



Appeal Decisions

Site visit made on 18 September 2023

by L Wilson BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th October 2023

Appeal A Ref: APP/N5090/W/22/3308860

Pavement outside 47 The Broadway, Mill Hill, London NW7 3DA

- 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, JCDecaux UK Limited, against the decision of the Council of the London Borough of Barnet.
 - The application Ref 22/3617/FUL, dated 12 July 2022, was refused by notice dated 29 September 2022.
 - The development was originally described as "this proposal seeks planning permission and advertisement consent to install an open access Communication Hub, following the removal of an existing communication apparatus, as illustrated in the attached documentation".
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Appeal B Ref: APP/N5090/H/22/3308861

Pavement outside 47 The Broadway, Mill Hill, London NW7 3DA

- The appeal is made under Regulation 17 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (the Regulations) against a refusal to grant express consent.
 - The appeal is made by Mr Martin Stephens, JCDecaux UK Limited, against the decision of the Council of the London Borough of Barnet.
 - The application Ref 22/3618/ADV, dated 12 July 2022, was refused by notice dated 29 September 2022.
 - The proposal was originally described as "the advertisement is integrated into the Communication Hub unit and comprises an LCD portrait screen that will be used to show static illuminated content that are remotely changed via a secure ISDN line to the communication device".
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Decision

1. Appeal A is allowed and planning permission is granted for the installation of public payphone/communication hub at Pavement outside 47 The Broadway, Mill Hill, London NW7 3DA in accordance with the terms of the application Ref 22/3617/FUL, dated 12 July 2022, and the plans submitted with it, subject to the conditions set out in the attached Appeal A Schedule of Conditions.
2. Appeal B is allowed, and express consent is granted for the installation of 86 inch advertisement located on the rear face of the communications apparatus, as applied for. The consent is for five years from the date of this decision and is subject to the five standard conditions set out in the Regulations and the additional conditions set out in the attached Appeal B Schedule of Conditions.

Preliminary Matters

3. In the headings and formal decisions above, I have used the address provided on the decision notices and the appeal forms, rather than that provided on the application forms as it is more accurate. Similarly, the description of

development in the formal decisions above have been taken from the decision notices and appeal forms as they more accurately describe the proposals than that given on the application forms.

4. The two appeals are located at the same site. Appeal A concerns the refusal of planning permission for the installation of a public payphone/communication hub. Appeal B concerns the refusal of express consent to display an advertisement on the hub. I have considered each on its individual merits, but I have combined both appeals into a single decision as they are intrinsically linked and raise similar issues.
5. Regulation 3 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (the Regulations) states that a local planning authority shall exercise its powers under these Regulations in the interests of amenity and public safety, taking into account - (a) the provisions of the development plan, so far as they are material; and (b) any other relevant factors. My determination of Appeal B is made on the same basis.

Background and Main Issue

6. There have been previous refused applications¹ of a similar nature to that proposed at the appeal site. There has also been an appeal decision². The Inspector found that the proposal would not materially harm the visual amenity of the area but would have a materially harmful effect on highway (public) safety. Since that appeal decision the scheme has been amended. The unit has been repositioned to be closer to the curb and rotated 180°.
7. The main issue for both appeals are the effect of the proposal on public safety.

Reasons

8. The appeal site is an area of pavement on The Broadway. The Broadway is a busy road, and the area is predominantly characterised by commercial units at ground floor and some residential uses above. Adjacent to the appeal site are well used parking and loading bays. There are numerous items of street furniture within the vicinity of the site such as a mature street tree, parking meter, bin, signage posts, as well as table and chairs.
9. There are similar hubs located in the wider area, for example outside the Care Chemist³. However, I have limited details of that case. In any event, the site is located within a commercial setting where there are numerous other advertisements, including on bus shelters and associated with the retail premises.
10. The information before me sets out that the proposal would replace an existing advertising unit which had been in place for many years. At the time of my site visit the advertising unit had been removed. The hub would be a similar size to the previous unit, and that contained advertisements to either side. The unit would have attracted the attention of drivers and affected the sight line for pedestrians. No evidence has been provided to demonstrate that the previous unit caused harm.

¹ 19/4850/FUL, 21/1472/FUL, and 22/1075/FUL

² APP/N5090/W/21/3279107 and APP/N5090/Z/21/3279108

³ APP/N5090/W/21/3269722 and APP/N5090/W/21/3269723

11. The hub unit would be situated towards the edge of the pavement. The extent of unobstructed footpath would be similar to the previous unit, albeit I recognise that was sited at an angle. The drawings show that the siting of the display would retain a width of unobstructed footpath of over 5m. The extent of unobstructed footway would not be dissimilar to other nearby street furniture. Considering the location of the previous unit and existing nearby street furniture, there would still be sufficient space to allow pedestrians to walk along the footway without significant obstruction. For these reasons, the installation would not have an unacceptable effect on sight lines of users of the pavement, including those with disabilities and visual impairments.
12. The unit would feature on one side an 86" advertisement screen and on the other a 32" touchscreen. The revised orientation of the hub would ensure that the advertisement primarily faces pedestrians using the footpath. The display would not face drivers on the nearside as they approach the site, or the vehicles using the nearest bays. It would be possible for drivers to see the display when travelling in a westerly direction (towards Mill Hill Broadway Station) and using the parking/loading bays to the other side of the street tree, but the display would not be prominent. This is primarily due the direction of travel of vehicles, the hub's siting and the trunk of the nearby tree.
13. The hub would display illuminated static images. The amended scheme would not be significantly more eye-catching than the previous display (which contained advertisements to either side) or other displays in the locality. The method of illumination and display could be controlled by planning conditions.
14. For the reasons given above, the installation would not harmfully reduce visibility for motorists, pedestrians or other vulnerable users. It would not harm the amenity of the public realm or that of neighbouring residents and proprietors. Accordingly, subject to appropriately worded planning conditions and taking into account the context of the site (including the busy town centre character of the area, previous double-sided advertising unit, similar hub's nearby, and other advertisements nearby) and the proposed installation's size, design and siting, the scheme would not have an unacceptable impact on pedestrian safety, the safe and efficient operation of the highway (including parking and loading bays). The installation would not be unduly distracting or cause a hazard to drivers or other road users and would not have an unacceptable impact on highway safety.
15. Consequently, in relation to Appeal A, the proposal would not have an adverse impact on public safety. As such, the proposal would accord with Policy DM17 and DM01 of the Barnet's Local Plan (Development Management Policies) Development Plan Document (2012) and Policies D8 and T4 of the London Plan (2021). These collectively seek, amongst other things, to ensure public realm is safe, and proposals that unacceptably increase conflicting movements on the road network or increase the risk to vulnerable users will be refused. It would also comply with the Council's Design Guidance Note No:1 Advertising and Signs (1993) which seeks to ensure advertisements do not cause confusion or danger to road users.
16. With regards to Appeal B, the proposal would not have an adverse impact on public safety. The provisions of the development plan, so far as they are material, have been considered. Given I have concluded that the proposal would not have an adverse impact on public safety, Appeal B would also

comply with the development plan and paragraph 136 of the National Planning Policy Framework (the Framework).

Other Matters

17. The Council set out that the proposal would negatively impact the character and appearance of the public realm, to the detriment of the amenity of the town centre. This matter is not included within the reason for refusal and is not raised as an issue within the Council's appeal statement. The Council also state that the Inspector did not find harm regarding visual amenities, and the appeal decision carries more weight than the Council's initial decision. Taking into account the findings of the Inspector, context of the surrounding area and previous unit, I am satisfied that the proposal would not have an unacceptable effect on the amenity of the area and would not negatively impact on the character and appearance of the public realm.

Conditions

18. I have considered the conditions suggested by the Council and the appellant. The suggested conditions have been assessed in light of guidance found in the PPG and where necessary the wording has been amended for clarity and precision.

Appeal A

19. In the interests of certainty, I have imposed the standard conditions relating to the commencement of the development and the approved plans. Conditions relating to a management plan and noise control are necessary to maintain satisfactory living conditions and public amenity in the area, and to ensure the hub would not encourage anti-social behaviour.
20. I have not included the other reports and statements within the conditions as they relate to recommendations, objectives, and examples of works. Thus, including these would not comply with paragraph 56 of the Framework, particularly as their inclusion would not be reasonably enforceable or necessary.
21. Considering the town centre location, limited nearby residential properties as well as the findings of the submitted noise level report, based on the evidence presented, a condition relating to an acoustic report is not necessary or reasonable in this case.

Appeal B

22. In addition to the five standard conditions set out in the Regulations, in the interest of public safety and amenity, I have imposed conditions controlling the illumination, display of advertisements, sequencing and length of displays.
23. As set out in paragraph 14(7)(b) of the Regulations, all consents are automatically given for 5 years, unless specifically stated. Therefore, a specific condition is not necessary, and my formal decision states that the consent is for five years from the date of this decision. A condition imposing the advertisement to be carried out in accordance with the approved plans is not necessary as this decision grants express consent, not planning permission.

24. Conditions 3, 4, 5, 6 and 7 suggested by the Council and conditions 1, 2, 3, 4 and 5 suggested by the appellant would be adequately covered by the standard conditions. It is not necessary to duplicate these requirements.
25. A condition requiring the advertising screen to be switched off at certain hours is not necessary. This is because the site is located in a busy town centre, and restricting the luminance level would ensure that the display is not unduly bright. There is also no clear information before me which suggests the previous display or similar nearby displays were/are subject to such a condition and the reason for this condition has not been supported by evidenced justification.

Conclusion

26. For the reasons set out above, I conclude that both appeals should be allowed.

L Wilson

INSPECTOR

Appeal A - Schedule of Conditions

- 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: A01806 Part 1- Site plan and images (location plan, block plan, elevations), and Part 2: Hub unit details.
- 3) Prior to the first use of the development hereby permitted, a management plan shall be submitted to and approved in writing by the local planning authority in consultation with the Police Service concerning the use and operation of the public payphone/communication hub. The management plan shall be implemented and thereafter managed and maintained in accordance with the approved details.
- 4) The level of noise emitted from the public payphone/communication hub hereby permitted shall be at least 5dB(A) below the background level, as measured from any point 1 metre outside the window of any room of a neighbouring residential property. If the noise emitted has a distinguishable, discrete continuous note (whine, hiss, screech, hum) and/or distinct impulse (bangs, clicks, clatters, thumps), then it shall be at least 10dB(A) below the background level, as measured from any point 1 metre outside the window of any room of a neighbouring residential property.

Appeal B – Schedule of Conditions

- 1) The intensity of the illumination of the advertisement permitted by this consent shall be in line with the maximum permitted recommended luminance as set out by 'The Institute of Lighting Professional's' in its 'Professional Lighting Guide 05: The Brightness of Illuminated Advertisements' (or its equivalent in a replacement Guide), and shall be no greater than 600 candela/m² during hours of darkness.
- 2) The minimum display time for each advertisement shall be 10 seconds and the screen display shall change without visual effects (including fading, swiping or other animated transition methods) between each advertisement. The screen display shall not contain moving images, animation, intermittent, video or full motion images.

END OF SCHEDULES