



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/H/18/3215854

Outside Regents Park Station, Marylebone Road, London NW1 5HA

- 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 18/06509/ADV, dated 31 July 2018, was refused by notice dated 28 September 2018.
 - The advertisement proposed is described as: 'Two digital 55-inch LED 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/18/3215820 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. For clarity, I have taken the full name of the appellant's company from the appeal form as it is more precise.
5. As Grade I listed buildings and a Grade I listed garden were identified in the Questionnaire as being affected by the advertisements and were cited in a refusal reason on the decision notice, the Council was requested to consult Historic England on the proposal². However, no comments have been received. I have dealt with the appeal on this basis.

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

² Letter dated 19 July from Westminster City Council to Historic England with a deadline of 2 August 2019

Main Issues

6. The main issues are the effect of the proposed advertisements on the amenity of the Regent's Park Conservation Area (RPCA), the setting of Grade I listed buildings on Park Crescent and Portland Place³ (the Grade I listed buildings) and Park Crescent Gardens (part of the Grade I Regent's Park in the Register of Parks and Gardens) (the Garden) and the West and East Lodges (the Lodges) at the corner of the Gardens which are Grade II listed, and on public safety.

Reasons

Amenity

7. The appeal site is on the pavement of Marylebone Road and is located within the RPCA. 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.
8. 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.
9. The advertisements would be located on a section of pavement between a wall to the Gardens and to stairs leading to Regent's Park Station (the Station). The proposal would involve the removal of the existing kiosk, and although its location would be prominent, I accept that it would essentially replace the existing telephone kiosk which has little advertising displayed upon it. I note that the area surrounding the site is bustling, due to factors, such as the presence of the Station and the nearby bus stop. However, there is little advertising in the vicinity and little in the way of illuminated advertising apart from that to the Station and the traffic information panels.
10. I acknowledge that Marylebone Road is a busy Road and the existing street furniture, in addition to that listed above that comprises street lighting, traffic signs / signals / camera, litter bins, a bus stop and an information display. The little amount of advertising in the area contributes to the uncluttered character and appearance of this part of the road. From my observations, the proposal would be viewed against the background of the adjacent wall and the mature trees in the Garden and in the context of the existing information display. The information display is close to the appeal site and I find that the introduction of the advertisements would create visual clutter in this location. Overall, I consider that there is not sufficient mitigation present to ensure that the proposal would not have a significant harmful effect on the amenity of the RPCA.
11. I find that the proposed advertisements fall within the setting of the Grade I listed buildings, the Garden and the Lodges due to their proximity. Although, construction works were being undertaken on the buildings forming the western section of Park Crescent at the time of my visit, I am satisfied that I was able to assess the effect of the proposal on the evidence submitted.

³ No's 1-6 / 8-14 Park Crescent and No. 98 Portland Place; No's 16 / 18-26 Park Crescent, and No. 83 Portland Place.

12. The addition of the advertisements to the setting of the listed buildings would diminish their design and setting. The Grade I listed buildings have a stucco façade with slate roofs, with simple spacious Grecian detailing. The Garden forms part of Regent's Park which is included on the Register of Historic Parks and Gardens as it was a key element of the early nineteenth century improvement scheme in north west London. The Lodges date from 1812 and were part of the Regent's Park development. They are single storey and have a stucco façade, slate roof and a Greek Doric pavilion, each set in corners of the garden facing Marylebone Road balanced with one another. 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 fails to accord with this duty.
13. Additionally, through 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. Furthermore, this would be more apparent during the hours of darkness and would form a discordant addition to the street scene that could not be overcome by suitably worded conditions. Consequently, I find that the proposed advertisements would have a significant harmful effect on the amenity of the RPCA. The advertisements 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 the setting of the Grade I listed buildings, the Garden and the Lodges.
14. The appellant has referenced various appeal decisions⁴ 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 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.
15. For the reasons set out above, I conclude that the proposed advertisements would have a significant harmful impact upon the amenity of the surrounding RPCA and on the setting of the Grade I listed buildings, the Garden and the Lodges. 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), saved Policies DES1, DES8, DES9, DES10 and DES12 of Westminster's Unitary Development Plan 2007 (UDP).
16. Additionally, the proposed advertisements would not conserve the heritage assets in a manner appropriate to their significance in line with the Framework. I find that the proposed advertisements would result in "less than substantial" harm to the RPCA, the Grade I listed buildings, the Garden and the Lodges 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

⁴ APP/X5990/Z/16/3156856; APP/X5990/W/17/3182006; APP/X5990/Z/17/3182012; APP/X5990/W/17/3182305; APP/X5990/Z/17/3182306; APP/X5990/W/17/3182307 and APP/X5990/Z/17/3182308

subject of this appeal. In any event, I do not consider the nature of these public benefits to outweigh the less than substantial harm to the significance of the setting of the listed buildings.

Public safety

17. The appeal site would be set away from Marylebone Road and close to the boundary wall of the Garden. 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 Marylebone Road is a Red Route and as such Transport for London (TfL) are the responsible highway authority.
18. TfL are concerned that the advertisement 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. Furthermore, 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 have also been cited. 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.
19. 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. As such, I find that the advertisements would still allow for pedestrians to move through the area conveniently. I acknowledge that due to the presence of the Station, pedestrians currently experience a slight deviation on this section of the pavement, but it also serves as a buffer between the road and the pavement. Furthermore, I am satisfied that the advertisements, through suitably worded conditions, would prevent the advertisements distracting passing road users in conjunction with the overall distance maintained from the carriage way. 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.
20. 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 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

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

W Johnson

INSPECTOR