



Appeal Decision

Site visit made on 27 October 2020

by Darren Hendley BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd November 2020

Appeal Ref: APP/X5990/W/17/3188130

Telephone Kiosk outside 25-27 Marylebone Road, London NW1 5JR

- 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) Order 2015 (as amended).
 - The appeal is made by Mr Matthew Coe, New World Payphones against the decision of the City of Westminster Council.
 - The application Ref: 17/06374/TELCOM, dated 4 July 2017, was refused by notice dated 6 September 2017.
 - The development proposed is the 'replacement of existing telephone boxes and installation of a new telephone kiosk.'
 - This decision supersedes that issued on 27 June 2018. That decision on the appeal was quashed by order of the High Court.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The site address and the description of the proposal are taken from the appeal form in order to provide certainty of the proposal subject of the appeal.
3. Subsequent to the determination of the application, the Town and Country Planning (Permitted Development, Advertisement and Compensation Amendments) (England) Regulations 2019 (2019 Regulations) came into force, amending the General Permitted Development Order (GPDO). This amendment removes the permitted development right to install, alter or replace a public call box under Schedule 2, Part 16, Class A of the GPDO.
4. 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 appeal before me.
5. As a consequence, the appellant, as an electronic communications code operator, benefits from deemed planning permission for the proposal by virtue of the provisions of Schedule 2, Part 16, Class A of the GPDO. This is as long as those provisions are met.

6. Such a deemed planning permission is subject to the prior approval of the local planning authority for the siting and appearance of the proposal. The appellant applied to the Council on that basis. The Council determined that prior approval was required for the siting and appearance of the proposal and refused to grant approval.
7. The Council subsequently consider that, following the *Westminster* judgment¹, the proposal falls outside the scope of Schedule 2, Part 16, Class A of the GPDO because it would not be solely for the purpose of the operator's electronic communications network, but for a dual purpose for both electronic communications and advertising.

Main Issue

8. Having regard to the above, the main issue is whether or not the proposal is solely for the purpose of the operator's electronic communications network.

Reasons

9. The proposal would be located on the south side of Marylebone Road, a busy thoroughfare in central London that is framed by imposing buildings. Two telephone kiosks currently occupy the area of the pavement where the proposal would be sited. The uses in the vicinity of the site are varied and of a commercial, leisure, institutional and residential nature.
10. The proposal would be an open structure that would be constructed of black powder coated steel. It would contain a shallow glazed side panel, with the exposed lit internal elevation containing telephone equipment and wayfinding information. The rear elevation would contain a digital advertising panel displaying images on a rotation.
11. Schedule 2, Part 16, Class A of the GPDO refers to "*development by or on behalf of an electronic communications code operator for the purpose of the operator's electronic communications network...*". For Class A to apply, therefore, the proposal must be for the purposes of the operator's electronic communications network.
12. The *Westminster* judgment found that the whole development for which prior approval is sought must fall within the Class relied on, and no part can fall outside of it. It went on to set out that a development falls outside the scope of Part 16 Class A if it is not "for the purpose" of the operator's network. It also confirms that a development which is partly "for the purpose" of the operator's network and partly for some other purpose is not a development that is permitted under Part 16 Class A.
13. In applying the purpose test in this case, the proposal would have a multi-functional capability as it would accommodate both the telephone equipment and the advertising panel. An application for advertisement consent² for the illuminated panel was also sought around the same time as when the prior approval for the proposal was made. This further demonstrates that the proposal would be multifunctional.

¹ New World Payphones Ltd v Westminster City Council [2019] EWCA Civ 2250, which upheld the related High Court judgment, Westminster CC v SSHCLG & New World Payphones Ltd [2019] EWHC 176 (Admin) that quashed the appeal decision for the proposal that was issued on 27 June 2018.

² Council ref: 17/06640/ADV

14. As such, the proposal would have a dual purpose when the advertising panel is considered with the telephone equipment. Hence, it is not solely for the purpose of the operator's electronic communications network and so falls outside of Schedule 2, Part 16, Class A of the GPDO.
15. As I have found the proposal falls outside of permitted development, there is no requirement for me to make a determination of the prior approval matters related to siting and appearance, including visual amenity and street clutter, as well as the effect on the setting of nearby conservation areas. The same applies concerning the benefits that the appellant has put forward and whether or not there would be a need for the proposal.
16. Nor is there a requirement to have regard to the Development Plan as section 38(6) of the Planning and Compulsory Purchase Act 2004 does not apply in this case and, similarly, with regard to the National Planning Policy Framework and the supplementary planning guidance that was referred to in the appeal submissions.

Conclusion

17. For the reasons given above and having regard to all matters raised, I conclude that the appeal should be dismissed.

Darren Hendley

INSPECTOR