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## 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: 17 November 2020

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### **Appeal Ref: APP/X5210/W/20/3253908**

#### **Telephone Kiosks outside 23-24 Tottenham Court Road, Fitzrovia, London W1T 1BJ**

- 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 2019/4100/P, dated 9 August 2019, was refused by notice dated 6 April 2020.
  - The development proposed is replacement of existing two telephone kiosks with single new telephone kiosk.
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### **Appeal Ref: APP/X5210/H/20/3253493**

#### **Telephone Kiosks outside 23-24 Tottenham Court Road, Fitzrovia, London W1T 1BJ**

- 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 2019/4894/A, dated 9 August 2019, was refused by notice dated 6 April 2020.
  - The advertisement proposed is illuminated digital advertisement display integrated within replacement telephone kiosk.
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## Decisions

### **Appeal A: APP5210/W/20/3253908**

1. The appeal is allowed and planning permission is granted for replacement of existing two telephone kiosks with single new telephone kiosk in accordance with the terms of the application, Ref 2019/4100/P, dated 9 August 2019, and the approved plans, subject to the conditions in the attached schedule.

### **Appeal B: APP/X5210/H/20/3253493**

2. The appeal is allowed and express consent is granted for the display of the advertisement as applied for. The consent is for ten years from the date of this decision and is subject to the five standard conditions set out in the Regulations and the additional conditions set out in the attached schedule.

## 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. Subsequent to determination of the application the appellants have submitted a revised plan (Drawing No PY3340/032-rev B) which proposes the location of the kiosk to be on that of the existing kiosks. The Council have had the opportunity to comment on the amended plan and I do not consider that either party would suffer prejudice by my consideration of the amended plan in my determination of this appeal.

### **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 replace the two kiosks outside 23-24 Tottenham Court Road with a single kiosk and two others outside 245 Tottenham Court 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. The main issues in relation to Appeal A are, therefore, (i) whether the development would preserve or enhance the character or appearance of the site and wider street scene, and (ii) the effect of the siting of the proposed development on pedestrian movement and public safety.
8. In relation to Appeal B, the control of advertisements is exercisable only with respect to amenity and public safety. The main issues are (i) effect of the proposed advertisement on amenity, and (ii) the effect of the siting of the proposed advertisement on highway safety.

### **Reasons**

9. The site is located on the footway outside 23-24 Tottenham Court Road, a building of modern design accommodating a shop on the ground floor. 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.

10. There is a wide footway between the building frontage and the vehicular carriageway in the vicinity of the site. This hosts a number of items of street furniture of contemporary design, many of which incorporate advertisements, including digital advertisements. Street furniture in the immediate vicinity includes, in addition to the two existing kiosks on the appeal site, street lighting, incorporating a bus stop, seating and bicycle racks. Close nearby there are other bus-stops with shelters, telephone kiosks, advertisement screens and services cabinets. There is also a line of mature street trees, roughly along the middle of the footway. Advertising on the commercial units includes some internally illuminated signage but is generally low key and incorporates static images.
11. The nearby buildings are mainly of modern design. Whilst the footway around the site has a cluttered, congested feel, the distribution of footway space to carriageway, separation of the buildings and uncluttered eastern footway give the area an overall pleasant sense of spaciousness despite its busy urban character. The aforementioned attributes add distinctively to the character and appearance of the immediate vicinity of the site.
12. 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.
13. 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”.
14. 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.
15. The proposed development would result in the removal of two existing kiosks at the site and 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.
16. 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.

17. This proposal is one of several in the wider area of Camden seeking to rationalise kiosk provision and reduce the number of kiosks overall. In association with the removal of the existing kiosk the replacement one would not significantly affect the sense of spaciousness, nor, given its setting against more modern buildings and shop fronts, would its simple, modern design incorporating elements referencing traditional kiosks, detract from the character and appearance of the site and the surrounding area.
18. 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 kerblines, 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.
19. However, 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. Whilst 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 feature within the street scene, it would be viewed in context of the series of such features along the street within which it would lie. Thus no significant harm would be caused to the character and appearance, and hence to the visual amenity, of the site and wider area.
20. 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<sup>1</sup>. 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.
21. With regard to the current layout of the street and footway width the proposed kiosk would replace two existing kiosks with a single kiosk closer to the kerblines. Whilst there would be a nominal reduction in footway width overall, the residual width would still be in excess of the recommended minimum width for high footfall locations contained within Appendix B of the Transport for London (TfL) guidance document entitled 'Pedestrian Comfort Guidance for London'. The replacement kiosk would occupy the area immediately adjacent to the kerb, in line with the street light/bus stop, and in practical terms this would restrict pedestrian flow less than the current layout.
22. Whilst the advertisement screen would be in the direct eyeline of pedestrians approaching there is little substantive evidence before me to demonstrate that it would provide such a distraction as to result in pedestrians entering the adjacent carriageway. Similarly there is little substantive evidence before me to demonstrate that similar advertisements in close proximity have resulted in an increase of accidents associated with driver distraction.

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<sup>1</sup> Crossrail and High Speed 2 projects

23. There would be no permanent obstruction to prevent pedestrians crossing at this point. However, it is not an identified pedestrian crossing. There would be little advantage in using this location to cross the road, given the proximity of signal controlled crossing points to either side and I have little substantive evidence before me to demonstrate that the number of pedestrians crossing the road at this point is significant.
24. I note the guidance contained in the Digital Roadside Advertising and Proposed Best Practice (commissioned by TfL) -2013- which advises that digital advertising signs will not normally be permitted if they are proposed within 20m of a traffic signal. However, the proposal would be in an almost identical position to an existing pair of kiosks of similar scale. I have little substantive evidence before me to demonstrate that the proposal would have a significant effect on intervisibility between the drivers of vehicles approaching or exiting Stephen Street. I note that the Local Highway Authority have not raised concerns on this issue.
25. The Metropolitan Police Crime Prevention Design Advisor has identified that, associated with their current low levels of use, telephone kiosks within the Borough have become crime generators and focal points for anti-social behaviour (ASB).
26. It is possible that the structure could attract ASB such as urinating against or within the structure and vandalism/graffiti. By replacing an existing kiosk there would be no overall increase in opportunities for such behaviour. The more open nature of the proposed kiosk compared to that of the existing one and the replacement of the old, uncared for kiosk and proposed improved maintenance regime would be likely to reduce the effects of ASB.
27. 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 substitution of the kiosk structures would have an adverse effect on CCTV coverage or reduce natural surveillance and so use of the kiosk to screen illegal activities such as drug dealing and use would be unlikely to be measurably altered.
28. It is proposed to reduce the number of kiosks at the site from two to one and remove two kiosks at another location. The reduction 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.
29. Drawing these points together, I conclude that in respect of Appeal A the development would not result in unacceptable harm to the character and appearance of the site and wider street scene. The proposal would therefore comply with Policy D1 of the Camden Local Plan -2017- (the Local Plan) in as much as this requires development to respect local context and character. For similar reasons I conclude that the proposal would also accord with the Fitzrovia Area Action Plan -2014- in as much as this seeks to reduce street clutter along Tottenham Court Road.
30. Furthermore, the proposal would not have a harmful effect on pedestrian movement and public safety and so it would comply with 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.

31. For the reasons outlined above, I conclude that in respect of Appeal B the proposed digital advertising panel would not be harmful to amenity and would accord with Policies D1 and D4 of the Local Plan in as much as these require development to respect local context and character and to avoid contributing to an unsightly proliferation of signage in the area and so are material in this case.
32. I also find that the proposed digital advertising panel would not result in harm to public safety, and would therefore be in accordance with Policies A1, D4 and T1 of the Local Plan, in as much as these seek to resist development that fails to adequately assess and address transport impacts affecting the existing transport network, adversely impact upon public safety and ensure that developments are easy and safe to walk through and are so material to the case. The proposal would also accord with the Transport for London Streetscape Guidance Fourth Edition -2019 Revision 1- the in as much as this requires that sightlines should not be obstructed by street furniture and is also material to the case.

### **Other Matters**

33. 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.
34. 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.

### **Conditions – Appeal A**

35. In addition to that setting out the statutory time limit, a condition requiring compliance with the approved plans is necessary for the avoidance of doubt and in the interest of certainty.
36. A condition requiring the removal of the kiosk, should it no longer serve any telecommunications purpose is necessary to prevent the accumulation of street clutter and protect the character and appearance of the area.

### **Conditions – Appeal B**

37. The Council has suggested a number of conditions, five of which would replicate the five standard conditions set out in the Regulations and which would, therefore, be unnecessary.

38. A condition to control the intensity of illumination is necessary to preserve the character and appearance, and hence the amenity, of the area and to ensure that the advertisement complies with the requirements of the Transport for London Guidance for Digital Roadside Advertising.
39. In the interests of public safety, it is necessary to impose conditions relating to the movement, display and intervals for any advertisements and governing the images displayed so that they do not cause driver or pedestrian confusion, should they resemble a traffic sign.
40. The Council proposed a condition to regulate the way in which works are carried out to prevent obstruction or interference with the passage of pedestrians or other traffic. I am satisfied that regulatory powers are available to the Local Highway Authority to prevent this and so the condition suggested is unnecessary.

**Conclusions – Appeals A & B**

41. For the reasons given above I conclude that the appeals should succeed.

*I Dyer*

INSPECTOR

### **APPEAL A – SCHEDULE OF CONDITIONS**

1. The development hereby permitted shall begin not later than 3 years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan – 23 Tottenham Court Road; Site Plan – PY3340/032-revB; New World Payphones Specification Document Revision A.
3. The kiosk hereby permitted shall be removed from the building at such time as it is no longer required for telecommunications purposes and the land shall be restored to its condition before the development took place.

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### **APPEAL B – SCHEDULE OF CONDITIONS**

The following conditions are attached to this consent, in addition to the five standard conditions set out in the Regulations.

1. The advertisement display shall be statically illuminated and the intensity of the illumination of the digital sign shall not exceed 2500 candelas per square metre during the day and 300 candelas per square metre during the hours of darkness in line with the maximum permitted recommended luminance as set out by 'The Institute of Lighting Professional's 'Professional Lighting Guide 05: The Brightness of Illuminated Advertisements' 2015. The levels of luminance on the digital sign should be controlled by light sensors to measure the ambient brightness and dimmers to control the lighting output to within these limits.
2. The digital sign shall not display any moving, or apparently moving, images (including animation, flashing, scrolling three dimensional, intermittent or video elements).
3. The minimum display time for each advertisement shall be 10 seconds.
4. The interval between advertisements shall take place over a period no greater than one second; the complete screen shall change with no visual effects (including swiping or other animated transition methods) between displays and the display will include a mechanism to freeze the image in the event of a malfunction.
5. No advertisement displayed shall resemble traffic signs, as defined in section 64 of the Road Traffic Regulation Act 1984.