
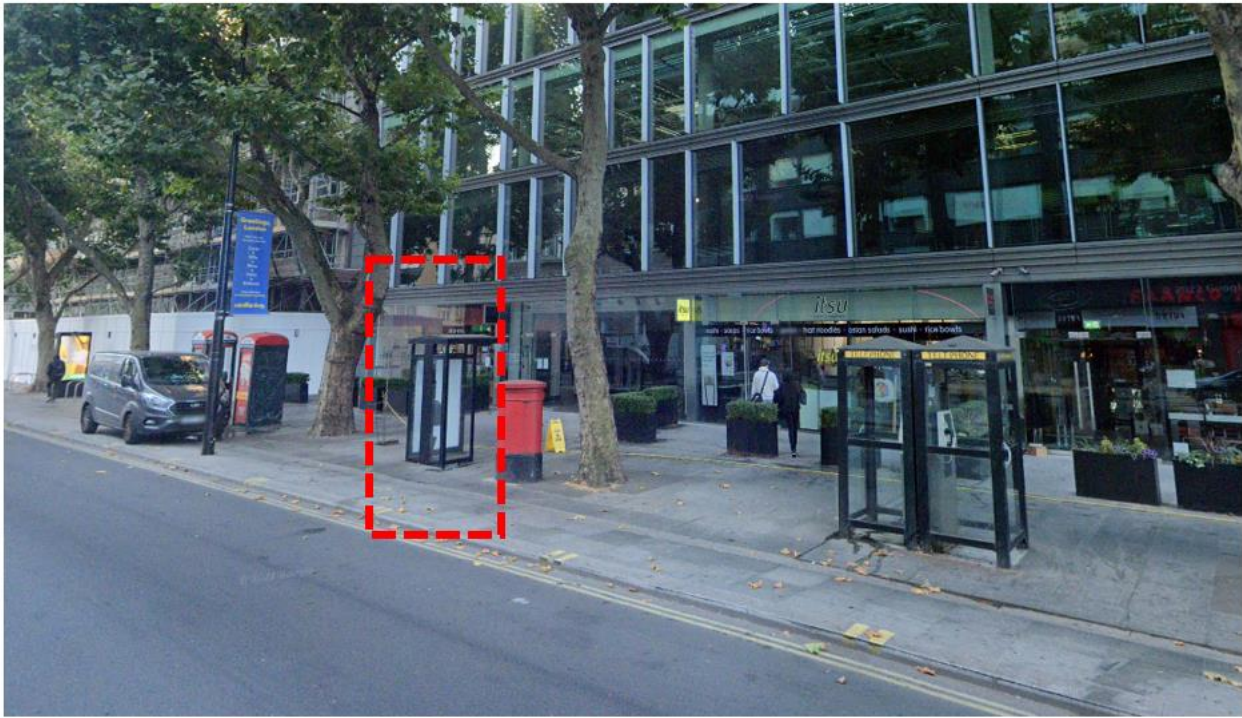


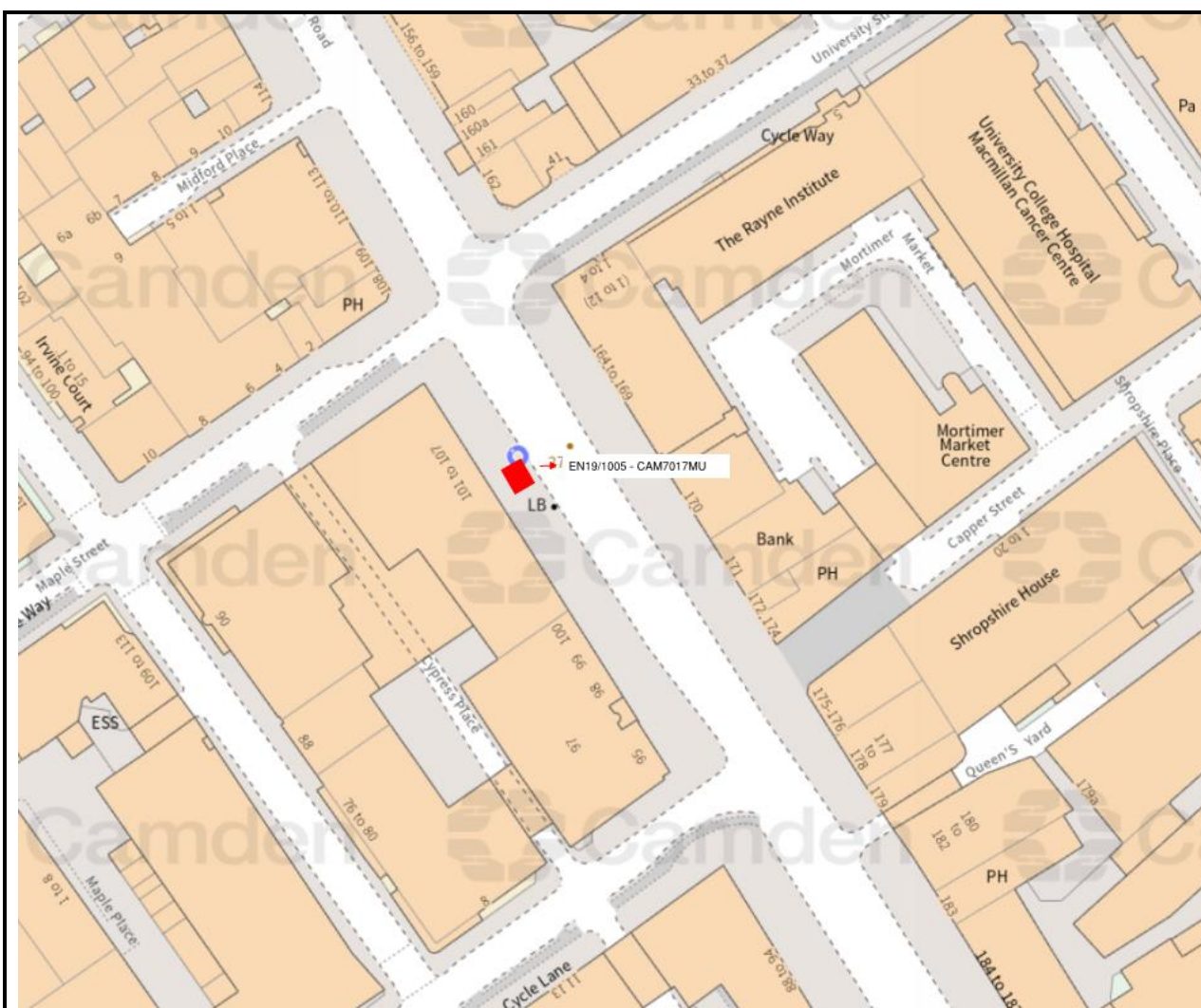
Enforcement Delegated Report		Receipt date:	25/11/2019
Officer		Enforcement Case	
Katrina Lamont		EN19/1005	
Breach Address		Photos & Other material	
Infocus Public Call Box (Ref: CAM7017MU) on pavement outside 105 Tottenham Court Road, London, W1T 4TT		On file	
Authorised Officer Signature			
 15/02/2023			
Alleged Breach			
Breach of condition A.2 (2) of Part 24 Class A of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 (as amended)			
Recommendation(s):		That the Borough Solicitor be instructed to issue a Beach 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 24 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) and Officers be authorised in the event of non-compliance to prosecute under that section or to issue Injunction proceedings to remove the unauthorised public call boxes.	
Site Description			
<p>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.</p> <p>Although Tottenham Court Road is only 1.1km long there are 32 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.</p> <p>This kiosk is located on the pavement outside no. 105 Tottenham Court Road outside a modern commercial building. It is located adjacent to the Bloomsbury Conservation area and within the Fitzrovia Neighbourhood centre. There are 4 other telephone kiosks within 10m from the site.</p>			



Google streetview image showing the Infocus public call box in the centre next to a post box. There are 5 public call boxes in close proximity.



Photo showing the Infocus public call box on pavement outside 105 Tottenham Court Road, London



Location of Infocus public call box on pavement outside 105 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 30th 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 8th 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

2019/2692/P– Prior approval application submitted on 23/05/2019 for Installation of 1 x replacement telephone kiosk on the pavement. – **Prior approval required – approval refused, 11/07/2019**

Reason for refusal:

1. The proposed development, is not wholly for the purpose of the operator's electronic network and thereby falls outside the terms of Class 16, Part A of the General Permitted Development Order
2. 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.

3. 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 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.
4. 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.

2017/5185/A – Advertisement consent application submitted on 19/09/2017 Display of a 6 sheet internally (back lit) LED illuminated advertisement panel to south eastern elevation of existing public payphone – Granted, 12/02/2018

2012/1695/P – Prior approval application submitted on 23/03/2012 for Installation of 1 x telephone kiosk on pavement – Prior approval refused and approval refused, 01/05/2012. Appeal allowed APP/X5210/A/12/2178982

Reason for refusal:

1. The proposed telephone kiosk, by reason of its location and its proximity to existing street furniture, would add to visual clutter and detract from the character and appearance of the street scene, contrary to core policy CS14 (promoting high quality places and conserving our heritage); development plan policy DP24 (securing high quality design) of the of the London Borough of Camden LDF and Central Government guidance contained within the National Planning Policy Framework (2012).
2. The proposed telephone kiosk, by virtue of its location, would reduce the amount of useable, unobstructed footway, which would be detrimental to the quality of the public realm, amenity and safety of pedestrians and have a detrimental impact on the promotion of walking as an alternative to motorised transport, contrary to Development Plan policies DP17 (Walking, cycling and public transport) & DP21 (Development connecting to the highway network) of the of the London Borough of Camden LDF and Central Government guidance contained within the National Planning Policy Framework (2012).

Reason for allowing appeal:

The payphone would be a modest structure with a footprint of approximately 1.1 x 1.3 metres constructed with a black steel frame infilled with clear polycarbonate glass. It is open on one and a half sides to give good wheelchair access. Tottenham Court Road at this point is a busy shopping street. The payphone would be sited close to the road on a stretch of 8.5 metres wide footway where there are already four payphones, a post box and a line of street trees. The footway is heavily used by pedestrians and food and drink establishments have outdoor seating areas, although not immediately adjacent to the appeal site. The roadside is also used for servicing shops and for refuse collection. The introduction of the proposed payphone in this location would have no material effect on the free flow of pedestrians or servicing activities. In relation to its visual impact the payphone is of a sound functional design which would be readily assimilated into the street setting as one of a number of items of street furniture. Whilst it would, by definition, increase the clutter of street furniture, the scale, width and openness of the street is such that the impact of the payphone either alone or in combination with existing structures would not be visually dominant or disruptive.

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

The public call boxes were installed under Part 24 Class A to Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015. This provided as follows:

“Permitted development

A. Development by or on behalf of a telecommunications code system operator for the purpose of the operator's telecommunication system in, on, over or under land controlled by that operator or in accordance with his licence, consisting of—

(a) the installation, alteration or replacement of any telecommunication apparatus...”

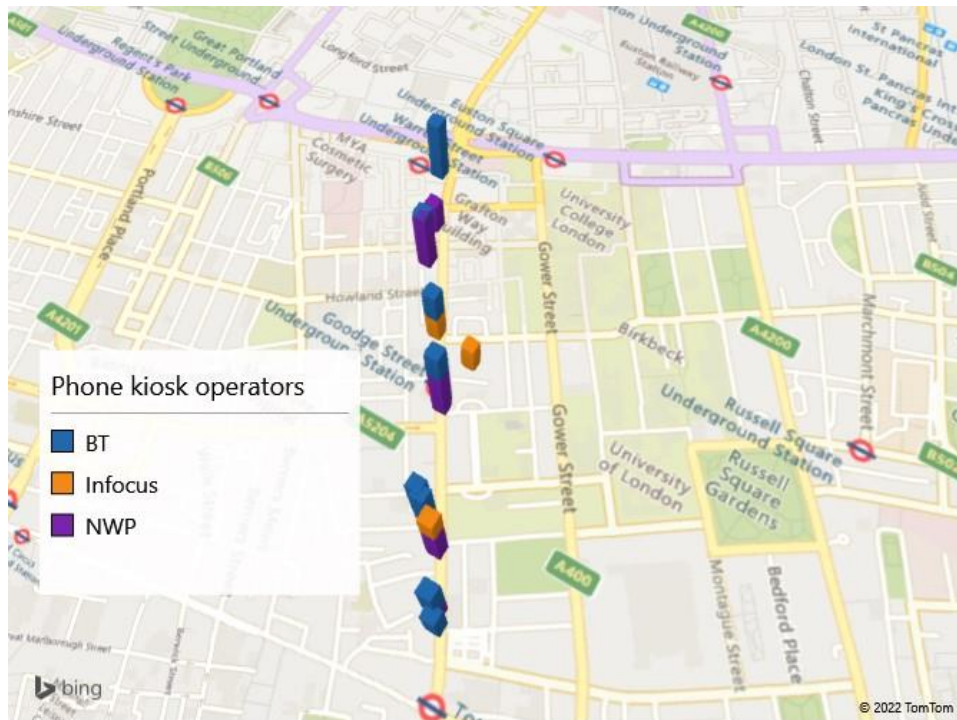
Permission was granted subject to the condition contained within Paragraph A.2 of Part 24, Class A of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 as follows:

“(2) Class A(a) and Class A(c) development is permitted subject to the condition that any apparatus or structure provided in accordance with that permission shall be removed from the land, building or structure on which it is situated:

*...
(b) in any other case, as soon as reasonably practicable after it is no longer required for telecommunication purposes,*

and such land, building or structure shall be 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.”

There are currently 32 public call boxes within Tottenham Court Road, as shown on the plan 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	Address	Condition	Working?	Others	Advertisement
22/11/2022	o/s 105 TCR	Fly posting and glue residue			
12/07/2022	o/s 105 TCR	Cardboard			Matilda Musical
14/02/2020	o/s 105 TCR	Dirty, loads of litter, prostitutes' cards	Emergency calls only		Vaudeville Theatre
07/02/2020	o/s 105 TCR	Dirty, litter, prostitutes' cards	Emergency calls only		Garrick Theatre
30/01/2020	o/s 105 TCR	Dirty, litter	Emergency calls only		Garrick Theatre
24/01/2020	o/s 105 TCR	Graffiti, very dirty, prostitutes' cards, litter	Emergency calls only		On The Market
25/10/2019	o/s 105 TCR	Graffiti, dusty, flyposting, prostitutes' cards, rough sleeper lives inside	Not working, handset damaged		Saatchi Gallery

01/10/2019	o/s 105 TCR	Graffiti, dusty, flyposting, prostitutes' cards, rough sleeper lives inside	Not working, handset damaged		Saatchi Gallery
31/05/2019	o/s 105 TCR	Dirty, prostitutes' cards, graffiti, stickers	Emergency calls only		
24/05/2019	o/s 105 TCR		Not working		
17/05/2019	o/s 105 TCR	Dusty, prostitutes' cards, graffiti	Not working		
10/05/2019	o/s 105 TCR	Dusty, prostitutes' cards, graffiti, stickers	Not working		
03/05/2019	o/s 105 TCR	Dusty, prostitutes' cards, graffiti	Not working		
01/08/2018	o/s 105 TCR		Not working		
01/07/2018	o/s 105 TCR		Not working		
01/03/2018	o/s 105 TCR		Not working		
01/12/2017	o/s 105 TCR	Handset damaged, phone damaged	Not working		

The public call box located pavement outside 105 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	11 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 Councils intervention.

A local group undertook a project to inspect the public call boxes and identify issues from 2017 - 2020. On a number of occasions, they noted the public call box to be dirty, display prostitute cards, graffiti and litter. 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 consider to alleviate concerns regarding the low usage of the public call box.

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*’.

Given that the wording of conditions imposed under the 2015 and the 1995 Order are identical, it is considered that the principles outlined above would also apply to the interpretation of the relevant condition under the 1995 Order.

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.*

In addition, recent appeal decisions (Ref: APP/X5210/W/22/3297273 and APP/X5210/W/22/3297276) regarding the BT public call boxes located outside no. 39 Tottenham Court Road were dismissed on 11/10/2022. The dismissed proposals involved replacing the existing 2 x public call boxes at this location with 1 x BT Street hub with LCD advert screen. The Inspector noted “the existing BT kiosks are dated and in a poor state of repair, with some being covered in graffiti and showing signs of physical damage...the Police say that the area is prone to criminal activity and the main reason why the existing BT kiosks are something of an eyesore is that they have been vandalised and poorly maintained”.

Assessment of breach of Condition A.2 - Infocus public call box on pavement outside 105 Tottenham Court Road

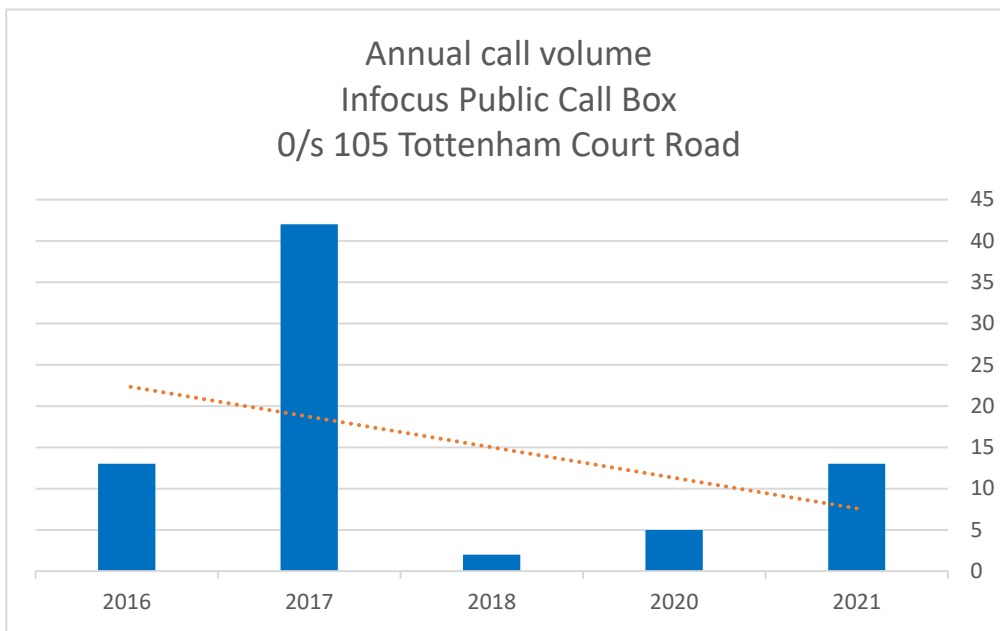
The following assessment centres on the usage of the public call box and its condition.

Assessment of usage and condition of the Infocus public call boxes on pavement outside 105 Tottenham Court Road

Working telephonic equipment	Reports of phone not working or no handset
Public call box unmaintained	There have been frequent reports of poor condition however the Council has noted the

	operator has improved its maintenance program
Unusable (not able or fit to be used)	It was frequently noted that the handset was not working limiting the usability of the public call box and likely to have attributed to the significantly low call figures. It has also been recorded to frequently contain graffiti, are dirty and contain prostitutes cards demonstrates they are not fit to be used.
Usage	1.3 calls per month on average/15 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 13 calls made for the year 2021, 5 calls for 2020 and just 2 calls for 2018. The average annual calls made from 2016-2021 (excluding 2019) comes to 15 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 8th 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 13 calls were made for the year 2021. There is no other evidence of reasonable user need for this public call box which would justify it remaining in place.



Site photograph taken 22nd November 2022 showing fly posting and glue residue.

The complaints that have been received from local groups about the public call box range from public call box being dirty, handset not working, litter and prostitutes cards on a frequent basis between 2017 -2020. 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.

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 providers 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. There have been a number of appeal decisions on kiosks within Tottenham Court Road, the Fitzrovia Action Plan has been adopted and work on the West End Project has sought to declutter the street.

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 are considered unsightly additions which are located in the middle of the footpath and add unsightly visual clutter to the pavement

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 24 Class A of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 (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 telecommunications purposes and has not been removed in breach of condition A.2 (2) of Part 24 Class A to Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995.