



Appeal Decisions

Site visit made on 26 October 2023

by Lynne Evans BA MA MRTPI MRICS

an Inspector appointed by the Secretary of State

Decision date: 20 November 2023

Appeal A Ref: APP/T5150/W/22/3299892

Pavement outside Betfred/Natwest, 127 Kilburn High Road, London NW6 6JH

- 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 BT Telecommunications PLC against the decision of the Council of the London Borough of Brent.
 - The application Ref: 22/0991 dated 4 March 2022, was refused by notice dated 10 May 2022.
 - The development proposed is installation of 1 no. new BT Street Hub, incorporating 2no. digital 75" LCD advert screens, plus the removal of associated BT kiosk(s).
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Appeal B Ref: APP/T5150/H/22/3299893

Pavement outside Betfred/Natwest, 127 Kilburn High Road, London NW6 6JH

- 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 Telecommunications PLC against the decision of the Council of the London Borough of Brent.
 - The application Ref: 22/0992 dated 4 March 2022, was refused by notice dated 10 May 2022.
 - The development proposed is 2no. digital 75" LCD display screens, one on each side of the Street Hub unit.
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Appeal C Ref: APP/T5150/W/22/3300348

Pavement outside Halifax, 149 Kilburn High Road, London NW6 7HW

- 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 Telecommunications PLC against the decision of the Council of the London Borough of Brent.
 - The application Ref: 22/0948 dated 28 February 2022, was refused by notice dated 3 May 2022.
 - The development proposed is installation of 1 no. new BT Street Hub, incorporating 2no. digital 75" LCD advert screens, plus the removal of associated BT kiosk(s).
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Appeal D Ref: APP/T5150/H/22/3300349

Pavement outside Halifax, 149 Kilburn High Road, London NW6 7HW

- 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 Brent.
 - The application Ref: 22/0949 dated 28 February 2022, was refused by notice dated 3 May 2022.
 - The development proposed is 2no. digital 75" LCD display screens, one on each side of the Street Hub unit.
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Decisions

Appeal A Ref: APP/T5150/W/22/3299892

1. The appeal is dismissed.

Appeal B Ref: APP/T5150/H/22/3299893

2. The appeal is dismissed.

Appeal C Ref: APP/T5150/W/22/3300348

3. The appeal is dismissed.

Appeal D Ref: APP/T5150/H/22/3300349

4. The appeal is dismissed.

Preliminary Matters

5. Appeals A and C relate to the refusal of planning permission for the proposed hubs. Appeals B and D are in respect of refusal of advertisement consent for the digital signage which would be an integral part of the proposed hubs sought under Appeal A and C. In respect of each pair of appeals, I have considered both on their individual merits. However, to avoid repetition, I have dealt with the relevant issues concurrently.
6. In respect of Appeals B and D, 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.
7. 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.

8. In the site addresses both the Appellant and the Council have referred to the specific occupiers at the property addresses on the pavement in front of which the proposed hubs with their digital displays would be sited. However, as individual occupiers can change over time, I consider that it is sufficient and more appropriate simply to refer to the street number.

Main Issues

9. I consider that the main issues in respect of each of the appeals (Appeals A- D) are:
- a) the effect of the proposals on public safety, and
 - b) the effect of the proposals on the character and appearance and visual amenity of the area, including proposed levels of lighting and the effect on nearby residents.

Reasons

Background

10. The appeals all relate to two freestanding hubs with integral advert displays along part of Kilburn High Road. In respect of Appeals A and B, two existing phone kiosks are proposed for removal, one with the address given as adjacent No 79 Kilburn High Road, Brondesbury Villas NW6 6JE and the other with the address given as adjacent No 85 Victoria Road, Hazelmere Road, NW6 6TB. In respect of the former the existing kiosk is on Brondesbury Villas, albeit close to its junction with Kilburn High Road and in respect of the latter, the kiosk I saw was round the corner from No 85, in Hazelmere Road. In respect of Appeals C and D two existing kiosks are also proposed for removal, one outside No 141 Kilburn High Road NW6 7HT and the other outside No 68 Salusbury Road NW6 6NU.
11. The proposed hubs would be of the same design, with a width of 1236mm and depth of 350mm and overall height of 2960mm, with two digital 75-inch LCD display screen, one on each side, together with a call facility on one of the narrow faces. Each proposal would provide a range of services, including, amongst others, ultrafast Wi-Fi, 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.

Appeals A and B

Issue a) Public Safety

12. The siting of the proposed hub would be on the west side of Kilburn High Road, within the Town Centre and adjacent a Primary Shopping Frontage, with shops and service uses at ground floor on both sides of the road and a range of uses on the upper floors, including residential uses. At the time of my site visit the local area was very busy.

13. The proposed hub would be sited on a pavement with a total width of some 4.8m and this would be reduced to just over 3m with the hub in situ. This appears to be a very heavily used pavement, as seen at the time of my site visit, and reflecting its location within a primary shopping frontage and within a Town Centre. The Council has referred to the Transport for London Pedestrian Comfort Guidance for minimum pavement widths for pedestrian flows above 1,200 persons per hour. No alternative information in this specific regard has been submitted by the Appellant. Whilst I agree with the Appellant that this information is not in itself decisive it does confirm my assessment from my site visit, that this is a busy town centre location.
14. I acknowledge that the pavement width does not achieve the desired width set out in the above Guidance, as is, but I concur with the views of the Council that the introduction of the hub in this location, given its width would restrict the walkable environment to the detriment of public safety. Given the width of the hub in relation to the width of the pavement, it would present an unacceptable obstruction and hazard to pedestrians.
15. The Appellant has referred to the removal of two existing kiosks as part of this proposal which would assist in the decluttering of the pavement. Whilst I agree that the removal of the two existing kiosks would be welcomed in this regard, neither are directly on Kilburn High Road, one is on Brondesbury Villas albeit at the junction with Kilburn High Road and the other is a little further away and within a residential environment. The existing kiosk on Brondesbury Villas does constrain the available width of pavement, but nonetheless, they do not in my view compare with the siting of the proposed hub in terms of the pedestrian environment on Kilburn High Road itself. Their proposed removal would not outweigh the harm I have concluded from the proposed location of the new hub.
16. My attention has also been drawn to other hubs along Kilburn High Road which have been granted permission by the Council, and which the Appellant contends are on pavements of comparable width with the proposed hub. Each proposal must be considered on its individual merits and on the basis of the information provided, the pavements appear to be wider in these examples. They do not persuade me to a different view.
17. In terms of highway safety, this is a busy highway with two marked lanes in either direction. The hub would be sited a little way to the south of the signalised junction with Victoria Road (B510), which also includes for signalised pedestrian crossings.
18. For road users on the main road and the side road, the proposed hub with its adverts would be sited sufficiently away from the junction not to affect any sight lines and I am not persuaded that the proposed hub would camouflage or obstruct the signal head. While I have taken into account the concerns raised by the Transportation Officer, in the context of this very urban location, I see no reason why the proposed hub and in particular the proposed adverts should be a distraction that would result in a danger to public safety sufficient to justify a refusal of permission and consent. Although each proposal must be considered on its individual merits, there is no information or evidence before me to support the concerns of the Transport Officers.

19. Although I have found that there would be no public safety concerns in respect of highway users, this does not outweigh the public safety harm I have concluded to pedestrians.
20. With regard to Appeal A, and for the reasons given above, I therefore conclude that the proposal would obstruct pedestrian flows and would harm public safety. This would conflict with Policy DMP1 of the Brent Local Plan in this regard. The reason for refusal also refers to TFL's Pedestrian Comfort Guidance, which is a guide for those involved in the planning of London's streets which I have taken into account. However, it does not form part of the development plan.
21. With regard to Appeal B, for the reasons given, the advertisement would unduly harm public safety. I have taken into account the policies of the development plan insofar as they are material, and the scheme would fail to comply with those policies referred to above in this respect.

Issue b) Character and Appearance

22. As set out above the proposal would be sited within a town centre location. The buildings on both sides of the highway in the immediate vicinity, are predominantly three storeys, although to the south the buildings are lower and more varied. but significantly set back from the highway. In the context of the scale and massing of the surrounding townscape I consider that in medium and longer distance views, the proposal would not appear overly large in relation to the surrounding buildings.
23. However, at a more local level and when approaching from either direction, I consider that the proposed hub would appear as a very bulky and solid structure, particularly given the available width of the unobstructed pavement in the vicinity of the site. I appreciate that it is intended to be seen as a notable feature, but given the constraints of the pavement width, the proposed hub would be overly dominant and visually intrusive in the local context.
24. Whilst the removal of the two existing kiosks is to be welcomed, they do not form part of the immediate street scene and do not therefore affect my findings in this regard.
25. The Council has drawn my attention to the Public House at No 125 Kilburn High Road which is a non-designated heritage asset, a locally listed building. This is an attractive brick-built building with a variety of stone dressings and embellishments. I have therefore considered the effect of the proposal on the setting of that building, as I am required to do. As a result of its siting as well as its very distinctive appearance, it stands out as a separate building in the street scene. The eye is drawn upwards towards its stone decorations. Furthermore, it is set back from No 127 and I agree with the Council that given the scale of the proposed hub and its siting in relation to the appeal site it would not result in harm to the setting of the non-designated heritage asset; its setting would be preserved. However, my finding in relation to the effect on the setting of this locally listed building does not affect or outweigh my overall conclusions on visual amenity with particular regard to the effect on the street scene.

26. 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, shopfronts and signage related to existing retail and commercial premises as well as advertisements associated with existing bus shelters.
27. The Council has raised as a separate reason for refusal the impact of the levels of illumination on the residential occupiers of the upper floors at Nos 125, 127 and 129 Kilburn High Road. The Council has set out that, in its view, there is insufficient information to determine whether there would be an adverse impact on nearby sensitive properties.
28. The height of the proposed hub would be lower than the shop front signage at No 127, and its digital displays would face north and south along the street. Given the general urban context already described above and taking into account the size and proposed illumination of the digital displays on the hub, and their siting in relation to the upper floors of nearby buildings, I do not consider that there would be any material harm to the occupiers of the upper floors of these properties, in terms of levels of illumination.
29. However, my finding in respect of the proposed levels of illumination does not override my findings on the harm to visual amenity.
30. With regard to Appeal A, for the reasons given above, the hub would have a significant adverse effect on the character and appearance of the area. It would fail to respect visual amenity. It would fail to comply with Policy DMP1 of the Brent Local Plan, and the guidance contained in Brent's Supplementary Planning Document 1 and Supplementary Planning Guidance 8 as well as the Framework with particular reference to Section 12, insofar as they seek to ensure good design that respects the local context. The Council has also referred to the London Plan in its reason for refusal, but it has not drawn my attention to any specific policies which it considers the proposal would conflict with.
31. With regard to Appeal B, for the reasons given, the advertisement would unduly harm the visual amenity of the area. I have taken into account the policies of the development plan insofar as they are material, and the scheme would fail to comply with those policies referred to above in this respect.

Appeals C and D

Issue a) Public Safety

32. The proposed hub would be sited on a pavement which is indicated to be some 3.6m in width. This appears to be a very heavily used pavement, as seen at the time of my site visit, and reflecting its location within a primary shopping frontage and within a Town Centre. This stretch of pavement is already restricted as a result of the bus stop and shelter further to the south and cycle stands further to the north.

33. Outside Nos 149-153 Kilburn High Road there is an existing private forecourt serving the Building Society and it is necessary to cross this forecourt to access the building and the external cash machine. At the time of my site visit, the forecourt also appeared to be in use as part of the general pedestrian environment but there is insufficient information before me to be able to be confident that this can be taken into account as part of the pedestrian environment. The Council simply points out the status of this land and the Appellant does not specifically refer to it, relying on the width of the adopted pavement to contend that this would be satisfactory. On the basis of the very limited information before me, I have not therefore regarded this additional land as part of the public pedestrian environment.
34. On the basis of the width of the adopted pavement I am concerned and share the views of the Council that the proposed hub, given its width and the other street furniture in the immediate vicinity would unacceptably restrict the width of available pavement. The area of unobstructed pavement is further restricted as a result of people waiting and queuing at the nearby bus stop and shelter. As a result, I consider that the proposed hub would exacerbate the existing situation and it would present an unacceptable obstruction and hazard to pedestrians.
35. The Appellant has referred to the removal of two existing kiosks as part of this proposal which would assist in the decluttering of the pavement. Whilst I agree that the removal of the two existing kiosks would be welcomed in this regard, one is some distance from the proposed hub in a different environment. The proposed removal of the one on Kilburn High Road to the south of the bus stop would improve the pedestrian environment in that location but the benefit of removing that kiosk would not outweigh the harm I have concluded from introducing a wider hub as proposed.
36. My attention has also been drawn to other hubs along Kilburn High Road which have been granted permission by the Council, and which the Appellant contends are on pavements of comparable width with the proposed hub. Each proposal must be considered on its individual merits and on the basis of the information provided, the pavements appear to be wider in these examples. They do not persuade me to a different view.
37. In terms of highway safety, this is a busy highway with two marked lanes in either direction. The hub would be sited a little way to the south of the junction with Priory Park Road. However, as a result of my site visit and the distance between the proposed hub and the junction, I am satisfied that the visibility splays for vehicles emerging from the side road to join Kilburn High Road would not be materially affected.
38. While I have taken into account the concerns raised by the Transportation Officer, in the context of this very urban location, I see no reason why the proposed hub and in particular the proposed adverts should be a distraction that would result in a danger to public safety sufficient to justify a refusal of permission and consent. Although each proposal must be considered on its individual merits, there is no information or evidence before me to support the concerns of the Transport Officers.

39. Although I have found that there would be no public safety concerns in respect of highway users, this does not outweigh the public safety harm I have concluded to pedestrians.
40. With regard to Appeal A, and for the reasons given above, I therefore conclude that the proposal would obstruct pedestrian flows and would harm public safety. This would conflict with Policy DMP1 of the Brent Local Plan in this regard. The reason for refusal also refers to TFL's Pedestrian Comfort Guidance, which is a guide for those involved in the planning of London's streets which I have taken into account. However, it does not form part of the development plan.
41. With regard to Appeal B, for the reasons given, the advertisement would unduly harm public safety. I have taken into account the policies of the development plan insofar as they are material, and the scheme would fail to comply with those policies referred to above in this respect.

Issue b) Character and Appearance

42. The proposed hub would be sited on the western side of Kilburn High Road, to the south of its junction with Priory Park Road. The site lies within the Town Centre and adjacent a Primary Shopping Frontage, with shops and service uses at ground floor on both sides of the road and a range of uses on the upper floors, including residential uses. At the time of my site visit the local area was busy.
43. In the immediate vicinity and to the immediate south of the proposed hub is a bus shelter and beyond that an existing kiosk which is proposed for removal. To the north are some existing cycle stands. The building at Nos 149-153 Kilburn High Road set further back than the properties to the south but the street scene in the immediate vicinity is very varied with a wide mix of properties, including single storey buildings as well as three storey development. There is an existing advertisement panel on the side wall of No 147 Kilburn High Road.
44. With the existing bus stop and shelter together with the other elements of street furniture in the vicinity, this part of the pavement appears very cluttered with street furniture. I have taken into account the proposed removal of the existing kiosk to the south of the bus shelter. However, the proposed hub would be deeper, more solid and noticeably taller than the existing. Notwithstanding the set back of Nos 149-153 Kilburn High Road, I consider that the addition of the proposed hub in this location would unacceptably add to the existing street furniture exacerbating an appearance of clutter to the detriment of the street scene and visual amenity.
45. The Council has drawn my attention to the Public House at No 155 Kilburn High Road which is a non-designated heritage asset, a locally listed building. This is an attractive brick-built building with stone dressings which successfully turns the corner of Kilburn High Road with Priory Park Road. I have therefore considered the effect of the proposal on the setting of that building, as I am required to do. As a result of its siting on the north side of Priory Park Road and distance to the proposed hub, I agree with the Council it would not result in harm to the setting of the non-designated heritage asset; its setting would be preserved. However, my finding in relation to the effect on the setting of

this locally listed building does not affect or outweigh my overall conclusions on visual amenity with particular regard to the effect on the street scene.

46. 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, shopfronts and signage related to existing retail and commercial premises as well as advertisements associated with existing bus shelters.
47. However, my finding in respect of the proposed levels of illumination does not override my findings on the harm to visual amenity.
48. With regard to Appeal A, for the reasons given above, the hub would have a significant adverse effect on the character and appearance of the area. It would fail to respect visual amenity. It would fail to comply with Policy DMP1 of the Brent Local Plan, and the guidance contained in Brent's Supplementary Planning Document 1 and Supplementary Planning Guidance 8 as well as the Framework with particular reference to Section 12, insofar as they seek to ensure good design that respects the local context. The Council has also referred to the London Plan in its reason for refusal, but it has not drawn my attention to any specific policies which it considers the proposal would conflict with.
49. With regard to Appeal B, for the reasons given, the advertisement would unduly harm the visual amenity of the area. I have taken into account the policies of the development plan insofar as they are material, and the scheme would fail to comply with those policies referred to above in this respect.

Other Considerations

Appeals A – D inclusive.

50. In respect of Appeals A and B the Council's Town Centre Manager has raised a concern about the potential for crime, including drug dealing but has offered no evidence in this regard. Furthermore, the Appellant has included a Management Plan which is directed to public safety issues including anti-social behaviour, which if no other matters were of concern and permission and consent were to be granted could be the subject of a condition. The Council similarly acknowledged that development could not be refused on the basis of the Town Centre Manager's concerns in this regard.
51. The Appellant has also raised concerns that the Council has not been prepared to enter pro-active discussions on this and other hub proposals within the Borough, but my decisions are based solely on the planning merits of the appeals before me. The concerns raised would need to be directed to the Council.
52. The Appellant has referred me to a number of other kiosks and street hubs in the vicinity and further afield. 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.

Overall Balance: Appeals A and B

53. As set out under my Preliminary Matters, the proposal would provide a range of services, including, amongst others, Wi-Fi, device charging, public messaging facilities, free calls to landlines, and wayfinding contributing towards a 'smart city'. It would be powered by renewable energy, would generate minimal waste and would include features to prevent crime and anti-social behaviour. It would provide a platform for other technologies such as environmental conditions and key data and would support businesses and the vitality of the area. These facilities and services would provide a useful function to members of the public, but I am not persuaded that such services could not be provided in a less obtrusive way which would not raise concerns in respect of both public safety and visual amenity.
54. The proposal includes for the removal of two phone boxes, as addressed under both my main issues. Whilst the removal of any redundant structure from the street scene is to be welcomed, the weight to be afforded to the proposed removal of these kiosks is significantly reduced as their siting is not directly comparable in terms of the proposed location of the hub before me, and therefore in respect of their impact on both visual amenity and public safety.
55. Taking all of these factors into account including the support in the Framework and the London Plan for high quality communications, as well as the Council's own Digital and Inclusive Growth Strategies, these public benefits would be modest. They would not outweigh the harm I have concluded both to visual amenity and public safety under both Appeal A and Appeal B.

Overall Balance: Appeals C and D

56. As set out under my Preliminary Matters, the proposal would provide a range of services, including, amongst others, Wi-Fi, device charging, public messaging facilities, free calls to landlines, and wayfinding contributing towards a 'smart city'. It would be powered by renewable energy, would generate minimal waste and would include features to prevent crime and anti-social behaviour. It would provide a platform for other technologies such as environmental conditions and key data and would support businesses and the vitality of the area. These facilities and services would provide a useful function to members of the public, but I am not persuaded that such services could not be provided in a less obtrusive way which would not raise concerns in respect of both public safety and visual amenity.
57. The proposal includes for the removal of two phone boxes, as addressed under both my main issues. One of these kiosks is not on Kilburn High Road and does not raise the same issues in terms of public safety and visual amenity. The other kiosk is on Kilburn High Road, in close proximity to the new hub but although smaller in footprint, the proposed hub would both be wider and taller and therefore more solid than the kiosk proposed to be removed. Whilst the removal of any redundant structure from the street scene is to be welcomed, the weight to be afforded to this proposed removal of the two kiosks is therefore significantly reduced.

58. Taking all of these factors into account including the support in the Framework and the London Plan for high quality communications, as well as the Council's own Digital and Inclusive Growth Strategies, these public benefits would be modest. They would not outweigh the harm I have concluded both to visual amenity and public safety under both Appeal A and Appeal B.

Conclusion

59. For the reasons given above and having regard to all other matters raised, I conclude that Appeals A and B and Appeals C and D should be dismissed.

L J Evans

INSPECTOR