
Appeal Decision

Site visits made on 30 January 2019

by F Rafiq BSc (Hons), MCD, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd October 2019

Appeal A Ref: APP/U4230/W/17/3192074

Public Highway at Blackfriar's Road corner of Queen Street, Salford M3 7EE

- 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 Maximus Networks Ltd against the decision of Salford City Council.
 - The application Ref 17/70039/TEL56 dated 18 May 2017 was refused by notice dated 5 July 2017.
 - The development proposed is the installation of a telephone kiosk.
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Appeal B Ref: APP/U4230/W/17/3192077

Public Highway at Blackfriar's Street corner of Chapel Street, Salford M3 5AL

- 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 Maximus Networks Ltd against the decision of Salford City Council.
 - The application Ref 17/70041/TEL56 dated 18 May 2017 was refused by notice dated 5 July 2017.
 - The development proposed is the installation of a telephone kiosk.
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Appeal C Ref: APP/U4230/W/17/3192078

Public Highway at Chapel Street near the junction of Blackfriar's Street, Salford M3 7AA

- 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 Maximus Networks Ltd against the decision of Salford City Council.
 - The application Ref 17/70040/TEL56 dated 18 May 2017 was refused by notice dated 5 July 2017.
 - The development proposed is the installation of a telephone kiosk.
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Decisions:

Appeal A

1. The appeal is allowed and approval is granted under the provisions of 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) for the siting and appearance of the installation of a telephone kiosk on the Public Highway at Blackfriar's Road corner of Queen Street, Salford M3 7EE in accordance with the terms of the application Ref 17/70039/TEL56, dated 18 May 2017, and the plans submitted with it.

Appeal B

2. The appeal is allowed and approval is granted under the provisions of 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) for the siting and appearance of the installation of a telephone kiosk on the Public Highway at Blackfriar's Street corner of Chapel Street, Salford M3 5AL in accordance with the terms of the application Ref 17/70041/TEL56, dated 18 May 2017, and the plans submitted with it.

Appeal C

3. The appeal is allowed and approval is granted under the provisions of 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) for the siting and appearance of the installation of a telephone kiosk on the Public Highway at Chapel Street near the junction of Blackfriar's Street, Salford M3 7AA in accordance with the terms of the application Ref 17/70040/TEL56, dated 18 May 2017, and the plans submitted with it.

Procedural Matters

4. The application forms refer to 'Manchester' within the site address and to the type of apparatus to be installed as a 'Call Box'. I have utilised 'Salford' which is referenced within the decision notices and appeal forms as this more accurately reflects the locations of the appeal sites, as well as part of the description of development from the respective appeal forms, which reference the installation of telephone kiosks as this provides certainty of the proposal subject of each appeal.
5. As an electronic communications code operator, the appellant benefits from deemed planning permission for a proposed payphone kiosk (also known as a public call box) under Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) Order 2015 (GPDO), subject to prior approval by the local planning authority of siting and appearance. The appellant applied to the Council on that basis. The Council determined that prior approval was required and refused for the siting and appearance of the telephone kiosk subject to each of the three appeals.
6. On 25 May 2019, the Town and Country Planning (Permitted Development, Advertisement and Compensation Amendments) (England) Regulations 2019 came into force, amending the GPDO. This amendment removes the permitted development right to install a public call box under Schedule 2, Part 16, Class A of the GPDO. However, transitional and saving provisions at Part 5 of the 2019 Regulations provide that where an appeal has been made within 6 months of the date of notice of refusal of a prior approval application submitted before 25

May 2019, the planning permission granted by Schedule 2, Part 16, Class A continues to have effect in relation to a public call box as if the amendments made to the GPDO by the 2019 Regulations had not been made. That is the case in respect of the appeals before me.

7. The Council have made reference to various development plan policies. The principle of development is established by the GPDO and prior approval relating to paragraph A.3 of Schedule 2, Part 16, Class A of the GPDO includes no requirement that regard be had to the development plan. The provisions of the GPDO require the local planning authority to assess the proposed development solely upon the basis of its siting and appearance, taking into account any representations received. I, therefore, take account of the policies of the development plan and any related guidance including a Supplementary Planning Document in so far as they are a material consideration relevant to matters of siting and appearance.
8. The National Planning Policy Framework (Framework) deals with supporting high quality and reliable communications infrastructure, including applications for prior approval, and requires that local planning authorities must determine applications on planning grounds. As the principle of development is established by the GPDO, considerations such as the need for the telephone kiosk are not a relevant matter. The Framework has been revised since the appeal was lodged, but this does not raise any additional matters in this respect.
9. Listed buildings are situated in the vicinity of the appeal sites, with Appeal's B and C also being close to a Conservation Area. 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 Conservation Area. Section 66 of the same Act requires special regard to be paid to the desirability of preserving listed buildings and their settings. The Framework makes clear that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight attaches to the asset's conservation; the more important the asset, the greater that weight should be. Significance can be harmed through development within an asset's setting.
10. The determination of each of these appeals follows a High Court judgement in the decision of Ouseley J in *Westminster CC v. SSHCLG & New World Payphones Ltd* [2019] EWHC 176 (Admin). The decision in this case concluded that the relevant telephone kiosk was for the dual purpose of advertisement display and telecommunications use, stating that it contained features which were for advertising and not there at all for the telecommunications function.
11. In respect of these appeal cases, based on the evidence before me, including the submitted drawings and technical details, I find that they do not clearly show that the proposed telephone kiosks are intended to support advertising. I have taken into account that deemed consent allows for a non-illuminated advertisement on the glazed surface of one face of the kiosk. However, in the absence of any particular advertising elements or features, to me these appeals should not be considered to constitute a dual purpose and therefore prior approval consideration of siting and appearance must be considered.
12. Concerns have been raised on the possible addition of an advertisement on the kiosks with reference to the Appellant's funding model. However, the

construction of a telephone kiosk and the display of advertisements are distinct and separate matters. The subject appeals relate to the construction of a kiosk only and not any advertisement consent that may otherwise be required. I have determined the appeals on that basis.

13. Reference has been made to appeal decisions on other sites, but I am not aware of the full circumstances of those cases or specific details of regeneration projects taking place within this part of the City Centre, including details of the complete renewal referenced in the area of the proposed kiosk in Appeal B. I can confirm that I have considered these appeals on their own merits.

Main Issue

14. The main issue is whether or not approval should be given in respect of the siting and appearance of the proposed telephone kiosks, having regard to the character and appearance of the area and the setting of heritage assets.

Reasons

Background

15. The appeals relate to a number of free standing telephone kiosks that would consist of the same design, with a rectangular form. Their roof would cover an area of around 1.325m by 1.125m with the kiosks extending to a height of 2.6m. The telephone kiosks would be constructed with a steel frame and casings and would use clear polycarbonate and toughened glass. They would have open sides and each would have a solar panel at roof level.

Appeal A

16. The telephone kiosk subject of this appeal would be situated on Blackfriar's Road, near the junction with Queen Street. The Council have stated that the land where the proposal is to be sited is owned by a private developer. Whilst I have been provided with limited details of the extent of the public highway, I was able to see at the time of my visit that there was some variations in the surfacing materials in the area around the appeal site. The pavement is wide at this corner location and other than a number of slender posts, some carrying street signage as well as a low level vehicle charging point, the area in the vicinity of the site is generally clear of other street furniture. I do not therefore consider that this kiosk would give rise to a cluttered appearance.
17. The Council have stated that the proposal does not line up with the back of the pavement, disrupting views and its siting would be unsympathetic. The kiosk would however be sited away from the kerb and closer to the residential building at this junction, leaving in excess of 4m as a clear zone and therefore unobstructed views along Blackfriar's Road. Whilst the kiosk may only be aligned with a solitary pole, I do not agree that it would appear as an abandoned structure or one that has been dropped into place without care or regard, irrespective of its orientation. The proposed kiosk would be seen close to and mainly against the backdrop of a large building along Blackfriar's Road and would not be harmful to visual amenity in this respect.
18. The Council have raised concerns on the generic nature of the proposal and a solution that is specific to Salford not having been provided. Whilst the proposal does appear as a standard design, it also has a simple form

comprising of the use of a metal frame and large areas of glazing and clear polycarbonate. These materials, as well as its partially open design, would ensure that its appearance would be one of a lightweight structure and not unduly bulky or dated in appearance. The Council reference the particular design of TfGM bus shelters, but I was not able to see any in the immediate vicinity of the site and therefore the proposal would not be visually discordant in this regard.

19. There are listed buildings situated in the area, including the Grade II* listed Manchester Tennis and Racquet Club. This is a mainly brick built building, that appears as a 3 storey structure. It is however situated on the opposite side of Blackfriar's Road, and offset to the south-east and not directly opposite the site. Given this relationship, and the separation between the scheme and the Grade II* listed building, I do not consider that it would unduly harm its setting.
20. I, therefore, conclude that the proposed kiosk with respect to its siting and appearance would not unacceptably harm the character and appearance of the area and would preserve the setting of the listed buildings, which justifies the grant of prior approval.

Appeal B

21. This appeal consists of a proposed free-standing telephone kiosk that would be located on the corner of Blackfriar's Street and Chapel Street. It would be positioned to the front of a small landscaped area that contains various advertisement hoardings. The surrounding area hosts a variety of buildings from different periods and in differing styles, although they are generally of a larger scale, with many extending to around 6 storeys.
22. The appeal proposal would be situated in a prominent location on what the Council describe as a gateway area for the City. It would however be seen against or in close proximity to the larger timber boarding that forms part of the structure to an advertisement hoarding. I was able to see the existing street furniture in the vicinity of the site, and apart from the totem sign, the remaining items mainly consisted of lower level items such as the nearby green cabinets. Given the clear differentiation in scale between the appeal proposal and these generally smaller items on the one hand, and the much larger free standing advertisements on the other, I do not consider that the proposal would unduly add to street clutter.
23. The proposed kiosk would be seen in various views, including from the north travelling along Blackfriar's Street towards Chapel Street and also along Chapel Street in a westerly direction towards Blackfriar's Street. I acknowledge that in some of those views the proposed kiosk would be seen in front of the former Police Station on Chapel Street and other listed buildings on Blackfriar's Street. These are all however separated from the telephone kiosk that is subject of this appeal, by virtue of being situated on the opposite sides of the road. The kiosk would also have an open design and be formed of glazing and clear polycarbonate. These features, as well as its limited size, would mean that the views of the identified listed heritage assets would not be unduly obscured to their detriment. The lightweight appearance of the proposal would also ensure that there would not be any detrimental impact on the setting of the nearby Flat Iron Conservation Area.

24. I note that no information has been provided on the orientation of the kiosk, but as it would be located close to the back of the pavement, it would not appear to be dropped into place without care. As with Appeal A, whilst noting the standard design of the kiosk proposed, its simple, largely open form, would give it a modern, functional appearance rather than it appearing bulky or having a dated appearance. It would also not look out of place alongside other street furniture, given that those items nearby are of differing types of furniture such as cabinets and a Post Box. Furthermore, in reference to the particular design of TfGM bus shelters which the Council have raised, I was not able to see any in the immediate vicinity of the site.
25. Reference has been made to the proposal obstructing a natural desire line running around this corner. I was able to see that there is a line of other street furniture to the back of the pavement and although the proposal would result in somewhat of a protrusion, the pavement is sufficiently wide at this corner location for there not to be unacceptable harm to pedestrians.
26. I, therefore, conclude that the proposed kiosk with respect to its siting and appearance, would not harm the character and appearance of the area and would preserve the setting of the listed buildings and the character and appearance of the Conservation Area, which justifies the grant of prior approval.

Appeal C

27. The telephone kiosk proposed would be situated on Chapel Street, a short distance to the east from its junction with Blackfriar's Street. It would be positioned towards the back of the pavement and broadly in line with a free-standing advertisement to the east. As such, it would not appear to have been arbitrarily positioned without care or regard of its surroundings whatever its final orientation. I was also able to see street signs to the west of the location of the proposed kiosk, but apart from these, and nearby low level bollards, the area around the appeal site was generally clear of street furniture. The proposal would not therefore add unduly to street clutter.
28. As with Appeal's A and B, the Council have stated their concern that the proposal does not result in a local solution, with reference to the design of the TfGM bus shelters. The appearance of the proposed telephone kiosk, whilst being standardised, has a simple form with a partially open design. The use of glazing and clear polycarbonate also assists in it appearing as a lightweight structure rather than a bulky or dated appearance as has been stated. I do not therefore find the proposal harmful in this regard.
29. I note the proposed kiosk in Appeal B would be situated to the west in the vicinity of this site. This nearby proposed kiosk would however be positioned around the corner towards Blackfriar's Street and not be prominent in views from the appeal site.
30. The separation also with listed buildings that have been identified, the closest of which would be 62 Chapel Street, on the opposite side of the street, would also ensure that there is no adverse harm arising. I also do not find that the setting of the Flat Iron Conservation Area would be unduly harmed, as it is sufficiently separated from the appeal site owing to its location on the opposite side of the middle of Blackfriar's Street.

31. I, therefore, conclude that the proposed kiosk with respect to its siting and appearance, would not unacceptably harm the character and appearance of the area and would preserve the setting of the listed buildings and the character and appearance of the Conservation Area, which justifies the grant of prior approval.

Conditions

32. Any planning permission granted for the kiosks under Article 3(1) and Schedule 2, Part 16, Class A is subject to conditions set out in Paragraphs A.3(9), A.3(11) and A.2(2), which specify that the development must, except to the extent that the local planning authority otherwise agree in writing, be carried out in accordance with the details submitted with the application, must begin not later than the expiration of 5 years beginning with the date on which the local planning authority received the application, and must be removed as soon as reasonably practicable after it is no longer required for electronic communications purposes and the land restored to its condition before the development took place. Given these conditions, the suggested conditions by the Council in relation to the commencement of development and refencing the approved plans are therefore not required.

Conclusion

33. For the reasons given above and having regard to all matters raised, I conclude that the appeals should be allowed and prior approval granted.

F Rafiq

INSPECTOR