



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/19/3221429

Pavement adjacent to 225-229 Piccadilly, London W1J 9HR

- 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: 18/09443/FULL, dated 20 October 2018, was refused by notice dated 12 December 2018.
 - The development proposed is the installation of a public water fountain providing free water bottle refill which will be funded by revenue generated by an integral digital advertising screen.
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Appeal B Ref: APP/X5990/H/19/3221432

Pavement adjacent to 225-229 Piccadilly, London W1J 9HR

- 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: 18/07927/ADV, dated 3 September 2018, was refused by notice dated 12 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 matter

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, although the proposal that forms the subject of Appeal A was refused for an additional reason relating to pedestrian movement. 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.

Main Issues

4. The main issue in both appeals is:

- The effect of the proposed development/advertisement on the character and appearance of the of the Regent Street Conservation Area and the setting of the neighbouring Grade II* listed building; and
- In respect of Appeal A only: The effect of the proposed development on the safe and efficient operation of the footway in the vicinity of the appeal site.

Reasons

Character and appearance and the effect on heritage assets

5. 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.
6. The Town and Country Planning (Control of Advertisements) (England) Regulations 2007 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. It is common ground that the proposed advertisement, taken in isolation, would not prejudice public or highway safety.
7. The appeal site is within the Regent Street Conservation Area and, whilst the reason for refusal refers specifically to the setting of the Grade II* listed Criterion Theatre, the Council Officer's report identifies that the site is located in proximity to 24- 36 Regent Street, a Grade II listed building, and the entrance stairways to Piccadilly Circus Underground Station that are also part of a Grade II listed building. The plan within the Council's Statement also identifies the Shaftesbury Memorial Fountain as a Grade I listed building.
8. 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 Framework also requires that great weight should be given to the conservation of heritage assets.
9. The appeal proposal would be within the inter-related settings of multiple listed buildings. The Framework describes the setting of a heritage assets as the surroundings in which a heritage asset is experienced. Grade I listed buildings are of exceptional importance and Grade II* buildings are particularly important buildings of more than special interest.
10. Other than asserting that the proposed water fountain would not have a detrimental effect on the surrounding area, the appellant has submitted no evidence in respect of the effect on the nearby listed buildings or their significance. Notwithstanding the high quality, detailed façade of the building

above, the Criterion Theatre is an unusual theatre building in that the auditorium is below ground level. Consequently, its street level entrance and that to the restaurant that was associated with it, and their decorative canopies are an important external expression of the use and the pavement area outside the building is a key part of its setting. This space is framed by the listed entrance stairs to the Underground Station with its decorative railings, lighting columns and entrance signage, and the Shaftesbury Memorial Fountain.

11. The appeal proposal would result in the introduction of tall, utilitarian, structure in prominent location next to and within a group of listed buildings and structures. It would be seen in views of all of these buildings both individually and as a group, and as a result of its functional appearance, height and colour it would appear as an alien feature in the frontage of the theatre building and represent a divergence from the finely detailed building façades, the decorative entrance to the Underground Station, and the base of the Shaftesbury Memorial Fountain which frame to space. This alien appearance would be exacerbated by the presence of the proposed illuminated sequential advertisement on the water fountain. This is shown on the submitted drawings as facing to the east and so would be apparent when approaching the Theatre and The Shaftesbury Memorial Fountain from this direction. It would also result in the proposed water fountain presenting its blank rear face to the area in front of the theatre. The combination of these factors would be harmful to the setting of the Criterion Theatre and the context within which the listed buildings are experienced.
12. 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 paid to the desirability of preserving or enhancing the character and appearance of the area.
13. The Regent Street Conservation Area is a largely linear area running from just south of Piccadilly Circus to just north of Oxford Street, comprising largely of Regent Street itself and parts of some secondary streets. The conservation area is predominantly commercial in character and displays a high degree of uniformity in terms of architectural style, materials and scale. Its significance is derived from being an important early example of town planning, created to form part of a processional route from Regent's Park to Carlton House. Piccadilly Circus marks a change in alignment of Regent Street.
14. The buildings around Piccadilly Circus form a cohesive group and are fundamental to the character and appearance of the space. Within the footway in the vicinity of the appeal site there are a number of waste bins, lighting columns and telecommunications equipment cabinets within the footway. A short distance from the appeal site there is a totem pole style wayfinding sign with local area maps. These are all black in colour. The proposed water fountain structure would be light grey in colour and due to its height would appear as a stark contrast to the existing street furniture and would not integrate well into its surroundings. This would be exacerbated by the presence of the illuminated sequential advertisement display, that would draw attention to it.
15. In the main, the existing street furniture, except for a lighting column outside the neighbouring building to the Criterion Theatre, is located around the edge of the space giving the footway an uncluttered appearance. The addition of the

water fountain in the interior of the space would be inconsistent with this approach and would undermine the open appearance of the footways.

16. Whilst there is an extremely large digital, sequential, advertising screen on the north side of Piccadilly Circus, the Council state that this is a longstanding exception to the Council's policies. In addition, there is a smaller, although still sizeable, digital sequential advertisement screen located at high level on the building on the corner of Coventry Street and Haymarket. These exceptions aside, there is no digital illuminated advertising in the immediate vicinity of the appeal site and advertisements are restricted to those on business premises. The proposed advertisement would be relatively small, however, it would nonetheless appear as an incongruous feature in the area given the lack of ground level digital advertisement screens or sequential advertisements in the vicinity. This would cause harm to the visual amenity of the area and be harmful to the character and appearance of this part of the conservation area.
17. The proposed development and associated advertisement would cause harm to the setting of nearby listed buildings, particularly the Grade II* Criterion Theatre, and would be harmful to the character and appearance of the Regent Street Conservation Area. However, due to the comparatively small scale of the water fountain, the scale of the nearby buildings, and the overall size of the conservation area, this harm would be less than substantial.
18. 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 which has 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 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, including cafes and restaurants and public houses, and premises that participate in the Refill scheme, and consequently only moderate weight can be given to this benefit. 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.
19. I therefore find that the proposed development and advertisement would cause harm to the character and appearance of the of the Regent Street Conservation Area and to the setting of the neighbouring Grade II* listed building and would be detrimental to the visual amenity of the area. The proposals would be contrary to the relevant requirements of Policies S25 and S28 of the Westminster City Plan 2016 (the City Plan) and Saved Policies DES1, DES8, DES9 and DES10 of the Westminster Unitary Development Plan 2007 (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

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. The appeal site is located within the West End Special Retail Policy Area where City Plan Policy S7 seeks an improved pedestrian environment to manage the significant pedestrian flows and address the adverse impacts of pedestrian congestion in the Primary Shopping Frontages. 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. The proposed water fountain would be installed within the footway adjacent to the access stairs to Piccadilly Underground Station. Although there is a wide footway in this location, the area subject to extremely heavy pedestrian traffic. During my site visit I spent some time observing pedestrian movements in the area. I saw that there was constant flow of pedestrians past the appeal site often in large groups. I also saw that pedestrians moved around both sides of the entrance to the Underground station entrance and that the whole of the footway area was used in order to avoid conflicting with the movements of other users of the footway. Whilst I accept that the unit is not unduly wide it would nonetheless introduce a further obstacle into the footway that would interfere with efficient pedestrian flows in an area subject to very high levels of pedestrian movements.
22. I therefore conclude that the proposed development 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 Policies S7 and S41 of the City Plan, Saved Policy TRANS3 of the UDP or the guidance in the SPD.

Conclusion

23. I have found that the proposed water fountain and its associated advertisement would cause harm to the setting of the adjacent Grade II* listed building and to the character and appearance of the Regent Street Conservation Area. 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.

24. For the above reasons, I conclude that both appeals should be dismissed.

John Dowsett

INSPECTOR