The Planning Inspectorate

Appeal Decision

Site visit made on 23 January 2018

by Stephen Normington BSc DipTP MRICS MRTPI FIQ FIHE

an Inspector appointed by the Secretary of State

Decision date: 15 February 2018

Appeal Ref: APP/B4215/W/17/3189034
Pavement outside 105 Market Street, Manchester M1 1NN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 16 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
- The appeal is made by Mr Tom Fisher (Euro Payphone Ltd) against the decision of Manchester City Council.
- The application Ref 116987/TEL/2017, dated 22 March 2017, was refused by notice dated 6 September 2017.
- The development proposed is prior approval for the installation of a telephone kiosk.

Decision

1. The appeal is dismissed.

Procedural Matters

2. In the interests of clarity and precision, the description of the development used above has been taken from the appeal form and the Council's decision notice.

3. Whilst certain deemed consent rights exist for the display of advertisements on telephone kiosks, or express consent may be sought for such, this appeal relates solely to the installation of a telephone kiosk.

4. As an electronic communications code operator, the appellant benefits from deemed planning permission for a proposed telephone kiosk under Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) Order 2015 (GPDO), subject to prior approval by the local planning authority of siting and appearance. The provisions of the GPDO require the local planning authority to assess the proposed development solely upon the basis of its siting and appearance, taking into account any representations received. The appellant applied to the Council on that basis.

5. As the principle of development is established, considerations such as need for the telephone kiosk are not a relevant matter. The Council determined that prior approval was required and refused. Accordingly, the main issues are as below.

Main Issues

The main issues are:

- The effect of the siting and appearance of the proposed kiosk on the character and appearance of the surrounding area bearing in mind its location adjacent to the Upper King Street Conservation Area.
- The effect of the siting and appearance of the proposed kiosk on the safety of the pedestrian environment.
- Whether the siting and appearance of the proposed kiosk would cause an increase in crime and disorder in the area.

Reasons

Character and appearance

6. The appeal site is on the relatively wide pavement of a busy pedestrianised shopping street. A characteristic feature of this part of the street is that the footway on both sides of the road have relatively noticeable regular spaced and aligned iron columns that appear to be used for the hanging of flower baskets that extend for the majority of the length of the street. In addition, the majority of other street furniture such as street trees, litter bins and benches are predominantly located down the centre of the street. As such the footway area located in the vicinity of the appeal site is relatively uncluttered and has a uniform and spacious character.

7. The proposed kiosk would be located on the northern side of the street. The boundary of the Upper King Street Conservation Area is located approximately in the centre of the road such that the southern half of the street lies within the Conservation Area.

8. The proposed kiosk would be metal framed with extensive glazing panels and would be open sided to facilitate access for wheelchair users. It would have a simple, modern, lightweight design and would be sited approximately 0.6m from the kerb edge and would be aligned with the position of iron columns in terms of its relationship with the road. The appellant indicates that the proposed position of the kiosk would enable approximately 3.47m of unobstructed footway to remain between the kiosk and the adjacent building following its installation.

9. Other than the presence of the iron columns and a litter bin, the proposed kiosk would be located on an area of footway on Market Street that is largely devoid of street furniture. Although the proposed kiosk is of a simple design, given the paucity of street furniture on the footway, the proposal would appear as a prominent and intrusive feature at odds with the prevailing open character of the footway. It would introduce an element of clutter to the area in an otherwise relatively open footway along the frontage of the buildings on this side of street that would downgrade the quality of the public realm. In addition, the proposed siting of the kiosk would interrupt the visual flow of the iron columns that are an integral component of the character and quality of the public realm on the footway on both sides of the road on this part of Market Street.

10. Given the proximity of the proposed kiosk to the Conservation Area boundary and the important contribution that the relatively clutter free environment of the footway on both sides of the road makes to the character and appearance of the area, the introduction of an incongruous and prominent feature in such close proximity to the Conservation Area would harm the visual symmetry that currently exists on both sides of the road. It would appear as an anomalous feature that would not preserve the setting of the adjacent Conservation Area.

11. Owing to the small scale of the proposed kiosk, the harm to the Conservation Area would be less than substantial. Paragraph 134 of the Framework requires that where a development proposal would lead to less than substantial harm to a designated heritage asset, this harm should be weighed against the public benefits of the proposal.

12. Whilst the telephone kiosk would contribute to the provision of a telecommunications network, there is no substantive evidence before me that would indicate that there are notable deficiencies in public telecommunications provision within the area. Consequently, I give this only very limited weight.

13. I have also noted that the proposed telephone kiosk would be accessible to wheelchair users, and that photovoltaic panels are to be utilised to provide internal lighting, nonetheless, neither of these factors overcomes the great weight that must be given to the conservation of the heritage assets.

14. I therefore conclude that the proposed development would cause harm to the character and appearance of the area and the setting of the Upper King Street Conservation Area which would therefore not be preserved. Therefore the proposal would be contrary to the design, appearance and conservation aims of Policies DM1, EN1, EN3, CC9 and SP1 of the Manchester Local Development Framework – Core Strategy Development Plan Document 2012 (Core Strategy) and Saved Policies E3.3, DC17.1 and DC18.1 of the Unitary Development Plan for the City of Manchester 1995 (UDP). These policies, amongst other things, require that proposals should consider the impact on the character of the area and the city's heritage and seek to preserve and enhance heritage assets.

15. The appellant's statement suggests that the Council's reasons for the refusal of planning permission relates to the impact on the setting of the adjacent Grade II Listed Rylands Building. However, the Council's Decision Notice makes no reference to the effect of the proposal on the setting of the Listed Building. The Council also suggests that the proposal would conflict with Saved Policy DC19.1 of the UDP which relates to development that may have an impact on Listed Buildings. However, I have no evidence in this case to conclusively suggest that the proposed development is within the setting of a Listed Building or would affect such setting. In any event, I consider that the appeal site is located a sufficient distance away from the Listed Building so as not to affect its setting. Consequently, I have attached no weight to the provisions of this policy in the consideration of this appeal.

Pedestrian environment

16. In considering the width of unobstructed footway that should be maintained in new development for the installation of structures on the street, the appellant has referred to the guidance provided in the Department for Transport's 'Manual for Streets (2007)' and the 'Inclusive Mobility (2005)' documents. These require a minimum unobstructed footway width of a least 2m to remain.

In addition, the Council's 'Design for Access 2 (2003)' document suggests that there should be a minimum of 1.8m of footway clear of obstructions and that street furniture should be placed a minimum of 0.45m from the kerb face with the road.

17. Given the pedestrianised nature of Market Street, pedestrians are able to use the full width of the street. The proposed position of the kiosk would meet the requirements of the above guidance documents. Notwithstanding the fact that the full width of the street is pedestrianised, an unobstructed footway width of 3.47m would remain between the kiosk and the adjacent building.

18. Market Street has a high degree of pedestrian movements and the proposal would introduce a small localised obstruction to pedestrian flow. However, the proposed kiosk is a relatively small structure and taking into account the useable width of the street, the proposal would not result in any significant impediment to pedestrian flow.

19. Taking the above factors into account, I conclude that the proposed siting of the kiosk would not significantly harm the safety of the pedestrian environment. As such, there would be no conflict with Policies CC4, CC10, DM1, EN1 and SP1 of the Core Strategy or Saved Policy E3.3 of the UDP. These policies, amongst other things, require development to take road safety into consideration and maintain a high standard of accessibility across all spaces.

Crime and disorder

20. The GDPO and the National Planning Policy Framework establish that, in planning terms, payphones are, in principle, an acceptable form of development. Insofar as the Council's concerns regarding a potential increase in anti-social behaviour, flyposting and resulting in an increase in crime and disorder, I have little evidence before me as to how the proposed kiosk would cause such impacts.

21. The proposed location would be open to wide public surveillance. The design of the proposed kiosk with open sides and glass panels would also provide for natural surveillance within the kiosk itself. Whilst I accept that fly posting could occur, I observed at my site visit that other kiosks in the vicinity of the appeal site did not display any significant evidence of vandalism or fly postings. As such, I have little evidence to suggest that such concerns are a problem in the area.

22. Greater Manchester Police recommend that the kiosk's location be reconsidered, as the proposal could create issues due to the narrow footpath which may lead to easy pick-pocketing and anti-social behaviour. However, I have no conclusive evidence to demonstrate how this would be the case. Furthermore, I have no evidence that would support the view that the siting of telephone kiosks is a contributory factor to an increase in crime and disorder and in particular pick-pocketing.

23. Taking the above factors into account, I am satisfied the proposed kiosk would perform a public function and I have no demonstrable evidence to suggest that its proposed siting would cause an increase in crime and disorder in the area. Although, some of the policies of the development plan that the Council has referred to have tenuous links to matters of crime and disorder, I do not

consider that there would be any conflict with Policies CC4, CC10, DM1, EN1 and SP1 of the Core Strategy or Saved Policy E3.3 of the UDP. These policies, amongst other things, require development proposals to take into account community safety and crime prevention and contribute to the health, safety and wellbeing of residents. In addition, and for the same reasons, I do not consider that there would be any conflict with Policy 8 of the Council's 'Guide to Development in Manchester Supplementary Planning Document and Planning Guidance 2007' document.

24. The Council has referred to a conflict with Policy T1 of the Core Strategy with regard to the effect of the development on crime and disorder. However, the requirements of this policy relate to sustainable transport and, in my view, it has little relevance, if any, to the Council's concerns regarding crime and disorder. Consequently, I have attached minimal weight to the requirements of this policy in the consideration of this issue.

Other matters

25. I have taken into account the Council's concern that the proposal would have a negative effect upon regeneration efforts and improvements to the environment taking place within the area. However, there is no substantive evidence before me regarding any detailed proposals or the effect that these may have on the appeal site. Consequently, I have attached minimal weight to this matter and I have determined the appeal within the parameters of the GPDO.

26. I have also taken into account the concerns of an interested party who consider that the motivation for such applications for prior approval is to develop a ubiquitous network of advertising panels. This appeal relates solely to the installation of a telephone kiosk and does not provide for any advertisement consent pursuant to the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, as amended. As such, I attach little weight to these concerns.

27. A number of allowed appeal decisions for similar development have been submitted in support of the proposal. However, I do not have full details of the nature of the proposals or the circumstances relating to these appeals to make any meaningful comparisons with the appeal before me. Consequently, I cannot be sure that these are entirely representative of the circumstance in this appeal and, in any case, I have determined this appeal on its own merits.

Conclusion

28. I have found that the proposal would not have a detrimental effect on the safety of the pedestrian environment and would not cause a demonstrable increase in crime and disorder in the area. However, these matters do not outweigh the harm that would be caused to the character and appearance of the surrounding area and the setting of the Upper King Street Conservation Area. For the above reasons, taking into account the development plan as a whole based on the evidence before me and all other matters raised, I conclude that the appeal should be dismissed.

Stephen Normington

INSPECTOR