



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:

CASE DETAILS

All Appeals

- The appeals are made under section 78 of the Town and Country Planning Act 1990 against a refusal 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 in each case is described as installation of an electronic communications apparatus.

Appeal A - Ref: APP/W0734/W/18/3209444

OS Rede House, Corporation Road, Middlesbrough TS1 1LY.

Grid reference easting: 449737, grid reference northing: 520373.

- The application ref 18/0406/TEL, dated 14 June 2018, was refused by notice dated 10 August 2018.

Appeal B - Ref: APP/W0734/W/18/3209431

OS 25 Corporation Road, Middlesbrough TS1 1LP.

Grid reference easting: 449545, grid reference northing: 520396.

- The application ref 18/0401/TEL, dated 14 June 2018, was refused by notice dated 10 August 2018.

Appeal C - Ref: APP/W0734/W/18/3209433

OS 14 Corporation Road, Middlesbrough TS1 1LJ.

Grid reference easting: 449495, grid reference northing: 520402.

- The application ref 18/0402/TEL, dated 14 June 2018, was refused by notice dated 10 August 2018.

Appeal D - Ref: APP/W0734/W/18/3209434

The Corner, 1 Newport Road, Middlesbrough TS1 1LE.

Grid reference easting: 449395, grid reference northing: 520409.

- The application ref 18/0403/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

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

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 Part 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 of the Framework 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 proposed 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 of the GPDO do not require regard be had to the development plan. I have taken account of the policies of the development plan and to the 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 Corporation Road within Middlesbrough town centre. The road is partially pedestrianised with appeal sites A and B situated on the pavement adjacent to the road and appeal sites C and D situated within the pedestrianised section. The area has both contemporary and traditional buildings with street furniture varying in type and position at the different locations. The site visits took place in the mid part of the day and at that time the areas were busy with both pedestrians and, at appeal sites A and B, with vehicles.

Appeal A – Outside Rede House, Corporation Road, Middlesbrough, TS1 1LY

11. The proposed kiosk would be situated on the outside edge of the pavement close to the junction with Gurney Street. It would be on a projecting section of the pavement formed at the end of a well-used line of parking bays inset into the line of the pavement. Other street furniture in the vicinity includes lighting columns, street signs, utility cabinets, bollards and occasional trees, but these are well spaced and currently do not impede pedestrian movement. The appeal site appears to be frequently used as a crossing point due to its proximity to the parking bays and the adjacent junction. The presence of a kiosk in this position would hamper this pedestrian movement and vehicle/pedestrian visibility which would have a detrimental effect upon the safe and efficient operation of the highway.
12. The appeal site is in an open section of the pavement with few obstacles and clear sightlines. A kiosk in this position would create a visual obstruction which would restrict this openness. As the kiosk would be at the edge of the pavement, near the corner with Gurney Street, it would, by virtue of its height and scale, form a visually intrusive feature in the streetscape which would have a negative effect upon the character and appearance of the area.

Appeal B - Outside 25 Corporation Road, Middlesbrough TS1 1LP

13. The proposed kiosk would be situated on the outside edge of the pavement close to the junction with Dundas Mews. There is other street furniture in the vicinity including bollards, a litter bin, a tree, a utility cabinet, lighting columns and signs. This is a relatively narrow section of pavement on the main approach to the pedestrianised section of Corporation Road. A kiosk in this position would add to the existing clutter in the area and create a pinch-point between the street furniture and the proposed kiosk. This would obstruct the free movement of pedestrians into the retail centre and lead to potential congestion.
14. This junction of Corporation Road and Dundas Mews sits at the gateway to the pedestrianised area and, as witnessed during my site visit, is used as a drop-off area for taxis and other vehicles. The presence of a kiosk in this position would create an obstruction at the kerbside. This, in addition to a decrease in vehicle/pedestrian visibility, would have a detrimental effect upon the safe and efficient operation of the highway.
15. As the kiosk would be sited at the edge of the pavement in an open area near the corner with Dundas Mews, it would, by virtue of its height and scale, form a visually intrusive feature in the streetscape which would have a negative effect upon the character and appearance of the area.

Appeal C - Outside 14 Corporation Road, Middlesbrough TS1 1LJ

16. The proposed kiosk would be sited close to the junction with Dundas Street. This area forms a cross-roads between the Cleveland Centre and shops on the opposite side of the street which, during my site visit, received heavy footfall. The appeal site has other street furniture in the vicinity including bollards, a litter bin, a lighting column and a directional sign. A kiosk in this position would be a further obstacle at this busy junction which would obstruct a nearby directional sign and impede the free movement of pedestrians within the retail centre leading to potential congestion. This would have a detrimental effect upon the safe and efficient operation of the highway.
17. A kiosk in this position would add to the general street furniture clutter, and by virtue of its height and scale, form a visually intrusive feature in the streetscape which would have a negative effect upon the character and appearance of the area.

Appeal D - The Corner, 1 Newport Road, Middlesbrough TS1 1LE

18. The proposed kiosk would be situated within the pedestrianised part of Corporation Road where the evenly distributed street furniture, comprising trees, lighting columns and utility cabinets forms a narrow linear, but permeable, feature giving an open appearance with good opportunities for free flow of pedestrians crossing from one side of the street to the other. A kiosk in this area, combined with the existing street furniture, would create an obstacle which would limit pedestrian cross-movement, potentially create congestion and have a detrimental effect upon the safe and efficient operation of the highway.
19. A kiosk in this position would introduce further street furniture clutter within an existing narrow discrete area of furniture. By virtue of its height and scale,

would create a visually intrusive feature in the streetscape which would have a negative effect upon the character and appearance of the area.

Conclusions

20. 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.
21. 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.
22. 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