
Appeal Decisions

Site visit made on 18 November 2017

by Daniel Hartley BA Hons MTP MBA MRTPI

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

Decision date: 6 December 2017

Appeal A Ref: APP/X5990/W/17/3181964 18-20 Edgware Road, London W2 2JG

- 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 Matthew Coe (New World Payphones) against the decision of City of Westminster Council.
 - The application Ref 17/03735/TELECOM, dated 27 April 2017, was refused by notice dated 21 June 2017.
 - The development proposed is the replacement of an existing kiosk with a new kiosk.
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Appeal B Ref: APP/X5990/Z/17/3181993 18-20 Edgware Road, London W2 2JG

- 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 Mr Matthew Coe (New World Payphones) against the decision of City of Westminster Council.
 - The application Ref 16/10277/ADV, dated 26 October 2016, was refused by notice dated 23 June 2017.
 - The advertisement proposed is the display of an illuminated digital panel, measuring 1.650 m x 0.928 m as part of a new telephone kiosk.
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Decision

Appeal A

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 replacement of an existing kiosk with a new kiosk by an electronic communications code systems operator at land at Payphone Site Outside 18-20 Edgware Road, London W2 2JG in accordance with the terms of the application Ref 17/03735/TELECOM, dated 27 April 2017, and subject to the following condition.
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans and documents: Site Plan PY3245/001 and the Updated Specification Document.

Appeal B

2. The appeal is allowed and express consent is granted for the display of an illuminated digital panel, measuring 1.650 m x 0.928 m as part of a new telephone kiosk at land at Payphone Site Outside 18-20 Edgware Road, London W2 2JG in accordance with the terms of the application Ref 16/10277/ADV, dated 26 October 2016, and the plans/documents submitted with it. 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 and the following additional conditions:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans and documents: Site Plan PY3245/001 and the Updated Specification Document.
 - 2) The advertisements displayed shall be a series of static images, which individually feature no moving elements, dynamic displays or motion pictures. The speed of change between one static image and the next shall be no quicker than 10 seconds.

Procedural Matters

3. In respect of Appeal A, I have used the description of development given on the appellant's appeal form and the Council's refusal notice within the banner heading above as this accurately captures the scope of the proposed development. I have also taken the appeal site address from the Council's decision notice as this is a more precise address.
4. The proposed kiosk includes a rear digital display area in the form of an advertisement. Appeal B relates to the Council's refusal of this advertisement. I have taken the description of development from the Council's refusal notice as this more precisely describes the advertisement.
5. In respect of the prior approval appeal (Appeal A), only the construction of the kiosk should be considered and not the advertisement. In respect of Appeal B, only the advertisement part of the proposal shall be considered.

Background and Main Issues

6. Appeal A concerns a proposed telecommunications development that was refused prior approval by the Council under the terms of Schedule 2, Part 16 of the Town and Country Planning (General Permitted Development) England Order 2015 (as amended) (the GPDO). Within certain limits the GPDO grants permission for the development of telecommunications equipment subject to a prior approval procedure. The GPDO makes it clear that the relevant issues to consider when assessing applications of this type are the siting and appearance of the proposed development.
7. As part of the appeal, the appellant submitted an amended site plan (Drawing Reference No PY3245/001). On 16 November 2017, the appellant commented that they had *"now been able to liaise with the developer of the site to establish the exact location of the proposed kiosk following the completion of the highways works relating to the redevelopment. The location has changed only very slightly (a matter of centimetres) in the substituted plan"*. I am satisfied that proposed change to the siting of the proposed kiosk is not significant and therefore I have determined the appeals against such a plan.

8. I have considered the Council's refusal notice and the main issue in respect of Appeal A relates to the effect of the siting and appearance of the proposed kiosk upon the character or appearance of the Portman Estate Conservation Area.
9. In respect of Appeal B, I have considered the Council's refusal notice and the main issue is the effect of the proposal upon the amenity of the area.

Reasons

Appeal A

10. The appeal site falls within the Portman Estate Conservation Area (CA). This part of the CA is characterised by multi-storey buildings which are in mixed use and which include mainly commercial uses on the ground floor. There is a mixture of architectural styles and ages of buildings, but nonetheless there is a consistency of scale and height. In the main, only the ground floor commercial premises include advertisements and the upper floors of the buildings remain unaltered. The street furniture and apparatus (i.e. road signs, refuse bins, street lamps and bollards) are predominantly black and this consistency of colour adds positively to the character and appearance of the CA. Whilst the aforementioned street apparatus exists, the pavements are nonetheless wide and essentially unobstructed and overall there is an absence of street clutter.
11. The appellant has provided details of a re-alignment of the pavement as part of the re-development works being undertaken on the neighbouring site. The proposed kiosk would be sited in a similar location to the kiosk which has now been removed, albeit slightly closer to Edgware Road. It would be located close to the new pavement line, but this in itself would not be unacceptable in siting and appearance terms. Subject to the imposition of planning conditions, Transport for London raise no objection to the siting of the proposed kiosk.
12. The proposed kiosk would be more modern in appearance than the kiosk that was previously erected close to the appeal site, but would be finished in a black colour (according to the accompanying specification) and so would assimilate well into the street-scene. It would have a more contemporary appearance in relative terms, but not so contemporary that it would be to the detriment of the overall character and appearance of the immediate locality. Furthermore, its open sided design would have the effect of minimising its scale and dominance when viewed from public roads. The screen to the rear would have the effect of breaking up the rear elevation of the kiosk and the use of a screen in such an elevation (for display purposes) would not be an alien concept in what is a very urban environment.
13. Taking into account the siting and appearance of the kiosk, as well as the appearance and position of the kiosk which has recently been removed by the appellant, I conclude that the overall effect of siting and appearance of the development upon the character and appearance of the CA would be a neutral one. I am satisfied that the proposal would preserve the character and appearance of the CA and therefore the proposal would accord with the design, appearance and conservation aims of Policies S25 and S28 of Westminster's City Plan 2016 (CP); saved Policies DES1, DES7, DES9 of Westminster's Unitary Development Plan 2007 (UDP) and the Westminster Way Supplementary Planning Document 2011 (SPD).

Appeal B

14. The proposed advertisement would be positioned on the rear of the proposed kiosk. The Council has not raised any in principle concerns in respect of public safety issues. I have no reason to depart from such a view.
15. The Council's concern relates primarily to the effect of the advertisement upon the amenity of the area taking into account its location and in particular its capability of displaying moving images and its method of illumination. The appellant has indicated that they would accept a planning condition which prevented dynamic/moving images.
16. The illuminated advertisement would be seen in the context of a number of ground floor commercial establishments which include illuminated signage. In this context, and taking into account its relatively small size, I am satisfied that it would not cause harm to the amenity of the area. The level of illumination during the hours of darkness would be restricted to 280cd/m². This would be well below the maximum level recommended by the Institute of Lighting Professionals in their 'Professional Lighting Guide 05', The Brightness of Illuminated Advertisements which is 600cd/m² for this zone.
17. Notwithstanding the above, there are no other adverts in the immediate locality which display moving images and this design consistency adds positively to the significance of the CA. I consider that the appellant's agreement to the imposition of a planning condition which prohibits the use of moving/dynamic images is a necessary one. In the absence of this, the advertisement would be seen as a discordant visual distraction in this part of the CA where other illuminated advertisements are more static in terms of appearance. Given its close proximity to the highway, the presence of moving images would also cause a distraction to users of vehicles and hence such a condition is necessary in public safety terms.
18. Subject to the imposition of a number of conditions, I conclude that the advertisement would have a neutral impact upon the character and appearance of the CA. It would be acceptable in both amenity and public safety terms. I therefore conclude that the advertisement would accord with the amenity and public safety aims of Policies S25 and S28 of the CP and saved Policies DES1, DES8, DES 9 and paragraphs 10.108 to 10.128 of the UDP.

Other Matters

Appeals A & B

19. I have fully considered the comments made by the Council in their appeal statement. I do not have any specific evidence that the former kiosk led to anti-social activity. In any event, the proposed kiosk would not be enclosed in the same way as the existing kiosk: hence, this may have the effect of minimising any alleged anti-social activities. The Council state that the proposed kiosks would not be well used for telephone call purposes given the rise in mobile telephone use. Need is not a matter under consideration in terms of the prior approval criteria and, in any event, the kiosk would include additional functionality and not all people have a mobile telephone.
20. I do not doubt that the associated advertisements would generate some income for the appellant. However, income generation is not a relevant prior

approval matter and nor does it relate to matters of amenity or public safety in terms of the consideration of the proposed advertisement.

21. The Council has made reference to an appeal decision (APP/X5990/Z/16/3144435) for an advertisement in Regent Street, London. I acknowledge that the Inspector concluded that the LED advertisement would be bright and at odds with the traditional surroundings. However, I am not bound by such a decision and have determined both the prior approval and advertisement appeals on their individual planning merits. The Council acknowledged that illuminated advertisements have been allowed on bus shelters but state that *"there is a difference between advertising on bus shelters and advertising on telephone kiosks. First the bus shelter provides a useful public function on the street. The telephone kiosks by and large do not"*. The kiosk would perform a public function and, in any event, the degree of public benefit is not a prior approval consideration. Furthermore, I do not consider that is a relevant matter when considering amenity and public safety as part of the determination of the advertisement application.
22. I note that the proposed kiosk would include mapping functionality which may be of benefit for tourists. It would also include telephone use, public Wi-Fi capability and advertisement space including urgent messages that could potentially be displayed by the Council. Furthermore, its open sided design would enable ease of access for wheel chair users.
23. Whilst I note the above benefits, the principle of erecting the kiosk in land use principle terms is already established and agreed by virtue of the GPDO. In that sense such benefits do not need to be considered in overall the balance. However, I do note that the SPD states that *"equipment should only occupy a place in the street if it has an unavoidable and/ or desirable function for the greater public good; otherwise it is clutter. It must be carefully placed and its details engineered to avoid obstructions and not create problems for people with mobility impairments. Consideration must be given to the needs of those with sensory / learning impairments and allow for effective maintenance and cleansing"*. I am satisfied that the proposal would suitably accord with these requirements.
24. The appellant has completed a planning obligation (dated 9 November 2017) which would secure additional tree planting and the removal of existing kiosks in the event of the proposed kiosk being allowed. I have taken the planning obligation into account as part of my consideration of siting and appearance matters and I am satisfied that it is both acceptable and necessary. I am satisfied that up to twelve months to both remove and refurbish the identified existing kiosks is an acceptable period of time.
25. I have taken into account comments made by other interested parties, but I do not consider that the proposal would constitute poor design, have an adverse impact upon the ease of walking in the locality or unacceptably add to street clutter.
26. None of the other matters raised outweigh or alter my conclusions on the main issues.

Conditions

Appeal A

27. For the avoidance of doubt, the GPDO attaches the following standard condition to development of this nature given in Schedule 2, Part 16 paragraph A.2:

- Development is permitted subject to the condition that (a) any apparatus or structure provided in accordance with that permission is removed from the land, building or structure on which it is situated (i) if such development was carried out in an emergency, at the expiry of the relevant period; or (ii) in any other case, as soon as reasonably practicable after it is no longer required for electronic communications purposes; and (b) such land or building is restored to its condition before the development took place, or to any other condition as may be agreed in writing between the local planning authority and the developer.

28. I have determined this appeal based on the submission of an amended plan. Therefore, and in the interests of certainty, I have imposed a planning condition which refers to the approved plan and documents.

Appeal B

29. In addition to the standard five standard conditions set out in the Advertisement Regulations, and in the interests of the amenity of the area, it is necessary to also impose a planning condition relating to the proposed drawings and specification. In the interests of highway safety and amenity, a condition is necessary which prohibits moving images. The Council raise no objection to the appellant's suggested ten seconds between each static image rather than the originally suggested twelve seconds.

Conclusion

Appeal A

30. For the reasons outlined above, the siting and appearance of the proposed development would not have a harmful effect upon the character or appearance of the CA. I conclude that the appeal should therefore be allowed.

Appeal B

31. For the reasons outlined above, and taking into account all other matters raised, the proposed advertisement would not have a detrimental impact upon the amenity of the area or to matters of public safety. Subject to planning conditions, it would preserve the character and appearance of the CA. I therefore conclude that the appeal should be allowed.

Daniel Hartley

INSPECTOR