
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/18/3192572

3315 Islington, near the junction of Camden Street, Liverpool, L3 8JR

- 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/1556 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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Appeal B Ref: APP/Z4310/W/18/3192976

1 Islington, adjacent to Jack Jones House, Liverpool, L3 8EG

- 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/1550 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 3315 Islington, near the junction with Camden Street, Liverpool, L3 8JR in accordance with the terms of the application Ref 17PP/1556, 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 1 Islington, adjacent to Jack Jones House, Liverpool L3 8EG in accordance with the terms of

the application Ref 17PP/1550, dated 1 June 2017, and the plans submitted with it.

Procedural Matters

3. 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.
4. 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 appeals.
5. 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.
6. The Council have made reference 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.
7. 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.

8. 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.
9. 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.
10. 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

11. For both 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.

Reasons

Background

12. Each of the two appeals relates to a free standing telephone kiosk of the same design and rectangular form. Both 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.
13. Although not referenced by the Council in the decision notice in Appeal B, each of the two sites would be located within the 'buffer zone' of the Liverpool Maritime Mercantile City World Heritage Site (WHS), as depicted in the SPD.

Appeal A

14. The telephone kiosk subject of this appeal would be set back from the edge of the vehicular carriageway, on an area of pavement adjacent to a triangular-shaped landscaped space containing mature trees and grass. There is little existing street furniture in the immediate vicinity of the site, other than street lighting further along this section of the pavement, as well as highway signage and traffic lights to the south-west. The limited amount of street furniture, the pavement width (which the appellant calculates at 4m) and the adjacent landscaped space, gives the area an open character.
15. The kiosk has been designed to accommodate wheelchair users, and it would therefore be wider than more traditional telephone kiosks. However, it would be open to the front, and its sides would be narrow and largely transparent. It would have a fairly lightweight, simple and functional appearance. This would

limit its apparent scale and size, and its consequent visual impact. I do not therefore consider that its size would give it an appearance similar to a small bus shelter.

16. I note the Council's reference to the aims of the joint statement¹, which are to reduce street clutter. There is however, a limited amount of street furniture nearby and I do not find that the addition of this one structure, given its design and siting close to a landscaped area, would give the area an unduly cluttered appearance. Whilst I appreciate the reference to the wider area having benefited from considerable investment and regeneration, and public realm works, for the above reasons, this scheme would not appear as an incongruous addition or have a detrimental impact on the area's character.
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.

Appeal B

18. The proposed kiosk would be located across the carriageway, broadly to the north-west of the kiosk subject to Appeal A. It would be sited between a street light and the nearby traffic lights with pedestrian crossing facility. As with appeal A, the wide pavement and in this instance, the adjacent open land to the front of Jack Jones House, which contains a number of trees, gives the area an open and spacious character.
19. The proposal, with the same design as that on Appeal A, would have a lightweight, simple and functional appearance. This would limit its apparent scale and size and I do not therefore consider that it would have a similar resemblance to a bus shelter. Whilst the kiosk would be situated on a prominent site, its design, incorporating an open front and narrow, largely transparent sides, would ensure that its visual impact would be limited.
20. Moreover, and taking into account the aims of the joint statement¹ to reduce street clutter, although the proposed kiosk would be close to a street light, given the limited amount of other street furniture nearby, this one additional structure would not result in the pavement assuming a cluttered appearance. Even taking account of the cumulative effect of the kiosk subject to Appeal A, and the public realm improvement works in the wider area referenced in this nearby appeal, it would not significantly reduce the area's open character.
21. Given the proposed kiosk's siting, and its modest size relative to the width of the pavement, the scheme would not act as a significant obstruction to pedestrian movement and I find the proposal would have no unacceptable harmful effects in this regard.
22. 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.

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

Conditions

23. 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

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

F Rafiq

INSPECTOR