
Appeal Decision

Site visit made on 2 July 2019

by H Miles BA(hons), MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 August 2019

Appeal Ref: APP/J4423/W/18/3193294

Public Highway, Gibraltar Street near Junction Russell Street, Sheffield S3 8RW

- 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 Maximus Networks Ltd against the decision of Sheffield City Council.
 - The application Ref 17/02948/TEL, dated 10 July 2017, was refused by notice dated 22 August 2017.
 - The development proposed is a call box.
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Decision

1. This appeal is allowed and prior approval is granted under the provisions of Article 3(1) Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) Order 2015 (GPDO) for a call box at Public Highway, Gibraltar Street near Junction Russell Street, Sheffield, S3 8RW in accordance with the application Ref 17/02948/TEL, dated 10 July 2017 and the details submitted with it including plan nos: Maximus Networks Ltd Telephone Kiosk, Gibraltar Street near junction Russell Street, Sheffield S3 8RW large scale site location map, Gibraltar Street near junction Russell Street, Sheffield S3 8RW small scale location map and Gibraltar Street near junction Russell Street, Sheffield S3 8RW site location photograph, pursuant to Article 3(1) Schedule 2, Part 16, Class A, Paragraph A.3 (4).

Procedural Matters

2. Following the Council's decision on the application that led to this appeal, a new version of the National Planning Policy Framework (the 2018 Framework) has been published. The main parties had the opportunity to make comments on the bearing of this on the appeal. Whilst there have been further revisions to the Framework contained in the new version published in February 2019 (the revised Framework), no changes have been made to the content directly relevant to the subject matter of this appeal. Consequently, I consider that no prejudice would occur to any parties as a result of me taking the revised Framework into account in my assessment of the appeal's merits.
3. I have been appointed to decide other appeals made by the appellant for similar development on nearby sites. For the avoidance of doubt, I have determined these appeals on their individual merits. Nonetheless, as there are similarities between the cases, much of the language used in my decisions is common to the decision letters.

4. It is put to me that these proposals are 'not in any way whatsoever for advertising and there is no incorporation of advertising in [these] proposals' and that the size of the kiosk is to allow wheelchair access and cover from the elements. Based on the evidence before me, including the submitted drawings, I find that the whole development as proposed would be for the purpose of the operator's electronic communications network. There is no dispute between the main parties that the proposal meets the requirements of Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) Order 2015 (GPDO) in other respects, subject to the prior approval of siting and appearance.
5. During the consideration of this appeal the Town and Country Planning (Permitted Development, Advertisement and Compensation Amendments) (England) Regulations 2019 (the 2019 regulations) came into force. With respect to Class A of Part 16 of Schedule 2, the 2019 regulations state that in the case of appeals that relate to the refusal of a prior approval application submitted before 25th May 2019, if prior approval is given, the planning permission granted under this class continues to have effect as if these amendments had not been made. This appeal is considered on this basis.
6. It has also been brought to my attention that Paragraph 17 of Part 3 of the 2019 regulations amends the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 by removing deemed consent to display an advertisement on the glazed surface of a telephone kiosk. I have taken this into account in my considerations as far as it is relevant.
7. I have been referred to Transport for London's Pedestrian Comfort Guidance and Streetscape Guidance 2017. However, they do not apply to the relevant local authority area and as such I give this guidance limited weight in my decision.

Main Issues

8. In light of the above, the main issues are the effect of the proposed development on the character and appearance of the area and highway safety, with particular regard to pedestrian safety in terms of its siting and appearance.

Reasons

Character and Appearance

9. The public pavement in the vicinity of the appeal site includes a line of street trees and a line of signage including an advertising panel, although the streetscene in this immediate area is not excessively cluttered. The wider area benefits from a planned public realm, however I did not observe an overriding appearance to the street furniture that forms the immediate setting of this appeal site. In summary, the immediate area of the appeal site is characterised by the existence of street furniture.
10. The appearance of the kiosk would be functional and, as such, in keeping with other street furniture in this area, which in this location does not appear to be part of a coordinated public realm. The nearby advertising panel is relatively wide and the proposed call box would be lower in height than some of the other items of street furniture in this area. Its footprint would not be excessive in this context. Therefore I do not find harm with respect to its appearance in

terms of its size or detailed design. The siting of street furniture in this location, in the form of the proposed call box, would thus preserve the existing character of this part of the street. Furthermore, the site is not excessively cluttered but is nonetheless characterised by street furniture, and a single call box would not result in unacceptable clutter in this location.

11. I conclude that the proposed development would not be harmful to the character and appearance of the area in terms of its siting and appearance. I have taken into account the evidence provided in relation to the provisions of the development plan so far as they are material. For the reasons above, the development would not be contrary to the policies I find to be most relevant to this main issue: Policies BE10 (Design of Streets, Pedestrian Routes, Cycleways and Public Spaces) and IB9 (Conditions on development in industry and business areas) of Sheffield a city for people Sheffield Unitary Development Plan Adopted March 1998, or Policies CS61 (Pedestrian Environment in the City Centre) and CS74 (Design Principles) of the Sheffield Development Framework Core Strategy Adopted March 2009, nor to the relevant advice in the Framework.

Highway Safety

12. This part of the pavement includes mainly slender street trees and signage but with a relatively wide advertising board. The existing street furniture and planting is not aligned. The proposed call box would be located roughly in line with the advertising signage and although it would reduce the width of the footway, given the existing arrangement on this stretch of pavement, I am not presented with substantive evidence that it would be so constrained as to result in an obstruction to pedestrians that would be harmful to highway safety.
13. Consequently, for the reasons above I conclude that the proposed development would not be harmful to highway safety, with particular regard to pedestrian safety in terms of its siting and appearance. I have taken into account the evidence provided in relation to the provisions of the development plan so far as they are material. For the reasons above the development would not be contrary to the policies I find to be most relevant to this main issue: Policy BE10 (Design of Streets, Pedestrian Routes, Cycleways and Public Spaces) of the UDP, or Policy CS61 (Pedestrian Environment in the City Centre) of the Core Strategy nor to the relevant advice in the Framework.

Other Matters

14. I have been provided with appeal decisions relating to other freestanding payphone kiosks in Sheffield¹. I have not been provided with the full details of these cases so I afford limited weight to their specific circumstances. Nevertheless, I note that the Inspectors made a site specific judgement with respect to character and appearance for each case, and I have done the same in this case.

Conditions and Conclusion

15. I conclude that the appeal should be allowed and prior approval granted.

¹ APP/J4423/W/17/3183033, 3183035, 3183036, 3183037, 3183042, 3183047, 3183048, 3183050, 3183039, 3183041, 3183044, 3183045

16. The Appellant is referred to the requirements under Schedule 2, Part 16, paragraph A.2. which need to be complied with.
17. I have considered the Council's suggested conditions. As set out in procedural matters, the advertisement regulations no longer permit advertisement displays to be fixed to the face of such kiosks. As such the Council's suggested condition in this regard would no longer meet the test of necessity. The GPDO requires that the apparatus must be removed from the land as soon as reasonably practicable after it is no longer required for electronic communications purposes, and the land must be restored to its condition before the development took place. The wording in the GPDO would achieve a similar purpose as the Council's suggested wording that the development should be removed when the 'phone apparatus no longer functions'. Therefore I do not consider that the Council's additional condition relating to the removal of the kiosk would meet the test of necessity.

H Miles

INSPECTOR