



Appeal Decisions

Site visit made on 9 July 2024

by K Townend BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 August 2024

Appeal A Ref: APP/X5210/W/24/3342948

Telephone Kiosk at the junction of Shaftesbury Avenue and Earlham Street, Camden, London WC2H 8JA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Martin Stephens on behalf of JCDecaux UK Limited against the decision of the Council of the London Borough of Camden.
 - The application Ref is 2023/3147/P.
 - The development proposed is to replace an existing telephone kiosk with an upgraded telephone kiosk.
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Appeal B Ref: APP/X5210/H/24/3342952

Telephone Kiosk at the junction of Shaftesbury Avenue and Earlham Street, Camden, London WC2H 8JA

- 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 Martin Stephens on behalf of JCDecaux UK Limited against the decision of the Council of the London Borough of Camden.
 - The application Ref is 2024/0594/A.
 - The advertisement proposed is display of an LCD digital advertising screen attached to a replacement, upgraded telephone kiosk.
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Decision

1. Appeal A is allowed, and planning permission is granted to replace an existing telephone kiosk with an upgraded telephone kiosk at the junction of Shaftesbury Avenue and Earlham Street, Camden, London, WC2H 8JA in accordance with the terms of the application, Ref 2023/3147/P, and the plans submitted with it, in accordance with the conditions set out in the attached schedule.
2. Appeal B is allowed, and express consent is granted for an LCD digital advertising screen attached to a replacement, upgraded telephone kiosk. The consent is for five years from the date of this decision and is subject to the five standard conditions set in the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (the Regulations) and the additional conditions set out in the attached schedule.

Preliminary Matters

3. There are two appeals on this site. Appeal A relates to the refusal of planning permission for the replacement kiosk and Appeal B relates to the Council's refusal to grant advertisement consent. The kiosk and the advertisement are integral to each other, and both are the subject of these appeals. I have dealt

with each case on its individual merits, but to avoid duplication both proposals are considered together in this decision, except where otherwise indicated.

4. The Town and Country Planning (Control of Advertisements) (England) Regulations 2007 require that advertisement appeal decisions be made only in the interests of amenity and public safety, taking account of any material factors. The National Planning Policy Framework (the Framework) and the Planning Practice Guidance confirm this approach.
5. The Council has questioned whether the existing kiosk has consent. It is not appropriate for me to come to a view on this matter within this appeal. However, it is clear that the existing kiosk has been in position for a long period of time. Moreover, the applications were submitted, assessed, and consulted on as a replacement structure. On this basis I am satisfied that I should assess the proposals as a replacement.
6. The appellant did not provide a description of development within the application form, and I have therefore taken these from the Council's decision notices.

Main Issues

7. The main issues with respect to Appeal A are:
 - the effect on the character and appearance of the area, specifically whether the proposal would preserve or enhance the character or appearance of the Severn Dials (Covent Garden) Conservation Area;
 - the effect of the proposal on pedestrian safety; and
 - the effect on crime, disorder, and anti-social behaviour.
8. With respect to Appeal B, as there is no dispute between the parties in relation to the proposed advertisement on public safety, the main issue is therefore the effect of the proposed advertisement on amenity, including the Severn Dials (Covent Garden) Conservation Area.

Reasons

Character and appearance/amenity

9. The appeal site comprises an existing kiosk structure within an area of pavement on the corner of Shaftsbury Avenue and Earlham Street, within the Seven Dials (Covent Garden) Conservation Area. The Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) provides at section 72(1) that with respect to any buildings, or other land, in a conservation area special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.
10. The Camden Conservation Area Statement for Severn Dials (Covent Garden) (the CAS) details the historic development of the area and the characteristics which are of special architectural or historic interest. Insofar as it is relevant to the appeal, I consider that the significance of the conservation area is mainly derived from the range and mix of building types and uses and the street layout. The area has a dense, urban, feel with tight-knit terrace buildings, built at back of pavement, on narrow plot widths of a fairly consistent scale which

contribute positively to the character and appearance of the conservation area as a whole.

11. Shaftsbury Avenue is noted in the CAS as having a wider street and plot widths than the rest of the Conservation Area. The London Plane trees have also become a distinctive feature of the street. The CAS also recognises the need to preserve and enhance the Conservation Area in the design and siting of street furniture, the need to avoid visual clutter and to seek design solutions appropriate to the area.
12. Other street furniture structures around the site include a waste bin and information board either side of the existing kiosk and street signs and bollards on Earlham Street. At the time of my visit there was also a street vendor on Earlham Street.
13. The area around the site is a commercial and leisure area with a mix of retail units, restaurants and the nearby Palace Theatre and nearby Cinema. The urban appearance is softened by the significant street trees and the green canopy this provides along Shaftsbury Avenue. Notwithstanding this, the area includes other advertisements, including illuminated adverts, and clearly has a daytime and night-time economy.
14. The proposed kiosk is similar in scale and footprint to the existing kiosk but would be modern in design and detailing. It would be open to one side and half of another side. Even if the existing kiosk does not benefit from consent, it has been in position for some time and the proposed kiosk would have a similar physical layout and size and a similar visual appearance. Consequently, the proposed kiosk would not add visual clutter to the area, as resisted in the CAS.
15. The proposal would introduce an illuminated digital advertising panel to the solid side, facing the nearby street tree, in place of the existing poster advert panel. The proposal would not result in additional advertisements. The addition of illumination would increase the prominence of the advertisement, as too would the ability for the advertisement to change.
16. However, I noted other illuminated signage on retail and restaurant uses, the ground floor of the surrounding buildings is, in the most, glazed, and active and includes various levels of lighting. Moreover, the adjacent tree, due to its wide trunk, would partially screen the advertisement and also reduce the visual effect of the proposal on the wider area. Albeit that the advertisement panel is intended to draw attention, due to its position, the proximity of the tree and other advertisements, even though the advertisement would include illumination and changing content, in my judgement it would not appear visually prominent or an incongruous feature in the street scene.
17. Furthermore, in the context of the scale of the adjacent buildings and the canopies of the trees along Shaftsbury Avenue the advertisement would not be dominant or visually harmful. I am thus satisfied that neither the kiosk or the advertisement panel would harm the character and appearance of the street scene or the Seven Dials (Covent Garden) Conservation Area.
18. Both main parties have drawn my attention to a recent appeal decision on this site, allowing replacement of the existing kiosk structure with a telecommunications hub and illuminated advertisement panel¹. Although the

¹ APP/X5210/W/22/3290317 & APP/X5210/H/22/3290319

previously approved hub would have had a smaller footprint and, therefore, less of a visual effect on the character of the area, the hub represents a realistic fallback position.

19. The Council contend that there is no need for the proposed kiosk given the location of other kiosks around Cambridge Circus and on Shaftsbury Avenue. Although there are two kiosk further along Shaftsbury Avenue all of the other kiosks around Cambridge Circus are situated on each of the roads radiating off the junction. Given the city location it is not unreasonable to expect these facilities to be available on each road. The pair of telephone kiosks opposite the cinema appear to just serve as telephone boxes and do not provide the other services that the appeal proposal would provide. I, therefore, consider that there is not an over proliferation of these facilities in the immediate area or that the proposal before me would result in unacceptable street clutter.
20. In relation to Appeal A, the proposal for a new telephone kiosk structure, would have a neutral effect on the character and appearance of the Seven Dials (Covent Garden) Conservation Area. I, therefore, find no conflict with the requirements of Policies D1, D2, G1, A1, C6 and T1 of the Camden Local Plan 2017 (the LP) which, taken together, seek high quality design which respects local context and character, integrates with the streets, preserves or, where possible, enhances the character and appearance of the Conservation Area, and protects the amenity of an area.
21. In relation to Appeal B, I have taken into account Policies D1 and D4 of the LP in so far as they are material in this case. Given I have concluded that the proposal would not harm the character and appearance of the area it would also not harm amenity. The proposal would, therefore, not conflict with these policies, which, in addition to the above requirements also seek to ensure that advertisements preserve the character and amenity of the area, including the Conservation Area, and resists advertisements that contribute to street clutter.

Pedestrian safety

22. The pavement along Shaftsbury Avenue is limited due to the presence of the trees and other structures. However, the pavement widens out substantially where it joins Earlam Street, and this section is also pedestrianised. At the time of my visit, which was a very wet Tuesday, the area was still busy with pedestrians.
23. The existing kiosk, street tree, waste bin and information board are clustered together at the outer edge of the pavement. Pedestrians walking along the footway would already be walking close to the buildings due to the line of street trees. The presence of the existing structures means that the appeal site is not currently unrestricted or usable footway. The proposed kiosk would replace the existing kiosk with a similar scale and footprint. Consequently, the proposal would not have any greater effect on the availability of pavement or reduce the amount of usable footway in the immediate area, including for pedestrians with visual impairments.
24. There is a formal pedestrian crossing at the Cambridge Circus junction, near to the appeal site, where pedestrians can safely cross Shaftsbury Avenue and I have no substantive evidence that the proposed kiosk would affect the safety of pedestrians using it. Moreover, the wider section of pavement, adjacent to

the appeal site, provides a clear space to walk to if crossing Shaftsbury Avenue near the appeal site.

25. The previous appeal decision is also material to my consideration of pedestrian safety. Although the hub would have had a smaller footprint and, therefore, less of an effect on the availability of pavement, the hub represents a realistic fallback position. Although the fallback would have less of an effect it would not result in opening this space up for pedestrians and the other street furniture items around the site would also remain as obstructions to pedestrian movement.
26. For these reasons, in relation to Appeal A, I find that the proposal would not adversely affect pedestrian safety and, therefore, find no conflict with Policies G1, A1, C6 and T1 of the LP which, amongst other matters, seeks to ensure that development is of a high quality, that addresses the transport impacts, ensures routes are fully accessible, and promotes walking by improving the pedestrian environment, ensuring spaces are 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.

Crime, disorder, and anti-social behaviour

27. The existing kiosk is three-sided with one solid side which provides the advertising panel and one side partially solid which provides for the telephone. The structure also has a roof and, therefore, provides shelter and enclosure. In that regard the existing structure could provide an area for someone to loiter and be partially hidden from view and a structure that would be at risk of anti-social behaviour from graffiti and stickering. However, at the time of my visit the existing kiosk showed no signs of any such damage.
28. The proposed kiosk would be similar and would continue to provide an area where someone could loiter or result in other antisocial behaviour issues. Notwithstanding this, I note the comments from the Metropolitan Police which raised no objection to the proposal and advises that, although there have been numerous crimes reported around the location, these could not be attributed to the presence of the phone kiosk. I, therefore, have no substantive evidence that the proposed kiosk would increase the risk of crime and disorder or increase opportunities for crime. Moreover, the addition of the illuminated advertisement would be likely to deter people from loitering as it would highlight anyone standing nearby.
29. A Unit Management Plan² (UMP) has been submitted with the appeal which sets out the processes that would be used to monitor, identify, and action any misuse and anti-social behaviour and details the regular inspection and maintenance of the structure. The UMP confirms that restrictions can be placed on the use of the kiosk remotely and in real-time so as to respond to any issues promptly, that the unit would include inbuilt video cameras and that the kiosk would be built with toughened glass and a surface treatment that enables easy removal of stickers and graffiti. The UMP, therefore, provides the additional information sought by the Police and confirms that the kiosk would be maintained.

² JCDecaux Communication Hub Unit Management Plan V4 June 2023

30. Standard condition 3, as set out in Schedule 2 of the Regulations³, requires that an 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 area. This would provide the Council opportunity to carry out enforcement action should the appearance of the kiosk cause harm. Furthermore, it is reasonable to expect that companies who pay for advertisements to be displayed on the kiosk would expect the structure to be maintained. For these reasons I am satisfied that it is not necessary to secure maintenance through a legal agreement and that this can be secured through an appropriately worded condition.
31. For the above reasons, in relation to Appeal A, I find that the proposed development would not increase opportunities for crime, disorder or anti-social behaviour. Consequently, I find no conflict with Policy C5 of the LP which, amongst other matters, seeks to ensure that development incorporates design principles which contribute to community safety and security.

Other Matters

32. The nearby cinema building, the Former Saville Theatre, is a Grade II listed building. Section 66(1) of the Act requires the decision maker, in considering whether to grant planning permission for development which affects a listed building or its setting, to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest.
33. The list description suggests that the significance of the listed building is derived from its fine composition that incorporates architecture and sculpture. It is suggested that the artificial stone frieze is one of the largest and most important works of public sculpture of its age. The setting in which the Theatre is appreciated includes the immediate area either side and opposite, along Shaftsbury Avenue. The mature trees are also significant components of the street and contribute towards the densely developed urban setting of the listed building. The proposed unit would stand some distance away from this building and on the opposite side of the road and behind the mature trees. On this basis I am satisfied that the unit would not harm the setting of the listed building and would thus not harm its special interest.
34. The proposed kiosk would replace the existing kiosk. The removal of the existing kiosk would have to take place in order to implement the proposal. It is, therefore, not necessary to have a legal agreement to secure the removal of the existing kiosk. Furthermore, the appeal also only relates to the replacement of a single kiosk, so it is also not before me to consider the removal of any other kiosks in the area.
35. Numerous decisions and appeal cases are referred to by both parties, including the previous appeal decision at the same site. Some of these cover similar main issues and some are for similar structures. It would not be practical for me to individually address all of these; however, I have considered them carefully. Nevertheless, I have assessed the proposals before me on their own merits, taking into account the information submitted and my own observations on site.

³ Town and Country Planning (Control of Advertisements) (England) Regulations 2007

Conditions

36. I have had regard to the conditions suggested by the Council and the appellant. I have considered them against the tests in the Framework and the advice in the Planning Practice Guidance.
37. In regard to appeal A, I have imposed the standard condition which relates to the commencement of development for the avoidance of doubt. I have also imposed a condition that specifies the approved plans as this provides certainty in the interests of the character and appearance of the Conservation Area.
38. I have imposed a separate condition requiring the kiosk to be managed and maintained in accordance with the Unit Management Plan to ensure the ongoing maintenance and management of the kiosk in the interests of the character and appearance of the Conservation Area and to ensure that the development does not increase crime and disorder.
39. I have also imposed a planning condition to ensure that the kiosk is removed when it is no longer required, to ensure that no unnecessary street furniture is retained, and a condition to require the pavement surface materials to match the existing so as to maintain the character and appearance of the area.
40. With regard to the advertisement consent, the conditions set out in the attached schedule are in addition to the five standard conditions set out at Schedule 2 of the Regulations. These standard conditions are not repeated in the attached schedule.
41. In order to ensure that the proposal does not harm the character and appearance of the area, or create a distraction for pedestrian and vehicular traffic, I have imposed an additional condition to control the level of illuminance, restrict moving images, display interval times, and to ensure that the advertisement does not emit music or sounds, combining the Council's suggested conditions.
42. Furthermore, in the interests of highway and pedestrian safety, to ensure that the development does not distract drivers and retains the existing footway area, I have imposed conditions to ensure that the advertisements displayed do not resemble traffic signs and to ensure that the footway and carriageway is not blocked during installation and maintenance of the unit.

Conclusion

43. For the reasons given above Appeal A and Appeal B should be allowed.

K Townsend

INSPECTOR

Schedule of Conditions – Appeal A

1. The development hereby permitted shall begin not later than three years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the proposed site plan, drawing A02299, and Appendix A - Kiosk Details.
3. The telephone kiosk, including its electronic features, shall be managed in accordance with the Communication Hub Unt Management Plan dated June 2023, for the lifetime of the development.
4. The structure hereby permitted shall be removed from the land on which it is situated as soon as reasonably practicable after it is no longer required for telecommunication purposes.
5. All new or replacement pavement surface materials should match the existing adjacent surface materials.

Schedule of Conditions – Appeal B

1. The advertisement display shall be statically illuminated and the intensity of the illumination of the digital signs shall not exceed 2500 candelas per square metre during the day and 400 candelas per square metre during the hours of darkness in line with the maximum permitted recommended luminance as set out by 'The Institute of Lighting Professional's 'Professional Lighting Guide 05: The Brightness of Illuminated Advertisements' 2015. The levels of luminance on the digital signs should be controlled by light sensors to measure the ambient brightness and dimmers to control the lighting output to within these limits.
2. The digital sign shall not display any moving, or apparently moving, images (including animation, flashing, scrolling three dimensional, intermittent, or video elements). The minimum display time for each advertisement shall be 10 seconds and the interval between advertisements shall take place over a period no greater than one second; the complete screen shall change with no visual effects (including fading, swiping or other animated transition methods) between displays and the display will include a mechanism to freeze the image in the event of a malfunction. No music or sound shall be emitted from the advertisements displayed.
3. No advertisement displayed shall resemble traffic signs, as defined in section 64 of the Road Traffic Regulation Act 1984.
4. The footway and carriageway on the Transport for London Road Network (TLRN) and Strategic Road Network (SRN) must not be blocked during the installation and maintenance of the advertising panel. Temporary obstruction during the installation must maintain at all times the clear space needed to provide safe passage for pedestrians.

*** END OF CONDITIONS ***