



Appeal Decisions

Site visit made on 18 February 2019

by **E Symmons BSc (Hons), MSc**

an Inspector appointed by the Secretary of State

Decision date: 30 April 2019

CASE DETAILS

ALL Appeals

- The appeals are made under section 78 of the Town and Country Planning Act 1990 against refusals to grant approval required under Article 3(1) and Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
- The appeals are made by Mr Nathan Still (Infocus Public Networks Ltd) against the decisions of Middlesbrough Borough Council.
- The development proposed is installation of electronic communication apparatus.

Appeal A - Ref: APP/W0734/W/18/3209428

OS 74 Linthorpe Road, Middlesbrough TS1 2LA.

Grid reference easting: 449426, grid reference northing: 520357.

- The application ref 18/0400/TEL, dated 14 June 2018, was refused by notice dated 10 August 2018.

Appeal B - Ref: APP/W0734/W/18/3209427

OS 86 Linthorpe Road, Middlesbrough TS1 2JZ.

Grid reference easting: 449420, grid reference northing: 520311.

- The application ref 18/0399/TEL, dated 14 June 2018, was refused by notice dated 10 August 2018.

Appeal C - Ref: APP/W0734/W/18/3209425

OS 102 Linthorpe Road, Middlesbrough TS1 2JZ.

Grid reference easting: 449411, grid reference northing: 520235.

- The application ref 18/0398/TEL, dated 14 June 2018, was refused by notice dated 10 August 2018.

Appeal D - Ref: APP/W0734/W/18/3209436

OS 107-109 Linthorpe Road, Middlesbrough TS1 5DH.

Grid reference easting: 449392, grid reference northing: 520133.

- The application ref 18/0404/TEL, dated 14 June 2018, was refused by notice dated 10 August 2018.

Appeal E - Ref: APP/W0734/W/18/3209443

OS 129 Linthorpe Road, Middlesbrough TS1 5DE.

Grid reference easting: 449382, grid reference northing: 520075.

- The application ref 18/0405/TEL, dated 14 June 2018, was refused by notice dated 10 August 2018.
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Decision

1. The appeals are dismissed.

Preliminary matters

2. The provisions of Schedule 2, Part 16 of the GPDO¹ require the local planning authority to assess the proposed development solely based on its siting and appearance. I note objections from an interested party expressing concern regarding anti-social behaviour associated with 'phone boxes'. I also note the positive aspects of the proposal including the use of solar energy. However, given the aforementioned provisions, none of these issues are within the scope of this appeal.
3. As the High Court ruling *Westminster CC v SSHCLG & New World Payphones Ltd* [2019] EWHC 176 (Admin), was published after the parties submitted their evidence, they were given an opportunity to comment upon the ruling and its impact upon the appeal cases. This ruling found that the whole development for which prior approval is sought must fall within the class relied on. This would therefore not allow a bespoke advertising panel to be included in a kiosk (as that element of the kiosk would not be for the purposes of the network), however it would allow advertisements on the glazed surfaces which were not specifically designed for the purposes of advertising, but which would be there anyway as part of the structure. It is the Council's view that if the kiosks are approved the applicant could install non-illuminated advertisements without the need for planning permission giving the kiosks a dual purpose which would fall outside of the scope of Class A of Part 16 Schedule 2 of the GPDO as determined in the Westminster City Council case.
4. However, my own assessment is that, whilst a non-illuminated poster advert could be displayed on a glazed surface of the kiosk (as is the case with traditional phone kiosks), there is nothing contained in the evidence or in the structure and features of the kiosk proposed in the above appeals which would indicate that the structure would include a bespoke advertising panel and therefore have a dual purpose. So, in my view it would fall within the GPDO.
5. The appellant refers to section 5 of the 2012 National Planning Policy Framework (The Framework) which was revised in February 2019. The considerations within section 5 are now within section 10 and I have had regard to the revised version in my decision and I am satisfied this has not prejudiced either party.

Main Issues

6. In all cases the main issues are the effect of the siting and appearance of each electronic communication apparatus (kiosk) on:
 - the safe and efficient operation of the highway; and
 - the character and appearance of the area.

Reasons

Planning policy

7. The principle of development is established by the GPDO, and the provisions of Schedule 2, Part 16, Class A do not require regard be had to the development plan. I have taken account of the policies of the development plan and to the

¹ The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Framework only in so far as they are a material consideration relevant to matters of siting and appearance. Those relevant are policies DC1, CS13, REG20 and REG21 of the Middlesbrough Local Development Framework (LDF), February 2008, which taken together and amongst other matters, are concerned with the effect of development on the appearance, highway safety, environment and function of the town centre.

8. Paragraph 112 of the Framework is supportive of the development of communications infrastructure seeing it as essential for economic growth and social well-being. The Framework however, also refers to appropriate design, character, appearance and pedestrian movement in several paragraphs. Paragraph 127 seeks to ensure, amongst other matters, that developments add to the quality of the area, are visually attractive, are sympathetic to the local character, establish a strong sense of place and create accessible places. Paragraphs 91 and 92 seek street layouts that allow for easy pedestrian and cycle connections, are safe and accessible, for example using clear and legible pedestrian routes and layouts that encourage walking, and plan positively for the provision of shared spaces.

Telephone kiosks

9. In each case the proposed kiosk would comprise clear glazed panels set in a black steel frame which would be open at the front, with one side featuring a shorter panel. The overhanging roof would incorporate photovoltaic modules to provide internal illumination. On all sites, the modern and open appearance of the kiosk would be appropriate in their setting as they would complement the style of the existing street furniture and the retail setting.

Locations

10. All appeal sites are located on Linthorpe Road within Middlesbrough town centre which has both contemporary and traditional buildings. The road is partially pedestrianised with appeal sites A, B and C situated within the pedestrianised area which has existing street furniture comprising trees, bins and seats, arranged centrally within the space. This street furniture partly obstructs free pedestrian cross-movement and to alleviate this it is grouped in discrete clusters with gaps in between allowing free movement between shops. Sites D and E are situated on the pavement adjacent to the road. The site visits took place in the mid part of the day and the areas were busy with both pedestrians and, at appeal sites D and E, with vehicles.

Appeal A - Outside 74 Linthorpe Road, Middlesbrough TS1 2LA

11. The proposed kiosk would be situated adjacent to two cycle racks at the end of one of the central street furniture blocks. The area currently allows free pedestrian cross-movement. A kiosk in this position would extend the line of street furniture into this area of free movement thereby limiting the flow of pedestrians between the adjacent shopping areas.
12. The Council suggest that the proximity of the proposed kiosk to the cycle racks would affect the security of parked cycles which currently have an open aspect with good natural surveillance. They also suggest that the siting of the kiosk would impede the free movement of cycles using the racks and, on both points, I concur with this assessment. This, in addition to the obstruction of free

pedestrian movement, would have a detrimental effect upon the safe and efficient operation of the highway.

13. In this position, a kiosk would introduce further street furniture clutter which, by virtue of its height and scale, would create a visually intrusive feature in the streetscape. It would reduce sight lines when looking towards Corporation Road and have a negative effect upon the character and appearance of the area which currently has an open aspect.

Appeal B – Outside 86 Linthorpe Road, Middlesbrough TS1 2JZ

14. The proposed kiosk would be situated adjacent to an empty tree pit at the end of one of the central street furniture blocks. The gap which has been created in this area currently allows free pedestrian cross-movement. The kiosk would extend the line of street furniture into one of the gap areas which stretches from the empty tree pit to the large feature street canopy which marks the junction with Gilkes Street, so impeding pedestrian movement. In addition, in the area adjacent to the proposed kiosk position, is a coffee shop external seating area which, in combination with the kiosk, would constrain movement on this side of the road. These factors would have a detrimental effect upon the safe and efficient operation of the highway.
15. A kiosk in this position would extend the line of street furniture clutter and, by virtue of its height and scale, would disrupt the open views towards and through the street canopy which marks this junction. This would create a visually intrusive feature in the streetscape which would have a negative effect upon the character and appearance of the area.

Appeal C – Outside 102 Linthorpe Road, Middlesbrough TS1 2JZ

16. The proposed kiosk would be situated close to the Newton Mall entrance to the Cleveland Centre at the end of a group of existing street furniture. The gap in this area currently allows free and open pedestrian movement and unimpeded access to the Cleveland Centre. A kiosk in this position would create a pinch-point between the kiosk and the support leg of the shopping centre entrance canopy. This combination would create an obstacle to cross-movement thereby limiting the flow of pedestrians and having a detrimental effect upon the safe and efficient operation of the highway.
17. A kiosk in this position would extend the line of street furniture clutter and, by virtue of its height and scale, would create a visually intrusive feature in the streetscape at the entrance to the Cleveland Centre which would have a negative effect upon the character and appearance of the area.

Appeal D – Outside 107-109 Linthorpe Road, Middlesbrough TS1 5DH

18. The proposed kiosk would be situated at the end of a line of bollards on the outside edge of the pavement on the southern approach to the pedestrianised section of Linthorpe Road. Other street furniture in the vicinity includes lighting columns and road signs in addition to an external seating area associated with the adjacent fish and chip shop. A kiosk in this position would add to the existing clutter and introduce an obstacle which would affect free pedestrian movement to the retail centre and to the local shops on this stretch of road requiring pedestrians to detour around the proposed kiosk. This would have a detrimental effect upon the safe and efficient operation of the highway.

19. A kiosk in this position, by virtue of its height and scale at the edge of pavement, would create a visually intrusive feature in the streetscape which would obstruct the currently open views towards the retail centre and have a negative effect upon the character and appearance of the area.

Appeal E – Outside 129 Linthorpe Road, Middlesbrough TS1 5DE

20. The proposed kiosk would be sited adjacent to a line of bollards on the outside edge of the pavement on the southern approach to the pedestrianised area opposite the junction with Baker Street. There is little street furniture in the immediate vicinity and as such the proposed kiosk would introduce an obstruction to the free movement of pedestrians to and from the retail centre and to the local shops on this stretch of road. As observed during my site visit, there is considerable footfall crossing the road from Baker Street travelling towards the local shops and the proposed kiosk would create a physical and visual obstacle which would affect free pedestrian movement. This would have a detrimental effect upon the safe and efficient operation of the highway.
21. A kiosk in this position, in an area with little existing clutter, by virtue of its height and scale at the edge of the pavement, would create a visually intrusive feature in the streetscape which would obstruct views towards the retail centre and have a negative effect upon the character and appearance of the area.

Conclusions

22. With regard to the first main issue, for the reasons given above, and in all cases, I conclude that the siting and appearance of each proposed kiosk would have a harmful effect on the safe and efficient operation of the highway.
23. With regard to the second main issue, for the reasons set out above, in all cases I conclude that the siting and appearance of each kiosk would have a harmful effect upon the character and appearance of the area.
24. For the reasons set out above, and having had regard to other matters raised, I conclude that the appeals should be dismissed.

E Symmons

INSPECTOR