



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/18/3215884

Pavement outside 25 Marylebone Road, London NW1 5JR

- 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 18/06513/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/18/3215881 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 area and on public safety.

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

Reasons

Amenity

6. The appeal site is on the pavement of Marylebone Road, close to the junction of Nottingham Place. 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. The advertisements would be located on a section of pavement where there is street furniture present comprising street lights, traffic signs, bollards and a number of kiosks, one which faces the appeal site and has an advertisement panel. I note the commercial properties on the opposite side of the road to the site, which includes 'Madame Tussauds'. However, from my observations, the proposal would be viewed against the background of the adjacent property, which has little advertising present on the facing elevation.
8. Given the little advertising on the section of Marylebone Road where the site is located, the proposal would be a prominent and intrusive feature that would appear at odds with its surroundings. The advertisements would replace the existing kiosks on Nottingham Place and outside 31 Marylebone Road close to the junction of Luxborough Street. However, I find that the proposed location of the advertisements are in an area where little advertising is present and they would appear discordant in their appearance and create visual clutter on this section of pavement where the site would be located close to an existing display.
9. Additionally, the proposed illumination of the advertisements 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 an incongruous 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.
10. The appellant has made reference towards various appeal decisions² 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 this appeal scheme.
11. 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. 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 aims of

² 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

Policies S25 and S28 of Westminster's City Plan 2016 (CP), saved Policies DES1 and DES8 of Westminster's Unitary Development Plan 2007 (UDP) and the Framework.

Public safety

12. The appeal site would be close to the edge of the pavement and Marylebone Road. 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. Whilst, it has been suggested that the advertisement be rotated so the screens run parallel with the edge of the footway, I consider this would likely create unacceptable conditions through pedestrians being stood close to the carriage way whilst facing the advertisements. The Council confirm that Marylebone Road is a Red Route and as such Transport for London (TfL) are the responsible highway authority.
13. TfL are concerned that the advertisements 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. Additionally, TfL have referenced 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. 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.
14. Having given due consideration to the above, I am satisfied that the width and design of the pavement would ensure that the pedestrian flow in the vicinity of the advertisements would be maintained, especially as it would not be located notably closer to the adjacent building than the existing signage display close to the site. Therefore, I am convinced that this would be sufficient to ensure that the flow of pedestrians in this location would not be impeded. 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.
15. 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.

Other Matters

16. Whilst the appellant refers to the public benefits of the 'InLink' unit in which the proposed advertisements would be incorporated, that development is not the subject of this appeal. In any event, I do not consider the nature of these benefits against the nature of the harm to the amenity of the area, to outweigh the harm identified above. I have considered this proposal on its own planning merits and concluded that the scheme is not acceptable for the reasons set out above.

Conclusion

17. Although I have concluded that the proposed advertisements 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