
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/18/3217406

Pavement to the east of 38 Humberstone Gate, Haymarket Shopping Centre, Leicester LE1 3PH

- 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 20181173, dated 21 May 2018, was refused by notice dated 5 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/18/3217409

Pavement to the east of 38 Humberstone Gate, Haymarket Shopping Centre, Leicester LE1 3PH

- 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 20181174, dated 21 May 2018, was refused by notice dated 5 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:
 - the effect of the proposed structure on the character and appearance of the area, 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 the visual amenity of Charles Street.

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 close to the highway. It is on a wide part of the footway and adjacent to a section that narrows to accommodate a bus stop lay-by. The site is also close to a side entrance to the Haymarket Shopping Centre. This location is also close to a traffic light controlled pedestrian crossing, a streetlight and bin. Although there is a bus shelter and telephone kiosks on the opposite side of Charles Street, the site and its immediate context has an open aspect. Furthermore, there is a notable absence of large street furniture. As such, the site makes a positive contribution towards 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 social and economic public benefits in relation to both its data connections and services.

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. Considering the context, the proposed 'smart hub' would be a relatively utilitarian and bulky feature, especially due to its wide base and monolithic form. Therefore, even in comparison to existing street furniture, the proposal would appear bulky and substantial. Furthermore, the structure would be an uncomfortable juxtaposition between the appearance of a large mobile phone and a free-standing illuminated advertisement. In contrast, the local area is modern and commercial in character the specific site is uncluttered and does not include structures of a similar scale.
10. Consequently, the proposal would not be within a clearly identified street furniture zone nor would sit within, or adjacent to, a cluster of existing street furniture. This would reinforce the disharmonious and obtrusive nature of the structure. The harm identified is therefore a combination of the bulky design and the open and comparatively prominent location of the site. As a result, the proposal would harm the character and appearance of the area.

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

11. Accordingly, in regard to appeal A, the proposal would not accord with Policy CS03 of the CS which seeks development that contributes positively to the character of an area. Furthermore, the proposal would not comply with the Framework, which includes the requirement for development to create places that are safe, attractive and secure.

Pedestrian Flow

12. The structure would be set back some distance from the kerb-line and be within a wide section of footway. Also, the proposal would not block or impede pedestrian routes from the Haymarket Shopping Centre across Charles Street or walking south towards Humberstone Gate. Therefore, the significant majority of the footway would remain unobstructed by the proposal. As such, the proposal would have only a negligible effect on pedestrian flow.
13. Therefore, in regard to appeal A, the proposed 'smart hub' 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 the Framework, which seeks development to provide for safe and suitable access for all users.

Visual amenity

14. The site is within the city centre retail area and this includes a substantial number of illuminated signs along Humberstone Gate. Charles street is less active by comparison. Although there are also advertisements within a nearby bus shelter the context around the site is unobstructed by substantial advertisements.
15. The proposed display panel would sit within a relatively thick frame. This would be emphasised by the deep base, which barely tapers as it meets the ground. Furthermore, whilst the display would be smaller than a standard '6-sheet' display panel, its chunky frame draws attention and emphasises its bulk. Furthermore, it would be divorced from other advertisements and be located in a prominent location. Consequently, the illuminated free-standing advertisement would be out of character with its context. The advertisement would therefore be harmful to the visual amenity of Charles Street.
16. As such, in regard to appeal B, the proposed advertisements would not accord with 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 Policy CS03 of the CS, which requires well designed development that contributes positively to the character and appearance of the built environment and is therefore material in this case.

Other Matters

Appeal A and appeal B.

17. In regard to design, the appellant has referred to an appeal decision in Belfast where the Commissioner considered that the smart hub would be similar in size to a traditional phone box and be no more obtrusive than other advertisements in the area². However, the full context of that decision is not in evidence and

² Appellant's Statement of Case- Appendix I, Appeal Decision Reference 2017/A0237 & 2017/A0234

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 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.

18. 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.
19. 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.
20. 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.
21. 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.

Conclusion

22. Therefore, although I have not found harm to pedestrian flow, the harm to the character and appearance of the area and to visual amenity is substantial.
23. For the above reasons appeals A and B are dismissed.

Ben Plenty

INSPECTOR