



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/19/3221436

Pavement in front of 31 James Street, Covent Garden, London WC2E 8PA

- 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 against the decision of the City of Westminster Council.
 - The application Ref: 18/09450/FULL, dated 26 October 2018, was refused by notice dated 19 December 2018.
 - The development proposed is the installation of a public drinking water fountain for the public to refill water bottles free of charge.
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Appeal B Ref: APP/X5990/H/19/3221441

Pavement in front of 31 James Street, Covent Garden, London WC2E 8PA

- 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 against the decision of the City of Westminster Council.
 - The application Ref: 18/07913/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 the same 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 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, reference is made to City Plan Policy S41 that relates to pedestrian movement and sustainable transport, and 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.
5. Although it is not mentioned in the reason for refusal, the Council identifies in the officer's report and in its statement of case that the appeal site is in the near vicinity of several listed buildings. There is a statutory duty to consider the effect of proposed development on the setting of listed buildings and, consequently, I have included this within the first of the main issues that I have identified.

Main Issues

6. The main issues in both appeals are:
 - The effect of the proposed development/advertisement on the character and appearance of the Covent Garden Conservation Area and the setting of nearby listed buildings; and
 - The effect of the proposed development on the safe and efficient operation of the footway in the vicinity of the appeal site.

Reasons

7. 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.
8. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that, in making decisions on planning applications and appeals within a Conservation Area, special attention is to be paid to the desirability of preserving or enhancing the character and appearance of the area. Paragraph 193 of the Framework also requires that great weight should be given to the conservation of heritage assets.
9. The appeal site is located within the Covent Garden Conservation Area. The applications were not accompanied by any form of heritage assessment. Neither party has submitted substantive evidence in respect of the significance of the conservation area. From what I saw when I visited the site, the conservation area is predominantly commercial in character and is centred on

¹ Appeal references APP/X5990/W/19/3221480, 3221469, 3221548, 3221429 & 3221449.

- the Piazza which contains the market hall and St Paul's Church. The area contains a range of building ages and types reflecting different phases of development and rebuilding. James Street provides important views from the north to the Piazza.
10. The proposed water fountain would be located with the LCD screen facing towards the Piazza. Consequently, it would present the blank rear surface in important views toward the Piazza from most of James Street. The LCD advertising screen would face towards the Piazza and market hall, which are the focal point of the conservation area. Whilst not within the Piazza itself, the proposed water fountain and advertisement would be clearly visible from it.
 11. The proposed water fountain would be broadly in alignment with other items of street furniture located on the west side of James Street. However, it would be significantly taller than most of these and wider than the lighting columns, and as a result would appear as an incongruous feature within the arrangement of street furniture. In addition, the grey colour of the proposed water fountain would be inconsistent with the other street furniture in the area which, with the exception of an number of timber planting boxes/seating units, is coloured black. The Westminster Way- Public realm strategy Design principles and practice 2011, Supplementary Planning Document (the SPD) sets out that new street furniture is expected to adopt the black street furniture livery that is used throughout the Borough apart from items that are identified as exceptions or as exceptional projects as defined in the SPD. There is no evidence that would indicate the appeal proposal would qualify as an exceptional project as envisaged by the SPD. This inconsistency with the other items of street furniture would be exacerbated by the presence of the advertising screen with its frequently changing, illuminated, advertisement which would draw the eye to it. This would be harmful to the character and appearance of the conservation area. Substantial harm is a high test and does not often occur. In this case the harm would be less than substantial.
 12. Although the building immediately adjacent to the appeal site is not listed, the neighbouring buildings at 33 James Street and 1-8 Bedford Chambers are listed Grade II. Immediately opposite the appeal site the Royal Opera House is a Grade I listed building. Just to the south of the appeal site are a pair of Grade II listed K6 telephone kiosks and the Grade II* listed Market Hall. Further to the north, 28 James Street is also listed Grade II. These buildings have a strong visual relationship with one another and the street between them is an integral part of their setting, reinforced by the traditional style of the black street furniture and the traditional style shop fronts on at ground floor level on numbers 28 to 31 James Street. The appeal proposal would introduce into the street scene a modern, utilitarian, feature with an illuminated and frequently changing digital advertisement that would be wholly inconsistent with the surrounding historic buildings. This would be harmful to the setting of the listed buildings and the context within which they are experienced. Again, this harm would be less than substantial.
 13. The Town and Country Planning (Control of Advertisements) (England) Regulations 2007 and the Framework sets out that advertisements are subject to control only in the interests of amenity and of public safety.
 14. Saved Policy DES8 of the Westminster Unitary Development Plan 2007 (the UDP) states that signs or advertisements on street furniture will not normally

be permitted, especially where they are, among other things, adjacent to listed buildings or within conservation areas; and those incorporating light emitting diode or video screens. The proposal in Appeal B therefore conflicts with this policy.

15. Although the area is commercial in character, advertising is largely restricted to the fascias of business premises and is restrained in character. There were no other examples of freestanding digital sequential advertisements within the area. The proposed advertisement would, therefore, be inconsistent with the prevailing type of advertising in the area and its prominence would be increased by its position within the highway, unrelated to any commercial premises. This would be harmful to the amenity of the area.
16. Paragraph 196 of the Framework requires that where a development proposal would lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal. The appeal proposal would provide a public benefit in the form of free drinking water with potential health benefits 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 substantive 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 that are accessible to both shoppers and tourists. In addition to this, there are other opportunities to obtain free drinking water in the vicinity, such as nearby public houses and cafes, or premises that participate in the Refill scheme, and consequently only moderate weight can be given to this benefit. The National Planning Policy Framework (the Framework) requires that great weight should be given to the conservation of heritage assets and the benefits of the proposal would not overcome the harm that would be caused.
17. I therefore conclude that the proposed development and advertisement would cause harm to the character and appearance of the of the Covent Garden Conservation Area and the settings of the nearby listed buildings. The proposals would be contrary to the relevant requirements of Policies S25 and S28 of the City Plan and Saved Policies DES1, DES8 and DES9 of the UDP. Taken together these policies, amongst other matters, seek to ensure that new development is of a high standard of design that preserves or enhances the setting of listed buildings and the character and appearance of conservation areas. UDP Policy DES8 seeks to restrict advertisements on street furniture and incorporating light emitting diode or video screens, particularly in conservation areas and adjacent to listed buildings.

The operation of the footway

18. 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 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.

19. James Street is a wide street that is effectively pedestrianised, although vehicle access is allowed from 07:00 to 11:00 for loading and deliveries. The area used as the carriageway during those times is surfaced in cobbles and the footway areas are demarcated by a flush kerb, bollards, lighting columns and items of street furniture, including benches and wooden planting boxes with incorporated seating. Outside of the times when vehicle access is permitted, the street would have an effective width of approximately 17 metres between the building frontages.
20. The submitted drawings show that a footway width of approximately 4 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.
21. At the time of my site visit, just before 10:00 on a weekday morning there were moderate, two way, flows of pedestrians on the street. During the period of time, approximately 45 minutes in duration, that I was present at the site and the immediate vicinity, I observed that the numbers of pedestrian movements steadily increased and the level of footfall was much heavier by the time that I left. I also saw that the area is also visited by large groups of tourists accompanied by guides. Due to presence of Covent Garden Underground Station on corner of James Street and Long Acre, James Street is a principal pedestrian route to the Piazza which contains Covent Garden Market Hall. I saw that pedestrians used the full width of the street for movement and that movements were not restricted to the defined footways, despite it being during the period where delivery vehicles could access the street.
22. The Council state that a large number of pedestrians pass through the area daily and I also note that the Highway Authority's comment on the planning application that footways in the area have been widened and decluttered to facilitate high levels of pedestrian activity throughout the day and night. From what I saw during my site visit, particularly the steady increase in the number of pedestrians over time, and due to the presence of attractions such as Covent Garden Market, the London Transport Museum and St Paul's Church within the Piazza, and the large number of shops in the locality, I have no reason to doubt the Council's statements about large numbers of pedestrians using the street.
23. There are presently a large number of items of street furniture within the footway that pedestrians have to negotiate and the proposed water fountain would add a further obstacle to pedestrian movements. This would be contrary to the Council's objectives to prioritise pedestrian movements and allow for directness of movement.
24. The control of advertisements takes into account the interests of public safety, including the safety of persons using any highway. The Planning Practice Guidance gives further advice in respect of public safety considerations. This guidance focusses on signs that may cause distraction to drivers, or obstruct the sightlines of drivers, may obscure traffic signs or signals. It is not argued that, when taken in isolation, the proposed advertising screen would result in any of the above. Vehicular traffic in the area is very restricted and I do not consider that the proposed advertisement would cause a distraction to drivers resulting in prejudice to highway safety in terms of vehicle movements.

25. I therefore find that the advertisement that forms the subject of Appeal B would not cause harm to public safety. However, this does not outweigh or alter my finding that the structure within which the advertising screen would be incorporated would increase clutter within the footway and introduce an additional obstacle to pedestrian movement.
26. I conclude that the development proposed by Appeal A would cause harm to the safe and efficient operation of the footway in the vicinity of the appeal site. It would not comply with the relevant requirements of City Plan Policy S41, Saved Policy TRANS3 of the UDP, and the guidance in the SPD.

Conclusion

27. I have found that the proposed water fountain and its associated advertisement would cause harm to character and appearance of the Covent Garden Conservation Area and the nearby listed buildings. I have also found that the proposed water fountain would adversely affect the safe and efficient operation of the footway in the vicinity of the appeal site. As such, both proposals conflict with the relevant policies in the development plan that are identified above. Great weight also has to be given to the harm that would be caused to the heritage assets. 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.
28. For the above reasons, I conclude that both appeals should be dismissed.

John Dowsett

INSPECTOR