

## Appeal Decisions

Site visits made on 14 September 2016

**by C J Ford BA (Hons) BTP Dist. MRTPI**

**a person appointed by the Secretary of State for Communities and Local Government**

**Decision date: 27 October 2016**

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### **Appeal A Ref: APP/N4720/Z/16/3151296**

#### **Pavement outside Leeds Bus Station, New York Street, Leeds LS2 7DY**

- The appeal is made under Regulation 17 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 ('the Regulations'), against a refusal to grant express consent.
- The appeal is made by Mr Derek Parkin (Infocus Public Networks Ltd) against the decision of Leeds City Council.
- The application Ref 16/00128/ADV, dated 5 January 2016, was refused by notice dated 3 March 2016.
- The proposal is described as "illumination of a six sheet display which already enjoys non-illuminated deemed consent".

The following appeals have also been made by the same appellant, for identical proposals, against decisions of the same local planning authority.

### **Appeal B Ref: APP/N4720/Z/16/3151315**

#### **Pavement opposite 7 Kirkgate, Leeds LS1 6BZ**

- The application Ref 16/00129/ADV, dated 5 January 2016, was refused by notice dated 3 March 2016.

### **Appeal C Ref: APP/N4720/Z/16/3151316**

#### **Pavement outside 22-26 The Headrow, Leeds LS1 8EQ**

- The application Ref 16/00130/ADV, dated 5 January 2016, was refused by notice dated 3 March 2016.

### **Appeal D Ref: APP/N4720/Z/16/3151319**

#### **Pavement outside The Core Shopping Centre, The Headrow, Leeds LS1 6JD**

- The application Ref 16/00132/ADV, dated 5 January 2016, was refused by notice dated 3 March 2016.

### **Appeal E Ref: APP/N4720/Z/16/3151331**

#### **Pavement corner of South Parade and Park Row, Leeds, LS1 5QB**

- The application Ref 16/00134/ADV, dated 5 January 2016, was refused by notice dated 3 March 2016.

### **Appeal F Ref: APP/N4720/Z/16/3151336**

#### **Pavement outside 28 New Briggate, Leeds LS1 6NU**

- The application Ref 16/00139/ADV, dated 5 January 2016, was refused by notice dated 3 March 2016.

### **Appeal G Ref: APP/N4720/Z/16/3151337**

#### **Pavement outside/adjacent 1 Bond Court, Leeds LS1 2JZ**

- The application Ref 16/00143/ADV, dated 5 January 2016, was refused by notice dated 3 March 2016.
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## **Decisions**

### **Appeal A Ref: APP/N4720/Z/16/3151296**

#### **Pavement outside Leeds Bus Station, New York Street, Leeds LS2 7DY**

1. The appeal is allowed and express consent is granted for the display of the advertisement, as applied for. The consent is for five years from the date of this decision and is subject to the five standard conditions set out in the Regulations.

### **Appeal B Ref: APP/N4720/Z/16/3151315**

#### **Pavement opposite 7 Kirkgate, Leeds LS1 6BZ**

2. The appeal is allowed and express consent is granted for the display of the advertisement, as applied for. The consent is for five years from the date of this decision and is subject to the five standard conditions set out in the Regulations.

### **Appeal C Ref: APP/N4720/Z/16/3151316**

#### **Pavement outside 22-26 The Headrow, Leeds LS1 8EQ**

3. The appeal is allowed and express consent is granted for the display of the advertisement, as applied for. The consent is for five years from the date of this decision and is subject to the five standard conditions set out in the Regulations.

### **Appeal D Ref: APP/N4720/Z/16/3151319**

#### **Pavement outside The Core Shopping Centre, The Headrow, Leeds LS1 6JD**

4. The appeal is dismissed.

### **Appeal E Ref: APP/N4720/Z/16/3151331**

#### **Pavement corner of South Parade and Park Row, Leeds, LS1 5QB**

5. The appeal is dismissed.

### **Appeal F Ref: APP/N4720/Z/16/3151336**

#### **Pavement outside 28 New Briggate, Leeds LS1 6NU**

6. The appeal is allowed and express consent is granted for the display of the advertisement, as applied for. The consent is for five years from the date of this decision and is subject to the five standard conditions set out in the Regulations.

### **Appeal G Ref: APP/N4720/Z/16/3151337**

#### **Pavement outside/adjacent 1 Bond Court, Leeds LS1 2JZ**

7. The appeal is allowed and express consent is granted for the display of the advertisement, as applied for. The consent is for five years from the date of this decision and is subject to the five standard conditions set out in the Regulations.

## **Preliminary Matters**

8. The appeals all relate to telephone kiosks which currently have double-sided non-illuminated advertisements that form a flank to the structures; one side facing outwards and the other inwards. The proposal in each case is to replace the outward facing side with an internally illuminated display.
9. The description of the proposals in the header above is taken from the original application forms. However, where a kiosk is located within the Central Area - Leeds City Centre Conservation Area (CA), the notion that the existing non-illuminated outward facing display already enjoys deemed consent is inaccurate. As is acknowledged in the appellant's appeal statement, the Regulations prohibit deemed consent for such telephone kiosk displays in CAs.
10. Therefore, where a kiosk is located within the CA and accordingly the existing display does not benefit from deemed consent, the principle of the advert, including its proposed internal illumination, is at issue in the appeal.
11. In respect of the kiosks that are located outside of the CA, the appellant specifies that the existing adverts have been in position since the kiosks were erected in 2013. Within that time, the Council has not reportedly sought to take discontinuance action or expressed an intention to do so, despite some of the kiosks being in locations where public realm enhancement and de-cluttering programmes have recently taken place.
12. Consequently, irrespective of the outcome of the appeals, where the kiosks are located outside of the CA, the existing outward facing non-illuminated adverts would benefit from deemed consent under the Regulations and continue to be displayed. The main consideration in those cases is therefore the effect of the proposed internal illumination.
13. The parties have drawn attention to Development Plan policies and parts of the National Planning Policy Framework ('the Framework'), Planning Practice Guidance and local design guidance which they consider are pertinent to the appeals. In particular, it is noted that Policy BD8 of the Leeds Unitary Development Plan Review (2006) specifies that all signs must be sensitively located within the street scene, whilst Policy GP5 sets out that proposals should seek to promote the prevention of crime. The policies and guidance have been taken into account, so far as they are material.

## **Appeal A: Pavement outside Leeds Bus Station, New York Street, Leeds LS2 7DY**

### **Main Issue**

14. The main issue is the effect of the proposal on public safety.

### **Reasons**

15. The Council consider the kiosk to be located in an area with low footfall and identified as high risk for thefts during the evening/night-time periods.
16. Whilst the area experiences comparatively lower footfall than those kiosks which are located within the retail heart of the City Centre, the adjoining street is nevertheless a significant thoroughfare. The kiosk's close proximity to the southern entrance of Leeds City Bus Station and a large bus shelter would

ensure there is a fairly high degree of public activity nearby, into the late hours. West Yorkshire Police's desire to see natural surveillance can be reconciled with the kiosk being open or transparent on three sides and the public views this affords within the characteristically wide and open street scene.

17. Notwithstanding this, the effect of the proposal is the addition of internal illumination to the existing outward facing display, which has deemed consent. The illumination would, to a certain degree, make the area feel safer. Consequently, it is concluded the proposal would not have an unacceptably harmful effect on public safety and would not conflict with Policy GP5 or the Framework. The appeal is therefore allowed.

### **Appeal B: Pavement opposite 7 Kirkgate, Leeds LS1 6BZ**

#### **Main Issue**

18. The main issue is the effect of the proposal on the visual amenity of the area.

#### **Reasons**

19. The kiosk is located in a busy pedestrianised street. The Council state it is close to but outside the boundary of the City Centre CA. The street is lined by buildings which predominantly have shop window displays at the ground floor level. A freestanding double-sided digital display panel has recently been erected a short distance to the east of the kiosk.
20. The effect of the proposal is the addition of internal illumination to the existing outward facing advertisement display, which has deemed consent. The Council note that the kiosk is located in front of a blank elevation to the adjacent retail unit. As that elevation is faced with black tiles at ground floor level, the proposed illumination would positively lift an existing dull element of the street scene. In the context of the existing internally illuminated shop windows and advertisements in the surrounding area, the proposal would not be detrimental to setting of the CA or the visual amenity of the area. Accordingly, it would not conflict with relevant policies and guidance. The appeal is therefore allowed.

### **Appeal C: Pavement outside 22-26 The Headrow, Leeds LS1 8EQ**

#### **Main Issue**

21. The main issue is the effect of the proposal on the visual amenity of the area.

#### **Reasons**

22. The kiosk is located in Dortmund Square which the Council explain is a recently improved public space. It has been de-cluttered of street furniture and fixtures in order to improve pedestrian permeability. The boundary of the City Centre CA runs along the centre of The Headrow, to the south.
23. Notwithstanding the recent improvements, the kiosk has been erected under permitted development rights and the existing outward facing display has deemed consent. The effect of the proposal is therefore the addition of internal illumination to the advertisement.

24. The square is a busy pedestrianised area which forms a walkway to the St Johns indoor shopping centre and adjoining streets. The buildings that form the sides to the square incorporate retail premises at ground floor level. The kiosk is orientated such that the proposed display would primarily be viewed against a backdrop of the tall windows of the retail unit and its internal illumination on the eastern side of the square. In this commercial context, the proposal would not be detrimental to the visual amenity of the area or harm the setting of the nearby CA. It would not conflict with relevant policies and guidance. The appeal is therefore allowed.

### **Appeal D: Pavement outside The Core Shopping Centre, The Headrow, Leeds LS1 6JD**

#### **Main Issue**

25. The main issue is the effect of the proposal on the visual amenity of the area.

#### **Reasons**

26. Whilst the appellant is of the view that the kiosk is not located within the City Centre CA, the map provided by the Council shows the CA boundary running along the centre of The Headrow at this point. The kiosk's siting on the south side of the street places it within the CA. Consequently, the existing outward facing advertisement display does not benefit from deemed consent and in determining the appeal, it is necessary to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA.
27. The character of this part of the CA is distinctly commercial with shop windows at ground floor level facing onto The Headrow. However, the pavement running in front of the shops is a key pedestrian thoroughfare and it is evident that works have taken place to create a high quality public realm. Such works include a long raised brick planter containing soft landscaping. The visual natural relief provided by the planter makes a positive contribution to the character and appearance of the area.
28. The kiosk is sited close up to the western end of the planter. In its permitted form, namely without the existing double-sided advertisement, the primarily clear glazed structure would enable views through it. With the advertisement display in place, that transparency is lost and pedestrians approaching from the west are able to discern little of the soft landscaping. In these views the advert, which would be emphasised by the proposed internal illumination, is an unduly dominant feature that undermines the positive contribution that the planter makes to the character and appearance of the area.
29. Moreover, in long views along The Headrow, there is an appreciable high degree of existing street furniture, many with sizeable advertisements attached. In this context, the kiosk display results in an over proliferation of signage and visual clutter.
30. In light of the above, it is concluded that the proposal would have an unacceptably harmful effect on the visual amenity of the area. It would fail to preserve or enhance the character or appearance of the CA. The proposal would conflict with relevant policies and guidance.

31. It is understood the advertisement generates revenue to cover the cost of installing and maintaining a public payphone facility. It is also understood the kiosk structure has been designed to be wheelchair accessible. Nevertheless, advertisements are subject to control only in the interests of amenity and public safety. The conclusion on the former is determinative in this case. In any event, there is an existing public payphone facility located a short distance beyond the eastern end of the planter which is similarly wheelchair accessible, albeit with higher call charges. The appeal is therefore dismissed.

### **Appeal E: Pavement corner of South Parade and Park Row, Leeds, LS1 5QB**

#### **Main Issue**

32. The main issue is the effect of the proposal on the visual amenity of the area.

#### **Reasons**

33. The kiosk occupies a prominent position close to the street corner and stands alongside the northern elevation of the Grade II listed Royal Bank of Scotland building. Sovereign House on the opposite side of South Parade is likewise Grade II listed, as are the buildings on the opposite side of Park Row. Consequently, the kiosk is effectively surrounded by listed buildings, all of which have fine architectural detailing.
34. The high quality of the buildings similarly extends to the wider public realm. There is little street furniture, fixtures and general clutter. The kiosk stands out as an exception to this with the existing outward facing advertisement display, which has deemed consent, appearing overtly large in comparison to the appreciably restrained signage attached to the surrounding buildings.
35. Owing to a combination of its prominent positioning, its comparatively large size and the emphasis that would be brought about by its illumination, the proposed display would appear as an unduly dominant and obtrusive feature. It would be significantly at odds with and detract from the high quality public realm in which it is situated and be harmful to the setting of the nearby designated heritage assets, in particular the neighbouring Royal Bank of Scotland building.
36. In light of the above, it is concluded the proposal would have an unacceptably harmful effect on the visual amenity of the area and its detrimental impact could not be overcome by the imposition of conditions. The proposal would conflict with relevant policies and guidance. The appeal is therefore dismissed.

### **Appeal F: Pavement outside 28 New Briggate, Leeds LS1 6NU**

#### **Main Issues**

37. The main issues are:

- i) The effect of the proposal on the visual amenity of the area.
- ii) The effect of the proposal on public safety.

#### **Reasons**

##### *Visual Amenity*

38. On the opposite side of the street to the kiosk there is the stone boundary wall and gateway to the Grade I listed St John's Church and churchyard. Adjoining the eastern side of the churchyard is a terrace that faces New Briggate. The ground floor of the terrace is occupied by commercial units which have a proliferation of fascia and other signage. There are also a number of bus shelters in front of the terrace with attached advertisements. Given the physical separation and the commercial context described above, the proposed illumination of the outward facing display to the kiosk would not be harmful to the setting of the church and its environs.
39. Likewise, the illumination would not be harmful to the setting of the Grade II\* listed Grand Theatre. The kiosk adjoins a street block located to the south of the theatre and would primarily be viewed against the glazed front elevation of a restaurant. It is understood that a review of the City Centre CA boundary is being undertaken and the area will be designated part of the CA at some point in the near future. Nevertheless, the appeal must be determined in accordance with the present circumstances. Accordingly, the proposal would not be detrimental to the visual amenity of the area and it would not conflict with relevant policies and guidance in this regard.

#### *Public Safety*

40. The Council consider the kiosk to be located in an area with low footfall and identified as high risk for thefts during the evening/night-time periods.
41. Whilst the area experiences comparatively lower footfall than those kiosks which are located within the retail heart of the City Centre, New Briggate is nevertheless a significant thoroughfare. The kiosk's close proximity to The Grand Theatre and a number of bus shelters would ensure there is a fairly high degree of public activity nearby, into the late hours. West Yorkshire Police's desire to see natural surveillance can be reconciled with the kiosk being open or transparent on three sides and the public views this affords within the fairly wide and open street scene.
42. Notwithstanding this, the effect of the proposal is the addition of internal illumination to the existing outward facing display, which has deemed consent. The illumination would, to a certain degree, make the area feel safer. Consequently, it is concluded the proposal would not have an unacceptably harmful effect on public safety and would not conflict with Policy GP5 or the Framework. The appeal is therefore allowed.

### **Appeal G: Pavement outside/adjacent 1 Bond Court, Leeds LS1 2JZ**

#### **Main Issues**

43. The main issues are:
- i) The effect of the proposal on the visual amenity of the area.
  - ii) The effect of the proposal on public safety.

#### **Reasons**

##### *Visual Amenity*

44. The kiosk is located within part of Bond Court where the character and appearance of the buildings that align the northern and southern sides are distinctly different. The southern side comprises finely detailed historic Grade II listed buildings. In contrast, the single building on the northern side is more modern and has large windows to a commercial unit at the ground floor level. This distinction is seemingly recognised and emphasised by a change in the colour and materials of the walkway surface on one side of the street compared to the other.
45. The kiosk is positioned slightly off-centre in the street, towards the north. It is therefore more closely associated with the large modern building and the association is visually reinforced by the respective underlying street surface.
46. It is understood that Bond Court has recently been de-cluttered of street furniture and fixtures to improve pedestrian permeability. However, the kiosk has been erected under permitted development rights and the existing outward facing display has deemed consent. The effect of the proposal is therefore the addition of internal illumination to the advertisement. Given the close association with the modern building to the north, in particular its large ground floor windows that will be illuminated from inside the commercial unit, the proposal would not be detrimental to the visual amenity of the area or harmful to the setting of the listed buildings to the south. It would not conflict with relevant policies and guidance in this regard.

#### *Public Safety*

47. The Council consider the kiosk to be located in an area with low footfall and identified as high risk for thefts during the evening/night-time periods.
48. Whilst the area experiences comparatively lower footfall than those kiosks which are located within the retail heart of the City Centre, it is nevertheless a significant and well used thoroughfare. Indeed, the Council's first reason for refusal acknowledges that it is an important pedestrian route. West Yorkshire Police's concern that the kiosk could provide a possible hiding place for would be thieves is mitigated to a satisfactory degree by the kiosk being open or transparent on three sides and its siting within a wide and otherwise fairly open street scene.
49. Notwithstanding this, the effect of the proposal is the addition of internal illumination to the existing outward facing display, which has deemed consent. The illumination would, to a certain degree, make the area feel safer. Consequently, it is concluded the proposal would not have an unacceptably harmful effect on public safety and would not conflict with Policy GP5 or the Framework. The appeal is therefore allowed.

#### **Conclusion**

50. For the reasons given above, five of the appeals are allowed and two are dismissed. For those that are allowed, no conditions are necessary other than the five standard conditions set out in the Regulations.

*C J Ford*

APPOINTED PERSON