
Appeal Decision

Site visit made on 26 November 2019

by Helen B Hockenhull BA (Hons) B. PI MRTPI

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

Decision date: 10 December 2019

All Appeals

- The appeals are 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 appeals are made by Mr Nathan Still, Infocus Public Networks Limited against the decision of Guildford Borough Council.
 - The development proposed in each case is the installation of an electronic communications apparatus comprising a telephone kiosk.
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Appeal Ref: APP/Y3615/W/19/3231956

OS 193 High Street, Guildford GU1 3AW

- The application Ref 19/P/00154, dated 25 January 2019, was refused by notice dated 15 March 2019.
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Appeal Ref: APP/Y3615/W/19/3231950

Junction Commercial Road, North Street, Guildford GU1 4EH

- The application Ref 19/P/00151, dated 25 January 2019, was refused by notice dated 15 March 2019.
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Appeal Ref: APP/Y3615/W/19/3231951

OS Café Nero, Junction North Street, Market Street, Guildford GU1 4LB

- The application Ref 19/P/00152, dated 25 January 2019, was refused by notice dated 15 March 2019.
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Appeal Ref: APP/Y3615/W/19/3231955

OS Barclays Bank, 19 North Street, Guildford GU1 4AG

- The application Ref 19/P/00153, dated 25 January 2019, was refused by notice dated 15 March 2019.
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Appeal Ref: APP/Y3615/W/19/3231959

OS The Friary, North Street, Guildford GU1 4YT

- The application Ref 19/P/00155, dated 25 January 2019, was refused by notice dated 15 March 2019.
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Decision

1. The appeals are dismissed.

Procedural Matters and Background

2. The appeals relate to proposals by Infocus Public Networks limited for the

installation of an electronic communications apparatus comprising a telephone kiosk pursuant to Class 16 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GDPO). Whilst the appeals relate to 5 different sites in the Borough of Guildford, the proposed kiosks are identical. Therefore, in the interests of conciseness I have considered each proposal in the same decision.

3. The Town and Country Planning (Permitted Development, Advertisement and Compensation Amendments) (England) Regulations 2019 amends the GPDO by removing permission for the installation, alteration or replacement of a public call box by, or on behalf of an electronic communication code operator. For the purposes of the above appeals, the proposals fall to be considered against the provisions of Schedule 2, Part 16, Class A of the GDPO. This sets out permitted development rights for development carried out by or on behalf of electronic telecommunication code operators for the purposes of the operator's electronic communication network, subject to prior approval by the local planning authority of siting and appearance.
4. A recent High Court Case in Westminster¹, concerned prior approval appeals for telephone kiosks under the above Class of the GDPO. The judgment considered development 'for the purposes' of an operator's network. The Court found that the judgment as to whether the kiosk, as applied for, comes within the scope of Class A must be made before siting and appearance are considered. The judgment also 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'.
5. Whilst the appeal proposals were the subject of planning applications submitted before the Westminster case, the Council took account of this judgment in making their decisions.

Main Issues

6. Having regard to the above, and following the Westminster judgment, the main issues are whether or not the proposals are solely for the purpose of the operator's electronic communications network and therefore form permitted development; and if they do, whether or not prior approval should be granted.

Reasons

7. The Westminster judgment stated 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 as it is for a dual purpose.
8. In the appeal cases before me, the proposed telephone kiosk is described in the appellant's Technical Specification as a 'communications hub'. The front face would provide an integrated touch screen including a hands-free phone, wayfinding and access to Council services. There would also be a USB Charger, a Defibrillator and a range of sensors for the Smart City to monitor and report on environmental conditions such as air quality, noise and pedestrian flow. It is notable that the appellant's statement of case describes the kiosk as a 'multifunctional portal'.

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

9. The rear of the structure would consist of a glazed panel of anti-vandalism hardened toughened glass which it is stated could be used for commercial display or Council information. It is therefore clear from the evidence before me, that the rear of the proposed kiosk would incorporate an area specifically designed for the commercial display of advertisements or other information. Whilst I acknowledge that express advertisement consent is not being applied for, as I have explained above, the key consideration is whether the proposed apparatus would have a dual purpose.
10. In light of the above, I conclude that the proposed kiosk would not be solely for the purpose of the operator's electronic communications network. The appeal proposals would fall outside Schedule 2, Part 16, Class A of the GDPO and would not form permitted development.
11. Accordingly, it is not necessary for me to consider matters relating to the siting and appearance of the proposed kiosks.

Conclusion

12. For the reasons given above and having had regard to all other matters raised, the appeals are dismissed.

Helen Hockenhull

INSPECTOR