



Appeal Decisions

Site visit made on 17 September 2024

by **F Harrison BA(Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 25 October 2024

Appeal A Ref: APP/W1525/W/23/333316

Pavement opposite 25-27 Exchange Way CM1 1XA

- 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 Mr Nathan Still of IN FOCUS NETWORK LIMITED against the decision of Chelmsford City Council.
- The application Ref is 23/01399/FUL.
- The development proposed is the installation of a multifunctional communication hub with integral defibrillator and the display of an advertisement.

Appeal B Ref: APP/W1525/Z/23/333304

Pavement opposite 25-27 Exchange Way CM1 1XA

- 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 Nathan Still of IN FOCUS NETWORK LIMITED against the decision of Chelmsford City Council.
 - The application Ref is 23/01400/ADV.
 - The advertisement proposed is the installation of a multifunctional communication hub with integral defibrillator and the display of an advertisement.
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Decisions

1. Appeal A is dismissed, and Appeal B is dismissed.

Preliminary Matters

2. The appeals concern the same site and proposals that are intrinsically linked and raise similar issues. Although the remit of planning permission (Appeal A) and advertisement (Appeal B) regimes are different, I have dealt with both appeals together. In the case of Appeal B, the Regulations require that decisions are made only in the interests of amenity and public safety. Accordingly, while I have taken account of the relevant development plan policies, they have not been decisive in my determination of Appeal B.
3. The Council's second reason for refusing to grant express consent refers to a different conservation area and listed buildings than referred to in its decision notice relating to the refusal of planning permission. The Council has confirmed that the decision notice for application ref 23/01400/ADV should have referred to the same designated heritage assets as for 23/01399/FUL. I have determined Appeal B on this basis.
4. The Council has referred to a 'a group of historic buildings set around Tindal Square, including Shire Hall (Grade II*)'. During the appeal, further details have been submitted to clarify the listed buildings potentially affected by the proposals, including: the Grade I listed Cathedral Church of St Mary The Virgin (List Entry Number (LEN): 1328779); the Grade II* listed building Shire Hall

(LEN: 1141328); the Grade II listed building known as Part of Midland Bank (LEN: 1141285); the Grade II listed building Crown Court Office (LEN: 1328800) and the Grade II listed buildings of 2 and 3 Duke Street (LEN: 1141370), 4 Duke Street (LEN: 1328781) and 5 and 6 Duke Street (LEN: 1323155).

5. Notwithstanding that harm to listed buildings or their settings did not form part of the Council's reasons for refusal, section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act), places a statutory duty on decision makers to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. Given the appeal site's proximity to various designated heritage assets, some of which are of the highest significance, the main parties were offered the opportunity to comment on the proposals' effect on their settings and significance. I have taken the responses into account in my decision and considered the matter of listed building settings as a main issue for Appeal A.

Main Issues

Appeal A

6. The main issues in this appeal are:
 - the effect of the proposed development on the character and appearance of the area, including its effect on the significance of the Central Conservation Area (CCA) through development within its setting;
 - whether the proposed development would preserve the settings of relevant nearby listed buildings; and
 - the effect of the proposed development on highway safety.

Appeal B

7. The main issue in this appeal is the effect of the proposed advertisement on amenity.

Reasons

Character and appearance and amenity

8. The appeal site comprises an area of paving set back from the road, located in the middle of an area of public space at the entrance to the High Chelmer shopping centre in Chelmsford city centre. The surrounding area has a mix of uses and a commercial character which features a mixture of built form of varying appearance, including large scale and modern buildings.
9. The CCA designation is focused on the primary routes that converge at Tindal Square, encapsulating the Cathedral precinct a rich back drop of historic buildings, many of which are listed. The significance of the CCA as a whole is primarily derived from the relationship between the medieval street pattern, traditional buildings and its commercial activity. The boundary of the CCA runs along Market Street and the appeal site is located immediately adjacent to it. In views of the site from the edge of the CCA it is read as an area of pavement but is still prominent in views from Tindal Square and surrounding streets. For the purposes of the Council's Central Conservation Area Character Appraisal

(2007) (CCA Character Appraisal) views in and out of the conservation area form an important part of its character and this identifies important views along Market Road towards Tindal Square and Shire Hall.

10. In the vicinity of the appeal site is a variety of street furniture including benches, traffic lights, road signs, lamp posts, railings, litter and recycling bins, bike racks and a wayfinding map sign. However, the generally open and unobstructed nature of the appeal site and the surrounding pavement allows channelled views along Market Street towards Tindal Square. Therefore, the appeal site is part of the setting of the CCA that makes a positive contribution to its significance as a designated heritage asset.
11. The proposed free standing multifunctional communication hub, integral defibrillator and advertisement screen would be prominently located in what is currently an open and relatively uncluttered expanse of attractive public realm. The proposed hub has been designed to appear subservient in the street and to complement other street furniture. Notwithstanding its city centre location, where people would expect to see commercial images and street furniture, the proposal would introduce a relatively sizable and starkly contemporary urban feature that would weaken the open and unobstructed nature of the appeal site. Even taking account of the surrounding commercial context and appreciating that the High Chelmer shopping centre has a modern frontage, the bulk, height and composition of the communications hub with its various components would be an incongruous addition to the clean and uncluttered streetscape, to the detriment of the character and appearance of the area.
12. Moreover, the proposals would partially interrupt views into and out of the CCA, failing to maintain views across the public realm that allow an appreciation of the important historic townscape nearby and as a result, would stand out as a jarring addition to the streetscape. The visual clutter in the public realm would be prominent in views out of the CCA that would be experienced by motorists, pedestrians, and cyclists from numerous vantage points on Market Road, Tindal Square and where Duke Street turns into Tindal Street. This is despite the scale of the surrounding buildings and the hub occupying only a small proportion of any views into and out of the CCA.
13. The advertising screen would be modest in size, confined to one side of the hub facing the roadside and the illumination has been designed to be seen but not appear overly bright. While advertisements are a common feature of city centres, I observed a general absence of illuminated advertisements in the surrounding area. As such, the illuminated, digital nature of the advertisement would draw further attention to the structure and would combine to have a negative effect on the quality and character of the vistas towards the CCA. This is not a matter that could be overcome by a planning condition to control the illumination levels of the proposed advertisement as this would not adequately resolve the visual effects of the proposal.
14. Therefore, I conclude that the proposed development would be harmful to the character and appearance of the area, and cause harm to the significance of the CCA through development within its setting. Bearing in mind the scale and nature of the proposal relative to the significance of the CCA as a whole, the degree of harm would be less than substantial. The proposals would be in conflict with Policies DM23, DM13 and SP3 of the Chelmsford Local Plan (2020)

(CLP). Amongst other things, these policies require development to respect the character and appearance of the area in which it is located, placing great weight on the preservation or enhancement of designated heritage assets and their setting. Policy DM13 and the National Planning Policy Framework (the Framework) require any less than substantial harm to be weighed against the public benefits, which I turn to in the heritage balance.

15. Furthermore, I conclude that the proposed advertisement would harm amenity and therefore it would conflict with the above-mentioned policies.

Listed buildings

16. The Grade I listed Cathedral Church of St Mary The Virgin is a heritage asset of the highest significance. As well as its fine architecture features, age, evolution and history, it also enjoys very strong townscape value being situated at the historic core of the city. It's immediate setting is relatively enclosed and includes the churchyard and adjacent buildings. However, the classical octagonal lantern topped by a tall needle spire is perceptible above rooflines and can be seen in glimpsed views along Market Street and from far-afield. This city-wide context, which includes the appeal site, is part of the setting of this listed building that makes a valuable contribution to its significance.
17. The Grade II* listed building of Shire Hall is a dominant landmark building expressing the historic role and status of Chelmsford as a judicial administrative centre. The special interest and significance of this asset primarily stems from its historic and architectural interest, and includes its Portland stone front, Ionic columns and the third storey three central high reliefs in the window spaces representing justice, wisdom and mercy. The setting of Shire Hall comprises the historic character of the immediate surrounding townscape and its buildings, and the streets and spaces in the wider area, which includes the appeal site. The clear visual relationship with the asset means that the appeal site is part of the setting and makes a positive contribution to the significance of this listed building.
18. The Grade II listed buildings known as Part of Midland Bank and the Crown Court Office are set around Tindal Square. Their special interest and significance include their historic interest as evidence of the role and status of Chelmsford and their associated appearance comprising period architecture and the use of stone. The appeal site falls within their settings, which comprise the streetscape within which they are located. I observed inter-visibility to varying extents between the identified buildings and the appeal site. However, it has a visual relationship with the buildings and the streetscape, and therefore contributes positively to their significance.
19. The proposal would introduce modern and conspicuous built form into an open area of pavement that would be a feature in prominent views to the above listed buildings. In doing so it would unacceptably detract from the public realm and historic townscape, visually competing with the assets. For these reasons the proposal would fail to preserve the settings of the nearby listed buildings and would cause some harm, contrary to the statutory presumption under s66(1) of the Act. This is a matter that carries considerable importance and weight.

20. For the purposes of the Framework, the harm to each listed building as designated heritage assets would be less than substantial, and towards the lower end given the scale and nature of the proposal. In those circumstances, the Framework states that the harm should be weighed against the public benefits of the proposal which is reflected in Policy DM13 of the CLP. I will return to this matter later.
21. To conclude on this main issue, the proposed development would not preserve the settings of relevant nearby listed buildings and would be in conflict with Policies DM13 and SP3 of the CLP. These policies place great weight on the preservation or enhancement of designated heritage assets and their settings and include a requirement for development in the setting of a listed building not to adversely affect its significance.

Highway safety

22. The proposed advertisement would not have a detrimental effect on public safety, but the Council is concerned about the effect of the hub on the free flow of pedestrians. The proposal would be positioned in a manner not dissimilar to the linear rhythm of the existing street furniture on approach to the entrance of the shopping centre that causes pedestrians to navigate their way past these. Although a busy area of public realm, there would continue to be sufficient room for pedestrians to comfortably pass between the restaurant frontages and proposed hub structure, and to traverse Market Street in either direction. Furthermore, there would be sufficient space for pedestrians to comfortably pass those congregating at the proposed hub.
23. Accordingly, the proposed additional street furniture would not make this section of the busy thoroughfare a more awkward area for pedestrians to negotiate. Consequently, the proposal would not constrict the channel for movement in the surrounding public realm and would not cause inconvenience to users. The proposed hub would also be at a distance from the vehicle highway and as such its position and scale would not dominate pedestrians' views as they use the pedestrian crossing.
24. Therefore, the proposal under Appeal A would not have a detrimental effect on highway safety and so would accord with Policy DM23 of the CLP. This policy includes a requirement for development to be compatible with its surroundings and create a safe and accessible environment.

Other Matters

25. Properties that front Duke Street separate the appeal site from the listed buildings at 2 and 3, 4, and 5 and 6 Duke Street. The special interest and significance of these buildings is derived in part from their architectural interest and their historic fabric as appreciated principally from Duke Street, comprising sash windows and detailed cornices. The setting of these buildings includes the streetscape within which they are located. The appeal site is physically and visually separate and does not comprise their settings. Accordingly, the proposal would have no effect on the significance of these heritage assets. A lack of harm in this respect, however, does not alter my overall conclusions.
26. On the decision notice, the Council also refer to Policy DM14 of the CLP which relates to non-designated heritage assets. However, there is no substantive

evidence that there are any such assets in proximity to the appeal site. As such this policy has not been determinative in this appeal.

Heritage Balance

27. Paragraph 205 of the Framework indicates great weight should be given to the conservation of designated heritage assets (and the more important the asset, the greater the weight should be). Harm to the significance of a designated heritage asset should also require a clear and convincing justification. The Framework requires such harm to be weighed against any public benefits.
28. Paragraph 118 of the Framework indicates that an advanced, high quality and reliable communication infrastructure is essential for economic growth and social well-being. The Framework also seeks to support the expansion of electronic communications networks. A range of services are included within the proposed hub, including access to online facilities, phone calls, wayfinding and device charging. It would be part of a network of apparatus using the latest digital communication technology, providing efficient, reliable, and free to use public services. There is also potential for the proposed interactive screen to be made available to the Council to promote initiatives, advertise public celebrations and to facilitate wayfinding. The integral defibrillator would provide important life-saving equipment and there is likely to be some economic benefit during the manufacture and installation phase.
29. These are all public benefits which count in favour of Appeal A. However, since there are other hubs and defibrillators nearby in the vicinity of the appeal site and across the city, this limits the weight I afford to these benefits, which in practical terms would be modest. Furthermore, I have limited evidence to indicate that there is not a more sensitive location for a communications hub where similar public benefits could be gained without the harms identified. Accordingly, I give the public benefits arising from these matters only limited weight. Overall, even cumulatively, the sum of the public benefits of the proposals would not outweigh the harm to the significance of the designated heritage assets that I have identified, and the considerable importance and weight, in each instance, this carries.
30. This finding leads me to conclude that the proposed development would be in conflict with criterion A of Policy DM13 of the CLP, which requires any less than substantial harm to heritage assets or their settings to be considered against the public benefits arising from the proposed development.

Conclusion

31. In respect of Appeal A, the proposed development would not harm highway safety but would harm the character and appearance of the area, cause harm to the significance of the CCA through development within its setting and would not preserve the settings of nearby listed buildings. In respect of Appeal B, the proposed advertisement would harm amenity.
32. For the reasons given above, and having regard to all other matters raised, I conclude that Appeal A should be dismissed, and Appeal B should be dismissed.

F Harrison

INSPECTOR