
Appeal Decisions

Site visit made on 1 March 2019

by Michael J Muston BA(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th April 2019

Appeal A Ref: APP/P4605/W/18/3202341

Union Street / High Street, Junction of, Birmingham

- 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 Neil Scoresby of British Telecommunications plc, against the decision of Birmingham City Council.
 - The application Ref 2017/10812/PA, dated 19 December 2017, was refused by notice dated 1 March 2018.
 - The development proposed is "*the removal of 2no. KX100 telephone kiosks and the installation of 1no. InLink*".
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Appeal B Ref: APP/P4605/H/18/3201305

Union Street / High Street, Junction of, Birmingham

- 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 Neil Scoresby of British Telecommunications plc, against the decision of Birmingham City Council.
 - The application Ref 2017/10924/PA, dated 19 December 2017, was refused by notice dated 1 March 2018.
 - The development proposed is "*the removal of 2no. KX100 telephone kiosks and the installation of 1no. InLink*".
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Decisions

1. Appeal A is allowed and planning permission is granted for the removal of 2no. KX100 telephone kiosks and the installation of 1no. InLink at Union Street / High Street, Junction of, Birmingham, in accordance with the terms of the application Ref 2017/10812/PA, dated 19 December 2017, subject to the conditions set out in Schedule A to this Decision.
2. Appeal B is allowed and express consent is granted for the display of the advertisements as applied for. The consent is for five years from the date of this decision and is subject to the five standard conditions set out in the Regulations and the additional conditions set out in Schedule B to this Decision.

Main Issues

3. The main issues in relation to Appeal A are:
 - the effect of the proposal on the character and appearance of the area, and
 - whether the proposal would create a barrier to pedestrian movement.

4. The main issues in relation to Appeal B are the impact on:-

- amenity, and
- public safety.

Reasons

Appeal A – Character and appearance

5. The part of Union Street around the appeal site, between its junctions with High Street and Union Passage/Martineau Way, is a pedestrianised shopping street between 11 and 12 metres wide and running between modern buildings. It is not within a conservation area. This part of Union Street already contains a number of sizeable items of street furniture. These are nearly all located on the southern side of the street, but close to its centre. Within this 'zone' are a large internally illuminated digital advertising display, two BT telephone kiosks featuring poster advertising, litter bins, market stalls and A boards. The existing character and appearance of this area is therefore one that includes these significant items of street furniture within this 'zone' just to the south of the centre of the street.
6. The proposed unit would be a "monolith" approximately 2.9 metres high, between 0.8 and 0.9 metre in width, and about 0.3 metre deep. It would be located just to the south of the centre of Union Street, approximately 5.2 metres from its southern edge and about 6 metres from its northern edge. It would therefore be within the 'zone' where the existing street furniture is located. The proposed unit would be taller than these. However, it would not appear out of place in an area where large items of street furniture already exist.
7. Part of the proposal is the removal of the two KX100 telephone kiosks located just a few metres west of the appeal site. The appellant has stated that he would be happy for this element of the proposal to be secured by Grampian condition. The InLink unit would therefore be replacing some of the existing large items of street furniture in this part of Union Street, rather than adding to them. As a result, as long as the removal of the existing kiosks is secured by condition, the proposal would not add 'clutter' to the street scene, but rather be seen as a replacement feature located within an established 'zone' in this part of the street.
8. Policy PG3 of the Birmingham Development Plan 2017 (BDP) seeks development that, amongst other things, reinforces or creates a positive sense of place and local distinctiveness, with design that responds to site conditions and the local area context. Policy GA1.1 of the BDP says, amongst other things, that new development should make a positive contribution to improving the vitality of the City Centre. Policy GA1.4 says that measures to improve accessibility to and within the City Centre will be supported. Policy TP39 says that the provision of safe and pleasant walking environments throughout Birmingham will be promoted by, amongst other things, ensuring that pedestrian routes and areas are free from unnecessary clutter. Saved Policy 3.14D of the Birmingham UDP 2005 (UDP) deals with urban design and says, amongst other things, that the scale and design of new buildings and spaces should generally respect the area surrounding them, and should reinforce and

evolve any local characteristics which are considered to be positive. The proposal complies with all of these policies.

9. The Council has adopted two documents as part of the Big City Plan: a Master Plan (MP) dated 2011 and a City Centre Retail Strategy (RS) dated 2015. The MP designates this part of Union Street as a primary walking route, where improvements to the public realm will be prioritised. The RS stresses the role of public realm improvements in creating a network of pedestrian friendly clutter-free streets. This proposal, which is to replace two existing telephone kiosks with one InLink unit, would not add additional clutter to the street and therefore complies with this guidance. I have not been provided with evidence that these documents have been subjected to appropriate public consultation, which limits the weight I can attach to them. However, this proposal is not in any event contrary to the aims of these documents, which supports my view that the proposal would not harm the character and appearance of the area.
10. Paragraph 110 of the National Planning Policy Framework (the Framework) says that applications for development should create places that are safe, secure and attractive, which minimise the scope for conflicts between pedestrians, cyclists and vehicles, avoid unnecessary street clutter, and respond to local character and design standards. This proposal, in this location, and replacing two existing telephone kiosks, would comply with this advice.
11. I conclude that the payphone kiosk as proposed in Appeal A would not have an adverse effect on the character and appearance of the area, and complies with Policies PG3, GA1.1, GA1.4 and TP39 of the BDP and saved Policy 3.14D of the UDP in this respect, as well as relevant guidance within the MP, RS and the Framework.

Appeal A – Pedestrian movement

12. Union Street, in the area of the appeal site, is a pedestrianised street of good width, with the other obstructions to pedestrian movement being within the 'zone' I identified above, to the south of the centre of the street. The proposed InLink unit would also be just south of the centre of the street. Ample space would still exist to either side to allow pedestrians to move safely up and down the street. I conclude that the proposal would not create a barrier to the movement of pedestrians and complies with Policies PG3, GA1.1, GA1.4 and TP39 of the BDP and saved Policy 3.14D of the UDP in this respect, as well as relevant guidance within the MP and RS. .

Appeal B

13. The display of the 2 internally illuminated digital LED advertisement panels, as applied for, would add to the visual impact of the structure in its setting. The existing advertising display a few metres to the east of the appeal site, is already a prominent feature in the street, predominantly because of its large internally illuminated advertisements. In addition, other internally illuminated signs exist nearby, predominantly in the fascias of shops along the street.
14. The addition of further internally illuminated advertisements, one on each side of the proposed unit, would appear prominent in the street scene. However, in this setting, in a relatively enclosed street, where the width of the street and the presence of market stalls limit visibility along it, the proposed unit would

not appear unduly dominant, even during the hours of darkness, and would not result in harm to amenity. It is also sufficiently far from the existing digital advertising display to avoid an unacceptable cumulative impact. I conclude that the proposal would not have an adverse effect on amenity and complies with Policies PG3, GA1.1, GA1.4 and TP39 of the BDP and saved Policy 3.14D of the UDP in this respect, as well as relevant guidance within the MP and RS.

15. The addition of advertisements to the proposed InLink unit would increase its visibility in the street, but would not result in it becoming a barrier to the movement of pedestrians. The Council accepts in its officer report that there is insufficient justification to refuse advertisement consent on grounds of public safety. I agree and conclude that the proposal would not have an adverse effect on public safety and complies with Policies PG3, GA1.1, GA1.4 and TP39 of the BDP and saved Policy 3.14D of the UDP in this respect, as well as relevant guidance within the MP and RS.

Benefits of the scheme

16. I have identified above that the removal of the two existing KX100 telephone kiosks in close proximity to the appeal site can be secured by condition. This is a benefit of the proposal, which weighs in its favour.
17. The High Court judgement in Westminster City Council v Secretary of State for Housing Communities and Local Government [2019] EWHC 176 (Admin) (05 February 2019), although referring to a kiosk, has some relevance in that the structure in that case was providing both communications and advertising. On the basis of the information supplied in relation to the InLink structure, I conclude that it too would serve a dual purpose in providing both communication services and in hosting advertising intended to fund these functions. Nonetheless, the provision of the communications element, including Wi-Fi and public information, in line with the advice in the Framework, would provide some benefit, which therefore weighs in favour of the structure.

Other Matters

18. Many of the points raised by third parties have been dealt with above. In addition, concerns have been raised in relation to a number of other matters, including the need for further public telephones, that the unit may become a target for flyposting and graffiti, possible links to criminal activity, and the amount of such structures in the city centre. I have considered the points raised; however they do not outweigh my conclusions on the main issues, particularly as the proposed InLink unit would replace two existing telephone kiosks in close proximity.

Conditions

Appeal A

19. As well as the standard time condition, a condition relating to compliance with the approved plans is necessary, in the interests of providing clarity and certainty. A 'Grampian' style condition is also attached requiring removal of the two identified telephone kiosks. This is required in the interests of the character and appearance of the area, and is a matter which requires resolution prior to the commencement of development, since the works it relates to are so fundamental to the development permitted that it would have been otherwise

necessary to refuse the whole permission. The appellant has agreed to the application of this condition.

Appeal B

20. A series of standard conditions are applied as required by regulation 2(1) and Schedule 2 of the Town & Country Planning (Control of Advertisements) (England) Regulations 2007. I have also considered the conditions suggested by the appellant. In the interests of visual amenity, the intensity of the illumination of the sign between dusk and dawn is limited by condition, in line with the guidance set out by the Institute of Lighting Professionals. For the same reason, conditions are applied in respect of details of the display time of advertisements and transitions between them, and there being no moving images. In the interests of public safety, a condition is added to ensure that no advertisements resemble traffic signs.

Conclusions

21. For the reasons given above, I conclude that both appeals should be allowed, and planning permission and advertisement consent granted.

Michael J Muston

INSPECTOR

Schedule A: Conditions in respect of Appeal A

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan-BRM-056-Union St (OS No.34 Kanoo Travel), Existing & Proposed Views Ref BRM-056-EP-V1, Site Plan Drawing No. BRM-056-EP-V1 and InLinkUK Unit Dimensions Drawing No. D0002.
- 3) The InLink unit hereby approved shall not be erected until the 2 existing KX100 telephone boxes located in Union Street with grid references of 52.479692-1.8954894 and 52.479683-1.8954895, as set out under SSP reference BRM-056-EP-V1 on submitted document "*InLinkUK from BT Birmingham Site Schedule 18th December 2017*" are removed in their entirety.

Schedule B: Conditions in respect of Appeal B

- 1) The intensity of the illumination of the advertisement display permitted by this consent shall be no greater than 600 candelas per square metre between dusk and dawn.
- 2) The digital sign shall not display any moving, or apparently moving, images (including animation, flashing, scrolling, three dimensional, intermittent or video elements).
- 3) The minimum display time for each advertisement shall be 10 seconds.
- 4) The interval between advertisements shall take place over a period no greater than one second; the complete screen shall change with no visual effects (including fading, swiping or other animated transition methods) between displays and the display will include a mechanism to freeze the image in the event of a malfunction.
- 5) No advertisement displayed shall resemble traffic signs, as defined in section 64 of the Road Traffic Regulation Act 1984.