
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/18/3202291

Lower Temple Street (outside 14 Burlington Court), Birmingham

- 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 2017/10803/PA, dated 19 December 2017, was refused by notice dated 28 February 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/18/3201349

Lower Temple Street (outside 14 Burlington Court), Birmingham

- 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 2017/10917/PA, dated 19 December 2017, was refused by notice dated 28 February 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, with particular regard to whether it would preserve or enhance the character or appearance of the Colmore Row and Environs Conservation 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, with particular regard to the effect on the character and appearance of the Colmore Row and Environs Conservation Area, and
 - public safety.

Reasons

Appeal A – Character and appearance

5. The appeal site is located within the Colmore Row and Environs Conservation Area. The character of the Conservation Area has been considered in the Council's adopted Colmore Row and Environs Conservation Area Character Appraisal and Supplementary Planning Policies (CACA). It is most clearly expressed through the quality and variety of its architecture, which includes the early eighteenth century Church of St Philip and nineteenth century civic buildings. The significance of the Conservation Area lies in these individual buildings, as well as the larger number of commercial developments dating from the mid-nineteenth to the mid-twentieth century, reflecting the city's growth as a financial, retail and service centre.
6. Lower Temple Street is a pedestrianised street with a commercial character. Visually, it is separated into 'zones' by its paving. There is existing street furniture in the zones to each side of the street, which probably equate to the footways when the street was open to traffic, including traffic signs, electricity cabins, A boards and, on the western side of the street, enclosed seating areas outside a pub and a cafe. The central zone is less cluttered and features two street trees. At its southern end, closest to New Street station, are rising bollards, traffic lights, a CCTV installation and a number of litter bins. However, at its northern end, beyond the street trees and accompanying litter bins, the central part of Lower Temple Street is free of street furniture. The "semi-permanent hot potato kiosk" referred to in the appellants' Statement of Case and shown in their photographs appears to have moved around the corner into New Street.
7. 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 in line with the street trees and litter bins in the central zone of Lower Temple Street. However, it would be within the northern part of that zone, closest to New Street, which is currently free of street furniture. In this context, the proposed unit would, by reason of its height, width, siting and the materials from which it would be made, appear as an unduly prominent and discordant feature in the street scene, notwithstanding the commercial character of the area. It would appear particularly out of keeping when viewed in conjunction with the buildings at 113 and 114 New Street, the curved facades of which provide a distinctive character to this part of the Conservation Area as they turn the corner into Lower Temple Street. It would also add clutter in the form of an additional piece of street furniture to a part of Lower Temple Street that is currently relatively clutter-free.
8. The appellants point out that the Council has permitted a large digital commercial advertising display within the same Conservation Area, which is no more than 80 metres away on New Street. However, the existence of this intrusive structure within the Conservation Area is not a good reason to allow further harmful development.
9. The harm arising from the siting and appearance of the InLink would fail to preserve the character and appearance of the Conservation Area when viewed in the immediate vicinity of the site. However, as the harm would be localised and from limited vantage points along Lower Temple Street and New Street, it

would be less than substantial to the significance of the Colmore Row and Environs Conservation Area.

10. 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 heritage assets and appropriate use of innovation in design. Policy TP12 of the BDP says, amongst other things, that the Council will seek to manage new development in ways which will make a positive contribution to the character of the historic environment and that great weight will be given to the conservation of the City's heritage assets. The less than substantial harm that the appeal scheme would cause, which I have identified above, makes the proposal contrary to these two policies.
11. 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. The proposal does not offend these policies. 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 is contrary to this policy to the extent that it would introduce further clutter into a pedestrian area.
12. 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.
13. The CACA includes a section on the public realm within the Conservation Area. It says that new street furniture must be carefully designed or selected to enhance the character of the conservation area, and that it should provide a unifying element, reinforcing local identity and distinctiveness. It goes on to say that a co-ordinated effort should be made to eliminate street clutter and that larger items should be located at the back of footway. The proposal to site an InLink unit in this location in Lower Temple Street, in an otherwise largely uncluttered section of the street, is contrary to that advice.
14. 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 Lower Temple 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 introduce an additional piece of street furniture into a part of Lower Temple Street that is relatively clutter-free. 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.
15. I conclude that the InLink unit as proposed in Appeal A would have an adverse effect on the character and appearance of the area, including failing to

preserve the character and appearance of the Colmore Row and Environs Conservation Area, causing less than substantial harm to the significance of this heritage asset. It would be contrary to Policies PG3, TP12 and TP 39 of the BDP and saved Policy 3.14D of the UDP in this respect, as well as relevant guidance within the CACA, MP and RS.

Appeal A – Pedestrian movement

16. Lower Temple Street, in the vicinity of the appeal site, is a pedestrianised street of good width, with no other obstructions to pedestrian movement in the central zone. The proposed InLink unit would continue a line of obstructions to pedestrian movement further south in the street, including two street trees and a number of litter bins. Ample space would still exist to either side of the InLink 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

17. 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. The limited number of illuminated advertisements in Lower Temple Street are predominantly externally illuminated. In this setting, the presence of an internally illuminated advertisement on each side of the proposed unit would appear strident and dominant, particularly during the hours of darkness, and would add to the harm to amenity, in particular to the Conservation Area, 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.
18. 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

19. 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.

20. Part of the proposal is the removal of two KX100 telephone kiosks. 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 two existing kiosks would be removed in relation to each proposed new InLink unit in Birmingham. The two kiosks that would be removed in relation to these appeals are some considerable distance away from the appeal site, outside Conservation Area. Their removal would do nothing to mitigate the harm that would be caused by the appeal proposals.

Other Matters

21. 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

22. I have concluded that both proposals would adversely affect the character and appearance of the area, including causing less than substantial harm to a heritage asset. This harm outweighs the benefits arising from the proposals. 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