

Appeal Decisions

Site visit made on 20 August 2024

by H Senior BA (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 October 2024

Appeal A: APP/T4210/W/24/3343991

Pavement o/s 61 The Rock, Bury BL9 0NB

- 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 (Infocus Ltd) against the decision of Bury Metropolitan Borough Council.
 - The application Ref is 70426.
 - The development proposed is described as 'installation of a multifunctional communication Hub including defibrillator and advertisement display, as illustrated in the attached documentation.'
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Appeal B: APP/T4210/H/24/3343992

Pavement o/s 61 The Rock, Bury BL9 0NB

- 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 Mr Nathan Still (Infocus Ltd) against the decision of Bury Metropolitan Borough Council.
 - The application Ref is 70443.
 - The advertisement proposed is described as 'installation of a multifunctional communication Hub including defibrillator and advertisement display, as illustrated in the attached documentation.'
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Decision

1. Appeals A and B are dismissed.

Preliminary Matters

2. The two appeals are for related proposals on the same site. Appeal A concerns the refusal of planning permission to install a multi-functional communication hub. Appeal B concerns the refusal of express consent to display advertisements, integrated into the hub. I have considered each appeal proposal on its merits, however, as they raise similar issues, I have combined both decisions in a single decision letter.
3. In respect of Appeal A the decision notice refers to Policy EN5/1. The Council have confirmed that this is an error and should refer to Policy HT5/1. The appellant has referred to the policy and I have had sight of it and have considered it in the determination of the appeal.

4. In respect of Appeal B the Council has drawn my attention to Development Plan policies it considers relevant to this appeal, and I have taken them into account where relevant. However, powers under the Regulations¹ to control advertisements may be exercised only in the interest of amenity and public safety, taking account of any material factors. The National Planning Policy Framework (the Framework) and the Planning Practice Guidance (PPG) reiterate this approach.

Main Issues

5. The main issues are the effect of the proposal on:
 - the character and appearance of the area (including in relation to the interest of amenity for Appeal B);
 - highway safety with particular regard to pedestrians (including in relation to public safety for Appeal B); and
 - the wider strategy for the need for and provision of defibrillators throughout the Borough (Appeal A only).

Reasons

Character and appearance

6. The appeal site is situated within a pedestrianised area, at the junction of The Rock and Tithebarn Street, that serves a predominantly retail and commercial area in the centre of Bury.
7. Although pedestrianised, the surface materials clearly delineate areas where vehicles can travel within The Rock, which excludes through to Tithebarn Street. The area between the buildings on either corner of the junction is occupied by litterbins, planters, seating, and other street furniture. There is also an existing freestanding permanent advertisement display. Beyond this there are few such features to the northern side of The Rock, as they are grouped in a linear arrangement to the opposite side of the road, beyond where vehicles can travel. This arrangement gives a rhythm to the street scape and prevents clutter in the other areas of the street. These characteristics are therefore important to the amenity of the area, including its character and appearance.
8. While the proposal would be sited close to the planter, advertisement and other street furniture at the junction of Tithebarn Street and The Rock, it would be positioned forward of the buildings to either side, within the area delineated primarily for pedestrians. The proposal would therefore introduce a prominent feature where it would be significantly detrimental to the prevailing characteristics of the street.
9. I conclude that in respect of Appeal A the proposal would harm the character and appearance of the area. It would conflict with Policies EN1/2, EN1/4, HT5/1, HT6/1, EN1/9 and EN1/10 of the Bury Unitary Development Plan 1997 (UDP) which together amongst other matters seek to ensure that development enhances the character and appearance of the street scene.

¹ The Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (as amended)

10. In respect of Appeal B, I conclude that the proposal would have an unacceptable effect on the amenity of the area. It would be contrary to guidance on advertisements within the Framework and the aims of Policy EN1/9 of the UDP which, although not decisive, seeks to ensure proposals do not harm the character of the area.

Highway and public safety

11. The communications hub would be close to the pedestrian access to Tithebarn Street, used to access car parks and other parts of the town centre. The pedestrianised street is approximately 14 metres wide in this location. Whilst the hub and the potential for people congregating around it would cause a narrowing of the pedestrianised area, it would only be to one part of it. The space that would remain would not adversely affect pedestrian permeability or the safe and efficient operation of the highway, including for emergency access.
12. I conclude that in respect of Appeal A the proposal would not harm highway safety with particular regard to pedestrian safety. It would comply with Policies EN1/2, EN1/4, HT5/1, HT6/1, EN1/9 and EN1/10 of the UDP which together amongst other matters seek to ensure that pedestrians are able to move conveniently and safely.
13. In respect of Appeal B I conclude that the proposal would not have an unacceptable effect on public safety. It would comply with the guidance on advertisements within the Framework and the aims of Policy EN1/9 of the UDP which, although not decisive, seeks to ensure proposals protect the safety of pedestrians.

Strategy for defibrillators

14. The proposal includes for a defibrillator to be provided, in partnership with Community Heartbeat Trust, a registered charity that promotes greater access to defibrillators in public spaces. The Council state that there is insufficient information to properly assess the proposal in relation to a wider strategy for the need and provision of defibrillators throughout the Borough. However, I have not been provided with any information in respect of the Council's wider strategy, or how the proposal could undermine any such approach.
15. On this basis, I conclude that there is no evidence before me to demonstrate that the proposal would harm the wider strategy for the need for and provision of defibrillators throughout the Borough. Hence it would comply with Policy CF1/1 of the UDP which supports the provision of new and improved community facilities in appropriate locations. The decision notice also refers to Policies EN1/2, EN1/4, HT5/1, HT6/1, EN1/9 and EN1/10 of the UDP with regard the provision of defibrillators. I do not consider that their provisions are relevant to the consideration of this main issue.

Other Matters

16. I note the appellant's concerns regarding the Council's handling of the case. However, this is a matter that would need to be taken up with the Council in

the first instance. In determining this appeal, I am only able to have regard to the planning merits of the case.

17. I note the Council's concerns that the appellants did not have the agreement for the placement of the proposal on the adopted highway. The appellant's evidence is that they are statutory undertakers on the unregistered adopted highway and as such are not required to obtain a formal agreement with the Highway Authority for the placement of such equipment. I have no evidence to the contrary.

Planning Balance

18. In the context of Appeal A, I have had regard to the public benefits of the proposed communication hub, which in addition to a defibrillator, include free phone calls to landlines and charities, free Wi-fi, local wayfinding and charging facilities. The hub would also be powered by Green energy and lit using high-capacity batteries, powered by solar energy. The proposal would therefore not conflict with Policy JP-C2 of the Places for Everyone Joint Development Plan Document (adopted 21 March 2024), which supports the provision of high quality digital infrastructure. Nevertheless, there is no substantive evidence before me that the benefits could not be achieved through a scheme that would not be harmful for the identified reasons. Consequently, the public benefits identified only weigh moderately in favour of the proposals and do not outweigh the significant harm that I have identified to the amenity, including character and appearance of the area.
19. Notwithstanding the above, in relation to Appeal B, there is no indication in the Regulations, Framework or PPG that any other factors can be taken into account either for, or against, a proposal. The aforementioned benefits have therefore had no bearing on my decision in Appeal B.

Conclusion

Appeal A

20. Whilst I have found no harm to the strategy for defibrillators and highway safety, this does not outweigh the harm I have found to the character and appearance of the area. The proposal conflicts with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it. For the reasons given above the appeal is dismissed.

Appeal B

21. Whilst I have found no harm to public safety this does not outweigh the harm I have found to amenity. The appeal is dismissed.

H Senior

INSPECTOR