



Decision by Chris Norman, a Reporter appointed by the Scottish Ministers

- Advertisement appeal reference: ADA-270-2002
- Site address: Unit 2, Seaforth Road, Muir of Ord, IV6 7TA
- Appeal by Jaki Pickett against the decision by The Highland Council
- Application for advertisement consent 20/04608/ADV refused by notice dated 25 March 2021
- The advertisement proposed: Siting of a 'Prolights' Panorama IPB spot to project light into the sky on a one minute rotation
- Date of site visit by Reporter: 30 June 2021

Date of appeal decision: 19 November 2021

Decision

I dismiss the appeal and refuse advertisement consent.

Reasoning

1. Regulation 4(1) of the Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984 (the 1984 Regulations) limits the exercise of the powers of control of advertisements solely to the interests of amenity and public safety, and these matters are elaborated in regulation 4(2). Accordingly, on the basis of the site inspection and the written submissions, I consider that the determining issues in this appeal are whether the proposed display would be contrary to the interest of amenity or public safety.

Policy Background

2. Section 25 of the Town and Country Planning (Scotland) Act 1997, which gives primacy to the development plan, does not apply in advertisement consent cases. However, the adopted development plan, the Highland Wide Local Development Plan 2012 (the HWLDP) identifies at policy 28 'Sustainable Design' and policy 72 'Pollution' those matters that include the council's standards and general approach to the control of advertisements. Policy 28 'Sustainable Design' of the HWLDP requires that the impact of a proposal requires to be assessed against, amongst other things, individual and community residential amenity. In refusing the application to the council the proposal is considered to have an adverse impact amenity as it would be visible and intrude upon non-commercial areas where such artificial light sources are out of keeping. Policy 72 'Pollution' of the HWLDP requires the avoidance or mitigation of light pollution.



The proposal

3. The appeal seeks express advertisement consent for an advertisement comprising a beam of light projected from a mobile device located on land adjacent to a hot-food takeaway premises at Seaforth Road, Muir of Ord. From here a beam of light would be projected into the sky during periods of darkness to advertise the premises. The beam of light, with a radius of around one metre, would rotate approximately once every minute and it would appear and then fade at one minute intervals from the static position. It would be seen over a 24 kilometre radius, visible from the A9 corridor between Inverness and Alness, parts of the Black Isle, and from parts of Dingwall and surrounding settlements including the Muir of Ord and Beauly. Inverness Airport is some 23 kilometres east of Muir of Ord.

4. Previously the beam of light was projected, for trial purposes, prior to an application for express consent being made to the council. The appellant now wishes to project the beam of light 7 evenings each week between the hours of 16.00 and 21.00. Its purpose is to guide customers to the hot food takeaway and help support the appellant's business that employs 12 staff. The beam, described by the appellant as an unorthodox means of advertising, would be directed into the sky and would not shine directly on houses or residential areas. I have no evidence that it would impact on any listed building or conservation area.

5. In her submissions the appellant has advised me of numerous other sources of night-time light outwith the urban area of Inverness which impact on dark skies. My attention is drawn to a proposal for large scale residential development adjacent to the nearby Tore Roundabout with its resultant night-time lighting and consequences on the darkness of the night sky. In referring to other instances where night-time illumination has been allowed by the council, at both Kessock Bridge and Inverness Castle, the appellant contends that the appeal proposal would be directed to the sky and would not emit ambient light. It is also submitted that elsewhere in Muir of Ord there is night-time lighting of premises for security reasons. Because, in this instance, the beam points into the sky the appellant contends that there would be no impact upon motorists or individual buildings. Unlike the appellant's comparisons with night-time lighting elsewhere around Inverness the proposal is not intended to illuminate landmark features or facilitate industrial or residential development, but advertise a business.

Amenity

6. In accordance with the 1984 Regulations the determination of the appeal must address amenity and I therefore require to determine the suitability of the use of the site in the context of the general characteristics of the locality, including the presence of any feature of historic, architectural, cultural or similar interest. To the council, in refusing express advertisement consent the proposed rotating light projected into the night sky would have an unacceptable impact upon amenity by introducing visually intrusive light pollution which would be out of character in a non-commercial and rural area.

7. Some eight representations against the proposal were received by the council. The Highland Astronomical Society points to the disturbance to dark skies caused by the emission of light, which diffuses over a large area in turn increasing light pollution. Other persons describe the proposal as being unwanted light pollution extending over a wide area

that impacts on the experience of seeing constellations of stars and the Aurora Borealis. It would be distracting for drivers on adjacent roads, the light could adversely impact on wild life. One representee described the effects on aircraft.

8. During my site inspection, late in the evening in mid-summer, I witnessed the beam of light being projected into the sky even though the night sky was not totally dark at that time of year. Even so, the beam was clearly visible as it rotated on the axis of the device and I noted that it comprises of a very intensive beam which, despite the mid-summer twilight, was readily visible from a radius of around five kilometres. In complete darkness the beam would invariably project to much higher distances and altitudes, and the appellant's submits that it could be up to 24 kilometres in length.

9. I am mindful that the device is not located within an area otherwise subject to policies that specifically safeguard dark skies. Nevertheless within the 24 kilometre radius surrounding the source of the light there is a mix of settlements, dispersed rural communities and undeveloped countryside. While illuminated advertisements can be appropriate for areas of a commercial nature, in contrast the illumination of advertisements in less commercially developed and sparsely populated areas or the wider countryside would be out of keeping with these areas, in turn giving rise to an adverse impact upon amenity.

10. By introducing artificial light into an extensive and largely unlit rural area I conclude that the proposal would be a highly visible and incongruous feature. The very lengthy, non-static and potentially coloured light beam would have an unmitigated impact against the dark background of the night sky, adversely impacting on the night-time environment. The proposal would neither have any direct impact on residential areas nor built heritage assets. However I conclude that the scale and nature of the illuminated and rotating light beam are characteristics that would be tantamount to light pollution, contrary to both policy 28 and policy 72 of the Highland-Wide Local Development Plan 2012.

Public Safety

11. Regulation 17 of the 1984 Regulations provides that I could allow the appeal and grant advertisement consent subject to specified standard conditions and to such additional conditions as I think fit, or I may dismiss the appeal and refuse consent. In accordance with regulation 4(2)(b) of the 1984 Regulations in my determination of the appeal I must have regard to the interests of public safety and, amongst other things, the safety of persons using any road or airfield that is likely to be affected by the display of advertisements. In particular I must consider whether the display is likely to obscure, or hinder the ready interpretation of any road traffic sign or any aid to navigation by air. In this regard I am mindful that the council's Transport Planning Team do not oppose the advertisement. I have noted that National Air Traffic Services (NATS) has concluded that there would be no impact from the proposal on its infrastructure or on its own air traffic control operations. However, as confirmed in its handling report, the council's decision was made in the absence of any consultation response from the Civil Aviation Authority (CAA).

12. The appellant has advised me that if I were to allow the appeal she is required to issue the CAA with a 'Notice to Airman' (NOTAM) and that it is necessary for her to notify CAA to allow details of the proposal to be included in the Aeronautical Information Publication. I have noted that several local aviation interests, cited by the appellant, do not

oppose the proposal. Nevertheless I sought the views of the CAA and Highlands and Islands Airports Ltd (HIAL) on the proposal in my procedure notice of 26 July 2021.

13. In my determination of the appeal I attach significant weight to the response to my procedure notice made by HIAL. HIAL note that the siting of the proposed light source is “well away” from Inverness Airport. Nevertheless the strength and rotational nature of the light is regarded by HIAL as a potential distraction for aircraft operating in the phase of a flight that relates to Runway 23 at the airport. Consequently even if the appellant were to prove that the proposal is not a distraction both HIAL, and the airport’s air traffic control, would wish to reserve the right to require that the beam of light is turned off in the event of pilots reporting a distraction in their final approach to the airport. HIAL also draw my attention to the proximity of the light to other civilian and military aircraft routes and the presence of RAF Lossiemouth and Kinloss.

14. The importance of aviation safety is unarguable. On the basis of the response to my procedure notice from HIAL I am in no doubt that the proposal could pose a significant potential risk to aviation safety. If I were to allow the appeal there is an overarching necessity for some form of regulation that would, with very immediate effect, extinguish the illuminated advertisement.

15. In my consideration of the appeal, and in the context of Regulation 4(2) of the 1984 Regulations, I cannot overstate the importance of aviation safety. The need for the instantaneous extinguishment of the proposed advert would be fundamental to public safety if it hindered pilots on their descent to Inverness Airport. I am in no doubt that a means to avoid the distraction of airline pilots is essential if I am to allow the appeal. Like conditions attached to planning permissions Regulation 17 of the 1984 Regulations allows me to impose conditions on an advertisement consent, as I think fit.

16. Scottish Government Circular 4/1998 ‘The Use of Conditions in Planning Permissions’ (the 1998 Circular) sets out parameters for the use of conditions to regulate planning permissions. Although not expressly aimed at conditions imposed on an advertisement consent nevertheless, in exercise of my duty under both Regulation 4(2)(b) and Regulation 17, and by analogy, I find its contents to be relevant in my determination of this appeal.

17. From the 1984 Circular I conclude that any such condition that I attach must be a valid condition and not *ultra vires* or otherwise unlawful. I do not consider that it would be fit to allow the appeal requiring, by the means of a condition, the immediate extinguishment of the advertisement in the event of it distracting or otherwise hindering airline pilots in a short but critical part of their journey. In the context of the 1998 Circular to do so would be unreasonable because, firstly, such a condition would be unenforceable given the instantaneous need for its compliance. Secondly, the implementation of the condition, although requiring actions by the appellant, is itself dependent on the action of other parties including the pilots of an aircraft in alerting HIAL and its air traffic control, and in turn a spontaneous request being made to and received by the appellant before she takes the urgent emergency action. The 1998 Circular also provides that an unreasonable condition does not become reasonable because an appellant suggests it or consents to its terms.

18. I have no evidence of a mechanism before me that would enable the immediate extinguishment of the beam of light in accordance with a request made by HIAL by any

other means. I therefore conclude, on the basis of the evidence that I have received from HIAL, there is an overriding risk to public safety resultant from the proposed advertisement. I conclude that the beam of light that could be emitted for up to 24 kilometres in variable directions, including the flightpath into Inverness Airport, would be contrary to public safety and conflicts with Regulation 4(2) (b) of the 1994 Regulations.

Conclusion

19. I have taken into account the general characteristics of the area, including the dark sky above the commercially undeveloped characteristics of the wider area around Muir of Ord. I conclude, because of the unmitigated and intrusive light pollution that would ensue, that in the interests of amenity the appeal site is not suitable for the display of the advertisement the subject of this appeal.

20. No evidence is before me that allows me to conclude that the potential risk to aviation safety could otherwise be addressed by some other form of regulation separate from the 1994 Regulations. Consequently because of the nature and scale of the advertisement, and the paramount need to regulate any potential hindrance that it could cause to aircraft inbound to Inverness Airport, I conclude that the display of the advertisement would not be in the interests of public safety.

21. In the event of aviation interests being satisfied by an alternative means, rather than a condition being imposed under Regulation 17 of the 1984 Regulations, I have in any event concluded that the proposal is contrary to the interests of amenity.

22. I therefore dismiss the appeal and refuse advertisement consent.

Chris Norman
Reporter