

DPV Consult

Town & Country Planning Act 1990

Section 78 Appeal by Urban Innovation Company (UIC) Ltd

Appeal Statement of Case

Installation of Pulse Smart Hub with integrated digital screens and emergency functionality including provision of defibrillators as follows:

- Appeal 1: Planning Permission (“Appeal 1A”) and Advertisement Consent (“Appeal 1B”) Pavement outside 85 Chalk Farm Road, London, NW1 8AR
- Appeal 2: Planning permission (“Appeal 2A”) and Advertisement Consent (“Appeal 2B”) Pavement Outside The Holborn Hotel, on the North Side of Theobald’s Road at the Junction with Old Gloucester Street, London WC1B 4AR
- Appeal 3: Planning permission (“Appeal 3A”) and Advertisement Consent (“Appeal 3B”) Pavement outside 133 Clerkenwell Road, London EC1R 5DB
- Appeal 4: Planning permission (“Appeal 4A”) Advertisement Consent (“Appeal 4B”) Land adjacent to 85 Clerkenwell Road, London EC1R 5AR
- Appeal 5: Planning permission (“Appeal 5A”) and Advertisement Consent (“Appeal 5B”) Pavement outside of 27 Chalk Farm Road, London, NW1 8AG
- Appeal 6: Planning permission (“Appeal 6A”) and Advertisement Consent (“Appeal 6B”) Pavement opposite 152 West End Lane, (corner of Iverson Road), London, NW6 2LJ

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1. Introduction

1.1. The following appeals are made against the decisions of LB Camden to refuse planning permission and advertisement consent as follows:

- **Appeal 1: Pavement outside 85 Chalk Farm Road, London, NW1 8AR**

- ***Appeal 1A: Planning Permission***

- 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 UIC against the decision of LB Camden
- The application ref. LPA ref. 2024/3313/P, dated 8 August 2024, was refused by notice dated 3 October 2024.
- The development proposed is the installation of a Pulse Smart Hub with integrated digital screens

- ***Appeal 1B: Advertisement Consent***

- The appeal is made under Regulation 17 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 ('the Regulations') against a refusal to grant express consent.
- The appeal is made by UIC against the decision of LB Camden
- The application ref. LPA ref 2024/3453/A, dated 8 August 2024, was refused by notice dated 3 October 2024.
- The advertisement proposed is display of 2x LED digital static illuminated displays, one on either side of a Pulse Smart Hub proposed under planning application ref. ref. LPA ref. 2024/3313/P.

- **Appeal 2: Pavement Outside The Holborn Hotel, on the North Side of Theobald's Road at the Junction with Old Gloucester Street, London WC1B 4AR**

- ***Appeal 2A: Planning Permission***

- 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 UIC against the decision of LB Camden
- The application ref. LPA ref. 2024/3309/P, dated 8 August 2024, was refused by notice dated 3 October 2024.

- The development proposed is the installation of a Pulse Smart Hub with integrated digital screens
- ***Appeal 2B: Advertisement Consent***
- The appeal is made under Regulation 17 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 ('the Regulations') against a refusal to grant express consent.
- The appeal is made by UIC against the decision of LB Camden
- The application ref. LPA ref 2024/3440/A, dated 8 August 2024, was refused by notice dated 3 October 2024.
- The advertisement proposed is display of 2x LED digital static illuminated displays, one on either side of a Pulse Smart Hub proposed under planning application ref. ref. LPA ref. 2024/3309/P.
- **Appeal 3: Pavement outside 133 Clerkenwell Road, London EC1R 5DB**
- ***Appeal 3A: Planning Permission***
- 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 UIC against the decision of LB Camden
- The application ref. LPA ref. 2024/3310/P, dated 8 August 2024, was refused by notice dated 3 October 2024.
- The development proposed is the installation of a Pulse Smart Hub with integrated digital screens
- ***Appeal 3B: Advertisement Consent***
- The appeal is made under Regulation 17 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 ('the Regulations') against a refusal to grant express consent.
- The appeal is made by UIC against the decision of LB Camden
- The application ref. LPA ref 2024/3446/A, dated 8 August 2024, was refused by notice dated 3 October 2024.
- The advertisement proposed is display of 2x LED digital static illuminated displays, one on either side of a Pulse Smart Hub proposed under planning application ref. ref. LPA ref. 2024/3310/P.

- **Appeal 4: Land adjacent to 85 Clerkenwell Road, London EC1R 5AR**

- ***Appeal 4A: Planning Permission***

- 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 UIC against the decision of LB Camden
- The application ref. LPA ref. 2024/3311/P, dated 8 August 2024, was refused by notice dated 3 October 2024.
- The development proposed is the installation of a Pulse Smart Hub with integrated digital screens

- ***Appeal 4B: Advertisement Consent***

- The appeal is made under Regulation 17 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 ('the Regulations') against a refusal to grant express consent.
- The appeal is made by UIC against the decision of LB Camden
- The application ref. LPA ref 2024/3450/A, dated 8 August 2024, was refused by notice dated 3 October 2024.
- The advertisement proposed is display of 2x LED digital static illuminated displays, one on either side of a Pulse Smart Hub proposed under planning application ref. ref. LPA ref. 2024/3311/P.

- **Appeal 5: Pavement outside of 27 Chalk Farm Road, London, NW1 8AG**

- ***Appeal 5A: Planning Permission***

- 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 UIC against the decision of LB Camden
- The application ref. LPA ref. 2024/3312/P, dated 8 August 2024, was refused by notice dated 3 October 2024.
- The development proposed is the installation of a Pulse Smart Hub with integrated digital screens

- ***Appeal 5B: Advertisement Consent***

- The appeal is made under Regulation 17 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 ('the Regulations') against a refusal to grant express consent.
- The appeal is made by UIC against the decision of LB Camden
- The application ref. LPA ref 2024/3452/A, dated 8 August 2024, was refused by notice dated 3 October 2024.
- The advertisement proposed is display of 2x LED digital static illuminated displays, one on either side of a Pulse Smart Hub proposed under planning application ref. ref. LPA ref. 2024/3312/P.

- ***Appeal 6: Pavement opposite 152 West End Lane, (corner of Iverson Road), London, NW6 2LJ***

- ***Appeal 6A: Planning Permission***

- 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 UIC against the decision of LB Camden
- The application ref. LPA ref. 2024/3448/P, dated 8 August 2024, was refused by notice dated 10 October 2024.
- The development proposed is the installation of a Pulse Smart Hub with integrated digital screens

- ***Appeal 6B: Advertisement Consent***

- The appeal is made under Regulation 17 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 ('the Regulations') against a refusal to grant express consent.
- The appeal is made by UIC against the decision of LB Camden
- The application ref. LPA ref 2024/3459/A, dated 8 August 2024, was refused by notice dated 10 October 2024.
- The advertisement proposed is display of 2x LED digital static illuminated displays, one on either side of a Pulse Smart Hub proposed under planning application ref. ref. LPA ref. 2024/3448/P.

Preliminary and Procedural Matters

- 1.2. Single planning application forms were submitted to the Council for each of the appeal sites. The applications covered both an application for planning permission and for consent to display advertisements, and for each of the sites the Council refused all.
- 1.3. Consequently, there are two appeals relating to each of the appeal sites. For each we have considered each appeal on its own individual merits, but to avoid duplication, we have dealt with them together, except where otherwise indicated. When we refer to the proposed development it shall be with regard to Appeal 1A through to Appeal 6A and when we refer to the proposed advertisement for each site, it shall be with regard to Appeal 1B through to Appeal 6B. When we refer to the proposals, it shall mean the proposed development and the proposed advertisement as they relate to amenity and public safety in the case of each of the appeals.
- 1.4. In regard to appeals 1B through to 6B the Regulations stipulate that control of advertisement may only be exercised in the interests of amenity and public safety, taking account of cumulative effects. This position is supported by the National Planning Policy Framework (the Framework) and Planning Practice Guidance (PPG). The development plan policies put forward by the Council in its reasons for refusal are not determinative, but we have taken them into account in so far as they relate to amenity and public safety.
- 1.5. As all proposals are within proximity to designated heritage assets, we have had special regard to section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act).

The Planning Case

- 1.6. The Planning case for the appeal proposals has already comprehensively set out in the supporting plans and documents that accompanied the application and are included in this Appeal submission. As a main point of reference, the Inspector's attention is drawn to:
 - The submitted Plans and drawings
 - The Planning and Heritage Statement
 - The Design, Management and Operational Statement
 - Urban Innovation Company "Our Responsibilities" Statement
- 1.7. The Planning and Heritage Statement addresses the proposals having regard to the independent requirements of the Town and Country Planning Act. It addresses matters of planning policy and benefits, questions of weight and concludes with an assessment of the appropriate planning balance as to whether the proposals are acceptable.
- 1.8. The Applicant's Design, Management and Operational Statement (DMOS) also accompanying these appeals explains the evolution of the Pulse Smart Hub, the design and software detailing,

the operation and day-to-day management of the Pulse Smart Hub once it is installed, along with case studies. The document also includes relevant technical appendices to support these planning appeals.

2. Site Context

Appeal 1A and 1B: Pavement outside 85 Chalk Farm Road

- 2.1. The site is depicted on the Site Location Plan and Existing Site Photographs and would be sited on a part of the pavement on the northern side of Chalk Farm Road.
- 2.2. Details of a previous Prior Approval proposal for the installation of a telephone kiosk at the same location and granted on appeal in 2018 are set out in the Planning History section (see below). This includes the Inspector's evaluation of the proposals in the context of the site and surroundings. It is submitted that the physical environment has not materially changed since the 2018 decision.

Site Designations

- 2.3. It is located close to the Regents Canal Conservation Area and Roundhouse Theatre, which has been identified as a Grade II* listed building. The installation process will not require any substantive below ground excavation and as such the proposals will not have a deleterious impact under the street. The remaining designations are characteristic of the site's location within a central, commercial location where street furniture and advertisement content are widely seen.

Planning History

- 2.4. Prior approval was granted at the same location as the current proposals on the 23 July 2018 (APP/X5210/W/17/3180682) following the council's decision to refuse planning permission for the installation of a public telephone box. A copy of this appeal decision is attached at **Appendix Bi of the Planning and Heritage Statement**.
- 2.5. The phone box has not been installed, because it is massively outdated technology and no longer serves the original purpose for the community, and the Prior Approval has now expired. Nevertheless, the appeal decision is highly pertinent for the reasons explained below.
- 2.6. The Inspector's reasons for allowing the appeal are set out in paras. 7 to 19 of the Appeal Decision as follows:

"Main Issue

7. The main issue is whether or not approval should be given in respect of the siting and appearance of the development, having regard to the character and appearance of the area, the setting of nearby heritage assets and the effect upon highway and pedestrian safety.

Reasons

8. The proposed free standing telephone kiosk would have a broadly rectangular form with dimensions of 1.32m by 1.11m and a height of 2.45m. The telephone kiosk would be constructed with a powder coated metal frame and laminated glass. It would have an open side to allow wheelchair access and solar panels would be included at roof level.

9. The application site forms part of the pavement on the northern side of Chalk Farm Road. It is located close to the Regents Canal Conservation Area and Roundhouse Theatre, which has been identified as a Grade II* listed building.

10. The immediate area where the kiosk is proposed, is clear from other street furniture, but the proposal would be seen in the context of nearby cycle stands, bins and lampposts. It would however be sufficiently separate from other street furniture to not give rise to a cluttered appearance, albeit its larger scale to these other items and being somewhat larger than a standard telephone kiosk.

11. I recognise that the proposal would have a metal frame and large elements of glazing, but on the northern side of Chalk Farm Road, in the immediate surroundings to the appeal site, is a modern mixed-use building. The kiosk's modern and functional appearance would not appear as a substantial physical obstacle in this context. Although in my view, the appeal site does form part of the setting of the Conservation Area and listed building, the effect on their setting is lessened by the presence of, and the separation with the road. I

recognise the limited height and the transient nature of traffic, and also note the reference the Council makes to the surrounding fascia signs being flush to the building's façade. However, I was able to see the Grade II* listed Roundhouse Theatre on my site visit, and from my observations, the proposal would not be prominent in long views of the listed building. I do not therefore consider that the proposed kiosk would be unduly harmful to the setting of the listed building or the nearby Conservation Area. Its siting and appearance would also not detract from the character and appearance of the area.

12. Concern has been raised in relation to the siting of the kiosk adjacent to an existing telephone box giving rise to safety issues, but I was not able to see any such existing telephone box that the Council make reference to on my site visit. The proposed kiosk, which would be largely glazed, would not unacceptably reduce sight lines (including of CCTV) or casual surveillance, as has been stated. I do not therefore consider that the siting and appearance of the kiosk would be harmful in terms of crime and anti-social behaviour.

13. The Council have identified concerns in relation to the wheelchair accessibility of the proposal. They state that the appellant has referenced an older version of the British Standards, and that the kiosk would fail to comply with the current British Standard (BS) 8300, which includes guidance on payphones outside of buildings. I have not been provided with the full details of BS8300 but it has been stated that the proposed telephone controls would not be within the correct height range from the floor (0.75m-1m). Whilst this may be the case, I consider that the height of the telephone controls at 1.5m, would still be within the reach of a wheelchair user. Furthermore, it is not disputed that that the open design of the kiosk would allow for wheelchair access. As such, overall, despite the shortcomings identified, I consider that the siting and appearance of the proposal would not be unduly harmful in this respect.

14. The proposed kiosk would result in the loss of 1.8m of footway, but the Council have not set out how the clear footway would be reduced below the minimum threshold. The footway is according to the Council, around 5.3m wide, discounting the area used for parking. Following the proposal, there would remain around 3.5m. Taking into account the higher pedestrian flows that the Council refer to, the Council's Streetscape Design Manual sets out a minimum of 3m (in busy pedestrian streets), with the Transport for London's Pedestrian Comfort Guidance For London, setting out a 5.3m overall footway width (in high flow locations). I was able to visit the appeal site in the lunchtime busy period referred to by the Council, and was able to see some pedestrian movements where the appeal site is located. However, due to the presence of other street furniture and trees, which the proposal would broadly align with, most pedestrians used those sections of the footway closer to the adjacent buildings. Whilst there may not have been a Pedestrian Comfort Level Assessment undertaken, and it may be the case that pedestrian volumes increase in the future, I consider the footway would remain sufficiently wide to not impede pedestrian movements.

15. The appeal site would be adjacent to parking bays that are partly sited on the footway. The proposal would have dimensions that are greater than other street furniture, but from the information available before me, there would be sufficient room to not impede people getting in and out of their vehicles. The longer parking bays also allow for the appropriate parking of vehicles. There is also no substantive evidence before me that the proposed kiosk would interfere with any signals, cause a visual obstruction or unduly affect visibility splays.

16. The Council have made reference to the proposed Chalk Farm and Primrose Hill scheme which are intended to create a high quality place and improve

pedestrian comfort. They also refer to an option to create a cycle track. I have not been provided with any details of these schemes or their current status. Given the width of the pavement, I have no reason to consider that the siting of the proposal would be unacceptable in this regard.

17. Reference has been made to appeal decisions on other sites but I am not aware of the full circumstances and I can confirm that I have considered this appeal on its own merits.

18. Concerns have been expressed regarding the proposed kiosk being used for advertisements. The construction of a kiosk and the display of advertisements are distinct and separate matters requiring different applications. The appeal relates to the construction of a telephone kiosk only and not any advertisement consent that may otherwise be required. I have determined the appeal on that basis and, therefore, the matter of advertisements has not influenced this decision.

19. I, therefore, conclude that the proposed kiosk with respect to its siting and appearance would not harm the character and appearance of the area or highway and pedestrian safety, which justifies the grant of prior approval.”

2.7. It is within this context that the installation, and the proposed advertising elements, of the Pulse Smart Hub at this location should be allowed, given the Inspector's conclusions that a bulkier telephone kiosk at the same location **would not**:

- Harm the character and appearance of the area including the Reents Canal Conservation Area or the Grade II* listed Roundhouse Theatre
- Unacceptably add to the clutter of street furniture and signage.
- Impede pedestrian flows or necessitate the use of the road as an alternative.
- Cause an undue obstruction on the public highway and would not compromise the safety of pedestrians, cyclists, and drivers.

Appeal 2A and 2B: Pavement Outside The Holborn Hotel, on the North Side of Theobald's Road at the Junction with Old Gloucester Street

2.8. The site is depicted on the Site Location Plan and Existing Site Photographs and would be located within a wide footway that is outside The Holborn Hotel which, itself, is within a commercial area.

2.9. Details of a previous Prior Approval proposal for the installation of a telephone kiosk at the same location and granted on appeal in 2018 are set out in the Planning History section (see below). This includes the Inspector's evaluation of the proposals in the context of the site and

surroundings. It is submitted that the physical environment has not materially changed since the 2018 decision.

Site Designations

- 2.10. The site is adjacent to the Kingsway Conservation Area and there are Listed Buildings around the junction, including St Martins College of Arts and Design, Victoria House, the Kingsway Tram Subway and Avenue Chambers. The installation process will not require any substantive below ground excavation and as such the proposals will not have a deleterious impact under the street. The remaining designations are characteristic of the site's location within a central, commercial location where street furniture and advertisement content are widely seen.

Planning History

- 2.11. Prior approval was granted at the same location as the current proposals on the 6 August 2018 (APP/X5210/W/18/3195372) following the council's decision to refuse planning permission for the installation of a public telephone box. A copy of this appeal decision is attached at **Appendix Bii of the Planning and Heritage Statement.**
- 2.12. The phone box has not been installed, because it is massively outdated technology and no longer serves the original purpose for the community, and the Prior Approval has now expired. Nevertheless, the appeal decision is highly pertinent for the reasons explained below.
- 2.13. The Inspector's reasons for allowing the appeal are set out in paras. paras. 8 to 26 of the Appeal Decision as follows:

"Main Issues

8. The main issues are considered to be whether or not approval should be given in respect of the siting and appearance of the development, with particular reference to (a) the character and appearance of the locality and (b) and the convenience of highway users.

Reasons

Character and Appearance

9. The appeal site is located within a wide footway that is outside The Holborn Hotel which, itself, is within a commercial area. To the west is a busy traffic light controlled junction. Around the junction are numerous items of street furniture, including bins, telephone kiosks of varying designs, traffic cameras, an information pedestal and various signs.

10. The pavement where the kiosk is proposed is wide and spacious in character and. This appeal scheme would introduce a freestanding kiosk into the streetscene adjacent to various columns, street railings and a tree. By reason of siting, the appeal site can reasonable be claimed to be within the street furniture zone along this part of the footway. No details of any tables or chairs being temporarily placed outside the hotel have been provided and none were observed during the mid-morning site visit.

11. The appeal scheme would not project into the more open character of the pavement adjacent to the hotel and, as such, it would not be a conspicuous or unduly prominent addition to the streetscene. Instead, the appearance of the proposed kiosk would be assimilated into the pattern and arrangement of existing street furniture. The appeal scheme would not, therefore, either result in an unacceptable level of street clutter or be an incongruous addition to the streetscene along this part of Theobald's Road.

12. The site is adjacent to the Kingsway Conservation Area and there are Listed Buildings around the junction, including St Martins College of Arts and Design, Victoria House, the Kingsway Tram Subway and Avenue Chambers. Special regard is to be paid to the desirability of preserving Listed Buildings and their settings. The Framework also states that when considering the impact of a proposal on the significance of designated heritage assets, great weight should be given to the asset's conservation and that significance can be harmed or lost through development within their setting.

13. By reason of the separation distance between the proposed kiosk and the Listed Buildings, together with the intervening roads and junction, the appeal scheme would not adversely affect the setting of these heritage assets. Views towards the Listed Buildings across the existing collection of street furniture associated with the traffic light junction would remain when walking along the footway from east to west. The glazed nature of the proposed kiosk would assist with maintaining views. For similar reasons, the setting of the Conservation Area would be preserved.

14. Accordingly, it is concluded that the siting of the kiosk would not detract unacceptably from the character and appearance of the locality. Further, it would not conflict with LP Policies D1, D2 and T1 insofar as that they are a material consideration to this appeal for prior approval. LP Policy D1 is concerned with high quality design in development which respects local context and character and also integrates well with the surrounding streets. LP Policy T1 refers to improvements to the pedestrian environment by supporting high quality public

realm improvement works and this is echoed in the SDM, CPG and SG which seek to minimise unnecessary street clutter.

Convenience of Highway Users

15. Although the pavement as measured is not as wide as initially identified by the appellant, there would remain a clear pavement between the proposed kiosk and the adjacent hotel frontage of some 5 metres. This width would be sufficient to ensure the comfort of pedestrians along this well used pavement and, as such, it would not conflict with the guidance contained in the SG, CPG and PCG. Further, because of its siting adjacent to the columns, street railings and tree, the proposed kiosk would be related to the street furniture zone which exists along this part of Theobald's Road rather than project into the pavement.

16. No temporary chairs or tables were observed to be placed outside the hotel. However, the narrowing of the pavement caused by the combination of the erection of the proposed kiosk and any tables and chairs would be similar to the width available between the street tree and the external seating area. The street tree already interrupts pedestrians who may seek to walk adjacent to the railings. Accordingly, this current interruption to the flow of pedestrians would not be materially changed by the siting of the appeal scheme.

17. Concern has been expressed about the potential for the proposed kiosk to obstruct visibility to the right for vehicles existing Old Gloucester Street. However, because of the proposed kiosk's siting away from the edge of the carriageway, the railing and other street furniture, there would be no material reduction in the current visibility splay for highway users. Further, the number of vehicles existing Old Gloucester Street is limited to those accessing the service area of the hotel and the car park of an adjacent office building.

18. On this issue, it is concluded that the siting of the kiosk would not unacceptably harm the convenience of other highway users. Further, it would not conflict with LP Policies T1 and T6 insofar as that they are a material consideration to this appeal for prior approval. These policies seek to provide high quality footpaths and pavements that are wide enough for the number of people expected to use them and promoting fair access for all. In respect of highway safety matters, no specific conflict has been identified with LP Policies G1 and A1 which are concerned with the delivery and location of growth in Camden and protecting the quality of life of occupiers and neighbours.

Other Matters

19. The Framework deals with supporting high quality communications infrastructure, including applications for prior approval, and requires that local planning authorities must determine applications on planning grounds. As the principle of development is established by the GPDO, some of the considerations raised by other parties, such as need for the proposed kiosk, are not relevant matters.

20. The appellant has referred to the principle of the development being supported by the Framework which encourages the development of telecommunication infrastructure to support sustainable economic growth. Furthermore, and subject to the location of the equipment, the kiosk would be accessible to those with impaired mobility and include solar technology as a power source.

21. The Council has referred to the number of kiosks within the surrounding area, including on the opposite side of the road and within the public realm to the east. However, these other kiosks are in locations with a different character and surrounding context. Both parties have provided appeal decisions but, in the absence of their detailed planning circumstances, I cannot be certain that these other schemes are directly comparable to the proposed kiosk. This appeal has been determined based upon the planning circumstances of the proposed kiosk.

22. The general concerns of the Police and others have been carefully noted but there is no specific evidence or reason to consider that the proposed kiosk's presence would encourage or increase crime or anti-social behaviour when taking into account that the design of the kiosk is not fully enclosed. Further, no details of CCTV cameras which might be obstructed have been provided and it was observed that the view towards the appeal site of the nearest traffic camera was already affected by the street trees. I am also mindful that there is nearby street lighting and natural surveillance of the appeal site, including from near-by cafés. This is a neutral matter in the determination of this appeal.

23. Although an amended drawing has been provided by the appellant, the Council has identified that the internal layout of the proposed kiosk does not accord with the updated version of BS8300 – Design of Buildings and their approaches to meeting the needs of disabled people. However, there are no reasons for me to consider that the appellant would not fully accord the provisions of BS8300. The internal change required to the location of the equipment would not materially alter the assessment made concerning the siting

and appearance of the appeal scheme. This is a neutral matter in the determination of this appeal.

24. Concerns have been expressed regarding the prospect of outside panels of the payphone kiosk being used for advertisements. The erection of a kiosk and the display of advertisements are distinct and separate matters requiring different applications. This appeal relates to the construction of a kiosk only and not any advertisement consent that may otherwise be required. I have determined the appeal on that basis and, therefore, the matter of advertisements has not influenced my conclusion.

Conditions

25. The grant of prior approval for the payphone kiosk is subject to the standard conditions set out in the GPDO, including an implementation timescale, removal of the structure/apparatus when it is no longer required for electronic telecommunications purposes and accordance with the details submitted with the application. No further conditions are necessary to make the proposal acceptable.

Conclusion

26. For the reasons given above and having regard to all matters raised, it is concluded that the appeal should be allowed and prior approval granted subject to the standard conditions set out in Schedule 2, Part 16, Class A of the GPDO.”

2.14. It is within this context that the installation, and the proposed advertising elements, of the Pulse Smart Hub at this location should be allowed, given the Inspector's conclusions that a bulkier telephone kiosk at the same location **would not**:

- Harm the character and appearance of the area including the setting of the Kingsway Conservation Area and the Listed Buildings including St Martins College of Arts and Design, Victoria House, the Kingsway Tram Subway and Avenue Chambers
- Unacceptably add to the clutter of street furniture and signage.
- Impede pedestrian flows or necessitate the use of the road as an alternative.
- Cause an undue obstruction on the public highway and would not compromise the safety of pedestrians, cyclists, and drivers.

Appeal 3A and 3B: Pavement outside 133 Clerkenwell Road

- 2.15. The site is depicted on the Site Location Plan and Existing Site Photographs and would be sited on the pavement on the south side of the busy Clerkenwell Road close to its intersection with Grays Inn Road and Theobalds Road. The kiosk would be positioned close to the pavement edge in front of No 133.
- 2.16. Details of a previous Prior Approval proposal for the installation of a telephone kiosk at the same location and granted on appeal in 2018 are set out in the Planning History section (see below). This includes the Inspector's evaluation of the proposals in the context of the site and surroundings. It is submitted that the physical environment has not materially changed since the 2018 decision.

Site Designations

- 2.17. The Hatton Garden Conservation Area covers approximately 20 hectares west of Farringdon Road. The installation process will not require any substantive below ground excavation and as such the proposals will not have a deleterious impact under the street. The remaining designations are characteristic of the site's location within a central, commercial location where street furniture and advertisement content are widely seen.

Planning History

- 2.18. Prior approval was granted at the same location as the current proposals on the 12 September 2018 (APP/X5210/W/18/3195374) following the council's decision to refuse planning permission for the installation of a public telephone box. It was determined at the same time as 1 other appeals (appeal B) which were all dismissed. A copy of this appeal decision is attached at **Appendix Biii of the Planning and Heritage Statement**.
- 2.19. The phone box has not been installed, because it is massively outdated technology and no longer serves the original purpose for the community, and the Prior Approval has now expired. Nevertheless, the appeal decision is highly pertinent for the reasons explained below.
- 2.20. The Inspector's reasons for allowing the appeal are set out in paras. 5 to 17 of the Appeal Decision as follows:

"Main Issue

5. The main issue is whether or not approval should be given in respect of the siting and appearance of the proposed kiosk, with particular regard to whether it would preserve or enhance the character or appearance of the Hatton Garden Conservation Area, the effect on highway and pedestrian safety, and the effect on crime and anti-social behaviour.

Reasons

6. The location of the proposed kiosk is the pavement on the south side of the busy Clerkenwell Road close to its intersection with Grays Inn Road and Theobalds Road. The kiosk would be positioned close to the pavement edge in front of No 133, which has a retail frontage at ground floor, with a number of street trees immediately in front of this and neighbouring shops.

7. The Hatton Garden Conservation Area covers approximately 20 hectares west of Farringdon Road. Its historic character derives largely from its industrial, commercial and residential buildings of the late nineteenth to mid twentieth centuries, combined with an intricate street pattern. The area around this part of Clerkenwell Road is characterised by large multi-storied buildings with commercial and retail uses at street level and attractive Victorian facades above this, apparently in residential and office use.

8. There is a limited amount of street furniture along either side of this stretch of Clerkenwell Road. Three cycle stands are positioned parallel to the road adjacent to the location of the proposed kiosk, with a free-standing wayfinding column just beyond the stands. There are no other telephone kiosks visible within the immediately surrounding area.

9. While the kiosk would have a larger footprint than the adjacent stands and sign, as a piece of street furniture its position and scale would also be seen in the context of existing larger lighting columns and traffic lights. Its relatively slim frame and laminated glass panels means that it would not be a bulky or otherwise obtrusive visual addition in this location; and due to the limited existing street furniture it would not result in cumulative visual clutter.

10. The positive character and appearance of this part of the conservation area derives from the original upper storeys and historic facades of the large blocks either side of the road. The limited scale and modern appearance of the kiosk would be viewed not against this background but principally against the busy commercial street level with its retail and other signage, street furniture and high levels of vehicular and pedestrian traffic. As such, it would reflect and preserve, rather than harm, the character and appearance of the area directly related to its siting.

11. Turning to the effect on highway and pedestrian safety, I acknowledge that this is a heavily-used pedestrian route as I observed during the inspection. The kiosk would be positioned in line with the adjacent cycle stands and wayfinding column but due to its size, it would protrude further onto the pavement than

these existing features. The Council indicates that detailed drawings were not provided to enable a full appreciation of the effects of the kiosk's position. However, the appeal submissions do include an illustrative diagram of the position of the kiosk and the remaining area of pavement. This information, all the other submitted material and the site inspection enabled me to consider the effect of the proposal on its merits.

12. The main area of pedestrian usage is between the street trees and pavement edge. Due to its position slightly forward of the other trees, the tree opposite the wayfinding column results in a narrower gap than would be the case between the kiosk and the nearest opposite tree. As such, the position of the kiosk would not narrow this section of pavement more than is already the case with regard to the position of existing street furniture and trees. Moreover, the width of the remaining pavement would be no narrower than that further down Clerkenwell Road, eastwards beyond No 131, which carries similar pedestrian volumes.

13. The main parties and Transport for London (TfL) refer to the TfL Pedestrian Comfort Guidance, which provides recommended footway widths for different levels of pedestrian flow. In areas of high flow such as this the unobstructed pavement width should be no less than 3.3 metres. I observed that while the main desire line is between the trees and pavement, pedestrians do also use the area between the trees and shop fronts, providing additional capacity in an area of high usage. I consider, therefore, that the total width available with the kiosk in position would meet this recommended requirement.

14. Taking these findings as a whole, I conclude that the existence of the kiosk would not materially change the current situation to the extent that it would cause unacceptable harm to highway and pedestrian safety. While I note that there are aspirations for a scheme of public realm improvements within the site's vicinity, I am unaware of further details that would have a direct bearing on the proposal before me and, therefore, this matter cannot have a determinative effect on the appeal's outcome.

15. With regard to the potential for crime and anti-social behaviour associated with the kiosk, this is a busy commercial location, with a number of night-time uses nearby and which is open to surveillance. Moreover, the open design of the kiosk and use of glass panels means that users of the kiosk would remain largely visible from the surrounding public realm. Other kiosks within the wider surrounding area do not have a sufficient direct relationship with the proposed location that any cumulative effect would lead to greater risk of crime or anti-social behaviour occurring. While there may be examples of such behaviour

related to other kiosks in the wider area, for the reasons given this is insufficient basis to assume that it will also occur in this specific location.

16.The Council refers to the existence of other telephone kiosks along Grays Inn Road and therefore questions whether the current proposal is required. However, as noted above, the principle of development is established by the GPDO and therefore considerations such as need for the kiosk are not a relevant matter.

17.Accordingly, for all the above reasons, I conclude that the siting and appearance of the proposed kiosk would preserve the character and appearance of the Hatton Garden Conservation Area and would not have an unacceptably harmful effect on highway and pedestrian safety, or on crime and anti-social behaviour. Therefore, the appeal should succeed.

2.21. It is within this context that the installation, and the proposed advertising elements, of the Pulse Smart Hub at this location should be allowed, given the Inspector's conclusions that a bulkier telephone kiosk at the same location **would not**:

- Harm the character and appearance of the area including the setting of the Hatton Garden Conservation Area.
- Unacceptably add to the clutter of street furniture and signage.
- Impede pedestrian flows or necessitate the use of the road as an alternative.
- Cause an undue obstruction on the public highway and would not compromise the safety of pedestrians, cyclists, and drivers.

Appeal 4A and 4B: Land adjacent to 85 Clerkenwell Road

2.22. The site is depicted on the Site Location Plan and Existing Site Photographs and would be located within a section of pavement on the northern side of George Street. on the south side of Clerkenwell Road, between its junctions with Leather Lane and Hatton Garden. The hub would be positioned in front of No 85, a six-storey building in commercial use.

2.23. Details of a previous Prior Approval proposal for the installation of a telephone kiosk at the same location and granted on appeal in 2018 are set out in the Planning History section (see below). This includes the Inspector's evaluation of the proposals in the context of the site and surroundings. It is submitted that the physical environment has not materially changed since the 2018 decision.

Site Designations

- 2.24. The appeal site is within the Hatton Garden Conservation Area, which covers approximately 20 hectares west of Farringdon Road. The installation process will not require any substantive below ground excavation and as such the proposals will not have a deleterious impact under the street. The remaining designations are characteristic of the site's location within a central, commercial location where street furniture and advertisement content are widely seen.

Planning History

- 2.25. Prior approval was granted at the same location as the current proposals on the 12 September 2018 (APP/X5210/W/17/3180694) following the council's decision to refuse planning permission for the installation of a public telephone box. A copy of this appeal decision is attached at **Appendix Biv. of the Planning and Heritage Statement**.
- 2.26. The phone box has not been installed, because it is massively outdated technology and no longer serves the original purpose for the community, and the Prior Approval has now expired. Nevertheless, the appeal decision is highly pertinent for the reasons explained below.
- 2.27. The Inspector's reasons for allowing the appeal are set out in paras. paras. 5 to 16 of the Appeal Decision as follows:

Main Issue

5. The main issue is whether or not approval should be given in respect of the siting and appearance of the proposed kiosk, with particular regard to whether it would preserve or enhance the character or appearance of the Hatton Garden Conservation Area, the effect on highway and pedestrian safety, and the effect on crime and anti-social behaviour.

Reasons

6. The location of the proposed kiosk is the pavement on the south side of Clerkenwell Road, between its junctions with Leather Lane and Hatton Garden. The kiosk would be positioned in front of No 85, a six storey building apparently in commercial use.

7. The appeal site is within the Hatton Garden Conservation Area, which covers approximately 20 hectares west of Farringdon Road. Its historic character derives largely from its industrial, commercial and residential buildings of the late nineteenth to mid twentieth centuries, combined with an intricate street pattern. This part of the area generally reflects these broader characteristics, but there is a diverse mix of original and more modern buildings including above the

commercial and retail uses at street level. No 85 is an older building, which makes a positive contribution to this part of the conservation area.

8. The kiosk would be positioned close to the pavement at a point where this widens considerably in front of No 85, moving westwards from Hatton Garden towards Leather Lane. There is limited existing street furniture in the immediately surrounding area, with cycle stands immediately to the west of the appeal location and lighting columns to the east. I acknowledge also that a Legible London sign nearby has been removed but will be replaced soon. The most significant feature in this regard is relatively large public toilets adjacent to the Leather Lane junction.

9. The kiosk would be highly visible in this open setting, but its relatively slim frame and laminated glass panels means that it would not be a bulky or otherwise visually incongruous addition. Moreover, due to the limited existing street furniture it would not result in cumulative visual clutter. From most surrounding views its modest scale would be framed by the substantive multi-storey buildings and its appearance would be appreciated against the busy commercial context at street level. From views to the north on the opposite side of Clerkenwell Road, the kiosk would be seen against the attractive, more muted backdrop of No 85. However, it would also be seen in the context of the much larger and bulkier public toilets nearby. As such, its siting and appearance seen against the scale and appearance of existing street features would not lead to such a material change that it would not preserve the character and appearance of this part of the conservation area.

10. With regard to the effect on highway and pedestrian safety, I acknowledge that this is a heavily-used pedestrian route as I observed during the inspection. The kiosk would be positioned close to the pavement edge and in line with the adjacent cycle stands, but it would protrude further onto the pavement than these existing features. The Council indicates that detailed drawings were not provided to enable a full appreciation of the effects of the kiosk's position. However, the appeal submissions do include an illustrative diagram of the position of the kiosk and the remaining area of pavement. This information, all the other submitted material and the site inspection enabled me to consider the effect of the proposal on its merits.

11. The main parties and Transport for London (TfL) refer to the TfL Pedestrian Comfort Guidance, which provides recommended footway widths for different levels of pedestrian flow. In areas of high flow such as this the unobstructed pavement width should be no less than 3.3 metres. Even allowing for the forecourt area in front of No 85, with the kiosk in place the extent of remaining

pavement would exceed this recommended width. This would allow for eastward and westward travelling pedestrians to pass each other utilising what would remain a broad extent of pavement area.

12.Those pedestrians using the desire line between the toilet block and road would not be caused significantly to divert their path because of the limited protrusion of the kiosk beyond the cycle stands. I was able to observe these effects at the inspection during a period of high footfall and I am satisfied that no harmful effects would result from the kiosk's siting in this location. I was also able to use the nearby pedestrian crossing close to the kiosk's location. Due to the straight stretch of road, set back of the kiosk and overall good visibility, the kiosk's position would not compromise the safety of pedestrians using this crossing. For similar reasons, its siting would not adversely affect highway safety with regard to driver visibility from the Hatton Garden and Leather Lane junctions.

13.I note that there are aspirations for a scheme of public realm improvements within the site's vicinity and specific reference is made to the Leather Lane/Farringdon scheme. However, I am unaware of further details or firm proposals that would have a direct bearing on the proposal before me, which in any case, I have found would not be unacceptably harmful with regard to its siting and appearance. This matter cannot, therefore, have a determinative effect on the appeal's outcome.

14.With regard to the potential for crime and anti-social behaviour associated with the kiosk, this is a busy commercial location with a wide pavement to the road frontage and a number of night-time uses nearby and residential occupancy above street level. Consequently, it is an area of public realm that is well-used and open to surveillance. Moreover, the open design of the kiosk and use of glass panels means that users of the kiosk would remain largely visible from the surrounding public realm. I am unaware of other kiosks within the vicinity that would have a bearing on this matter and I have no other reasons or evidence to suggest that the siting of the kiosk in this location will realise the concerns that have been raised. Similarly, examples of kiosks in other locations that have been subject to such criminal or anti-social behaviour are not a sufficient reason to find against the current proposal.

15.The Council also indicates that the kiosk would not be properly accessible to wheelchair users. However, the provisions of the GPDO require a local planning authority to assess the proposed development solely on the basis of its siting and appearance. As this matter, including compliance with any British Standards relating to accessibility, does not fall within the specific scope of these issues

relating to prior approval, I cannot take account of it as having a direct bearing on the appeal's outcome. In reaching this view I have had full regard to the Public Sector Equality Duty.

16. Accordingly, for all the above reasons, I conclude that the siting and appearance of the proposed kiosk would preserve the character and appearance of the Hatton Garden Conservation Area and would not have an unacceptably harmful effect on highway and pedestrian safety, or on crime and anti-social behaviour. Therefore, the appeal should succeed."

2.28. It is within this context that the installation, and the proposed advertising elements, of the Pulse Smart Hub at this location should be allowed, given the Inspector's conclusions that a bulkier telephone kiosk at the same location **would not**:

- Harm the character and appearance of the area including the setting of the Hatton Garden Conservation Area
- Unacceptably add to the clutter of street furniture and signage.
- Impede pedestrian flows or necessitate the use of the road as an alternative.
- Cause an undue obstruction on the public highway and would not compromise the safety of pedestrians, cyclists, and drivers.

Appeal 5A and 5B: Pavement outside of 27 Chalk Farm Road

2.29. The application site is depicted on the Site Location Plan and Existing Site Photographs and would be sited on the pavement area outside No 27 Chalk Farm Road and opposite the entrance to Camden (Stables) Market.

2.30. Details of a previous Prior Approval proposal for the installation of a telephone kiosk at the same location and granted on appeal in 2018 are set out in the Planning History section (see below). This includes the Inspector's evaluation of the proposals in the context of the site and surroundings. It is submitted that the physical environment has not materially changed since the 2018 decision.

Site Designations

2.31. The site is located within the Regents Canal Conservation Area. The installation process will not require any substantive below ground excavation and as such the proposals will not have a deleterious impact under the street. The remaining designations are characteristic of the site's location within a central, commercial location where street furniture and advertisement content are widely seen.

Planning History

- 2.32. Prior approval was granted at the same location as the current proposals on the 19 December 2018 ('Appeal F' under appeal ref. APP/X5210/W/17/3202786) following the council's decision to refuse planning permission for the installation of a public telephone box. It was determined at the same time as the successful appeal at Location 6 (Appeal K) (see below) along with 10 other proposals. A copy of this appeal decision is attached at Appendix Bv. Prior approval was granted at the same location as the current proposals on the 12 September 2018 (APP/X5210/W/17/3180694) following the council's decision to refuse planning permission for the installation of a public telephone box. A copy of this appeal decision is attached at **Appendix Biv. of the Planning and Heritage Statement.**
- 2.33. The phone box has not been installed, because it is massively outdated technology and no longer serves the original purpose for the community, and the Prior Approval has now expired. Nevertheless, the appeal decision is highly pertinent for the reasons explained below.
- 2.34. The Inspector's reasons for allowing the appeal are set out in paras. 19 and paras. 49 to 51 of the Appeal Decision as follows:

"Main Issues

19. The Council's reasons for refusal are almost identical in terms of the proposal subject to each appeal. I therefore consider that the main issue for each of the Appeals A - L is whether or not approval should be given in respect of the siting and appearance of the development, with particular regard, as appropriate, to whether it would preserve or enhance the character or appearance of the relevant Conservation Area; its effect on Listed Buildings; and to include, where relevant, the effect upon highway and pedestrian safety.

.....

Appeal F

49. The proposed kiosk would be sited on the pavement area outside No 27 Chalk Farm Road and opposite the entrance to Camden (Stables) Market. It would be positioned between two small trees towards the front of the pavement. There is a bicycle stand to the north of one tree and a bus shelter (apparently disused) a few metres to the south. Chalk Farm Road is a busy road and bus route. The Market lies within the Regents Canal Conservation Area (RCCA), the boundary of which is on the opposite side of the road from the appeal site. There are listed buildings also on the opposite side of the road, but in this case, I do not consider that the proposed kiosk would form part of, or have any impact on, their setting, being across a busy main road and partly screened by trees. For similar reasons,

I do not consider that the kiosk would have any harmful impact on the character or appearance of the RCCA.

50. Whilst the road is busy in terms of traffic usage, it would not appear to be particularly heavily used by pedestrians – most of the pedestrian activity being concentrated on the opposite side of the road near the market entrance. There is very little in the way of street furniture in the immediate vicinity of the proposed kiosk, and it would appear to be sited between the two pavement trees. In this position, it would not affect the likely pedestrian desire lines along this part of the road, which appear to be more heavily influenced by the position of the bus shelter and the crossing point for pedestrians at the junction of Chalk Farm Road and Hartland Road, both of which effectively direct pedestrians away from the kerb into the middle of the pavement.

51. In the light of the above, I conclude that the siting and appearance of the proposed kiosk could not be said to harm the character or appearance of the nearby CA, or to the setting of the listed buildings on the opposite side of the road. Moreover, on the basis of the information available to me, it appears that the kiosk would not be likely to result in any harm to the free and safe movement of pedestrians along this section of pavement. Accordingly, I allow the appeal, subject to the telephone within the kiosk being positioned at a height of between 0.75 metres and 1 metre above ground level, in the interests of ensuring maximum accessibility for disabled persons. I have referred to this condition in the section on decisions above.”

2.35. It is within this context that the installation, and the proposed advertising elements, of the Pulse Smart Hub at this location should be allowed, given the Inspector’s conclusions that a bulkier telephone kiosk at the same location **would not**:

- Harm the character and appearance of the area including the siting of the Regents Canal Conservation Area
- Unacceptably add to the clutter of street furniture and signage.
- Impede pedestrian flows or necessitate the use of the road as an alternative.
- Cause an undue obstruction on the public highway and would not compromise the safety of pedestrians, cyclists, and drivers.

Appeal 6A and 6B: Pavement opposite 152 West End Lane, (corner of Iverson Road)

2.36. The site is depicted on the Site Location Plan and Existing Site Photographs and would be sited at the rear of the pavement on West End Lane, close to its junction with Iverson Road.

- 2.37. Details of a previous Prior Approval proposal for the installation of a telephone kiosk at the same location and granted on appeal in 2018 are set out in the Planning History section (see below). This includes the Inspector's evaluation of the proposals in the context of the site and surroundings. It is submitted that the physical environment has not materially changed since the 2018 decision.

Site Designations

- 2.38. There are no designated or non-designated heritage assets near the site. The installation process will not require any substantive below ground excavation and as such the proposals will not have a deleterious impact under the street. The remaining designations are characteristic of the site's location within a central, commercial location where street furniture and advertisement content are widely seen.

Planning History

- 2.39. Prior approval was granted at the same location as the current proposals on the 19 December 2018 ('Appeal K' under appeal ref. APP/X5210/W/17/3202789) following the council's decision to refuse planning permission for the installation of a public telephone box. It was determined at the same time as the successful appeal at Location 5 (Appeal F) (see above) along with 10 other proposals. A copy of this appeal decision is attached at **Appendix Bv of the Planning and Heritage Statement**. Prior approval was granted at the same location as the current proposals on the 19 December 2018 ('Appeal F' under appeal ref. APP/X5210/W/17/3202786) following the council's decision to refuse planning permission for the installation of a public telephone box. It was determined at the same time as the successful appeal at Location 6 (Appeal K) (see below) along with 10 other proposals. A copy of this appeal decision is attached at **Appendix Bv of the Planning and Heritage Statement**. Prior approval was granted at the same location as the current proposals on the 12 September 2018 (APP/X5210/W/17/3180694) following the council's decision to refuse planning permission for the installation of a public telephone box. A copy of this appeal decision is attached at **Appendix Biv of the Planning and Heritage Statement**.
- 2.40. The phone box has not been installed, because it is massively outdated technology and no longer serves the original purpose for the community, and the Prior Approval has now expired. Nevertheless, the appeal decision is highly pertinent for the reasons explained below.
- 2.41. The Inspector's reasons for allowing the appeal are set out in paras. 19 and paras. 75 to 79 of the Appeal Decision as follows:

"Main Issues

19. The Council's reasons for refusal are almost identical in terms of the proposal subject to each appeal. I therefore consider that the main issue for each of the

Appeals A - L is whether or not approval should be given in respect of the siting and appearance of the development, with particular regard, as appropriate, to whether it would preserve or enhance the character or appearance of the relevant Conservation Area; its effect on Listed Buildings; and to include, where relevant, the effect upon highway and pedestrian safety.

.....

The proposed kiosk would be sited at the rear of the pavement on West End Lane, close to its junction with Iverson Road. The pavement here is very wide

and is relatively free of street furniture. There is a slimline display board in close proximity to the site of the proposed kiosk and there are equipment cabinets backing onto a 2.5 metre high fence that bounds the Thameslink railway cutting to the north. The pavement on the western side of West End Lane is very narrow as the road bridges the railway, and then widens out considerably at the end of the bridge. Pedestrian flows are heavy but the effect of the existence of the narrow pavement over the bridge appears to concentrate pedestrian flows to the front of the pavement, whereas the kiosk would be sited to the rear.

76. The area behind the pavement here comprises a tree-lined walkway from West End Lane to the West Hampstead Thameslink station. This walkway is situated to the rear of the pavement along Iverson Road and is relatively wide and open in the vicinity of the proposed kiosk. It contains a number of cycle stands near to the station itself, but the stands are some considerable distance away from the kiosk site and access would not be affected by it.

77. Pedestrian flows along this section of West End Lane focus on two pedestrian crossings to the south of the appeal site. One crossing takes pedestrians over Iverson Road and the other, which is close by, takes pedestrians across West End Lane itself. The Council contends that the kiosk would have the effect of reducing the 'clear footway' of the pavement to less than the minimum required threshold, which would reduce pedestrian comfort, resulting in overcrowding, and issues of highway safety through interfering with signals and visual obstructions. In this case, I disagree. The width of the pavement in the vicinity of the proposed kiosk site is around 7 metres, such that the kiosk, sited at the rear, would not significantly interfere with pedestrian desire lines and would leave significantly greater space than threshold required.

78. This section of West End Lane, and Iverson Road off it, is characterised by very modern buildings, and the simple modern design of the kiosk would not, in this case, adversely affect the prevailing character or appearance of the area.

79. In conclusion, I find that the proposed kiosk, by virtue of its modern simple design, would complement the modern frontages of nearby shops, and the designs of nearby buildings. It would not be harmful to the visual amenities of the area and it would not prejudice pedestrian safety. Accordingly, I allow the appeal, subject to the telephone within the kiosk being positioned at a height of between 0.75 metres and 1 metre above ground level, in the interests of ensuring maximum accessibility for disabled persons. I have referred to this condition in the section on decisions above.”

2.42. It is within this context that the installation, and the proposed advertising elements, of the Pulse Smart Hub at this location should be allowed, given the Inspector’s conclusions that a bulkier telephone kiosk at the same location **would not**:

- Harm the character and appearance of the area
- Unacceptably add to the clutter of street furniture and signage.
- Impede pedestrian flows or necessitate the use of the road as an alternative.
- Cause an undue obstruction on the public highway and would not compromise the safety of pedestrians, cyclists, and drivers.

Consistency in Decision Making

2.43. Whilst it is the case that appeal proposals introduce a digital element the context of the principle of the proposals each operating as a telecommunications apparatus is consistent with the previous Prior Approval allowed appeals, further noting the more streamlined nature of the 3 proposed hubs. In this context these decisions are highly relevant to all 3 appeal proposals for the following reasons:

- There is a well-established principle of consistency in planning decision-making so that previous appeal decisions on similar applications are material considerations.
- That like cases should be determined in the same way unless there are good reasons not to.

2.44. The reasoning behind the need for consistency in decision making was explained by Mann LJ in *North Wiltshire District Council v Secretary of State for the Environment* (1993) 65 P & CR 137 (**Appendix Ai**):

“One important reason why previous decisions are capable of being material is that like cases should be decided in a like manner so that there is consistency [...]. Consistency is self-evidently important to both developers and development control authorities. But it is also important for the purpose of securing public confidence in the operation of the development control system.”

- 2.45. Two decisions in the High Court have now emphasised the importance of consistency in planning decisions and the need for clear reasons to be given where inconsistencies arise.
- 2.46. The first case, R (Midcounties Co-Operative Limited) v Forest of Dean District Council [2017] EWHC 2050 (**Appendix Aii**), involved a challenge by the Co-op of the granting of planning permission for an Aldi store on a site outside the town centre.
- 2.47. The application was approved at a full council meeting despite the planning officer's report recommending refusal. One of the Co-Op's grounds of challenge was that the council had failed to have regard to the importance of consistency in decision-making as it had refused to grant Aldi permission for a near-identical development on the same site the previous year due to adverse retail impacts on the town centre. The Co-Op also alleged that if the council had given consideration to its earlier decision, there had been a failure to give reasons as to why it had now reached a different decision and granted planning permission.
- 2.48. Planning permission was quashed by the court after it held that the council had made clearly inconsistent decisions and had failed to provide adequate reasons for doing so. By failing to reference, let alone address, the previous refusal decision, the council had not explained how the previous concerns relating to adverse retail impacts had been addressed and allayed in the subsequent application.
- 2.49. Singh J confirmed (at paragraph 107) that:
- “Although the authorities demonstrate that a local planning authority is not bound by its earlier decision, nevertheless it is required to have regard to the importance of consistency in decision-making.”***
- 2.50. In essence, it was open to the council to reach a different decision but only if it had “grappled with the earlier reason for refusal based on retail impact and harm to the viability of the town centre”. The case emphasised that, in circumstances in which an earlier decision is a material consideration in the context of a current application, a decision-maker must provide clear reasons for any departure from their original position.
- 2.51. In the second case, Baroness Cumberlege v Secretary of State for Communities & Local Government [2017] EWHC 2057 (**Appendix Aiii**), planning permission granted by the secretary of state for a housing development was quashed after he had failed to take into account a decision taken by his own department a mere 10 weeks earlier.
- 2.52. The High Court held that the secretary of state's decision that a planning policy was out-of-date, and thus could be given less weight, was completely inconsistent with the decision of his own department, which was that the policy was up-to-date.
- 2.53. Howell QC stated (at paragraph 100) that:

“There is a public interest in securing reasonable consistency in the exercise of administrative discretions that may mean that it is unreasonable for a decision-maker not to take into account other decisions that may bear in some respect on the decision to be made. There is no exhaustive list of the matters in respect of which a previous decision may be relevant. That must inevitably depend on the circumstances.”

- 2.54. The earlier decision was not so different that it could reasonably be ignored. Any reasonable decision-maker would have considered it and decided whether they agreed with the reasoning given for regarding the policy as being up-to-date and whether the reasons were equally applicable to the present case. Again, they would also have provided reasons for any departure from the previous decision. Permission has been granted for the secretary of state to appeal the decision in the Court of Appeal.
- 2.55. These two court decisions emphasise the need for consistency in planning decision-making, especially when assessing similar developments. This is not so onerous to mean all previous decisions must be considered. However, there are instances where decisions are so similar that to fail to take them into account would be nothing but unreasonable and here, the material planning considerations associated with the Appeal proposals are in all respects identical to those associated with the Advertisement Consent for the display of adverts within the 2 integrated display units of the hub (LPA ref. AP/24/1938). Furthermore, the considerations are essentially the same in their fundamental elements to the acceptability of the previous kiosk proposals (APP/A5840/W/17/3188449).
- 2.56. It is within this context that the siting of the Pulse Smart Hub in the case of all 3 appeal proposals should be considered.

3. The Main Issues

3.1. We consider that the main issues of Appeal proposals 1A/1B through to 6A/6B in relation to the Council's respective reasons for refusal are:

- Character, appearance and amenity including relationship with designated heritage assets
- Highway safety / public safety
- In the event of harm whether the public benefits would outweigh harm

• Proposals

3.2. The appeals relate to 6 freestanding hubs, located within the Borough. As described in Section 3 of the Planning and Heritage Statement and The Design Management and Operational Statement (DMOS) the freestanding hubs consist of the same design, dimensions and appearance with the same functions.

3.3. To reaffirm the current Hub proposals, as described in Section 3 of the Planning and Heritage Statement with reference to the Design Management and Operational Statement, assume a significantly more streamlined form than the previous kiosk design approved at the same appeal site locations in 2018, as described in Section 2 of this Statement. Whilst there is a slight increase in height by 500mm from 2,450mm to 2,500mm the hub will take up significantly less space (there is a 66% reduction in footprint), and therefore will appear less cluttered in the street scene, with a very significant reduction in depth of 710mm from 1,110mm to 400mm. The width of the proposed Hub compared to the previous kiosk is also reduced by 0.20m from 1,320mm to 1,300mm.

3.4. As summarised in Section 3 of the Planning and Heritage Statement, drawing from Chapter 2 of the DMOS the advertisement element of the proposals is very modest in scale noting that all advertisements will be statically displayed. The Technical Appendices to the DMOS confirms that ambient noise and light levels will comply with the latest standards and current best practice. Judged in the context of each proposed Hub location it is concluded that the advertisement element of the proposal will not cause any additional layer of harm to the conservation area or any other designated heritage or non-designated heritage assets.

• Policy Context

3.5. The planning policy context is common to all appeal proposals, the detail of which is set out in Section 4 'Planning Policy' of the Planning and Heritage Statement with the pertinent Development Plan policies assessed being in the main consistent with those referred to in the decision notices and the officers' reports informing the Council's decisions to refuse planning permission and advertisement consent for all the appeal proposals.

3.6. In addition, the Council refer to the following policies of the Camden Local Plan (adopted 2017):

- Policy G1 (Delivery and Location of Growth)
- Policy C6 (Access for All)
- Policy T1 (Prioritising Walking, Cycling and public transport)
- Policy C5 (Safety and Security)

3.7. In all the officers' reports reference is made to the fact that the previous kiosk proposals at the appeal site locations were allowed in 2018 but in all cases the Council fails to articulate how the material planning circumstances have changed both in terms of policy and also to the physical conditions on the ground.

3.8. For all practical purposes these policies add nothing new to the assessment of the proposals against the Development Plan policies and all supplementary planning guidance set out in the Planning and Heritage Statement.

- **Assessment**

3.9. Within the context of the appeals the Appellant submits that there is no identified harm to any interest of identified importance.

3.10. This conclusion is drawn from the comprehensive suite of information accompanying the original applications for the proposed hub with reference to the previous decision of the appeal inspectors' (see Section 2) who granted permission for much more bulky telephone kiosks. The previous Inspector in determining the kiosk proposals at the same appeal sites in 2018 concluded that the kiosk proposals:

- Are comparatively modest scale and its similar glazing finishes would respect the modern character and appearance of the area, both within and outside the relevant conservation areas and would not harm the significance of the relevant conservation areas.
- Would not impede pedestrian flows
- Would not cause an undue obstruction on the public highway and would not compromise the safety of pedestrians, cyclists, and drivers.
- Would not cause harm to trees

3.11. It is submitted that the more streamlined hub (when compared to the consented bulkier kiosk) or the proposed advertising associated with the integrated digital displays will not cause harm to any matter of acknowledged importance.

3.12. Accordingly, the Appellant submits that there is **no identified harm** in each of the appeal cases to:

- Character and appearance and amenity of the respective areas including to the identified designated heritage assets having regard to:
 - Design and appearance
 - Visual amenity
- Highway safety and public safety

3.13. Also common to all 6 appeals is the Council's contention that in the absence of a legal agreement to secure a maintenance plan for the proposed Pulse Smart Hubs, all 6 proposals would be detrimental to the quality of the public realm, and detract from the character and appearance of the streetscene, contrary to policies D1 (Design), G1 (Delivery and location of growth), A1 (Managing the impact of development), C6 (Access for all) and T1 (Prioritising walking, cycling and public transport) of the London Borough of Camden Local Plan 2017.

3.14. The Appellant submits that the requirement for the Appellant to enter into a Section 106 legal agreement on any of the 6 locations for the reasons set out above fails at least two of the three legal 'tests' set out in Regulation 123 of the Community Infrastructure Regulations 2010 (as amended) insofar as such an agreement on any of the sites would not:

- Be necessary to make the development acceptable in planning terms
- Be fairly and reasonably related in scale and kind to the scale of the proposed development

3.15. The Appellant submits that there are no Development Plan policy mechanisms in place requiring legal agreements for the proposals and the Inspectorate in allowing the earlier Prior Approvals for the kiosks on the same sites was satisfied that the proposals could be implemented without legal agreements in place. There has been no material change in planning policy related to any of the proposals in the interim.

3.16. Finally, the Inspector's attention is drawn to the Ongoing Maintenance and Management (pp. 33) and Addressing Anti-social Behaviour (pp. 34) sections within Chapter 2 'The Pulse Hub Experience' of the Design, Management and Operational Statement. This demonstrates that the proposals represent well maintained street furniture with a deliverable management plan in

3.17. The Public Benefits

3.18. Having concluded that there would be no harm to the character of the respective areas including to the relevant conservation areas and also to highway safety / public safety or any other harm in each circumstance it is the Appellant's case that there is no requirement to assess the public benefits of the appeal proposals in this case.

- 3.19. That said the Appellant takes great issue with Officers own assessment of the proposals insofar as these benefits are “limited”. The Appellant went into considerable detail in the Planning submission documentation to demonstrate that **very substantial weight** should be attached to the **very significant public benefits** of the proposals.
- 3.20. For an assessment of these benefits the Inspector is directed to:
- Section 6 (paras. 6.1 to 6.33) of the Planning and Heritage Statement
 - Chapters 1 to 3 of the Design, Management and Operational Statement
- 3.21. These very substantial free public benefits of course must also be framed in the need to plan for greater investment in world-class digital infrastructure is critical to the continued social, economic and environmental success of this country which is recognised in both national, regional and local government policies and strategies as comprehensively set out in Section 4 of the Planning and Heritage Statement.

4. Conclusions

- 4.1. Section 38 (6) of the Planning & Compulsory Purchase Act 2004 requires that, when making a determination under the Planning Acts, the determination shall be made in accordance with the Development Plan unless material considerations indicate otherwise.
- 4.2. The appeal proposals will deliver very significant free public benefits to which **very substantial weight** must be afforded when framed in the need to plan for greater investment in world-class digital infrastructure and seen as critical to the continued social, economic and environmental success of this country. This is recognised in national, regional and local planning policies and strategies.
- 4.3. At the same time it has been demonstrated that none of the appeal proposals will cause harm to the character of their respective areas including to designated heritage assets, or to highway safety / public safety or any other harm. With reference to legislation, national and local planning policy the proposals are acceptable in principle.
- 4.4. Accordingly, there is no inherent conflict with:
 - The National Planning Policy and Framework (2023)
 - The Development Plan
- 4.5. The Inspector is respectfully requested to allow appeals 1A/1B through to 6A/6B and grant planning permission and advertisement consent at the appeal locations.

Appendices

Appended separately

Appendix A: Consistency in Decision Making Court Decisions

Ai: Mann LJ in North Wiltshire District Council v Secretary of State for the Environment (1993) 65 P & CR 137

Aii R (Midcounties Co-Operative Limited) v Forest of Dean District Council [2017] EWHC 2050

Aiii: Baroness Cumberlege v Secretary of State for Communities & Local Government [2017] EWHC 2057