



Appeal Decision

Site visit made on 24 June 2019 by C McDonagh BA (Hons), MA

Decision by Susan Ashworth BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 July 2019

Appeal Ref: APP/F5540/W/19/3225659

2 IFO Subway, Longford Centre, Feltham, TW13 4GU

Easting: 510587 Northing: 173114

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a development order.
 - The appeal is made by Mr Nathan Still on behalf of Infocus Public Networks Ltd against the decision of the Council of the London Borough of Hounslow.
 - The application Ref 00609/CE/COM1, dated 25 October 2018, was refused by notice dated 18 December 2018.
 - The development proposed is the installation of an electronic communications apparatus comprising a telephone kiosk.
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Decision

1. The appeal is dismissed.

Appeal Procedure

2. The site visit was undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

Procedural Matters

3. A recent 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 Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO).
4. The 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. This would therefore not allow a bespoke advertising panel to be included in a kiosk (as that element of the kiosk would not be for the purposes of the network), however it would allow advertisements on the glazed surfaces which were not

specifically designed for the purposes of advertising, but which would be there anyway as part of the structure.

5. This judgement was passed after the initial application was determined although before the appeal was submitted. Regardless, both parties were invited to submit final comments to address this issue. The appellant responded confirming that the submissions relate to communication apparatus only and are not to be used for any other purpose. The Local Planning Authority did not respond, although they do not dispute this in their submitted evidence or within their officer report.
6. The judgement as to whether the kiosk, as applied for, comes within the scope of Class A must be made before siting and appearance are considered. Whilst a non-illuminated poster advert could be displayed on the glazed surface of the kiosk (as is the case with traditional phone kiosks), there is nothing contained in the evidence or in the structure and features of the kiosk proposed in this appeal which would indicate that the structure would include a bespoke advertising panel and therefore have a dual purpose. Therefore, in my view it would fall within the GPDO.

Main Issue

7. As an electronic communications code operator, the appellant benefits from deemed planning permission for the proposed payphones under Part 16 of Schedule 2 to the GPDO subject to prior approval by the local planning authority of their siting and appearance. Prior approval of the siting was refused by the Council in this case.
8. As the principle of the development, including considerations such as need for this particular facility, is not at issue, the main issue in this appeal is the effect of the siting of the proposed kiosk on users of the public highway.

Reasons

9. The appeal site is a strip of land located on the footpath at the entrance to the Longford Centre, a retail complex located on Feltham High Street (A244). The surrounding area is a mixture of residential, commercial and retail uses. Alongside a large number of pedestrians in this vicinity, the A244 road was also very congested at the time of my site visit, all of which contributes to a very busy urban environment.
10. The proposal comprises a telecommunications kiosk, with a 32" touchscreen LCD display intended to provide a telephone handset and multimedia access. On the rear would be a glazed panel which the elevation drawings and the JCDecaux Technical Specification document describe as capable of being 'used for commercial display or Council information', although as I have determined this would not constitute dual purpose given the evidence available to me.
11. The Council has expressed concern regarding the location of the kiosk given it is within an area which is subject to substantial redevelopment. This involves works to the road layout as well as alterations to footways, bus stops and additional street furniture. Those works have already commenced.
12. The submitted approved highway redevelopment plans show clearly the provision of a new bus stop next to the bus lane close to the kiosk location, which is required to consolidate the reduction of stops along the High Street.

This would mean the same amount of bus routes using the bus lane, but more stopping in the one new location. Evidently, the kiosk would also be located in an area of planned reinforced footway, designed to facilitate loading and unloading of products to serve the retail complex in the Longford Centre. There is also provision for new street furniture such as a bench, cycle stands and new lampposts.

13. During the site visit I witnessed how congested the High Street can become, with queuing buses unable to manoeuvre in the narrow bus lane while passengers alighted. The location of the new bus stop would mean the proposed kiosk, due to its siting, would be a further obstacle to queueing passengers seeking views of buses approaching the stop.
14. The footway is wide, but these proposed works would add to the existing street furniture, which includes a totem sign advertising stores in the retail complex, litter bins, bollards and signage. The presence of a kiosk in this position would hamper the free movement of pedestrians and pedestrian visibility, especially from the bus stop to approaching buses, all of which would have a detrimental effect upon the safe and efficient operation of the highway.

Recommendation

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

C McDonagh

APPEAL PLANNING OFFICER

Inspector's Decision

16. I have considered all the submitted evidence and the Appeal Planning Officer's report and on that basis the appeal is dismissed.

S Ashworth

INSPECTOR