



Appeal Decisions

Site visit made on 15 July 2019

by Ben Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30th July 2019

Appeal A Ref: APP/W2465/W/18/3217259

Pavement to the west of 36 Market Street, Leicester LE1 6DE

- 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 Thomas Fisher, on behalf of Euro Payphone Ltd against the decision of Leicester City Council.
 - The application Ref 20181127, dated 18 May 2018, was refused by notice dated 3 October 2018.
 - The development proposed is for the erection of 1no. smart hub with 2no. inset digital advertising screens.
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Appeal B Ref: APP/W2465/W/18/3217261

Pavement to the west of 36 Market Street, Leicester LE1 6DE

- 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 Thomas Fisher, on behalf of Euro Payphone Ltd against the decision of Leicester City Council.
 - The application Ref 20181128, dated 18 May 2018, was refused by notice dated 4 October 2018.
 - The advertisement proposed is for the erection of 1no. smart hub with 2no. inset digital advertising screens.
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Decision

1. Appeal A and Appeal B are dismissed.

Procedural Matters

2. The two appeals relate to the same appeal site and to each other. I have considered each on its individual merits, but as they raise similar issues, I have dealt with the case in a single decision letter.
3. These appeals have been lodged as part of a suite of appeals for similar devices in numerous locations throughout Leicester City Centre. The Council has provided a single statement of case that encompasses all appeals.

Main Issues

4. With regard to appeal A, the main issues are:
 - whether the proposal would preserve and enhance the character and appearance of the Market Street Conservation Area (CA), and
 - the effect of the proposal on pedestrian flow.

5. With regard to appeal B, the main issue is the effect of the proposed advertisement on visual amenity.

Reasons

Background

6. The site, the subject of the appeals, is within a commercial area in a city centre location. The structure would be placed on a section of footway adjacent to the highway. Market Street is a mostly pedestrianised street and access is limited to delivery vehicles only at restricted times in the day. It is an active and vibrant area. The street is relatively narrow with some cafes and restaurants providing on street seating areas. The site is presently an unobstructed section of footway and consequently provides an open aspect. The site therefore makes a positive contribution to the character and appearance of the area.
7. The proposal consists of a 'smart hub' which includes two illuminated advertising screens, data connection point and a range of further public services. It would include several public benefits in relation to both its data connections and services. The social and economic benefits are set out in appendix E of the appellant's Statement of Case.

Character and appearance

8. Policy CS03 of the Leicester City- Local Development Framework Core Strategy 2014 (CS) seeks to promote active frontages and an uncluttered street-scene. It also seeks to create spaces that respond to changing social, technological and economic conditions. Paragraph 110 of the National Planning Policy Framework (The Framework) seeks development that avoids unnecessary street clutter and responds to local character and design standards. Furthermore, Guidance identifies the importance of public spaces and routes that are attractive, accessible and uncluttered¹. The Council is attempting to reduce and rationalise street furniture in the City Centre. However, it has not identified that this is subject to a public realm strategy.
9. The proposal would be located within the setting of the grade II listed buildings of 36-40 Market Street. Their significance derives from the local importance of their architect, the distinctive façades and being a landmark of considerable architectural calibre. The statutory requirements² necessitate that special regard is paid to the desirability of preserving the building or its setting. Due to its separation and scale the proposal would have a negligible effect on the setting of the listed buildings. As such the proposal would not harm their significance and would preserve their setting.
10. The appeal site is also within the Market Street CA. The statutory requirements³ also entail that special attention be paid to the desirability of preserving or enhancing the character or appearance of the CA. The Council's character appraisal⁴ defines the significance of the CA by its links to Leicester's early economic growth and social history. It explains that the CA includes a large number of high-quality buildings and is a visual reminder of the town's 18th century residential expansion. The appraisal also identifies that existing

¹ Planning Practice Guidance- Paragraph: 009 Reference ID: 26-009-20140306

² Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990

³ Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990

⁴ Market Street Conservation Area- Character Appraisal 2006

street clutter contributes to the sense of untidiness and lack of co-ordination within the CA. Whilst, this may have been prepared before the recent improvement works, this has not undermined the purpose or usefulness of the appraisal.

11. The proposal would add to the existing street furniture in a manner which would not fit the established vernacular. It would therefore be a jarring modern intervention. The narrow street is framed by historic buildings and includes 2 King Street which is a landmark building at the end of the street. The careful placement of new street furniture, such as benches, respects the retained historic character of Market Street. In contrast, the proposed structure would be a prominent and modern intervention in an important view looking along Market Street towards King Street. Subsequently, the proposal would be of significant harm to the character and appearance of the CA including key views through and beyond it.
12. The harm to the significance would be less than substantial. The Framework requires less than substantial harm to be weighed against any public benefits of the proposal. However, the public benefits of the proposal are relatively limited and do not outweigh the identified harm to the CA.
13. Considering the context, design styles of local existing street furniture appear to be considered and grouped. Street lights, hanging baskets, benches, bins and surface materials are mostly uniform, subdued and show an overarching and coordinated design philosophy. Whereas, the proposal would be relatively utilitarian and bulky, especially due to its wide base and monolithic form. Therefore, even in comparison to existing street furniture, the proposal would appear bulky and substantial. Moreover, there is a notable absence of large items of street furniture in the area, other than the rather unsightly cash machine and kiosks adjacent to Belvior Street. There is also a '6-sheet' advertisement by the corner building on Welford Place. This is successfully framed by the building and hence is respectful of its siting. The street furniture comparison⁵ is a useful summary but many items are not apparent within Market Street itself.
14. As such, the proposal would be appreciably larger and of greater prominence than nearby street furniture. Although the proposal would be within the linear street furniture zone and a similar colour palette, it would be an incongruous addition. It would not integrate well with the established style of existing street furniture. Therefore, due to its bulk and prominence the proposal would fail to preserve or enhance the CA. It would therefore have a harmful effect on the character and appearance of the area.
15. As a result, in regard to appeal A, the proposal would not accord with Policies CS03 and CS18 of the CS, which seeks development that contributes positively to the character of an area and protect the historic public realm. Furthermore, the proposal would not comply with the Framework, which seeks well designed places where development is sympathetic to the local character.

Pedestrian Flow

16. The highway shares space between pedestrians and occasional delivery vehicles. As such the character of the street presents an adequate width to

⁵ Appellant's Statement of Case - table 1

enable good pedestrian movement, even with the seating areas and other furniture within sections of the footway. The proposal would be located in an established street furniture strip which includes street lights, bins and seating areas. Whilst the addition of further street furniture would, in principle, create a hazard in the footway the proposal would not in itself present a particularly arduous obstacle. It would therefore not generate substantial harm to the safety of pedestrians in this context. Therefore, the footway would remain largely unobstructed by the proposal and not obstruct the free flow of pedestrians.

17. Accordingly, in regard to appeal A, the proposed structure would satisfy policy CS14 of the CS which seeks development to support the provision of pedestrian routes, cycle routes and infrastructure to give good access around the city. Also, the proposal would satisfy paragraphs 108 and 109 of the Framework, which seeks development to provide for safe and suitable access for all users.

Visual amenity

18. The site is within a retail area which includes a number of illuminated signs. However, these are mostly subdued externally illuminated fascia signs. In contrast, the proposal would be a relatively prominent illuminated screen. Furthermore, the proposed advertisement panels would sit within a relatively thick frame. This would be emphasised by the deep base, which barely tapers as it meets the ground. Also, whilst the display would be smaller than a standard '6-sheet' display panel, its chunky frame draws attention and emphasises its bulk. Moreover, the proposal would be comparatively isolated from other advertisements. Therefore, within the context of the CA, the narrow street and existing subdued illumination the proposal would represent a stark and prominent addition. Consequently, the advertisements would be harmful to the visual amenity of the local area and would not preserve or enhance the character and appearance of the Market Street CA.
19. Accordingly, in regard to appeal B, the proposal would not accord with paragraphs 127 and 132 of the Framework, which requires development to be sympathetic to the local area and in particular respect of amenity. In accordance with the Regulations, I have also taken into account the provision of the development plan so far as it is material. The proposal would not accord with Policies CS03 and CS18 of the CS, which requires well designed development that contributes positively to the character and appearance of the built environment and protects the historic environment and is therefore material in this case.

Other matters

Appeals A and B

20. In regard to design, the appellant has referred to 3 appeal decisions in Belfast where the decision maker considered that the smart hub would be similar in size to a modern phone box and be no more obtrusive than other advertisements in the area⁶. However, the full context of that decision is not in evidence and the decision was made in a different policy context. In any event each case must be treated on its own merits. Also, the design would be a modern structure, coloured black and with four active sides. It has been

⁶ Appellant's Statement of Case- Appendix I, Appeal Decision Reference 2017/A0237 & 2017/A0234

designed to assist pedestrians who are visually impaired due to its simple base. However, these design features only have a limited bearing in favour of the proposal.

21. The appellant also refers to the Council's recent approval of the BT Inlink telephone kiosks. He has raised concerns regarding consistency of decision making, especially in regard to design comparisons. These issues have only a limited bearing on the main issues as the design of the proposal is markedly different to the approved kiosk design. I also recognise that the BT decisions have been able to offer the removal of existing street furniture with a net loss of street furniture, this would have been a material benefit of those proposals.
22. The appellant has referred to recently approved smart hub structures on Vaughan Way. Having considered the siting of those proposals, the context is significantly different to the proposed site. Those decisions have not therefore established a clear precedent. Furthermore, the Council's decision to approve those Euro Payphone devices does not necessarily illustrate that the design is appropriate in all circumstances. Conversely, each proposal and its effect must be judged on its own merits. Furthermore, these decisions illustrate that the Council has not applied a moratorium on all 'smart hub' proposals.
23. Chapter 10 of the Framework identifies that a high quality and reliable communication infrastructure is essential for economic growth and social well-being. It also seeks to prevent decision makers placing a ban on new installations or inhibit competition. However, these considerations are not without regard to the Framework as a whole.
24. The appellant has alleged that the Council's approach to these proposals has included generic statements and 'in principle' objections, especially in regard to clutter. However, I have determined each case on its own merits with regard to its local context.

Planning balance and conclusion

25. Whilst I have not found harm to highway safety or pedestrian flow, the harm to the character and appearance of the area would be substantial. The public benefits, as set out at appendix E of the appellant's Statement of Case, whilst of merit, would be insufficient to outweigh the identified conflict with the development plan.
26. For the above reasons and having taken into account all evidence submitted, appeal A and appeal B are dismissed.

Ben Plenty

INSPECTOR