



Appeal Decisions

Site visit made on 11 June 2019

by John Dowsett MA DipURP DipUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th September 2019

Appeal A Ref: APP/X5990/W/19/3221449

Pavement in front of 11 Upper St Martin's Lane, London WC2H 9FB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Adam Hodgson of On Charge Limited against the decision of the City of Westminster Council.
 - The application Ref: 18/08493/FULL, dated 26 September 2018, was refused by notice dated 27 November 2018.
 - The development proposed is the installation of a public drinking water fountain for refilling plastic water bottles.
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Appeal B Ref: APP/X5990/H/19/3221464

Pavement in front of 11 Upper St Martin's Lane, London WC2H 9FB

- The appeal is made under Regulation 17 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 against a refusal to grant express consent.
 - The appeal is made by Mr Adam Hodgson of On Charge Limited against the decision of the City of Westminster Council.
 - The application Ref: 18/07882/ADV, dated 3 September 2018, was refused by notice dated 19 December 2018.
 - The advertisement proposed is a 32 inch LCD screen attached to a public drinking fountain.
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Decisions

Appeal A

1. The appeal is dismissed.

Appeal B

2. The appeal is dismissed.

Procedural matters

3. The proposed advertisement is an integral part of the proposed water fountain and the planning application sets out that the advertisement display facility is required to generate revenue to support the operation and maintenance of the water fountain. The Council's reasons for refusal are essentially similar for both applications. I have considered each proposal on its individual merits. However, to avoid duplication I have dealt with the two schemes together, except where otherwise indicated.

4. The second reason for refusal cited by the Council in respect of Appeal B refers to Policy S43 of the Westminster City Plan 2016 (the City Plan). I have been provided with a copy of this Policy which relates to major transport infrastructure. In the section the Planning Officer's report relating to highways and within the Council's Statement of Case, reference is made to City Plan Policy S41 that relates to pedestrian movement and sustainable transport. I have also been provided with a copy of this Policy. In addition, concurrently with this appeal, I am considering five other appeals for identical proposals in different parts of the Council's administrative area¹ which each include an essentially similar reason for refusal. The equivalent reasons for refusal in these cases refer to City Plan Policy S41. It is, therefore, not unreasonable to assume that the reference to Policy S43 on the decision notice in this case is a typographical error as the appeal proposals are clearly not major transport infrastructure. I have, therefore, taken references to City Plan Policy S43 to refer to City Plan Policy S41.

Main Issues

5. The main issues in both appeals are:
- The effect of the proposed development/advertisement on the character and appearance of the area, the setting of the neighbouring Grade II listed building and the setting of the Covent Garden Conservation Area; and
 - The effect of the proposed development/advertisement on the safe and efficient operation of the footway in the vicinity of the appeal site.

Reasons

Character and appearance and the setting of heritage assets

6. The appeal proposal is for the installation of a public drinking water fountain measuring 2.14m (height) x 0.6m (width) x 0.2m (depth) with an integral digital 32 inch (81.28cm) liquid crystal display (LCD) advertising screen on one side on the upper part of the structure, located above the water dispenser. From the submitted details the proposed unit would be housed in a metal cabinet coloured a pale grey.
7. The Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (as amended) (the Advertisements Regulations) and the National Planning Policy Framework (the Framework) set out that advertisements are subject to control only in the interests of amenity and of public safety.
8. Within the footway of Upper St Martin's Lane there are three different styles of telephone kiosks, two different styles of post boxes and a number of telecommunications equipment cabinets, in addition to waste bins and cycle racks. This creates a diverse and un-coordinated appearance. The buildings in the near vicinity of the appeal site are a small enclave of modern buildings located between the older buildings within the Covent Garden Conservation Area to the south and the older, traditional, buildings, beyond the Council's administrative area, leading up to, and in the area around, Seven Dials.

¹ Appeal references APP/X5990/W/19/3221480, 3221469, 3221548, 3221429 & 3221436

9. The proposed water fountain would be located in such a way that it would be generally in line with the other existing items of street furniture within the footway. However, it would add to the diversity of the existing street furniture and further erode the appearance of the street. This would be compounded by the presence of the digital advertisement screen on the structure, which although it is subject to a different consenting regime is, nonetheless, an integral part of the water fountain installation which has been designed to accommodate both functions. Saved Policy DES8 Westminster Unitary Development Plan 2007 (the UDP) is clear that signs or advertisements on street furniture and those incorporating light emitting diode or video screens will not normally be permitted.
10. Advertising in the area is restricted generally to fascia signs on buildings and there are no other examples of digital, sequential, advertisements in the vicinity of the appeal site. Whilst I saw when I visited the site that some of the existing telephone kiosks have advertisements on them, these are likely to have been displayed under the, now revoked, deemed consent provisions of the Advertisements Regulations. In any event these were static, poster, style advertisements and not the frequently changing style of advertising proposed by the appeal scheme. Although the area has a predominantly commercial character, the advertisement on the proposed water fountain would be wholly inconsistent with the other types of advertising in the vicinity and, as such, would be harmful to the visual amenity of the area.
11. Taken both individually and a whole, I find that the proposed water fountain and the proposed advertisement would be harmful to the character and appearance of the area. It would, therefore, conflict with Policy S28 of the Westminster City Plan 2016 (the City Plan) and Policies DES1 and DES8 of the UDP which expect new development to be of the highest standard of design and set the criteria against which proposals for advertisements will be assessed.
12. Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that, in considering whether to grant planning permission for development which affects a listed building or its setting, special regard must be given to the desirability of preserving the building, or its setting, or any features of special architectural or historic interest which it possesses. Paragraph 193 of the National Planning Policy Framework (the Framework) also requires that great weight should be given to the conservation of heritage assets.
13. Numbers 4 and 5 Great Newport Street are both Grade II listed buildings with number 5, a public house, located on the corner with Upper St Martin's Lane. The Framework describes the setting of a heritage asset as the surroundings in which a heritage asset is experienced. The extent of the setting of a listed building is not defined and in practical terms depends on the nature of the building and the context within which it is located. The appeal site is located some distance from number 5 Great Newport Street and there is very little intervisibility between the appeal site and the listed building. As it is a corner property with a frontage on both streets, the setting of this building will include parts of Upper St Martins Lane, but its primary setting is within the context of the space formed by the convergence of six roads immediately adjacent to the property itself. The nearby buildings on both sides of Upper St Martin's Lane are modern structures and do not provide a wider historical context for number

- 5 Great Newport Street. Although the proposed water fountain is over 2 metres tall, it is located sufficiently far from the listed building that it would not interfere with important views of it or have any significant effect on the context within which the listed building is experienced.
14. 4 Great Newport Street is located around the street corner from Upper St Martin's Lane and there is no intervisibility between this property and the appeal site. The rear of the building is enclosed to the east by modern buildings on Upper St Martin's Lane and this building is very much seen within the context of its neighbours and those around the road junction. The proposed water fountain would have no significant effect on the setting of this building.
15. I therefore find that the proposed water fountain would have a neutral effect on the setting of the nearby listed buildings and there is no conflict with City Plan Policy S25 or Policy DES10 of the UDP which seek to preserve or enhance listed Buildings and their settings.
16. The site is located outside of the boundary of the Covent Garden Conservation Area, which lies to the south. Saved Policy DES9 of the UDP seeks to restrict development outside of conservation areas that may have an effect on their setting, where it would have an adverse effect upon the area's recognised special character or appearance, or on any recognised and recorded familiar local views into, out of, within or across the area.
17. Whilst the appeal site can be considered to be within the setting of the conservation area due to its relative proximity, no substantive evidence has been submitted in respect of the way in which the proposed development and advertisement would affect the special character and appearance of the area. Nor is there any evidence to indicate that the views to the south from Upper St Martin's Lane are recognised as important views into or out of the conservation area. I therefore find that the proposed water fountain and advertisement would have a neutral effect on the setting of the conservation area and that there is no conflict with Policy S25 of the City Plan or Saved Policy DES9 of the UDP in this respect.
18. Drawing these various strands together, the proposed installation of the water fountain and its associated advertisement would be harmful to the character and appearance of the area and harmful to its visual amenity. Whilst the appeal site is in proximity to heritage assets and potentially within their respective settings, due to the degree of separation from both the listed buildings and the conservation area, the effect of the appeal proposals on these would be neutral. However, this does not counteract or override the other harm that I have identified.
19. I therefore conclude that the proposed development would cause harm to the character and appearance of the area and that the proposed advertisement would be harmful to amenity. Both proposals would, consequently, conflict with the relevant requirements of Policies S25 City Plan and Saved Policies DES1 and DES8 the UDP.

The operation of the footway

20. City Plan Policy S41 and Saved Policy TRANS3 of the UDP seek to prioritise pedestrian movements and secure an improved environment for pedestrians

that is safe and convenient and allows for directness of movement. Additional advice on urban design and highways matters is set out in the Westminster Way- Public realm strategy Design principles and practice 2011, Supplementary Planning Document (the SPD) which is to be read alongside these more general policies. In particular, this seeks to minimise obstruction by street furniture to ensure ease of pedestrian movement.

21. In the vicinity of the appeal site the footway is approximately 5 metres wide although various items of street furniture, lighting columns and a small street tree, all of which are located near the footway edge adjacent to the carriageway, reduce its effective width in places. The proposed water fountain would be located generally in line with these existing obstructions within the footway. At the time of my site visit a few metres to the south of the appeal site a number of tables, chairs and portable barriers demarcated an external seating area for a restaurant which occupied approximately half the width of the footway. I recognise that this is not a permanent obstruction although it is reasonable to assume that this is likely to be present at times when the restaurant is open for business.
22. The submitted drawings show that a footway width of 3.8 metres would be retained between the proposed water fountain and the wall of the building located at the back of the footway. The SPD seeks to ensure that a clear footway width of at least 2 metres is available, although it does recognise that this may need to be greater in areas where flows of pedestrians converge on busy destinations. When I visited the site, at around mid-morning on a typical weekday, I spent some time observing pedestrian movements in the vicinity of the appeal site. At the time of my visit, the street was not busy and was being used by relatively small numbers of pedestrians. Whilst there were regular pedestrian movements, these were not in large groups and the footways were not congested. I accept that this is just a snapshot of conditions at the time of my visit and that there may be times when the footfall is heavier. This notwithstanding, in the area to the south around Great Newport Street and Long Acre, and the surrounding streets the pedestrian traffic was heavier, and I have no reason to believe that what I saw was atypical for the time of day.
23. The third reasons for refusal given by the Council in respect of Appeal B states that the proposed advertisement would create an unsafe pedestrian environment, no evidence has been submitted in respect of the effect of the advertisement, when taken in isolation would have on public safety.
24. Although the proposed water fountain would reduce the effective width of the footway at the point where it would be located, from what I have read and from what I saw when I visited the site, there is no substantive evidence that would indicate the remaining width would be insufficient space to allow the free passage of pedestrians and allow for its safe operation.
25. I therefore conclude that the proposed development would not cause harm to the safe and efficient operation of the footway in the vicinity of the appeal site. It would comply with the relevant requirements of City Plan Policy S41, Saved Policy TRANS3 of the UDP, and the guidance in the SPD.

Other matters

26. The appeal proposal would provide a public benefit in the form of free drinking water with the potential health benefits of this and the consequent potential

reduction in plastic waste. I accept that there would be a greater potential benefit if the facility were to be located in an area where there are large numbers of pedestrians. However, no evidence has been provided explaining the rationale behind the selection of this precise location for the facility over other potential locations and within central London there are many other areas with a high pedestrian footfall. In addition to this, there are other opportunities to obtain free drinking water in the vicinity, such as nearby cafes and public houses, and restaurants in addition to premises that participate in the Refill, or similar, schemes. Because of this, I give moderate weight to the benefits of the scheme, but these do not outweigh the conflict with the policies in the development plan or the harm I have found that the proposed development and advertisement would cause to the character and appearance of the area.

Conclusion

27. I have found that the proposed water fountain would cause harm to the character and appearance of the area and that the proposed advert would be harmful to visual amenity. The proposals therefore conflict with the relevant requirements of Policies S25 City Plan and Saved Policies DES1 and DES8 the UDP. Although I have found that the respective proposals would not cause harm to the settings of the nearby heritage assets and would not prejudice the safe and efficient operation of the footway, neither of these factors outweighs the other harm that I have found or the conflict with the development plan, a matter to which I attach considerable weight.
28. Whilst there would be environmental and health benefits resulting from the provision of free drinking water to the public and the reduction in plastic waste, these have to be balanced against the availability of free drinking water elsewhere in the area that does not result in the harm that I have identified. Whilst moderate weight can be given to these benefits, it does not overcome the harm that I have found or represent a material consideration that would justify granting planning permission for a development that is contrary to the provisions of the development plan or for an advertisement that would cause harm to the visual amenity of the area.
29. For the above reasons, I conclude that both appeals should be dismissed.

John Dowsett

INSPECTOR