



## Appeal Decisions

Site visit made on 11 December 2017

**by Stephen Normington BSc DipTP MRICS MRTPI FIQ FIHE**

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

**Decision date: 11 January 2018**

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### **Appeal Ref: APP/X5990/W/17/3182344**

#### **Payphone Site Outside 508-520 Oxford Street, London W1C 1NB**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 16 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
  - The appeal is made by Mr Matthew Coe (New World Payphones) against the decision of City of Westminster Council.
  - The application Ref 17/03819/TELECOM, dated 28 April 2017, was refused by notice dated 22 June 2017.
  - The development proposed is the replacement of an existing telephone kiosk with a new kiosk.
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### **Appeal Ref: APP/X5990/Z/17/3182346**

#### **Payphone Site Outside 508-520 Oxford Street, London W1C 1NB**

- The appeal is made under Regulation 17 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 against a refusal to grant express consent.
  - The appeal is made by Mr Matthew Coe (New World Payphones) against the decision of City of Westminster Council.
  - The application Ref 17/00742/ADV, dated 31 January 2017, was refused by notice dated 22 June 2017.
  - The advertisement proposed is the display of an illuminated digital panel measuring 1.650 m x 0.928 m as part of a new telephone kiosk.
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## Decisions

### **Appeal A: Ref. APP/X5990/W/17/3182344**

1. The appeal is allowed and approval is granted under the provisions of Schedule 2, Part 16 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the siting and appearance of the replacement of an existing kiosk with a new kiosk by an electronic communications code systems operator at land at Payphone Site Outside 508-520 Oxford Street, London W1C 1NB in accordance with the terms of the application Ref 17/03819/TELECOM, dated 28 April 2017, and the plans/documents submitted with it.

### **Appeal B: Ref. APP/X5990/Z/17/3182346**

2. The appeal is allowed and express consent is granted for the display of an illuminated digital panel measuring 1.650 m x 0.928 m as part of a new telephone kiosk at land at Payphone Site Outside 508-520 Oxford Street, London W1C 1NB in accordance with the terms of the application Ref 17/00742/ADV, dated 31 January 2017, and the plans/documents submitted

with it. The consent is for five years from the date of this decision and is subject to the five standard conditions set out in the Regulations and the following additional conditions:

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans and documents: Site Plan Drawing Ref No PY3068/001 and the Updated Specification Document.
- 2) The advertisements displayed shall be a series of static images, which individually feature no moving elements, dynamic displays or motion pictures. The speed of change between one static image and the next shall be no quicker than 10 seconds.

### **Procedural Matters**

3. In respect of Appeals A and B, I have used the descriptions of development given on the appellant's appeal forms and the Council's decision notices as they more accurately describe the proposals. There is a discrepancy in the postcode of the appeal site address as shown on the Council's decision notices between Appeal A and B. I have taken the appeal site address from the application forms and the Council's decision notice for Appeal A.
4. In respect of Appeal A, only the construction of the kiosk is considered and not the advertisement. With regard to Appeal B, only the advertisement part of the proposal is considered.

### **Background and Main Issues**

5. Appeal A concerns proposed telecommunications development that was refused prior approval by the Council under Schedule 2, Part 16 of the Town and Country Planning (General Permitted Development) England Order 2015 (as amended) (GPDO). Within certain limits the GPDO grants permission for the development of telecommunications equipment subject to a prior approval procedure. Appeal B concerns an advertisement which was refused consent under the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 as amended (the advert regulations).
6. The GDPO makes clear that the relevant issues to consider when assessing the construction of the proposed kiosk relate to the siting and appearance of the proposed development. Furthermore, the advert regulations confine the assessment of advertisements to issues of amenity and public safety.
7. Therefore in respect of Appeal A, the main issue is the effect of the siting and appearance of the proposed kiosk on the character and appearance of the area bearing in mind its location within the Portman Estate Conservation Area.
8. In respect of Appeal B, the main issues are the effect of the proposed advert on the amenity of the area bearing in mind its location within the Portman Estate Conservation Area and its effect on public safety.

### **Reasons**

*Appeal A: Ref. APP/X5990/W/17/3182344*

9. The appeal site is located within the Portman Estate Conservation Area and is currently occupied by an existing telephone kiosk that is located close to the junction of Portman Street and Oxford Street. The surrounding area is

characterised by large commercial buildings with mainly retail uses on the ground floor with wide pedestrian footways. The current kiosk is located close to the prominent illuminated ground floor retail frontage of a store to the west with a hotel above.

10. The proposed kiosk would replace the existing kiosk and would be constructed in the same position and sited close to the edge of the pavement. The replacement kiosk would have a more modern and contemporary appearance than the existing kiosk but the simple and open sided design would not appear out of place within the context of the existing street furniture and the commercial nature of this part of the street. It would be no more visually prominent than the kiosk that would be replaced.
11. Overall it would be no more bulky and imposing than the kiosk it would replace and in being sited in the same position it would assimilate well into the street scene and would not add to street clutter. Therefore its siting and appearance would have a neutral effect on the character and appearance of the surrounding area. As such, the character and appearance of the Conservation Area would not be harmed and would be preserved.
12. Taking into account the above factors, the siting and appearance of the proposed development would not cause any demonstrable harm to the character and appearance of the surrounding area and would preserve the character and appearance of then Portman Estate Conservation Area. Consequently, the proposal would accord with design, appearance and conservation aims of Policies S25 and S28 of Westminster's City Plan 2016 (CP) and Saved Policies DES 1, DES 7 and DES 9 of Westminster's Unitary Development Plan 2007 (UDP).

*Appeal B: Ref. APP/X5990/Z/17/3182346*

13. The proposed advertisement would be positioned on the rear of the proposed kiosk and would face directly onto Portman Street. The Council has not raised any concern in respect of public safety issues. I have no reason to depart from such a view.
14. The Council's principal concern relates to the effect of the proposal on the amenity of the area due to its appearance, capability of displaying moving images and method of illumination.
15. The illuminated advertisement would be seen in the context of the numerous ground floor retail uses in the surrounding area which have prominent illuminated retail frontages and side window displays with vibrant illuminated fascia signage. In addition, I observed that several bus shelters on this part of Oxford Street have double sided illuminated advertisements.
16. I have taken into account the appellant's comments that "*WCC recently granted advertisement consent (15/08644/ADV) for a 2.37 m x 1.34 double sided digital advertising screen on the bus stop outside 501-523 Oxford Street (adjacent to the Portman Estate Conservation Area), with the report justifying the decision on the basis that it lies in a highly commercial street*". In the context of the commercial nature of the surrounding area, and taking into account its relatively small size, I am satisfied that the proposed advertisement would not result in material harm being caused to the amenity of the area.

17. The level of illumination during the hours of darkness would be restricted to 280cd/m<sup>2</sup>. This would be within the levels recommended by the Institute of Lighting Professionals in their 'Professional Lighting Guide 05, The Brightness of Illuminated Advertisements' for installations located in commercial areas. As such the proposed advertisement would not appear overly bright or cause glare.
18. The advertisement would be relatively small in the context of the surrounding urban environment. However, I did not notice any other adverts that display moving images in the immediate locality. As such, moving images would appear out of place amongst the static retail and bus shelter advertisements nearby. Furthermore, the proposed advertisement would be located in close proximity to the highway and moving images would have the potential to cause a distraction to passing motorists, cyclists and pedestrians who may view such advertisements for longer periods than would be the case with static advertisements. This would be to the detriment of highway and pedestrian safety.
19. However, the appellant has agreed to the imposition of a planning condition, were I minded to allow the appeal, which would prohibit the use of moving images and would therefore overcome this harm.
20. Subject to the imposition of a planning condition prohibiting moving images, I consider that the proposed advertisement would not harm the amenity of the area and the character and appearance of the Portman Estate Conservation Area would be preserved. In addition, it would also not harm public safety.
21. For the above reasons, and subject to the imposition of a number of conditions, I conclude that the advertisement would not have a detrimental impact upon the amenity of the area or lead to any significantly adverse public safety impacts. Consequently, the proposal would accord with the amenity and public safety aims of Policies S25 and S28 of the CP and Saved Policies DES 1, DES 8 and DES 9 of the UDP.

#### *Other matters*

22. As part of my consideration of the siting and appearance matters I have taken into account the completed planning obligation submitted by the appellant which would secure the planting of a street tree, the removal of the existing kiosks and kiosks nearby and the refurbishment of a K6 kiosk and the ongoing maintenance of the kiosk. I am satisfied that it is both acceptable and necessary. A period of up to twelve months to both remove and refurbish the identified existing kiosks is both reasonable and acceptable.
23. I have taken into account the Council's concerns with regard to payphone kiosks leading to anti-social activity and the difference between advertising on bus shelters and advertising on telephone kiosks. However, the proposed kiosk would not be enclosed in the same way as the existing kiosks which may minimise any alleged anti-social activities and like a bus shelter, I am satisfied the proposed kiosk would perform a public function.
24. I have also taken into account the reasons for refusal which relate to prematurity and the review of Oxford Street to provide for future improvements to the pedestrian environment. However, there is no substantive evidence before me regarding any detailed proposals or the effect

that these may have on the appeal site. Furthermore, the appellant indicates that the initial consultation into the Mayor's proposals for Oxford Street was concerned with the stretch between Oxford Circus and Orchard Street and that the proposed kiosk location does not fall within this stretch. Consequently, I have attached minimal weight to this matter and I have determined the appeal within the parameters of the GPDO and the advert regulations.

25. I have considered the appeal decision referred to by the Council (Ref APP/X5990/Z/16/314435) relating to an advertisement in Regent Street, London. Whilst I note that my colleague Inspector concluded that a similar advertisement would be bright and at odds with the traditional surroundings, the full details of that scheme are not before me and I have determined both the appeals on their own individual planning merits. The appeal referred to by the Council and other matters raised do not outweigh or alter my conclusions on the main issues.

### **Conditions**

26. In addition to the standard conditions imposed by Schedule 2, Part 16 paragraph A.2 of the GPDO and the five standard conditions set out in the Advertisement Regulations, conditions are necessary in respect of Appeal B to ensure that the advertisement is provided in accordance with the approved plans and specification. This is in the interests of certainty and to safeguard the amenity of the area.
27. In the interest of public safety and to safeguard the amenity of the area a condition is necessary to prohibit the display of moving images. The Council raised no objection to the appellant's suggested ten seconds between each static image rather than the originally suggested twelve seconds as such I have specified ten seconds between each image in the condition.

### **Conclusion**

*Appeal A: Ref. APP/X5990/W/17/3182344*

28. For the above reasons, the siting and appearance of the proposed development would not harm the character and appearance of the area. Consequently, I conclude that the appeal should be allowed.

*Appeal B: Ref. APP/X5990/Z/17/3182346*

29. For the above reasons, the proposed advertisement would not have a detrimental impact upon the amenity of the area or public safety. Consequently, I conclude that the appeal should be allowed.

*Stephen Normington*

INSPECTOR