



Appeal Decisions

Site visit made on 15 October 2024

by **K Stephens BSc (Hons) MTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 13 January 2025

Appeal A Ref: APP/C1055/W/24/3346195

Pavement outside O/S the Castle and Falcon public house, 4 East Street and at junction with Morledge, Derby, DE1 2AU

- 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 Network Limited against the decision of Derby City Council.
 - The application Ref is 24/00350/FUL.
 - The development proposed is the installation of a freestanding telephone apparatus with affixed defibrillator and advert display.
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Appeal B Ref: APP/C1055/H/24/3346194

Pavement outside O/S the Castle and Falcon public house, 4 East Street and at junction with Morledge, Derby, DE1 2AU

- The appeal is made under Regulation 17 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (as amended) against a refusal to grant express consent.
 - The appeal is made by In Focus Network Limited against the decision of Derby City Council.
 - The application Ref is 24/00351/ADV.
 - The advertisement proposed is display of internally illuminated digital display screen.
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Decision

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

Preliminary Matters

3. The site address above is taken from the application forms. In its joint appeal statement the appellant uses “Pavement on East Street” as the address, which is not to be confused with “Pavement outside 33 East Street” for another linked appeal¹. The Council also uses a different address on its decision notice, explaining that the Castle and Falcon public house is due to be demolished and hence the use of the road junctions would be more relevant after demolition. The Council also used their description in the statutory publicity of the applications. Despite the variety of site addresses used by both main parties, I have used the address from the application forms as it includes reference to both the public house and to the junction with Morledge.
4. The appellant used the same proposal description on both application forms but used totally different descriptions on the appeal form. Moreover, the Council has used different and simplified descriptions of both. I have therefore used the appellant’s description of the proposed planning development for Appeal A and

¹ APP/C1055/W/24/3346190 and APP/C1055/H/24/3346189

the Council's description for the advertisement application for Appeal B as they more accurately describe the proposal.

5. The two appeals relate to the same site. Appeal A relates to the refusal of planning permission for the installation of the hub structure for the telephone apparatus and advert display, and Appeal B is against the refusal of an internally illuminated advertisement display on one side of the hub structure. I shall consider each appeal on its individual merits. However, as they are inextricably linked, I will deal with the two appeals in a single document to avoid duplication.
6. In respect of Appeal B, powers under the above Advert Regulations and the National Planning Policy Framework (the Framework) make it clear that control of advertisements may be exercised only in the interests of amenity and public safety, taking account of cumulative impacts. Issues of public safety have not been raised by the Council as a reason for refusal and the Highway Authority has raised no objection. Nothing I saw on my site visit would lead me to take a different view. I have therefore confined my assessment to amenity issues.
7. For advertisement applications, there is no need to have regard to the development plan. Nonetheless, whilst the policies referred to by the Council have not by themselves been decisive for Appeal B, I have taken them into account as a material consideration where relevant.
8. During the appeal, a revised Framework was published in December 2024 that replaces the previous version published in December 2023. However, as any policies that are material to this decision have not fundamentally changed in the Framework, I am satisfied that neither party would be prejudiced by my consideration of the revised Framework in reaching my decision.

Main Issues

9. For Appeal A, the main issue is whether the proposal would preserve the settings of the Grade I listed Cathedral, the locally listed White Horse pub and the City Centre Conservation Area.
10. For Appeal B the main issue is the effect of the proposal on the visual amenity of the area.

Reasons

Special interest and significance of the heritage assets

11. The Cathedral Church of All Saints² (hereafter the Cathedral) is a Grade I listed building and a designated heritage asset. Whilst the original church on the site was early 16th century, the body of the present building is circa 1725, designed by James Gibbs. The building was raised to Cathedral status when the diocese of Derby was created in 1927. The special interest and significance of the listed building, insofar as it relates to these appeals, are largely derived from its age, surviving architectural and local historic interest as an example of good classical design and its role and importance in the social and economic growth of Derby.
12. The special interest and significance of the heritage asset also stem in part from the surroundings in which the listed building is experienced. The Cathedral has an

² National Heritage List for England: list entry number 1228277

immediate setting limited and well defined by existing roads and pedestrian routes on all sides. However, due to the building's height it also has a wider setting as its tower and finials are visible above rooftops and from various vantage points and roads in the city, thus acting as a dominant landmark. I therefore find that the setting of the Cathedral, insofar as it relates to these appeals, is primarily associated with the visibility and prominence of the tower within views of the city that contribute to its special interest and significance.

13. The White Horse Public House (the White Horse PH) mentioned in the reasons for refusal is referred to by a previous name in the Council's list of locally listed buildings as the Court House Public House. I have treated it as a non-designated heritage asset. It is described as being a highly decorated classically designed public house built in 1923, although there has been an inn on the site since 1779. Its significance for the purposes of these appeals, is largely derived from its surviving architecture and local historic interest as part of the evolution of the city. It sits at the back edge of a wide pavement and the wide vehicular thoroughfare that is Morledge, which allow an open appreciation of its significance. Attached to a row of old buildings it also has group value with them as part of the street scene.
14. The City Centre Conservation Area (the CCCA) lies a short distance to the north-west of the appeal site with its boundary along the middle of the upper section of Morledge, beyond the row of buildings containing the White Horse PH. It covers the historic core of Derby and includes the Grade I listed Cathedral. The special interest and significance of the CCCA, insofar as it relates to these appeals, are derived principally from its historic street pattern along with the architectural richness and variety of its historic buildings and planned urban spaces, which reflect the growth and economic prosperity of Derby.
15. The appeal site is within a wide paved area close to the Eagle Market a modern building and at the junction of East Street, which is a pedestrianised shopping street. Morledge is a main vehicle thoroughfare. Opposite is a contemporary angular glazed building containing shops and Derby Bus Station. There is intervisibility with the front of the White Horse public house and the top of the Cathedral tower can also be seen straight ahead. Thus when viewed from the east, the appeal site is within the wider setting and townscape of both buildings but there is limited intervisibility with the CCCA itself, although the contemporary Quad building is partially visible.

Effect of appeal proposal on significance

16. The proposal would involve the erection of a freestanding rectangular dark grey/brown coloured steel and alloy hub structure that would be about 2.63m tall, 1.34m wide and 0.317m thick. On one side the hub would contain an internally illuminated advertisement screen that would occupy most of the side of the stand and display a sequence of static digital images. The illumination levels and display-rate of the advertisements can be controlled, as can the hours of illumination. On the other side of the structure there would be a canopy that would project out about 0.6m over a public phone, interactive touch screen and a defibrillator. The top of the canopy would have a solar panel.
17. The area where the hub structure would be sited is part of a wide area of pavement adjacent to modern buildings. To the east there is the backdrop of the Eagle Market building and its angled car park entrance and further away a multi-

storey car park that crosses Morledge at high level, and modern shopping centre and bus station opposite. There is already a variety of street furniture in the vicinity including a hooped bicycle stand, a street lamp column, a number of equipment cabinets and a post box, road signage and bollards nearby at the end of East Street. Being a main thoroughfare, Morledge is a busy road with traffic, buses, pedestrian crossing with traffic lights, and bus lay-bys and various other bicycle stand, planters and litter bins in the vicinity of the site and the White Horse PH.

18. The submitted photomontage and plans show the existing bicycle stand would be removed and relocated alongside, and parallel to, the bus stop lay-by where there is already a single hooped bicycle stand, litter bin and bus stop sign.
19. The scale and simple form of the hub structure would not be unduly out of keeping with the existing busy commercial street environment. I saw that it would be similar to the one that has been installed nearby on the other side of Morledge, close to Lolly Roll's and the Law Courts.
20. However, the submitted montage and plans shows that the orientation of the internally illuminated digital advertisement panel would be on the western side of the structure. As a result, when looking from the east the digital advertisement panel would be seen in the same view and against the backdrop of the heritage assets of the White Horse PH and the Cathedral tower, unlike the existing hub structure I describe above whose advertisement panel faces the other way and is read against the modern buildings of the Eagle Market, bus station and multi-storey car park. As a result the proposed hub structure would be unduly prominent in the street scene, despite the busy nature of the local environment, and would interfere and compete with views of the Cathedral tower and the White Horse PH.
21. The proposal would therefore fail to preserve the setting of the Grade I listed Cathedral and the locally listed White Horse PH thus harming their significance. It would be an unduly prominent structure in the street scene to the detriment of the visual amenity of the area. The orientation, location and limited intervisibility with the CCCA is such that I am satisfied the setting of the CCCA would not be harmed.

Other Matters

22. The appeal proposal is one of a number the appellant is appealing across the city. The appellant draws my attention to the fact the size of the advertisements would be similar to those found in some other parts of the city or seen at bus shelter units. That may be the case, but they are in different locations and contexts and the proposal is not part of a bus shelter. The appellant has included examples of applications for advertisements that have been granted consent³ around the city. From their descriptions they are for double-sided free standing advertising units with digital displays and all of them are described as 'replacements' and are in different locations to the appeal site. Therefore, they differ to the proposal before me and are not directly comparable. Furthermore, I have little detail of the relationship these signs may have had with heritage assets in their vicinity. In any event, all decisions turn on their own characteristics, site-specific issues and the evidence before the decision-maker and I must consider the appeals on their own merits.

³ Local Planning Authority Ref: 22/00636/ADV, 22/00634/ADV and 22/00635/ADV all approved 16 June 2022

Heritage balance

23. The Framework advises at paragraph 212 that when considering the impact of a proposal on the significance of a designated heritage asset, great weight should be given to the asset's conservation, and the more important the asset, the greater the weight should be. Paragraph 213 goes on to advise that significance can be harmed or lost through the alteration or destruction of those assets, or from development within their setting and that this should have a clear and convincing justification. In light of the scale and nature of the proposal I find the harm to the setting of the Cathedral and Castle House PH would be less than substantial, but nevertheless of considerable importance and weight.
24. Paragraph 215 of the Framework requires that less than substantial harm should be weighed against the public benefits of the proposal, including where appropriate, securing its optimum viable use. Where there is harm to the significance of a non-designated heritage asset, paragraph 216 advises that a balanced judgment is required.
25. Paragraph 119 of the Framework supports the expansion of electronic communication networks, which it states is essential for economic growth and social well-being. With the increase in mobile phone usage, public phone box use has declined. The proposal would provide a means for the public to access a phone, call the emergency services and provide other facilities such as free Wi-Fi, phone charging services, and access Council and other community information through the interactive screen, helping residents and visitors. The proposal would also contribute to the expansion of the 4G/5G communication networks across the city centre, although I have no substantive evidence before me that indicates coverage is particularly lacking in this location. The provision of a defibrillator would also contribute to general health and wellbeing and could save lives. However, these public benefits would be modest when considering the scale of the proposal and do not outweigh the harm I have found to designated and non-designated heritage assets.
26. Therefore, for the reasons above I conclude that the proposal would fail to preserve the settings of the Grade I listed Cathedral and the White Horse PH (non-designated heritage asset). Also, for the reasons above, the advertisement would be harmful to visual amenity.
27. Consequently, the proposal would be contrary to Policies GD5, E18, E19 and E26 of the City of Derby Local Plan Review 2006 and Policies CP3, CP4 and CP20 of the Derby City Local Plan - Part 1: Core Strategy (adopted 2017) and the Framework as far as they are relevant. Cumulatively these policies require that development is of high quality design, makes a positive contribution to character, distinctiveness and identity, and preserves or enhances heritage assets.

Conclusion

28. For the reasons set out above both appeals are dismissed.

K. Stephens
INSPECTOR