



Appeal Decisions

Site visit made on 8 January 2025

by Megan Thomas KC Barrister-at-Law

an Inspector appointed by the Secretary of State

Decision date: 29 January 2025

Appeal A Ref: APP/Q1445/W/24/3351471

Pavement outside 127 Western Road, Brighton BN1 2AD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Urban Innovation Company (UIC) Ltd against the non-determination by Brighton and Hove City Council.
 - The application Ref is BH2024/01176.
 - The development proposed is the installation of 'Pulse Smart Hub' with integrated digital screens.
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Appeal B Ref: APP/Q1445/H/24/3351472

Pavement outside 127 Western Road, Brighton BN1 2AD

- The appeal is made under regulation 17 of the Town and Country Planning (Control of Advertisements)(England) Regulations 2007 against a failure to give notice within the prescribed period of a decision on an application for express consent to display an advertisement.
 - The appeal is made by Urban Innovation Company (UIC) Ltd against the non-determination of Brighton and Hove City Council.
 - The application Ref is BH2024/01177.
 - The development proposed is the installation of 'Pulse Smart Hub' with integrated digital screens.
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Decisions

Appeal A Ref: APP/Q1445/W/24/3351471

1. The appeal is allowed and planning permission is granted for the installation of 'Pulse Smart Hub' with integrated digital screens at the pavement outside 127 Western Road, Brighton BN1 2AD in accordance with the terms of the application, Ref. BH2024/01176, subject to the following conditions:
 - (1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - (2) The development hereby permitted shall be completed in accordance with the following approved plans and documents: WR/2024/01; WR/2024/02; WR/2024/03; WR/2024/04A & WR/2024/06 & Design, Management and Operational Statement.
 - (3) Prior to the first operation of the development hereby permitted a management plan setting out the means of dealing with vandalism, graffiti and malfunctioning shall be submitted to the local planning authority for its approval. The

development shall thereafter be operated and managed in accordance with the approved plan.

Appeal B Ref: APP/Q1445/H/24/3351472

2. The appeal is allowed and express consent is granted for the display of advertisements on a pulse smart hub at the pavement outside 127 Western Road, Brighton BN1 2AD in accordance with the terms of the application, Ref. BH2024/01177, dated 10 May 2024. The consent is for five years from the date of this decision and is subject to the five standard conditions set out in Schedule 2 of the 2007 Regulations and the following additional conditions:
 - (1) The digital display screens hereby granted advertisement consent shall display static images only that will alternate no more frequently than once every ten seconds.
 - (2) No music or sound shall be emitted from the advertisements.
 - (3) In the event of malfunction, the display screens shall be immediately switched off.

Procedural Matters

3. There are two appeals relating to the same site, one against the non determination of planning permission and the other against the non determination 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. I use the same description as utilised by the appellant for both appeals, but for the sake of clarity, the hub structures are the subject of a s.78 planning appeal and the advertisement displays are the subject of separate advertisement appeal.
4. The Town and Country Planning (Control of Advertisements)(England) Regulations 2007 stipulate that control may only be exercised in the interests of 'amenity' and 'public safety'. With respect to appeal B, the development plan policies referred to by the Council are not determinative, but I have taken these into account as material considerations.
5. Several development plan policies have been referred to by both parties, in respect of both the s78 and Advertisement appeals. I consider the most relevant are Brighton & Hove City Plan Part One (adopted 2016) policy CP12 which aims amongst other matters to raise the standard of design in the City; CP13 which seeks to improve the quality of the City's public streets and spaces; CP15 which seeks to conserve the City's historic environment; those aspects of CP9 directed to promote and provide measures that would help to manage and improve mobility and to encourage and enable walking. Additionally, in the Brighton & Hove City Plan Part Two (adopted 2022) policy DM20 seeks to protect amenity; DM24 sets out requirements for advertisement display including where heritage assets may be affected; DM25 is similar in respect of communications infrastructure and DM26 and DM29 have a number of matters to have regard to when development affects conservation areas or the setting of a heritage asset. Also those parts of DM33 directed to encourage safe and comfortable walking, wheelchair and buggy use and cycling.

6. BHCP23 policy DM25, which sets out the criteria for determining planning applications for communications infrastructure; policies DM26 & DM27 which set out criteria for determining development in conservation areas and that affecting the setting of Heritage Assets, and policy DM33 which amongst other matters seeks to prioritise and encourage walking in the City and maintain or improve wheelchair accessible routes.
7. Reference is made to the Council's Supplementary Planning Document on Advertisements (SPD07), which I treat as a material consideration, and to a document entitled 'Brighton and Hove City Council's Local Cycling and Walking Infrastructure Plan'. The latter does not form part of the Local Development Framework, but I note that it has been subject to public consultation, and it attracts moderate weight as a material consideration.

Main Issues

8. The appeal site falls within the Montpelier and Clifton Hill Conservation Area 'CA' and also in the setting of Regency Square Conservation Area. The main issues are (1) the effect of the proposal on the character and appearance of the surrounding area and its amenity, including consideration of the setting of listed buildings and the preservation of the character or appearance of the CA, and (2) the effect of the proposal on the movement of pedestrians and other footway users (including those with restricted mobility and wheelchair users) and public safety.

Reasons

Character, appearance, amenity, heritage

9. The Smart Hub structure would be about 2.54m tall, about 1.2m wide and about 0.35m deep. It would display two back-to-back internally illuminated digital LED screens which would take up the vast majority of the main faces of the hub. Whilst the material displayed on the LED screens would be static, the nature of the display would change on a timed basis.
10. The hub would include a touchpad, free calls and charging for devices and free wifi, a usb charging point, a defibrillator, an emergency services call button, the ability to advertise local events and information and built in CCTV monitoring. It would be sited on the footway outside 127 Western Road which was in use as a nail bar at the time of my site visit.
11. In accordance with the statutory duty set out in section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990, I have paid special attention to the desirability of preserving or enhancing the character or appearance of the CA and in accordance with s.66 of the same Act I have had special regard to the desirability of preserving the setting of nearby listed buildings.
12. The CA is characterised by its hilly position and long domestic terraces which step down towards the coast. Some of the streets are tree lined and there are areas of open space which soften the urban appearance of the area. At the southern end of the Conservation Area Western Road is a busy commercial road and a main traffic route into the city centre. There is a diverse range of building styles and materials in the CA,

although stucco, Roman cement, painted render and timber sash windows predominate. At ground floor level there is a diverse range of shopfronts. Whilst overall, they make a positive contribution to the vibrant commercial character of Western Road, some of the poorer quality shopfronts, together with the traffic congestion detract from the special character and significance of the CA. There are two listed buildings in the row of properties diagonally opposite the appeal site. They are nos 103 and 105 Western Road which are both grade II, terraced houses with commercial use on the ground floor. They are early 19th century, stucco fronted with 3 storeys.

13. In the vicinity of the appeal site the retail and other commercial units are typically narrow. This results in a close knit and diverse range of shop fronts, hanging/box signs and shop front designs and colours. Some of the bars and cafes have outside seating and tables within the pavement area and some of the units have freestanding advertising “A” frames. At the same time there are refuse bins, cycle stands, a bus shelter, street lights and road signs. As a result, the street scene at ground floor level is diverse and busy. However, the pavement in the immediate vicinity of the appeal site is largely free from obstruction, other than two cycle stands and an oblong divider. It is also materially wider than the adjacent pavement area. I have noted that there is planning permission for a communications hub with digital advert display outside Waitrose supermarket which is at 130-134 Western Road and on the same side of the road as the appeal site. This was granted permission on appeal dated 5 December 2023 (refs 3311790 & 3311794). This hub was not evident at the time of my site visit. I have also borne in mind appeal decision ref. APP/Q1445/W/18/3195225 dated 18 July which granted approval for a telephone kiosk on the pavement outside 127 Western Road but I have determined the appeal before me on its own particular merits.
14. The proposed hub would be seen in the context of the busy ground floor environment, which is quite distinct from the traditional, stucco faced upper floors with their canted bay and bow windows. It would be seen within the immediate setting of commercial large paned front windows and commercial shopfront fascia signs. For these reasons I find that within this specific environment the proposed hub, even with its glossy red finish, would blend satisfactorily into this vibrant street environment, without an appearance of overbearing clutter. It would therefore preserve the character and appearance of the CA and the setting of Regency Square Conservation Area, and would not detract from CA significance. In respect of the two listed buildings on the south side of the road, it would be possible to view those buildings with the proposed hub also in the views, however, to my mind the impact on the setting of those buildings would be neutral given that an appreciation of them has little to do with the shops on their ground floors and a ground floor structure such as a smart hub on the opposite footway. Views of adverts within the settings are not very different in impact from views of the commercial shopfronts and their fascia signs.
15. On this issue, I find that the proposals would preserve the character and appearance of the CA and preserve the setting of listed buildings. Visual amenity of the local area would not be unduly harmed given the limited street clutter on this stretch of footway. Accordingly, I do not find there is conflict with the provisions and requirements of the most relevant development plan policies identified earlier.

Highway/Pedestrian Movement and Safety

16. Turning to highway and pedestrian safety, I anticipate that this footway has a heavy footfall. Nevertheless, the resultant width of the pavement where the hub would be located would be about 2.7m wide and in this location I do not consider that unduly narrow. Footway users moving east are already funnelled slightly towards the shop fronts owing to the two bike stands but nevertheless the smart hub would not unduly impede the space for footway users including when the hub was in use. Pedestrians congregating to use the pedestrian crossing over Western Road would continue to be seen by motorists due to the distance between the crossing and the hub together with the siting of the hub about 0.6 metres back from the carriageway. I have taken note of the Local Cycling and Walking Infrastructure Plan and its aims to reduce street clutter but it does not convince me that there would be harm to pedestrians or cyclists or motorists in this case.
17. As a result, I find on this issue that the proposal and its associated display would not have a detrimental impact upon the function of the public highway or the safety of highway users, including pedestrians and wheelchair users. Accordingly, no conflict arises with the provisions and requirements of the most relevant development plan policies identified earlier.

Conditions

18. I have considered the main parties' suggested conditions. Having regard to what I saw on my site visit I do not consider that any specific conditions are needed for this site. In relation to the s.78 appeal, a condition to the effect that the development shall be carried out in accordance with the approved plans is imposed for the avoidance of doubt. In order to preserve amenity, a condition requiring a management plan to deal with matters such as vandalism is also imposed.
19. In relation to the advertisements, the five standard conditions set out in the Regulations are already imposed. In relation to additional conditions to those, I consider a number are necessary. One controls the frequency of change of the advert in order to avoid unduly distracting motorists and cyclists and to maintain visual amenity. Another prohibits music and sound associated with the advertisements in order to protect amenity. Use of emergency call button, for example, would involve noise coming from the hub and it is reasonable to allow some noise. If the display screen malfunctions there is a condition requiring it to be switched off and this would protect visual amenity and distraction.

Other Matters and Conclusion

20. All other matters raised in the representations have been considered but none outweighs the considerations that led me to my conclusions on the appeals.
21. For the above reasons, I conclude that the appeals should be allowed, with conditions.

Megan Thomas KC

INSPECTOR