

Appeal Decisions

Site visit made on 17 May 2019

by David Fitzsimon MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9th July 2019

Appeal A Ref: APP/Z4310/W/18/3204966

Parker Street (outside No. 1 Vision Express and opposite No. 17 Superdrug), Liverpool L1 1DJ

- 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 British Telecommunications Plc against the decision of Liverpool City Council.
 - The application Ref 18F/0622, dated 23 February 2018, was refused by notice dated 20 April 2018.
 - The development proposed is the 'removal of (2) existing BT payphones and the erection of (1) freestanding InLink providing free ultrafast WiFi and other community services and with excess space returned to the community'.
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Appeal B Ref: APP/Z4310/Z/18/3204954

Parker Street (outside No. 1 Vision Express and opposite No. 17 Superdrug), Liverpool L1 1DJ

- 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 British Telecommunications Plc against the decision of Liverpool City Council.
 - The application Ref 18A/0623, dated 23 February 2018, was refused by notice dated 20 April 2018.
 - The advertisements proposed are 'two digital LED display screens, one on each side of the InLink'.
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Appeal C Ref: APP/Z4310/Z/18/3204981

Houghton Street (outside Tesco Clayton Square), Liverpool L1 1DP

- 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 British Telecommunications Plc against the decision of Liverpool City Council.
 - The application Ref 18A/0616, dated 26 February 2018, was refused by notice dated 23 April 2018.
 - The advertisements proposed are 'two digital LED display screens, one on each side of the InLink'.
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Appeal D Ref: APP/Z4310/W/18/3204983

Houghton Street (outside Tesco Clayton Square), Liverpool L1 1DP

- 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 British Telecommunications Plc against the decision of Liverpool City Council.
 - The application Ref 18F/0615, dated 26 February 2018, was refused by notice dated 23 April 2018.
 - The development proposed is the 'removal of (2) existing BT payphones and the erection of (1) freestanding InLink providing free ultrafast WiFi and other community services and with excess space returned to the community'.
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Appeal E Ref: APP/Z4310/W/18/3205042

Roe Street (outside entrance to St Johns Centre and next to Roe Street Bus Stop), Liverpool L1 1HL

- 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 British Telecommunications Plc against the decision of Liverpool City Council.
 - The application Ref 18F/0624, dated 23 February 2018, was refused by notice dated 20 April 2018.
 - The development proposed is the 'removal of (2) existing BT payphones and the erection of (1) freestanding InLink providing free ultrafast WiFi and other community services and with excess space returned to the community'.
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Appeal F Ref: APP/Z4310/Z/18/3205043

Roe Street (outside entrance to St Johns Centre and next to Roe Street Bus Stop), Liverpool L1 1HL

- 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 British Telecommunications Plc against the decision of Liverpool City Council.
 - The application Ref 18A/0625, dated 23 February 2018, was refused by notice dated 20 April 2018.
 - The development proposed is 'two digital LED display screens, one on each side of the InLink'.
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Appeal G Ref: APP/Z4310/W/18/3205164

Williamson Square (outside Nos. 21-23 Richmond Street), Liverpool L1 1EQ

- 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 British Telecommunications Plc against the decision of Liverpool City Council.
 - The application Ref 18F/0620, dated 26 February 2018, was refused by notice dated 23 April 2018.
 - The development proposed is the 'removal of (2) existing BT payphones and the erection of (1) freestanding InLink providing free ultrafast WiFi and other community services and with excess space returned to the community'.
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Appeal H Ref: APP/Z4310/Z/18/3205165

Williamson Square (outside Nos. 21-23 Richmond Street), Liverpool L1 1EQ

- 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 British Telecommunications Plc against the decision of
- Liverpool City Council.
- The application Ref 18A/0621, dated 26 February 2018, was refused by notice dated 23 April 2018.
- The advertisements proposed are 'two digital LED display screens, one on each side of the InLink'.

Appeal I Ref: APP/Z4310/Z/18/3205385

Great Charlotte Street (outside Nos. 18-20 Clayton Square), Liverpool L1 1HU

- 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 British Telecommunications Plc against the decision of
- Liverpool City Council.
- The application Ref 18A/0611, dated 26 February 2018, was refused by notice dated 26 April 2018.
- The advertisements proposed are 'two digital LED display screens, one on each side of the InLink'.

Appeal J Ref: APP/Z4310/W/18/3205386

Great Charlotte Street (outside Nos. 18-20 Clayton Square), Liverpool L1 1HU

- 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 British Telecommunications Plc against the decision of
- Liverpool City Council.
- The application Ref 18F/0610, dated 26 February 2018, was refused by notice dated 26 April 2018.
- The development proposed is the 'removal of (2) existing BT payphones and the erection of (1) freestanding InLink providing free ultrafast WiFi and other community services and with excess space returned to the community'.

Appeal K Ref: APP/Z4310/Z/18/3205396

Whitechapel (outside Nos. 1-5 Forever 21) near Junction with Church Street, Liverpool L1 1DA

- 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 British Telecommunications Plc against the decision of
 - Liverpool City Council.
 - The application Ref 18A/0576, dated 26 February 2018, was refused by notice dated 26 April 2018.
 - The advertisements proposed are 'two digital LED display screens, one on each side of the InLink'.
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Appeal L Ref: APP/Z4310/W/18/3205397

Whitechapel (outside Nos. 1-5 Forever 21) near Junction with Church Street, Liverpool L1 1DA

- 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 British Telecommunications Plc against the decision of Liverpool City Council.
 - The application Ref 18F/0575, dated 26 February 2018, was refused by notice dated 26 April 2018.
 - The development proposed is the 'removal of (2) existing BT payphones and the erection of (1) freestanding InLink providing free ultrafast WiFi and other community services and with excess space returned to the community'.
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Decisions

Appeal A Ref: APP/Z4310/W/18/3204966

1. The appeal is dismissed.

Appeal B Ref: APP/Z4310/Z/18/3204954

2. The appeal is dismissed.

Appeal C Ref: APP/Z4310/Z/18/3204981

3. The appeal is allowed and express consent is granted for the display of two digital LED display screens, one on each side of the InLink 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 following conditions:
 - 6) The levels of the illuminance shall not exceed 600cd/m² during daylight hours or exceed 300cd/m² during twilight and night hours; as defined by official lighting up times.
 - 7) The screen displays shall only show two dimensional static images, shall contain no moving images, animation, video or full motion images and no messaging should spread across more than one screen image.
 - 8) The advertisement displays shall not change more frequently than every 10 seconds and the rate of change should be instantaneous.
 - 9) The illumination of the advertisements shall not at any time be intermittent.

Appeal D Ref: APP/Z4310/W/18/3204983

4. The appeal is allowed and planning permission is granted for the removal of (2) existing BT payphones and the erection of (1) freestanding InLink providing free ultrafast WiFi and other community services and with excess space returned to the community on land at Houghton Street (outside Tesco Clayton Square), Liverpool L1 1DP in accordance with the terms of the application, Ref 18F/0615, dated 26 February 2018, subject to the following conditions:

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the approved plans refs. LVP-040 (Site Plan) and LVP-040 (Site Elevation) and operated in accordance with the details contained within the Planning, Design and Access Statement (Ref. LVP-040).
- 3) The development hereby permitted shall be removed from the land on which it is to be erected as soon as it is no longer required for the intended purpose and the land shall be made good in accordance with details first submitted to and approved in writing by the Local Planning Authority.

Appeal E Ref: APP/Z4310/W/18/3205042

5. The appeal is dismissed.

Appeal F Ref. APP/Z4310/Z/18/3205043

6. The appeal is dismissed.

Appeal G Ref. APP/Z4310/W/18/3205164

7. The appeal is dismissed.

Appeal H Ref. APP/Z4310/Z/18/3205165

8. The appeal is dismissed.

Appeal I Ref. APP/Z4310/Z/18/3205385

9. The appeal is dismissed.

Appeal J Ref. APP/Z4310/W/18/3205386

10. The appeal is dismissed.

Appeal K Ref. APP/Z4310/Z/18/3205396

11. The appeal is dismissed.

Appeal L Ref. APP/Z4310/W/18/3205397

12. The appeal is dismissed.

Procedural Matters

13. In each case, the Council's Decision Notice for the freestanding Inlink proposal refers to the Town and Country Planning (General Permitted Development)

(England) Order 2015 (as amended). However, the Appellant Company applied for planning permission and advertisement consent on a combined application form. In light of the recent judgement in Westminster CC v SSHCLG & New World Payphones Ltd [2019] EWHC 176 (Admin), I consider that an application for planning permission rather than an application for 'prior approval' is the correct approach. I have therefore determined each relevant appeal as one against the refusal of planning permission.

14. Some of the appeal sites are either located within or close to Conservation Areas and/or close to statutorily listed buildings. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of a Conservation Area. Section 66 of the same Act requires special regard to be paid to the desirability of preserving listed buildings or their setting or any features of special architectural or historic interest that they possess. The Framework directs that when considering the impact of a proposal on the significance of designated heritage assets, great weight should be given to the asset's conservation and that significance can be harmed or lost through development within their setting.

Main Issues

15. The main issues are as follows:

- The effect of the proposal on public safety, with particular regard to pedestrian and highway safety (all Appeals);
- The effect of the proposal on amenity (all Appeals); and
- The effect of the proposal on heritage assets (Appeals A, B, E, F, G, H, I, J, K and L).

Reasons

16. Each application for planning permission relates to a freestanding InLink installation which measures 290cm tall, 89cm wide and 28cm deep. The associated application for advertisement consent relates to digital LED display screens measuring 121cm tall and 69cm wide which would sit on either side of the unit.
17. Each appeal site is located outside of the Liverpool Maritime Mercantile World Heritage Site (WHS). The WHS covers most of the city centre and its central docks, embodying the civic, mercantile and maritime history of Liverpool. However, each site sits within the Buffer Zone which provides a visual setting for the WHS and includes some historically significant features and major landmarks.

Appeals A & B

18. The proposed InLink installation would be sited within Parker Street. It is a wide pedestrianised street within the main retail core of the city centre that has been the subject of recent public realm improvements including new paving and landscaping. The InLink would be sited between and in line with an existing tall rectangular digital advertisement, a line of trees, a large bin and a bench. As a result, the structure itself would not impede the established pedestrian flow line or cause an undue obstruction for pedestrians.

19. The Council has suggested that the digital advertisements on either side of the proposed installation would lead to driver distraction. However, the proposal would sit within a pedestrian zone where access for vehicles is restricted during the day. Whilst I have no details relating to the frequency and types of vehicles using Parker Street between 6pm and 10am, the Inlink would be sited in line with other physical obstructions. I have seen no evidence to suggest these present any particular safety issues. Similarly, I have seen no evidence which indicates that the nearby digital advertisement has led to driver distraction.
20. As explained, the proposed installation would sit next to a range of existing street furniture. In particular it would sit very close to an existing tall, rectangular freestanding digital advertisement. Given the proximity of this existing illuminated advertisement panel, I consider that the proposed installation would result in undue clutter. The visual effect of this would be exacerbated by the illuminated digital advertisements that would be displayed on each side of the InLink. The unit would be further away from the Grade II Listed Buildings of Nos. 2 and 4 Parker Street than the existing freestanding digital advertisement and it would have no greater effect on the setting of the WHS. In addition, it would be some distance from the Grade II Listed Lime Street Station and The Crown Hotel so as not to adversely affect their setting. Nevertheless, the additional clutter which would be caused by this large addition would be detrimental to the overall character and appearance of the street scene.
21. I therefore find that although the proposed InLink and associated LED screens would not have a harmful effect on public safety or the setting of the WHS and other heritage assets, they would harm the visual amenities of the immediate locality.

Appeal C & D

22. The proposed InLink would be installed within Houghton Street. This is a very wide pedestrianised area which is close to Clayton Square and the St Johns Shopping Centre. The buildings and public space within the immediate vicinity of the site are largely of limited architectural quality and I saw no similar installations, free standing advertisements or large pieces of street furniture close by. As a result, the proposed installation would not result in clutter and it would not appear incongruous given the context I have described.
23. Although not cited within the Refusal Notice, the Council argues that the proposed InLink and associated digital LED display screens would affect views of The Beacon, which is a Local Landmark Building. The WHS Supplementary Planning Document (SPD) explains that such buildings form a fundamental part of the WHS's Outstanding Universal Value and the wider city's visual structure. It goes on to say that they make a positive contribution to the city's distinctiveness, whilst providing visual reference points across the cityscape and forming major components of key views to, from and within the WHS. I agree with the sentiments of the SPD that views to and from these buildings form part of their setting. However, given the very limited scale of the InLink compared to the extremely large and imposing scale of this building, I am satisfied that the proposal would not harm its setting, or that of the WHS.

24. The proposed installation would sit between two trees and within a square defined by four bollards. Given this arrangement, the proposed installation would not obstruct the established pedestrian flow lines and therefore it would not cause an undue obstruction for pedestrians. This pedestrian zone has very restricted access for vehicles. Given the arrangement I have described, I am satisfied that the proposal would not cause undue obstruction for vehicles at the times they are allowed to access Houghton Street and no evidence has been advanced to persuade me that it would cause undue distraction for drivers.
25. I therefore find that the proposed InLink and associated digital LED display screens would not cause a public safety risk and nor would they harm amenity.

Appeals E & F

26. The proposed InLink would be sited close to a busy open air bus station. It would sit in line with a number of bollards and lampposts which means that it would not impede the established pedestrian flow line. In addition, it would be set a reasonable distance from the back edge of the pavement, thereby safeguarding adequate pedestrian and bus driver inter-visibility. Given the location of the proposed InLink near to quite a sharp bend in the bus route, where I witnessed the speed of buses to be slow and drivers taking great care, I am satisfied that the proposed installation and associated digital LED display screens would not cause a dangerous distraction to them.
27. However, when viewed in the context of the existing street furniture, which includes a number of bollards, bins, lampposts with information boards attached to them, along with a tall free standing LED advertisement panel immediately to the northeast, the proposed installation would result in undue street clutter and the digital LED display screens would only exacerbate this harmful effect. As a result, the proposals would detract from the visual amenity of the immediate surroundings.
28. The Council asserts that the proposed installation would harm the setting of the statutorily Listed Buildings of St George's Hall (Grade I) and the Royal Court Theatre (Grade II). However, I am satisfied that the proposals would be less prominent in relation to these buildings than the freestanding advertisement I have referred to. On this basis, the installation would have no greater impact on their setting, or for that matter, the setting of the William Brown Street Conservation Area and the WHS beyond.
29. I therefore find that although the proposed installation would not cause a public safety issue and it would not have an adverse impact on the setting of nearby heritage assets, it would harm the amenity of the immediate locality.

Appeals G & H

30. The proposed installation would be sited within Williamson Square, close to No. 23 Richmond Street. Some of the nearby premises have outside seating but this large square has an open and pleasant feel and it is largely free from large items of street furniture. This makes a noticeable and positive contribution to the character and appearance of the Castle Street Conservation Area (CA).

31. At 2.9 metres, the proposed InLink would be quite tall. Given the setting I have described, it would appear as a somewhat isolated fixture. The positioning and size of the installation would result in it appearing as an overly prominent feature and the effect would be exaggerated by the digital LED display screens which would be fitted to either side.
32. The proposed installation would be sited on the opposite side of Williamson Square and some distance from the Grade II* Listed Playhouse Theatre. As a result, I am satisfied that it would not adversely affect the setting of this Listed Building. However, it would appear as an over-prominent feature within the western side of the Square and it would harm the overall character and appearance of the CA as a result.
33. The InLink would be located within a pedestrianised zone, where vehicular access is restricted. In the absence of any compelling evidence to persuade me otherwise, I am satisfied that it would not lead to a distraction for drivers during the limited times they are able to access this area. Nevertheless, the proposed installation would sit a few metres from the façade of the nearest building. Whilst I am mindful that the outside seating area of a nearby food establishment sits reasonably close to the position of the proposed installation, this seating appears to be of a temporary nature and in all likelihood, will be removed at the end of the trading day. At times when the seating is not present, the proposed installation would be very isolated and it would result in a potential obstruction and hazard for pedestrians, particularly those with visual impairments.
34. I therefore find that although the proposed installation and associated digital LED display screens would not harm the setting of the Grade II* Playhouse Theatre, it would fail to preserve the overall character and appearance of the CA within which it sits, thereby harming amenity, and it would also pose an undue risk to public safety.

Appeals I & J

35. The proposed installation would sit on the outside edge of the pavement of Great Charlotte Street. It would effectively be tucked behind a pedestrian barrier which wraps around the corner of the pavement. As a result, it would not affect the established pedestrian flow and nor would it amount to an obstruction.
36. As the proposed InLink would be enclosed by a barrier, pedestrians would be prevented from stepping out into the road from directly behind it. Whilst the proposed installation would be tall and it would have digital advertisements either side, no evidence has been advanced to persuade me that it would be a greater distraction to motorists than other illuminated advertisements located in close proximity to other highways within the city.
37. The proposed installation would be sited some distance from the former Lewis's Department Store and therefore I am satisfied that it would not harm the setting of this Grade II Listed Building. Nevertheless, the InLink would be a tall rectangular structure which would be sited in a somewhat isolated and exposed position on the outer edge of the pavement. As a result, it would appear overly

prominent within the immediate street scene and the digital LED display screens would only exacerbate this overly dominant and harmful visual effect.

38. I therefore find that although the proposed InLink and digital LED display screens would not pose an undue risk to public safety or the setting of a heritage asset, they would cause detriment to the character and appearance of the immediate street scene, thereby causing harm to amenity.

Appeals K & L

39. The proposed installation would be sited on Whitechapel which sits within the heart of the city centre and within the Castle Street Conservation Area (CA). Whitechapel is a wide street which is fully pedestrianised. Although some concession stalls are present, the street has a largely open character which contributes positively to the character and appearance of the CA.
40. In the absence of any compelling evidence to the contrary, I am satisfied that the InLink and associated digital LED display screens would not result in driver distraction because the installation would be sited within a pedestrian zone with very restricted vehicular access. Nevertheless, the InLink would be a large structure and it would sit in a very isolated position within this pedestrianised zone. As a result, a significant obstruction would be introduced which would disrupt the established pedestrian flow. This would pose a particular hazard to pedestrians with visual impairments.
41. I am satisfied that the proposed installation would be a reasonable distance from the Grade II Listed Buildings of 81-89 Lord Street, 45 Whitechapel and 19-23 Sir Thomas Street, so as not to adversely affect their setting. However, the isolated position of the InLink would result in an overly prominent feature which would harm the largely open character of this particular part of the street scene. The digital LED display screens fitted to either side of the unit would only exaggerate this effect, therefore the proposals would fail to preserve the character and appearance of the CA and they would harm amenity.
42. I therefore find that although the InLink and digital LED display screens would not harm the setting of any statutorily Listed Buildings, they would harm the character and appearance of the street scene and that of the CA and they would pose a risk to public safety.

Other considerations (all cases)

43. I am mindful that the proposed installations offer a number of benefits. These include free ultrafast Wi-Fi with speeds up to 1 Gb per second within 100m of each InLink along with touchscreen tablets to access Council services, BT's phone book, maps and directions. I also appreciate that the InLink is of an accessible design including hearing induction loops, braille embossed and TalkBack functionality.
44. I also understand that all InLinks are powered by 100% renewable energy, each would include 438 hours of council content on screen per year to promote local initiatives, news, and events and over 1,000 hours per year of hyper-local content allowing each InLink to act as a community notice board. In addition, I

acknowledge that each InLink provides secure power-only USB ports for rapid device charging, free phone calls to UK mobile, local or national numbers, including the option to plug in personal headphones for more privacy, a 999 call button with location sharing two-press approach to limit accidental activation and the opportunity to integrate additional environmental sensors.

45. In reaching my decision, I am mindful of the Appellant Company's assertion that each installation would facilitate and fund the removal of two existing BT payphones and I appreciate that some of these are poorly maintained and can be an unwelcome focal point for anti-social behaviour. However, no mechanism has been advanced to ensure that the existing BT payphones are removed. As a result, I can attach only limited weight to this factor in the overall planning balance.
46. Finally, the Appellant Company refers to Appeal Decisions and Local Authority Decisions relating to similar installations and proposals for digital LED advertisements. However, I have considered each proposal before me on its individual merits and against the specific circumstances and context of each case.

Overall Conclusions

47. I conclude that appeal proposals G, H, K and L would harm public safety, contrary to policies GEN6, GEN9, HD19, HD25 and T8 of the adopted Liverpool Unitary Development Plan (in so far as the development plan is a material consideration in the determination of the proposals for advertisement consent). In addition, appeal proposals A, B, E, F, G, H, I, J, K and L would harm the character and appearance of the local area, and therefore amenity, contrary to policies GEN9, HD18, HD25 and HD27 of the UDP (in so far as the UDP is material to the determination of the proposals for advertisement consent), whilst appeal proposals G, H, K and L would also adversely affect the setting of a heritage asset, contrary to policies GEN9, HD14, HD25, HD18 of the UDP (in so far as the UDP is material to the determination of proposals for advertisement consent). Appeal proposals C and D would not cause harm to public safety, amenity or any heritage assets and therefore they do not conflict with any of the development plan policies referred to above, or policy T9 of the UDP which relates to road safety.
48. The arguments advanced by the Appellant Company do not outweigh the identified harms and associated policy conflict relating to the proposals I have found objectionable. On this basis, with the exception of Appeals C and D which I do find to be acceptable, the appeals do not succeed.

Conditions relating to Appeals C and D

49. In addition to the standard conditions set out in the Regulations, the Council has suggested several others relating to the application for Advertisement Consent. I consider these to be reasonable in order to ensure a visually acceptable form of development.
50. Other than the standard conditions which limit the lifespan of the planning permission and direct that the development takes place in accordance with the approved plans, the Council has suggested several conditions in the event that

the appeal relating to the refusal of planning permission succeeds. I agree that conditions are required to ensure removal if the InLink becomes redundant with the land upon which it is sited made good and that it should be operated only in accordance with the approved details. I am satisfied, however, that a management, maintenance and operation strategy is not required above and beyond the details outlined within the submitted Planning, Design and Access Statement.

51. In allowing these two appeals, I shall impose conditions accordingly.

David Fitzsimon

INSPECTOR