

## A ruling that could end prior approval consents for phone kiosks – February 2019

**Westminster City Council says it will review recent phone kiosk prior approval consents after winning a landmark ruling on permitted development that experts say will help local authorities refuse such schemes in future.**

In recent years, a number of councils have complained about a sharp rise in prior approval applications for new telephone kiosks. The problem has also affected the Planning Inspectorate (PINS), which has said an increase in related appeals has stretched its resources and contributed to delays in other appeal decisions.

But [a High Court judgment](#) may have solved the problem, say commentators. Following a legal challenge by Westminster City Council, Mr Justice Ouseley quashed a planning inspector's consent for a new kiosk in the central London authority, ruling that it served a "dual purpose" of communications and advertising and so should not benefit from permitted development (PD) rights.

A spokesman for Westminster Council said it was now reviewing all the recent prior approval consents for phone boxes with advertising. "The council might be within its rights to insist that these all now have to apply for planning permission," he said. The spokesman put the number that could be re-examined at about 300.

Martin Tett, chairman of the Local Government Association's environment, economy, housing and transport board, said: "We believe councils should now be able to refuse to consider new phone boxes through the prior approval process in some cases, where it is clear they have a purpose other than for the operator's network. Instead, they would need to go through the full planning application process, enabling councils to reject bogus boxes and approve those that communities truly need."

Another council that has been a vocal critic of phone box PD rights is the London Borough of Camden. Danny Beales, its cabinet member for investing in communities, said the ruling was "an important decision which we hope will seek to discourage code operators from pursuing structures merely for advertising space". He said the council was reviewing any live prior approval applications for phone boxes.

But planning lawyer Trevor Ivory, UK head of planning at DLA Piper, warned revoking older approvals could "result in a significant bill for compensation in many cases". He said: "For those permitted less than six weeks ago, the prior approval could be judicially reviewed and quashed. For the rest, a council could look to use its powers of revocation, but compensation would likely be payable."

Ivory said PINS is now likely to see a dramatic reduction in the number of kiosk prior approval appeals. However, he said: "If such an appeal is made, the issue for the inspector becomes less about an exercise of planning judgment regarding siting and appearance and more a question of fact. The inspector will need to decide whether the proposal is designed for the sole purpose of telecommunications services; if not, the appeal must fail."

Barristers chambers Francis Taylor Building, which acted for Westminster Council, said the ruling could have "potentially far-reaching implications" for the interpretation of PD rights "in a range of other contexts". Mike Kiely, chair of local authority body the Planning Officers Society called the judgment "very significant". He said: "This ruling could also affect other forms of permitted development that have a dual purpose. This could include putting adverts on a building being converted to an office or putting a drinking water fountain on the side of a building."