



Appeal Decisions

Site visit made on 11 July 2023

by A James BSc (Hons) MA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 August 2023

Appeal A Ref: APP/A5840/W/22/3303517

Os Unit 4 22 Pret, Elephant & Castle, Southwark, London SE1 6BH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Martin Stephens of JCDecaux UK Limited against the decision of the Council of the London Borough of Southwark.
 - The application Ref 21/AP/4516, dated 9 December 2021, was refused by notice dated 11 July 2022.
 - The development proposed is open access Communication Hub, following the removal of an existing communication apparatus.
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Appeal B Ref: APP/A5840/H/22/3303519

Os Unit 4 22 Pret, Elephant & Castle, Southwark, London SE1 6BH

- 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 Martin Stephens of JCDecaux UK Limited against the decision of the Council of the London Borough of Southwark.
 - The application Ref 21/AP/4517, dated 9 December 2021, was refused by notice dated 11 July 2022.
 - The proposal is described as 'advertisement integrated into the proposed Communication Hub unit (21/AP/4516) that comprises an LCD portrait screen that will be used to show static illuminated content.'
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Decision

1. Appeal A and Appeal B are both dismissed.

Preliminary Matters

2. As set out above, there are 2 appeals on this site. One seeks planning permission for a communications hub, which among other things would display an advertisement. The other appeal seeks express consent to display the advertisement. I have considered each appeal on its individual merits; however, the communication hub and advertisement are inextricably linked. In the interests of conciseness and to avoid unnecessary duplication I have dealt with the 2 appeals together.
3. I have amended the proposal description for Appeal A to omit words that are not development. For clarity, I have taken into account the documentation referred to on the application form. I have taken the proposal description for Appeal B from the appeal form, as this more accurately represents the proposed advertisement.

4. The applicant for the planning and advertisement consent applications (as shown on the application forms) was Mr Thomas Johnston of JCDecaux UK. The appeal is made under a different name from the same company, which I have used in the banner heading above.
5. In respect of Appeal B, the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (the Regulations), the National Planning Policy Framework (the Framework) and the national Planning Practice Guidance confirm that advertisements should be subject to control only in the interests of amenity and public safety. Regard does not need to be had to the development plan. I have taken relevant policies into account as a material consideration; however, they have not, by themselves, been determinative for Appeal B.
6. The Council do not consider that the proposal would harm the living conditions of nearby residents. Based on the evidence before me and my site visit, I have no reason to reach a contrary conclusion to the Council on this matter.
7. There is a typographical error in the second reason for refusal for both appeals. The decision notice refers to Policy 5.3 of the SP February 2022. However, this should read Policy 53 of the SP. This policy refers to the provision of cycle infrastructure and does not relate to highway safety. As a result, it is not directly relevant to this appeal. The Council has also forwarded Policy 51 of the SP, which refers to walking. I have not based my decision on the contents of Policy 51 as it was not cited within the reasons for refusal and is therefore not a matter of dispute between the 2 parties.

Main Issues

8. The main issues for both appeals are the effect of the proposed development and advertisement on:
 - the character and appearance/amenity of the area, having particular regard to the setting of listed buildings; and,
 - highway (public) safety.

Reasons

Character and appearance/amenity

9. The proposal seeks to provide a communication hub, which would contain a digital advertisement on a pavement adjacent to the A3. It is a relatively wide stretch of pavement, adjacent to a signalised junction and contains other street furniture, including cycle stands, a wayfinding totem and bus stops, which contain digital advertisements. This stretch of pavement is separated from the adjacent parade of shops by a cycle lane. On the opposite side of the pavement is a bus lane and dual carriageway.
10. The appeal site lies within a busy urban area, characterised by mixed used development including retail, commercial, residential, leisure and education. There are a variety of architectural styles and periods, including modern high-rise development. The wide pavements respond to the size and scale of the surrounding built form and have been designed to accommodate the high level of pedestrian movements.

11. The appeal site is located close the Metropolitan Tabernacle, Michael Faraday Memorial and Metro Central Heights, which are Grade II listed buildings. The significance of the Metropolitan Tabernacle insofar as is relevant to these appeals, derives from its sacral architecture and grand stature, which is highly prominent in the public realm. The significance of the memorial which is dedicated to the physicist and chemist Michael Faraday stems from its modern design, use of metallic materials and prominent position on a roundabout. The memorial contributes to the social and industrial history of the area. The significance of Metro Central Heights insofar as is relevant to these appeals, derives from its post-war, modernist style and striking appearance. The public realm, including the wide pavements contributes to the significance of these designated heritage assets.
12. In accordance with the statutory duty imposed by section 66(1) of the Planning (Listed Building and Conservation Areas) Act 1990, I have had special regard to the desirability of preserving the settings of the listed buildings in my decision.
13. The proposal would be modern in appearance; however, its design and materiality would not appear discordant in an area which contains a significant amount of modern and contemporary architecture. There are other digital advertisements in the locality, including those affixed to bus shelters, one of which is sited directly in front of the Metropolitan Tabernacle. The proposal would be sited further away from this designated heritage asset than an existing digital advertisement. Given the distance and separation by other street furniture, the proposal would not be harmful to the significance of the Metropolitan Tabernacle. As a result of the distance of the appeal site to the Michael Faraday Memorial and Metro Central Heights and the intervening road infrastructure, the proposal would preserve the significance of these designated heritage assets.
14. The appellant ascertains that the proposal would not lead to any additional visual clutter, as it would replace an existing item of street furniture on the opposite side of the road. However, the existing kiosk has already been removed, thus removing this alleged benefit.
15. The proposal would be a fairly slimline structure, with small projecting canopy and would be smaller in scale than a standard phone kiosk. However, as a result of its height and width, it would appear as a bulky freestanding structure in views along the streetscape. The proposal by reason of its size, design and siting would create a new standalone structure, which would exacerbate the sense of clutter from street furniture in this location and would be harmful to the character, appearance and amenity of the area.
16. Even though I find that the proposed development and advertisement would preserve the significance of the designated heritage assets, for the reasons given above, I conclude that the proposal would have a harmful effect on the character, appearance and amenity of the area. Insofar as is relevant, the proposal would be contrary to Policies P13, P14, P43 and P56 of the Southwark Plan 2019-2036 (SP) February 2022. These policies among other matters require proposals to avoid unacceptable harm to public amenity, avoid street clutter and provide a positive pedestrian experience.
17. Given that I find the proposal would preserve the significance of the designated heritage assets, I find no conflict with Policy P19 of the SP or Policy HC1 of The

London Plan (LP) 2021. I also find no conflict with Section 16 of the Framework, which seeks to conserve and enhance the historic environment.

18. Although Policy P56 refers to amenity it seeks to protect the living conditions of present and future occupiers and is therefore not relevant to this main issue.

Highway (public) safety

19. The appeal site lies within a busy urban area, close to a variety of uses, including a children's play area and leisure centre. There is a high level of pedestrian, cycle and vehicular activity in the locality. The site lies adjacent to a segregated cycle lane and near a pedestrian crossing and bus stop. Pedestrians have to cross the cycle lane to access the signalised junction. A short distance away from the pedestrian crossing, cyclists merge onto the cycle lane from the junction opposite. In this location pedestrians not only require a heightened sense of awareness of motorised traffic, but also of cyclists as they cross the busy cycle lane.
20. The pavement is reasonably wide and already accommodates other street furniture including bus stops, cycle stands and a wayfinding totem, without unacceptably reducing the space available for pedestrians. The proposal would not unacceptably narrow the pavement or effect the free flow of pedestrians, including vulnerable and wheelchair users. However, the proposed illuminated advertisement with changing images would be a source of distraction for cyclists and pedestrians. There are frequent pedestrian movements across the cycle lane and any distractions could result in a collision with pedestrians. The location of the proposed hub at the edge of the pavement would also impede visibility for cyclists leaving the cycle parking area and joining the cycle lane, which could result in collisions with pedestrians or other cyclists and would be harmful to public safety.
21. The proposed advertisement would face oncoming traffic and have static images which would change every 10 seconds. While there are other digital advertisements within nearby bus stops, none are located so close to the signalised junction. The proposed advertisement could result in a potentially dangerous distraction, in an area where drivers need to be alert to pedestrians crossing and vehicles/cyclists accessing and exiting the nearby junctions and roads. The proposed advertisement would be a distraction for drivers, cyclists and pedestrians in an area where a high number of collisions have been recorded. As a result, heightened awareness of other road users is essential. Given the proximity of the site to the busy pedestrian crossing and the significant pedestrian and cyclist activity in the area, the proposal would pose an unacceptable risk for drivers, cyclists and pedestrians being distracted at a critical moment.
22. For the reasons given above, I conclude that the proposal would result in harm to highway and public safety. Insofar as is relevant, the proposal would conflict with Policies T2, T5 and D8 of the LP. These policies among other matters require proposals to minimise any adverse impact on the highway network, not increase road danger, ensure the public realm is safe, and create a healthy environment in which people choose to cycle. The proposal would also conflict with Sections 8 and 9 of the Framework, which seek to promote healthy and safe communities, and not have an unacceptable impact on highway safety.

23. I do not find that Policy 53 of the SP is relevant to this main issue as it refers to the provision of cycle routes and cycle parking, as opposed to highway (public) safety.

Other Matters

24. For Appeal A, I note the benefits of the proposed development, including in terms of communications, its environmental credentials and the provision of a defibrillator. However, the benefits of the proposed development would not outweigh the harm that I have identified, with regard to the character and appearance of the area and highway safety. In respect to Appeal B, the Regulations require that I exercise my powers with regards to amenity and public safety only. The proposed benefits therefore cannot be taken into consideration in my decision for Appeal B.
25. While I note that letters of support have been received from the Elephant and Castle Properties Co. Limited and the Community Heartbeat Trust charity, the benefits of the scheme, including the provision of a defibrillator would not outweigh the harm that I have identified to the character and appearance/amenity of the area and highway (public) safety.
26. I have had regard to the standard conditions set out in Schedule 2 of the Regulations. I have also considered the conditions proposed by the appellant. In addition, I note that the proposed levels of illumination would fall within the guidelines set by the Institute of Lighting Professionals and the levels of illumination would be able to adapt to light levels during the day. Nevertheless, the proposed conditions would not overcome the harm that I have identified to amenity and public safety.

Conclusion

27. For the reasons given above, and taking into account all matters raised, both Appeals A and B are dismissed.

A James

INSPECTOR