



Appeal Decision

Site visit made on 25 November 2019

by Stephen Wilkinson BA BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th February 2020

Appeal Ref: APP/V5770/W/19/3222056

OS 21-31 Essex Road, London N1 2SA

Grid Reference: 531794 183718

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under by 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 Infocus Public Networks Limited against the decision of the Council of the London Borough of Islington.
 - The application Ref P2018/3842/PRA, dated 15 November 2018, was refused by notice dated 7 January 2019.
 - The development proposed is replacement of an existing three sided enclosed telephone kiosk (mark 1) 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 appeal is dismissed.

Procedural Matter

2. This appeal relates to a proposal for a public call box. As a licenced electronic communications code operator, the appellant benefits from deemed planning permission as communications apparatus falls within the permitted development rights of Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). However, such permission is subject to the prior approval requirements under paragraph A.3. The Council therefore determined the application having regard its siting and appearance.
3. After the Council had refused the application, on 25 May 2019, the General Permitted Development Order (GPDO) amendment Order 2019 came into force. This removed permitted development rights for the installation of telephone kiosks. However, this was subject to transitional and saving provisions. Where an application for prior approval was refused before that date and appealed within 6 months of the date of refusal, the Order continues to have effect as the amendments had not been made. This is the case in respect of this appeal which was refused on 7 January 2019 and the appeal was lodged on 6 February 2019.
4. Since the application was refused, the Courts have confirmed that in order to be permitted development the whole development must be for the purpose of

the operator's electronic communications network. Notwithstanding the Council's reasons for its decision, it therefore falls to me to decide whether or not the proposal is solely for the purpose of the operator's network.

5. In December 2019, I wrote to the parties requesting their views as to whether the High Court¹ decision had any bearing on their appeal. To date only the Council has replied stating that the appeal proposal does not fall within Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended and that planning permission is required.
6. Contemporaneous with my letter to the parties the Court of Appeal upheld the High Court decision on 18 December 2019². This confirmed the following: 'The GDPO could not be used to obtain planning permission for a mixed planning use or 'dual purpose' because to allow it to be so used would allow permission to be obtained for development that was outside the scope of that permitted by executive (and, ultimately, by Parliament) under the GDPO which would be an abuse of the GDPO.' Where a proposed telephone kiosk did not merely have a single purpose, it would therefore clearly fall outside the scope of the GPDO.
7. Give that the Court confirmed the High Court decision there was no need to seek the views of the parties again.

Main Issues

8. Having regard to the above, and following the Court of Appeal judgement, the main issue is whether or not the proposal is solely for the purposes of the operator's electronic communications network.

Reasons

9. The appellant is an electronic communications code system operator seeking to deliver a new generation of public call boxes. The intention is to provide kiosks based on a sound functional design with improved access constructed of high quality materials, which would not appear visually intrusive or dominant in the street scene. However, the appellant's statement indicates that whilst one side would have a touchscreen required for operating the unit, the other side would include an area designed for commercial display.
10. It is apparent from the submitted material that the kiosk would have a dual use with the main rear panel incorporating an area designed for commercial display. Accordingly, the appeal proposal is 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 Town and Country Planning (General Permitted Development) (England) Order 2015 as amended.

Conclusions

11. For the reasons given above and having regard to all other matters this appeal is dismissed.

Stephen Wilkinson

INSPECTOR

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

² New World Payphones Ltd v SSHCLG & Westminster CC [2019] EWCA Civ 2250

