



Appeal Decision

Site visit made on 7 September 2018

by Julie Dale Clark BA (Hons) MCD DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4th October 2018

Appeal Ref: APP/K5600/W/17/3190287

First Floor South, 29 Duke of York Square, London SW3 4LY

- 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 Matthew Coe, New World Payphones against the decision of the Council of The Royal Borough of Kensington and Chelsea.
 - The application Ref PA/17/05024, dated 18 August 2017, was refused by notice dated 27 September 2017.
 - The development proposed is Telephone Kiosk – Replacement of existing kiosk with new design.
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Decision

1. The appeal is allowed and approval is granted under the provisions of Part 16 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), in respect of development by a telecommunications code system operator for the siting and appearance of a Telephone Kiosk – Replacement of existing kiosk with new design on the pavement outside 29 Duke of York Square, King's Road, London SW3 4LY in accordance with the terms of the application Ref PA/17/05024, dated 18 August 2017, and the plans submitted with it.

Procedural Matters

2. The decision notice refers to the appeal site as the pavement outside 29 Duke of York Square. The kiosk would be located on the pavement on King's Road. For accuracy and for the avoidance of doubt I refer to the location of the kiosk as being on the pavement outside 29 Duke of York Square, King's Road.
3. As an electronic communications code operator, the appellant benefits from deemed planning permission for the installation of a telephone kiosk (also known as a public call box) that falls within the permitted development rights of Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) Order 2015 (GDPO), subject to prior approval by the local planning authority for siting and appearance. The appellant applied to the Council on that basis. The Council determined that prior approval was required and refused/withheld for the siting and appearance of the telephone kiosk.

4. The Council has made reference to Local Plan policies CL 1, CL 3, CL 6, CR 4, CR 6 and CV 1¹ and SPD Transport and Streets². However, the principle of development is established by the GDPO and prior approval relating to paragraph A.3 of Schedule 2, Part 16, Class A of the GDPO includes no reference that regard be had to the development plan. The provisions of the GDPO 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. Consequently, the appeal is not determined on the basis of Section 38(6) of the Planning and Compulsory Purchase Act 2004. Nonetheless, I have taken account of the above mentioned policies and SPD in so far as they relate to matters of siting and appearance.
5. The National Planning Policy Framework³ deals with supporting high quality communication 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 GDPO, considerations such as need for the telephone kiosk are not a relevant matter.
6. However, the appeal site is within the Royal Hospital Conservation Area and statutory requirements of Section 72(1) of the Planning (Listed Building and Conservation Area) Act 1990 require that special attention be paid to the desirability of preserving or enhancing the character or appearance of a Conservation Area.

Main Issue

7. I consider that the main issue is whether or not prior approval should be given in respect of the siting and appearance of the development, with particular regard to whether it would preserve or enhance the character or appearance of the Royal Hospital Conservation Area.

Reasons

8. The telephone kiosk would be sited on a wide section of pavement in a busy area fairly close to Sloane Square underground railway station. There are two existing older telephone kiosks which would be replaced by the proposed kiosk which is of a newer design.
9. The kiosk is designed to be wheelchair accessible and would provide modern telecommunications equipment. It would be located within the pavement in the location of the existing kiosks. It would replace the existing kiosks with a modern one that would still retain a distinctly traditional and recognisable telephone kiosk in a black finish that would be compatible with the general street furniture in the area. I consider that the size and design of the telephone kiosk preserves the character and appearance of the Conservation Area and its siting and appearance would be acceptable.

Conditions

10. The Council has suggested a condition in order to secure the removal of 51 redundant existing kiosks within the Borough. However, I consider that this is unreasonable, unenforceable and imprecise. I do not intend to impose it.

¹ Consolidated Local Plan Royal Borough of Kensington and Chelsea, July 2015.

² The Royal Borough of Kensington and Chelsea Transport and Streets Supplementary Planning Document, April 2016 (SPD).

³ Ministry of Housing, Communities & Local Government National Planning Policy Framework, July 2018.

However, the grant of prior approval for the telephone kiosk would be subject to the standard conditions set out in Schedule 2, Part 16, Class A of the GDPO.

Conclusion

11. For the reasons given above and having regard to all other 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 GDPO.

J D Clark

INSPECTOR