



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/19/3221469

Pavement in front of 169-173 Oxford Street, London W1D 2JR

- 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: 18/09174/FULL, dated 18 October 2018, was refused by notice dated 13 December 2018.
 - The development proposed is the installation of a public drinking water refill fountain to provide free drinking water to the public.
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Appeal B Ref: APP/X5990/H/19/3221475

Pavement in front of 169-173 Oxford Street, London W1D 2JR

- 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: 18/07900/ADV, dated 3 September 2018, was refused by notice dated 13 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, although the scheme that forms the subject of Appeal A was refused for an additional reason relating to pedestrian movements. 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. Whilst the application forms for both proposals gives the address as 171 Oxford Street, I saw when I visited the site that the building in question is numbered 169 to 173 Oxford Street and as this is more accurate, I have used this address for the purposes of the appeal.

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 listed building and the setting of the East Marylebone Conservation Area; 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 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 proposed water fountain and incorporated illuminated advertisement would be located on the footway outside numbers 169-173 Oxford Street, which is a Grade II 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 National Planning Policy Framework (the Framework) also requires that great weight should be given to the conservation of heritage assets.
9. The appellant has submitted no evidence or assessments in respect of the effect of the proposals on the setting of the listed building. The proposed water fountain and advertisement would be within the setting of the listed building due to the proximity of the appeal site to it. The List description sets out that the special interest of the building is concentrated on the frontage to Oxford Street with the façade built according a modular system that was unique and innovative at the time. It also sets out that 169-173 Oxford Street has group value with the former Mappin and Webb store (Grade II*) and the former Waring and Gillow's department store (Grade II) opposite. The List entry states that together, these three buildings form a strong group which showcases the ingenuity of commercial architecture in the Edwardian and interwar periods.
10. The Framework defines the setting of a heritage asset as the surroundings in which a heritage asset is experienced. The appeal proposals would insert a tall, utilitarian, structure into a prominent position close to the principal

entrance to the building at 169-173 Oxford Street where it would be particularly apparent to people entering and leaving the building. It would also be a stark contrast to the black granite façade of the building, especially when viewed from across the street where the geometrical effect created by the modular cladding system is more obvious and the design and detail of the façade stands out from the plainer, modern buildings to each side. The presence of the frequently changing, illuminated advertisement screen would further increase the visual prominence and incongruity of the installation. This would be harmful to the setting of the listed building and its significance. However, this harm would be less than substantial.

11. More generally, the character and appearance of this part of Oxford Street is also in large part derived from the setting of the listed buildings. 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- 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. I find that the proposed water fountain would be harmful to the character and appearance of the area.
12. The appeal site is outside the boundary of the East Marylebone Conservation Area which runs down the centre of Oxford Street with the conservation area lying to the north. Saved Policy DES9 of the Westminster Unitary Development Plan 2007 (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. The conservation area information leaflet provided by the Council identifies the key features of the conservation area as the typical Eighteenth Century street pattern dominated by late Nineteenth and early Twentieth Century small scale and piecemeal redevelopment. The information leaflet also identifies that the Primrose Hill to Palace of Westminster strategic view cuts through the conservation area, but there is no evidence that would indicate that the proposed development or advertisement would interfere with this view. From what I have read and from what I saw when I visited the site, the proposed development and advertisement would not affect any of these identified key features.
14. I therefore find that the effect of the proposed development and advertisement on the setting of the conservation area would be neutral one. However, this does not lead me to a different conclusion in respect of the effect on the setting of the listed building or on the character and appearance of the area generally.

15. The Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (as amended) (the Advertisements Regulations) and the Framework set out that advertisements are subject to control only in the interests of amenity and of public safety.
16. Saved Policy DES8 of 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; and those incorporating light emitting diode or video screens. The proposal in Appeal B therefore conflicts with this policy. I did note that there are digital sequential advertisements attached to bus shelters close to the appeal site. However, I do not know the circumstances that lead to these being accepted and 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.
17. 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.
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 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 that are accessible to both shoppers and tourists. In addition to this, I saw during my site visit that within a short distance of this part of Oxford Street that there are other opportunities to obtain free drinking water in the vicinity, such as cafes, restaurants and public houses as well as premises that participate in the Refill, or similar, schemes. 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 area and to the setting of the neighbouring Grade II listed building. 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, and DES10 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. 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. Although the second reason for refusal cited by the Council in respect of Appeal A states the proposed advertisement relates to pedestrian movement, it is common ground that the proposed advertisement, when taken in isolation, would not have an adverse effect on safety on the public highway.
21. During my site visit I spent some time observing pedestrian movements in the vicinity. I saw that in this part of Oxford Street there was an extremely high level of pedestrian movements and that the full width of the footway was used as pedestrians sought to avoid conflict or collisions with other users on the footway. 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. The footway at this location is approximately 6 metres wide. I saw that the appeal site is in proximity to a lighting column located in the footway and to a waste bin, which have some effect on pedestrian movements. Due to the proposed location 0.6 metres from the carriageway edge, the proposed water fountain would reduce the effective width of the footway to approximately 4.8 metres. Whilst this distance exceeds the 2 metres minimum width set out in the Westminster Way SPD, nonetheless, the footway was very busy, and the proposed development would add a further obstruction on footway and constrain its current width. In addition, as the proposed water fountain would be located approximately 0.60 metres from edge of footway adjoining the carriageway, at busier times this may lead to pedestrians having to step out into the carriageway to avoid conflict with other users of the footway.
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 City Plan Policy S41, Saved Policy TRANS3 of the UDP, and 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, to the character and appearance of the area and to visual amenity. 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. Although I have not found harm to the setting of the East Marylebone Conservation Area, this does not overcome the other harm I have found. 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 outweigh 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