



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/18/3215930

Outside Winchester House, 259-269 Old Marylebone Road, London NW1 5RA

- 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 18/06497/ADV, dated 1 August 2018, was refused by notice dated 28 September 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 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/18/3215927 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 property number, road name and post code in the address from the Council's decision notice as it is more precise.
5. I note in the Officer Report that Transport for London has raised objections to the advertisement. However, the Council has not raised any in principle concerns in respect of public safety issues or cited public safety as a reason for refusal on its decision notice. I have no reason to depart from such a view and have dealt with the appeal on this basis.

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

Main Issue

6. The main issues are the effect of the proposed advertisements on the amenity of the area and to the setting of the Church of St Mark (the church), the former vicarage and No. 245 Old Marylebone Road, which are all Grade II listed buildings in their own right.

Reasons

7. The appeal site is on the pavement of Old Marylebone Road, close to the junction with Edgware 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. The advertisement would be located on a section of pavement where there is street furniture present comprising a street light, telecommunications cabinet, bicycle racks and traffic signals. In addition to the existing kiosk that would be removed as part of the proposal, another kiosk is present which has an advertising panel facing the site. I note the presence of the bank on the corner of Winchester House that returns along Edgware Road, where further commercial properties are located with various forms of advertising on the shop fronts. Additionally, I note the advertising panels on the pavement of Edgware Road that includes a digital display on a kiosk.
9. 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. Although there is advertising present on the corner of Winchester House and on the opposite side of Old Marylebone Road, this would not provide sufficient mitigation against the harmful effect of the advertisements. The area immediately surrounding the site is used to store commercial bins and refuse and although the proposal would replace the existing kiosk, it does not have any formal advertising displayed on it. I find that the advertisements would appear discordant in their appearance and create visual clutter on this section of pavement where the site would be located close to the existing display.
10. I find that the proposed advertisements fall within the setting of the church, the former vicarage and No 245, due to their proximity. The addition of the advertisements to the setting of the listed buildings would diminish their design and setting. The former vicarage dates from 1879-1880 and is constructed of red brick with Bath stone dressings and Brossleys tiles to the roof. The building was built to serve the newly completed church. The Church dates from 1871-1872 and is constructed out of similar materials to the former vicarage. This church was consecrated on 29 June 1872 and was originally a daughter church to that of St Mary's, Bryanston Square. No 245 is the former St Mark's School and dates from 1871-1872 and has a 3-storey hall with 5-stage tower attached, constructed in similar materials to both the church and former vicarage. It is noted that these buildings form a strong and notable group of high Victorian religious buildings in an inner city setting.
11. I have a statutory duty under Section 66 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 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.

12. 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 and the setting of the church, former vicarage and No 245.
13. The appellant has referenced 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 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.
14. 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 and on the setting of the church, former vicarage and No 245. 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, saved Policies DES1, DES8 and DES10 of Westminster's Unitary Development Plan 2007.
15. 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 church, the former vicarage and No 245 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.

Other Matters

16. I have taken into account other issues raised in representations made by other interested parties, regarding anti-social behaviour and crime, amongst other things. However, there is no substantive evidence before me to demonstrate that the advertisements would give rise to any anti-social or criminal activities. I have considered this proposal on its own planning merits and concluded that the scheme is not acceptable for the reasons set out above.

² APP/X5990/W/17/3182006; APP/X5990/Z/17/3182012; APP/X5990/Z/17/3182306; APP/X5990/W/17/3182307; APP/X5990/W/17/3182337 and APP/X5990/Z/17/3182338

Conclusion

17. For the reasons set out above I conclude that the appeal should be dismissed.

W Johnson

INSPECTOR