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## Appeal Decision

Site visits made on 16 May 2019

**by Nigel McGurk BSc(Hons) MCD MBA MRTPI**

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

**Decision date: 30<sup>th</sup> May 2019**

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### **Appeal A Ref: APP/Z4310/W/18/3205017**

#### **Whitechapel (Outside No. 35 Metquarter), Liverpool, L1 6DZ**

- 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 British Telecommunications PLC against the decision of Liverpool City Council.
  - The application Ref 18F/0579, dated 26 February 2018, was refused by notice dated 23 April 2018.
  - The development proposed is the removal of (2) existing BT payphones and the erection of (1) freestanding InLink providing free ultrafast WiFi and other community services and with excess space returned to the community.
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### **Appeal B Ref: APP/Z4310/H/18/3205013**

#### **Whitechapel (Outside No. 35 Metquarter), Liverpool, L1 6DZ**

- 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 British Telecommunications PLC against the decision of Liverpool City Council.
  - The application Ref 18A/0580, dated 26 February 2018, was refused by notice dated 23 April 2018.
  - The development proposed is two digital LED display screens, one on each side of the InLink.
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### **Appeal C Ref: APP/Z4310/W/18/3205151**

#### **Whitechapel (Outside No.20 Lobster Pot), Liverpool, L1 6DZ**

- 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 British Telecommunications PLC against the decision of Liverpool City Council.
  - The application Ref 18F/0629, dated 26 February 2018, was refused by notice dated 23 April 2018.
  - The development proposed is the removal of (2) existing BT payphones and the erection of (1) freestanding InLink providing free ultrafast WiFi and other community services and with excess space returned to the community.
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### **Appeal D Ref: APP/Z4310/H/18/3205152**

#### **Whitechapel (Outside No.20 Lobster Pot), Liverpool, L1 6DZ**

- 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 British Telecommunications PLC against the decision of Liverpool City Council.

- The application Ref 18A/0630, dated 26 February 2018, was refused by notice dated 23 April 2018.
  - The development proposed is two digital LED display screens, one on each side of the InLink.
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**Appeal E Ref: APP/Z4310/W/18/3205429**

**Hardman Street (Outside No.24 Old Blind School), Liverpool, L1 9AS**

- 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 British Telecommunications PLC against the decision of Liverpool City Council.
  - The application Ref 18F/0612, dated 26 February 2018, was refused by notice dated 26 April 2018.
  - The development proposed is the removal of (2) existing BT payphones and the erection of (1) freestanding InLink providing free ultrafast WiFi and other community services and with excess space returned to the community.
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**Appeal F Ref: APP/Z4310/H/18/3205424**

**Hardman Street (Outside No.24 Old Blind School), Liverpool, L1 9AS**

- 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 British Telecommunications PLC against the decision of Liverpool City Council.
  - The application Ref 18A/0613, dated 26 February 2018, was refused by notice dated 26 April 2018.
  - The development proposed is two digital LED display screens, one on each side of the InLink.
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**Decisions:**

**Appeal A**

1. The appeal is dismissed.

**Appeal B**

2. The appeal is dismissed.

**Appeal C**

3. The appeal is allowed and planning permission is granted for the removal of (2) existing BT payphones and the erection of (1) freestanding InLink providing free ultrafast WiFi and other community services and with excess space returned to the community at Whitechapel (Outside No.20 Lobster Pot), Liverpool, L1 6DZ in accordance with the terms of the application, Ref 18F/0629, dated 26 February 2018, subject to the conditions set out in the attached schedule.

**Appeal D**

4. The appeal is allowed and express consent is granted for two digital LED display screens, one on each side of the InLink as applied for. The consent is
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for five years from the date of this decision and is subject to the five standard conditions set out in the Regulations and the additional conditions set out in the attached schedule.

### **Appeal E**

5. The appeal is dismissed.

### **Appeal F**

6. The appeal is dismissed.
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### **Procedural Matters**

7. I note that Appeals A, B, C and D relate to sites that are located within the Liverpool Maritime Mercantile World Heritage Site (WHS); within the Castle Street Conservation Area; and within the setting of a Listed Building. Further, Appeals E and F relate to a site within the Canning Conservation Area; within the setting of Listed Buildings; and within the WHS Buffer Zone.
8. According to statute, Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of these areas. National planning policy, as set out in the Framework, states that when considering the impact of a proposal on the significance of designated heritage assets, great weight should be given to the asset's conservation and that significance can be harmed or lost through development within their setting.
9. The proposals include the removal of existing payphones. Whilst this would result in the freeing up of space and the removal of old-fashioned and generally unattractive features, if the payphones are no longer being frequently utilised they could be removed notwithstanding the applications the subject of these appeals. Thus, whilst I have taken into account the fact that the removal of payphones would help to keep street furniture to a minimum and that this is a positive factor, it does not, in any of the cases before me, amount to such a benefit that it outweighs the identified harm arising.

### **Main Issues**

10. In its reasons for refusal, the Council draws attention to the location of the appeal sites within the WHS, or its Buffer Zone; and within Conservation Areas and states that each of the proposals subject to each Appeal would be harmful to visual amenity. It also considers that each proposal would be harmful to the setting of one or more Listed Buildings; and that the proposals the subject of Appeals A, B, E and F would be harmful to highway and/or pedestrian safety.
11. Taking all matters into account, I consider that the main issues for Appeal A are whether the proposal would preserve or enhance the WHS and the setting of the Grade II Listed Building 45 Whitechapel and 19 to 23 Sir Thomas Street; its effect on the character and appearance of the Castle Street Conservation Area (CSCA); and its effect on highway and pedestrian safety.
12. For Appeal B, the main issues comprises the effect that the proposal would have on visual amenity and, thus, the character and appearance of the area,

having regard to the WHS, the setting of Grade II Listed Buildings and the CSCA; and its effect on public safety, with regards to vehicular traffic.

13. The main issues for Appeal C are whether the proposal would preserve or enhance the WHS and the setting of the Grade II Listed Building, 45 Whitechapel and 19 to 23 Sir Thomas Street; and the effect of the proposals on the character and appearance of the CSCA. For Appeal D, the main issue is the effect that the proposal would have on visual amenity and, thus, the character and appearance of the area, having regard to the WHS, the setting of Grade II Listed Buildings and the CSCA.
14. The main issues for Appeal E are whether the proposal would preserve or enhance the setting of the Grade II\* Listed Buildings, the Philharmonic Dining Room and the Philharmonic Hall, and the Grade II Listed Building, the Former Royal School for the Blind; the effect of the proposal on the character and appearance of the Canning Conservation Area (CCA) and the WHS Buffer Zone; and its effect on highway safety.
15. For Appeal F, the main issues are the effect that the proposal would have on visual amenity and, thus, the character and appearance of the area, having regard to the CCA, the setting of Grade II\* and II Listed Buildings and the WHS Buffer Zone; and its effect on public safety, with regards to vehicular traffic.

## **Reasons**

### *Background*

16. The appeals relate to proposals for the removal of telephone kiosks and their replacement with a freestanding InLink, together with advertisement screens at sites in Liverpool city centre.
17. The design of each of the InLinks proposed would be the same, comprising a modern free-standing structure with digital advertising display screens to two sides and a user interface panel to the side. The main casing of the proposed unit would be aluminium and the advertising displays would have front tempered and laminated glass. The proposed interface panels and vent areas would be painted powder-coated aluminium.
18. The dimensions of each Inlink would be around 0.79m wide by 0.28m deep at ground level, and around 0.89m wide by 0.28m deep at the top of the unit. Each InLink would reach a height of approximately 2.89m. The proposed advertisements would largely be located within the top half of each InLink.

### *Appeals A and B*

19. The appeal site is located within a largely pedestrianised area of Liverpool city centre, with restricted access to mainly service vehicles,. Whitechapel in this location is a major shopping street, with ground floor access to retailers, including the Metquarter shopping centre, the pedestrian entrance to which is close to the appeal site.
20. The appeal site is located in the Canning Street Conservation Area (CSCA), which includes part of Liverpool's civic and commercial centre and is characterised by the presence of grand buildings indicative of the city's mercantile wealth and trading links. The site also appears within the setting of

the Grade II Listed 45 Whitechapel and 19 to 23 Sir Thomas Street, a three storey high building with a canted corner bay, with further bays either side facing Whitechapel and Sir Thomas Street.

21. The site lies within the WHS, which has Outstanding Universal Value (OUV) because: Liverpool played a leading role in the development of dock construction, port management and international trading systems during the 18<sup>th</sup> and 19<sup>th</sup> centuries; the building and structures of the port and the city are an exceptional testimony to mercantile culture; and Liverpool played a major role in influencing globally significant demographic changes during the 18<sup>th</sup> and 19<sup>th</sup> centuries through its involvement in the trans-Atlantic slave trade and its role as the leading port of mass European emigration to the New World.
22. I also noted during my site visit that the appeal site is located close to two low “wave-design” benches, as well as to a waste bin, an advertising pole and a lamp-post. Whilst the pole and lamp-post comprise tall features, they are generally slim and together with the benches, form a part of a regular rhythm of tall slim columns and low benches along Whitechapel, which appears as a largely open and spacious street.
23. The proposed InLink would be off-set to one side of these features and as such, its siting would disturb this identified sense of rhythm. I find that the harm arising from this would be exacerbated as a result of the incongruous dimensions of the proposal, such that its height and width would fail to reflect either the low height of the benches, or the slim columns of the poles and lamp-posts.
24. Further to the above, I find that the proposed In-Link would combine with the nearby waste bin, benches, pole and lamp-post to afford this area of Whitechapel a particularly cluttered appearance. I consider that this would detract from Whitechapel’s open and spacious qualities, to the detriment of the character and appearance of the CSCA.
25. As an alien feature, the proposed InLink would also serve to draw attention to itself and away from the grand façade of the nearby Listed Building at the corner of Whitechapel and St Thomas Street. The impacts of this would be made more significant as a result of the proposed advertisements, the very purpose of which would be to draw attention to themselves. The large LED panels would appear at a height directly in line with the vision of passers-by and would draw the eye to such an extent that they would appear as unduly dominant features.
26. The wide, open and spacious nature of Whitechapel in this location means that the proposed InLink would be unlikely to obstruct pedestrian movements and the largely pedestrianised nature of the street means that there would be no significant harm to highway safety. However, the absence of harm in respect of pedestrian and highway safety is not a factor which mitigates the harm identified above.
27. Taking the above into account, I find that the proposed InLink would harm the character and appearance of the CSCA and that it would fail to preserve the WHS or the setting of a Grade II Listed Building. This would be contrary to the

National Planning Policy Framework (NPPF) and to UDP<sup>1</sup> Policies HD5, HD14, HD18 and HD27, which together amongst other things, seek to protect local character.

28. The harm arising would be localised and in respect of the significance of the heritage assets as a whole, would be less than substantial. Public benefits may arise from the proposal in terms of providing accessibility to InLink for people with limited mobility, including wheelchair users. However, in this case, this does not amount to something that outweighs the harm to heritage assets identified.
29. The proposed advertisements would harm visual amenity having regard to the WHS, a Grade II Listed Building and the CSCA.
30. Taking the above into account, Appeals A and B are dismissed.

#### *Appeals C and D*

31. Like the site for Appeals A and B, the appeal site is located along Whitechapel, a major shopping street in Liverpool city centre and within a largely pedestrianised area, with restricted access to mainly service vehicles.
32. The site lies within the WHS and is located within the Canning Street Conservation Area (CSCA), which includes part of Liverpool's civic and commercial centre. It is characterised by the presence of grand buildings indicative of the city's mercantile wealth and trading links. Whilst the Council considers that the site also appears within the setting of the Grade II Listed 45 Whitechapel and 19 to 23 Sir Thomas Street, a three storey high building with a canted corner bay, with further bays either side facing Whitechapel and Sir Thomas Street, I observed during my site visit that this building is some considerable distance away from the appeal site.
33. This considerable distance, along with the presence of many large buildings in between the appeal site and the Grade II Listed Building, along with many advertisements and much street furniture, means that the appeal site does not appear, to any degree of significance, within the setting of 45 Whitechapel and 19 to 23 Sir Thomas Street. Rather, from the appeal site, it is the large, modern Metquarter shopping centre that dominates Whitechapel as one looks along the street in the direction of the Listed Building.
34. The Council also states that the appeal site appears within the setting of the Grade II\* Listed Landmark Museum, which does not appear to be the case and there is no substantive evidence before me to the contrary.
35. During my site visit, I observed the appeal site to be located amongst a small cluster of street paraphernalia, including cycle racks, a map post of similar dimensions to the proposed InLink, a lamp-post with highway signs, a waste bin and bollards.
36. The proposed InLink would be located more or less in-line with the cycle racks, the map post, the lamp-post and the waste bin. Furthermore, its dimensions and appearance would to some considerable degree, mirror the appearance of the map post. Consequently, the proposal would not appear out of place, but

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<sup>1</sup> The City of Liverpool Unitary Development Plan (2002).



would be in keeping with adjacent street furniture. The generally in-line siting of the InLink, combined with its modern appearance and the presence of a comfortable space between the nearby lamp-post and bin, would mean that its addition to this part of Whitechapel would not result in any unduly cluttered effect.

37. Further to the above, the proposed advertisements would, I find, appear comfortable and appropriate alongside the plethora of advertisements associated with the surrounding commercial establishments. The clean lines and modern appearance of the InLink and the LED advertising screens would complement and enhance this particular part of Whitechapel.
38. As a consequence of the above, the proposals would preserve the WHS and would not harm the character and appearance of the CSCA. There would be no harm to the setting of any Listed Buildings.
39. Consequently, the proposed InLink would preserve the WHS and would not harm the character and appearance of the CSCA. There would be no impact on the setting of a Grade II Listed Building. The proposal would not be contrary to the National Planning Policy Framework (NPPF) or to UDP<sup>2</sup> Policies HD5, HD14, HD18 and HD27, which together amongst other things, seek to protect local character.
40. The proposed advertisements would not harm visual amenity having regard to the WHS, Grade II Listed Buildings and the CSCA.
41. For the reasons given above, Appeals C and D are allowed.

#### *Appeals E and F*

42. The appeal site is located along the pavement outside the Former Royal School for the Blind, a Grade II Listed Building; it is also located on the opposite side of Hardman Street to the Grade II\* Listed Philharmonic Dining Room; and on the opposite side of Hope Street to the Grade II\* Listed Philharmonic Hall.
43. The site is located within the Canning Conservation Area (CCA), characterised in this location by the presence of significant landmark buildings along wide roads and set back behind pavements. The site also falls within the WHS Buffer Zone.
44. The Grade II Listed Former Royal School for the Blind has a grand frontage to Hardman Street comprising 13-bays with a carved plinth and entablatures above the ground and first floors, the elevation being faced with Bath Stone. The Grade II\* Philharmonic Dining Room is an 1898 building of Exuberant Free Style, with stepped gables, turrets and a balustraded parapet. The Grade II\* Philharmonic Hall is a largely three storey fawn brick building influenced by Dutch expressionism. Together, the three buildings exude a very strong sense of Liverpool's built heritage.
45. During my site visit, I observed the appeal site to be located within an area of paving, close to Hardman Street and within the setting of each of the three Listed Buildings identified above. The width of the pavement in this area combines with a large gap in between a post box and a waste bin to provide for

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<sup>2</sup> The City of Liverpool Unitary Development Plan (2002).

an open and spacious area. The generally low heights of both the waste bin and the post box, along with the post box's traditional appearance, means that this part of Hardman Street appears largely uncluttered. This provides for a sense of openness that helps to provide for the appreciation of the surrounding architecture, with landmark buildings appearing within spacious surroundings, largely unfettered by the presence of excessive street clutter, or unduly dominant or obtrusive features.

46. The proposed InLink would be located between the post box and the waste bin in a prominent pavement location adjacent to Hardman Street. As a consequence, it would reduce the open and spacious qualities of this part of the pavement. It would introduce a structure considerably taller and wider than either the post box or the waste bin and this would result in the InLink drawing attention to itself as an incongruous feature. Further, the InLink would have the effect of combining with the post box and waste bin to result in this part of Hardman Street appearing unduly cluttered with street furniture.
47. The harm arising from the above would be exacerbated as a result of the proposed advertisements drawing the eye as a result of the introduction of large LED panels at eye level, where no such features exist. As a consequence, the InLink and the proposed advertisements would appear as unduly dominant features.
48. The effect of the above would be to draw attention away from the magnificent heritage around the appeal site and this would be to the significant harm of the setting of the identified Listed Buildings, as well as to the character and appearance of the CCA and the WHS Buffer Zone.
49. Further to the above, I consider that the proposed InLink and advertisements would, due to their prominent appearance adjacent to the road, inevitably draw the eye of road users as they make their way along Hardman Street. This would occur very close to the busy junction of Hardman Street and Hope Street, which includes traffic lights and a pedestrian crossing. I find that this runs the risk of distracting both driver and pedestrian attention, resulting in a potential danger to highway users. In this regard, I note that the presence of parking bays alongside Hardman Street close to the appeal site would not prevent the InLink and advertisements being seen over and above parked cars.
50. Taking all of the above into account, I find that the proposed InLink would harm the character and appearance of the CCA and that it would harm the setting associated with the WHS and the setting of Grade II and Grade II\* Listed Buildings. This would be contrary to the National Planning Policy Framework (NPPF) and to UDP<sup>3</sup> Policies HD5, HD14, HD18 and HD27, which together amongst other things, seek to protect local character. It would also harm highway safety, contrary to the NPPF and to UDP Policies HD19, GEN6, GEN9, T8 and T9, which together amongst other things, seek to protect highway safety.
51. The harm arising would be localised and in respect of the significance of the heritage assets as a whole, would be less than substantial. Public benefits may arise from the proposal in terms of providing accessibility to InLink for people with limited mobility, including wheelchair users. However, in this case, this

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<sup>3</sup> The City of Liverpool Unitary Development Plan (2002).



does not amount to something that outweighs the harm to heritage assets identified.

52. The proposed advertisements would harm visual amenity, having regard to the CCA, identified Listed Buildings and the WHS Buffer Zone; and would harm public safety, having regard to pedestrian safety.

53. Appeals E and F are dismissed.

### **Conclusions and conditions**

54. I conclude that, for the reasons given above and having regard to all matters raised, Appeals A, B, E, and F should fail; whilst Appeals C and D should succeed.

55. In respect of Appeal C, I have had regard to the planning conditions suggested by the Council. A condition relating to the submitted plans is required for the avoidance of doubt. A condition to provide for the removal of the existing telephone kiosks and the making good of the land; and a condition to provide for the removal of the InLink when it is no longer required and the making good of the land is required in the interest of local character. A condition requiring an approved operational strategy is required in the interests of public amenity. A condition limiting the operation of the development is required in the interests of local character.

56. In respect of Appeal D, I have also had regard to the planning conditions suggested by the Council. Conditions are required to control advertisement illuminance levels and to prevent advertisements appearing intermittent to avoid harmful glare or dazzle. For the same reasons, conditions are required to ensure that the display only shows two-dimensional static images and limits the frequency of changes to the displays.

*N McGurk*

INSPECTOR

### **SCHEDULES OF CONDITIONS**

#### **Appeal C**

1) The development hereby permitted shall begin no later than 3 years from the date of this decision.

2) The development hereby permitted shall be carried out in accordance with the following approved plans: LVP-087 Site Plan; LVP-087 Site Elevation; LVP-087-EP-V1 Existing and proposed.

3) The area of highway/land on which the existing telephone kiosks to be removed currently sits and on which the new InLink structure to be installed would be located, shall be reinstated/made good following both the removal of the telephone

kiosk and the installation of the InLink in accordance with a scheme that shall be submitted to and approved in writing by the City Council as Local Planning Authority before the development commences. The development shall be carried out in accordance with the approved details. For the avoidance of doubt, the InLink hereby approved shall only be installed following the removal of the telephone kiosks which it would be replacing.

4) The development hereby approved shall be removed from the land on which it is situated as soon as it is no longer required for the purposes of the approved development and the land shall be made good using materials which shall be submitted to and approved in writing by the City Council as Local Planning Authority before the removal of the InLink. The development shall be carried out in accordance with the approved details.

5) The permission hereby granted is for the installation of 1 no. 2.9m high InLink structure, to be operated in accordance with the details set out in the submitted Planning, Design and Access Statement (ref - LVP-033), and for no other purposes, including the installation and operation of any cameras.

6) Before the development commences, a management, maintenance and operational strategy must be submitted to and approved in writing by the City Council as Local Planning Authority. The strategy must include details of: inspection regimes; repair and maintenance timescales and methodologies; upgrade strategy; data collection and protection measures; and a privacy impact statement. The development shall be carried out in accordance with the approved details.

### **Appeal D**

1) The levels of the illuminance shall not exceed 600cd/m<sup>2</sup> during daylight hours or exceed 300cd/m<sup>2</sup> during twilight and night hours; as defined by official lighting up times.

2) The screen displays shall only show two dimensional static images, shall contain no moving images, animation, video or full motion images and no messaging should spread across more than one screen image.

3) The advertisement displays shall not change more frequently than every 10 seconds and the rate of change should be instantaneous.

4) The illumination of the advertisements shall not at any time be intermittent.

END OF SCHEDULES