



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/18/3215617

Pavement outside Western Eye Hospital, 153 - 173 Marylebone Road, London NW1 5QH

- 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 18/06493/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/18/3215615 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.

Main Issues

5. The main issues are the effect of the proposed advertisement on the amenity of the Portman Estate Conservation Area (PECA), the neighbouring Dorset Square Conservation Area (DSCA), the setting of the former Samaritan Hospital for

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

Women (former hospital), which is a Grade II listed building, and on public safety.

Reasons

Amenity

6. The appeal site is on the pavement of Marylebone Road. The site is located within the PECA and faces the DSCA on the opposite side of the road, albeit at an oblique angle. The site is also on the same side of the road and close to the former hospital. 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.
7. 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.
8. The proposed advertisements would be seen in association with the adjacent Western Eye Hospital and the former hospital. 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. Whilst the area surrounding the site is commercial, there is little advertising in the vicinity and little in the way of illuminated advertising. I acknowledge that Marylebone Road is a busy Road, but I consider that this does not provide sufficient mitigation to ensure that the proposal would not have a significant harmful effect on the amenity of the area, especially as the existing street furniture consisting of street lighting and traffic signs / signals and litter bins are adequately spaced along this section of pavement.
9. The addition of the advertisements to the setting of former hospital would diminish the design and setting of the hard red brick and terracotta building that dates from 1889-1890. The building has strong architectural qualities and plenty of historic interest through its bold eclectic terracotta classicism with a symmetrical front dressed with a giant pilaster order and provided with segmental bows. 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.
10. Given the little advertising on this section Marylebone Road, the proposal would be a prominent and intrusive feature that would appear at odds with its surroundings. From my observations, the proposal would be viewed against a background of the adjacent properties, where I accept that the former hospital is currently vacant. However, 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. 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.

11. 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 and would adversely impact on the significance of the PECA, the DSCA and the setting of the former hospital.
12. The appellant has made reference towards 2 approved applications² 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.
13. For the reasons set out above, I conclude that the proposed advertisements would have a significant harmful impact upon the amenity of the PECA, the neighbouring DSCA and the setting of the former hospital. 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, 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 development would result in "less than substantial" harm to the PECA, DSCA and the former hospital 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 PECA, DSCA or the former hospital.

Public safety

15. 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.
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

² 11/04695/ADV and 16/03494/ADV

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

other things. Additionally, TfL have referenced potential issues with street maintenance and the potential collection of litter between the advertisement and the railings. 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 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.
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 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