



Appeal Decisions

Site visit made on 28 February 2019

by Lynne Evans BA MA MRTPI MRICS

an Inspector appointed by the Secretary of State

Decision date: 8th July 2019

Appeal A Ref: APP/A5840/W/18/3208286

Duke Street Hill outside Colechurch House, London SE1 2SW

- 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 (as amended).
 - The appeal is made by New World Payphones against the decision of the Council of the London Borough of Southwark.
 - The application Ref: 18/AP/1529 dated 4 May 2018 was refused by notice dated 25 June 2018.
 - The development proposed is Telephone Kiosk – relocation and replacement of existing kiosk with new kiosk.
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Appeal B Ref: APP/A5840/H/18/3208287

Duke Street Hill outside Colechurch House, London SE1 2SW

- 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 New World Payphones against the decision of the Council of the London Borough of Southwark.
 - The application Ref: 18/AP/1522 dated 4 May 2018 was refused by notice dated 27 June 2018.
 - The development proposed is illuminated digital advertisement display integrated within replacement telephone kiosk.
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Appeal C Ref: APP/A5840/W/18/3209619

20 Camberwell Road, London SE5 0EN

- 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 (as amended).
 - The appeal is made by New World Payphones against the decision of the Council of the London Borough of Southwark.
 - The application Ref: 18/AP/1515 dated 4 May 2018 was refused by notice dated 25 June 2018.
 - The development proposed is Telephone Kiosk – relocation and replacement of existing kiosk with new kiosk.
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Appeal D Ref: APP/A5840/H/18/3209618
20 Camberwell Road, London SE5 0EN

- 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 New World Payphones against the decision of the Council of the London Borough of Southwark.
 - The application Ref: 18/AP/1521 dated 4 May 2018 was refused by notice dated 27 June 2018.
 - The development proposed is illuminated digital advertisement display integrated within replacement telephone kiosk.
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Appeal E Ref: APP/A5840/W/18/3208157
Newington Causeway outside Skipton House, London SE1 6NJ

- 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 (as amended).
 - The appeal is made by New World Payphones against the decision of the Council of the London Borough of Southwark.
 - The application Ref: 18/AP/1527 dated 4 May 2018 was refused by notice dated 25 June 2018.
 - The development proposed is Telephone Kiosk – relocation and replacement of existing kiosk with new kiosk.
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Appeal F Ref: APP/A5840/H/18/3209610
Newington Causeway outside Skipton House, London SE1 6NJ

- 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 New World Payphones against the decision of the Council of the London Borough of Southwark.
 - The application Ref: 18/AP/1530 dated 4 May 2018 was refused by notice dated 27 June 2018.
 - The development proposed is illuminated digital advertisement display integrated within replacement telephone kiosk.
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Appeal G Ref: APP/A5840/W/18/3208370
128-150 Blackfriars Road, London SE1 8EQ

- 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 (as amended).
 - The appeal is made by New World Payphones against the decision of the Council of the London Borough of Southwark.
 - The application Ref: 18/AP/1526 dated 4 May 2018 was refused by notice dated 25 June 2018.
 - The development proposed is Telephone Kiosk – relocation and replacement of existing kiosk with new kiosk.
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Appeal H Ref: APP/A5840/H/18/3208375
128-150 Blackfriars Road, London SE1 8EQ

- 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 New World Payphones against the decision of the Council of the London Borough of Southwark.
 - The application Ref: 18/AP/1519 dated 4 May 2018 was refused by notice dated 27 June 2018.
 - The development proposed is illuminated digital advertisement display integrated within replacement telephone kiosk.
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Decisions

Appeal A

1. The appeal is dismissed.

Appeal B

2. The appeal is dismissed.

Appeal C

3. The appeal is dismissed.

Appeal D

4. The appeal is allowed and express consent for illuminated digital advertisement display at 20 Camberwell Road, London SE5 0EN as applied for, is granted. 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 together with the following condition:
 - 1) The intensity of the illumination of the advertisement display hereby permitted shall be no greater than 600.00 cd/m² during daylight hours and no greater than 300.00 cd/m² during hours of darkness.

Appeal E

5. The appeal is dismissed.

Appeal F

6. The appeal is allowed and express consent for illuminated digital advertisement display at Newington Causeway outside Skipton House, London SE1 6NJ as applied for, is granted. 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 together with the following condition:

- 1) The intensity of the illumination of the advertisement display hereby permitted shall be no greater than 600.00 cd/m² during daylight hours and no greater than 300.00 cd/m² during hours of darkness.

Appeal G

7. The appeal is dismissed.

Appeal H

8. The appeal is allowed and express consent for illuminated digital advertisement display at 128-150 Blackfriars Road, London SE1 8EQ as applied for, is granted. 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 together with the following condition:
 - 1) The intensity of the illumination of the advertisement display hereby permitted shall be no greater than 600.00 cd/m² during daylight hours and no greater than 300.00 cd/m² during hours of darkness.

Background and Preliminary Matters

9. An electronic communications code operator benefits from deemed planning permission for a public call box under Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) Order 2015 (GPDO), subject to prior approval by the local planning authority of siting and appearance. The appellant applied to the Council on that basis. The Council determined that prior approval was required and refused for the siting and appearance of the call box subject to each of Appeals A, C, E and G.
10. Each proposed kiosk would include a rear digital display area in the form of an advertisement. Appeals B, D, F and H relate to the Council's refusal of consent for the display of this advertisement.
11. Since these decisions were made by the Council, the judgement in *Westminster CC v SSHCLG & New World Payphones Ltd* [2019] EWHC 176 (Admin) has been published on 5 February 2019. The Westminster judgement found:

"... that means 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. Otherwise, the general permission in the GPDO, and the restricted range of considerations would be applied to development which falls outside the scope of the permission." (paragraph 37)

"A development therefore falls outside the scope of Class A Part 16 if it is not "for the purpose" of the operator's network. That means, at least in the specific context of a GPDO permission, that a proposed development falls outside it, if part of it falls outside it. It cannot be said that the whole falls within the GPDO... A development which is partly "for the purpose" of the operator's network, and partly for some other purpose, is not a development "for the purpose" of the operator's network, precisely because it is for

something else as well. The single dual purpose development must be judged as a whole.” (paragraph 39).

12. In the light of this judgement, the Appellant and the Council were invited to submit any additional comments including any comments on any elements of the structure and features of the proposed telephone kiosk that might indicate the proposal is not solely for the purpose of the operator’s electronic communications network. I have taken these further comments, as submitted by the Appellant, into account. The Appellant has contended that the proposals should be assessed on their merits on the basis that at the time the applications were made and determined, the Prior Approval procedure was unquestioned as the appropriate procedure for this type of telecommunications structure. I agree that each proposal must be considered on its individual merits. However, whilst I acknowledge that the judgement has been appealed to the Court of Appeal, I am required to determine the appeal on the basis of the law as it currently stands.
13. The associated advertisement appeals are also before me to be determined. In their additional comments in respect of the related advertisement appeals, the Appellant has contended that there is no reason why these appeals cannot be determined as submitted. The application forms describe the illuminated digital advertisement display to be integrated within the replacement telephone kiosk. It would be for the Appellant to seek permission, if required, for the structure for the display of each advertisement.
14. The proposed advertisement for each of the Appeals B, D, F and H would, from the information set out on the application forms and in the supporting material, have a total height of 1.65 m by 0.93 width, with a height from ground to the base of the advertisement of 0.38 m. The illuminance would be 600.00 cd/m², reducing to 300.00cd/m² during periods of darkness, and each would display a sequence of static digital advertising images, changing no more frequently than every 10 seconds via a smooth fade.
15. The Council and the Appellant have made reference to policies from the Southwark Plan 2007, including Policies 5.2, 5.3, 3.12, 3.15, 3.18 and 3.23 and Core Strategy Policies 12 and 13 of the Core Strategy 2011, as well as policies from The London Plan (2016), guidance from Transport for London, including Streetscape Guidance (2016) and Guidance for Digital Roadside Advertising and Proposed Best Practice (2013). I have taken account of these development plan policies and guidance in so far as they are relevant to the issues before me in respect of each appeal.

Main Issues

16. The main issue for each of Appeals A, C, E and G is whether or not, following the Court’s judgment in *Westminster CC v SSHCLG & New World Payphones Ltd* [2019] EWHC 176 (Admin), the proposal is solely for the purpose of the operator’s electronic communications network.
17. The main issues in respect of each of Appeals B, D, F and H (the advertisement appeals) are

- a) the effect of the proposal on visual amenity, with particular regard in respect of Appeals B and D to the effect on the setting of nearby Conservation Areas and in respect of Appeals F and H on the setting of nearby listed buildings.
- b) the effect of the proposal on public safety.

Reasons

Appeals A, C, E and G

18. The appeals relate to four freestanding call boxes, all of which would be located in different parts of Southwark. The freestanding call boxes consist of the same design, a broadly rectangular, covered but open fronted structure. The kiosk would be 1096mm in width and 762mm in depth and the total height of the structure would be 2499mm. The materials would comprise a steel frame and casings with safety glass or composite plastic materials for the side panels. The design of the kiosk would allow accessibility for people with limited mobility, including wheelchair users. The Specification Document submitted in respect of each proposal indicates that each proposed kiosk would include a rear digital display area in the form of an advertisement.
19. From the information before me as well as the proposed design of the call box incorporating an integrated advertisement panel, together with the fact that each appeal in respect of the call box is also accompanied by an associated advert appeal, it is my view that the appeal proposals under Appeals A, C, E and G are not solely for the purpose of the operator's electronic communications network. As a result, each proposal falls outside Schedule 2, Part 16, Class A of The Town and Country Planning (General Permitted Development) (England) Order 2015.

Appeal B

Issue a) Visual Amenity

20. The overall footway outside Colechurch House on the north side of Duke Street Hill, the A200, is relatively wide leading away from the junction with London Bridge. It is a busy footway opposite London Bridge Station. Outside Colechurch House, there is a series of benches with street trees set back from the road edge, with cycle stands, lamp posts and highway signs closer to the highway edge. The street furniture reduces the width of usable footway. The proposed advertisement would be sited towards the highway edge and between the two sets of cycle stands. This part of the footway, with the low level benches and cycle stands is relatively open in appearance and provides a welcome relief in visual terms to the more cluttered street scene further along where the pavement narrows.
21. Notwithstanding the generous width of the overall pavement area, given the assortment of street furniture already within the immediate locality, I consider that the addition of the proposed advertisement, which would not relate in terms of its proposed siting with the existing street furniture, would exacerbate the proliferation of street furniture, leading to a more cluttered appearance. It would be a visually discordant and obtrusive feature that would not contribute to the cohesiveness of this local street scene. This would detract from the spacious character and appearance of the local area.

22. The Council has provided a copy of the Conservation Area Appraisals, including maps, for Borough High Street Conservation Area, which extends to the west of London Bridge and south of the railway lines as well as for the Tooley Street Conservation Area to the east of the appeal site. The Borough High Street Conservation Area is focused on the historical development either side of Borough High Street which formed the primary route into the City of London from the south and the pattern of development is generally tightly packed reflecting the mediaeval street pattern and provides the Conservation Area with its significance. The significance of the Tooley Street Conservation Area relates to the importance of this east-west route and the river associated development to the immediate north of the street up to the river frontage.
23. I am satisfied that the proposed advertisement, given its distance from these Conservation Areas and its small scale in relation to the townscape, would not result in any harm to their setting; the setting of both Conservation Areas would therefore be preserved. However, it does not affect the conclusion I have already reached in terms of harm to the street scene.

Issue b) Public Safety

24. Given that this is a busy commercial road (London for Transport Red Route Road) with a range of uses and street furniture including signs and advertisements, I do not consider that the introduction of the proposed advertisement would be a distraction to drivers of passing vehicles, including bus drivers approaching the nearby bus stop. In reaching this decision I have taken into account both the proposed size and siting of the advertisement and its illumination, with a sequential change of images, but I do not consider that they would cause a distraction in this already busy street scene.

Conclusion in Respect of Appeal B

25. I am also satisfied that the proposal under Appeal B would not harm public safety, but this does not override my conclusion with respect to the harm to visual amenity. The commercial considerations advanced do not outweigh the harm to visual amenity which I have concluded.

Appeal D

Issue a) Visual Amenity

26. The proposed advertisement would be sited on the pavement outside 20 Camberwell Road (A215), which has a row of retail units at the ground floor with flats above. The pavement is of generous width and there is a variety of street furniture in the vicinity including bus stops and shelters, phone kiosks and street benches as well as street trees. Some of the bus shelters and kiosks in the vicinity have advertisements incorporated. The opposite side of the road also has retail uses at the ground floor and commercial or residential uses above.
27. Given the busy and commercial nature of the road with an assortment of street furniture, including existing advertisements, as well as the scale of the proposed advertisement, I do not consider that the proposal would appear visually intrusive or detract from the varied street scene. The advertisement would be appropriately sited so as not to appear cramped in relation to existing street

furniture. Taking all these matters into account, it would not be incongruous or obtrusive in relation to the surrounding street furniture or in the street scene.

28. The proposed siting of the advertisement would not be within the Walworth Road Conservation Area, which lies to the north and east of the site. The Conservation Area is focussed on the historic core of Walworth further to the north which provides its significance. Given its modest size and the surrounding commercial uses, I am satisfied that it would not harm the setting of the Walworth Road Conservation Area.

Issue b) Public Safety

29. Given that this is a busy commercial road (London for Transport Road) with a range of shops and street furniture including signs and advertisements, I do not consider that the introduction of the proposed advertisement would be a distraction to drivers of passing vehicles, including bus drivers approaching the nearby bus stop. In reaching this decision I have taken into account both the proposed size of the advertisement and its illumination, with a sequential change of images, but I do not consider that they would cause a distraction in this already busy street scene.

30. I also agree with the Council that as a result of the proposed siting, set in from the pavement edge, the advertisement would be unlikely materially to impede bus passengers seeking to board or alight buses at the nearby bus stop.

Conclusion in Respect of Appeal D

31. I am satisfied that there would be no harm in terms of the effect of this proposal on both visual amenity and public safety.

Appeal F

Issue a) Visual Amenity

32. The proposed advertisement would be on the pavement outside a large office building, Skipton House, on the west side of Newington Causeway (A3), just to the north of Elephant and Castle junction. This is a very densely developed urban environment with a number of multi storey buildings on both sides of the road and the road is a Transport for London Red Route. On the east side of the road is the grade II listed designated heritage asset of Metro Central Heights, a multi storey group of residential buildings built in the late 1950s – early 1960s. The dominance of the built form within the street scene and on both sides of this busy road is softened with street trees and planting.
33. At street level on both sides of the road and in the general vicinity of the proposed site there are bus stops and shelters as well as advertisement panels and street furniture. I do not consider that the modest size of the advertisement panel would appear visually intrusive in the street scene, given the existing street furniture, including advertising panels and the scale of the surrounding buildings.
34. Given the small scale of the proposed advertisement in relation to the scale of Metro Heights on the opposite side of the road, as well as the distance between the listed buildings and the proposal, I am satisfied that the proposal would not harm but would preserve the setting of the listed building.

35. I am therefore satisfied that the proposal would not result in any harm to visual amenity and would preserve the setting of the designated heritage asset, Metro Heights.

Issue b) Public Safety

36. Given that this is a busy commercial road with a range of uses and street furniture including signs and advertisements, I do not consider that the introduction of the proposed advertisement would be a distraction to drivers of passing vehicles, including bus drivers approaching the nearby bus stop. In reaching this decision I have taken into account both the proposed size of the advertisement and its illumination, with a sequential change of images, but I do not consider that they would cause a distraction in this already busy street scene.

37. I am therefore satisfied that the proposal would not result in any harm to public safety.

Conclusion in Respect of Appeal F

38. I am satisfied that there would be no harm in terms of the effect of this proposal on both visual amenity and public safety.

Appeal H

Issue a) Visual Amenity

39. The proposed advertisement would be on the pavement on the east side of Blackfriars Road (A201) outside a modern, multi storey development with retail use at the ground floor. This is an urban environment with a number of multi storey buildings on both sides of the road. On the west side of the road is the grade II listed designated heritage asset of the Peabody Estate, comprising an attractive group of Victorian buildings, with a number of blocks of all similar form, designed and built as philanthropic housing.

40. Blackfriars Road is a wide road with generous pavements and is a Transport for London Red Route. Although the pavement on both sides of the road is largely uncluttered, there are other examples of advertisements associated with bus stops and phone kiosks in the nearby vicinity. The proposed advertisement would be sited in close proximity to the retail unit and I do not consider that the modest size of the advertisement panel would appear visually intrusive in the street scene, given its siting in relation to other street furniture and the retail use.

41. Given the small scale of the proposed advertisement in relation to the scale of the designated heritage asset on the opposite side of this wide road, I am satisfied that the proposal would not harm but would preserve the setting of the listed building. I am therefore satisfied that the proposal would not result in any harm to visual amenity and would preserve the setting of the designated heritage asset of the Peabody Estate.

Issue b) Public Safety

42. Given that this is a busy commercial road with other examples of advertising of a similar scale in the vicinity, I do not consider that the introduction of the

proposed advertisement would be a distraction to drivers of passing vehicles, including those approaching the advertisement. In reaching this decision I have taken into account both the proposed size of the advertisement and its illumination with a sequential change of images, but do not consider that they would cause a distraction in this already busy commercial road.

43. I am therefore satisfied that the proposal would not result in any harm to public safety.

Conclusion in Respect of Appeal H

44. I am satisfied that there would be no harm in terms of the effect of this proposal on both visual amenity and public safety.

Conditions

45. The application form in respect of each advertisement appeal refers to an illumination level of 600 cd/m² but the supporting information refers to the level of illumination reducing to 300 cd/m² during hours of darkness. I agree that this reduction during hours of darkness is required in the interests of both visual amenity and public safety. I am advised that the illumination of brightness of the display is automatically controlled via a light sensor which monitors ambient light levels.

Conclusion

46. I have found no harm in respect of either visual amenity or public safety in respect of Appeals D, F and H. I am also satisfied that the proposal under Appeal B would not harm public safety, but this does not override my conclusion with respect to the harm to visual amenity.

47. For the reasons given above and having regard to all matters raised, including in representations, I conclude that Appeals A, B, C, E and G should be dismissed, and appeals D, F and H allowed.

L J Evans

INSPECTOR