



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/18/3217379

Pavement to the west of 37 St. Nicholas Place, Leicester LE1 4LD

- 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 20181119, 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/18/3217383

Pavement to the west of 37 St. Nicholas Place, Leicester LE1 4LD

- 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 20181120, 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:
 - the effect of the proposed structure on the character and appearance of the area,
 - the effect of the proposed structure on pedestrian flow, and

- the effect of the proposed structure on highway safety.
5. With regard to appeal B, the main issues are the effect of the proposed advertisement on visual amenity and public safety.

Reasons

Background

6. The site, the subject of these appeals, is part of a relatively narrow footway and perpendicular to the highway. It would also be adjacent to a two-storey building. The adjacent highway is a two lane slip road from Vaughan Way. There is a delivery bay in between the slip road and footway with restricted waiting times. The immediate area has limited street furniture with two finger posts and a streetlight but otherwise presents an open aspect. It is close to a traffic light controlled pedestrian crossing. Beyond the crossing is the junction of St Nicholas Place and St Nicolas Circus. St Nicholas Circus acts as the western boundary to High Street Conservation Area (CA). St Nicholas Place continues onto High Street. This has recently been downgraded as a shared surface upon entering the CA. Being in a commercial area and adjacent to a busy road, the site makes a neutral 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. The public benefits relate to both its data connections and services. These include social and economic benefits and are fully 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, Government 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 site is close to two grade I listed buildings; Jewry Wall and St Nicholas Church. I have a statutory duty² to have special regard to the desirability to preserve the setting of a listed building. Jewry wall dates from AD 125-30 and is a Roman feature. Its significance derives from its age and rarity. The significance of St Nicholas Church includes its construction that includes roman masonry and having decorative detailing. Its significance derives from its architectural and historical value. However, these are both some distance from the site. Consequently, the proposal would have a neutral effect on their setting and the significance of both would be preserved.

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

² Under section 66(1) of the Planning (Listed Building and Conservation Areas) Act 1990

10. The site is outside but adjacent to the CA. The significance of which stems from the high-quality townscape and architecture. No 37 is at an entrance to the CA. It is identified in the Council's appraisal³ as a building within a group that makes a positive contribution to the significance of the CA. Beyond the CA the area is commercial in character. 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 bulky and substantial. Moreover, it would be isolated and divorced from other street furniture. It would therefore be viewed as a bulky structure and overtly prominent within its context. Consequently, it would have a harmful effect on the character and appearance of the area, including the adjacent CA.
11. 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 not comply with the Framework, which seeks well designed places where development is sympathetic to the local character.

Pedestrian flow

12. The site is within a narrow section of footway in a position that would effectively reduce its width by about half. Furthermore, a user of the smart hub would further block access when using the device. As such, I do not concur that the obstruction would be momentary. The reduction in width would create an obstacle and pinch-point that would impede pedestrian flow. Therefore, even though the footway enjoys lighter use, the proposal would have a significantly harmful effect upon the free-flow of pedestrian movement with regard to convenience and safety.
13. As a result, in regard to appeal A, the proposal would not accord with Policies CS03 and CS14 of the CS, which seeks development that meets the highest standards of accessibility and supports the provision of pedestrian routes, cycle routes and infrastructure to provide good access around the city. Furthermore, the proposal would not comply with the Framework, in so much as it seeks development that creates places that are safe and accessible.

Highway/public safety

14. The proposed structure would be close to the kerb-line. The slip road climbs as it leaves Vaughan Way and curves to the left. Consequently, the proximity, curve and climb of the highway would place the proposal into motorist's sightlines. Moreover, this would endanger pedestrians using the crossing and other motorists using the junction beyond by creating a visual obstruction. The highway adjacent to the site has experienced accidents in the past. The road improvement works may have made the pedestrian crossing and surrounding junctions safer. However, based on my observations the proposal would lead to a significant distraction to motorists where focus should be directed to existing highway hazards.
15. Furthermore, National Planning Practice Guidance states that advertisements are more likely to affect public safety at points where drivers need to take care such as at junctions⁴. The structure would be seen beyond the minimal

³ High Street Conservation Area Character Appraisal 2006

⁴ National Planning Policy Guidance: Paragraph: 067 Reference ID: 18b-067-20140306

stopping sight distances as set out in Manual for Streets⁵. However, these relate to street geometry design for lightly trafficked residential streets. In any event this would not prevent motorists being distracted by it. Consequently, although it could be assimilated from some distance, the proposal would nevertheless divert the attention of road users. Accordingly, due to its scale, illumination, orientation and the arrangement of the highway the proposal would be of substantial harm to highway safety.

16. Therefore, in terms of appeal A and appeal B, the proposal would not accord with the Framework, which seeks development to provide for safe and suitable access for all users and that would not have an unacceptable impact on highway/public safety. Furthermore, the proposal would be contrary to Policy CS14 of the CS which requires development to maximise accessibility of pedestrian routes around the city.

Visual amenity

17. The proposed structure would be within a commercial area. Existing signage within the adjacent CA is largely subtle and well designed. As such advertisements in the area generally make a positive contribution to the local area.
18. In terms of the proposal, the proposed display panels 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. The proposed advertisements would be divorced from other advertisements and be highly prominent. Consequently, the proposal would be out of character with its context and be harmful to the visual amenity of the area, including the context of the adjacent CA.
19. Consequently, in regard to appeal B, the proposed advertisement 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. As such, 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.

Other Matters

Appeals A and B

20. 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 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 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.

⁵ Department for Transport- Manual for Streets 2007

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

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.

Conclusion

25. The proposal would deliver some public benefits by the device. However, these benefits would not outweigh the harm identified to the character and appearance of the area and to highway/public safety.
26. For the above reasons appeals A and B are dismissed.

Ben Plenty

INSPECTOR