

Appeal Decisions

Site visits made on 22 August 2024

by J Bell-Williamson MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 September 2024

Appeal A Ref: APP/A1530/W/23/3334145

Pavement opposite 72 Culver Street East, Colchester CO1 1LF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by In Focus Public Networks against the decision of Colchester City Council.
 - The application Ref is 232015.
 - The development proposed is the replacement and upgrade of an existing illuminated and advertised enclosed telephone kiosk with a multifunctional communication Hub including advertisement display.
-

Appeal B Ref: APP/A1530/H/23/3334146

Pavement opposite 72 Culver Street East, Colchester CO1 1LF

- 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 In Focus Public Networks against the decision of Colchester City Council.
 - The application Ref is 232016.
 - The advertisement proposed is integrated into the Communication Hub unit and comprises an LCD portrait screen that will be used to show static illuminated content that is remotely changed via a secure ISDN line to the communication device.
-

Appeal C Ref: APP/A1530/W/23/3334147

Pavement opposite 29 Head Street, Colchester CO1 1NH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by In Focus Public Networks against the decision of Colchester City Council.
 - The application Ref is 232017.
 - The development proposed is the replacement and upgrade of an existing illuminated and advertised enclosed telephone kiosk with a multifunctional communication Hub including advertisement display.
-

Appeal D Ref: APP/A1530/H/23/3334148

Pavement opposite 29 Head Street, Colchester CO1 1NH

- 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 In Focus Public Networks against the decision of Colchester City Council.
 - The application Ref is 232018.
 - The advertisement proposed is integrated into the Communication Hub unit and comprises an LCD portrait screen that will be used to show static illuminated content that is remotely changed via a secure ISDN line to the communication device.
-

Decisions

1. Appeals A and C, each concerning a proposed multifunctional communication Hub, are dismissed.
2. Appeals B and D, each concerning a proposed integrated advertising display, are dismissed.

Preliminary Matters

3. The four appeals addressed here involve two proposals for a multifunctional communication Hub and two related proposals to display a static illuminated advertisement as an integral part of each Hub. The appellant is the same in all the appeals and both sites are situated in central Colchester within the Town Centre Conservation Area 1. For these reasons, the four appeals are dealt with in this single decision document, although each case is considered on its individual merits.
4. The description of the proposed Hub in each case is for the replacement of an existing telephone kiosk. However, there are currently no kiosks at either of the two sites. For this reason, despite the description of the proposal, I have dealt with the appeals as involving a new Hub and integrated advertisement in each case.
5. The 2007 Regulations and National Planning Policy Framework state that advertisements should be subject to control only in the interests of amenity and public safety.

Main Issues

Appeal A

6. The main issues are whether the proposed communication Hub would preserve or enhance the character or appearance of the Colchester Town Centre Conservation Area 1; and the effect of the proposal on highway safety, with regard to the space available for pedestrians.

Appeal B

7. The main issue is the effect of the proposed advertisement on the visual amenity of the area, with particular regard to the Colchester Town Centre Conservation Area 1.

Appeal C

8. The main issues are whether the proposed communication Hub would preserve or enhance the character or appearance of the Colchester Town Centre Conservation Area 1 and related to this, the effect on the setting of nearby listed buildings; and the effect of the proposal on highway safety, with regard to the space available for pedestrians and a planned highway improvement scheme.

Appeal D

9. The main issues are the effect of the proposed advertisement on the visual amenity of the area, with particular regard to the Colchester Town Centre Conservation Area 1 and nearby listed buildings; and the effect of the proposed advertisement on public safety.

Reasons

10. The proposed Hub is the same in each case, comprising a slim design with the advertising panel on one side and telephony and related services on the other. For the avoidance of repetition in each appeal, I have had regard to the full range of services that would be provided, including an integral defibrillator, free Wi-Fi, device charging and public messaging capabilities. I note also that the unit screens are powered by solar energy.
11. The proposed advertisement in each case is the size of a standard six sheet advertisement with the luminance level adjusted via a light sensor to no more than 600cdm² at night.
12. The Colchester Conservation Area 1 covers the whole of the ancient walled town, including the town centre, and includes parts the historic extra-mural settlements immediately outside the walls. As such, the area as a whole is varied in character and appearance, and so specific matters are referred to in the consideration of each appeal site.
13. As the main issues for all the appeals involve the effect on a designated heritage asset and in Appeals C and D the effect on the setting of assets, I am particularly mindful in my consideration of the proposals of the statutory requirements for decision makers to have special regard to the desirability of preserving the setting of a listed building; and that in exercising planning functions in conservation areas special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area¹.

Appeals A and B

¹ Sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

Colchester Town Centre Conservation Area 1

14. The character and appearance of Culver Street East is largely informed by the relatively recent development of the Lion Walk shopping centre. The site of the proposed Hub is the pavement adjacent to a shopfront with modern development above, apparently in residential use. The immediately surrounding area comprises retail and commercial uses at street level. The principal form of advertisement in the surrounding area is fascia signs on shops and commercial premises.
15. The paved area between shopfronts to either side of the pedestrianised street is extensive and is largely devoid of street furniture. Within this modern retail setting, framed by substantially larger buildings, the size and appearance of the Hub would not be incongruous. Moreover, its slim utilitarian design would not be uncharacteristic in the modern retail setting.
16. This is a town centre location where different types of advertisement are typically found. The display in this case would be of limited size due to it being integrated as part of the Hub. As such, the visual effects would be similar to those related to the Hub itself; the advertisement display would be seen within the context of the modern shopping environment and so would not be a visually harmful or uncharacteristic addition to the street scene in this part of the conservation area.
17. Reference is made to a similar structure nearby that displays public transport information and limited advertisement. However, this is positioned on the opposite side of the wide paved area from the location of the proposed Hub. As such, due to this separation the presence of the two similar structures within the street scene would not result in visual clutter or otherwise be harmful to this part of the conservation area.
18. My attention is drawn to unsuccessful appeals for a similar form of Hub and integrated advertisement². However, these decisions involved a different site within the Council's area and, therefore, it is not possible to compare directly the effects of the respective developments in two different locations.
19. Therefore, for the reasons given, I conclude for Appeal A that the proposed Hub would not have a materially harmful effect in this location and so would preserve the character and appearance of the Colchester Town Centre Conservation Area 1. Consequently, there is no conflict with the following development plan policies: Policy SP7 of the Colchester Borough Local Plan 2013-2033 Section 1 (2021) and Policy DM15 of the Colchester Borough Local Plan 2017-2033 Section 2 (2022),

² APP/A1530/W/22/3313696 and APP/A1530/Z/22/3313699 dated 25 September 2023.

which both require development to meet high design standards, including that it should preserve and not harm local character; and Policy DM16 of the Local Plan Part 2, concerning the effect of development on the historic environment. There is also no conflict with the National Planning Policy Framework.

20. I conclude for the reasons given that the advertisement proposed in Appeal B would not result in harm to the visual amenity of the area. I have taken into account Policies SP7, DM15 and DM16 outlined above, which are material in this case. Given the conclusion on Appeal B, the proposal does not conflict with these policies.

Highway safety

21. The Council and Highway Authority indicate that the paved pedestrianised area directly adjacent to the location of the proposed Hub is regularly used for public events, particularly at weekends, which involve parked kiosks and trading trailers. An interested party also raises the fact that a local charity sites an 'SOS Bus' in this location on Friday and Saturday nights to provide assistance to patrons of the evening economy.
22. Due to the town centre retail and leisure environment, it is most likely that pedestrian footfall will be highest at weekends, both during the daytime and at night. Despite the width of the paved area, I share the concerns raised that the proposed Hub, due to its location and size, in combination with the temporary but established uses of the pavement near it will cause an obstruction to pedestrians. The space between the Hub and other structures or vehicles would be limited to the extent that it would harmfully impede the free flow of pedestrians, including those using mobility scooters or wheelchairs.
23. Accordingly, based on these findings, I conclude with regard to Appeal A that the proposed Hub would result in material harm to highway safety due to its effect on the space available for pedestrians. As such, the proposal is contrary to Policy DM20 of the Local Plan Part 2, which requires development to safeguard existing walking routes; and to Policy DM21 from the same plan, which requires development to give priority to the movement of people walking and to ensure accessibility for those with impaired mobility.

Other Matters

24. I have had regard to the representations made by interested parties, some of which concern the main issues. With regard to other matters raised, the proposal would be sufficiently well-separated from Colchester

Castle to not be harmful to its setting. The content of the advertisement display could not be subject to specific limitations as suggested. Therefore, these matters do not alter the above conclusions.

Appeals C and D

Colchester Town Centre Conservation Area 1 and listed buildings

25. Head Street has retail and other commercial uses at street level. The proposed Hub would be located on the east side opposite the Odeon Cinema, the largest and most prominent building in this part of the street. While the Hub would be immediately adjacent to the frontage of the modern Culver Square shopping centre there are a number of listed buildings to the south of the Hub's location and on the west side of the street.
26. As a whole these buildings of varied ages provide a good degree of architectural and historic interest and inform the character and appearance of this part of the conservation area. The Hub would be close to these buildings and seen in relation to them from views along the street. As such, it would be within the settings of the listed buildings.
27. There are a number of free-standing structures and street furniture within the street, including bus shelters, refuse bins and a structure displaying public transport information and limited advertisement. However, these are all located on the west side, while the east side where the Hub would be sited is entirely free of street furniture, providing an open and uncluttered pedestrian environment. Therefore, the Hub and the integrated advertisement would be a focal point approaching from the north and south. From these views it would be an undue presence that would be incongruous and uncharacteristic of the location of street furniture within this part of the conservation area, harmfully undermining the open environment to the east side of Head Street. Moreover, the prominence and visibility of the Hub and integrated advertisement in this location would be readily apparent in relation to the listed buildings, thereby detracting from their settings.
28. Therefore, for these reasons, I find that the proposed Hub would fail to preserve the character and appearance of the conservation area and the settings of the nearby listed buildings. The National Planning Policy Framework (the Framework) advises that when considering the impact of development on the significance of a designated heritage asset, great weight should be given to the asset's conservation³. Based on the above

³ Paragraph 205.

findings, I consider the harm to be less than substantial in this instance, but nevertheless of considerable importance and weight.

29. Under such circumstances, the Framework advises that this harm should be weighed against the public benefits of the proposal⁴. In this regard the Framework indicates that communications infrastructure is essential for economic growth and social well-being⁵. Although I recognise that the proposed Hub would make a positive contribution to these aims, including through the range of communications and other features, the public benefits arising from them are not sufficient either individually or as a whole to outweigh the individual and collective harm to the heritage assets that is afforded considerable weight.
30. Accordingly, for the above reasons, I conclude with regard to Appeal C that the proposed Hub would not preserve the character and appearance of the Colchester Town Centre Conservation Area 1. Consequently, the proposal is contrary to Policy SP7 of the Local Plan Part 1 and to Policies DM15 and DM16 of the Local Plan Part 2, described above.
31. I conclude with regard to Appeal D that, for the reasons given, the proposed advertisement would have an unacceptably harmful effect on the visual amenity of the area. I have taken into account Policies SP7, DM15 and DM16 of the Local Plan in so far as they are material. Given that I have concluded that the proposal would harm the visual amenity of the area it therefore conflicts with these policies.

Highway/public safety

32. The Highway Authority indicates that the proposed Hub and advertisement would occupy a planned highway improvement scheme along the eastern side of Head Street. This scheme in the form of a double-width cycle lane had been completed at the time of the inspection. As a result, the pavement has been reduced by around half its original width.
33. The practical implications are that the Hub could not be located in the position proposed because this is now occupied by the cycle lane. Moreover, the width of the pavement with the cycle lane in place is not sufficient to accommodate the Hub without harmfully impeding the safe and free passage of pedestrians.
34. Accordingly, based on these findings, I must conclude with regard to Appeal C that the proposed Hub would have an unacceptably harmful effect on highway safety. Consequently, the proposal is contrary to

⁴ Paragraph 208.

⁵ Paragraph 118.

Policies DM20 and DM21 of the Local Plan Part 2, as described above with regard to Appeal A. It would also conflict with the Framework's provisions concerning highway safety⁶.

35. I conclude for the reasons given that the advertisement proposed in Appeal D would result in material harm to public safety. Policy DM21, already referred to, is material to the appeal. Given the conclusion on this issue with regard to Appeal D, the proposal is contrary to this policy.
36. I have regard to the representations made by interested parties, but these do not raise any matters in addition to the main issues that would lead me to reach a different conclusion.

Overall Conclusions

37. With regard to Appeal A I have found in the appellant's favour on the first main issue concerning the effect on the conservation area and visual amenity. However, the appeal must fail due to the findings of material harm and conflict with development plan policies with regard to the second main issue, concerning the effect on highway safety. For Appeal B, while it has been found that the proposal would not harm visual amenity, the proposal cannot be implemented because the advertisement is integrated within the Hub. Accordingly, Appeals A and B are dismissed.
38. For the reasons given, Appeals C and D are dismissed.

J Bell-Williamson

INSPECTOR

⁶ Paragraph 115.