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## 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**

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### **Appeal Ref: APP/X5210/W/20/3253940**

#### **Telephone Kiosks outside 111 High Holborn, London WC1V 6JJ**

- 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 2019/3994/P, dated 5 August 2019, was refused by notice dated 7 April 2020.
  - The development proposed is replacement of existing telephone kiosks with single new telephone kiosk.
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### **Appeal Ref: APP/X5210/Z/20/3253569**

#### **Telephone Kiosks outside 111 High Holborn, London WC1V 6JJ**

- 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 2019/4486/A, dated 5 August 2019, was refused by notice dated 7 April 2020.
  - The advertisement proposed is illuminated digital advertisement display integrated within replacement telephone kiosk.
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## **Decisions**

### **Appeal A Ref: APP/X5210/W/20/3253940**

1. The appeal is dismissed.

### **Appeal B Ref: APP/X5210/Z/20/3253569**

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.

5. Subsequent to determination of the application the appellants have submitted a revised plan (Drawing No PY3292/016-rev C) which reflects recent changes to the layout of the street. The layout depicted reflects that which I observed during my site visit and in determining this appeal I have considered the layout of the street as shown in the amended plan. The Council have had the opportunity to comment on the amended plan and I do not consider that either party would suffer prejudice by my so doing.

## **Main Issues**

6. 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 the existing two kiosks at the site with a single 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.
7. I consider that, through the Agreement, the Council's concerns relating to the fourth reason for refusal in the Decision Notice for Appeal A are addressed.
8. 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 and Kingsway Conservation Areas (the CAs), the settings of 114-115 and 233 High Holborn, both Grade II Listed Buildings (the LBs) and wider street scene, and (ii) the effect of the siting of the proposed development on pedestrian movement and public safety.
9. In relation to Appeal B, the control of advertisements is exercisable only with respect to amenity and public safety. In this case, the main issue is the effect of the proposed advertisement on amenity.

## **Reasons**

10. The site is located within the footway outside 111 High Holborn, a building of modern design with a retail unit on the ground floor, currently occupied by a café, and offices above. High Holborn 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 together with the presence of underground stations combine to result in High Holborn having the character of a busy urban street. The buildings exhibit a mix of architectural styles, including modern development, generally with more modern shop fronts below.

11. A nearby building, 114-115 High Holborn and a building opposite, at 233 High Holborn are Grade II Listed buildings. The significance of 114-115 and 233 High Holborn derives from the architectural features of their façades.
12. There is a wide footway between the shop frontage and the vehicular carriageway in the vicinity of the site. In the immediate vicinity there is very limited street furniture and this is of a contemporary design, including two existing telephone kiosks and bicycle racks. Advertising on the commercial units includes some internally illuminated signage but is generally low key and incorporates static images. 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 Bloomsbury CA in the immediate vicinity of the site.
13. 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.
14. 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".
15. 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.
16. The proposed development would result in the removal of the two existing nearby kiosks and a kiosk of L-shaped cross section with 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.
17. 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.
18. Two existing kiosks, of more angular, enclosed design and an uncared-for appearance, very close to the proposal site, would be removed. 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.
19. 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 kiosks 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 forms part of the settings for the LBs and the Kingsway CA.
  20. However, 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 kerblane, 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.
  21. The luminance level and rate of image transition could be controlled by condition. 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 a prominent discordant feature within the street scene and in vistas encompassing Nos 114-115 and No 233. Whilst such forms of advertisement are becoming increasingly familiar on the street scene, it would, nonetheless, create an additional discordant feature within the street scene, adding visual clutter and hence adversely affect the way in which these buildings are experienced from the public realm. To this extent, significant harm would be caused to the amenity of the area.
  22. 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 Bloomsbury CA and have an adverse effect on the settings of the LBs and the Kingsway CA. To this extent, in both cases, significant harm would be caused to the character and appearance, and hence to the visual amenity, of the area.
  23. Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that, in making decisions on planning applications that may affect a listed building or its setting, special attention is paid to the desirability of preserving the building or its setting. 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.
  24. Whilst, within the wider area, there are other examples of illuminated advertisements mounted on street furniture near the kerblane, 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 close to two underground stations and is likely to experience high volumes of footfall. 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 layout of the street, in conjunction with the removal of the two existing kiosks, the replacement of the kiosk would result in a marginal reduction in width of available footway. The Camden Streetscape Design Manual -2005- identifies that there are benefits to overall passenger flow by grouping street furniture in bunches. However, the proposal would introduce a second row of street furniture. Thus, whilst the usable footway width would be in excess 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', the flow of pedestrians would be unnecessarily restricted by the positioning of the replacement kiosk.
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 ones and the replacement of the older, more worn kiosks and proposed improved maintenance regime would be likely to reduce the effects of ASB, particularly in view of its position in front of a large window associated with the coffee shop.
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 increased.
31. Other kiosks that it is proposed to remove are situated some distance from the appeal site and are not visible from it. Such de-cluttering of the streetscape is supported within the TfL Streetscape Guidance Fourth Edition -2019 Revision 1. 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. 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. I conclude that in respect of Appeal A the development the proposed development would fail to preserve or enhance the character or appearance of the Bloomsbury CA and harm the settings of the LBs, the Kingsway CA and wider street scene. The proposal would therefore not comply with the expectations of the Planning (Listed Buildings and Conservation Areas) Act 1990. The development 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. Furthermore, whilst I find that the replacement kiosk would not have a harmful effect on public safety and would therefore not be contrary to Policy C5 of the Local Plan, in as much as this promotes safer streets, I find that it would have a harmful effect on pedestrian movement. It would therefore be contrary to Policies G1, A1, C6 and T1 of the Local Plan in as much as these, amongst other things, promote streets 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 fail to preserve or enhance the character or appearance of the Bloomsbury CA, be harmful to the settings of the LBs and hence harmful to amenity. It would not, therefore, 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 two existing kiosks of unappealing appearance with a single kiosk and make provision for its maintenance and upkeep. The proposal would, in addition to replacing the two kiosks at the site with a single kiosk, remove four other kiosks, 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 Bloomsbury CA and the settings of the LBs.

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