



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/18/3217434

Pavement to the west of 2 Waterloo Way, London Road, Leicester LE2 0QE

- 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 20181157, dated 18 May 2018, was refused by notice dated 4 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/18/3217429

Pavement to the west of 2 Waterloo Way, London Road, Leicester LE2 0QE

- 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 20181158, 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 is dismissed.
2. Appeal B is allowed, and express advertisement consent is granted for the Installation of a double-sided digital panel on multifunctional structure in accordance with the details pertaining to application 20181158 dated 18 May 2018 at Pavement to the west of 2 Waterloo Way, London Road, Leicester LE2 0QE. The consent is for five years from the date of this decision and is subject to the five standard conditions set out in the Regulations¹.

Procedural Matters

3. 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.
4. For clarity I have adjusted the description of development of appeal B in accordance with the Council's decision notice.

¹ Town and Country Planning (Control of Advertisements)(England) Regulations 2007.

5. 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.

Application for costs

6. An application for costs was made by Mr Thomas Fisher, on behalf of Euro Payphone Ltd against Leicester City Council, against appeal A. This application is the subject of a separate Decision.

Main Issues

7. With regard to appeal A, the main issues are:
- the effect of the proposal on the character and appearance of the area,
 - the effect of the proposed structure on pedestrian flow, and
 - the effect of the proposal on highway safety
8. The main issue in regard to appeal B is the effect of the proposal on public safety.

Reasons

Background

9. The site, the subject of the appeals, is located on a broad section of footway in a prominent location. The immediate public realm includes tree planting and block pavements. A telephone kiosk and cycle racks are located some distance further along the footway, beyond a pedestrian crossing. Local street furniture also includes street lights, directional signage and traffic lights. There is a notable absence of bulky street furniture. The site is within a wide footway with an open and spacious character. It therefore makes a positive contribution towards the character and appearance of the area.
10. 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 fully set out in appendix E of the appellant's Statement of Case.

Character and appearance

11. 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 uncluttered². 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.

² Planning Practice Guidance- Paragraph: 009 Reference ID: 26-009-20140306

12. The proposed smart hub would be located between two street trees, set back from the highway edge and within an open section of footway. The proposal would be a large and prominent addition to the street scene. It would also be isolated and divorced from other street furniture. Furthermore, the proposal would disrupt the existing pleasant visual grouping of street furniture. As such in this location the proposal would be out of place.
13. Furthermore, a recent appeal decision for a telephone kiosk in a similar site as the proposal, for prior approval was dismissed³. The Inspector found that the structure would be incongruous in an otherwise open street scene and would affect the safe operation of the highway. Whilst only considering siting and appearance the conclusions drawn are material in this case.
14. The proposed 'smart hub' 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 prominent and substantial. Consequently, the proposed structure would 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 Policy CS03 of the CS which seeks development that contributes positively to the character of an area. Furthermore, the proposal would fail to comply with the Framework, which requires development to create places that are safe, attractive and secure.

Pedestrian flow

16. The site is close to a hotel and a railway station within a city centre location. During my visit, I noted that the pedestrian crossing was relatively busy, but fewer pedestrians walked further north toward Campbell Street thus reducing the capacity demand of the footway. The recent appeal decision found that the dismissed proposal would have resulted in an undesirable impact on the safe and efficient operation of the highway. However, whilst taking the previous appeal decision into account, I have found that the proposed structure would not materially obstruct the free flow of pedestrians. The footway is comparatively wide, and the proposal would retain adequate clearance for pedestrians.
17. 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.

Highway/public safety

18. The nearby traffic controlled pedestrian crossing connects pedestrians to the city centre retail area. The site is adjacent to a dual carriageway with a 30mph speed limit and a landscaped central reservation. The dual carriageway curves in front of the site. The site is also adjacent to the junction of Campbell Street. Motorists approaching the area from the north would therefore be presented with a series of potential hazards as they move through the area. However, the site itself would be visible to approaching motorists from a substantial distance.

³ Planning Appeal Reference: APP/W2465/W/18/3193581

19. The Framework states that development should only be refused on highway safety grounds if there would be an unacceptable impact on highway safety or the cumulative residual impacts would be severe. The proposed smart hub would be around 5 m from the kerb line and would not be within the immediate sight line of motorists. The structure would be seen beyond the minimal stopping sight distances as set out in Manual for Streets⁴, even if this relates to street geometry and is therefore of limited relevance in this case. However, in any event the proposal's relationship to the crossing, and the distraction that could be caused to pedestrians and motorists, would be limited.
20. Also, the proposed structure would not obstruct views of pedestrians approaching the crossing due to the separation between it and the crossing point. As such, the structure would not therefore be especially distracting or overt. The appellant's assessment of accidents illustrate that only 2 accidents were recorded at the site in the last 5 years⁵, both resulting in 'slight injury'. Furthermore, there is no substantive link established between the small number of recorded accidents and the effect of the proposal itself on highway safety. Subsequently, whilst some distraction would be created by the proposal it would not significantly harm highway safety provided that the proper care and attention is paid by road users and pedestrians.
21. As such, in terms of appeal A and appeal B, the proposal would accord with policy CS14 of the CS which amongst other things 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 requires development to have an acceptable impact on highway safety.

Other Matters

Appeal A and appeal B

22. 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 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 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.
23. 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. Furthermore, the site of the approved BT Inlink device adjacent to East Street, is in a less prominent location than the proposal.

⁴ Department for Transport- Manual for Streets 2007

⁵ Appellant's Statement of Case – appendix D, CrashMap analysis

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

24. 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.
25. 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.
26. 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

27. Whilst I have not found harm to highway safety in regard to either appeal or harm to pedestrian flow in regard to appeal A, the harm to the character and appearance of the area is substantial and sufficient to warrant dismissal of appeal A. The public benefits offered by the proposal would not outweigh the harm I have identified to the development plan and the Framework.
28. For the above reasons, and having paid regard to all submitted evidence, appeal A is dismissed. Also, as I have found no harm to public safety appeal B is allowed and express advertisement consent is granted.

Ben Plenty

INSPECTOR