



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/18/3217149

Outside 219 Baker St, London NW1 5RT

- 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 18/07399/ADV, dated 29 August 2018, was refused by notice dated 23 October 2018.
 - The advertisement proposed is described as: 'Two Digital 55-inch LCD display screens, one on each side of the InLink unit'.
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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 outside 219 Baker Street, London NW1 5RT in accordance with the terms of the application Ref 18/07399/ADV, dated 29 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/18/3217148 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.

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

Main Issues

4. The main issues are the effect of the proposed advertisements on the amenity of the Dorset Square Conservation Area (DSCA), the setting of 231-243 Baker Street and The Volunteer Public House (the VPH), which are both Grade II listed buildings in their own right, and on public safety.

Reasons

Amenity

5. The appeal site is on the pavement of Baker Street and would be located on the site of the existing kiosk, within the DSCA. 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.
6. 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.
7. The proposed advertisement would be seen in association with the adjacent building, which at the time of my visit had various advertisements in the window and areas of outside seating. 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, with a notable amount of advertising on neighbouring properties, particularly at ground floor. Additionally, there was digital illuminated advertising in the vicinity, on nearby bus stops and on an existing kiosk on a section of Baker Street beyond Melcombe Street, which the appellant has submitted a copy of the appeal decision² to support his submission.
8. The existing street furniture in the immediate vicinity of the site are street lights, traffic signs / signals, litter bins. On the opposite side of the road to the site is one of the bus stops that has a 2-sided illuminated digital panel, which I find in this instance 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.
9. I find that the proposed advertisements falls within the wider setting of both No's 231-243 and the VPH, due to its proximity, although given that the VPH is further away than No's 231-243, I find the effect of the advertisements would be further reduced. No's 231-243 are terraced houses with shops dating from 1815, where the shop fronts at ground floor date from the mid to late nineteenth century with some twentieth century alterations. The VPH again dates from 1815 as part of the Portman Estate Development, incorporating a former terraced house, in its traditional public house frontage.

² APP/X5990/W/17/3182178 and APP/X5990/Z/17/3182180

10. I note the pavement on the section of road incorporating the listed buildings is relatively wide and has overall little street clutter. Nevertheless, the neighbouring retail premises, other advertisements and window displays in Baker Street, along with the digital advertising on the kiosk and bus stops would ensure that the design and setting of No's 231-243 and the VPH would not diminish. 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.
11. 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 hours of darkness and to prevent moving images, which if otherwise not controlled would form a discordant feature to the detriment of the amenity and public safety in the area.
12. 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 and the setting of both No's 231-243 and the VPH. 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).
13. 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

14. The appeal site would be located on the site of the existing kiosk, close to 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. Additionally, I note the comments from Transport for London (TfL) who 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. 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.
15. 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.

16. 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 TRANS3, Westminster Way Public Realm Strategy Supplementary Planning Document 2011, and the Framework.

Other Matters

17. 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

18. 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.
19. In addition to the standard five 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.
20. 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.
21. 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 guide³. 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

22. For the reasons given above, the proposed advertisements would not have a detrimental impact upon the amenity of the area or prejudice local conditions

³ 'The Institute of Lighting Professional's 'Professional Lighting Guide 05: The Brightness of Illuminated Advertisements'

of public safety. Subject to planning conditions the proposal would preserve the character, appearance and significance of the DSCA and the setting of No's 231-243 and the VPH. 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.

23. 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: (WST-024) LP-V1; SP-V1; SITE PLAN REV A and SITE ELEVATION REV A.
- 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