



Appeal Decisions

Site visit made on 24 July 2023

by H Wilkinson BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 September 2023

Appeal A Ref: APP/G3110/W/22/3308266

Pavement o/s 94 London Road, Headington, Oxford OX3 9FN

- 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 Brown of BT Telecommunications Plc against the decision of Oxford City Council.
 - The application Ref 22/01153/FUL, dated 29 April 2022, was refused by notice dated 11 August 2022.
 - The development proposed is described as the 'proposed installation of 1no. new BT Street Hub, incorporating 2no. digital 75" LCD advert screens, plus the removal of 2no. associated BT kiosks'
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Appeal B Ref: APP/G3110/H/22/3308267

Pavement o/s 94 London Road, Headington, Oxford OX3 9FN

- The appeal is made under Regulation 17 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (as amended) (the Regulations) against a refusal to grant express consent.
 - The appeal is made by Mr James Brown of BT Telecommunications Plc against the decision of Oxford City Council.
 - The application Ref 22/01154/ADV, dated 29 April 2022, was refused by notice dated 11 August 2022.
 - The advertisement proposed is described as 'two. digital 75-inch LCD display screens, one on each side of the Street Hub unit'.
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Decision

1. Appeal A is allowed and planning permission is granted for the proposed installation of 1no. new BT Street Hub, incorporating 2no. digital 75" LCD advert screens, plus the removal of 2no. associated BT kiosks at Pavement o/s 94 London Road, Oxford OX3 9FN in accordance with the terms of the application, Ref 22/01153/FUL, dated 12 May 2022, and the plans submitted with it, subject to the conditions in the schedule at the end of this decision.
2. Appeal B is allowed and express consent is granted for two. digital 75-inch LCD display screens, one on each side of the Street Hub unit at Pavement o/s 94 London Road, Oxford OX3 9FN. The consent is for five years from the date of this decision and subject to the five standard conditions set out in the Regulations and the additional conditions in the schedule at the end of this decision.

Preliminary Matters

3. As set out above there are two appeals on this site. Appeal A relates to a refusal of planning permission and Appeal B relates to the Council's refusal to grant advertisement consent. To avoid duplication, I have dealt with the two

schemes together. However, I have considered each proposal on individual merit.

4. In respect of Appeal B, the Regulations regarding advertisements state that control may only be exercised in the interests of amenity and public safety. Whilst the development plan policies are not determinative to this appeal, I have had regard to the policies as cited by the Council in so far as they are a material consideration relevant to the matters before me.

Main Issues

5. The main issues in respect of both appeals are the effect of the proposed Street Hub and advertisements on:
 - the character and appearance of the area; and,
 - highway safety.

Reasons

Character and appearance

6. The appeal site is an area of pavement in front of an existing retail premise and lies adjacent to London Road – a busy throughfare through Headington. This section of the road is characterised by commercial premises located at street level whilst a mix of commercial, office space and residential above occupy the upper floors. Although generally non-illuminated, the retail parades located on either side of the road display various fascias, projecting signs and awnings relating to the premises concerned. Bus shelters and phone boxes within the wider area display advertisements and other signage exists for directional purposes. These characteristics and existing features provide the urban street scene with a busy, varied commercial character and appearance.
7. The proposed new Street Hub would be positioned one metre from the edge of the highway. In this location, the pavement is wider due to the layout of the adjacent parking bay. Street furniture along this section of the road includes traffic lights, road signs, street lighting and low-lying seating whilst there are several mature trees also located on the pavement. On the opposite side of the road there is a freestanding advertisement of similar proportions. In the immediate vicinity of the appeal site there are several bike stands.
8. The submitted plans indicate that the proposed street hub would reach a height of some 2.9 metres above ground level. Notwithstanding the relatively tall height, the proposed Street Hub would have a simplistic appearance, muted finish, and slender form. Therefore, when viewed in the context of the three storey buildings to the rear of the site and given the pavement width, the proposed street hub would not read as an unduly bulky or prominent form of development. Moreover, given the urban and commercial setting, I do not consider that the proposals in combination with the existing furniture would result in an unacceptable accumulation of street clutter to the detriment of character and appearance.
9. The advertisement displays would be illuminated and would be unrelated to the existing commercial premises on the street. However, the appeal site is located within an urban area which is lit by streetlights and buildings. Therefore, subject to a condition controlling the level of illumination in the hours of

darkness and given the prominent urban and commercial character of the street, I am not persuaded that the digital displays would be unduly dominant or incongruous such that they would be harmful to visual amenity.

10. For these reasons I find that the proposed Street Hub and the digital advertisement displays would not adversely affect the character and appearance of the area. The proposals would therefore accord with Policies DH1 and DH6 of the Oxford Local Plan 2036 (Local Plan) together with Policy CIP1 of the Headington Neighbourhood Plan 2017-2032. Collectively, these policies seek to ensure that proposals respond and enhance local character and distinctiveness and safeguard visual amenity. The appeal schemes would also be consistent with the design objectives of the National Planning Policy Framework (the Framework) where they seek to ensure that new development including advertisements does not adversely affect the quality and character of places.

Highway safety

11. The proposed Street Hub would be located at the end of the parallel parking bay. It would however be set in a sufficient distance from the edge of the bay to allow users to safely access the screen. The junction of London Road and New High Street lies within proximity of the appeal site. A pedestrian crossing lies within reasonable distance in the opposite direction. This section of London Road is relatively straight, and, at the time of my site visit, there was a notable volume of traffic passing through the area. As a result of the commercial aspect, I also observed a steady level of pedestrian activity.
12. In accordance with Transport for London guidance¹, the Street Hub would be orientated to face oncoming drivers and sited within one metre of the kerb, in the driver's sight lines, and thus would reduce the risk of driver's turning their attention away from the road to look at the advertisements. I saw nothing at my site visit which would suggest that the proposals would conflict with any existing signage, and it would be located a sufficient distance from the pedestrian crossing to avoid the advertisements distracting drivers on their approach or as they pass through. Further, and notwithstanding the Council's submissions, the evidence does not indicate that the levels of illumination would be such that the digital displays would be a distracting feature for road users. For these reasons and given that there was no indication that the road layout and geometry is so complicated or demanding, I am satisfied that the proposals would not present an unacceptable risk to highway safety in this regard.
13. I recognise that the visibility of drivers exiting the parking bay would be marginally restricted by the position of the proposed Street Hub. However, it is reasonable to assume that drivers leaving the parking bay and entering the flows of traffic would do so at low speed. Their vision and awareness of drivers approaching would also increase as they emerge. Therefore, in weighing the balance of risk against probability, based on my own observations on site and the lack of substantive evidence before me, I do not consider that this would result in an unacceptable or severe impact on highway safety. Furthermore, I am satisfied that the set back of the proposals from the kerb would mean that cyclists exiting the bike stands would have adequate visibility and awareness of traffic thus reducing any risk to an acceptable level.

¹ Transport for London Guidance for Digital Roadside Advertising and Proposed Best Practice 2013

14. In conclusion, I find that the proposed Street Hub and the digital advertisement display would not adversely affect highway safety. The proposals would therefore comply with Policies M1 and RE7 of the Local Plan where they seek to ensure an accessible environment for pedestrians and cyclists and manage the impact of development on the transport network.

Other Matters

15. The description of development as set out above includes the removal of 2 existing BT kiosks in the area although these structures are not identified within the application site boundary and there is no alternative mechanism before me which would secure their removal. However, for the reasons set out above, I am satisfied that the proposal, in combination with existing apparatus and street furniture in the area would not be unacceptable. In any event, as they are not located within the immediate vicinity of the appeal site, their removal would not be determinative to the appeal.
16. I have had due regard to the Public Sector Equality Duty (PSED) contained in section 149 of the Equality Act 2010, which, sets out the need to foster good relations between people who share a protected characteristic and those who do not. Whilst not included within the reason for refusal, the Council's delegated report sets out that the proposed Street Hub would compromise the mobility of less able bodies including wheelchair and scooter users together with pushchairs. Visibility of the street, nearby street furniture and pavement activity and the potential for visual obstruction is also highlighted as a concern. These are echoed by interested parties.
17. I recognise that the placement of trolleys and retail paraphernalia in front of the existing retail store reduces the overall width of the pavement in this location. Nevertheless, the wider width at this point would ensure that there would be sufficient clear space for pedestrians, including less able bodies to move freely without obstruction. Moreover, the proposed Street Hub would be located on an area of footway that did not appear to be within the natural pedestrian flow. As such, I am not persuaded that the Street Hub would reduce or obstruct movement. Furthermore, whilst noting reference to the existing bench and accessibility implications, as this is not located within the immediate vicinity of the appeal site, I fail to understand how access to this facility would be compromised. I thus find the proposals to be satisfactorily consistent with the aims of the PSED.
18. I recognise the concerns regarding mental health and wellbeing, in particular the need to escape digital screens. I also acknowledge the assertions in relation to potential interference with internet connections and the sustainability credentials of the proposal. Nevertheless, there is a lack of substantive evidence before me to demonstrate that the proposal would be harmful in this regard. Thus, the interested party submissions on these matters do not lead me to a different conclusion.
19. It has been put to me by interested parties that there is an abundance of street furniture within the area and that the installation of the proposed Street Hub would undermine the aims of Headington Action and the Headington Neighbourhood Forum. However, for the reasons set out in this decision, I am satisfied that the proposed installation would be acceptable and thus I do not agree that the public realm or wider aspirations would be compromised. In addition, whilst having had regard to the photographs provided of the existing

street market which takes place in the area of the appeal site, there is no robust evidence to suggest that the proposals would prejudice such activities continuing in the locality.

20. The proposals would offer a wide range of other public benefits, which in summary, would include free ultrafast public Wi-Fi, 5G small-cell mobile connectivity, free UK calls, free device charging, an emergency services button, environmental sensors, insight counting, and public messaging capabilities. Access would be provided to Council services, national charities, BT's phone book, local weather information, maps, and wayfinding. The public messaging capabilities would include free Council advertising, a community notice board facility, discount advertising for local business groups, and emergency and community awareness messaging.
21. The Framework provides that, amongst other things, advanced, high quality and reliable communications infrastructure is essential for economic growth and social well-being, and that planning decisions should support the expansion of electronic communications networks, including next generation mobile technology (such as 5G). As I have found the proposal to be acceptable, I need not consider whether the benefits are sufficient to justify the proposal in this location. Equally, I have no reason to question the need for the development.
22. Finally, in relation to precedent, whilst I recognise the concerns in this regard, I have determined the appeal proposals on their own merit, in accordance with the development plan in so far as the policies are relevant to the matters before me.

Conditions

23. I have had regard to the various draft conditions suggested by the Council and consulted upon with the appellant. I have considered them against the tests in the Framework and the advice in the Planning Practice Guidance and made such amendments as necessary to comply with those documents and for clarity and consistency purposes.

Appeal A

24. In addition to the standard time limit condition (Condition 1), a condition listing the approved drawings is necessary to in the interests of certainty (Condition 2). In the interests of appearance and visual amenity, I have imposed a condition requiring that the material specification as set out in the supporting documents is adhered to (Condition 3).
25. It is also necessary, to ensure that the Street Hub is managed appropriately to reduce the risk of street crime and anti-social behaviour. As such, a condition requiring adherence to the BT Street Hub Anti-Social Behaviour and Management Plan April 2021 is imposed (Condition 4). To avoid the accumulation of unnecessary street clutter, I have imposed a condition requiring the removal of the structure should this become defunct or defected (Condition 5).
26. A condition limiting the display of moving images, display time and visual effects has been recommended by the Council. However, as this relates directly to the display of the advertisements, it is not necessary to attach this condition to the planning permission. For the same reason, I have not imposed a condition restricting the display of any advertisement resembling traffic signs.

Appeal B

27. In addition to the five standard conditions in the Regulations, it is necessary to apply a condition to control the intensity of the illuminance of the advertisements so that they do not stand out significantly from the background illumination in the street during darkness or distract road users. In accordance with the maximum recommended luminance as set out by the Institute of Lighting Professionals² a condition restricting the maximum of 600 candelas per square metre (cd/m²) is imposed (Condition 1). For the same reason I have imposed conditions restricting the display of moving or sequenced images, the minimum display time (Condition 2), the rate of change of the images to instantaneous and that a suitable mechanism to freeze the image in the event of a malfunction is included (Condition 3).
28. It is not necessary to attach a condition requiring the management of the Street Hub in accordance with the BT Street Hub Anti-Social Behaviour and Management Plan April 2021 as this does not relate to the advertisement and, in any case would only duplicate a condition of the associated planning permission.
29. The Council has suggested a condition restricting the display of images which may resemble a traffic sign. Whilst I acknowledge the reasoning for this recommendation, condition 2 as set out in the Regulations prohibits the display of an advertisement which would endanger persons using any highway. Thus, I am satisfied that this would be sufficient to ensure that the safety of highway users is safeguarded. A condition restricting the size, colouring and lettering of the advertisement has also been suggested by the Council. No such details are shown on the submitted plans. However, given that the advertisement is not static and subject to the controls above, I do not consider this condition is necessary.

Conclusion

30. For the reasons set out above, Appeals A and B are allowed.

H Wilkinson

INSPECTOR

² Professional Lighting Guide 05: The Brightness of Illuminated Advertisements 2014

SCHEDULES OF CONDITIONS

Appeal A

1. The development hereby permitted shall be begun before the expiration of three year from the date of this permission.
2. The development hereby permitted shall be carried out in accordance with the following approved plans:
 - Drawing No. 001 Revision A – Site Location Maps
 - Drawing No. 002 Revision A – Proposed Site Plan
 - Drawing No. 003 Revision A – Existing and Proposed Elevations
3. The external surfaces of the development shall be constructed using the materials finishes and colours as set out in the planning application form and BT Street Hubs Product Statement v1.0 February 2021.
4. The Street Hub shall be managed in accordance with the BT Street Hub Anti-Social Behaviour Management Plan Version 2 April 2021 for the lifetime of the development.
5. Should the Street Hub hereby permitted no longer be required or become defunct or defected, the Street Hub shall be removed as soon as practicable thereafter and the land reinstated to its former condition.

Appeal B

1. The intensity of the illumination of the advertisements hereby permitted shall not exceed 600 cd/m² between dusk and dawn, consistent with the guidance set out in the Institute of Lighting Professionals – The Brightness of Illuminated Advertisements 2014.
2. The minimum display time for each advertisement shall be 10 seconds. There shall be no moving images including animation, flashing, scrolling three dimensional, intermittent or video elements.
3. The interval between successive displays shall be instantaneous and the complete display screen shall change without visual effects (including swiping or other animated transition methods) between each advertisement. The display shall include a mechanism to free the image in the event of a malfunction.

END OF SCHEDULE