

# Enforcement Delegated Report

Receipt date:

25/11/2019

## Officer

Katrina Lamont

## Enforcement Case

EN19/1002

## Breach Address

Infocus Public Call Box (Ref: CAM7016MU) on pavement outside 80-81 Tottenham Court Road, London

## Photos & Other material

On file

## Authorised Officer Signature



15/02/2023

## Alleged Breach

Breach of condition A.2 (2) of Part 16 Class A of Schedule 2 of the General Permitted Development Order 2015 (as amended)

## Recommendation(s):

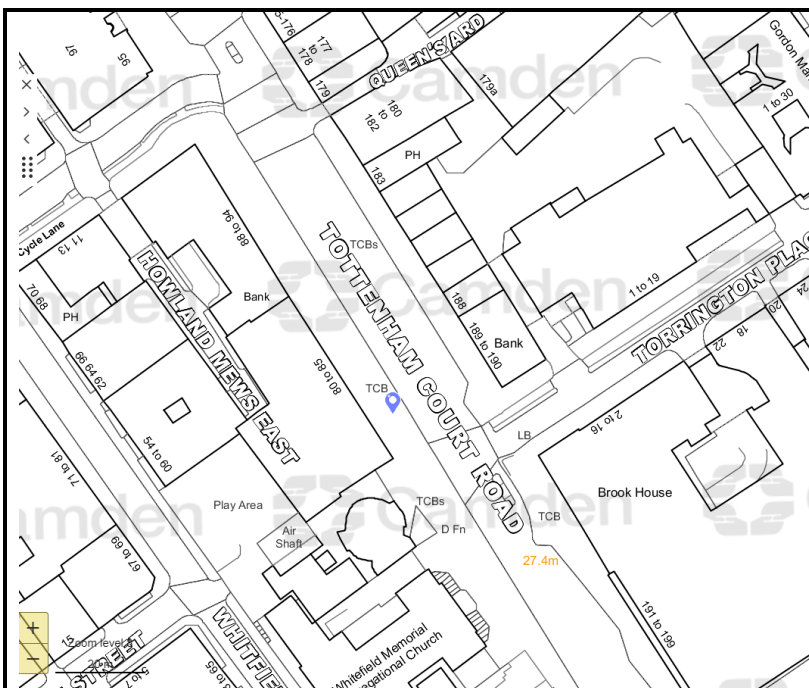
That the Borough Solicitor be instructed to issue a Breach of Condition Notice under Section 187A of the Town and Country Planning Act 1990 (as amended) for the breach of condition A.2 (2) of Part 16 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) and Officers be authorised in the event of non-compliance to prosecute under that section or issue injunction proceedings to remove the unauthorised public call boxes.

## Site Description

Tottenham Court Road is a major thoroughfare linking Centrepont and the West End with Euston Road. It is commercial in nature containing shops, hotels and office buildings. It is an important transport corridor with many bus routes and three underground stations. It has undergone a major refurbishment through the West End Project.

Although Tottenham Court Road is only 1.1km long there are 30 public call boxes 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.

The public call box, the subject of this notice, is located on the pavement outside nos.80-81 Tottenham Court Road outside a modern building. It is located adjacent to the boundary with the Charlotte Street Conservation area and with the Fitzrovia Neighbourhood centre.



Location of Infocus public call box on pavement outside 80-81 Tottenham Court Road, London

### Investigation History

Complaints were initially received in 2019 in relation to the condition of public call boxes along Tottenham Court Road. In 2019 and 2022 Planning Contravention Notices (PCN) were served on all public call boxes within the street and site inspections undertaken. Warnings were issued that the Council is concerned with the condition of the public call boxes and whether they are still required.

An Enforcement Notice was issued on 30<sup>th</sup> September 2021 and appealed. However, following a review of the enforcement approach with Counsel, the enforcement notice was withdrawn. An award for costs in favour of the appellant was awarded on 8<sup>th</sup> June 2022. Following recent inspections of the condition of the public call boxes and the information provided in the 2022 PCN, the Council has decided to issue a Breach of Condition Notice.

### Planning History

**2018/5531/P –Prior Approval Application submitted on 6/11/2018 for a telephone kiosk on land adjacent to no. 80-85 Tottenham Court Road (alternatively described as outside 86 Tottenham Court Road)- Approval Refused, 20<sup>th</sup> December 2018, Appeal lodged and subsequently dismissed, 9<sup>th</sup> December 2019 (Ref: APP/X5210/W/19/3231480)**

Reason for refusal:

1. The proposed telephone kiosk, by reason of its location, size and detailed design, would add to visual clutter and detract from the character and appearance of the street scene, contrary to policy D1 (Design) of the London Borough of Camden Local Plan 2017.
2. The proposed telephone kiosk, by virtue of its location, size and detailed design, and adding unnecessary street clutter, would reduce the amount of useable, unobstructed footway, which would be detrimental to the quality of the public realm, cause harm to highway safety and hinder pedestrian movement and have 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.
3. The proposed telephone kiosk, by virtue of its inappropriate siting, size and design, would fail to reduce opportunities for crime and antisocial behaviour to the detriment of community safety and security, and compromise the safety of those using and servicing the telephone kiosk

contrary to policy C5 (Safety and Security) of the London Borough of Camden Local Plan 2017.

4. The proposed telephone kiosk, by reason of its design, would not be accessible to wheelchair users, failing to promote fair access or meet sufficient standard of design contrary to policy C6 (Access for all) of the London Borough of Camden Local Plan 2017.

**2018/0312/P - Prior Approval Application submitted on 21/01/2018 for a telephone kiosk on land adjacent to no. 80-85 Tottenham Court Road - Approval Refused, 15<sup>th</sup> March 2018. Appeal lodged and subsequently allowed, on 19<sup>th</sup> February 2019 (Ref: APP/X5210/W/18/3211171)**

Reason for refusal:

1. The proposed telephone kiosk, by reason of its location, size and detailed design, would add to visual clutter and detract from the character and appearance of the street scene, contrary to policy D1 (Design) of the London Borough of Camden Local Plan 2017.
2. The proposed telephone kiosk, by virtue of its location, size and detailed design, and adding unnecessary street clutter, would reduce the amount of useable, unobstructed footway, which would be detrimental to the quality of the public realm, cause harm to highway safety and hinder pedestrian movement and have 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.
3. The proposed telephone kiosk, by virtue of its inappropriate siting, size and design, would fail to reduce opportunities for crime and antisocial behaviour to the detriment of community safety and security, and compromise the safety of those using and servicing the telephone kiosk contrary to policy C5 (Safety and Security) of the London Borough of Camden Local Plan 2017.
4. The proposed telephone kiosk, by reason of its design, would not be accessible to wheelchair users, failing to promote fair access or meet sufficient standard of design contrary to policy C6 (Access for all) of the London Borough of Camden Local Plan 2017.

Reason for allowing appeal:

The appeal is allowed and prior approval is granted under the provisions of Article 3(1) and Schedule 2, Part 16, Class A 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 electronic communications apparatus (a telephone call box) on the Pavement at 80-85 Tottenham Court Road, London W1T 4TE in accordance with the terms of the application Ref. 2018/0312/P dated 18 January 2018, and the plans submitted with it comprising 2 No. OS based Site plans with grid reference of siting; Illustration: 'Maximus Networks Ltd – Telephone kiosk Design'; Drawings 01-05 showing Plan, Roof Plan, Front Elevation; Side Elevation; Rear Elevation; Photograph of pavement with position of proposed development indicated.

**2009/1037/P - Prior Approval Application submitted 16/02/2009 for a telephone kiosk on land adjacent to no. 80-81 Tottenham Court Road. Approval Refused, 19<sup>th</sup> May 2009. No appeal submitted.**

Reason for refusal:

1. The proposed telephone kiosk, by reason of its design, size and location would introduce an incongruous feature with the streetscape, add to visual clutter detracting from the pedestrian environment and the setting of the adjoining Charlotte Street conservation area contrary to

policies B1 (General Design Principles), B5 (Telecommunications), B7 (Conservation Areas), T3 (Pedestrians and cycling) and T12 (Works affecting highways) of the London Borough of Camden Replacement Unitary Development Plan 2006, Camden Planning Guidance 2006 and PPG8 (Telecommunications).

2. The proposed telephone kiosk, by virtue of its inappropriate design and location would compromise the safety of those using and servicing the telephone kiosk and encourage criminal activity, contrary to policies SD1d (Community Safety) and T3 (Pedestrians and cyclists) of London Borough of Camden Replacement Unitary Development Plan 2006, Camden Planning Guidance and PPG8 (Telecommunications).

### **Relevant policies / GPDO Category**

#### **Local plan 2017**

A1 Managing the impact of development  
C5 Safety and Security  
C6 Access  
D1 Design  
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).  
Charlotte Street 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 provided as follows::

*“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 was 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*

*–*

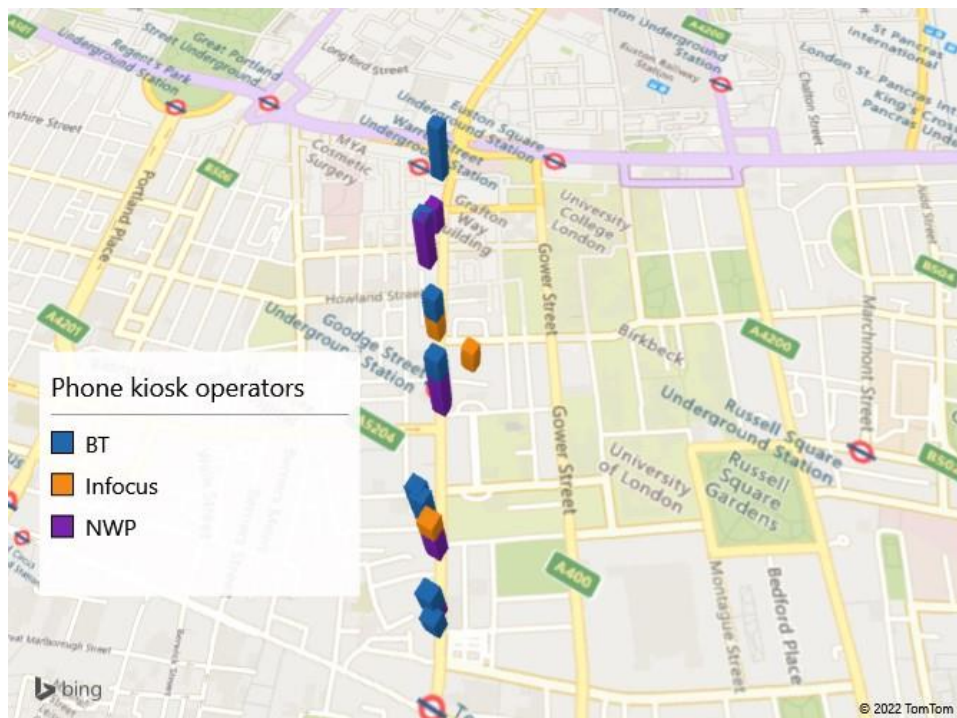
*(i) .....*

(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”.

Although Part 16 was amended on 25 May 2019, 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 conditional 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.

There are currently 32 public call boxes within Tottenham Court Road, as shown on the map below. BT, Infocus and New World Payphones have a number of public call boxes within the street, of which all are in close proximity of each other.



Date of inspection	Ref	Inside	Outside	Working?	Others	Advertisement
08.09.2022	CAM70 16MU	Cardboard				Giselle Ballet
05.2022	CAM70 16MU	Prostitute cards, rubbish				
25.10.2020	CAM70 16MU	Dusty, graffiti, prostitutes' cards		Emergency calls only		Palace Theatre
24.01.2020	CAM70 16MU	Very dirty, prostitutes' cards, graffiti, cardboard	Graffiti	Emergency calls only		Nutracheck

30.01.2020	CAM70 16MU			Emergency calls only		Shaftesbury Theatre
07.02.2020	CAM70 16MU	Very dirty, prostitutes' cards		Emergency calls only		Shaftesbury Theatre
14.02.2020	CAM70 16MU	Dirty, prostitutes' cards, stickers, litter		Emergency calls only		Peacock Theatre
10.05.2019	CAM70 16MU	Dusty, prostitutes' cards, graffiti		Not working		
03.05.2019	CAM70 16MU	Dusty, prostitutes' cards, graffiti		Emergency calls only		
17.05.2019	CAM70 16MU	Dusty, prostitutes' cards	Graffiti	Not working		
10.2019	CAM70 16MU	Dusty, graffiti, prostitutes' cards		Emergency calls only		Palace Theatre
24.05.2019	CAM70 16MU	Dusty, prostitutes' cards	Graffiti	Not working		
31.05.2019	CAM70 16MU	Very dusty, prostitutes' cards	Graffiti	Emergency calls only		
06.2018	CAM70 16MU	Rough sleeper lives there or cardboard left	Dirty, graffiti	Yes		
05.2018	CAM70 16MU	Rough sleeper lives there or cardboard left	Dirty, graffiti	Yes		

The public call box located outside 80-81 Tottenham Court Road is operated by Infocus who have 4 public call boxes in total along Tottenham Court Road.

BT	17 public call boxes
Infocus	4 public call boxes
NWP	9 public call boxes

The Council's investigation into public call boxes commenced as a result of complaints from local groups about the continuing poor condition, lack of appropriate use and the number of public call boxes within Tottenham Court Road.

Planning Contravention Notices were served in 2019 requesting details on the condition, maintenance, complaints and usage of public call boxes for the prior 4-year period. The information demonstrated that there was minimal use of kiosks within the street. Despite the Council bringing the

poor usage and condition of public call boxes to the attention of the operator the box remained in position. In February 2022 the Council issued Planning Contravention Notices again in order to have a comprehensive picture of the condition, maintenance, complaints and usage of the public call boxes. The PCN response showed usage has remained very low but maintenance has increased perhaps due to the Council's intervention.

A local group undertook a project to inspect the public call boxes and identify issues from 2018 - 2020. On a number of occasions, they noted the public call box to be dirty, display prostitute cards, graffiti and rubbish. These issues have persisted as Officers have continued to carry out site inspections. The Council acknowledges that the Operators PCN response shows they have made improvements to the frequency of repairs and cleaning of the public call boxes however this is not considered to alleviate concerns regarding the low usage of the public call boxes.

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 public call boxes is relevant to the right to install it under Part 16 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 ("the 2015 Order"). He also rejected the submission that the condition imposed upon the grant of prior approval in paragraph A.2 of Part 16 Schedule 2 to the 2015 Order, that the public call boxes 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 consider the following:*

1. *is there telephonic equipment in the public call box;*
2. *If there is telephonic equipment, is the public call box 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 public call box to determine whether it is useable/fit to be used and assessed call figures to demonstrate whether the public call box is unused and to demonstrate whether the public call box is usable.*

**Assessment of breach of Condition A.2 - Infocus public call box outside 80-81 Tottenham Court Road**

The following assessment centres on the usage of the public call box and its condition.

***Assessment of usage and condition of the Infocus public call box outside 80-81 Tottenham Court Road***

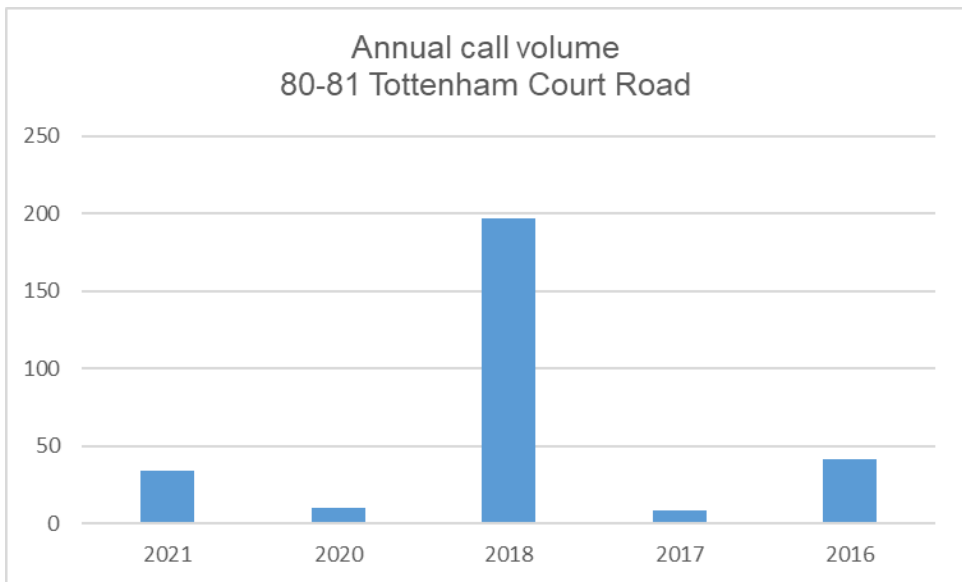
Working telephonic equipment	Only calls permitted to Freephone numbers.
Public call box unmaintained	There are have been reports of poor condition however the Council has noted the operator has improved its maintenance program
Unusable (not able or fit to be used)	Due to the condition and clear signs of ASB it is not considered to be fit to be used and given only certain calls can be made we consider they are not able to be used for telecommunication purposes. This is demonstrated by the significantly low call figures. The fact the public call boxes are dirty and contain prostitutes cards demonstrates they are not fit to be used.

Unused	4.8 calls per month on average/58 calls a year*
--------	---

\*Average taken from data from 2016-2021 provided by the operator in response to PCN (excluding 2019 as no date provided by the operator)

The public call box has extremely low call numbers with just 34 calls made for the year 2021. The 3 other public call boxes operated by Infocus Tottenham Court Road have similar low numbers, as follows:

Kiosk	Average Monthly	Average Annual figure
o/s 29 TCR	8.3	99.4
o/s 105 TCR	1.3	15
o/s 196-199	2.1	24.8 (figures include 2019)



Only 34 calls were made from this public call box in 2021. The average annual calls made from 2016 - 2021 (excluding 2019 as no data provided) comes to 58 calls per year however it should be noted that 2018 had a very high call number of 197 which was significantly higher than other years which distorts the average and only 2 months worth of data was provided for 2020. When considering the median number of call per year the figure is 41 calls per year. All calls in Infocus public call boxes are restricted to only certain free calls that have to be put through an operator. It is considered that the purpose of this public call box is clearly as an advertising structure given the limited usability of the telephone service and the prominent advertisement panel. It is considered that the display of advertisement is the only real purpose for the public call box with such low use to be retained by the Operator. In this circumstances the public call box is considered to be no longer required for **electronic communications purposes and the failure to remove it is contrary to the requirements of Condition A.2**

On 8<sup>th</sup> June 2022 Ofcom (communications regulator for public call boxes (PCB) in the UK) published updated guidance for service providers in relation to the removal of public call boxes at 'Last-at-a-Site' PCB locations. 'Last-at-a-Site PCB' is described as a Public Call Box whose removal or relocation would result in the removal of all Public Call Boxes from the relevant Site. Although this guidance does not relate to the Council's statutory duties pursuant to the planning regime, it is worth noting that the removal of this phone box is not a Last – at a Site location. Furthermore, in serving this Breach of Condition Notice, it is not the Council's intention to remove all public calls boxes from Tottenham Court Road. The over provision of phone call boxes has resulted in clutter, hot spots for ASB behaviour and eliciting prostitution. The Council is of the view, that the removal of the public call



box in question would not disadvantage the end user or the provider in terms of the provision of public call box services.

The Criteria for BT and KCOM to assess whether a Last-at-a-Site PCB (albeit this is not a Last-at-a-Site PCB) can be removed is set out below

Under Condition 3.3 BT and KCOM may only remove or relocate a Last-at-a-Site PCB where all of the following Removal Criteria are met:

- a) all UK-wide mobile network operators have coverage at the Site;
- b) the Site is not a high frequency accident or suicide location;
- c) fewer than 52 calls were made from the last at a site PCB in the 12 months prior to the start of the relevant Representation Period; and
- d) there is no other evidence of a reasonable user need for that PCB

Although this is not planning guidance, it is instructive to cross refer to it. It is worth noting that Tottenham Court Road is served by all UK wide mobile network providers (albeit as noted above this is not a Last-at-a-Site PCB in any event), is not considered a high frequency accident or suicide location. Only 34 calls were made from this public call box in 2021. There are other nearby public call boxes that will remain in place. There is no evidence of this public call box being required for electronic communications purposes which would justify it remaining in place.



Site inspection photographs taken May 2022, second photo shows several prostitute cards



Site inspection photograph taken September 2022 showing cardboard

The complaints that have been received from local groups about these public call boxes to date show the public call box have been dirty, contained litter and prostitutes cards on a frequent basis. The Council's designing out crime advisors outlines that public call boxes 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 public call box is more open, it still provides a large side panel which provides opportunity for ASB.

In an Appeal decision ref: APP/X5210/W/20/3253878 and 3253540 (in relation to a proposed public call box outside 216-217 Tottenham Court Road) the Inspector noted *'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'*.

The ASB experienced with this public call box is stemmed from its lack of use and design which provides screening and encourages such behaviour.

In conclusion, it is considered that the public call box is no longer required for electronic communication purposes. A breach of condition A.2 has taken place which was brought to the provider's attention in 2019, 2021 and 2022. The operator has failed to remove the public call box or demonstrate why it is not currently practicable to do so. For these reasons the public call box is considered to be an unauthorised structure.

### **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.

Prior approval for a public call box was refused in 19/05/2009 (2009/1037/P) due to its inappropriate design and location impacting the highway and visual amenity of the streetscape.

Two further approval applications for public call boxes were refused in 15/03/2018, one 2018/0312/P was allowed on appeal however 2018/5531/P was dismissed in 14/08/2019 due to design, crime and transport issues, including that the public call box 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 Town and County Planning (General Permitted Development)(England) Order 2015. 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) aims to resist development outside of a conservation areas that causes harm to the character or appearance of that conservation area.

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 public call box, which is no longer required is of poor design which detracts from the visual amenity of the wider streetscene and adding unnecessary clutter to the street.

The public call box is considered to have a less than substantial impact on the adjacent conservation area. Given the limited usage of the public call box it is considered that there is no public benefit to outweigh the harm caused.

**Pavement width/clutter** - The public call box 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 public call boxes due to the prevalence of mobile phone use, the public call boxes 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** - public call boxes 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 public call boxes 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 public call boxes 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 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 this public call box.

**Recommendation:** Breach of Condition notice to be served

**The notice shall allege the following breaches of planning control:** Breach of condition A.2 (2) of Part 16 Class A of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

**What you are required to do:**

- 1) Completely remove the public call box; and
- 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 public call box is no longer required for electronic communications purposes and has not been removed in breach of condition A.2 (2) of Part 16 Class A to Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).