The Planning Inspectorate

Appeal Decision

Site visit made on 3 July 2017

by Richard S Jones BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 18 August 2017

Appeal Ref: APP/P4605/W/17/3174121
Outside 72 Digbeth, Birmingham B5 6DH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 16 of the Town and Country Planning (General Permitted Development) England Order 2015 (as amended).
- The appeal is made by Mr Nathan Still, Infocus Public Networks Ltd, against the decision of Birmingham City Council.
- The application Ref 2017/00334/PA, dated 13 January 2017, was refused by notice dated 7 March 2017.
- The development proposed is the installation of a freestanding payphone kiosk on the pavement.

Decision

1. The appeal is allowed and approval is granted under the provisions of Schedule 2, Part 16 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the siting and appearance of the installation of a freestanding payphone kiosk by an electronic communications code systems operator on the pavement outside 72 Digbeth, Birmingham B5 6DH in accordance with the terms of the application Ref 2017/00334/PA, dated 13 January 2017, and the plans submitted with it.

Preliminary Matters and Main Issue

2. In the interests of clarity, I have taken the description of the development in the heading above from the appeal form.

3. The application and appeal documents make reference to the Town and Country Planning (General Permitted Development) Order 1995. However, by the time of making the application this Order had been superseded by the Town and Country Planning (General Permitted Development) (England) Order 2015 (the 2015 GPDO). Part 24 has effectively been replaced by Part 16.

4. The proposal is for a payphone kiosk that was refused prior approval under Schedule 2, Part 16 of the 2015 GPDO. The principle of this type of development is already established by the Order and it is only the effects of siting and appearance which are to be considered in this appeal. I am unable therefore to consider matters such as need, existing kiosk provision or the manner of its use.

5. The main issues are therefore the effects of the siting and appearance of the proposed kiosk on the character and appearance of the area and on pedestrian movements.

Reasons

Character and appearance

6. The appeal site comprises a busy central location outside a parade of shops adjacent to Birmingham Coach Station. The context of the appeal site is therefore commercial in nature with a mixture of retail, cafes, public houses and the Institute music venue.

7. The Council's Big City Plan sets out its vision of how the City Centre will be improved and seeks to ensure that the major improvements are matched by an outstanding pedestrian environment. One of the "Big Ideas" is therefore the creation of more attractive, distinctive streets and places within the city centre.

8. The proposed kiosk would be mainly glazed with a black painted steel frame and canopy. It would be larger than a typical payphone kiosk and would have an open side to allow easier disabled access. Although relatively lightweight in its appearance, the proposed kiosk would be prominently sited close to a pedestrian barrier and the corner with Rea Street, in the place of an existing but disused totem sign. Despite, its standard design and prominent siting, it would not appear particularly out of place within a central urban street scene such as this and would not be read as an incongruous or visually jarring structure. As a result, no material harm to the character or appearance of the street scene would be caused as a result of the proposed kiosk's appearance.

9. I observed that there is an existing telephone kiosk further along Digbeth along with a litter bin, bus shelter and other street signage. Whilst the proposed kiosk would undoubtedly add to the amount of structures in the area, there is not an excessive amount of street furniture in the immediate setting of the appeal site. Moreover, within this particularly busy and commercial context, the kiosk would amount to a relatively recessive feature which would not unduly add to the degree of visual clutter. Accordingly, I consider it would cause no material harm to the character or appearance of its surroundings and would not unduly undermine the aspirations of the Council through its public realm programme.

10. I therefore conclude on this issue that the siting and appearance of the proposed kiosk would have an acceptable effect on the character and appearance of the area. The proposal would not conflict with Birmingham Development Plan (BDP) Policies GA1.1, GA1.4 or TP39 or the Big City Plan. These seek, amongst other things, to continue to promote the City Centre as the focus for retail, office, residential and leisure activity within the context of the wider aspiration to provide a high quality environment and visitor experience.

Pedestrian movements

11. The kiosk would be positioned on the outer edge of the pavement where there is an existing totem panel, which I understand is to be removed in due course. In the meantime, I have no substantive evidence that the totem has created an undue barrier to pedestrian movements.

12. On the basis that the totem is removed, the proposal would, by virtue of it being a physical structure, create an additional barrier to pedestrian movement along the footway. However, in my view the proposal would leave sufficient room between it and the front of the buildings such that it would not

significantly impede pedestrian or wheelchair movement in its immediate vicinity. Thus it would not cause material harm to the convenience or safety of users of the footway.

13. I have noted the Council's concern relating to the appellant's reference to the site being chosen in accordance with criteria set out in Transport for London's adopted standards and best practice on footpath accessibility. Whilst I recognise that there will be many similar issues and principles which apply, the standards relate to a different location and are not adopted by Birmingham City Council. I have therefore given limited weight to this assertion by the appellant.

14. Nevertheless, I have not found that the proposal would unacceptably increase barriers to pedestrian movements and as such would not conflict with BDP Policy TP39, insofar as this policy seeks the provision safe walking environments.

Other matters

15. I have no substantive evidence to suggest that the proposal would have a negative effect on future investment in the city by any potential incoming businesses.

16. I have noted the concerns expressed by West Midlands Police, however, the proposal before me is of a structure with a high degree of visual permeability and which is open on one side. It is positioned in a busy area and would therefore be subject to a significant degree of natural surveillance. I do not therefore envisage a material effect on crime and disorder.

17. I have also noted concerns about the proposed kiosk being used for advertising, however, any kiosk would have deemed consent to display advertising within certain limits, and a consideration of the effects of these is not before me in this appeal, which is focussed on the plans and details submitted with the application.

18. I am mindful that the Council and interested parties have suggested a number of conditions. However, the GPDO does not provide specific authority for me to attach conditions, and thus I am unable to do so in this case.

Conclusion

19. For the above reasons, and having regard to all other matters raised, I conclude that the appeal should be allowed.

Richard S Jones

INSPECTOR