



Appeal Decision

Site visit made on 2 July 2019

by C Beeby BA (Hons) MIPROW

an Inspector appointed by the Secretary of State

Decision date: 14th November 2019

Appeal Ref: APP/X5990/Z/18/3215596

Pavement o/s 404-406 Edgware Road, Marylebone, London W2 1ED

- 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 Neil Scoresby on behalf of British Telecommunications Plc against the decision of City of Westminster Council.
 - The application Ref 18/06442/ADV, dated 31 July 2018, was refused by notice dated 28 September 2018.
 - The advertisement proposed is two digital 55-inch LCD display screens, one on each side of the InLink unit.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. The appeal was originally accompanied by a second appeal in respect of an application¹ for prior approval for construction of the InLink structure. The appellant subsequently withdrew the prior approval appeal in light of a relevant judgment². Accordingly, planning permission in respect of the construction of the InLink structure is not being considered in this Decision and would require separate consideration. However, the appellant has indicated that he wishes to continue this appeal, the determination of which would remain necessary if permission were granted for the structure. I have therefore determined the appeal on this basis.
3. One of the Council's reasons for refusal of the appeal proposal concerned the effect of the telecommunications console which would lie to the side of the proposed structure on pedestrian safety. However, as this matter relates to the use of the structure for telecommunications I do not consider it to fall for consideration as part of an appeal seeking advertisement consent only. Thus, I will determine the appeal on this basis.
4. The description of development in the heading above has been taken from the planning application form. A different wording has been entered in Part E of the appeal form. Neither of the main parties has provided written confirmation that a revised description of development has been agreed. Accordingly, I have used the one given on the original application.

¹ Local Planning Authority Ref: 18/06443/TELCOM

² Westminster CC v SSHCLG & New World Payphones Ltd [2019] EWHC 176 (Admin)

Main Issue

5. The main issue is the effect of the appeal proposal on the amenity of the area.

Reasons

6. The appeal site is a section of footway within a busy commercial area with several shops and businesses. Street furniture in the vicinity includes a bus shelter which has one poster advertisement and one static illuminated advertisement panel, waste bins, utility boxes and A-board signage associated with adjacent businesses.
7. The appeal site currently holds a single payphone kiosk, which is pasted with advertising flyers to one side. These have limited prominence within the street scene as a result of their lack of illumination or moving images.
8. The appeal proposes the removal of the site kiosk. A single free-standing "InLink" structure would be constructed at the appeal site, with a height of approximately 2.9 metres and a width of approximately 0.89 metres. Screens would occupy the top part of the front and rear of the structure, and would consequently lie at eye level and above. These would display digital advertisements in the form of a series of static illuminated images.
9. The footway in the vicinity does not hold any significant illuminated advertisements other than that which is present on the bus shelter. Furthermore, the A-boards outside businesses are limited in scale and are not illuminated. As a result, advertising is reasonably spaced and lacks undue prominence.
10. Whilst the proposed panels would be somewhat smaller than the bus shelter advertisements and may be smaller than others for which permission was granted on appeal³ in the vicinity, they would be located at a greater height. Views of them from the footway and adjacent carriageway would be uninterrupted due to the unenclosed nature of the proposed structure. The proposed advertisements would consequently be prominent within views from the footway and carriageway. This effect would be increased because a panel would be positioned on both sides of the structure.
11. The appeal proposal would additionally give rise to a "tiled" effect of adjacent advertisements within longer range views of the proposed advertisements and those present on the bus shelter.
12. The proposal would consequently contribute to a cluttered appearance which would be out of keeping with the spacing between existing advertisements. The screens would additionally be unduly prominent within their setting. The proposal would therefore have a harmful effect on amenity.
13. I have taken into account policy S28 of the Westminster City Plan (2016) and policies DES 1 and DES 8 of the Unitary Development Plan (2007), which seek to protect amenity and so are material in this case. Given that I have concluded that the proposal would harm amenity, the proposal conflicts with these policies.

³ APP/X5990/Z/17/3182177 and APP/X5990/Z/17/3182000

Other Matters

14. My attention has been drawn to an appeal decision⁴ which granted permission for the display of an illuminated digital panel on a kiosk. The Inspector concluded that the panel would be viewed in the context of existing illuminated advertisements. I have found above that the footway in the vicinity of this appeal site does not hold any significant illuminated advertisements other than that which is present on the bus shelter. Furthermore, the current appeal relates to the display of two panels rather than one. It is therefore materially different from the other proposal. As a result, the other appeal decision does not alter my views on the appeal scheme. In any event, I am required to reach conclusions based on the individual circumstances of this appeal.
15. The appellant submits that the proposal would not harm public safety with regard to users of the adjacent carriageway. However, even if I were to concur with this submission, or to conclude that any harm in this regard could be overcome by the imposition of conditions, it would be a neutral matter which would not outweigh the harm which I have identified.
16. The appeal makes reference to potential benefits of the proposal including the provision of public services and information. However, advertisements are subject to control only in the interests of amenity and public safety. Thus, the benefits referred to cannot be taken into account in my decision. Accordingly, I attach minimal weight to these submissions in determining the appeal.

Conclusion

17. For the reasons given above, I conclude that the appeal should be dismissed.

C Beeby

INSPECTOR

⁴ APP/X5990/Z/17/3182246