
Appeal Decision

Site visit made on 26 June 2019

by G Powys Jones MSc FRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd July 2019

Appeal Ref: APP/K5600/Z/19/3227275

Outside 159 Kensington High Street, London W8 6SU

- 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 New World Payphones against the Council of the Royal Borough of Kensington and Chelsea.
 - The application Ref CA/19/00071, dated 2 January 2019, was refused by notice dated 27 February 2019.
 - The proposed advertisement is illuminated digital advertisement display integrated within replacement Telephone Kiosk.
-

Decision

1. The appeal is allowed and consent is granted for an illuminated digital advertisement display integrated within replacement Telephone Kiosk outside 159 Kensington High Street, London W8 6SU in accordance with the terms of the application Ref CA/19/00071, dated 2 January 2019, subject to the five standard conditions set out in the Regulations and the following conditions:

1) The intensity of the illumination of the digital advertisement permitted by this consent shall be no greater than 280cd/m² during the period from dusk until dawn.

2) The digital advertisement panel hereby granted consent shall display static images only and the images shall be changed no more frequently than once every ten seconds through a smooth fade. No moving images or special effects shall be shown.

Preliminary matters

2. A telephone kiosk currently stands on the pavement outside 159 Kensington High Street. The appellant wishes to replace it and to display an advertisement as part of the replacement kiosk's fabric. However, pursuant to the High Court judgment referred to¹ the appellant seeks consent only for the advertisement display at this stage. The appellant, subject to the outcome of its appeal against the High Court judgment in the Court of Appeal, intends to apply for planning permission at a later stage for the kiosk structure. I shall proceed on this basis.

¹ Westminster CC v Secretary of State for Housing Communities and Local Government (SSHCLG) & New World Payphones Ltd (2019) EWHC 176 (Admin).

3. The National Planning Policy Framework's guidance on advertisement control underlines the fact that the powers under the current Regulations to control advertisements may be exercised only in the interests of amenity and public safety. In this context, the development plan policies referred to, in particular policies CT1, CR3 & CR4 of the Council's Consolidated Local Plan, have been treated as material considerations.
4. The appeal property is located within the Edwardes Square, Scarsdale and Abingdon Conservation (CA) and I am therefore required to pay special attention to the desirability of preserving or enhancing its character or appearance.

Main issues

5. The main issues are the effect of the proposed advertisement on the visual amenity of the surrounding area.

Reasons

6. The existing kiosk stands on the southern frontage of Kensington High Street a short distance to the west of the underground station. The appellant says that the proposed advertisement panel would be contained within the replacement kiosk's structure and would measure about 1650 x 928mm. It would display static advertising images in sequence, changing no more frequently than every 10 seconds. The illumination brightness of the display would be controlled via a light sensor that monitors ambient light. During periods of darkness, the display's illumination would be restricted to a maximum brightness of 280cd/m².

7. The Council's assessment is that:

The advertisement forms an integral part of a telephone kiosk. At circa 2.5 metres in height, the advert would be an overly prominent and visually imposing addition to the streetscene, exacerbated by the brightness of the LED lighting. The size, orientation and brightness of the advertisement would add significantly to the visual clutter in the vicinity, and would bring undue attention, detracting from the high quality and streetscape environment.

8. The site is located in a busy location on a major thoroughfare within a designated shopping area. Commercial businesses including shops and banks are in evidence on the ground floors of both sides of this part of the High Street, and all display fascia advertisements above shop fronts, and some small projecting signs.
9. There is some street furniture close by, including a bus stop and a BT In-Link kiosk. The extent and nature of the street furniture and advertising material evident is what one would reasonably expect to see in a busy, designated commercial location, and the proposed advertisement would not therefore appear out of place. I am satisfied that the visual impact of the proposed advertisement on its surroundings would be small, certainly not as to prove harmful to the character or appearance of the CA.
10. Accordingly, I do not share the Council's view that the advertisement, which is modestly sized, would prove overly prominent or visually imposing in the street scene. The ability to control brightness and the nature of the display would assist in reducing its impact, especially during the late evenings and at night.

11.I therefore conclude that the proposal would not harm the visual amenity of its surroundings, subject to the imposition of conditions as suggested by the Council to control the nature of the display and its brightness at night, albeit that I have varied the wording of the suggested conditions.

Other matters

12.The Council's has expressed concerns relating to public safety arising from the alleged effect on pedestrian movement on the pavement next to the advertisement. It seems to me however that given the nature of this appeal that this is a matter more appropriately considered at another, later stage. The advertisement subject of this appeal will not be displayed unless the kiosk is replaced, and that is to be the subject of a future application. Accordingly, it is not the advertisement that could possibly have an adverse effect on pedestrian movement but the replacement kiosk, and the Council can therefore assess the implications of this aspect if and when a planning application for the replacement kiosk is submitted.

13.I have considered all other matters raised in the representations but none outweighs the considerations that led me to conclude that the appeal should be allowed.

G Powys Jones

INSPECTOR