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: 13 February 2018

Appeal Ref: APP/B4215/W/17/3189032
Pavement outside 106 – 122 Market Street, Manchester M1 1WA

- 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 116347/TEL/2017, dated 22 March 2017, was refused by notice dated 5 July 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 and the Smithfield Conservation Area and within the setting of the Grade II Listed 'Rylands Building'.
- 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 pavement of a busy shopping street in the town centre of Manchester. The proposed kiosk would be positioned in relatively close proximity to the frontage of the Rylands Building which is Grade II Listed with the unguarded tram lines and the Metrolink platform located to the north.

7. Although not referred to in the Council's Decision Notice, the Upper King Street Conservation Area is located to the west of the site and the Smithfield Conservation Area located to the north. Whilst the Council did not identify any harm to the setting of these Conservation Areas in the reasons for the refusal of prior approval, I am nevertheless required to have regard to the statutory duty to consider the impact of the proposal on these designated heritage assets in my consideration of this appeal.

8. Market Street is a relatively wide spacious street that is predominantly pedestrianised. However, the useable width of this part of the street is reduced by the presence of the tram tracks and the Metrolink platform. Although there is minimal street furniture in the immediate vicinity of the site, owing to the reduced useable width of the street, the presence of the platforms and the associated platform signage and the tramlines, this part of the street has a number of contrasting visual components concentrated in a narrower width in comparison to other parts of Market Street to the west.

9. Given the visual components of this part of the street identified above, the uncluttered nature of the pavement and space in front of the Rylands Building is simple and unified. It therefore makes a positive contribution to the character and appearance of this part of the street.

10. The proposed kiosk would be located on an area of Market Street that is largely devoid of street furniture, with the exception of a litter bin, and in a part of the street that has a reduced useable width and as such there is a high degree of pedestrian flow that is channelled between the platform and the building. The presence of the kiosk and the space it would occupy would be quite noticeable to pedestrians. The consequence of this is that proposed kiosk would appear as a prominent feature and intrusive feature at odds with the prevailing open character and would give the impression of adding harmful clutter to the area that would downgrade the quality of the public realm.

11. Given the distance of the proposed kiosk from the Upper King Street Conservation Area I do not consider that its setting would be unduly compromised by the proposal. However, the boundary of the Smithfield Conservation Area is positioned along the southern edge of the Metrolink Platform. Given the proximity of the proposed kiosk to the Conservation Area boundary and the important contribution that the relatively clutter free environment of the area in front of Rylands Building makes to the character and appearance of the area, the introduction of an incongruous and prominent feature in such close proximity to the boundary would not preserve the setting of the adjacent Conservation Area.

12. Turning to the effect of the proposal on the adjacent Listed Building, section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that in considering whether to grant permission for development which affects a listed building or its setting, special regard must be given to the desirability of preserving the building, or its setting, or any features of special architectural or historic interest which it possesses. Paragraph 132 of the National Planning Policy Framework also requires that great weight should be given to the conservation of heritage assets.

13. The Listing Description indicates that the Rylands Building was one of the last and biggest textile warehouses built in the city and is seven storeys, steel framed with cladding of Portland Stone and with architecture of a modernist classical style. Other than a litter bin, there is no other street furniture along the frontage of the building on Market Street between the building and the Metrolink platform. As such the frontage of the building is uncluttered which preserves its appearance within the streetscene.

14. The proposed kiosk would be located approximately 4.36m from the façade of the building and the minimal, steel framed, design of the proposed kiosk would be inconsistent with the dominant use of Portland Stone and the relatively ornate architecture of the surroundings. It would appear as an anomalous feature in the relatively open area that forms a focal point around the frontage of the building.

15. The proposed kiosk would introduce an element of clutter in an otherwise relatively open footway along the frontage of the building. Due to the resulting prominence of the proposed kiosk, its siting close to the façade of the building and its inconsistency with the surrounding architecture, it would cause harm to the setting of the listed building and the context within which it is experienced, although due to the small scale of the proposed development, this harm would be less than significant.

16. 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. 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 and, consequently, I give this only very limited weight.

17. I have also noted the appellant's points 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.

18. I therefore conclude that the proposed development would cause harm to the character and appearance of the area, the setting of the Smithfield Conservation Area and the setting of the adjacent Listed Building 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 SP1of the Manchester Local Development Framework – Core Strategy Development Plan Document 2012 (Core Strategy) and Saved Policies E3.3, DC17.1, DC18.1 and DC19.1 of the Unitary Development Plan for the City of Manchester 1995 (UDP). These policies, amongst other things, require that development should consider the city's heritage, complement heritage features and seek to preserve and enhance the setting of Listed Buildings.

Pedestrian environment

19. 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.

20. The proposed position of the kiosk would meet the requirements of these guidance documents in being sited approximately 0.6m from the kerb edge with the tramline curtilage and would enable approximately 4.36m of unobstructed footway to remain between the kiosk and the Rylands Building following its installation. However, as mentioned above, in comparison to the rest of Market Street the width of the footway is already compromised in the vicinity of the appeal site due to the proximity of the Metrolink platform and tram tracks. Consequently, when trams are present pedestrian flow is channelled between the tram tracks and the building.

21. Market Street is one of the most significant partially pedestrianised shopping streets in the city and provides a linkage to Piccadilly Railway Station and the tram interchange on Piccadilly Gardens with the main shopping area of the city. As such it is subject to a high level of pedestrian flow. I observed at my site visit that shoppers also have a tendency to stop and observe the window displays that occupy the full extent of the ground floor of the Rylands Building. This further adds to a reduction in the useable width of the footway.

22. The proposed kiosk would cause the reduction in the available width of the footway and would form a physical and noticeable obstruction to the high degree of pedestrian flow on this part of Market Street. It would have the effect of further channelling this significant pedestrian flow on a reduced footway width between the kiosk and the façade of the building. At busy times this is also likely to cause pedestrians to try to avoid congestion by stepping on to the unguarded tram tracks between the platform and the kiosk which would be harmful to pedestrian safety.

23. These factors lead me to conclude that the siting of the proposed kiosk would unacceptably impede pedestrian flow and the safe manoeuvring of users of the footway, in particular wheelchair and pushchair users which would compromise their safety. As such, the proposal would conflict with Policy EN1 of the Core Strategy which, amongst other things, requires development to maintain the city's permeability.

24. The Council has also referred to a conflict with Policy CC7 of the Core Strategy which relates to Mixed Use Development. I have no evidence to indicate the relevance of this policy to the development proposed or how there may be conflict with its provisions. Consequently, I have minimal weight to the provisions of this policy in the determination of this appeal.

Crime and disorder

25. 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.

26. 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 evidence of vandalism or fly postings. As such, I have little evidence to suggest that such concerns are a problem in the area. Furthermore, I note that Greater Manchester Police did not specifically object to the proposed siting of the kiosk.

27. 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.

28. 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 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

29. 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.

30. 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.

31. 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

32. 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