The Planning Inspectorate

Appeal Decisions

Site visit made on 6 October 2020

by I A Dyer BSc (Eng) FCIHT

an Inspector appointed by the Secretary of State

Decision date: 16 November 2020

Appeal A Ref: APP/X5210/W/20/3253902
Proposed replacement Telephone Kiosk outside 164-167 Tottenham Court Road, London W1T 7JE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Richard Wilson and New World Payphones against the decision of the Council of the London Borough of Camden.
- The application Ref 2019/4032/P, dated 7 August 2019, was refused by notice dated 7 April 2020.
- The development proposed is proposed new telephone kiosk outside 164-167 Tottenham Court Road to replace the existing kiosks outside 101-107 Tottenham Court Road, which would be removed.

Appeal B Ref: APP/X5210/H/20/3253546
Proposed replacement Telephone Kiosk outside 164-167 Tottenham Court Road, London W1T 7JE

- 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 Richard Wilson and New World Payphones against the decision of the Council of the London Borough of Camden.
- The application Ref 2019/4927/A, dated 7 August 2019, was refused by notice dated 7 April 2020.
- The advertisement proposed is illuminated digital advertisement display integrated within replacement telephone kiosk.

Decisions

Appeal A Ref: APP/X5210/W/20/3253902

1. The appeal is dismissed.

Appeal B Ref: APP/X5210/Z/20/3253546

2. The appeal is dismissed.

Procedural Matters

3. The applications were submitted together on a single application form covering both planning permission and consent to display advertisements. As set out above there are two appeals on this site relating to different aspects of the same proposal. I have considered each proposal on its individual merits. However, to avoid duplication I have dealt with the two schemes together, except where otherwise indicated.

4. The Council has referred to development plan policies in respect of Appeal B. As advertisement proposals can only be considered on the basis of amenity and public safety considerations, I have taken into account relevant development plan policies so far as they relate to these issues, but in themselves they have not been determinative from the point of view of my overall conclusion on the advertisement appeal.

5. The plan submitted with the application[1] shows a proposed new kerbline. At the time of my site visit the new kerbline, as shown, was in place and I have determined this appeal in regard to the current layout of the footway and street furniture.

Main Issues

6. Since submitting the appeal the Main Parties have entered into an Agreement made under Section 106 of the Town and Country Planning Act 1990, Section 111 of the Local Government Act 1972, Section 278 of the Highways Act 1980, Section 1 of the Localism Act 2011 and the New Roads and Streetworks Act 1991 (the Agreement). Through the Agreement the proposal would remove two existing kiosk on the opposite side of the road. The Agreement would also make provision for a new street tree to be provided for each of the kiosks removed. Further provision is made for the cleaning and upkeep of the replacement kiosk to an agreed standard. The Agreement also makes provision for the Council to have access to the advertising panel and provide a wayfinding screen to display Council messages, including emergency messages. I have taken the Agreement into account as part of my consideration of both appeals and I am satisfied that it is both acceptable and necessary.

7. I consider that, through the Agreement, the Council's concerns relating to the fourth reason for refusal in the Decision Notice for to Appeal A are addressed.

8. The main issues in relation to Appeal A are, therefore, (i) whether the development would preserve or enhance the character or appearance of the Bloomsbury Conservation (the CA) and wider street scene, and (ii) the effect of the siting of the proposed development on pedestrian movement and public safety.

9. In relation to Appeal B, the control of advertisements is exercisable only with respect to amenity and public safety. The main issue is the effect of the proposed advertisement on amenity.

Reasons

10. The site is located on the footway outside 164-167 Tottenham Court Road, a building of modern design accommodating a bank on the ground floor, with offices above. Tottenham Court Road is a wide street with commercial uses on both sides. The range of shops and services provided and the high-density office and residential accommodation in the area combine to result in Tottenham Court Road having the character of a busy urban street.

11. The footway in front of the building has recently been widened and provides a generous width between the building frontage and the vehicular carriageway in the vicinity of the site, with very limited street furniture, including a litter bin

[1] Drawing No PY3339/031

and a streetlight of contemporary design. Nearby there is a bus stop with a bus shelter which incorporates digital illuminated images. Advertising on the commercial units includes some internally illuminated signage but is generally low key and incorporates static images.

12. The buildings exhibit a mix of architectural styles, including modern development, interspersed with some older buildings. Overall the area has a pleasant sense of spaciousness despite its busy urban character, whilst the limited street furniture gives this frontage a particularly open, uncluttered feel. The aforementioned attributes add positively and distinctively to the character and appearance of the CA in the immediate vicinity of the site.

13. The Council, as part of their consideration of the application, requested usage figures for the kiosks that would be removed or replaced. Whilst this demonstrated a very low level of usage of kiosks in the vicinity of the appeal site, a degree of usage was nonetheless present, including that by persons accessing emergency and other support services. Further, the development would provide a type of structure that could be conveniently accessed by those with a mobility impairment and thus would meet a clear need for its users. The proposal would, therefore, address a degree of need in the area and the kiosks to be replaced are not, on the basis of the evidence before me, entirely redundant.

14. Paragraph 116 of the Framework makes it clear that decisions on applications for telecommunications equipment should be made on planning grounds and that decision-takers should not seek to "prevent competition between different operators… [or]… question the need for the telecommunications system".

15. The appellants argue that the increased use of the mobile phone has resulted in a decrease in use of public telephone boxes, and that this usage is further reduced by the lack of inclusivity and anti-social behaviour issues associated with the design of their current kiosk. They cite an increase in usage of their kiosks following upgrade and I have no reason to dispute this.

16. The proposed development would result in a kiosk of L-shaped cross section and a roof being installed close to the footway edge, with the shorter side closest to the kerb and the longer side at right angles to the flow of traffic. It would have an advertising panel on the longer side.

17. There is dispute between the main parties regarding the need for the structure to be of the form and scale proposed. Notwithstanding that an alternative structure could physically incorporate the proposed telecommunications equipment, the design incorporates a roof and a side panel which would provide shelter from the elements for customers whilst retaining two open sides to allow access for those with a mobility impairment and improve natural surveillance. The degree of shelter that would be provided would be a reasonable balance against the need to provide accessibility. However, as a consequence of its height, width, dark colour, illuminated screen and separation from other street furniture of a similar scale, the proposed kiosk would be a prominent feature in the street scene.

18. This proposal is one of several in the wider area of Camden seeking to rationalise kiosk provision and reduce the number of kiosks overall. Whilst its simple, modern design incorporating elements referencing traditional kiosks would not be discordant with the modern shop fronts against which it would be

set, the introduction of the kiosk in this location would significantly affect the sense of openness and spaciousness of the frontage which I have identified above. In this context the reduction in openness and spaciousness would result in harm and would fail to preserve the character and appearance of the CA.

19. Further, the visual impact of the kiosk would be increased by the large illuminated advertising panel, which would be a dominating feature on the structure. The panel, close to the kerbline, would be a prominent standalone illuminated feature. The panel would be unrelated to the services provided by the adjacent commercial units and would appear prominent in views along the street both during the day and in hours of darkness.

20. The luminance level and rate of image transition could be controlled by condition and such forms of advertisement are becoming increasingly familiar on the street scene. Nevertheless, the appeal proposal would, as a result of the internal illumination associated with the panel, its position adjacent to the kerb and changing images, create an additional discordant feature within the street scene, adding visual clutter and hence would not preserve or enhance the character or appearance of the CA. To this extent significant harm would be caused to the character and appearance, and hence to the visual amenity of the area.

21. Even without displaying an advertisement, the illuminated screen would be a discordant feature within the street scene adding unnecessary visual clutter and hence would not preserve or enhance the character or appearance of the CA.

22. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that in making decisions on planning applications and appeals within a Conservation Area, special attention is paid to the desirability of preserving or enhancing the character and appearance of the area. In addition, Paragraph 193 of the Framework requires when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.

23. Whilst, within the wider area, there are other examples of illuminated advertisements mounted on street furniture near the kerbline, including digital advertisements, these are some distance from the appeal site or not located within the context of this particular street frontage.

24. No pedestrian count data has been provided by either party in support of their case. However, the proposal site lies on a busy commercial street where pedestrian volumes are forecast to increase following rail network improvements[2]. With the incidence of the Coronavirus, more emphasis is being put on encouraging pedestrian movement whilst maintaining safe social distancing, requiring additional useable pavement width.

25. With regard to the current layout of the street and footway width the proposed kiosk would be positioned close to, but not in line with, a litter bin, and, in combination this would significantly reduce the available width of the footway. Notwithstanding that the proposal would leave a clear width of footway in excess of recommended minimum width for high footfall locations contained within Appendix B of the Transport for London (TfL) guidance document

[2] Crossrail and High Speed 2 projects

entitled 'Pedestrian Comfort Guidance for London', in practical terms this would unnecessarily impede pedestrian flow.

26. The kiosk would be located in close proximity to two automatic telling machines (ATMs) within the frontage of the bank. The Metropolitan Police Crime Prevention Design Advisor has identified that, associated with their current low levels of usage, telephone kiosks within the Borough have become crime generators and focal points for anti-social behaviour (ASB).

27. Notwithstanding the orientation of the kiosk and its open nature, the kiosk would provide of a degree of shelter from the elements and, given its proximity to the ATMs, be likely to provide a greater incentive to use the phone boxes for begging.

28. It is possible that the structure could attract ASB such as urinating against or within the structure and vandalism/graffiti. The appellants' proposed maintenance regime would be likely to reduce the effects of such ASB. However, the form of the structure provides a degree of screening for such behaviour and would be likely to encourage it.

29. Levels of illumination from the kiosk could be controlled through a suitable planning condition and I have little substantive evidence before me to demonstrate that the illumination from a kiosk in this location would have an adverse effect on CCTV coverage. However the substantial form of the kiosk, with screening panels would reduce natural surveillance and so use of the kiosk to screen illegal activities such as drug dealing and use could increase, notwithstanding the maintenance regime proposed.

30. It is proposed to remove two kiosks situated opposite the site. Their removal would have the benefit of fewer structures in their local streetscape, and I have no reason to object to their removal. Such de-cluttering of the streetscape is supported within the TfL Streetscape Guidance Fourth Edition -2019 Revision 1. However, the kiosks are situated in line with existing obstructions within the footway and so their removal would have limited benefit in aiding the flow of pedestrians along the footway. Therefore, I attach limited weight to any potential benefits that could arise from this.

31. The appellants identify that the inclusion of the advertisement panel is necessary to facilitate the proposed upgrading of their kiosk stock. However, there is little evidence before me to demonstrate that the inclusion of advertising in the form proposed is the only way of achieving this end and so I give this argument limited weight.

32. Drawing these points together, I conclude that in respect of Appeal A the development would fail to preserve the character and appearance of the CA and wider street scene. The proposal would therefore not comply with the expectations of the Planning (Listed Buildings and Conservation Areas) Act 1990 and would also be contrary to Policies D1 and D2 of the Camden Local Plan -2017- (the Local Plan) in as much as these require development to respect local context and character and preserve or enhance the historic environment and heritage assets.

33. The above identified harm would be less than substantial taking into account paragraph 196 of the Framework. The Framework directs that where a development proposal would lead to less than substantial harm, this harm

should be weighed against the public benefits of the proposal. I deal with this matter below.

34. Furthermore, the proposal would have a harmful effect on pedestrian movement and public safety and so it would be contrary to Policies G1, A1, C6, T1 and C5 of the Local Plan in as much as these, amongst other things, promote streets and public areas which are fully accessible, easy and safe to walk through and provide high quality footpaths and pavements that are wide enough for the number of people expected to use them, and resist development that fails to adequately address transport impacts affecting communities and the existing transport network.

35. For the reasons outlined above, I conclude that in respect of Appeal B the proposed digital advertising panel would be harmful to the CA and hence to amenity and therefore would not accord with Policies D1, D2 and D4 of the Local Plan in as much as these require development to respect local context and character, preserve or enhance the historic environment and heritage assets and to avoid contributing to an unsightly proliferation of signage in the area and so are material in this case.

36. In respect of Appeal A, the kiosk would provide a number of services to members of the public, which I understand to be at no cost to end users, including local information provided by the Council and travel and emergency information. The proposal would remove two other kiosks of unattractive appearance, thus reducing overall street clutter within the Borough and make provision for the maintenance and upkeep of the new kiosk. For each of the kiosks removed a payment would be received to enable the planting of a street tree within the Borough, which would provide wider environmental benefits.

37. The Framework supports the expansion of electronic communication networks which are essential to economic growth and social well-being. Notwithstanding that there are other facilities in the area that provide similar services, the proposal would provide some minor public benefit through increased competition. In addition, the kiosks inclusive design (including accessibility and shelter for the mobility impaired) weighs moderately in favour of the proposal. Whilst these are positive matters to weigh in the overall planning balance, they are not of sufficient magnitude to outweigh the less than substantial harm caused by the kiosk to the character and appearance of the CA.

38. In respect of Appeal B, the advertisement screen would provide local information provided by the Council and emergency information. The Framework supports the expansion of electronic communication networks which are essential to economic growth and social well-being. Whilst these are positive matters to weigh in the overall planning balance, they are not of sufficient magnitude to outweigh the harm caused by the advertisement to the amenity of the area.

Other Matters

39. I note that the main parties engaged in a prolonged process of pre-application discussions, however, such participation, though laudable, is not a guarantee of success. I further note that the appellants have expressed concerns that the Council has been inconsistent in their decision making process. That, however, is a matter between the appellants and the Council.

40. My attention has been drawn by both of the main parties to other appeal decisions in regard to telephone kiosks and advertisements in other local planning authorities. However I have little information before me to draw a comparison between these cases and the proposals before me, particularly in regard to the design of the proposed kiosk and advertisement screen in the context of their setting. In any case, I have determined these appeals on their individual merits and with regard to current planning legislation.

Conclusions – Appeals A & B

41. For the above reasons I conclude that Appeal A and Appeal B should be dismissed.

I Dyer

INSPECTOR