

INFOCUS PUBLIC NETWORKS LTD

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**The Planning Inspectorate
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN**

11 September 2018

Dear Sir / Madam

Town and Country Planning Act 1990

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

Re: **Appeal against the Refusal of Advertisement Consent**

London Borough of Cemden

**Site Location : Adjacent to 114 Shftesbury Avenue
App Ref: 2017/5184/A**

Please find enclosed completed appeal papers submitted under the provisions of Regulations 17 of the above Regulations and s78 of the above Act, as amended by part 3 Schedule 4 of the 2007 Regulations.

This appeal is for the display of an advertisement at a site within the London Borough of Cemden submitted by Infocus Public Network Limited (the Appellant), which relate to an existing payphone kiosk. The appellant is an electronic communications code system operator and thereby benefits from statutory powers under section 106 of the Communications Act 2003. The appeal is submitted against the refusal of advertisement consent for an illuminated, static advertisement display. The proposed advertisement display forms part of the payphone kiosk structure design, the detail for which is contained within the documentation submitted to the Local Planning Authority's (LPA) and enclosed with this appeal, together with a copy of the LPA's decision notice which sets out the LPA's reason for refusing consent.

Background Detail

The appellant is one of the smaller providers of public payphones in the UK, with just over 400 individual kiosks within main UK cities. The appellant Company was the first to develop an accessible open payphone kiosk as an alternative to the enclosed BT units. Each kiosk is three sided with glazed panels

and an open end that is wide enough to accommodate a wheelchair. The income from call use funds the provision and maintenance of the unit however, with the rise in mobile phone and commensurate fall in the use of the public phones, the network is also subsidised by revenue from advertising on one elevation of the unit itself. Most locations, as in the case of these appeals, are purposefully positioned within commercial urban areas where the presence of a public payphone is to be expected and where advertising material would not appear out of place. In the case of the two appeal site locations, the kiosks are already used for the purpose of advertisement display in accordance with the terms of the Regulations.

The proposed advertisement is an integral part of the overall structure design and will be altered by affixing a narrow metal sheet and frame to the existing kiosk unit within which will be the advertisement and LED lighting strips. The ability to generate revenue through advertising is a key component in the delivery plans of the accessible payphone network.

The Regulations: The Requirement for Advertisement Consent

The applications, which are the subject of appeal, seek advertising consent to illuminate an existing advertisement currently affixed to a payphone kiosk unit. The payphone kiosk unit is an existing structure granted by virtue of it being an item of telecommunication apparatus and a permitted development which does not require separate planning permission. The payphone kiosk unit has been specifically designed as a modern, accessible and functional structure that features a single façade that is wide enough to be used to display a six sheet advertisement.

Advertisement control in England is operated through the 2007 Regulations. The 2007 Regulations states that all advertisements, other than certain exempted classes require consent before they can be lawfully displayed (**Reg. 4**). Consent may be granted expressly by the LPA or Secretary of State, or it may be granted by "deemed consent" by virtue of Regulation 6 of the 2007 Regulations. The installation of commercial advertising imagery on items of street furniture is permitted under class 9, schedule 3 and subject to the following conditions;

Class 9 Advertisements on highway structures

Description. *An advertisement displayed on a part of an object or structure designed to accommodate six-sheet panel displays, the use of which for the display of advertisements is authorised under section 115E(1)(a) of the Highways Act 1980(a).*

Conditions and Limitations

(1) No advertisement may exceed 2.16 square metres in area.

(2) Illumination is not permitted.

(3) No character or symbol on the advertisement may be more than 0.75 metre in height or 0.3 metre in an area of special control.

(4) No part of the advertisement may be more than 4.6 metres above ground level, or 3.6 metres in an area of special control.

The kiosk units continue to be viable payphones and will remain in the locations irrespective of the outcome of these appeals. The applications were submitted for advertisement consent under Regulation 9 of the Regulations in order to include illuminated advertising use, not covered under Class 9, and to continue this important element of the on street payphone network.

Infocus Payphone Networks, as the operator of an electronic communication code network, has powers set out in the Electronic Communications Code. This code provides the authority and right for Infocus Payphone Network to install electronic apparatus on a highway, maintainable at public expense, without consent from the highway authority. A payphone kiosk, whether it includes advertising or not, is electronic communication apparatus for the purposes of the Code and accordingly permission from the highways authority is not required for the installation of the kiosk. Furthermore s334(1) of the highway act 1980 provided that the Highways Act 1980 does not affect electronic communication code operators rights and consequently, section 115E consent is not required.

Application Proposal

It should be recognised from the outset that the proposal in this appeal relates solely to the intention of adding an illuminated advertisement display to the existing advertised payphone kiosk and not for the erection of new kiosk structure. The existing payphone kiosk benefits from deemed permission under the provisions of Part 16 of the Town and Country Planning (General Permitted Development) Order 2015. As such, in assessing the impact of the proposed advertisement display on visual amenity or public safety, as required by R3, the assessment must be based upon the advertisement alone, the relative merits of the structure of the payphone kiosk does not fall to be considered or assessed as part of the proposal.

In respect of amenity impact the 2007 Regulations require an assessment of the character of the local area, which necessarily includes an examination of the nature and type of surrounding land uses and the existing built form within the particular locality where the proposed advertisement is to be displayed. It is the impact upon local character and any particular feature of interest in the local environment that the proposed advertisement is assessed.

On matters of public safety the primary consideration is the effect of an advertisement display on drivers and pedestrians upon seeing the advertisement in the particular location. It is accepted that roadside advertising is intended to be seen but this aspect in itself does not mean all roadside advertisements are a distraction. Advertising is often part of the fabric of main centres and busy routes where drivers have a degree of expectation of seeing commercial images and adjust their driving accordingly.

This statement will therefore address the issues of concern and seek to identify why it is the appellants view that the decision to refuse consent was unfounded.

Details of Proposed Advertisement

The advertisements will be displayed and illuminated by means of LED modules. The advertisement will automatically change the displayed image in sequence. The LED illumination is a low energy and low carbon lighting solution and will be lit to a level of no greater than 300Cd^m², which is 50% below the maximum recommended by the Institute of Lighting Professionals (ILP) for advertisements under 10m² in suburban and urban medium to high brightness districts.

The size of the proposed advertisement is equal to the industry standard "6 sheet" panel, which provides a display area of just under 2m². This size of advertisement has long been considered an appropriate scale for the pedestrian environment and is the typical size of advertisement found in towns and cities affixed to street furniture, as is illustrated by the terms of class 9 cited above. The

Inspector will note from the site visit that there are a number of other pre-existing examples of this type and size of display in the vicinity. In the case of the existing kiosk, the size and position of the advertisement will not be altered, only the addition of illumination and the ability to automatically change the advertisement. The proposed advertisement will not feature any flashing or intermittent lighting effect or animation and this can be addressed through conditions¹.

Policy Considerations

Applications for advertisement consent are subject to the specific terms of assessment as outlined in Regulation 3, which requires that:

"A local planning authority shall exercise its powers under these Regulations in the interests of amenity and public safety, taking into account –

- a) the provisions of the development plan, so far as they are material; and*
- b) any other relevant factors."*

Unlike most areas of planning control, the advertising regime is control through the Advertising Regulations and the terms provided therein rather than the provisions of a local plan. Local policies may be relevant where they repeat in substance the material considerations as defined within the Regulations.

National Guidance

National Guidance on the control of advertisements is provided within paragraph 67 of the National Planning Policy Framework (NPPF), which has superseded the more comprehensive advice contained within guidance PPG19. Whilst much of the detailed advice has been removed, the support for sustainable forms of development remains a fundamental part of the guidance. Advertising has always been seen as an important part of a diverse and vibrant market economy. Advertising promotes business and a vibrant advertising sector contributes to sustainable economic growth by encouraging consumer confidence and spending, a key component of economic growth. In this respect the development of advertising locations is consistent with the aim of sustainability in supporting a viable and a vital market. The NPPF promotes the planning system as an enabling one with paragraph 19 emphasizing the role of the planning system to support economic growth.

"The Government is committed to ensuring that the planning system does everything it can to support sustainable economic growth. Planning should operate to encourage and not act as an impediment to sustainable growth. Therefore significant weight should be placed on the need to support economic growth through the planning system"

In respect of advertisements and their display the NPPF states that;

"Poorly placed advertisements can have a negative impact on the appearance of the built and natural environment. Control over outdoor advertisements should be efficient, effective and simple in concept and operation. Only those advertisements which will clearly have an appreciable impact on a building or on their surroundings should be subject to the local planning authority's

¹ Refer to Appendix A for a list of recommended additional conditions

detailed assessment. Advertisements should be subject to control only in the interests of amenity and public safety, taking account of cumulative impacts."

Core planning principles in the NPPF which are relevant to the appeal proposals include, amongst other criteria, the advice that the planning process should;

- *"not simply be about scrutiny, but instead be a creative exercise in finding ways to enhance and improve the places in which people live their lives;*
- *always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings;"*

The NPPF also recognises the importance of the communication infrastructure and supports wider connectivity and improvements to the service to the public. The NPPF states that;

"Advanced, high quality communications infrastructure is essential for sustainable economic growth. The development of high speed broadband technology and other communications networks also plays a vital role in enhancing the provision of local community facilities and services"

Specific guidance relating to advertising developments and on the interpretation of the Regulations is contained within the **Communities and Local Government Planning Practice Guidance** ("PPG"), which contains the current guidance on this subject. Section 8 of the PPG explains in greater detail the criteria for considering amenity issues in advertising proposals. More specifically, on the matter of scale the guidance suggests that advertisements should respect the scale of the surroundings

"for example, if the locality where the advertisement is to be displayed has important scenic, historic, architectural or cultural features, the local planning authority would consider whether it is in scale and in keeping with these features."

It further advises that;

"This might mean that a large poster-hoarding would be refused where it would dominate a group of listed buildings, but would be permitted in an industrial or commercial area of a major city (where there are large buildings and main highways) where the advertisement would not adversely affect the visual amenity of the neighbourhood of the site."

Key Planning Considerations

This appeal relates to the display of advertisements, as such, in accordance with the 2007 Regulations, the primary considerations relate to the likely impact of the advertisement display on visual amenity and public safety. For the reasons outlined above only matters of visual amenity are discussed.

Visual Amenity

Policy guidance requires applicants to have regard to the general characteristics of the area in which a proposal is sited, and is generally supportive of advertising within retail and commercial areas where advertising contributes to vitality without harm to visual amenity. The appeal sites are located in and around the city centre within a brightly lit urban setting. Each site is also situated alongside a busy thoroughfare and adjacent to active and brightly lit commercial frontages such as retail outlets, cafes

and large-scale office buildings where advertising material would not appear out of place. Given the urban setting and character of the appeal sites, each with a continually flow of pedestrians and traffic, it is considered that this is a suitable location for this type of illuminated display. The proposed advertisement, will have limited, if any, impact on residential occupiers within the area, which is typically confined to upper floors, rather than the street level environment which is the immediate context for the advertisement. The kiosk is an open structure to allow easy access and visibility for pedestrians. The unit has an open section between the display and the pavement which allows a pedestrian to realise if the kiosk is occupied and in use. The use of the location and orientation of the kiosk is positioned to not create an environment to encourage anti-social behaviour. The introduction of an illuminated display will create a lit environment, which would further hinder opportunities for anti-social behaviour and dark, hidden areas would be reduced.

In such environments, on street advertising is a common feature and part of local character, which is often reinforced by brightly coloured and strident shop fronts, fascia signs, banners, business premises and commercial signs. These aspects serve to establish advertising as an acceptable and integral part of the urban fabric. The proposed advertisement would form part of a modern well designed structure and an existing item of street furniture so is not likely to be seen as contributing to visual clutter. The proposal to add illumination to the display would represent a relatively minor alteration to the street. Such a change will have a visually neutral impact, in light of the localised context, the scale of the surroundings and the existence of other items of illuminated Street Furniture of comparable scale.

Paragraph 67 of the National Planning Policy Framework states that;

“Only those advertisements which will clearly have an appreciable impact on a building or on their surroundings should be subject to the local planning authority’s detailed assessment”.

The advertisement would not be materially harmful to the surroundings, and would be proportionate to the scale of the kiosk structure. The size of the advertisement is specifically designed so as to appear proportionate and integral to the structure rather than an unrelated afterthought. In assessing impact, one must also consider the positive benefits associated with the advertisement display within a retail environment, which can enhance a shoppers experience and promote commercial enterprise.

As stated above, the proposed advertisement can be programmed to ensure the lighting levels fall within the recommended limits of the ILP and consistent with the level on other displays within the locality. Should the Inspector be minded to grant consent, a condition setting a maximum luminance level of 300Cd/m² would be acceptable to the appellant.

Impact on Conservation Area

Guidance on development within conservation areas exist to ensure the preservation and enhancement of the characteristics which make the area special, and may include measures which seek to restrict or define the extent or nature of new developments with this aim in mind. The fact that there are a similar size and type of advertisement already existing within the centre demonstrates the appropriateness of this form of roadside advertisement within a vibrant retail core without harming its character.

Many conservation areas within the London Borough of Camden all include a significant number of shopping and business uses where advertising material may be appropriate when particular care is taken to ensure the size and nature of the display is compatible with its surroundings. This approach has informed the initial selection of the locations for the payphone kiosks to be situated on the edge or

outside a conservation area and within a busy urban location where the commercial context is a characteristic of the locality. In such overtly commercial settings the public is used to and expects to see a range of commercial images, which tend to complement the retail function and make it part of the areas character and use.

It is considered that the proposed display, positioned at a pedestrian level, would contain the visual impact of the advertisement within the context of the street which is the most important consideration. In the appeal cases the street is largely defined by the presence of shops or other commercial premises with active frontages that form a high street or shopping parade and busy centre. There are some instances where buildings have retained original facades and architectural features on the upper floors with ground floor street level facades having been renovated to include more modern materials and advertising signage – something which is equally important in defining and creating the character of any street scene.

The appeal site for the proposed type of illuminated advertisement would be similar to the existing “6-sheet” advertising currently located on the streetscene sharing the same visual context. The scale of the proposed advertisement and the method and level of illumination will be similar to the established levels and have no greater impact on the character and appearance of the locality. The conservation area includes numerous examples of illuminated street level advertisements as well as retail properties adjacent to the appeal site. The application seeks to continue this established and expected characteristic along this stretch of road in an appropriate manner.

In the case of the appeal site proposals it is considered that the addition of a single illuminated advertisement to the existing payphone kiosk structure will not have a harmful effect on the character or appearance of the area.

Conditions

All consents for express advertisement consent are covered by the standard conditions set out in Schedule 2 to the Regulations and are acceptable to the appellant. Additional conditions are attached as Appendix A and include a maximum night time luminance level of 300Cd/m², to accord with the ILP recommendations.

Grounds of Appeal

The LPA’s reason for refusing consent asserts that the advertisement display would unacceptably harm the amenity of the locality, the setting of the Conservation Area. Local policy and guidance is not decisive in advertisement applications but they can be material factors where the policy aims are applicable and related to amenity and public safety matters, the primary considerations in advertisement developments.² Nevertheless the Appellant submits that policy is supportive of the appeal proposal.

- The Appellant disagrees with the conclusions expressed in the decision notice and would reaffirm that the proposed illuminated sequential advertisement affixed to the side of the existing payphone kiosk would not harm visual amenity.

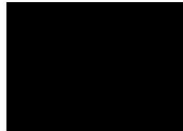
² Regulation 3 of the Town and Country Planning (Control of Advertisements)(England) Regulations 2007/783

- The proposed advertisement display, forming an integral part of the existing kiosk structure, accords with the relevant policies and guidance at national and local level.

In conclusion, it is considered that the appeal site location is suitable for the addition of illumination to an advertisement that is integral to the payphone kiosk. The proposed advertisement respects the scale and character of the localities. The nature and character of the appeal site location is such that the addition of controlled illumination would neither appear out of place or harmful to character and appearance of the existing street scenes.

In light of the above statement and attached documents, I would respectfully ask the Inspector to agree that the proposed advertisements would not be against the interests of the character, setting, adjoining conservation area(s) or amenity of public safety. Accordingly, the Inspector is respectfully requested to uphold the appeals and grant consent for the advertisements applied for.

Yours faithfully



Mr N Still
For and on behalf of Infocus Public Networks Ltd

C.C.

APPENDIX A

1. No special visual effects of any kind are permitted when any message is displayed or through the transition of one image to another. The displayed image must not include animated, flashing, intermittent lighting designed to give the impression of movement.
2. The intensity of the illuminance of the advertisement shall be no greater than 300Cd/m² during hours of darkness.
3. The footway and carriageway must not be blocked during the installation and maintenance of the advertising panel. Temporary obstruction during the installation must be kept to a minimum and should not encroach on the clear space needed to provide safe passage for pedestrians, or obstruct the flow of traffic.