



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: 28 October 2022

Appeal Ref: APP/C1055/Z/22/3292276

Land at Market Place, Derby, DE1 3AE, 435271, 336302

- 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 21/01261/ADV, dated 3 July 2021, was refused by notice dated 14 December 2021.
 - The advertisement proposed is for two digital 75 inch LCD display screen, one on each side of the amended InLink unit.
-

Decision

1. The appeal is dismissed.

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 (1) 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.

Main Issue

7. The main issue is the effect of the proposal on the visual amenity of the area, having regard to the City Centre Conservation Area and the presence of nearby Grade II listed buildings.

Reasons for the Recommendation

8. The proposed advertisement would be displayed in a pedestrianised area of the City Centre Conservation Area (CA) within the Market Place. It would be in the vicinity of the Grade II Market Place War Memorial and the Grade II listed buildings at No 2-4, 11, 33 and 35-36 Market Place, the former NatWest Building and The Guildhall.
9. The significance of the CA is derived primarily from the many buildings of architectural and historic interest which make a positive contribution to the character and appearance of the area. It is also derived from the city's historic street pattern which runs on a north-south axis. The Market Place forms an open part of this axis providing a spacious setting for the historic buildings that partly encompass it.
10. The proposed advertisement would be located in an area of open public space that would be enclosed by bollards and close to a raised brick planter, benches, bins and street lighting. Despite the array of street furniture, the appeal site retains an open feel as much of the existing street furniture is either smaller in scale or positioned discretely along the edge of the brick planters.
11. This part of Market Place contains buildings of various different sizes, ages and designs, generally with ground floor level businesses. The existing signage on these is primarily small-scale and low level associated with the business premises. The proposal would be located a short distance northeast of the front elevation of No 2-4 Market Place, a 4-storey, grade II listed building dating from the 18th century, in the direct line of sight of the Grade II war memorial, a short distance northwest of the Grade II listed 19th century Guildhall Marketplace and directly opposite 35-36 Market Place.
12. The size, position and orientation of the proposed internally illuminated digital screens means it would be a visually prominent and intrusive feature within the streetscene detracting from the historic character and appearance of the CA and the open space experienced in this area, thereby causing resultant harm to the visual amenity of the area. Whilst the luminance levels and rate of image

change could be controlled by conditions, by reason of the advertisements size and positioning it would still introduce an unsympathetic, large and dominant feature within the street scene, out of keeping when compared with the other forms of advertisement in the immediate surrounding area.

13. Furthermore, when the proposal is viewed in a northeast direction it would be readily visible in views of the Guildhall and War Memorial and when viewed towards the southwest it would be visible in views of the Grade II listed former NatWest building and 2-4 Market Place. The prominent visual effect of the illuminated digital advertisement with its changing static imagery, would increase the prominence of the modern style advertisement, unduly drawing the eye and thereby detracting from the ability to appreciate the listed buildings in their surrounding setting. Given the importance of the listed buildings to the general character of the area the impact in that regard would be harmful to visual amenity.
14. Whilst the proposed supporting structure would be more compact than the existing two phone boxes it would replace, the proposed advertisement would be taller and the location of the existing phone boxes is not as prominent nor do they contain advertising of the form being proposed. Moreover, no mechanism for securing the removal of the phone boxes has been put forward and their removal cannot be relied upon as part of this appeal. This factor therefore does not mitigate against the harm I have identified.
15. The appellant has directed me towards a number of previous appeal decisions where Inspectors found similar schemes to be acceptable.¹ These appeals relate to different locations to the proposed advertisement and therefore the local context and environment is not directly comparable.
16. For the reasons outlined above, I find that the proposed advertisement would have a harmful effect upon the visual amenity of the area and would fail to preserve or enhance the character and appearance of the CA. In assessing the harm to amenity, I have taken account of the prominent and unsuitable location within the setting of the nearby Grade II listed buildings and War Memorial.
17. In reaching my decision, in accordance with the Regulations, I have taken into account 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 harm amenity, accordingly the proposal conflicts with these policies.

Other Matters

18. The appellant has outlined numerous ways that the advertisement displays can be used for the public benefit, including the display of public health and community information, crime awareness and emergency messaging. However, those matters do not relate to the amenity of the area and, in any event, no mechanism for managing the content of the displays has been presented.

¹ Appeal Ref: APP/Z5630/H/3209488, APP/N5660/W/18/3199793, APP/Z41310/W/3205102 and APP/Z1775/Z/18/3211052

19. There are a number of associated benefits related to the street hub functions, such as improved internet coverage and access to communication technology. However, as outlined in the preliminary matters, this appeal is focused solely on the proposed advertisement and therefore these benefits do not form part of the consideration in this appeal.
20. I have noted the appellant's claim regarding the Council's engagement during the application process. However, this has had no bearing on my assessment of the proposed scheme which has focused on the merits of the proposed advertisement insofar as it relates to the amenity of the area.

Recommendation

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

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 dismiss the appeal.

Chris Preston

INSPECTOR