
Appeal Decision

Site visit made on 5 December 2023

by Roy Curnow MA BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th March 2024

Appeal Ref: APP/H5960/C/22/3308975

Footway east of 328 to 334 Old York Road, London, SW18 1SS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by BT Group PLC against an enforcement notice issued by the Council of the London Borough of Wandsworth ('the Notice').
 - The enforcement notice, numbered 2021/0535/ENF, was issued on 6 September 2022.
 - The breach of planning control as alleged in the notice is Without planning permission, and within the past four years, the installation of a freestanding InLink phone and web communications structure incorporating two digital LED screens on the Land.
 - The requirements of the notice are: 1 Remove the unauthorised freestanding InLink phone and web communications structure incorporating two digital LED screens shown in the photograph in appendix 1; and 2. Remove from the Property all debris that arises from compliance with step 1 above.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (c) of the Town and Country Planning Act 1990 as amended ('the Act').
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Decision

1. It is directed that the enforcement notice is corrected by

Omitting the word "InLink" in section 3 of the Notice, 'The Matters which Appear to Constitute the Breach of Planning Control' and replacing it with the words "Street Hub"

and varied by

Omitting the word "InLink" in section 5 of the Notice, 'What you are required to do' and replacing it with the words "Street Hub"

Subject to the correction and variation the appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the installation of a freestanding Street Hub phone and web communications structure incorporating two digital LED screens at Footway east of 328 to 334 Old York Road, London, SW18 1SS as shown on the plan attached to the notice and subject to the following condition:

“Should this structure cease to function for 3 months, then the structure shall be removed in its entirety and the land made good to the same condition as the adjacent land within 3 months of that cessation.”

Procedural Matter

2. The Notice referred to policies from an ‘emerging’ development plan. Given the time that had elapsed between the issuing of the Notice and my determining the appeal, I asked the Council to confirm the status of the emerging plan and, if it had changed, how that affected the status of other policies referred to. The Council confirmed that the Core Strategy and Development Management Policy Document, referred to in the Notice, had been replaced by the Wandsworth Local Plan 2023-2038, adopted July 2023 (‘WLP’). It provided copies of policies from the WLP that were, in essence, those from the emerging version of the plan. The Appellant was asked if it wanted to make any comment on the WLP policies, but it said that it had no comment to make.
3. The Notice alleges the erection of an ‘InLink’ structure. It is clear from the evidence that what has been erected is a similar, though larger ‘Street Hub’ structure. As it causes no injustice to either party, I have corrected and varied the Notice to reflect this.

Reasons

Background

4. In 2018, the Council granted planning permission for an ‘InLink’ structure together with advertisement consent for the display of advertisements on it. In 2021, the Council granted advertisement consent for larger advertisements. It refused planning permission in 2001 for a similar, though larger InLink style structure. The refused structure has been erected; it displays the advertisements approved in 2021.

Ground (c)

5. An appeal made under Ground (c) is that the matters alleged in the Notice, if they occurred, do not constitute a breach of planning control. This is a legal ground of appeal where the onus lies with the Appellant to make his case on the balance of probability.
6. The essence of the Appellant’s case is that as it received advertisement consent, by reason of s222 of the Act, the “unit [in which the advertisement would be displayed] and the associated uses should be considered part of the same scheme and therefore section 222 of the Act grants planning permission for the structure”.
7. Although I was not provided with copies of drawings and documents that accompanied the application, I was supplied with a copy of the advertisement consent¹ granted for “Installation of two illuminated digital advertisement displays to two sides of InLink structure (1670mm x 950mm)”.
8. Section 222 of the Act sets out that planning permission is not required for advertisements that comply with regulations, which the consented advertisements would. It states:

¹ LPA Reference 2021/1323, dated 14 May 2021

"Where the display of advertisements in accordance with regulations made under section 220 involves development of land—

- (a) planning permission for that development shall be deemed to be granted by virtue of this section, and*
- (b) no application shall be necessary for that development under Part III".*

Section 220 enables the provision of Regulations to regulate the display of advertisements, whilst Part III of the act relates to the control of development.

9. This is a matter that was considered by the Courts in *Westminster CC v SSHCLG & New World Payphones Ltd* [2019] EWCA Civ 2250. That decision involved a telephone kiosk, which has similarities with the development before me and, therefore, the *Westminster* case is relevant.
10. The Court of Appeal's judgement stated "Section 222 cannot be used to piggy-back a much more substantial development than envisaged by the definition of 'advertisement'". The judgement went on to say that "until that telephone kiosk has planning permission, section 222 cannot be engaged to make (deemed) planning permission for a hoarding dependent upon advertising consent". In the judgement, Lewison, LJ said that, in his view, "the Advertisement Regulations are also something of a red herring. Subject to the effect of section 222 of the 1990 Act, those Regulations concern the display of advertisements, not planning permission for buildings etc upon which advertisements might be displayed". The other two judges sitting with him agreed with his conclusions.
11. The principles of that judgement, when applied to the case before me, lead me to find that the Appellant's assertion that "as advertisement consent was granted...then as the unit and associated uses should be considered part of the same scheme and therefore section 222 of the Act grants planning permission for the structure" is ill-founded.
12. The case was referred to in the Council's statement. Thus, the Appellant had an opportunity to reply to the Council's position, which accords with mine. It did not do so.
13. For the above reasons, I find that the grant of advertisement consent did not provide planning permission for the Street Hub. It is development that requires planning permission. Therefore, the Ground (c) case fails.

Ground (a)

14. The Main Issues in the appeal are:
 - whether the development preserves or enhances the character and appearance of the Old York Road Conservation Area, in which it is located; and
 - the effect of the structure on the safety and convenience of pedestrians using the footway.

Character and appearance

15. I have been given a copy of a plan showing the extent of the Old York Road Conservation Area ('OYRCA'), but not a copy of any Conservation Area Statement or Appraisal document. The OYRCA is fairly small, and from my site visit I consider that it had three constituent parts. Firstly, Old York Road itself, from its junction with Morie Street to Wandsworth Town railway station;

secondly, a linear section that is bounded by the railway line from Putney to London, at the heart of which is the station; and, thirdly, a roughly rectangular area of housing at its eastern end.

16. The length of Old York Road in the OYRCA is flanked by terracing of largely two-storey buildings on its south side and three-storey buildings on its north side. This development has uniformity both in its appearance and land use. The buildings have commercial uses, with traditional shopfronts at ground level, with what appeared to be residential uses on the floors above. The buildings have similar brick finishes, with symmetry in their window patterns and layout of dormer windows.
17. Traffic restrictions and calming were in place in the road, which had the consequence of pedestrians using the carriageway. Sections of both the carriageway and footway were also used by cafes for seating. The character of this part of the OYRCA was that of a busy town centre.
18. The railway station is at the end of Old York Road and shares some of this commercial character. It and the adjacent railway bridge provide an entrance to the commercial centre along Old York Road.
19. The rectangular area at the eastern end of the OYRCA comprises a small number of largely residential streets that run gently uphill from the railway line. Each is flanked by similar two-storey brick dwellings of simple designs. This area has an overwhelmingly residential character.
20. Despite the different areas within the OYRCA, overall it has the character and appearance of what was a Victorian development that has, through the decades, been subject to sympathetic change. It has not been preserved as a Victorian show piece, however; its character and appearance is that of a contemporary, bustling scene within a mostly Victorian townscape.
21. The Street Hub lies at the northeastern end of Old York Road, close to the station. The road has trees at intervals along its northern side. In addition, I saw, in close proximity to the site, bollards at the edge of the footway, waste bins, 'Sheffield' cycle stands and A-board advertisements for commercial premises. There were tables and seats outside the coffee shop close to the Street Hub, as well as outside other cafes on this side of the road. Furthermore, there are substantial planters in the highway that seem to have been installed as part of the traffic management/calming scheme. These have allowed seating to be placed in the carriageway.
22. Even without the Street Hub, the street scene on of this side of the road would be busy and fairly cluttered.
23. The footway on the south side of the road presents a quite different scene, being relatively open and uncluttered.
24. Given the trees, street furniture and paraphernalia associated with businesses in the road, the addition of the Street Hub makes little difference to the character and appearance of the street. It has a neutral effect on the OYRCA, taken as a whole, thus preserving its character and appearance.

25. Whilst not strictly necessary to note, given that I have found that there is no harm to the OYRCA, the benefits that the Street Hub provides in terms of Wi-Fi and the like, weigh in favour of its retention.
26. Although it is a new feature in the streetscape, I note that the Council granted planning permission and advertisement consent² for an InLink structure on the site. This provided a similar service to the Street Hub, with a similar advertisement display on either side. It was, however, 8cms lower, up to 44cms narrower and 7cms less deep than the Street Hub. Its advertisement display was also smaller. The Council's decisions on that InLink machine showed that it felt that introducing this form of development into the street scene was acceptable in principle.
27. Notwithstanding the increase in size, that decision weighs in favour of the proposed Street Hub. For the reasons that I have given, I do not find that the development harms the character and appearance of the area. It accords with the statutory test and WLP Policy LP3; Policy LP1, which requires a 'design-led' approach to development that will ensure that developments have due regard to their surroundings; Policy LP9 that requires advertisements to be of a high quality that respect their settings; and Policy LP22 C.2. that requires utilities and digital infrastructure to not detract from an area's character and appearance.

Pedestrian safety and convenience

28. The Street Hub is located in much the same position as the previously approved InLink structure. The Council tells me that it reduces the usable width of the footway by 20cms, leaving 1.9m to the seating area in front of the adjacent coffee shop and 2.6m to its shopfront.
29. The position of the Street Hub does cause something of a pinch point in the footway. However, the reduction in width compared to what the Council has approved is minimal. The footway was fairly busy at the time of my site visit, and I watched the flow of pedestrians, including those with pushchairs, along it. The Street Hub did not obstruct this flow to any great degree. People simply walked between it and the coffee shop seating, seemingly without a thought.
30. My finding on this issue is that the Street Hub has little effect on the convenience of users of this part of the footway, and no effect on their safety. Therefore, it accords with WLP Policies LP9(6) and LP22(4) that seek to avoid causing material harm to public or highway safety and to protect the health and well-being of the public, respectively.

Conditions

31. The Council submitted a schedule of two conditions that it required to be attached to any grant of planning permission. The Appellant was given an opportunity to comment on the conditions, but did not do so.
32. The first of these required the development to be carried out in accordance with drawings and specifications. However, what is before me is a s174(a) appeal related to the development that has been carried out. I cannot be sure that the plans accurately reflect the development that has been carried out

² Council references 2018/0457 and 2018/0504

and, in any event, as I have found the development to be acceptable there is no necessity for the condition.

33. The second of the Council's proposed conditions requires the removal of the structure, upon the cessation of, or material alteration to, the 'InLink' scheme. However, I am unaware what is meant by that scheme and, as this is a Street Hub, it may not be part of that InLink scheme. The essence of the condition is that should the structure cease to function, it should be removed within 3 months of that occurring. The reason is to protect the character and appearance of the OYRCA from redundant telecommunications equipment. I agree that a condition of this sort is required and would pass the tests for conditions. However, I have amended its terms, by omitting reference to the InLink scheme and specifying a 3-month period of non-use instead. I consider this to be a reasonable period and the amended condition would not cause injustice to the parties.

Conclusion

34. For the reasons given above, I conclude that the appeal succeeds on Ground (a). I shall grant planning permission for the installation of a freestanding Street Hub phone and web communications structure incorporating two digital LED screens as described in the notice as corrected.

Roy Curnow

Inspector