

Appeal Decisions

Site visit made on 19 November 2017

by Daniel Hartley BA Hons MTP MBA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 6 December 2017

Appeal A Ref: APP/X5990/W/17/3182187

50-52 Buckingham Palace Road, London SW1W 0RN

The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 16 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

The appeal is made by Mr Matthew Coe (New World Payphone) against the decision of City of Westminster Council.

The application Ref 17/03754/TELECOM, dated 28 April 2017, was refused by notice dated 23 June 2017.

The development proposed is the replacement of an existing telephone kiosk with a new Kiosk.

Appeal B Ref: APP/X5990/Z/17/3182188

50-52 Buckingham Palace Road, London SW1W 0RN

The appeal is made under Regulation 17 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 against a refusal to grant express consent.

The appeal is made by Mr Matthew Coe (New World Payphone) against the decision of City of Westminster Council.

The application Ref 16/11390/ADV, dated 1 December 2016, was refused by notice dated 23 June 2017.

The advertisement proposed is the display of an illuminated digital panel measuring 1.650 m x 0.928 m as part of a new telephone kiosk.

Decision

Appeal A

1. The appeal is allowed and approval is granted under the provisions of Schedule 2, Part 16 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the siting and appearance of the replacement of an existing kiosk with a new kiosk by an electronic communications code systems operator at land at 50-52 Buckingham Palace Road, London SW1W 0RN in accordance with the terms of the application Ref 17/03754/TELECOM, dated 28 April 2017, and the plans/documents submitted with it.

Appeal B

2. The appeal is allowed and express consent is granted for the display of an illuminated digital panel measuring 1.650 m x 0.928 m as part of a new telephone kiosk at land at 50-52 Buckingham Palace Road, London SW1W 0RN in accordance with the terms of the application Ref 16/11390/ADV, dated 1 December 2016, and the plans/documents submitted with it. The consent is for five years from the date of this decision and is subject to the five standard conditions set out in the Regulations and the following additional conditions:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans and documents: Site Plan PY3093/001 and the Updated Specification Document.
 - 2) The advertisements displayed shall be a series of static images, which individually feature no moving elements, dynamic displays or motion pictures. The speed of change between one static image and the next shall be no quicker than 10 seconds.

Procedural Matters

3. In respect of Appeals A and B, I have used the description of development given on the Council's decision notices within the banner headings above as they accurately capture the scope of the proposals.
4. The proposed kiosk includes a rear digital display area in the form of an advertisement. Appeal B relates to the Council's refusal of this advertisement.
5. In respect of the prior approval appeal (Appeal A), only the construction of the kiosk should be considered and not the advertisement. In respect of Appeal B, only the advertisement part of the proposal shall be considered.

Background and Main Issues

6. Appeal A concerns a proposed telecommunications development that was refused prior approval by the Council under the terms of Schedule 2, Part 16 of the Town and Country Planning (General Permitted Development) England Order 2015 (as amended) (the GPDO). Within certain limits the GPDO grants permission for the development of telecommunications equipment subject to a prior approval procedure. The GPDO makes it clear that the relevant issues to consider when assessing applications of this type are the siting and appearance of the proposed development.
7. I have considered the Council's refusal notice and the main issue in respect of Appeal A relates to the effect of the siting and appearance of the proposed kiosk upon (i) the character or appearance of the Grosvenor Gardens Conservation Area and (ii) the setting of Marshall Foch which is a grade II listed statue and the setting of Lower Grosvenor Gardens which is a London Square.
8. In respect of Appeal B, I have considered the Council's refusal notice and the main issue is the effect of the proposal upon the amenity of the area.

Reasons

Appeal A

9. The appeal site falls within the Grosvenor Gardens Conservation Area (CA). This part of the CA is characterised by multi-storey buildings which are in mixed use and which include mainly commercial uses on the ground floor. Most of the buildings are traditional in architecture and appearance terms and there is generally a consistency of scale and height to the properties. In the main, only the ground floor commercial premises include small advertisements or large shop front windows and the upper floors of the buildings remain unaltered. The street furniture and apparatus (i.e. road signs, refuse bins, street lamps and bollards) are predominantly black and this consistency of colour adds positively to the character and appearance of the CA. Whilst the aforementioned street apparatus exists, the pavements are nonetheless wide and essentially unobstructed. The appeal site is adjacent to Lower Grosvenor Gardens which provides an attractive green and open space within an otherwise very built up area.
10. The proposed kiosk would be more modern in appearance than the double kiosk that is currently positioned on the site. It would be finished in a black colour (according to the accompanying specification) and so would assimilate well into the street-scene. It would have a more contemporary appearance in relative terms, but not so contemporary that it would be to the detriment of the overall character and appearance of the immediate locality. Furthermore, its open sided design would have the effect of minimising its scale and dominance when viewed from public roads.
11. The screen to the rear would have the effect of breaking up the rear elevation of the kiosk. The use of a screen in such an elevation (for display purposes) would not be an alien concept in what is a very urban environment. Indeed, the appellant has commented that "*WCC recently granted advertisement consent (16/07728/ADV) for a 2.37m x 1.34 m double sided digital advertising screen on the bus stop outside 34 Buckingham Palace Road*". Furthermore, the planning committee report states that the site is "*near the bus shelter outside 123-151 Buckingham Palace Road, which has two illuminated poster panels (00/05771/ADV)..There would be a relatively low level of harm to the visual amenity of the area*".
12. Taking into account the siting, scale and appearance of the kiosk, as well as the siting, scale and appearance and of the existing kiosk which would be removed, I conclude that the overall effect of the development upon the character and appearance of the CA would be a neutral one.
13. I have considered the effect of the proposal upon the setting of the grade II statue and the adjacent Lower Grosvenor Gardens. Taking into account the fact that it is proposed to replace an existing kiosk with a new kiosk which overall would be similar in siting and scale terms, I do not consider that the proposal would cause harm to the setting of the aforementioned statue or gardens. I reach this conclusion in the knowledge that the proposed kiosk would actually be less wide than the existing double kiosk.

14. In design terms, I consider that the new kiosk would appear as a more up to date and aesthetically pleasing structure when viewed in the street-scene. In this sense, it would lead to some improvement to the overall setting of the listed statue and the CA.
15. I am satisfied that the proposal would at least preserve the character and appearance of the CA and that no significant harm would be caused to the setting of the nearby listed statue or to the gardens. Therefore the proposal would accord with the design, appearance and conservation aims of Policies S25 and S28 of Westminster's City Plan 2016 (CP) and saved Policies DES1, DES7, DES9 and DES 10 and DES 12 of Westminster's Unitary Development Plan 2007 (UDP).

Appeal B

16. The proposed advertisement would be positioned on the rear of the proposed kiosk. The Council has not raised any concern in respect of public safety issues. I have no reason to depart from such a view.
17. The Council's concern relates primarily to the effect of the advertisement upon the amenity of the area, including the CA and the setting of the statue and gardens. In particular, the Council raises concerns about the location of the kiosk and its capability of displaying moving images and its method of illumination. The appellant has indicated that they would accept a planning condition which prevented dynamic/moving images.
18. The illuminated advertisement would be seen in the context of some ground floor commercial establishments and other street apparatus including a bus shelter which has consent to display illuminated advertisements. In this context, and taking into account its relatively small size, I am satisfied that the proposed advertisement would not cause harm to the amenity of the area, the character and appearance of the CA or the setting of the nearby statue or gardens. The level of illumination during the hours of darkness would be restricted to 280cd/m². This would be well below the maximum level recommended by the Institute of Lighting Professionals in their 'Professional Lighting Guide 05', The Brightness of Illuminated Advertisements which is 600cd/m² for this zone.
19. Notwithstanding the above, there are no other adverts in the immediate locality which display moving images and this design consistency adds positively to the significance of the CA. I consider that the appellant's agreement to the imposition of a planning condition which prohibits the use of moving/dynamic images is a necessary one. In the absence of this, the advertisement would be seen as a discordant visual distraction in this part of the CA where other illuminated advertisements are more static in terms of appearance. I also consider that such a condition would be necessary so that the advertisement did not harm the relatively calm character and setting of the nearby listed statue and the gardens. Furthermore, the use of moving images within the advertisement would distract motorists to the detriment of highway safety.
20. Subject to the imposition of a number of conditions, I conclude that the advertisement would have a neutral impact upon the character and appearance of the CA and would not harm the setting of the nearby listed

building. It would be acceptable in both amenity and public safety terms. I therefore conclude that the advertisement would accord with the amenity and public safety aims of Policies S25 and S28 of the CP and saved Policies DES1, DES8, DES 9, DES 10, DES 12 and paragraphs 10.108 to 10.128 of the UDP.

Other Matters

Appeals A & B

21. I have fully considered the comments made by the Council in their appeal statement. I do not have any specific evidence that the existing kiosk has led to anti-social activity. In any event, the proposed kiosk would not be enclosed in the same way as the existing kiosk: hence, this may have the effect of minimising any alleged anti-social activities. The Council state that the proposed kiosk would not be well used for telephone call purposes given the rise in mobile telephone use. Need is not a matter under consideration in terms of the prior approval criteria and, in any event, the kiosk would include additional functionality and not all people have a mobile telephone.
22. I do not doubt that the associated advertisements would generate some income for the appellant. However, income generation is not a relevant prior approval matter and nor does it relate to matters of amenity or public safety in terms of the consideration of the proposed advertisement.
23. The Council has made reference to an appeal decision (APP/X5990/Z/16/3144435) for an advertisement in Regent Street, London. I acknowledge that the Inspector concluded that the LED advertisement would be bright and at odds with the traditional surroundings. However, I am not bound by such a decision and have determined both the prior approval and advertisement appeals on their individual planning merits. The Council acknowledged that illuminated advertisements have been allowed on bus shelters but state that "*there is a difference between advertising on bus shelters and advertising on telephone kiosks. First the bus shelter provides a useful public function on the street. The telephone kiosks by and large do not*". The kiosk would perform a public function and, in any event, the degree of public benefit is not a prior approval consideration. Furthermore, I do not consider that is a relevant matter when considering amenity and public safety as part of the determination of the advertisement application.
24. I note that the proposed kiosk would include mapping functionality which may be of benefit for tourists. It would also include telephone use, public Wi-Fi capability and advertisement space including urgent messages that could potentially be displayed by the Council. Furthermore, its open sided design would enable ease of access for wheel chair users.
25. Whilst I note the above benefits, the principle of erecting the kiosk in land use principle terms is already established and agreed by virtue of the GPDO. In that sense, such benefits do not need to be considered in overall the balance. However, I do note that the SPD states that "*equipment should only occupy a place in the street if it has an unavoidable and/ or desirable function for the greater public good; otherwise it is clutter. It must be carefully placed and its details engineered to avoid obstructions and not create problems for people with mobility impairments. Consideration must be*

given to the needs of those with sensory / learning impairments and allow for effective maintenance and cleansing". I am satisfied that the proposal would suitably accord with these requirements.

26. The appellant has completed a planning obligation (dated 9 November 2017) which would secure additional tree planting and the removal of existing kiosks in the event of the proposed kiosk being allowed. I have taken the planning obligation into account as part of my consideration of siting and appearance matters and I am satisfied that it is both acceptable and necessary. I am satisfied that up to twelve months to both remove and refurbish the identified existing kiosks is an acceptable period of time.
27. I have taken into account comments made by other interested parties, but I do not consider that the proposal would constitute poor design, have an adverse impact upon the ease of walking in the locality or unacceptably add to street clutter.
28. None of the other matters raised outweigh or alter my conclusion on the main issue.

Conditions

Appeal A

29. The GPDO does not provide specific authority for me to attach conditions. However, and for the avoidance of doubt, the GPDO attaches the following standard condition to development of this nature given in Schedule 2, Part 16 paragraph A.2:
 - Development is permitted subject to the condition that (a) any apparatus or structure provided in accordance with that permission is removed from the land, building or structure on which it is situated (i) if such development was carried out in an emergency, at the expiry of the relevant period; or (ii) in any other case, as soon as reasonably practicable after it is no longer required for electronic communications purposes; and (b) such land or building is restored to its condition before the development took place, or to any other condition as may be agreed in writing between the local planning authority and the developer.

Appeal B

30. In addition to the standard five standard conditions set out in the Advertisement Regulations, and in the interests of the amenity of the area, it is necessary to also impose a planning condition relating to the proposed drawings and specification. In the interests of highway safety and amenity, a condition is necessary which prohibits moving images. The Council raise no objection to the appellant's suggested ten seconds between each static image rather than the originally suggested twelve seconds.

Conclusion

Appeal A

31. For the reasons outlined above, the siting and appearance of the proposed development would not have a harmful effect upon the character or appearance of the CA and would not have an adverse impact upon the setting of the nearby listed statue or London Square. I therefore conclude that the appeal should be allowed.

Appeal B

32. For the reasons outlined above, and taking into account all other matters raised, the proposed advertisement would not have a detrimental impact upon the amenity of the area and subject to planning conditions would preserve the character and appearance of the CA and the setting of the listed statue and London Square. I therefore conclude that the appeal should be allowed.

Daniel Hartley

INSPECTOR