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## Appeal Decisions

Site visit made on 20 June 2023

**by D Moore BSc (HONS), MDC, PGDip, MRTPI, IHBC**

**an Inspector appointed by the Secretary of State**

**Decision date: 12 July 2023**

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### **Appeal A: APP/G3110/W/22/3308271**

#### **Pavement o/s 14 New Road, Oxford OX1 1LT**

- 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 James Browne of BT Telecommunications Plc against the decision of Oxford City Council.
  - The application Ref 22/01157/FUL, dated 29 April 2022, was refused by notice dated 11 August 2022.
  - The development proposed is described as "installation of 1 no. new BT Street Hub, incorporating 2 no. digital 75" LCD advert screens, plus the removal of 2 no. associated BT kiosks".
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### **Appeal B: APP/G3110/H/22/3308272**

#### **Pavement o/s 14 New Road, Oxford OX1 1LT**

- The appeal is made under Regulation 17 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (2007 Regulations) against a refusal to grant express consent.
  - The appeal is made by Mr James Browne of BT Telecommunications Plc against the decision of Oxford City Council.
  - The application Ref 22/01158/ADV, dated 29 April 2022, was refused by notice dated 11 August 2022.
  - The advertisement proposed is described as "installation of 1 no. new BT Street Hub, incorporating 2 no. digital 75" LCD advert screens, plus the removal of 2 no. associated BT kiosks".
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## **Decisions**

### *Appeal A*

1. The appeal is dismissed.

### *Appeal B*

2. The appeal is dismissed.

## **Preliminary Matters**

3. Regulation 3(1) of the 2007 Regulations provides that - "A local planning authority shall exercise its powers under these Regulations in the interests of amenity and public safety, taking into account - (a) the provisions of the development plan, so far as they are material; and (b) any other relevant factors." My determination of Appeal B is made on the same basis.
4. When dealing with an appeal for an advertisement in a Conservation Area, the test from Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the 1990 Act) is that "special attention shall be paid to the

desirability of preserving or enhancing the character or appearance of a Conservation Area". This statutory duty applies in advertisement appeals insofar as it relates to the consideration of 'amenity'.

5. However, when dealing with an appeal for an advertisement on a listed building or within its setting, the statutory duty from Section 66(1) of the 1990 Act requiring decision makers to "have special regard to preserving the [listed] building or its setting or any features of special architectural or historic interest" does not apply. Nonetheless, the fact that a building is listed is likely to be a relevant consideration when considering the effect on 'amenity'. In any event, there was also an application for planning permission for the structure itself. Therefore, as the proposal is in a Conservation Area and relates to listed buildings, I have had special regard to Sections 66(1) and 72(1) of the 1990 Act.

## **Main Issues**

6. The main issues are the effect of the proposals on amenity and public safety, bearing in mind the special attention that should be paid to the desirability of preserving the setting of the nearby Grade II\* listed County Hall, the grade II listed buildings – (1) the Oxfordshire Light Infantry Memorial; (2) the New Road Baptist Chapel, and (3) the "national importance" of the Scheduled Monument, Oxford Castle, and the extent to which it would preserve or enhance the character or appearance of the Central Conservation Area.

## **Reasons**

### *Amenity*

7. The proposals comprise a structure of dimensions 1.24m by 0.35m by 2.98m high, incorporating two 75 inch screens that would display illuminated advertisements. The unit would accommodate telecommunications facilities including fast WI-FI, a 999 call button, USB rapid charging, and public messaging with capacity for 5G services. Two BT kiosks along Woodstock Road would be removed as part of the proposals. The appellant explains the proposal is part of a wider roll out of Street Hubs that are part of a nationwide upgrade to the BT estate.
8. The proposed site is on a semi-pedestrianised shopping street in a predominantly commercial part of the city, close to the Westgate shopping centre and Bonn Square. It would be sited on the pavement between two rows of bike racks, although other street furniture in the area is limited and fairly low-key. Despite the relatively modern surroundings, there are a number of historic buildings in the vicinity and the site is within the Central Conservation Area. The Conservation Area covers an area encompassing the historic core of the city. Its significance, insofar as it relates to these appeals, is attributed to the remaining medieval street layout, and the range of distinctive historic buildings that provide a record of the City's importance and evolution over the centuries.
9. The proposed development would be a relatively tall structure and, as such, it would be a dominant feature within this part of the Conservation Area. Although it would be sited among the rows of bike racks, they are small scale in comparison and, in addition, bikes are a common feature of Oxford. The bike racks and other street furniture in the immediate vicinity, such as the litter bins

and lighting columns, blend into the street scene. In contrast, the proposal would stand out, which is logical as its purpose is to attract attention.

10. I appreciate that the siting within the shopping street has been selected to avoid undue harm to visual amenity. However, despite the commercial nature and the range of modern buildings nearby, this part of the Conservation Area retains its historic character. This is due to the design of the buildings, the limited amount of street furniture and the signage, which is mostly sensitive to the surroundings. The numerous historic buildings sit alongside the modern development, making a positive contribution to the area's character and distinctiveness.
11. The appellant argues that the proposal is streamlined and modern, however, it is also of a uniform design. In my judgement, it would not sit comfortably in this part of the city, and it would be an incongruous feature that has potential to erode the area's special character and appearance. I find, therefore, that the proposal would not preserve the significance of the Central Conservation Area. Consequently, I give this harm considerable importance and weight in the planning balance of these appeals.
12. Oxford Castle lies to the west of the appeal site, beyond the grade II\* listed County Hall. The scheduled monument includes the surviving elements of a large motte and bailey castle dating from the Norman Conquest. The motte has survived well, however, the bailey has been built over but can be traced along Bulwarks Lane to the north-east, the prison wall and Paradise Road to the south-west. Its significance is derived from its national importance as a scheduled monument, with a well-documented history, that played a key role in the development of Oxford.
13. The proposal would result in the introduction of telecommunications equipment and an advertisement into the area, which would be seen in views towards the Castle. However, there would be a significant separation distance. Moreover, any historic connection between the site and the medieval castle complex has been lost due to incremental modern development. The proposal would result in visual change, but it would not impact on the understanding and appreciation of the heritage asset and how the asset is experienced. Thus, the setting, and the heritage significance, of the scheduled monument would be preserved.
14. The County Hall dates from the nineteenth century and is described as one of the best surviving examples of its time. The screen and gateways are listed grade II. The buildings' significance is associated with the historic connections to the city's administration and justice system and in their architectural detailing. There are views towards the listed buildings from the appeal site but there is limited evidence of any historic connection. I do not consider that the appeal site forms part of the setting to County Hall and associated listed buildings, and it makes only a minimal contribution to how the assets are experienced.
15. The Light Infantry Memorial stone lies in Bonn Square to the east. It comprises a plinth with an obelisk, and dates from the late nineteenth century. I attribute its significance to its historic connections. The New Road Baptist Chapel on Bonn Square dates from the eighteenth century with later enlargements. Its significance can be attributed to its architectural style and historic religious associations.

16. The memorial and the chapel are prominent within Bonn Square which forms their setting as it enables the heritage assets to be seen and appreciated. The area of pavement where the proposal would be sited is nearby but is visually distinct due to the prominent building known as the Art Café which provides screening. In addition, the appeal site is part of a relatively busy route between commercial premises and has a different character to the square. The site is close to the listed buildings but does not form part of their settings nor does it contribute to how the assets are appreciated.
17. In view of the above, I consider that the development would preserve the settings to the County Hall, the Light Infantry Memorial Stone and the New Road Baptiste Chapel. However, this does not affect my judgement in relation to the Conservation Area as described above.
18. I have had regard to the other appeal decisions referred to by the appellant<sup>1</sup>, which relate to refusals to grant express advertisement consent and/or planning permission. The main issues relating to amenity are necessarily site specific and, as such, have limited bearing on the matters before me.
19. Paragraph 199 of the National Planning Policy Framework 2021 (the Framework) advises that when considering the impact of development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. Paragraph 200 goes on to advise that significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting and that this should have a clear and convincing justification. I find the harm to be less than substantial in this instance but nevertheless of considerable importance and weight.
20. Under such circumstances, paragraph 202 of the Framework advises that this harm should be weighed against the public benefits of the proposal. The appellant is of the opinion that the proposal would be beneficial because it would support the delivery of 5G technology while contributing to a busy and vibrant town centre and an improved visitor experience. Two outdated kiosks would be removed but these are in another part of the city, which reduces the weight I can attach to this benefit. I appreciate that the appellant has an Electronic Communications Code licence and Universal Service Obligation to provide and maintain publicly accessible call boxes on the street. I also appreciate the need to support the roll out of the 5G network. The totality of the benefits carries moderate weight, however, this does not outweigh the harm identified.
21. Given the above and in the absence of any defined significant public benefit, I conclude that, on balance, the proposal would fail to preserve the character or appearance of the Central Conservation Area. This would fail to satisfy the requirements of the 1990 Act, paragraphs 136 and 197 of the Framework and conflict with policies S1, DH1, DH3, DH4 and DH6 of the Oxford Local Plan (2020) that seek, among other things, to ensure development is of a high quality design that respects local distinctiveness and the significance of designated heritage assets. As a result, the proposal would not be in accordance with the development plan.

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<sup>1</sup> APP/K5030/H/18/3211267, APP/T5150/Z/18/3201678, APP/Z4310/W/18/3205104 and APP/N5660/W/18/3199779.

### *Public Safety*

22. The proposal would be sited on the pavement, close to a bus stop. Its siting between existing cycle racks is an attempt to limit its impact on pedestrian flows including people with limited mobility or impaired sight. The proposal would be relatively large, and its despite its siting, it would attract attention as is usual with advertisements. I appreciate the area is busy and used by cyclists as well as pedestrians. In addition, the site is close to a bus route and there are frequent traffic movements associated with buses coming from New Road and Castle Street. It is an area where drivers need to take more care due to the number and variety of highway users and resulting traffic hazards.
23. However, the site is within a commercial locality. The street hub would be seen against this commercial backdrop, and it is less likely to result in road safety problems. The siting alongside the bike racks will reduce any potential conflicts with pedestrians and cyclists as there is already an obstacle in place. The advertisements would be directed towards the pedestrian flow, as opposed to the bus route. The proposal is unlikely to present a hazard in this context. I note this finding accords with that of the Highways Authority.
24. I have considered all users of the public highway, including those with a 'protected characteristic' for the purpose of the Equality Act 2010 and the related Public Sector Equality Duty. I am satisfied that anyone with a protected characteristic would not be disproportionately affected.
25. I conclude, therefore, that the proposal would not have an adverse impact on public safety and would accord with Policies M1, M2 and RE7 of the Local Plan that seek to ensure development limits transport impacts, minimises conflict between road users and avoids unnecessary street clutter while respecting its surroundings.

### **Conclusions**

26. For the above reasons and having regard to all other matters raised I conclude that the appeals should be dismissed.

*D Moore*

Inspector