



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/18/3215878

Pavement outside 15 Marylebone Road, London NW1 5JD

- 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 18/06510/ADV, dated 1 August 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/18/3215875 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. 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 name from the appeal form as it is more precise.
5. As Grade I listed buildings 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 area with regard to the significance of the neighbouring Regent's Park Conservation Area (RPCA), the setting of 2 Grade I listed buildings at the Church of St Marylebone (the Church) and the terraces on York Gate (the Terraces) and the Royal Academy of Music (RAM) which is Grade II listed, and on public safety.

Reasons

Amenity

7. The appeal site is on the pavement of Park Road. The site is not located within the RPCA but faces it on the opposite side of the road and a short distance away along the pavement as it incorporates the Church. 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. 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.
9. The advertisements would be located on a section of pavement between 2 street trees where there is little street furniture present apart from traffic signs, although I recognise the presence of traffic signals at the Marylebone High Street junction. The little amount of street furniture contributes to the spacious and uncluttered character and appearance of this part of the road. From my observations, the proposal would be viewed against the background of the adjacent property that has both traditional and modern fenestration at ground floor, which is faced in stone with an attractive Charles Dickens sculptured panel located on the facing elevation towards Marylebone High Street. The building has a modern entrance and little advertising present. Additionally, I note that the proposal would involve the removal of a kiosk on Marylebone High Street, but I find that this would not provide sufficient mitigation.
10. I find that the proposed advertisements fall within the setting of the Church, the Terraces and the RAM due to their proximity. The addition of the advertisements to the setting of the listed buildings would diminish their design and setting. The Church dates from 1813-18 and was remodelled in 1883-84. It is constructed of Portland stone with a slate roof and has an enlarged portico and prominent steeple facing Marylebone Road. The Terraces are a unified block dating from 1821-22 and was rebuilt as one unit internally with a stucco façade and slate roof. York Gate was a modification in Nash's plan to open up a vista of the Church. The RAM dates from 1910-11 and is constructed from red brick with generous stone dressings, channelled stone ground floor and stone faced centrepiece; slate roofs. It is a large symmetrical composition with centre block and projecting wings designed as a scaled up free version of an English

baroque country house. 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.

11. 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 area. 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, the neighbouring RPCA and the setting of the Church, the Terraces and the RAM.
12. The appellant has referenced 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 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.
13. 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, the significance of the RPCA and on the setting of the Church, the Terraces and the RAM. 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 and DES10 of Westminster's Unitary Development Plan 2007 (UDP).
14. 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 Church, the Terraces and the RAM 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 outweigh the less than substantial harm to the significance of the setting of the listed buildings.

Public safety

15. The appeal site would be close to the pavement edge of Marylebone Road and the bus lane. I note that the Council's Highways Section has raised no

³ 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

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.

16. 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 a highway safety issues, amongst other things. Additionally, TfL have referenced potential issues with street trees. 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.
17. 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. As such, I find that the advertisements would still allow for pedestrians to move through the area conveniently. Additionally, I am satisfied that the advertisements, through suitably worded conditions, would prevent the advertisements distracting passing road users. 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.
18. For the reasons set out above, I therefore conclude that the proposed advertisement 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 Policies TRANS2 and TRANS3, Westminster Way Public Realm Strategy Supplementary Planning Document 2011, and the Framework.

Conclusion

19. 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