



Appeal Decisions

Site visit made on 28 January 2020

by Conor Rafferty LLB (Hons), AIEMA, Solicitor (Non-practising)

Decision by Chris Preston BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 May 2020

Appeal A Ref: APP/N2345/W/19/3235361

Os 125 – 127 Fishergate, Preston, PR1 2DA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under an Article 3(1) and Schedule 2, Part 16 of the Town and Country Planning (general Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr Nathan Still (Infocus Public Networks Limited) against the decision of Preston City Council.
 - The application Ref 06/2019/0572 dated 14 May 2019, was refused by notice dated 9 July 2019.
 - The development proposed is the installation of an electronic communications apparatus comprising a telephone kiosk.
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Appeal B Ref: APP/N2345/W/19/3235371

Os Train Station, Fishergate, Preston, PR1 2UH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under an Article 3(1) and Schedule 2, Part 16 of the Town and Country Planning (general Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr Nathan Still (Infocus Public Networks Limited) against the decision of Preston City Council.
 - The application Ref 06/2019/0576 dated 14 May 2019, was refused by notice dated 9 July 2019.
 - The development proposed is the installation of a communication hub on the highway by an electronic communications code operator.
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Decisions

1. The Appeals A and B are dismissed.

Appeal Procedure

2. The site visit was undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

Procedural Matters

3. As set out above, there are two separate appeals for the installation of an electronic communications apparatus comprising a telephone kiosk pursuant to Class 16 of the Town and Country Planning (General Permitted Development) Order 2015 (the GPDO). Whilst each appeal relates to a different site, the

proposed kiosks on the sites are identical. I have considered each proposal on its individual merits, but as they raise similar issues, the cases are dealt with in a single decision letter.

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. 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 by the 2019 Regulations had not been made. That is the case in respect of the appeals before me.
5. As an electronic communications code operator, the appellant benefits from deemed planning permission for a proposed telephone kiosk under Article 3(1) and Schedule 2, Part 16, Class A, Paragraph A.3(4) of the Town and Country Planning (General Permitted Development) Order 2015, subject to prior approval by the local planning authority of siting and appearance.
6. 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. My determination of these appeals has been made on the same basis.
7. The High Court has considered the issue of the inclusion of advertising on public call boxes. A recent judgement in the Westminster case (Westminster City Council v Secretary of State for Housing, Communities and Local Government & New World Payphones Ltd (2019) EWHC 176 (Admin)) considered the matter of dual purpose of advertisement display and telecommunications use.
8. This judgement confirmed 'that the whole development for which prior approval is sought must fall within the class relied on, and no part of it can fall outside it'. The judgement went on to state that a development falls outside the scope of Part 16, Class A if it is not 'for the purpose' of the operator's network. Thus, if the development is partly for some other purpose beyond that of the operator's network, it cannot be development 'for the purpose' of the operator's network precisely because it is for something else as well. In that case the proposed kiosk was for a dual purpose of advertisement display and telecommunications use and therefore contained features that were for advertising and 'not at all there for the telecommunications function'.
9. The proposed call boxes are relatively simple, thin, freestanding structures with a projecting canopy with glazed side sections. They would measure 2.6 metres in height with a 317 millimetre profile and incorporate a 32 inch interactive touch screen with high definition LCD technology. The outer structural casing of the call boxes would be powder coated to a metal chain grey colour.
10. It is apparent that the form and design of the proposed telecommunications apparatus in these appeals is driven by the proposed functionality as public call boxes. There is no evidence to suggest that the proposed developments include elements that are there for the purpose of advertising. Consequently, on the

basis of the evidence provided in these appeals, I consider that the proposals are for the purpose of the operator's electronic communications network.

Planning Policy

11. The principle of development is established by the GPDO and the provisions of Schedule 2, Part 16, Class A of the GPDO do not require regard be had to the development plan. I have had regard to the policies of the development plan, any related guidance and the National Planning Policy Framework only in so far as they are a material consideration relevant to matters of siting and appearance.
12. Among the refusal reasons provided, the Council states that the developments would each "have an unacceptable adverse impact on the public realm improvements carried out within the city centre". The precise extent of these public realm improvements has not been defined by the Council. However, Policies SP1 of the Preston City Centre An Area Action Plan to 2026, adopted June 2016 (the Area Action Plan) has been cited by the Council in its reasons for refusal. It states that development proposals should, among other things, support the following principles: (i) promote ease of pedestrian movement over that of vehicles; (ii) enhance the city's townscape and historic environment; and (iii) reduce visual clutter within the public realm. The main issues have therefore been defined taking these policies into consideration.

Main Issues

13. The main issues are:

- i) The effect of the siting and appearance of the proposed kiosk on the character and appearance of the surrounding area (All Appeals);
- ii) The effect of the siting and appearance of the proposed call box on the safe and efficient operation of the highway network (All Appeals); and
- iii) Whether the siting and appearance of the proposed kiosk would preserve or enhance the character or appearance of the Winckley Square Conservation Area (the WSCA) (Appeal A).

Reasons for the Recommendation

Appeal A

Character and appearance; Conservation Area

14. The appeal site is located on the pavement of Fishergate and falls within the WSCA. The surrounding part of the WSCA is predominantly commercial, with shop front facades at street level and a mix of both traditional and more modern building styles at first floor level.
15. While the surrounding footpaths in the area are primarily wide and free from structures, the call box would be sited in a section of street with numerous elements of street furniture present. This includes a bench, a rubbish bin and concrete blocks. Whilst the amount of street furniture results in a degree of clutter the visual harm is off set to some degree by the strong and seemingly planned alignment of the benches, bollards, bins and trees. A call box at this location would add to the proliferation of existing structures. As a result of its height, width and footprint, it would represent an imposing addition compared

to the structures present on the footpath. In addition, the plans show that it would be set at right angles to the road, such that it would appear considerably more bulky than the comparatively small and slender proportions of the benches, bins and bollards that are currently in situ. It would appear at odds with the otherwise coordinated arrangement of street furniture. Consequently, the proposal would exacerbate the cluttered feel of the street furniture to the visual detriment of the character and appearance of this part of the streetscape.

16. The proposal would represent a noticeably more contemporary and bulky addition to the immediate area than the other structures on the footpath, including the facades and buildings lining the street. However, this section of the WSCA is defined by its mixture of styles and characters. As such, while the call box would be at odds with the more traditional architecture present in the WSCA, this harm is lessened by the fact that it would be located among the range of styles present in the immediate area.
17. Whilst the level of harm caused to the WSCA would be less than substantial it is, nevertheless, to be given considerable importance and weight. This harm has been weighed against the number of public benefits purported by the appellant, including the provision of accessible communications to the public and the accessibility of the call box itself. It has also been weighed against the provisions of the National Planning Policy Framework (the NPPF) which encourage electronic communications. However, whilst I recognise the general acceptance of the principle of call boxes through the GPDO and the public benefits that would arise there is little before me to indicate that the proposed siting has been determined having regards to the characteristics of the CA, or to indicate that an assessment of whether alternative locations outside the CA have been considered. In any event, any negative impact arising from what would amount to a small reduction in local coverage in the absence of the apparatus would be significantly outweighed by the substantial weight that should be afforded to the harm to the CA.
18. For the reasons set out above I find that the proposal would, by reason of its siting and appearance, have a harmful appearance on the character and appearance of this part of the streetscape and would fail to preserve or enhance the character or appearance of the WSCA.
19. The proposal would therefore conflict with Policy 16 of the Core Strategy and Policies EP7, EN8 and EN9 of the Local Plan.

Highway Safety

20. The proposal would be located on a footpath that is likely to be relatively well used by pedestrians, given the presence of nearby commercial premises. Despite the pavement being reasonably wide, the proposed siting of the call box would be close to the existing structures and trees along the street and in this location has the potential to visually and physically obstruct the flow of pedestrian traffic travelling along Fishergate.
21. The proposal would introduce a wide obstacle to the footpath along with the street furniture and trees already present and as such would greatly reduce the pavement width in its immediate area. This, in turn, would diminish the area for pedestrians and create a narrow useable corridor along the footpath.

Accordingly, the flow of pedestrian traffic would, therefore, be restricted around this area and would be detrimental to highway safety.

22. The proposal would therefore conflict with Policy SP1 of the Area Action Plan.

Appeal B

Character and appearance

23. The appeal site is located outside Preston Train Station on the Fishergate Bridge, which is a Grade II Listed Building. The surrounding area is primarily commercial, with numerous modern shop fronts in proximity to the site. However, the immediate location of the appeal site is defined by the imposing cast iron panels of the bridge which retain a more traditional feel.
24. While the surrounding footpaths in the area are primarily wide and free from structures, the call box would be sited in a section of street with numerous elements of street furniture present. This includes a lamppost, information panel, bus shelter and rubbish bin. A call box at this location would add to the proliferation of existing structures. As a result of its height, width and footprint, it would represent an imposing addition compared to the structures present on the footpath, and would contribute to the cluttered feel to the visual detriment of the character and appearance of this part of the streetscape.
25. The proposal would also be located alongside the cast iron panels of the Fishergate Bridge Grade II Listed Building. I am required to have special regard to the aim of preserving the Listed Building or its setting and any impact in that regard is relevant to the consideration of visual amenity. In such a dense urban context the streetscape provides overlapping settings. The proposal would be experienced primarily in the context of the panels, in an already mixed urban setting alongside other modern elements of street furniture. Nonetheless, its overtly modern design would further detract from the historic and visual significance of the building and as such would have a negative effect on the setting of this Listed Building and would be a discordant feature in this context.
26. This harm has been weighed against the number of public benefits purported by the appellant, including the provision of accessible communications to the public and the accessibility of the call box itself. It has also been weighed against the provisions of the National Planning Policy Framework (the NPPF) which encourage electronic communications. However, whilst I recognise the general acceptance of the principle of call boxes through the GPDO and the public benefits that would arise there is little before me to indicate that the proposed siting has been determined having regards to the surrounding character of the area and the setting of the Listed Building. In any event, any negative impact arising from what would amount to a small reduction in local coverage in the absence of the apparatus would be significantly outweighed by the substantial weight that should be afforded to the harm to the setting of the Listed Building.
27. The proposal would therefore conflict with Policies EP7 and EN9 of the Local Plan.

Highway Safety

28. The proposal would be located on a footpath that is likely to be relatively well used by pedestrians, given the presence of the nearby train station. Despite

the pavement being reasonably wide, the proposed siting of the call box would be close to the existing structures along the street and in this location has the potential to visually and physically obstruct the flow of pedestrian traffic travelling along Fishergate.

29. The proposal would introduce a wide obstacle to the footpath along with the street furniture already present and as such would greatly reduce the pavement width in its immediate area. This, in turn, would diminish the area for pedestrians and create a narrow useable corridor along the footpath. Accordingly, the flow of pedestrian traffic would, therefore, be restricted around this area and would be detrimental to highway safety.
30. The proposal would therefore conflict with Policy SP1 of the Area Action Plan.

Other considerations (All Appeals)

31. The appellant has referred to other street furniture and information panels as being comparable to the proposed development. However, limited information on this has been provided and I have considered each proposal before me on its own individual merits and the specific circumstances and context of each case.

Overall conclusions

32. Accordingly, I both proposals would cause harm to the character and appearance of the areas in question and would cause harm to designated heritage assets that would not be outweighed by the public benefits. Both proposals would also cause harm to highways safety. Having had regard to those matters, and all other considerations, I recommend that the above appeals should be dismissed.

C Rafferty

APPEAL PLANNING OFFICER

Inspector's Decision

33. I have considered all the submitted evidence and the Appeal Planning Officer's report and on that basis both appeals are dismissed.

C Preston

INSPECTOR