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## Appeal Decision

Site visits made on 14 February 2019

**by F Rafiq BSc (Hons), MCD, MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 7<sup>th</sup> January 2020**

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### **Appeal A Ref: APP/Z4310/W/18/3192543**

#### **89 London Road, Liverpool, L3 8JA**

- 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 Liverpool City Council.
  - The application Ref 17PP/1509 dated 1 June 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/Z4310/W/18/3192857**

#### **10 Norton Street, Liverpool, L3 8QA**

- 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 Liverpool City Council.
  - The application Ref 17PP/1566 dated 1 June 2017 was refused by notice issued with a date of 20 July 2017.
  - The development proposed is the installation of a telephone kiosk.
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### **Appeal C Ref: APP/Z4310/W/18/3192539**

#### **Norton Street, adjacent to The Brain Charity, Liverpool, L3 8LR**

- 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 Liverpool City Council.
  - The application Ref 17PP/1507 dated 1 June 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 at 89 London Road, Liverpool, L3 8JA in accordance with the terms of the application Ref 17PP/1509, dated 1 June 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 at 10 Norton Street, Liverpool, L3 8QA in accordance with the terms of the application Ref 17PP/1566, dated 1 June 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 at Norton Street, adjacent to The Brain Charity, Liverpool, L3 8LR in accordance with the terms of the application Ref 17PP/1507, dated 1 June 2017, and the plans submitted with it.

### **Procedural Matters**

4. The application forms refer to the type of apparatus to be installed as a 'Call Box'. I have utilised 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 as amended (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 2015. 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 2015 by the 2019 Regulations had not been made. That is the case in respect of the appeals before me.
7. Reference has been made to a number of 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 referenced policies of the development plan and any related guidance including the Liverpool Maritime Mercantile City World Heritage Site Supplementary Planning Document 2009 ('SPD') 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 also 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. The Framework has been revised since the appeal was lodged, but this does not raise any additional matters in this respect.
9. 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.
10. 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.
11. Reference has been made to appeal decisions on other sites, but I am not aware of the full circumstances of those cases. I can confirm that I have considered these appeals on their own merits.

### **Main Issues**

12. For all three appeals, 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, including the Liverpool Maritime Mercantile City World Heritage Site.
13. In relation to Appeal C, a further main issue relating to whether or not approval should be given in respect of the siting and appearance of the proposed telephone kiosk, having regard to the effect upon highway safety.

## Reasons

### *Background*

14. The appeals relate to a number of free standing telephone kiosks of the same design and rectangular form. Each would have an overhanging roof with an area of around 1.325m by 1.125m and would be about 2.6m high. They would be constructed with a steel frame and casings, and clear polycarbonate and toughened glass, with a solar panel on the roof.
15. Each would be located within the 'buffer zone' of the Liverpool Maritime Mercantile City World Heritage Site, as depicted in the SPD.

### *Appeal A*

16. The telephone kiosk would be sited on a footway on the northern side of London Road, in a commercial area broadly opposite the retail units at No's 89 to 93. There are lighting and signage columns, an existing kiosk and a cycle hire station in the vicinity. However, the pavement here is fairly wide, and the proposed telephone kiosk would be reasonably spaced between existing street furniture. It would also be set back slightly from the kerb to broadly align with some of those existing structures. Consequently, having regard to cumulative impacts, the proposed kiosk in this location would not give rise to an incongruous appearance. I also note the aims of the joint statement<sup>1</sup> are to reduce street clutter, but do not find in this instance that the proposal would unduly add to clutter in the street environment.
17. The telephone kiosk has been designed to accommodate wheelchair users, and it would therefore be wider than more traditional kiosks. However, it would be open to the front, and its sides would be narrow and largely transparent. This would give it a fairly lightweight appearance and would limit its apparent scale and size.
18. Although the Council describes this as an area of the City that has seen considerable financial investment, regeneration activity and high quality public realm improvements, for the above reasons, in the context of the area, the kiosk would not appear over-dominant or incongruous.
19. Consequently, I find that its siting and appearance would not unacceptably harm the character and appearance of the area, including the Liverpool Maritime Mercantile World Heritage Site and its 'buffer zone', which justifies the grant of prior approval.

### *Appeal B*

20. The proposed telephone kiosk subject of this appeal would be located near the edge of the footway on the eastern side of Norton Street, close to its intersection with London Road and Seymour Street. It would be fairly prominently sited, close to this busy junction on the approach towards the historic areas of the City Centre.
21. There is existing street furniture in the vicinity, including street lighting, directional signage and traffic lights. However, the pavement here is fairly wide, and the telephone kiosk would be sited with a sufficient distance to existing structures to prevent it appearing visually obstructive, or incongruous.

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<sup>1</sup> By Department of Communities and Local Government and Department of Transport (2010)

Consequently, having regard to cumulative impacts, and the aims of the joint statement<sup>2</sup> to reduce street clutter, its siting would not give rise to an unduly cluttered appearance.

22. As with Appeal A, the scheme's fairly lightweight design would assist in limiting its apparent size; and its simple and functional design would be readily assimilated into the streetscene in this mainly commercial area, where buildings around this nearby junction extend generally to 4 storeys or greater.
23. Whilst the Council maintains that street clutter here has been rationalised to reduce the visual impact on the area and to remove potential barriers to pedestrian permeability, I have been provided with few details of this. Having regard to the pavement width and existing structures, I do not consider the proposal would cause a significant obstruction to pedestrians.
24. For the above reasons, I conclude that the siting and appearance of the proposed telephone kiosk would not unacceptably harm the character and appearance of the area, including the Liverpool Maritime Mercantile World Heritage Site and its 'buffer zone', which justifies the grant of prior approval.

#### *Appeal C*

25. The proposed telephone kiosk would be sited on a footway on the western side of Norton Street diagonally opposite the proposal in Appeal B, and with a similar context of large scale, mainly commercial buildings. Other than lampposts and some directional signage, this section of Norton Street contains only a limited amount of street furniture.
26. Although reference has been made to the proposal being larger than more traditional telephone kiosks, I have found that the scheme's design and materials, as in Appeal's A and B, would assist in limiting its perceived size. According to the Appellant's calculations, the pavement here is over 5m wide and I was able to see at the time of my visit the wide area in front of nearby buildings along this stretch of the street. In this context, although the kiosk would be prominently sited, it would not appear incongruous. Furthermore, whilst I note the aims of the joint statement<sup>2</sup> in relation to street clutter, given the few items of other street furniture and the open aspect along this section of footway, the proposal would not in my view give rise to an unduly cluttered appearance in the area. The siting and appearance of the proposed telephone kiosk would not therefore unacceptably harm the character and appearance of the area, including the Liverpool Maritime Mercantile World Heritage Site and its 'buffer zone'.
27. Turning to the scheme's effect on highway safety, Norton Street is a classified 'B' road which is part of the City's strategic road network, and carries a significant volume of traffic. Drivers travelling northwards on this section of it need to assess road signage and make an appropriate lane selection ahead of the busy junction with Islington, which the Council have identified as forming part of the Primary Road Network. The Highways and Transportation Divisional Manager has objected to the scheme on the basis that it would lead to a potential hazard that may cause danger to highway users.
28. The scheme would introduce a new structure close to the kerbside in this location. However, given its simple and functional design, it would not act as a

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<sup>2</sup> By Department of Communities and Local Government and Department of Transport (2010)

significant distraction to drivers. It would be sited some distance forward of a large advance direction sign, which is also elevated well above ground level. Consequently, having regard to the proposed kiosk's siting and dimensions, as well as its partially open design and glazed elements, it would not unduly obstruct drivers' views of that sign. I therefore conclude on this issue, that the proposal in terms of its siting and appearance, would not have a significant adverse impact on highway safety, which justifies the grant of prior approval.

### **Conditions**

29. 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**

30. 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