

Enforcement Delegated Report	Receipt date:	25/11/2019
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Officer	Enforcement Case
Gary Bakall	EN19/1005

Breach Address	Photos & Other material
Infocus Telephone Kiosk (Ref: CAM7019MU) on pavement outside 196-199 Tottenham Court Road, London W1T 7JE	On file

PO 3/4	Area Team Signature	C&UD	Authorised Officer Signature
			 12/07/2021

Alleged Breach

Phone kiosk which is no longer required for telecommunication purposes has not been removed from the pavement in breach of paragraph A.2 of Part 16 Class A to Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015

Recommendation(s): That the Borough Solicitor be instructed to issue an Enforcement Notice under Section 172 of the Town & Country Planning Act 1990 as amended and to pursue any legal action necessary to secure compliance and officers be authorised in the event of non-compliance, to prosecute under section 179 or appropriate power and/or take direct action under 178 in order to secure the cessation of the breach of planning control.

Site Description

Tottenham Court Road is a major thoroughfare linking Centrepoint and the West End with Euston Road. It is commercial in nature containing shops, hotels and office buildings and is known as a specialist centre for electronics. It is an important transport corridor with many bus routes and three underground stations. It has just received a major refurbishment through the West End Project.

Although Tottenham Court Road is only 1.1km long there are 33 phone kiosks located on it which are generally poorly maintained, some only providing free calls, not working and/or are a focal point for anti-social behaviour, including drug supply and consumption.

This kiosk is located on the pavement outside nos.196-199 Tottenham Court Road outside a Grade II* listed building. It is located within the Bloomsbury Conservation area and with the Fitzrovia Neighbourhood centre.

Investigation History

Complaints were initial received in 2019 in relation to the condition of kiosks along Tottenham Court Road. A Planning Contravention Notice was served on all kiosks within the street and site inspections undertaken. Warnings have been provided that the Council is concerned with the condition of the kiosks and whether they are still required. As none of the kiosks have been removed or the situation changed formal action is now being taken.

Relevant policies / GPDO Category

Local plan 2017
A1 Managing the impact of development
C5 Safety and Security
C6 Access
D1 Design
D2 Heritage

D4 Advertisements
G1 Delivery and location of growth
T1 Prioritising walking, cycling and public transport

Supplementary planning guidance

CPG Design (2019)
CPG Transport (2019)
CPG Advertisements (2018)
CPG Amenity (2018)
Camden Streetscape Design Manual
Fitzrovia Area Action Plan (2014).
Bloomsbury Conservation Area Statement

National Planning Policy Framework (2019)
London Plan (2020)
Design of an accessible and inclusive built environment. External environment (code of practice - BS8300-1:2018 and BS-2:2018)
Digital Roadside Advertising and Proposed Best Practice (commissioned by Transport for London) March 2013
TfL's Pedestrian Comfort Guidance for London (2010)

Assessment

Background - Part 16 Class A to Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (Part 16), includes:

“Development by or on behalf of an electronic communications code operator for the purpose of the operator’s electronic communications network in, on, over or under land controlled by that operator or in accordance with the electronic communications code, consisting of –

(a) The installation, alteration or replacement of any electronic communications apparatus....”

This permitted development right is a conditional right. Paragraph A.2 provides:

“(2) Class A development is permitted subject to the condition that –

(a) any electronic communications apparatus provided in accordance with that permission is removed from the land or building on which it is situated –

(i)

*(ii)as soon as reasonably practicable after it is **no longer required for electronic communications purposes**; and*

(b) such land or building is restored to its condition before the development took place, or to any other condition as may be agreed in writing between the local planning authority and the developer”.

Part 16 was amended on 25 May 2019 by the insertion of a new paragraph, paragraph A.10 which provides:

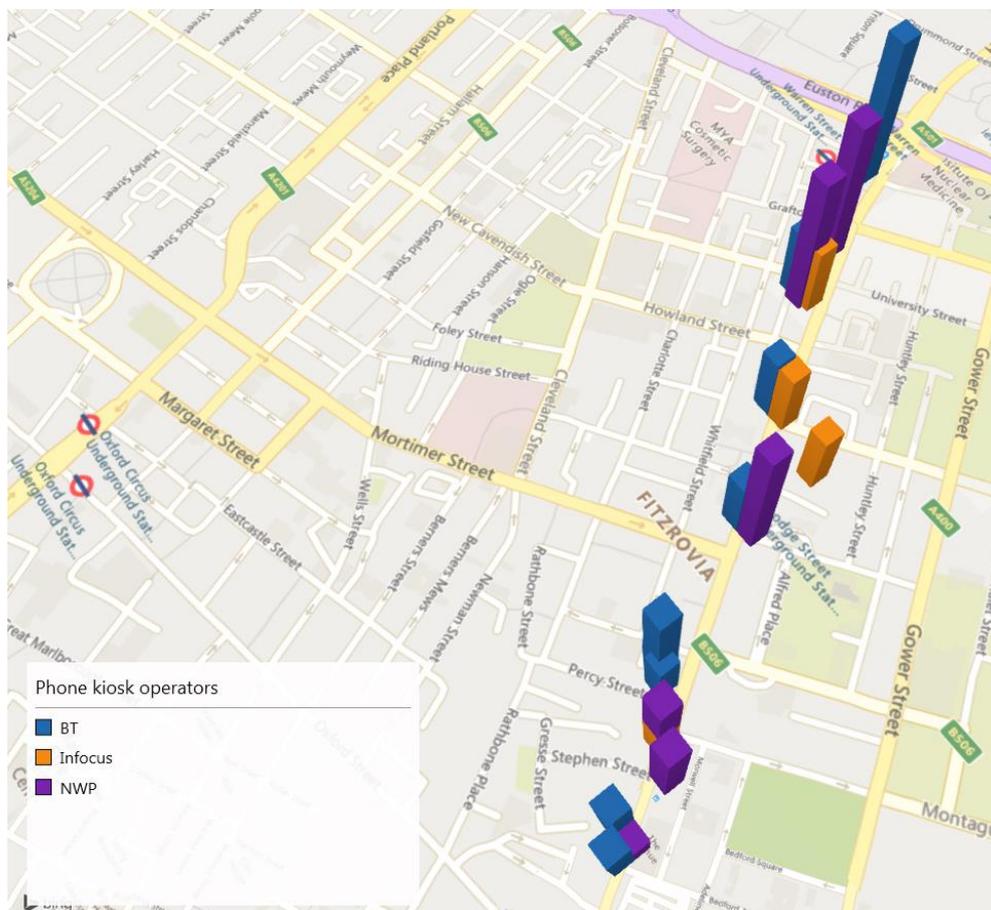
“Development not permitted: public call box

(10) Development consisting of the installation, alteration or replacement of a public call box is not permitted by Class A.”

Regulation 19 of the Town and Country Planning (Permitted Development, Advertisement and Compensation Amendments)(England) Regulations 2019 provides that where a prior approval for a public call box was given before 25 May 2019, then the planning permission granted by Part 16 continues to have effect in relation to the public call box as if the amendments to the Order made by the 2019 Regulations had not been made.

It follows that the deemed condition contained in paragraph A.2 applies to all public call boxes which have been installed pursuant to prior approvals granted under Part 16.

There are currently 33 kiosks within Tottenham Court, as shown on the plan below. Each operator has a number of kiosks within the street, of which all are in close proximity of each other.



The kiosk located outside 196-199 Tottenham Court Road is operated by Infocus who have 3 other kiosks.

BT	16 kiosks
Infocus	4 kiosks
NWP	13 kiosks

The Council received complaints from local groups about the continuing poor condition, lack of appropriate use and the number of kiosks within Tottenham Court Road. The local group undertook regular inspections of the kiosks conditions and submitted information to the Council. In relation to this kiosk there have been a total of 17 complaints following inspections undertaken by a local group.

Date of inspection	Ref	Inside	Outside	Working?	Advertisement
25.10.2019	CAM7019 MU	Graffiti, stickers, full of cardboard newspapers & litter, prostitutes' cards	Stickers	Not working	Saatchi Gallery

24.01.2020	CAM7019 MU	Dirty, prostitutes' cards		Emergency calls only	On The Market
30.01.2020	CAM7019 MU	Dirty, prostitutes' cards, litter		Not working	Garrick Theatre
07.02.2020	CAM7019 MU	Dirty		Not working	Garrick Theatre
14.02.2020	CAM7019 MU	Dirty, prostitutes' cards, litter, food waste, full of cardboard and boxes		Probably not working, no access to handset because of boxes	Vaudeville Theatre
10.05.2019	CAM7019 MU	Dusty, litter		Emergency calls only	
03.05.2019	CAM7019 MU			Emergency calls only	
17.05.2019	CAM7019 MU	Dusty, litter, prostitutes' cards		Emergency calls only	
Jul-18	CAM7019 MU	Always full of cardboard		Yes	
Oct-19	CAM7019 MU	Graffiti, stickers, full of cardboard newspapers & litter, prostitutes' cards	Stickers	Not working	Saatchi Gallery
24.05.2019	CAM7019 MU	Dusty, loads of cardboard		Emergency calls only	
31.05.2019	CAM7019 MU	Dusty, loads of cardboard		Emergency calls only	
Jun-18	CAM7019 MU	Always full of cardboard		Not working	
Aug-18	CAM7019 MU	Always full of cardboard		Yes	
May-18	CAM7019 MU	Always full of cardboard		Not working	
Dec-17	CAM7019 MU	Not working, loads of cardboard inside			
Mar-18	CAM7019 MU	Not working, constantly full of cardboard and waste			

Planning Contravention Notices were served in 2019 requesting details on the condition, maintenance, complaints and usage of kiosks for the prior 4-year period. The information provided demonstrated the minimal use of kiosks within the street. Despite the Council bringing the poor usage and condition of kiosks to the attention of the operator the box remained in position.

In the High Court decision of *Westminster City Council v New World Payphones Ltd* ([2019] EWHC 176 (Admin)), Ouseley J did not agree that the need for a particular kiosk is relevant to the right to install it under Part 16. He also rejected the submission that the condition imposed upon the grant of prior approval in paragraph A.2, that the kiosk be removed when no longer required, imports a “needs test” into the test for prior approval. The Court of Appeal agreed.

However, when considering paragraph A.2, Ouseley J provides clear guidance that ‘it would be straightforward to judge whether a kiosk was required by an operator: it might have no telephonic equipment in it, it might be left unmaintained, unusable or unused’.

Therefore, in assessing whether there is a breach of paragraph A.2, the Council has taken into consideration the following:

1. is there telephonic equipment in the kiosk;
2. If there is telephonic equipment, is the kiosk a) unmaintained, b) unusable (not able or fit to be used) or c) unused – We have reviewed whether the kiosk is functioning, the condition of the kiosk to determine whether it is useable/fit to be used and assessed call figures to demonstrate whether the kiosk is unused and to demonstrate whether the kiosk is usable.

Assessment of breach of A.2

In this case, the regular complaints we have received from local groups, following regular inspections of the kiosks in Tottenham Court Road are centred on the unsanitary condition, graffiti, and prostitutes’ cards.

Assessment of condition of the kiosk outside 196-199 Tottenham Court Road

Working telephonic equipment	Only calls permitted to Freephone numbers.
Kiosk unmaintained	Yes - Regular reports of poor condition – not considered to be well maintained
Unusable (not able or fit to be used)	Yes - Due to the condition it is not considered to be fit to be used, and given only certain calls can be made we consider the kiosk is not able to be used for telecommunication purposes. This is demonstrated by the significantly low call figures. The fact the kiosks are dirty and contain prostitutes cards demonstrates they are unusable.
Unused	1.2 calls per month on average/14.75 calls a year*

*Average taken from data from 2016-2019 provided by the operator in response to a PCN.

	Average Monthly	Average Annual figure
o/s 196-199 TCR EN19/1001 9R	1.2	14.8
o/s 80-81 TCR EN19/1002 16L	4.6	55.0
o/s 105 TCR EN19/1005 20L	1.1	13.8

The kiosk has extremely low call figures but given, like all the above mentioned public telephone kiosks, it is solar powered and calls are restricted to only certain free calls that have to be put through an operator, this is not surprising. Considering the very limited usability of the telephone service, it is considered that the main function of the kiosk is as a structure displaying a six sheet advertisement display panel.



The complaints that have been received from local groups about these kiosks from 2018, 2019 and 2020 show the kiosk have been dirty, contained litter and prostitutes cards. The Council's designing out crime advisors outlines that kiosks become magnets for crime and anti-social Behaviour and that the issues which surround them range from the placement of prostitute cards, graffiti, public urination, criminal damage and a location where Class A drugs misuse can occur. Whilst the design of the kiosk is more open, it still provides a large side panel which provides opportunity for ASB.

The lack of use of these kiosks for telephone communication purposes but there very poor condition illustrates the other uses they are put too as well as the lack of maintenance of the kiosks.

It is considered that the kiosk is no longer required for telecommunication purposes and a breach of A.2 has taken place which was brought to the providers attention in 2019 and again in 2021. The operator has failed to remove the kiosk or demonstrate why it is not currently practicable to do so. For these reasons the kiosk is considered to be an unauthorised structure.

Assessment:

Expediency of enforcement action – An assessment is made below against planning policy and guidance as to whether it is expedient to take formal action against the unauthorised structure. There have been a number of recent appeal decisions on kiosks within Tottenham Court Road and work on the West End Project has sought to declutter the street.

Prior approval for a further kiosk was refused in May 2009 (2009/1035/P) due to its inappropriate design and location impacting the highway and visual amenity of the streetscape.

A further application was refused in July 2019 (2019/2697/P) due to design, crime and transport issues, including that the kiosk was not wholly for the purpose of the operator's electronic network and thereby falls outside the terms of Part 16, Class A of the General Permitted Development Order. An appeal was not received.

Design - Local Plan Policy D1 (Design) aims to ensure the highest design standards for developments. Policy D1 states that the Council will require all developments to be of the highest

standard of design and to respect the character, setting, form and scale of neighbouring buildings, its contribution to the public realm, and its impact on wider views and vistas.

D2 (Heritage) requires development within conservation areas to preserve or where possible enhance the character and appearance of the area and will resist development that would cause harm to the significance of a listed building through an effect on its setting.

Camden Planning Guidance (CPG) Design advises 'the design of streets, public areas and the spaces between buildings, needs to be accessible, safe and Visual Amenity ASB

The Fitzrovia Area Action Plan (2014) seeks to make more effective use of highway space to augment public open space in the area through reducing street clutter along Tottenham Court Road ensuring a generous width of pavement. The kiosk, which is no longer required is a poor design which is poorly maintained detracting from the visual amenity of the wider streetscene and adding unnecessary clutter to the street.

The kiosk is considered to have a less than substantial impact on the setting of the neighbouring listed building and wider conservation area. Given the limited usage of the kiosk it is considered that there is no public benefit to outweigh the harm caused.

Pavement width/clutter - The kiosk is located in a high footfall area in Central London, one of the busiest pedestrian corridors in the borough, next to Warren Street, Goodge Street and Tottenham Court Road Station, where pedestrian volumes are forecast to increase significantly when Crossrail services become operational (forecast for 2022) and would increase further following the introduction of High Speed 2 (HS2).

National Planning Policy Framework (NPPF) aims to keep telecommunication sites to a minimum and encourage applicants to explore shared facilities. Policy D7 (Public Realm) of the New London Plan (Intend to publish) 2019 states that 'Applications which seek to introduce unnecessary street furniture should normally be refused'.

In addition to concerns about the infrequent use of telephone kiosks due to the prevalence of mobile phone use, the telephone kiosk results in the loss of public space, acts as a hindrance to pedestrian movement, adding further clutter to the streetscene rather than providing a public service for the benefit of highways users, contrary to Policy A1.

Crime - Phone kiosks in Tottenham Court Road have become focal points for anti-social behaviour due to their poor design and lack of maintenance,

Policy C5 of the Camden Local Plan, the Council requires development to incorporate appropriate design, layout and access measures to help reduce opportunities for crime. As such, careful consideration needs to be given to the design and location of any street furniture or equipment in order to ensure that they do not obscure public views or create spaces that would encourage anti-social behaviour (ASB). Camden Planning Guidance (CPG) Design in Paragraph 7.42 states with regard to telephone kiosks in particular that, 'The size of the structure that the phone box is in should be minimised to limit its impact on the streetscene and to decrease the opportunities for crime and anti-social behaviour.'

A number of issues have been raised by the Metropolitan Police. In particular existing telephone kiosks within the London Borough of Camden have become 'crime generators' and a focal point for anti-social behaviour (ASB). CPG (Design) states that "designs should seek to maximise views into and through the phone box and along the footway." The solid panel and advertisements seem to screen views through and the smell of urine, graffiti and calling cards present in the booths are physical indicators of the ASB taking place due to the presence of these kiosk.

Recommendation: Enforcement notice to be served

The notice shall allege the following breaches of planning control: Phone kiosk which is no longer required for telecommunication purposes has not been removed from the pavement in breach of paragraph A.2 of Part 16 Class A to Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015

What you are required to do:

- 1) Completely remove the phone kiosk
- 2) Make good the pavement to match the surrounding surface

PERIOD OF COMPLIANCE: 1 month

REASONS WHY THE COUNCIL CONSIDER IT EXPEDIENT TO ISSUE THE NOTICE:

The phone kiosk, by reason of being a) unmaintained, b) unusable (not able or fit to be used) and c) unused, is no longer required for electronic communications purposes and has not been removed in breach of paragraph A.2 of Part 16 Class A to Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015.

The phone kiosk, by reason of its location and size, and advertisement panel, adds to visual clutter and detracts from the character and appearance of the street and wider area, harming the setting of the neighbouring Grade II* listed building contrary to policy D1 (Design) and D2 (Heritage) of the London Borough of Camden Local Plan 2017 and Fitzrovia Area Action Plan (2014).

The phone kiosk, adds unnecessary street clutter, creates increased opportunities for crime in an area which already experiences issues with crime, therefore the proposal would be contrary to policy C5 (Safety and security) of the London Borough of Camden Local Plan 2017.

The phone kiosk, by virtue of its location, size and detailed design, impacts the amount of useable, unobstructed footway, is detrimental to the quality of the public realm, hinders pedestrian movement and has a detrimental impact on the promotion of walking as an alternative to motorised transport, contrary to policies G1 (Delivery and location of growth), A1 (Managing the impact of development), C6 (Access for all) and T1 (Prioritising walking, cycling and public transport) of the London Borough of Camden Local Plan 2017.