



Appeal Decisions

Site visit made on 2 September 2019 by S Watson BA (Hons) MSc

Decision by R C Kirby BA(Hons) DipTP MRTPI

An Inspector appointed by the Secretary of State

Decision date: 11 February 2020

Appeal A Ref: APP/Q4625/W/19/3225171

Os McDonalds, 48-66 High Street, Solihull B91 3TB

- 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 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr Nathan Still, on behalf of Infocus Public Networks Ltd, against the decision of Solihull Metropolitan Borough Council.
 - The application Ref PL/2018/02789/PN, dated 24 September 2018, was refused by notice dated 16 November 2018.
 - The development proposed is the installation of an electronic communications apparatus pursuant to Class 16 of the Town and Country Planning (General Permitted Development) Order 2015.
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Appeal B Ref: APP/Q4625/W/19/3225169

Os Burchell Edwards, 29 High Street, Solihull B91 3SN

- 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 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr Nathan Still, on behalf of Infocus Public Networks Ltd, against the decision of Solihull Metropolitan Borough Council.
 - The application Ref PL/2018/02788/PN, dated 24 September 2018, was refused by notice dated 16 November 2018.
 - The development proposed is the installation of an electronic communications apparatus pursuant to Class 16 of the Town and Country Planning (General Permitted Development) Order 2015.
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Appeal C Ref: APP/Q4625/W/19/3225186

Os Foneworld, 61 High Street, Solihull B91 3SW

- 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 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr Nathan Still, on behalf of Infocus Public Networks Ltd, against the decision of Solihull Metropolitan Borough Council.
 - The application Ref PL/2018/02796/PN, dated 24 September 2018, was refused by notice dated 16 November 2018.
 - The development proposed is the installation of an electronic communications apparatus pursuant to Class 16 of the Town and Country Planning (General Permitted Development) Order 2015.
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Appeal D Ref: APP/Q4625/W/19/3225184
Os Natwest Bank, 4 High Street, Solihull B91 3TF

- 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 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr Nathan Still, on behalf of Infocus Public Networks Ltd, against the decision of Solihull Metropolitan Borough Council.
 - The application Ref PL/2018/02795/PN, dated 24 September 2018, was refused by notice dated 16 November 2018.
 - The development proposed is the installation of an electronic communications apparatus pursuant to Class 16 of the Town and Country Planning (General Permitted Development) Order 2015.
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Appeal E Ref: APP/Q4625/W/19/3225172
Os Joules, 122 High Street, Solihull B91 3SX

- 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 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr Nathan Still, on behalf of Infocus Public Networks Ltd, against the decision of Solihull Metropolitan Borough Council.
 - The application Ref PL/2018/02790/PN, dated 24 September 2018, was refused by notice dated 16 November 2018.
 - The development proposed is the installation of an electronic communications apparatus pursuant to Class 16 of the Town and Country Planning (General Permitted Development) Order 2015.
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Appeal F Ref: APP/Q4625/W/19/3225174
Os TKMaxx, 4-8 Mell Square, Solihull B91 3AY

- 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 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr Nathan Still, on behalf of Infocus Public Networks Ltd, against the decision of Solihull Metropolitan Borough Council.
 - The application Ref PL/2018/02791/PN, dated 24 September 2018, was refused by notice dated 15 November 2018.
 - The development proposed is the installation of an electronic communications apparatus pursuant to Class 16 of the Town and Country Planning (General Permitted Development) Order 2015.
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Appeal G Ref: APP/Q4625/W/19/3225176
Os Costa, Mell Square, Solihull B91 3AY

- 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 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr Nathan Still, on behalf of Infocus Public Networks Ltd, against the decision of Solihull Metropolitan Borough Council.
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- The application Ref PL/2018/02792/PN, dated 24 September 2018, was refused by notice dated 16 November 2018.
 - The development proposed is the installation of an electronic communications apparatus pursuant to Class 16 of the Town and Country Planning (General Permitted Development) Order 2015.
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Appeal H Ref: APP/Q4625/W/19/3225178
Os Boots, 7 Mell Square, Solihull B91 3AZ

- 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 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr Nathan Still, on behalf of Infocus Public Networks Ltd, against the decision of Solihull Metropolitan Borough Council.
 - The application Ref PL/2018/02793/PN, dated 24 September 2018, was refused by notice dated 15 November 2018.
 - The development proposed is the installation of an electronic communications apparatus pursuant to Class 16 of the Town and Country Planning (General Permitted Development) Order 2015.
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Appeal I Ref: APP/Q4625/W/19/3225183
Os Game, 17 Mill Lane, Solihull B91 3AR

- 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 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr Nathan Still, on behalf of Infocus Public Networks Ltd, against the decision of Solihull Metropolitan Borough Council.
 - The application Ref PL/2018/02794/PN, dated 24 September 2018, was refused by notice dated 16 November 2018.
 - The development proposed is the installation of an electronic communications apparatus pursuant to Class 16 of the Town and Country Planning (General Permitted Development) Order 2015.
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Decisions

1. All of the appeals are dismissed.

Appeal Procedure

2. The site visits were undertaken by an Appeal Planning Officer whose recommendations are set out below and to which the Inspector has had regard before deciding the appeals.

Procedural Matters and Background

3. As set out above, there are nine separate appeals 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 (as amended) (GPDO). All units are within a short walk of each other with appeals A-E being on High Street, appeals F-H in Mell Square and appeal I on Mill Lane which connects High Street to Mell Square. The proposed apparatus is identical in all cases. Therefore, in the interests of

conciseness, I have dealt with the nine appeals in the same decision letter. However, each appeal has been determined on its merits, with reference to observations taken on site.

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. 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 by the 2019 Regulations had not been made. That is the case in respect of the ten appeals before me.
5. During the course of the appeal the *Westminster* judgment¹ was issued concerning the matter of development for 'the purpose' of an electronic communications code operator's electronic communications network for the purposes of Schedule 2, Part 16, Class A of the GPDO. The appellant and Council have been offered the opportunity to comment on the bearing of the judgment upon the appeals. I have taken these comments into account in making my recommendation.
6. The appeals before me were refused by the Council on a number of grounds relating to siting and appearance, including the impact on heritage assets. However, the *Westminster* judgment confirmed that "the judgement as to whether the kiosk, as applied for, comes within the scope of Class A has to be made before siting and appearance are considered".

Main Issue

7. Having regard to the above therefore, the main issue in each case is whether or not the proposal is for the purpose of the operator's electronic communications network.

Reason for the Recommendation

8. The proposed kiosks are relatively simple, freestanding structures with a canopy which serves as a shelter and includes solar panels. The submitted details indicate that the kiosks would provide a telephone, a touch-screen which provides information, a charger for personal devices and a defibrillator. In all instances the technical specifications also state that the reverse side of the kiosk can be used as a commercial display or for council information.
9. The *Westminster* judgment found that a development "falls outside the scope of Class A Part 16 if it is not "for the purpose" of the operator's network. That means, that a proposed development falls outside of the scope of Class A, Part 16 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

¹ Westminster CC v SSHCLG & New World Payphones Ltd [2019] EWHC 176 (Admin) (5 February 2019)

network, it cannot be development “for the purpose” of the operator's network, precisely because it is for something else as well.

10. In this instance it is clear from the evidence before me that each of the proposed kiosk’s rear face would incorporate areas expressly and specifically designed for the display of commercial advertisements or council information. Moreover, the unit is also designed to include medical equipment. I therefore disagree with the appellant’s assertion that the ‘submissions relate to communication apparatus only (and that they would) not be used for any other purpose’. Accordingly, I conclude that the proposal within each of the appeals before me is not solely for the purposes of the operator’s electronic communications network, and as such falls outside Schedule 2, Part 16, Class A of the GPDO.
11. As such, it is not necessary for me to consider matters relating to siting or appearance in the context set out in the Council’s refusal reasons for each proposal.

Conclusion and Recommendation

12. For the reasons given above I recommend that all the appeals should be dismissed.

S Watson

APPEAL PLANNING OFFICER

Inspector’s Decision

13. I have considered all the submitted evidence and the Appeal Planning Officer’s report and concur that each appeal proposal does not comprise permitted development under Schedule 2, Part 16, Class A of the GPDO. Accordingly, each appeal is dismissed.

RC Kirby

INSPECTOR