

Grounds of Appeal

**Pavement outside 199 Finchley Road, London, NW3 6NW (LPA Ref:
2017/2488/P)**

July 2017

Contents

- Introduction
- Euro Payphone Ltd
- Site Selection Process
- Legislative Background
- National Policy
- Local Policy
- Highways Guidance
- Application Submission
- Site and Surroundings
- Reasons for Refusal
- Planning Considerations
- Conclusion

Appendices

- Appendix A – Key Appeal Decisions
- Appendix B – Schedule of Kiosks on UK Streets
- Appendix C – Footway width outside 199 Finchley Road

Introduction

These Grounds of Appeal have been prepared under section 78 of the Town and Country Planning Act 1990 against a refusal to grant prior approval required under The Town and Country Planning (General Permitted Development) (England) Order 2015, Part 16: Communications [Communications Act 2003, Section 106: Electronic Communications Code]. The appeal is made by Euro Payphone Ltd against the decision of London Borough of Camden Council who refused applications Ref 2017/2488/P, dated 3rd May 2017, by notice dated 21st June 2017. The development proposed is the installation of electronic communications apparatus (telephone kiosk) on the pavement outside 199 Finchley Road.

Euro Payphone Ltd

Euro Payphone Ltd is an electronic communications network provider which was granted statutory powers by the Communications Regulator (Ofcom) and the Electronic Communications Code under Section 106 of the Communications Act 2003 on 2nd March 2006.

Euro Payphone Ltd was established in Belfast, Northern Ireland, and has developed to date a portfolio of telephone kiosks exclusively in Northern Ireland. Euro Payphone Ltd is now seeking to expand its portfolio in other parts of the United Kingdom, offering customers a greater range of choice in the process.

Site Selection Process

Euro Payphone Ltd has developed a stringent site selection process for potential telephone kiosk locations. This process has been developed with the intention of providing locations that will be acceptable in terms of amenity and public safety whilst also being commercially viable:

- Identify location with an appropriate level of pedestrian flow so as to ensure the proposal will be viable;
- Seek to locate in commercial/retail areas and avoid residential where possible;
- Select site ensuring that overall pavement width is 5.3m or wider;
- Avoid conflict with existing street furniture;
- Check local planning authority website for other street furniture applications in the vicinity to avoid potential conflicts;
- Site kiosks within existing street furniture zones to avoid clutter and the development of pedestrian flow bottlenecks; and
- Investigate and assess the potential impact on any heritage assets in the vicinity.

Legislative Background

Permitted Development Rights

The appellant wishes to clarify that the refused submission did not constitute an application for planning permission. Electronic communications operators (the appellant) avail of full planning permission for the installation and upkeep of electronic communications apparatus on the Highway. This permission is pursuant to the GPDO, on the provision that the electronic communications code operator applies to the Local Planning Authority for prior approval regarding matters of siting and appearance only. The applicable provision is set out in Part 16 of the GPDO.

Key High Court Judgments

In 2010, there were two court cases relating to how applications for prior approval should be considered and also covering the scope of prior approval applications relating to telephone kiosks. The first of these is *Murrell v SSCLG & Broadland District Council (2010) ECWA Civ 1367*. One element of the case regarded the scope of issues (siting and appearance) which could be considered and made it clear that prior approval applications are not applications for planning permission. It was determined that the LPA in reaching its decisions had attached disproportionate weight to its planning policies.

The court determined that planning permission was already granted by virtue of the GPDO, subject to the prior approval relating to siting and appearance and referred to the prior approval process as being analogous to decisions on reserved matters. In this regard Paragraph 45 states:

"Thus as the Guidance..., spells out, if the GPDO requirements are met "the principle of whether the development should be permitted is not for consideration" in the prior approval procedure".

Further to this, paragraph 46 states:

"Nevertheless, the two situations call for a broadly similar approach, and the analogy with outline planning permission has a real value in underlining the point that the assessment of siting, design and external appearance has to be made in a context where the principle of the development is not itself in issue".

It was noted that paragraphs E15 and E16 of Annex E to the old PPG7 set out the factors necessary to be considered by the local planning authority in administering the prior approval scheme:

*"E15 - Provided all the General Permitted Development Order requirements are met, the principle of whether the development should be permitted is not for consideration, and only in cases where the local planning authority considers that a specific proposal is likely to have a **significant impact** on its surroundings would the Secretary of State consider it necessary for the authority to require the formal submission of details for approval. **By no means all the development proposals notified under the Order will have such an impact**" (please note that all bold text has been added by the appellant for the purposes of emphasis).*

The Court of Appeal's criticism of the Inspector's decision in that case was articulated at paragraph 49 of the Murrell judgment:

*"The question whether the particular form of development proposed is acceptable in terms of siting, design and appearance involves a balancing exercise. Paragraph E16 of Annex E refers to the weighing of two sets of considerations: on the one hand, the operational needs of agriculture and related matters; on the other hand, the effect of the development upon the landscape in terms of visual amenity, as well as the implications for ancient monuments, archaeological sites and sites of recognised nature conservation value. That exercise involves potentially difficult planning judgments, which are the province of the local planning authority and, on appeal, the planning inspector and with which the court will not interfere otherwise than on grounds of irrationality. **That makes it all the important for the court to be satisfied that the decision-maker has approached the exercise from the right perspective when attributing weight to the competing considerations.** An approach premised, for example, on the need for strict controls over development in the countryside*

could produce a different result from an approach premised on an acceptance of the principle of development in the countryside. This adds to my concern about the inspector's decision in this case" (please note that all bold text has been added by the appellant for the purposes of emphasis).

Paragraph 29 of the Murrell judgment confirms the required submission documents for prior approval applications:

"The application for determination as to whether prior approval is required does not need to be in any particular form and does not need to be accompanied by anything more than a written description of the proposed development and of the materials to be used and a plan indicating the site, together with the required fee"

The second case was *Infocus Public Networks Ltd v SSCLG & The Mayor and Commonality of the Citizens of London (2010) EWHC 3309 (Admin)*, in which the judge referred extensively to the Murrell judgment and also considered the issue of advertising on pay-phones. The judge found that local planning authorities have sufficient powers to control advertisements, including discontinuance procedures and that, once the principle of this kind of development is acknowledged, the primary issues to be considered are the siting and appearance of the kiosk.

The judge considered in Paragraph 66 that, *"If the primary issues for consideration, once the principle of this kind of development is acknowledged, are the siting and appearance of any kiosk, then "appearance" (though apt to include anything attached to the surface of the kiosk) would ordinarily be thought to be the intrinsic appearance of the kiosk itself"*. In other words the principle of development has been settled and the reference in the GPDO relates to the appearance of the kiosk itself, rather than the appearance of the surrounding area. The judge goes on to state that the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, *"give what would certainly seem to be a self-contained code for the regulation of advertising material generally and, in this particular context, of advertising materials attached to the surface of a telephone kiosk"*.

Key Appeal Decisions

There are a wealth of notable allowed appeal decisions in recent years regarding the refusal of prior approval applications for the installation of telephone kiosks. Of particular note are the following allowed appeals regarding the installation of telephone kiosks within the confines of the London Borough of Camden:

- APP/X5210/A/12/2187076 – Pavement adjacent to 189 Shaftesbury Avenue;
- APP/X5210/A/12/2178982 – Pavement adjacent to 105 Tottenham Court Road; and
- APP/X5210/A/12/2187079 – Pavement adjacent to 148-149 Holborn.

In each of the appeal decisions the Inspector has determined that the proposed kiosks would be appropriate in terms of siting and appearance, contrary to the assertions of the local planning authority. The above appeal decisions and further relevant examples have been included as

Appendix A.

National Policy

National Planning Policy Framework (March 2012)

The National Planning Policy Framework is a material consideration in planning decisions.

Section 5 of the NPPF seeks to outline the measures to support the provision of high quality communications infrastructure.

Paragraph 42 states that, *"high quality communications infrastructure is essential for sustainable economic growth"* and that the development of communications networks, *"plays a vital role in enhancing the provision of local community facilities and services"*.

Paragraph 43 states that in preparing Local Plans, local planning authorities should, *"support the expansion of electronic communications networks, including telecommunications"*. Where new sites are required, it is stated that equipment should be appropriately designed.

Paragraph 44 states that local planning authorities, *"should not impose a ban on new telecommunications development in certain areas, impose blanket Article 4 directions over a wide area or a wide range of telecommunications development or insist on minimum distances between new and existing development"*.

Paragraph 46 outlines the requirement for local planning authorities to determine applications on planning grounds. It is stated that they should, *"not seek to prevent competition between different operators"*, nor should they, *"question the need for telecommunications systems"*.

Paragraph 60 outlines that local planning authorities, *"should not attempt to impose architectural styles or particular tastes"*, nor should they, *"stifle innovation, originality or initiative through unsubstantiated requirements to conform to certain development forms or styles"*.

Conserving and Enhancing the Historic Environment

Section 12 of the NPPF regards the conservation and enhancement of the historic environment. Protecting and enhancing the historic environment is a core component of the NPPF's drive to achieve sustainable development. As such, the appropriate conservation of heritage assets forms one of the 'Core Planning Principles' that underpin the planning system.

The National Planning Practice Guidance (NPPG) requires that any decisions relating to listed buildings and their settings and conservation areas must address the statutory considerations of the Planning (Listed Buildings and Conservation Areas) Act 1990, as well as satisfying relevant policies within the NPPF and Local Plan (Paragraph: 002 Reference ID: 18a-002-20140306).

Paragraph: 003 Reference ID: 18a-003-20140306 states, *"The conservation of heritage assets in a manner appropriate to their significance is a core planning principle"*. In addition, it is noted that, *"Conservation is an active process of maintenance and managing change. It requires a flexible and thoughtful approach to get the best out of assets"*. Where changes are proposed, the NPPF sets out a clear decision making framework to conserve, and where appropriate, enhance heritage assets appropriate to their status.

The Guidance states, *"What matters when assessing if a proposal causes substantial harm is the impact on the significance of the heritage asset"* (Paragraph: 017 Reference ID: 18a-017-

20140306). The NPPF makes it clear that significance is matter of both the asset itself along with its setting.

When making a decision the local planning authority must judge whether or not a proposal causes significant harm, having appropriate regard to the circumstances of the case and NPPF policy. In general terms, substantial harm is a high test, so it may not arise in many cases. It is the degree of harm to the asset's significance rather than the scale of the development that is to be assessed. The harm may arise from works to the asset or from development within its setting. In this regard, the Guidance notes that, "*works that are moderate or minor in scale are likely to cause less than substantial harm or no harm at all*".

Local Policy

Local policies alone cannot be used to determine an application for prior approval, but are a material consideration in assessing siting and appearance impacts.

The Development Plan for the area comprises of:

- London Plan (2011) (consolidated with alterations 2016);
- Camden Core Strategy 2010-2025 (adopted 2010);
- Camden Development Policies 2010-2025 (adopted 2010); and
- Camden Proposals Map (adopted 2010).

The Inspector's Report on the forthcoming Camden Local Plan was published in May 2017, concluding that the plan is 'sound' subject to modifications. As such, substantial weight may be applied to the relevant policies of the emerging plan as a material consideration.

Other policy documents that are material to the consideration and determination of these appeals include Supplementary Planning Guidance (SPGs) and Documents (SPD's) prepared by the Greater London Authority and Camden Council.

Policy 6.10b 'Walking' of the London Plan requires development proposals to ensure high quality pedestrian environments and emphasise the quality of the pedestrian and street space.

Policy 7.5 'Public Realm' of the London Plan states that London's public spaces should be connected whilst street furniture should, "*be of the highest quality, have a clear purpose, maintain uncluttered spaces and should contribute to the easy movement of people through the space*".

It should be noted that Camden's Core Strategy and Development Policies documents do not contain any policies regarding telephone kiosks or street furniture.

Polices CS1 'Distribution of growth' of the Core Strategy and G1 of the emerging Local Plan seek to focus development in Camden upon the most suitable locations.

Policy CS5 'Managing the impact of growth and development' of the Core Strategy refers to a requirement to provide infrastructure and facilities which meet the needs of Camden's population whilst protecting and enhancing amenity.

Policy CS11 'Promoting sustainable and efficient travel' of the Core Strategy promotes a desire to improve public spaces and pedestrian links across the borough.

Policies CS14 'Promoting high quality places and conserving our heritage' of the Core Strategy and

D1 of the emerging Local Plan require development of the highest standard of design that respects local context and character. Heritage assets such as conservation areas and listed buildings are to be protected and enhanced.

Policy CS17 'Making Camden a safer place' of the Core Strategy refers to a requirement to promote safer streets and public areas and for development to demonstrate that design principles have been incorporated which contribute to community safety and security.

Policy DP16 'The transport implications of development' of the Development Management Policies states that development will be resisted which doesn't address movements to, from and within the site.

Policies DP17 'Walking, cycling and public transport' of the Development Management Policies and A5 & T1 of the emerging Local Plan refer to a desire to promote walking. It is stated that development must make suitable provision for pedestrians including footways designed to appropriate widths.

Policies DP21 'Development connecting to the highway network' of the Development Management Policies & A1 of the emerging Local Plan state that the Council will expect works affecting the highway network to address the needs of wheelchair users, people with sight impairments and other vulnerable users, to avoid causing harm to highway safety or hinder pedestrian movement and avoid unnecessary street clutter, and to contribute to the creation of high quality streets and public spaces.

Policy DP24 'Securing high quality design' of the Development management policies requires all development to be of the highest standard of design, expecting character, setting, context and form to be appropriately considered.

Policies DP25 'Conserving Camden's heritage' of the Development management policies and D2 of the emerging Local Plan state that the Council will not permit development which fails to preserve and enhance the character and appearance of conservation areas and the settings of listed buildings.

Policies DP29 'Improving access' of the Development management policies and C6 of the emerging Local Plan require all spaces that may be used by the public to be designed to be as accessible as possible.

Camden Planning Guidance CPG1 'Design' states that the proposed siting of new kiosks must be considered to ensure that there is limited impact upon the sightlines of the footway. It is also stated that the size of kiosks should be minimised to limit impact on the streetscene and to decrease opportunities for crime and anti-social behaviour.

Camden Planning Guidance CPG7 'Transport' seeks improvements to streets and public spaces in order to ensure good quality circulation. The guidance refers to a need to maximise pedestrian accessibility and avoid unnecessary street clutter.

Highways Guidance

There is a wealth of differing guidance pursuant to streetscape design, in particular footway widths, which is vital to consider when determining the appeal:

Department for Transport – Inclusive Mobility (2005)

This is a key document which states specific footway dimensions (Section 3.1 - Widths) which in turn form the basis of or inform numerous other standards and guidance sources. However, the document does not go as far as to give consideration to the level of pedestrian usage - the second

determining factor of footway capacity and convenience of use. A minimum unobstructed width of **2m** is recommended under normal circumstances.

Department for Transport – Manual for Streets (2007)

The document provides guidance for practitioners involved in the planning, design, provision and approval of new streets, and modifications to existing ones. It aims to increase the quality of life through good design which creates more people-oriented streets. The document does not include an absolute minimum footway width, instead stating that the minimum unobstructed width for pedestrians should generally be **2m**.

Transport for London (TfL) – Pedestrian Comfort Guidance (2010)

TfL is responsible for managing the TfL Road Network (the TLRN or London's 'red routes'). The document was created to assist those responsible for planning London's streets to create excellent pedestrian environments through a clear, consistent process during the planning and implementation of transport improvement projects.

Appendix B of the document deals with recommended footway widths. A system has been devised which categorises roads according to pedestrian flow levels:

- Low flow - < 600pph
- Active flow - < 600-1200pph
- High flow - > 1200pph

Low Flow

The recommended minimum footway width (total width) for a site with low flows is **2.9 m**. This is deemed to be enough space for comfortable movement and a large piece of street furniture such as guard rail, cycle parking (parallel with the road), a bus flag for a low activity bus stop or a busy pedestrian crossing. Kiosks are not specifically mentioned but could be considered a large piece of street furniture, comparable to those listed above.

In high street or tourist areas it is said that the total width can be reduced to **2.6m** if there is no street furniture (except street lights) to allow space for people walking in couples or families and with prams etc.

In other areas, low flow streets can be **2m** wide if there is no street furniture. This total width is required for two users to pass comfortably and to meet DfT minimum standards.

Active Flow

The recommended minimum footway width (total width) for a site with active flows is **4.2m**. This is deemed to be enough space for comfortable movement and a large piece of street furniture such as a wayfinding sign, a bench or a bus shelter.

In high street or tourist areas it is said that the width can be reduced to **3.3m** if there is no street furniture (except street lights). This width allows two groups to pass.

In other areas, active flow streets can be **2.2m** wide if there is no street furniture. This width is required for the level of flow and to meet DfT minimum standards.

High Flow

At this level of flow the recommended minimum footway width (total width) is **5.3 m**. This is deemed to be enough space for comfortable movement up to 2,000 pph and a large piece of street furniture such as a wayfinding sign, a bench, a bus shelter or a busy pedestrian crossing.

In areas such as transport interchanges more it is stated that space may be required if there are multiple bus stops on one footway.

If there is no street furniture, the width can be reduced to **3.3m**. This is enough space for comfortable movement up to 2,000 pph.

Street Furniture

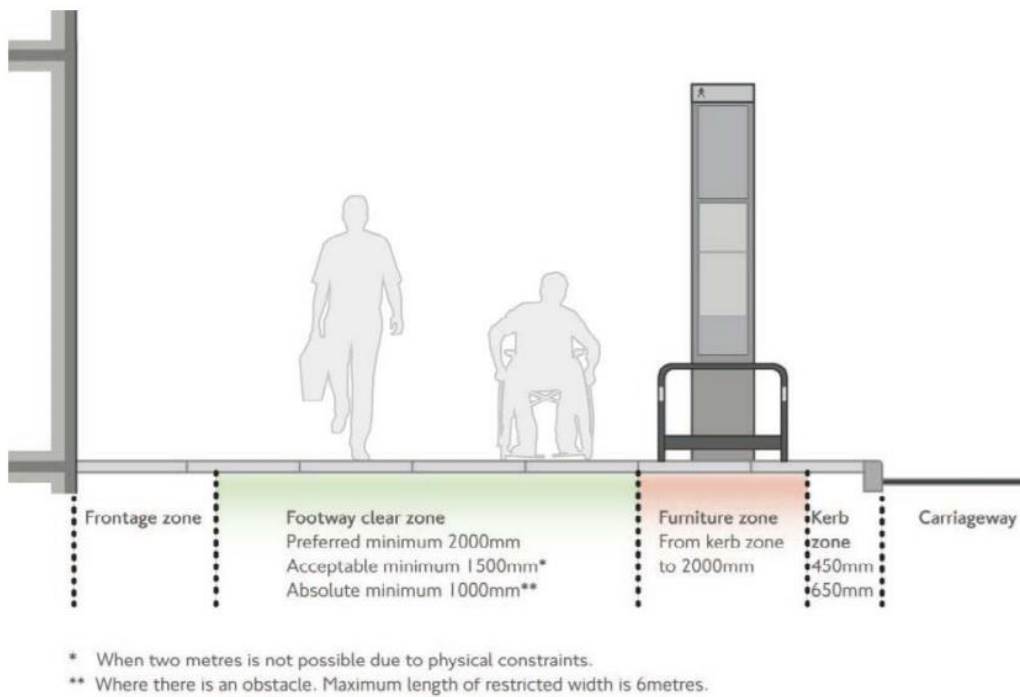
Appendix C deals with street furniture. It is stated that if the footway is busy, people keep at least 200mm between the building edge or kerb and their position. Therefore a standard buffer of 200mm has been identified for the building edge, and 200mm for the kerb edge. This means that on a footway with no street furniture the clear footway width is the total width minus 400mm.

If street furniture is placed against the wall or kerb edge, the street furniture will act as a new wall or kerb edge (i.e. buffer is not counted twice). In such instances, the street furniture buffer is used when calculating the level of pedestrian comfort and the wall/kerb edge measurement is disregarded. In addition, current Department for Transport guidance states that restricted footway length should be no longer than 6m. A schedule is included which deals with different types of street furniture and the associated required distances, however telephone kiosks are not included.

TFL Streetscape Guidance (2016)

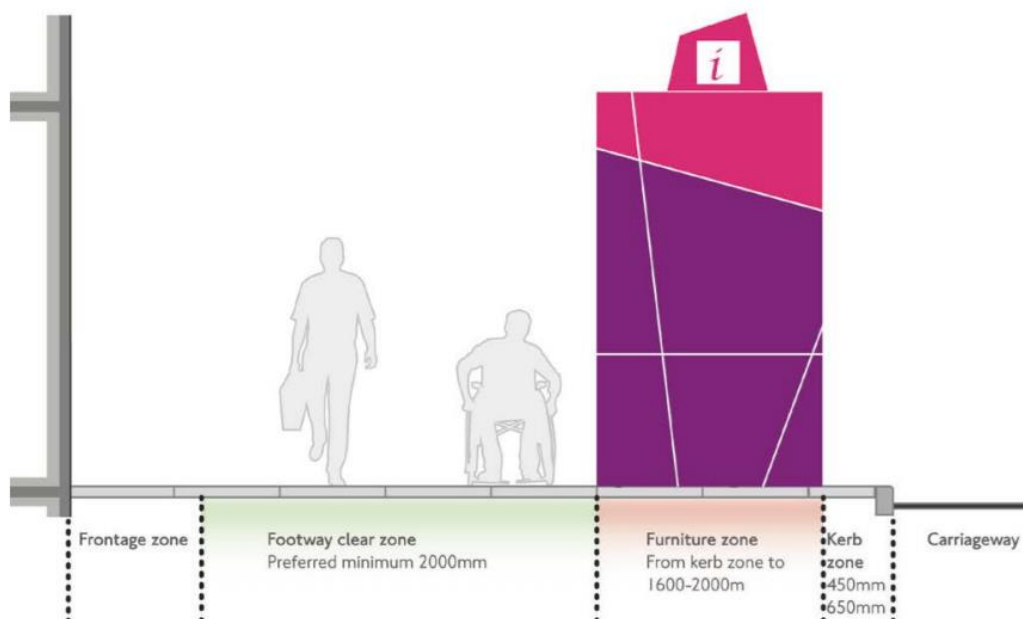
The purpose of the document is to set a high standard for the design of London's streets and spaces by applying best practice design principles. The document divides the area between the kerb line and the highway boundary into four zones. A minimum footway clear zone of **2m**, excluding a furniture zone, frontage zone and kerb zone (450mm - 650mm) is recommended:

Figure 205: Footway Zones



It is stated that telephone kiosks can be accommodated in furniture zones with a width of 1,600mm – 2,000mm:

Figure 205: Footway Zones [Part E – Physical design and materials]



Camden Streetscape Design Manual (2005)

The Camden Streetscape Design Manual refers to a requirement of a minimum footway width of 1.8m to allow two adults to pass and a minimum width of 3m for busy pedestrian streets. The importance of clear sightlines for pedestrians is also stressed.

The above demonstrates that a minimum unobstructed footway of at least 2m is required nationally. In addition, TfL have devised a PCL assessment methodology to establish desired footway widths to maintain pedestrian comfort levels. The methodology forms a specific well-informed and quantitative assessment which categorises roads according to levels of pedestrian traffic. Whilst there is a range of differing streetscape guidance, the appellant has sought to comply with the TfL Pedestrian Comfort Guidance in the siting of the kiosks as this features the most robust methodology.

Application Submission

The subject of the appeal is refused application Ref 2017/2488/P for the installation of electronic communications apparatus (telephone kiosk) on the pavement outside 199 Finchley Road.

The proposed kiosk has been designed, in contrast to the traditional style kiosks, with an open side which renders activities completely visible to passers-by. As such, the proposed kiosk will be much less appealing to individuals wishing to engage in anti-social behaviour.

The design process for the proposed kiosk has been tailored to ensure that the call box will be simple, durable and with a minimum footprint, allowing for easy, seamless integration into its surroundings.

The proposed kiosk measures 1.32m by 1.11m, and is open sided to allow for wheelchair access. The footprint is the minimum required to facilitate full wheelchair accessibility. The dimensions are comparable to existing kiosks on London streets (please refer to **Appendix B** for further details). The kiosk materials will comprise powder coated metal with reinforced, laminated glass panels which will ensure optimum see through visibility. Solar panels will be included at roof level, providing the added benefit of environmental sustainability.

Site and Surroundings

The appeal site (LPA Ref: 2017/2488/P) is located on the pavement outside 199 Finchley Road Road, London. As per the Officer's Report, this is a busy town centre location with an abundance of commercial uses in situ. A lamp post (approximately 4.5m to the north east), a litter bin (approximately 8m to the north west), a bus shelter (9.7m to the north west) and a row of Sheffield cycle stands (approximately 3.4m to the south east) are the only pieces of street furniture in close proximity to the appeal site. The kiosk will be installed in an area of wide footway at a distance of 1m from the highway kerb edge, within the street furniture zone so that it will align with other street furniture, thus ensuring minimum impact on pedestrian flows. The overall pavement width is 9.9 metres at the appeal location, offering sufficient space for shared use and adequate space for two way passing for both pedestrians and wheelchairs.

Total footway width	Pedestrian traffic level	Distance to kerb	Kiosk width	Distance to closest piece of street furniture	Unobstructed footway width	Compliance with Pedestrian Comfort Guidance
9.9m	High	1m	1.32m	3.4m	7.58m	Yes

The appeal site is not in a conservation area and there are no listed buildings in close proximity to the proposed kiosk location. St John's Court (191-217 Finchley Road) is locally listed. The appeal site is located within the designated Finchley Road/Swiss Cottage Town Centre and the surrounding area is characterised by commercial uses at ground floor level and offices/residential above. As such, this is the type of location wherein a telephone kiosk would be expected to be located. There are many examples of existing telephone kiosks in situ throughout Camden of a comparable design and appearance. St John's Court. The locally listed asset has been significantly compromised by the surrounding modern commercial and retail development. As such, its setting is confined to its boundary and would not be further impacted by the proposals. As such, the appeal proposal is not sensitive from a heritage perspective.

Reasons for Refusal

Application 2017/2488/P was refused under officer's delegated powers on grounds of clutter, amenity, insufficient footway width and the potential for crime and anti-social behaviour. It should be noted that in accordance with legislation and national policy, prior approval applications regarding the installation of telecommunications apparatus are subject to control in the interests of siting and appearance only. The Council have established a standard refusal principle for telephone kiosk applications and commented as follows in their reasons for refusal:

"01) The proposed telephone kiosk, by reason of its location, size and detailed design, would add to visual clutter and detract from the character and appearance of the street scene and harm the setting of the adjacent locally listed building, contrary to Core Strategy Policies CS5 (Managing the impact of growth and development) and CS14 (Promoting high quality places and conserving our heritage) of the London Borough of Camden Local Development Framework Core Strategy and policy DP24 (Securing high quality design) and DP25 (Conserving Camden's Heritage) of the London Borough of Camden Local Development Framework Development Policies and policies D1 (Design) and D2 (Heritage) of the Camden Local Plan Submission Draft 2016.

02) The proposed telephone kiosk, by virtue of its location, size and detailed design, and adding unnecessary street clutter, would reduce the amount of useable, unobstructed footway, which would be detrimental to the quality of the public realm, cause harm to highway safety and hinder pedestrian movement and have a detrimental impact on the promotion of walking as an alternative to motorised transport, contrary to policy CS11 (Promoting sustainable and efficient travel) of the London Borough of Camden Local Development Framework Core Strategies Development Plan Policies and policies DP16 (The transport implications of development) and DP21 (Development connecting to the highway network) of the London Borough of Camden Local Development Framework Development Policies and policies A1 (Managing the impact of development), C6 (Access) and T1 (Prioritising walking, cycling and public transport) of the Camden Local Plan Submission Draft 2016.

03) The proposed telephone kiosk, by virtue of its inappropriate siting, size and design, would fail to reduce opportunities for crime and antisocial behaviour to the detriment of

community safety and security, and compromise the safety of those using and servicing the telephone kiosk contrary to policy CS17 (Making Camden a safer place) of the London Borough of Camden Local Development Framework Core Strategy and policy C5 Safety and Security of the Camden Local Plan Submission Draft 2016."

Whilst the above policies are a material consideration in determining the siting and appearance impacts of the proposal, it is the appellant's position that no other material considerations are necessary as the proposal accords with Policies CS5, CS11, CS14 & CS17 of the Camden Core Strategy, DP16, DP17, DP24, DP21 & DP25 of the Camden Development Management Policies and Policies A1, C6, D1, D2 & T1 of the Camden Local Plan Submission Draft 2016.

Planning Considerations

The principle of the siting of a telephone kiosk has been established by Part 16 of the GPDO, whilst paragraph 46 on the NPPF requires that local planning authorities should , "***not seek to prevent competition between different operators***", nor should they, "***question the need for telecommunications systems***".

The issues of siting, appearance and of compliance with policy are addressed in the following sections:

Reasons for Refusal 1 & 2 state that the proposed kiosk, by reason of its location, size and design, would add to visual clutter to the detriment of the character of the area. 'Clutter' is defined by Wikipedia as "a confused or disordered state or collection" whilst the Collins English Dictionary defines it as "a disordered heap or mass of objects". As previously mentioned, a lamp post, a litter bin, a bus shelter and a cycle stand are the only pieces of street furniture within 10 metres of the appeal site. The proposed kiosk would be in line with the existing street furniture. The closest telephone kiosk to the appeal site is located approximately 60m to the north west on Canfield Gardens, adjacent to Finchley Road Station. As such, the appellant is at a loss as to how the siting of the proposed kiosk would result in street clutter at the appeal location. The appeal site is located on an area of wide footway, providing ample room for street furniture and unobstructed pedestrian flow. The kiosk would be located 1m from the kerb, within the street furniture zone (aligned with the existing street furniture), outside of the established lines of pedestrian flow. Therefore, there would be no obstructions as a result of the development and it would not lead to clutter as it would be located in an ordered manner in accordance with TfL guidance for street furniture.

Reason for Refusal 1 also refers to a perception that the proposed kiosk would detract from the setting of the locally listed building at St John's Court, 191-217 Finchley Road. Whilst locally listed buildings do not benefit from statutory status, any development affecting such buildings is a material consideration in the planning process. The character of the surrounding area at the appeal site is that of a modern commercial high street. The proposed kiosk would be viewed by pedestrians and motorists as a form of street furniture typical of a city centre location. Regarding the locally listed building, it should be considered that its setting has been significantly compromised by the surrounding large scale, modern development. It should be noted that the primary commercial/retail function of the surrounding area has resulted in an abundance of fascia signs related to the retail uses (many of which are in situ at ground floor level). As such, the setting is confined to the asset itself and would not be further compromised or impacted by the proposals. As above, the appellant is of the view that the kiosk represents a minor development which would cause no harm. As such, the impact of the proposed kiosk upon the busy, modern city setting of the locally listed building would not be material.

As laid out in the national policy section above, the NPPF makes it clear that when assessing the impact of development upon heritage assets, it is the impact on the significance of the heritage impact which should be considered. It is clear that Camden Council have plainly failed to assess the impact in this manner. The NPPG notes that substantial harm is a high test and may not arise in all cases. In addition, it is stated that, "*works that are moderate or minor in scale are likely to cause less than substantial harm or no harm at all*". Paragraph 4.3 of the Officer's Report states, "*In this case there would be harm but it is considered that this would be less than substantial harm*". The LPA state that in such cases the harm should be weighed against the public benefits of the proposals. It is stated that as there are a number of existing kiosks in proximity to the appeal site, there is not considered to be any public benefit. The appellant is of the opinion that there is public benefit as the proposed kiosk is fully wheelchair accessible whilst those in the surrounding area are not. The addition of a kiosk of another operator also provides a public benefit through the introduction of consumer choice and competition.

Further to this, Historic England's Historic Environment Good Practice Advice in Planning: 3 (March 2015) guidance was produced on behalf of the Historic Environment Forum to provide information on good practice. Whilst the document does not constitute a statement of Government policy itself or seek to prescribe a single methodology or particular data sources, it reinforces the well-established concept that some views can contribute more to understanding the significance of a heritage asset than others. This is because the appreciation of relationships between the asset and elements in the view may be particularly relevant. That is almost inevitably the case where there are intentional sight lines or inter-visibility between heritage assets, or between heritage assets and natural features. Such views are part of the design of the asset and can therefore make a particularly important contribution to its significance. Conversely, however, there may be a multitude of 'incidental' views which do not make a particular contribution to an asset's significance – or indeed not at all in some instances, where they may be described as detracting features.

In this case the relative value, or contribution, of the existing situation is a critical factor to be taken into account. That is to say, a change proposed to an aspect of the heritage asset's setting that is plainly of little or no value, and that makes little or no material contribution to its significance, would not affect its significance in the same way as, for example, an aspect of its setting that does make a positive contribution to or reinforce their significance.

The Historic England guidance document notes, in Section 4.1, that the protection of the setting of heritage assets need not prevent change. The document also recognises that not all heritage assets are of equal importance and states that the contribution made by their setting to their significance will also vary.

In terms of the assessment, the most important part of the guidance appears in and after paragraph 10, where a stepped approach towards assessment is advocated. The stepped approach makes the significance of the heritage asset the object of the assessment (in Step 2), and not the proposed development. This is important because it means that the significance of the asset is the first and foremost consideration, not the type, form or the relative visibility of the proposed development.

Step 3 is also important in making it clear that a proposed development should be assessed in terms of the impacts on the significance of the asset, not the scale of change. That is to say, the degree of visibility of the development or the degree of change to the setting of an asset is not the critical consideration. Instead the critical consideration is the extent to which the heritage asset's archaeological, architectural, artistic or historic interest may be affected.

As previously mentioned, the setting of the locally listed building at the appeal site is characterised by commercial uses such as cafes, restaurants, shops and offices at this location. The proposed kiosk would be viewed by pedestrians and motorists as a form of street furniture typical of a busy city location. In this regard, it should be noted that there are modern call boxes elsewhere throughout the surrounding area. The appellant is of the view that the kiosk represents a minor development which would cause no harm, paragraph 4.4 of the Officer's Report stating, "*In this case there would be harm but it is considered that this would be less than substantial harm*". As such, the appellant is of the belief that the setting of the listed building would be preserved in the event that the appeal is allowed.

Reason for Refusal 2 raises concerns regarding a reduction in the amount of usable, unobstructed footway at the appeal site to the detriment of public safety and pedestrian movement. The proposed kiosk has been designed and sited with the free movement and comfort of pedestrians in mind. As discussed earlier in the appeal statement, there is a wealth of guidance regarding streetscape design and the appropriate width of footways, which in some cases conflicts. A minimum unobstructed footway width of 1.8m is recommended by the Camden Streetscape Design Manual (2005), whilst 2m is recommended in both the Department for Transport's 'Manual for Streets (2007)' document and TfL's 'Streetscape Guidance (2016)' documents. The footway width at the appeal site is 9.9m whilst the width of the proposed kiosk is 1.32m. The Officer's Report has incorrectly referred to a footway width of 7m at the appeal site. As such, the unobstructed footway width will significantly exceed the recommended minimum width of 2m.

TfL's 'Pedestrian Comfort Guidance (2010)' document has devised a system which categorises red route roads according to pedestrian flow levels and recommends footway widths accordingly. It should be noted that the minimum recommended footway widths within the guidance contradict those laid out in TfL's more recent 'Streetscape Guidance (2016)' document. Nonetheless, the appeal proposal would fully comply with the recommended minimum footway width. The LPA considers that the appeal site is subject to high levels of pedestrian traffic. As such, the recommended minimum footway width (including a large piece of street furniture) of 5.3m for an area of active pedestrian flow would be adhered to given that the footway width is 9.9m. In addition, an unobstructed footway width of 3.3m is required which would also be exceeded given the wide footway and lack of adjacent clutter at the appeal site. The Pedestrian Comfort Guidance document sets out an assessment to calculate footway widths and represents the most robust methodology of all the guidance documents. The proposed kiosk location complies with both the TfL and Camden standards in this regard, demonstrating that its proposed siting is wholly acceptable. Please refer to **Appendix C** for a visual representation in this regard.

The Officer's Report refers to objections from TfL and the Council's Transport Strategy officer due to a lack of detailed drawings depicting the exact position of the kiosk on the footway, the proposed distance from the kerb, leftover footway widths and street furniture in close proximity. The appellant is of the opinion that sufficient information was submitted to determine the application. Telecommunications applications submitted for prior approval pursuant to The Town and Country Planning (General Permitted Development) (England) Order 2015 do not need to be in any particular form and do not need to be accompanied by anything more than what is prescribed by the GPDO. Part 16, Condition A.3 (4)(a) of the GPDO requires prior approval applications to be accompanied by "*a written description of the proposed development and a plan indicating its proposed location together with any fee required to be paid*". A High Court judgement in 2010 (Murrell v SSCLG & Broadland District Council (2010) ECWA Civ 1367) confirmed the required submission documents for prior approval applications, stating "*The application for determination as to whether prior approval is required does not need to be in any particular form and does not need to be accompanied by anything more than a written description of the proposed development and of the materials to be used and a plan indicating the site, together with the required fee*" (Para 29).

A location plan indicating the proposed location of the kiosk was submitted as part of the application, along with a cover letter. As such, the requirements of the GPDO were fulfilled as confirmed by the validation and registration of the application. The appellant also wishes to highlight that further information in this regard was not requested at application stage. In any case, the information in the preceding paragraphs has demonstrated that the proposed kiosk location complies with both the TfL and Camden standards.

Further public safety concerns are raised in paragraph 3.3 of the Officer's Report, regarding a perception that the siting of the kiosk, "*could have an impact on highway safety through interfering with signals, visual obstructions, visibility splays*". It should be considered that the back and sides of the kiosk would consist of reinforced laminated glass panels which provide excellent through visibility, reducing any risk of sight lines being impeded. The kiosk would be subject to a programme of regular maintenance and cleaning which will ensure that the glass panels remain in a transparent state. The closest traffic signals to the appeal are located approximately 30m to the north west, the operation of which would not be impacted upon by the appeal development due to the separation distance and the elevated nature of the lights.

Reason for Refusal 3 asserts that the siting, size and design of the kiosk would fail to reduce opportunities for crime and anti-social behaviour to the detriment of community safety and security. The Officer's Report refers to an objection from the Designing Out Crime Officer in this regard. Regarding the design, Euro Payphone recognise that the traditional public telephone kiosk requires modernisation to reflect the needs of present day society. The old style kiosks suffer from a range of difficulties including anti-social behaviour. In addition to this, the old style K2 & K6 kiosks based upon the designs of Sir Giles Gilbert Scott have ceased to be installed throughout the UK due to a lack of compliance with current disability regulations, as per guidance issued by Ofcom. As such, the proposed kiosk has been designed so that it will be easily accessible to wheelchair users (please refer to kiosk specification drawing).

The proposed kiosk has been designed, in contrast to the traditional style kiosks, with an open side which renders activities completely visible to passers-by. As such, the proposed kiosk will be much less appealing to individuals wishing to engage in anti-social behaviour.

The proposed kiosk has been designed to ensure that the call box will be simple and functional in form, durable and with a minimum footprint, allowing for easy, seamless integration into its surroundings. The design forms part of the Euro Payphone brand in the same way that the BT kiosks do.

The proposed kiosk measures 1.32m by 1.11m, ensuring full wheelchair accessibility as per The Telecommunications (Services for Disabled Persons) Regulations 2000, Schedule 1, Condition 25.13 (b) of which requires all telecommunications license holders to, "*ensure that at any time at least 75% of its public Call Boxes are accessible by reasonable means to users in wheelchairs*". A notification under section 48(1) of the Communications Act 2003 also sets out the same requirements (paragraph 6.3 (a)(i)). As such, it is no longer possible to provide kiosks designed similarly to the K2 and K6 installations of the past as they cannot be accessed by wheelchair users.

The structure consists of powder coated metal with reinforced, laminated glass panels which will ensure optimum see through visibility. The kiosk would be subject to a programme of regular maintenance and cleaning which will ensure that the glass panels remain in a transparent state, discouraging anti-social behaviour.

A solar panel will be included at roof level, providing the added benefit of environmental sustainability. The kiosk is the minimum size to provide cover for wheelchair users.

The appellant also wishes to draw attention to allowed appeals for the installation of a telephone kiosks within the Borough of Camden on the pavement outside 105 Tottenham Court Road (Appeal Ref: APP/X5210/A/12/2178982) and on the pavement outside 148-149 Holborn (Appeal Ref: APP/X5210/A/12/2187079). Regarding the potential for crime and anti-social behaviour, the Inspector for appeal APP/X5210/A/12/2178982 stated, *"these concerns apply to all payphones. The GDPO and the National Planning Policy Framework establish that, in planning terms, payphones are, in principle, an acceptable form of development. Insofar as these concerns are relevant to the case before me then the location would be open to wide public surveillance"*. The Inspector for appeal APP/X5210/A/12/2187079 referred to the above comments, adding, "I am far from convinced that the proposed siting or appearance of the payphone, in themselves, would serve to encourage or increase crime or anti-social behaviour in the locality".

Further to the above, paragraph 4.2 of the Officer's Report states, *"the proposed structure is considered to be a very poor design in terms of size, scale, massing and proposed materials"* but provides no analysis of these elements. It should be considered that Paragraph 60 of the NPPF outlines that local planning authorities, *"should not attempt to impose architectural styles or particular tastes"*, nor should they, *"stifle innovation, originality or initiative through unsubstantiated requirements to conform to certain development forms or styles"*. The kiosk design is simple and functional as it is an operational piece of equipment that serves a purpose in providing much needed services to the public. In this regard, it is reflective of the designs of other telephone kiosks and street furniture on the street in Camden. It should also be considered that the design process has been informed by a desire to render the kiosk fully wheelchair accessible which is not the case with the old style kiosks located elsewhere in the surrounding area. To impose restrictions on designs of one operator will stifle competition and in this case a new entrant to the market.

Paragraph 4.4 of the Officer's Report states that whilst wheelchair users would be able to access the kiosk, an objection was received from the Council's Access Officer due to a number of stipulations which it is stated are required for an accessible phone booth. The requirements are taken from the British Standard document 'BS8300 – 2009+A1:2010 – Design of buildings and their approaches to meet the needs of disabled people – Code of practice'. The requirements are lifted from section 10.4 which deals with the provision of public telephones in buildings. The appellant is of the view that the British Standard requirements are not relevant as they regard the design of buildings and the requirements are relevant to the provision of telephones within buildings. The appeal proposal relates to the siting of a telephone kiosk and so the British Standard requirements are irrelevant.

Paragraph 3.5 of the Officer's Report refers to existing telephone kiosks in the surrounding area, stating that, *"no justification has been submitted for the need to install a further one"*. It should be considered that the need for a telephone kiosk is not a material planning consideration in the determination of this appeal. Paragraph 46 of the NPPF outlines the requirement for local planning authorities to determine applications on planning grounds. It is stated that they should, *"not seek to prevent competition between different operators"*, nor should they, *"question the need for telecommunications systems"*. For this to have formed part of Camden Council's decision making is ultra vires.

Conclusion

The refused application did not constitute an application for planning permission as electronic communications operators avail of full planning permission for the installation and upkeep of electronic communications apparatus on the Highway in accordance with Part 16 of the GPDO. **As such, the principle of the development has been established.** Part 16 of the GPDO also states that prior approval applications for telecommunications apparatus should only be controlled where there are sufficient concerns regarding siting or appearance. The Council have listed clutter, amenity, insufficient footway width and the potential for crime and anti-social behaviour as its reasons for refusal. Local policies alone cannot be used to determine a prior approval application, but are a material consideration in assessing siting and appearance impacts.

The NPPF stipulates that local planning authorities should not impose a ban on new telecommunications development in certain areas (paragraph 44), nor seek to prevent competition between different operators or question the need for telecommunications systems (paragraph 46), nor attempt to dictate design (paragraph 60). The Officer's Report and decision appear to indicate that Camden Council has an in principle objection to the scheme, contrary to the GPDO and NPPF.

The appeal proposal is simple in concept and similar to kiosks that have been approved across the UK at both the application and appeal stages. The proposed kiosk has been thoughtfully designed, will be fully accessible to disabled users whilst also limiting the potential for crime and anti-social behaviour. The kiosk will be constructed from high quality and robust materials suited to its immediate surroundings. The call box will be simple and functional, the design forming part of the Euro Payphone brand in the same way that the BT kiosks do. As such, it is not considered that the kiosk's appearance can form a sound reason to refuse the application in this instance. In addition to this, the kiosk will provide competition and choice for the public and, as such, should be considered a valuable community asset.

The above Planning Considerations section has demonstrated that the kiosk will not create clutter in the vicinity to the detriment of the surrounding public realm and streetscape. It is considered that the Local Planning Authority has incorrectly applied the street furniture guidance and failed to demonstrate why the proposed kiosk would lead to clutter. The appeal proposal is a minor development which would result in no harm to the locally listed building, as per the NPPF.

Overall the proposal is considered to be well located, of appropriate size in relation to its surroundings and attractively and thoughtfully designed. The application appears to have been refused on the basis of an in principle objection to the proposal. After taking into account all relevant factors it is considered that the proposed kiosk complies with all of the relevant legislation, and, as such, it is strongly considered that the appeal should be allowed.

Appendix A



Appeal Decision

Site visit made on 2 March 2012

by Clive Hughes BA (Hons) MA DMS MRTPI

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

Decision date: 8 March 2012

Appeal Ref: APP/X5990/A/11/2166164

Outside 30 Millbank, Westminster, London SW1P 4DU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a development order.
 - The appeal is made by Derek Parkin, Infocus Public Networks Ltd against the decision of City of Westminster Council.
 - The application Ref 11/07496/TELCOM, dated 3 August 2011, was refused by notice dated 26 September 2011.
 - The development proposed is installation of a public payphone on the pavement.
-

Decision

1. The appeal is allowed and approval is granted under the provisions of Part 24 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) for the siting and appearance of the installation of a public payphone on the pavement outside 30 Millbank, Westminster, London SW1P 4DU in accordance with the terms of the application Ref 11/07496/TELCOM, dated 3 August 2011 and the plans submitted with it, subject to the following conditions:
 - 1) The development hereby permitted shall be carried out in accordance with plans/ photographs Nos (A) to (H) inclusive.
 - 2) No development shall take place until samples of the materials to be used, including the colour of the kiosk, have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details and the colour shall be retained for as long as the kiosk remains in situ.
 - 3) In the event that the telephone kiosk is no longer required for the purposes of telecommunication or is made redundant, then it is to be removed from the site and works to the pavement made good.

Reasons

2. The application is made under the above Development Order and concerns only the siting and appearance of the development. The main issue is the effect of the proposed development on the street scene.
3. The kiosk would be sited on a wide section of pavement outside the Millbank Centre, close to the kerb. The Council has not explained how the kiosk would be harmful to visual amenity other than by stating that it would add street clutter to this part of the City. While there is little in the way of street furniture, other than street lights and a letter box, on the relatively short section of pavement outside this part of the Millbank Centre, there are

numerous other items in the immediate vicinity that impact upon the street scene and that need to be taken into consideration in calculating the visual impact of the proposed kiosk.

4. In addition to a bus shelter at Tate Britain, there is a substantial bicycle hire/ parking area; car parking bay signs; red route signs; cycle way signs; and various bollards and signage around the vehicular entrance to the Millbank Centre. In this context, I do not consider that the proposed kiosk, which would be of modest scale, would add unacceptably to the existing street clutter. The kiosk would have a simple design, be mostly made of glass, and the steel frame would be painted black to match other street furniture in the area. The Council has not identified how the development would relate to *Westminster way – Public realm strategy 2011*, its recent Supplementary Planning Guidance, or how it would conflict with Policy DES 1 of its *Unitary Development Plan*. The design, form, materials and appearance of the kiosk would not be greatly dissimilar to the nearby bus shelter, albeit without the extensive advertising panels. It would be acceptable in the street scene and so would accord with Policy DES 7(B)(1) of the UDP. There would be no unacceptable conflict with UDP Policies DES 1 or STRA 28, and no conflict with *Core Strategy* Policy CS27.
5. In view of the above, I conclude that the appeal should succeed. I have not imposed the suggested condition concerning hours of building work as no reason for this has been provided and as there would be no impact on residential amenity. I have imposed conditions concerning materials and colour in the interests of the visual amenity of the area and requiring that the kiosk be removed when no longer necessary for the same reason. I have identified the plans for the avoidance of doubt and in the interests of the proper planning of the area.

Clive Hughes

Inspector



Appeal Decision

Site visit made on 16 October 2012

by Bern Hellier BA(Hons) MRTPI

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

Decision date: 24 October 2012

Appeal Ref: APP/X5210/A/12/2178982

Pavement outside 105 Tottenham Court Road, London, W1T 4TT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Part 24 of the Town and Country Planning (General Permitted Development) Order 1995 (GPDO).
 - The appeal is made by Infocus Public Networks Ltd against the decision of the Council of the London Borough of Camden.
 - The application Ref 2012/1695/P, dated 13 March 2012, was refused by notice dated 1 May 2012.
 - The development proposed is the installation of a public payphone.
-

Decision

1. The appeal is allowed and approval is granted under the provisions of Part 24 of the Town and Country Planning (General Permitted Development) Order 1995 for the siting and appearance of a public payphone sited on the pavement outside 105 Tottenham Court Road, London, W1T 4TT in accordance with the terms of the application Ref 2012/1695/P, dated 13 March 2012, subject to the following condition.
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing labelled Solar Powered Telephone Kiosk (with wheelchair access); Site Plan; and Photograph showing proposed position of phone kiosk.

Main issues

2. As an electronic communications Code Operator the appellant benefits from deemed planning permission granted by Part 24 of the GPDO for the proposed payphone but subject to applying to the Council for prior approval of its siting and appearance. The Council has refused permission. The main issues are the effect of the siting and appearance of the payphone on, firstly the safety and convenience of pedestrians and, secondly, on the appearance of the street scene.

Reasons

3. The payphone would be a modest structure with a footprint of approximately 1.1 x 1.3 metres constructed with a black steel frame infilled with clear polycarbonate glass. It is open on one and a half sides to give good wheelchair access.
4. Tottenham Court Road at this point is a busy shopping street. The payphone would be sited close to the road on a stretch of 8.5 metres wide footway where

there are already four payphones, a post box and a line of street trees. The footway is heavily used by pedestrians and food and drink establishments have outdoor seating areas, although not immediately adjacent to the appeal site. The roadside is also used for servicing shops and for refuse collection. The introduction of the proposed payphone in this location would have no material effect on the free flow of pedestrians or servicing activities.

5. In relation to its visual impact the payphone is of a sound functional design which would be readily assimilated into the street setting as one of a number of items of street furniture. Whilst it would, by definition, increase the clutter of street furniture, the scale, width and openness of the street is such that the impact of the payphone either alone or in combination with existing structures would not be visually dominant or disruptive.
6. I note the concerns of both the local police crime prevention advisor and a local shop owner at the use of phone boxes for criminal and anti-social activity. However these concerns apply to all payphones. The GDPO and the National Planning Policy Framework establish that, in planning terms, payphones are, in principle, an acceptable form of development. Insofar as these concerns are relevant to the case before me then the location would be open to wide public surveillance.
7. I conclude that the siting and appearance of the proposed payphone would be satisfactory. It would not materially harm the safety and convenience of pedestrians or the appearance of the street scene, thereby complying with the requirements of the relevant development plan policies set out in the Core Strategy¹. I shall therefore allow the appeal.

Bern Hellier

INSPECTOR

¹ Camden Core Strategy 2010-2025. Published November 2010. Policy DP21 *Development connecting to the highway network* and Policy DP24 *Securing high quality design*



Appeal Decision

Site visit made on 14 May 2013

by P G Horridge BSc(Hons) DipTP FRICS MRTPI

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

Decision date: 24 June 2013

Appeal Ref: APP/E5900/C/12/2182746

Footway outside 15-17 Leman Street, London E1 8EN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued by the Mayor and Burgesses of the London Borough of Tower Hamlets.
- The appeal is made by Infocus Public Networks Limited (Derek Parkin).
- The Council's reference is ENF/12/00159.
- The notice was issued on 11 July 2012.
- The breach of planning control as alleged in the notice is the installation of a pay phone kiosk on the footway.
- The requirements of the notice are to remove the pay phone kiosk, remove all materials from the site and repair any damage to the footway.
- The period for compliance with the requirements is 14 days.
- The appeal is proceeding on the grounds set out in section 174(2)[a] and [c] of the Town and Country Planning Act 1990 as amended.

Summary of decision: The enforcement notice is quashed.

The appeal on ground (c)

1. This is that the phone kiosk benefits from the planning permission granted by Part 24 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 (as amended) (the 'GDPO').
2. Certain facts relating to this appeal are not in dispute. The kiosk is one to which the provisions of Part 24 apply. Developments under Part 24 are subject to the 'prior approval' procedure. An application for prior approval was made to the local planning authority. The authority had 56 days in which to give notice whether prior approval was required, and for the applicant to receive such notice. Both parties agree that the time within which the applicant should have received such notice expired on 26 December 2011. Where an applicant for prior approval does not receive notification from the planning authority within this period, the apparatus benefits from 'permitted development' rights.
3. The authority sent an undated letter both requiring and refusing prior approval. That letter was received by the appellant in the post on 29 December 2011, outside the 56 day period. The authority sent a further letter on 24 January 2012 explaining that the letter was sent on, and should have been dated, 23 December 2011.

4. The authority also sent the undated letter by email to two email addresses purporting to be those of the appellant. The email was sent at 1632 hours on Friday 23 December 2011. The appellant says that one email address does not exist. The email was received at the other email address, that given on the appellant company's letter heading.
5. At first glance, this suggests that the decision requiring and refusing prior approval was received by the appellant within the 56 day period. However, the appellant raises two issues with regard to this.
6. Firstly the appellant says that the email copy of the letter should be disregarded since the application was not made electronically and no permission was given for electronic communication to be used in correspondence. However, the email address at which the letter was received was on the appellant company's letter seeking prior approval. It is now common practice, and indeed positively encouraged, for applications and decisions to be made electronically, and where an email address is given it is accepted practice that this can be used in communications. Section 329(1)(cc) of the Town and Country Planning Act 1990 permits the service of a notice using electronic communications where an address for service has been given, subject to condition and a number of exceptions, none of which include notices confirming that prior approval is required under Part 24 of the GPDO. Furthermore, although in the initial stages of this appeal some doubt was expressed about whether the email was received by the appellant, there is now no doubt that it was so received.
7. However, the appellant also says that this email enclosing the letter was received outside its business hours. Section 336(4A) of the Town and Country Planning Act 1990 provides that:

Where—

(a) an electronic communication is used for the purpose of serving or giving a notice or other document on or to any person for the purposes of this Act, and

(b) the communication is received by that person outside that person's business hours,

it shall be taken to have been received on the next working day, and in this subsection, "working day" means a day which is not a Saturday, Sunday, Bank Holiday or other public holiday.
8. The appellant says that its business hours are 0830 to 1630 on Mondays to Fridays. Both parties accept that the email was sent at 1632 on Friday 23 December 2011. This is outside these business hours. The next working day would have been Wednesday 28 December 2011, as the intervening days were Saturday, Sunday and two public holidays.
9. The council points to a previous appeal (APP/E5900/C/12/2170915) by the same appellant, relating to a different site, where the Inspector accepted that an electronic copy of the council's decision which arrived on a Friday evening, just prior to the weekend, was validly served within the specified time. However, the appellant's agent says that, at the time of that appeal, he had

been unaware of the above Section 336(4A), which had been inserted into the 1990 Act from March 31, 2003¹. Had he been aware of this point and argued it in that appeal, the Inspector's conclusion may well have been different.

10. Section 336(4A) of the 1990 Act specifically refers to "*that person's business hours*". While many other businesses – and indeed, it would appear, the council – may still have been working at 1632 hours on a Friday afternoon, a 1700 or 1730 finish being common practice for office-based businesses, the Act is specific that it is the business hours of the person receiving the notice which is determinative of the matter. There is no evidence to suggest that the business hours of the appellant are different to those claimed in the appeal representations. In any event, many office-based businesses which normally operate until 1700 or 1730 hours on other weekdays do close earlier on a Friday afternoon, and this is particularly so when, as in this case, it is the last working day before the Christmas holiday. Accordingly the emailed letter from the council requiring and refusing prior approval was not received during the appellant's business hours on Friday 23 December 2011, and by virtue of Section 336(4A) of the 1990 Act is deemed to have been received on Wednesday 28 December 2011.
11. The notification of the council's decision to require and refuse prior approval was thus not received by the appellant until after the expiry of the 56 day period. The apparatus therefore benefits from the permitted development rights granted under Part 24 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 (as amended) and the appeal on ground (c) succeeds. As the appeal is successful under this ground, the ground (a) appeal and the deemed planning application do not fall to be considered.

Formal decision

12. I allow the appeal and direct that the enforcement notice be quashed.

Peter Horridge

INSPECTOR

¹ by the Town and Country Planning (Electronic Communications) (England) Order 2003 (SI 2003/956), article 6



Appeal Decision

Site visit made on 7 March 2012

by Ray Wright BA(Hons) DipTP MRTPI

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

Decision date: 15 May 2012

Appeal Ref: APP/X5990/A/11/2165665

Outside 124 Horseferry Road, London SW1P 2TX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a development order.
 - The appeal is made by D Parkin (Infocus Public Networks Ltd) against the decision of the Council of the City of Westminster.
 - The application Ref 11/07499/TELCOM, dated 3 August 2011, was refused by notice dated 26 September 2011.
 - The development proposed is the installation of a 'public payphone'.
-

Decision

1. The appeal is allowed and approval is granted under the provisions of Part 24 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 (as amended), in respect of development by a telecommunications code system operator for the siting and appearance of a public payphone on land outside 124 Horseferry Road, London SW1P 2TX in accordance with the terms of the application Ref 11/07499/TELCOM, dated 3 August 2011, and the plans/photographs submitted with it, (nos.(A) to (H) inclusive), subject to the following conditions:
 - 1) Upon installation the telephone kiosk shall be painted black and maintained in that colour for as long as it remains in situ.
 - 2) In the event that the payphone kiosk is no longer required for the purposes of telecommunication, or is made redundant, it shall be removed from the site and works to the pavement made good.

Procedural Matter

2. The Council, in its decision letter, refers to Policy STRA 28 of the Westminster City Council Unitary Development Plan (UDP) which relates to Conservation Areas and the World Heritage site. The appeal site is not within a designated Conservation Area and therefore I have assessed this proposal against the other policies cited by the Council.

Main Issues

3. The main issue in this case is the effect of the proposed payphone kiosk on the character and appearance of the area.

Reasons

4. The proposed payphone would be enclosed by a kiosk principally of toughened glass within a steel frame, which would be painted black and have a site coverage, according to the appellant, of 1.48 square metres.
5. It would be sited close to the kerb of Horseferry Road. The Council and appellant refer to the pavement being between 8 and 11 metres wide at this point. Therefore the siting of the kiosk here, with its proposed positioning and dimensions, would have only a minimal effect on pedestrian movement in this area. I see no conflict with the principles set out in the recently adopted 'Westminster Way – Public realm strategy' Supplementary Planning Document in this respect.
6. While there are relatively few elements of street furniture in the immediate area, there are lampposts, trees and bollards on the pavement border. Also nearby, the Channel 4 offices at 124 Horseferry Road have a prominent, high profile entrance and this proposal must be assessed taking these existing features into account.
7. The siting proposed, between an existing tree and lamppost, would mean the kiosk would not be an isolated element or particularly visually prominent on this wide pavement. I agree with the appellant that the materials and form of the payphone kiosk would give it an appearance similar to bus shelters in the area. In consequence, it would not add unacceptably to street clutter or be visually harmful to the area.
8. Overall the siting and appearance of the proposed payphone would not adversely affect the character and appearance of the area. I therefore, find no conflict with the spacing or design requirements of Policy CS27 of the City of Westminster Core Strategy or Policies DES 1 or DES 7 of the UDP. In coming to a view on this proposal, I have had regard to the recently issued National Planning Policy Framework and am satisfied that the relevant local plan policies are not at odds with the new Framework.

Conclusion

10. For the reasons given above and having regard to all the above matters, I conclude that the appeal should be allowed.

Conditions

11. The Council has put forward three conditions should this appeal be allowed. The proposed black finish links in with other street furniture in the area and I consider a condition retaining this colour is reasonable in the interests of visual appearance. Should the payphone become redundant, it should be removed and the pavement area re-instated, therefore a condition to this effect is also necessary. This site is on a road frontage outside an office building and I do not consider the hours of building work for this payphone need to be controlled in the interests of amenity of residents.

Ray Wright

INSPECTOR



Appeal Decision

Site visit made on 7 February 2013

by Tim Wood BA(Hons) BTP MRTPI

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

Decision date: 6 March 2013

Appeal Ref: APP/K5030/A/12/2185860

Land outside Irongate House, 22-30 Dukes Place, London EC3A 7HX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a development order.
 - The appeal is made by Infocus Public Networks Ltd against the decision of the City of London Council.
 - The application Ref 12/00669/DPAR, dated 26 June 2012, was refused by notice dated 9 August 2012.
 - The development proposed is the installation of a public pay-phone.
-

Decision

1. The appeal is allowed and approval is granted under the provisions of the Town and Country Planning (General Permitted Development) Order 1995 for the siting of a public pay-phone on Land outside Irongate House, 22-30 Dukes Place, London EC3A 7HX accordance with the terms of the application, Ref: 12/00669/DPAR, dated 26 June 2012 and the plans and documents submitted with it.

Preliminary Matters

2. Telecommunications Code System operators have permitted development rights under the Town and Country Planning (General Permitted Development) Order 1995 (GPDO). They are, amongst other things, entitled to place and maintain telephone kiosks on the highway as permitted development subject to the relevant local planning authority (LPA) being given the opportunity to say whether its prior approval for the siting and appearance of the apparatus is required. The applicable provision is set out in Part 24 of the GPDO.
3. In 2010, there were two court cases relating to how applications for prior approval ought to be considered and covering the scope of prior approval applications relating to telephone kiosks. The first of these is *Murrell v SSCLG & Broadland District Council* (2010) ECWA Civ 1367. This case addressed, amongst other things, the scope of issues (siting and appearance) which could be considered and made it clear that these are not applications for planning permission. The court held that planning permission was already granted by the GPDO, subject to the prior approval relating to siting and appearance and referred to the prior approval process as being analogous to decisions on reserved matters. It is on this basis that I have dealt with the appeal and I have considered it on its merits in relation to siting and appearance in the specific location proposed.

4. The second case involved the appellant in the current appeal and this LPA: Infocus Public Networks Ltd v SSCLG & The Mayor and Commonality of the Citizens of London (2010) EWHC 3309 (Admin). In this case the judge referred extensively to the Murrell judgement and also dealt with the issue of advertising on pay-phones. He found that LPAs have sufficient powers to control advertisements, including discontinuance procedures and that, once the principle of this kind of development is acknowledged, the primary issues to be considered are the siting and appearance of the kiosk.
5. The judge considered that 'appearance (though apt to include anything attached to the surface of the kiosk) would ordinarily be thought to be the intrinsic appearance of the kiosk itself'. Whilst I accept that the kiosk has the potential to be altered in appearance by advertising material, the court case above has held that such material cannot be a 'predominant determinant' in relation to whether or not prior approval should be given. I have, therefore dealt with the appeal on that basis.

Main Issue

6. The main issue in this appeal is the effect of the proposal on the character and appearance of the area.

Reasons

7. The proposed telephone kiosk would be sited at the southern end of Houndsditch and Dukes Place on land forming part of the public highway. The public area accommodates planted landscaping, paving and the now disused stairs to the pedestrian subway. The proposal would be sited on an area which is currently paved, adjacent to the disused stairs.
8. The site falls within the Aldgate area identified in the Council's Core Strategy (CS) in Policy CS8 which seeks to, amongst other things, regenerate the amenities and environment of the area and enhance the public realm. In addition, Policy UTIL 4 of the Council's Unitary Development Plan (UDP) permits ground based apparatus which enhances or does not harm townscape and seeks to refuse such proposals if they materially harm the townscape. Furthermore, Policy ENV 7 of the UDP seeks to ensure that street furniture has due regard to the character of the City.
9. The Council accepts that, in its current layout, the proposal would not be as obtrusive as other locations, as it would be set against the existing wall to the stairs and close to the planted area. I agree that it would be unobtrusive within this location and not appear to clutter the street-scene.
10. In relation to its design, it would be simple and uncomplicated with a metal frame and glazed sides. Its relatively modest scale in comparison to the buildings nearby would mean that it would not dominate the area and its simple form would have no detrimental effect on the character of the area.
11. The Council refer to the Aldgate and Tower Area Strategy which envisages improvements to the public realm within this area. The Council states that the scheme is scheduled for highway layout approval in May 2013 and is due for implementation in early 2014. Within this context, I consider that the plain and simple design of the proposal would not prejudice the overall design and implementation of such an improvement scheme, the final layout of which has not yet been decided. Therefore, I find no conflict with the Policies set out

above nor with CS Policies CS10 and CS12 and that the siting and appearance of the kiosk in this location is acceptable. Therefore, the appeal succeeds.

12. The Council has asked that, in the event that the appeal is allowed, this should be the subject of a Unilateral Undertaking which would secure the removal of the kiosk in order to undertake an improvement scheme, and without seeking compensation. Notwithstanding the fact that no such Undertaking is before me, as the nature of this proposal is for the prior approval of siting and appearance for development which otherwise enjoys permitted development rights, I do not consider that such an Undertaking is necessary. In addition, I do not find that the proposed Undertaking is necessary in order to make the proposal acceptable.

S T Wood

INSPECTOR

Appeal Decisions

Site visit made on 17 October 2014

by Alan Boyland BEng(Hons) DipTP CEng MICE MIHT MRTPI

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

Decision date: 23 December 2014

CASE DETAILS

All Appeals

- The appeals are made under section 78 of the Town and Country Planning Act 1990 against refusals to grant approvals required under Part 24 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995.
 - The appeals are made by Infocus Public Networks Ltd against the decisions of Swindon Borough Council.
 - The development proposed in each case is installation of a public payphone on the public highway by an electronic communications code operator.
 - The applications were all dated 10 June 2013 and refused by notice dated 2 August 2013.
-

Appeal A - Ref: APP/U3935/A/13/2204403

Outside 18-19 Commercial Road, Swindon, SN1 5NS

- Application Ref S/TC/13/0770.
-

Appeal B - Ref: APP/U3935/A/13/2204411

Outside 18-19 Regent Street, Swindon, SN1 5JQ

- Application Ref S/TC/13/0779.
-

Appeal C - Ref: APP/U3935/A/13/2204414

Outside 2-6 The Parade, Swindon, SN1 1BB

- Application Ref S/TC/13/0785.
-

Appeal D - Ref: APP/U3935/A/13/2204416

Outside 19-21 Canal Walk, Swindon, SN1 1LD

- Application Ref S/TC/13/0772.
-

Appeal E - Ref: APP/U3935/A/13/2204422

Outside Unit 1A, The Lock, Canal Walk, Swindon, SN1 1LD

- Application Ref S/TC/13/0789.
-

Appeal F - Ref: APP/U3935/A/13/2204424

Outside 15 Regent Circus, Swindon, SN1 1PP

- Application Ref S/TC/13/0781.
-

Appeal G - Ref: APP/U3935/A/13/2204430
Adjacent to 23 Canal Walk, Swindon, SN1 1LD

- Application Ref S/TC/13/0790.
-

Appeal H - Ref: APP/U3935/A/13/2204431
To rear of 12 Theatre Street, Swindon, SN1 1QN

- Application Ref S/TC/13/0784.
-

Appeal I - Ref: APP/U3935/A/13/2204434
Outside 53-55 The Parade, Swindon, SN1 1BB

- Application Ref S/TC/13/0788.
-

Appeal J - Ref: APP/U3935/A/13/2204447
Outside 32-34 Regent Street, Swindon, SN1 1JS

- Application Ref S/TC/13/0773.
-

Appeal K - Ref: APP/U3935/A/13/2204456
Outside 38 Havelock Street, Swindon, SN1 1SD

- Application Ref S/TC/13/0782.
-

Appeal L - Ref: APP/U3935/A/13/2204462
Adjacent to The Tri Centre, Two Buildings, New Bridge Square, Swindon, SN1 1HN

- Application Ref S/TC/13/0778.
-

Appeal M - Ref: APP/U3935/A/13/2204463
Outside 44-45 Bridge Street Swindon, SN1 1BL

- Application Ref S/TC/13/0771.
-

Appeal N - Ref: APP/U3935/A/13/2204468
Outside Wellington House, Wellington Street (opposite Haydon Street), Swindon, SN1 1EB

- Application Ref S/TC/13/0768.
-

Decisions

Appeals dismissed

1. The following appeals are **dismissed**:

- Appeal F - Outside 15 Regent Circus, Swindon, SN1 1PP (Application Ref S/TC/13/0781)
- Appeal G - Adjacent to 23 Canal Walk, Swindon, SN1 1LD (Application Ref S/TC/13/0790)

Appeals allowed

2. The following appeals are allowed and approval is granted under the provisions of the Town and Country Planning (General Permitted Development) Order 1995 for installation of a public payphone on the public highway by an electronic communications code operator at the following locations, in accordance with the applications as indicated, all dated 10 June 2013, and in accordance with the plans submitted with the respective applications:
 - Appeal A - Outside 18-19 Commercial Road, Swindon, SN1 5NS
Application Ref S/TC/13/0770
 - Appeal B - Outside 18-19 Regent Street, Swindon, SN1 5JQ
Application Ref S/TC/13/0779
 - Appeal C - Outside 2-6 The Parade, Swindon, SN1 1BB
Application Ref S/TC/13/0785
 - Appeal D - Outside 19-21 Canal Walk, Swindon, SN1 1LD
Application Ref S/TC/13/0772
 - Appeal E - Outside Unit 1A, The Lock, Canal Walk, Swindon, SN1 1LD
Application Ref S/TC/13/0789
 - Appeal H - To rear of 12 Theatre Street, Swindon, SN1 1QN
Application Ref S/TC/13/0784
 - Appeal I - Outside 53-55 The Parade, Swindon, SN1 1BB
Application Ref S/TC/13/0788
 - Appeal J - Outside 32-34 Regent Street, Swindon, SN1 1JS
Application Ref S/TC/13/0773
 - Appeal K - Outside 38 Havelock Street, Swindon, SN1 1SD
Application Ref S/TC/13/0782
 - Appeal L - Adjacent to The Tri Centre, Two Buildings, New Bridge Square, Swindon, SN1 1HN
Application Ref S/TC/13/0778
 - Appeal M - Outside 44-45 Bridge Street Swindon, SN1 1BL
Application Ref S/TC/13/0771
3. Appeal N is allowed and approval is granted under the provisions of the Town and Country Planning (General Permitted Development) Order 1995 for installation of a public payphone on the public highway by an electronic communications code operator outside Wellington House, Wellington Street (opposite Haydon Street), Swindon, SN1 1EB in accordance with the application, Ref S/TC/13/0768, dated 10 June 2013, in accordance with the plans submitted subject to the condition that, notwithstanding the submitted plans, the payphone hereby approved shall be set 0.5 metre from the edge of the adjacent carriageway.

Main Issues

4. The appellant company in these cases is a telecommunications code operator. As such it benefits from deemed planning permission for the proposed payphones under Part 24 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 (the GPDO), subject to prior approval by the local planning authority of their siting and appearance.

Accordingly the principle of the developments, including considerations such as the need for these particular facilities is not at issue in these appeals. However, approval of the siting and appearance was refused by the Council in all of these cases.

5. Accordingly, the main issues in all of these appeals are the effects of the siting and appearance of each proposed payphone on:
 - (i) the safety and convenience of users of the public highway; and
 - (ii) the character and appearance of the area and, in the case of appeal F (outside 15 Regent Circus) only, whether the proposed payphone would preserve the setting of the Grade II Listed Town Hall.

Reasons

Policy

6. The section on communications infrastructure in the *National Planning Policy Framework* (NPPF) mainly addresses radio and telecommunication masts and high speed broadband facilities. However, more generally it sets out a positive approach to such development and indicates that local planning authorities should not impose a ban on new telecommunications development in certain areas.
7. Saved policy DS6 of the adopted *Swindon Borough Local Plan 2011* (LP) sets out standards of design and amenity, and indicates that particular scrutiny will be given to proposals within the town centre. Saved policy ENV2 seeks to ensure that development affecting a listed building, amongst other things, at least preserves its setting. Saved policy ENV8 seeks appropriate provision to allow access for all, including disabled people. These policies predate the NPPF but nevertheless are broadly consistent with it, and I give them great weight.
8. The *Swindon Central Area Action Plan 2009* (CAAP) is an adopted Development Plan Document. Policy CAAP3 sets out, amongst other things, detailed criteria for the assessment of development proposals in terms of their effects on the public realm. Again this document predates the NPPF, but policy CAAP3 insofar as it relates to these proposals is also consistent with it. I therefore attach much weight to it.
9. *Inclusive Design Access for All*, a Supplementary Planning Document (SPD) under the Council's Local Development Framework (LDF), was adopted in 2011. While it does not carry the full weight of a development plan, it is a material consideration in the determination of planning applications. To my mind that extends to the matters that are the subjects of these appeals. The SPD sets out design principles in support of LP policy ENV8.

Payphone design

10. The conclusions in this section apply generally to all the proposals except where indicated subsequently.
11. The design of the proposed payphone kiosk would be the same in each case. It would be a simple asymmetric 3-sided rectangular box having a footprint some 1.3m x 1.1m, with one side shortened and a slightly domed roof. The frame and main part of the roof would be of steel coated in black, with the sides and rear panels infilled with clear polycarbonate toughened glass leaving gaps at

the bottom. The floor would be level with the existing pavement, and in the few instances where they would be situated adjacent to trafficked roads the opening would face away from the traffic.

12. It is undisputed that there is the potential for advertisements on one face of the kiosks through deemed consent. However, as both parties acknowledge, the Courts have held that local planning authorities have powers to secure discontinuance of such advertising and that this cannot be a 'predominant determinant' in the assessment of kiosks. I have considered the appearance of these proposed kiosks accordingly.
13. I recognise that the NPPF seeks high quality design, as does LP policy DS6, but design quality has to be assessed with regard to context. I agree that the design could be described as functional and utilitarian. In some situations those might well be regarded as negative attributes. Equally they could suggest that the kiosks would be uncomplicated in style and unobtrusive in an urban setting predominantly comprising modern buildings of relatively unassuming designs. I consider the latter to apply in the case of most of these proposals. The light and airy style and simplicity of form of the proposed kiosks would in my view minimise their visual impact rather than seeking to make an intrusive visual statement. The similarity in form and style to existing phone kiosks, advertising stands and bus shelters near some of the proposed payphones would further help these to assimilate into the street scene.
14. The payphone would be powered by solar panels integral to the roof, which would bring modest benefits in term of sustainability. Also they would be connected wirelessly via the mobile phone network. Accordingly, and more significantly for the matters under consideration here, there would be no overhead or underground cabling required, and the visual impacts of these would be avoided.
15. The Council disputes the appellant's claim that the payphones need to be the size proposed in order to accommodate wheelchairs. It also points out that they do not fully comply with best practice guidance for telephones within a booth as set out in British Standard (BS) 8300:2009 due to insufficient floor area and because, it says, they are not accessible from the front and sides. The appellant does not deny that the BS standards would not be met, though its point that the recommended size would fall outside the limit for permitted development under the GPDO has no bearing on the substantive planning merits of these proposals.
16. However, leaving aside the apparent contradiction between the Council's two points regarding size, it does not appear to deny that the payphones would be wheelchair-accessible. They would be accessible by most wheelchairs from the front and at an angle from one side, and in all cases there would be sufficient space around them for any necessary manoeuvring of wheelchairs.
17. Again the parties disagree on whether or not other payphones provided in the area by the appellant's competitors can provide this facility, but that is essentially a matter of commercial competition and it not material to the planning issues in these appeals. However, I note that an existing wheelchair accessible payphone in The Parade is mounted on the outside of a kiosk, so users are fully exposed to the weather and have no privacy.

18. Clearly any additional structure in the highway could be said to add to clutter as the Council suggests but, in view of the nature of the proposed kiosks as discussed above, I conclude that in general the harm in this respect to the character and appearance of the area would be minimal. However, where necessary I consider further the particular effects of individual kiosks below.

Locations

19. All of the sites of the proposed payphones are in the town centre, mainly within the retail core. None is in a Conservation Area.

Appeal A : Outside 18-19 Commercial Road, Swindon, SN1 5NS

20. Commercial Road is on the fringe of the town centre. It is a busy, trafficked (one way) street with frontage development mainly comprising a mix of shops and premises offering financial and professional services. There was little pedestrian traffic at the time of my visit, and I have seen nothing to indicate that this was untypical.
21. The proposed kiosk would be 0.5m from the edge of the footway, allowing adequate clearance from the carriageway along which there is a prohibition of waiting at all times indicated by double yellow lines. Nearby is a street lamp standard which is painted black. Almost opposite are an existing payphone kiosk and a cable box, both at the kerbside.
22. The footway here is 4.7m wide, and there would remain a gap of in excess of 3m between the kiosk and the adjacent building frontage. I saw that pedestrians here generally walk closer to the building frontages. I consider it unlikely that many would walk along close to the kerb, and the path for any (including those with visual impairments) who do so is already obstructed by the adjacent lamppost and other street furniture at the kerbside along the street.
23. I conclude that this kiosk would not significantly harm the safety and convenience of highway users. My general conclusion regarding the effect on character and appearance applies in this instance.

Appeal B : Outside 18-19 Regent Street, Swindon, SN1 5JQ

Appeal D : Outside 19-21 Canal Walk, Swindon, SN1 1LD

Appeal E : Outside Unit 1A, The Lock, Canal Walk, Swindon, SN1 1LD

Appeal I : Outside 53-55 The Parade, Swindon, SN1 1BB

Appeal J : Outside 32-34 Regent Street, Swindon, SN1 1JS

Appeal K : Outside 38 Havelock Street, Swindon, SN1 1SD

Appeal M : Outside 44-45 Bridge Street Swindon, SN1 1BL

24. These locations are all in pedestrianised 'streets'. Most are within the modern shopping precinct, but Havelock Street and Bridge Street are older streets now also pedestrianised. They carry high pedestrian flows. In each of the streets the outer parts, closest to the frontages, are largely free from obstructions, and I observed that most pedestrians walking along these streets, particularly those clearly 'window shopping' as they went, did so here. These parts also provide routes for service vehicles.
25. The central parts of the streets are also largely open, but they do contain many items of street furniture including seats, benches, litter bins, lamp posts and

existing phone kiosks, as well as trees, raised planters, sculptures and advertising stands. I saw that pedestrians can, and some do, walk longitudinally along the streets here, weaving their way between the obstructions. However, most use the central areas only to cross from one side to the other.

26. On my visits I identified only a small number of people with visual or physical impairments. These largely followed similar paths to other pedestrians.
27. The proposed payphone kiosks would be in the central parts, well related to other features so as to minimise, in conjunction with their relatively small footprints, the additional obstruction to pedestrian movements. I conclude that these kiosks would not significantly harm the safety and convenience of highway users. My general conclusion regarding the effects on character and appearance also applies in these instances.

Appeal C : Outside 2-6 The Parade, Swindon, SN1 1BB

28. This kiosk would be in a small pedestrianised piazza. This is on one of the main routes into the main shopping precinct and I saw that it carries particularly high levels of pedestrian traffic passing through. The piazza is mainly open, with just a small number of seats in the central area and two pairs of kiosks to one side. Three of these kiosks are conventional payphones and one has an external ATM on one side and an external payphone on another.
29. I saw that pedestrian routes are more varied than in the linear 'streets', but principal desire line is between the underpass and The Parade along the building frontages on the north-east side. The existing permanent features cause little impediment to free flow, though building works on the north-east side were encroaching a little at the time of my visit. The proposed kiosk would be in the gap between two bench seats, still leaving space for pedestrians to pass to either side between it and the seats. In the light of this and of the proposed location in relation to the pattern of movements I observed, I consider that the kiosk would cause little obstruction.
30. I conclude that this kiosk would not significantly harm the safety and convenience of highway users. My general conclusion regarding the effects on character and appearance again applies here.

Appeal F : Outside 15 Regent Circus, Swindon, SN1 1PP

31. This site is in an open area around the west (main) and north (secondary) sides of the old Town Hall, a Grade II Listed Building. This dates from the late 19th century and is a typical public building of its period in red brick with stone string courses and door and window features. The space around it gives a pleasant visual separation from the mainly nondescript mid 20th century buildings surrounding it. The Council advises that this area has in recent times been decluttered, enhanced and landscaped. I saw that it provides a fitting setting for the listed building and consider that it makes an important contribution to the designated heritage asset.
32. The proposed payphone kiosk would be in the wide (10.7m here) footway on the far side of a cul-de-sac roadway running along the north (secondary) frontage of the Town Hall providing access to loading bays and 'blue badge' parking. It would be in line with several trees, a cycle rack and a post box. It

did not appear to me to lie on any main pedestrian desire lines and so would not significantly impede movements. The Council expresses concern that it would be difficult for people with disabilities to alight from vehicles next to the kiosk. However, this side of the road is a loading bay whereas 'blue badge' parking is available on the opposite side adjacent to the Town Hall. In any event, while the distance between it and the kerb is not dimensioned on the submitted plans, it scales at over 2m which in my view would be adequate to avoid significant problems in this respect.

33. The cycle racks are relatively inconspicuous, being low and set between trees and shaded by them. There is a fixed information/direction board a little further up but, while it is of similar height to a phone kiosk, it has a much smaller footprint and relates more to the pedestrian routes and surrounding buildings than to the Town Hall. The proposed kiosk on the other hand would stand more alone and be taller and more prominent than the existing features. In my view it would detract from the openness of this part of the setting of the Town Hall and cause substantial harm to the significance of the heritage asset.
34. I conclude therefore that that while this kiosk would not significantly harm the safety and convenience highway users, it would be harmful to the character and appearance of the area and would fail to preserve the setting of the listed building.

Appeal G : Adjacent to 23 Canal Walk, Swindon, SN1 1LD

35. This location is within a large open area known as Wharf Green. It is identified in the CAAP as a primary space and a multi-purpose urban square providing a focal point for events and congregations, including a large TV screen mounted on an adjacent building. Clearly openness is an important attribute of the space, in both visual and functional terms.
36. The proposed payphone kiosk would be located in line with two low benches and near a recently-planted tree. It would not in my judgement materially impede day-to-day pedestrian routes through the area, but it would be an obstruction to movement on occasions when large gatherings take place here. Moreover it would be visually prominent as an intrusion into the open area and would introduce a visual 'shadow' within which views of events occurring live or being shown on the TV screen would be blocked.
37. I conclude that this kiosk would be harmful to the safety and convenience of highway users and would be harmful to the character and appearance of the area.

Appeal H : To rear of 12 Theatre Street, Swindon, SN1 1QN

38. This location is actually on the footway of Princes Street, a major route around the town centre. The footway here is some 6m wide, and it is built out further at a pelican crossing near the site of the proposed payphone kiosk. I saw that the railings shown on the photo submitted by the appellant and referred to by the Council have now been removed, but I observed that pedestrians still tend to walk diagonally across the footway to and from the crossing rather than turning towards the position of the kiosk. By chance, on my visit I saw a long cane user using the crossing. Rather than following the kerb as the Council suggests he also headed for the back of the footway where he followed the

building frontages to Regent Circus. Accordingly I do not share the Council's view that the kiosk would be a barrier to pedestrian movement.

39. A kiosk here should not impede cyclists as the Council suggests. There is no designated cycle track here so, as I understand it, lawfully cyclists should be using the road rather than the footway. I note that there are proposals to convert the crossing to a toucan crossing, but it seems to me that there is ample space to accommodate provision for cyclists in association with this. In the event of it nevertheless being necessary to relocate the kiosk for this purpose, the lack of cables for power or telephony and the proposed fixing of the kiosk to the existing surfacing rather than setting it into the ground would render this relatively straightforward.
40. The kiosk would be close to the kerb, but it would not pose an obstruction to traffic as stand-out for the crossing forces vehicles away from the kerb at this point, and the 'layby' thus created has double yellow lines and is within the zig-zag zone on the approach to the crossing.
41. I conclude that this kiosk would not significantly harm the safety and convenience of highway users. My general conclusion regarding the effects on character and appearance applies here.

Appeal L : Adjacent to The Tri Centre, Two Buildings, New Bridge Square, Swindon, SN1 1HN

42. This proposed kiosk would be located outside the main shopping area, on the opposite side of Fleming Way, in an area of mainly office development. The site is on a main pedestrian route between the shopping centre, via a subway from the Parade, and the bus and rail stations as well as the office and other development north of Fleming Way.
43. The kiosk would be at the edge of a small open area, adjacent to a wall containing an area of landscaping that rises towards Fleming Way. I saw that most pedestrians go diagonally across to Newbridge Square or straight ahead towards the bus station. The proposed kiosk would not impinge on these desire lines. A few turn to go up the ramp to the bus stops in Fleming Way (most use the shorter route via the steps), but the post box, recycling bins and lamp post already situated against the wall near the kiosk site already force the to take a slightly wider route so the kiosk would not affect them significantly.
44. While the phone kiosk would introduce a new visual element here, the proximity of the wall and the presence of the post box, recycling bins and lamp post close by would mitigate its impact.
45. I conclude that this kiosk would not significantly harm the safety and convenience of highway users. My general conclusion regarding the effects on character and appearance applies again here.

Appeal N : Outside Wellington House, Wellington Street (opposite Haydon Street), Swindon, SN1 1EB

46. Wellington Street is a trafficked (one way) street near the rail station to which it forms a key pedestrian route though flows were low at the off-peak time of my visit. The frontage development is a mix of commercial and residential; Wellington House is residential with the lowest level of accommodation

apparently being at about normal first floor level and a largely blank façade below this.

47. The footway here is some 5.5m wide, and the proposed kiosk would be close to the kerbside, leaving ample room for pedestrians to pass. It would obstruct the path for any visually impaired people following the kerb rather than the building edge but, while there are no other obstructions on this side of this road, there are many instances of lamp posts and bollards close to the road edge (for example on the opposite side of Wellington Street nearby) so such obstructions would not be unexpected.
48. There is no direct pedestrian access to Wellington House from the street, double yellow lines on the road here denote a prohibition of parking at any time, and the kiosk would be opposite a road junction. Therefore there should be no issue with access to parked vehicles. In the interests of safety it would be necessary for the kiosk to be no closer than 0.5m from the kerb. The submitted plans do not specify a distance in this instance, but it scales at less than this. However, the necessary separation could be secured through a planning condition. Subject to such a condition I conclude that the kiosk would not significantly harm the safety and convenience of highway users.
49. This side of the street is somewhat featureless, and while a payphone kiosk would introduce a significant new visual element I do not consider that it would amount to clutter. My general conclusion regarding the effects on character and appearance applies again here.

Conclusions

50. The Council's refusal of all 14 of the applications to which these appeals relate, in a variety of locations and situations, could be viewed as tantamount to a blanket ban on such new payphone kiosks in the area, contrary to para 44 of the NPPF. However, the authority has rightly avoided consideration of the need for the proposed kiosks, and its reasons for refusal relate only to the matters for which prior approval is required, namely siting and appearance.
51. In all but two of these cases I have found no material harm in respect of the main issues, which address those two matters. In the case of appeal F (outside 15 Regent Circus) there would be harm in respect of the second issue only. In appeal G (adjacent to 23 Canal Walk) I have found harm in respect of both main issues.
52. In those cases where there would be no material harm to the safety and convenience of users of the public highway (issue (i)), and in the light of my conclusion with regard to the accessibility of all of the proposed kiosks by wheelchair users, I conclude that the proposals would comply with LP policies ENV8 (access for all) and DS6 (design strategy) criterion (f) regarding suitable access. The proposed kiosk adjacent to 23 Canal Walk (appeal G) would not comply with these.
53. Similarly, none of the proposed payphones would materially prejudice the delivery of new and improved primary routes in central Swindon as set out in the CAAP, or the provision of safe and suitable routes for everyone in accordance with design principle 2 in the *Inclusive Design Access for All* SPD. However, the proposed kiosk adjacent to 23 Canal Walk (appeal G) would prejudice the delivery of the primary space at Wharf Green, contrary to policy

CAAP3. It would also conflict with design principle 3 of the SPD on inclusive spaces.

54. In the cases where there would be no material harm to the character and appearance of the area (issue (ii)) the proposed kiosks would accord with criterion (a) of LP policy DS6, which requires development to be well laid out and sympathetic to the local context, character and site coverage. The proposed kiosk outside 15 Regent Circus (appeal F) would not comply with this. Moreover, the harm to the setting of the listed Town Hall in that case would also be contrary to LP policy ENV2 (development affecting listed buildings).
55. In those appeals that are allowed the deemed planning permission for the proposed payphones under Part 24 of Schedule 2 to the GPDO, subject to prior approval of their siting and appearance, is also subject to conditions set out in the GPDO. In the case of appeal N (Outside Wellington House, Wellington Street) an additional condition would be necessary as indicated above.
56. For the reasons given above I conclude that appeals F (outside 15 Regent Circus) and G (adjacent to 23 Canal Walk) should be dismissed but that the remaining 12 appeals should succeed.

Alan Boyland

Inspector



Appeal Decision

Site visit made on 27 March 2013

by G Powys Jones MSc FRTPI

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

Decision date: 11 April 2013

Appeal Ref: APP/X5210/A/12/2187076

North of Endeavour House, 189 Shaftesbury Avenue, London WC2H 8JR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under the provisions of Part 24 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995, as amended. (GPDO).
 - The appeal is made by Infocus Public Networks Ltd against the decision of the Council of the London Borough of Camden.
 - The application Ref 2012/3807/P, dated 18 July 2012, was refused by notice dated 4 September 2012.
 - The development proposed is the installation of a public payphone.
-

Decision

1. The appeal is allowed and approval is granted under the provisions of Part 24 of Schedule 2 to the GPDO, in respect of development by Infocus Public Networks Ltd, for the siting & appearance of a public payphone on land to the north of Endeavour House, 189 Shaftesbury Avenue, London WC2H 8JR in accordance with the terms of the application Ref 2012/3807/P, dated 18 July 2012, subject to the following condition:

The development hereby permitted shall be carried out in accordance with the following approved plans and documents: the OS based site & location plans, the annotated photograph showing the proposed position of the payphone, and the unreferenced drawing of the proposed payphone.

Preliminary and procedural matters

2. In the appeal documentation, so as to avoid confusion, the appellant has adopted the address for the proposal used by the Council in its decision notice. I shall do likewise. However, as clearly shown on the submitted plans and photographs, the proposed payphone would be sited in St Giles High Street, albeit north of Endeavour House.
 3. As a telecommunication code systems operator the appellant benefits from deemed planning permission granted under the terms of the GPDO for the proposed payphone, subject to applying for a determination from the local planning authority as to whether the prior approval of the authority would be required to its siting and appearance. Such an application was made, but the Council deemed that prior approval would be needed, and contemporaneously
-

refused to approve the proposed siting and appearance on the basis of the information supplied at that stage.

Main Issue

4. The main issue is the effect of the siting and appearance of the proposed payphone on the street scene.

Reasons

5. The payphone would be sited between trees, close to the edge of the wide pavement in this part of St Giles High Street, next to a bus stand. The site was occupied by a large wheelie bin when I visited, one of five such bins parked next to one another, forming part of the Council's local recycling centre.
6. I consider the payphone to be well designed, with a light steel frame and toughened clear polycarbonate glass, exuding an impression of airiness. It would sit relatively unobtrusively in its visual context, particularly having regard to its siting beneath the tree canopy, which softens the distinctly urban street scene, particularly during the seasons when in full leaf.
7. The payphone would have far less of a visual impact than the Council's recycling centre. Apart from the wheelie bins, the locality does not display any more street furniture than normal in central London, and the payphone would be seamlessly absorbed into the street scene. I do not therefore share the Council's view that it 'would unacceptably add to a cluttered agglomeration of street furniture'.
8. The applicant has produced the necessary evidence to justify the development in the terms of paragraph 45 of the National Planning Policy Framework (the Framework) with particular reference to siting and appearance, and most of the policy advice in this paragraph is directed to other forms of telecommunications development. As paragraph 46 of the Framework provides, the need for the payphone is not a material consideration.
9. I note the views expressed on issues related to crime and anti-social behaviour. However, as a colleague said in a recent planning appeal to which my attention has been drawn, (*Ref APP/X5210/A/12/2178982*), the GDPO and the Framework establish that, in planning terms, payphones, in principle are an acceptable form of development. I share his view, but in any event, I am far from convinced that the proposed siting or appearance of the payphone, in themselves, would serve to encourage or increase crime or anti-social behaviour in the locality.
10. I conclude that the proposed siting and appearance of the proposed payphone would be acceptable, and the visual qualities of the street scene would not be harmed. Accordingly I find no conflict with those provisions of policies CS14 & DP24 of Camden's Local Development Framework: Core Strategy and Development Policies (CS) directed to promoting high quality places and design.
11. A condition is imposed for the avoidance of doubt and in the interests of proper planning to ensure that the development is carried out in accordance with the plans and documentation considered by the Council and myself.

12.No other matter raised in the representations outweighs the considerations that led me to this conclusion.

G Powys Jones

INSPECTOR



Appeal Decision

Site visit made on 27 March 2013

by G Powys Jones MSc FRTPI

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

Decision date: 11 April 2013

Appeal Ref: APP/X5210/A/12/2187079

Outside 148-149 Holborn, London EC1N 2NS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under the provisions of Part 24 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 (as amended) (GPDO).
 - The appeal is made by Infocus Public Networks Ltd against the decision of the Council of the London Borough of Camden.
 - The application Ref 2012/3469/P, dated 29 June 2012, was refused by notice dated 20 August 2012.
 - The development proposed is the installation of a public payphone.
-

Decision

1. The appeal is allowed and approval is granted under the provisions of Part 24 of Schedule 2 to the GPDO in respect of development by Infocus Public Networks Ltd for the siting & appearance of a public payphone on land outside 148-149 Holborn, London EC1N 2NS in accordance with the terms of the application Ref 2012/3469/P, dated 29 June 2012, subject to the following condition:

The development hereby permitted shall be carried out in accordance with the following approved plans and documents: the OS based site & location plans, the annotated photograph showing the proposed position of the payphone, and the unreferenced drawing of the proposed payphone.

Preliminary and procedural matters

2. As an electronic communications code operator the appellant benefits from deemed planning permission granted under the terms of the GPDO for the proposed payphone, subject to applying for a determination from the local planning authority for a determination as to whether the prior approval of the authority would be required to its siting and appearance. Such an application was made, but the Council deemed that prior approval would be needed and it refused to approve the proposed siting and appearance on the basis of the information supplied at that stage.

Main Issues

3. The main issues are the effect of the siting and appearance of the payphone on the street scene, and on pedestrian safety and convenience.
-

Reasons

4. The payphone would be sited back-to-back with an existing telephone box, not far from a set of steps serving Chancery Lane tube station. A small moveable newspaper stand rests against the steps' safety railings. A newspaper kiosk is sited to the east well away from the station's steps, although it was shut at the time of my afternoon visit. A small information panel erected by Transport for London is also in evidence, between the kiosk and the steps, and there is a modest amount of traffic signage/lights. A City of London plaque sits on a plinth erected to the west, on the junction of Holborn and Grays Inn Road.
5. The payphone is well designed, with a light steel frame and toughened clear polycarbonate glass, and exudes an impression of airiness. It would hardly be noticeable when approaching along the footway from the east, since the existing telephone box would largely screen it. From the west, and from the south on the opposite side of the road, given the lightness of its appearance, the payphone would be perceived as an acceptably designed addition to the existing telephone box.
6. The immediate area is not unusually or excessively cluttered with street furniture, and includes items normally associated with the entrances to London's tube stations. The addition of the proposed payphone would not, in my view, result in the visual congestion feared by the Council. Although not specifically cited as a reason for refusal, the payphone would not harm the setting of any of the listed buildings in the vicinity referred to by the Council.
7. During my visit, I watched the flow of, and routes taken by pedestrians along the footway, including those entering and exiting the tube station. Whilst I fully understand the Council's concerns, pedestrians rarely used the land immediately behind the existing telephone box upon which the proposed payphone would stand. This very restricted area did not appear to be on a clearly established pedestrian desire line, largely because of the presence of the existing telephone box.
8. The proposed payphone would marginally reduce the amount of space available to pedestrians, but sufficient space would remain in the remainder of the footway, which is almost 10m wide at this point, to ensure that the safety and convenience of pedestrians would not be put at risk.
9. The applicant has produced the necessary evidence to justify the development in the terms of paragraph 45 of the National Planning Policy Framework (the Framework) with particular reference to siting and appearance, and most of the policy advice in this paragraph is directed to other forms of telecommunications development. As paragraph 46 of the Framework provides, the need for the payphone is not a material consideration.
10. I note the views expressed on issues related to crime and anti-social behaviour. However, as a colleague said in a recent planning appeal to which my attention has been drawn, (*Ref APP/X5210/A/12/2178982*) the GDPO and the Framework establish that, in planning terms, payphones, in principle are an acceptable form of development. I share his view, but in any event, I am far from convinced that the proposed siting or appearance of the payphone, in

themselves, would serve to encourage or increase crime or anti-social behaviour in the locality.

11. I conclude that the proposed siting and appearance of the proposed payphone would be acceptable since the visual qualities of the street scene would not be harmed, and the safety and convenience of pedestrians would not be put at risk. Accordingly, I find no conflict with those provisions of policies CS14 & DP24 of Camden's Local Development Framework: Core Strategy and Development Policies (CS) directed to promoting high quality places and design. Nor is there a conflict with those provisions of CS policy DP21, setting out the Council's expectations that works affecting highways should avoid harm to highway safety, not hinder pedestrian movement and avoid unnecessary street clutter.
12. A condition is imposed for the avoidance of doubt and in the interests of proper planning to ensure that the development is carried out in accordance with the plans and documentation considered by the Council and myself. The second condition suggested by the Council is unnecessary, since it is a condition imposed on the development permitted under the terms of the GPDO.
13. No other matter raised in the representations outweighs the considerations that led me to my conclusions.

G Powys Jones

INSPECTOR

Appendix B

Schedule of Telephone Kiosks on UK Streets (Chronological Order)



K2 Kiosk

2.74m (h) x 1.00m (w) x 1.00m (w)



K6 Kiosk

2.44m (h) x 0.91m (w) x 0.91m (w)

Schedule of Telephone Kiosks on UK Streets (Chronological Order)



BT KX100 kiosk

2.16m (h) x 0.89m (w) x 0.90m (d)



BT KX100+ kiosk

2.21m (h) x 0.89m (w) x 0.90m (d)

Schedule of Telephone Kiosks on UK Streets (Chronological Order)



Infocus Kiosk

2.56m (h) x 1.32m (w) x 1.11m (d)



Arquiva Kiosk

2.43m (h) x 0.95m (w) x 0.94m (d)

Schedule of Telephone Kiosks on UK Streets (Chronological Order)



New World Payphones 'Modern' Kiosk

2.43m (h) x 0.90 (w) x 0.90 (d)



BT Street Talk 6 Kiosk

2.64m (h) x 1.34m (w) x 0.8m (d)

Schedule of Telephone Kiosks on UK Streets (Chronological Order)



New World Payphones Kiosk

2.64m (h) x 1.34m (w) x 0.8m (d)



BT Link

2.9m (h) x 0.89m (w) x 0.27m (d)

Appendix C



ALL INFORMATION IS TO BE CHECKED ON SITE FOR ACCURACY AND FIT.

KEY:

- 1. 1.0M - KERB ZONE
- 2. 1.32M - FURNITURE ZONE
- 3. 7.58M - FOOTWAY CLEAR ZONE
- 4. KIOSK LOCATION

DATE	PROJECT	JOB NO.	ISSUE	SCALE	TITLE
21/07/17	KIOSKS	CN10	001	NTS	CAMDEN
LOCATION: PAVEMENT OUTSIDE 199 FINCHLEY ROAD					