



Appeal Decision

Site visit made on 5 June 2018

by Richard S Jones BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 June 2018

Appeal Ref: APP/Q1445/W/18/3193442

Pavement outside 1 Church Street, Brighton, BN1 1UE

- 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 on behalf of Euro Payphone Ltd, against the decision of Brighton & Hove City Council.
 - The application Ref BH2017/01908, dated 22 March 2017, was refused by notice dated 28 July 2017.
 - The development proposed is a call box.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The proposed call box was refused prior approval under Schedule 2, Part 16 of the Town and Country Planning (General Permitted Development) England Order 2015 (as amended) (the GPDO). The principle of this type of development is already established by the Order and it is only the effects of siting and appearance which are to be considered in this appeal.
3. The Council's reasons for refusal refer to conflict with a number of development plan policies. Whilst I have taken them into account as material considerations, section 38(6) of the Planning and Compulsory Purchase Act 2004 does not apply as the principle of development is established through the grant of permission by the Order. In my determination of this appeal, the Council's policies have not therefore, by themselves, been decisive.
4. Concern has been expressed by the Council about the potential for the proposed structure to accommodate advertisements. However, the installation of a call box and the display of an advertisement are two separate matters and considerations relating to the latter are not before me. Consequently I have only considered the effects of the call box in the determination of this appeal.

Main Issues

5. The main issues are the effects of the siting and appearance of the call box on:
 - the character and appearance of the area, including the Valley Gardens Conservation Area and the setting of nearby listed buildings; and
 - pedestrian users and highway safety.

Reasons

Character and appearance

6. The appeal site comprises part of the pavement in front of the Mash Tun Public House, which is an attractive three storey corner building which makes a positive contribution to the Valley Gardens Conservation Area, in which it is situated.
7. The character of the Conservation Area as a whole is derived from mix of uses, including commercial, residential, retail, cultural, educational, and recreational. The townscape of this area is dominated by the public gardens and open spaces which run its length. Buildings are typically three or four storey terraces. The architecture generally shares a common Regency/early Victorian style based upon classical architecture and the elevations are most commonly stucco render, punctuated by sash windows graduated in size to reflect the primary importance of the ground and first floors. The Royal Pavilion dominates as a landmark.
8. The proposed call box would have a footprint of 1.32 x 1.11 metres, with an overall height of 2.45 metres. It would be wholly enclosed on two sides and partially enclosed on a third, allowing for wheelchair access. It would be constructed of reinforced laminated glass panels within a powder coated metal framework.
9. I acknowledge that paragraph 60 of the National Planning Policy Framework (the Framework) states that Local Planning Authorities 'should not attempt to impose architectural styles or particular tastes' and that there is a large scale modern building close by at No 1 Jubilee Road, albeit just outside the Conservation Area. However, paragraph 60 also states that it is proper to reinforce local distinctiveness. Whilst there is a wide range of commercial uses within this city centre location, particularly at ground floor level, these are predominantly within traditional buildings with frontages reflecting that character.
10. Despite the open sided design and use of glazed panels, it would appear as standardised modern structure of bland, utilitarian design that bears little regard to the surrounding historic townscape in which it would be primarily viewed, and would detract from its visual qualities. The call box would not therefore reinforce local distinctiveness and would be contrary to the Council's Streetscape Design Guidelines Supplementary Planning Guidance which seeks to achieve a design that is appropriate to the context and identity of the location.
11. The call box would also be prominently sited well forward of the building line in an exposed and isolated location within the footway. It would also be view in conjunction with the adjacent high quality public realm and surface treatment of New Road. This is a visually busy area of public realm, with external seating, umbrellas and canvas barriers associated with the surrounding public houses and café's, as well as 'A' boards, bollards, public benches, bins, a post box and street signage. An additional call box in this prominent location would in my view unacceptably add to the existing amount of visual and physical clutter and erode the quality of the street scene in this location. For these reasons, I find that the proposal would be harmful to the established character and appearance of the Conservation Area.

12. I appreciate that the Council does not specifically refer to the setting of any listed buildings in its reason for refusal. Nevertheless the Council has highlighted in its statement that the site is located adjacent to several such buildings including The Corn Exchange and Nos 23 and 24 New Road. As I am required to have special regard to the desirability of preserving their setting, I requested their listing entry and location, as these details had not been provided. I offered the appellant opportunity to comment so no party has been prejudiced.
13. No 23 New Road and attached railings are listed Grade II. The property is a former terrace house dating from circa 1815. It now incorporates attractive traditional ground floor shopfront with a two storey segmental bay above and first floor veranda, within a Flemish bond brick elevational treatment. No 24 is also a Grade II listed former terrace house dating from circa 1807, now with traditional shopfront and café use. This four storey building is finished in cobbles with brick dressings. The New Road frontage is a full-height and almost full-width segmental bay, though the later 19th Century shopfront is canted, with central entrance flanked by pilasters with elaborate bracketed stops, modillion cornice, and cast-iron cresting over fascia.
14. At the time of my site visit, the Grade II listed Corn Exchange building was obscured by scaffolding. The listing explains that it is two storeys over basement and that the design is a highly stylised version of the Islamic forms.
15. In approaching views from the east, No 24 sits fully forward of the Church Street building line with its principal elevation in full view. Part of the elevation of No 23 is also visible. This view makes a notable contribution to how No 24 is experienced within the context of the high quality public realm with café's and public houses spilling out into the adjoining spaces. The appeal site therefore lies within their setting and the setting contributes to their significance insofar as it provides the context within which those qualities can be appreciated. The call box would be sited directly in line of this view thereby partially obscuring the buildings and their interaction with the public realm. Similarly, given the proximity to the Corn Exchange, the call box would also partially obscure views of the building from the west. In the case of the three identified listed buildings the call box would appear as a visually intrusive and alien structure that would materially detract from their setting.
16. The appellant has referred to an approval for two kiosks in 1997 at 97 Church Street. However, No 97 falls outside of the Conservation Area and its context, which includes a number of larger scale modern buildings, is materially different to that of the appeal proposal. Moreover, whilst acknowledging the differing design and inclusion of advertisements, these existing telephone kiosks served to confirm the visual harm arising from their siting. As such their existence and historic approvals do not justify the addition harm which would be caused by the appeal proposal, which in any case occupies a more sensitive and conspicuous location and would be visually more intrusive.
17. I have had regard to the appeal decisions¹ referred to in the appellant's statement, as well as the appended decisions, insofar as some of the general issues they raise may be applicable to this appeal. However, these appeals relate to different sites within different local authority areas for which I have limited information regarding the prevailing character. They therefore carry

¹ Appeal References: APP/K5030/A/12/2185860; APP/X5990/A/11/2166164; and APP/U3935/A/13/2204462

limited weight in favour of the appeal proposal, which in any case, I have considered on its own individual merits.

18. I therefore conclude that the siting and appearance of the call box would be harmful to the character and appearance of the Conservation Area and to the setting of nearby listed buildings. This would be contrary to Policies CP12 and CP13 of the Brighton and Hove City Plan Part One and to Policies QD24 and HE6 of the Brighton and Hove Local Plan (LP). These state, amongst other things, that proposals for telecommunications developments will not be permitted where they would have an adverse effect on important areas and their settings, including conservation areas and listed buildings. The policies also seek, amongst other matters, to improve the quality, legibility and accessibility of the city's public urban realm through new development schemes to produce attractive and adaptable streets and public spaces that enrich people's quality of life and provide for the needs of all users by positively contributing to the network of public streets and spaces in the city; conserving or enhancing the setting of the city's built heritage; and reducing the clutter of street furniture and signage.
19. In the context of paragraph 134 of the Framework I would categorise the level of harm to the Conservation Area and setting of the listed buildings as less than substantial. In such circumstances the Framework requires the harm to be weighed against any public benefits associated with the development. In this regard, the Framework indicates that communications infrastructure is essential for sustainable economic growth and also plays a vital role in enhancing the provision of local community facilities and services. Although I recognise that the proposed call box would make a positive contribution to these aims through the provision of a wheelchair accessible payphone service powered using a photovoltaic panel, as well as providing consumer choice and competition, these factors do not outweigh the harm that I have identified above.

Pedestrian users/highway safety

20. Although the application marked on a map the location of the call box there was no block plan showing its exact position. However, I do not dispute the appellant had satisfied the requirements of the GPDO for an application of this nature. In any case, precise siting details have been provided with the appeal.
21. The appellant suggests that the total footway width is 7.4m leaving an unobstructed width of 5.48m. However, this does not correspond with the figures shown in the proposed plan, which are less. The width is further reduced by the outdoor drinking benches of Mush Tun. Moreover, the footway significantly narrows towards the Corn Exchange frontage and the call box would effectively extend the resulting pinch-point further west. Whilst it and the nearby post box would be similarly set back from the edge of the pavement, the narrowing of the pavement in this location means that the post box would be closer to the building frontage than the call box. Therefore, although minimum widths set out in national and local guidance² may be achieved, the call box would create an additional barrier to pedestrian movements and due to the varying alignments would require pedestrians to weave between the resulting pinch-points.

² Inclusive Mobility; Manual for Streets; and Public Place Public Space Study

22. Within a busy central location such as this with a high level of footfall, this would likely lead to congestion and harm to pedestrian flows and potentially necessitate that pedestrians use the road as an alternative. This would be to the detriment of the safety and comfort of footway users, particularly those in wheelchairs, the elderly, infirm, partially sighted and parents with small children and pushchairs.
23. Given the proposed 600mm set back from the edge of the pavement and that the alignment of Church Road projects forward at the northern end of New Road, I consider that there would be sufficient visibility for pedestrians crossing over to Jubilee Street combined with sufficient forward visibility for approaching drivers along Church Street.
24. Nevertheless, for the reasons explained I conclude that the siting of the call box would pose a risk to the safety and comfort of pedestrians using the footway. The proposal would therefore conflict with LP Policy TR7 which allows developments that do not increase the danger to users of adjacent pavements, cycle routes and roads.

Other matters

25. I have noted the appellant's concern regarding a blanket approach by the Council but, as highlighted, the Framework states that local planning authorities should not impose a ban on telecommunications development in certain areas, nor seek to prevent competition between different operators or question the need for telecommunications systems. I have therefore considered the appeal proposal accordingly, within the specific parameters of the GPDO.
26. I note the appellant's comments that the number of telephone kiosks on UK streets has reduced from 90,000 in 2002 to 46,000 in 2016 with BT proposing to remove more. However, this factor does not overcome the above identified harm.
27. I have no evidence to suggest that the call box would be poorly maintained and concerns in this regard have attracted limited weight. I agree that paragraph 43 of the Framework insofar as it relates to radio and telecommunications masts, is not relevant to my consideration of the appeal proposal. I have noted the Council's reference to a Local Government Association article but this does not amount to planning policy or guidance. I have therefore attached little weight to it.

Conclusion

28. For the reasons explained, and taking all other matters into consideration, I conclude that the appeal should be dismissed.

Richard S Jones

INSPECTOR

