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## Appeal Decisions

Site visit made on 5 December 2017

by **L Fleming BSc (Hons) MRTPI**

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

Decision date: 20<sup>th</sup> December 2017

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### **Appeal A Ref: APP/X5990/W/17/3182218**

#### **Payphone Site Outside 1-3 Craven Road, London W1F 9JT**

- 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 against the decision of City of Westminster Council.
  - The application Ref 17/03825/TELCOM, dated 28 April 2017, was refused by notice dated 23 June 2017.
  - The development proposed is the replacement of an existing kiosk with a new kiosk.
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### **Appeal B Ref: APP/X5990/Z/17/3182220**

#### **Payphone Site Outside 1-3 Craven Road, London W1F 9JT**

- 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 against the decision of City of Westminster Council.
  - The application Ref 16/10285/ADV, dated 26 October 2016, was refused by notice dated 21 June 2017.
  - The advertisement proposed Display of illuminated digital panel, measuring 1.650m x 0.928m, as part of new telephone kiosk.
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## Decisions

### Appeal A

1. The appeal is allowed and approval is granted under the provisions of Schedule 2, Part 16 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the siting and appearance of the replacement of an existing kiosk with a new kiosk by an electronic communications code systems operator at land at Payphone Site Outside 1-3 Craven Road, London W1F 9JT in accordance with the terms of the application Ref 17/03825/TELCOM, dated 28 April 2017 subject to the standard conditions set out in the Order.

### Appeal B

2. The appeal is allowed and express consent is granted for the display of an illuminated digital panel, measuring 1.650 m x 0.928 m as part of a new telephone kiosk at land at Payphone Site Outside 1-3 Craven Road, London W1F 9JT in accordance with the terms of the application Ref 16/10285/ADV,

dated 26 October 2016, and the plans/documents submitted with it. The consent is for five years from the date of this decision and is subject to the five standard conditions set out in the Regulations and the following additional condition:

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans and documents: Site Plan Drawing Ref No PY30074/001 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 refusal notices as they more accurately describe the proposals. I have also taken the appeal site address from the Council's decision notices as this is more precise.
4. In respect of Appeal A, only the construction of the kiosk should be considered and not the advertisement. With regard to Appeal B, only the advertisement part of the proposal shall be 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. Therefore whilst I have considered the comments with regard to whether or not the proposed kiosk is needed, its public benefits and the revenue generated by the proposal the GPDO makes clear that the relevant issues to consider when assessing the construction of the proposed kiosk are matters relating 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. Thus the main issue in respect of Appeal A is the effect of the siting and appearance of the proposed kiosk on the character and appearance of the area bearing in mind it would be within the Bayswater 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 it would be within the Bayswater Conservation Area and its effect on public safety.

## **Reasons**

### Appeal A

9. The appeal is within the Bayswater Conservation Area (CA), the significance of the CA derives from the consistent architectural quality of the buildings and formal layout and pattern of development. The immediate area is characterised by mixed character and use multi-storey buildings with mainly commercial uses at street level. Overall I find the character and appearance of the area to be mixed and commercial.
10. The proposed kiosk would replace an existing kiosk and would be positioned in a similar location on a street corner close to the edge of the pavement between a traffic light, utility boxes close to signage and metal railings in front of a public house.
11. The proposed kiosk would be more modern in appearance than the kiosk it would replace. It would be finished in black matching street furniture nearby, would be open sided, of relatively simple design and an overall less bulk than the existing kiosk. Thus there would be no increase in street clutter.
12. Sitting between and in line with other street furniture it would not appear out of place in a commercial street scene. Furthermore, it is of a lesser scale and would be no more visually prominent than the existing kiosk. Therefore it would not harm and would have a neutral effect on the character and appearance the area. Such that the character or appearance and the significance of the CA would be preserved.
13. For these reasons the proposal would accord with the design, appearance and conservation aims of the development plan, specifically, Policies S25 and S28 of Westminster's City Plan 2016 (CP) and saved Policies DES1, DES7, DES9 of Westminster's Unitary Development Plan 2007 (UDP). For the same reasons it would also accord with the Westminster Way Supplementary Planning Document (2011).

### Appeal B

14. The illuminated advertisement would be fixed to the proposed kiosk and would be viewed in the context of a number of ground floor commercial uses which have illuminated adverts.
15. The proposed advert would be relatively small particularly when compared to adverts nearby. Furthermore, the level of illumination during the hours of darkness would be restricted to 280cd/m<sup>2</sup>. This would be well below the maximum level recommended by the Institute of Lighting Professionals in their 'Professional Lighting Guide 05', The Brightness of Illuminated Advertisements which is 600cd/m<sup>2</sup> for this zone, such that I do not find it would be too bright.
16. Notwithstanding the above, I did not notice any other adverts in the immediate locality which display moving images. In my view, moving images would appear out of place amongst the street furniture and static advertisements nearby. Furthermore, due to the proximity to moving traffic it would distract drivers, cyclists and pedestrians who would look at such signage for longer than static signage, thus increasing the risk of highway accidents.

17. However, the appellant agrees to the imposition of a planning condition which prohibits the use of moving images which would overcome this harm. Thus subject to the imposition of a condition prohibiting moving images, I find the advertisement would not harm the amenity of the area and would not harm and would therefore preserve the character or appearance and significance of the CA. It would also not harm public safety.
18. The proposed advert would therefore accord with the amenity and public safety aims of development plan, specifically, Policies S25 and S28 of the CP and saved Policies DES1, DES8, DES 9 of the UDP. For the same reasons it would also accord with the aims of the Westminster Advertisement Design Guidelines (1992).

## **Other Matters**

### Appeal A & B

19. The appellant has completed a planning obligation 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 have taken the planning obligation into account as part of my consideration of siting and appearance matters and I am satisfied that it is both acceptable and necessary. I am satisfied that up to twelve months to both remove and refurbish the identified existing kiosks is an acceptable period of time.
20. I note the comments 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.
21. I have also considered the numerous appeal decisions<sup>1</sup> and Council decisions relating to adverts and payphones. Whilst I note an Inspector concluded that a similar advertisement would be bright and at odds with the traditional surroundings, the full details of that scheme or any of the other examples are not before me and I have determined both the appeals on their planning merits. None of these examples or any other matters raised outweigh or alter my conclusions on the main issues.

## **Conditions**

### Appeals A and B

22. 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 in the interests of certainty and amenity to ensure the advert is displayed in accordance with the approved plans and in the interest of public safety and amenity to prohibit moving images. The Council raise no objection to the appellant's suggested ten seconds between each static image rather than the originally suggested twelve seconds as such I have specified ten seconds between each image.

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<sup>1</sup> Appeal Reference APP/X5990/Z/16/3144435, APP/Q5300/Z/17/3178149, APP/V5570/Z/17/3169006, APP/R5510/Z/16/3157043 and 4 linked cases

## **Conclusion**

### Appeal A

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

### Appeal B

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

*L Fleming*

INSPECTOR