The Planning Inspectorate

Appeal Decision

Site visit made on 10 October 2020

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 November 2020

Appeal Ref: APP/X5990/G/20/3251029
Land at Unit G1 to 2, West One Shopping Centre, 381 Oxford Street, London W1C 2JS

- The appeal is made under Regulation 17 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 against a Discontinuance Notice relating to the use of a site for the display of advertisements with deemed consent.
- The appeal is made by Mr Michael Shields of JD Sports Fashion PLC against discontinuance action by Westminster City Council.
- The Discontinuance Notice is dated 21 February 2020.

Decision

The appeal is allowed and I direct that the Discontinuance Notice, as corrected, be quashed.

Procedural Matters

1. The Discontinuance Notice as drafted requires the display of digital advertisement display screens from behind any of the windows located at ground, first, or second floor levels of the site to cease. However, the City Council has subsequently confirmed that this was an error and that the site should relate only to the windows at first floor level. The appellant had picked up on that error and has set out his grounds of appeal accordingly. I am therefore satisfied that the appellant has not been caused injustice by the error in the Discontinuance Notice and I shall correct it accordingly.

2. In that context, the City Council accepts that the advertisement in the form of a digital display screen behind the first-floor corner window of the appeal site benefits from deemed consent.

3. The City Council has also alerted me to typographical errors, insofar as both the Mayor of London's London Plan and Westminster's City Plan: Strategic Policies were adopted in 2016 rather than the dates cited in the notice. The policy documents being referred to are nevertheless reasonably clear and I am satisfied that I can correct these typographical errors without causing injustice.

4. Having regard to the above, I direct that the Discontinuance Notice be corrected by deleting the description of the site at Schedule 1 in its entirety and substituting there "The Site comprises the windows located at first floor levels at Unit G1 to 2, West One Shopping Centre, 381 Oxford Street, London, W1C 2JS ("the Property")". I also direct that the Statement of Reasons at Schedule 2 of the notice be corrected by deleting the dates given for Mayor of London's London Plan and Westminster's City Plan: Strategic Policies, and in both cases substituting there "(2016)".

Main Issue

5. The Regulations and the National Planning Policy Framework make it clear that advertisements should be subject to control only in the interests of amenity and public safety. In terms of public safety, the Statement of Reasons at Schedule 2 of the Discontinuance Notice does not allege any danger to public safety and public safety forms no part of the City Council's case. I see no reason to depart from the position adopted by the City Council in this respect. The main issue in this case is therefore whether the continued use of the site for the display of advertisements would cause substantial injury to amenity.

Reasons

6. The appeal property is a six-storey building[1] located on the south side of Oxford Street, at the junction with Davies Street. The building features a modern fully glazed shopfront at ground and first floor levels on the elevations to both Oxford Street and Davies Street. The appeal site itself is outside of any designated conservation areas, but is surrounded on three sides by the Mayfair Conservation Area and is also opposite the Stratford Place Conservation Area.

7. Being at the corner of Oxford Street and Davies Street, the site occupies a largely central position along Oxford Street. The latter is one of the busiest shopping streets in the country, with a number of the major retail chains having their flagship stores on the street alongside several large department stores. It is a busy, vibrant shopping environment with high footfall both during the day and into the night.

8. The City Council's position is that in Oxford Street the recognised character and appearance is that digital display screen advertisements are generally confined to ground floor level, even on properties outside of designated conservation areas. Observations during my site visit lead me to concur with that assessment.

9. However, context is everything. The planning permission for the alterations to the shopfront at ground and first floor level granted in October 2016 (Ref: 16/08160/FULL) was for a two-storey shopfront. The illuminated 'JD' logo is indicatively shown on the application drawings at first floor level on both the Oxford Street and Davies Street frontages, and is among the advertisements granted express consent at around the same time as the alterations to the shop front (Ref: 16/08161/ADV). I note also that reference is made on the application form and on the drawings to the installation of new digital screens in the corner window where Oxford Street and Davies Street meet as part of the overall package of advertisements proposed for the site.

10. The appeal site is in a prominent corner position. The obvious corollary of installing the shopfront and advertisements granted by the City Council in 2016 is that the attention of the passer-by is drawn away from the ground floor and upwards towards first floor level. It therefore seems to me that, in granting the planning permission and advertisement consent in 2016, the City Council explicitly made an exception to its normal approach of confining advertisements to ground floor level and in so doing surrendered any in-principle objection to advertisements at first floor level in the context of this particular site.

[1] With basement

11. In terms of the particular advertisement subject to the Discontinuance Notice, it sits within a-two storey shopfront and in the midst of signage that has the benefit of express consent. Furthermore, the appeal site sits within a wider shopping frontage in which advertisements of various descriptions proliferate and in which the adjacent entrance to Bond Street Underground Station adds to the visual clutter. I accept that the advertisement is eye-catching, perhaps even prominent. But the test in relation to a Discontinuance Notice is that of substantial injury to amenity. That is a higher hurdle to surmount than the test associated with express advertisement consent. In the context of a busy shopping street and in the particular context of the shopfront within which it sits, I am not persuaded that the digital display screen advertisement subject to the Discontinuance Notice does cause substantial injury to amenity.

12. In reaching that conclusion, I have had special regard to the desirability of preserving the setting of statutorily listed buildings nearby. I have also paid special attention to the desirability of preserving or enhancing the character or appearance of the Mayfair Conservation Area and of the Stratford Place Conservation Area.

13. In relation to the setting of statutorily listed buildings nearby, 360-366 Oxford Street is a Grade II listed building dating to the early-20th-century, but which exhibits an architectural style and detailing that reference the late 18th-century. The listing description explains that the building is listed for its group value only. This building is situated directly opposite and to the north of the appeal site, such that the digital display screen advertisement subject to the Discontinuance Notice is visible from the Oxford Street façade of the listed building. Furthermore, both the listed building and the appeal site can be viewed in conjunction with each other when facing west along Oxford Street. These views are experienced in the context of a vibrant shopping street, with advertisements of various descriptions on the majority of the buildings, albeit mostly at ground floor level. Viewed in that context, I am satisfied that the setting of the listed building is preserved.

14. The significance of the Mayfair Conservation Area is derived in part from the large number of surviving high-quality buildings within a tight urban grain, interspersed between large formal garden squares. Views of the digital display screen from within this conservation area are limited due to the position of the advertisement on the canted corner of the building. The limited views of the advertisement that are possible are largely confined to Oxford Street, where again the views are experienced in the context of a vibrant shopping street and a plethora of other advertisements. These views do not impinge upon the features of the conservation area from which its significance is largely derived. I am therefore satisfied that the character and appearance of the Mayfair Conservation Area are preserved.

15. The Stratford Place Conservation Area is extensive and essentially comprises three distinct character areas. The significance of the Stratford Place Conservation Area derives in part from the contrast between the formality and tranquillity of the area around Stratford Place and the larger scale buildings and bustle of Oxford Street. To my mind, the key point here is that the appeal site fronts onto Oxford Street and therefore faces onto that part of the Stratford Place Conservation Area that exhibits a character derived from a combination of larger scale buildings and the bustle of Oxford Street itself. Viewed in that context, neither the character nor the appearance of this conservation area is

harmed by the digital display screen advertisement subject to the Discontinuance Notice, notwithstanding that it is located at first-floor level.

16. I am mindful that the digital display screen advertisement subject to the Discontinuance Notice is similar to others to be found along Oxford Street against which the City Council has already initiated enforcement proceedings, or is about so to do. The digital display screen advertisement on the nearby Adidas store at 415-419 Oxford Street and the digital display screen advertisements at ground, first and second floor levels of the Flannels store at 161-167 Oxford Street are both examples of this. Consequently, I do not know at this time whether or not any of those advertisements are lawfully displayed now and/or will be lawfully displayed going forward. For that reason, I have not had regard to the presence of any of the advertisements that the City Council has initiated enforcement proceedings against, or is contemplating initiating enforcement proceedings against, in my consideration of this appeal. I have therefore determined this appeal purely on the basis of the merits of the advertisement subject to the Discontinuance Notice.

17. Similarly, some of the other examples referred to by the City Council relate to advertisements on statutorily listed buildings and/or within a conservation area. I note that the Council has been consistent in its approach to these advertisements. Nevertheless, I have reached my decision on the particular facts of this case which, in my view, distinguish it from the examples that I have been referred to by the City Council.

Other matters

18. The City Council cites a number of development plan policies in the reasons taking discontinuance action, as set out in the Second Schedule of the Discontinuance Notice. However, powers under the Regulations to control advertisements may be exercised only in the interests of amenity and public safety, taking account of any material factors. In determining this appeal, I have taken account of the policies in the development plan as a material consideration but they have not, in themselves, been decisive.

Conclusion

19. Taking all the above considerations into account, and applying the relevant test set out in the Regulations, I conclude that the continued use of the site for the display of advertisements would not cause substantial injury to amenity. I therefore allow the appeal and direct that the Discontinuance Notice, as corrected, be quashed.

Paul Freer
INSPECTOR