



Appeal Decisions

Site visit made on 23 July 2019

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 July 2019

Appeal A

Appeal Ref: APP/Q1445/W/18/3213546

4 North Street, Brighton BN1 1EB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under the Town and Country Planning (General Permitted Development) (England) Order 2015, Schedule 2, Part 16, Class A.
 - The appeal is made by Mr Nathan Still of Infocus Public Networks Ltd against the decision of Brighton & Hove City Council.
 - The application Ref BH2018/01807, dated 6 June 2018, was refused by notice dated 2 August 2018.
 - The development proposed is the installation of electronic communications apparatus pursuant to Class 16 of the Town and Country Planning (General Permitted Development) Order 2015.
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Appeal B

Appeal Ref: APP/Q1445/W/18/3213488

16-19 North Street, Brighton BN1 1EB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under the Town and Country Planning (General Permitted Development) (England) Order 2015, Schedule 2, Part 16, Class A.
 - The appeal is made by Mr Nathan Still of Infocus Public Networks Ltd against the decision of Brighton & Hove City Council.
 - The application Ref BH2018/01795, dated 6 June 2018, was refused by notice dated 2 August 2018.
 - The development proposed is the installation of electronic communications apparatus pursuant to Class 16 of the Town and Country Planning (General Permitted Development) Order 2015.
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Appeal C

Appeal Ref: APP/Q1445/W/18/3213534

82 North Street, Brighton BN1 1ZA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under the Town and Country Planning (General Permitted Development) (England) Order 2015, Schedule 2, Part 16, Class A.
 - The appeal is made by Mr Nathan Still of Infocus Public Networks Ltd against the decision of Brighton & Hove City Council.
 - The application Ref BH2018/01803, dated 6 June 2018, was refused by notice dated 2 August 2018.
 - The development proposed is the installation of electronic communications apparatus pursuant to Class 16 of the Town and Country Planning (General Permitted Development) Order 2015.
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Appeal D

Appeal Ref: APP/Q1445/W/18/3213541

134 North Street, Brighton BN1 1RG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under the Town and Country Planning (General Permitted Development) (England) Order 2015, Schedule 2, Part 16, Class A.
 - The appeal is made by Mr Nathan Still of Infocus Public Networks Ltd against the decision of Brighton & Hove City Council.
 - The application Ref BH2018/01805, dated 6 June 2018, was refused by notice dated 2 August 2018.
 - The development proposed is the installation of electronic communications apparatus pursuant to Class 16 of the Town and Country Planning (General Permitted Development) Order 2015.
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Appeal E

Appeal Ref: APP/Q1445/W/18/3213521

55 East Street, Brighton BN1 1HN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under the Town and Country Planning (General Permitted Development) (England) Order 2015, Schedule 2, Part 16, Class A. order.
 - The appeal is made by Mr Nathan Still of Infocus Public Networks Ltd against the decision of Brighton & Hove City Council.
 - The application Ref BH2018/01801, dated 6 June 2018, was refused by notice dated 2 August 2018.
 - The development proposed is the installation of electronic communications apparatus pursuant to Class 16 of the Town and Country Planning (General Permitted Development) Order 2015.
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Appeal F

Appeal Ref: APP/Q1445/W/18/3213494

OS 40-44 West Street, Junction with North Street, Brighton BN1 1ZA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under the Town and Country Planning (General Permitted Development) (England) Order 2015, Schedule 2, Part 16, Class A.
 - The appeal is made by Mr Nathan Still of Infocus Public Networks Ltd against the decision of Brighton & Hove City Council.
 - The application Ref BH2018/01796, dated 6 June 2018, was refused by notice dated 2 August 2018.
 - The development proposed is the installation of electronic communications apparatus pursuant to Class 16 of the Town and Country Planning (General Permitted Development) Order 2015.
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Appeal G

Appeal Ref: APP/Q1445/W/18/3213478

OS 13 Pavilion Buildings, Brighton BN1 1EE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under the Town and Country Planning (General Permitted Development) (England) Order 2015, Schedule 2, Part 16, Class A.
 - The appeal is made by Mr Nathan Still of Infocus Public Networks Ltd against the decision of Brighton & Hove City Council.
 - The application Ref BH2018/01793, dated 6 June 2018, was refused by notice dated 2 August 2018.
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- The development proposed is the installation of electronic communications apparatus pursuant to Class 16 of the Town and Country Planning (General Permitted Development) Order 2015.
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Decisions A, B, C, D, E, F and G

1. All appeals are dismissed.

Preliminary Matters

2. As set out above there are seven concurrent appeals that relate to prior approval appeals involving telephone kiosks under the *Town and Country Planning (General Permitted Development) (England) Order 2015* (the Order), Schedule 2, Part 16, Class A. Whilst the locations proposed differ, they propose similar technical equipment and are sufficiently proximate such that they can be considered together. I have assessed each proposal on its individual merits but to avoid duplication, have dealt with the schemes together unless stated otherwise.
3. In addition, there are seven related corresponding appeals made under the *Town and Country Planning (Control of Advertisements) (England) Regulations 2007*¹ (the Regulations). I have considered whether it would be appropriate to consider the appeals together. However, given that those appeals relate to advertisements, the Regulations relevant to the respective applications make the scope of the decisions different. As such, in the interests of clarity I have considered those appeals separately.
4. The judgement in *Westminster CC v SSHCLG & New World Payphones Ltd* [2019] EWHC 176 (admin) has been determined since the submission of the appeals. It found that Schedule 2, Part 16, Class A of the Order included a purpose test such that the whole development for which prior approval is sought must fall within the Class relied on. The parties have been given the opportunity to provide observations on the bearing of the *Westminster* judgement on the appeals.

Main Issue

5. The main issue is whether or not the proposal is solely for the purpose of the operator's electronic communications network.

Reasons

6. The *Westminster* judgement found the telephone kiosk in that case had a dual purpose in that it had a purpose of advertising in addition to the purpose of the operator's telecommunications network. As such, the dual purpose was not solely for the purpose of the operator's network permitted under Class A, Part 16 of the Order and therefore did not constitute permitted development. Whether a proposal is solely for the purpose of the operator's electronic communications network is a question of planning judgement based on the facts in each case and must be undertaken prior to considering the matters of siting and appearance set out in Class A, Part 16 of the Order.

¹ Referenced APP/Q1445/H/18/3213483, APP/Q1445/H/18/3213489, APP/Q1445/H/18/3213495, APP/Q1445/H/18/3213524, APP/Q1445/H/18/3213535, APP/Q1445/H/18/3213542 & APP/Q1445/H/18/3213547.

7. The Technical Specification² for the digital totem apparatus proposed is similar in each appeal proposal. This shows that on the rear façade of the vertical frame there would be an illuminated LCD display screen of considerable size that is an integral part of the unit. The purpose of the LCD screen is for the display of advertisements, which is corroborated by the corresponding applications for advertisements under the Regulations. On this basis, the equipment proposed would be partly for the purpose of the operator's communication network and partly for an advertising role. As such, the digital totem apparatus proposed has a dual purpose that would not wholly fall within Part 16, Class A of the Order.
8. Given my finding that the appeal proposal would not be development permitted under Part 16, Class A, of the Order, there is no need for me to consider the merits of the siting and design of the proposals, as this would only apply in circumstances where the proposed developments were considered to amount to permitted development within the terms and limitations of Class A. My consideration of it would not alter the outcome of the decisions.
9. Accordingly, I find that the appeal proposals are not solely for the purpose of the operator's electronic communications network, and therefore, fall outside Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015.

Conclusion

10. For the reasons given above, I conclude that all the respective appeals should be dismissed.

Helen O'Connor

Inspector

² Digital Totem 85"/32" Communication Hub