



Appeal Decisions

by David Troy BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 October 2019

CASE DETAILS

All Appeals

- The appeals are 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 (as amended).
 - The appeals are made by Mr Nathan Still of Infocus Public Networks Limited against the decision of the Council of the London Borough of Hounslow.
 - The development proposed in each case is installation of an electronic communications apparatus pursuant to Class 16 of the Town and Country Planning (General Permitted Development) Order 2015.
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Appeal A Ref: APP/F5540/W/19/3225638

6 Chiswick Terrace, Acton Lane, Chiswick, London W4 5LY

- The Application Ref 00004/A6/COM1, dated 25 October 2018, was refused by notice dated 18 December 2018.
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Appeal B Ref: APP/F5540/W/19/3225639

Opposite Quality Food, 34-62 Staines Road, Hounslow, London TW3 3LZ

- The Application Ref 01054/OPP34-62/COM1, dated 25 October 2018, was refused by notice dated 18 December 2018.
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Appeal C Ref: APP/F5540/W/19/3225654

OS Central House, Lampton Rd, Hounslow, London TW3 1JQ

- The Application Ref 00676/AT/COM1, dated 25 October 2018, was refused by notice dated 18 December 2018.
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Appeal D Ref: APP/F5540/W/19/3225655

OS Pieris House, High Street, Feltham, London TW13 4GD

- The Application Ref 00609/CD/COM1, dated 25 October 2018, was refused by notice dated 18 December 2018.
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Decisions

1. The appeals are dismissed.

Procedural Matters and Background

2. All of the appeals are made by Infocus Public Networks Limited and propose the installation of electronic communications apparatus pursuant to Class 16 of

the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (GPDO) at four separation locations within the London Borough of Hounslow. The proposed apparatus, described by the appellant in the application forms as comprising a telephone kiosk, is identical in each case. Therefore, in the interests of conciseness, I have dealt with all of the appeals in the same decision.

3. The Council has referred to the recent amendment¹ to the GPDO which removes the permitted development rights for a public call box. The amendment includes transitional and saving provisions which means the appeals can be determined.
4. 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. A 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.
5. These appeals were refused by the Council on grounds relating to siting and appearance. 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 must be made before siting and appearance are considered.
6. 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 main parties have had an opportunity to provide comments on the judgement as part of the appeals process. Accordingly, no party is prejudiced by the consideration of the appeals in the light of the judgement and that only the installation of the kiosks is being considered, not the matter of advertisement consent.
7. I have not undertaken a site visit, but instead made a desk-based assessment of the proposals, to determine whether or not the proposal in each case are solely for the purpose of the operator's electronic communications network.

Main issue

8. Having regard to the above, and following the Westminster judgement, the main issue is whether or not the proposals are solely for the purpose of the operator's electronic communications network.

Reasons

9. The Westminster judgement considered the matter of development for 'the purpose' of an operator's network. The Court found that a development falls outside the scope of Part 16, Class A if it is not "for the purpose" of the operator's network. If a development is partly "for the purpose" of the operator's network, and partly for another purpose, it falls outside of the scope

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

of the GDPO and is not permitted development. Paragraph 39 of the Westminster judgement indicates that the single 'dual purpose' development must be judged as a whole.

10. In all cases, the telephone kiosk proposed is a freestanding rectangular structure which would be 2600mm high and 1338mm wide with a depth of 312mm. One side of the unit would house communication equipment, including an integrated touch screen designed for public phone use and a telephone handset, with a projecting canopy above. On the reverse or other side would be a glazed panel of anti-vandalism hardened laminated glass, which the elevation drawings and photomontages show as a reasonably large rectangular area.
11. A Technical Specification for the proposed kiosks identifies that the reverse side of the unit can be used for 'commercial display or Council information'. Moreover, the appellant's Statements of Case describes this side of the unit as "an area designed for commercial display".
12. As such, based on the evidence before me, the reverse side of the proposed kiosks from the telecommunication equipment would incorporate areas expressly and specifically designed for the display of commercial advertisements or other information.
13. Therefore, I conclude that the proposed apparatus would be both for the purpose of the operator's telecommunications network and for the purpose of commercial display. Accordingly, the appeal proposals 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. As such, it precludes the proposals from being permitted development under terms of the GDPO.

Conclusion

14. For the reasons given above, and having regard to all other matters raised, I conclude that the appeals should be dismissed.

David Troy

INSPECTOR