



Appeal Decisions

Site visit made on 19 September 2023

by Tom Bristow BA MSc MRTPI AssocRICS

an Inspector appointed by the Secretary of State

Decision date: 29th September 2023

Appeal A Ref: APP/P4605/W/22/3311745

Junction at Oozells Street and Broad Street, Birmingham B1 2HP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended (the '1990 Act') against a refusal to grant planning permission.
 - The appeal is made by BT Telecommunications Plc ('BT') against the decision of Birmingham City Council ('BCC').
 - The application ref. 2022/06009/PA, dated 15 July 2022, was refused by notice dated 13 October 2022.
 - The development proposed is described on the application form as the 'installation of 1no. new BT Street Hub, incorporating 75" LCD advert screens plus the removal of associated BT kiosk(s)'.
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Appeal B Ref: APP/P4605/H/22/3311746

Junction at Oozells Street and Broad Street, Birmingham B1 2HP

- The appeal is made under Regulation 17 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 as amended (the 'Regulations') against a refusal to grant express consent.
 - The appeal is made by BT against the decision of BCC.
 - The application ref. 2022/06028/PA, dated 15 July 2022, was refused by notice dated 29 September 2022.
 - The advertisement proposed is described on the application form as in appeal A.
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Decisions

1. The appeals are allowed. Planning permission and express consent is thereby granted for the installation of 1.no new BT Street Hub, incorporating 75" LCD advert screens plus the removal of associated BT kiosks at the junction of Oozells Street and Broad Street, Birmingham B1 2HP in accordance with the terms of applications ref. 2022/06009/PA and 2022/06028/PA, both dated 15 July 2022, subject to the five standard conditions set out at Schedule 2 to the Regulations in respect of appeal B, and to the additional conditions in the first and second schedules below.

Preliminary matters

2. Appeals A and B relate to different aspects of the same proposal. BCC's decision notices refused permission and consent for the same reasons. The acceptability of proposed development must be determined in accordance with the development plan unless material considerations indicate otherwise. The development plan includes policies of the Birmingham Development Plan ('BDP') and of the Development Management in Birmingham Development Plan Document ('DMB').¹ I have also had regard to various other material considerations, including the Birmingham Design Guide Supplementary

¹ Adopted respectively in 2017 and 2021.

Planning Document ('SPD'),² the National Planning Policy Framework ('NPPF') and the Planning Practice Guidance ('PPG').

3. As set out in the Regulations, NPPF paragraph 136 and the PPG, the assessment of proposed advertisements is limited to matters of public safety and amenity. Only effects in respect of amenity are cited in BCC's decision notices. That is notwithstanding that there are representations on behalf of the Westside Business Improvement District ('BID') referring to other potential implications. I address all implications of the proposal insofar as they are principal important controversial issues.
4. On 19 September I visited another site where the replacement of an existing telephone box is proposed near Holloway Circus.³ There is some thematic overlap between the two schemes. Nonetheless the appellant, proposal and surrounding context in each instance differs. I have assessed each scheme on its merits.

Main issue

5. The main issue is the effect of the proposal on the character and appearance of the area, including in respect of the setting of the Second Church of Christ Scientist (grade II listed).⁴

Reasons

6. The proposed Hub would be sited so as to partially overlap with the footprint of an existing telephone kiosk. It would replace that kiosk and another kiosk next to it.⁵ The site is close to the junction of Oozells Street and Broad Street, within the pavement beside the latter. The Hub would be set between the carriageway, also a tramline, and One Brindley Place (a late twentieth century commercial building).
7. The Church falls across Oozells Street relative to the appeal site, originally a Presbyterian Church built in 1848-9 to the designs of architect J. R. Botham. It embodies an early Victorian eclecticism, albeit fused with a staunch industrial aesthetic (the latter on account of the listed building's heavy overall form, facades being principally of blue brick with substantial stone quoins). The Church is now used as a nightclub, 'Popworld'. The list entry notes that its interior has been 'wholly altered', reflecting successive alterations.
8. In form, design and illumination the Hub would be contemporary in appearance. It would intrinsically diverge from the materials, detailing and handcrafted character of the Church. It would also be taller than the existing kiosks, resulting in some greater occlusion of views of the listed building from certain vantage points north-eastwards along Broad Street.
9. Illuminated advertisements are designed to attract attention. Relative to the existing kiosks, which do not feature illumination, the proposal would occasionally divert individuals' attention away from the Church and its

² Adopted 2022.

³ Ref. APP/P4605/W/23/3321526 and APP/P4605/H/23/3321542.

⁴ List entry no. 1343341, mindful of the statutory duty upon me in that respect under section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.

⁵ Hence reference to 'kiosks' in paragraph 1 of this decision.

immediate surroundings. The proposal would bring 'standalone' illuminated advertising closer to the listed building than at present (compared to the illuminated displays at the two bus stops beyond the existing kiosks).

10. Echoing SPD Design Principle 21, paragraph 7.2 of BCC's officer report sets out that 'most of the signage on this part of Broad Street is externally illuminated and where there are heritage setting issues this is generally the recommendation made city-wide'. In theory I accept that illumination of existing buildings and features is less attention-diverting, and more consistent with historic character, than internally illuminated displays.
11. BCC aver that the degree of harm arising to the setting, and thereby significance, of the Church would be 'minor to negligible'. Despite that rational gradation, NPPF paragraph 200 nonetheless sets out how any harm should require 'clear and convincing justification'. There is argumentation before me as to the benefits of the scheme and, inevitably, differing perspectives as to the weight those should carry.
12. However, modern design is not inherently inimical to historic character. At some point in time the existing kiosks, and later bus stops and associated illuminated advertisement displays, would have been such. They have assimilated with local character over time, alluded to in BCC's officer report describing them now as 'relatively neutral'. Moreover, physically, the scheme would result in a smaller 'modern' intervention in the built environment (on account of its overall scale relative to the removal of two kiosks).⁶
13. Tracking further back, the Church itself would have been a contemporary intervention. It would have taken the place of something beforehand, reflecting a long continuity of use and re-use here. Broad Street is now in part characterised by modern street furniture and features. That, I saw, includes road signs, public transport and wayfinding signage, street and traffic lighting upstands, utility boxes and refuse provision.
14. Broad Street also comprises a lively amalgamation of historic and modern buildings (reflecting successive overlays in the evolution of the area). 44, 78 and 79 and also 80 Broad Street are all listed. As with the Church they sit cheek by jowl with later buildings of diverse eras, aesthetics and scales. As reflected above the Church itself has been altered internally. It has also been altered externally responding to changing circumstances around it.⁷
15. BCC aptly characterise the present character of Broad Street as 'a mixed townscape setting of predominantly modern commercial/ retail buildings, many with shop fronts and signage, along with other remnants of the historic environment'. Whilst 'external' illumination may predominate here, at night Broad Street is subject to illumination from a wide variety of sources in comparable manner to the architectural variety of its buildings.
16. I saw that light of varying intensity and colour spills from commercial signage, streetlights, traffic and through windows of commercial properties here. 'PLG

⁶ The appellant citing figures of 3.48 cubic metres as existing, relative to 1.29 cubic metres as proposed (alternatively given in respect of footprint as 1.58 square metres relative to 0.43 square metres respectively).

⁷ Notably to the rear through an addition which contains a datestone marked 1996, and side addition, both likely coterminous with the redevelopment of Brindley Place.

05' contains a photograph of a 'large media screen' looking from the north-east along Broad Street (seen in conjunction with no. 44 and One Brindley Place).⁸ Subject to preventing moving images via condition, the proposed scheme would not be out of context in that already highly mixed context.

17. In summary, the setting of the listed building is diverse and mutable. It would ever have been such. The historic function of the listed building was also for assembly as part of a bustling environment (and always, as now, a place of congregation). It was established as part of the milieu of the evolving City, to be experienced in that vibrant context rather than set aside from it. That is equally part of significance.
18. I acknowledge there comes a point where cumulative changes serve to qualitatively undermine character and appearance or the setting of a designated heritage asset. However inherent in my reasoning above is that the proposal before me would, physically and in terms of illumination, represent a barely perceptible change. In respect of the Church that would represent a very small part of the context in which it is experienced. The scheme would not tip the balance towards unacceptable effects in terms of character and appearance. Moreover, relative to the significance of the listed building considered holistically, that change would be so minimal as to be neutral (thereby preserving significance).
19. I therefore conclude that the proposal would accord with the relevant provisions of BDP policies PG3 and TP12, DMB policies DM2 and DM7, having taken account of the guidance in the SPD. In summary, amongst other things, and with differing emphases, those policies seek to ensure proposals integrate appropriately with their surroundings (policy TP12 specifically relating to heritage matters, and DM7 to advertisements). The proposal would also accord with the expectations of statute in respect of the setting of the Church, and relevant provisions of NPPF paragraph 136.

Other Matters

20. There is a fundamental difference of perspective in respect of the scheme between BCC and BID. BID contend the proposal would have wide-ranging detrimental effects. Those include in respect of the accessibility and intelligibility of the built environment, in terms of safety and wellbeing (particularly in relation to vulnerable individuals), in relation to attracting anti-social behaviour and crime, and as regards the scheme generating additional light pollution and energy use.
21. In terms of accessibility, I have reasoned above that the scheme represents a significant reduction in terms of footprint. For that reason, and given the relatively generous width of the pavement here, there is nothing to substantiate physically that the proposal would undermine accessibility. Nor would the scheme meaningfully impede wayfinding in terms of its relationship to information stands, landmarks or signage.
22. In terms of intelligibility and illumination I have reasoned above that the effects of the proposal would be acceptable given the nature of the scheme and its

⁸ The Institute of Lighting Professionals' Professional Lighting Guide 05: The Brightness of Illuminated Advertisements.

particular context. Albeit, following on from my finding in paragraph 19, there is no need to weigh countervailing benefits of the scheme, Street Hubs are designed, in part, to facilitate accessibility and wayfinding digitally.⁹

23. I acknowledge that 'legacy' elements of the built environment such as telephone kiosks, which have essentially outlived the purpose for which they were installed, may attract anti-social behaviour and crime. However that is much more likely in terms of enclosed or occluded spaces, as the existing kiosks are.
24. There is furthermore no substantive evidence before me indicating that Street Hubs are correlated with an increased incidence of adverse behaviour. Albeit that the assessment of advertisements is limited to amenity and public safety, nevertheless I am told that Street Hubs are to be powered by 100% 'renewable carbon-free energy'.¹⁰ In short, therefore, no other matters serve to outweigh my overall finding regarding the acceptability of the proposal.

Conclusion

25. For the above reasons, having taken account of relevant statute, the development plan as a whole, and all other relevant material considerations, I conclude that the appeals should be allowed (subject to the standard conditions in respect of appeal B, and otherwise subject to the conditions below).

Conditions

26. In respect of appeal A, it is necessary to impose conditions requiring commencement in line with section 91 of the 1990 Act, and to secure compliance with the approved plans (for certainty, and in order that the development is implemented in accordance with my assessment of it). Conditions 3 and 4 are also necessary to ensure that any physical disruption resulting from undertaking the development proposed is made good.
27. I have specified compliance with the five standard conditions in the Regulations in paragraph 1 of this decision (pursuant to Regulation 14(1)(a)). In that context it is unnecessary to replicate below BCC's suggested conditions 2, 3, 4 and 5. BCC's suggested condition 6, requiring adherence to the approved plans, is addressed under schedule 1 applicable to appeal A (the planning and advertising angles to the scheme being indivisible).
28. Regulation 14(7)(b) specifies that where no lifespan of consent is specified, the consent will expire at the end of a period of 5 years. BT has ventured conditions A to H.¹¹ Suggested condition H relates to the lifespan on the consent specifically, advocating 10 years instead of 5. The rationale for that lifespan is, however not clearly justified.
29. I note that BT also explain how 'the advert may continue to remain in place after that [5 year] period without submitting any further application (under Class 14 deemed consent)'. In my view there should be a compelling justification for diverging from statute. That has not been borne out. Moreover,

⁹ As detailed in the supporting document entitle 'BT: Street Hubs, Beyond connection'.

¹⁰ Ibid.

¹¹ Correspondence ref. BRM301 to BCC, dated 15 July 2022.

given the foregoing position of the appellant, it is not clear that the appellant would in any event be disadvantaged by a standard statutory lifespan applying.

30. BT do not object to adherence to the recommendations in PLG 05.¹² Those recommendations are picked up in BCC's suggested condition 1 and BT's condition C. PLG 05 recommends maximum luminance level from dusk till dawn of 600 candela ('cd') per square metre (m²) and 5,000 cd/m² during daylight hours (the site falling squarely within PLG 05 'zone E4').
31. BT has, however, advanced that during the daytime the maximum luminance should be 2,500 cd/m². If secured at the lower level of daylight illumination, that would further reinforce my reasoning above regarding the barely perceptible effects of the scheme (and for that reason is applied via condition 1 in respect of appeal B).
32. There is no dispute between the main parties that, to minimise distraction, conditions should specify appropriate provision for excluding moving images, display timing, transitions and intervals (and to ensure no displayed advertisement interferes with traffic signage). I agree, including cross-referring my reasoning in paragraph 21 above, and adherence to conditions 2 to 5 related to appeal B would secure those provisions.
33. In imposing conditions I have had regard to the relevant provisions of statute, the NPPF and PPG, and have accordingly amended the wording of certain conditions put to me without affecting their fundamental aims.

Tom Bristow

INSPECTOR

SCHEDULES OF CONDITIONS

SCHEDULE 1, 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: BRM301 001 Rev. A 'SITE LOCATION MAPS', BRM301 002 Rev. A 'PROPOSED SITE PLAN', BRM301 003 Rev. A 'EXISTING AND PROPOSED ELEVATIONS', 003 Rev. A 'GENERIC DRAWING ELEVATIONS', and the supporting plan entitled simply 'Solutions30 Solutions for New Technologies' illustrating elevations.
- 3) Within 3 months of the commencement of the development hereby permitted, the two existing BT telephone booths annotated as for removal on plan no. BRM301 Rev. A 'PROPOSED SITE PLAN' shall have been permanently removed in their entirety, and the land that they occupied made good to the same condition as adjacent land.

¹² Albeit now superseded by a 2023 version.

- 4) Any disruption to the land or pavement surrounding the development hereby permitted, whether by virtue of the removal of existing booths or installation of the Street Hub, or both, shall be made good to the same condition as adjacent land before the Street Hub is brought into operation.

SCHEDULE 2, APPEAL B

- 1) The intensity of the illumination of the digital advertisement hereby consented shall not exceed 600 cd/m² between dusk and dawn, and 2,500 cd/m² during the daytime, in line with the maximum recommended luminance levels as set out in the current iteration of The Institute of Lighting Professional's 'Professional Lighting Guide 05: The Brightness of Illuminated Advertisements'.
- 2) The digital advertisement hereby consented shall not display any moving or apparently moving, images (including any animation, flashing, scrolling, three dimensional effects, intermittent motion or video elements).
- 3) The minimum display time for each piece of content hosted via the digital advertisement hereby consented shall be 10 seconds.
- 4) The interval between each piece of content displayed via the digital advertisement hereby consented shall take place over a period no greater than one second; the complete screen shall change with no visual effects between displays (including fading, swiping or other animated transition methods), and the display will include a mechanism to freeze the image in the event of a malfunction.
- 5) No content displayed via the digital advertisement hereby consented shall resemble traffic signs (as defined pursuant to section 64 of the Road Traffic Regulation Act 1984 as amended).