



Appeal Decisions

Site visit made on 24 May 2022

by Alexander O'Doherty LLB (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 July 2022

Appeal A Ref: APP/B1605/W/21/3289377

Pavement outside 21 Promenade, Cheltenham GL50 1LE

- 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 Browne (BT Telecommunications Plc) against the decision of Cheltenham Borough Council.
 - The application Ref 21/02304/FUL, dated 29 September 2021, was refused by notice dated 29 November 2021.
 - The development proposed is described as, "Proposed installation of 1no. new BT Street Hub, incorporating 75" LCD advert screens plus the removal of associated BT kiosk(s)".
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Appeal B Ref: APP/B1605/H/21/3289380

Pavement outside 21 Promenade, Cheltenham GL50 1LE

- 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 James Browne (BT Telecommunications Plc) against the decision of Cheltenham Borough Council.
 - The application Ref 21/02304/ADV, dated 29 September 2021, was refused by notice dated 29 November 2021.
 - The advertisements proposed are described as, "2no. digital 75" LCD display screens, one on each side of the Street Hub unit".
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Decisions

Appeal A

1. The appeal is dismissed.

Appeal B

2. The appeal is dismissed.

Preliminary Matter

3. The proposal for Appeal B would be an integral part of the proposal for Appeal A. As such, to avoid repetition I have provided one reasoning section, detailing my findings for both appeals. Notwithstanding this, each proposal and appeal has been considered individually, and on its own merits.

Main Issues

4. The main issue with respect to Appeal A is whether the proposal would preserve or enhance the character or appearance of the Cheltenham Central Conservation Area and whether the settings of the nearby listed buildings would be preserved.

5. The main issue with respect to Appeal B is the effect of the proposed advertisements on amenity, including the Cheltenham Central Conservation Area and the settings of the nearby listed buildings.

Reasons (Appeal A and Appeal B)

Conservation area

6. The appeal site comprises a section of the pavement which is adjacent to Imperial Circus, which is located between Clarence Street and the Promenade. The site is positioned immediately in front of commercial frontages in a bustling and vibrant commercially-orientated area of Cheltenham. The High Street is nearby and the wider area generally consists of a range of commercial and retail premises.
7. Several items of street furniture are present on the same stretch of pavement, including that part separated by a cycle lane, and this street furniture includes, amongst other items, a post-box, a wayfinding sign, and a bike rack. Bus shelters with advertisement panels are present nearby. Nevertheless, this broad area of pavement as a whole is relatively uncluttered by street furniture and the advertising, branding, and fascia signs present on nearby buildings in retail and commercial use at ground-floor level is predominantly very refined and notably visually restrained in appearance.
8. The site is within the Cheltenham Central Conservation Area (conservation area). The Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) provides at s72(1) that with respect to any buildings or other land in a conservation area, special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.
9. I concur with the analysis provided in the appeal decisions referred to, relating to the High Street in Cheltenham¹, that the significance of the conservation area lies in part in the manner in which it encompasses a range of buildings and spaces that reflect the evolution of this historic centre, and that the area has a busy, vibrant character and advertisements on shopfronts are a well-established feature of the street scene.
10. I would add that part of the significance of the conservation area, as a whole, as a designated heritage asset is derived from the continuing influence of Regency-period layouts, buildings, and open spaces, which include numerous examples of architecturally-significant buildings, often with 'polite', formal, and elegant facades. The site contributes to the significance of the conservation area primarily by its function as part of the wider pavement area which provides a relatively uncluttered space which affords clear views of the mostly architecturally-impressive buildings which surround the site.
11. The proposed 'Street Hub' would be a tall and wide structure in its context, with a rectangular block-like design. Due to its height and design, in its prominent location on this broad area of pavement, the proposed 'Street Hub' would be viewed as an imposing and visually incongruous item of street furniture which would unduly detract from the fine examples of high-quality architecture and the visually restrained and aesthetically-pleasing facades and fascia signs present on the commercial and retail frontages near the site.

¹ APP/B1605/Z/19/3227824, APP/B1605/Z/19/3227826, APP/B1605/Z/19/3227830, APP/B1605/Z/19/3227836, APP/B1605/Z/19/3227839

- Moreover, due to its fairly large scale in comparison with most other items of nearby street furniture it would serve to add visual clutter to the street scene.
12. The 2 proposed LCD screens would display static images. Conditions could be imposed to require a minimum 10 seconds display time for each piece of content on the digital displays, and to control the intensity of the illumination.
 13. Nevertheless, LCD displays of a similar size to that proposed are not common in the immediate vicinity. Considering this, the 2 large-sized LCD screens, when considered together, would appear as overly-dominant and visually intrusive features in this location which contains an abundance of historic buildings which exhibit a refined elegance. Although the 2 LCD screens would automatically dim in the hours of darkness, considering the size of the proposed illuminated screens in this prominent location, the overall visual effect of the proposed 'Street Hub' would be particularly noticeable and harmful in the hours of darkness.
 14. It follows that the proposals would undermine the character and appearance of the nearby historic architecture, which would cause harm to the significance of the conservation area. As the harm caused by the 'Street Hub' would be localised, the proposal would cause less than substantial harm to the significance of the conservation area as a designated heritage asset, but nevertheless this harm is of considerable importance and weight. The National Planning Policy Framework (the Framework) advises that such harm should be weighed against the public benefits of the proposal, which are considered below.

Listed buildings

15. The site is within the settings of a number of listed buildings, which include 21 to 31 Promenade, 19 Promenade, Clarence Lamp, and the south elevation and attached sculpture of Cheltenham House, i.e. the site is within the surroundings in which these heritage assets are experienced. These are all classed as Grade II listed buildings.
16. With respect to Appeal A, The Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) provides at s66(1) that in considering whether to grant planning permission for development which affects a listed building or its setting, special regard shall be had to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.
17. I observed that the significance of these listed buildings, as a group, derives in part from their important contribution to the grandeur of the street scene by virtue of their being fine examples of historic architecture, including modern architecture and design in the case of the south elevation and attached sculpture of Cheltenham House. The setting, including the appeal site, contributes to the significance of these listed buildings by being part of a broad pavement area which provides a mostly open space in which the visual qualities of the listed buildings may be better experienced.
18. The proposed 'Street Hub' would appear as an incongruous feature in this historic context, due to its considerable size, its block-like design with a vertical emphasis, and its 2 large illuminated screens, and it would add to visual clutter

in this location. In this way, the visual experience of the listed buildings when viewed within their settings would be negatively affected.

19. Consequently, the contribution that the setting makes to the significance of the listed buildings would be compromised by the proposals. Whilst the harm caused by the 'Street Hub' to the settings of the listed buildings would be less than substantial, this harm is of considerable importance and weight. This harm must be weighed against the public benefits of the proposal, which are considered below.
20. I have had regard to appeal decisions Refs APP/Z4310/W/18/3205104 & APP/Z4310/W/18/3205102. In those decisions, the Inspector referred to the listed buildings in question as being 'some distance' from the proposals, whereas the site for the appeals before me is surrounded by listed buildings in close proximity to the site. The Inspector also referred to the variety of illuminated advertisements in the vicinity, including digital advertisement screens, whereas digital advertisement screens are not common near the appeal site. As such, it appears from the limited information before me that the freestanding InLink and 2 LED display screens proposed in those appeals in Liverpool was much more in-keeping with its visual context than is the case in relation to the proposed 'Street Hub' in this particular area of Cheltenham. Accordingly, those appeal decisions do not change my findings.

Public benefits and balance

21. The proposals would remove an existing telephone kiosk, which does not complement the street scene and which contributes to visual clutter in the vicinity. Indeed, the appellant has referred to the proposals as forming an upgrade / direct conversion of this existing and long-established item of street furniture.
22. Whilst I recognise that the principal considerations that justified the consent of the existing kiosk may not have changed, I am required to undertake an impartial and independent assessment of the proposals before me. In this regard, whilst I have taken full account of the presence of the existing kiosk, and noting that consistency is important in the planning system, I am not bound to fall in line with any previous decision of the Council.
23. The proposed 'Street Hub' would be read in the same context as the existing kiosk, and would incorporate a more modern and streamlined design than that kiosk. It would also appear less bulky in the street scene. Nevertheless, that kiosk only contains one advertisement, which is not of a digital format, whereas the proposals would have 2 advertisements in the form of large LCD screens which would be more noticeable in the street scene, and as I have noted above, would serve to unduly undermine the character and appearance of the conservation area. These facts would off-set much of the improvements in product design which the proposals exhibit in comparison to the existing kiosk.
24. Similarly, as the proposals would remove an existing kiosk that does not complement the street scene and would replace it with a 'Street Hub' which also causes demonstrable harm to the character and appearance of the conservation area and the settings of nearby listed buildings, this greatly limits the weight that can be given to the public benefit of removing the existing kiosk.

25. The proposed 'Street Hub' would have a smaller footprint than the existing kiosk, and accordingly would free-up some space on the pavement. However, the difference in footprint between the 2 units would not be significant, which limits the weight that can be given to this factor, including with respect to any benefits in relation to pedestrian movement and safety.
26. 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.
27. The Street Hubs Beyond connection document states that the proposed 'Street Hub' would be powered by 100% renewable carbon-free energy, and that business rates are paid when requested by the Council, ensuring that an ongoing financial contribution is made to the local area. A Street Hub Anti-Social Behaviour Management Plan is in place which would likely reduce any potential negative anti-social behaviour issues occurring due to the presence of the proposed 'Street Hub'.
28. The proposed 'Street Hub' would not have any visible antennas, equipment cabinets or electricity meter cabinets, meaning that it would offer a more discrete alternative to a conventional mobile phone mast. However, I have not been provided with evidence which demonstrates that there is a specific need for a mobile phone mast near the appeal site, which limits the weight that can be given to this matter.
29. The proposed 'Street Hub' could potentially provide the Council with environmental and pedestrian, cycle and vehicle movement data, considering its proposed placement in an area which likely has fairly high movement. However, limited details have been provided as to whether the Council would find this 'smart city' planning data to be useful in practice, nor the extent to which such data would be useful in terms of the delivery of the Council's services and planning functions, which limits the weight that can be given to these factors.
30. These benefits would accord with the National Infrastructure Strategy, the Government's Ten Point Plan for a Green Industrial Revolution, the UK Digital Strategy, and paragraph 114 of the Framework which 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).
31. The Framework makes clear that great weight needs to be given to designated heritage assets' conservation. Whilst I have considered all the case studies presented and have taken account of the quotes provided in the 'Community feedback' section of the Street Hubs Beyond connection document, I have not been presented with evidence which uses a robust and transparent research methodology. As such, I consider that it has not been demonstrated that the potential scale and practical impacts of the various benefits of the proposals

- would be significant, particularly with respect to the use of the various data services proposed to be provided to the Council.
32. Therefore, collectively I have given all these benefits no more than moderate weight in favour of the proposals. Consequently, in relation to Appeal A, I find that they do not, either individually or cumulatively, amount to public benefits which outweigh the harm that would be caused to the significance of the conservation area and the settings of the listed buildings.
33. Hence, in relation to Appeal A, I find that the proposal would not preserve or enhance the character or appearance of the conservation area and that the settings of the nearby listed buildings would not be preserved. In relation to Appeal B, a similar range of public benefits would arise via the proposal. However, The Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (as amended) (2007 Regulations) make clear that advertisements should be subject to control only in the interests of amenity and public safety. Appeal B has been assessed on this basis.
34. In relation to Appeal A, the proposal would conflict with Policy D1 of the Cheltenham Plan (adopted 2020), which provides that, amongst other things, development will only be permitted where it complements and respects neighbouring development and the character of the locality. It would also conflict with Policies SD4 and SD8 of the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy 2011 – 2031 (adopted 2017) which collectively provide that, amongst other things, development should make a positive contribution to local character and distinctiveness, having regard to valued and distinctive elements of the historic environment.
35. The reasons that I have provided above, in relation to Appeal A, with respect to the impact of the proposal on the character and appearance of the conservation area and the settings of the nearby listed buildings, apply equally with regards to the effect of the proposed advertisements on amenity, for Appeal B. Thus, in relation to Appeal B, the proposed advertisements would have an unacceptable and harmful effect on amenity, including the conservation area and the settings of the nearby listed buildings.
36. In relation to Appeal B, in accordance with Regulation 3(1) of the 2007 Regulations, material to my findings is Policy HE3 of the Cheltenham Plan (adopted 2020), which provides that, amongst other things, advertisements in conservation areas will be supported providing that they respect the character of the surrounding area. For the reasons given above, with respect to amenity, the proposed advertisements would conflict with this policy.
37. In relation to Appeal B, the proposal would conflict with paragraph 136 of the Framework which provides that, amongst other things, the quality and character of places can suffer when advertisements are poorly sited and designed. The proposal for Appeal B would also conflict with the advice given in Streets for All: Advice for Highway and Public Realm Works in Historic Places (2018) which provides that, amongst other things, poorly sited advertising can have a degrading effect on the character of conservation areas and the setting of listed buildings, especially when digital screens and internally illuminated signs are used. Accordingly, in accordance with paragraph 136 of the Framework, it is appropriate for express consent to be withheld for the advertisements, in the interests of amenity.

Conclusions (Appeal A and Appeal B)

38. For the reasons given above, I conclude that Appeal A should be dismissed and that Appeal B should be dismissed.

Alexander O'Doherty

INSPECTOR