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## Appeal Decisions

Site visit made on 24 July 2024

**by R Jones BA(Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 12 August 2024**

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### **Appeal A Ref: APP/T4210/W/24/3343988**

#### **Pavement o/s 46 Haymarket, Bury BL9 0BX**

- 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 Ltd against the decision of Bury Metropolitan Borough Council.
  - The application Ref is 70422.
  - The development proposed is the installation of a multifunctional communication hub including a defibrillator and advertisement display, as illustrated in the attached documentation.
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### **Appeal B Ref: APP/T4210/H/24/3343989**

#### **Pavement o/s 46 Haymarket, Bury BL9 0BX**

- The appeal is made under Regulation 17 of the Town and Country Planning (Control of Advertisement) (England) Regulations 2007 against a refusal to grant express consent .
  - The appeal is made by In Focus Ltd against the decision of Bury Metropolitan Borough Council.
  - The application Ref is 70423.
  - The development proposed is the installation of a multifunctional communication hub including a defibrillator and advertisement display, as illustrated in the attached documentation.
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## **Decision**

1. Appeal 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. The Places for Everyone Joint Development Plan (PfE) was adopted in March 2024 by nine greater Manchester authorities, including Bury Metropolitan Borough Council. PfE policies JP-P1 and JP-P2 replace policies EN1/1 and EN2 respectively of the Bury Unitary Development Plan (1997) (UDP) referred to in the Council's decision in respect of Appeal A. The Council's Statement of Case confirmed that the adoption of the PfE would not alter their decision, and the appellant has had an opportunity to comment on this change in policy.

4. The Council has drawn my attention to UDP Policy EN1/9 in the reasons for refusal for Appeal B, and I have taken it into account as a material consideration. However, the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (the Regulations) and the National Planning Policy Framework (the Framework) makes it clear that control of advertisements may only be exercised in the interest of amenity and public safety. Consequently, UDP Policy EN1/9 has not itself been decisive in my determination of Appeal B.
5. The proposal relates to the setting of nearby listed buildings and the appeal site is within the Bury Town Centre Conservation Area. Accordingly, in relation to Appeal A, I have had regard to the statutory duties set out in Section 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act).

### **Main Issues**

6. The main issues in respect of Appeal A are the effect of the proposal on:
  - the character and appearance of the streetscene and the Bury Town Centre Conservation Area.
  - the setting of nearby Listed Buildings, and on non-designated heritage assets.
  - pedestrian safety, and the active travel aspirations of the Council.
  - the wider strategy for the need for, and provision of, defibrillators throughout the Borough.
7. The main issue in respect of Appeal B is the effect of the proposed advertisement on visual amenity and public safety.

### **Reasons**

#### *Character and appearance – both appeals*

8. The appeal site is an area of pavement, outside No.46 Haymarket, located to the north of the western entrance of the Mill Gate Shopping Centre and within the Bury Town Centre Conservation Area (the CA). Market Street (and Haymarket) are single carriageway at this point, which restricted vehicular access between 10am and 4pm, with wide pavements giving pedestrian priority. Both sides of the road are characterised by long parades of commercial premises with a mix of predominantly restaurant, café and leisure uses.
9. It is proposed to install a freestanding multi-functional communication hub measuring around 2.6m in height and 1.3m wide. The hub would provide a touch screen and defibrillator on one side and an LCD advertisement screen on the other side. The proposed hub would be sited around 3.3m from the road, broadly in line with a bollard (one of three) adjacent a pedestrian crossing. Although the appellant describes the siting of the proposed hub as within a 9.3m wide section of highway (pavement) I observed on my site visit that there is an external seating area for No.46 Haymarket (No.46) (Bap sandwich shop, and the adjoining units) which extends the depth of the canopy of the Mill Gate Shopping Centre. The width of the pavement is therefore much narrower in this location than suggested.

10. The CA covers the historic core of central Bury focusing around the junction of Market Place, Bolton Street, Silver Street and The Rock. The special interest and significance of the CA is derived, in part, from its development as a medieval market town and its groupings of Victorian and Edwardian civic and commercial buildings, arranged around, and linked by, public spaces.
11. Taken on its own, by reason of its nature and extent, the appeal site makes only a limited contribution to the character and appearance of the CA and thereby to its significance as a designated heritage asset. Nonetheless, the wider public realm in this location, notably the generous pavements, provides a sense of spaciousness which allows the surrounding townscape and large street and pavement trees to be better appreciated. This contributes positively to the character and appearance of the CA as a whole and thus to its significance as a designated heritage asset.
12. Within the immediate vicinity of the appeal site, I observed various existing street furniture, including the columns and bollards/fencing associated with the pedestrian crossing, a bin and bicycle stands. The canopy and entrance feature (within supporting columns) of the Mill Gate Shopping Centre overhangs a length of the pavement in this location, and a lighting column adjacent No.46 and information board with fingerpost sign are sited to the south of the appeal site; neither identified on the Proposed Site Plan. The proposed hub would be relatively tall and wide with a projecting canopy formed of a solid rectangular design and would markedly increase the visual presence of street furniture within the pavement; as described, already a busy space.
13. Furthermore, given its proposed siting across the pavement, so perpendicular to the road, it would reduce both visual permeability up and down Market Street and the characteristic sense of spaciousness I have described. Although it would be partially obscured by an existing pavement tree when viewed from the north, I nonetheless find the proposed hub would appear unduly prominent and incongruous in the streetscene to the detriment of the character and appearance of the CA.
14. I have identified harm to the CA as a result of the proposal. Paragraph 205 of the Framework advises that when considering the impact of a proposed development on the significance of designated heritage assets, great weight should be given to their conservation. Given the scale of the proposals relative to the CA, I find that the harm would be 'less than substantial' in this instance but, nevertheless, of considerable importance and weight. Under such circumstances, paragraph 208 of the Framework advises that this harm should be weighed against the public benefits of the proposal.
15. I recognise that the proposed communications hub would offer a range of benefits, including a defibrillator, free phone calls to landlines and charities, community messaging and rapid connection to emergency services. The hub would also be powered by green electricity and lit using high-capacity batteries, powered by solar energy. I also recognise that advertising plays an important role in a diverse and vibrant market economic, and that reliable communications is essential for economic growth and social well-being. I do not question the need for such communication systems, or that they provide a public benefit, but I am not persuaded that the delivery of these is dependent on the scheme before me. Therefore, overall, the weight that I ascribe to the

public benefits that would accrue from the proposal is not sufficient to outweigh the considerable importance and weight that I attach to the harm I have found.

16. I therefore conclude on the first main issue that, in respect of Appeal A, the proposal would fail to preserve or enhance the character and appearance of the CA, contrary to the requirements of Section 72(1) of the Act and the relevant provisions of the Framework, PfE policies JP-P1 and JP-P2 and UDP policies EN1/2, EN1/4 and EN1/10. These policies, amongst other things, seek to ensure that new development, including street furniture, is suitably located and well-designed, respects and would not have an unacceptable adverse effect on the particular character and townscape, and conserves the historic environment.
17. With regards to Appeal B, the proposal would have an unacceptable effect on the amenity of the area. The policies of the development plan have been considered as far as they are material, and in this respect, the proposal would also conflict with the above identified policies and UDP Policy EN1/9 which requires advertisements to have regard to the characteristics of the local neighbourhood.

#### *Listed Building – Appeal A*

18. The Kay monument is Grade II listed and is sited within landscaped gardens, around 70m to the south of the appeal site. Derby Hall, 18-20 Market Street and 12-16 Market Street are Grade II listed buildings, located to the north, either side of Market Street.
19. Although acknowledging the location of the listed buildings, the planning application submission did not identify the significance of these buildings and I have no evidence before me on this matter. In that they are statutorily listed, the special interest and significance will be derived, at least in part, by their historic and architectural interest as well as from their setting. I observed on my site visit that the immediate surrounding areas of public realm – notably the wide paved areas and landscaped gardens – has a visual connection to these heritage assets, as it is from that position where they are best appreciated.
20. Beyond this, I observed that the surrounding area is made up of built form and public realm of varying age, form and quality. This includes the appeal site. In this particular case, the surrounding development has altered how the various assets would have been experienced and thus has moderated the contribution the wider setting makes to its special interest and significance. There is some limited intervisibility along Market Street between the appeal site, Kay monument and those listed buildings on Market Street to the north. However, these views are filtered by trees along the pavement and the position, scale and nature of the proposed communication hub, means that the visual, function and physical relationship between the appeal site and designated heritage assets would be maintained. The historic and architectural interest of these assets would also remain unaffected.
21. For the same reason, the proposal would not affect the setting of the non-designated heritage assets identified by the Council, namely the Former George Hotel and 28-30 Haymarket.

22. I therefore conclude that, despite the absence of a Heritage Assessment in support of the proposals, the proposed communication hub would preserve the setting of the nearby designated and non-designated heritage assets, causing no harm to significance. Consequently, the proposal would accord with the requirements of Section 66(1) of the Act, the relevant provisions of PfE Policy JP-P2 and UDP Policy EN1/2. Together these seek to ensure development does not have an unacceptable adverse effect on townscape, conserves heritage assets and their setting. It would further comply with the guidance at Section 16 of the Framework in respect of conserving and enhancing the historic environment.

*Public safety – both appeals*

23. The proposed communication hub would be sited in a currently open area of pavement, close to the entrance of the Mill Gate Shopping Centre. Because of this siting and its size, around 2.6m high and 1.3m wide, it would obstruct some lines of sight along the pavement in an area busy with pedestrians using both the pedestrian crossing on Market Street and the entrance to the shopping centre. The proposed hub would also be sited in an area of the pavement which, as a result of external seating associated with No.46 Haymarket, is narrower and more constrained than suggested by the appellant.
24. However, I observed that the pavement would remain wide enough in this location so that, in practice, pedestrians could see adequately in either direction along Market Street, and there would be sufficient room to easily and safely pass the proposed hub. Even in the event of pedestrians congregating to use the proposed hub, I am therefore satisfied it would not present an obstruction to pedestrian flow or movement, including those with mobility impairment, such that it would be to the detriment of safety.
25. I note the consultation response from the Council's Head of Engineering raised concerns that the proposal would be without agreement of the Highways Authority for the placement of such equipment, and that there would be a conflict with the active travel aspirations of the Council. The appellant's evidence is that they are statutory undertakers on the unregistered adopted highway and I have no evidence to the contrary. In any event, in respect of Appeal B, a standard condition of the Regulations is that no advertisement is to be displayed without the permission of the owner of the site or any other person with an interest in the site. I have been provided with no information regarding the active travel aspirations of the Council, so I am unable to conclude on this point.
26. I therefore conclude on the third main issue that, in respect of both Appeal A and B, there would be no harm to public safety. Consequently, in respect of Appeal A, there would be no conflict with UDP policies HT6/1, HT5/1 and EN1/4 which together seek to ensure that development, including street furniture, does not interrupt main pedestrian flows and that pedestrians are able to move safely, and encourages satisfactory access to pedestrian areas for those with special needs. I do not find the provisions of UDP Policy EN1/10 relevant to this issue.
27. Finally, the proposal would not conflict with the guidance at paragraph 114 of the Framework that developments ensure that safe and suitable access can be achieved for all users.

### *Strategy for defibrillators – Appeal A*

28. The Council raise an issue that the application and submitted plans contained insufficient information to properly assess the proposal in relation to a wider strategy for the need and provision of defibrillators throughout the Borough. I have been provided no information in respect of the Council's wider strategy, but I note that the appellant is working in partnership with Community Heartbeat Trust, a registered charity that promotes greater access to defibrillators in public spaces.
29. Further, irrespective of the absence of an assessment against a strategy for provision, the benefits of early use of a defibrillator in respect of increasing the chances of surviving a heart attack, are well known. In isolation, I do not therefore find any planning harm in providing an additional defibrillator in this location; to the contrary it is a benefit of the proposal. Consequently, in itself, the proposed defibrillator does not conflict with the objectives of UDP Policy CF1/1 which supports the provision of new and improved community facilities in appropriate locations.

### **Conclusion**

#### **Appeal A**

30. The proposal would have an acceptable effect on the setting of nearby designated and non-designated heritage assets, pedestrian safety and defibrillator provision. However, this does not outweigh the harm to character and appearance that has been identified to the streetscene and Bury Town Centre Conservation Area. The appeal is therefore dismissed.

#### **Appeal B**

31. The proposal would be acceptable in terms of public safety but this does not outweigh the harmful effect it would have on visual amenity. The appeal is therefore dismissed.

*R. Jones*

INSPECTOR