



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/19/3221480

Pavement in front of 12-14 Argyll Street, London W1F 7TJ

- 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 18/09172/FULL, dated 18 October 2018, was refused by notice dated 12 December 2018.
 - The development proposed is the installation of a public drinking water fountain to provide free drinking water to the public.
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Appeal B Ref: APP/X5990/H/19/3221483

Pavement in front of 12-14 Argyll Street, London W1F 7TJ

- 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 18/07904/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 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 B 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.

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, the setting of nearby listed buildings and the character and appearance of the Regent Street 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

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. 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.
7. Number 12-14 Argyll Street is not a listed building, however, the appeal site is only a few metres to the south of the Grade II listed Underground station at number 15 Argyll Street which has one of its exits located at the south end of the building frontage. The list description sets out that this building is the best surviving example of an original Central London Railway station, marking an important stage in the development of London's transport and in conjunction with the Grade II listed station building on the opposite side of the street constitutes an important survival of two tube stations built by separate companies serving the same station. Although the upper part of the building was obscured by scaffolding at the time of my visit, the lower level was visible and is a highly detailed and well-proportioned architectural composition.
8. Opposite this building is the Grade II* Argyll Public House at number 18. This is a mid-Nineteenth Century, five storey building with a well detailed façade. The group of listed buildings have a strong visual relationship with each other and the area of street between and beside them is an important part of their respective and interlinked settings.
9. No substantive evidence was submitted by the appellant in respect of the potential effect on the setting of the listed buildings. The appeal proposal would introduce a tall, functional, and utilitarian element into this setting that would markedly contrast with the highly detailed and articulated frontages of the buildings and, due to its appearance, would detract from the context within which they are experienced. This would be exacerbated by the presence of the

- illuminated and frequently changing advertising screen incorporated into the water fountain.
10. Although located further to the south, the Grade II* Liberty building forms a terminal feature to views to the south down the whole length of Argyll Street and is clearly visible from the appeal site. Due to its distinctive Tudor style, this building stands out from others in the area and the principal entrance to the building is framed in views down Argyll Street which, as a result, forms an important part of its setting. These views are already somewhat interrupted by the presence of a totem pole style wayfinding sign and the addition of another structure of similar dimensions, incorporating an illuminated and frequently changing advertisement display would further erode these views causing harm to the setting of the building.
 11. I therefore find that the proposed water fountain and illuminated advertisement would cause harm to the setting of the nearby listed buildings.
 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. The appellant's submissions do not include an assessment of the potential effects on the conservation area or its significance.
 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 which form the transition between the formal grandeur of Regent Street and areas with a different historic character beyond. Argyll Street is one such secondary street. The significance of the Conservation area 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. The conservation area is predominantly commercial in character and Regent Street displays a high degree of uniformity in terms of architectural style, materials and scale. There is slightly smaller scale to, and greater architectural diversity in, the secondary streets with a number of more recent insertions into the older built fabric, although there are few of these in Argyll Street which retains a more historic character.
 14. The proposed water fountain and digital advertisement is of an overtly modern design and utilitarian appearance. The character and appearance of this part of the conservation area is in large part derived from the lively and detailed building façades and their relationship to the street. The proposed water fountain, with its metal enclosure and functional appearance would be at odds with the visually rich architecture surrounding it. 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.
 15. This inconsistency with the surrounding buildings and 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 conservation area and the area generally.
16. The Town and Country Planning (Control of Advertisements) (England) Regulations 2007 and the Framework set out that advertisements are subject to control only in the interests of amenity and of public safety.
 17. Saved Policy DES8 of the Westminster Unitary Development Plan 2007 (the UDP) is clear that signs or advertisements on street furniture, especially where they are, among other things, adjacent to listed buildings or within conservation areas; and those incorporating light emitting diode or video screens will not normally be permitted. The proposal in Appeal B therefore conflicts with this policy.
 18. With the notable exception of the very large digital sequential display screen on the north side of Piccadilly Circus, which is some distance to the south of the appeal site, I saw no other digital advertisements within the conservation area. Whilst the area is commercial in character, advertising is largely restricted to signs on shop fascias. Within this context a free standing digital advertisement within the footway would appear as alien and incongruous and would consequently, I find that this would be harmful to the visual amenity of the area.
 19. I have found that the proposed water fountain and associated digital advertisement would cause harm to the setting of nearby listed buildings and to the character and appearance of the Regent Street Conservation Area. However, this harm would be less than substantial.
 20. 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, there are other opportunities to obtain free drinking water nearby including cafes, restaurant 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.
 21. I therefore conclude that the proposed development and advertisement would cause harm to the character and appearance of the of the Regent Street Conservation Area and the setting of the nearby listed buildings. 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 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

22. 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.
23. The proposed water fountain is located within a pedestrianised area in the northern part of Argyll Street. In this area there is an effective footway width of approximately 12 metres between the building frontages. The proposed water fountain would be located approximately 3.5 metres from the façade of numbers 12-14 Argyll Street. Although there is a wide footway width, I saw when I visited the site that this was constrained in several locations by external seating areas associated with restaurants, cafes and the public house that are present in the street. Whilst I recognise that these are not permanent fixtures, it is reasonable to assume they are likely to be present whilst the premises are trading and during the busiest times of the day. I also saw that there were a number of existing items of street furniture in the area including two catering kiosks, a pair of telephone kiosks, a totem pole style wayfinding sign, bollards and waste bins.
24. At the time of my site visit the street was subject to a heavy, two way, footfall and pedestrians used the full width of the street. Additionally, there were regular peaks in movements due to passengers egressing from the Underground station at the north end of the street. I spent some time observing the movements of pedestrians and saw that in addition to changes in direction to avoid the existing street furniture and to negotiate past external seating areas, users of the street had also to change direction to avoid conflict with other pedestrians. Whilst I accept that this only represents the conditions at the time of my visit, in the late morning on a weekday, there is no evidence that would suggest that this is not typical.
25. Although it would be located to the north of a freestanding kiosk unit, the proposed water fountain would be some 6 metres from this and due to this distance would not benefit from any deflection in pedestrian movements resulting from the location of the kiosk, rather it would introduce an additional obstacle into the footway that already contains a number of obstructions and which would result in further changes in direction to avoid it. This would increase the likelihood of conflict or collision with other users of the footway.
26. 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 and 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 the settings of the nearby listed buildings, the character and appearance of the Regent Street Conservation 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. 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