

Enforcement Delegated Report		Receipt date:	25/11/2019
Officer		Enforcement Case	
Katrina Lamont		EN19/0962 - 0207 255 2087 EN19/0963 - 0207 580 7538	
Breach Address		Photos & Other material	
New World Payphone 2 x Public Call Boxes on pavement outside 29 Tottenham Court Road, London, W1T 1BX		On file	
Authorised Officer Signature			
 15/02/2023			
Alleged Breach			
Breach of condition A.2 (2) (b) 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) (b) 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 issue injunction proceedings to remove the unauthorised phone boxes.	
Site Description			
<p>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. 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>The 2 x public call boxes are located on the pavement outside no.29 Tottenham Court Road. It is not located within a conservation area but lies in close proximity to the Charlotte Street Conservation area and Grade II listed no.20 Percy Street.</p>			



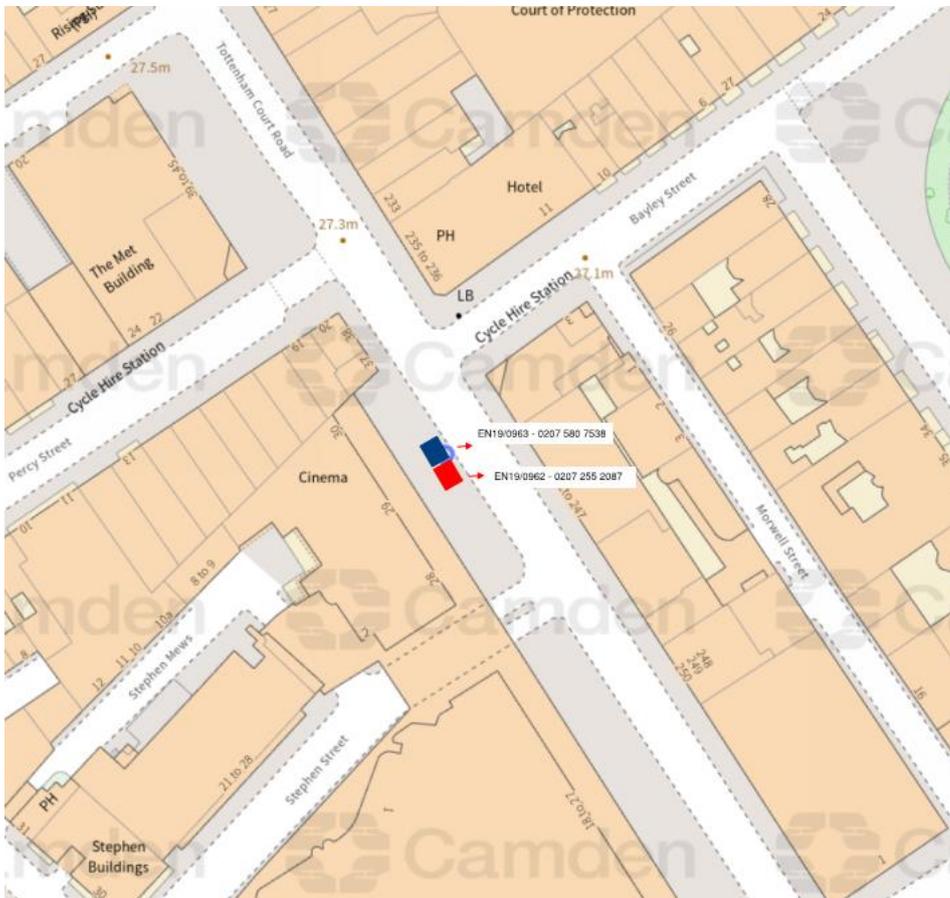
EN19/0963 o/s 29 TCR L10 - 020 7580 7538



EN19/0962 o/s 29 TCR L8 - 0207 255 2087



Google streetview image showing 2 x NWP public call boxes



Location of 2 x NWP public call box on pavement outside 29 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 in relation to 3 other public call boxes in the street 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

PSX014464 – Prior approval application – no objection to siting and appearance of the replacement of two existing phone boxes with two new design phone boxes - **10/07/2001**

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 1995. 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: :

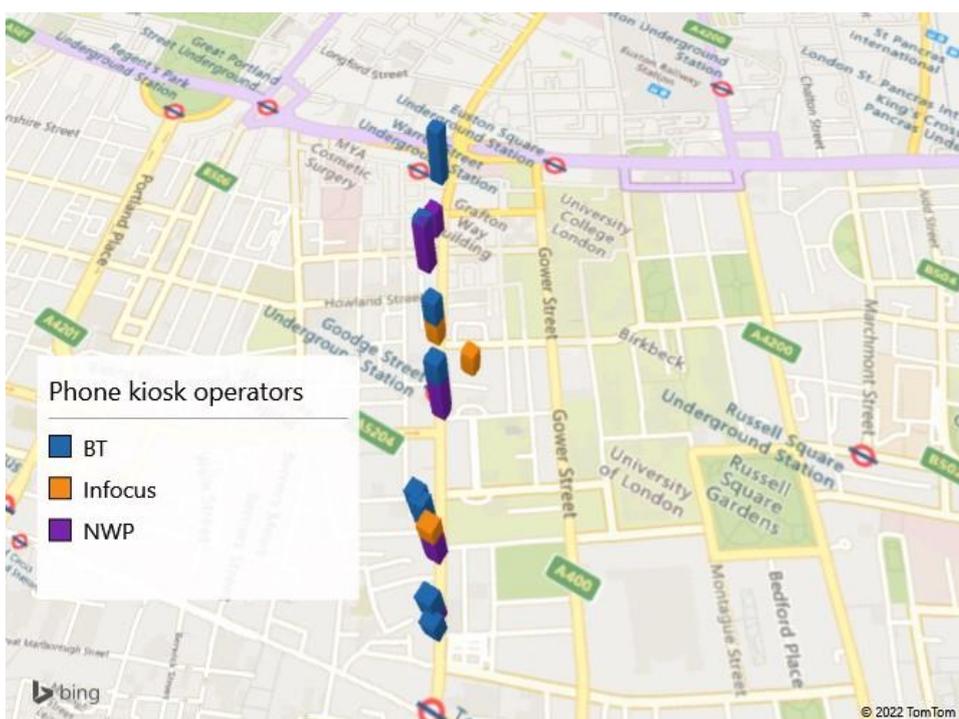
“(2) Class A(a) and Class A(c) development is permitted subject to the condition that any apparatus or structure provided in accordance with that permission shall be removed from the land, building or structure on which it is situated:

...

(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
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22/11/2022	2 x 29 TCR	Graffiti, dirty, broken umbrella, smell of urine			
02/10/2022	2 x 29 TCR	Graffiti, dirty			
08/09/2022	2 x 29 TCR	Graffiti, dirty			
27/08/2022	2 x 29 TCR	Graffiti			
10/2020	2 x 29 TCR	Prostitute cards			
14/02/2020	2 x 29 TCR	Prostitute cards and graffiti			
07/02/2020	2 x 29 TCR	Empty bottles of alcohol			
25/10/2019	2 x 29 TCR	Prostitute cards, graffiti, fly posting, stickers			
05/10/2019	2 x 29 TCR	Prostitute cards, litter, dirty	Not working		
31/05/2019	2 x 29 TCR	Prostitute cards, litter, dirty, cobwebs	Not working		
24/05/2019	2 x 29 TCR	Prostitute cards, litter, dirty, cobwebs			
17/05/2019	2 x 29 TCR	Prostitute cards, litter, dirty			
26/04/2019	2 x 29 TCR	Dirty, obscene graffiti			
05/03/2019	2 x 29 TCR	Dirty, prostitute cards, graffiti,	Not working		
08/2018	2 x 29 TCR	Dusty, obscene graffiti, glass panel missing			
06/2018	2 x 29 TCR	Obscene graffiti, glass panel missing			
05/2018	2 x 29 TCR	Graffiti, glass panel missing			

The 2 x public call boxes located pavement outside 29 Tottenham Court Road are operated by New World Payphones who have 11 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 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 litter. These issues have persisted as Officers have continued to carry out site inspections. The Council acknowledges that the Operator's 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 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 consideration 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”. The same can be said of NWP public call boxes along Tottenham Court Road, they are mostly in state of disrepair and poor condition which likely attracts antisocial behaviour.

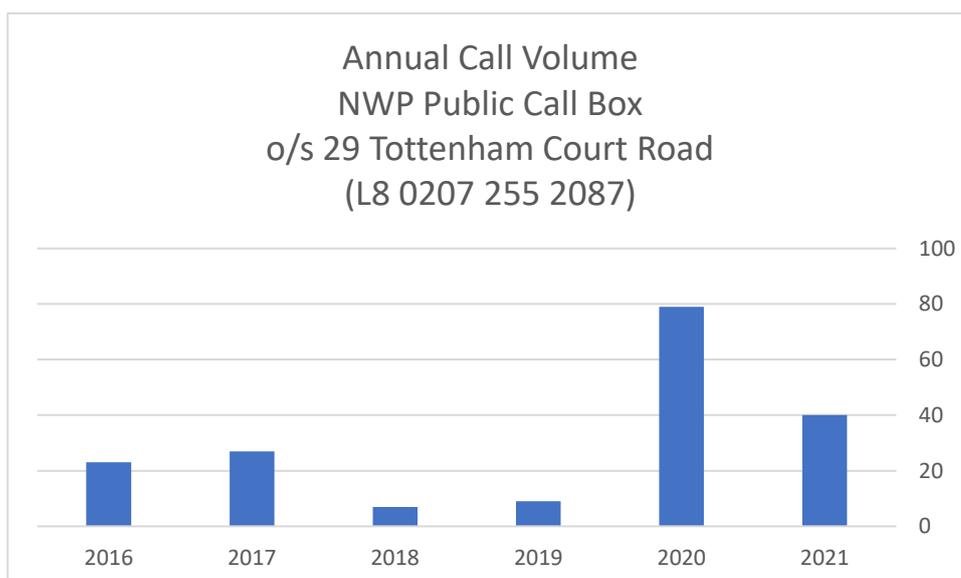
Assessment of breach of Condition A.2 - 2 x NWP public call boxes on pavement outside 29 Tottenham Court Road

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

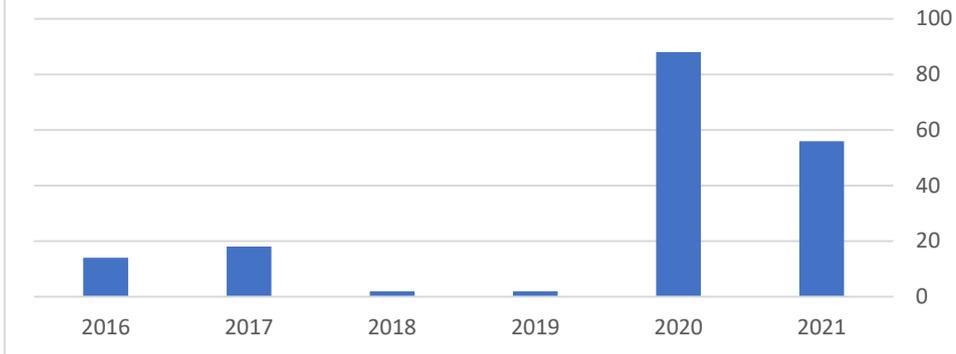
Assessment of usage and condition of the 2 x NWP public call boxes on pavement outside 29 Tottenham Court Road

Working telephonic equipment	Reports of phone not working
Public call box unmaintained	There have been frequent reports of poor condition with the public call boxes containing graffiti and prostitute cards
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.
Usage	o/s 29 TCR L10 (0207 580 7538) 2.5 calls per month on average/30 calls a year* o/s 29 TCR L8 (0207 255 2087) 2.6 calls per month on average/ 30.8 calls a year*

*Average taken from data from 2016-2021 provided by the operator in response to PCN



Annual Call Volume
NWP Public Call Box
o/s 29 Tottenham Court Road
(L10 0207 580 7538)



The public call boxes have low call numbers with just 40 calls (o/s 29 TCR L8 0207 255 2087) and 56 calls (o/s 29 TCR L10 0207 580 7538) made for the year 2021. The average annual calls made from 2016-2021 comes to approximately 30 calls per year for each public call box. It is considered that the display of advertisement is the only real purpose for the public call boxes with such low use to be retained by the Operator. In this circumstances the public call boxes are 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. 40 calls (o/s 29 TCR L8 0207 255 2087) and 56 calls (o/s 29 TCR L10 0207 580 7538). There is no other evidence of reasonable user need for this public call box which would justify it remaining in place.



Site inspection photographs taken 27th August 2022 showing the public call box to be dirty



Site inspection photograph taken 8th September 2022 showing graffiti

The complaints that have been received from local groups about the public call box range from public call boxes containing graffiti, dirty and prostitutes cards on a frequent basis between 2018 -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 2 x public call boxes are 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 2 x public call boxes are 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 2 x public call boxes are considered unsightly additions which are located in the middle of the footpath and add unsightly visual clutter to the pavement

The 2 x public call boxes are 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 2 x public call boxes are 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 for each public call box:

The notice shall allege the following breaches of planning control: Breach of condition A.2 (2) (b) 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 electronic communications purposes and has not been removed in breach of condition A.2 (2) (b) of Part 24 Class A to Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995.