



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/22/3307217

Pavement opposite Frankie & Benny's, 15-17 The Rock, Bury BL9 0JY

- 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 68449, dated 26 April 2022, was refused by notice dated 11 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/22/3307218

Pavement opposite Frankie & Benny's, 15-17 The Rock, Bury BL9 0JY

- 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 68450, dated 26 April 2022, was refused by notice dated 11 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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Decision

Appeal A

1. The appeal is dismissed.

Appeal B

2. The appeal is dismissed.

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 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 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. UDP Policy EN1/9 has not, therefore, by itself been decisive in my determination of Appeal B.

5. 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.
6. 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.

Main Issue

7. 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 emergency access and the pedestrian environment.

Reasons

Character, appearance and visual amenity

8. The appeal site is a wide paved area between two restaurants containing lamp posts and a bin close to the proposed siting, and a static information board, bollards, and bike racks closer to Rochdale Road. In such a relatively uncluttered context, the proposed Street Hub would be an isolated and visually dominant feature in the space due to its scale, height and positioning. The two large LCD screens contained in the proposed Street Hub, in a location where digital advertisements are not currently present, would exacerbate the harmful effects that the proposal would cause to the character, appearance and amenity of the area.
9. I note that the proposals would replace 2 existing telephone kiosks. However, those kiosks are set apart from the site outside of the town centre. As such their removal would not alter the unacceptable effects that the proposal would cause to the character, appearance and visual amenity of the area I have identified.
10. Accordingly, in relation to Appeal A, the proposed Street Hub would be harmful to the character and appearance of the area. As such, in respect of Appeal A, the proposals would conflict 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 including areas of architectural or historic interest and encourage the provision of suitably located and well-designed street furniture. In addition, the proposals would not accord with UDP Policy EN1/10 which requires proposals for new telecommunications developments have regard to, amongst other things, visual and physical impact.

11. With regard to Appeal B, the proposals would have an unacceptable effect on the amenity of the area and would be conflict with UDP Policy EN1/9 insofar as it is relevant to amenity.

Public safety

12. The proposals provide a number of benefits to the local community which include free ultrafast Wi-Fi, free phone calls, wayfinding, device charging, an emergency 999 call button, public messaging capabilities, and a platform for interactive technologies on the streets such as air quality monitoring. Whilst I recognise that the proposed Street Hub is intended to be part of a wider network, for the purposes of these appeals I must assess the proposals on their own merits. In this respect, there is little before me to suggest that there are no alternative solutions or viable alternative sites, including those in less prominent positions, that could provide a realistic alternative. Consequently, the benefits identified only weigh moderately in favour of the proposals.
13. Consequently, it would not result in an undue obstruction to the movement of, or create a risk of conflict between, pedestrians to the detriment of their safety. Furthermore, there is little before me to demonstrate that the proposal would be contrary to the Council's active travel aspirations.
14. 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.
15. 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, and ensure satisfactory access for those with special needs.
16. 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.
17. With regard 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 such a consideration.

Other Matters

18. The proposals provide a number of benefits to the local community which include free ultrafast Wi-Fi, free phone calls, wayfinding, device charging, an emergency 999 call button, public messaging capabilities, and a platform for interactive technologies on the streets such as air quality monitoring. Whilst I recognise that the proposed Street Hub is intended to be part of a wider network, for the purposes of these appeals I must assess the proposals on their own merits. In this respect, there is little before me to suggest that there are no alternative solutions or realistic alternative sites, including those in less prominent positions, that would not provide a realistic alternative. Consequently, the benefits identified only weigh moderately in favour of the proposals.

19. As identified above, the proposals would be harmful to the character, appearance and visual amenity of the area to which I ascribe substantial weight. Considering this, in relation to Appeal A, I find that the matters advance in support of the proposal do not, either individually or collectively, outweigh the harm or conflict with the development plan identified.
20. In respect of Appeal B, a similar range of benefits would arise. However, the Regulations make it clear, as set out above, that advertisements should be controlled only in the interests of amenity and public safety. Therefore, in relation to Appeal B, none of the other considerations raised changes my findings on the main issues.

Conclusion

21. Whilst I have found that the proposals would not be harmful to public safety, this does not outweigh the harm to the character, appearance, and visual amenity of the area that I have identified. The proposals conflicts with the development plan when considered as a whole and there are no material considerations, either individually or in combination, that outweigh the identified harm and associated development plan conflict.
22. I conclude that the Appeals A and B should be dismissed.

Elaine Moulton

INSPECTOR