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## Appeal Decision

Site visit made on 5 June 2018

**by F Rafiq BSc (Hons), MCD, MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 23<sup>rd</sup> July 2018**

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### **Appeal Ref: APP/X5210/W/17/3180681**

### **Pavement outside 199 Finchley Road, London, NW3 6NN**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) Order 2015.
  - The appeal is made by Mr Tom Fisher (Euro Payphone Ltd) against the decision of the Council of the London Borough of Camden.
  - The application Ref 2017/2488/P dated 22 March 2017 was refused by notice dated 21 June 2017.
  - The development proposed is the installation of a telephone kiosk on the pavement.
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### **Decision**

1. The appeal is allowed and approval is granted under the provisions of Schedule 2, Part 16, Class A of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the siting and appearance, of the installation of a telephone kiosk on the pavement at Pavement outside 199 Finchley Road, London, NW3 6NN in accordance with the terms of the application Ref 2017/2488/P, dated 22 March 2017, and the plans submitted with it.

### **Procedural Matters**

2. I have taken the description of development from the decision notice as this more accurately describes the proposal subject of this appeal. Reference has been made by various parties to there not being sufficient information to assess the proposal. The Council proceeded to determine the prior approval application and I am also satisfied, based on the submitted written information, location plan and kiosk drawing, that there is adequate information to proceed to determine it.
3. As an electronic communications code operator, the appellant benefits from deemed planning permission for a proposed payphone kiosk (also known as a public call box) under Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) Order 2015 (GPDO), subject to prior approval by the local planning authority of siting and appearance. The appellant applied to the Council on that basis. The Council determined that prior approval was required and refused for the siting and appearance of the telephone kiosk.
4. The Council have made reference to Core Strategy Policies CS5, CS11, CS14 and CS17 and Policies DP16, DP21, DP24 and DP25 of the Council's Development Policies. The principle of development is established by the

GPDO and prior approval relating to paragraph A.3 of Schedule 2, Part 16, Class A of the GPDO includes no requirement that regard be had to the development plan. The provisions of the GPDO require the local planning authority to assess the proposed development solely upon the basis of its siting and appearance, taking into account any representations received. I, therefore, take account of the policies of the development plan and (any related guidance including policies in emerging plans) in so far as they are a material consideration relevant to matters of siting and appearance.

5. The National Planning Policy Framework deals with supporting high quality communications infrastructure, including applications for prior approval, and requires that local planning authorities must determine applications on planning grounds. As the principle of development is established by the GPDO, considerations such as need for the telephone box are not a relevant matter.

### **Main Issue**

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

### **Reasons**

7. The proposed free standing telephone kiosk would have a broadly rectangular form with dimensions of 1.32m by 1.11m and a height of 2.45m. The telephone kiosk would be constructed with a powder coated metal frame and laminated glass. It would have an open side to allow wheelchair access and solar panels would be included at roof level.
8. Finchley Road is a busy road which has been identified as forming part of the Transport for London's Road Network. It is also a busy shopping street with the appeal site, on the western side, situated outside a large store. The appeal proposal would be positioned where there is a wide pavement, but which goes on to taper and narrow to the south towards Goldhurst Terrace.
9. The area where the kiosk is proposed is clear from other street furniture, but the proposal would be seen in the context of the various bus shelters, bicycle stands and lamp posts along this stretch of pavement. These are all positioned in a broadly linear arrangement, and the proposal, would also be located close to the edge of the footway. It would not therefore appear as an obtrusive addition or give rise to a cluttered appearance in the streetscene.
10. The size of the kiosk, albeit its somewhat larger scale than a standard telephone kiosk, would also, given the scale of the nearby bus shelters, sit comfortably in the area. Although the kiosk would use metal as part of its construction, it would have significant elements of glazing, which would give it a lightweight appearance. The appeal site is not situated in a Conservation Area but reference has been made to the adjacent St John's Court, which is said to be locally listed. The building has been described as a fine Art Deco housing block above a supermarket. Given the substantial scale of this building, I do not consider the proposal, which would have large elements of glazing, would detract from this locally listed building. This is particularly so, as the strong horizontal emphasis most clearly seen above ground floor level, would be largely unobstructed.

11. Concern has been raised in relation to the siting of the kiosk in close proximity to an existing telephone box giving rise to safety issues, but I was not able to see any such existing telephone box in the immediate vicinity on my site visit. The proposed kiosk, which would be largely glazed, would not unacceptably reduce sight lines or casual surveillance, as has been stated. A number of issues have been identified with the design of the kiosk but, in the absence of any substantive evidence of loitering, anti-social behaviour or crime, I consider the open design of the kiosk would not be unduly harmful in these respects.
12. The Council have identified concerns in relation to the wheelchair accessibility of the proposal. They state that the appellant has referenced an older version of the British Standards, and that the kiosk would fail to comply with the current British Standard (BS) 8300, which includes guidance on payphones outside of buildings. I have not been provided with the full details of BS8300 but it has been stated that the proposed telephone controls would not be within the correct height range from the floor (0.75m-1m). Whilst this may be the case, I consider that the height of the telephone controls at 1.5m, would still be within the reach of a wheelchair user. Furthermore, it is not disputed that the open design of the kiosk would allow for wheelchair access. As such, overall, despite the shortcomings identified, I consider that the siting and appearance of the proposal would not be unduly harmful in this respect.
13. The footway where the proposed kiosk would be sited is wide, although there does appear to be some difference between the Appellant and the Council on its width. From the information available before me, and my site observations, the width of the footway would appear closer to 9.9m than 7m. Nevertheless, even taking the lower width, I find this would be adequate as there is little pedestrian movement along that part of the pavement where the proposal is due to be sited due to the presence of other street furniture, to either side of the proposed kiosk. The bus shelters serving the stops are not immediately adjacent to the appeal site, and would not create a problem for specific user groups such as those using wheelchairs.
14. Reference has been made to the Council's Streetscape Design Manual and Transport for London's Pedestrian Comfort Guidance For London. Despite the Council stating that the clear footway would be reduced below the minimum, the former sets out a minimum of 3m (in busy pedestrian streets), with the latter document stating a 5.3m overall footway width (in high flow location). Even with the high pedestrian flows at peak time due to the proximity of Finchley Road Underground Station, I consider the proposed telephone kiosk would not have a detrimental impact by way of overcrowding.
15. The Council have made reference to proposed schemes to reconfigure the Swiss Cottage Gyration which are said to be within the vicinity of the site and install Cycle Super Highway Route 11. I have not been provided with the details of these, and therefore have no reason to consider that the siting of the kiosk, given the width of the pavement, would be harmful to the aims of these schemes.
16. Reference has been made to appeal decisions on other sites but I am not aware of the full circumstances and I can confirm that I have considered this appeal on its own merits.
17. Concerns have been expressed regarding the proposed kiosk being used for advertisements. The construction of a kiosk and the display of advertisements

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

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

### **Conditions**

19. The grant of prior approval for the kiosk would be subject to the standard conditions set out in Schedule 2, Part 16, Class A of the GPDO. Those conditions include an implementation timescale, accordance with the details submitted and removal of the structure/apparatus when no longer required for electronic telecommunications purposes.

### **Conclusion**

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

*F Rafiq*

INSPECTOR