, similar types of road.
28. Nevertheless, because there are junctions, "more care" is necessary in the words of Appendix B. Indeed, as observed by the Inspector who considered proposals for internally illuminated display panels and a tower at the appeal site in 2007¹, this is a point where a driver's "full attention" is required. Therefore particular consideration should be given as to whether the proposal would be likely to distract road users.
29. When moving along the main carriageways the panels would be seen well in advance. The appellant gives distances of between 300 to 400m. They would also be viewed in the context of other signs and commercial buildings. Drivers would need to be aware of and react to, if necessary, vehicles merging and

¹ Refs: APP/F5540/A/07/1201754 & APP/F5540/H/07/1201743

diverging from the slip roads. Nevertheless, because the screens would be recognisable at an early stage the proposal would be unlikely to affect the decision making processes of drivers or to hamper their ability to change lanes or brake in safety.

30. The nose length of the eastbound on-slip road is sub-standard according to the Design Manual for Roads and Bridges. The most appropriate criteria in this case, given the nature of the M4 here, are those for urban roads rather than for motorways. When assessed on this basis merging can occur 10m earlier than would now be permitted. However, the taper length exceeds the relevant standards which are also applicable to roads with a speed limit of up to 50mph.
31. For drivers travelling along the slip road the west facing panel would come into view at a distance of about 150m around the place where merging from two lanes into one should be completed. As a result the screen would not appear suddenly. Indeed, drivers should be able to get into position on the slip road, assimilate the presence of the sign and then turn their attention to the task of joining traffic on the motorway. These actions could be performed in sequence and the presence of the panel above the slip road as it rises up to the M4 should not interfere with driving capabilities or functions. Therefore the proposal would not pose an unacceptable risk to public safety.
32. This finding is at odds with that of the Inspector in 2007 who considered that the proposals would be a significant traffic hazard. Since then physical conditions along this part of the M4 have not changed. Further signs have nevertheless been accepted and erected although the third party commented that some have been removed. What has happened is that the Highways Agency has changed its stance and no longer resists all applications for large format advertising adjacent to the M4. Rather it assesses each case on its own merits having regard to DoT Circular 02/2013 *The Strategic Road Network and the Delivery of Sustainable Development*.
33. It is notable that no objection has been made by the Highways Agency or Transport for London. Whilst no detailed explanation of the Agency's position has been provided it continues to make objections in other cases. This is presumably where there is specific reason to consider that a hazard to road safety would be a direct consequence of the development in accordance with Circular 02/2013. The fact that this has not occurred in this case is a matter of significant weight. In part, this may stem from the study referred to from 2008 which did not show a correlation between advertising and road safety.
34. Nevertheless, my own analysis of the proposal based on the evidence provided does not coincide with the conclusion in 2007 that advertising would be detrimental to highway safety. That is a judgement that I am entitled to reach and it is supported by the broad backdrop of an increasing appreciation that, in general terms, roadside advertising is not as potentially distracting as was once thought. In the light of that experience it is reasonable to distinguish the circumstances over 6 years ago with those pertaining now.
35. Other Inspectors have reached differing views in relation to the public safety aspects of advertisement proposals near the raised section of the M4. These would no doubt have been determined on an individual basis. The only case worthy of specific comment is a recently decided appeal at the Audi Centre to

the west of the appeal site² where a sign was found to be prejudicial to highway safety. However, that was on the basis that it would detract from the function of a motorway gantry of imparting important traffic information. The proposed panels would not reduce the clarity or effectiveness of a traffic sign or signal so the situation is materially different.

36. In conclusion the proposal would not harm public safety particularly that of drivers along the adjacent raised section of the M4 and its associated slip roads.

Conclusions

37. The proposed digital media screens would be harmful to the amenity of the area for the reasons given and are unacceptable even though they would not harm public safety. This part of the appeal should therefore fail. However, as indicated earlier, there is no objection to the modest totem signs and this part of the appeal should succeed by means of a 'split' decision. Their luminance should be limited by condition in the interests of amenity but requiring planting is not necessary especially since details of soft landscaping are required by the planning permission for the development.
38. Therefore the appeal should be dismissed in respect of the digital panels but allowed in respect of the totem signs.

David Smith

INSPECTOR

² Ref: APP/F5540/H/13/2199268

APPEARANCES

FOR THE APPELLANT:

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DOCUMENTS

- 1 Statement of Common Ground
- 2 Heritage rebuttal evidence submitted by Mr Froneman
- 3 Plan and photos of advertisement sites along the M4 submitted by the Council
- 4 Letter of 21 November 2013 from Wildstone Planning
- 5 Appeal decision APP/F5540/H/10/2130674 (Appendix 1 to Document 4)
- 6 Appellant's highway statement (Appendix 2 to Document 4)
- 7 Letter of 13 October 2011 from Planning Perspectives LLP submitted by the Council
- 8 Appeal decision APP/F5540/H/13/2199268
- 9 Plan showing suggested viewpoints submitted by Mr Gottlieb
- 10 Statement of Common Ground – Highways Agency
- 11 Statement of Common Ground – Transport for London

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