



Appeal Decisions

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 A Ref: APP/X5990/Z/18/3218433

Outside Wigmore Racquet Specialists, Welbeck Street, London W1U 1PD

- 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 18/07406/ADV, dated 29 August 2018, was refused by notice dated 18 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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Appeal B Ref: APP/X5990/Z/18/3218830

Outside David Clulow Opticians, 41/43 Wigmore Street, London W1U 1PR

- The appeal is made under Regulation 17 of 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 18/07407/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

Appeal A

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 68-73 Welbeck Street (Wigmore), London W1U 1PD in accordance with the terms of the application Ref 18/07406/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 additional condition below and those listed in the schedule.

1) The development hereby permitted shall be carried out in accordance with the following approved plans and documents: (WST-119) SITE PLAN REV A; SITE ELEVATION REV A.

Appeal B

2. 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 41-43 Wigmore Street, London W1U 1PR in accordance with the terms of the application Ref 18/07407/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 additional condition below and those listed in the schedule.

1) The development hereby permitted shall be carried out in accordance with the following approved plans and documents: (WST-118) LP-V1; SITE PLAN REV A and SITE ELEVATION REV A.

Procedural Matters

3. 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.
4. Appeal A was initially linked with Ref APP/X5990/W/18/3218435 and APP/X5990/W/18/321831 was linked with Appeal B. These appeals were for Prior Approval for the installation of one freestanding InLink kiosk. In March 2019, following the Westminster judgment¹, the appellant withdrew the prior approval appeals but asked that the advertisement appeals 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 Appeal A and Appeal B on the basis of the above. Notwithstanding the outcome of these appeals, the necessary permissions would still be required for the kiosk itself.
5. For clarity, the address of both Appeal A and Appeal B in the banner heading above is taken from their application forms. However, in my decisions, I have taken the address of the advertisements from the respective appeal forms as they are more precise.
6. Both decisions for Appeal A and Appeal B are included on the same document to avoid unnecessary duplication and repetition, and due to the proximity of the sites. Nevertheless, they are independent of each other.
7. The Council has not raised any objections to the proposal in Appeal B with regards to the setting of 27-37 Wigmore Street, which is Grade II Listed. I have dealt with the appeal on this basis.
8. I note in the Officer Report concerns with regards to public safety are raised, but the Council have not cited public safety as a reason for refusal on its decision notice. Based on the evidence before me and on my observations during my site visit, I have no reason to depart from the reasons for refusal on the decision notice and have dealt with the appeal on this basis.

Main Issues

9. For Appeal A, the main issues are the effect of the advertisements upon amenity, with regard to the significance of the adjacent Harley Street Conservation Area (HSCA) and the setting of the Grade II listed building at 27-37 Wigmore Street.
10. For Appeal B the main issues are the effect that the advertisements upon amenity, with regard to the significance of adjacent HSCA.

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

Reasons

Appeal A

11. The proposed site is on the pavement of Welbeck Street, immediately outside No's 68-73. The site faces the HSCA on the opposite side of the road and faces the Grade II Listed Building at No's 27-37. 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.
12. 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.
13. The proposed advertisements would be seen in association with the adjacent retail premises and other advertisements and window displays in Welbeck Street, 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 HSCA.
14. The addition of the advertisement to the setting of No's 27-37 would not diminish its vast Baroque revival design or commercial character. The 5 storey building dated 1907 has strong architectural qualities and plenty of historic interest. 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.
15. 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 that includes street lighting, lighting to shop fronts / window displays and a multitude of existing illuminated advertisements in this commercial 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 an incongruous feature to the detriment of the amenity of the area.
16. 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 significance of the adjacent HSCA and the setting of No's 27-37. 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, public safety and heritage aims of Policies S25 and S28 of Westminster's City Plan 2016 (CP) and saved Policies DES1, DES8, DES 9 and DES10 and paragraphs 10.108 to 10.128 of Westminster's Unitary Development Plan 2007.

17. 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.

Appeal B

18. The proposed site is on the pavement of Wigmore Street, immediately outside no's 41-43. The site faces the HSCA on the opposite side of the road. 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.
19. It is common ground between the parties that the setting of the HSCA is a material consideration in this appeal and I have had regard to the Act to the desirability of preserving or enhancing the character or appearance of the HSCA. The advertisement would be located on a footpath, larger in width than the site on Welbeck Street. 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. The proposed advertisement would be seen in association with the adjacent retail premises and other advertisements and window displays in Wigmore Street, of which some are illuminated. I find that, overall 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 HSCA.
20. 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 that includes street lighting, lighting to shop fronts / window displays and a number of existing illuminated advertisements in this commercial area. However, 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.
21. For the reasons given above, I conclude that the advertisements would have a neutral impact upon the character and appearance of the surrounding area, including the significance of the HSCA. 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 and DES 9 and paragraphs 10.108 to 10.128 of Westminster's Unitary Development Plan 2007.
22. 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

Appeal A and Appeal B

23. I have taken into account other issues raised by the Council and representations made by other interested parties, regarding anti-social behaviour, crime, amongst other things. However, there is no substantive evidence before me to demonstrate that the advertisements 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

Appeal A and Appeal B

24. 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 these cases and as a consequence I see no reason to depart from the standard timeframe in both instances.
25. 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.
26. 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 area 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.
27. 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.
28. I have amended the suggested conditions where necessary to better reflect the advice set out in the PPG concerning the use of planning conditions, without changing their overall intention.

Conclusion

Appeal A

29. For the reasons given above, the proposed advertisements would not have a detrimental impact upon the amenity of the area. Subject to planning conditions it would preserve the character, appearance and significance of the HSCA, and the setting of No's 27 - 37. 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.
30. I therefore conclude that the appeal should be allowed and express consent is granted.

Appeal B

31. For the reasons given above, the proposed advertisements would not have a detrimental impact upon the amenity of the area. Subject to planning conditions it would preserve the character, appearance and significance of the HSCA. 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.
32. I therefore conclude that the appeal should be allowed and express consent is granted.

W Johnson

INSPECTOR

Schedule of Conditions

- 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