
Appeal Decision

Site visit made on 2 May 2024

by S Ashworth BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th May 2024

Appeal Ref: APP/X5990/W/23/3333552

Land rear of Piccadilly Circus Tube Station Entrance, Street Level, Exit Four, Piccadilly Circus, London, W1J 9HT

- 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 Tom Bunce against the decision of City of Westminster Council.
 - The application Ref 23/00118/FULL, dated 9 January 2023, was refused by notice dated 14 July 2023.
 - The development proposed is installation of a kiosk for hot and cold beverages and snacks.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this case are:
 - Whether the site is a suitable location for a kiosk, having regard to current development plan policy;
 - Whether the proposal would preserve or enhance the character or appearance of the Regent Street Conservation Area;
 - The effect of the proposal on the setting of the Station entrance, a grade II listed building; the Criterion Theatre, a Grade II* listed building; the Shaftesbury Memorial Fountain Eros (the memorial fountain) a Grade I listed building, and the Pavilion, a Grade II listed building;
 - The effect of the proposal on pedestrian movement.

Reasons

Whether the site would be a suitable location for a kiosk having regard to current development plan policy

3. The Westminster City Plan 2019-2040 adopted in 2021 (the City Plan) sets out at Policy 43 the need for development to contribute to a well-designed, clutter free public realm. Section 43C states that kiosks or other structures for the display and sale of goods outside of a market will be resisted. Whilst the relocation and replacement of existing structures can be accommodated, subject to certain criteria, there is no provision for new kiosks under the terms of the policy. The proposed kiosk would be for the sale of goods within the

public realm, away from any market. On that basis the proposal is contrary to Policy 43 of the City Plan.

Whether the proposal would preserve or enhance the character or appearance of the Regent Street Conservation Area

4. The character and appearance of the Regent Street Conservation Area is derived in part from the uniformity of the architectural style, materials and large scale of the buildings in the area. Piccadilly Circus is an historically open area which makes a positive contribution to the historic significance of the conservation area in providing a public focal point and a contrast with the surrounding densely built street pattern. The area is a busy place which draws a significant number of pedestrians, including large groups of tourists, and traffic. The space accommodates the memorial fountain and several entrances to the Piccadilly Circus Underground Station.
5. The kiosk that forms the subject of this appeal would be constructed in GRP with retractable awnings. It would be sited at the rear of the railings which enclose the steps down to the underground station and would be open to the public on its east side. The kiosk would have a box-like appearance and would create additional clutter in Piccadilly Circus. It would be highly prominent in views around the area. Moreover, whilst I note that the appellant has reduced its original size, it would reduce the openness of the area, and because of its form and appearance, would detract from the quality of the space and the architecture around it.
6. I acknowledge that there are ticket kiosks immediately adjacent to two other underground entrances as well as kiosks around the perimeter of the open space. To my mind, these kiosks are negative elements within the conservation area, as a result of their form and appearance and the clutter they create in the space. Accordingly, they do not represent good examples of development to follow. I understand that the kiosks were permitted by the Council some time ago and I note the Council's view that they would not meet current planning policy. As such, their presence does not justify further similar development.
7. Accordingly, the proposal would fail to preserve or enhance the character or appearance of the Regent Street Conservation Area. As such it would fail to comply with the statutory duty set out in s72 of the Town and Country Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) which requires that with respect to buildings and land within a conservation area, special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area. In addition, for the same reason the proposal would not comply with Policy 39 of the City Plan which has the same requirement.
8. The approach in the National Planning Policy Framework (the Framework) is that where a proposal would lead to less than substantial harm to the significance of a designated heritage asset, as in this case, the harm should be weighed against the public benefits of the proposal. I will turn to this balance below.

The effect of the proposal on the setting of the listed buildings

9. Section 66 (1) of the Act requires that, in considering whether to grant planning permission for development which affects a listed building or its setting, special regard should be had to the desirability of preserving the building, or its setting or any features of special architectural or historic interest which it possesses.
10. The Piccadilly Circus Underground Station was first opened in 1906 and modernised in 1925-28 by notable architect Charles Holden. Its significance as a listed building lies in its architectural detailing, its engineering and historic interest. Of particular relevance to this appeal are the station entrances at street level which are framed by decorative, bronzed neo-Roman style railings and panelled bronze lamp standards.
11. The kiosk would be positioned immediately adjacent to the railings and its bulk and appearance would contrast poorly with the character and detailed design of the railings. Moreover, the kiosk would obscure views of the railings from the east side. Accordingly, the proposal would have a harmful effect on the setting of the Listed Building and the ability to appreciate it.
12. The Memorial Fountain 'Eros' is a Grade I listed building and therefore a structure of the highest national importance. Constructed and finely detailed in bronze, the fountain dates from 1892-93 and commemorates the philanthropist, Lord Shaftesbury. Accordingly, its significance lies in its historic and cultural interest as well as in its detailed design. Sited in a central position, the fountain is clearly designed and positioned to be seen by members of the public. Its setting, the open space around it, therefore makes a considerable contribution to its significance as a heritage asset.
13. At the time of my visit, the memorial was a focus of tourist activity. The kiosk would be sited at a distance from the memorial but nevertheless, would have a spatial and visual impact on its open setting. It would also obscure views of the fountain from certain points. As such, the proposal would have a harmful effect on the setting and significance of the listed building.
14. Other listed buildings around Piccadilly Circus include, on the south side, the Criterion Theatre, consisting of a theatre, restaurant and former hotel dating from 1870-74 with later additions, and on the north side The London Pavilion, a former theatre now in use as a cinema which dates from 1885. These are both substantial buildings which demonstrate the social and architectural history of this part of the city. Their significance, as heritage assets, lies in their age and their cultural, architectural and historic interest.
15. The openness of Piccadilly Circus allows these buildings, their scale and architectural detailing, to be seen and appreciated from a wider area, including in views from the ends of the various roads which convene at this point. The introduction of further clutter in the form of an additional kiosk into the setting of these important buildings would have a limited but nevertheless harmful impact on the ability to appreciate them. Accordingly, the proposal would also fail to preserve the setting of these heritage assets.
16. As I found that the proposal would harm the setting of the listed buildings it follows that it would not meet the weighty requirements of the Act. For the

same reasons the proposal would be contrary to Policy 39 (I) of the City Plan which requires that development within the settings or affecting views of listed buildings will take opportunities to enhance or better reveal their significance.

17. As set out above where the harm to heritage assets is less than substantial, as is the case here, in accordance with the requirements of the Framework it should be weighed against the public benefits of the scheme. I will turn to that balance below.

The effect of the proposal on pedestrian movement

18. The justification for Policy 28 of the City Plan explains that the loss of highway land will not generally be acceptable as reducing space on the highway for pedestrians and vehicles impedes movement and traffic flow, worsening congestion and discouraging active transport modes including walking.
19. As set out above, Piccadilly Circus is a very busy area. At the time of my visit, I observed that the area was used by people crossing the space and that generally, because of its location at the back of the railings, pedestrian routes ran in an east/west direction either side of the appeal site.
20. The introduction of the kiosk at this point would result in a loss of highway land, contrary to Policy 28. In addition, it could also give rise to people waiting to be served outside it, which would result in a further reduction in the amount of space available to pedestrians. Moreover, the installation of a kiosk and people waiting at this point could reduce the space available immediately adjacent to the road. The proposal would therefore hinder pedestrian movements and, whilst there is no specific evidence before me to demonstrate that the proposal would be a danger to safety, the pedestrian environment would not be improved, and I am unconvinced that the loss of highway land is justified.
21. Accordingly, the proposal would be contrary to Policy 25 of the City Plan which requires that development prioritises and improves the pedestrian environment, Policy 28 which seeks to resist the loss of highway land particularly footways, and Policy 43 which amongst other things seeks to minimise obstruction to pedestrian movement and street cleansing arrangements.

Other Considerations

22. I have taken into consideration the third parties' objections to the proposal and the appellant's view of those objections. Competition between similar businesses is not a planning matter and I have determined the appeal on the basis of the main issues as set out.
23. My attention has been drawn to the change of use of a nearby building to a mosque. I do not have the details of the case before me, but the issues raised by such a change of use, which related to the interior of the building, are likely to have been different to those raised in this appeal. Accordingly, it has no bearing on my decision. I noted that tables and chairs are positioned outside a restaurant in Leicester Square. Again, I do not have the full details of the case

before me but it appears that the seating is located adjacent to a wide pedestrianised area. Customers are unlikely to queue or wait beyond the area of seating, and as such any impact on pedestrian flow would be limited. Accordingly, this case does not justify the proposal which I have dealt with on the basis of its own site-specific circumstances.

24. Notwithstanding this, I acknowledge that the proposal would provide an economic benefit in terms of revenue generated, employment opportunities for staff and a reasonably priced food/drink facility for members of the public. These are benefits of the scheme which carry moderate weight in its favour.

Heritage and Planning Balance

25. The Framework states that great weight should be given to the conservation of heritage assets. In this case, the harm the proposal would cause to the conservation area carries great weight. The harm to the listed buildings carries additional great weight. In addition, there would be some, albeit limited, harm to pedestrian flow from the loss of highway land.
26. On that basis the benefits of the scheme, which cumulatively carry moderate weight do not therefore outweigh the harm that would be caused.

Conclusion

27. Planning law requires development to be determined in accordance with the development plan unless material circumstances indicate otherwise.
28. As set out above the proposal would be contrary to the development plan when considered as a whole. There are no other considerations which indicate that planning permission should be granted contrary to the development plan.
29. Accordingly, taking all other matters raised into account, the appeal is dismissed.

S Ashworth

INSPECTOR