
Appeal Decision

Site visits made on 13 January 2020

by Martin Andrews MA(Planning) BSc(Econ) DipTP & DipTP(Dist) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th February 2020

Appeal A: Ref: APP/P5870/W/19/3235357

Outside 108-110 Central Road, Worcester Park, Sutton KT4 8HU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a development order.
 - The appeal is made by Infocus Public Networks Limited against the decision of the Council of the London Borough of Sutton.
 - The application, Ref. DM2019/00117, dated 23 January 2019 was refused by notice dated 19 March 2019.
 - The development proposed is the installation of an electronic communications apparatus comprising a telephone kiosk pursuant to Class 16 of the Town and Country Planning (General Permitted Development) Order 2015.
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Appeal B: Ref: APP/P5870/W/19/3235363

Outside 109 Central Road, Worcester Park, Sutton KT4 8DY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a development order.
 - The appeal is made by Infocus Public Networks Limited against the decision of the Council of the London Borough of Sutton.
 - The application Ref. DM2019/00118, dated 23 January 2019, was refused by notice dated 19 March 2019.
 - The development proposed is the installation of an electronic communications apparatus comprising a telephone kiosk pursuant to Class 16 of the Town and Country Planning (General Permitted Development) Order 2015.
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Decisions

1. The appeals are dismissed.

Preliminary and Procedural Matters

2. These appeals concern individual proposals for the installation of public telephone kiosks of the same design within the pavement area of Central Road in the Worcester Park area of the London Borough of Sutton. For ease of reference and administrative convenience the appeals are combined in a single decision letter.
3. The appellant is a licenced electronic communications code operator and as such benefits from deemed planning permission for the proposed telephone kiosks erected as communications apparatus falling within the permitted development rights of Schedule 2, Part 16, Class A, paragraph A.1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 ('the GPDO'), subject to the prior approval requirements under paragraph A.3. Following the appellant's application to the Council under these provisions it

was determined that prior approval was required for the siting and appearance of the communication apparatus.

4. On 25 May 2019, the GPDO was amended through the coming into force of the Town and Country Planning (Permitted Development, Advertisement and Compensation Amendments) (England) Regulations 2019. This amendment has had the effect of removing permitted development rights to install a public call box under Schedule 2, Part 16, Class A of the GPDO. However, Part 5 of the 2019 Regulations provides that where an appeal has been made within six 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 of the GPDO 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. This is the position in respect of the two appeals in this decision letter.
5. Both of the Notices of Refusal, issued on 19 March 2019, stated in the first reason *'The application for prior approval is considered to have incorporated a 'mixed' use and it is therefore considered that this 'dual' or 'mixed' use does not fall within the scope of Part 16 of the Town and Country Planning (General Permitted Development)(England) Order 2015 and as such, the proposal cannot be considered to benefit from permitted development rights under this schedule and planning permission would therefore be required'*. Again, in both Notices of Refusal there were also second and third reasons of the same wording, referring respectively to the effect of the proposed telephone kiosk's siting and appearance resulting in an adverse impact on the street scene and a harmful obstruction to pedestrian / cycle movement.
6. The decision of the Court in respect of *Westminster CC v SSHCLG & New World Payphones Ltd [2019] EWHC 176 (Admin)* concerning prior approval for telephone kiosk / call box development was issued on 5 February 2019 and has been the subject of representations in these appeals by the Council and the appellant. Amongst other matters, the 'Westminster judgement' confirms that the assessment as to whether a telecommunications apparatus falls within the scope of Part 16, Class A of the GPDO should be made before matters pertaining to the siting and / or appearance are considered.

Main Issue

7. Having regard to the above, it follows that the main issue in these appeals, initially at least, is whether or not the proposals are solely for the purpose of the operator's electronic communications network.

Reasons

8. In my appraisal of the appellant's evidence for both appeals I have carefully examined the application plans for the proposed kiosks and read the supporting technical specification. The rear surface of the kiosk, in contrast to the multi-functional front façade, is for the most part in the form of an extensive liquid-crystal display (LCD) panel and unencumbered by any equipment or facility designed for members of the public to actively use as part of the 'communication hub'.
9. The Council's appeal statement refers to how features of the equipment described in the Technical Specification document and in part reproduced as application plans do not appear to be compliant with paragraph A5

(Interpretation of Class A) of the GPDO. Furthermore, the 'Overview' paragraph confirms that the *'reverse of the unit can be used for commercial display or Council information'*.

10. This inherent element of the kiosk design requires assessment in the light of the Westminster judgement. Paragraph 37 begins *'In my view the whole development for which prior approval is sought must fall within the class relied on, and no part of it can fall outside it'*. In paragraph 39 the judgement says: *'A development therefore falls outside the scope of Class A Part 16 if it is not "for the purpose" of the operator's network. That means, at least in the specific context of a GPDO permission, that a proposed development falls outside it, if part of it falls outside it. It cannot be said that the whole falls within the GPDO'*. The paragraph concludes: *'A development which is partly "for the purpose" of the operator's network, and partly for some other purpose, is not a development "for the purpose" of the operator's network, precisely because it is for something else as well. The single dual purpose development must be judged as a whole.'*
11. I have noted the appellant's submissions that the scope of the Control of Advertisement Regulations 2007 includes an advertisement display on the glazed surface of a telephone kiosk subject to conditions that at the time the prior approval application was made would not have resulted in a material change of use the structure so as to require planning permission. However, I do not consider that the limited scope of this deemed consent can reasonably be equated with an LCD panel made of 8mm laminated glass incorporating Silk Screen Printing and Anti-glare treatment. In my view, the combination of the large display panel on the 'non-operational' reverse panel of the apparatus and the technologically advanced nature of its construction specification are strongly indicative of an illuminated advertisement function.
12. Accordingly, and applying the Court's interpretation of the GPDO to the detailed design of the proposed kiosks, on the main issue I consider that on the balance of the evidence it is fair to conclude that the proposals are not solely for the purpose of the operator's electronic communications network and that accordingly they fall outside Schedule 2, Part 16, Class A of the GPDO. For this reason the appeals must fail and the further matters of the siting and appearance of the telephone kiosk in each appeal do not fall to be considered.
13. For the above reasons and having had regard to all other matters raised the appeals are dismissed.

Martin Andrews

INSPECTOR