

# Enforcement Delegated Report

Receipt date:

25/11/2019

## Officer

Katrina Lamont

## Enforcement Case

EN19/1006 - 0207 580 7241

EN19/1007 - 0207 580 7529

## Breach Address

New World Payphone 2 x Public Call Boxes on pavement outside 104 Tottenham Court Road, London, W1T 1BX

## Photos & Other material

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

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.

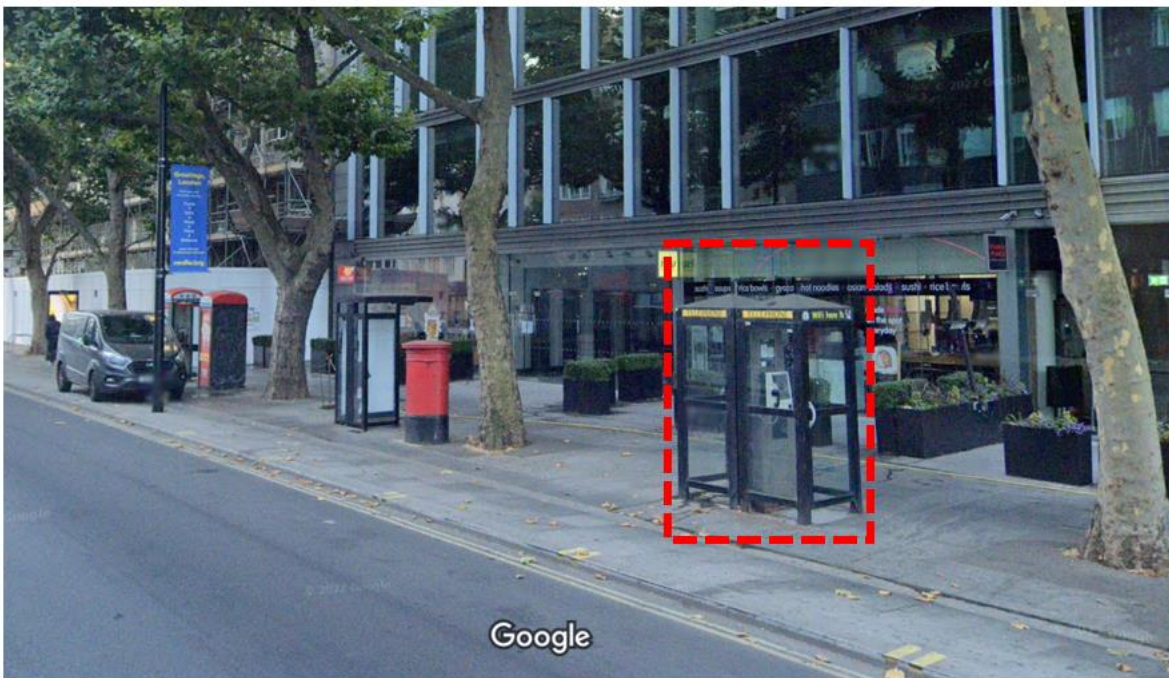
Although Tottenham Court Road is only 1.1km long there are 32 public call boxes located on it which are generally poorly maintained, some only providing free calls, not working and/or are a focal point for anti-social behaviour, including drug supply and consumption.

The 2 x public call boxes are located on the pavement outside no.104 Tottenham Court Road. It is not located within a conservation area but lies in close proximity to the Bloomsbury Conservation area to the east and Charlotte Street Conservation Area to the south.

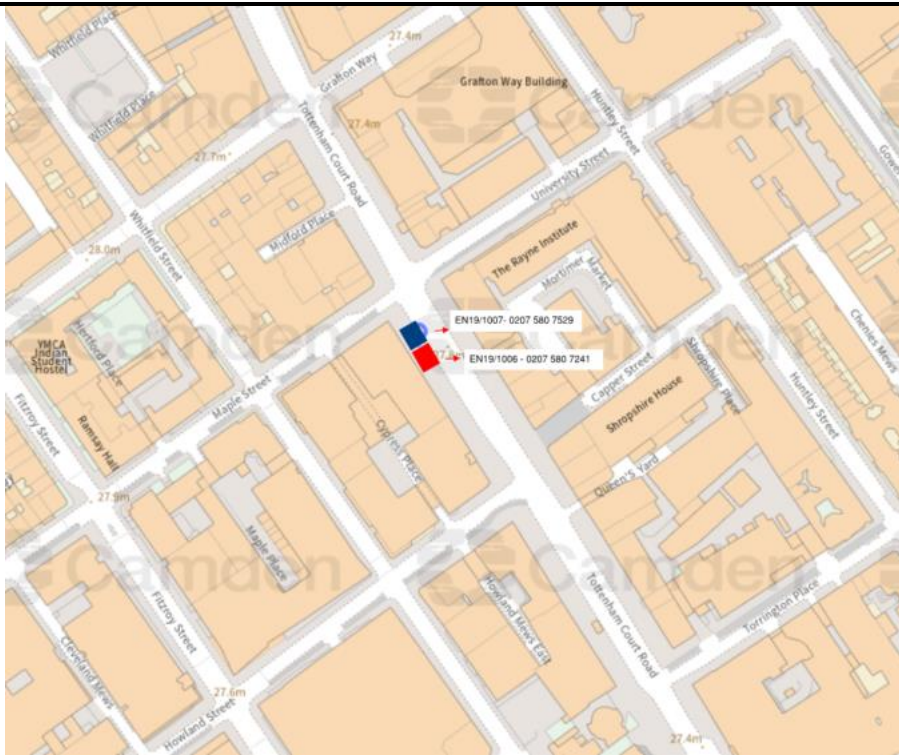


EN19/1007 - o/s 104 TCR- 0207 580 7529

EN19/1006 o/s 104 TCR - 0207 580 7241



Google streetview image showing 2 x NWP public call boxes outside 104 Tottenham Court Road with an Infocus and 2 x BT public call boxes in close proximity.



Location of 2 x NWP public call box on pavement outside 104 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 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 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

**PSX0104461** – Prior approval application – no objections raised for replacement of two existing phones boxes with two new design boxes –**Approved, 10/07/2001**

Planning history for pavement outside 105 Tottenham Court Road:

**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 appeal 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 Bourough 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 Bourough 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...”

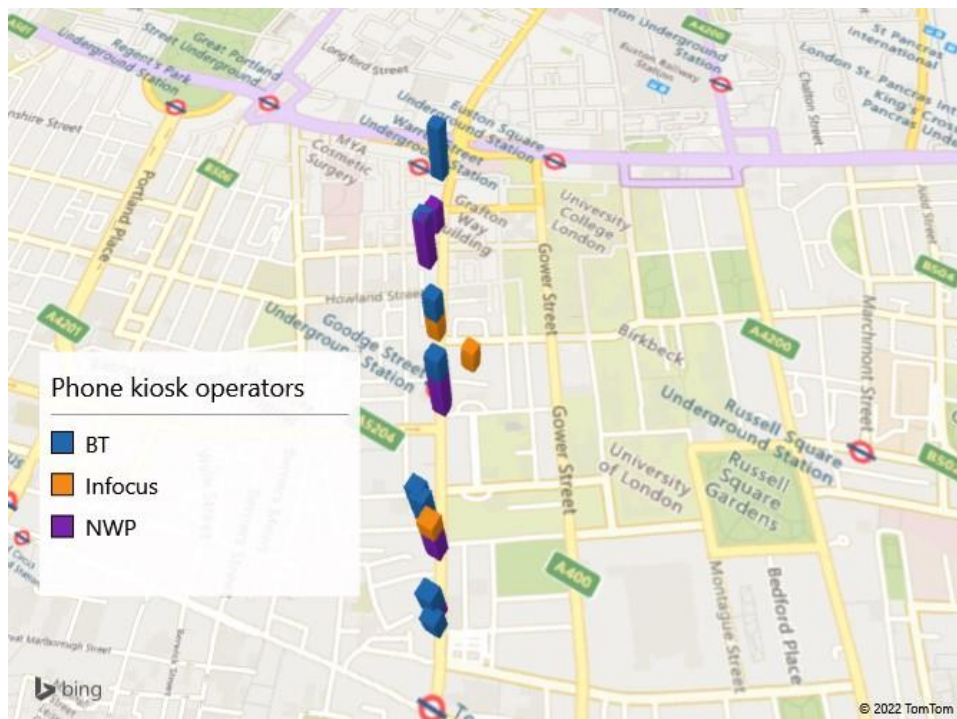
Permission was granted subject to the condition contained within Paragraph A.2 of Part 24, Class A of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 as follows:

“(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	2 x 104 TCR	Dirty, fly posting	Not working (0207 580 7529)		
02/10/2022	2 x 104 TCR	Graffiti, residue of glue, prostitute cards			
08/09/2022	2 x 104 TCR	Dirty, prostitute cards			
14/02/2020	2 x 104 TCR	Graffiti, residue of glue, prostitute cards			
07/02/2020	2 x 104 TCR	Graffiti, residue of glue,			
24/01/2020	2 x 104 TCR	Graffiti, residue of glue, litter			
03/01/2020	2 x 104 TCR	Graffiti, residue of glue			
25/10/2019	2 x 104 TCR	Graffiti, residue of glue prostitute cards,			
31/05/2019	2 x 104 TCR	Graffiti, residue of glue prostitute cards, stickers			

24/05/2019	2 x 104 TCR	Graffiti, residue of glue prostitute cards			
17/05/2019	2 x 104 TCR	Graffiti, residue of glue, prostitute cards, old lamp			
26/04/2019	2 x 104 TCR	Graffiti, residue of glue,			
05/03/2019	2 x 104 TCR	Graffiti, residue of glue prostitute cards			
08/2018	2 x 104 TCR	Graffiti, residue of glue, dusty	Not working (0207 580 7529)		
06/2018	2 x 104 TCR	Graffiti, residue of glue	Not working (0207 580 7529)		
05/2018	2 x 104 TCR	Graffiti, residue of glue			

The 2 x public call boxes located pavement outside 104 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 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”. 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 104 Tottenham Court Road**

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

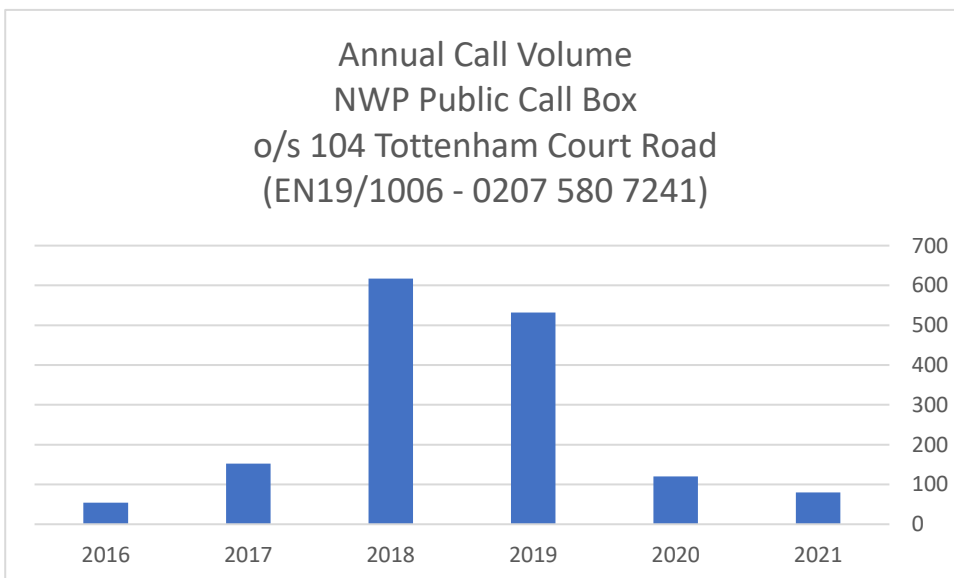
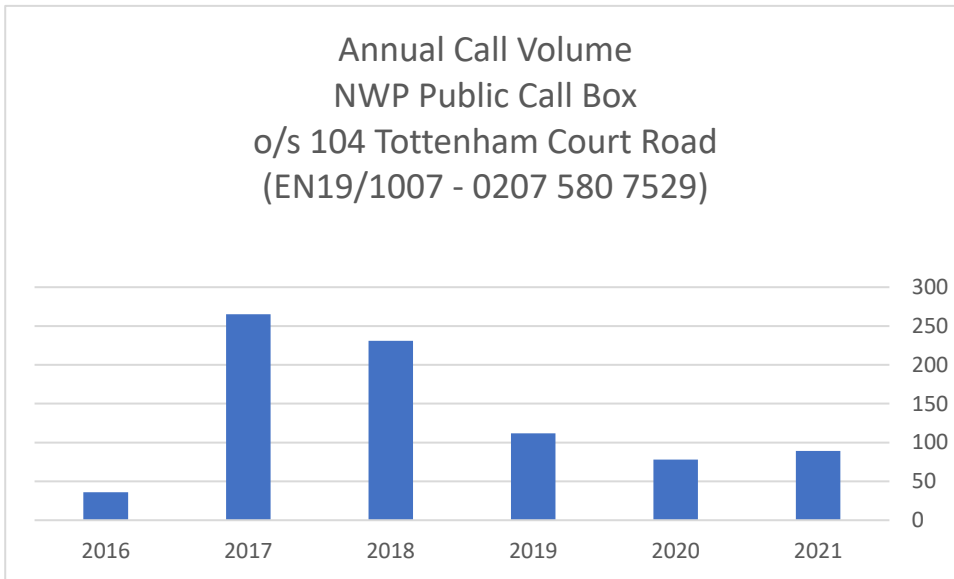
**Assessment of usage and condition of the 2 x NWP public call boxes on pavement outside 104Tottenham Court Road**

Working telephonic equipment	Reports of phone not working – most recently on site inspection 22 <sup>nd</sup> November 2022 (0207 580 7529)
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 prostitute cards demonstrates they are not fit to be used.
Usage	o/s 104 TCR 22 L (0207 580 7529) 11.3 calls per month on average/135.2 calls a year*



o/s 104 TCR 21L (0207 580 7241) 21.6 calls per month on average/ 259.2 calls a year\*

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



The public call boxes have low call numbers with 80 calls (o/s 104 TCR 0207 255 2087) and 89 calls (o/s 104 TCR 0207 580 7529) made for the year 2021. While the average annual calls made from 2016-2021 is higher for both call boxes the bar charts above show a downward trend.

Given the low usage of the public calls boxes and the frequently poor condition as outlined in the table above, 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 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. While both public call boxes have more calls than 52 calls for the year 2021, the number is not considered significantly high with just 80 (0207 580 7241) and 89 (0207 580 7529) calls made for 2021. The call levels of the kiosks are clearly in decline. 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 22<sup>nd</sup> November 2022 showing the public call box to be dirty, contain graffiti and fly posting. 0207 580 7529 was not working at the time of this visit.



Site inspection photograph taken 2<sup>nd</sup> October 2022 showing graffiti and prostitute cards.





Site inspection photograph taken 12<sup>th</sup> July 2022 showing several prostitute cards.

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) 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.