
Appeal Decisions

Site visit made on 28 May 2019

by David Fitzsimon MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th September 2019

Appeal A Ref: APP/C1055/W/18/3212998

Land outside No. 7 St Peter's Street, Derby DE1 2AA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Infocus Public Networks Ltd against the decision of Derby City Council.
 - The application Ref DER/06/18/00933, dated 20 June 2018, was refused by notice dated 9 August 2018.
 - The development proposed is the 'installation of an electronic communications apparatus comprising a telephone kiosk'.
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Appeal B Ref: APP/C1055/Z/18/3213002

Land outside No. 7 St Peter's Street, Derby DE1 2AA

- 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 Infocus Public Networks Ltd against the decision of Derby City Council.
 - The application Ref DER/06/18/00949, dated 20 June 2018, was refused by notice dated 10 August 2018.
 - The advertisement proposed is the 'display of a single illuminated sequential display affixed to the frame of the communication hub'.
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Appeal C Ref: APP/C1055/W/18/3213016

Land outside No. 1 Royal Buildings, Victoria Street, Derby DE1 1ES

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Infocus Public Networks Ltd against the decision of Derby City Council.
 - The application Ref DER/06/18/00936, dated 20 June 2018, was refused by notice dated 9 August 2018.
 - The development proposed is the 'installation of an electronic communications apparatus comprising a telephone kiosk'.
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Appeal D Ref: APP/C1055/Z/18/3213021

Land outside No. 1 Royal Buildings, Victoria Street, Derby DE1 1ES

- 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 Infocus Public Networks Ltd against the decision of Derby City Council.
 - The application Ref DER/06/18/00952, dated 20 June 2018, was refused by notice dated 13 August 2018.
 - The advertisement proposed is the 'display of a single illuminated sequential display affixed to the frame of the communication hub'.
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Appeal E Ref: APP/C1055/W/18/3213023

Land outside 17-24 Victoria Street, Derby DE1 1ES

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Infocus Public Networks Ltd against the decision of Derby City Council.
 - The application Ref DER/06/18/00937, dated 20 June 2018, was refused by notice dated 9 August 2018.
 - The development proposed is the 'installation of an electronic communications apparatus comprising a telephone kiosk'.
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Appeal F Ref: APP/C1055/Z/18/3213025

Land outside 17-24 Victoria Street, Derby DE1 1ES

- 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 Infocus Public Networks Ltd against the decision of Derby City Council.
 - The application Ref DER/06/18/00953, dated 20 June 2018, was refused by notice dated 8 August 2018.
 - The advertisement proposed is the 'display of a single illuminated sequential display affixed to the frame of the communication hub'.
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Appeal G Ref: APP/C1055/W/18/3213027

Land outside 22-26 St Peter's Street, Derby DE1 1SH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Infocus Public Networks Ltd against the decision of Derby City Council.
 - The application Ref DER/06/18/00938, dated 20 June 2018, was refused by notice dated 9 August 2018.
 - The development proposed is the 'installation of an electronic communications apparatus comprising a telephone kiosk'.
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Appeal H Ref: APP/C1055/Z/18/3213029

Land outside 22-26 St Peter's Street, Derby DE1 1SH

- 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 Infocus Public Networks Ltd against the decision of Derby City Council.
- The application Ref DER/06/18/00954, dated 20 June 2018, was refused by notice dated 10 August 2018.
- The advertisement proposed is the 'display of a single illuminated sequential display affixed to the frame of the communication hub'.

Appeal I Ref: APP/C1055/W/18/3213034

Land outside 52 St Peter's Street, Derby DE1 1SH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
- The appeal is made by Infocus Public Networks Ltd against the decision of Derby City Council.
- The application Ref DER/06/18/00939, dated 20 June 2018, was refused by notice dated 29 August 2018.
- The development proposed is the 'installation of an electronic communications apparatus comprising a telephone kiosk'.

Appeal J Ref: APP/C1055/Z/18/3213036

Land outside 52 St Peter's Street, Derby DE1 1SH

- 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 Infocus Public Networks Ltd against the decision of Derby City Council.
- The application Ref DER/06/18/00955, dated 20 June 2018, was refused by notice dated 10 August 2018.
- The advertisement proposed is the 'display of a single illuminated sequential display affixed to the frame of the communication hub'.

Appeal K Ref: APP/C1055/W/18/3213050

Land outside 115 St Peter's Street, Derby DE1 2AD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Infocus Public Networks Ltd against the decision of Derby City Council.
 - The application Ref DER/06/18/00941, dated 20 June 2018, was refused by notice dated 13 August 2018.
 - The development proposed is the 'installation of an electronic communications apparatus comprising a telephone kiosk'.
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Appeal L Ref: APP/C1055/Z/18/3213054

Land outside 115 St Peter's Street, Derby DE1 2AD

- 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 Infocus Public Networks Ltd against the decision of Derby City Council.
- The application Ref DER/06/18/00960, dated 20 June 2018, was refused by notice dated 13 August 2018.
- The advertisement proposed is the 'display of a single illuminated sequential display affixed to the frame of the communication hub'.

Appeal M Ref: APP/C1055/W/18/3213081

Land outside the Old Post Office, Victoria Street, Derby DE1 1EQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
- The appeal is made by Infocus Public Networks Ltd against the decision of Derby City Council.
- The application Ref DER/06/18/00945, dated 20 June 2018, was refused by notice dated 9 August 2018.
- The development proposed is the 'installation of an electronic communications apparatus comprising a telephone kiosk'.

Appeal N Ref: APP/C1055/Z/18/3213083

Land outside the Old Post Office, Victoria Street, Derby DE1 1EQ

- 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 Infocus Public Networks Ltd against the decision of Derby City Council.
- The application Ref DER/06/18/00965, dated 20 June 2018, was refused by notice dated 10 August 2018.
- The advertisement proposed is 'display of a single illuminated sequential display affixed to the frame of the communication hub'.

Decisions

Appeal A Ref: APP/C1055/W/18/3212998

1. The appeal is dismissed.

Appeal B Ref: APP/C1055/Z/18/3213002

2. The appeal is dismissed.

Appeal C Ref: APP/C1055/W/18/3213016

3. The appeal is dismissed.

Appeal D Ref: APP/C1055/Z/18/3213021

4. The appeal is dismissed.

Appeal E Ref: APP/C1055/W/18/3213023

5. The appeal is dismissed.

Appeal F Ref: APP/C1055/Z/18/3213025

6. The appeal is dismissed.

Appeal G Ref: APP/C1055/W/18/3213027

7. The appeal is dismissed.

Appeal H Ref: APP/C1055/Z/18/3213029

8. The appeal is dismissed.

Appeal I Ref: APP/C1055/W/18/3213034

9. The appeal is dismissed.

Appeal J Ref: APP/C1055/Z/18/3213036

10. The appeal is dismissed.

Appeal K Ref: APP/C1055/W/18/3213050

11. The appeal is dismissed.

Appeal L Ref: APP/C1055/Z/18/3213054

12. The appeal is allowed and express consent is granted for the 'display of a single illuminated sequential display affixed to the frame of the communication hub' as applied for. The consent is for five years from the date of this decision and is subject to the five standard conditions set out in the Regulations.

Appeal M Ref. APP/C1055/W/18/3213081

13. The appeal is dismissed.

Appeal N Ref. APP/C1055/Z/18/3213083

14. The appeal is dismissed.

Procedural Matters

15. The appeals relate to an application for prior approval for a contemporary style slimline telephone kiosk and an associated application for advertisement consent for a single large illuminated digital display which would occupy the majority of the rear of each unit.
16. The recent judgement in Westminster CC v SSHCLG & New World Payphones Ltd [2019] EWHC 176 (Admin) found that the whole development for which prior approval is sought must fall within the Class relied on, and no part of it can fall outside it.
17. The judgement found that a development therefore falls outside the scope of Class A Part 16 if it is not "for the purpose" of the operator's network. The

judgement explains that a development which is partly "for the purpose" of the operator's network, and partly for some other purpose, is not a development "for the purpose" of the operator's network, precisely because it is for something else as well. It directs that the single dual purpose development must be judged as a whole.

18. In the cases before me, the advertisement screen proposed would occupy the majority of the rear of the kiosk and would be integrated within the structure. On this basis, it is clear to me that the proposals are for the dual purpose of the operator's telecommunications network and for the purpose of advertising, because part of what is needed for the advertising role is performed by the structure and features of the telephone kiosk. Proposals A, C, E, G, I, K and M are therefore not solely for the purpose of the operator's electronic communications network, and as such falls outside Schedule 2, Part 16, Class A of The Town and Country Planning (General Permitted Development) (England) Order 2015. These appeals are dismissed for this reason.
19. Accordingly, appeal proposals B, D, F, H, J, L and N are considered on the basis that the structure upon which the advertisement would be displayed require a separate planning permission, bearing in mind that a developer having advertising consent without the planning permission would be of little practical use.
20. Some of the appeal sites are either located within or close to Conservation Areas and/or close to locally or statutorily listed buildings. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of a Conservation Area. Section 66 of the same Act requires special regard to be paid to the desirability of preserving listed buildings or their setting or any features of special architectural or historic interest that they possess. The Framework directs that when considering the impact of a proposal on the significance of designated heritage assets, great weight should be given to the asset's conservation and that significance can be harmed or lost through development within their setting.

Main Issues

21. The main issues relating to Appeals B, D, F, H, J, L and N are as follows:
 - The effect of the proposal on public safety with particular regard to natural surveillance (Appeals B, H, J and L);
 - The effect of the proposal on public safety with particular regard to highway safety (Appeal D);
 - The effect of the proposal on amenity, including the effect on heritage assets (Appeals B, D, F, H, J and N).

Reasons

22. Each application for prior approval relates to a contemporary style totem kiosk measuring 2600mm tall, 1338mm wide and 312mm deep. The associated application for advertisement consent relates to digital display screen which would sit on the back of the kiosk, occupying the majority of its surface area.

Appeal B

23. The proposed advertisement would be attached to a kiosk which would be sited within a wide pedestrianised section of St Peter's Street, which is a main shopping street, close to the junction with Thorntree Lane.
24. The advertisement would be sited broadly in line with a row of lampposts and a cycle rack and as a result, it would not impede the established pedestrian flow line. However, the Council asserts that the introduction of the advertisement would increase opportunities for crime and disorder by reducing natural surveillance. As explained, the advertisement itself would be fixed to the back of a tall telephone kiosk. I have no detail as to whether the advertisement would face north or south. Either way, the view from the north is open and the view from the south is equally open. Whilst criminal activity could take place behind the kiosk and would not be seen from the north, or in front of the kiosk and would not be seen from the south, in reality it is the kiosk itself rather than the advertisement which would cause the obstruction and the advertisement could not be displayed without it. On this basis, I am satisfied that the advertisement would not cause a public safety issue.
25. I am mindful that this part of St Peter's Street is home to a range of shops with illuminated advertisements. I also note that the proposed advertisement could be programmed to ensure the lighting level falls within the recommended limits of the Institution of Lighting Professionals. Nevertheless, there is a noticeable absence of large, solid pieces of street furniture within this part of St Peter's Street. This gives the street an open feel which makes a positive contribution to the overall character and appearance of the immediately adjacent Derby City Centre Conservation Area (CA).
26. The overall scale and positioning of the proposed advertisement would result in a somewhat isolated and dominant feature within the street scene, which would harm its open character and the setting of the adjacent CA. Furthermore, the large free standing advertisement would sit immediately in front of No. 11 St Peter's Street and given the context I have described, it would harm the setting of this locally listed building.
27. I therefore find that although the proposed advertisement would not harm public safety, it would harm the setting of heritage assets, thereby harming the amenities of the locality.

Appeal D

28. The proposed advertisement would be sited on the outside edge of the pavement close to the junction of Victoria Street and Corn Market, which is an area of pavement currently free from obstruction. The advertisement would occupy the majority of the back of a tall and wide kiosk. Given its position close to the highway edge of the pavement, it would introduce a significant obstruction which would create a 'blind spot' where pedestrian/driver visibility would be reduced. This could only increase the safety risk to users of the highway in a busy area where I observed footfall and vehicle movements to be relatively high.

29. Although some infrastructure cabinets and a traditional telephone kiosk are present around the corner on Corn Market, the pavement along this section of Victoria Street is free from large obstructions, as I have explained. This makes a noticeable and positive contribution to the overall character of this part of the CA. The proposed advertisement would be a large and dominant feature if introduced and the effect would detract from the character and appearance of the street scene and the wider CA. Furthermore, particularly when seen from a mid-range viewpoint to the south-east, the prominent visual effect of the proposed advertisement would harm the setting of the immediately adjacent 'Royal Buildings' which are Grade II Listed.
30. I therefore find that the proposed advertisement would harm public safety and it would harm the character and appearance of heritage assets, thereby harming amenity.

Appeal F

31. The proposed advertisement would be sited on the outside edge of the pavement on the opposite side of Victoria Street to the Appeal D proposal, close to the junction with Green Lane. Similarly, this section of the pavement is currently free from substantial solid pieces of street furniture and its open nature makes a positive contribution to the character and appearance of the street scene and the adjacent CA.
32. The proposed advertisement would be a large and dominant feature which would appear somewhat isolated and overly prominent within the street scene given the context I have described. The effect would detract from its character and appearance, along with that of the wider CA. I am satisfied, however, that the proposed advertisement would be a sufficient distance from the Grade II Listed Royal Buildings and the former Tramway Office located on the opposite side of Victoria Street so as not to harm their setting.
33. I therefore find that although the proposed advertisement would not harm the setting of the Royal Buildings and former Tramway Office, it would harm the character and appearance of the street scene and the adjacent CA, thereby harming amenity.

Appeal H

34. The site of the proposed advertisement would be close to the Appeal B proposal, on the opposite side of what is a wide pedestrianised street. Like the Appeal B proposal, the proposed advertisement would be attached to a kiosk which would be broadly in line with a row of street furniture including lampposts, a refuse bin, seating and a cycle rack. As a result, it would not impede the established pedestrian flow line.
35. The Council asserts that the introduction of the advertisement would increase opportunities for crime and disorder by reducing natural surveillance. As explained, the advertisement itself would be fixed to the back of a tall telephone kiosk. Whilst I have no detail as to whether the advertisement would face north or south, the view from the north is open and the view from the south is equally open. Criminal activity could take place behind the kiosk

and would not be seen from the north, or in front of the kiosk and would not be seen from the south. However, as already explained, it is the kiosk itself rather than the advertisement which would cause the obstruction and the advertisement could not be displayed without it. On this basis, I am satisfied that the advertisement would not cause a public safety issue.

36. This part of St Peter's Street is home to a range of shops with illuminated advertisements. Nevertheless, there is a noticeable absence of solid, large pieces of street furniture within this section. This gives the street an open feel which makes a positive contribution to the overall character and appearance of the street and the adjacent CA. The overall scale and positioning of the proposed advertisement would result in an isolated and dominant feature within the street scene, which would harm its open character and the setting of the adjacent CA.
37. I therefore find that although the proposed advertisement would not harm public safety, it would harm the character and appearance of St Peter's Street and that of the adjacent CA, thereby harming amenity.

Appeal J

38. The proposed installation would be sited further to the south along St Peter's Street than the Appeal A and H proposals, in a prominent position near to the junction with St Peter's Church Yard and East Street.
39. The Council asserts that the introduction of the advertisement would increase opportunities for crime and disorder by reducing natural surveillance. The advertisement itself would be fixed to the back of a tall telephone kiosk and I have no detail whether it would face north or south. Either way, the view from the north is open and the view from the south is equally open. Whilst criminal activity could take place behind the kiosk and would not be seen from the north, or in front of the kiosk and would not be seen from the south, it is the kiosk itself rather than the advertisement which would cause the obstruction and the advertisement could not be displayed without it. On this basis, I am satisfied that the advertisement itself would not cause a public safety.
40. This section of St Peter's Street, which is within the Green Lane & St Peter's Street Conservation Area, is also wide and pedestrianised. With an absence of large, solid items of street furniture, save for an information board, it has an open and pleasant feel. The proposed advertisement would introduce a large, bulky advertisement in a relatively isolated position within the pavement. As a result, it would appear overly prominent within the setting I have described, thereby harmfully reducing the open character of the street scene and failing to preserve the character and appearance of the Conservation Area within which it sits. Notwithstanding this harmful effect, I am satisfied that the advertisement would be sited a sufficient distance from the Church of St Peter, which is a Grade II* Listed Building and No. 45 St Peter's Street which is Grade II Listed, so as not to adversely affect their setting.
41. I therefore find that although the proposed advertisement would not cause a public safety issue, it would cause detriment to the character and appearance

of the immediate street scene and the Conservation Area within which it sits, thereby causing harm to amenity.

Appeal L

42. The proposed advertisement would sit close to a similar free standing advertisement. The Council raises no issue with its effect on amenity and I have no reason to disagree. The Council does, however, assert that the proposal would increase opportunities for crime and disorder by reducing natural surveillance. As explained, the advertisement itself would be fixed to the back of a tall telephone kiosk. Whilst I have no detail whether the advertisement would face north-west or south-east, the views from both directions are open. Whilst criminal activity could take place behind or in front of the kiosk and would not be seen from the opposite direction, it is the kiosk itself rather than the advertisement which would cause the obstruction and the advertisement could not be displayed without it. On this basis, and in the absence of any compelling evidence to suggest that the nearby advertisement has caused a public safety issue, I am satisfied that the advertisement itself would not either.
43. I therefore find that the proposed advertisement itself would not pose an undue risk to public safety.

Appeal N

44. The proposed advertisement would be sited on the outside edge of the pavement on Victoria Street, in a prominent position close to the intersection with Wardwick and The Strand. Given the intersection, the highway is wide at this point and the pavement is currently free from substantial pieces of street furniture. This combination gives the immediate locality an open feel, which makes a positive contribution to the character and appearance of the street scene and CA within which it sits.
45. The proposed advertisement would be a large and dominant feature which would appear somewhat isolated and overly prominent within the street scene given the context I have described. The effect would detract from its character and appearance, along with that of the wider CA. Given the scale of the advertisement and its position immediately adjacent to the Old Post Office, I also consider that it would harm the setting of this Grade II listed building.
46. I therefore find that the proposed advertisement would harm the character and appearance of heritage assets, thereby harming amenity.

Other considerations (all cases)

47. I am mindful that the proposed advertisements would subsidise the kiosks which offer a number of benefits including include free Wi-Fi and touchscreen tablets to access a range of services. However, only matters of public safety and amenity can be taken into account when determining applications for advertisement consent. These factors would not outweigh the harm I have identified in any event.

48. The Appellant Company refers to Appeal Decisions and Local Authority Decisions relating to similar advertisements. However, I have considered each proposal before me on its individual merits and against the specific circumstances and context of each case.

Overall Conclusions

49. I conclude that as proposals A, C, E, G, I, K and M are not solely for the purpose of the operator's electronic communications network, they fall outside Schedule 2, Part 16, Class A of The Town and Country Planning (General Permitted Development) (England) Order 2015. These appeals are dismissed for this reason.
50. I conclude that none of the associated appeals for advertisement consent would pose an undue risk to public safety in terms of increasing opportunities for crime and disorder. In this respect, they do not conflict with saved policy E24 of the adopted City of Derby Local Plan Review (LP). However, proposal D would pose an unacceptable risk to public safety as it would increase the risk to highway users, contrary to policy CP23 of the adopted Derby City Local Plan – Part 1 Core Strategy (CS).
51. All proposals other than proposal L would cause harm to amenity, contrary to policies GD5 and E26 of the LP and policies CP3 and CP4 of the CS. Proposals B, D, F, J and N would specifically fail to preserve the character and appearance of a Conservation Area, contrary to policy E18 of the LP and policy CP20 of the CS, whilst proposals D and N would also fail to preserve the setting of at least one statutorily listed building, contrary to policy E19 of the LP and policy CP 20 of the CS. Although not decisive, these development plan policies are material considerations in the determination of the appeal proposals.
52. The arguments advanced by the Appellant Company, including the public benefits, do not outweigh the identified harms and associated policy conflict relating to the proposals I have found objectionable. On this basis, with the exception of Appeal L which I do find to be acceptable, the appeals do not succeed.

Conditions relating to Appeal L

53. The Council is satisfied that no additional conditions beyond the standard conditions set out in the Regulations are required in the event that the appeal is allowed. I have no reason to disagree.

David Fitzsimon

INSPECTOR