The Planning Inspectorate

Appeal Decisions

Site visit made on 6 October 2020

by I A Dyer BSc (Eng) FCIHT

an Inspector appointed by the Secretary of State

Decision date: 17 November 2020

Appeal A Ref: APP/X5210/W/20/3253943
Telephone Kiosk outside 55-59 New Oxford Street, London WC1A 1BS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Richard Wilson and New World Payphones against the decision of the Council of the London Borough of Camden.
- The application Ref 2019/4049/P, dated 7 August 2019, was refused by notice dated 27 March 2020.
- The development proposed is replacement of existing telephone kiosk with new telephone kiosk.

Appeal B Ref: APP/X5210/Z/20/3252956
Telephone Kiosk outside 55-59 New Oxford Street, London WC1A 1BS

- The appeal is made under Regulation 17 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 against a refusal to grant express consent.
- The appeal is made by Mr Richard Wilson and New World Payphones against the decision of the Council of the London Borough of Camden.
- The application Ref 2019/4679/A, dated 7 August 2019, was refused by notice dated 27 March 2020.
- The advertisement proposed is illuminated digital advertisement display integrated within replacement telephone kiosk.

Decisions

Appeal A Ref: APP/X5210/W/20/3253943

1. The appeal is dismissed.

Appeal B Ref: APP/X5210/Z/20/3252956

2. The appeal is dismissed.

Procedural Matters

3. The applications were submitted together on a single application form covering both planning permission and consent to display advertisements. As set out above there are two appeals on this site relating to different aspects of the same proposal. I have considered each proposal on its individual merits. However, to avoid duplication I have dealt with the two schemes together, except where otherwise indicated.

4. The Council has referred to development plan policies in respect of Appeal B. As advertisement proposals can only be considered on the basis of amenity and public safety considerations, I have taken into account relevant development

plan policies so far as they relate to these issues, but in themselves they have not been determinative from the point of view of my overall conclusion on the advertisement appeal.

Main Issues

5. Since submitting the appeal the Main Parties have entered into an Agreement made under Section 106 of the Town and Country Planning Act 1990, Section 111 of the Local Government Act 1972, Section 278 of the Highways Act 1980, Section 1 of the Localism Act 2011 and the New Roads and Streetworks Act 1991 (the Agreement). Through the Agreement, the proposal would replace an existing nearby kiosk, and remove four others in the wider area. The Agreement would also make provision for a new street tree to be provided for each of the kiosks removed. Further provision is made for the cleaning and upkeep of the replacement kiosk to an agreed standard. The Agreement also makes provision for the Council to have access to the advertising panel and provide a wayfinding screen to display Council messages, including emergency messages. I have taken the Agreement into account as part of my consideration of both appeals and I am satisfied that it is both acceptable and necessary.

6. I consider that, through the Agreement, the Council's concerns relating to the fourth reason for refusal in the Decision Notice for to Appeal A are addressed.

7. The main issues in relation to Appeal A are, therefore, (i) whether the development would preserve or enhance the character or appearance of the Bloomsbury Conservation Area (the CA) and wider street scene, and (ii) the effect of the siting of the proposed development on pedestrian movement and public safety.
8. In relation to Appeal B, the control of advertisements is exercisable only with respect to amenity and public safety. The main issue is the effect of the proposed advertisement on amenity.

Reasons

9. The site is located on the footway outside 55-59 New Oxford Street, a building of modern design accommodating a restaurant on the ground floor, with offices above. New Oxford Street is a wide street with commercial uses on both sides. The range of shops and services provided and the high-density office accommodation in the area combine to result in New Oxford Street having the character of a busy urban street.

10. There is a footway of moderate width between the building frontage and the vehicular carriageway in the vicinity of the site, with limited street furniture including three existing telephone kiosks, one, at the appeal site, and a pair nearby. Nearby are street lights, traffic signal equipment and traffic signage. Advertising on the commercial units includes some internally illuminated signage but is generally low key and incorporates static images.

11. The buildings exhibit a mix of architectural styles, including modern development, interspersed with some older buildings, most notably Hazelwood House, a Grade II Listed Building (the LB). The significance of the LB derives from the pleasing architectural composition of the exterior. Overall the area has a pleasant sense of spaciousness despite its busy urban character. The

aforementioned attributes add positively and distinctively to the character and appearance of the CA in the immediate vicinity of the site.

12. The Council, as part of their consideration of the application, requested usage figures for the kiosks that would be removed or replaced. Whilst this demonstrated a very low level of usage of kiosks in the vicinity of the appeal site, a degree of usage was nonetheless present, including that by persons accessing emergency and other support services. Further, the development would provide a type of structure that could be conveniently accessed by those with a mobility impairment and thus would meet a clear need for its users. The proposal would, therefore, address a degree of need in the area and the kiosks to be replaced are not, on the basis of the evidence before me, entirely redundant.

13. Paragraph 116 of the Framework makes it clear that decisions on applications for telecommunications equipment should be made on planning grounds and that decision-takers should not seek to "prevent competition between different operators… [or]… question the need for the telecommunications system".

14. The appellants argue that the increased use of the mobile phone has resulted in a decrease in use of public telephone boxes, and that this usage is further reduced by the lack of inclusivity and anti-social behaviour issues associated with the design of their current kiosk. They cite an increase in usage of their kiosks following upgrade and I have no reason to dispute this.

15. The proposed development would result in a kiosk of L-shaped cross section and a roof being installed close to the footway edge, with the shorter side closest to the kerb and the longer side at right angles to the flow of traffic. It would have an advertising panel on the longer side.

16. There is dispute between the main parties regarding the need for the structure to be of the form and scale proposed. Notwithstanding that an alternative structure could physically incorporate the proposed telecommunications equipment, the design incorporates a roof and a side panel which would provide shelter from the elements for customers whilst retaining two open sides to allow access for those with a mobility impairment and improve natural surveillance. The degree of shelter that would be provided would be a reasonable balance against the need to provide accessibility.

17. An existing kiosk, of more angular, enclosed design of a similar scale, with an uncared-for appearance, would be replaced. Notwithstanding this, as a consequence of its height, width, dark colour, illuminated screen and separation from other street furniture of a similar scale, the proposed kiosk would be a prominent feature in the street scene.

18. This proposal is one of several in the wider area of Camden seeking to rationalise kiosk provision and reduce the number of kiosks overall. In association with the removal of the existing kiosk the replacement one would not significantly affect the sense of spaciousness, nor, given its setting against more modern shop fronts and the mix of architectural styles, would its simple, modern design incorporating elements referencing traditional kiosks, detract from the character and appearance of the site and the surrounding area which is part of the CA or, although the kiosk would appear in long views encompassing the LB, harm its setting.

19. Nevertheless, the visual impact of the kiosk would be increased by the large illuminated advertising panel, which would be a dominating feature on the structure. The panel, close to the kerbline, would be a prominent standalone illuminated feature. The panel would be unrelated to the services provided by the adjacent commercial units and would appear prominent in views along the street both during the day and in hours of darkness.

20. The luminance level and rate of image transition could be controlled by condition and such forms of advertisement are becoming increasingly familiar on the street scene. Nevertheless, the appeal proposal would, as a result of the internal illumination associated with the panel, its position adjacent to the kerb and changing images, create an additional discordant feature within the street scene, adding visual clutter and hence would not preserve or enhance the character or appearance of the CA. To this extent significant harm would be caused to the character and appearance, and hence to the visual amenity of the area.

21. Even without displaying an advertisement, the illuminated screen would be a discordant feature within the street scene adding unnecessary visual clutter and hence would not preserve or enhance the character or appearance of the CA.

22. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that in making decisions on planning applications and appeals within a Conservation Area, special attention is paid to the desirability of preserving or enhancing the character and appearance of the area. In addition, Paragraph 193 of the Framework requires when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.

23. The proposed advertisement would appear in long views of the LB. However, these would be limited by the position of the kiosk in regard to the geometry of the street and would appear in the context of the existing commercial development. Thus neither the advertisement nor the illuminated screen would harm the setting of the LB.

24. Whilst, within the wider area, there are other examples of illuminated advertisements mounted on street furniture near the kerbline, including digital advertisements, these are not located within the context of this particular street frontage.

25. No pedestrian count data has been provided by either party in support of their case. However, the proposal site lies on a busy commercial street. With the incidence of the Coronavirus, more emphasis is being put on encouraging pedestrian movement whilst maintaining safe social distancing, requiring additional useable pavement width.

26. With regard to the current layout of the street and footway width the replacement of the existing nearby kiosks with a single kiosk in the location proposed would provide a marginal reduction in overall width of available footway. However, by moving the kiosk location to the section of footway closest to the kerb, in practical terms this would be in the section between the kiosk and the kerb, the least usable section of the footway. However, it would still fall short of the recommended minimum width for high footfall locations contained within Appendix B of the Transport for London (TfL) guidance

document entitled 'Pedestrian Comfort Guidance for London'. Given the width of the footway and the separation of the proposed kiosk from other obstructions in the footway the kiosk would, of itself, be unlikely to obstruct the footway to a degree where pedestrians would experience additional delay or encouragement to leave the footway and enter the carriageway.

27. The Metropolitan Police Crime Prevention Design Advisor has identified that, associated with their current low levels of use, telephone kiosks within the Borough have become crime generators and focal points for anti-social behaviour (ASB).

28. It is possible that the structure could attract ASB such as street begging, urinating against or within the structure, the placing of cards offering the services of prostitutes and vandalism/graffiti.

29. By replacing the existing kiosk there would be no overall increase in opportunities for such behaviour. The more open nature of the proposed kiosk compared to that of the existing one and the replacement of the older, more worn kiosk and proposed improved maintenance regime would be likely to reduce the effects of ASB.

30. Levels of illumination from the kiosk could be controlled through a suitable planning condition and I have little substantive evidence before me to demonstrate that the substitution of the kiosk structures and relocation would have an adverse effect on CCTV coverage or reduce natural surveillance and so use of the kiosk to screen illegal activities such as drug dealing and use would, therefore, be unlikely to be measurably altered.

31. Other kiosks that it is proposed to remove are situated some distance from the appeal site. Their removal would have the benefit of fewer structures in their local streetscape particularly where these lie near to Listed Buildings or within Conservation Areas, and I have no reason to object to their removal. Such de-cluttering of the streetscape is supported within the TfL Streetscape Guidance Fourth Edition -2019 Revision 1. However, there is limited information before me about the kiosks which would be removed, including the quality of the public realm at those sites, or whether the streets within which they are located attract a high level of footfall. Therefore, I attach limited weight to any potential benefits that could arise from this.

32. The appellants identify that the inclusion of the advertisement panel is necessary to facilitate the proposed upgrading of their kiosk stock. However, there is little evidence before me to demonstrate that the inclusion of advertising in the form proposed is the only way of achieving this end and so I give this argument limited weight.

33. Drawing these points together, I conclude that in respect of Appeal A the development would fail to preserve the character and appearance of the CA and wider street scene. The proposal would therefore not comply with the expectations of the Planning (Listed Buildings and Conservation Areas) Act 1990 and would also be contrary to Policies D1 and D2 of the Camden Local Plan -2017- (the Local Plan) in as much as these require development to respect local context and character and preserve or enhance the historic environment and heritage assets.

34. The above identified harm would be less than substantial taking into account paragraph 196 of the Framework. The Framework directs that where a development proposal would lead to less than substantial harm, this harm should be weighed against the public benefits of the proposal. I deal with this matter below.

35. However, I find that the replacement kiosk would not have a harmful effect on pedestrian movement and public safety. It would therefore be in accordance with Policies G1, A1, C5, C6 and T1 of the Local Plan in as much as these, amongst other things, promote safer streets and public areas which are fully accessible, easy and safe to walk through and provide high quality footpaths and pavements that are wide enough for the number of people expected to use them and resist development that fails to adequately address transport impacts affecting communities and the existing transport network.

36. For the reasons outlined above, I conclude that in respect of Appeal B the proposed digital advertising panel would be harmful to the CA and hence to amenity and therefore would not accord with Policies D1, D2 and D4 of the Local Plan in as much as these require development to respect local context and character, preserve or enhance the historic environment and heritage assets and to avoid contributing to an unsightly proliferation of signage in the area and so are material in this case.

37. In respect of Appeal A, the kiosk would provide a number of services to members of the public, which I understand to be at no cost to end users, including local information provided by the Council and travel and emergency information. The proposal would replace a kiosk of unattractive appearance and make provision for its maintenance and upkeep. The proposal would also remove four other kiosks in the wider area, thus reducing overall street clutter within the Borough. For each of the kiosks removed a payment would be received to enable the planting of a street tree within the Borough, which would provide wider environmental benefits.

38. The Framework supports the expansion of electronic communication networks which are essential to economic growth and social well-being. Notwithstanding that there are other facilities in the area that provide similar services, the proposal would provide some minor public benefit through increased competition. In addition, the kiosks inclusive design (including accessibility and shelter for the mobility impaired) weighs moderately in favour of the proposal. Whilst these are positive matters to weigh in the overall planning balance, they are not of sufficient magnitude to outweigh the less than substantial harm caused by the kiosk to the character and appearance of the CA.

39. In respect of Appeal B, the advertisement screen would provide local information provided by the Council and emergency information. The Framework supports the expansion of electronic communication networks which are essential to economic growth and social well-being. Whilst these are positive matters to weigh in the overall planning balance, they are not of sufficient magnitude to outweigh the harm caused by the advertisement to the amenity of the area.

Other Matters

40. I note that the main parties engaged in a prolonged process of pre-application discussions, however, such participation, though laudable, is not a guarantee of

success. I further note that the appellants have expressed concerns that the Council has been inconsistent in their decision making process. That, however, is a matter between the appellants and the Council.

41. My attention has been drawn by both of the main parties to other appeal decisions in regard to telephone kiosks and advertisements in other local planning authorities. However I have little information before me to draw a comparison between these cases and the proposals before me, particularly in regard to the design of the proposed kiosk and advertisement screen in the context of their setting. In any case, I have determined these appeals on their individual merits and with regard to current planning legislation.

Conclusions – Appeals A & B

42. For the above reasons I conclude that Appeal A and Appeal B should be dismissed.

I Dyer

Inspector