



Appeal Decision

Site visit made on 7 October 2022 by T Bennett BA (Hons) MSc

Decision by Chris Preston BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28th October 2022

Appeal Ref: APP/C1055/Z/22/3292557

Land at St Peters Street (adjacent To Optical Express), Derby, DE1 2NR, 435349, 335963

- 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 Ms Bella Noakes on behalf of British telecommunication PLC against the decision of Derby City Council.
 - The application Ref 21/01262/ADV, dated 3 July 2021, was refused by notice dated 16 December 2021.
 - The advertisement proposed is for two digital 75 inch LCD display screens, one on each side of the amended InLink unit.
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Decision

1. The appeal is allowed and express consent is granted for the display of two digital 75 inch LCD display screens, one on each side of the amended InLink unit 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 additional conditions set out in the attached Schedule.

Appeal Procedure

2. The site visit was undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

Preliminary and Procedural Matters

3. The proposed advertisement would form an integral part of a replacement BT Street Hub. The appeal documents indicate that a separate planning application to erect a replacement BT street hub was refused by the Council. There is no indication that an appeal has been made against that decision.
4. The powers to control advertisements under the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (the Regulations) may be exercised only in the interests of amenity and public safety, taking account of any material factors including development plan policies as a material consideration. The National Planning Policy Framework (the Framework) and the Planning Practice Guidance (PPG) reiterates this approach.
5. The Council has raised no concerns in terms of public safety and I see no reason to take a different view based on the information presented. In assessing the proposal from an amenity perspective, it is difficult to disassociate the advertisement from its proposed housing. No other way of supporting the advert has been shown on the drawings and without the

associated housing the advert could not exist in isolation. Thus, whilst this decision relates solely to the advert and makes no comment on the planning merits of the proposed street hub, I have taken account of the nature of the proposed housing as part of the context of assessing the visual amenity of the proposed advert.

6. Where relevant, possible effects on designated heritage assets have been considered. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of conservation areas. In advertisement appeals this is only in so far as it relates to amenity. The Council has also referred to the effect on the setting of nearby listed buildings. The requirements of s66(1) of the Act do not apply to proposals for advertisement consent because that statutory duty only applies to the consideration of planning applications made under The Town and Country Planning Act 1990. Nonetheless, features of historic or architectural interest are relevant when assessing the general characteristics of the area and I have taken account of the presence of nearby listed buildings in considering the impact on amenity.
7. In the interests of accuracy and clarity, the site address has been taken from the appeal form, which is also replicated on the Council's decision notice. The postcode has been taken from the application form as one was not present on the appeal form.

Main Issue

8. The main issue is the effect of the proposal on the visual amenity of the area, having regard to the Green Lane and St Peter's Conservation Area and the presence of nearby listed buildings.

Reasons for the Recommendation

9. The proposed advertisement would be sited towards the beginning of the main pedestrianised area on St. Peter's Street, adjacent to the Green Lane and St Peter's Conservation Area (CA), close to the Grade II listed buildings at 45 St Peter's Street and the Green Man Inn and the Grade II* listed St Peter's Church.
10. The significance of the CA is derived in part from the buildings of architectural and historic interest including the area of open space around St Peter's Church which makes a positive contribution to the character and appearance of the area.
11. The area surrounding the appeal site is characterised by a mix of commercial and retail units many of which have illuminated shop front signage. The immediate context is dominated by St Peter's Mall, a 1960's style shopping development which adds little to the historical significance of the area. At the proposed site there is presently a slimline phone kiosk with a non-illuminated static advertisement on the opposite side. Although the proposal would be higher than the existing structure which it would replace, it would be a slimmer design in terms of both width and depth.
12. The public realm at this location has a variety of street furniture, including planters, benches, bike stands and existing digital advertisement displays. The

proposed display would be positioned in line with these and would not increase any perception of clutter given that it would be replacing the existing kiosk.

13. As the advertisement would be viewed against the backdrop of other internally illuminated digital advertisements sited to both the north and south of the appeal site and taking the immediate context of the existing street scene into account, I consider that the proposed advertisement would not appear incongruous and dominant.
14. St Peter's Church and 45 St Peter's Street are both viewed within the setting of existing street furniture and a range of retail and commercial premises with visually prominent signs. As such the addition of the appeal proposal would not have an adverse impact on views of the listed buildings or notably alter the way they are appreciated in the street scene. I am also satisfied that the appeal proposal would be located a sufficient distance away from these buildings and the Green Man Inn, so as not to adversely affect their setting.
15. Taking account of all of the above, I am satisfied that the impact of the proposal on the visual amenity of the area would be acceptable and that the scheme would preserve the character and appearance of the CA. In reaching my decision, in accordance with the Regulations, I have considered Policies CP20 of the Core Strategy and E18 and E19 of the City of Derby Local Plan. These policies, amongst other matters, seek to ensure proposals preserve and enhance heritage assets, and do not adversely affect the street scene and so are material in this case. Given that I have concluded the proposal would not harm amenity, accordingly the proposal does not conflict with these policies.

Other Matter

16. The Council has directed me towards a series of appeal decisions¹ that were dismissed for similar kiosks. However, I do not have the full details of these cases before me so I cannot be sure of their exact location within the city centre and their reason for dismissal. In any case, each appeal must be decided on the individual planning merits.

Conditions

17. In addition to the five standard conditions set out in the Regulations, the Council and the appellant have suggested several additional conditions. I have reviewed these in accordance with the tests in the Framework.
18. In the interests of public safety and visual amenity I consider conditions relating to the frequency and method with which the displays change, control of moving images and a mechanism to freeze the image in the event of a malfunction to be necessary.
19. To avoid any confusion for highway users, it is necessary to ensure that advertisement content does not resemble road traffic signs and a condition to that effect is attached.
20. The Council suggested a condition that the lighting scheme of the proposal should be installed and retained in accordance with the submitted details and

¹ APP/C1055/W/18/3212998, APP/C1055/Z/18/3213002, APP/C1055/W/18/3213016, APP/C1055/Z/18/3213021, APP/C1055/W/18/3213023, APP/C1055/Z/18/3213025, APP/C1055/W/18/3213027, APP/C1055/Z/18/3213029, APP/C1055/W/18/3213034, APP/C1055/Z/18/3213036, APP/C1055/W/18/3213050, APP/C1055/Z/18/3213054, APP/C1055/W/18/3213081 & APP/C1055/Z/18/3213083

the Institution of Lighting Engineers "Guidance Notes for the Reduction of Obtrusive Light. However, I do not find this necessary or relevant, as the guidance relates to exterior lighting installations rather than advertisements. I consider the Council's second suggested condition in relation to luminance levels would be sufficient. I have modified the condition for clarity. This condition regarding luminance levels is necessary to ensure highway safety and protect amenity.

Recommendation

21. For the reasons given above and having had regard to all other matters raised, I recommend that the appeal should be allowed.

T Bennett

APPEAL PLANNING OFFICER

Inspector's Decision

22. I have considered all the submitted evidence and the Appeal Planning Officer's report and, on that basis, I agree with the recommendation and shall allow the appeal subject to the recommended conditions.

Chris Preston

INSPECTOR

Schedule of additional conditions

1. The minimum display time for any advertisement shall be 10 seconds and the change between advertisement images shall take place over a period no greater than one second with no sequencing, fading, swiping or merging of images.
2. The advertisements shall only display static images and shall not display any moving images, animation, intermittent or full motion video images.
3. A mechanism shall be in place so that if the installation breaks down it freezes the image to avoid any flashing error messages or pixilation.
4. No content on the advertisements shall resemble traffic signs, as defined in section 64 of the Road Traffic Regulation Act 1984.
5. The intensity of the illumination of the advertising unit and display permitted by this consent shall be no greater than 600 cd/m² between the hours of dusk (local sunset time) and dawn (local sunrise time).