The Planning Inspectorate

Appeal Decision

Site visit made on 03 May 2022 by S. Wilson LLB, MSc, LRTPI

Decision by Decision by L. McKay MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 July 2022

Appeal Ref: APP/K5600/Z/22/3293984
156, Portobello Road London W11 2EB

- 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 Mural Republic against the decision of the Council of the Royal Borough of Kensington and Chelsea.
- The application Ref CA/21/07859, dated 07 December 2021, was refused by notice dated 10 February 2022.
- The development proposed is described as: 'A Painted Mural and Wall of Community Benefit'.

Decision

1. The appeal is dismissed.

Appeal Procedure

2. The site visit was undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

Preliminary Matter

3. The Council has drawn my attention to the development plan policies it considers to be relevant to this appeal and I have taken them into account where relevant. However, powers under the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (as amended), (the Regulations), to control advertisements may be exercised only in the interests of amenity and public safety, taking account of any relevant factors. In my determination of this appeal, the policies cited by the Council have not therefore, by themselves, been decisive.

Main Issue

4. The Council has raised no objection in respect of public safety, and I observed nothing which would lead me to dispute this conclusion. Accordingly, the main issue is the effect of the proposed advertisement on visual amenity, with particular regard to whether the advertisement would preserve or enhance the character or appearance of the Ladbroke Conservation Area (LCA).

Reasons for the Recommendation

5. 156 Portobello Road is a prominent corner building with primary elevations on both Portobello Road and Colville Terrace. There is ground floor commercial use

and the building façade dominates above. It is prominently located on the edge of, but within the LCA and is demarcated as a positive building within the LCA Appraisal (adopted 2015) (the Appraisal). The Appraisal describes positive buildings as contributing to the historic and architectural character and appearance of the LCA, that they are a key reason for the designation and significance of the LCA. It also states that change to positive buildings must be managed to conserve and, where appropriate, to enhance their significance in accordance with national and local planning policies.

6. The character of this part of Portobello Road is that of a busy, vibrant road with multiple examples of retail/commercial use at the ground floor level whilst the often brightly coloured building facades dominate above. Much of the lively character of this street is derived from the trader's stock festooning the frontages and tables on the street. Whilst there are many fascia level signs, there is an absence of high-level advertisements and consequently the facades of the surrounding buildings form a dominant part of the Portobello Road street scene.

7. The Appraisal notes that the upper storeys of shops have sometimes been neglected and allowed to decay, stating that where these can be restored or rebuilt this will enhance the appearance of the area. Colville Terrace has a residential character and appearance with no commercial elements or signage except for the appeal building at ground floor level and the ground floor corner elevation of the property directly opposite.

8. I am mindful of my statutory duty, arising under section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, to pay special attention to the desirability of preserving or enhancing the character or appearance of conservation areas when considering the grant of express consent. In accordance with the advice in paragraph 199 of the National Planning Policy Framework 2021 (the Framework), I attach great weight to the conservation of heritage assets.

9. The proposal is for a painted mural advertisement on the flank wall along the Colville Road elevation, from the fascia level to the roof. The building is currently bright green and brightly painted frontages form part of the character of the area and LCA. However, they are generally single colours, as the existing building is. Consequently, the appeal property currently complements the vibrant character of the road.

10. Murals and painted images can lend visual interest to a street scene, and there are several others in the local area, but they are much smaller than what is proposed here. The introduction of a large commercial advertisement covering a large proportion of the flank elevation, in an elevated position, would inappropriately dominate the host building. In this prominent location, it would introduce an intrusive and alien commercial feature into the residential character and appearance of Colville Street and negatively impact the vista along Portobello Road. It would harmfully alter the existing character of commercial uses being largely contained at ground floor level. As a result, the proposed advertisement would impose itself on the street scene far more than the existing plain façade, harming the character and appearance of this part of the LCA and the visual amenity of the area.

11. Painting the wall in any colour or mixture of colours, or the display of a hand painted mural without any form of advertising, may not require planning

permission or advertisement consent. However, an advertisement contains and conveys commercial information, which an artwork or mural would not. They would therefore have a materially different visual impact. Nevertheless, a non-advertisement mural would still have a greater visual impact than if the building were painted a single colour.

12. The evidence before me indicates however that it is expensive for such non-commercial artwork to be produced, and that the revenue from the commercial advertisement is necessary to pay for the professional installation of the community artworks proposed in between the commercial displays. In this situation, I do not consider that there is a realistic prospect that the wall would display non-commercial murals or artwork if the appeal proposal were dismissed. Therefore, I give this potential fallback position very little weight.

13. Matters relating to the funding revenue received from the display of an advertisement are generally outside of the scope of the Regulations, however if used to fund alternative displays for community purposes this could be of benefit to visual amenity. There is however no mechanism before me to secure the appellant's suggestion that funding from the display of the proposed advertisement would be used to sponsor non-advertisement murals and artwork in between. Therefore, I can give this potential benefit very little weight as a relevant factor in this appeal.

14. The appellant has stated that allowing the mural advertisement could potentially reduce graffiti and flyposting at the site. On my site visit, I witnessed evidence of graffiti and flyposting at ground floor level only, an area excluded from the proposal and not under the control of the appellant. There is no compelling evidence before me that the upper part of the flank wall suffers from such activities. I do not therefore consider that the proposal would result in any benefits in this regard.

15. The appellant has suggested that there be a display management plan that controls details of the proposed advertisement including content and the timetable for display. Time limits for display could be imposed by condition, and the advertisement could be painted over, reversing its impact. However, the harm to the amenity of the area would still be notable and the proposal would overwhelm and dominate the building and local area even for the relatively short periods of display suggested. Consequently, while the resulting harm would be less than for a permanent display, the proposal would still harm visual amenity during those periods. As such, a condition limiting the times for display would not adequately address the harm identified.

16. Furthermore, the Regulations do not provide for the function, purpose, content, or design of a proposed advertisement to be taken into account when considering effects on amenity. In any event, there is no wording before me of how such a condition or conditions could be drafted. Consequently, I cannot be certain that any such conditions would secure the suggested benefits or mitigate the harm proposed, or that they would be reasonable and enforceable.

17. I note that there is some support within the community for a 'community wall'; however, the methodology of the surveys and consultation undertaken are unclear, particularly whether the images shown to participants related to an advertisement or other type of mural or artwork. Therefore, I cannot be certain that the support relates to the type of proposal now before me, so can give limited weight to the consultation and survey evidence presented.

18. In conclusion, the proposed commercial advertisement would harm the appearance of this positive building and the street scene and as such would fail to preserve or enhance the LCA. It would therefore have an unacceptable adverse impact on visual amenity. I have taken into account Policies CR4, C11 and CL3 of the Royal Borough of Kensington and Chelsea Local Plan 2019 which seek to resist adverts that harm amenity, protect and enhance views and vistas which contribute to the character and quality of an area and to preserve or enhance the character or appearance of conservation areas. Given I have concluded that the proposal would harm amenity, the proposal conflicts with these policies.

Other Matters

19. The appellant has drawn my attention to a recent appeal decision at 95-97 Portobello Road, allowing the display of a 3D artwork mural on that mid-terraced building. That scheme was development requiring planning permission, not an advertisement. The Inspector described that property as making only a minor contribution to the significance to the LCA, noted that the mural was visually striking but not especially dominant in the street scene, and that prior to the installation of the mural that property would have disrupted the prevalent design in the street.

20. These circumstances are markedly different to those of the appeal property, which in its current form makes a positive contribution to the LCA in a visually prominent corner location, and where the proposed advertisement would be visually dominant from both Portobello Road and Colville Terrace. Therefore, the two schemes are not comparable and that decision does not justify the harm I have identified.

21. The appellant has also referred me to other large-scale images in the area including a Banksy mural at the corner of Acklam Road, poster style adverts and painted images at 186, 216, 221, 284 Portobello Road and 1 Blagrove Road. However, I have no information on how the images came to be displayed. In any event, none are comparable in scale, prominence, or visual impact to the proposal before me. Therefore, while images are part of the character of the area these examples are not comparable to the appeal proposal and do not justify granting consent for the appeal proposal.

Conclusion and Recommendation

22. For the reasons given above and having had regard to all other matters raised, I recommend that the appeal should be dismissed.

S. Wilson

APPEAL PLANNING OFFICER

Inspector's Decision

23. I have considered all the submitted evidence and the Appeal Planning Officer's report and on that basis the appeal is dismissed.

L. McKay

INSPECTOR