
Appeal Decision

Site visit made on 16 August 2019 by Scott Britnell MSc FdA

Decision by R C Kirby BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 October 2019

Appeal Ref: APP/U5360/W/19/3222048

Os 235 Old Street, Hackney, London, EC1V 9EY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3(1) and 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 Nathan Still (Infocus Public Networks Limited) against the decision of the Council of the London Borough of Hackney.
 - The application Ref 2018/4187, dated 15 November 2018, was refused by notice dated 7 January 2019.
 - The development proposed is described as "Installation of an electronic communications apparatus comprising a telephone kiosk".
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Decision

1. The appeal is dismissed.

Appeal Procedure

2. The site visit was undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

Procedural Matters and Background

3. The case before me relates to a prior notification application for the installation of electronic communications apparatus pursuant to Class 16 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO).
4. The Council refused the application on grounds relating to siting and appearance. However, the *Westminster*¹ judgment, which was drawn to the attention of the main parties², establishes that it is first necessary to establish whether the proposed development is permitted development. That is that the development falls within the scope of Part 16, Class A of the GPDO and is for the purpose of the operator's electronic communications network.

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

² No comments were received from either party

Main Issues

5. Having regard to the above, the main issues are whether or not the proposal comprises permitted development, and if it does whether or not prior approval should be granted.

Reasons for the Recommendation

6. The proposed kiosk would be located on Old Street, a busy road in the Hackney area of London and would replace an existing kiosk. It would be sited at the back edge of the main pavement on an area of hardstanding upon which a bank of recycling receptacles has been established. The surrounding area is characterised by commercial premises, although there are residential properties nearby. The site is located outside of, but close to the boundary of the South Shoreditch Conservation Area.
7. The kiosk is described in varying terms in the appellant's submission, including as 'telecommunication apparatus', 'accessible payphone kiosk' and 'communication hub'. On one side of the kiosk, beneath a projecting canopy, would be a 32 inch touch screen display to include, amongst other things, a hands free phone. On the rear would be a glazed panel of anti-vandalism hardened laminated glass. This is described in the appeal statement as "an area designed for commercial display".
8. In this instance, it is clear from the submissions before me that the rear face of the kiosk would incorporate an area expressly and specifically designed for the commercial display of advertisements. Accordingly, the proposal would not solely be for the purpose of the operator's electronic communications network. As such the telephone kiosk would not comprise permitted development under Schedule 2, Part 16, Class A of the GPDO. Consequently, it is not necessary for me to consider matters relating to siting or appearance, or other matters set out in the Council's refusal reason.

Recommendation

9. For the reasons given above and having regard to all matters raised, I conclude that the proposal would not comprise permitted development. I recommend that the appeal should be dismissed.

Scott Britnell

APPEAL PLANNING OFFICER

Inspector's Decision

10. I have considered all the submitted evidence and the Appeal Planning Officer's report and on that basis the appeal is dismissed.

RC Kirby

INSPECTOR