



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/18/3193823

Pavement adjacent to 244 Regent Street, London, W1A 1DB

- 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 17/05078/TELCOM dated 22 March 2017, was refused by notice dated 31 July 2017.
 - The development proposed is the installation of a telephone kiosk.
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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 Oxford Street (Ref: APP/X5990/W/18/3193811). 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. The second reason for refusal refers to the Mayfair Conservation Area, whereas the evidence in the case officer report and Council's appeal statement reveals the site to be within the Regent Street Conservation Area. I am nonetheless content that this is a typing error and have as a consequence considered the scheme on the basis of its impact on the Regent Street Conservation Area. I am satisfied that dealing with the appeal on this basis is in the interests of proper planning and has not prejudiced the interests of any party.

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, with particular regard to the Regent Street Conservation Area and the setting of a nearby listed building;
 - the pedestrian environment.

Reasons

Appeal site context

9. The appeal site lies within an extremely busy and commercial thoroughfare in central London, next to a busy 4-way intersection with pedestrian crossings, and within the West End Special Retail Policy Area, as identified in the City Plan⁴. It lies adjacent to No 203-221 Regent Street, a Grade II listed building ('the listed building') and within the Regent Street Conservation Area ('the conservation area'). A litter bin, traffic light column and pedestrian-crossing signal column are in close proximity to the appeal site.

Character and appearance

10. The appeal site is located within the Regent Street Conservation Area and the statutory requirements of Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 require that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area. I have also considered the impact of the development on the conservation area and setting of the listed building in accordance with Chapter 16 of the Framework.

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.

11. The proposed telephone kiosk is of a lightweight and modern design, with extensive glazing. Although it is of modest proportions, there is limited street clutter in the vicinity of the appeal site and it would as a consequence stand-out and appear intrusive. Furthermore, its functional and utilitarian design would appear out-of-place against its backdrop of attractive and well-articulated shopfronts. This harm would be intensified by its highly prominent and publicly visible location, and it partly obscuring the shopfront of the adjacent listed building when viewed from the opposite side of the road.
12. For the reasons set out above I conclude that, due to its siting and appearance, the proposed telephone kiosk would have a harmful effect upon the character and appearance of the area, and in particular, the conservation area. Furthermore, because the adjacent pedestrian footway is central to how the listed building is experienced, I find that the development would fail to preserve its setting. 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 Policy DES 1 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 heritage assets.
13. As a consequence, the development would also fail to preserve or enhance the character or appearance of the conservation area in accordance with S72 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.
14. I also find that the scheme conflicts with Paragraphs 127, 193 and 194 of the Framework which seeks, amongst other things; (a) great weight to be given to the conservation of designated heritage assets; (b) clear and convincing justification for any harm to the significance of a designated heritage asset; (c) development that adds to the overall quality of an area; (d) development that is sympathetic to local character, including the surrounding built environment; and (e) development that maintains a strong sense of place using the established pattern of buildings, streets and spaces.
15. 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. Policy DES 9 is also not applicable as section (F) relates to the setting of conservation areas and not developments wholly or partly within them. Similarly, Policy DES 10 is not applicable as the section on setting of listed buildings relates to applications for planning permission.

Pedestrian environment

16. The footway is of a generous width where the telephone kiosk would be sited (approximately 5.8 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. However, these are minimum standards and the appeal site is directly adjacent to an extremely busy 4-way intersection with pedestrian crossings on one of the most

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.

prominent retail streets in London and an international shopping destination. At my site visit I observed that the full width of the footway was needed to accommodate pedestrian traffic and that to reduce its width, even marginally, would result in insufficient space for the movement of pedestrians and wheelchair users.

17. For the reasons set out above I conclude that, due to its siting, the proposed telephone kiosk would have a harmful effect upon the pedestrian environment of the area. As a consequence, insofar as they are a material consideration, the development would be contrary to 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, with particular emphasis to the West End Special Retail Policy Area and areas with high pedestrian volumes.
18. I also find that the scheme conflicts 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.
19. I also find that the scheme conflicts 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.

Other matters

20. Given my conclusion on the main issues 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.
21. 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.
22. 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.

Conclusion

23. 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 other than in respect of heritage assets.
24. Given the glazed finish of the telephone kiosk and its modest size, I am satisfied that the scheme would cause less-than substantial harm to the significance of the conservation area and listed building as designated heritage assets. As a consequence, I have weighed this harm against the public benefits

of the proposal, including securing optimum viable use, in accordance with Paragraph 196 of the Framework.

25. In carrying out this balancing exercise, I have given considerable importance and weight to the desirability of preserving or enhancing the character or appearance of the conservation area in accordance with Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.
26. I recognise that the scheme would provide a communication service benefit to the public in that it would increase the number of telephone kiosks available and that it would be accessible by those with disabilities. However, whilst I note the decline in the number of telephone kiosks in the UK, this can reasonably be considered to correlate with an increase in the use of mobile phone technology. Given the way people communicate, I do not consider the benefits to the local population or those visiting as tourists would be significant. Accordingly, it is my view that this benefit would be of limited value and significantly outweighed by the harm to the character and appearance of the area, with particular regard to the conservation area and setting of the listed building and their significance as designated heritage assets.
27. For the reasons given above, I conclude that the appeal should be dismissed.

Robert Fallon

INSPECTOR