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## 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: 22<sup>nd</sup> October 2019**

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### **Appeal A Ref: APP/U4230/W/17/3192080**

#### **Public Highway at Irwell Street junction with Trinity Way, Salford M3 5EN**

- 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 17/70037/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/17/3192081**

#### **Public Highway at New Bailey Street at City Wharf, Salford M3 5ER**

- 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 17/70042/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/17/3192083**

#### **Public Highway at New Bailey Street junction of Gore Street, Salford M3 5ET**

- 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 17/70038/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 D Ref: APP/U4230/W/17/3192084**

#### **Public Highway at Trinity Way near junction of Chapel Street, Salford M3 5EP**

- 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 17/70043/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 Irwell Street junction with Trinity Way, Salford M3 5EN in accordance with the terms of the application Ref 17/70037/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 new Bailey Street at City Wharf, Salford M3 5ER in accordance with the terms of the application Ref 17/70042/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 New Bailey Street junction of Gore Street, Salford M3 5ET in accordance with the terms of the application Ref 17/70038/TEL56, dated 18 May 2017, and the plans submitted with it.

### **Appeal D**

4. 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 Trinity Way near junction of Chapel Street, Salford M3 5EP in accordance with the terms of the application Ref 17/70043/TEL56, dated 18 May 2017, and the plans submitted with it.

## **Procedural Matters**

5. 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. The description of development I have taken from the respective appeal forms, which reference the installation of telephone kiosks, as this provides certainty of the proposal subject of each appeal.

6. 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 kiosks subject to each of the four appeals.
7. 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.
8. 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.
9. 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.
10. Listed buildings are situated in the vicinity of the appeal sites. The statutory requirements of Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that 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.

11. 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.
12. 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.
13. 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.
14. 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**

15. 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*

16. The appeals relate to 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*

17. The appeal proposal consists of a telephone kiosk that is to be located adjacent to a multistorey car park and in close proximity to a railway viaduct. My attention has been drawn to investment that has been made in providing a

high quality public realm, and I was able to see the surface paving and the provision of street trees at the time of my visit. Other than these trees and slender posts for lighting and traffic signals, there were no other street furniture items in the vicinity of the site. The addition of this kiosk, whilst adding an additional piece of street furniture, would not in my view give rise to an unduly cluttered appearance in the area.

18. The proposed kiosk would be situated close to the outer edge of the pavement, and would be visible in both directions along with footway and from vehicular traffic at this junction. The kiosk is however of a partially open design, and given its limited footprint, I do not consider that it would unacceptably impact on sightlines or disrupt views in a way that would harm navigation and movement. I acknowledge the improved lighting that has been introduced to pedestrian areas under the viaduct. However, the kiosk would be set away from the edge of the viaduct, and would still permit users to view the route. I do not therefore consider that there would be an unacceptable impact on safety of this route, particularly given the high levels of passing vehicular traffic at this junction and close to the entrance of the multi-storey car park.
19. In addition to its partially open form, the materials, which include a steel frame as well as glazing and clear polycarbonate, would give the kiosk the appearance of a lightweight structure. I note the Council's reference to the particular design of TfGM bus shelters in Salford, but there were none in the immediate vicinity of the site. Whilst the telephone kiosk proposed would be of a generic form, I do not agree that given the design, it would appear particularly bulky or dated in its appearance. Reference has been made to the Southern Railway Viaduct and Colonnade being Grade II\* listed, but given the considerable scale of this structure and other buildings in the vicinity, such as the multi-storey car park in comparison to the proposed kiosk, I do not find that the listed building's setting would be unduly affected.
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 building, which justifies the grant of prior approval.

### *Appeal B*

21. This appeal proposal consists of a free-standing telephone kiosk that would be situated on New Bailey Street, close to Stanley Street, beyond which is the Albert Bridge over the River Irwell. Contrary to references by the Appellant, the Council have stated that the proposal would not be situated on the highway, but where a proposal for a new building has been approved. I have not however been provided with the full details of this approved development or the precise extent of the highway. From the information before me, which illustrates the angle of the highway at the corner location, and site observations at the time of my visit, it would appear that the subject kiosk is situated on the highway.
22. Irrespective, however, of its precise location in respect of the highway, I was able to see the site and its surroundings on my visit. It was clear that a highway scheme that the Council referenced had been delivered, with high quality surfacing and street trees. The proposal would be outside a defined zone for street furniture which had a linear form closer to the edge of the

- footway. Despite this, the proposed kiosk would broadly be situated in line with the street lighting columns which are to the back of the footway and outside the street furniture zone. The kiosk proposed would not therefore appear isolated or dropped into place, despite its orientation not being clear. As the kiosk would be positioned on a corner location, leaving a wide clear area of pavement, there would not be any unacceptable harmful impacts on sight lines nor would it be disruptive to circulation and movement. Given its separation with most of the other street furniture that is situated in the zone, it would also not give rise to undue clutter.
23. The standard design of the kiosk proposed would be different to the particular design of TfGM bus shelters that the Council have referenced, but it's simple, largely open form, would give it a modern, functional appearance rather than appearing as a bulky or having a dated appearance. In the wider context, it would be seen against a variety of different buildings, that are typical for a City Centre location, many of which have a substantial footprint and height. I do not therefore consider that the size and design of the proposed kiosk would have a harmful visual impact. The nearby Albert Bridge is listed and a locally listed building, the Mark Addy Public House has also been referenced by the Council. These are both however sufficiently separated from the telephone kiosk that is subject of this appeal by Stanley Street, and in the case of the latter, by the River Irwell. The separation, along with the size and the lightweight appearance of the proposal, would ensure their setting is preserved.
24. 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 building, which justifies the grant of prior approval.

### *Appeal C*

25. The telephone kiosk would be situated outside Salford Central Railway Station on New Bailey Street, where it meets Gore Street. The Council have stated that that it would be on land owned by Network Rail, but I have not been provided with any details on this or on the extent of the highway. The Appellant has however stated the proposed kiosk would be on the highway and this reflects my site observations, where the proposed siting of the kiosk would appear in line with other street furniture.
26. As well as the nearby bin, I was also able to see the kiosk would be broadly in line with the pillars of the listed Northern Railway Viaduct. I do not therefore consider that it would just appear dropped into place. The kiosk not lining up with the back of the pavement would also for this same reason, not unduly disrupt views. Reference has been made to the problem of clutter, but it would appear from my site visit, that a highway scheme has been implemented which the Council have stated would improve the public realm. The kiosk would form an additional piece of street furniture in the area, but this would not in itself give rise to unacceptable clutter as there are few other street furniture items in the vicinity of the site.
27. The kiosk would be seen against the listed Viaduct including the glazed extension of Salford Central Station, particularly in views from the north. The Council have raised concerns on the proposals standardised design having a

bulky and dated appearance, but as with the other linked appeal proposals forming part of this decision, the kiosk would have a lightweight appearance owing to its use of glazing and clear polycarbonate. I therefore consider that the setting of this listed building would be preserved. The Council have identified the particular form and appearance of the TfGM bus shelters, but I was not able to see any under the Viaduct or in the immediate vicinity of the site.

28. I note the proximity of the station entrance and bus stops as well as reference to proposals that would increase usage of these transport facilities. However, given the position and alignment of the proposed kiosk, in line with other street furniture and pillars of the Viaduct, whatever the intended orientation of the kiosk, I do not consider that pedestrian movements would be unduly impeded.
29. 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 building, which justifies the grant of prior approval.

#### *Appeal D*

30. The appeal consists of a proposed free-standing telephone kiosk that would be located on Trinity Way, a short distance to the south of its junction with Chapel Street. The immediate area is dominated by this busy multi lane junction. A further road, with a turning area is situated to the west of the site, such that the proposed kiosk would be situated between two vehicular carriageways.
31. The appeal proposal would be situated in a highly visible location, but whatever its orientation, even if it was sited perpendicular to the back of the pavement, I do not consider that it would give rise to an adverse visual impact. It would be seen in the context of a busy City Centre location that contains tall buildings that are visible around this junction. There are only a few items of street furniture around the appeal site, such as the nearby traffic signals as well as a group of trees to the south and for this reason, I consider the proposal would not add unduly to street clutter.
32. The Council have, as with Appeals A-C, stated their concern that the proposal does not result in a 'Salford' solution, with reference to the particular design that the TfGM bus shelters have adopted. 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.
33. A Grade II listed building is situated at 247 Chapel Street, which was formerly known as the Williams Deacon Bank. The appeal proposal is situated to the rear of this building, and beyond a road that separates them. Given this relationship and separation, as well as the modest scale and the lightweight appearance of the proposal, I consider that the setting of the listed building would be preserved.
34. This design and limited size of the proposed development would also ensure that sight lines are not unduly compromised. The pedestrian footfall was low at the time of my visit in the vicinity of the site and I note the need for

pedestrians to assess the safety of an area as they move through. I was able to walk in both directions along Trinity Way towards the appeal site, and found that due to the curvature of the highway and the wide pavement, the proposed kiosk, whichever way it is orientated, would not unduly disrupt views to the detriment of navigation or safety.

35. 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 building, which justifies the grant of prior approval.

### **Conditions**

36. 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 referencing the approved plans are therefore not required.

### **Conclusion**

37. 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