



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/18/3215614

Pavement outside 200 Marylebone Road, London NW1 5QE

- 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 Neil Scoresby of BT Telecommunications PLC against the decision of City of Westminster Council.
 - The application Ref 18/06489/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'.
-

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 on the pavement outside 200 Marylebone Road, London NW1 5QE in accordance with the terms of the application Ref 18/06489/ADV, dated 1 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 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/18/3215613 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.

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

5. The Dorset Square Conservation Area (DSCA) Plan 1996 supplied by the Council with the Questionnaire does not include the appeal site. However, it is common ground between the main parties that the site lies within the DSCA. I have dealt with the appeal on this basis.

Main Issues

6. The main issues are the effect of the proposed advertisement on the amenity of the DSCA, the neighbouring Portman Estate Conservation Area (PECA), the setting of Westminster Council House (WCH) and the Library and Health Centre (LHC), which are both Grade II listed buildings in their own right, and on public safety.

Reasons

Amenity

7. The appeal site is on the pavement of Marylebone Road and would be located close to the existing kiosk. The site is located within the DSCA and faces the PECA and both the WCH and LHC 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.
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 proposed advertisement would be seen in association with the adjacent building, which the appellant indicates has been converted from office premises to residential properties with a brightly lit entranceway. 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. The area surrounding the site is commercial in character, and whilst there is little advertising in the vicinity, apart from the advertisement panels on the nearby bus stop.
10. The existing street furniture in the vicinity of the site comprises the afore mentioned bus stop, street lighting and traffic signs / signals, all of which are generously spaced along this section of pavement. The area also benefits from trees at regular intervals lining both sides of this section of the road, which with the central reservation and its central barrier create an attractive boulevard. I acknowledge that Marylebone Road is a busy road, but do not consider this to be a determinative factor on its own. However, in this instance I find the presence of the illuminated digital advertisements on the bus stop to be a material consideration and to provide sufficient mitigation to ensure that the proposal does not have a significant harmful effect on the amenity of the area. The proposed advertisement would be similar to that on the bus stop through its digital display and would therefore not be unlike anything else experienced in the existing surrounding street scene.

11. I find that the proposed advertisements fall within the setting of both the WCH and LHC, due to its proximity and the visibility of the site from their principal elevations. I note the street furniture directly outside the WCH and the LHC, such as the bicycle racks and refuse / recycling containers, amongst other things. As a consequence, I find that the addition of the advertisements to the setting of both the WCH and the LHC would not diminish their design and setting.
12. The WCH, formerly the Marylebone Town Hall dates from 1914-20 and is of Edwardian Graeco-Roman classicism relying on mass and volume for broad fronted composition with elaboration reserved for the Wren inspired central tower. The WCH has a bridge linking it to the LHC that dates from 1938-39. It is constructed from Portland stone and is a stripped cubic version of the earlier Graeco-Roman Town Hall design. 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.
13. From my observations, the proposal would be viewed against a background of the adjacent property and in the context of the digital advertisements on the bus shelter. Whilst the new illuminated advertisement would be more apparent during the hours of darkness, they would not form a discordant addition to the street scene. However, I do recognise that the proposal would require the imposition of suitably worded conditions to control the level of illumination during the 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 and on public safety.
14. For the reasons set out above, I conclude that the proposed advertisements would have a neutral impact upon the character, appearance and significance of the DSCA, the neighbouring PECA and the setting of both the WCH and the LHC. 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, DES9 and DES10 of Westminster's Unitary Development Plan 2007 (UDP).
15. 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.

Public safety

16. The appeal site would be close to the existing kiosk, set away from the pavement edge. 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.

17. TfL are concerned that the advertisement would impinge upon the effective width of the footway. Additionally, 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.
18. 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 advertisement would still allow for pedestrians to move through the area conveniently. Additionally, I am satisfied that the advertisement, through suitably worded conditions, would prevent the advertisement 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.
19. 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 Policies TRANS2 and TRANS3, Westminster Way Public Realm Strategy Supplementary Planning Document 2011, and the Framework.

Other Matters

20. I have taken into account other issues raised by representations made by other interested parties, regarding the need and content displayed. However, these do not affect the planning merits of the case. I have considered this proposal on its own planning merits and concluded that the scheme is acceptable for the reasons set out above.

Conditions

21. 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.
22. In addition to the five standard 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.
23. 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 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.
24. 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 noted the suggested levels of illumination from TfL, but I find little evidence before me to deviate from the levels specified in the lighting guide². 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

25. For the reasons given above, the proposed advertisement would not have a detrimental impact upon the amenity of the area or prejudice local conditions of public safety. Subject to planning conditions it would preserve the character, appearance and significance of the DSCA, the PECA and the setting of the WCH and LHC. 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.
26. 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: (WES012) SITE LOCATION MAPS; PROPOSED SITE PLAN and EXISTING AND PROPOSED ELEVATIONS.
- 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 advertisements shall emit any sound at any time.

End of schedule

² 'The Institute of Lighting Professional's 'Professional Lighting Guide 05: The Brightness of Illuminated Advertisements'