
Appeal Decision

Site visits made on 8 March 2019

by F Rafiq BSc (Hons), MCD, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th May 2020

Appeal A Ref: APP/Z4310/W/18/3192547

Vauxhall Road near the junction with Leeds Street, Liverpool, L3 2BB

- 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, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Maximus Networks Ltd against the decision of Liverpool City Council.
 - The application Ref 17PP/1528 dated 1 June 2017 was refused by notice dated 5 July 2017.
 - The development proposed is the installation of a telephone kiosk.
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Appeal B Ref: APP/Z4310/W/18/3192772

Public Highway at 39 Leeds Street in front of The Reach, Liverpool, L3 2DD

- 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, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Maximus Networks Ltd against the decision of Liverpool City Council.
 - The application Ref 17PP/1503 dated 1 June 2017 was refused by notice issued with a date of 18 July 2017.
 - The development proposed is the installation of a telephone kiosk.
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Appeal C Ref: APP/Z4310/W/18/3192775

Public Highway at Byrom Street adjacent to Liverpool John Moores University, Liverpool, L3 3AF

- 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, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Maximus Networks Ltd against the decision of Liverpool City Council.
 - The application Ref 17PP/1514 dated 1 June 2017 was refused by notice issued with a date of 18 July 2017.
 - The development proposed is the installation of a telephone kiosk.
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Appeal D Ref: APP/Z4310/W/18/3192817

Tithebarn Street adjacent to Victoria Hall, Liverpool, L3 2EZ

- 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, Class A of the Town and Country Planning (General Permitted Development) (England)

Order 2015 (as amended).

- The appeal is made by Maximus Networks Ltd against the decision of Liverpool City Council.
 - The application Ref 17PP/1551 dated 1 June 2017 was refused by notice issued with a date of 19 July 2017.
 - The development proposed is the installation of a telephone kiosk.
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Decisions:

Appeal A

1. The appeal is allowed and approval is granted under the provisions of Article 3(1) and Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the siting and appearance of a telephone kiosk at Vauxhall Road near the junction with Leeds Street, Liverpool L3 2BB in accordance with the terms of the application Ref 17PP/1528, dated 1 June 2017, and the plans submitted with it.

Appeal B

2. The appeal is allowed and approval is granted under the provisions of Article 3(1) and Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the siting and appearance of a telephone kiosk on the public highway at 39 Leeds Street in front of The Reach, Liverpool L3 2DD in accordance with the terms of the application Ref 17PP/1503, dated 1 June 2017, and the plans submitted with it.

Appeal C

3. The appeal is allowed and approval is granted under the provisions of Article 3(1) and Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the siting and appearance of a telephone kiosk on the public highway at Byrom Street adjacent to Liverpool John Moores University, Liverpool L3 3AF in accordance with the terms of the application Ref 17PP/1514, dated 1 June 2017, and the plans submitted with it.

Appeal D

4. The appeal is allowed and approval is granted under the provisions of Article 3(1) and Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the siting and appearance of a telephone kiosk at Tithebarn Street, adjacent to Victoria Hall, Liverpool L3 2EZ in accordance with the terms of the application Ref 17PP/1551, dated 1 June 2017, and the plans submitted with it.

Procedural Matters

5. The application forms refer to the type of apparatus to be installed as a 'Call Box'. I have utilised part of the description of development from the respective appeal forms, which reference the installation of telephone kiosks.
6. On Appeal A, the Appellant has confirmed on the appeal form that a decision was made on the 5 July 2017. Despite a request to the Local Planning Authority, a copy of the decision notice has not been provided. The Local

Planning Authority set out the basis for the prior approval refusal in the Delegated Report and I have determined the appeal accordingly.

7. As an electronic communications code operator, the appellant benefits from deemed planning permission for a proposed payphone kiosk (also known as a public call box) under Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) Order 2015 as amended (GPDO), subject to prior approval by the local planning authority of siting and appearance taking account of representations received. The appellant applied to the Council on that basis. The Council determined that prior approval was required and refused for the siting and appearance of the telephone kiosks subject to each of the four appeals.
8. On 25 May 2019, the Town and Country Planning (Permitted Development, Advertisement and Compensation Amendments) (England) Regulations 2019 came into force, amending the GPDO 2015. 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 2015 by the 2019 Regulations had not been made. That is the case in respect of the appeals before me.
9. Reference has been made to a number of development plan policies. The principle of development is established by the GPDO and prior approval relating to paragraph A.3 of Schedule 2, Part 16, Class A of the GPDO includes no requirement that regard be had to the development plan. The provisions of the GPDO require the local planning authority to assess the proposed development solely upon the basis of its siting and appearance, taking into account any representations received. I, therefore, take account of the referenced policies of the development plan and any related guidance including the Liverpool Maritime Mercantile City World Heritage Site Supplementary Planning Document 2009 ('SPD') in so far as they are a material consideration relevant to matters of siting and appearance.
10. The National Planning Policy Framework (Framework) deals with supporting high quality and reliable communications infrastructure, including applications for prior approval, and requires that local planning authorities must determine applications on planning grounds. As the principle of development is established by the GPDO, considerations such as the need for the telephone kiosks are not a relevant matter. The Framework also makes clear that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight attaches to the asset's conservation; the more important the asset, the greater that weight should be. Significance can be harmed through development within an asset's setting. The Framework has been revised since the appeal was lodged, but this does not raise any additional matters in this respect.
11. The determination of each of these appeals follows a High Court judgement in the decision of Ouseley J in *Westminster CC v. SSHCLG & New World Payphones Ltd* [2019] EWHC 176 (Admin). The decision in this case concluded that the relevant telephone kiosk was for the dual purpose of advertisement

display and telecommunications use, stating that it contained features which were for advertising and not there at all for the telecommunications function.

12. In respect of these appeal cases, based on the evidence before me, including the submitted drawings and technical details, I find that they do not clearly show that the proposed telephone kiosks are intended to support advertising. I have taken into account that deemed consent allows for a non-illuminated advertisement on the glazed surface of one face of the kiosk. However, in the absence of any particular advertising elements or features, to me these appeals should not be considered to constitute a dual purpose and therefore prior approval consideration of siting and appearance must be considered.
13. Reference has been made to appeal decisions on other sites, but I am not aware of the full circumstances of those cases. I can confirm that I have considered these appeals on their own merits.

Main Issues

14. For all four appeals, the main issue is whether or not approval should be given in respect of the siting and appearance of the proposed telephone kiosks, having regard to the character and appearance of the area, including, on appeals A, C and D, the Liverpool Maritime Mercantile City World Heritage Site buffer zone.

Reasons

Background

15. The appeals relate to a number of free standing telephone kiosks of the same design and rectangular form. Each would have an overhanging roof with an area of around 1.325m by 1.125m and would be about 2.6m high. They would be constructed with a steel frame and casings, and clear polycarbonate and toughened glass, with a solar panel on the roof.
16. Appeals A, C and D would be located within the 'buffer zone' of the Liverpool Maritime Mercantile City World Heritage Site, as depicted in the SPD.

Appeal A

17. The telephone kiosk would be located on a broad pavement adjacent to a three lane section of Vauxhall Road, and close to its wide and open junction with Leeds Street. Other than a large sign raised above a grassed area to the north and some lamp columns, there is relatively little street furniture or signage nearby on this side of the road. I did however observe at the time of my visit an existing kiosk opposite the appeal site.
18. In this location, on an important through route, the Council consider the proposed kiosk would harm the streetscene and the visual amenity of the area. The kiosk has been likened to a small bus shelter, but as it has been designed to accommodate wheelchair users, it would be wider than more traditional kiosk's. Despite this, it would be open to the front, and its sides would be narrow and largely transparent. This would give it a fairly simple and lightweight appearance, and would limit its apparent scale and size.
19. Given the siting of the proposal on part of the pavement that is wide with a wide three lane vehicular carriageway, the telephone kiosk would be fairly

prominent. However, it would be set back from the carriageway and the few other street furniture items on this pavement would ensure that it would not give rise to a significant sense of clutter. Moreover, its design is such that it would not appear dominant or incongruous in the streetscene.

20. The Council states that the area has benefitted from considerable financial investment, regeneration activity and high quality public realm works. That may be so, but for the above reasons, I am satisfied that the siting and appearance of the proposed telephone kiosk would not unacceptably harm the character and appearance of the area, including the Liverpool Maritime Mercantile World Heritage Site and its 'buffer zone'.

Appeal B

21. The proposed telephone kiosk would be sited in a position on the pavement where it would broadly align with a low brick wall. Whilst there is some existing street furniture in the area, including bicycle racks and highway signage, this part of Leeds Street has a generally wide and spacious character.
22. Given this context, the Council describes the scheme as 'removed from its surrounds'. I agree that it would be fairly prominently sited close to the carriageway edge in this open location on a main thoroughfare. However, its lightweight design would limit its apparent scale and size, and its simple form and appearance would soften its visual impact. I do not also therefore consider that it would result in the proposal appearing similar to a bus shelter.
23. Moreover, there would be a significant gap between the proposed telephone kiosk and existing items of street furniture and, according to the appellant's figures, a distance of roughly 5m to the tall building at the back edge of the pavement, against which it would be largely seen from Leeds Street. For all those reasons, it would not appear incongruous in the streetscene, or give rise to a significant sense of clutter in the public realm.
24. I therefore conclude that its siting and appearance would not unacceptably harm the character and appearance of the area.
25. Although the Council states that the telephone kiosk would provide a further obstruction to pedestrian movement, given its alignment with the wall, and the width of the clear zone between it and the nearby building, the scheme would not have a significant adverse impact on the safety and convenience of pedestrians using the pavement.

Appeal C

26. The proposed telephone kiosk would be sited immediately outside a substantial Liverpool John Moores University campus building. Its location at the back edge of this wide section of pavement would broadly align with nearby bicycle racks and a previously approved kiosk.
27. Although the scheme would introduce an additional item of furniture into this part of Byrom Street, given its alignment with those structures, and the simplicity of its design, it would not appear incongruous in the streetscene.
28. I have found that the telephone kiosk's design, with an open front and largely transparent sides would also give it a lightweight appearance, and not as the

Council state, appear similar to a bus shelter. The design, together with the width of the pavement, and the significant gap between the proposed kiosk and the railings close to the carriageway edge, would be sufficient to prevent the scheme from giving rise to a significant sense of clutter. In reaching this conclusion, I have regard to the aims of the joint statement¹ to reduce street clutter.

29. For all the above reasons, the siting and appearance of the proposed telephone kiosk would not unacceptably harm the character and appearance of the area, including the Liverpool Maritime Mercantile World Heritage Site and its 'buffer zone'.
30. The Council have stated that the telephone kiosk would provide a further obstruction to pedestrian movement. However, given the width of the resultant pavement clear zone, which the appellant calculates at 4.2m, and the scheme's alignment with existing structures, I am satisfied that the telephone kiosk would not have a significant impact on the safety and convenience of pedestrians.

Appeal D

31. The proposed telephone kiosk would be prominently sited, set back slightly from the pavement edge, and close to a road junction on this main thoroughfare. It would be situated outside a convenience store with its associated advertisement and canopy and close to a refuse bin and a street light on this section of pavement. On the opposite side of Tithebarn Street, outside the Avril Roberts building, are further items of street furniture including cycle parking, a bin, street lighting and a piece of public art. There is also an existing kiosk outside 79 Tithebarn Street. Given the width of the pavements and the careful positioning of the street furniture, this part of the public realm has a generally spacious and well-ordered character.
32. The proposed kiosk would be situated a short distance from the refuse bin and the street light, ensuring that there would not be an unduly cluttered appearance. Its broad alignment with these street furniture items would aid its assimilation into the streetscene, as would its simple and lightweight design. I do not consider that the design which includes an open front and largely transparent sides, would make it appear unconventional or result in it having an appearance similar to a bus shelter.
33. Concern has been raised on the cumulative impact of the proposal along with existing street furniture. Reference has also been made to the aims of the joint statement² to reduce street clutter. From my site observations, the proposal would be separated from much of the referenced street furniture, which is on the opposite side of Tithebarn Street, as is the existing telephone kiosk outside No. 79. More immediately, given the pavement width of 6.3m according to the appellant's figures, and the gap to the few other street furniture items on this side of the street, the proposal would not give rise to a significant sense of clutter.
34. For the above reasons, the siting and appearance of the proposed telephone kiosk would not unacceptably harm the character and appearance of the area,

¹ By Department of Communities and Local Government and Department of Transport (2010)

² By Department of Communities and Local Government and Department of Transport (2010)

including the Liverpool Maritime Mercantile World Heritage Site and its 'buffer zone'.

35. Although not referred to in the decision notice, the Council have stated that it considers that pedestrian movements would be obstructed – although I have taken its reference to 'Lord Street' to be erroneous. However, in my view, given the width of the pavement and the alignment of the proposed telephone kiosk with existing features, the scheme would not have a significant impact on the safety and convenience of pedestrians along this section of Tithebarn Street.

Conditions

36. Any planning permission granted for the call boxes under Article 3(1) and Schedule 2, Part 16, Class A is subject to conditions set out in Paragraphs A.3(9), A.3(11) and A.2(2), which specify that the development must, except to the extent that the local planning authority otherwise agree in writing, be carried out in accordance with the details submitted with the application; must begin not later than the expiration of 5 years beginning with the date on which the local planning authority received the application; and must be removed as soon as reasonably practicable after it is no longer required for electronic communications purposes and the land restored to its condition before the development took place.

Conclusion

37. For the reasons given above, and having regard to all matters raised, I conclude that all four appeals should be allowed and prior approval granted.

F Rafiq

INSPECTOR