The Planning Inspectorate

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: 15th November 2019

Appeal Ref: APP/X5990/Z/18/3215684
Pavement o/s 378 Edgware Road, Paddington, London W2 1EB

- 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 18/06445/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 allowed and express consent is granted for two digital 55-inch LCD display screens, one on each side of the InLink unit as applied for. The consent is for five years from the date of this decision and is subject to the five standard conditions set out in the Regulations and the following additional conditions:

    1) The intensity of the illumination of the screens permitted by this consent shall be no greater than 600 candelas per square metre between dusk and dawn.

    2) The advertisements displayed shall be a series of static images, which individually feature no moving elements, dynamic displays or motion pictures.

    3) The minimum display time for each piece of content on the digital screens shall be 10 seconds.

    4) The interval between advertisements shall take place over a period of no greater than one second. The complete screen shall change, with no visual effects (including swiping or other animated transition methods) between displays, and the display shall include a mechanism to freeze the image in the event of a malfunction.

    5) No advertisement displayed shall resemble a traffic sign, as defined in section 64 of the Road Traffic Regulation Act 1984.

Procedural Matters

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

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 which lies within a busy commercial area which includes examples of illuminated signage and a prominent roadside market sign. Street furniture in the vicinity of the site includes a lamp post, bins, navigational post and a street sign. These have a generally modern and well-kept appearance.

7. The appeal site currently holds a payphone kiosk. It has a dilapidated appearance which does not contribute positively to its surroundings. It consequently has a harmful effect on the amenity of the area. 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.

8. Whilst there are some advertisements in the vicinity, these are not of so great an extent that the addition of the proposed advertisements would result in an undue dominance of advertising in the area. The proposal would be in keeping with the bustling commercial character of its surroundings. Furthermore, the proposed advertisements would harmonise better with their modern and urban context than the existing kiosks.

[1] Local Planning Authority Ref: 18/06444/TELCOM
[2] Westminster CC v SSHCLG & New World Payphones Ltd [2019] EWHC 176 (Admin)

9. I therefore conclude that the appeal proposal would have an acceptable effect on amenity. 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 not harm amenity, the proposal does not conflict with these policies.

Conditions

10. The additional condition to restrict screen illumination levels in the hours of darkness accords with the relevant institute guidance[3] in respect of urban areas. It is necessary so that the advertisements do not appear unduly prominent at night. It is additionally necessary in order to protect public safety, particularly by means of a reduction of the potential distraction which bright illumination would cause to users of the adjacent carriageway.

11. The additional conditions to prevent the display of moving images and to set a minimum content display time are necessary so that the advertisements do not distract users of the adjacent carriageway. They are additionally necessary so that the advertisements do not adversely affect the amenity of the area by means of undue dominance.

12. Whilst the Council requests a slightly longer display time per advertisement, at 12 seconds, I am mindful of advice within PLG 05 which sets out that the rate of change for such advertisements should be limited to once every 5 seconds. I consider that only minimal evidence of the reasons for the Council's request is before me and hence I conclude that the requested 12 second display period has not been shown to be necessary. I concur that the 10 second display time proposed by the appellant is reasonable in this context in order to protect amenity and public safety.

13. An additional condition with regard to the interval between advertisements is necessary in order to prevent undue distraction to users of the adjacent carriageway, and hence in order to protect public safety.

14. The additional condition which requires that content does not resemble a road sign is necessary to prevent road user confusion in view of the appeal site's location adjacent to a carriageway, and hence in order to protect public safety.

Conclusion

15. For the reasons given above, I conclude that the appeal should be allowed.

C Beeby

INSPECTOR

[3] Professional Lighting Guide 05 ("PLG 05") "The Brightness of Illuminated Advertisements" by the Institute of Lighting Professionals