



Appeal Decision

Site visit made on 4 July 2023

by N Teasdale BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th July 2023

Appeal Ref: APP/W0734/Z/23/3319072

New World Payphones Kiosks O/S 426 Marton Road, Middlesbrough TS4 2PT

- 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 Ben Porte (New World Payphones) against the decision of Middlesbrough Council.
 - The application Ref 22/0738/ADV, dated 15 November 2022, was refused by notice dated 15 March 2023.
 - The advertisement proposed is replacement of existing double telephone kiosk with new telephone kiosk which includes integrated digital advertising display.
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Decision

1. The appeal is allowed and express consent is granted for the replacement of existing double telephone kiosk with new telephone kiosk which includes integrated digital advertising display as applied for. The consent is for five years from the date of this decision and is subject to the five standard conditions set out in the Regulations and the following additional conditions:
 - 1) The intensity of the illumination of the advertisement permitted by this consent shall be no greater than within that recommended by the Institute of Lighting Professionals in its Professional Lighting Guide 05 (PLG 05) Brightness of Illuminated Advertisements (or its equivalent in a replacement Guide).
 - 2) The advertisement shall only show two dimensional static images, shall contain no moving images, animation, video or full motion or any images that resemble road signs, traffic lights or traffic signs, and no messaging should spread across more than one screen image.
 - 3) The advertisements shall be switched off between the hours of 00.00 and 05.00.
 - 4) The advertisement display shall not change more frequently than every 10 seconds and changes between displays shall take place over no more than 0.1 seconds.
 - 5) A mechanism shall be in place so that if the installation breaks down, it defaults to a black screen to avoid any flashing error messages or pixilation.

Procedural Matter

2. A previous application for the replacement of existing telephone kiosk with new telephone kiosk which includes integrated digital advertising display has been

granted by the Council under reference 22/0737/FUL. Whilst it is noted that a separate application has been granted in respect of that application, I have determined this appeal on the basis that it relates to the integrated digital advertising display only at the location of this appeal site.

Main Issue

3. Regulations to control advertisements may be exercised only in the interests of visual amenity and public safety. The assessment regarding visual amenity is not disputed and the main issue is therefore the effect of the proposed advertisement on public safety.

Reasons

4. The appeal site relates to an existing double telephone kiosk which is located along Marton Road along the footway adjacent to a parade of shops. Existing street furniture exists in the immediate vicinity of the site including bollards, litter bins, benches, post boxes, railings, bus shelters comprising advertisements, street light columns and road signs.
5. As referred to above, the existing telephone kiosk benefits from an extant consent for the replacement with a new kiosk and the proposed advertisement which is subject to this appeal would be located on the rear elevation of the kiosk which would be seen by those heading south along Marton Road. The display would be illuminated presenting a range of static images on rotation, at a frequency of once every 10 seconds. They would not contain any movement, animation, or flashing lights, with a gradual and smooth interchange between each advertisement.
6. There is a set of traffic lights for the pedestrian crossing located to the north of the appeal site. However, there is sufficient distance from the set of traffic lights to the appeal site where drivers would not be so unduly distracted. The overall commercial nature of the locality and presence of other street furniture would also allow the proposed advertisement to assimilate into the immediate environment where such digital displays are commonly experienced and thus would not be so prominent to attract the full attention of road users. The illumination, static imagery, and frequency between changes of the display proposed would further ensure that the display would not be an unacceptable distraction for road users. These measures have been conditioned.
7. A parking layby is located directly adjacent the appeal site in a location where a good level of forward visibility exists. Whilst well used with a high turnover, it covers only a small area and can accommodate around 2/3 cars. The proposed advertisement would be within the driver's sight line given its siting close to the kerb of the footway. This means that drivers would not need to turn away from the road to view the advertisement and would still be able to sufficiently see and concentrate on any movements into and out of the parking layby which would likely be one at a time in any case given the size/capacity. At my site visit, I also noted that whilst only a snapshot in time, vehicles passing the site appeared to be travelling at a lower speed given the positioning of the traffic lights and roundabout to the south. This would further reduce any highway safety implications within close proximity of the site.
8. In terms of the roundabout to the south of the appeal site which comprises a two-lane approach, a good distance also exists from the appeal site to this

roundabout. This distance ensures that drivers would still be able to move into the appropriate lane in sufficient time as to not impede highway safety. The proposed advertisement would not obstruct views of any road sign and there is also no compelling case to suggest that the road layout is so complicated or demanding where the proposed advertisement would present an unacceptable highway safety risk.

9. My attention has been drawn to a previous appeal relating to a BT Hub located within close proximity of the site and the Council's highways' department has set out that the combination of both, would amongst other matters, distract motorists. I have had due regard to this previous appeal including its specific location and siting and as a result, I am satisfied that the implementation of this scheme would not alter my findings as set out above.
10. For the above reasons, I conclude that the proposed advertisement would not harm public safety. I have taken into account Policy DC1 (d) of the Middlesbrough Local Development Framework Core Strategy, 2008 and the Middlesbrough Urban Design Supplementary Planning Document, 2013 (SPD) which together, amongst other matters, ensures that there is no impact on highway safety throughout the development process. Given I have concluded that the proposal would not harm public safety, the proposal would not conflict with this Policy or the SPD.

Other Matters

11. I acknowledge the consultation response from Cleveland Police regarding the necessity of this application given a previous approval for a BT Hub located within close proximity of the site providing free calls etc. However, as the appeal proposals relate to advertisement consent only, the regulations require that I exercise my powers only with regard to amenity and public safety.
12. The consultation response from the Council's highways team has also referred to the previously approved BT Hub and considers that in combination, these would create excessive clutter. The effect on visual amenity has been considered by the Council where they conclude that the advertisement display would not appear out of keeping in what is a predominantly commercial setting. Based on my observations onsite and evidence before me, I have no reason to disagree with these findings. The highways department has also made reference to strategic walking/cycling schemes across the town and that the proposal could potentially prejudice such schemes. I have very little information regarding this to be able to provide full comment or attach it any weight in my overall consideration.

Conditions

13. The five standard conditions set out in Schedule 2 of the 2007 Regulations are imposed in the terms of my decision. I have also considered the appellants' suggested planning conditions in light of the Framework and Planning Practice Guidance. As a result, I have amended these where necessary for clarity.
14. I agree that conditions relating to; the illumination; display; hours of operation; timing of images and an error mechanism are all necessary in the interests of amenity and highway safety and these have been imposed.
15. Cleveland Police have requested a condition requiring the provision of free Wi-Fi to be removed if it leads to an increase in anti-social behaviour. However, as

the appeal proposals relate to advertisement consent only, I do not find such a condition to be relevant to the development to be permitted.

Conclusion

16. For the reasons given above, and taking into account all matters raised, the appeal is allowed.

N Teasdale

INSPECTOR