



Appeal Decisions

Site visit made on 28 March 2023

By Andrew McCormack BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4th July 2023

Appeal A Ref: APP/A4710/W/22/3310355

NWP Kiosks, O/S Boots 7 - 11 Market Street, Halifax, Calderdale, HX1 1PB

- 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 New World Payphones against the decision of Calderdale Metropolitan Borough Council.
 - The application Ref 22/00855/FUL, dated 1 August 2022, was refused by notice dated 5 October 2022.
 - The development proposed is replacement of existing double telephone kiosk with new telephone kiosk which includes integrated digital advertising display.
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Appeal B Ref: APP/A4710/H/22/3310482

NWP Kiosks, O/S Boots 7 - 11 Market Street, Halifax, Calderdale, HX1 1PB

- 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 New World Payphones against the decision of Calderdale Metropolitan Borough Council.
 - The application Ref 22/10016/ADV, dated 1 August 2022, was refused by notice dated 6 October 2022.
 - The development proposed is illuminated digital advertisement display integrated within replacement telephone kiosk.
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Decision

1. Appeal A is dismissed and Appeal B is dismissed.

Preliminary Matters

2. Two appeals, Ref: APP/A4710/W/22/3310355 (Appeal A) and APP/A4710/H/22/3310482 (Appeal B) have been submitted in relation to the same proposed scheme. One is for the grant of planning permission for the proposed replacement telephone kiosk (Appeal A) within which an illuminated digital advertisement display would be integrated and the other relates to an application for express consent for the advertisement display itself (Appeal B). Whilst each appeal is a separate consideration to be determined, they have both been considered and determined in parallel. Notwithstanding this, I confirm that I have determined each appeal separately and on their own merits in accordance with the respective processes and requirements that I am required to undertake. However, for clarity, efficiency and simplicity, I have presented the outcomes of these two linked appeals within this one decision letter.
3. The Council adopted a new development plan, the Calderdale Local Plan (2018 – 2033) (the CLP) on 22 March 2023. Accordingly, the two appeals have been determined having regard to the relevant policies contained within the newly adopted development plan insofar as they are material considerations. The relevant policies with regard to Appeal A are policies BT1 and HE1. Policy BT1 considers the impact of development in terms of high quality design and aesthetics, local context and distinctiveness, the character and appearance of the surrounding area and the significance of any designated heritage assets

in the vicinity. Policy HE1 relates to the protection and enhancement of the historic environment and the effect of development on preserving and enhancing those elements that contribute to the significance of designated heritage assets including conservation areas and listed buildings.

4. Advertisement proposals (Appeal B) are to be assessed against the relevant policies of the National Planning Policy Framework 2021 (the Framework). Paragraph 136 of the Framework states that the quality and character of places can suffer when advertisements are poorly sited and designed. A separate and distinct consent process within the planning system controls the display of advertisements, which should be operated in a way which is simple, efficient and effective. Advertisements should be subject to control only in the interests of amenity and public safety, taking account of cumulative impacts. As such, Appeal B has been determined on that basis.,
5. In Appeal B, the relevant policies in the CLP to which regard has been had as material considerations are Policy BT1 and Policy RT5. Policy BT1 has been considered in relation to function and the consideration of any unacceptable loss of amenity resulting from the proposed development. Policy RT5, which sets out on general town centre development principles, has been considered with particular regard to the assessment of the proposal on amenity and its amenity value.
6. In accordance with sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the 1990 Act), in determining these appeals, I must also have special regard to whether the proposal would preserve or enhance the setting of a listed building or any features of special architectural or historic interest. Furthermore, for conservation areas, special attention shall be paid to the desirability of preserving or enhancing its character or appearance where these duties apply only to the consideration of whether to grant planning permission (Appeal A). They apply in advertisement applications and appeals (Appeal B) in so far as it relates to the consideration of amenity and public safety.
7. In relation to Appeal B, the Council has raised no dispute on the matter of public safety. Based on the evidence provided, and what I have seen during my site visit, I am satisfied that there is no substantive issue in this respect. Therefore, the proposal under Appeal B has been assessed solely in relation to amenity.

Main Issues

8. The main issues are:

Appeal A

the effect of the proposed development on the character and appearance of the Halifax Town Conservation Area (HTCA) and the setting of nearby listed buildings, with particular regard to preserving and enhancing their significance; and

Appeal B

- the effect of the proposed illuminated digital advertisement display on the visual amenity of the HTCA and the Grade II* listed Borough Market building.

Reasons

Appeal A

8. The proposed replacement telephone kiosk would be located on the eastern side of Market Street within the centre of Halifax and within the HTCA. It would also be in the vicinity of a number of heritage assets, including the Grade II* listed Borough Market building across

the street and approximately 20 metres to the south-west of the site. These listed buildings and heritage assets contribute significantly towards the special character of the HTCA.

9. Policy BT1 of the CLP states that development should respect or enhance the character and appearance of existing buildings and surroundings, taking account of its local context and distinctiveness and in particular any heritage assets. Contemporary, innovative design will be encouraged where it can be demonstrated that this will not harm local distinctiveness or the significance of any designated heritage assets in its vicinity, including, where relevant, their setting.
10. The proposed kiosk would replace the two existing red kiosks which are positioned side by side at the site and it would incorporate an illuminated digital advertising display screen to the reverse side of the kiosk. This screen would display advertisements which would change frequently through a smooth fade. However, a frequently changing illuminated advertising display of this type in this location would be prominent and appear discordant within the street scene.
11. There are a variety of shop front signs along Market Street and the surrounding town centre area. During my visit to the area, very few appeared to be illuminated, either externally lit or with individual lettering internally lit. An exception to this is a large, illuminated digital advertisement display screen positioned at first floor level on the corner of the building at 12 -14 Market Street. Notwithstanding this, the internally illuminated digital screen within the proposed kiosk would be in a different position visually, at street level, within the principal street scene. The existing first floor display screen, due to its elevated position is somewhat removed from the main street level as it is visually experienced. In that context, with few illuminated signs and digital displays at street level, the proposed illuminated digital display within the kiosk would appear as a prominent and uncharacteristic feature of that street level location within Market Street, the town centre and the HTCA.
12. The size of the advertisement display would take up much of the rear panel of the proposed kiosk which would be a considerable element and feature of the proposed kiosk. It is acknowledged that it would provide visual interest to what would otherwise be a blank panel. In terms of its design and scale, the proposed kiosk would be reasonable and acceptable in the wider street scene with its slimline appearance and references to the traditional K2 and K6 telephone box design features. In addition, the proposed kiosk would be acceptable in terms of its form and colour. Notwithstanding this, it would also appear as a more contemporary, modern and therefore incongruous addition to the predominantly traditional and historic street scene found on Market Street and within the context and setting of the listed buildings, heritage assets and conservation area.
13. Whilst the design and scale of the proposed kiosk would be acceptable in principle, the illumination of the proportionately substantial and frequently changing digital display at street level would mean that the proposed kiosk would not preserve or enhance the character or appearance of the conservation area. It would also be harmful to the setting and significance of the nearby Grade II* listed Borough Market. This would particularly be the case when viewed from the area to the north of the appeal site southwards towards the Borough Market building.
14. I note and accept that the illumination of the proposed digital display would alter in brightness to reflect ambient light levels, such that the illumination would be reduced when it is dark to limit glare. Despite this, the nature of the digital display within the kiosk would be incongruous with, and would visually dominate, the character and appearance of the locality at street level and in the context of existing street furniture, shop signage and the setting of local listed buildings. I also acknowledge that the means of illumination within the kiosk proposed may be more environmentally friendly than other types of illumination and that there may be some social benefits from the proposed kiosk for the public and

economic benefits from the advertisement display for the appellant and wider economy. However, these matters do not outweigh the significant harm to the character and appearance of the HTCA and the setting and significance of the Grade II* listed building that I have found.

- 16 Furthermore, it is acknowledged that there is an element of separation between the proposal and the Grade II* listed building due to the highway on Market Street and other street scene paraphernalia, including bus shelters and the wide pavements. However, when considered as a whole, I find that the proposed advertisement display within the replacement kiosk would result in a magnitude of change to the setting of that listed building in terms of visual impact that would constitute significant unacceptable harm to that setting and would not preserve or enhance the significance of the listed building and to the character or appearance of the HTCA.
17. For these reasons, I conclude that the proposed replacement telephone kiosk with an integrated digital advertising display would have a significant detrimental effect on the character and appearance of the HTCA. Furthermore, it would not preserve or enhance the significance or the setting of the Grade II* listed Borough Market building and would result in unacceptable harm. Therefore, it would be contrary to Policies BT1 and HE1 of the CLP, the relevant paragraphs of Section 16 of the Framework and the relevant requirements of the 1990 Act.

Appeal B

18. Appeal B relates to an application for express consent for an illuminated digital advertisement display that is integrated within a proposed replacement telephone kiosk. Whilst approval for the kiosk itself is sought separately, as considered under Appeal A, the express consent for the advertisement element within the proposed kiosk has been considered separately here under the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (the Regulations).
19. The Council has drawn my attention to the policies it considers to be relevant to this appeal and I have taken these into account as a material consideration. However, powers under the Regulations to control advertisements may be exercised only in the interests of amenity and public safety, taking account of any material factors. As such, in my determination of this appeal, the Council's policies have not, by themselves, been decisive.
20. The proposed kiosk would replace two existing red kiosks at the appeal site on Market Street within the HTCA. The proposed development would be located on Market Street in the town centre which is within the HTCA and in proximity to a number of listed buildings, the nearest being the Grade II* Borough Market building approximately 20 metres to the south west. This building is substantial and makes a significant contribution to the special character of the conservation area.
21. The proposed kiosk would incorporate a digital illuminated advertisement screen on the reverse panel of the kiosk. The size of the screen would take up much of the rear panel of the kiosk. As such, it would provide some visual interest to what would otherwise appear as a blank panel. The display would show static images at a frequency of once every 10 seconds, and changes between images are proposed to be achieved through a gradual and smooth fade. Furthermore, it is noted that the display would be internally illuminated to a maximum brightness of 280 candelas per square metre at night.
22. Having had regard to the above, I find that a frequently changing illuminated advertising display of this type in the centre of this busy shopping street would appear incongruous and prominent in the street scene. Whilst the advertisement display may provide an element of visual interest and accepting that the illumination of the digital display would alter to reflect ambient light levels, the illumination of the frequently changing digital display means that it would visually dominate the centre of the street in this location when viewed

from the north. Sitting within such a prominent position at street level on Market Street, the proposed display would introduce a type of display that is very limited in this area and as such would be detrimental to wider visual amenity within the street scene and HTCA.

23. There is a variety of shop front signage along Market Street that is predominantly non-illuminated, with some externally illuminated signage. The proposed display would not be in keeping with the existing street scene of Market Street as experienced at street level and due to the limited amount of other digital displays in the area. As a result, it would appear as a discordant and intrusive feature in the street scene. It is acknowledged that there is a large digital display screen in place at first floor level on the corner of Market Street and Russell Street on the opposite side of the street to the proposed site. However, the proposed internally illuminated digital display would be in a different and more central position in the street scene to that existing display. As such, I find that the proposed display would be more visually prominent at street level and have a greater impact on the visual amenity of the area as experienced by those moving along Market Street, particularly given the limited nature of such displays in the locality at street level.
24. The Council has not provided any specific reasoning as to why the proposed digital advertisement would be any more harmful in this setting than the larger sign at first floor level approved by the Council on the corner of Market Street and Russell Street. Notwithstanding this, when viewed and considered collectively alongside the existing larger elevated digital display screen located across the street, I find that the cumulative visual impact of the proposed and existing digital displays would have a significantly adverse effect on visual amenity particularly when viewing the proposed display from the north.
25. The Council's conservation officer states that the proposed display's proximity to the Borough Market building and its presence within the HTCA is a sufficient reason to warrant refusal. However, as the appellant and I note, the Council also confirms in the officer report that the proposed kiosk is acceptable in terms of its scale. The design of the proposed kiosk reflects that of traditional K2/K6 kiosks and would be more attractive and in keeping with the amenity of the surrounding area than the existing kiosks to be replaced. Furthermore, the means of illumination proposed may be more environmentally friendly than other means. There would also be economic benefits from the advertisements for the appellant and the wider economy and some social benefits in terms of the accessibility of the kiosk for mobility impaired users. However, having considered these matters both cumulatively and individually, in my assessment these public benefits do not outweigh the significant harm to visual amenity resulting from the proposed advertisement display that I have found.
26. Each proposal must be considered on its own merits and the appropriate amenity test is not whether an advertisement would positively contribute to the amenity of an area but rather whether it would detract from it. Therefore, for the above reasons, and in accordance with the Regulations, I conclude that the proposed illuminated digital advertisement display within the proposed replacement kiosk would be significantly harmful to visual amenity within the HTCA and the wider setting of the nearby Grade II* listed Borough Market. Consequently, in terms of amenity, the proposed display would be contrary to policies BT1 and RT5 of the CLP and significantly harmful with regard to the interests of amenity, as set out in the Regulations and paragraph 136 of the Framework.

Conclusion

27. For the above reasons, and having had regard to all other matters, I conclude that Appeal A is dismissed and that Appeal B is dismissed.

A McCormack

INSPECTOR