



Appeal Decision

Site visit made on 22 October 2019

by W Johnson BA(Hons) DipTP DipUDR MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 November 2019

Appeal Ref: APP/A5840/Z/19/3235197

Land at 709 Old Kent Road, London SE15 1JL

- The appeal is made under Regulation 17 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (as amended) (the Regulations) against a refusal to grant express consent.
 - The appeal is made by Maxx Media Ltd against the decision of the Council of the London Borough of Southwark.
 - The application Ref 19/AP/1408, dated 10 May 2019, was refused by notice dated 3 July 2019.
 - The advertisement proposed is described as: 'Replacement of two existing back-light displays with LED Digital Screens'.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The Regulations, the Framework and the Planning Practice Guidance (PPG) make it clear that advertisements should be subject to control only in the interests of amenity and public safety, taking account of cumulative impacts. The Regulations state that factors relevant to amenity include the general characteristics of the locality, including the presence of any feature of historic, architectural, cultural or similar interest.
3. The application form and submitted drawings indicate that displays already exist at the appeal site. However, in the appellant's Statement of Case and the Officer Report, it is stated that the site does not currently accommodate 1no. portrait display and 1no. landscape display, and this was also noted during my site visit. I have determined the appeal on this basis.
4. The appellant has referenced the emerging Old Kent Road Area Action Plan 2017 (AAP) in support of their submission. However, this document has not yet been adopted by the Council. Therefore, the weight that I can attach to the emerging AAP is limited.

Main Issues

5. The main issues are the effect of the proposed advertisement on the amenity of the appeal site and surrounding area and on public safety.

Reasons

Amenity

6. The appeal site consists of a parcel of land, fronting Old Kent Road, adjacent to Devon Street. The immediate area surrounding the appeal site is industrial and

commercial in character. To the rear of the appeal site is a historic gasholder (Gasholder No.13) which is Grade II Listed. Gasholder No.13 was erected between 1879-1881 to the design of Sir George Livesey for the South Metropolitan Gas Company. At the time, it's height of nearly 50m, economy of construction, and capacity of 5.5 million cu ft, broke new ground, and was the largest in the world at the time. The significance of Gasholder No. 13 is that it is a rare survival of a technologically and historically important development which influenced later design not just in England but throughout the world. I find that the proposed advertisements fall within the setting of Gasholder No.13, due to their proximity and their visibility within the street when viewing the heritage asset, particularly from Old Kent Road.

7. The appellant has provided photographic evidence of the 2no. displays that were located on the site prior to their removal, and before the submission of the application subject of this appeal. I note reference to an appeal decision¹ (previous decision) for the retention of the portrait display. The appellant considers that the displays that were located on the site prior to their removal benefit from 'deemed consent' by virtue of Class 13 of Part 1, Schedule 3 of the Regulations.
8. Class 13 of Part 1, Schedule 3 of the Regulations is described as 'An advertisement displayed on a site that has been used continually for the preceding ten years for the display of advertisements without express consent'. However, within the listed Conditions and Limitations², it states that 'If any building or structure on which such an advertisement is displayed is removed in any other circumstances the erection of any building or structure to continue the display is not permitted'. Therefore, on the evidence before me, I am not satisfied that the previous displays could be reinstalled at any time. I find that the site circumstances have changed and the style and form of the advertisements now proposed also appear to be materially different.
9. The nearest buildings on the same side of Old Kent Road as the appeal site comprise single storey commercial properties that are modest in character and scale, although a little further afield are some traditional 3no. and 4no. storey buildings. On my site visit I noticed that the built environment surrounding the appeal site has a relatively low intensity of development. This creates an open and spacious character that positively contributes to the wider street scene. Hence the proposed displays would enjoy a relatively open and exposed setting.
10. In this context, I find that the effect of the proposed signs, by reason of their height, size, location and illumination, would be unduly prominent and, intrusive features and, as such, would adversely affect the amenity of the site and its surroundings, including the setting of Gasholder No.13. Notwithstanding the industrial and commercial character of this locality, the appeal proposal would also be inconsistent with the principles set out in the PPG, which amongst other things, advocates consideration for the local characteristics of the neighbourhood. Whilst I note the appellant's suggestion that conditions that include limiting the intensity of illumination, duration and method of change between images, and hours of operation, amongst other things, this would not provide sufficient mitigation to outweigh the harm otherwise arising in relation to amenity.

¹ APP/A5840/H/08/1202626

² Class 13.(2)(b)

11. The appellant has directed me to an application³ (the application) for a digital display on the gable end at No's 719 to 725 Old Kent Road that was approved on 10 December 2015. However, I find this display to have different site circumstances than the appeal proposal, as it is wall mounted and located at a greater distance from Gasholder No.13. The appellant has also referenced 2no. appeal decisions⁴, but these are in different areas of the country and replace existing displays. In all instances, relatively little detail has been provided regarding the particular planning backgrounds to these schemes. Without such information a full and detailed comparison between these advertisements and the case before me cannot be drawn except insofar as I was able to observe and assess the advertisement at No's 719 to 725 during my visit.
12. With regards to the previous decision, I acknowledge that I have reached a different conclusion, but the circumstances and advertisement in the scheme before me are different. Additionally, I do not know what evidence was before the Inspector at the time of his decision, particularly regarding the Grade II status of Gasholder No.13. Consequently, I cannot be sure that the application or appeal decisions, including the previous decision are entirely representative of the circumstances in the appeal before me. Accordingly, I find little within these cases that would lead me to alter my conclusion on the main issue in this instance.
13. I have a statutory duty under Section 66 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, which requires me to have special regard to the desirability of preserving or enhancing a listed building or its setting or any features of special architectural or historic interest which it possesses. I consider the proposed development would not accord with this duty.
14. I therefore conclude that the proposed advertisements would adversely effect the amenity of the appeal site and surrounding area. This would conflict with design, character, appearance and heritage aims of Strategic Policy 12 of the Council's Core Strategy 2011, Saved Policies 3.13, 3.18 and 3.23 of The Southwark Plan 2007 (SP). The Regulations require that decisions are made only in the interests of amenity and public safety, and these are policies to which I have regard as a material consideration.
15. Additionally, the proposed development would not conserve the heritage asset in a manner appropriate to its significance in line with the Framework. I find that the proposed advertisements would result in "less than substantial" harm to Gasholder No.13 for the purposes of paragraph 196 of the Framework. I note that the appellant asserts that their business operates in a way that helps to support small local businesses, charities and services by providing free or affordable advertising, which would result in some limited economic and social benefits. However, as public benefits, these would not outweigh the less than substantial harm to the setting of Gasholder No.13.

Public safety

16. In the Officer Report the Council confirm that the proposals are not considered to be harmful to pedestrians and users of the footpath. On the basis of the evidence before me and my own findings during my site visit, I have little reason to disagree with this observation.

³ 15/AP/4146

⁴ APP/P4605/Z/19/3223076 and APP/Z0116/Z/19/3225269

17. However, the Council raise concerns regarding motorists and other road users. The appeal site would be set back from the edge of the footpath and Old Kent Road. This road comprises 4 lanes, with a pedestrian crossing in front of the site. The 'portrait' display would only be visible when travelling in the direction from Murdock Street and the 'landscape' display would only be visible when travelling in the opposite direction. In both directions of travel, the approach to the appeal site is relatively level with no significant change in gradient. In addition, the section of road approaching the appeal site is generally straight and although side roads join the carriageway in this area, the local physical conditions for approaching drivers are such that they are able to assimilate the traffic signals and junctions from a reasonable distance.
18. Given the physical conditions, and the distance between the advertisement and the pavement edge, I do not believe that drivers would be distracted whilst approaching the appeal site, especially with regard to motorists travelling towards the 'portrait' display, which is closest to the oncoming traffic on Old Kent Road and the shared vehicular access to businesses on the former gas works site, including the nursery. I also, noted that the shared access benefits from a good degree of visibility for both vehicles emerging and entering the access. Additionally, the 'landscape' sign facing Devon Street would be mainly noticeable to motorists turning right from Old Kent Road into Devon Street and not to those on the adjacent carriageway who may wish to turn left. Furthermore, I note that Devon Street is one way only, so there would be no vehicular traffic approaching the junction with Old Kent Road.
19. Both advertisements would be visible to drivers of vehicles and also to pedestrians using the footway. I observed at my visit that the footway appeared to be well used by pedestrians and that Old Kent Road is a busy highway, used by a variety of vehicles, including large HGV's and buses. Nevertheless, although both advertisements would be visible to drivers, I am not persuaded that the displays would be so distracting to motorists that they would be likely to make erratic or ill-judged movements in the locality of the appeal site, the pedestrian crossing or the shared access.
20. Furthermore, as Old Kent Road is a Red Route, Transport for London (TfL) are the responsible highway authority. I note that TfL raise no objections to the proposal, subject to conditions, which I consider to be a material consideration in the determination of this appeal. Overall, and given my findings above, I consider that a harmful effect on public safety could be avoided through the imposition of suitably worded conditions, such as those suggested by TfL.
21. For the reasons set out above, I therefore conclude that the proposed advertisements would not prejudice local conditions of public safety. The proposal would therefore accord with the highway safety aims of SP Policies 3.23, 5.2 and 5.3, and the Framework.

Other Matter

22. I have also had regard to concerns raised by the appellant about the way that the Council handled the application, but this does not affect the planning merits of the case. I have considered this appeal proposal on its own merits and concluded that it would cause harm for the reasons set out above.

Conclusion

23. Although I have concluded that the proposed advertisement would not prejudice conditions of public safety, the displays would still cause significant harm to local amenity, including the setting of Gasholder No.13. Accordingly, the appeal is dismissed.

W Johnson

INSPECTOR