



Appeal Decisions

Site visit made on 1 July 2019

by William Cooper BA (Hons) MA CMLI

an Inspector appointed by the Secretary of State

Decision date: 15th August 2019

All Appeals

- The appeals are made under section 78 of the Town and Country Planning Act 1990 as amended against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 16 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeals are made by Maximus Networks Ltd against the decision of Manchester City Council.
 - The development proposed in each case is installation of a telephone kiosk.
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Appeal A - Ref: APP/B4215/W/18/3192726

Great Ancoats Street adj Central Retail Park, Manchester M4 6DJ

Grid Reference Easting: 384981 and Grid Reference Northing: 398408

- The application Ref: 116393/TEL/2017, dated 18 May 2017, was refused by notice dated 5 July 2017.
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Appeal B - Ref: APP/B4215/W/18/3192727

Cheetham Hill Road (adjacent The Peninsular), Manchester M4 4FB

Grid Reference Easting: 384071 and Grid Reference Northing: 399246

- The application Ref: 116392/TEL/2017, dated 18 May 2017, was refused by notice dated 5 July 2017.
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Appeal C - Ref: APP/B4215/W/18/3192729

143 Great Ancoats Street, Manchester M4 6DH

Grid Reference Easting: 385251 and Grid Reference Northing: 398192

- The application Ref: 116394/TEL/2017, dated 18 May 2017, was refused by notice dated 5 July 2017.
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Appeal D - Ref: APP/B4215/W/18/3192735

Oldham Road junction Cable Street, Manchester M4 5EQ

Grid Reference Easting: 384662 and Grid Reference Northing: 398739

- The application Ref: 116396/TEL/2017, dated 18 May 2017, was refused by notice dated 5 July 2017.
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Appeal E - Ref: APP/B4215/W/18/3192763

Great Ancoats Street near junction Port Street, Manchester M4 5BG

Grid Reference Easting: 384895 and Grid Reference Northing: 398454

- The application Ref: 116391/TEL/2017, dated 18 May 2017, was refused by notice dated 5 July 2017.
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Decisions

1. Appeals A-E are dismissed.

Procedural Matters and Background

2. The application forms relating to appeals A-E describe the proposed development as a 'call box'. Notwithstanding this, the appeal forms describe the proposal as 'prior approval for siting and appearance: installation of a telephone kiosk'. Furthermore, I note that the appellant refers to telephone kiosks in the relevant statements of case provided. Taking all of this into account, 'installation of a telephone kiosk' more appropriately describes the proposed development, and, as such, is the description used in the banner heading above. Accordingly, I refer to telephone kiosks in the consideration of each appeal below.
3. The appeals relate to proposals by Maximus Networks Ltd for the installation of a telephone kiosk at five sites in Manchester. The proposed apparatus is identical in each case. Therefore, in the interests of conciseness, I have dealt with all the appeal decisions in the same letter.
4. Whilst the Town and Country Planning (Permitted Development, Advertisement and Compensation Amendments) (England) Regulations 2019 amends the (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) by removing permission for the installation, alteration or replacement of a public call box by, or on behalf of, an electronic communications code operator, this is subject to transitional and saving provisions. Therefore, for the purposes of these appeals, which were validly made, the proposals fall to be considered against the provisions of Schedule 2, Part 16, Class A of the GPDO, which refers to development 'by or on behalf of an electronic communications code operator for the purpose of the operator's electronic communications network'.
5. The proposals before me were refused by the Council on grounds relating to siting and appearance. However, the *Westminster*¹ judgement found 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' (paragraph 46). Whilst the Council determined the applications before the *Westminster* judgement was handed down, the appellant and Council have been offered the opportunity to comment on the bearing of the judgement upon the appeals. I have taken these comments into account in determining these appeals.
6. The design of each of the proposed kiosks is the same, comprising a steel-framed kiosk, constructed with steel casings, clear polycarbonate and toughened glass, with a roof-mounted solar panel. They would be approximately 2.6m high, with a footprint of around 1.125m by 1.325m, and side panels with a width of approximately 0.55m. All would comprise a three-sided structure, open at the front with two shorter clear glazed side panels. The proposed style would be plain and simple without lettering or illumination.
7. Whether or not the proposed kiosks are solely for the purpose of the operator's electronic communications network is a matter of dispute between the main parties. The kiosk specification for each proposal includes a toughened glass, hinged door on its rear face, which covers an access panel. The Council considers that the rear panel, enclosed by an openable glass door, in

¹ Westminster CC v SSHCLG & New World Payphones Ltd [2019] EWHC 176 (Admin) (5 February 2019).

combination with the 'much larger size' of kiosk than required to accommodate the telephone, renders the kiosk primarily for the purpose of advertising.

8. However, the openable rear door is necessary to provide access for servicing, maintenance, updating and replacement of telecommunications equipment within the kiosk. Furthermore, the proposed kiosk is wider than the 'traditional public call box' to provide wheelchair access. I consider that the proposed kiosk design does not contain elements which are clearly and specifically for purposes other than the telecommunications function. Whilst deemed consent allows a non-illuminated advertisement on the glazed surface of one face of the kiosk, in these appeals, only the construction of the kiosks is being considered, and the appellant is not seeking advertisement consent. The above factors, together, lead me to find that these appeal proposals should not be considered to constitute a dual purpose. Therefore, the prior approval considerations of siting and appearance must be considered.
9. The provisions of the GPDO, under Article 3(1) and Schedule 2, Part 16, Class A, Paragraph A.3(4) require the local planning authority to assess the proposed developments solely on the basis of their siting and appearance, taking into account any representations received. My determination of these appeals has been made on the same basis.
10. The Council has made reference in its decision notices to Policies DM1, EN1, EN3, CC4, CC9, CC10, T1 and SP1 of the Core Strategy (2012) and to Saved Policies DC17, DC18, DC19 and E3 of the Manchester Unitary Development Plan(1995, as Saved), as well as to its Guide to Development in Manchester Supplementary Planning Document (2007). However, applications for prior approval are determined in relation to the criteria set out within the GPDO and, as such, do not require regard to be had to the development plan. Nonetheless, although not determinative, I take account of the above-mentioned policies in so far as they are relevant to matters of siting and appearance.
11. Appeals D and E relate to sites that are located within the setting of Conservation Areas and/or Listed Buildings. According to statute, Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special attention shall be paid to the desirability of conserving or enhancing the character or appearance of these areas. National planning policy, as set out in the Framework, states that when considering the impact of a proposal on the significance of designated heritage assets, great weight should be given to the asset's conservation, and that significance can be harmed or lost through development within their setting.
12. I note that no indication has been provided as to the precise orientation of the telephone kiosks in each case. As such, I have determined the appeals with reference to the identified footprint on the appellant's submitted photographs.

Main Issues

13. The **main issues** are:

- a) for appeals A, B and C, whether or not approval should be given in respect of the siting and appearance of the proposed development, with particular regard to its effect on the character and appearance of the area, and its effect upon the safe and efficient operation of the highway, and

- b) for appeals D and E, whether or not approval should be given in respect of the siting and appearance of the proposed development, with particular regard to whether it would preserve or enhance the character or appearance of the conservation area, preserve the setting of listed buildings, and its effect upon the safe and efficient operation of the highway.

Reasons

Appeal A - Great Ancoats Street adj Central Retail Park

14. The appeal site is located on an area of pavement adjacent to the vacant site of the former Central Retail Park, and on the opposite side of the road from the Urban Exchange Retail Park, which includes a supermarket and gym. It is also a short distance away from a road bridge over the Rochdale Canal. The canal bridge creates something of a 'brow', which the road leads up to, on both sides. A pedestrian crossing is located on the stretch of Great Ancoats Street between the bridge and the appeal site. Another telephone kiosk, of a different design, is situated nearby, on the same side of pavement, to the north-west of the site.
15. During the time of my site visit, the street was very busy with traffic travelling past the appeal site along both carriageway directions. I have seen nothing to suggest my observations are untypical. The area around the appeal site was busy with pedestrians, with particularly noticeable pedestrian flows to and from the Urban Exchange Retail Park opposite, across the nearby pedestrian crossing and over the canal bridge. The pavement close to the site hosts bridge railing, tall street lighting columns, traffic lights, another telephone kiosk, metal utilities cabinets and road signage.
16. I recognise that the style of the kiosk would be plain and simple. However, when approaching the site from both north-westerly and south-easterly directions along the street, the addition of the mass of the proposed approximately 2.6m high kiosk would, together with the aforementioned elements, cumulatively result in an increasingly cluttered appearance to the pavement and the wider streetscene. This intrusiveness would be accentuated by cluttering vistas to and from the 'brow' of the canal bridge. Therefore, the proposed kiosk would harm the character and appearance of the area.
17. The proposed telephone kiosk would reduce the width of the pavement. A large road sign on two supporting posts, and a tall streetlight column approximately in the middle of the pavement, are situated close by and to the north of the appeal site. I note the analysis of the appellant's highways consultant that the proposal would accord with the Streetscape Guidance produced by Transport for London (TfL) (SG) (2017) and would not compromise pedestrian intervisibility or safety. Nonetheless, it is noted that the above analysis assesses the existing footway width as narrower than that recommended by the TfL's Pedestrian Comfort Guidance (PCG) (2015). Moreover, I saw that the proposal, in combination with the aforementioned elements, would create a 'slalom' of street furniture for pavement users to navigate around. Taking the above together, I find that the proposal would have an unacceptably adverse effect on pedestrian permeability in what is apparently a busy area.
18. Accordingly, the siting and appearance of the proposed telephone kiosk would harm the character and appearance of the area. It would also be detrimental to

the safe and efficient operation of the highway. This harm justifies the refusal of prior approval and the dismissal of appeal A.

Appeal B - Cheetham Hill Road (adjacent The Peninsular)

19. The proposed telephone kiosk would be sited on a stretch of pavement which runs between the front of a large hotel and the large Peninsular office building. The site is on the apex of a curve of highway, which is close to a substantial, multi-lane road junction that joins the A665 Cheetham Hill Road with Trinity Way. The pedestrian crossing close to the proposed location, to the south, and a number of other pedestrian crossings, are within short walking distance.
20. In the vicinity of the appeal site are highway signage within the pavement, bollards in front of the Peninsular, ground floor columns along the edge of the hotel building and a substantial street tree surrounded by a metal tree guard. I recognise that the style of the kiosk would be plain and simple. However, in combination with this other street furniture, the addition of the mass of the proposed approximately 2.6m high kiosk would create an intrusive visual 'pinch point' within the streetscene, which would interrupt the curving spatial flow of the street. Moreover, its location on the outside edge of the apex of the highway's curve, on the approach to a substantial and apparently busy junction, would give the proposed kiosk particular prominence. This prominence would exacerbate the proposal's visual intrusiveness.
21. The proposed kiosk would be sited adjacent to the outer, roadside edge of the pavement and would take up a substantial proportion of the width of the pavement in this location. I note the analysis of the appellant's highways consultant that the proposal would accord with the SG and would not compromise pedestrian and driver intervisibility or safety.
22. Nonetheless, it is noted that the above analysis assesses the existing footway width as narrower than that recommended by the PCG. Moreover, on my site visit, I observed a busy traffic flow, and a steady pedestrian flow along the pavement, past the site and around the junction described above. Although a 'snapshot' in time, there is nothing before me to suggest my observations were untypical. Given the large nearby multi-storey office and hotel buildings and the appeal site's proximity to Manchester Arena and Manchester Victoria railway station, a substantial footfall in the area is anticipated at peak commuting and event access times. Taking the above together, I find that the proposal would have an unacceptably adverse effect on pedestrian permeability.
23. Given the proposed location of the kiosk on the apex of a curve of the highway on the approach to a substantial, busy road junction, I find that it would reduce sightlines into and across the junction, and, given its proximity to traffic lights and a pedestrian crossing, would be a distracting feature to highway users. Thus, I find that the proposed kiosk would have an adverse effect on highway safety on Cheetham Hill Road, in the vicinity of the appeal site.
24. Accordingly, the siting and appearance of the proposed telephone kiosk would harm the character and appearance of the area. It would also be detrimental to the safe and efficient operation of the highway. The harm that would arise from the siting and appearance of the proposal justifies the refusal of prior approval and the dismissal of appeal B.

Appeal C - 143 Great Ancoats Street

25. The stretch of Great Ancoats Street which passes the appeal site is a busy dual carriageway road. The appeal site is located in front of a parade of retail units with dwellings above, and residential development on the other side of the road. At the time of my site visit, I observed a busy traffic flow passing the shops, and a light and steady pedestrian flow along the pavement past the proposed kiosk site. Although a 'snapshot' in time, there is nothing to suggest my observations are untypical.
26. The proposed kiosk would be on the outer, roadside edge of the pavement, near a bus stop. A tall lighting column and large highway sign on two posts are located close to the site of the proposed kiosk. Looking in a north-westerly direction there is a bus shelter and another lighting column within the vicinity of the parade of shops. I recognise that the style of the kiosk would be plain and simple. However, in combination with this other street furniture, the addition of the mass of the proposed approximately 2.6m high kiosk would have a cluttering visual effect. The rise of the road, in combination with the proposed location on the outer edge of the pavement, would give the proposal added prominence to highway users travelling in a south-easterly direction. This would harm the streetscene in front of the shops.
27. The stretch of Great Ancoats Street around the appeal site is fairly straight, and therefore the proposed kiosk would not have a significant effect on sight lines and thus highway safety.
28. Accordingly, the siting and appearance of the proposed telephone kiosk would harm the character and appearance of the area. The lack of harm to highway safety is a neutral matter that does not outweigh the above consideration. This justifies refusal of prior approval and the dismissal of appeal C.

Appeal D - Oldham Road junction Cable Street

29. The appeal site is located on an area of pavement along Oldham Road, close to its junction with Swan Street. The stretch of Oldham Road on which it is located is characterised by a mix of modern apartment blocks and lower-rise commercial buildings.
30. The site is on the opposite side of Oldham Road to, and within the setting of, the Ancoats Conservation Area (ACA), the significance and character of which, derives from its historic cotton spinning mills and associated buildings. The site is within the setting of the Grade II Listed, Gothic-style Crown and Kettle Public House, which is in the ACA. It is also located a short distance north of 2-4 Swan Street, which is a Grade II Listed bank building, and near 8 Cable Street, which is a Grade II Listed late nineteenth century warehouse. The appeal site is also located near, and within the setting of, Smithfield Conservation Area (SCA), which is characterised by historic market buildings and associated buildings.
31. The proposed kiosk site is located on the outer, roadside edge of a wide stretch of pavement. In this location, the nearby bus shelter would help to visually assimilate the proposed kiosk into middle and longer distance views along part of Oldham Road, from the south-west and north-east. Relative to the prevailing highway flow along Oldham Road, the somewhat oblique angle of sightlines from the vicinity of the proposed kiosk to the Grade II Listed Crown and Kettle

Public House and 8 Cable Street buildings, would limit the proposal's impact on those heritage assets. The proposed kiosk would have a minimal visual impact on views of the edge of the ACA, which is situated on the opposite side of the wide and busy dual carriageway of Oldham Road. As such, I find that the proposal would preserve the character and appearance and setting of designated heritage assets.

32. I recognise that the style of the kiosk would be plain and simple. However, when viewed from south-west of the bus shelter, the addition of the mass of the proposed approximately 2.6m high kiosk would have a visually intrusive and cluttering effect on the approach to the junction of Oldham Road and Swan Street, including the setting of the eastern corner of the SCA and the Grade II Listed Building at 2-4 Swan Street, which together form a vista of historic townscape value at this prominent 'node'.
33. Accordingly, I find that the proposal would harm the character and appearance of the area and would fail to preserve or enhance the character and appearance of the setting of the SCA and the setting of 2-4 Swan Street. The harm arising would be localised and, in respect of the significance of the heritage assets as a whole, would be less than substantial. Public benefits may arise from the proposal in terms of providing accessibility to a telephone kiosk for people with limited mobility, including wheelchair users. However, in this case, these do not amount to something that outweighs the harm to heritage assets identified.
34. The site is located on the pavement of a wide and fairly straight stretch of highway, between sets of traffic signals. Given this, the proposed kiosk would not significantly intrude on the sight lines of motorists travelling along Oldham Road. As such, it would not harm highway safety.
35. In conclusion, in relation to appeal D, the proposed telephone kiosk would harm the character and appearance of the setting of heritage assets. The lack of harm to highway safety in this case does not outweigh the above consideration, and this justifies the refusal of prior approval.

Appeal E - Great Ancoats Street near junction Port Street

36. The site relating to Appeal E is located on the inner edge of a stretch of pavement along Great Ancoats Street, close to the road bridge over the Rochdale Canal, which is north-east of appeal site C. The proposed kiosk location is in front of the site of Brownsfield Mill, which is a Grade II* Listed canal-side cotton mill building.
37. Great Ancoats Street is apparently very busy with traffic, with a steady flow of pedestrians, including those accessing the Urban Exchange Retail Park. Given the proximity of that retail park, with its gym and shops, and various roads and the canal towpath intersecting with Great Ancoats Road in the vicinity of the site, it is anticipated that those flows would increase at peak commuting and leisure times.
38. The kiosk would be close to a tall lighting column. A pedestrian crossing with traffic lights is a short distance away to the north-west of the site and a red pillar box adds to the middle distance vista, looking north west. I recognise that the style of the kiosk would be plain and simple. However, in addition to the elements described above, the mass of the proposed approximately 2.6m high kiosk would be a visually cluttering addition to the streetscene, on various

approaches to and from the 'brow' of the canal bridge. Moreover, it would detract from the setting of the historic Brownsfield Mill, viewed from various points on Great Ancoats Street.

39. The harm arising would be localised and, in respect of the significance of the heritage assets as a whole, would be less than substantial. Public benefits may arise from the proposal in terms of providing accessibility to a telephone kiosk for people with limited mobility, including wheelchair users. However, in this case, these do not amount to something that outweighs the harm to heritage assets identified.
40. The proposed telephone kiosk would reduce the width of the footway close to the road entrance to Brownsfield Mill, in the vicinity of a pedestrian crossing. I note the analysis of the appellant's highways consultant that the proposal would accord with the SG and would not compromise pedestrian and driver intervisibility or safety. Nonetheless, it is noted that the above analysis assesses the existing footway width as narrower than that recommended by the PCG. Moreover, given the anticipated busy pedestrian flows at peak commuting and leisure times, I consider that the proposal would adversely affect the width and permeability of the public footpath.
41. Given the fairly straight stretch of highway passing the appeal site and its location on the inner edge of the pavement, the proposed kiosk would not significantly intrude on sightlines for through traffic. However, it would reduce visibility for vehicles accessing the car park from Great Ancoats Street via Binns Place, and vehicles accessing Brownsfield Mill, once the latter's residential renovation is completed.
42. Accordingly, I find that the proposed telephone kiosk would harm the character and appearance of the area, including the setting of heritage assets. It would also be detrimental to the safe and efficient operation of the highway. This harm justifies the refusal of prior approval and the dismissal of appeal E.

Other Matters

43. In relation to appeals A-E, my attention has been drawn to several other appeal decisions. I do not have the full details of the other cases and so cannot determine whether the circumstances are analogous to the proposals before me. Notwithstanding this, I note that some of the other cases are within other local planning authority areas, where a different character and appearance will prevail. Moreover, the proposed kiosks have their own settings. As such, the other appeal decision referred to are not determinative points in favour of the proposals.

Conclusion

44. For the reasons given above and having regard to all matters raised, I conclude that appeals A-E should be dismissed due to the harmful impacts from their siting and appearance.

William Cooper

INSPECTOR