



Appeal Decisions

Site visit made on 7 December 2023

by Eleni Randle BSc (hons) MSc FRICS FAAV MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21.12.2023

Appeal A Ref: APP/G3110/W/22/3308280

Pavement o/s 205A Banbury Road, Summertown, Oxford, OX2 7HQ

- 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 Mr James Browne (BT Telecommunications Plc) against the decision of Oxford City Council.
 - The application Ref 21/01165/FUL, dated 29 April 2022, was refused by notice dated 11 August 2022.
 - The development proposed is installation of 1 no. new BT Street Hub, incorporating 2 no. digital 75" LCD advert screens, plus the removal of 2 no. associated BT kiosks.
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Appeal B Ref: APP/G3110/H/22/3308281

Pavement o/s 205A Banbury Road, Summertown, Oxford, OX2 7HQ

- 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 Mr James Browne (BT Telecommunications Plc) against the decision of Oxford City Council.
 - The application Ref 22/01166/ADV, dated 29 April 2022, was refused by notice dated 11 August 2022.
 - The development proposed is installation of 1 no. new BT Street Hub, incorporating 2 no. digital 75" LCD advert screens, plus the removal of 2 no. associated BT kiosks.
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Decisions

Appeal A Ref: APP/G3110/W/22/3308280

1. The appeal is dismissed.

Appeal B Ref: APP/G3110/H/22/3308281

2. The appeal is dismissed.

Procedural Matters

3. Whilst each appeal is a separate consideration to be determined, they have both been considered and determined in parallel. Notwithstanding this, I confirm that I have determined each appeal separately and on their own merits in accordance with the respective processes and requirements that I am required to undertake. However, for clarity, efficiency and simplicity, given the nature of the refusal reasons for each appeal I have presented the outcomes of these two linked appeals within this one decision letter.
4. Since the determination of the applications, and the submission of these appeals, a revised National Planning Policy Framework 2023 was adopted on 5 September 2023. A further revised National Planning Policy Framework (the

Framework) was adopted on 19 December 2023. The refusal reasons reference specific paragraphs of the Framework however, it is not considered that this impacts upon the determination of the appeals given that the paragraphs referred to within the stated decision notices, and within this decision letter, remain unchanged within the latest revision of the Framework.

Main Issues

5. The main issues within both appeals are i) the impact of the proposal upon the visual amenity of the area, street scene and public realm and ii) whether the proposal would be detrimental to road users, including pedestrians and cyclists.

Reasons Appeal A and Appeal B

Visual amenity of the area, street scene and public realm

6. The appeal site relates to land fronting 205A Banbury Road, which is currently part of the public highway, the pavement, along the main road through Summerton. The proposed street hub itself (Appeal A) would be approximately 3 metres high, 1.24 metres wide and 0.35 metres deep. Two 75-inch display screens would be installed to the sides for illuminated advertisements (Appeal B). The Street Hub would also house telecommunications equipment with features noted to include upgraded wi-fi range, free direct 999 call button, public messaging service, USB rapid device charging point, environmental monitoring and expanded mobile network coverage with 5G. The proposal would also remove two BT telephone units, outside the red line boundary.
7. The immediate area surrounding the application site is predominantly commercial in nature and is noted to have commercial and retail shop fronts occupying ground floor levels with more residential development occupying the upper levels. At the time of my site visit, I noted that the appeal site is adjacent to a multi-bus stop layby, cycle/scooter parking racks as well as existing street furniture such as a multi-bay bus stop with shelters. Such features are small scale, and low level, and blend into the street scene as part of the established character and appearance of the area as well as being common features of Oxford. None of them stand out in isolation.
8. During my site visit I observed a large number of people walking in and around the appeal site and found that there was limited space on the pavement in the area when taking into account people utilising the cycle/scooter parking as well as groups of people waiting for buses. The proposal would narrow the available pavement in an area which appeared widely used during my site visit as a result of it being an area of transport exchange. Whilst I appreciate that my visit is only a snapshot in time, I found that the area appeared generally busy and groups of people, standing around the Street Hub (in very close proximity to the edge of the pavement by the bus stop) would contribute further to the impact of the proposal in terms of visual amenity.
9. The Street Hub would be of a notable size, scale and massing and I find that it is of design that would be entirely alien to the character and appearance of the area. Its overall height would contribute to its negative prominence and would be exacerbated by visual contrast to the height of the nearby bus shelters. This, combined with advertisements, would result in a discordant feature which would be unduly prominent, and dominant stood forward of the existing street furniture less than a meter from the edge of the pavement. Whilst this area of

Oxford is perhaps more modern, the Street Hub is of uniform design which would be visually incongruous. The proposals would also add clutter within the street scene and public realm within a short distance when taking into account the existing street furniture, scooter/cycle parking, bus stops and general activity in the area.

10. I appreciate, that the nature of the proposal is to stand out, but this would be in contrast to the low-lying character of the area and the proposals would appear incongruous and obtrusive within the street scene against the generally modest appearance of the backdrop of shop facias and road signage. The presence of the advertisements would be exacerbated as a result of proposed illumination, however, even in the absence of such illumination, the proposal for the Street Hub and the associated advertisements would still appear as an unduly prominent and dominant structure that would detract from the visual amenity of the area due to their overall size and location.
11. There are secondary and tertiary uses and functions to the BT hubs as have already been outlined. It is noted that 5G needs to be provided and it is also understood that the locational needs are such that 5G has a smaller radius compared to previous and earlier network requirements. I am of the opinion that there is likely scope for more appropriate ways of providing enhanced telecommunications through 5G/Wi-fi as opposed to the proposal for a Street Hub of this scale, in this location, accompanied by large advertisements. Whilst it is stated that the proposal would encourage more people to walk or use public transport there is no evidence or justification to demonstrate this robustly which limits the weight which can be relied upon or attributed to this claim. The Wayfinding feature is not a part of the street hub itself as the street hub does not contain an interactive map or equivalent software feature, but simply provides wayfinding by allowing people who have access to a phone, or tablet, to utilise free wi-fi or 5G to be able to utilise such features on their own device.
12. I understand, as noted by the appellant, there would be public benefits to such features, however, in this case the proposals go beyond providing genuine telecommunications infrastructure including the other features noted that are not essential equipment equal to other telecommunications paraphernalia and the proposal falls to be considered under the relevant planning and advertising legislation and associated policies. Aside from the physical structure of the Street Hub itself, the impact of the proposal would be exacerbated by people, or groups of people, standing around the Street Hub to utilise features such as, for example, phone charging which would further narrow the available pavement for general users within the vicinity. The appellant acknowledges that the proposed Street Hub may have some negative impact, from an objective perspective, however I am not convinced that the benefits, in this case, outweigh the harm which I have identified to the character of the area or visual amenity.
13. It is understood that the street hubs have caused safety concerns in some areas of the country with some street hubs having to turn off their free calls feature due to some members of the public abusing this service. There is a detailed objection from Thames Valley Police (TVP) who have concern regarding misuse of this feature as well as objections on the grounds of negative impact on crime and disorder, drug offenses, honeypot effect, street clutter, pinch-points and cycle theft. I do not doubt that BT seek to work

closely with Police Forces throughout the UK, and I acknowledge the Street Hub Anti-Social Behaviour Management Plan V2 (the management plan). Even if I had found that concerns of this nature could be overcome with the imposition of a condition for management in accordance with the management plan, as suggested by TVP, the proposal would still fail due to the other issues I have identified.

14. Removal of two BT kiosks may well return space in terms of square metres and cubic metres, to the public realm, however, the proposal before me is in a location which would be overbearing in the overall context of the street scene and would create an unacceptable prominent and dominant feature for the reasons I have outlined. The existing kiosks are some 45m away from the appeal site and whilst they may, on paper, reduce scale and massing comparatively it falls to consider impact of the proposal in its revised location which is different to the general use and location of the existing kiosks. The existing kiosks are not as visually intrusive within the wider area. I have no evidence to support that the existing kiosks directly interfere with the entrance to adjacent commercial premises.
15. Additionally, the kiosks do not fall within the application site boundary and no mechanism has been submitted, by the appellant, which would secure its removal. I note that the appellant has suggested a condition can be attached stating the unique phone number designated to each individual payphone kiosk. In addition, where kiosks cannot be identified, the appellant has offered to provide necessary comfort that each kiosk would be removed as proposed but I find that this approach would be insufficient in the context of the tests required for the imposition of conditions upon any permission granted. It has not, overall, been demonstrated that the suggested planning conditions would meet the six tests set out within the Framework. Even if an appropriate mechanism had been submitted by the appellant to secure their removal, I do not find that this provides justification for the proposed Street Hub.
16. I note the appellant's contention that the Council does not support kiosks in the area, however, regardless of this I have considered the cases on their own merits. I acknowledge that BT has an Electronic Communications Code Licence and Universal Service Obligation (USO) covered by Ofcom, but this does not override the need for appropriate location, and sizing, of such proposals to enable the appellant to deliver such obligations in a sensitive and appropriate manner. It is only the telecommunications infrastructure which is strictly necessary for BT to fulfil their functions to deliver an appropriate electronic communications system. I note that BT also has a USO to provide and maintain publicly accessible call boxes on the street however, the proposal for the Street Hub before me goes beyond providing an accessible phone box. Furthermore, whilst the USO is noted this is not a material planning consideration which limits the weight this can carry within the consideration of the proposals.
17. Overall, there is no evidence to support that existing kiosks cannot be replaced in the same, or similar, locations in line with BT's default preferred option which is to replace existing kiosks. In the case of this proposal, the Street Hub would remove usable pavement space and be located in a visually prominent location resulting in an inappropriate structure in terms of character and appearance. It would be less than a meter from the edge of the highway at a

height of just under three metres with advertisements either side which would be illuminated.

18. The proposal would be contrary to Oxford Local Plan 2020 (LP) Policy DH1 which confirms that planning permission will only be granted where proposals are designed to meet the key design objectives and principles for delivering high quality development and LP Policy DH6, which confirms advertisement consent will only be granted where the design responds to and positively contributes to the character and design of existing buildings and surroundings. The proposal would also be contrary to 136 of the Framework which outlines that the character and quality of places can suffer when advertisements are poorly sited and designed. The proposal would also be contrary to Summertown and St Margaret's Neighbourhood Plan (Policy HOS2 and HOS3) which confirms that new developments will only be permitted where it responds positively to local character and distinctiveness and where they respond to the character of the neighbourhood.

Road users, including pedestrians and cyclists

19. Oxfordshire County Council, as highways consultee, have objected to the proposals due to the potential for additional clusters of people, using the Street Hub, creating a highway safety due to the interference with those either boarding/departing buses, with buses arriving/departing frequently. The Street Hubs location would at the start of a multi vehicle bus stop and, at the moment, visibility is maintained in the vicinity due to generally low level and presence of essential structures only.
20. The submitted product statement, which accompanied the application, confirms the proposed advertisement is 95cm wide by 167cm high (76 inch in portrait). It is acknowledged that, in general terms, it is reasonable to expect to place digital advertisements in locations alongside the nearside carriageway, however, I find the location of the Street Hub itself, combined with further clusters of people, would obscure views and interfere with users boarding/departing buses and/or using the cycle and scooters parking areas of cyclists/buses. The street hub would also obscure the vision of cyclists emerging from the cycle stands. Overall, I find that the street hub, at nearly three metres in height would, by virtue of its height, size and location be a highly prominent feature which would obstruct visibility which would be detrimental to the safety of pedestrians and cyclists for the reasons outlined.
21. The advertisements would be directed towards the pedestrian flow, as opposed to the main road itself, being separated by the by layby and would be unlikely to cause an issue themselves in terms of highway safety. For users of the road itself views of advertisements would be against a generally busy commercial backdrop. Levels of illumination or regularity as to the changing of images themselves could have been controlled by condition to ensure appropriate impacts to visual amenity and highway safety.
22. The proposal, for the Street Hub itself, would be contrary to LP Policy M1 which states that permission will only be granted for development that is laid out and designed in a way that prioritises access by walking, cycling and public transport and LP Policy RE7 which seeks to avoid unacceptable transport impacts effecting the existing transport network. The proposal would also be contrary to paragraph 111 of the Framework which seeks to prevent development on highway grounds if there would be unacceptable impact upon

highway safety as well as paragraph 112 which confirms that applications for development should minimise the scope for conflicts between pedestrians, cyclists and vehicles.

Other Matters

23. I note the appellant has submitted information, and guidance, relating to the Transport for London Guidance for Digital Roadside Advertising and Proposed Best Practice. This advice is not directly applicable to areas outside London, and I find that the guidance is provided as justification for siting and positioning of such proposals based upon guidance specifically for London. I do not find that the appeal site, whilst a busy area just outside Oxford, is comparable to that of London and I would apply limited weight to such guidance outside of London in support of the proposed advertisements.
24. The second refusal reason, within both appeals, references paragraph 109 and 132 (of the then 2021 Framework) with both of these paragraphs being the same wording, and numbering, within the current revision of The Framework. Paragraph 109 relates to the importance of providing adequate overnight lorry parking facilities and paragraph 132 relates to pre-application engagement between the Local Authority and the local community. I do not find that the stated paragraphs, of the Framework, are of direct relevance to the second refusal reason outlined within both decisions which are the subject of the appeals before me.
25. I note the appellants reference to appeal reference APP/Z4310/W/18/3205104 (Outside numbers 1-5 Forever 21), in particular reference to paragraph 23 of the Inspector's decision letter. The information before me regarding this appeal is limited (to the decision letter), however, it would appear that there are distinct differences between that appeal proposal and the appeal which is before me. This includes, for example, the use of bollards preventing motorised traffic which results in the street in question (Church Street) being pedestrianised for large parts of the day.
26. In addition, it would appear that there were numerous existing digital screens in the vicinity, of a similar size, which provided further evidence that such proposals in that area had not resulted in any issues and the Inspector considered the proposal to improve circulation as a result of the overall scheme with removal of two payphones in the same area. I do not, therefore, find this to be comparable to the proposal which are before me.
27. I also note submission of further site examples, by the appellant, such as the approval by Manchester City Council (13472/FO/2021). Looking at the site plan provided the case, in Manchester, does not carry similar site characteristics being on a straight line of pavement with no evidence of layby parking, scooter parking or similar which are to be taken into account on the London Road. APP/N5660/W/18/3199793 (Waterloo Road, Outside Waterloo Station) is submitted, but I only have the decision letter before me. Notwithstanding this the site adjoins a major transport interchange in London and is unlikely to result in the same impacts I have outlined based upon the specifics of the appeal site before me.
28. The main issues relating to visual impact and safety are necessarily site specific and, as such, have limited bearing on the matters before me within this appeal. Notwithstanding the above it is reiterated that each case falls to be considered

on its own merits and with cases of this nature they are very much on an individual basis based upon the surrounding site characteristics. Whilst the Framework is noted to support digital connectivity this is not at the expense of such proposals being appropriate to their siting or to the detriment of surrounding site users.

29. The appellant's references to the Framework, within their statement, is noted. This includes, as well as being within the conclusion, reference to paragraph 202 of the Framework. Despite this this paragraph is specific in weighing public benefits against harm found to a designated heritage asset – which is not the case, nor a refusal reason, relating to the proposals before me. No issue or commentary has been raised by the Council relating to Station Building. The proposal fails to meet the relevant policy requirements (Appeal A) and results in harm to amenity (Appeal B), it is not a balancing exercise against benefits which, as outlined, could potentially be provided in any case within alternative proposals.

Conclusion

Appeal A

30. The proposal would have an unacceptable impact upon character and appearance and would be an incongruous addition which would also result in an unacceptable impact to road users, pedestrians and cyclists. The appeal is therefore dismissed.

Appeal B

31. Whilst the advertisements themselves would be acceptable to road users I find that overall, the proposal would result in unacceptable impact to pedestrians and cyclists in terms of public safety and the advertisements themselves would be detrimental to visual amenity and character and appearance of the area. The appeal is therefore dismissed.

Eleni Randle

INSPECTOR