



Appeal Decisions

Site visit made on 4 July 2023

by Elaine Moulton BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 August 2023

Appeal A Ref: APP/T4210/H/22/3307211

Pavement at Princess Parade, near Bury Interchange Stand E, Bury BL9 0QL

- 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 Bury Metropolitan Borough Council.
 - The application Ref 68439, dated 26 April 2022, was refused by notice dated 10 August 2022.
 - The development proposed is described as 'proposed installation of 1no. new BT Street Hub, incorporating 75" LCD advert screens plus the removal of associated BT Kiosks.'
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Appeal B Ref: APP/T4210/W/22/3307212

Pavement at Princess Parade, near Bury Interchange Stand E, Bury BL9 0QL

- The appeal is made under Regulation 17 of the Town and Country Planning (Control of Advertisement) (England) Regulations 2007 against the refusal to grant express consent.
 - The appeal is made by Mr James Browne of BT Telecommunications Plc against the decision of Bury Metropolitan Borough Council.
 - The application Ref 68440, dated 26 April 2022, was refused by notice dated 10 August 2022.
 - The development proposed is described as 'proposed installation of 1no. new BT Street Hub, incorporating 75" LCD advert screens plus the removal of associated BT Kiosks.'
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Decisions

Appeal A

1. The appeal is allowed and planning permission is granted for the installation of 1no. new BT Street Hub, incorporating 75" LCD advert screens plus the removal of associated BT Kiosks at the pavement at Princess Parade, near Bury Interchange Stand E, Bury BL9 0QL in accordance with the terms of the application, Ref 68439, dated 26 April 2022, subject to the conditions set out in the Schedule to this Decision.

Appeal B

2. The appeal is allowed and express consent is granted for the installation of 1no. new BT Street Hub, incorporating 75" LCD advert screens at the pavement at Princess Parade, near Bury Interchange Stand E, Bury BL9 0QL in accordance with the terms of the application, Ref 68440, dated 26 April 2022. The consent is for five years from the date of this decision and is subject to the five conditions set out in the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (the Regulations) and the additional condition set out in the Schedule to this Decision.

Preliminary Matters

3. The two appeals are for related proposals on 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 appeal proposal on its merits, however, as they raise similar issues, I have combined both decisions in a single decision letter.
4. The description of development given in the formal decisions above omits some of the text from the description provided on the planning application form. The omitted text, 'proposed', does not describe acts of development or the advertisement proposals. In addition, advertisement consent is not required, and cannot be granted, for the removal telephone booths. As such, reference to the 'removal of associated BT Kiosks' has been omitted from the decision for Appeal B.
5. The Council has drawn my attention to Policy EN1/9 of the Bury Unitary Development Plan (UDP) in the decision that is the subject of Appeal B, and I have taken it into account as a material consideration. However, the Regulations stipulate that control may be exercised only in the interests of amenity and public safety. UDP Policy EN1/9 has not, therefore, by itself been decisive in my determination of Appeal B.
6. The Council has confirmed that reference to UDP Policy EN5/1 in the decision notice was in error and that the correct policy is UDP Policy HT5/1. The Appellant has had the opportunity to take this into consideration. Although the Appellant has chosen not to provide comments I have, nonetheless, taken UDP Policy HT5/1 into consideration in the determination of Appeal A.
7. The Appellant has referred to the emerging Bury Local Plan. However, the evidence indicates that this is at an early stage and therefore the policies within it, as material planning considerations, cannot be afforded full weight in the determination of these appeals.
8. The Appellant has referred to the proposal being located close to a Locally Listed Station Building. The Council has, however, confirmed that the adjacent bus interchange and metro link station (the Interchange) are not locally listed. Based on the information before me the appeal proposal would not affect any heritage assets, whether designated or non-designated. In addition, the Appellant has clarified that the proposal involves the removal of two kiosks, as shown on the revised Proposed Site Plan Drawing no. 002 Rev A dated 13.09.2022. I have determined the appeals on this basis, namely that the proposals do not affect a heritage asset and involve the removal of two kiosks.

Main Issues

9. The main issues in both appeals are as follows:
 - The effect of the proposals on the character, appearance, and visual amenity of the area; and
 - The effect of the proposal on public safety, with particular regard to the pedestrian environment.

Reasons

Character, appearance and visual amenity

10. The appeal site is located within the town centre and forms part of paved area on Princess Parade, close to Stand E of the Interchange. Princess Parade is characterised by the retail and commercial uses that are located along each side. The pavement is particularly wide at this point and contains trees and street furniture including a lamp post, bin, ramp handrail, and an existing digital advertisement board. In addition, close to Stand E there are currently two telephone kiosks which would be removed as part of the proposal.
11. The Street Hub would be taller than the telephone kiosks it would replace and in a marginally more prominent position, closer to the existing advertisement board. Nonetheless, its slender profile and more muted colour scheme would result in it being a less conspicuous structure within the street scene than the existing telephone kiosks. It would not materially diminish the visual qualities of this part of the town centre for shoppers or other visitors. Furthermore, given that the Street Hub would replace two telephone kiosks, the amount of street furniture would be reduced. Overall, the character and appearance of this part of the town centre would be improved notwithstanding the proximity of the proposals to the existing digital advertisement board.
12. Advertisement displays by their very nature are meant to be noticeable and draw the eye and are a common feature in urban locations. On a busy commercial thoroughfare within sight of an existing digital advertisement, as proposed, the proposed advertisements would not appear as an incongruous feature that unacceptably affects the visual amenity of the area.
13. Having regard to the above, I find that the proposed Street Hub would not result in an excess and over-proliferation of street furniture or advertisements when considered individually or cumulatively, including when taking the existing digital advertisement board into consideration.
14. Accordingly, in relation to Appeal A, the proposed Street Hub would not be harmful to the character and appearance of the area. As such, in respect of Appeal A, the proposals would accord with Policies EN1/2, EN1/4 and EN1/9 of the Bury Unitary Development Plan (UDP). Such policies seek, amongst other things, to ensure proposals do not have an unacceptable adverse effect on character and townscape and encourage the provision of suitably located and well-designed street furniture. In addition, in respect of Appeal A, the proposals accord with UDP Policy EN1/10 which requires proposals for new telecommunications developments have regard to, amongst other things, visual and physical impact.
15. Policies HT5/1 and HT6/1 have been referenced in the first reason for refusal, however, these policies relate to matters of access which are not relevant to this main issue.
16. With regards to Appeal B, the proposals would have an acceptable effect on the amenity of the area and would accord with UDP Policy EN1/9 insofar as it is relevant to amenity.

Public safety

17. Whilst the proposed Street Hub would be sited close to trees and existing street furniture, adequate space would be retained around it to avoid the risk of obstruction to the movement of, or create a risk of conflict between, pedestrians. Given its limited scale and footprint, it would make little difference to the useable pedestrian area.
18. The siting of the proposed Street Hub would not be in the position of any of the telephone kiosks that are to be removed. Nonetheless, it would be no closer to the shops than the existing telephone kiosks or the handrail to be retained adjoining the ramp up to the Interchange. Consequently, existing desire lines would be maintained and pedestrians, including those that are mobility impaired and those with special needs, would continue to be able to pass around it to access the interchange without undue hindrance. Furthermore, the pavement would continue to be wide enough to accommodate a high volume of pedestrian traffic including times when the flow to and from the interchange is at its greatest, even if a group were to use the Street Hub. In addition, there is little before me to demonstrate that the proposal would be contrary to the Council's active travel aspirations or adversely affect the Bury Market Flexihall proposals.
19. The proposed Street Hub would be seen within the context of the surrounding retail and commercial properties that display advertisements and line the route between the shopping centre and the interchange. In such an environment, the level of distraction would not materially increase if the proposed advertisements were introduced. In the absence of any substantive evidence to the contrary, the proposal would not confuse or create a distraction that would constitute a risk to public safety. Furthermore, noting the provisions of the BT Street Hub Anti-Social Behaviour Management Plan, the risk that the proposals will attract or increase incidents of anti-social behaviour and loitering in this high footfall area would be low.
20. Reference is made in the decision to the absence of agreement with the Highway Authority for the placement of the proposed Street Hub on the adopted highway. However, this is not a matter that weighs against the proposals.
21. Accordingly, in relation to Appeal A, the proposed Street Hub would not be harmful to public safety, with particular regard to the pedestrian environment. In respect of Appeal A, the proposals would therefore accord with UDP Policies EN1/4, HT5/1, HT6/1, and EN1/9. Such policies seek, amongst other things, to ensure proposals do not interrupt main pedestrian flows, do not adversely affect the safety of pedestrians and cyclists, ensure satisfactory access for those with special needs and discourage crime.
22. Policies EN1/2 and EN1/10 have been referenced in the second reason for refusal, however, these policies do not address public safety and, as such, they are not relevant to this main issue.
23. With regards to Appeal B, the proposals would not be harmful to public safety and would therefore accord with UDP Policy EN1/9 insofar as it is relevant to this matter.

Conditions

24. The Council has suggested matters that should be addressed within conditions. The Appellant has had the opportunity to comment upon the suggested conditions and I have considered them against the advice in the National Planning Policy Framework and Planning Practice Guidance.

Appeal A

25. In addition to the standard time limit condition limiting the lifespan of the planning permission I have also, in the interests of certainty, attached conditions specifying the approved plans. A condition requiring compliance with the submitted details is also necessary to ensure that the appearance of the proposals would be satisfactory. In addition, a condition has been imposed for the removal of the existing telephone kiosks to improve the appearance of the area and reduce street clutter.
26. If the Street Hub ceases to be used for telecommunication purposes the Council proposes that it should be removed. However, the Street Hub also contains LCD advert screens. In the absence of any compelling evidence that demonstrates that the Street Hub should only be retained when also utilised for telecommunication purposes, this requirement is not reasonable or necessary. Such a condition has not, therefore, been imposed as it does not meet the policy tests.

Appeal B

27. The five standard conditions imposed by the Regulations are necessary, but do not need to be repeated in this decision. The Regulations also specify that an express consent shall be subject to the condition that it expires at the end of such a period that the local planning authority may specify in granting the consent or where no period is specified, a period of 5 years. The Council has suggested a period of 5 years to which the Appellant has not objected, notwithstanding that consent is sought for a 10-year period. The consent will therefore be subject to a condition that specifies that the consent expires at the end of 5 years.
28. A condition restricting the brightness of the advertisements and to require the screen to automatically switch off in the event of breakdown or malfunction is necessary in the interests of the visual amenity of the area.
29. I have not imposed conditions specifying that no advertisement shall be displayed that resemble road signs, include visual effects or specify the minimum display time or the interval between each piece of content. Such conditions are not reasonable or necessary in the interests of public safety or amenity given the location of the appeal site.

Conclusion

30. For the reasons given above I conclude that the Appeals A and B should be allowed.

Elaine Moulton

INSPECTOR

Schedules of Conditions

Appeal A

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Maps 001 Revision A; Proposed Site Plan 002 Revision A; and Existing and Proposed Elevations 003 Revision A.
- 3) The external surfaces of the development shall be constructed using the materials, finishes and colours as described in the BT Street Hubs Product Statement v1.0 February 2021 and as shown on the BT Street Hub Proposals Renders 2021.
- 4) Before the development hereby approved is brought into use, the existing telephone kiosks indicated for removal on Proposed Site Plan drawing no 002 Rev A dated 13.09.2022, shall be removed and the street surface made good to match the adjoining footway surface materials.

Appeal B

- 1) The luminance levels of the free-standing sign hereby approved shall not exceed 2500 cd/m² during daylight hours or 600 cd/m² at any other time to accord with the recommendations of the Institute of Lighting Professionals Guide 05 (PLG05) Brightness of Illuminated Advertisements. The display panel shall be fitted with a light sensor, designed to adjust the brightness to changes in ambient light levels. In the event of breakdown or malfunction the screen shall automatically switch off.

End of Schedules