
Appeal Decision

Site visit made on 11 July 2018

by D J Barnes MBA BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6th August 2018

Appeal Ref: APP/X5210/W/17/3180921

Pavement Outside 36 Kingsway, London WC2B 6EY

- 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, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015.
 - The appeal is made by Mr Tom Fisher (Euro Payphone Limited) against the decision of the Council of the London Borough of Camden.
 - The application Ref 2017/2492/P, dated 3 May 2017, was refused by notice dated 21 June 2017.
 - The development proposed is the installation of x 1 telephone kiosk on the pavement.
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Decision

1. The appeal is allowed and approval is granted under the provisions of Part 16 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), in respect of development by a telecommunications code system operator for the siting and appearance of a telephone kiosk on the pavement at Outside 36 Kingsway, London WC2B 6EY in accordance with the terms of the application Ref 2017/2492/P, dated 3 May 2017 (form dated 22 March 2017), and the plans submitted with it.

Procedural Matters

2. The description of development is taken from the appeal form to provide certainty of the proposal subject to the appeal. Although the date on the application form was 22 March 2017, the date of the application is taken from the appeal form, appeal statement and covering letter.
3. To confirm the information provided, the pavement's width was measured during the site visit. The appellant has been given the opportunity to comment on this measurement but no response has been forthcoming.
4. A revised version of the National Planning Policy Framework (the Framework) was issued on 24 July 2018 but raises no new issues concerning telecommunication matters beyond those raised by the parties.
5. As an electronic communications code operator, the appellant benefits from deemed planning permission for a proposed telephone kiosk under Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) subject to prior approval by the local planning authority of siting and appearance. The Council determined that prior approval was required and refused for the siting and appearance of the kiosk proposed. This appeal has been determined based upon these matters.

6. The Council has made reference in the reasons for refusal to policies contained in the London Borough of Camden Local Development Framework Core Strategy and the London Borough of Camden Local Development Framework Development Policies. However, since the determination of the appeal application, the Camden Local Plan (LP) has been adopted and its policies supersede those of the previous development plan documents. The reasons for refusal also referred to the draft Local Plan policies which are now adopted.
7. However, the principle of development is established by the GPDO and prior approval relating to paragraph A.3 of Schedule 2, Part 16, Class A of the GPDO has no requirement that regard be had to the development plan. The provisions of the GPDO require the local planning authority to assess the proposed development solely upon the basis of its siting and appearance, taking into account any representations received. Consequently, this appeal is not determined on the basis of Section 38(6) of the Planning and Compulsory Purchase Act 2004. Nonetheless, the development plan policies and related guidance, including the *Streetscape Design Manual* (SDM) although this does not specifically refer to kiosks, *Streetscape Guidance* (SG), *Pedestrian Comfort Guidance for London* (PCG) and *Camden Planning Guidance* (CPG), insofar as they are relevant to matters of siting and appearance, have been taken into account.

Main Issues

8. The main issues are considered to be whether or not approval should be given in respect of the siting and appearance of the development, with particular reference to (a) the character and appearance of the locality and (b) and the convenience of highway users.

Reasons

Character and Appearance

9. The appeal site is located within the Kingsway Conservation Area where there is a statutory duty to pay special attention to the desirability of preserving or enhancing the character or appearance of that area. This duty is echoed in LP Policies D1 and D2. The *Conservation Area Statement* identifies that the significance of the area is associated with the planned approach adopted for the construction of Kingsway and the tram tunnel to create a broad thoroughfare from north to south.
10. The Edwardian buildings either side of the road are of the neo-classical style with generally uniform materials, scale and massing and following a consistent building line. The enclosure of Kingsway by tall commercial buildings located at the back edge of the wide footways, the broad width of the carriageway with its central reservation and the street trees within the footway give this road the character and appearance of a boulevard.
11. Along the east side of Kingsway and adjacent to the appeal site the street furniture includes lamp-posts, a traffic control camera, seating outside 2 cafés, 'A' board signs, planters outside the entrance to No. 36 and traffic light columns. From the observations made, the existing number and siting of street furniture items do not result in a cluttered appearance. During the site visit refuse and recycling bins of varying designs were also placed along the

footway albeit these containers do not have the same degree of permanence as other items of street furniture.

12. There are examples of other kiosks of varying designs within the wider streetscene but these are located away from the appeal site and related to their own context. To the south of the appeal site there is an In Link UK freestanding telecommunication pedestal but this has the appearance of a double sided advertising sign rather than a kiosk.
13. Although their purpose is not explained, about 2 metres from the edge of the kerb is a line of stone setts. The zone between these setts and the kerb includes the trees and other street furniture and it is within this zone that the proposed kiosk would be sited close to a tree. I agree with the appellant's claim that the proposed kiosk would respect the pattern and arrangement of existing street furniture within the defined zone along this part of the Kingsway. The assimilation of the proposed kiosk into the streetscene would be assisted by its lightweight design, being similar in scale to other kiosks and the screening afforded by the street trees.
14. There would be an adequate separation distance between the proposed development and other street furniture, including the In Link UK pedestal and other kiosks, to avoid a perception of unacceptable visual clutter. The appeal scheme would not be an incongruous addition to the streetscene along this part of Kingsway. No unacceptable harm would be caused to the boulevard streetscene of Kingsway and the character and appearance of the Conservation Area would be preserved. Further, the identified significance of the Conservation Area would not be harmed.
15. Adjacent to the site is Nos. 40/42 which is an eight-storey building erected in Portland stone with rusticated ground, first and second floor windows. It is a Listed Building and special regard is to be paid to the desirability of preserving Listed Buildings and their settings. The Framework also 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.
16. The siting of the proposed kiosk would not encroach outside the street furniture zone and would result in only a very limited impact of views towards the Listed Building for those travelling along Kingsway. This would be assisted by the light weight design of the appeal scheme. By reason of the separation distance between the proposed kiosk and this Listed Building, the siting within the street furniture zone and the intervening trees, the appeal scheme would not adversely affect the setting of this heritage asset. The boulevard setting of the Listed Building would physically and visually be preserved.
17. Accordingly, it is concluded that the siting of the kiosk would not detract unacceptably from the character and appearance of the locality. Further, it would not conflict with LP Policies D1, D2 and T1 insofar as that they are a material consideration to this appeal for prior approval. LP Policy D1 is concerned with high quality design in development which respects local context and character and also integrates well with the surrounding streets. LP Policy T1 refers to improvements to the pedestrian environment by supporting high quality public realm improvement works and this is echoed in the SDM, CPG and SG which seek to minimise unnecessary street clutter.

Convenience of Highway Users

18. It was observed during the morning site visit that there are a high number of pedestrian movements along the footway. As already identified, the proposed kiosk would be sited in a location where trees and other items of street furniture already affect pedestrian flows. It was observed during the site visit that people walk on that part of the footway, measured to be about 4 metres wide, between the setts and the frontages of the buildings.
19. The proposed kiosk would not extend into the footway where the pedestrian flow was concentrated. There would remain a minimum 3.3 metres wide pavement for pedestrians which would accord with the guidance contained in the in the SG, CPG and PCG. Although tables and chairs are temporarily placed on the pavement, the narrowing which occurs finishes before the appeal site.
20. The Council has identified that cycles are parked within the central reservation and these parking facilities were noted during the site visit. The erection of the kiosk in the location proposed would not prevent or preclude people crossing the carriageway and accessing their parked bicycles. The appeal site forms only a small part of the available footway which parallels the cycle parking and there are no railings or other similar structures which create a single crossing point which the proposed kiosk would impede.
21. Concerns have been raised about the siting of the appeal scheme placing restrictions on taxis being able to drop-off/pick-up passengers and for vehicles to load/unload. However, the siting of the proposed kiosk adjacent to an existing tree, the observed refuse and recycling collection and the limited evidence provided to support the concerns, I am satisfied that the appeal scheme would not result in significant impediment to the operations of taxis or delivery vehicles.
22. On this issue, it is concluded that the siting of the kiosk would not unacceptably harm the convenience of other highway users. Further, it would not conflict with LP Policies T1 and T6 insofar as that they are a material consideration to this appeal for prior approval. These policies seek to provide high quality footpaths and pavements that are wide enough for the number of people expected to use them and promoting fair access for all. In respect of highway safety matters, no specific conflict has been identified with LP Policies G1 and A1 which are concerned with the delivery and location of growth in Camden and protecting the quality of life of occupiers and neighbours.

Other Matters

23. The Framework deals with supporting high quality communications infrastructure, including applications for prior approval, and requires that local planning authorities must determine applications on planning grounds. As the principle of development is established by the GPDO, some of the considerations raised by other parties, such as need for the proposed kiosk, are not relevant matters.
24. The appellant has referred to the principle of the development being supported by the Framework which encourages the development of telecommunication infrastructure to support economic growth. Furthermore, and subject to the location of the equipment, the kiosk would be accessible to those with impaired mobility and include solar technology as a power source.

25. The Council has referred to the number of kiosks within the surrounding area which were observed during the site visit. However, these other kiosks are in locations with a different character and surrounding context. Both parties have provided appeal decisions but, in the absence of their detailed planning circumstances, I cannot be certain that these other schemes are directly comparable to the proposed kiosk. This appeal has been determined based upon the planning circumstances of the proposed kiosk.
26. The general concerns of the Police and the photographs provided by the Council have been carefully noted but there is no specific evidence or reason to consider that the proposed kiosk's presence would encourage or increase crime or anti-social behaviour when taking into account that the design of the kiosk is not fully enclosed. Further, no details of CCTV cameras which might be obstructed have been provided and it was observed that the view towards the appeal site of the nearest traffic camera was already affected by the street trees. I am also mindful that there is nearby street lighting and natural surveillance of the appeal site, including from near-by cafés. This is a neutral matter in the determination of this appeal.
27. Although an amended drawing has been provided by the appellant, the Council has identified that the internal layout of the proposed kiosk does not accord with the updated version of BS8300 – *Design of Buildings and their approaches to meeting the needs of disabled people*. However, there are no reasons for me to consider that the appellant would not fully accord the provisions of BS8300. The internal change required to the location of the equipment would not materially alter the assessment made concerning the siting and appearance of the appeal scheme. This is a neutral matter in the determination of this appeal.
28. Concerns have been expressed regarding the prospect of outside panels of the payphone kiosk being used for advertisements. The erection of a kiosk and the display of advertisements are distinct and separate matters requiring different applications. This appeal relates to the construction of a kiosk only and not any advertisement consent that may otherwise be required. I have determined the appeal on that basis and, therefore, the matter of advertisements has not influenced my conclusion.

Conditions

29. The grant of prior approval for the payphone kiosk is subject to the standard conditions set out in the GPDO, including an implementation timescale, removal of the structure/apparatus when it is no longer required for electronic telecommunications purposes and accordance with the details submitted with the application. No further conditions are necessary to make the proposal acceptable.

Conclusion

30. For the reasons given above and having regard to all matters raised, it is concluded that the appeal should be allowed and prior approval granted subject to the standard conditions set out in Schedule 2, Part 16, Class A of the GPDO.

D J Barnes

INSPECTOR