
Appeal Decisions

By C L Humphrey BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th July 2019

CASE DETAILS

All Appeals

- The appeals are made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3(1) and 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 Still (Infocus Public Networks Limited) against the decisions of Sunderland City Council.
 - The development proposed in each case is 'installation of an electronic communications apparatus pursuant to Class 16 of the Town and Country Planning (General Permitted Development) Order 2015.'
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Appeal A - Ref: APP/J4525/W/19/3224635

6 - 7 Park Lane, Sunderland SR1 3NX

Grid Reference Easting 439522, Grid Reference Northing 556706

- The application Ref 18/01516/TEX dated 23 August 2018, was refused by notice dated 17 October 2018.
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Appeal B – Ref: APP/J4525/W/19/3224637

Transport Interchange, Park Lane, Sunderland SR1 3NX

Grid Reference Easting 439539, Grid Reference Northing 556666

- The application Ref 18/01517/TEX dated 23 August 2018, was refused by notice dated 15 October 2018.
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Appeal C – Ref: APP/J4525/W/19/3224640

8 Maritime Street, Sunderland SR1 3JT

Grid Reference Easting 439516, Grid Reference Northing 556845

- The application Ref 18/01518/TEX dated 23 August 2018, was refused by notice dated 15 October 2018.
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Appeal D – Ref: APP/J4525/W/19/3224645

6 Blandford Street, Sunderland SR1 3JP

Grid Reference Easting 439549, Grid Reference Northing 556857

- The application Ref 18/01519/TEX dated 23 August 2018, was refused by notice dated 15 October 2018.
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Appeal E – Ref: APP/J4525/W/19/3224646

23 Blandford Street, Sunderland SR1 3JH

Grid Reference Easting 439679, Grid Reference Northing 556871

- The application Ref 18/01520/TEX dated 23 August 2018, was refused by notice dated 15 October 2018.
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Appeal F – Ref: APP/J4525/W/19/3224650

32A Market Square, Sunderland SR1 3HW

Grid Reference Easting 439670, Grid Reference Northing 557003

- The application Ref 18/01521/TEX dated 23 August 2018, was refused by notice dated 15 October 2018.

Appeal G – Ref: APP/J4525/W/19/3224652

Phoenix House Unit 5, Union Street, Sunderland SR1 3BT

Grid Reference Easting 439656, Grid Reference Northing 557079

- The application Ref 18/01522/TEX dated 23 August 2018, was refused by notice dated 15 October 2018.

Appeal H – Ref: APP/J4525/W/19/3224654

260 – 261 High Street West, Sunderland SR1 3DH

Grid Reference Easting 439516, Grid Reference Northing 557115

- The application Ref 18/01523/TEX dated 23 August 2018, was refused by notice dated 15 October 2018.

Appeal I – Ref: APP/J4525/W/19/3224657

43 Fawcett Street, Sunderland SR1 1SA

Grid Reference Easting 439751, Grid Reference Northing 556908

- The application Ref 18/01524/TEX dated 23 August 2018, was refused by notice dated 15 October 2018.
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Decisions

1. The appeals are dismissed.

Procedural Matters and Background

2. The appeals relate to proposals by Infocus Public Networks Limited for the installation of 'electronic communications apparatus pursuant to Class 16 of the Town and Country Planning (General Permitted Development) Order 2015' at nine sites in Sunderland city centre. The proposed apparatus, described by the appellant in section 4 of each application form as comprising a telephone kiosk, is identical in each case. Therefore, in the interests of conciseness, I have dealt with all the appeals in the same decision.
3. Whilst The Town and Country Planning (Permitted Development, Advertisement and Compensation Amendments) (England) Regulations 2019 amends the GPDO¹ by removing permission for the installation, alteration or replacement of a public call box by, or on behalf of, an electronic communications code operator, this is subject to transitional and saving provisions.
4. Therefore, for the purposes of these appeals, which were validly made, the proposals fall to be considered against the provisions of Schedule 2, Part 16, Class A of the GPDO, which refers to development '...by or on behalf of an electronic communications code operator for the purpose of the operator's electronic communications network...'.

¹ The Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended).

5. The recent *Westminster* judgement² concerned prior approval appeals involving telephone kiosks under Schedule 2, Part 16, Class A of the GPDO, and considered the matter of development for 'the purpose' of an operator's network. The Court 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).
6. The proposals before me were refused by the Council on grounds relating to siting and appearance. However, *Westminster* found 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..." (paragraph 46).
7. Whilst the Council determined the applications before the *Westminster* judgment was handed down, the appellant and Council have been offered the opportunity to comment on the bearing of the judgment upon the appeals. I have taken these comments into account in making my decision.
8. I have not undertaken a site visit, but instead made a desk-based assessment to determine whether the proposals are solely for the purpose of the operator's electronic communications network.

Main Issue

9. Following the Court's judgment in *Westminster*, the main issue is whether the proposals are solely for the purpose of the operator's electronic communications network.

Reasons

10. The *Westminster* judgment found that a development "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).
11. In all cases, the proposed apparatus is a sizeable freestanding rectangular unit which would be 2600mm high and 1338mm wide with a depth of 312mm. One side of the unit would house communication equipment, including an integrated touch screen designed for public phone use and a telephone handset, with a projecting canopy above.
12. The JCDecaux Technical Specification shows the reverse side of the unit as featuring a large laminated glass panel set within metal casing. The appellant's Full Statement of Case describes this side of the unit as "an area designed for commercial display". Moreover, the Technical Specification states "The reverse of the unit can be used for commercial display or council information."

² Westminster CC v SSHCLG & New World Payphones Ltd [2019] EWHC 176 (Admin) (5 February 2019)

13. I note that, in commenting on the bearing of the *Westminster* judgment on the appeals, the appellant asserts that 'the submissions relate to communication apparatus only and are not to be used for any other purpose'. However, based on the evidence before me, as outlined above, the proposed apparatus would contain features which are not there at all for the telecommunications function.
14. Therefore, I conclude that the apparatus would be both for the purpose of the operator's telecommunications network and for the purpose of commercial display. Accordingly, the proposals are not solely for the purpose of the operator's electronic communications network and so fall outside Schedule 2, Part 16, Class A of the GPDO.

Conclusion

15. For the reasons given above and having regard to all matters raised, including in representations, I conclude that the appeals should be dismissed.

CL Humphrey

INSPECTOR