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## Appeal Decision

Site visit 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 Ref: APP/Z4310/W/18/3192813**

**Leeds Street junction with Highfield Street, Liverpool, L3 6AL**

- 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/1547 dated 1 June 2017 was refused by notice issued with a date of 18 July 2017.
  - The development proposed is the installation of a telephone kiosk.
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### Decision:

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 Leeds Street junction with Highfield Street, Liverpool L3 6AL in accordance with the terms of the application Ref 17PP/1547, dated 1 June 2017, and the plans submitted with it.

### Procedural Matters

2. The application form refer to the type of apparatus to be installed as a 'Call Box'. I have utilised part of the description of development from the appeal form, which references the installation of a telephone kiosk, as this provides certainty of the proposal subject of this appeal. The application form also refers to the nearby road as 'Highfields Street'. I have corrected that to 'Highfield Street' in my heading, as that corresponds with the appeal form, submitted plans and the decision notice.
3. 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 this appeal.
4. 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 this appeal before me.

5. The Council have made reference in the decision notice to a development plan policy from their Unitary Development Plan. 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 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 policy 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.
6. 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 2015, 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.
7. 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.
8. In respect of this appeal case, based on the evidence before me, including the submitted drawings and technical details, I find that it does not clearly show that the proposed telephone kiosk is 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 this appeal should not be considered to constitute a dual purpose and therefore prior approval consideration of siting and appearance must be considered.

9. 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 Issue**

10. The main issue is whether or not approval should be given in respect of the siting and appearance of the proposed telephone kiosk, having regard to the character and appearance of the area, including the Liverpool Maritime Mercantile City World Heritage Site.

### **Reasons**

11. The appeal relates to a free standing kiosk with a rectangular form. It would have an overhanging roof with an area of around 1.325m by 1.125m and would be about 2.6m high. It would be constructed with a steel frame and casings, and clear polycarbonate and toughened glass, with a solar panel on the roof.
12. The proposed kiosk would be sited on a section of pavement beyond bollards at the end of Highfield Street, and before a marked cycle and pedestrian path which runs parallel to, but segregated from, the main vehicular carriageway on Leeds Street. Leeds Street is one of the city's main thoroughfares, and this part of it has undergone environmental improvement works. I observed that this has resulted in the public realm having a well-ordered and spacious appearance, with only minimal street furniture. In the general vicinity of the site, the street furniture included bollards and a refuse bin, with street lighting further afield. A grass verge area is located to the east of the appeal site, with trees and other planting also present in the vicinity of the site, which gives the area a spacious character.
13. The telephone kiosk has been designed with an open front to accommodate wheelchair users, and it would therefore be wider than more traditional telephone kiosks. Its partially open design and narrow sides would be to a large extent transparent, and give it a fairly lightweight, simple and functional appearance.
14. The scheme would introduce an additional structure into this open and spacious environment. Although the site is quite prominent, the kiosk's design would limit its apparent scale and size and would ensure that it does not appear, as the Council have referenced, similar to a bus shelter. Moreover, its siting would broadly align with the edge of the cycle and pedestrian path as well as some of the low level furniture, including a bin and bollards, such that it would not significantly disrupt the area's linear, well-ordered and open character.
15. Other than the nearby low bollards and bin, the kiosk would be a significant distance from other street furniture. As such, and whilst I have had regard to the aims of the joint statement<sup>1</sup>, which are to reduce street clutter, I do not consider this one additional street furniture item would give the area an unduly cluttered appearance.
16. Given its size and intended siting outside the marked cycle and pedestrian route, along with the overall width of the pavement, I do not find the kiosk would cause a significant obstruction to pedestrian movement and the proposal therefore does not give rise to any unacceptable adverse effects in this regard.

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

17. To conclude therefore, I find that the proposed 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.

### **Conditions**

18. 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.

### **Conclusion**

19. For the reasons given above and having regard to all matters raised, I conclude that the appeal should be allowed and prior approval granted.

*F Rafiq*

INSPECTOR