
Appeal Decisions

Site visit made on 6 August 2019

by Michael J Muston BA(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th August 2019

Appeal A Ref: APP/P4605/W/18/3202293

New Street (outside Odeon cinema), Birmingham B2 4NU

- 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 Neil Scoresby of British Telecommunications plc, against the decision of Birmingham City Council.
 - The application Ref 2017/10806/PA, dated 19 December 2017, was refused by notice dated 1 March 2018.
 - The development proposed is "*the removal of 2no. KX100 telephone kiosks and the installation of 1no. InLink*".
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Appeal B Ref: APP/P4605/H/18/3201287

New Street (outside Odeon cinema), Birmingham B2 4NU

- 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 Neil Scoresby of British Telecommunications plc, against the decision of Birmingham City Council.
 - The application Ref 2017/10918/PA, dated 19 December 2017, was refused by notice dated 1 March 2018.
 - The development proposed is "*the removal of 2no. KX100 telephone kiosks and the installation of 1no. InLink*".
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Decisions

1. Appeal A is dismissed.
2. Appeal B is dismissed.

Main Issues

3. The main issues in relation to Appeal A are:
 - the effect of the proposal on the character and appearance of the area, and
 - whether the proposal would create a barrier to pedestrian movement.
4. The main issues in relation to Appeal B are the impact on:-
 - amenity, and
 - public safety.

Reasons

Appeal A – Character and appearance

5. New Street is a busy pedestrianised street with a commercial character. There are street trees on both sides of the street, which is also where most of the street furniture is located, leaving a central area largely free of obstructions. On the south-western side of New Street in the vicinity of the appeal site, located between the street trees on this side of the street, are phone kiosks (including the one that would be replaced), traffic signs, lamp-posts, flagpoles and litter bins. Between the street trees on the north-eastern side of the street are market stalls, traffic signs and litter bins.
6. The proposed unit would be a “monolith” approximately 2.9 metres high, between 0.8 and 0.9 metre in width, and about 0.3 metre deep. It would be located under 5 metres in front of the Odeon cinema, within the zone that contains a large amount of existing street furniture. It would replace an existing telephone kiosk. However, the kiosk that it would replace has an advertising panel on one side and telephone apparatus on the other. The proposed InLink would include advertising space on both sides of the unit. It would have a smaller footprint than the existing unit, but be higher. In my view, by reason of its height, design, siting and the materials from which it would be made, the InLink would be more prominent within the street scene than the kiosk it would replace. It would appear as an unduly prominent and discordant feature in the street scene, notwithstanding the commercial character of the area.
7. The appellants point out that the Council has permitted other large digital commercial advertising displays elsewhere in New Street, including at least one within the nearby Colmore Row and Environs Conservation Area. However, the existence of these other large intrusive structures is not a good reason to allow further harmful development.
8. Policy PG3 of the Birmingham Development Plan 2017 (BDP) seeks development that, amongst other things, reinforces or creates a positive sense of place and local distinctiveness, with design that responds to site conditions and the local area context, including the appropriate use of innovation in design. The harm that the appeal scheme would cause, which I have identified above, makes the proposal contrary to this policy.
9. Policy GA1.1 of the BDP says, amongst other things, that new development should make a positive contribution to improving the vitality of the City Centre. Policy GA1.4 says that measures to improve accessibility to and within the City Centre will be supported. Policy TP39 says that the provision of safe and pleasant walking environments throughout Birmingham will be promoted by, amongst other things, ensuring that pedestrian routes and areas are free from unnecessary clutter. The proposal, to replace an existing kiosk, does not offend these policies.
10. Saved Policy 3.14D of the Birmingham UDP 2005 deals with urban design and says, amongst other things, that the scale and design of new buildings and spaces should generally respect the area surrounding them, and should reinforce and evolve any local characteristics which are considered to be positive. The proposal would not respect the surrounding area and is therefore contrary to this policy.

11. The Council has also adopted two documents as part of the Big City Plan: a Master Plan (MP) dated 2011 and a City Centre Retail Strategy (RS) dated 2015. The MP designates New Street as a primary walking route, where improvements to the public realm will be prioritised. The RS stresses the role of public realm improvements in creating a network of pedestrian friendly, clutter-free streets. The appeal proposals would replace an existing piece of street furniture into New Street, which would perpetuate its existence. I have not been provided with evidence that these documents have been subjected to appropriate public consultation, which limits the weight I can attach to them. However, the proposals are contrary to the aims of these documents, and this supports my view that the proposal would harm the character and appearance of the area.
12. I conclude that the InLink unit as proposed in Appeal A would have an adverse effect on the character and appearance of the area. It would be contrary to Policy PG3 of the BDP and saved Policy 3.14D of the UDP in this respect, as well as relevant guidance within the MP and RS.

Appeal A – Pedestrian movement

13. New Street, in the vicinity of the appeal site, is a pedestrianised street of good width, with existing street furniture between the street trees on either side of the street, leaving a central area free of obstructions. The proposed InLink unit would replace an existing kiosk and would be between other existing pieces of street furniture. Ample space would continue to exist to either side to allow pedestrians to move safely up and down the street. I conclude that the proposal would not create a barrier to the movement of pedestrians and would comply with Policies PG3, GA1.1, GA1.4 and TP39 of the BDP and saved Policy 3.14D of the UDP in this respect, as well as relevant guidance within the MP and RS.

Appeal B

14. The display of the 2 internally illuminated digital LED advertisement panels, as applied for, would add to the visual impact of the structure in its setting, particularly as it would add an advertising panel on the north-western side of the unit. As I noted above, the existing advertising displays in other parts of New Street are already intrusive features in the street, partly because of their large internally illuminated advertisements. The presence of further internally illuminated advertisements, one on each side of the proposed unit, would appear unduly dominant, particularly during the hours of darkness, and would add to the harm to amenity that would be caused by the unit itself. I conclude that the proposal would cause unacceptable harm to amenity, and would be contrary to Policies PG3 and TP12 of the BDP and saved Policy 3.14D of the UDP in this respect, as well as relevant guidance within the MP and RS.
15. The addition of advertisements to the proposed InLink unit would increase its visibility in the street, but would not result in it becoming a barrier to the movement of pedestrians. The Council accepts in its officer report that there is insufficient justification to refuse advertisement consent on grounds of public safety. I agree and conclude that the proposal would not have an adverse effect on public safety, and would comply with Policies PG3, GA1.1, GA1.4 and TP39 of the BDP and saved Policy 3.14D of the UDP in this respect, as well as relevant guidance within the MP and RS.

Benefits of the scheme

16. The High Court judgement in Westminster City Council v Secretary of State for Housing Communities and Local Government [2019] EWHC 176 (Admin) (05 February 2019), although referring to a kiosk, has some relevance in that the structure in that case was providing both communications and advertising. On the basis of the information supplied in relation to the InLink structure, I conclude that it too would serve a dual purpose in providing both communication services and in hosting advertising intended to fund these functions. Nonetheless, the provision of the communications element, including Wi-Fi and public information, in line with the advice in the National Planning Policy Framework, would provide some benefit, which therefore weighs in favour of the structure.
17. In addition to the replacement of the existing kiosk at the appeal site, part of the proposal is the removal of a further KX100 telephone kiosk. The appellant has stated that he would be happy for this element of the proposal to be secured by Grampian condition and has set out in a schedule which additional existing kiosk would be removed in relation to this proposed new InLink unit. The additional kiosk that would be removed in relation to these appeals is some considerable distance away from the appeal site. Its removal would do nothing to mitigate the harm that would be caused by the appeal proposals.

Other Matters

18. Many of the points raised by third parties have been dealt with above. In addition, concerns have been raised in relation to a number of other matters, including the need for further public telephones, that the unit may become a target for flyposting and graffiti, possible links to criminal activity, and the amount of such structures in the city centre. I have considered all of the points raised; however they do not outweigh my conclusions on the main issues.

Conclusions

19. I have concluded that both proposals would adversely affect the character and appearance of the area. This harm outweighs the benefits arising from the proposal. The lack of harm in other respects is a neutral factor. For the reasons given above, therefore, I conclude that both appeals should be dismissed.

Michael J Muston

INSPECTOR