



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/19/3221548

Pavement in front of 248 Oxford Street, London W1C 1DJ

- 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: 18/09169/FULL, dated 18 October 2018, was refused by notice dated 11 December 2018.
 - The development proposed is the installation of a public drinking water fountain to provide free drinking water (bottle refill) to the public.
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Appeal B Ref: APP/X5990/H/19/3221550

Pavement in front of 248 Oxford Street, London W1C 1DJ

- 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: 18/07919/ADV, dated 3 September 2018, was refused by notice dated 11 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. Two of the Council's reasons for refusal are essentially the same for both applications, however, the scheme in Appeal A was refused for additional reasons relating to pedestrian movement and prematurity. 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 issues in both appeals are:

- The effect of the proposed development/advertisement on the character and appearance of the area and the setting of the Regent Street Conservation Area;
- 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; and;
- The effect of proposed development on future improvements to the pedestrian environment.

Reasons

Character and appearance/visual amenity

5. The appeal proposal is for the installation of 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. Policy S28 of the Westminster City Plan 2016 (the City Plan) and Saved Policy DES1 of the Westminster Unitary Development Plan 2007 (the UDP) expect new development to be of a high standard of design. More detailed guidance on urban design and street furniture is set out in the Westminster Way – Public Realm Strategy Design Principles and Practice Supplementary Planning Document 2011 (the SPD) which is to be read alongside these more general design policies.
7. Oxford Street is a very long, wide and busy commercial street. In the immediate vicinity of the appeal site the surrounding buildings are of a range of ages and architectural styles and vary from four to six storeys in height. This diversity contrasts with the matching, curved, façades of the buildings that form the quadrants of Oxford Circus to the east.
8. Within this context and that of the large, mid to late Twentieth Century, concrete building with modern shopfronts that forms the immediate backdrop to the appeal site, the proposed water fountain installation would not appear excessively large. However, at over 2 metres high, it would nonetheless be a tall feature relative to pedestrians and the functional appearance of the water fountain installation, and its freestanding position within the footway, would make it an anomalous feature in the street scene. In addition, the grey colour of the proposed water fountain would be inconsistent with the other street furniture in the area which is coloured black. The Westminster Way 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. For these reasons, I find that the proposed water fountain would be harmful to the character and appearance of the area.
9. 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.
 10. Saved Policy DES8 of 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. The proposal in Appeal B therefore conflicts with this policy. Whilst I saw that there are digital sequential advertisements attached to bus shelters close to the appeal site, I do not know the circumstances that lead to these being accepted but would concur with the Council's position that these do not typify the pattern of advertising in the immediate vicinity which is generally restricted to shop fascias.
 11. Whilst the advertising screen incorporated within the water fountain would be smaller than the digital, sequential, displays on the bus shelters, due to its prominent position within the footway it would nevertheless be very apparent, and the frequently changing display would make it more so. Combined with its inconsistency with the general approach to advertising in the area, I find that this would be harmful to visual amenity in the area.
 12. The appeal site lies outside the boundary of the Regent Street Conservation Area. 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.
 13. 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 within its setting would affect the special character and appearance of the area. Nor is there any evidence to indicate that the views to the west from Oxford Street into Oxford Circus are recognised as important views into or out of the conservation area. Given the large scale of the buildings that frame the space of Oxford Circus the proposed water fountain installation with its associated advertisement would not significantly alter the context within which the conservation area is experienced. 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. However, this does not outweigh the other harm that I have identified in respect of the character and appearance and visual amenity of the area generally.
 14. 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 S28 of the City Plan and Saved Policies DES1 and DES8 the UDP.

The operation of the footway

15. 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 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. It is common ground that the proposed advertisement, taken in isolation, would not prejudice public or highway safety.
16. I saw when I visited the site that this part of Oxford Street was subject to an extremely heavy level of pedestrian movement. Whilst I appreciate that this is just a snapshot of the time that I visited I have no reason to believe that this was not a typical week day early afternoon and it is likely that the level of pedestrian traffic would be greater at weekends and peak times. I saw that although the footway at this point is approximately 8.1 metres wide, due to the number of pedestrians present these used the full width of the pavement to avoid conflicts of movement or collisions. Further to the west I noted that pedestrian flows were constrained by bus shelters and a line of small street trees. However, the section that contains the appeal site is more open, although it contains a concrete bench and a lighting column in proximity to the appeal site, and has to accommodate large numbers of pedestrians moving to and from Oxford Circus. In this location the proposed water fountain would add a further obstruction in the footway and constrain pedestrian movements. The proposed positioning close to the edge of footway also may lead to pedestrians having to step out into the carriageway to avoid conflict with other users of the footway.
17. 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 City Plan Policies S7, S41, Saved Policy TRANS3 of the UDP, and the guidance in the SPD.

Effect on future improvements to pedestrian environment

18. Although the council consider that the proposed development would be premature in the light of an ongoing review for future improvements to the pedestrian environment on Oxford Street, no details of either the timescales or the scope of the review have been submitted.
19. The Framework makes it clear that arguments that an application is premature are unlikely to justify a refusal of planning permission except where the development proposed is so substantial that to grant planning permission would undermine the plan making process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging plan, and the emerging plan is at an advanced stage but not yet part of the development plan. Whilst the Council may consider that it is premature to allow any new street furniture in advance of the conclusion of the review, in addition to the timescale for the completion of this not being available, there is no substantive evidence before me that would indicate clearly how granting

planning permission for the development proposed would prejudice the outcome of this review or the plan making process.

20. I conclude that the proposed development would not prejudice future improvements to the pedestrian environment.

Other matters

21. 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 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, when I visited the site I saw that there are other opportunities to obtain free drinking water a short distance from this part of Oxford Street, including cafes, restaurants and public houses, as well as 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 and to the safe and efficient operation of the footway in the vicinity of the appeal site.

Conclusion

22. 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 relevant requirements of Policies S25 City Plan and Saved Policies DES1 and DES8 the UDP. I have also found that the proposed water fountain would cause harm to the safe and efficient operation of the footway in the vicinity of the appeal site. Although I have found that the respective proposals would not cause harm to the setting of the conservation area or, in the case of the water fountain, prejudice future improvements to the pedestrian environment, 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.
23. 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