
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/21/3269724

79 Alexander Court (Outside Caffè Nero), High Road, East Finchley, London N2 8AD

- 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 Martin Stephens (JCDecaux UK Limited) against the decision of the Council of the London Borough of Barnet.
 - The application Ref 20/5317/FUL, dated 6 November 2020, was refused by notice dated 4 January 2021.
 - 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/21/3269725

79 Alexander Court (Outside Caffè Nero), High Road, East Finchley, London N2 8AD

- 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 Martin Stephens (JCDecaux UK Limited) against the decision of the Council of the London Borough of Barnet.
 - The application Ref 20/5318/ADV, dated 6 November 2020, was refused by notice dated 4 January 2021.
 - The advertisement proposed is described on the application form as '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 79 Alexander Court (Outside Caffè Nero), High Road, East Finchley, London N2 8AD 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 Unit Details; Part 3 Sustainability Objectives; 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 C O/s 79 Alexander Court, High Road East Finchley N2 8AD 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. For appeal A the Council have described the development as 'Installation of public payphone/communication hub'. I consider that this revision provides a succinct and accurate description of the proposal and I have therefore determined the appeal on this basis.
6. For appeal B the Council have described the development as 'Installation of 86 inch advertisement located on the rear face of the communications apparatus'. I consider that this revision provides a succinct and accurate description of the proposal and I have therefore determined the appeal on this basis.

Main Issues

7. The main issues are:
8. A main issue for both appeals is:
 - the effect of the proposed development on the character and appearance and visual amenity of the area.
9. 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

10. The Council has raised concerns that the siting, design, and overall size of the proposals as well as the fact that the scheme for appeal B would have an illuminated advertising panel would mean that they would create a relatively stark

and imposing structure within the street scene that would appear excessively prominent, adding to visual clutter and thereby reducing the visibility of the high street and detracting from the area's character.

11. 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.
12. The appeal site is located on a pavement situated on East Finchley high street in front of buildings with commercial units on the ground floor and residential accommodation on the first floor. The proposals would be next to an existing cluster of street furniture on the pavement comprising approximately four benches beyond which is some shrubbery and two mature trees. On the other side of the appeal site further along the pavement is a parking meter and another two mature trees that are relatively high. There is also another mature tree on the other side of the road and a lamppost and rubbish bin nearby.
13. On my site visit I observed that the pavement where the proposals would be located was relatively wide and that the mature trees in the vicinity were relatively tall. Consequently, as the trees' height would be much higher than the proposals', they would provide a visual backdrop and/or screening for them when viewed from certain directions. In addition, from the evidence before me, including the visual montages submitted by the appellant, the proposals would not be significantly wider than the existing street furniture, shrubbery, and mature trees that it would be visually aligned with. There would also still be reasonably sized gaps/open sections of pavement between the proposals and the nearby lamppost and rubbish bin as well as on either side of them and the benches they would be next to.
14. As a result, given their size, scale, design and location I find that the proposals would not clutter the pavement, would not appear excessively visually prominent and that they would therefore not have an adverse visual impact on the street scene.
15. 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).
16. Furthermore, with respect to appeal B and for the above reasons, I conclude that the proposal also would 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 would not conflict with this policy and guidance.
17. For similar reasons, both proposals would also accord with paragraphs 112 and 130 of the Framework.

Living Conditions

18. At the time of my visit, 10:50am, there was some background noise from traffic traversing the high street however this was not significant. Several pedestrians passed by the appeal site at this time as well as some patrons entering and existing the nearby shop and café. 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 current levels of traffic noise have given rise to any complaints from nearby residents.

19. As part of the planning application process the appellant submitted a Noise Level Report, dated 12 August 2020, (the Noise Report). The Noise Report indicates that the highest noise levels from a communications hub similar to the proposals was approximately 73.5dB and 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.
20. Therefore, based on the evidence, the proposal would have a noise level approximately 13.5 dB 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. 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.
21. In any event, in their statement the Council say that the additional reason for refusal, regarding noise and amenity, is one that could be overcome if an accompanying acoustic report were to be submitted and approved by them. Indeed, the Council's officer report also states that their Environmental Health Officer had been consulted and in response stated that additional details would be required to ensure that proposed development would not cause noise pollution to the occupiers in the residential premises on this part of the High Road and that these details could be secured by condition, were the proposals otherwise acceptable.
22. However, in the context of the above and given its size and the fact that the likely noise impact from the proposal would be limited, I am not convinced that the appellant would need to submit a full acoustic report in addition to the Noise Report which they have already submitted.
23. Accordingly, and based on the evidence before me I am satisfied that the proposal would not have an unacceptable adverse impact in this regard and that any potential noise impact could be adequately mitigated via the imposition of a suitably worded condition to monitor the level of its future noise output.
24. 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.

Conditions

25. 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.
26. 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.

27. In the interests of public safety, for appeal A, I have also imposed a condition requiring that the proposal would be compliant with the submitted management plan.
28. 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.
29. For appeal B, in addition to the five standard advertisement conditions I have also 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

30. 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 Unit Details; Part 3 Sustainability Objectives; 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 C O/s 79 Alexander Court, High Road East Finchley N2 8AD Visuals and OS Site Maps.
- 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) The proposal shall be managed in strict compliance with the approved Communication Hub Unit Management Plan dated October 2020 and maintained as such thereafter.
- 5) An Integrated CCTV camera shall be made operational from day 1 of official unit 'switch-on' and maintained permanently thereafter.
- 6) 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