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## 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: 15<sup>th</sup> November 2019**

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**Appeal Ref: APP/X5990/Z/18/3216256**

**Outside 55 Edgware Road, London W2 2HZ**

- 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 18/07272/ADV, dated 24 August 2018, was refused by notice dated 23 October 2018.
  - The advertisement proposed is two digital 55-inch LCD display screens, one on each side of the InLink unit.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The appeal was originally accompanied by a second appeal in respect of an application<sup>1</sup> for prior approval for construction of the InLink structure. The appellant subsequently withdrew the prior approval appeal in light of a relevant judgment<sup>2</sup>. 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.

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<sup>1</sup> Local Planning Authority Ref. 18/07271/TELCOM

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

5. The assessment of proposals under the above Regulations is confined to the issues of amenity and public safety. Therefore the issue of whether the development is necessary is not a matter which I am able to take into account in determining the appeal.

### **Main Issues**

6. The main issues are the effect of the appeal proposal on the amenity of the area and on public safety.

### **Reasons**

#### *Amenity*

7. The appeal site is a section of footway within a busy commercial area with several shops and businesses, which mainly lie to the ground floor of large buildings. Shop fronts in the vicinity feature some limited illuminated signage. Structures, seating and advertisement stands lie between the front of businesses and the footway. Street furniture, such as a navigational post of a relatively narrow width, two bicycle stands and two waste bins, has a relatively unobtrusive scale. The area consequently has a generally uncluttered appearance.
8. A "New World" telephone kiosk lies close to the site, which received permission on appeal<sup>3</sup>. It displays a static illuminated advertisement panel to one side, which faces oncoming traffic. The distance between the kiosk's illuminated panel and the nearest similar feature is such that it provides reasonable spacing between the advertisements. This spacing makes a positive contribution to the uncluttered appearance of the area.
9. The shop frontages and any illuminated signage thereon are set well back from the road. Trees and planters provide a natural element. As a result, the footway has a spacious appearance which contributes positively to the amenity of the area.
10. The appeal site currently holds a single payphone kiosk. It has a blank panel which faces oncoming traffic, and a single poster advertisement to the other side. The appeal proposes its removal and replacement by a single free-standing "InLink" structure, 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.
11. The proposed panels would be located at a greater height than that of the New World kiosk. 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.
12. The appeal proposal would additionally give rise to a "tiled" effect of a series of illuminated advertisements within longer range views of the kiosk and the proposed structure. The proposal would consequently contribute to a cluttered

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<sup>3</sup> APP/X5990/W/17/3182202 and APP/X5990/Z/17/3182208

appearance which would be out of keeping with the limited prominence of existing street furniture. This undue dominance within the street scene would cause harm to the spacious appearance of the footway. The proposal would therefore have a harmful effect on amenity.

13. I have taken into account policy S28 of the Westminster City Plan (2016) ("the WCP") and policies DES 1 and DES 8 of the Unitary Development Plan (2007) ("the UDP"), 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.

#### *Public safety*

14. The Council considers that the proposed screens could distract drivers and hence that they could cause harm to the safe and efficient movement of traffic. Its main concern relates to the potential for the screens to display moving images, which it considers would form a distraction to motorists.
15. One proposed screen would directly face oncoming traffic, and another would be visible to traffic on the opposite side of the carriageway. The screens would be visible for a reasonable distance as drivers approach due to the straight alignment of Edgware Road. This would provide adequate opportunity for drivers to assimilate the advertisement as they approach. I concur that moving images adjacent to this carriageway are likely to carry the potential for road user distraction. However, I am satisfied that the proposed imposition of a condition to prevent the display of advertisements featuring moving elements would satisfactorily protect the safety of road users. Nevertheless, the resulting lack of significant harm in this regard does not outweigh the harm which I have identified above with regard to amenity.
16. I have taken into account policy S41 of the WCP, policy TRANS 3 of the UDP and guidance within the Westminster Way public realm strategy (2011), which require developments to create a convenient and safe pedestrian environment and so are material in this case. Given that I have concluded that the proposal would not harm public safety, the proposal does not conflict with these policies and guidance.

#### **Other Matters**

17. My attention has been drawn to another appeal decision<sup>4</sup> which granted permission for the display of an illuminated digital panel on a kiosk. The Inspector concluded that the extent of advertising in close proximity to the proposed advertisement meant that it would not appear at odds with its setting, and that it would be commensurate with the commercial character of the area. I have found that the spacing between advertisements contributes positively to the amenity of the area in the case of this appeal. It is therefore materially different from the other proposal, where a number of premises with illuminated signage were identified immediately behind the kiosk.
18. Another appeal decision<sup>5</sup> which granted permission for a similar proposal identified numerous ground floor commercial establishments with prominent illuminated signage and large display windows in the vicinity. As such, the surroundings were materially different from those of the current appeal.

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<sup>4</sup> APP/X5990/Z/17/3182308

<sup>5</sup> APP/X5990/Z/17/3182336

19. As a result, the other appeal decisions do 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.
20. The appellant refers to recommendations<sup>6</sup> for conditional grants of advertisement consent by the Council. Only limited details of both proposals are before me, however the Council concluded that they were both located on a highly commercial street and similar in size and type, or method of illumination, to those being replaced. Notwithstanding these proposals, I have found greater material differences between the existing situation and that proposed in this instance.
21. Limited details of a further proposal<sup>7</sup> for a bus shelter panel are before me, however the existence of advertising at other locations on Edgware Road does not overcome my site-specific concerns about the appeal proposal.
22. As such, I attach minimal weight to the relevance of these proposals in determining the appeal.
23. 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.
24. The Council considers the proposal to conflict with Policy S25 of the WCP. This policy concerns the conservation of heritage assets. However, I have not identified that the proposal would cause any significant harm to heritage assets. Policy S25 therefore has limited relevance to the main issues of this appeal.

## **Conclusion**

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

*C Beeby*

INSPECTOR

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<sup>6</sup> Local Planning Authority Refs: 15/08600/ADV and 15/08635/ADV

<sup>7</sup> LPA Ref: 15/08524/ADV