
Appeal Decisions

Site visit made on 13 September 2023

by D J Barnes MBA BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 September 2023

Appeal A: Appeal Ref: APP/Q3060/W/22/3304293

Pavement Outside Theatre Royal, Upper Parliament Street, Nottingham NG1 5ND

- 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 Martin Stephens (J C Decaux UK Limited) against the decision of Nottingham City Council.
 - The application Ref 22/00865/PFUL3, dated 26 April 2022, was refused by notice dated 8 July 2022.
 - The development proposed is the installation of a multifunctional communication hub including defibrillator and advertisement display.
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Appeal B: Appeal Ref: APP/Q3060/Z/22/3304295

Pavement Outside Theatre Royal, Upper Parliament Street, Nottingham NG1 5ND

- 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 Martin Stephens (J C Decaux UK Limited) against the decision of Nottingham City Council.
 - The application Ref 22/00866/ADV2, dated 26 April 2022, was refused by notice dated 8 July 2022.
 - The development proposed is an advertisement integrated into the Communication Hub unit and comprises a LCD portrait screen that will be used to show static illuminated content.
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Decision

1. Appeal A and Appeal B are dismissed.

Procedural Matters

2. The appeals relate to the same site and the same proposed development, namely a multifunctional communications hub which, amongst other things, would have an illuminated digital advertisement display. To avoid unnecessary repetition, the 2 appeals have been dealt with in a single Decision letter but the appeals themselves have been considered based upon their own merits.
3. The Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (the Regulations) require that applications for the display of advertisements are considered in terms of amenity and public safety. Although the reasons for refusal for Appeal B refer to policies contained in the Nottingham City Aligned Core Strategy: Local Plan Part 1 (CS) and the

Nottingham Land and Planning Policies Development Plan Document: Local Plan Part 2 (DPD), they are material considerations rather than being decisive in the determination of this appeal.

4. In respect of Appeal A, there are duties set out in Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 which require special regard to be had to the desirability of preserving a Listed Building or its setting or any features of special architectural or historic interest which it possesses. Also, there is a duty to pay special attention to the desirability of preserving or enhancing the character or appearance of conservation areas. In advertisement appeals this is only relevant in so far as it relates to amenity. Where relevant, the statutory duties for designated heritage assets are echoed in CS Policy 10 and DPD Policy HE1.
5. Although the appellant has indicated a willingness to remove other advertisements from sites elsewhere within the Nottingham city centre, these appeals have been assessed on their own circumstances.
6. For clarity, the description for Appeal B has been adopted from the Council's Decision Notice which specifically refers to the proposed advertisement.

Main Issues

7. It is considered that the main issues for Appeal A are the effect of the proposed development on (a) the character and appearance of the streetscene and (b) the safety of other highway users. For Appeal B, the main issues are the effect of the proposed advertisement on (a) the visual amenity and (b) public safety.

Reasons

Character and Appearance

8. The appeal site is part of an area of wide footway located adjacent to the Theatre Royal which, itself, is situated adjoining a traffic light controlled junction. Where the proposed communications hub would be erected is characterised as being an open area of footway where there is limited street furniture. This street furniture is mainly the traffic lights, a controlled pedestrian crossing and lamp posts. Within the wider streetscene there are trees, cycle parking stands, posts and overhead gantries associated with the tram and benches for an external dining area for a café.
9. By reason of its siting, design and scale it would appear an imposing addition to the open streetscene with added visual prominence due to the proposed advertisement panel. This proposed advertisement would introduce a sizeable element of illumination that would be both visually prominent and incongruous within the context of the openness of the footway adjacent to the appeal site.
10. The site is situated within the extensive Old Market Square Conservation Area and is adjacent to the Theatre Royal which is a Grade II Listed Building. The Conservation Area encompasses primarily retail and commercial uses and includes buildings which appear to generally date from the late 19th and early 20th centuries.
11. There are variations in the character and appearance of the Conservation Area but the context of the appeal site is associated with the openness of the area

around the junction and the visual dominance of the Theatre. Its eastern elevation, which faces towards the appeal site, possesses is undulating façade with rounded corners and the wall is clad with mosaic tiles with roof terraces above.

12. By reason of siting, design and scale, the appeal scheme would be visible against the backdrop of the Theatre and would, therefore, be within the setting of this Listed Building. The prominent visual effect of this contemporary proposed development, including the illumination of both the touch screen and the advertisement panel with its changing images, would visually compete with the Listed Building, harming its setting and detracting from its significance as a designated heritage asset.
13. Further, and for the same reasons, the proposed development would fail to preserve the character and appearance of this part of the Conservation Area which is also a designated heritage asset. By reason of the importance of the Theatre to the general character and appearance of the streetscene and this part of the Conservation Area, there would be unacceptable harm to visual amenity.
14. Although the degree of harm to the designated heritage assets would be localised and less than substantial, in accordance with paragraph 202 of the National Planning Policy Framework (the Framework), where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal. This balancing exercise applies to Appeal A and is the type of exercise the appellant refers to as being required because of the Conservation Area encompassing part of the city centre and the variations in character and appearance across the area.
15. In this case, the appeal scheme would provide a range of services, including WiFi, device charging, messaging facilities, free calls to landlines and charities, wayfinding and a defibrillator. It would be powered by renewable energy, would generate minimal waste and would include features to prevent crime and antisocial behaviour. The proposed development would provide a platform for other technologies such as environmental conditions, CCTV and key data, and could support businesses and the vitality of the area.
16. However, even acknowledging the support in the Framework for high quality communications, these public benefits would be modest. The identified public benefits would fail to outweigh the less than substantial harm to the designated heritage assets, which would not have a clear and convincing justification, as required by the Framework.
17. For the reasons given, it is concluded that for Appeal A the proposed development would cause unacceptable harm to the character and appearance of the streetscene and, as such, it would conflict with CS Policies 10 and 11 and DPD Policies DE1, DE2 and HE1. In addition to heritage considerations, these policies also refer to development making a positive contribution to the public realm and sense of place; contribute towards the creation of an attractive, safe and inclusive pedestrian environment and wider public realm. For the same reasons, it is concluded that Appeal B would harm the visual amenity of the area.

Highway and Public Safety

18. The Planning Practice Guidance advises on the locations of, and types of, advertisements most likely to affect public safety on roads. It includes junctions and pedestrian crossings and those advertisements which are internally illuminated and subject to frequent changes of display, such as the proposed advertisement.
19. From what was observed during the site visit, there is a steady flow of traffic turning left from Upper Parliament Street into South Sherwood Street at the traffic light controlled junction. The siting and size of the appeal scheme would not interfere with the safe operation of the junction, including the ability for the drivers of vehicles to see pedestrians crossing or waiting to cross the road.
20. However, because of its size and siting, the gradient of the road and the forward visibility around the junction, the proposed communication hub would obstruct drivers' visibility of the lights of a pedestrian crossing located further along South Sherwood Street. Although there is another set of lights on the opposite side of the carriageway these may not be fully appreciated by drivers to relate to this pedestrian crossing, including because they could be distracted by the digital advertisement display. Accordingly, the obstruction of the lights would represent a danger to safety of pedestrians seeking to cross South Sherwood Street.
21. For the reasons given, for Appeal A it is concluded that the proposed development would cause an unacceptable danger to the safety of other highway users and, as such, it would conflict with DPD Policy DE2 which refers to proposals avoiding obstruction or adversely affecting the highway network. CS Policy 10 does not specifically refer to highway safety matters. For the same reasons, it is concluded that Appeal B would harm public safety.

Conclusion

22. For the reasons given, it is concluded that Appeal A and Appeal B should be dismissed.

D J Barnes

INSPECTOR