



Appeal Decisions

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

Decision by R C Kirby BA(Hons) Dip TP MRTPI

An Inspector appointed by the Secretary of State

Decision date: 11th February 2020

Appeal A Ref: APP/P4605/W/19/3225019

Os 100 Broad Street, Birmingham B15 1AU

- 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 Birmingham City Council.
 - The application Ref 2018/09048/PA, dated 6 November 2018, was refused by notice dated 31 December 2018.
 - The development proposed is the replacement of an existing three sided enclosed telephone kiosk (mark I), with a modern state of the art communications apparatus (mark II) pursuant to Class 16 of the Town and Country Planning (General Permitted Development) Order 2015.
-

Appeal B Ref: APP/P4605/W/19/3225022

Os Pit Stop 193-194 Broad Street, Birmingham B15 1AY

- 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 Birmingham City Council.
 - The application Ref 2018/09050/PA, dated 6 November 2018, was refused by notice dated 31 December 2018.
 - The development proposed is the replacement of an existing three sided enclosed telephone kiosk (mark I), with a modern state of the art communications apparatus (mark II) pursuant to Class 16 of the Town and Country Planning (General Permitted Development) Order 2015.
-

Decision

1. The appeals should be 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 two separate appeals for the replacement of an existing mark I telephone kiosk with communications apparatus (mark II) comprising a telephone kiosk pursuant to Class 16 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO). The proposed apparatus, described by the appellant in section 4 of both application forms as comprising a telephone kiosk, is identical in both cases. Therefore, in the interests of conciseness, I have dealt with the two appeals in the same decision. However, each appeal has been determined on its merits, with reference to observations taken on site and the evidence before me.
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 two 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 relating to siting. 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 provide a telephone, a touch-screen which provides information, a charger for personal devices and a defibrillator. In both instances the appellant's statement of case also state that the reverse side of the kiosk can be used as a commercial display.

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

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 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 submissions before me that the kiosks would incorporate areas expressly and specifically designed for the display of commercial advertisements, and storage of medical equipment. Accordingly, the appeal proposals are not solely for the purpose of the operator’s electronic communications network, and as such fall outside Schedule 2, Part 16, Class A of the GPDO. Therefore, it is not necessary for me to consider matters relating to siting in the context set out in the Council’s refusal reasons for each proposal.

Conclusion and Recommendation

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

S Watson

APPEAL PLANNING OFFICER

Inspector’s Decision

12. I have considered all the submitted evidence and the Appeal Planning Officer’s report and concur that neither appeal proposal comprises permitted development under Schedule 2, Part 16, Class A of the GPDO. Accordingly, each appeal is dismissed.

RC Kirby

INSPECTOR