
Appeal Decisions

Site visit made on 26 October 2021

by C Coyne BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10/03/2022

Appeal A Ref: APP/N5090/W/21/3269722

Outside British Heart Foundation, 33 The Broadway, Mill Hill, London NW7 3DA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Martin Stephens (JCDecaux UK Limited) against the Council of the London Borough of Barnet.
 - The application Ref 20/5315/FUL, is dated 6 November 2020.
 - The development proposed is install a state of the art Communication Hub, as per Specification in Part 2 document.
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Appeal B Ref: APP/N5090/W/21/3269723

Outside British Heart Foundation, 33 The Broadway, Mill Hill, London NW7 3DA

- The appeal is made under Regulation 17 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 against a failure to give notice within the prescribed period of a decision on an application for express consent to display an advertisement.
 - The appeal is made by Mr Martin Stephens (JCDecaux UK Limited) against the Council of the London Borough of Barnet.
 - The application Ref 20/5316/ADV is dated 6 November 2020. The advertisement proposed is 6 sheet illuminated advertisement incorporated into a freestanding communications hub unit, as illustrated in the application documents.
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Decisions

1. Appeal A is allowed and planning permission is granted for install a state of the art Communication Hub, as per Specification in Part 2 document at Outside British Heart Foundation, 33 The Broadway, Mill Hill, London NW7 3DA subject to the conditions set out in the attached schedule.
2. Appeal B is allowed and express consent to display an advertisement is granted for the display of 6 sheet illuminated advertisement incorporated into a freestanding communications hub unit, as illustrated in the application documents 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 and the following additional conditions:
 - 6) The development hereby permitted shall be carried out in accordance with the following approved plans: Part 2 Communication Hub Details; Part 3 Sustainability Aims and Achievements; Part 4 Pavement Remediation; Part 5 Communication Hub Noise Level Report; Part 6 Communication Hub Management Plan; Proposed Digital Communication Hub Location Plan Plotted

Scale 1:1250; Proposed Digital Communication Hub Location Plan Plotted Scale 1:200; Communication Hub SITE B O/s 33 The Broadway Mill Hill NW7 3DA Visuals and OS Site Maps.

- 7) The maximum luminance of the signs shall not exceed the values recommended in the association of Public Lighting Engineer's Technical Report No. 5, Zone 3. The intensity of the luminance of the approved advertisement shall be no greater than 600Cdm² during hours of darkness.
- 8) No visual effects of any kind to be permitted to accompany the transition between any two successive messages. The replacement image must not incorporate any fading, swiping or other animated transitional method. The minimum time between successive displayed images shall be 10 seconds.
- 9) The advertisement hereby approved shall be managed in strict compliance with the submitted Communication Hub Unit Management Plan (October 2020) and maintained as such thereafter.

Preliminary and Procedural Matters

3. The two appeals directly relate to the same appeal site and to each other. I have considered each on its individual merits, however as they raise similar issues, I have combined these cases in a single decision letter.
4. The relevant Regulations regarding advertisements stipulate that control may only be exercised in the interests of 'amenity' and 'public safety'. In determining the appeal, the Council's development plan policies are not determinative, but I have taken them into account as a material consideration in determining appeal B.
5. Both appeals relate to planning applications that were not determined by the Council within the prescribed period. The Council have subsequently issued statements for the purposes of these appeals highlighting that it would have refused the applications for planning permission and advertisement consent and the reasons for this. I have had regard to these statements in framing the main issues below.

Main Issues

6. Main issues for both appeals are:
 - the effect of the proposed development on the character and appearance and visual amenity of the area; and
 - the effect of the proposed development on public safety having regard to crime and anti-social behaviour.
7. Another main issue for appeal A is:
 - the effect of the proposed development on the living conditions of neighbouring occupiers having regard to noise and disturbance.

Reasons

Character and Appearance & Visual Amenity

8. The Council has raised concerns that the proposals would significantly reduce the visibility of the high street, as well as leading to the proliferation of street furniture that would increase the visual clutter on the pavement.

9. The Council's adopted Barnet Design Guidance Note 1: Advertisements and Signs (DGN), seeks advertisements that relate well to their surroundings and avoid visual clutter. Paragraph 112 of the Framework also seeks development that avoids unnecessary street clutter and responds to local character and design standards.
10. On my visit I observed that there was some street furniture nearby such as a rubbish bins, lamppost, bus stop/shelter on one side with a shorter parking information post on the other. I also observed that there was a larger and much taller mature tree beside this information post. In addition, I saw that there was a long line of cars parked at the kerbside in front of the appeal sites.
11. The proposals would be located near the edge of the pavement in a location in between these two clusters of existing street furniture. There would also be a good distance between them and the cluster of existing street furniture furthest from them i.e., the bus stop/shelter, bins, and lampposts. Additionally, even though the information post would be closer, it is not as high as the lampposts, or the bus stop/shelter and the adjacent tree provides a visual backdrop which would given their height and width also screen the proposals when viewed from certain directions.
12. Furthermore, given their size and location, there would still be a sizeable gap between the proposals and the existing street furniture on the pavement on this part of The Broadway. Consequently, given their size, scale, siting and design I find that both proposals would not unacceptably reduce the visibility of the high street or lead to a proliferation of street furniture and similar structures that would clutter the pavement.
13. I therefore conclude that the proposals would not materially harm the character and appearance or visual amenity of the area. As a result, in relation to appeal A, the proposal would not conflict with the relevant requirements of Policy DM01 of the adopted Barnet Development Management Policies Development Plan Document (DMP) and the London Plan (LP).
14. Moreover, with respect to appeal B and for the above reasons, I conclude that the proposal would also not materially harm the visual amenity of the area. In accordance with the Regulations, I have considered the provisions of the development plan and supplementary guidance so far as they are relevant to appeal B. Policy DM01 of the DMP seeks to protect visual amenity as does the DGN and so they are relevant in this case. As I have concluded that the proposed advertisement would not harm visual amenity, it consequently also does not conflict with this policy and guidance.
15. For similar reasons, both proposals would also accord with paragraphs 112 and 130 of the Framework.

Public Safety – crime and anti-social behaviour

16. The Council has raised concerns relating to public safety due to the appeal sites being within an area with high levels of anti-social behaviour such as begging and loitering and that the proposals' free phone service would potentially be used for illicit activities.
17. However, the appellant has submitted a management plan which outlines the potential measures that could be taken to prevent such potentially criminal activities which include: the installation of CCTV cameras, the prohibition of free calls to mobiles and landlines apart from emergency calls and charity calls and reverse charge landline calls and limiting the charging period for the proposal's USB charging hub.

18. Indeed, the Metropolitan Police have also commented on the proposals and recommended that an integrated CCTV camera and tactile paving be incorporated into their designs to help reduce these potential criminal activities from occurring around the proposed communication hub and the associated advertisement display which would in their view mitigate any potential harm.
19. Moreover, even though the submitted plans do not explicitly state that such measures would be taken, they could be secured via the imposition of a suitably worded condition ensuring that the proposals were implemented in accordance with such a management plan that was submitted to and approved in writing by the local planning authority in consultation with the police, as per draft condition no. 9 suggested by the appellant.
20. Consequently, I am satisfied that if such measures were implemented and secured via the imposition of a suitably worded condition, that neither proposal would have an unacceptable adverse impact on public safety in this regard.
21. I therefore conclude that the proposals would not materially harm public safety having regard to crime and anti-social behaviour. Accordingly, regarding appeal A, the proposal would not conflict with the relevant requirements of Policy D8 of the LP, Policy DM01 of the DMP and Policy CS12 of the adopted Local Plan Core Strategy (CS).
22. Furthermore, with respect to appeal B and for the above reasons, I conclude that the proposal also does not materially harm public safety having regard to crime and anti-social behaviour. In accordance with the Regulations, I have considered the provisions of the development plan and supplementary guidance so far as they are relevant to appeal B. Policy D8 of the LP, Policy DM01 of the DMP and Policy CS12 of the CS seek to protect public safety having regard to crime and anti-social behaviour so are relevant in this case. As I have concluded that the proposed advertisement does not harm public safety having regard to crime and anti-social behaviour, it consequently also does not conflict with this policy and guidance.

Living Conditions - Noise

23. The appeal site is located on the pavement next to a relatively busy road. At the time of my visit, 1:15pm, I saw that the pavement was well-used by pedestrians with the road having a steady flow of vehicular traffic moving in both directions which meant that there was a reasonable level of background noise in this location. This traffic noise could be heard from the pavement and is something to which residents have no doubt become accustomed. I also have no substantive evidence before me to suggest that this level of noise has given rise to any complaints from nearby residents.
24. In their statement the Council raise a concern in relation to the noise levels contained in the appellant's submitted Noise Level Report dated August 2020 (Noise Report). The Council do not accept the findings of the Noise Report and suggest that a detailed acoustic be prepared to demonstrate the proposal's compliance with the relevant standards. Even so, the Council state that based on the Noise Report the proposal's noise levels would measure approximately 86dB and that this could potentially give rise to disturbance to residents of first floor flats if the proposed unit had a distinctive hum. They also surmise that this potential hum may well be more audible at night when the background traffic noise had subsided. However, they have not submitted any substantive evidence to support this.
25. The Noise Report indicates that the highest noise levels from a JCDecaux communications hub like the proposal was approximately 73.5dB with this

measurement being taken at a height of approximately 455mm above the ground. It also concludes that the height and direction of any noise emanating from such a device is lower and directed downwards. The Noise Report also estimated ambient noise levels to vary between approximately 50 to 60 dB, a figure which the Council has not disputed.

26. Additionally, the Noise Report indicates that the 86dB noise level referred to by the Council would appear to be from an Ocean outdoor BT InLink hub which has different specifications to the proposal. The report also indicated that this measurement was taken approximately 100mm from the ground. Therefore, based on the evidence, the proposal would have a noise level approximately 13.5dB above the ambient level at a height of approximately 455mm above the ground. This would represent an increase of approximately 22% which would not be significant.
27. Consequently, and given the likely direction of this noise being downwards and the fact that it would also be likely to decrease in an upwards direction, I consider it unlikely that the proposal would give rise to noise levels that would cause unacceptable disturbance to nearby residents of first floor flats, even at night.
28. Accordingly, and based on the evidence before me I am satisfied that the proposal would not likely have an adverse impact in this regard and that any potential noise impact could be adequately mitigated via the imposition of a suitably worded condition.
29. I therefore conclude that the proposals would not materially harm the living conditions of neighbouring occupiers having regard to noise and disturbance. As a result, they would not conflict with the relevant requirements of Policy DM04 of the DMP and Policy 14 of the LP.

Other Matters

30. I note the point made by an interested party that there would be no need for the proposal as not many people use public payphones currently, instead relying on and using pay as you go mobile phones. However, the proposed communications hub is more than just a public telephone and would include a defibrillator, data connection point and further services which the general public would be likely to use.
31. In their statement the Council briefly refer to the proposal's potential impact on the living conditions of neighbouring residents resulting from a loss of business due to a loss of visibility. However, they have not given any further detail on what this would entail or why it would be harmful. As a result, I have not considered this matter in depth. In any event, given its size and location, I think it reasonable to conclude that the proposal would be unlikely to cause any loss of footfall for the surrounding businesses or to make the high street less visible to potential customers.

Conditions

32. The Council has suggested several conditions that it considers would be appropriate as has the appellant. I have considered these in light of the Planning Practice Guidance (PPG). For clarity and to ensure compliance with the PPG, I have amended some of the suggested wording.
33. For appeal A, in addition to the standard implementation condition, I have imposed a necessary condition to define the plans with which the scheme should accord in the interest of precision. I have also imposed a condition specifying that materials

match those shown on the approved plans in the interests of the character and appearance of the area.

34. The Part 2 Communications Hub Details was only submitted in relation to appeal B. As a result, for appeal A, I am imposing a condition requiring the submission of this document prior to the first use of the approved communications hub.
35. A management plan was only submitted in relation to appeal B. Consequently, for appeal A, I am imposing a condition requiring the submission of similar management plan to the LPA for their approval in the interests of public safety.
36. Also, in the interests of public safety, for appeal A I have also imposed conditions requiring that the proposal would be compliant with the submitted and approved Communication Hub Management Plan and that it would also incorporate measures that would reduce potential future instances of crime and disturbance in the area.
37. For appeal A the Council has suggested a pre-commencement condition in relation to the submission and approval of an acoustic report and noise mitigation measures, however bearing in mind paragraph 56 of the Framework and my findings above, I find the imposition of this proposed condition to be neither necessary nor reasonable.
38. For appeal B, in addition to the five standard advertisement conditions I have imposed necessary conditions to restrict luminance levels, prohibit visual effects and requiring that the proposal be compliant with the submitted management plan in the interests of public safety and visual amenity. I have also imposed a necessary condition on appeal B to define the plans with which the scheme should accord in the interest of precision.

Conclusion

39. For the reasons set out above I conclude that both appeals should be allowed.

C Coyne

INSPECTOR

Schedule of Conditions – Appeal A

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Part 2 Communication Hub Details; Part 5 Communication Hub Noise Level Report; Proposed Digital Communication Hub Location Plan Plotted Scale 1:1250; Proposed Digital Communication Hub Location Plan Plotted Scale 1:200.
- 3) The external surfaces of the development hereby permitted shall be constructed in the materials shown on approved plan Part 2 Communication Hub Details.
- 4) Prior to the first use of the development hereby approved a Communication Hub Unit Management Plan have been submitted to and approved in writing by the local planning authority in consultation with the Police Service concerning the use and operation of the public information display and telephone. This management plan shall include an implementation programme. The development shall be carried out in accordance with the approved details.
- 5) The proposal shall be managed in strict compliance with the submitted and approved Communication Hub Unit Management Plan and maintained as such thereafter.
- 6) An Integrated CCTV camera shall be made operational and tactile paving shall be installed from day 1 of official unit 'switch-on' and maintained permanently thereafter.
- 7) The level of noise emitted from the plant hereby approved shall be at least 5dB(A) below the background level, as measured from any point 1 metre outside the window of any room of a neighbouring residential property. If the noise emitted has a distinguishable, discrete continuous note (whine, hiss, screech, hum) and/or distinct impulse (bangs, clicks, clatters, thumps), then it shall be at least 10dB(A) below the background level, as measured from any point 1 metre outside the window of any room of a neighbouring residential property.

End of Schedule