

Committee	PLANNING COMMITTEE C	
Report Title	Pavement in front of 317-319 Evelyn Street, SE8 5RA	
Ward	Evelyn	
Contributors	Alfie Williams	
Class	PART 1	11 September 2018

Reg. Nos. DC/18/105689 and DC/18/105720 (planning permission & advertisement consent)

Application dated 2/2/2018

Applicant Strawberry Energy London LTD

Proposal Retrospective applications for planning permission and advertisement consent for a free-standing solar-powered Smart Bench with advertisement panels on the pavement in front of 317-319 Evelyn Street SE8.

Background Papers

- (1) This is Background Papers List
- (2) Case File DE/155/A/TP
- (3) Local Development Framework Documents
- (4) The London Plan

Designation Area of Archaeological Priority
PTAL 3
Flood Risk Zone 2/3

1.0 Summary

This report sets out officer's recommendation in regard to the above proposal. The report has been brought before members for a decision as:

- Permission is recommended to be approved and there is 1 or more objection from a recognised residents' association or community/amenity group within their area.

2.0 Site Description

2.1 The application site is located on the north-eastern side of Evelyn Street. The application relates to a smart bench installed without planning permission on the pavement outside 317-319 Evelyn Street. The surrounding area is characterised by commercial units at ground floor level with residential on the floors above.

2.2 The bench is located 5m from a bus stop within a large area of public space containing two mature trees. The trees have circular benches around their base providing public seating areas. The public space is set back from the road and is situated between a parade of shops and Evelyn Street. Evelyn Street (A200) forms part of the Transport for London Road Network (TLRN) and serves a number of bus routes.

2.3 The site is not located within a conservation area and neither is it within the vicinity of a listed building.

3.0 Background

3.1 This application forms part of a wider project involving the installation of ten smart benches at various site in Lewisham as part of a partnership between Lewisham Council and Strawberry Energy. The smart benches are powered by a solar panel and are equipped with sensors providing environmental data. The benches also provide portable device charging facilities and free Wi-Fi connection for the public.

3.2 Ten smart benches were installed in two phases in January and October 2017 following consultation with several Council departments including Highways, Crime Reduction and Regeneration.

3.3 Further consideration of the relevant legislation determined that the benches did not benefit from Permitted Development, as was initially concluded, and instead full planning permission and advertisement consent is required. The installation of street furniture in such locations, if carried out by the Council, does not - in most instances - require planning permission.

3.4 Following this advice, retrospective applications were submitted for planning permission and advertisement consent for all ten benches located in Lewisham. To date, seven of the ten smart benches have been granted both planning permission and advertisement consent under delegated authority.

4.0 Current Applications

4.1 Retrospective application for planning permission for a freestanding smart bench with advertisement panels. The smart bench is powered by a solar panel located within a steel construction attached to the bench. The bench was installed in October 2017 and is located on the pavement outside 317-319 Evelyn Street. The bench is located 5.5m from the road with a clearance of approximately 3.3m to the nearest building.

4.2 The smart bench is 2.48m long with a width of 0.84m and has timber seating with steel handrails. The bench has a large steel construction that wraps around the end of the bench. The steel construction has a maximum height of 2.87m and provides two advertisement panels.

4.3 An application for advertisement consent has also been submitted requesting permission for four advertisement panels located on the bench. Two triangular advertisement panels are located on the side and front measuring a maximum of 2.37m and 2.35m in height respectively. In addition, the smart bench provides two smaller advertisement spaces located on a panel on the rear of the bench. The advertisements measure 0.44m² and 0.8m².

5.0 Consultation

5.1 This section outlines the consultation carried out by the applicant prior to submission and the Council following the submission of the application and summarises the responses received. The Council's consultation exceeded the minimum statutory requirements and those required by the Council's adopted Statement of Community Involvement.

- 5.2 Following the submission of the applications, site notices were displayed and letters were sent to residents and business in the surrounding area and the relevant ward Councillors. Deptford Action were consulted in addition to the Council's Highways Departments and TfL. A second period of consultation was undertaken, as some of the documents were not published on the website for public viewing.
- 5.3 Three objections to the smart bench were received and are summarised below.
- 5.4 Deptford Folk stated that they oppose all of the retrospective applications for smart benches in Lewisham. The objection raises concerns with the nature of the advertisements given that the benches have been used for a car manufacturer, which conflicts with a GLA/TfL initiative to improve cycling and walking in the area, an initiative that includes £2.9m of funding and London's first Cycle Quietway. Deptford Folk also stated that advertisements for a car manufacturer are inappropriate within an area with poor air quality and raises concerns that the bench could be used for other inappropriate advertisement campaigns such as fast-food. Deptford Folk also state that the bench adds to clutter within 'the Evelyn Triangle' and creates an obstruction.
- 5.5 The objection makes several references to a document titled Lewisham Streetscape Guidance (2011) which states that street furniture must not be used for commercial advertising. Officers note that this is a highways document, not a 'Planning' development plan document, and it was published in 2011 and as such in any case pre-dates the current Local Plan. Officers therefore afford the document very limited material weight in regard to this application.
- 5.6 The Chair of Lewisham Living Streets also objected to this application and all of the smart bench applications that have yet to be determined. The points made in the objection are summarised as follows:
- Against existing LBL policy guidance with respect to advertising
 - Without proven benefit, no data has been provided to show the efficacy of solar power collection that provides services to the public.
 - Lower value compared to ordinary benches since they give inadequate support a particular need for the many infirm
 - Exclusionary - since 'smart benches' suggest 'reservation' to some extent for the select use of communications users
 - Inherently reduces/obstructs footway space (to varying degrees)
 - Uncoordinated with other street furniture (against policy guidance)
 - Obtrusive and deleterious intrusion into the public realm in scale, overall appearance, dominating elevations and in particular crown levels of the units
 - Effective privatisation of the public realm,
 - Liable to cause a reduction in the TfL Healthy Streets score

- Liable, once established to fall outside the remit of Planning forms the 'thin end of the wedge' as it opens the door to further additions
- Intimated to deliver a meaningful charitable benefit

5.7 The objection again refers to the Lewisham Streetscape Guidance (2011), which, as detailed above, carries very limited material weight in assessing the application. The efficacy of the smart bench is documented in the information provided in support of the application, most extensively in the Project Overview (January 2018) document. It should be noted that the performance of the bench is not a material planning consideration and neither is any proclamation of a perceived charitable benefit, irrespective of whether the claim is true or not.

5.8 The points relating to the appearance and scale of the smart bench and impact on the public realm are material considerations and are addressed with regard to the relevant policies in the Planning Considerations section of the report.

5.9 One further objection was received from a local resident raising concerns with the type of advertising given the poor air quality in the area and the incongruous design and impact on the public realm. The objection also raised concerns regarding potential incidents of anti-social behaviour and crime arising at the bench. The resident also noted that the applicant had not consulted with local residents in contrast to a scheme initiated by Deptford Folk.

5.10 The local Design Out Crime Officer was consulted for comment on the bench. The Design Out Crime Officer raised concerns regarding the vulnerability to theft of electronic devices. To reduce the risk of theft it was recommended that crime prevention advice be displayed on the bench either visually or aurally. It was also recommended that the smart bench be located further away from the road in order to reduce the risk from moped theft.

6.0 Policy Context

Introduction

6.1 Section 70(2) of the Town and Country Planning Act 1990 (as amended) sets out that in considering and determining applications for planning permission the local planning authority must have regard to:-

- (a) the provisions of the development plan, so far as material to the application,
- (b) any local finance considerations, so far as material to the application, and
- (c) any other material considerations.

6.2 Section 38(6) of the Planning and Compulsory Purchase Act (2004) makes it clear that 'if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise'. The development plan for Lewisham comprises the Core Strategy, the Development Management Local Plan, the Site Allocations Local Plan and the Lewisham Town Centre Local Plan, and the London Plan. The NPPF does not change the legal status of the development plan.

National Planning Policy Framework (NPPF) 2018

- 6.3 The revised NPPF, originally published in 2012, was published on 24th July 2018 and is a material consideration in the determination of planning and related applications.
- 6.4 It contains at paragraph 11, a 'presumption in favour of sustainable development'. Annex 1 of the NPPF provides guidance on its implementation. In summary, this states in paragraph 213, that policies in the development plan should not be considered out of date just because they were adopted prior to the publication of the NPPF and in regard to existing local policies, that '...due weight should be given to them, according to their degree of consistency with this Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given)'.
- 6.5 Officers have reviewed the Core Strategy and Development Management Local Plan for consistency with the NPPF and consider there is no issue of significant conflict. As such, full weight can be given to these policies in the decision making process in accordance with paragraphs 211, and 215 of the NPPF.

National Planning Practice Guidance 'NPPG' (2014 onwards)

- 6.6 On 6th March 2014, DCLG launched the National Planning Practice Guidance (NPPG) resource. This replaced a number of planning practice guidance documents, and is subject to continuous periodical updates in difference subject areas

London Plan (March 2016)

- 6.7 The London Plan was updated on 14 March 2016 to incorporate the Housing Standards and Parking Standards Minor Alterations to the London Plan (2015). The new, draft London Plan was published by the Mayor of London for public consultation on 29 November 2017 (until 2 March 2018). However, given the very early stage in this process, this document has very limited weight as a material consideration when determining planning applications, does not warrant a departure from the existing policies of the development plan in this instance and is therefore not referred to further in this report. The policies in the current adopted London Plan (2016) relevant to this application therefore are:

Policy 7.4 Local character

Policy 7.5 Public realm

Core Strategy

- 6.8 The Core Strategy was adopted by the Council at its meeting on 29 June 2011. The Core Strategy, together with the Site Allocations, the Lewisham Town Centre Local Plan, the Development Management Local Plan and the London Plan is the borough's statutory development plan. The following lists the relevant strategic objectives, spatial policies and cross cutting policies from the Lewisham Core Strategy as they relate to this application:

Spatial Policy 5 Areas of Stability and Managed Change

Core Strategy Policy 14 Sustainable movement and transport

Core Strategy Policy 15 High quality design for Lewisham

Development Management Local Plan

6.9 The Development Management Local Plan was adopted by the Council at its meeting on 26 November 2014. The Development Management Local Plan, together with the Site Allocations, the Lewisham Town Centre Local Plan, the Core Strategy and the London Plan is the borough's statutory development plan. The following lists the relevant strategic objectives, spatial policies and cross cutting policies from the Development Management Local Plan as they relate to this application:

6.10 The following policies are considered to be relevant to this application:

DM Policy 1 Presumption in favour of sustainable development

DM Policy 19 Shopfronts, signs and hoardings

DM Policy 30 Urban design and local character

DM Policy 35 Public realm

7.0 Planning Considerations

7.1 The main issues to be considered in respect of the applications are (including which considerations are relevant to which type of application):

Relevant to Planning Application & Advertisement Consent

- a) Design & Visual Amenity
- b) Residential Amenity
- c) Highways and Transport Impacts

Relevant to Planning Application only

- d) Crime/Anti-Social Behaviour

Scope of considerations for Advertisement Consent

7.2 The Council is required to exercise its powers under the Advertisement regulations "*in the interests of amenity and public safety*". Amenity in this context comprises "*the general characteristics of the locality, including the presence of any feature of historic, architectural, cultural or similar interest*". In regard to public safety, the considerations apply to "*the safety of persons using any highway, railway, waterway, dock, harbour or aerodrome*", whether the display of the advertisement in question is "*likely to obscure, or hinder the ready interpretation of, any traffic sign, railway signal or aid to navigation by water or air*" and "*hinder the operation of any device used for the purpose of security or surveillance or for measuring the speed of any vehicle*". The consideration of amenity may also extend to the impact of signage upon residential amenity.

Design

7.3 DM Policy 35 states that the Council will require street furniture and signage to be well designed and generously sized using high quality materials, harmonise with the street scene, be sited to minimise visual clutter, provide legible signage and conserve and enhance any historic fabric, features and assets.

- 7.4 The smart bench is constructed from high quality materials that are typical of street furniture of this nature. The scale and height of the smart bench is consistent with comparable street furniture such as phone boxes and bus stops. It is also noted that the height of 2.87m is necessary to provide the solar panel that powers the Wi-Fi and portable device charging facilities.
- 7.5 The smart bench has a neutral colour scheme that is not considered detrimental to the streetscene. The two handrails provide assistance for pedestrians using the bench, including aiding use for people with disabilities and the elderly. The smart bench is located approximately 5m from the bus stop and is therefore not considered to materially contribute to visual clutter in the public realm.
- 7.6 The advertisement panels are considered to be of an appropriate scale for the bench, not being overly dominant and are consistent with the size of advertisements on comparable street furniture. Furthermore the adverts are not projecting from the face of the bench or illuminated ensuring that they are not an obtrusive feature within the public realm
- 7.7 Officers consider the bench to be an appropriately scaled, well designed addition to the public realm that does not add to the visual clutter on the street in accordance with DM Policies 30 and 35.

Residential Amenity

- 7.8 Core Strategy Policy 15 states that development should be designed in a way that is sensitive to the local context. It must therefore be demonstrated that proposals are neighbourly and that significant harm will not arise with respect to overbearing impact, loss of outlook, overshadowing, loss of light or general disturbance.
- 7.9 No in principle objection is considered to be able to be raised to the formation of a small area of public seating in this location, given the function of the space and the presence of existing public seating.
- 7.10 The proposed advertisement panels are not considered to have a significant impact on residential amenity given that they are non-illuminated and located an appropriate distance from nearby residential windows located at first and second floor levels.

Highways and Traffic Issues

- 7.11 DM Policy 35 states that the Council will require street furniture to allow level and safe passage for all including people with disabilities including the careful design of shared surfaces with cyclists
- 7.12 Officers are satisfied that the advertisement panels on the bench would not cause a distraction to oncoming vehicles given that the panels are an appropriate size, are not illuminated and the bench is located 5.5m from the road. The smart bench allows distances of at least 3.3m either side, which is considered sufficient to prevent an obstruction to the footway. Officers also note that neither TFL nor the Council's Highways Department formally objected to the bench.

Crime/Anti-social behaviour

- 7.13 Officers are aware of the concerns raised regarding the potential for the benches to increase vulnerability to street crime. In particular, the charging of expensive hand held electronic devices is contrary to Police advice regarding the use of such devices in public spaces given that it is necessary that devices are on public display, increasing vulnerability to theft.
- 7.14 The use of mobile and valuable electronic devices within public areas is clearly already at a very high level, which would not be materially increased through the use of the subject bench.
- 7.15 It is noted that the applicant undertook pre-installation consultation with the Council's Crime Reduction Team and were advised that the locations chosen for the smart bench in Lewisham would not present any additional concerns with crime beyond that experience in typical day-to-day situations. Further, the applicant has followed advice by Police following a similar project in the London Borough of Islington to locate the bench at least 1-2 metres from the carriageway to reduce the risk of moped crime. The smart bench also features a warning stating 'Please do not leave your device unattended. You are using this bench on your sole responsibility' which complies with the advice given by the Design Out Crime Officer following consultation on this application
- 7.16 The smart bench is located on a well-lit busy street with a high level of natural surveillance. Officers consider that the measures taken to help reduce users' vulnerability to crime, both concerning the location chosen to site the bench and the warning printed on the bench, are sufficient to reduce theft risk. Officers also note that there have been no reported incidence of crime on the support telephone number printed on the bench, at this site or on any site in Lewisham.

8.0 Local Finance Considerations

- 8.1 Under Section 70(2) of the Town and Country Planning Act 1990 (as amended), a local finance consideration means:
- (a) a grant or other financial assistance that has been, or will or could be, provided to a relevant authority by a Minister of the Crown; or
 - (b) sums that a relevant authority has received, or will or could receive, in payment of Community Infrastructure Levy (CIL).
- 8.2 The weight to be attached to a local finance consideration remains a matter for the decision maker. No CIL is payable in regard to this application and therefore local finance considerations are not considered to exert any significant influence on members consideration of the applications.

9.0 Equalities Considerations

- 9.1 The Equality Act 2010 (the Act) introduced a new public sector equality duty (the equality duty or the duty). It covers the following nine protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 9.2 In summary, the Council must, in the exercise of its function, have due regard to the need to:

- (a) eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;
- (b) advance equality of opportunity between people who share a protected characteristic and those who do not;
- (c) foster good relations between people who share a protected characteristic and persons who do not share it.

9.3 The duty continues to be a “have regard duty”, and the weight to be attached to it is a matter for the decision maker, bearing in mind the issues of relevance and proportionality. It is not an absolute requirement to eliminate unlawful discrimination, advance equality of opportunity or foster good relations.

9.4 The planning issues set out above do not include any factors that relate specifically to any of the equalities categories set out in the Act, and therefore it has been concluded that there is minimal impact on equality.

10.0 Human Rights Implications

10.1 In determining this application the Council is required to have regard to the provisions of the Human Rights Act 1998. Section 6 of the Human Rights Act 1998 prohibits authorities (including the Council as local planning authority) from acting in a way which is incompatible with the European Convention on Human Rights. “Convention” here means the European Convention on Human Rights, certain parts of which were incorporated into English law under the Human Rights Act 1998. Various Convention rights are likely to be relevant including:

- Right to a fair trial
- Respect for your private and family life, home and correspondence
- Freedom of expression
- Freedom of thought, belief and religion
- Freedom of expression
- Freedom of assembly and association

10.2 This report has outlined the consultation that has been undertaken on the planning application and the opportunities for people to make representations to the Council as Local Planning Authority.

10.3 Members need to satisfy themselves that the potential adverse amenity impacts are acceptable and that any potential interference with Article 8 rights will be legitimate and justified. Both public and private interests are to be taken into account in the exercise of the Local Planning Authority’s powers and duties. Any interference with a Convention right must be necessary and proportionate. Members must therefore, carefully consider the balance to be struck between individual rights and the wider public interest.

11.0 Conclusion

11.1 This application has been considered in the light of policies set out in the development plan and other material considerations.

11.2 Officers consider that the smart bench has an acceptable impact on the function of the public realm, upon residential amenity and the appearance of the streetscene. The proposed development is therefore considered to be acceptable.

12.0 RECOMMENDATION

GRANT PLANNING PERMISSION subject to the following conditions:-

Conditions

1. The development shall be retained strictly in accordance with the application plans, drawings and documents hereby approved and as detailed below:

01_Location Plan_1-1250; 02_Site plan_1-200; 03_Elevation Drawings;

Reason: To ensure that the development is retained in accordance with the approved documents, plans and drawings submitted with the application and is acceptable to the local planning authority

GRANT ADVERTISEMENT CONSENT subject to the following conditions:-

Conditions

1. (a) This consent is granted for a fixed period expiring 5 years from the date of consent.

(b) No advertisement is to be displayed without the permission of the owner of the site or any other person with an interest in the site entitled to grant permission.

(c) No advertisement shall be sited or displayed so as to:-

(i) Endanger persons using any highway, railway, waterway, dock, harbour or aerodrome (civil or military).

(ii) Obscure, or hinder the ready interpretation of, any traffic sign, railway signal or aid to navigation by water or air.

(iii) Hinder the operation of any device used for the purpose of security or surveillance or for measuring the speed of any vehicle.

(d) Any advertisement displayed, and any site used for the display of advertisements, shall be maintained in a condition that does not impair the visual amenity of the site.

(e) Any structure or hoarding erected or used principally for the purpose of displaying advertisements shall be maintained in a condition that does not endanger the public.

(f) Where an advertisement is required under these regulations to be removed, the site shall be left in a condition that does not endanger the

public or impair visual amenity.

Reason: In accordance with the Town and Country Planning (Control of Advertisement) (England) Regulations 2007.

2. The advertisements hereby granted consent shall not be displayed otherwise than in complete accordance with the approved plans, unless previously agreed in writing by the local planning authority.

01_Location Plan_1-1250; 02_Site plan_1-200; 03_Elevation Drawings;

Reason: To protect the visual amenities of the area and to comply with the terms of the application and DM Policy 19 Shopfronts signs and hoardings of the Development Management Local Plan (November 2014).

Informatives

- A. **Positive and Proactive Statement:** The Council engages with all applicants in a positive and proactive way through specific pre-application enquiries and the detailed advice available on the Council's website. On this particular application, positive and proactive discussions took place with the applicant prior to the application being submitted through a pre-application discussion. As the proposal was in accordance with these discussions and was in accordance with the Development Plan, no contact was made with the applicant prior to determination.