
Appeal Decision

Site visit made on 30 September 2019 by Andreea Spataru BA (Hons) MA

Decision by Susan Ashworth BA (Hons) BPL MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 27 November 2019

Appeal Ref: APP/V5570/W/18/3204256

Pavement outside 19 Highgate Hill, London N19 5LS

Grid Reference Easting: 529328 and Grid Reference Northing: 186874

- 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 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr Tom Fisher, on behalf of Euro Payphone Limited against the decision of the Council of the London Borough of Islington.
 - The application Ref P2017/4095/PRA, dated 17 October 2017, was refused by notice dated 11 December 2017.
 - The development proposed is a call box.
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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

3. Whilst the Town and Country Planning (Permitted Development, Advertisement and Compensation Amendments) (England) Regulations 2019 amends the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) by removing permission for the installation, alteration or replacement of a public call box by, or on behalf of, an electronic communications code operator, this is subject to transitional and saving provisions. Therefore, for the purposes of this appeal, which was validly made, the proposal falls to be considered against the provisions of Schedule 2, Part 16, Class A of the GPDO, which refers to development 'by or on behalf of an electronic communications code operator for the purpose of the operator's electronic communications network'.
4. The proposal before me was refused by the Council on grounds relating to siting and appearance. However, the subsequent *Westminster*¹ judgement found that 'the judgement as to whether the kiosk, as applied for, comes within

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

the scope of Class A has to be made before siting and appearance are considered' (paragraph 46).

5. This judgement confirmed 'that the whole development for which prior approval is sought must fall within the class relied on, and no part of it can fall outside it'. The judgement went on to state that a development falls outside the scope of Part 16, Class A if it is not 'for the purpose' of the operator's network. Thus, if the development is partly for some other purpose beyond that of the operator's network, it cannot be development 'for the purpose' of the operator's network precisely because it is for something else as well. In that case the proposed kiosk was for a dual purpose of advertisement display and telecommunications use and therefore contained features that were for advertising and 'not at all there for the telecommunications function'.
6. On the basis of that judgement, the Council recommends a further refusal reason for the appeal on the basis that the call box is not solely for the purpose of the operator's telecommunications network as required in Schedule 2, Part 16, Class A of the GPDO as they include advertising space.
7. The call box would be enclosed with full height glazing on two sides, with a narrower glazing panel on a third side. A poster advertisement could, in theory, be displayed on those larger glazed surfaces. However, no advertisements or associated fixings or fittings are indicated on the submitted drawings, nor has consent been sought for any advertisements. On the basis of the evidence before me, I am therefore satisfied that the call box as proposed is solely for the operator's electronic communications network and, as such, fall within the scope of the provisions of Schedule 2, Part 16, Class A of the GPDO.
8. The provisions of 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 developments solely on the basis of their siting and appearance, taking into account any representations received. My determination of this appeal has been made on the same basis.
9. The Council has made reference in its decision notice to Policies DM 2.1, DM 2.3 and DM 8.2 of the Development Management Policies (DMP) and The Islington Streetbook Supplementary Planning Document (the SPD). The appellant also has referred to policies of the DMP and the SPD in addition to policies of the London Plan, policies of the Core Strategy, the Streetscape Guidance (SG) and Pedestrian Comfort Guidance for London (PCG) both published by Transport for London, the Inclusive Mobility (2005) and Manual for Streets (2007) prepared by the Department for Transport (DfT), and to the guidance contained within the National Planning Policy Framework (the Framework), the National Planning Practice Guidance (NPPG).
10. However, applications for prior approval are determined in relation to the criteria set out within the GPDO and, as such, do not require regard to be had to the Development Plan. Nonetheless, although not determinative, I take account of the above-mentioned policies and documents in so far as they are relevant to matters of siting and appearance.
11. A revised National Planning Policy Framework was published on 19 February 2019. Insofar as the Framework is relevant to my determination of these appeals, its policies in relation to telecommunications have not been

significantly altered such as to prejudice either of the main parties by my taking it into account as a material consideration.

Main Issues

12. The main issues are whether or not approval should be given in respect of the siting and appearance of the proposed development, with particular regard to its effect on the character and appearance of the area, and its effect upon the safe and efficient operation of the highway.

Reasons for the Recommendation

13. The appeal site is within proximity to tall buildings and within an area characterised by a mix of modern and more traditional built-form. The proposal would be outside the Holborn Union Infirmary Conservation Area and St John's Grove Conservation Area, which have their borders to the north/north-east of the appeal site.
14. The proposed call box would occupy a relatively central position on a wide area of pavement, next to a CCTV camera column and in the vicinity of a pedestrian crossing and cycle lanes. Given its height and width, the call box would be evident despite its predominantly glazed appearance, thus it would appear prominent within the street scene. Other existing street furniture within proximity of the appeal site include bins immediately to the west and east of the proposed call box, traffic columns, lighting columns, a bus shelter and street trees to the north-east, and tables and chairs to the east, in front of a fast food unit.
15. Although the call box would appear as a modern structure of utilitarian design, taken in isolation it would not appear particularly out of place within an urban street scene such as this. However, given the existing amount of street furniture and its prominent position, the proposed call box in this location would add to the amount of visual and physical clutter, to the detriment of the character and appearance of the area.
16. Notwithstanding the harmful impact that the proposal would have on the character and appearance of the area, given the distance between the proposed call box and the boundaries of the conservation areas, the development would preserve their character and appearance in accordance with the requirements of s72 of the Planning (Listed Buildings and Conservation Areas) Act 1990.
17. The appeal statement indicates that the unobstructed pavement width would be approximately 2.84m and 4.34m either side of the appeal site. Given the overall width of the footway, the pedestrian flows would not be significantly hindered. However, although the call box would be relatively in line with the existing CCTV column, it would be significantly wider than the existing structure. Although it would be mostly glazed, given the angles involved and the solidity of the supporting framework as well as its proximity to the cycle lane, the introduction of the call box in this location would cause additional obstruction to cyclists using the cycle lane, which would be detrimental to the safe and efficient operation of the highway.

Other matters

18. I have had regard to the appeal decisions referred to in the appellant's statement insofar as some of the general issues they raise may be applicable to this appeal. However, these appeals relate to different sites within different local authority areas and I have limited information regarding their prevailing character. Therefore, these decisions carry limited weight in favour of the appeal proposal, which in any case, I have considered on its own individual merits.

Recommendation

19. For the reasons given above, the siting and appearance of the proposed call box would harm the character and appearance of the area. The proposal would also be detrimental to the safe and efficient operation of the highway. This harm justifies the refusal of prior approval and the dismissal of this appeal.

Andreea Spataru

APPEAL PLANNING OFFICER

Inspector's Decision

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

S Ashworth

INSPECTOR