
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/17/3181996

Payphone Site Outside 97 Edgware Road, London W2 2HX

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 Core (New World Payphones) against the decision of City of Westminster Council.

The application Ref 17/03758/TELECOM, dated 28 April 2017, was refused by notice dated 21 June 2017.

The development proposed is the replacement of an existing kiosk with a new kiosk.

Appeal B Ref: APP/X5990/Z/17/3181997

Payphone Site Outside 97 Edgware Road, London W2 2HX

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 Core (New World Payphones) against the decision of City of Westminster Council.

The application Ref 16/10283/ADV, dated 26 October 2016, was refused by notice dated 21 June 2017.

The advertisement proposed is the display of an illuminated digital panel measuring 1.650m x 0.928 m as part of a new telephone kiosk.

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 97 Edgware Road, London W2 2HX in accordance with the terms of the application Ref , 17/03758/TELECOM, dated 28 April 2017, and the plans/documents submitted with it.

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 97 Edgware Road, London W2 2HX in accordance with the terms of the application Ref 16/10283/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 Ref No PY3100/001 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 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 refusal 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. 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 area.
8. 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

9. The Council's concern relates primarily to the effect of the siting and appearance of the proposed kiosk upon the character and appearance of the area. The Council contend that the kiosk would lead to street clutter.
10. The kiosk would be erected in a location which already includes a kiosk. It would replace a utilitarian structure with one that is more modern in appearance and would very closely relate to a bin and a road sign thereby avoiding a form of sprawling street clutter. The kiosk would not appear so modern that it would look out of place in the locality and in my view it would represent an enhancement in appearance terms when compared to the existing kiosk.
11. The proposed kiosk would be finished in a black colour and so would blend in with other street furniture and apparatus in the busy and vibrant Edgware Road. As the development would replace an existing kiosk and would be very similar in overall size/scale and position terms to that which already exists, I do not agree with the Council that it would result in the street appearing cluttered. Furthermore, I note that the appellant is proposing to remove other kiosks in the area and in that sense the streets would be less cluttered. The proposed kiosk would include open sides and in that sense it would appear less dominant and imposing in the street-scene when compared to the existing kiosk.
12. I conclude that the overall effect of the siting and appearance of the development upon the character and appearance of the area would be acceptable. Therefore, the proposal would accord with the design and appearance aims of Policies S25 and S28 of Westminster's City Plan 2016 (CP) and saved Policies DES1 and DES 7 of Westminster's Unitary Development Plan 2007 (UDP).

Appeal B

13. The proposed advertisement would be positioned on the rear of the proposed kiosk and would not face directly onto Edgware Road. The Council has not raised any concern in respect of public safety issues. I have no reason to depart from such a view.
14. The Council's principal concern relates to the effect of the proposal on the amenity of the area due to its appearance, capability of displaying moving images and method of illumination.
15. The illuminated advertisement would be seen in the context of a significant number of very close by ground floor commercial establishments which include illuminated signage. Furthermore, I noted on my site visit that there was an illuminated advertisement within the bus shelter on the opposite side of Edgware Road. In this context, and taking into account its relatively small size, I am satisfied that the proposed advertisement would not cause harm to the amenity of the area.
16. 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. I note that the appeal site does not fall within a conservation area. I do not consider that the display of moving images would have a materially adverse impact upon the character and appearance of the area. The advertisement would be relatively small in the context of the urban environment and the use of moving images would not in themselves cause harm to the amenity of the locality. However, given the close proximity of the advertisement to the highway, the presence of moving images would result in an unacceptable distraction for users of vehicles. Hence, a condition is necessary in public safety terms.
18. Subject to the imposition of a number of conditions, I conclude that the advertisement would not have a detrimental impact upon the amenity of the area or lead to any significantly adverse public safety impacts. Consequently, the proposal would accord with the amenity and public safety aims of Policies S25 and S28 of the CP and saved Policies DES1 and DES8 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 existing kiosk has 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 kiosk 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 representations made by other interested parties. The proposal would not constitute poor design, have an adverse impact upon the ease of walking in the locality or unacceptably add to street clutter.
26. No other matters have been raised which outweigh or alter my conclusions on the main issues.

Conditions

Appeal A

27. The GPDO does not provide specific authority for me to attach conditions. However, and 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.

Appeal B

28. 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, 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

29. 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 area. I conclude that the appeal should therefore be allowed.

Appeal B

30. 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. I therefore conclude that the appeal should be allowed.

Daniel Hartley

INSPECTOR