
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: 24th February 2020

Appeal A: Ref: APP/K5030/W/19/3236932

Outside 81 Farringdon Street, City of London EC4A 4BL

- 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 City of London Council.
 - The application, Ref. 19/00542/DPAR, dated 21 May 2019 was refused by notice dated 12 July 2019.
 - The development proposed is the replacement of an existing three-sided 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/K5030/W/W/19/3236934

Outside 26-30 Holborn Viaduct, City of London EC1A 2AQ

- 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 City of London Council.
 - The application Ref. 19/00543/DPAR, dated 21 May 2019, was refused by notice dated 12 July 2019.
 - The development proposed is the replacement of an existing three-sided 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.
-

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 the public highway in the City of London. For administrative convenience and ease of reference 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 public call boxes 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 all the appeals in this decision letter.
5. 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 call box development was issued on 5 February 2019 and is relevant to these appeals. 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.
6. I have therefore considered the Westminster judgement in relation to these appeals whilst also noting the Council's confirmation in this context that it does not regard the proposed kiosks as being designed to accommodate advertisements as an additional use to the identified purpose as telecommunications equipment.
7. From examining the application plans and appraising the application forms and the document on 'Technical Specification', I am minded to agree with the Council's position on this matter. Whilst there appears to be a paucity of information as to the exact form of construction of the unit's rear panel, or at least a lack of clarity in this respect, from all the information before me in both appeals I am unable to conclude with certainty that the design of the structures is such that they have a facility to support advertising in addition to the fully described and illustrated features of the 'Smart City Communication Hub'.

Main Issues

8. Having regard to the above, it follows that the main issue in these appeals is the effect of the siting and appearance of the proposed kiosks on the street scene and the setting of nearby heritage assets.

Reasons

9. The details of the kiosks in the appeals are the same in all respects. And in both cases the Council's concern is that the size, design and opaque appearance of the kiosk and its position on the public highway would have an unduly prominent visual impact and would detract from the townscape by adding visual clutter to the street scene.
10. In Appeal A, outside 81 Farringdon Street, there is the additional objection that the kiosk would detract from the setting of the Grade II listed Hoops & Grapes Public House and Holborn Viaduct, contrary to the Council's policies and guidance in the City Public Realm SPD. In relation to Appeal B, outside 26-30

Holborn Viaduct, the concern on heritage assets is the effect on the setting of the Grade II listed City Temple and Nos. 24 & 25 Holborn Viaduct.

11. An important consideration in both appeals is that the proposed kiosks are intended to replace the existing kiosks. I note that in the Planning Officer's reports the Council has to some extent evaluated and compared the existing and proposed kiosks and I agree that this is a valid approach, albeit that irrespective of any comparison the siting and appearance of the replacement structure must still be acceptable in terms of the main issue referred to above.
12. Whilst in my view the removal of both the existing kiosks would enhance the quality of their particular street scenes, the relative absence of clutter on the pavements in these particular locations will have the effect of ensuring that the eye is drawn to any new structures on the proposed sites. The consequence is that, as with the existing kiosks, the replacements would be particularly prominent, including in longer distance views along Farringdon Street and Holborn Viaduct respectively.
13. The reduced footprint and more contemporary design of the new kiosks has some aesthetic advantages over the existing, although to some extent I share the Council's reservations as regards a likely perception of a 'solid' and 'heavyweight' structure. However, the more salient point – and in my view the determining factor in both appeals – is one of the appropriateness of the developments in their particular context.
14. In this regard I saw on my visit that neither of these particular stretches of Farringdon Street or Holborn Viaduct have the characteristics of busy shopping centres with extensive pavement clutter, a range of shopfronts, fascias and advertising signage including illuminated signs forming a dominant characteristic of the street scene. In their immediate contexts, the proposed kiosks, including the effect of the LED interactive panel (especially at night-time), would therefore perpetuate the incongruous effect of the existing three-sided structures.
15. Furthermore, in the case of Appeal A the proposed siting has a close and harmful relationship with the listed Hoop & Grapes public house and in Appeal B there would be a similarly adverse effect on the settings of Fitz Eylwyn House (No. 25) and the City Temple.
16. Overall and on balance, whilst I do not agree with what appears to be an in-principle objection by the Council to the kiosks' design, I conclude that in the case of these appeals there would be unacceptable harm to the street scene and the setting of nearby heritage assets. This harm would not be outweighed by any public benefit associated with the features of the communications hub.
17. For the above reasons, and having had regard to all other matters raised, the appeals are dismissed.

Martin Andrews

INSPECTOR