



Appeal Decision

Site visit 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 Ref: APP/Z4310/W/18/3192888

Public Highway adjacent to 4 Brownlow Hill, Liverpool, L3 5RE

- 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/1525 dated 1 June 2017 was refused by notice issued with a date of 23 July 2017.
 - The development proposed is the installation of a telephone kiosk.
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Decision:

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 adjacent to 4 Brownlow Hill, Liverpool L3 5RE in accordance with the terms of the application Ref 17PP/1525, dated 1 June 2017, and the plans submitted with it.

Procedural Matters

2. The application form refers to the type of apparatus to be installed as a 'Call Box'. I have utilised part of the description of development from the appeal form which references the installation of a telephone kiosk. Whilst on the application form the site address is written as 'Bronlow Hill', having regard to other documents including the plans, that is clearly an error, which I have corrected to 'Brownlow Hill' in my decision.
3. 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 kiosk subject of this appeal.
4. 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 appeal before me.

5. 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.
6. 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 is 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.
7. The determination of this appeal 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.
8. In respect of this appeal case, 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 kiosk is 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 this appeal should not be considered to constitute a dual purpose and therefore prior approval consideration of siting and appearance must be considered.
9. 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 this appeal on its own merits.

Main Issue

10. The main issues are:

- i) the effect of the siting and appearance of the proposed telephone kiosk upon the character and appearance of the area, including the Liverpool Maritime Mercantile City World Heritage Site buffer zone; and
- ii) the effect of the siting and appearance of the proposal on the safety and convenience of highway users.

Reasons

Background

11. The appeal relates to a free standing kiosk with a rectangular form. It would have an overhanging roof with an area of around 1.325m by 1.125m and would be about 2.6m high. It would be constructed with a steel frame and casings, and clear polycarbonate and toughened glass, with a solar panel on the roof.

Character and appearance

12. Brownlow Hill contains a mix of street furniture including bus shelters, digital advertisement displays, litter bins, street lighting and existing telephone kiosks, which are spread out along the streetscene.
13. The proposed kiosk would be set back slightly from the carriageway edge on a wide section of pavement, albeit close to a narrower section adjacent to some railings. On this area of pavement there is a low pole supporting highway signage just to the west, but in other respects there would be a significant gap between the proposed kiosk and other items of street furniture. Its positioning relative to the carriageway would broadly align with the nearby pole and a telephone kiosk beyond, and with a street lamp, bus shelter and other street furniture to the east past the nearby side access road off Brownlow Hill.
14. Moreover, with its open front, and narrow largely transparent sides, the kiosk would have a fairly simple and lightweight appearance. Consequently, whilst it would be wider than more traditional kiosk's, and its design is likened to a bus shelter by the Council, I consider that its apparent scale and size would actually be fairly limited and distinguishable from bus shelters in the wider streetscene.
15. Whilst I understand that street clutter has been rationalised in the locality and I note the reference to the joint statement¹ which aims to reduce street clutter, given the scheme's design, along with its siting relative to existing street furniture, it would not give rise to an unduly cluttered or incongruous appearance in this part of the streetscene.
16. 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 'buffer zone'.

Highway safety

17. Brownlow Hill is described by the Council as a key connector between different parts of the city centre. I observed on my visit that there were high levels of pedestrian footfall in the area.

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

18. However, there is only a limited amount of street furniture near the site of the proposed telephone kiosk, and it would broadly align with those closest to it. Moreover, the appellant calculates that the overall pavement width here is about 8m. Whilst that would narrow to around 2.4m between the proposal and the railings, in my view that would provide sufficient space for footpath users, including those with visual or cognitive impairment, to safely and conveniently pass.
19. Although the Highways Manager states that the kiosk would align with an area of tactile pavement, the submitted photomontage actually shows it set slightly away from there. Consequently, in my view it would not cause significant inconvenience or confusion to pedestrians reliant on such surfacing to use the safe crossing point; and it would not cause a significant obstruction to pedestrian movement along Brownlow Hill.
20. Finally, the Council states that the kiosk would need to be removed or relocated at public expense in the 'near future' as highway improvements including new carriageway alignments, kerb lines and pedestrian/cycling facilities are proposed. However, although it is said that the programme would start in 2017, at the time of my visit, there was no evidence of significant alterations to the highway. In any event, I have no details before me of those improvements, nor what impact they would have on this location.
21. For all those reasons I am satisfied that the siting and appearance of the scheme would not have a significant impact on the safety and convenience of highway users.

Conditions

22. 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

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

F Rafiq

INSPECTOR