



Appeal Decision

Site visit made on 9 June 2020

by D. Szymanski, BSc (Hons) MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12th June 2020

Appeal Ref: APP/E5900/W/19/3242137

Os Whitechapel Building, Mansell Street, London, E1 8QS

- 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 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 Ltd. against the decision of the Council of the London Borough of Tower Hamlets.
 - The application Ref: PA/19/01087 dated 21 May 2019, was refused by notice dated 16 July 2019.
 - The development proposed is replacement of an existing three sided enclosed telephone kiosk (mark I), with a modern state of the art communications apparatus (mark II) pursuant to Class 16 of the Town and Country Planning (General Permitted Development) Order 2015.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The appellant is a licenced electronic communications code operator and benefits from deemed planning permission for the proposed public call box erected as communications apparatus falling within the permitted development rights of Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO), subject to the prior approval requirements under paragraph A.3. Following the appellant's application to the Council, it determined that prior approval was required for the siting and appearance of the communication apparatus and that approval was refused.
3. On 25 May 2019 the GPDO was amended by the Town and Country Planning (Permitted Development, Advertisement and Compensation Amendments) (England) Regulations 2019. This amendment had the effect of removing permitted development rights to install a public call box under Schedule 2, Part 16, Class A of the GPDO. However, Part 5 of those Regulations provides that where an appeal has been made within six 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 of the GPDO continues to have effect in relation to a public call box as if the amendments to the GPDO had not been made. This is the position in respect of this appeal.

4. The decision of the Court in respect of Westminster CC v SSHCLG & New World Payphones Ltd [2019] EWHC 176 (Admin) regarding prior approval for telephone call box development was issued on 5 February 2019 and was upheld in the Court of Appeal. The Westminster judgement confirms that the assessment as to whether a telecommunications apparatus falls within the scope of Part 16, Class A of the GPDO should be made before matters pertaining to the siting and/or appearance are considered.
5. I have therefore considered the Westminster judgement in relation to this appeal. I have noted the contents of the application form, plans and technical specification. The front of the kiosk has a 32-inch display screen which appears entirely related to the telecommunications function. There is limited information as to the exact form of construction of the unit's rear panel. However, based upon the information before me in the specification of the 'Smart City Communication Hub' there is no indication of a rear display panel or similar casing, and it would appear to comprise a painted grey metal surface. Therefore, based upon this information the development would not have a dual purpose and it would appear only for the purposes of telecommunications. Therefore, I have considered the appeal on this basis.
6. The Council's delegated report suggests that the base area of the proposed development would be greater than 1.5 square metres (sqm) and does therefore not meet the requirement of A.1(7) of the GPDO. However, based upon the information before me I do not agree, and the proposal would be below the 1.5 sqm limit. I have assessed the proposal on this basis.
7. The provisions of the GPDO require the development to be assessed solely on the basis of its siting and appearance. Therefore, whilst the appellant has referred to the purported benefits of the development, I have not taken these into account other than in respect of heritage assets as required by paragraph 196 of the National Planning Policy Framework (2019) (the Framework).
8. The Council's decision notice set out that the proposal is unacceptable in regard to siting and appearance due to it being unnecessary street clutter and obstructing the free flow pedestrian movement. The Council submitted the list entries for Nos. 46 and 47 Aldgate High Street to this appeal and set out the view that the development would detract from the setting of the two Grade II* listed buildings. Both the parties have been provided with an opportunity to comment upon this matter.

Main Issues

9. The main issues are whether approval should be given in respect of the siting and appearance of the proposed development with particular regard to the following:
 - the safe and efficient operation of the highway; and,
 - the setting of Nos. 46 and 47 Aldgate High Street as Grade II* designated heritage assets.

Reasons

10. The existing kiosk comprises three enclosed mostly see through sides, framed within and under a black roof. The proposed kiosk would occupy a reduced footprint, but it would be a similar width, a small amount higher and be of an

opaque design. Notwithstanding the new kiosk is intended to replace the existing kiosk, in any comparison of the siting and appearance of the replacement structure it must still be acceptable in terms of the main issues referred to above.

11. The development would be located on pavement to the south of the junction of Mansell Road (A1210) with Aldgate High Street (A11). These routes are part of the Transport for London Road Network (TLRN) and are significant arterial routes through this part of the city. On this section of Mansell Road although general street furniture such as streetlamps and traffic barriers are limited, amongst other things, there are a considerable number of public hire bike stands close to the appeal site. Due to its location close to the junctions of main arterial routes the area of pavement would be expected to be the subject of high levels of foot traffic as well as cyclists using the public cycle hire facility.
12. The positioning of the proposed development would result in it complying with The Transport for London Streetscape Guidance (Streetscape Guidance) (2017) in that it would be no less than 450mm from the kerb face kerb zone, which should be kept free of street furniture. Although the pavement appears relatively wide and the development would broadly align with street furniture on Mansell Road, it would be significantly wider, and the bike stands result in a narrowing of the footway in this location.
13. The high footfall, reduced width of the pavement from the bike stands and associated manoeuvring of those bicycles, means that the opaque structure would inhibit the visibility between pedestrians and cyclists, more so than the existing kiosk. As many of these movements would be likely to be in crossed paths, it is not considered any slight reorientation would overcome this matter. Therefore, the development would create a conflict with the safe and efficient operation of the highway, including the reversing and parking of bicycles in this location.
14. The appeal site is located in close proximity to Nos. 46 and 47 Aldgate High Street which front onto the high street close the junction with Mansell Street and Middlesex Street. These are 17th century three-storey buildings, understood to be of a timber frame construction, rendering and sash windows. The heritage assets are both Grade II* listed buildings, which are in a prominent location due to the width of the highways, open nature of the junction and relatively high level of traffic. Furthermore, there is a close proximity and inter-visibility between the appeal site and the heritage assets.
15. Paragraph 193 of the Framework requires that when considering the impact upon the significance of a heritage asset great weight should be given to the asset's conservation. Harm to the significance of a designated heritage asset can derive from development within its setting (paragraph 190). Where a proposal would lead to less than substantial harm to significance, the harm should be weighed against the public benefits of the proposal (paragraph 196).
16. The removal of the existing kiosk would have some benefits to the street scene. However, the significant scale, the prominent siting and the appearance of the proposed development would have the effect of ensuring that the eye is drawn to the sizeable new opaque solid modern structure on the pavement and its 32 inch digital screen. The consequence is that the development would be particularly noticeable when viewed from the north or the south. Given the close proximity, positioning, scale, massing and appearance of the new kiosk, it

would have a harmful relationship with the listing buildings, by drawing attention away from them and increasing the clutter in the immediate setting of the buildings. Therefore, the proposed development would result in harm to the significance of the designated heritage assets. However, the harm would amount to less than substantial harm, which must be weighed against any public benefits.

17. There would appear to be some small benefits to the proposed development such as allowing general public use, reducing the footprint, modernising the facility to allow features such as free WiFi, USB charging, disabled access, a reduced base plate and a small amount of renewable energy generation. The appellant also states the development would be compliant with Chapter 10 of the Framework (although does not specify which parts). However, the benefits attract a small weight and as such the public benefits associated with the communications hub would not outweigh the harm to the setting of the heritage assets, which attract great weight in accordance with paragraph 193 of the Framework.

Conclusion

18. For the reasons set out above and having had regard to all other matters raised, the appeal is dismissed.

Dan Szymanski

INSPECTOR