



Appeal Decision

Site visit made on 3 July 2019

by W Johnson BA(Hons) DipTP DipUDR MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 August 2019

Appeal Ref: APP/X5990/Z/18/3218560

Outside BP, Cavendish House, Wellington Road, London NW8 9SQ

- The appeal is made under Regulation 17 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (the Regulations) against a refusal to grant express consent.
 - The appeal is made by Mr Neil Scoresby of BT Telecommunications PLC against the decision of City of Westminster Council.
 - The application Ref 18/07385/ADV, dated 24 August 2018, was refused by notice dated 23 October 2018.
 - The advertisement proposed is described as: 'Two Digital 55-inch LCD display screens, one on each side of the InLink unit'.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Since the submission of this appeal, the Government has published the revised National Planning Policy Framework (the Framework) on 19 February 2019, which forms a material consideration in the determination of the appeal. However, the changes have no material bearing to the main issues before this appeal.
3. This appeal was initially linked with Ref APP/X5990/W/18/3218557 which was for Prior Approval for the installation of one freestanding InLink kiosk. In March 2019, following the Westminster judgment¹, the appellant withdrew the prior approval appeal but asked that the advertisement appeal continue. The Regulations, the Framework and advice within the Planning Practice Guidance (PPG) require that decisions on advertisements be made only in the interest of amenity and public safety. Accordingly, I have determined the appeal on the basis of the above. Notwithstanding the outcome of this appeal, the necessary permissions would still be required for the kiosk itself.

Main Issues

4. The main issues are the effect of the proposed advertisements on the amenity of the area with regard to the significance of the adjacent St John's Wood Conservation Area (SJWCA), the setting of the Grade II listed building at 26 Wellington Place and on public safety.

¹ Westminster CC v SSHCLG & New World Payphones Ltd [2019] EWHC 176 (Admin)

Reasons

Amenity

5. The appeal site is on the pavement of Wellington Road, outside the petrol filling station. The site is not located within the SJWCA, but faces it on the opposite side of the road and also faces the Grade II Listed Building at No 26, albeit at an oblique angle. This appeal relates to the provision of two digital 55-inch display screens which would be situated either side of a new InLink telephone kiosk, which has yet to be granted consent or erected on site. The InLink structure would have an overall height of around 2.9 metres.
6. Section 72 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) sets out that in the exercise of planning functions with respect to any buildings or land in a conservation area, special attention shall be paid to the desirability of preserving or enhancing the character or appearance of the area. This statutory duty does not extend to the setting of a conservation area, but it is common ground between the parties that this is a material consideration in this appeal.
7. The proposed advertisements would be seen in association with the adjacent petrol station and its related advertisements, of which some are illuminated. The proposal would involve the removal of the existing kiosk, and although its location would be prominent, it would essentially replace the existing telephone kiosk. I find that the proposal would complement the visual amenity of this section of the street and would not significantly harm the surrounding area including the significance of the SJWCA, particularly as it would be read in conjunction with the petrol filling station and its associated activities.
8. The addition of the advertisements to the setting of No 26 would not diminish the design or setting of the detached villa. The 3-storey building, which includes a basement, dates from 1840 and has strong architectural qualities and plenty of historic interest through elegant fenestration, hipped roofs and a projecting pilastered entrance. I have a statutory duty under Section 66 (1) of the Act which requires me to have special regard to the desirability of preserving or enhancing a listed building or its setting or any features of special architectural or historic interest which it possesses. I consider the proposal accords with this duty.
9. Whilst the new illuminated advertisements would be more apparent during the hours of darkness, they would not form a discordant addition to the street scene. Although the surrounding area is not particularly commercial in character, I find the presence of the petrol filling station to form a significant factor in addition to the existing street lighting and litter bin, amongst other things. However, I do recognise that the proposal would require the imposition of suitably worded conditions to control the level of illumination during hours of darkness and to prevent moving images, which if otherwise not controlled would form an incongruous feature to the detriment of the amenity of the area.
10. For the reasons set out above, I conclude that the proposed advertisements would have a neutral impact upon the amenity of the surrounding area, including the adjacent SJWCA and the setting of No 26. Therefore, in accordance with the Regulations, I have taken into account the provisions of the development plan so far as they are material and find that the proposed advertisements accord with the overall amenity and heritage aims of Policies

S25 and S28 of Westminster's City Plan 2016 (CP) and saved Policies DES1, DES8, DES 9 and DES10 of Westminster's Unitary Development Plan 2007 (UDP).

11. Accordingly, it would not conflict with national policy contained within section 16 of the Framework where it advocates great weight should be given to the conservation of heritage assets. It would not cause harm to the significance of the designated heritage assets for the purposes of the Framework. Hence, there is no requirement for me to consider public benefits to be weighed in a balancing exercise.

Public safety

12. The appeal site would be close to the edge of the footpath and Wellington Road. I note the comments received from Transport for London (TfL) in relation to the road being the main pedestrian route between St John's Wood Station and Lord Cricket Ground, which I acknowledge would likely lead to an increase in pedestrian activity, but little evidence has been provided to substantiate this assertion. TfL also raise issues relating to land ownership. However, any ownership issues are a private matter between the relevant parties and not within my jurisdiction.
13. I note that the Council's Highways Section has raised objections to the proposal, with regard to pedestrian movement. Having given due consideration to the above, I am satisfied that the width of the pavement would ensure that the pedestrian flow in the vicinity of the advertisements would not result in any significant harmful effects to their movement or represent an inconvenience to the detriment of public safety. Additionally, I am satisfied that the advertisements, through suitably worded conditions, would prevent the advertisement distracting passing road users. Whilst, it has been suggested that the advertisements could be rotated so the screens run parallel with the edge of the footway, I consider this would likely create unacceptable conditions through pedestrians being stood close to the edge of the pavement next to the carriage way whilst facing the display.
14. However, I note concerns raised by the Council in relation to the position of the proposed advertisements and the possibility of it impeding the visibility of vehicles emerging from the northern exit of the petrol filling station. The Council consider that from a 2.4m driver position at the northern exit the advertisement would reduce the unimpeded visibility down to approximately 20 metres to the kerb edge, this has not been disputed by the appellant. Wellington Road is the subject of a 30mph speed restriction and Manual for Streets requires a Stopping Sight Distance of 43m for 30mph traffic. Additionally, based on my findings during my visit, I too have concerns in this respect. I acknowledge the presence of the existing kiosk that would be removed and the other street furniture and tree in the direction of the on coming traffic toward the northern exit.
15. Having given due consideration to the above, I am not satisfied that satisfactory visibility would be afforded to drivers leaving the petrol filling station if the advertisement appeal was to succeed. Additionally, I am not satisfied that the effect of the advertisements could be mitigated in this respect, through the imposition of suitably worded conditions, in the same way that such conditions could prevent the advertisements distracting passing road users. Consequently, and in the absence of any substantive evidence to the

contrary, I find that the proposal would be unacceptable with regard to its impact on public safety.

16. The appellant has referenced 2 approved applications² for digital advertising on a bus shelter and various appeal decisions³ in support of their submission, although the advertisement appeals are only of relevance in this instance. However, relatively little detail has been provided regarding the particular planning backgrounds to these schemes and I do not know what evidence was before the Inspectors at the time of their decisions. In any event all applications and appeals are judged on their own individual merits and where appropriate the relevant legislative provisions. Accordingly, that is how I have assessed this appeal scheme.
17. For the reasons set out above, I therefore conclude that the proposed advertisements would prejudice local conditions of public safety. Therefore, in accordance with the Regulations, I have taken into account the provisions of the development plan so far as they are material and find that the proposed advertisements fail to accord with the public safety aims of CP Policy S41, UDP Policies TRANS2 and TRANS3, Westminster Way Public Realm Strategy Supplementary Planning Document 2011, and the Framework.

Other Matters

18. Whilst the appellant refers to the public benefits of the 'InLink' unit in which the proposed advertisements would be incorporated, that development is not the subject of this appeal. In any event, I do not consider the nature of these benefits against the nature of the likely harm to the public safety of the area, to outweigh the harm identified above. I have considered this proposal on its own planning merits and concluded that the scheme is not acceptable for the reasons set out above.

Conclusion

19. Although I have concluded that the proposed advertisements would not prejudice conditions of amenity or adversely affect the setting of heritage assets, the displays would likely still cause significant harm to public safety. Accordingly, the appeal should be dismissed.

W Johnson

INSPECTOR

² 15/08600/ADV and 15/08635/ADV

³ APP/X5990/W/17/3182307; APP/X5990/Z/17/3182308, APP/X5990/W/17/3182006, APP/X5990/Z/17/3182012, APP/X5990/W/17/3182305 and APP/X5990/Z/17/3182306