
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/22/3304306

Pavement Outside Starbucks, 3 Wheelers Gate, Nottingham NG1 2NA

- 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 22/00873/PFUL3, dated 26 April 2022, was refused by notice dated 7 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/22/3304309

Pavement Outside Starbucks, 3 Wheelers Gate, Nottingham NG1 2NA

- 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 22/00874/ADV2, dated 26 April 2022, was refused by notice dated 7 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 footway located adjacent to a 4-way junction. Where the proposed communications hub would be erected is characterised as being an open area of footway where the street furniture is limited to an information totem sign with an associated finger direction, zebra crossing and lamp-posts. Adjacent to the junction there is further street furniture associated with the posts and overhead gantries for the tram, bus and tram stops, pedestrian crossings and external seating for Starbuck's customers. However, the siting of the appeal scheme would not be particularly well related to the range of street furniture which exists around the junction.
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 which encompasses primarily retail and commercial uses and includes buildings which appear to generally date from the late 19th and early 20th centuries. There are variations in the character and appearance of the Conservation Area but the area around the junction is associated with the extensive Old Market Square which has an open character and appearance. This openness is evident when approaching along Wheeler Gate from the south. The proposed

development would encroach into these open views towards Old Market Square.

11. Adjoining the appeal site is 1 Wheeler Gate which is a Grade II Listed Building with modern shop windows at ground floor level. Above these windows the building's walls are red brick, with ashlar dressings and there are sash windows with stone surrounds and mullions. By reason of siting, design and scale, the appeal scheme would be visible against the backdrop of 1 Wheeler Gate and would, therefore, be within the setting of this Listed Building. Although there are modern shop windows at ground floor level, 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.
12. 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 openness of the junction to the wider open character and appearance of Old Market Square and this part of the Conservation Area, there would be unacceptable harm to visual amenity.
13. 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.
14. 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.
15. 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.
16. 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, and contributing 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

17. 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.
18. By reason of its size and siting, the proposed communication hub would cause some obstruction to the visibility of drivers approaching the junction from the south along Wheeler Gate. Pedestrians approaching the zebra crossing would be partially obscured.
19. However, from what was observed during the site visit, the traffic flow along Wheeler Gate, which is a one-way road, is not high and the speed of traffic is low. Further, because the appeal scheme would be set back from the kerb and the footway is built out, there would still be the opportunity for drivers to see pedestrians crossing, or about to cross the road, and for pedestrians to see approaching vehicles.
20. Accordingly, for Appeal A it is concluded that the proposed development would not cause an unacceptable danger to the safety of other highway users and, as such, it would not 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 not harm public safety.

Conclusion

21. Although the proposed development has been judged not to cause an unacceptable danger to the safety of other highway users or public safety, these matters are substantially and demonstrably outweighed by the unacceptable harm caused to the character and appearance of the streetscene and visual amenity. Accordingly, it is concluded that both Appeal A and Appeal B should be dismissed.

D J Barnes

INSPECTOR