



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: 26th October 2023

Appeal A Ref: APP/P4605/W/23/3321526

Land O/S 22 Holloway Circus, Birmingham B1 1EG

- 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 Mr Ben Porte of New World Payphones ('NWP') against the decision of Birmingham City Council ('BCC').
 - The application ref. 2023/01006/PA, dated 15 February 2023, was refused by notice dated 20 April 2023.
 - The development proposed is described on the application form as an 'illuminated digital advertisement display integrated with replacement Telephone Kiosk'.
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Appeal B Ref: APP/P4605/H/23/3321542

Land O/S 22 Holloway Circus, Birmingham B1 1EG

- 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 Mr Ben Porte of NWP against the decision of BCC.
 - The application ref. 2023/01015/PA, dated 15 February 2023, was refused by notice dated 20 April 2023.
 - The advertisement proposed is described on the application form as the 'replacement of existing black telephone kiosk with single black telephone kiosk and ancillary advertisement'.
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Decisions

1. The appeals are dismissed.

Preliminary matters

2. Appeals A and B relate to different aspects of the same proposal. Planning permission and advertisement consent in this instance are indivisible; one could not sensibly proceed without the other. BCC's decision notices refused permission and consent for the same reasons.
3. 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 Planning Document ('SPD'),² the National Planning Policy Framework ('NPPF') and the Planning Practice Guidance ('PPG').

¹ Adopted respectively in 2017 and 2021.

² Adopted 2022.

4. 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, specifically the physical implications of the scheme in adding to what BCC characterise as 'street clutter' (a term I adopt for brevity). Accorded its ordinary meaning, of a useful or desirable feature of a place, 'amenity' fairly encompasses matters of design in relation to the navigability or effective functioning of public spaces.
5. On 19 September I visited another site where the replacement of two existing telephone boxes is proposed by Oozells Street.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

6. The main issue is the effect of the proposal on local amenity, with specific regard to the navigability of the public realm.

Reasons

7. BCC explain that the black telephone box to be replaced was originally installed following permission granted on 18 March 1992.⁴ I understand that NWP is an Electronic Communications Code operator, albeit there is no indication they were the historic applicant. They may have since acquired the asset. I have approached the appeals on the basis that NWP would practically have the ability to remove the existing box, which could be secured via condition (were the proposal acceptable as a whole).
8. However, the proposal is not a 'replacement', or 'direct replacement', for the existing box.⁵ That is shown, in particular, on plan no. PY4437-001B. The location of the existing box and proposed kiosk differ. That is important.
9. The existing box is in front of no. 26 Holloway Circus. At the time of my site visit no. 26 was signed as 'Circle Centre', a money transfer and currency exchange. It appeared, however, vacant and shuttered. The existing box sits within the pavement, albeit hard up against railings beside the curving pedestrian downramp leading from Smallbrook Queensway to the Scala Subway (the latter running beneath Holloway Circus). The existing box might therefore fairly be described as tucked away within the thoroughfare.
10. The existing box is not in a location where one would naturally walk on account of the curving pavement here, other than to access it directly. The natural desire line around the south-eastern arc of Holloway Circus is instead closer to no. 26 and commercial frontages at Scala House. If you were to instead walk tangentially from nos. 32 or 34 Holloway Circus towards Smallbrook Queensway,⁶ you would likely hit the railings by the existing box.

³ Ref. APP/P4605/W/22/3311745 and APP/P4605/H/22/3311746.

⁴ BCC ref. 1990/03462/PA.

⁵ The former used in the application form descriptions, the latter at page 28 of NWP's statement of case.

⁶ The frontages of which face broadly across Holloway Circus, towards the Chinese Pagoda set centrally within it.

11. It is a relatively short walk from Holloway Circus to Birmingham New Street via Smallbrook Queensway (broadly north-eastwards). Holloway Circus is a substantial junction at the south-western periphery of the City centre. It connects Smallbrook Queensway with Bristol Street and Suffolk Street Queensway, the latter two elements of the A38, and also the B4127 (which spurs off south-westwards heading towards Five Ways).
12. Holloway Circus is encircled by commercial and residential uses, with what appeared to be a predominance of the former. Holloway Circus evidently has an important distributor function within the highway network. On account of its location, surrounding uses and proximity to the City centre, it also represents a logical pedestrian interchange. Many people likely reach Holloway Circus proceeding from Birmingham New Street. That would, for example, be the logical route if heading on foot to the 02 Academy off Bristol Street.
13. At the time of my site visit in the afternoon of 19 September, there was an intermittent flow of pedestrians headed in diverse directions here. There is nothing to indicate that observation is atypical (notwithstanding that, as with Circle Centre, many commercial premises appear vacant and in a poor state of appearance on account of vandalism). Despite the strategic function of Holloway Circus, it could undoubtedly benefit from improvements in terms of permeability and coherence of design. In headline terms that appears to accord with the position of BCC, and also that of NWP.⁷ There is, in other words, a legitimate case for rationalising street clutter here.⁸
14. The existing box has outlived the purpose for which it was originally installed. The thrust of NWP's case is that the proposal would remedy that with the modern functionality of the new kiosk. The representation of West Midlands Police attests to the obsolescence of the existing box, explaining that its door has been removed to lessen the potential for attracting anti-social behaviour.⁹
15. There are instances around Holloway Circus where signage or street furniture appears to have been installed haphazardly over time to the detriment of permeability and legibility. They include next to no. 4 on the opposite side of Smallbrook Queensway. There a BT telephone box falls close to a wayfinding stand, various street signs, a litter bin and lighting upstand. That results, effectively, in a knot in the grain of the pavement there.¹⁰
16. Moreover the pavement layout itself around the existing box does not lend itself to easy use. As noted above it is set next to the downramp from Smallbrook Queensway to the Underpass. There is, unsurprisingly a difference in levels there. There is also a difference in levels between the downramp and carriageway beyond, the differential there made up by a flight of stairs. A short distance north-eastward along Smallbrook Queensway the pavement varies in levels, reflecting changing topography.
17. Commercial frontages along the southern flank of Smallbrook Queensway are set at a higher level than the pavement beside the carriageway. The differential

⁷ BCC officer report, paragraph 7.7, NWP statement of case paragraph 18.

⁸ Albeit that BCC and NWP hold different views about the prospect of public realm improvements.

⁹ Correspondence of 19 April 2023.

¹⁰ Similarly the bus shelter on Horse Fair by no. 40, and bollards flanking the cut through to the rear of Scala House, serve to obscure legibility when proceeding towards Holloway Circus from the south-east.

there is also made up by a varied number of steps (where the differential is greatest amounting to some 10 or so steps). Permeability there is variously impeded by street signage, lighting upstands and bollards. As such, although on plan view the pavement appears relatively wide nearby the proposed kiosk, practically its useability is compromised.

18. The proposed kiosk would instead be located a short distance to the north-east of the 'City Centre Queensway Information Sign' or map (hereafter referred to as the 'wayfinding stand'). It would not be in such a tucked away location as the existing box. Falling outside the extent of mapping shown on plan no. PY4437-001B, there is also a parking signpost a short distance beyond the proposed location of the kiosk.
19. In conjunction with those features, and the broader nature of the environment here, the proposal has clear potential to lead to a similar knot in as described in paragraph 15 above. Inherent in my reasoning above is that the effective width, or convenient useability, of the pavement is of some importance in terms of the design of the public realm. The proposal would, in my view, further qualify the already compromised useability of this stretch of pavement.
20. It is also relevant that, if proceeding from Birmingham New Street along the southern side of Smallbrook Queensway towards Holloway Circus, the proposed kiosk would obscure the wayfinding stand from view. Although the proposal would be fractionally smaller than the existing box in terms of footprint, it would be both taller and wider than it.¹¹ In addition to the physical implications of the scheme further constraining the space available to pavements users, that would also be to the detriment of legibility.¹²
21. For the above reasons, the proposal would have an adverse effect on local amenity, with specific regard to the navigability of the public realm, in conflict with relevant provisions of BDP policy PG3 and DMB policy DM2. In summary, and amongst other things, those policies seek to ensure high quality design appropriate to its surrounding context. Policy PG3 refers specifically to the creation of attractive environments that encourage people to move around, and public spaces that are 'attractive, functional [and] inclusive'.
22. Similarly conflict would arise with NPPF paragraph 136 by virtue of the poor siting of the proposal (which, as with DMB policy DM2, refers to the cumulative impacts of development). In reaching that view I have also had regard to the approach in the SPD. Design principle 1 of the SPD advocates that advertisements should not (cumulatively or individually) adversely impact upon 'character, movement, amenity...'.
23. NWP argue that the proposal would be consistent with the approach in the PPG, wherein it is stated that 'this might mean that a large poster-boarding would be refused where it would dominate a group of listed buildings, but would be permitted in an industrial or commercial area of a major city...'.¹³ Whilst the site here is evidently part of a commercial area of a major City with much existing advertising, the foregoing is guidance in respect of general principles; it does not suggest that any particular scheme would be acceptable.

¹¹ NWP statement of case, paragraph 22.

¹² Albeit, inevitably, not from all vantage points.

¹³ Reference ID: 18b-079-20140306.

Other matters

24. Referring to 'trite' law of consistency in decision-taking, the appellant draws my attention to an advertisement display permitted by BCC on the opposite side of the junction, ref. 2015/06957/PA, and to the existence of a freestanding illuminated advertisement 'in the position of the proposed kiosk' between 2011 and 2016. However simultaneously appealing against the decision of BCC whilst arguing that their former decisions should justify allowing the appeal is contradictory.
25. Nevertheless, dealing with those earlier schemes in turn, I acknowledge that permission ref. 2015/06957/PA enabled a dual-sided illuminated advertisement display close to the BT telephone box referenced in paragraph 15 above. However, on the evidence before me, there are 6 principal differences between that scheme and the proposal here.
26. First, that display fell instead to the south-west of the wayfinding upstand there (rather than to the north-east as here). Secondly the pavement in that location extends outwards to meet the carriageway. Next to the proposed location of the kiosk here it cuts inwards to accommodate a loading bay.
27. Thirdly the applicant there was BCC. Whilst that may be an incidental point, the details of any associated contractual or function arrangements relevant to that scheme are not before me. Fourthly that display took the place of a pre-existing unit. Fifth, that decision pre-dated the adoption of the BDP, DMB and SPD (with which the scheme before me would conflict). Sixth, and of some importance, at the time of my site visit that display was no longer present.
28. In respect of the advertisement said to exist between 2011 and 2016, the information I have in that respect is more limited (ostensibly Google Maps time series screenshots). Nevertheless that limited information still points to 4 significant differences between the display there and the proposal here.
29. Firstly, that advertisement pre-dated the wayfinding stand. Secondly, that display existed in May 2011 beside road signage which is no longer present. As with the advertisement to which permission ref. 2015/06957/PA related, 2016 pre-dates the adoption of the BDP, DMB and SPD. And, fourthly, that installation is also no longer present.
30. There would be a benefit to removing the existing phone box, aesthetically in terms of the character of the area by virtue of removing street clutter and also by reducing any propensity for it to attract anti-social behaviour. The proposal is also for a scheme which would include 'more modern and inclusive features'.¹⁴
31. Those features would, I acknowledge, offer some benefit to users and partially counter the adverse implications of the scheme in terms of legibility. However, critically, those benefits would be contingent on what I have reasoned is a poorly located and insensitive scheme relative to the general characteristics of the locality. There is, moreover, nothing to indicate that comparable benefits could not arise through locating the proposed kiosk elsewhere.

¹⁴ NWP statement of case, paragraphs 19 to 21.

32. No other matters therefore alter my reasoning that the proposal would be unacceptable. My position in that respect would stand even were the scheme acceptable in all other respects (a finding which would logically only rule out additional negative implications rather than carry weight in favour of allowing the proposal).

Conclusion

33. Having taken account of relevant statute, the development plan as a whole and all other relevant materials considerations, I therefore conclude that the appeals should be dismissed.

Tom Bristow

INSPECTOR