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## Appeal Decisions

Site visit made on 28 September 2023

**by Lynne Evans BA MA MRTPI MRICS**

**an Inspector appointed by the Secretary of State**

**Decision date: 13 October 2023**

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### **Appeal A Ref: APP/Y5420/W/22/3311923**

#### **Footpath off Fortis Green Road, London N10 3HP**

- 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 British Telecommunication PLC against the decision of the Council of the London Borough of Haringey.
  - The application Ref: HGY/2021/1865 dated 4 May 2021, was refused by notice dated 29 September 2022.
  - The development proposed is removal of existing BT phone box and installation of a proposed replacement BT street hub and associated display of advertisement to both sides of the unit.
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### **Appeal B Ref: APP/Y5420/H/22/3311925**

#### **Footpath off Fortis Green Road, London N10 3HP**

- 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 British Telecom PLC against the decision of the Council of the London Borough of Haringey.
  - The application Ref: HGY/2021/1859 dated 30 April 2021, was refused by notice dated 29 September 2022.
  - The development proposed is two digital 75 inch LCD display screen, one on each side of the amended InLink Unit.
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## Decisions

### **Appeal A Ref: APP/Y5420/W/22/3311923**

1. The appeal is dismissed.

### **Appeal B Ref: APP/Y5420/H/22/3311925**

2. The appeal is dismissed.

## Preliminary Matters

3. Appeal A relates to the refusal of planning permission for the proposed hub. Appeal B is in respect of the refusal of advertisement consent for the LCD signage which would be an integral part of the proposed hub sought under Appeal A. I have considered both on their individual merits. However, to avoid repetition, I have dealt with the relevant issues concurrently.
4. In respect of Appeal B, Regulation 17 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (the Regulations) and

the National Planning Policy Framework (the Framework) make it clear that advertisements are subject to control only in the interests of amenity and public safety. While not decisive, I have taken relevant policies into account as a material consideration.

5. The Framework was updated in September 2023 but only in so far as it includes updated policy on planning for onshore wind development in England. It is not therefore necessary to reconsult the Appellant and the Council in respect of these appeals.
6. Although the address used by the Appellant is not specific to the precise proposed location, I do not consider that the address used by the Council, referring to 'Outside Everyman Cinema' is precise, as the siting would be further to the south-east on the footway and not directly outside of the cinema. I have therefore continued to use the address used by the Appellant, as better described on the accompanying plans and attachments.

### **Main Issues**

7. The main issues in these appeals are:
  - a) the effect of the proposals on the character and appearance and visual amenity of the area, having regard to the conservation area and the setting of nearby listed buildings,
  - b) the effect of the proposal on pedestrian and highway safety,

### **Reasons**

#### ***Issue a) – Character and Appearance***

8. The appeal site is on a very generous area of footway outside Nos 107-123 Muswell Hill Road at the roundabout junction of Fortis Green Road with Muswell Hill Road (B550) as well as Muswell Hill Broadway and St James Lane in the commercial part of Muswell Hill. The footway is laid out with a number of areas of public seating loosely grouped around street trees, towards the kerb edge, together with other street furniture, with a mainly unencumbered area of footway beyond.
9. Nos 107 - 123 Muswell Hill Road are listed Grade II, comprising a single composition of shops on the ground floor with two floors of residential above with a curved façade towards the road junction and attached to the Grade II\* listed cinema building which fronts Fortis Green Road. Both date from the mid 1930s and together form a very striking group of buildings in the Art Deco style. On the opposite (southern) side of the junction is the Grade II listed Church of St James, which is a large and imposing building built in the Gothic Revival Style.
10. The appeal site and the listed buildings fall within the extensive Muswell Hill Conservation Area, much of which relates to the residential suburb built largely in the Edwardian period, including its commercial heart as well as surrounding residential streets. The general consistency of character and appearance that is the result of the main focus of development within the Edwardian period contributes to its significance.
11. Section 72(1) and of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires me, when determining proposals in conservation areas, to

- pay special attention to the desirability of preserving or enhancing the character or appearance of that area. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires me with respect to a listed building or its setting, to pay special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.
12. Although this a very wide area of footway, it is laid out around the edge with public seating leaving a generous amount of uncluttered footway between the road edge and the parade of shops within the listed building. The proposed hub would be sited within this uncluttered space, but its siting would appear unrelated to the existing layout of the space and it would appear as a visually incongruous and randomly sited addition within the footway. It would neither relate in its siting to the pattern of street furniture in the vicinity or relate to the buildings behind. The tall and solid structure with its illuminated adverts would appear visually over dominant within this open space.
  13. In respect of the levels of illumination which particularly relates to Appeal B, the proposal indicates that both screens would automatically dim at night to 600 cdm-2. The light level would fall within the recommendations set out under the Institute of Lighting Professionals - Professional Lighting Guide No.5 2015: *The Brightness of Illuminated Advertisements*. Furthermore, the illuminated adverts would be seen in the context of a street scene which is generally well lit, including from street lighting, commercial premises including the Grade II\* Cinema, as well advertisements associated with existing bus shelters. The harm I have found is not specific to the levels of illumination but from the proposed siting of the proposed hub in relation to the street scene and surrounding townscape.
  14. As a result of its siting and form, I consider that the proposed hub would harm and would not preserve the setting of the listed buildings, and in particular and because of its proximity, the Grade II listed Nos 107-123 Muswell Hill Road. It would be sited slightly further away from both the Grade II\* listed cinema as well as the listed Church but nonetheless it would still be a detracting feature in a range of views of these buildings and would therefore harm and not preserve their setting. It would for the same reasons harm and not preserve the character and appearance of the Muswell Hill Conservation Area.
  15. I therefore conclude that the proposal under Appeals A and B would result in unacceptable visual harm to the local area and would not preserve the setting of the listed buildings in the vicinity, nor the character and appearance of the Muswell Hill Conservation Area. This would conflict with Policies D3, D8 and HC1 of the London Plan, Policies SP11 and SP12 of Haringey's Local Plan Strategic Policies (Local Plan) and Policies DM1, DM3 and DM9 of the Development Management DPD (DM DPD), as well as the Framework, and in particular Sections 12 and 16 all of which amongst other matters seek a high quality of design which respects the local context and the significance of designated heritage assets, including their setting.

### **Issue b) Public Safety**

16. Although the proposal would introduce a further piece of street furniture onto the footway, the unencumbered footway would remain of very generous proportions. I am satisfied that there would remain ample space for pedestrians to move easily on the footway in all directions.

17. The proposed hub would be in the general vicinity of a zebra crossing and close to the roundabout serving the busy retail and commercial centre of Muswell Hill. However, I do not agree with the Council that it would create a visual distraction which would increase the likelihood of an accident occurring. This is a busy retail and commercial location with potentially a number of distractions for drivers and cyclists. The proposed siting of the hub would be at a sufficient distance from vehicles and cyclists approaching the zebra crossing, in either direction, that it would not present a distraction that would justify withholding permission or consent on this ground.
18. I am therefore satisfied that there would be no harm to public safety, including for vehicle users, cyclists and pedestrians. There would be no conflict with Policy T4 of the London Plan, Policy SP7 of the Local Plan and Policy D3 of the DM DPD, in this regard.

### **Other Considerations**

19. The Appellant has drawn my attention to a number of decisions, including appeal decisions where the proposed hub would be within Conservation Areas or within the setting of listed buildings. Each proposal must be considered on its individual merits, but in so far as the information has been made available to me, I have taken them into account. However, the circumstances do not appear to compare directly with the situation before me in these appeals and they do not therefore persuade me to a different view.

### **Planning Balance**

20. Paragraph 202 of the Framework sets out that where a development proposal would 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. It is my conclusion that the proposal in harming and failing to preserve both the character and appearance of the Conservation Area as well as the setting of the listed buildings would result in less than substantial harm to the designated heritage assets.
21. The proposal would provide a range of services, including, amongst others, ultrafast wifi, device charging, public messaging facilities, free public and emergency calls, and local wayfinding. It would be powered by renewable energy, would generate minimal waste and would include features to prevent crime and antisocial behaviour. It would provide a platform for other technologies such as environmental conditions and key data and could support businesses and the vitality of the area, as well as provide free advertising for the Council. These facilities and services would provide a useful function to members of the public, but I not persuaded that such services could not be provided in a less obtrusive way.
22. The proposal would also include the removal of the existing phone kiosk, approximately opposite and on the narrower stretch of footway on the north side of Fortis Green Road. Whilst the removal of this structure from the street scene is to be welcomed, it is very modest in terms of its appearance within the street scene and its removal would only be of marginal public benefit.
23. I have found that there would be no harm to public safety, including for vehicle users, cyclists and pedestrians. This lack of harm is neutral in the overall planning balance.

24. Taking all of these factors into account including the policy support in the Framework and the London Plan as well as the Local Plan for high quality communications, these public benefits would be modest. They would fail to outweigh the less than substantial harm to the heritage assets and would not provide a clear and convincing justification to allow the proposal to proceed, as required by the Framework.

**Conclusion**

25. For the reasons given above and having regard to all other matters raised, I conclude that both Appeal A and Appeal B should be dismissed.

*L J Evans*

INSPECTOR