

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/18/3216869

Finchley Road (A41), outside 4-8 Queens Court / opposite Eyre Court, St Johns Wood, London NW8 6DR

- 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 18/07379/ADV, dated 29 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/18/3216868 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 and with regard to the significance of the adjacent St John's Wood Conservation Area (SJWCA), and on public safety.

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

Reasons

Amenity

5. The appeal site is located on Finchley Road, adjacent to SJWCA. 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 advertisements would be located on a relatively wide pavement where there is little street furniture present, limited to a lamppost with a traffic sign and a kiosk. At the junction of Queen's Terrace there are bollards and towards St John's Wood Station there are bicycle racks, a bench and a litter bin, amongst other things. As such the pavement area surrounding the appeal site is relatively uncluttered, which is echoed on the opposite side of the road.
8. Given the little street furniture on this section of the pavement and the little advertising in the vicinity of the site, the proposal would be a prominent and intrusive feature that would appear at odds with the simplicity of the public realm. From my observations, the proposal would be viewed against the background of the adjacent property, in particular the boundary treatment of Queen's Court that comprises a low brick wall with a hedge behind. Given the proposed illumination of the advertisement displays and the prominent location of the proposal, I find that the nature and effect of the digital advertising would be unlike anything else experienced in the existing surrounding street scene.
9. Consequently, I find that the proposed advertisements would have a significant harmful effect on the amenity of the area. The advertisement would be more noticeable due to its digital advertising displays. This would result in a more striking and wider reaching visual impact on the street scene and would adversely impact on the setting of a nearby designated heritage asset. Therefore, based on what I have seen and read, the proposal would also not preserve or enhance the setting of the SJWCA.
10. The appellant has referenced a planning application² 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 these appeal schemes.

² 16/03494/ADV

³ APP/X5990/W/17/3182307; APP/X5990/Z/17/3182308, APP/X5990/Z/16/3156856, APP/X5990/W/17/3182006 and APP/X5990/Z/17/3182012

11. For the reasons set out above, I conclude that the proposed advertisements would have a significant harmful impact upon the amenity of the surrounding area, including the significance of the adjacent SJWCA. 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 overall amenity and heritage aims of Policies S25 and S28 of Westminster's City Plan 2016 (CP) and saved Policies DES1, DES8 and DES 9 of Westminster's Unitary Development Plan 2007 (UDP).
12. Additionally, the proposed advertisements would not conserve the heritage asset in a manner appropriate to its significance in line with the Framework. I find that the proposed development would result in "less than substantial" harm to the SJWCA for the purposes of paragraph 196 of the Framework. I note the public benefits of the 'InLink' unit advanced by the appellant, in which the proposed advertisements would be incorporated. However, that development is not the subject of this appeal. In any event, I do not consider the nature of these public benefits to against the nature of the harm to the amenity of the area, to outweigh the less than substantial harm to the significance of the SJWCA. I have considered this proposal on its own planning merits and concluded that the scheme is not acceptable for the reasons set out above.

Public Safety

13. The appeal site would be close to the edge of the footpath and Finchley Road. I note that the Council's Highways Section has raised no objections to the proposal, subject to suggested conditions to address concerns such as moving advertisements and illumination levels, amongst other things. However, the Council confirm that Finchley Road is a Red Route and as such Transport for London (TfL) are the responsible highway authority.
14. TfL are concerned that the advertisements would impinge upon the effective width of the footway, and that pedestrians are likely to enter the carriageway if the pavement becomes blocked, resulting in highway safety issues, amongst other things. Additionally, TfL have referenced various improvements that have or are due to be undertaken in the area surrounding the site to the public realm for walking, cycling and public transport facilities. 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.
15. 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 advertisement 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 advertisements distracting passing road users. As such, I find that the advertisements would still allow for pedestrians to move through the area conveniently. Consequently, in the absence of any substantive evidence to the contrary, I find that the proposal would be acceptable with regard to its impact on public safety.
16. For the reasons set out above, I therefore conclude that the proposed advertisements would not 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 Policy TRANS3, Westminster Way Public Realm Strategy Supplementary Planning Document 2011, and the Framework.

Conclusion

17. Although I have concluded that the proposed advertisement would not prejudice conditions of public safety, the display would still cause significant harm to local amenity. Accordingly, the appeal should be dismissed.

W Johnson

INSPECTOR