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## Appeal Decisions

Site visit made on 4 July 2019

**by D J Barnes MBA BSc(Hons) DipTP MRTPI**

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

**Decision date: 29<sup>th</sup> July 2019**

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### **Appeal Ref: APP/Y5420/W/19/3222149**

#### **Outside Awesome Chips, 159 High Road, Wood Green, London N22 6YD**

- 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 Infocus Public Networks Limited against the decision of the Council of the London Borough of Haringey.
  - The application Ref HGY/2019/0103, dated 10 December 2018, was refused by notice dated 31 January 2019.
  - The development proposed is the installation of an electronic communications apparatus comprising a telephone kiosk.
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### **Appeal Ref: APP/Y5420/W/19/3222150**

#### **Outside Nationwide Bank, 25 High Road, Wood Green, London N22 6BH**

- 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 Infocus Public Networks Limited against the decision of the Council of the London Borough of Haringey.
  - The application Ref HGY/2019/0104, dated 10 December 2018, was refused by notice dated 31 January 2019.
  - The development proposed is the installation of an electronic communications apparatus comprising a telephone kiosk.
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### **Appeal Ref: APP/Y5420/W/19/3222153**

#### **Outside Select, 32 High Road, Wood Green, London N22 6BX**

- 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 Infocus Public Networks Limited against the decision of the Council of the London Borough of Haringey.
  - The application Ref HGY/2019/0106, dated 10 December 2018, was refused by notice dated 31 January 2019.
  - The development proposed is the installation of an electronic communications apparatus comprising a telephone kiosk.
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## **Decisions**

1. The appeals are dismissed.

## Procedural Matters

2. These 3 appeals relate to separate proposals for the installation of electronic communications apparatus, including a public telephone and internet access, which would be located at varying locations along High Road, Wood Green. Two of the proposals are identified by the appellant as replacing existing 2-sided freestanding advertisement displays within the footway. The units shown in the available photographs have already been replaced by digital display units. The third proposal would be erected within the footway. For simplicity, the 3 appeals have been included on the same decision letter.
3. Although the comments of the Council have been noted, as a licenced electronic communications code operator, the appellant benefits from deemed planning permission for the proposed communications apparatus that falls within the permitted development rights of Schedule 2, Part 16, Class A, paragraph A.1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO), subject to the prior approval requirements under paragraph A.3. The appellant applied to the Council on that basis. The Council determined that prior approval was required for the siting and appearance of the communication apparatus.
4. The Council has referred to the recent amendment<sup>1</sup> to the GPDO which removes the permitted development rights for a public call box. The amendment includes transitional provisions which means the appeals can be determined.
5. Class A of Part 16, Schedule 2 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*'. The 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) 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.
6. These appeals were refused by the Council on grounds relating to siting, appearance and need. However, the *Westminster* judgement confirmed that the assessment as to whether a telecommunications apparatus comes within the scope of Part 16, Class A of the GPDO has to be made before siting and appearance are considered.
7. The Council reached their decisions on the applications prior to the passing down of the *Westminster* judgement. However, the appeals were submitted after the judgement was passed down. The Council does not refer directly to the *Westminster* judgement in their Statement of Case but do question the purpose of the proposed developments and claim they are freestanding advertisement structures. In correspondence, the appellant has identified that the *Westminster* case concerned a dual use function of a single structure and this does not apply to the electronic communications apparatus subject of these appeals.
8. The erection of a telecommunications apparatus and the display of advertisements are distinct and separate matters requiring different

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<sup>1</sup> Town and Country Planning (Permitted Development, Advertising and Compensation Amendment) (England) Regulations 2019

applications. These appeals relate to the erection of a structure only and not any advertisement consent that may otherwise be required. These appeals have, therefore been assessed on that basis.

### **Main Issue**

9. When taking into account the commentary above, it is considered that the main issue for these appeals is whether or not the proposals are solely for the purpose of the operator's electronic communications network.

### **Reasons**

10. The appeal schemes are described by the appellant as including the installation of an electronic communication apparatus comprising a telephone kiosk. On one side of each structure there would be a projecting canopy above a touchscreen LCD display intended to provide an interactive screen to allow for, amongst other things, the dialling of numbers in connection with the unit's telephone handset. On the reverse or other side would be a glazed panel of anti-vandalism hardened laminated glass.
11. A Technical Specification for the proposed development has been provided and this identifies that the reverse side of the unit can be used for commercial display or Council information. This is echoed in the appellant's appeal Statement which refers to the other side being an area designed for commercial display.
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 of the GPDO if it is not *'for the purpose'* of the operator's network. Accordingly, 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. It is clear from the evidence available for these appeal schemes that the reverse or other side of the proposed developments from the telecommunication equipment would incorporate areas expressly and specifically designed for the display of commercial advertisements or other information. Accordingly, the appeal schemes 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 GPDO. For this reason, it is not necessary to consider issues relating to siting or appearance.

### **Conclusion**

14. For the reasons given, it is concluded that these appeals should be dismissed.

*D J Barnes*

INSPECTOR