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## Appeal Decisions

Site visits made on 18 June 2019

**by K Savage BA MPlan MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 08 July 2019**

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### CASE DETAILS – All Appeals

- The appeals are made under section 78 of the Town and Country Planning Act 1990 against refusals to grant approval required under Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
  - The appeals are made by Mr Nathan Sill (Infocus Public Networks Ltd) against the decisions of Coventry City Council.
  - The development proposed in each case is described as 'installation of an electronic communications apparatus comprising a telephone kiosk.'
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#### **Appeal A Ref: APP/U4610/W/18/3215221**

##### **Opp Pool Meadow Bus Station, Hales Street, Coventry CV1 1JA**

- The application Ref TELO/2018/1998, dated 12 July 2018, was refused by notice dated 28 August 2018.
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#### **Appeal B Ref: APP/U4610/W/18/3215224**

##### **3 Trinity Street, Coventry CV1 1FL**

- The application Ref TELO/2018/1999, dated 12 July 2018, was refused by notice dated 28 August 2018.
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#### **Appeal C Ref: APP/U4610/W/18/3215228**

##### **OS Blue Arrow, Cross Cheaping, Coventry CV1 1HG**

- The application Ref TELO/2018/2000, dated 12 July 2018, was refused by notice dated 28 August 2018.
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#### **Appeal D Ref: APP/U4610/W/18/3215242**

##### **OS WH Smith, Smithford Way, Coventry CV1 1FY**

- The application Ref TELO/2018/2003, dated 12 July 2018, was refused by notice dated 28 August 2018.
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#### **Appeal E Ref: APP/U4610/W/18/3215247**

##### **Adj Pravha, Bull Yard, Coventry CV1 1LH**

- The application Ref TELO/2018/2004, dated 12 July 2018, was refused by notice dated 28 August 2018.
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## Decisions

1. All of the appeals are dismissed.

## Procedural Matters and Background

2. As set out above, there are five separate appeals for the installation of an electronic communications apparatus comprising a telephone kiosk pursuant to Class 16 of the Town and Country Planning (General Permitted Development) Order 2015 (the GPDO). Whilst each appeal relates to a different site, the proposed kiosks on the five sites are identical. I have considered each proposal on its individual merits, but as they raise similar issues I have dealt with the cases in a single decision letter.
3. The appeal sites are all located within walking distance of each other in Coventry city centre. The site of Appeal A is within the wide footpath outside Millennium Place and within the Lady Herbert's Garden and the Burges Conservation Area (the LHGBCA). The sites for Appeals B and C are located to either side of the pedestrianised area of Ironmonger Row, near Holy Trinity Church, with the former just around the corner on Trinity Street and the latter at the top of Cross Cheaping. The site of Appeal D is located on Smithford Way outside the West Orchards Shopping Centre, whilst the site of Appeal E is to the south on Bull Yard, a pedestrianised area close to Christchurch spire.
4. On 25 May 2019, the Town and Country Planning (Permitted Development, Advertisement and Compensation Amendments) (England) Regulations 2019 came into force, amending the GPDO. This amendment removes the permitted development right to install a public call box under Schedule 2, Part 16, Class A of the GPDO. However, transitional and saving provisions at Part 5 of the 2019 Regulations provide that where an appeal has been made within 6 months of the date of notice of refusal of a prior approval application submitted before 25 May 2019, the planning permission granted by Schedule 2, Part 16, Class A continues to have effect in relation to a public call box as if the amendments made to the GPDO by the 2019 Regulations had not been made. That is the case in respect of the five appeals before me.
5. Schedule 2, Part 16, Class A of the GPDO refers to development '*...by or on behalf of an electronic communications code operator for the purpose of the operator's electronic communications network...*'. A recent judgement in the *Westminster*<sup>1</sup> case considered the matter of development for 'the purpose' of an electronic communications code operator's electronic communications network for the purposes of Schedule 2, Part 16, Class A of the GPDO.
6. Appeals A to E were refused by the Council on grounds relating to siting and appearance. However, the *Westminster* judgement confirmed that '*the judgement as to whether the kiosk, as applied for, comes within the scope of Class A has to be made before siting and appearance are considered*'<sup>2</sup>. The Council's decisions were made prior to this judgement. Accordingly, I gave both the appellant and the Council the opportunity to comment on the relevance of this judgement to the present appeals. I have no record of response from the appellant, but I have taken the Council's response into consideration.

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<sup>1</sup> Westminster City Council v Secretary of State for Housing, Communities and Local Government & New World Payphones Ltd [2019] EWHC 176 (Admin) – 5 February 2019

<sup>2</sup> Paragraph 46

7. Linked to each of the appeals A to E is an appeal seeking express advertisement consent for the display of 'a single illuminated sequential display affixed to the frame of the communication hub'.<sup>3</sup> The 'communication hub' in each case is the telephone kiosk for which prior approval is sought in the appeals before me. However, the planning and advertisement regimes are separate. Accordingly, in these decision I have dealt solely with the prior approval appeals on their own merits.

### **Main Issues**

8. Having regard to the above, and following the *Westminster* judgement, the main issue in each of the appeals is whether or not the proposals are for the purpose of the operator's electronic communications network.

### **Reasons**

9. The appeals describe the proposals as a kiosk or a communication hub, but both refer to the same structure. It would comprise a slender, freestanding, two sided structure standing 2600mm high, 1338mm wide and 312mm deep. The frame of the unit would be metal coloured in a dark grey. The front side is described as the 'telephony side'. Beneath a 600mm projecting canopy with solar panel would be a telephone handset, 32" touchscreen display, charging facilities and a defibrillator. The rear side is described as the 'advertisement side', with an 85" digital display set behind 8mm thick anti-vandalism hardened laminated glass. I note the appellant's statement of case describes this side of the unit as 'designed for commercial display.'
10. *Westminster* confirmed '*that the whole development for which prior approval is sought must fall within the class relied on, and no part of it can fall outside it*'. The judgement went on to state that a development falls outside the scope of Part 16, Class A if it is not '*for the purpose*' of the operator's network. Thus, if the development is partly for some other purpose beyond that of the operator's network, it cannot be development '*for the purpose*' of the operator's network precisely because it is for something else as well.
11. In this instance it is clear from the submissions before me that the rear face of the kiosks would incorporate areas expressly and specifically designed for the display of commercial advertisements. Accordingly, the proposals within Appeals A to E are not solely for the purpose of the operator's electronic communications network, and as such fall outside Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). Consequently, it is not necessary for me to consider matters relating to siting or appearance set out in the Council's reasons for refusal.

### **Conclusion**

12. For the reasons given above, and having regard to all other matters raised, I conclude that the appeals should be dismissed.

*K. Savage*

INSPECTOR

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<sup>3</sup> Appeals APP/U4610/H/18/3215223, 3215225, 3215229, 3215245, 3215249.