
Appeal Decisions

Site visits made on 22 and 23 August 2023

by J Moore BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 November 2023

Appeal A Ref: APP/A5840/W/22/3308979

Pavement outside Elephant and Castle Station, London Rd, Elephant and Castle, London SE1 6LW

- 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 against the decision of the London Borough of Southwark.
- The application Ref 22/AP/1740, dated 9 May 2022, was refused by notice dated 22 August 2022.
- The development proposed is the removal of 2no. phone kiosks and the installation of 1no. BT Street Hub unit.

Appeal B Ref: APP/A5840/H/22/3308980

Pavement outside Elephant and Castle Station, London Rd, Elephant and Castle, London SE1 6LW

- 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 British Telecommunications against the decision of the London Borough of Southwark.
- The application Ref 22/AP/1741, dated 9 May 2022, was refused by notice dated 22 August 2022.
- The advertisement proposed is display of 2x LED digital intermittent illuminated displays, one on either side of a street hub proposed under planning application reference 22/AP/1740.

Decisions

1. Appeal A is allowed and planning permission is granted for the removal of 2no. phone kiosks and the installation of 1no. BT Street Hub unit at Pavement outside Elephant and Castle Station, London Rd, Elephant and Castle, London SE1 6LW in accordance with the terms of the application, Ref 22/AP/1740, dated 9 May 2022, and the plans submitted with it, subject to the conditions in the schedule for Appeal A below.
2. Appeal B is allowed and express consent is granted for the display of the advertisement 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 in the schedule for Appeal B below.

Preliminary and Procedural Matters

3. A single planning application form was submitted to the Council. The application covered both an application for planning permission and for consent to display advertisements, and the Council refused both. Consequently, there are two appeals relating to the same site. I have considered each appeal on its own individual merits, but to avoid duplication, I have dealt with them

together, except where otherwise indicated. When I refer to the proposed development, it shall be with regard to Appeal A, and when I refer to the proposed advertisement, it shall be with regard to Appeal B. When I refer to the proposal, it shall mean the proposed development and the proposed advertisement i.e., both appeals.

4. The description of development in my banner heading above for Appeal A is taken from the planning application form, excluding words that are not acts of development. The description of the proposed advertisement in my banner heading for Appeal B above is taken from the decision notice in the interests of clarity and precision.
5. The decision notice refers to a plan entitled *Removal Kiosk Site Plan*. The Council has confirmed that the plan entitled *BT Street Hub - Removal Kiosk Site PlansS30 Site Ref: SOU003* was submitted with the application and is the plan that it considered when it determined the planning application. I am satisfied that no party has been prejudiced in this regard.
6. In regard to Appeal B, the Regulations stipulate that control of advertisements may only be exercised in the interests of amenity and public safety, taking account of cumulative effects. This position is supported by the National Planning Policy Framework (the Framework) and Planning Practice Guidance (PPG). The development plan policies put forward by the Council in its reasons for refusal are not determinative, but I have taken them into account in so far as they relate to amenity and public safety.
7. As the proposal is in proximity to listed buildings, I have had special regard to section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act).

Main Issues

8. The proposed development and the proposed advertisement are intrinsically linked, and therefore for both appeals, the main issues are the effect of the proposal upon:
 - the character and appearance/amenity of the area, including whether it would preserve or enhance the setting of the grade II listed buildings of the Michael Faraday Memorial, the Metropolitan Tabernacle and Metro Central Heights; and
 - highway safety/public safety.

Reasons

Character and appearance/amenity

9. The appeal site is an area of footway outside the Northern Line entrance to the Elephant and Castle underground station (the station), which includes an existing telephone kiosk with non-illuminated advertisement, a street bin, some street cabinets, street lighting columns, and a bus stop located to the south of the station entrance which includes internally illuminated advertisements that change at intervals.
10. The Elephant and Castle area is busy, due to the presence of the station and various bus stops, the convergence of the A3 and A201, the presence of segregated cycle lanes and the surrounding commercial, retail and educational

uses. From the evidence before me, the area adjacent to the station is currently being redeveloped, but the details are not before me. From my own observations, it is clear that the redevelopment scheme is large with multiple site entrances for construction access.

11. The proposed street hub would be about 2.98m high, 1.23m wide and 0.35m deep, with a footprint of about 0.43m². It would be located about 6.9m further north of the existing kiosk which would be removed. Each side of the hub would display static advertisements, with illumination in accordance with the well-established and widely accepted standards of the *Institute of Lighting Professionals: Professional Lighting Guide 05 (PLG05) 'Brightness of Illuminated Advertisements'*. Even though the street hub would be taller and wider than the existing kiosk, it would be slimmer. Its volume would be about 1.29m³ and it would thus be a less bulky form than the existing kiosk which is about 3.48m³ and in poor condition.
12. A further kiosk is proposed for removal outside No.32 New Kent Road, which is some distance from the proposed site for the street hub, but nevertheless within the busy area at Elephant and Castle. There is little substantive evidence before me of any agreement to remove more than one kiosk for each proposed street hub. Nonetheless, the removal of the existing kiosks would result in less street clutter in terms of footprint and volume at both locations. The proposed development would therefore improve the character, appearance and amenity of the area at the station and at New Kent Road.
13. There is little evidence before me to demonstrate that a digital advertisement is significantly different or more harmful than a non-digital one in terms of the effect upon character, appearance or amenity.
14. The proposed illuminated advertisements would be seen within the context of a station entrance that is well lit at night, and in the context of the other illuminated advertisements at the bus stops within the area. However, the proposed illumination at 600cd/m² during the hours of darkness would be very bright, and the illuminated advertisements could thus appear harsh or stark. Such a proposed luminosity would not accord with the Guidance for Digital Roadside Advertising and Proposed Best Practice, 2013 (GDRA) by Transport for London (TfL), which seeks a level of 100-300cd/m² in urban areas. However, this matter could be controlled by a suitable condition.
15. The appeal site is close to the Michael Faraday Memorial, the significance of which stems from its use as a transformer station as well as a memorial to its namesake. It is a square flat roofed form suspended within a black plinth, with stainless-steel panelled cladding. Due to its position within the Elephant and Castle Roundabout, it is in prominent view from all approaches. Its setting is therefore wide, and it is experienced in the context of a busy hub of pedestrian and vehicular movement. The design of the proposed street hub is a simple form with a black finish and thus it would not detract from the contemporary appearance of the memorial.
16. Importantly, surrounding light sources are subtly reflected off the external panelling of the Michael Faraday Memorial during the hours of darkness. In this regard, a harsh or stark level of illumination would detract from its setting during the hours of darkness, especially when approaching from the south. However, this matter could be controlled by a condition requiring a lower level of luminosity during the hours of darkness.

17. The Metropolitan Tabernacle is located on the opposite side of the carriageway to the appeal site, slightly further to the south. Its significance stems from its façade and its elevated grand Corinthian portico, emphasised at night with external illumination. Furthermore, there are three bus stops in proximity to it, one directly in front, one further north and one further south, all of which include illuminated advertisements. Such features do not unduly detract from the setting of this asset which has a strong and imposing presence within the street scene, even at night, and thus due to its more distant siting, the proposal would not detract from its setting.
18. Metro Central Heights is situated further to the north-west of the appeal site. Its significance arises from its modernist and award-winning architecture which includes various tall blocks with deeply modelled façades, and as part of a wider redevelopment of Elephant and Castle. Although the proposal would be within northbound views of this heritage asset, such views are largely confined to the middle and upper layers and would be partly obscured by the station building on the approach to the proposal. Therefore, due to its scale and distant siting, together with the busy nature of the area, the proposal would not unduly detract from its setting, even at night.
19. I therefore conclude that subject to a suitable condition to control the luminosity of the proposed advertisement, the proposal would not unacceptably harm the character and appearance/amenity of the area, and it would preserve the setting of the grade II listed buildings of the Michael Faraday Memorial, the Metropolitan Tabernacle and Metro Central Heights.
20. The proposed development accords with Policies D8 and HC1 of the London Plan 2021 (LP), and Policies P13, P14, P19 and P21 of the Southwark Plan 2019-2036, 2022 (SP). The proposed advertisement also accords with these policies in so far as they relate to the interest of amenity. Taken together these policies seek to ensure high quality design and place-making; to conserve heritage assets in a manner appropriate to their significance; and to ensure that advertisements do not unacceptably harm visual amenity or the significance of heritage assets and their settings.
21. The proposal accords with the Framework, which seeks to ensure that the quality and character of places does not suffer from advertisements that are poorly sited and designed; and that heritage assets (including their settings) are conserved in a manner appropriate to their significance so that they can be enjoyed for their contribution to the quality of life of existing and future generations.

Highway Safety/Public Safety

22. The highway around the Elephant and Castle area is busy and complex. The southbound carriageway from the Elephant and Castle Roundabout is wide. There is a segregated cycle lane which emerges from the side of the Michael Faraday Memorial before the pedestrian crossing near the station entrance, and the carriageway then includes a tapered bus lane before a further set of traffic signals and a further pedestrian crossing. There is also a bus stop with internally illuminated advertisements that change at intervals.
23. The northbound side of the carriageway is also wide, with a bus lane, highway signage, traffic lights, and three bus stops, all with internally illuminated advertisements that change at intervals. There is also a segregated cycle lane

that runs along the back of the footway towards the Elephant and Castle Roundabout. The opposing carriageways are separated by railings.

24. The proposed street hub would be sited perpendicular to the carriageway, about 500mm from the kerb edge. Its width of 1.23m would extend across the footway, resulting in some 5m of footway width between it and the station entrance. Consequently, its position and siting would accord with the Streetscape Guidance by TfL which defines the kerb zone as 450-650mm from the kerb edge and seeks a preferred minimum of 2m of footway clear zone, which would be well exceeded in this case.
25. TfL states that the existing station ticket hall is not of a sufficient size to accommodate large numbers of pedestrians in terms of those exiting the station and/or in terms of persons waiting at the station or trying to work out directions. There is little evidence before me to substantiate this position, and I saw no evidence of this during my numerous visits to the area. In such an event, the street hub would not be such a significant impediment to pedestrian movement. Furthermore, due to the smaller footprint and volume of the proposed street hub in comparison to that of the existing kiosk to be removed, there would be a net increase in the space available for pedestrian movement.
26. TfL suggests that due to the proposal's proximity to the pedestrian crossing, potential passengers would be at risk if they were trying to catch a train and crossing on a red man signal. The presence of the proposal would not fundamentally change such a motivation, and the proposal would not be positioned so close to the pedestrian crossing to the extent that it would impede pedestrian movement on it or towards it.
27. TfL states that there have been some 13 collisions in the immediate vicinity surrounding the proposed street hub, with six involving a pedestrian or cyclist. However, there is little substantive or compelling evidence before me to demonstrate this, nor to demonstrate that the proposal would form an increased risk of collision between highway users. The presence of a street hub and/or illuminated roadside advertisement by itself does not increase such risks in a commercial and busy area.
28. One side of the street hub would present an illuminated advertisement that would face southbound traffic and pedestrians from the Elephant and Castle Roundabout, and it would be within the driver's eyeline. As such, it would accord with the requirements of the GDRA. Southbound highway users would experience the pedestrian crossing, followed by the street hub with its illuminated advertisement set against the station entrance (which is well-lit at night), then the further illuminated advertisement at the bus stop to the south of the station entrance, before approaching further traffic signals and another pedestrian crossing. The proposed hub and illuminated advertisement would not be unduly distracting within this context.
29. The other side of the proposed street hub would face northbound traffic on the opposite side of the carriageway. Highway users approaching from this direction would experience a pedestrian crossing, then three illuminated advertisements at the bus stops and at night, the intervening externally lit portico at the Metropolitan Tabernacle, and then the further traffic signals and pedestrian crossing at the Elephant and Castle Roundabout. The proposal would not unduly distract road users on this northbound side of the

carriageway due to its proposed scale and siting, its position within the driver eyeline, and the intervening southbound carriageway.

30. The advertisement display would be of tempered and laminated glass to reduce glare. However, the proposed illumination level at night would be bright, and the GDRA seeks a level of 100-300cd/m² in urban areas. Given the backdrop of a well-lit station entrance, I am satisfied that a level of 300cd/m² would be reasonable in this regard, and this can be secured by condition.
31. During my visits to the site, I saw that the access points to the large redevelopment site were staffed, managed and controlled. In my judgement the proposal would not increase risks to pedestrian safety in this regard. There is no substantive or compelling evidence before me to demonstrate that the proposed street hub would undermine any future improvements to the public realm that may be delivered via any agreement associated with the redevelopment scheme.
32. Having regard to all of the above, I therefore conclude that the proposal would not result in an unacceptable harm or risk to highway/public safety. The proposed development accords with Policies T2, T5 and D8 of the LP, and Policies P43, P50, and P51 of the SP. The proposed advertisement also accords with these policies in so far as they relate to the interest of public safety. Taken together these policies seek (among other things) to ensure a well-designed public realm and healthy streets that are safe, accessible and inclusive and encourage cycling and walking; to ensure a high standard of pedestrian amenity; to ensure safe and free movement along the public highway; and the safe operation of the road network. The proposal accords with the objectives of the Framework, which seeks to promote healthy and safe communities and sustainable travel.

Other Matters

33. The appellant draws my attention to the potential benefits of the proposal. However, with regard to Appeal B, I am confined to matters that relate to amenity or public safety. As I have found in favour of the proposed development with regard to the main issues, it is not necessary for me to consider the potential benefits of the proposed development in further detail in order to weigh them in any balancing exercise for Appeal A.

Conditions

34. I have considered the conditions suggested by the Council and the appellant. I have also considered the conditions suggested by TfL in their consultation response to the planning application. For clarity, precision and to ensure compliance with the PPG, I have undertaken some amendments, editing and rationalisation.
35. For Appeal A, I have imposed a condition with regard to the time period for commencement and I have referenced the accompanying plans in my decision, which together provide clarity and precision to the permission. A materials condition is necessary in the interests of the character and appearance of the area. Conditions to control the timely removal of the existing kiosks, the reinstatement of the footway and the maintenance of the proposed street hub are reasonable and necessary in the interests of character and appearance of the area, and also in the interests of pedestrian and highway safety.

36. The Council's suggested condition to expunge rights to instate kiosks at the removal locations is not accompanied by any compelling justification, and it is not precisely defined. Further conditions suggested by TfL to prevent obstructions to the footway and highway during installation are not necessary as such matters would be controlled by other regulatory frameworks and codes of practice in this case.
37. For Appeal B, the five standard conditions as required by the Regulations are imposed in the interests of amenity and public safety. A condition to control illumination is reasonable and necessary in order to preserve the setting of the Michael Faraday Memorial and to ensure the safe operation of the highway, and as such they are imposed in the interests of visual amenity and public safety.
38. The remaining conditions are imposed to ensure that the content of advertisements and operation of the display does not harm the safe operation of the highway. The conditions seek to ensure that the advertisements are static, displayed for a minimum time with instantaneous transition, and without content or effects that would harm the safe operation of the highway, and with a control in the event of any malfunction. Such conditions are reasonable and necessary and are in the interests of public safety.

Conclusions

39. With regard to Appeal A, I conclude that the proposed development would accord with the development plan when read as a whole. There are no material considerations, including the Framework that would indicate otherwise. Therefore, Appeal A is allowed, and planning permission is granted, subject to the conditions I have set out.
40. With regard to Appeal B, I conclude that the display of the proposed advertisement would not be detrimental to the interests of amenity and public safety. Therefore, Appeal B is allowed, and express consent is granted subject to the conditions I have set out.

J Moore

INSPECTOR

Schedule of Conditions - Appeal A - APP/A5840/W/22/3308979

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The external surfaces of the BT Street Hub hereby approved shall be constructed using the materials, finishes and colours as described in the BT Street Hubs Beyond Connection (Street Hub product statement) v1.0 February 2021 and as illustrated in the BT Street Hub Proposal Renders 2021.
- 3) The removal of the existing kiosk outside the Northern Line entrance to the Elephant and Castle Station shall be completed no later than four weeks after the commencement of the installation of the BT Street Hub hereby approved. The removal of the existing kiosk shall include works to reinstate the footway with materials to match the adjoining footway surface materials. The developer shall obtain written confirmation of the completion of footway reinstatement works from the local highway authority. The written confirmation shall be submitted to the local planning authority within two weeks of receipt.
- 4) The removal of the existing kiosk outside 32 New Kent Road shall be completed no later than four weeks after the commencement of the installation of the BT Street Hub hereby approved. The removal of the existing kiosk shall include works to reinstate the footway with materials to match the adjoining footway surface materials. The developer shall obtain written confirmation of the completion of footway reinstatement works from the local highway authority. The written confirmation shall be submitted to the local planning authority within two weeks of receipt.
- 5) The installation of the BT Street Hub hereby approved shall include works to reinstate the footway with materials to match the adjoining footway surface materials. The developer shall obtain written confirmation of the completion of footway reinstatement works from the local highway authority. The written confirmation shall be submitted to the local planning authority within two weeks of receipt.
- 6) The BT Street Hub hereby approved shall be managed and maintained in accordance with the BT Street Hubs Beyond Connection (Street Hub product statement) v1.0 February 2021 and the BT Street Hub Anti-Social Behaviour Management Plan April 2021 for the lifetime of the development.

Schedule of Conditions - Appeal B - APP/A5840/H/22/3308980

- 1) The illumination of the advertisement display shall be operated in accordance with the *Professional Lighting Guide 05 (PLG 05): Brightness of Illuminated Advertisements* by the Institute of Lighting Professionals or any subsequent amendment or equivalent replacement guide, except during the hours of darkness (between dusk and dawn) when the intensity of the illumination shall be no greater than 300cd/m².
- 2) The minimum display time for each advertisement shall be no less than 10 seconds.
- 3) The interval between advertisements shall take place over a period no greater than one second and the complete screen shall change with no visual effects including swiping or other animated transition methods.

- 4) The individual advertisements displayed shall not contain moving images, animation, intermittent or full motion video, audio, directional symbols or any images resembling road signs or traffic signals, or special effects.
- 5) The advertising display shall operate with a control system to turn the display off, freeze the image or display a black/blank screen in the event of any malfunction.

END OF SCHEDULES