



Appeal Decisions

Site visit made on 2 October 2023

By E Worthington BA (Hons) MTP MUED MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th October 2023

Appeal A Ref: APP/A4710/W/22/3310598

New World Payphones Kiosks, Outside 5 Corn Market, Halifax, HX1 1RL

- 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 Ben Porte, New World Payphones against the decision of Calderdale Metropolitan Borough Council.
 - The application Ref 22/0876/FUL, dated 5 August 2022, was refused by notice dated 5 October 2022.
 - The development proposed is the replacement of existing double telephone kiosk with new telephone kiosk which includes integrated digital advertising display.
-

Appeal B Ref: APP/A4710/H/22/3310680

New World Payphones Kiosks, Outside 5 Corn Market, Halifax, HX1 1RL

- 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 Calderdale Metropolitan Borough Council.
 - The application Ref 22/10017/ADV, dated 5 August 2022, was refused by notice dated 5 October 2022.
 - The advertisement proposed is the replacement of existing double telephone kiosk with new telephone kiosk which includes integrated digital advertising display.
-

Decisions

1. Appeal A and Appeal B are both dismissed.

Procedural Matters

2. As set out above, there are two appeals on the site. I have considered each proposal on its own individual merits. However, the telephone kiosk and advertisement are inextricably linked in each case. Therefore to avoid duplication, except where otherwise indicated, I have dealt with the two appeals together having regard to the independent requirements of both the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) and the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (the Regulations) for the proposals on each site.
3. In respect of Appeal B, Regulation 17 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (the Regulations) and the National Planning Policy Framework (the Framework) both make it clear that advertisements should be subject to control only in the interests of amenity and public safety, taking account of cumulative impacts. Regard does not need to be had to the development plan. Nonetheless, whilst the policies

referred to by the Council have not by themselves been decisive for Appeal B, I have taken them into account as a material consideration.

Main Issue

4. The main issue for both appeals is the effect of the proposals on visual amenity and the character and appearance of the area, including whether they would preserve or enhance the character or appearance of the Halifax Town Centre Conservation Area, and whether they would preserve the settings of nearby listed buildings.

Reasons

The conservation area and the settings of the nearby listed buildings

5. The appeal site comprises an existing double black telephone box which would be replaced with a single grey/black kiosk with an integrated digital advertisement display on its north facing side.
6. The appeal site is part of the pavement outside the retail frontage of shops in Corn Market and is within the Halifax Town Conservation Area. This covers much of the town centre and its historic core. The Conservation Area Appraisal identifies Halifax as a prime example of a Victorian/Edwardian civic and commercial centre, with an abundance of 19th and 20th century buildings which reflect the industrial and commercial confidence of that era. A considerable number of these buildings have been retained in a compact area which contributes to a townscape of great character with a variety of high quality historic buildings and a feeling of much splendour and dignity.
7. I consider that the significance of the conservation area, in so far as it relates to these appeals is mainly derived from the quality and variety of the historic buildings and the relationships of these to each other and the spaces, streets and public realm around them that make up the distinctive and cohesive townscape of the town centre. The appeal site forms part of an important area of public realm and is seen in views up and down Corn Market. As a result, it contributes positively to the historic character and appearance of the conservation area.
8. There are a number of listed buildings nearby. Notably, these include the Grade II* Borough Market with shopping arcade to north, Market Street (Ref: 1281516). This extensive covered market was built in 1891-5 and is a wrought and cast iron structure with ashlar dressings in a free Renaissance style. It has a rectangular plan enclosing shop ranges on three sides and incorporating a projecting arcade on the north side. This considerable and dominating feature of the town centre lies to the south of the appeal site.
9. The Council refers to other listed buildings nearby and has provided the listing descriptions for: 2 Crown Street, 7 and 9 Crossley Street, Number 1 with south extension of the White Swan Hotel, 1 Princess Street, The Old Arcade, and the Town Hall, Crossley Street (Grade II*) which is to the north of the appeal site.
10. Despite their different ages and architectural styles and types, and accepting that they all have their own particular features of interest and significance, there is nevertheless a cohesiveness to the impressive concentration of town centre buildings in Halifax. Thus, this grouping of heritage assets has a shared significance. Insofar as relating to these appeals, this common significance is

derived from their historic interest as traditional town centre buildings which collectively provide evidence of the role and status of Halifax and its historic development.

11. The settings of these buildings, and the contribution they make to the significance of those assets, in so far as they relate to these appeals, is derived from the rich historic character of the urban townscape and its traditional buildings, streets and spaces.
12. The National Planning Policy Framework (the Framework) defines setting as the surroundings in which a heritage asset is experienced. A good number of historic buildings are close to the appeal site, some over-look it or are near to it, and others form part of the back drop to it. Overall I consider that there is inter-visibility to varying extents between these and the appeal site, and that some contextual views of the buildings identified include the appeal site.
13. Thus the appeal site has a visual relationship with the listed buildings and the urban streetscape, and therefore contributes to their settings. I have had special regard to this matter in considering the appeals.

The effect of the proposals

Appeal A

14. The open front section of the new kiosk would provide a new telephone system with the ability to accept card payments as well as cash. Additionally a 24 inch LCD display would provide an interactive wayfinding capability with location based information and equipment for the provision of Wi-Fi access points and public small cell access nodes.
15. It would be made from robust high quality materials and is intended to be a distinctive modern design which retains the heritage of traditional UK phone boxes and has been influenced by the red kiosks designed by Giles Gilbert Scott. Although it would be sited differently to the existing kiosk with its long edge (which would contain the display) facing north, it would not be at odds with the generally linear nature of street furniture nearby. Since it would replace an existing structure, it would not increase visual street clutter or further hinder pedestrian movement in Corn Market.
16. The appellant indicates that the existing kiosk was granted consent in 1997 and is box shaped and enclosed. However the plans provided for the existing kiosk do not reflect that which is in place. I saw at my site visit that the existing double kiosk is of a traditional design and completely open to both its north and south elevations. Additionally, both the side elevations are fully glazed and allow views through the structure. This accords with the Council's description of the kiosk as being of a heritage design and for the most part open and opaque. In my view, despite its somewhat tired appearance, the existing kiosk sits comfortably in the street scene and its understated traditional design respects the historic character of the town centre.
17. The proposed kiosk would be of similar proportions and size to the existing kiosk with a slightly smaller footprint. The Council raises no objections to its scale which would see a reduction in comparison to the existing kiosk. However, in direct contrast to the existing kiosk it would have a much more obviously modern and strident design. Despite being smaller than the existing kiosk it would also appear as a more solid and less lightweight structure.

18. The front of the kiosk would be open to allow access to the phone equipment, but the rear would be completely solid in order to house the digital display. One of the side elevations would be open, and the other side in part fenestrated. Whilst the appellant indicates that the kiosk is designed to be purposefully open, in practical terms that part of the kiosk housing the display and the phone equipment would be solid on both side elevations. As a result, the replacement structure would appear more enclosed and heavyweight in form than the existing kiosk and would have less glazing.
19. Corn Market and the surrounding roads are busy thoroughfares with a pronounced commercial presence and shops lining the streets. Nevertheless, the kiosk would be prominently located in an area of generally high quality and attractive public realm. Even taking into account the surrounding commercial context, due to its design and form, the kiosk would be appreciated as a prominent and obtrusive addition to the street scene. That its visual impact would be confined to street level does not alter my view.
20. Taking these factors into account, I find that the proposed kiosk would appear at odds with the historic townscape and traditional buildings nearby. It would detract from its surroundings and stand out as an incongruous and jarring addition to the site that would undermine the appreciation of the important historic townscape nearby. Accordingly, I am not persuaded that it would complement the pedestrianisation of Corn Market as suggested by the appellant.
21. In unacceptably detracting from the public realm and historic townscape, it would diminish the contribution of the settings of the nearby buildings to their significance. For these reasons I find that the proposal would fail to preserve the settings of the nearby listed buildings. In undermining the settings, which also contribute to the historic significance of the conservation area, the proposal would also detrimentally affect how the conservation area is experienced. I therefore consider that the proposal would cause harm to the significance of the conservation area and would fail to preserve its character and appearance.

Appeal B

22. Turning to the advertisement, the back of the kiosk includes an LCD display (1650 mm high by 928 mm wide) for advertising purposes. This would be contemporary and slimline in design and integrated into the structure, recessed behind toughened glass. The illuminated display would flick between static images every 10 seconds with no movement, animation or flashing images. These would be displayed on rotation and would be interchangeable with a gradual and smooth fade. The display would be illuminated to levels recommended by the Institute of Lighting Professionals using systems and timers to regulate brightness. All these matters could be controlled via conditions. No safety issues have been raised by the Council with regard to the display.
23. Corn Market is within the retail core and is a busy street with wide pavements and street lighting. There are other illuminated advertisements on the shop fronts and in the shop windows nearby and adverts are a feature of the locality. The screen would be seen at ground floor level only (below street lamp level) and would be some distance from the commercial frontage. Additionally, given its orientation it would only be seen on approach from the north.

24. Nevertheless, the proposed display would introduce a considerable and freestanding illuminated display to the streetscape in a prominent pavement location. Despite the context described above, I find that it would stand out as a discordant and intrusive feature. It would also draw further attention to the proposed kiosk (as considered under Appeal A) and would have an additional negative effect on the quality and character of the area.
25. Thus I find that the proposed advertisement would unacceptably detract from the public realm and historic townscape and diminish the contribution of the settings of the nearby buildings to their significance. Accordingly, it would fail to preserve the settings of the nearby listed buildings. In undermining the settings, which also contribute to the historic significance of the conservation area, the proposal would also detrimentally affect how the conservation area is experienced. I therefore consider that the proposal would cause harm to the significance of the conservation area and would fail to preserve its character and appearance.
26. In coming to this view I have had regard to the existing permitted digital display at 12-14 Market Street referred to by the appellant. Whilst I appreciate the need for consistency in decision making, the merits of that existing display are not before me for consideration, and I am not aware of the full circumstances that led to its approval. In any event, that display is sited in an elevated position on the building which turns the corner between Market Street and Russell Street and is some distance to the south east of the appeal site. As such, it is not part of the same street scene, and does not share the same relationship with the nearby buildings and streetscape as the appeal site. Thus, I do not regard that existing development to justify the appeal scheme or to be a reason to allow an advertisement that would be harmful.

Heritage Balance – both appeals

27. I therefore conclude that the proposals would be harmful to the visual amenity of the area and would not preserve or enhance the character or appearance of the conservation area or preserve the settings of the nearby listed buildings. I give this harm considerable importance and weight in the balance of these appeals.
28. The Framework advises at paragraph 199 that when considering the impact of a proposal on the significance of a designated heritage asset, great weight should be given to the asset's conservation. Paragraph 200 goes on to advise that significance can be harmed or lost through the alteration or destruction of those assets or from development within their setting and that this should have a clear and convincing justification. I find the harm to be less than substantial in this instance, but nevertheless of considerable importance and weight.
29. Paragraph 202 of the Framework requires that less than substantial harm should be weighed against the public benefits of the proposal, including where appropriate, securing its optimum viable use.
30. The appellant refers to a number of provisions in the Framework which lend support to the proposal. In particular, I am conscious that paragraph 114 of the Framework indicates that an advanced, high quality and reliable communication infrastructure is essential for economic growth and social well-being. It also seeks to support the expansion of electronic communications networks. Furthermore, paragraph 115 encourages the use of existing

structures. The Framework also seeks to support economic growth (para 81) and to achieve healthy, inclusive and safe places (para 92). Additionally I have had regard to the appellant's reference to the UK Digital Strategy, which sets out the Government's commitment to seeing the potential of the digital sector.

31. The proposal is part of a strategy to rationalise and upgrade facilities in Halifax. The appellant refers to the Halifax Town Centre Improvement Strategy and argues that the proposal would not prejudice the Council's wider aim of regenerating the area. The existing kiosks are outmoded in terms of their equipment, and the programme aims to install new modern telecommunication infrastructure and technology which better meets the needs of society.
32. These are all public benefits which count in favour of Appeal A. The appellant also advises that the advertisement screen could display Council communications to local residents and visitors free of charge. Additionally it is stated that the upgrade programme is in part funded by revenues from the proposed advertising associated with the new kiosks. This are public benefits of Appeal B. However, since there are other kiosks across the town as referred to in the appellant's wider programme, this limits the weight I afford to these benefits, which in practical terms would only be modest. Accordingly, I give the public benefits arising from these matters only limited weight.
33. The appellant indicates that the new kiosk would allow access for those with mobility impairment. However, I have seen nothing to demonstrate that the existing kiosks are not accessible or that particular problems have arisen in this regard. Reference is also made to the proposal's contribution to security and crime prevention particularly in reducing the potential for anti-social behaviour such as littering. However, given my findings above in relation to the design and opaqueness of the unit, I am not persuaded that the proposed kiosk would improve natural surveillance to any meaningful extent over and above the existing situation.
34. Additionally, the appellant refers to the commitment to plant a tree for every kiosk proposed for upgrade. No further details of that scheme have been provided and I have seen no agreement with the Council in this regard. Accordingly, I give very little weight to this potential public benefit.
35. Thus, I find that even taken together, overall the public benefits of the proposals would be insufficient to outweigh the harm to the significance of the designated heritage assets that I have identified.
36. The proposals would therefore be contrary to Policy BE15 of the Replacement Calderdale Unitary Development Plan (UDP) which states that development will not be permitted where through its siting, scale, design or nature it would harm the setting of a listed building. There would also be conflict with UDP Policy BE18 which seeks to preserve or enhance the quality of Conservation Areas, and with UDP Policy BE1 which sets out generally design criteria and requires proposals to make a positive contribution to the quality of the existing environment, or at the very least, maintain that quality by means of high standards of design.
37. For these reasons the proposals would fail to satisfy the requirements of the Act and paragraph 197 of the Framework and would be in conflict with the development plan.

Other matters

38. I have had regard to the appellant's suggestion under Appeal B that one element of the proposals could be permitted but not the other, and I am mindful that the display of the advertisement and the construction of the kiosk are distinct and separate. However, I have found that both elements of the proposal would be harmful.
39. The appellant refers to other kiosks and advertisements that have been permitted by other Councils/allowed on appeal elsewhere around the country and includes excerpts of the reasoning for those decisions. However, whilst I note that they also form part of the appellant's rationalisation programme, I am not aware of the full circumstances that led to those approvals so cannot be sure that they are the same as in the case before me. In any event, I confirm that I have considered the appeals on their own merits and made my own assessment as to their impacts.

Conclusion

40. For the reasons set out, and having regard to all other matters raised, both Appeals A and B are dismissed.

E Worthington

INSPECTOR