

Case Name: *New World Payphones Ltd v Westminster City Council & Anor* [2019] EWCA Civ 2250 (18 December 2019)

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Commentary: The Court of Appeal dismissed an appeal by the developer (an electronic communications code operator) against the quashing by the High Court of a planning inspector's decision to grant approval for the replacement of two telephone boxes with a new kiosk incorporating a large back panel to display illuminated digital advertisements. The approval was quashed on the ground that the kiosk had a dual use as both a telephone kiosk and for the advertising panel and therefore did not sit within the scope of the relevant GPDO class (Part 16 Class A). The Court of Appeal upheld this judgment.

Since the date of the Inspector's decision, the GPDO and the Advertisement Regulations have been amended to remove the relevant permitted development right and the deemed advertising consent. However, the judgment emphasises the requirement for any development to fall entirely within the applicable class of the GPDO to benefit from the permitted development right. Mixed use development cannot generally fall within the scope of a GPDO class because, if it were to be able to do so, the GPDO could and would be used for permitting development for something outside its scope.

The Council's cross appeal, that the Inspector was wrong not to take into account the (lack of) need for telephone kiosks was also dismissed. Whilst "need" is a well-recognised planning requirement in other circumstances, it plays no part in the requirements for Part 16 Class A.

Case summary prepared by Susannah Herbert