

Appeal Decisions

Site visit made on 17 October 2014

by Alan Boyland BEng(Hons) DipTP CEng MICE MIHT MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 23 December 2014

CASE DETAILS

All Appeals

- The appeals are made under section 78 of the Town and Country Planning Act 1990 against refusals to grant approvals required under Part 24 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995.
 - The appeals are made by Infocus Public Networks Ltd against the decisions of Swindon Borough Council.
 - The development proposed in each case is installation of a public payphone on the public highway by an electronic communications code operator.
 - The applications were all dated 10 June 2013 and refused by notice dated 2 August 2013.
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Appeal A - Ref: APP/U3935/A/13/2204403 **Outside 18-19 Commercial Road, Swindon, SN1 5NS**

- Application Ref S/TC/13/0770.
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Appeal B - Ref: APP/U3935/A/13/2204411 **Outside 18-19 Regent Street, Swindon, SN1 5JQ**

- Application Ref S/TC/13/0779.
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Appeal C - Ref: APP/U3935/A/13/2204414 **Outside 2-6 The Parade, Swindon, SN1 1BB**

- Application Ref S/TC/13/0785.
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Appeal D - Ref: APP/U3935/A/13/2204416 **Outside 19-21 Canal Walk, Swindon, SN1 1LD**

- Application Ref S/TC/13/0772.
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Appeal E - Ref: APP/U3935/A/13/2204422 **Outside Unit 1A, The Lock, Canal Walk, Swindon, SN1 1LD**

- Application Ref S/TC/13/0789.
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Appeal F - Ref: APP/U3935/A/13/2204424 **Outside 15 Regent Circus, Swindon, SN1 1PP**

- Application Ref S/TC/13/0781.
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Appeal G - Ref: APP/U3935/A/13/2204430
Adjacent to 23 Canal Walk, Swindon, SN1 1LD

- Application Ref S/TC/13/0790.
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Appeal H - Ref: APP/U3935/A/13/2204431
To rear of 12 Theatre Street, Swindon, SN1 1QN

- Application Ref S/TC/13/0784.
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Appeal I - Ref: APP/U3935/A/13/2204434
Outside 53-55 The Parade, Swindon, SN1 1BB

- Application Ref S/TC/13/0788.
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Appeal J - Ref: APP/U3935/A/13/2204447
Outside 32-34 Regent Street, Swindon, SN1 1JS

- Application Ref S/TC/13/0773.
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Appeal K - Ref: APP/U3935/A/13/2204456
Outside 38 Havelock Street, Swindon, SN1 1SD

- Application Ref S/TC/13/0782.
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Appeal L - Ref: APP/U3935/A/13/2204462
Adjacent to The Tri Centre, Two Buildings, New Bridge Square, Swindon, SN1 1HN

- Application Ref S/TC/13/0778.
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Appeal M - Ref: APP/U3935/A/13/2204463
Outside 44-45 Bridge Street Swindon, SN1 1BL

- Application Ref S/TC/13/0771.
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Appeal N - Ref: APP/U3935/A/13/2204468
Outside Wellington House, Wellington Street (opposite Haydon Street), Swindon, SN1 1EB

- Application Ref S/TC/13/0768.
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Decisions

Appeals dismissed

1. The following appeals are **dismissed**:

- Appeal F - Outside 15 Regent Circus, Swindon, SN1 1PP (Application Ref S/TC/13/0781)
- Appeal G - Adjacent to 23 Canal Walk, Swindon, SN1 1LD (Application Ref S/TC/13/0790)

Appeals allowed

2. The following appeals are allowed and approval is granted under the provisions of the Town and Country Planning (General Permitted Development) Order 1995 for installation of a public payphone on the public highway by an electronic communications code operator at the following locations, in accordance with the applications as indicated, all dated 10 June 2013, and in accordance with the plans submitted with the respective applications:
 - Appeal A - Outside 18-19 Commercial Road, Swindon, SN1 5NS
Application Ref S/TC/13/0770
 - Appeal B - Outside 18-19 Regent Street, Swindon, SN1 5JQ
Application Ref S/TC/13/0779
 - Appeal C - Outside 2-6 The Parade, Swindon, SN1 1BB
Application Ref S/TC/13/0785
 - Appeal D - Outside 19-21 Canal Walk, Swindon, SN1 1LD
Application Ref S/TC/13/0772
 - Appeal E - Outside Unit 1A, The Lock, Canal Walk, Swindon, SN1 1LD
Application Ref S/TC/13/0789
 - Appeal H - To rear of 12 Theatre Street, Swindon, SN1 1QN
Application Ref S/TC/13/0784
 - Appeal I - Outside 53-55 The Parade, Swindon, SN1 1BB
Application Ref S/TC/13/0788
 - Appeal J - Outside 32-34 Regent Street, Swindon, SN1 1JS
Application Ref S/TC/13/0773
 - Appeal K - Outside 38 Havelock Street, Swindon, SN1 1SD
Application Ref S/TC/13/0782
 - Appeal L - Adjacent to The Tri Centre, Two Buildings, New Bridge Square, Swindon, SN1 1HN
Application Ref S/TC/13/0778
 - Appeal M - Outside 44-45 Bridge Street Swindon, SN1 1BL
Application Ref S/TC/13/0771
3. Appeal N is allowed and approval is granted under the provisions of the Town and Country Planning (General Permitted Development) Order 1995 for installation of a public payphone on the public highway by an electronic communications code operator outside Wellington House, Wellington Street (opposite Haydon Street), Swindon, SN1 1EB in accordance with the application, Ref S/TC/13/0768, dated 10 June 2013, in accordance with the plans submitted subject to the condition that, notwithstanding the submitted plans, the payphone hereby approved shall be set 0.5 metre from the edge of the adjacent carriageway.

Main Issues

4. The appellant company in these cases is a telecommunications code operator. As such it benefits from deemed planning permission for the proposed payphones under Part 24 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 (the GPDO), subject to prior approval by the local planning authority of their siting and appearance.

Accordingly the principle of the developments, including considerations such as the need for these particular facilities is not at issue in these appeals. However, approval of the siting and appearance was refused by the Council in all of these cases.

5. Accordingly, the main issues in all of these appeals are the effects of the siting and appearance of each proposed payphone on:
 - (i) the safety and convenience of users of the public highway; and
 - (ii) the character and appearance of the area and, in the case of appeal F (outside 15 Regent Circus) only, whether the proposed payphone would preserve the setting of the Grade II Listed Town Hall.

Reasons

Policy

6. The section on communications infrastructure in the *National Planning Policy Framework* (NPPF) mainly addresses radio and telecommunication masts and high speed broadband facilities. However, more generally it sets out a positive approach to such development and indicates that local planning authorities should not impose a ban on new telecommunications development in certain areas.
7. Saved policy DS6 of the adopted *Swindon Borough Local Plan 2011* (LP) sets out standards of design and amenity, and indicates that particular scrutiny will be given to proposals within the town centre. Saved policy ENV2 seeks to ensure that development affecting a listed building, amongst other things, at least preserves its setting. Saved policy ENV8 seeks appropriate provision to allow access for all, including disabled people. These policies predate the NPPF but nevertheless are broadly consistent with it, and I give them great weight.
8. The *Swindon Central Area Action Plan 2009* (CAAP) is an adopted Development Plan Document. Policy CAAP3 sets out, amongst other things, detailed criteria for the assessment of development proposals in terms of their effects on the public realm. Again this document predates the NPPF, but policy CAAP3 insofar as it relates to these proposals is also consistent with it. I therefore attach much weight to it.
9. *Inclusive Design Access for All*, a Supplementary Planning Document (SPD) under the Council's Local Development Framework (LDF), was adopted in 2011. While it does not carry the full weight of a development plan, it is a material consideration in the determination of planning applications. To my mind that extends to the matters that are the subjects of these appeals. The SPD sets out design principles in support of LP policy ENV8.

Payphone design

10. The conclusions in this section apply generally to all the proposals except where indicated subsequently.
11. The design of the proposed payphone kiosk would be the same in each case. It would be a simple asymmetric 3-sided rectangular box having a footprint some 1.3m x 1.1m, with one side shortened and a slightly domed roof. The frame and main part of the roof would be of steel coated in black, with the sides and rear panels infilled with clear polycarbonate toughened glass leaving gaps at

the bottom. The floor would be level with the existing pavement, and in the few instances where they would be situated adjacent to trafficked roads the opening would face away from the traffic.

12. It is undisputed that there is the potential for advertisements on one face of the kiosks through deemed consent. However, as both parties acknowledge, the Courts have held that local planning authorities have powers to secure discontinuance of such advertising and that this cannot be a 'predominant determinant' in the assessment of kiosks. I have considered the appearance of these proposed kiosks accordingly.
13. I recognise that the NPPF seeks high quality design, as does LP policy DS6, but design quality has to be assessed with regard to context. I agree that the design could be described as functional and utilitarian. In some situations those might well be regarded as negative attributes. Equally they could suggest that the kiosks would be uncomplicated in style and unobtrusive in an urban setting predominantly comprising modern buildings of relatively unassuming designs. I consider the latter to apply in the case of most of these proposals. The light and airy style and simplicity of form of the proposed kiosks would in my view minimise their visual impact rather than seeking to make an intrusive visual statement. The similarity in form and style to existing phone kiosks, advertising stands and bus shelters near some of the proposed payphones would further help these to assimilate into the street scene.
14. The payphone would be powered by solar panels integral to the roof, which would bring modest benefits in term of sustainability. Also they would be connected wirelessly via the mobile phone network. Accordingly, and more significantly for the matters under consideration here, there would be no overhead or underground cabling required, and the visual impacts of these would be avoided.
15. The Council disputes the appellant's claim that the payphones need to be the size proposed in order to accommodate wheelchairs. It also points out that they do not fully comply with best practice guidance for telephones within a booth as set out in British Standard (BS) 8300:2009 due to insufficient floor area and because, it says, they are not accessible from the front and sides. The appellant does not deny that the BS standards would not be met, though its point that the recommended size would fall outside the limit for permitted development under the GPDO has no bearing on the substantive planning merits of these proposals.
16. However, leaving aside the apparent contradiction between the Council's two points regarding size, it does not appear to deny that the payphones would be wheelchair-accessible. They would be accessible by most wheelchairs from the front and at an angle from one side, and in all cases there would be sufficient space around them for any necessary manoeuvring of wheelchairs.
17. Again the parties disagree on whether or not other payphones provided in the area by the appellant's competitors can provide this facility, but that is essentially a matter of commercial competition and it not material to the planning issues in these appeals. However, I note that an existing wheelchair accessible payphone in The Parade is mounted on the outside of a kiosk, so users are fully exposed to the weather and have no privacy.

18. Clearly any additional structure in the highway could be said to add to clutter as the Council suggests but, in view of the nature of the proposed kiosks as discussed above, I conclude that in general the harm in this respect to the character and appearance of the area would be minimal. However, where necessary I consider further the particular effects of individual kiosks below.

Locations

19. All of the sites of the proposed payphones are in the town centre, mainly within the retail core. None is in a Conservation Area.

Appeal A : Outside 18-19 Commercial Road, Swindon, SN1 5NS

20. Commercial Road is on the fringe of the town centre. It is a busy, trafficked (one way) street with frontage development mainly comprising a mix of shops and premises offering financial and professional services. There was little pedestrian traffic at the time of my visit, and I have seen nothing to indicate that this was untypical.
21. The proposed kiosk would be 0.5m from the edge of the footway, allowing adequate clearance from the carriageway along which there is a prohibition of waiting at all times indicated by double yellow lines. Nearby is a street lamp standard which is painted black. Almost opposite are an existing payphone kiosk and a cable box, both at the kerbside.
22. The footway here is 4.7m wide, and there would remain a gap of in excess of 3m between the kiosk and the adjacent building frontage. I saw that pedestrians here generally walk closer to the building frontages. I consider it unlikely that many would walk along close to the kerb, and the path for any (including those with visual impairments) who do so is already obstructed by the adjacent lamppost and other street furniture at the kerbside along the street.
23. I conclude that this kiosk would not significantly harm the safety and convenience of highway users. My general conclusion regarding the effect on character and appearance applies in this instance.

Appeal B : Outside 18-19 Regent Street, Swindon, SN1 5JQ

Appeal D : Outside 19-21 Canal Walk, Swindon, SN1 1LD

Appeal E : Outside Unit 1A, The Lock, Canal Walk, Swindon, SN1 1LD

Appeal I : Outside 53-55 The Parade, Swindon, SN1 1BB

Appeal J : Outside 32-34 Regent Street, Swindon, SN1 1JS

Appeal K : Outside 38 Havelock Street, Swindon, SN1 1SD

Appeal M : Outside 44-45 Bridge Street Swindon, SN1 1BL

24. These locations are all in pedestrianised 'streets'. Most are within the modern shopping precinct, but Havelock Street and Bridge Street are older streets now also pedestrianised. They carry high pedestrian flows. In each of the streets the outer parts, closest to the frontages, are largely free from obstructions, and I observed that most pedestrians walking along these streets, particularly those clearly 'window shopping' as they went, did so here. These parts also provide routes for service vehicles.
25. The central parts of the streets are also largely open, but they do contain many items of street furniture including seats, benches, litter bins, lamp posts and

existing phone kiosks, as well as trees, raised planters, sculptures and advertising stands. I saw that pedestrians can, and some do, walk longitudinally along the streets here, weaving their way between the obstructions. However, most use the central areas only to cross from one side to the other.

26. On my visits I identified only a small number of people with visual or physical impairments. These largely followed similar paths to other pedestrians.
27. The proposed payphone kiosks would be in the central parts, well related to other features so as to minimise, in conjunction with their relatively small footprints, the additional obstruction to pedestrian movements. I conclude that these kiosks would not significantly harm the safety and convenience of highway users. My general conclusion regarding the effects on character and appearance also applies in these instances.

Appeal C : Outside 2-6 The Parade, Swindon, SN1 1BB

28. This kiosk would be in a small pedestrianised piazza. This is on one of the main routes into the main shopping precinct and I saw that it carries particularly high levels of pedestrian traffic passing through. The piazza is mainly open, with just a small number of seats in the central area and two pairs of kiosks to one side. Three of these kiosks are conventional payphones and one has an external ATM on one side and an external payphone on another.
29. I saw that pedestrian routes are more varied than in the linear 'streets', but principal desire line is between the underpass and The Parade along the building frontages on the north-east side. The existing permanent features cause little impediment to free flow, though building works on the north-east side were encroaching a little at the time of my visit. The proposed kiosk would be in the gap between two bench seats, still leaving space for pedestrians to pass to either side between it and the seats. In the light of this and of the proposed location in relation to the pattern of movements I observed, I consider that the kiosk would cause little obstruction.
30. I conclude that this kiosk would not significantly harm the safety and convenience of highway users. My general conclusion regarding the effects on character and appearance again applies here.

Appeal F : Outside 15 Regent Circus, Swindon, SN1 1PP

31. This site is in an open area around the west (main) and north (secondary) sides of the old Town Hall, a Grade II Listed Building. This dates from the late 19th century and is a typical public building of its period in red brick with stone string courses and door and window features. The space around it gives a pleasant visual separation from the mainly nondescript mid 20th century buildings surrounding it. The Council advises that this area has in recent times been decluttered, enhanced and landscaped. I saw that it provides a fitting setting for the listed building and consider that it makes an important contribution to the designated heritage asset.
32. The proposed payphone kiosk would be in the wide (10.7m here) footway on the far side of a cul-de-sac roadway running along the north (secondary) frontage of the Town Hall providing access to loading bays and 'blue badge' parking. It would be in line with several trees, a cycle rack and a post box. It

did not appear to me to lie on any main pedestrian desire lines and so would not significantly impede movements. The Council expresses concern that it would be difficult for people with disabilities to alight from vehicles next to the kiosk. However, this side of the road is a loading bay whereas 'blue badge' parking is available on the opposite side adjacent to the Town Hall. In any event, while the distance between it and the kerb is not dimensioned on the submitted plans, it scales at over 2m which in my view would be adequate to avoid significant problems in this respect.

33. The cycle racks are relatively inconspicuous, being low and set between trees and shaded by them. There is a fixed information/direction board a little further up but, while it is of similar height to a phone kiosk, it has a much smaller footprint and relates more to the pedestrian routes and surrounding buildings than to the Town Hall. The proposed kiosk on the other hand would stand more alone and be taller and more prominent than the existing features. In my view it would detract from the openness of this part of the setting of the Town Hall and cause substantial harm to the significance of the heritage asset.
34. I conclude therefore that that while this kiosk would not significantly harm the safety and convenience highway users, it would be harmful to the character and appearance of the area and would fail to preserve the setting of the listed building.

Appeal G : Adjacent to 23 Canal Walk, Swindon, SN1 1LD

35. This location is within a large open area known as Wharf Green. It is identified in the CAAP as a primary space and a multi-purpose urban square providing a focal point for events and congregations, including a large TV screen mounted on an adjacent building. Clearly openness is an important attribute of the space, in both visual and functional terms.
36. The proposed payphone kiosk would be located in line with two low benches and near a recently-planted tree. It would not in my judgement materially impede day-to-day pedestrian routes through the area, but it would be an obstruction to movement on occasions when large gatherings take place here. Moreover it would be visually prominent as an intrusion into the open area and would introduce a visual 'shadow' within which views of events occurring live or being shown on the TV screen would be blocked.
37. I conclude that this kiosk would be harmful to the safety and convenience of highway users and would be harmful to the character and appearance of the area.

Appeal H : To rear of 12 Theatre Street, Swindon, SN1 1QN

38. This location is actually on the footway of Princes Street, a major route around the town centre. The footway here is some 6m wide, and it is built out further at a pelican crossing near the site of the proposed payphone kiosk. I saw that the railings shown on the photo submitted by the appellant and referred to by the Council have now been removed, but I observed that pedestrians still tend to walk diagonally across the footway to and from the crossing rather than turning towards the position of the kiosk. By chance, on my visit I saw a long cane user using the crossing. Rather than following the kerb as the Council suggests he also headed for the back of the footway where he followed the

building frontages to Regent Circus. Accordingly I do not share the Council's view that the kiosk would be a barrier to pedestrian movement.

39. A kiosk here should not impede cyclists as the Council suggests. There is no designated cycle track here so, as I understand it, lawfully cyclists should be using the road rather than the footway. I note that there are proposals to convert the crossing to a toucan crossing, but it seems to me that there is ample space to accommodate provision for cyclists in association with this. In the event of it nevertheless being necessary to relocate the kiosk for this purpose, the lack of cables for power or telephony and the proposed fixing of the kiosk to the existing surfacing rather than setting it into the ground would render this relatively straightforward.
40. The kiosk would be close to the kerb, but it would not pose an obstruction to traffic as stand-out for the crossing forces vehicles away from the kerb at this point, and the 'layby' thus created has double yellow lines and is within the zig-zag zone on the approach to the crossing.
41. I conclude that this kiosk would not significantly harm the safety and convenience of highway users. My general conclusion regarding the effects on character and appearance applies here.

Appeal L : Adjacent to The Tri Centre, Two Buildings, New Bridge Square, Swindon, SN1 1HN

42. This proposed kiosk would be located outside the main shopping area, on the opposite side of Fleming Way, in an area of mainly office development. The site is on a main pedestrian route between the shopping centre, via a subway from the Parade, and the bus and rail stations as well as the office and other development north of Fleming Way.
43. The kiosk would be at the edge of a small open area, adjacent to a wall containing an area of landscaping that rises towards Fleming Way. I saw that most pedestrians go diagonally across to Newbridge Square or straight ahead towards the bus station. The proposed kiosk would not impinge on these desire lines. A few turn to go up the ramp to the bus stops in Fleming Way (most use the shorter route via the steps), but the post box, recycling bins and lamp post already situated against the wall near the kiosk site already force the to take a slightly wider route so the kiosk would not affect them significantly.
44. While the phone kiosk would introduce a new visual element here, the proximity of the wall and the presence of the post box, recycling bins and lamp post close by would mitigate its impact.
45. I conclude that this kiosk would not significantly harm the safety and convenience of highway users. My general conclusion regarding the effects on character and appearance applies again here.

Appeal N : Outside Wellington House, Wellington Street (opposite Haydon Street), Swindon, SN1 1EB

46. Wellington Street is a trafficked (one way) street near the rail station to which it forms a key pedestrian route though flows were low at the off-peak time of my visit. The frontage development is a mix of commercial and residential; Wellington House is residential with the lowest level of accommodation

apparently being at about normal first floor level and a largely blank façade below this.

47. The footway here is some 5.5m wide, and the proposed kiosk would be close to the kerbside, leaving ample room for pedestrians to pass. It would obstruct the path for any visually impaired people following the kerb rather than the building edge but, while there are no other obstructions on this side of this road, there are many instances of lamp posts and bollards close to the road edge (for example on the opposite side of Wellington Street nearby) so such obstructions would not be unexpected.
48. There is no direct pedestrian access to Wellington House from the street, double yellow lines on the road here denote a prohibition of parking at any time, and the kiosk would be opposite a road junction. Therefore there should be no issue with access to parked vehicles. In the interests of safety it would be necessary for the kiosk to be no closer than 0.5m from the kerb. The submitted plans do not specify a distance in this instance, but it scales at less than this. However, the necessary separation could be secured through a planning condition. Subject to such a condition I conclude that the kiosk would not significantly harm the safety and convenience of highway users.
49. This side of the street is somewhat featureless, and while a payphone kiosk would introduce a significant new visual element I do not consider that it would amount to clutter. My general conclusion regarding the effects on character and appearance applies again here.

Conclusions

50. The Council's refusal of all 14 of the applications to which these appeals relate, in a variety of locations and situations, could be viewed as tantamount to a blanket ban on such new payphone kiosks in the area, contrary to para 44 of the NPPF. However, the authority has rightly avoided consideration of the need for the proposed kiosks, and its reasons for refusal relate only to the matters for which prior approval is required, namely siting and appearance.
51. In all but two of these cases I have found no material harm in respect of the main issues, which address those two matters. In the case of appeal F (outside 15 Regent Circus) there would be harm in respect of the second issue only. In appeal G (adjacent to 23 Canal Walk) I have found harm in respect of both main issues.
52. In those cases where there would be no material harm to the safety and convenience of users of the public highway (issue (i)), and in the light of my conclusion with regard to the accessibility of all of the proposed kiosks by wheelchair users, I conclude that the proposals would comply with LP policies ENV8 (access for all) and DS6 (design strategy) criterion (f) regarding suitable access. The proposed kiosk adjacent to 23 Canal Walk (appeal G) would not comply with these.
53. Similarly, none of the proposed payphones would materially prejudice the delivery of new and improved primary routes in central Swindon as set out in the CAAP, or the provision of safe and suitable routes for everyone in accordance with design principle 2 in the *Inclusive Design Access for All* SPD. However, the proposed kiosk adjacent to 23 Canal Walk (appeal G) would prejudice the delivery of the primary space at Wharf Green, contrary to policy

CAAP3. It would also conflict with design principle 3 of the SPD on inclusive spaces.

54. In the cases where there would be no material harm to the character and appearance of the area (issue (ii)) the proposed kiosks would accord with criterion (a) of LP policy DS6, which requires development to be well laid out and sympathetic to the local context, character and site coverage. The proposed kiosk outside 15 Regent Circus (appeal F) would not comply with this. Moreover, the harm to the setting of the listed Town Hall in that case would also be contrary to LP policy ENV2 (development affecting listed buildings).
55. In those appeals that are allowed the deemed planning permission for the proposed payphones under Part 24 of Schedule 2 to the GPDO, subject to prior approval of their siting and appearance, is also subject to conditions set out in the GPDO. In the case of appeal N (Outside Wellington House, Wellington Street) an additional condition would be necessary as indicated above.
56. For the reasons given above I conclude that appeals F (outside 15 Regent Circus) and G (adjacent to 23 Canal Walk) should be dismissed but that the remaining 12 appeals should succeed.

Alan Boyland

Inspector