



Appeal Decisions

Site visit made on 02 July 2024

by Nicola Davies BA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th July 2024

Appeal A Ref: APP/D5120/W/23/3333678

Outside ASDA, Broadway, Bexleyheath, London DA6 7BN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to under Article 3(1) and Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr Ben Porte of New World Payphones against the decision of the London Borough of Bexley.
 - The application Ref is 23/02190/FUL.
 - The development proposed is replacement of existing telephone kiosk with single black telephone kiosk and ancillary advertisement.
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Appeal B Ref: APP/D5120/H/23/3333683

Outside ASDA, Broadway, Bexleyheath, London DA6 7BN

- The appeal is made under Regulation 17 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (as amended) against a refusal to grant express consent.
 - The appeal is made by Mr Ben Porte of New World Payphones against the decision of the London Borough of Bexley.
 - The application Ref is 23/02191/ADV.
 - The advertisement proposed is replacement of existing telephone kiosk with single black telephone kiosk and ancillary advertisement.
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Decisions

Appeal A Ref: APP/D5120/W/23/3333678

1. The appeal is allowed and approval is granted under the provisions of Article 3(1) and Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the siting and appearance of the replacement single black telephone kiosk and ancillary advertisement at land outside ASDA, Broadway, Bexleyheath, London DA6 7BN in accordance with the terms of the application Ref 23/02190/FUL: -
 - a) The development hereby approved shall be begun no later than 5 years beginning with the date on which the permission is granted.
 - b) The development hereby approved shall only be carried out in accordance with the following approved plans and documents: PY4056/001, PY4056/005, PY4419-039-002A; Perspective Views; Site

Location Plan; Site Plan; Specification Document; Planning & Design Statement and Management Plan.

- c) The development shall be removed as soon as reasonably practicable after it is no longer required for electronic communications purposes and the land shall be restored to its condition before the development took place.

Appeal B Ref: APP/D5120/H/23/3333683

- 2. The appeal is allowed and express consent is granted for the display of the replacement single black telephone kiosk and ancillary advertisement outside ASDA, Broadway, Bexleyheath, London DA6 7BN in accordance with the terms of the application, Ref 23/02191/ADV. The consent is for 5 years from the date of this decision and is subject to the 5 standard conditions set out in Schedule 2 of the 2007 Regulations: -

- a) No advertisement is to be displayed without the permission of the owner of the site or any other person with an interest in the site entitled to grant permission.
- b) No advertisement shall be sited or displayed so as to:
 - a. endanger persons using any highway, railway, waterway, dock, harbour or aerodrome (civil or military);
 - b. obscure, or hinder the ready interpretation of, any traffic sign, railway signal or aid to navigation by water or air; or
 - c. hinder the operation of any device used for the purpose of security or surveillance or for measuring the speed of any vehicle.
- c) Any advertisement displayed, and any site used for the display of advertisements, shall be maintained in a condition that does not impair the visual amenity of the site.
- d) Any structure or hoarding erected or used principally for the purpose of displaying advertisements shall be maintained in a condition that does not endanger the public.
- e) Where an advertisement is required under these Regulations to be removed, the site shall be left in a condition that does not endanger the public or impair visual amenity.

Procedural Matter

- 3. There are two appeals relating to the site, one against a refusal of planning permission and the other against a refusal of advertisement express consent. They are intrinsically linked as one concerns the kiosk unit upon which an advertisement would be displayed. Both appeals raise similar issues. While considering each appeal on its own merits this decision letter considers both appeals in one.
- 4. A revised version of the National Planning Policy Framework (the Framework) has been published since the planning application was determined by the Council. Both main parties have had the opportunity to comment on the

relevant implications for the appeal. I have had regard to the revised Framework in reaching my decision.

Planning Policy

Appeal A

5. The provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended, under Article 3(1) and Schedule 2, Part 16, Class A, Paragraph A.3(4) require the local planning authority to assess the proposed development solely on the basis of its siting and appearance, taking into account any representations received. My determination of this appeal has been made on the same basis noting that no representations were received.

Appeal B

6. The provisions under Regulation 17 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (as amended) require the local planning authority to assess the proposed development solely on the basis of amenity and public safety, taking into account the provisions of the development plan, so far as they are material, and any other relevant factors.

Main Issue

7. In respect of Appeal A the local planning authority have not raised concern with regard to the appearance of the proposed telephone kiosk. In regard to Appeal B the local planning authority have not raised concern with regard to the amenity, that being the visual amenity of the area, of the proposed telephone kiosk.
8. The main issue relating to both these appeals is the effect of the siting of the proposed telephone kiosk and advertisement on public safety, that being highway safety.

Reasons

9. The kiosk would be installed adjacent to the kerb of the pedestrian highway. It would be in line with other existing street furniture close by, including that of two bicycle stands, refuse bins and a lamp post.
10. The width of the of the pedestrian footway varies with the entrance to the adjacent store projecting into the pedestrian highway. However, the proposed kiosk would not be directly in front of that entrance and would be located where the footway is wider. The kiosk would be a relatively small structure that would not take up significant space upon the pedestrian highway. As such, reasonable space would remain available on the footway for pedestrians to move freely along the highway.
11. Further to the above, the proposal would be located beside and in line with existing street furniture. There would not be significant change in walking lines imposed upon pedestrians. The proposed kiosk would occupy a small part of the pedestrian footway next to the bicycle stands. As the majority of the footway would remain open, I see no substantive reason why the kiosk would impede cyclists from dismounting on the pedestrian highway in the vicinity of the cycle stands.

12. The Council have referred to a previous grant of express consent in the vicinity of this appeal site. However, the appellant advises that that consent has now expired. The proposals before me can and should be considered on their own individual merits.
13. For these reasons, I conclude that the siting of the proposed telephone kiosk and advertisement would not have a harmful effect on public safety, that being highway safety. I have taken into account Policies DP11 and DP22 of the Bexley Local Plan 2023 that seek high quality design and that require advertisement not to have an adverse effect on public safety and so are material in this case. Given that I have concluded that the proposal would not harm public safety, the proposal does not conflict with these policies.

Conditions

Appeal A

14. The order does not provide any specific authority for imposing additional conditions beyond the deemed conditions for development by electronic communications code operators contained within it. These specify that the development must be carried out in accordance with the details submitted with the application, begin within 5 years of the date of the approval and be removed as soon as reasonably practicable after it is no longer required for electronic communications purposes and the land restored to its condition before the development took place.
15. In addition to the above, the local planning authority seeks a condition to be imposed requiring the pavement to be made good around the kiosk. However, this goes beyond those conditions set out within the order. It is also sought that the development begins within 3 years, however this would not be consistent with the requirements of the order.

Appeal B

16. Schedule 2 of the 2007 Regulations sets out 5 standard conditions to be imposed in the event that express consent is granted. These are relevant to this case and should be imposed.
17. A condition requiring the intensity of illumination of the advertisement to be controlled in the interest of public safety and the visual amenities of the area is sought by the local planning authority. The Council's condition is different to that suggested by the appellant. However, the imposition of such a condition goes beyond those conditions set out within the regulations.

Conclusion

18. For the reasons set out above, and subject to the conditions listed, Appeal A and Appeal B should be allowed.

Nicola Davies

INSPECTOR