
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: 7th January 2020

Appeal A Ref: APP/Z4310/W/18/3192884

101 Old Hall Street, Liverpool, L3 9BP

- 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/1524 dated 1 June 2017 was refused by notice issued with a date of 23 July 2017.
 - The development proposed is the installation of a telephone kiosk.
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Appeal B Ref: APP/Z4310/W/18/3192894

Old Hall Street adjacent Lancaster House, Liverpool, L3 9PY

- 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/1569 dated 1 June 2017 was refused by notice issued with a date of 23 July 2017.
 - The development proposed is the installation of a telephone kiosk.
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Appeal C Ref: APP/Z4310/W/18/3192977

King Edward Street near junction Brook Street, Liverpool, L3 9RE

- 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/1553 dated 1 June 2017 was refused by notice dated 24 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 101 Old Hall Street, Liverpool L3 9BP in accordance with the terms of the application Ref 17PP/1524, 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 Old Hall Street adjacent to Lancaster House, Liverpool L3 9PY in accordance with the terms of the application Ref 17PP/1569, 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 King Edward Street near the junction with Brook Street, Liverpool L3 9RE in accordance with the terms of the application Ref 17PP/1553, 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 2015 and prior approval relating to paragraph A.3 of Schedule 2, Part 16, Class A of the GPDO 2015 includes no requirement that regard be had to the development plan. The

provisions of the GPDO 2015 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 B, 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 (WHS), as depicted in the SPD.

Appeal A

16. The telephone kiosk subject of this appeal would be sited on Old Hall Street, close to the edge of the pavement with the vehicular carriageway. Given the quality of the surface materials and the ordered nature of the pavement, I have no reason to doubt that the public realm on this part of Old Hall Street has undergone environmental improvement works. This has given a spacious quality to the streetscene arising from the consistency in materials and due to the presence of street trees.
17. The proposed telephone kiosk would be sited on part of the pavement finished with brick paviours, between two trees, and with cycle stands beyond. There are also street lights situated nearby. Whilst the scheme would introduce an additional structure into this part of the streetscene, the pavement here is wide and the kiosk would be slightly set back from the kerbside in a position where it would broadly align with the cycle stands and other items of street furniture. There would be a noticeable gap between it and the trees either side. Whilst I note the aims of the joint statement¹ are to reduce street clutter, I do not find in this instance that the proposal would unduly add clutter in the street environment.
18. The proposal 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. Although the kiosk has been likened by the Council to a bus shelter, given its overall dimensions of 1.325m length by 1.125m width, it would in my view, appear noticeably smaller than a typical bus shelter. Its simple and functional design would also ensure that it would not stand out, or draw-the-eye; and it would not appear over-dominant or give rise to an incongruous appearance in this location within the buffer zone of the WHS.
19. According to the appellant's calculations there would be a 5.1m 'clear zone' along the footway following the proposal. I observed that the gap would be sufficient to prevent the structure acting as a significant obstacle to pedestrian movement and consequently, I find no harm in this respect.
20. To conclude therefore, I find that the kiosk's siting and appearance would not unacceptably harm the character and appearance of the area, including its location within the 'buffer zone' of the Liverpool Maritime Mercantile World Heritage Site, which justifies the grant of prior approval.

¹ By Department of Communities and Local Government and Department of Transport (2010)

Appeal B

21. The proposed telephone kiosk would be located on a wide section of pavement which juts out beyond parking spaces to the south, and a narrow access to the north. There is a limited amount of street furniture nearby, which includes street lighting, bollards and a parking meter. Given the ordered nature of the streetscene and consistency in surface materials, I have no reason to doubt that the public realm in this part of Old Hall Street has undergone environmental improvement works, which gives the area a spacious quality.
22. The Council considers that the scheme would introduce unnecessary visual clutter which would harm the public realm and I note the reference that has been made to the aims of the joint statement² to reduce street clutter. However, I have found that the kiosk's appearance, which is the same as the proposal in Appeal A, would be simple, yet functional, and that its design would limit its apparent scale and bulk such that it would not have an appearance similar to a bus shelter. In this location, given the distance to other items of street furniture, including the proposed kiosk subject of Appeal A, it would not give this part of the streetscene a cluttered appearance.
23. For the above reasons, the siting and appearance of the proposed kiosk would not unacceptably harm the character and appearance of the area, including its location with the 'buffer zone' of the Liverpool Maritime Mercantile World Heritage Site, which justifies the grant of prior approval.
24. Turning to the scheme's impact on highway safety, drivers emerging from the parking bays immediately to the south of the appeal proposal would need to pull out onto Old Hall Street, which is a busy, classified road. The Council and Highway Development Control Officer object to the scheme on the grounds that it would reduce highway visibility for drivers.
25. However, the kiosk would be set back approximately 0.45m from the vehicular carriageway. Moreover, this section of Old Hall Street is one-way, and, whilst noting the curvature of the road, the proposed kiosk would not significantly impede the view of drivers emerging from those spaces when looking over their shoulder or using their off-side mirror to see traffic approaching from the north. Similarly, due to the positioning of the kiosk on the footway, away from the edge of the vehicular carriageway, I do not consider it would unduly obstruct the view of emerging cars from these nearby parking bays, for drivers approaching along Old Hall Street.
26. The appellant calculates that the pavement where the proposal is to be sited is 4m wide, and that, allowing for the set back from the kerb edge, there would still be a 2.3m 'clear zone'. This would be sufficient to prevent the kiosk from presenting a significant obstacle to pedestrians using the pavement.
27. I therefore conclude, that the proposal would not have a significant adverse impact on highway safety, which justifies the grant of prior approval.

Appeal C

28. The proposed telephone kiosk would be situated on the eastern side of King Edward Street, which is very wide and carries multiple lanes of traffic in each direction. This section of the road is lined with a variety of large scale

² By Department of Communities and Local Government and Department of Transport (2010)

buildings, although the width of the carriageway, as well as the views afforded towards the nearby dock and the River Mersey, gives the area an open and spacious character.

29. The proposal would be sited on a section of the pavement which the appellant calculates at 3.8m wide. It would be slightly set away from the kerb edge, close to an existing pole, but with little other street furniture in the immediate vicinity other than street and traffic lights, as well as low level utility boxes. Whilst the kiosk would consequently appear fairly prominent in the streetscene, given its simple, functional design and its limited apparent scale and bulk, it would not appear out of place in the area, which contains many tall commercial buildings.
30. My attention has been drawn to the aims of the joint statement³ to reduce street clutter. This proposal, as a result of its siting and context, would not however give the vicinity a cluttered appearance. Furthermore, as with the kiosks subject of Appeal's A and B, the size of the proposal has been designed to accommodate wheelchair users, but it would not in my view be of a scale where it would appear similar to a bus shelter. Its design, open to the front and with narrow sides that are largely transparent, would also ensure that it does not significantly diminish the wider area's open character, or harm the streetscene on this major route approaching the city centre.
31. The Council have set out that the kiosk would need to be removed or relocated at public expense as improvements to the highway are proposed in this area. However, other than general reference to new carriageway alignments, amended kerblines and altered pedestrian and cycling facilities, I have no details before me of those improvements, nor what impact they would have on this location.
32. The appellant calculates that allowing for the set back from the kerb edge, there would still be a 2.1m 'clear zone' on the pavement. In my view that would be sufficient to prevent the kiosk from presenting a significant obstacle to pedestrians and consequently, I find no harm in this respect.
33. I conclude that 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', which justifies the grant of prior approval.

Conditions

34. 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.

³ By Department of Communities and Local Government and Department of Transport (2010)

Conclusion

35. 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