



Appeal Decision

Site visit made on 19 November 2019

by John Dowsett MA DipURP DipUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 February 2020

Appeal Ref: APP/W5780/W/19/3222055

Outside 82 High Road, Ilford IG1 1DL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Part 16, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr Nathan Still of Infocus Public Networks Limited against the decision of the Council of the London Borough of Redbridge.
 - The application Ref: 4720/18, dated 15 November 2018, was refused by notice dated 10 January 2019.
 - The development proposed is described as the installation of an electronic communications apparatus comprising a telephone kiosk.
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Decision

1. The appeal is dismissed.

Procedural matter

2. The appeal relates to an application for prior approval made under Part 16 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), hereinafter the GPDO. The application sought to replace an existing telephone kiosk with a new installation of a different design. At the time that the application was made to, and determined by, the Council, the GPDO granted permission for the installation of a public call box with a ground area not exceeding 1.5 square metres, subject to a condition that the prior approval of the Council must be sought for the siting and appearance of the development. On 25 May 2019, after the prior approval application was determined and the appeal had been lodged by the appellant, the GPDO was amended by the Town and Country Planning (Permitted Development, Advertisement and Compensation Amendments) (England) Regulations 2019¹ and the permitted development provisions for the installation of a public call box were revoked. However, under the transitional provisions of these Regulations, the planning permission in respect of call boxes granted by Part 16 continues to have effect for the purposes of an appeal lodged under Section 78 of the Town and Country Planning Act 1990 against refusal of a prior approval application made before 25 May 2019.
3. On 5 February 2019, the day after the appeal was lodged, the High Court issued its judgement in the case of *Westminster City Council v Secretary of State for Housing Communities and Local Government & New World Payphones*

¹ Statutory Instrument 2019 No 907

Ltd.² The findings of the judgement were subsequently upheld by the Court of Appeal. This case has a direct bearing on the operation of the permitted development rights in respect of public call boxes. The comments of the appellant and the Council were sought in respect of the implications of this judgement on the appeal and I have taken these into account when determining the appeal.

Main Issues

4. The main issues in this appeal are:

- The effect of the proposed development on the character and appearance of the area; and
- The effect of the proposed development on the safe operation of the footway in the vicinity of the appeal site.

Reasons

5. Following on from the judgement in Westminster City Council v Secretary of State for Housing Communities and Local Government & New World Payphones Ltd. the Council consider that the proposed development would not benefit from the permitted development rights set out in Part 16 of Schedule 2 to the GPDO. The Council submit that the proposed installation is a dual use facility as the proposed kiosk has a display screen area facing the High Road and is of the view that it is clear from the proposed plan submitted that the purpose of this screen is to display advertisements, albeit no consent for the display of advertisements was sought as part of the submission.
6. The appellant asserts in their comments in respect of the judgement that the application relates only to the installation of the communication apparatus and that no part of the unit is to be used for the purposes of advertising. It is stated that the liquid crystal display (LCD) interactive screen incorporated in the proposal contains apparatus to facilitate access to internet services and a range of communication platforms, and that the screen will not display any form of commercial advertising. Additionally, advertisements will be blocked from webpages when in use.
7. These later submissions do, nonetheless, somewhat contradict the evidence in the appellant's original appeal submission which states that "The unit features on one side a 32" touchscreen using the latest high definition LCD product with the luminance level adjusted via an inbuilt light sensor and on the other side an area designed for commercial display". The technical specification for the proposed kiosk that I have been provided with refers only to a 32 inch LCD screen. This would be integrated into the front face of the unit alongside the telephone apparatus. The drawings that have been I have provided with, whilst showing the rear face of the kiosk, are not annotated to indicate that a display screen is incorporated on this side of the unit, the only annotations are those relating to dimensions. I note that the technical specification states that the rear face incorporates a laminated glass panel in addition to the aluminium of the casing. It is unclear from the submitted documents what the purpose of this is.

² [2019] EWHC 176 (Admin) & subsequently [2019] EWCA Civ 2250

8. Whilst the rear face of the kiosk is of a size that could accommodate a standard paper advertising poster, there is no indication from the technical specification or drawings submitted with the appeal that, notwithstanding the appellant's description in the original statement of case, the installation has been purposefully designed with features such as opening, or removable panels, or external/internal lighting to accommodate poster advertising or a digital advertising screen in addition to the telecommunications use. The unit does incorporate a relatively small display screen, however, the appellant has set out that this is not to be used for the display of advertising. I am also mindful that the deemed consent provisions of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 relating to advertisements on telephone kiosks were revoked in May 2019 and that consent for the display of advertisements did not form part of the appeal proposal.
9. The evidence before me does not clearly show that the proposed kiosk is intended to support advertising or that it would be a dual purpose facility as set out in the New World Payphones judgement. Consequently, I am satisfied that for the purposes of this appeal, the proposal would have been permitted development when applying the criteria in Part 16, Schedule 2 of the GPDO. Nevertheless, development under Part 16, such as the appeal scheme, is subject to a condition that the prior approval of the Council must be sought for the siting and appearance of the development. The Council considered these matters in their original determination and resolved that prior approval should be withheld.
10. The GPDO requires the decision maker to have regard to the National Planning Policy Framework (the Framework) so far as it is relevant to the subject matter of the prior approval. The Framework is supportive of the development of communications infrastructure, however, Paragraph 115 makes it clear that applications for telecommunications development, including applications for prior approval, should be supported by the necessary evidence to justify the proposal.
11. The reasons for refusal refer to Policy 6.10 of the London Plan 2016 and Policies LP25 and LP26 of the Redbridge Local Plan 2018. As this is an appeal seeking prior approval, subject to satisfying the requirements of Part 16 of Schedule 2 to the GPDO, consideration of compliance with development plan policy is not required. These policies are only relevant insofar as they assist in assessing the effect of the siting and design of the development on the character and appearance of the area, or on highway safety. The policies are framed in general terms, seeking to ensure that development is of high standard of design, of a scale and appearance that has regard to its context, ensures a high quality pedestrian environment, and keeps the size of the installation to the technical minimum.

Character and appearance

12. The area surrounding the appeal site is commercial in nature, comprised primarily of two and three storey, terraced, buildings of varying ages and designs. These have commercial premises at ground floor level and other uses above. The ground floor units for most part have modern shops fronts. Beyond and to the east, High Road is pedestrianised with a similar mix of buildings. To the west Cranbrook Road and Chapel Road are major roads with a similar building typology. This section of High Road is a busy town centre

street, and whilst there is no predominant, defining architectural style, there are, nonetheless, some distinguished and well detailed building façades at the upper levels.

13. To the south side of the street there are several black waste bins near carriageway edge, a bus shelter and the existing telephone kiosk that would be replaced by the appeal proposal. Adjacent to a bend in the carriageway towards the pedestrianised section of High Road there are galvanised metal pedestrian guard rails. Within the pedestrianised area the street furniture is predominantly silver grey in colour as are the lighting columns on section of High Road where appeal site located. The proposed kiosk would be powder coated a mid to dark grey colour that would not match the existing street furniture. This would lead to the proposed installation being inconsistent with the existing street furniture.
14. Although there is no predominant architectural character and the area is not within a conservation area, there is a lively and vibrant street scene resulting from the commercial frontages that form the approach to pedestrianised main shopping area. The current structure on the appeal site is a black framed, glazed, kiosk with advertising displayed on one side. It is a relatively lightweight, if utilitarian, structure. The proposed replacement kiosk would be of a similar height and width, being marginally taller and slightly narrower. However, it would be perceived as having much bulkier appearance due to the solid nature of the structure which would also present a large, blank, elevation to the footway in one direction. It is not clear from the submission which way round the installation would be orientated, but this would not result in a different visual effect. In combination with the inconsistent colour, the size and massing of the unit and the presence of a large, blank, elevation would detract from the otherwise lively street scene on an important route to the town centre.
15. I therefore find that the proposed development would cause harm to the character and appearance of the area. It would be contrary to the requirements of the Framework that new development should add to the overall quality of an area, be visually attractive, and sympathetic to local character.

Operation of the footway

16. The Council state that the footway in this area was widened to accommodate high flows of pedestrians and it is also stated that the Council is embarking on decluttering of footways as part of improvements to Ilford town centre.
17. The current width of the footway is approximately 4.8 metres and would be reduced to approximately 3 metres by the replacement kiosk. This would be similar to the current situation. At time of my site visit I observed that there was a regular and heavy, two way, flow of pedestrians on the area of footway in question and that the full width of the footway was used. This was in the mid-afternoon on a typical weekday and I have no reason to consider that this is not representative of the usual level of footfall, although I recognise that it may be higher or lower at different times and on different days. I observed the appeal site for some time and noted the telephone kiosk and a bus shelter located further west on High Road create pinch points on the footway where it is noticeably narrowed. I also saw that pedestrians deflected from the route that they were following to avoid the current kiosk and that there were regular

conflicts with flows in opposite directions. Small numbers of users of the footway passed on the outside of the kiosk, stepping into the carriageway to do so. In areas of high pedestrian flow the Transport for London guidance document Pedestrian Comfort Guidance for London 2010 recommends that a minimum footway width of 5.3 metres is required to accommodate both street furniture and the movement of pedestrians. The footway width in this area falls short of this and, whilst the appellant states that an unobstructed width of 2 metres would be retained, there is no supporting evidence to indicate that this width would be sufficient to accommodate pedestrian flows in the area.

18. Whilst the new kiosk would have smaller physical ground area than the current kiosk, it would be for practical purposes the same width and the proposed position, perpendicular to the carriageway, would result in a similar level of obstruction as the existing installation. High Road at this point is a principal route to the pedestrianised part of High Road to the east containing the main shopping area. Although the proposal would not have a greater effect on pedestrian movements than existing structure, I saw that the positioning and size of the existing kiosk obstructs pedestrian flows in this area. The proposed replacement kiosk would have a similar effect. This would be contrary to the Council's stated objective and approach to decluttering footways in this area to facilitate access to the town centre. I have also had regard to the fact that the Highway Authority raised objections to the proposal on the grounds of obstruction to pedestrian movement.
19. I therefore find that the proposed development would cause harm to the safe operation of the footway in the vicinity of the appeal site.

Other matters

20. I have noted the appellant's points that the design of kiosk allows access for wheelchair users and that it would provide free wi-fi and charging capabilities in addition to a touchscreen that could provide local information. Whilst these may provide a public benefit, the requirement of the GPDO is to assess whether the effect of the siting and design of the proposal is acceptable. In the context of this proposal, neither the GPDO nor the Framework require any public benefits to be weighed against any harm that would arise from the development.

Conclusion

21. For the above reasons, I conclude that the appeal should be dismissed.

John Dowsett

INSPECTOR