



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/18/3217031

Junction of Orchard Street and Wigmore Street, 105 Wigmore St, London W1U 1QY

- 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 18/07457/ADV, dated 29 August 2018, was refused by notice dated 22 October 2018.
- The advertisement proposed is described as: 'Two Digital 55-inch LCD display screens, one on each side of the InLink unit'.

Decision

1. The appeal is allowed and express consent is granted for two digital 55-inch LED display screens, one on each side of the InLink unit outside 105 Wigmore Street, London W1U 1QY in accordance with the terms of the application Ref 18/07457/ADV, dated 29 August 2018, and the plans/documents submitted with it. 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 the following additional conditions listed in the schedule.

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/18/3217030 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.
4. The address of the advertisements in the banner heading above is taken from the application form. However, in my decision, I have taken the address of the development from the appeal form, since this more succinctly describes the location.

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

Main Issue

5. The main issue is the effect of the proposal upon amenity, with regard to the significance of the adjacent Portman Estate Conservation Area (PECA).

Reasons

6. The appeal site is on the pavement of Orchard Street. The site is not located within the PECA but faces it on the opposite sides of Orchard Street and Wigmore Street. 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.
7. 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.
8. The Council's concern relates primarily to the effect of the advertisement upon the amenity of the area (including the setting of the PECA) taking into account its location and in particular its size and capability of displaying moving images and its method of illumination. The appellant has made reference to various appeal decisions² 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 these appeal schemes.
9. The advertisements would be located towards the edge of the pavement and would be sited in place of the existing telephone kiosks. Although its location would be prominent, it would essentially replace the existing telephone kiosks. Additionally, I find that the advertisements would be read in conjunction with the adjacent modern building that has various automotive advertisements on its large glazed frontages at ground floor. Additionally, the presence of other street furniture, such as street and traffic lights are close to the appeal site. The new illuminated advertisement would be more apparent during the hours of darkness, but it would not be a discordant addition to the street scene in this commercial area with the variety of shop fronts and the overall commercial nature of the area. 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 a discordant feature to the detriment of the amenity of the area.
10. On the opposite side of Orchard Street to the appeal site is the PECA, which then extends in a northerly direction, including the opposite side of Wigmore Street to the appeal site. However, given the existing character of the

² APP/X5990/W/17/3182307; APP/X5990/Z/17/3182308; APP/X5990/W/17/3182006; APP/X5990/Z/17/3182012 and APP/X5990/Z/16/3156856

surrounding area, I find that the proposal would still preserve the existing character of this part of the street. Therefore, in this context, and taking into account its size, location and method of illumination, I am satisfied that the proposed advertisement would not cause harm to the amenity of the area, or the significance of the PECA.

11. 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 PECA. 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 and saved Policies DES1, DES8, DES 9 and paragraphs 10.108 to 10.128 of Westminster's Unitary Development Plan 2007.
12. 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 asset for the purposes of the Framework. Hence, there is no requirement for me to consider public benefits to be weighed in a balancing exercise.

Other Matters

13. I have taken into account other issues raised by the Council and representations made by other interested parties, regarding anti-social behaviour, crime and commercial aspects, amongst other things. However, although I acknowledge that the advertisements would likely generate some income for the appellant it is not a relevant matter to matters of amenity or public safety in terms of the consideration of the proposed advertisement. Additionally, there is no substantive evidence before me to demonstrate that the advertisement would give rise to any anti-social or criminal activities. I have considered this proposal on its own planning merits and concluded that the scheme is acceptable for the reasons set out above.

Conditions

14. The appellant has requested a period of 10 years on the application form, but little evidence has been offered as to why the standard 5 years is not appropriate in this case and as a consequence I see no reason to depart from the standard timeframe in this instance.
15. In addition to the standard five conditions set out in the Regulations, and in the interests of the amenity of the area, it is necessary to also impose a planning condition relating to the proposed drawings and specification.
16. In the interests of highway safety and amenity, a condition is necessary which prohibits moving images and defines the minimum time to lapse between images. I am aware of correspondence from the appellant on similar cases within the Council's that I am also dealing with, where the appellant has suggested 10 seconds between each static image rather than the originally suggested 12 seconds and the Council has not raised any objections. Whilst no such suggestion has been made on this appeal, for consistency, I consider that 10 seconds is an appropriate duration on this appeal scheme.

17. The additional conditions relate to the proposed level of illumination, and the nature of the advertisements, which I consider reasonable and necessary in the interests of visual amenity and public safety. I have amended the suggested conditions where necessary to better reflect the advice set out in the Planning Practice Guidance concerning the use of planning conditions, without changing their overall intention.

Conclusion

18. For the reasons given above, the proposed advertisement would not have a detrimental impact upon the amenity of the area. Subject to planning conditions it would preserve the character, appearance and setting of the PECA. My conclusions in relation to the proposed advertisements do not indicate whether the InLink Kiosk would be acceptable, and this would need to be considered on its own merits. I therefore conclude that the appeal should be allowed and express consent is granted.

W Johnson

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans and documents: (WST-122) LP-V1; SITE PLAN REV A and SITE ELEVATION REV A.
- 2) The advertisements displayed shall be a series of static images, which individually feature no moving elements, dynamic displays or motion pictures. The speed of change between one static image and the next shall be no quicker than 10 seconds.
- 3) During the hours of darkness (dusk until dawn) the illumination level shall not exceed 600 candelas in accordance with the maximum permitted recommended luminance as set out by 'The Institute of Lighting Professional's 'Professional Lighting Guide 05: The Brightness of Illuminated Advertisements'.
- 4) The interval between each piece of content on the digital display screens shall take place over a period no greater than one second; the complete screen shall change with no visual effects (including swiping or other animated transition methods) between displays. Additionally, no content that resembles traffic signs as defined in section 64 of the Road Traffic Regulation Act 1984 shall be displayed.
- 5) The display shall at all times maintain a safety feature that will turn the screen off (ie shows a black screen) in the event that the display experiences a malfunction or error.
- 6) No part of the advertisement(s) shall emit any sound at any time.

End of Schedule