



Appeal Decision

Site visit made on 8 August 2019

by Robert Fallon B.Sc. (Hons) PGDipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 October 2019

Appeal Ref: APP/X5990/W/18/3193811

455 - 497 Oxford Street, London, W1C 2DZ

- The appeal is 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 appeal is made by Mr Tom Fisher (Euro Payphone Ltd) against the decision of City of Westminster Council.
 - The application Ref 17/05064/TELCOM dated 22 March 2017, was refused by notice dated 31 July 2017.
 - The development proposed is the installation of a phone box outside 455 - 497 Oxford Street.
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Decision

1. The appeal is dismissed.

Procedural matters

2. The provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (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 development solely on the basis of its siting and appearance, taking into account any representations received. My determination of this appeal has been made on the same basis.
3. I have also dealt with another appeal by the same appellant nearby on Regent Street (Ref: APP/X5990/W/18/3193823). That appeal is the subject of a separate decision.
4. Since the appeal was submitted, two revised versions of the Framework have been published¹². However, insofar as the Framework is relevant to my determination of the appeals, it is not so changed that the case of either party would be prejudiced by my taking it into account as a material consideration.
5. The Framework supports high quality communications infrastructure and requires that local planning authorities must determine applications on planning grounds only. In accordance with the provisions of Schedule 2, Part 16 of the GPDO, and subject to any relevant exception, limitation or condition specified therein, development by or on behalf of an electronic communications code operator for the purpose of the operator's electronic communications network

¹ National Planning Policy Framework, Ministry for Housing, Communities and Local Government, July 2018.

² National Planning Policy Framework, Ministry for Housing, Communities and Local Government, February 2019.

is permitted development. Therefore, matters such as the need for the development are not at issue in this appeal.

6. In its reasons for refusal, the Council has referred to the prematurity of the appeal scheme in light of the review of Oxford Street and future proposals for its improvement. However, I have no details of those proposals before me or when any improvement scheme might be built. I therefore give the potential future proposals very limited weight.

Planning Policy

7. The principle of development is established by the GPDO and the provisions of Schedule 2, Part 16, Class A contained within this do not require regard be had to the development plan. I have had regard to the policies of the development plan, the Framework, and related guidance in the Westminster Way Supplementary Planning Document³, but only in so far as they are a material consideration relevant to matters of siting and appearance.

Main issues

8. The main issues are the effect of the siting and appearance of the proposed telephone kiosk upon:
 - the character and appearance of the area, and the setting of the Mayfair Conservation Area;
 - the pedestrian environment.

Reasons

Appeal site context

9. The appeal site is located at the corner of Park Street and Oxford Street, the latter of which is an extremely busy and commercial thoroughfare in central London within the West End Special Retail Policy Area, as identified in the City Plan⁴ and next to a busy 4-way intersection with pedestrian crossings. It lies just outside, but directly adjacent to the Mayfair Conservation Area ('the conservation area'), in close proximity to a traffic light column.

Character and appearance

10. The proposed telephone kiosk is of a lightweight and modern design, with extensive glazing. Although it is of modest proportions, there is almost no street clutter in the vicinity of the appeal site and it would as a consequence stand-out and appear intrusive. This harm would be intensified by its highly prominent and publicly visible location, and close proximity to the conservation area.
11. For the reasons set out above I conclude that, due to its siting, the proposed telephone kiosk would have a harmful effect upon the character and appearance of the area, and detract from the setting of the conservation area. As a consequence, insofar as they are a material consideration, the development would be contrary to Policies S25 and S28 of the City Plan and

³ Westminster Way - Public realm strategy, Design principles and practice, Adopted 6 September 2011, City of Westminster.

⁴ Westminster City Plan, Consolidated with all changes since November 2013, Revision to Westminster's City Plan, November 2016, City of Westminster.

Policies DES 1 and DES 9 of the Unitary Development Plan⁵, which collectively seek, amongst other things, to; (a) maintain the character of historic streets; (b) improve the quality of spaces around buildings; and (c) conserve and respect the setting of heritage assets.

12. I also find that the scheme conflicts with Paragraphs 127 and 194 of the Framework which seeks, amongst other things; (a) clear and convincing justification for any harm to the significance of a designated heritage asset from development within its setting; (b) development that adds to the overall quality of an area; (c) development that is sympathetic to local character, including the surrounding built environment; and (d) development that maintains a strong sense of place using the established pattern of buildings, streets and spaces.
13. Despite the Council having referred to Policy DES 7 of the Unitary Development Plan in its reason for refusal, this is not applicable to the proposal as the street furniture section only applies where planning permission is required, or to prevent or minimise light pollution or trespass.

Pedestrian environment

14. The footway is of a generous width where the telephone kiosk would be sited (approximately 7.3 metres) and would exceed the 2 metre width specification set out in government documents⁶ and the measurements referred to in the Transport for London Guidance referred to by the appellant. In view of this, and because it is set back from the main thoroughfare on Oxford Street, and appears to be more directly related to the secondary road of Park Street, I am satisfied that the proposal would retain sufficient space for the movement of pedestrians and wheelchair users.
15. For the reasons set out above I conclude that, due to its siting, the proposed telephone kiosk would not have a harmful effect upon the pedestrian environment of the area. As a consequence, insofar as they are a material consideration, the development would accord with Policies S7 and S41 of the City Plan and Policy TRANS 3 of the Unitary Development Plan, which collectively seek, amongst other things, to; (a) prioritise pedestrian movement; and (b) secure an improved environment for pedestrians with particular regard to their safety, ease, convenience and directness of movement.
16. I also find that the scheme accords with Paragraph 127 of the Framework which seeks, amongst other things, development that will create places that are safe, inclusive and accessible, with a high standard of amenity for existing users.
17. I also conclude that the scheme accords with the Westminster Way Supplementary Planning Document which seeks, amongst other things, to ensure ease of pedestrian movement and the delivery of an inclusive public realm, particularly where flows converge on busy destinations.

⁵ City of Westminster Unitary Development Plan, Adopted 24 January 2007.

⁶ Inclusive Mobility report, 2005, Department for Transport and Manual for Streets, 2007, Communities and Local Government and the Department for Transport.

Other matters

18. The provisions of the GPDO require the proposed development to be assessed solely on the basis of its siting and appearance. Therefore, whilst the appellant has referred to the purported benefits of the proposed telephone kiosk, I have not taken these matters into account.
19. Despite the appellant having referred to Policy SOC 9 of the Unitary Development Plan in support of the scheme, this is not applicable to the proposal as it applies to telecommunications equipment where planning permission is being sought.
20. My attention has been drawn by the appellant to a number of other appeal decisions. However, a significant period of time has elapsed since many of these decisions were made and I do not consider the site and development circumstances for any of these to be directly comparable to the scheme before me. I have as a consequence assessed the proposal on its own merits in the light of all the evidence which is now before me.
21. Given my conclusion on the first main issue that the development is unacceptable, the other matters raised by interested parties have not been central to my decision. Accordingly, there is no need for me to consider them further as it would not alter the outcome of the appeal.

Conclusion

22. For the reasons given above, I conclude that the appeal should be dismissed.

Robert Fallon

INSPECTOR