



Appeal Decisions

Site visit made on 7 February 2024

By E Worthington BA (Hons) MTP MUED MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 18 April 2024

Appeal A Ref: APP/M4510/W/23/3333497

New World Payphones Kiosk, o/s 88 Pilgrim Street, Newcastle, NE1 6SG

- 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 Newcastle City Council.
 - The application Ref 2023/1342/01/DET, dated 30 August 2023, was refused by notice dated 24 October 2023.
 - The development proposed is the replacement of existing telephone kiosk with new telephone kiosk which includes integrated digital advertising display.
-

Appeal B Ref: APP/M4510/H/23/3333498

New World Payphones Kiosk, o/s 88 Pilgrim Street, Newcastle, NE1 6SG

- 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 Newcastle City Council.
 - The application Ref 2023/1335/01/ADV, dated 30 August 2023, was refused by notice dated 24 October 2023.
 - The advertisement proposed is the replacement of existing 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, telephone kiosk and advertisement are inextricably linked in each case. Therefore to avoid duplication 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.

4. On 19 December 2023 the government published its revised National Planning Policy Framework (the Framework). Whilst this post-dates the evidence provided by the main parties in relation to these appeals, since the revised Framework's approach to the main issue in this case has not altered significantly, I confirm that all references to the Framework in this decision are to the updated 2023 version.

Main Issue

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

Reasons

The listed buildings and the conservation area

6. The proposals seeks the removal of the existing red telephone box from the site, and its replacement with a new telephone kiosk incorporating an integrated digital LCD screen. The appeal site is part of the pavement on Pilgrim Street. It is within the Central Conservation Area which covers much of the city centre and historic core of Newcastle. Pilgrim Street is at the eastern edge of the designation, close to the Georgian developments along Grey Street and is rich in historic buildings and street layout which are interspersed with some more modern development. To the east side of Pilgrim Street the development of a substantial new office building and public realm improvements are underway.
7. The character and appearance of the conservation area includes a variety of high quality historic buildings in a formal urban setting with wide thoroughfares flanked by tall buildings and high quality public realm. 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 city centre.
8. The appeal site is in a prominent roadside position that forms part of an important area of public realm that is seen in wide ranging views taken along Pilgrim Street. Thus it contributes positively to the historic character and appearance of the conservation area.
9. There are listed buildings nearby. These include the Grade I listed Alderman Fenwick's House (Ref: 1024793) which was built as a residence in the 17th century with 18th century alterations. Built of English garden wall bond brick with moulded brick strings and a pantile roof over four storeys, chamfered rusticated columns support the upper floor projections and it has a fine entrance feature with a pedimented hood supported by slim posts. It is a handsome and commanding building with a strong presence in the street scene and is recognised as being of the highest national significance and of exceptional architectural and historic interest.

10. Further to the north on Pilgrim Street is the Grade II listed Market Lane Hotel (Ref: 1106314). This three storey building dates to the early 18th century and is built of painted brick with painted ashlar dressings, with coursed square sandstone on the flank elevation under a brick gable and a Welsh slate roof. It is a good example of a public house and has an attractive appearance and traditional charm.
11. Despite their different ages and architectural styles, and accepting that they each have their own particular features of interest and significance, there is some cohesiveness to these city centre buildings which have a shared significance. Insofar as relating to these appeals, this common significance is derived from their historic interest as city centre buildings which collectively provide evidence of the role and status of the city and its historic development. 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 and quality of the urban townscape and its buildings, streets and spaces.
12. The Framework defines setting as the surroundings in which a heritage asset is experienced. The listed buildings are close to the appeal site, they over-look it, border it, and/or form part of the back drop to it in views up and down Pilgrim Street. Overall I consider that there is inter-visibility to varying extents between the identified buildings and the appeal site, and that some contextual views of the buildings include it. Thus the appeal site has a visual relationship with the 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 scheme

13. The proposed kiosk would be of a robust construction utilising high quality materials, with a distinctive design intended to reflect the influence and heritage of traditional phone boxes. It would incorporate more modern and inclusive features including a multi-functional communication interface with a telephone system that accepts card payments, a 24 inch LCD display providing interactive wayfinding capability, a WiFi access point, and location based information.
14. Its relatively simple modern appearance and colour scheme would be generally sympathetic to existing street furniture, bins and street lights nearby and it would be subservient in scale in relation to the tall buildings nearby. The proposed kiosk would utilise an existing telecommunications site, and since it would replace an existing structure, it would not increase visual clutter or affect pedestrian movement in Pilgrim Street.
15. The existing red kiosk was built in the 1990s and has a somewhat utilitarian and boxy design. However it has a generally open design incorporating a good deal of glazing. Despite its colour and somewhat worn and tired appearance, in my view it sits relatively comfortably in the street scene where its traditional design and generally understated appearance respects the historic character of the surrounding area. The proposed replacement kiosk would be of similar proportions and size to the existing kiosk. Whilst it would be slightly taller and wider, it would be slimmer than it and would occupy a smaller footprint. The proposed kiosk would also incorporate a digital display screen.

16. The integral digital advertisement display/panel measuring 1635mm by 924mm would face south. It would present a range of static images on rotation, at a frequency of once every 10 seconds. Images would not contain any movement, animation or flashing lights, and the interchange between each advertisement would be a gradual and smooth fade. The display would be illuminated to levels recommended by the Institute of Lighting Professionals, and the brightness would be reduced during periods of darkness. During the day when ambient light levels are significantly greater, the display would be regulated by sensors that monitor and adjust luminance according to the prevailing conditions. These matters could be secured via conditions.
17. Pilgrim Street is a busy vehicular route in the urban core with commercial frontages at ground floor level. There is modern office redevelopment opposite the site and the area continues to experience change and public realm works. The area is subject to traffic and overhead lighting and there are other digital and illuminated advertisements on the shopfronts and in the windows in the immediate area. However, these are relatively limited and low-key in nature.
18. Despite being confined to ground floor level and sitting below street lamp level, due to its scale and illuminated digital nature, the proposed screen would be highly visible when travelling northwards along Pilgrim Street. It would be significantly brighter and larger than the existing advertisements in the immediate vicinity. Even taking into account the surrounding commercial context and appreciating the new development opposite, I find that the proposals would be an obtrusive addition to the relatively open streetscape and wide pavement and would stand out as a jarring feature that would be seen in close proximity to the nearby listed buildings.
19. On approach from the south the proposals would be appreciated within the direct context of No 98, and moving northwards against the backdrop of no 70. In contrast to the existing kiosk, the illuminated digital nature of the display would stand out as a highly distracting, bold and intrusive feature in close proximity to both buildings. As a result the proposals would detract from the traditional design and fine architectural features of those buildings, and appear at odds with the important historic townscape.
20. A previous appeal for the display of an internally illuminated digital LCD panel to a telephone kiosk at the appeal site was dismissed on appeal¹. The appellant argues that the streetscape has changed over the past five years such as to warrant revisiting the proposals.
21. There are other digital installations to the north of the appeal site on Pilgrim Street including bus shelters with double sided digital displays and a kiosk which also incorporates a screen. New commercial buildings have been erected on the opposite side of the road and improvements to the highway and public realm are underway. Permission has been granted for an installation within a bus shelter there which would be comparable in size to the appeal scheme. I note the appellant's view that (like the appeal scheme) this will bring the traditional buildings and modern buildings into contrast, strike a balance between old and new, and complement the associated highway and public realm works and renewal of the area. I am also aware that the previous appeal decision related only to the advertisement and accordingly only matters of amenity and public safety were considered.

¹ APP/M4510/Z/16/3159007

22. However, the existing kiosk and bus shelters and their associated advertisements are in a different part of Pilgrim Street further to the north. They do not form part of the same immediate street scene and do not share the same relationship with the nearby buildings and historic streetscape as the appeal site. The approved installation opposite the site would be set back from the road and seen in the immediate context of the new development there. I also note that this would replace an illuminated display there. Thus, I do not regard these nearby existing/approved developments to justify the appeal scheme or to be a reason to allow proposals that would be harmful.
23. Thus, whilst I accept that the appeal site's immediate surroundings, particularly to the east have changed since the previous appeal decision was issued, the proposals' unacceptable relationship with the nearby heritage assets has not altered. Thus I agree with the findings of the previous Inspector that the proposed advertisement would be a brash and discordant feature in such close proximity to the nearby listed buildings.
24. Bringing matters together, in introducing an intrusive and distracting feature to the pavement, the proposals would unacceptably detract from the public realm and historic townscape and diminish the contribution of the settings of the nearby buildings to their significance. For these reasons I find that the proposals 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 proposals would also detrimentally affect how the conservation area is experienced. I therefore consider that the proposals would cause harm to visual amenity and to the significance of the conservation area and would fail to preserve its character and appearance. That there is no objection from the Conservation Advisory Panel does not alter my view.
25. In coming to this conclusion, I accept that there are other kiosks and adverts in the city, the type, design and appearance of which are not alien or unfamiliar to the Council. The appellant refers to a large installation at the Life Centre and other shelters and kiosks across the city centre in the conservation area and close to listed buildings. I also appreciate the need for consistency in approach towards the determination of applications. That said, the merits of those existing installations are not before me for consideration, moreover, I am not aware of the full circumstances that led to their approval and am mindful that each case must be determined on its own merits.

Heritage Balance

26. I 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.
27. The Framework advises at paragraph 205 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 206 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.

28. I find the harm to be less than substantial in this instance, but nevertheless of considerable importance and weight. Paragraph 207 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.
29. The appellant refers to various elements of the Framework which lend support to the proposals. Paragraph 85 states that planning decisions should help create the conditions in which businesses can invest, expand and adapt. Paragraph 96 requires planning decisions to achieve healthy, inclusive and safe places and beautiful buildings. Paragraph 118 indicates that an advanced, high quality and reliable communication infrastructure is essential for economic growth and social well-being, and that planning policies and decisions should support the expansion of electronic communications networks. Paragraph 119 encourages the use of existing structures for new electronic communications capability, and paragraph 120 states that local planning authorities should not impose a ban on new electronic communications development in certain areas.
30. Additionally I have had regard to the appellant's reference to the UK Digital Strategy which indicates that the government is committed to seeing the enormous potential of the digital sector. Furthermore I note that Policy DM35 of the Newcastle upon Tyne Development and Allocations Plan (DAP) also supports the proposals and recognises the development of telecommunications and digital infrastructure as an important driver for both the local and national economies that helps to deliver social and economic growth.
31. The existing kiosks are outmoded in terms of their equipment, and the appellant aims to install new modern telecommunication infrastructure, technology and services which better meet the needs of society. The kiosk would be open to allow access for all users including the mobility impaired, and in improving natural surveillance it would reduce anti-social behaviour. The advertisement screen could display Council communications to local residents and visitors free of charge. The upgrade programme is in part funded by revenues from the proposed advertising associated with the new kiosks. These are all public benefits. However, since there are other kiosks nearby in the vicinity of the appeal site and across the city, this limits the weight I afford to these benefits, which in practical terms would only be modest.
32. The proposals are part of a rationalisation and consolidation programme with kiosks being removed to enhance the public realm across Newcastle. Notably, two kiosks located outside Lloyds Bank on Green Street where it joins Hood Street would also be removed. I accept that the removal of these would be a benefit to the street scene there and to the character and appearance of the conservation area. This is also a public benefit.
33. However, in contrast to the appeal scheme, those kiosks are of a traditional glazed design and do not incorporate digital displays. Additionally, they are not within the immediate vicinity or context of the appeal site. Accordingly I am not persuaded that their removal would mitigate the visual impact of the appeal proposals that I have described. Moreover, whilst appreciating that the appeal scheme and the removal of those units is part of a wider consolidation programme, I have seen nothing to demonstrate that the removal of those kiosks is necessarily reliant on the appeal scheme per se.

34. 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 thus be contrary to Policy CS15 of the Core Strategy and Urban Core Plan for Gateshead and Newcastle upon Tyne (Core Strategy) which requires development to respond positively to local distinctiveness and character (1 i) and respect and enhance significant views and the setting of heritage assets (1 iv). They would also undermine Core Strategy Policy UC12 which seeks to deliver higher quality locally distinctive places in terms of architecture and public realm and indicates that development will (amongst other things) be designed to respect and enhance the positive characteristics and context (1).
37. They would also fail to support Core Strategy Policy UC14 which seeks to respect the historical legacy, varied character and appearance of the environment and advises that development will maximise opportunities to sustain and enhance the significance of heritage assets and their settings.
38. Furthermore, there would be conflict with DAP Policy DM15 which deals with the conservation of heritage assets and requires development to ensure that the significance of a conservation area is preserved or enhanced, and with DAP Policy DM16 which requires development to ensure that its design, location, siting, form, and appearance conserves or enhances the significance of the heritage asset, its setting and surrounding key views (1) and consider any additional impacts on the setting of heritage assets including the degree of permanence of any impact (2). Finally the proposals would fail to conform with DAP Policy DM20 which requires development to deliver high quality sustainable design.
39. For these reasons the proposed development and works would fail to satisfy the requirements of the Act and paragraph 203 of the Framework and would be in conflict with the development plan.

Other matters

40. The appellant refers to other kiosks and advertisements that have been approved or allowed on appeal elsewhere including in London and Wakefield. However, 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

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

E Worthington

INSPECTOR