



Appeal Decisions

Site visit made on 31 October 2023

by A Wright BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th December 2023

Appeal A Ref: APP/A1530/W/22/3313752

Footpath outside 11-14 Lion Walk, Colchester CO1 1LX

- 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 Plc against the decision of Colchester Borough Council.
- The application Ref 222452, dated 12 September 2022, was refused by notice dated 23 November 2022.
- The development proposed is the removal of the existing BT phone box and the installation of a proposed replacement BT street hub and associated display of advertisement to both sides of the unit.

Appeal B Ref: APP/A1530/H/22/3313758

Footpath outside 11-14 Lion Walk, Colchester CO1 1LX

- 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 BT Plc against the decision of Colchester Borough Council.
- The application Ref 222451, dated 12 September 2022, was refused by notice dated 23 November 2022.
- The development proposed is two digital 75 inch LCD display screens, one on each side of the street hub unit.

Decision

1. Appeal A is dismissed.
2. Appeal B is dismissed.

Preliminary Matters

3. There are two appeals on this site, one against the refusal of planning permission and the other against the refusal of advertisement consent. They are intrinsically linked and raise similar issues. To avoid repetition, while considering each on its merits, I have dealt with both in a single decision letter.
4. However, in respect of Appeal B, powers under the Regulations to control advertisements may be exercised only in the interests of amenity and public safety.
5. The Council refers to a recent permission for a new scheme of signage and wayfinding that will replace existing signage (reference 212552), but no details have been provided and I have determined the appeal based on the information before me and my site observations.

Main Issues

6. The main issues in respect of Appeal A are: (i) whether the development would preserve or enhance the character or appearance of the Colchester Conservation Area 1 Lion Walk (CA); (ii) the effect on the setting of the Congregational Church and Eld Lane Baptist Church grade II listed buildings; and (iii) pedestrian safety.
7. In respect of Appeal B, the Council does not include public safety in the reason for refusal and therefore the main issue is the effect of the proposed advertisement on visual amenity.

Reasons

Effect on heritage assets/Visual amenity – Appeal A and Appeal B

8. The site lies in the pedestrianised Lion Walk shopping area which links to Eld Lane. A historic stone church spire sits apart from the modern shopfronts of the surrounding buildings, towering above them and sited forward of the adjacent structures. Along Lion Walk is a central line of streetlights and an existing shopping centre wayfinding sign.
9. The significance of the CA derives in part from the tall spire of the Congregational Church forming a landmark feature within the modern shopfronts of the Lion Walk shopping precinct, with the new octagonal United Reformed Church, Eld Lane Baptist Church, and historic buildings on this street nearby. The appeal site makes a positive contribution to the CA due to the views of the church spire.
10. The significance of the grade II listed Congregational Church, in so far as it relates to this appeal, is derived from its random stone spire in the Decorated Gothic style. The grade II listed Eld Lane Baptist Church is significant in part due to its gault brick and stucco front with central bays, pilasters, pediments, blind panels and arches.
11. The proposal would provide free electronics communications services with LED digital screens for advertising on each side, the revenue from which would make it commercially viable. Street hubs are intended to replace the existing payphone network, but there is no phone box on the site and no indication of any phone boxes that would be removed in the immediate locale. The proposal would introduce a new substantial sized structure in a busy town centre walkway. Although it would be close to the existing narrow streetlights and wayfinding sign, the street hub would be significantly wider than them and much higher than the existing sign. Therefore, the height, width and position of the proposed development would harmfully add to visual clutter.
12. The contemporary street hub would lie between modern shop frontages. The scale and siting of the structure in a well-used pedestrian area, the extent of the display screens with the introduction of digital advertisements, and the black surrounding materials would result in a dominant and incongruous addition to the street scene.
13. Furthermore, its location and scale would obscure some views of parts of the Congregational Church spire for pedestrians walking along Lion Walk from Eld Lane. In this regard, its size and appearance would negatively affect the setting and thus the significance of the listed Congregational Church and the CA.

14. The proposed street hub would be separated from the listed Eld Lane Baptist Church by the United Reformed Church building. Given the distance of the proposal from the Baptist Church and its location relative to surrounding buildings, the street hub would not harm the setting and therefore the significance of this listed building.
15. I consider that the appeal proposal would lead to less than substantial harm to the CA and the listed Congregational Church which are designated heritage assets. In such circumstances, paragraph 202 of the National Planning Policy Framework (the Framework) states that less than substantial harm to the significance of a designated heritage asset should be weighed against the public benefits of the proposal.
16. In this regard, the street hub would be accessible to all, providing ultrafast public wi-fi and improved 4G and 5G coverage, public service information, rapid device charging, free phone calls, environmental sensors, and use for advertising by the Council and local businesses. It would be powered by renewable energy and regularly cleaned and monitored. Further, national policies and codes of practice recognise the social and economic benefits of digital connectivity and support high quality telecommunications infrastructure and town centres. In addition, the Council did not question the need for the development and its Local Plan recognises that digital infrastructure technologies are evolving rapidly. However, these public benefits would not be of sufficient weight to outweigh the harm that would be caused to the character and appearance of the CA and the setting of the listed Congregational Church.
17. The appellant refers to appeal decisions in other cities where the Inspectors found that similar proposals would variously cause no harm to visual amenity or the setting of listed buildings or would preserve the character and appearance of the conservation area. However, the decisions are from different locations and there is no clear evidence that they are directly comparable to the current proposal. Accordingly, I cannot afford them any material weight and I have determined the appeal proposals based on their merits.
18. Therefore, in terms of Appeal A, I conclude that the development would fail to preserve or enhance the character and appearance of the CA. Although it would preserve the significance of the listed Eld Lane Baptist Church, it would not preserve the significance of the listed Congregational Church, given the harm that would be caused to its setting. It would be contrary to Policies SP7 of the North Essex Authorities' Shared Strategic Section 1 Plan and Policies DM15 and DM16 of the Colchester Borough Local Plan Section 2 2022 (LP2). Together, these require development to respect the site context and conserve and enhance the significance of heritage assets, amongst other things. It would also conflict with the conservation and design requirements of the Framework.
19. In respect of Appeal B, I conclude that the proposed advertisement would harm visual amenity. I have had regard to the development plan policies and Framework set out above where they are material to this issue. As I have found harm to visual amenity, it follows that there would be conflict with them.

Pedestrian safety – Appeal A

20. The appeal site is in a wider part of the pedestrian walkway due to the position and shape of the adjacent buildings but, towards Eld Lane, Lion Walk narrows where the shops project further forward and there are outdoor dining tables

and a walled space opposite. Part of the site lies in the corridor immediately west of the streetlights and dining tables which is the most heavily used part of the pedestrian walkway due to the unobstructed access to and from Eld Lane.

21. The proposed street hub would follow the line of the existing streetlights and wayfinding sign but would be much wider than them, extending into the pedestrian walkway on both sides. It would reduce the footway width and obstruct part of the most used western section of Lion Walk, impeding the free flow of pedestrians.
22. Legislation and various documents, including the Manual for Streets, outline minimum footway widths. Whilst there would be sufficient space for wheelchairs to pass each other comfortably, this does not alter the fact that this is a busy pedestrian thoroughfare in a town centre shopping area. As such, it would still unacceptably obstruct the footway to the detriment of users.
23. The site is in a pedestrian area and the Council does not raise concerns about the potential of the proposal to distract drivers to the detriment of road safety. I have no reason to come to a different conclusion to the Council on this matter.
24. Therefore, in relation to Appeal A, I conclude that the proposed development would harm pedestrian safety. It would be contrary to Policies DM20 and DM21 of the LP2 where they seek to safeguard existing routes for walking and ensure safe passage of all highway users. It would also conflict with the Framework which requires decisions to achieve safe and accessible places.

Conclusion

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

A Wright

INSPECTOR