



Appeal Decisions

Site visit made on 6 August 2019

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 September 2019

Appeal A Ref: APP/W2465/W/18/3217412

Pavement to the east of 11 East Gates, Leicester LE1 5YA

- 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 20181135, 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/Z/18/3217414

Pavement to the east of 11 East Gates, Leicester LE1 5YA

- 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 20181136, 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. The appeal is 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.
4. Notwithstanding the Council's description of the address, I have taken the address of the site from the application forms.

Application for costs

5. 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

6. With regard to appeal A, the main issue is:
 - the effect of the proposed structure on the character and appearance of the area; and
 - The effect of the proposal on pedestrian flow.
7. With regard to appeal B, the main issue is the effect of the proposed advertisement on visual amenity.

Reasons

Character and appearance

8. The site, the subject of these appeals, is part of a pedestrianised area along East Gates, within the High Street Conservation Area (HSCA) and on the edge of the adjoining Market Place Conservation Area (MPCA). The area comprises retail and commercial uses and derives its interest from both the historical pattern of development and the attractive and traditional architectural detailing. Since the High Street Conservation Area Appraisal (HSCAA)(2006) was published, improvements have been carried out to the public realm, including the replacement of street surfaces and street furniture.
9. Street furniture in the area generally appears unobtrusive and is coordinated in discrete groupings. Nearby street furniture comprises bins, seating and an information board. The Market sculpture is located on the corner of East Gates and Cheapside. There are a number of listed buildings within the HSCA, including the Clock Tower and Former East Gates Coffee House, 12-14 East Gates which are both Grade II listed buildings.
10. The Clock Tower is a key landmark and focal point for this part of the City and the Coffee House is an elegant rendered brick building with mock half-timbering to the top floor and large oriel windows at first floor level. The significance of both of these buildings stem from their historic interest and fine architectural detailing.
11. In determining this appeal, I have a statutory duty, under Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, to consider the impact of the proposal on the special architectural and historic interest of the listed buildings affected, and their settings. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires me to pay special attention to the desirability of preserving or enhancing the character or appearance of the CSCA. Furthermore, paragraph 193 of the Framework states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.
12. 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.
13. Policy CS03 of the Leicester City- Local Development Framework Core Strategy 2014 (CS) seeks to promote active frontages and an uncluttered street-scene

- and to create spaces that respond to changing social, technological and economic conditions. Policy CS18 of the CS states that the Council will protect and seek opportunities to enhance the historic environment including the character and setting of designated and other heritage assets.
14. Paragraph 110 of the National Planning Policy Framework (The Framework) (2019) seeks to ensure that applications for development, amongst other things, avoid unnecessary street clutter and respond to local character and design standards. Furthermore, Government guidance identifies the importance of public spaces and routes that are attractive, accessible and uncluttered¹.
 15. The proposed smart hub would be located on the periphery of a vista from the High Street towards the Clock Tower and Former East Gates Coffee House. The Council concluded that the proposal would not impact upon the setting of the buildings and, given the peripheral location and distance from these buildings, I concur with this view and conclude that the proposal would have a neutral effect on their setting and the significance of both heritage assets would be preserved.
 16. 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. It would be viewed as a bulky structure and overtly prominent within its context. Consequently, it would have a harmful effect on the HSCA. As a result, in regard to appeal A, the proposal would not accord with Policies CS03 and CS18 of the CS, the requirements of which are set out above.
 17. Paragraph 184 of the Framework states that heritage assets are an irreplaceable resource, and should be conserved in a manner appropriate to their significance. Paragraph 196 goes on to advise that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including, where appropriate, securing its optimum viable use.
 18. For the reasons given, the proposal would harm the character and appearance of the area and the significance of the HSCA. I consider that the harm arising to the significance of the designated heritage asset would be less than substantial in the context of paragraph 196 of the Framework. The Framework is clear that any harm to the significance of a designated heritage asset should require clear and convincing justification.
 19. I acknowledge that the appeal scheme would provide some benefit in terms of connectivity, data collection and public health, however, these benefits would be outweighed by the harm I have identified to the HSCA, the conservation of which I attribute great weight to.

Pedestrian flow

20. The appeal site is located in front of a store within an expansive pedestrianised section of East Gates which was well used by pedestrians at the time of my site visit. Although the street can be used by vehicles, the Council advise that this tends to be occasional emergency vehicles or commercial vehicles servicing the commercial properties out of usual opening times.

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

21. The proposed structure would be located between the Market Place sculpture and a bin. Given the size of the proposed smart hub it would introduce an additional obstruction for pedestrians travelling to and from Cheapside. However, given the size of the pedestrianised area, I agree that sufficient unobstructed pavement would remain around the appeal site to enable the free flow of pedestrian movement. As such, there would not be a significantly harmful effect upon the free-flow of pedestrian movement with regard to convenience and safety.
22. Accordingly, there would be no conflict 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, there would be no conflict with the Framework in this regard, in so much as it seeks development that creates places that are safe and accessible.

Visual amenity

23. The proposed advertisement would be located close to the Market sculpture. Existing signage within the HSCA is largely subtle and well designed. As such advertisement in the area generally make a positive contribution to the local area.
24. In terms of the proposal, the proportion of each display panel would sit within a relatively thick frame. The thickness of the frame 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 highly prominent and would be out of character with its context. The advertisement would therefore be harmful to the visual amenity of the area and consequently the HSCA.
25. Thus, 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 and Policy CS18 which seeks to protect the historic environment.

Other Matters

Appeals A and B

26. 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 area². 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

² Appeal Decision Reference 2017/A0237 & 2017/A0234

pedestrians who are visually impaired due to its simple base. However, these design features only have a limited bearing in favour of the proposal.

27. 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.
28. The appellant has drawn my attention to other advertisement applications submitted in 2016 and 2017, and in particular, an application for an advertisement opposite 9 Welford Place. However, I do not have full details of these applications before me. Furthermore, in relation to Welford Place, it does not affect the context of the appeal site nor is it comparable to the appeal site. I acknowledge that there are advertisements within the wider area which are larger than the appeal scheme, however, I have considered the appeal on its own merits.
29. 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.
30. 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

31. 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 visual amenity.
32. For the above reasons appeals A and B are dismissed.

Martha Savage

INSPECTOR