



Appeal Decision

by David Wyborn BSc(Hons), MPhil, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 July 2019

Appeal A - Ref: APP/N1160/W/19/3224097

6 Derrys Cross, Plymouth PL1 2SG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval under a development order.
- The appeal is made by Mr Nathan Still of Infocus Public Networks Ltd against the decision of Plymouth City Council.
- The application Ref 18/01292/16, dated 24 July 2018, was refused by notice dated 20 September 2018.
- The development proposed is the Installation of an electronic communications apparatus pursuant to Class 16 of the Town and Country Planning (General Permitted Development) Order 2015 comprising a telephone kiosk.

Appeal B - Ref: APP/N1160/W/19/3224098

11-13 Cornwall Street, Plymouth PL1 1NL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval under a development order.
- The appeal is made by Mr Nathan Still of Infocus Public Networks Ltd against the decision of Plymouth City Council.
- The application Ref 18/01293/16, dated 24 July 2018, was refused by notice dated 20 September 2018.
- The development proposed is the Installation of an electronic communications apparatus pursuant to Class 16 of the Town and Country Planning (General Permitted Development) Order 2015 comprising a telephone kiosk.

Appeal C - Ref: APP/N1160/W/19/3224101

30-32 Cornwall Street, City Centre, Plymouth PL1 1LP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval under a development order.
- The appeal is made by Mr Nathan Still of Infocus Public Networks Ltd against the decision of Plymouth City Council.
- The application Ref 18/01294/16, dated 24 July 2018, was refused by notice dated 20 September 2018.
- The development proposed is the Installation of an electronic communications apparatus pursuant to Class 16 of the Town and Country Planning (General Permitted Development) Order 2015 comprising a telephone kiosk.

Appeal D - Ref: APP/N1160/W/19/3224102

Mayflower, Armada Way, Plymouth PL1 1HZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval under a development order.
 - The appeal is made by Mr Nathan Still of Infocus Public Networks Ltd against the decision of Plymouth City Council.
 - The application Ref 18/01295/16, dated 24 July 2018, was refused by notice dated 20 September 2018.
 - The development proposed is the Installation of an electronic communications apparatus pursuant to Class 16 of the Town and Country Planning (General Permitted Development) Order 2015 comprising a telephone kiosk.
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Appeal E - Ref: APP/N1160/W/19/3224105
130-138 Armada Way, Plymouth PL1 1NR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval under a development order.
 - The appeal is made by Mr Nathan Still of Infocus Public Networks Ltd against the decision of Plymouth City Council.
 - The application Ref 18/01296/16, dated 24 July 2018, was refused by notice dated 20 September 2018.
 - The development proposed is the Installation of an electronic communications apparatus pursuant to Class 16 of the Town and Country Planning (General Permitted Development) Order 2015 comprising a telephone kiosk.
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Decision

1. The appeals are dismissed.

Application for costs

2. Applications for costs were made by Plymouth City Council against Mr Nathan Still of Infocus Public Networks Ltd in respect of all the appeals. These applications are the subject of a separate Decision.

Procedural Matters and Background

3. The development descriptions above, are those set out in the respective applications at section 1 of the application forms, with the additional descriptive element from section 4, namely that the proposal comprise a telephone kiosk in each case. This provides a more precise description of the appeal proposal. I am satisfied that the main parties have not been prejudiced by this more detailed description taken from the forms and I have determined the appeals accordingly.
4. These cases relate to separate proposals for the installation of an electronic communications apparatus pursuant to Class 16 of the Town and Country Planning (General Permitted Development) Order 2015 comprising a telephone kiosk. All five units would be in proximity within a central location within Plymouth. Based on the plans, the five kiosks would be located in reasonable proximity in a central location within Plymouth. Appeal sites B and C propose kiosks within Cornwall Street and the kiosks proposed in Appeals D and E are a short distance away and located within Armada Way. Appeal site A is located adjoining Derrys Cross. The kiosk in each case would be identical and I have dealt with them as a combined appeal as the issues raised are the same.
5. Class A of Part 16, Schedule 2 of the GPDO¹ refers to development by or on behalf of an electronic communications code operator for the purpose of the operator's electronic communications network. A judgement in *Westminster City Council v Secretary of State for Housing, Communities and Local Government & New World Payphones Ltd* [2019] EWHC 176 (Admin) (the Westminster judgement)² considered the matter of development for 'the purpose' of an electronic communications code operator's electronic communications network for the purposes of Part 16, Class A of the GPDO.

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

² 5 February 2019

6. Appeals C, D and E were refused on the grounds of siting and appearance (design) and Appeals A and B for a single reason referenced as design. 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.
7. The Council reached their decision on the application prior to the Westminster judgement. However, the appeals were submitted after the judgement was handed down. The Council has referred directly to the judgement in their statement and I also sought views on the implications of the judgement from the main parties. Accordingly, no party is prejudiced by the consideration of the appeals in the light of the judgement and that only the installation of the kiosks is being considered, not the matter of advertisement consent.
8. I have not undertaken a site visit, but instead made a desk-based assessment of the proposals, to determine whether or not the proposal in each case are solely for the purpose of the operator's electronic communications network.

Main Issue

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

Reasons

10. The kiosks are described in varying terms in the appellant's submissions, including as a telephone kiosk, public payphone or a telecommunication hub. On one side of each unit, sheltered under a projecting canopy, the equipment would include a pay phone and interactive touch screen. On the rear would be a glazed panel of laminated glass, which the elevation drawings and photomontages show as a reasonably large rectangular area. The JCDecaux document which sets out the drawings and technical specifications explains that the purpose of the reverse of the unit is that it can be 'used for commercial display or council information'. Furthermore, the appellant's description of the rear face of the units in the Statement of Case as being 'an area designed for commercial display'.
11. The Council in their statement set out the case that the kiosk is not solely for the operator's electronic communications network because the structure incorporates other items such as USB charger, defibrillator and climate monitoring equipment.
12. The Westminster judgement 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.
13. The appellant's subsequent statements advise that the submissions relate to communications apparatus only, are not to be used for any other purpose and

that the Westminster case concerned a dual use function in a single structure, which is not the same proposition contained within these appeal proposals.

14. Nevertheless, given the previous statements regarding the purpose of the rear panel, as well as the design and specification set out in the submissions, in this instance, I am satisfied on the evidence before me that the rear face of the kiosks would incorporate areas expressly and specifically designed for the purpose of the display of commercial advertisements. Accordingly, and notwithstanding the other issues that the Council has raised, I conclude that the appeal proposals 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 in the context set out in the Council's reasons for refusal.

Conclusion

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

David Wyborn

INSPECTOR