



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/22/3292477

Land At Morledge (adjacent To Court Building), Derby, DE1 2AU, 435502, 336193

- 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 21/01270/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 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.
4. 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 report 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.

5. 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.
6. 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

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.

Reasons for the Recommendation

8. The appeal site is adjacent to the City Centre Conservation Area (CA) and whilst not within it, the advertisement would be visible in views to and from the edge of the CA. The overall 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.
9. The proposed advertisement would be located on a wide, spacious area of pavement on the Morledge where two phone boxes are currently sited and near to where a bus stop with a large internally illuminated digital advertisement faces the site. The immediate surroundings have a busy commercial character. On the opposite side of the road, retail units and fast food outlets in the CA are visible, many with illuminated signage. The immediate context is dominated by large modern buildings, including the prominent 'Holiday Inn' hotel with its tall, glazed, frontage with internal illumination and The Eagle Centre Market with tall, glazed sections and substantial signage which, whilst not illuminated, is also very prominent in the street scene. The sense of scale created by those buildings and the width of the street and pavement is substantial.
10. The proposal whilst taller, would be slimmer in design than the existing phone boxes which would be replaced. These already have advertisements on them and although not illuminated, the luminance levels and rate of image change of the proposed advertisements could be controlled by conditions so as to not unduly draw the eye, should I be minded to allow the appeal.
11. When set against the prevailing sense of scale of the area and the size of adjacent modern buildings, and taking account of the size, orientation and position of the advertisements, I find that they would not appear unduly tall, dominant or incongruous in views along the Morledge in either direction and would not have an adverse effect upon visual amenity, nor cause harm to the existing character or appearance of the adjacent CA.
12. In reaching my decision, in accordance with the Regulations, whilst not determinative, I have taken into account Policies CP20 of the Core Strategy and E18, E19 and E26 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

13. 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 has to be decided on the individual planning merits.

Conditions

14. In addition to the five standard conditions set out in the Regulations, the Council and the appellant have suggested a number of additional conditions. I have reviewed these in accordance with the tests in the Framework.
15. 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 requirement of a blank or frozen screen in the event of a malfunction to be necessary.
16. The displays are sited close to the highway. 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.
17. In the interests of visual amenity in order to avoid the display appearing stark, a condition is necessary to ensure the brightness of the display screens adjust to ambient light levels.
18. The Council suggested a condition that the lighting scheme of the proposal should be installed and retained in accordance with the submitted details and 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. In any event, 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.

Conclusion and Recommendation

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

T Bennett

APPEAL PLANNING OFFICER

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

Inspector's Decision

20. 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 defaults to a blank screen or 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 display panel shall be fitted with a light sensor, designed to adjust the brightness to changes in ambient light levels.
6. The intensity of the illumination of the advertising unit and display permitted by this consent shall not exceed a luminance of 600 cd/m² between the hours of dusk (local sunset time) and dawn (local sunrise time).