
Appeal Decision

Site visit made on 3 July 2017

by Richard S Jones BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 08 September 2017

Appeal Ref: APP/P4605/W/17/3174110
Newton Street, Birmingham B4 6UD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 16 of the Town and Country Planning (General Permitted Development) England Order 2015 (as amended).
 - The appeal is made by Mr Nathan Still, Infocus Public Networks Ltd, against the decision of Birmingham City Council.
 - The application Ref 2017/00331/PA, dated 13 January 2017, was refused by notice dated 6 March 2017.
 - The development proposed is the installation of a freestanding payphone kiosk on the pavement.
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Decision

1. The appeal is dismissed.

Preliminary Matters and Main Issues

2. In the interests of clarity, I have taken the description of the development in the heading above from the appeal form.
3. I note that the Council's first reason for refusal refers to the Victoria Law Courts as a grade II listed building. This is at odds with the listing in the Council's Steelhouse Conservation Area Character Appraisal and Supplementary Planning Policies, which states that it is grade I. I have determined the appeal on the basis that the latter is correct.
4. The application and appeal documents make reference to the Town and Country Planning (General Permitted Development) Order 1995. However, by the time of making the application this Order had been superseded by the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). Part 24 has effectively been replaced by Part 16.
5. The proposal is for a payphone kiosk that was refused prior approval under Schedule 2, Part 16 of the 2015 GPDO. The principle of this type of development is already established by the Order and it is only the effects of siting and appearance which are to be considered in this appeal.
6. The main issues are therefore the effects of the siting and appearance of the proposed kiosk on the character and appearance of the area and pedestrian movements.

Reasons

Character and appearance

7. The appeal site is situated in a triangular area of public realm opposite The Crown Pub on Newton Street, within the Steelhouse Conservation Area. The special quality of the area surrounding the appeal site is defined by the quality of the architecture and townscape. Most of the buildings are commercial in nature dating from the mid-nineteenth to the mid-twentieth century and reflect the city's growth as a financial, retail and service centre.
8. The Council's Big City Plan sets out the vision of how the City Centre will be improved and seeks to ensure that major improvements are matched by an outstanding pedestrian environment. One of the "Big Ideas" is the creation of more attractive, distinctive streets and places within the city centre. To deliver the Big City Plan's ambitions, a programme of public realm improvements is being developed, including that set out in the Snow Hill Masterplan, which seeks to deliver radical enhancements to the public environment. Newton Street is identified in the Plan as an 'improved walking route'.
9. There is already a significant amount of street furniture and fixtures in this area of public realm, including modern features such as utility boxes, street signage, traffic lights, and lighting columns, as well as more traditional fixtures such as cast iron street names and bollards and street trees with decorative protection. The Character Appraisal and Supplementary Planning Policies for the Conservation Area highlights that the clutter of street furniture detracts from the character and interest of the Conservation Area and that standard designs are sited without reference to the surrounding buildings or the context of the wider street scene, disrupting the visual unity of the streetscape and obscuring views. Based on my own observations, I agree with these findings.
10. The proposed kiosk would be sited in the position of an existing Morris column which the Council say was due to be removed by the end of March this year as part of its strategy for improving the public realm. The kiosk would be mainly glazed with a black painted steel frame and canopy. It would be larger than a typical payphone kiosk and would have an open side to allow easier disabled access. Whilst the more traditional items of street furniture are also finished in black, they would bear little resemblance or visual relationship to the modern and functional design of the kiosk, which in my view would sit far less comfortably in this area of public realm than the existing Morris column.
11. Although it would be relatively lightweight in its appearance, it would be prominently sited well forward of the building line in an exposed and isolated location within the public realm. If the Morris column were to be removed and subsequently replaced with the proposed kiosk, this would be counterproductive to the Council's aspirations of achieving improvements to the public realm and would re-establish a level of visual and physical clutter that would undermine the quality of the street scene in this location. The proposal would thus neither preserve nor enhance the character or appearance of the Steelhouse Conservation Area.
12. The proposal would also be located to the east of the nearby Victoria Law Courts, Nos 153 to 161 Corporation Street and the County Courts. The Victoria Law Courts is an elaborate and imposing grade I listed building, built in a mix of styles with red brick and terracotta finishing and green tile roof. Nos 153 to

- 161 is identified in the appraisal as a grade II* listed. At four storeys high with additional accommodation in the roof, it is an imposing and attractive building finished in red brick with terracotta detailing. The County Court is a grade II listed building built in the Classical design.
13. From Dalton Street, the views through this area of public realm towards Nos 153 to 161 and the County Court are attractively framed by the Citadel building and The Crown Public House, thereby making a positive contribution towards their setting and significance. On the basis that the existing Morris column is removed, the proposal would reinstate a visual obstruction in this view with an alien and utilitarian structure that is less sensitive to its location and in doing so detract from the quality of the surroundings in which these listed buildings are experienced.
 14. I acknowledge that the effect on the settings of Nos 153 to 161 and the County Court are not referred to in the reasons for refusal, even though harm to the latter is identified by the Council's Conservation Officer. Nevertheless, section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires me to have special regard to the desirability of preserving their setting.
 15. Due to the screening provided by the Citadel building, only the southern corner of the Victoria Law courts can be seen in conjunction with the appeal site and this area of public realm. The proposal would therefore have a limited effect on the setting of this listed building. Nevertheless, where the kiosk would be experienced in conjunction with this listed building, it would detract from its setting due to its modern and functional design.
 16. I therefore conclude that the siting and appearance of the proposed kiosk would be harmful to the character and appearance of the area and the Steelhouse Conservation Area and to the setting of the aforementioned listed buildings. This would be contrary to Policies PG3 and TP12 of the Birmingham Development Plan (BDP), the Steelhouse Conservation Area Character Appraisal and Supplementary Planning Policies and paragraph 132 of the National Planning Policy Framework (the Framework). These state, amongst other things, that great weight will be given to the conservation of the City's heritage assets.
 17. In the context of paragraph 134 of the Framework I would categorise the level of harm to both the Conservation Area and the setting of the listed buildings as less than substantial. In such circumstances the Framework requires the harm to be weighed against any public benefits associated with the development. In this regard, the Framework indicates that communications infrastructure is essential for sustainable economic growth and also plays a vital role in enhancing the provision of local community facilities and services. The appeal proposal would make a positive contribution to these aims through the provision of a wheelchair accessible payphone service and this is a matter of significant weight in its favour. However, Paragraph 132 of the Framework makes clear that great weight should be given to the conservation of designated heritage assets, and to their setting. Having regard to my above findings, the public benefits of the proposal would not outweigh the harm which would arise to the identified heritage assets.
 18. The harm I have found to the character and appearance of the area would also be contrary to BDP Policies GA1.1 and GA1.4 as well as undermining the aspirations of the Council's Big City Plan and Snow Hill Masterplan. These

seek, amongst other matters, to continue to promote the City Centre as the focus for retail, office, residential and leisure activity within the context of the wider aspiration to provide a high quality environment and visitor experience. The proposal would also conflict with BDP Policy TP39 insofar as it seeks to promote the provision of pleasant walking environments.

Pedestrian movements

19. On the basis that the existing Morris Column is removed, the proposal would reinstate the number of physical barriers in the public realm. However, in the meantime, I have no substantive evidence that the advertisement panel has created an undue barrier to pedestrian movements. In my view, given the footprint of the kiosk relative to the extent of the public realm in this location, the proposal would not significantly impede pedestrian or wheelchair movement in its immediate vicinity.
20. I have noted the Council's concern relating to the appellant's reference to the site being chosen in accordance with criteria set out in Transport for London's adopted standards and best practice on footpath accessibility. Whilst I recognise that there will be many similar issues and principles which apply, the standards relate to a different location and are not adopted by Birmingham City Council. I have therefore given limited weight to this assertion made by the appellant.
21. Nevertheless, I have not found that the proposal would materially increase barriers to pedestrian movement and as such would not conflict with BDP Policy TP39, insofar as this policy seeks the provision safe walking environments.

Conclusion

22. Whilst I have not found that the proposal would create an unacceptable barrier to pedestrian movements, I have found that the siting and appearance of the kiosk would be harmful to the character and appearance of the area and Conservation Area and to the setting of a number of listed buildings. For these reasons, and taking all other matters into consideration, I conclude that the appeal should be dismissed.

Richard S Jones

INSPECTOR