
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/17/3192391

Public Highway at 80-88 London Road, Liverpool, L3 5NF

- 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/1504 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/18/3192842

Public Highway at Lord Nelson Street adjacent to The Liner Hotel, Liverpool, L3 5QB

- 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/1564 dated 1 June 2017 was refused by notice issued with a date of 20 July 2017.
 - The development proposed is the installation of a telephone kiosk.
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Appeal C Ref: APP/Z4310/W/18/3192898

Seymour Street opposite 47 Seymour Terrace, Liverpool, L3 5PE

- 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/1510 dated 1 June 2017 was refused by notice dated 24 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 on the Public Highway at 80-88 London Road, Liverpool L3 5NF in accordance with the terms of the application Ref 17PP/1504, 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 Lord Nelson Street, adjacent to The Liner Hotel, Liverpool L3 5QB in accordance with the terms of the application Ref 17PP/1564, dated 1 June 2017, and the plans submitted with it.

Appeal C

3. The appeal is dismissed.

Procedural Matters

4. 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 decision notices, which reference the installation of telephone kiosks.
5. 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 three appeals.
6. 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.
7. 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.

8. 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 kiosk 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.
9. 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.
10. 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.
11. 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

12. For all three 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 the Liverpool Maritime Mercantile City World Heritage Site buffer zone.
13. In relation to Appeal C, a further main issue relating to whether or not approval should be given in respect of the siting and appearance of the proposed telephone kiosk, having regard to the effect upon highway safety.

Reasons

Background

14. 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.

15. Each would be located within the 'buffer zone' of the Liverpool Maritime Mercantile City World Heritage Site, as depicted in the SPD.

Appeal A

16. The telephone kiosk would be sited to the front of commercial buildings on a section of pavement on the southern side of London Road, close to its junction with Seymour Street. The pavement here contains lighting columns, and a Royal Mail post box. However, in other respects, this section of the pavement, which the appellant calculates at 3.4m wide, contains relatively little permanent street furniture.
17. The Council likens the telephone kiosks to a small bus shelter. For my part, I note that it has been designed to accommodate wheelchair users, and that it would therefore be wider than more traditional telephone kiosks. However, it would also 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.
18. Consequently, whilst the scheme would introduce an additional item of street furniture into this fairly open section of pavement, its impact on the streetscene, including in views when approaching from the east, would be relatively limited.
19. According to the appellant's figures, there would be a clear zone of around 1.7m between the telephone kiosk and the adjacent building. The proposed telephone kiosk would be sited a little way from, but broadly in line with, the much smaller post box, relative to the carriageway. For those reasons, and having regard to the proposed kiosk's form and design, and the space around it, the scheme would not appear incongruous, or give rise to an unduly cluttered appearance. I also note the aims of the joint statement¹ are to reduce street clutter, but do not find in this instance that the proposal would unduly add to clutter in the street environment.
20. Although the Council describes this as an area of the City that has seen considerable financial investment, regeneration activity and high quality public realm improvements, for the above reasons, in the context of the area, the kiosk would not appear over-dominant or incongruous.
21. Consequently, I find that its siting and appearance would not unacceptably harm the character and appearance of the area, including the Liverpool Maritime Mercantile World Heritage Site and its 'buffer zone', which justifies the grant of prior approval.

Appeal B

22. The proposed telephone kiosk would be located on a pavement in front of The Liner Hotel, and a short distance from its external seating area. The pavement here contains a streetlamp and a row of low bollards which are set back slightly from the carriageway edge. Although the Council describes the pavement as narrow, I observed it to be quite wide, and it is measured by the appellant at 5.2m. The kiosk would however be sited close to a section of railings where the pavement does narrow, but even here the width of the footway separating it from the proposal would be around 2.6m.

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

23. I have found that the design of the proposed telephone kiosk would be relatively simple and that, despite being large enough to accommodate wheelchair users, its form and materials would give it a lightweight appearance and would limit its apparent scale and size.
24. It would be set slightly away from the much smaller bollards either side, and further away still from the nearest street lamp which is a slender structure. Despite the Council's reference to there being a considerable amount of visual clutter currently, there is little other street furniture in the immediate vicinity of the site. For these reasons, and having regard to the aims of the joint statement² to reduce street clutter, the scheme would not give rise to a significant sense of clutter, or cause significant harm to this part of the public realm.
25. Whilst this part of the city may have seen considerable financial investment, regeneration activity and public realm improvements, for the above reasons, the telephone kiosk would not appear out of place here. Its siting and appearance would not unacceptably harm the character and appearance of the area, including the Liverpool Maritime Mercantile World Heritage Site and its 'buffer zone'.
26. Although not cited in its decision notice as a reason for refusal, the Council's delegated report states that, owing to the limited width of the pavement, the telephone kiosk would obstruct pedestrians, wheelchair users and others with mobility difficulties. I have no reason to doubt that the pavement is well used. However, I have found that this section of it is quite wide, with the appellant stating that there would be a clear gap of 2.6m between the kiosk and the nearby railings. I do not therefore agree with the Council's contention that that the proposed kiosk would take up the majority of the pavement's width, but that the space available would be sufficient to enable pedestrians to easily pass. Consequently, and having regard to the existing bollards and other street furniture, the scheme would not cause a significant obstruction.
27. Finally, I note that there are Grade II listed buildings on the opposite side of Lord Nelson Street. However, the Council does not allege that their settings would be harmed. Having regard to the Framework, and given the relatively modest scale and simple design of the scheme and the intervening carriageway, the significance of those designated heritage assets would not be harmed.

Appeal C

28. The proposed telephone kiosk would be sited at the edge of a green space, which is bounded by busy roads, including a gently curved stretch of Seymour Street. There are pedestrian crossings close to the site. Additionally, along this part of the pavement, are street lights, highway signage, and an existing telephone kiosk which is a short distance to the north.
29. The proposed telephone kiosk would be set back approximately 2.2m from the carriageway edge, in a position at the edge of the pavement where it would cut slightly into the green space. However, from my site observations, that also appears to be the position for the existing telephone kiosk, with which it would

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

broadly align. The impact on the much larger area of green space would be very minimal.

30. Given the telephone kiosk's relatively simple design, and its narrow and largely transparent sides, it would have a lightweight appearance which would limit its apparent scale and size. There would be a short gap between it and the nearest street light, with other street furniture more distant. For all these reasons, and having regard to the aims of the joint statement² in relation to street clutter, it would not appear incongruous, or result in the public realm looking cluttered.
31. I therefore conclude that the siting and appearance of the proposed telephone kiosk would not therefore unacceptably harm the character and appearance of the area, including the Liverpool Maritime Mercantile World Heritage Site and its 'buffer zone'.
32. Turning to the scheme's effect on highway safety, according to the appellant's figures, the level of pedestrian flow at the site is estimated to be low. The approximate 2.2m 'clear zone' between the telephone kiosk and the carriageway, is also said to be sufficient to allow pedestrians to safely pass in that location with reference to various guidance.
33. However, although the appellant states that there is no existing street furniture in the immediate vicinity of the telephone kiosk, this proposal would be sited close to a street light that can be seen in the photograph on the appellant's 'dashboard'. In contrast to the proposed kiosk subject of this appeal, that street light is positioned near the centre of the pavement. This proposal would therefore result in a rather meandering, awkward and incoherent route for pedestrians.
34. Seymour Street carries a heavy volume of traffic, and in this location the resultant layout of street furniture would be confusing, particularly for those with visual or cognitive impairment, and would significantly increase the risk of pedestrians walking through the narrow gap between the street light and the carriageway, and possibly stepping into the road, particularly given the curvature of the highway.
35. As it would impede pedestrian desire lines and pedestrian flows adjacent to a busy part of the city's strategic road network, I therefore conclude on this issue that the scheme would cause significant harm to the safety and convenience of highway users.
36. No's 11 – 53 (odds) Seymour Street comprise a long terrace identified as a Grade II listed building, which lie broadly opposite the appeal site on the other side of this four-lane carriageway. Whilst the Council has provided me with the list entry for that designated heritage asset, it does not allege that its setting would be harmed. Given the relatively modest scale and simple design of the scheme, and the significant distance to that listed building, I consider that its significance would not be harmed.

Conditions

37. I will turn to the matter of conditions in relation to appeals A and B. Any planning permission granted for the kiosks 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

38. For the reasons given above and having regard to all matters raised, I conclude that appeals A and B should be allowed and prior approval granted. I conclude that appeal C should be dismissed.

F Rafiq

INSPECTOR