



Appeal Decisions

Site visit made on 17 July 2023

by M Ollerenshaw BSc (Hons) MTPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 August 2023

Appeal A Ref: APP/E5900/W/23/3314782

Footpath outside 455 Mile End Road, Mile End, London E3 4PA

- 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 British Telecommunications PLC against the decision of the Council of the London Borough of Tower Hamlets.
 - The application Ref PA/22/01015, dated 13 May 2022, was refused by notice dated 21 November 2022.
 - The development proposed is described as 'removal of existing BT phone box and installation of a proposed replacement BT street hub and associated display of advertisement to both sides of the unit'.
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Appeal B Ref: APP/E5900/H/23/3314784

Footpath outside 455 Mile End Road, Mile End, London E3 4PA

- 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 Mr James Browne of British Telecommunications PLC against the decision of the Council of the London Borough of Tower Hamlets.
 - The application Ref PA/22/01012, dated 13 May 2022, was refused by notice dated 21 November 2022.
 - The development proposed is described as 'two digital 75 inch LCD display screen, one on each side of the Street Hub unit'.
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Decisions

1. Appeal A is dismissed.
2. Appeal B is dismissed.

Preliminary Matters

3. The two appeals are located at the same site. Appeal 'A' concerns the refusal of planning permission to erect a BT street hub. Appeal 'B' concerns the refusal of express consent to display advertisements on the street hub. I have considered each on its individual merits.
4. The Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (the Regulations) stipulate that control may be exercised only in the interests of amenity and public safety. In determining the advertisement appeal, development plan policies are not determinative, but I have taken them into account where relevant.

Main Issues

5. The main issues in both appeals are the effect of the proposals on the character and appearance/amenity of the area and the setting of heritage assets; and the effect of the proposals on public safety.

Reasons

Character and Appearance/Amenity

6. The appeal site is an area of pavement on the northern side of Mile End Road which is currently occupied by a telephone kiosk. The existing kiosk is positioned close to the kerb and adjacent to a cycle lane. This stretch of Mile End Road is predominantly residential with some ground floor commercial premises with flats above on the southern side of the road.
7. 439-455 Mile End Road, a Grade II listed terrace, is located to the north. Given its proximity, the appeal site is within the setting of the listed terrace. I consider the significance of the listed terrace to be mainly attributable to its prominence within the street, the consistent building line and scale, reinforced by the fenestration and materials of this terrace, including their arched door and window openings and traditional sash windows, and the prominent chimney stacks, all of which provide a harmonious built form. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) requires the decision maker to pay special attention to the desirability of preserving the setting of a listed building.
8. The appeal site also lies within the Tredegar Square Conservation Area (the CA). The Tredegar Square Conservation Area Character Appraisal and Management Guidelines (July 2016) details the significance of the CA to be derived from well-proportioned buildings of similar styles laid out in a grid and uniform pattern, with the core being Tredegar Square. Section 72(1) of the Act requires that special attention be paid to the desirability of preserving or enhancing the character or appearance of a conservation area.
9. Other than the existing kiosk, the pavement area on this side of the road is relatively uncluttered. During my site visit I did not observe any other illuminated street hubs or street furniture of a similar nature to the appeal proposal in the surrounding area. Given its current condition, the removal of the existing kiosk would benefit the character and appearance of the area.
10. The proposed street hub would have a slightly reduced footprint compared to the existing kiosk. However, the proposal would be about 3m high and consequently much taller and more visually intrusive than the existing structure. It would not add to a sense of clutter given that it would be a replacement of the existing structure. However, the introduction of a tall street hub which incorporates digital advertising on both sides would result in a very prominent, discordant feature when viewed from both directions.
11. The size, high definition displays and changing images on both sides would make this a very strident and incongruous feature within the street scene. Due to its proximity the proposal would not respect the prominence or stature of the listed buildings within the street and would fail to preserve their setting. It would also fail to preserve or enhance the character or appearance of the CA.
12. I note the appellant has suggested controls in line with guidance from the Institute of Lighting Professionals which would control the level of illumination. However, this would not sufficiently mitigate the effects of the proposal on the amenity of the area or the designated heritage assets. The presence of graffiti on some of the shop fronts on the southern side of the road does not justify the proposal or alter my view that it would be visually harmful.

13. Accordingly, in relation to Appeal A, the proposal would be harmful to the character and appearance of the area, including failing to preserve the setting of the adjacent listed buildings and the CA. As such, Appeal A would conflict with Policies S.DH1, D.DH2, S.DH3, D.DH4, D.DH10 and D.DH11 of the Tower Hamlets Local Plan 2031 (Local Plan) (adopted January 2020), Policies D3, D4, D5, D8 and HC1 of the London Plan 2021 (London Plan), and the National Planning Policy Framework (the Framework). Amongst other matters, these policies seek to ensure that development complements the character of a locality including conserving and enhancing the historic environment. It would also not comply with the Tredegar Square Conservation Area Character Appraisal and Management Guidelines, which aims to define the qualities and features that make the CA special and provide guidelines for development within it.
14. In relation to Appeal B, the proposal would have an unacceptable effect on the amenity of the area. The policies of the development plan have been considered as far as they are material, and in this respect, the scheme would also conflict with the development plan.

Public Safety

15. This stretch of Mile End Road accommodates two lanes of traffic in each direction with cycle lanes on both sides. The proposed street hub would be positioned towards the kerbside adjacent to the cycle lane. The footway is wide at this point and, at the time of my site visit, pedestrian mobility did not appear to be affected by the existing kiosk. The proposal would be slightly wider than the existing structure but it would still maintain a 3.8m gap from the adjacent boundary wall. This gap would be a sufficient width to allow pedestrians and other users to move along the pavement without undue obstruction even when the street hub would be in use.
16. Whilst the proposal would be taller than the existing kiosk, its only marginally greater width means that it would not create a significant visual obstruction. The distance between the proposal and the carriageway and cycle lane is such that it would not adversely affect visibility for drivers or cyclists.
17. Given the proximity of the street hub to the kerb, the Council is also concerned that the proposal would distract drivers, cyclists and pedestrians particularly with the moving and internally illuminated advertisements. There are traffic lights and a pedestrian crossing further east along Mile End Road, but these are a reasonable distance away from the appeal site. The road is straight with good visibility in both directions and a low-speed limit. Any pedestrians crossing close to the site would have to do so when the road is clear. There is no substantive evidence before me to suggest that the advertisements would be an undue distraction for drivers or cyclists, or for pedestrians crossing the road.
18. For the above reasons, I conclude that the proposal would not result in a harmful effect on public safety. In respect of Appeal A, planning permission for the proposal would comply with the relevant parts of Policies D.DH10 and S.TR1 of the Local Plan and Policies T1, T2, T3 and T4 of the London Plan which seek, amongst other things, to ensure advertisements do not adversely affect public or highway safety. In respect of Appeal B, the advertisement consent sought would also accord with these policies insofar as they are relevant.

Other Matters

19. The appellant refers to other appeals for similar proposals which were allowed. However, I do not have the substantive details of these cases before me other than extracts of the decisions. As such, I cannot be certain of the exact circumstances of these other developments and their relevance to the appeals before me. In any case, I have determined the appeals on their own merits.
20. I consider that the harm that would arise to both the listed buildings and the CA would be less than substantial. However, paragraph 199 of the Framework requires great weight to be attributed to harm regardless of the level of harm identified. Under paragraph 202 of the Framework the less than substantial harm should be weighed against any public benefits of the proposal. I have not found harm to public safety as a result of the hub and advertisement, although this lack of harm does not weigh in favour of the scheme.
21. The appellant has referred to various public benefits associated with the appeal proposal, including free public phone calls, improved 4G and 5G coverage, ultra-fast Wi-Fi, council messages, free advertising, charging for devices, and environmental sensors for air quality, noise and traffic. The proposal would align with paragraph 114 of the Framework's objective of supporting advanced, high-quality communications infrastructure.
22. Whilst I do not dispute the need for infrastructure such as the hub in general, I am not persuaded that this is the only location in which the development could take place. This is particularly important given the adjacent listed buildings and the CA. This therefore limits the weight I afford to the public benefits arising from this proposal. Consequently, the public benefits of the proposal would not outweigh the identified harm to the setting of heritage assets and the character and appearance of the area.

Conclusion

23. In conclusion, Appeal A would be contrary to the development plan and there are no other considerations, including the Framework, which indicate that a decision should be made other than in accordance with the development plan. Moreover, Appeal B would be contrary to the Regulations. Therefore, both appeals should be dismissed.

M Ollerenshaw

INSPECTOR