



Appeal Decision

Site visit made on 2 July 2019

by P Wookey BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 July 2019

All Appeals

- The appeals are made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a development order.
 - The appeal is made by Maximus Networks Ltd against the decision of The Council of The Royal Borough of Kensington & Chelsea.
 - The development proposed in each case is described as call box.
-

Appeal A-Ref: APP/K5600/W/18/3212012

On highway outside of 166-168 Kensington Church Street, London W8 4BN

Grid Reference Easting:525371 and Northing:180331

- The application Ref PA/18/00519, dated 22 January 2018, was refused by notice dated 29 March 2018.
-

Appeal B-Ref: APP/K5600/W/18/3212017

On highway outside 178 Kensington Church Street, London W8 4DP

Grid Reference Easting:525365 and Northing:180370

- The application Ref PA/18/00498, dated 22 January 2018, was refused by notice dated 29 March 2018.
-

Appeal C-Ref: APP/K5600/W/18/3212015

Pavement outside 164-166 Kensington High Street, London W8 7RG

Grid Reference Easting:525326 and Northing:179454

- The application Ref PA/18/00466, dated 22 January 2018, was refused by notice dated 29 March 2018.
-

Appeal D-Ref: APP/K5600/W/18/3212019

Pavement outside 189 Kensington High Street, London W8 6SH

Grid Reference Easting:525339 and Northing:179441

- The application Ref PA/18/00465, dated 22 January 2018, was refused by notice dated 29 March 2018.
-

Appeal E-Ref: APP/K5600/W/18/3212080

On highway Earl's Court Road, adjacent 245-249 Kensington High Street, London W8 6SA

Grid Reference Easting:525159 and Northing:179298

- The application Ref PA/18/00511, dated 22 January 2018, was refused by notice dated 29 March 2018.
-

Appeal F-Ref: APP/K5600/W/18/3212056

On highway outside 279 Kensington High Street, London W8 6NA

Grid Reference Easting:525035 and Northing:179273

- The application Ref PA/18/00508, dated 22 January 2018, was refused by notice dated 29 March 2018.
-

Appeal G-Ref: APP/K5600/W/18/3211987

On highway outside 127 Kensington High Street, London W8 5SF

Grid Reference Easting: 525508 and Northing:179544

- The application Ref PA/18/00459, dated 22 January 2018, was refused by notice dated 26 March 2018.

Appeal H-Ref: APP/K5600/W/18/3212021

On highway outside 243 Kensington High Street, London W8 6SA

Grid Reference Easting:525159 and Northing:179331

- The application Ref PA/18/00518, dated 22 January 2018, was refused by notice dated 29 March 2018.

Appeal I-Ref: APP/K5600/W/18/3211992

On highway outside 225 Kensington High Street, London W8 6SA

Grid Reference Easting:525217 and Northing:179367

- The application Ref PA/18/00530, dated 22 January 2018, was refused by notice dated 26 March 2018.
-

Decision

1. The appeals are dismissed.

Procedural Matters

2. The site addresses have been taken from the application forms or from the Local Planning Authority's (LPA) decision notices, whichever most accurately describes the location of the appeal site. The post codes shown for Appeals C, E and I differ to that shown on the Council's decision notice which are incorrect.
3. Both parties have been given the opportunity to comment upon the ruling and its impact of the appeal cases, following the High Court ruling Westminster CC vs SSHCLG & New World Payphones Ltd [2019] EWHC 176 (Admin) as this was published after the parties submitted their evidence. My own assessment is that there is nothing contained within the evidence or shown in the structure of the call box proposed in the above appeals which would indicate that the call box would have a dual purpose. As a result, the call boxes proposed would fall within the ambit of those permitted under the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GDPO).
4. The LPA states that in relation to some of these cases that there are other telephone kiosks nearby and therefore there is no need for new ones. The provisions of the GDPO (as amended), under Article 3(1) and Schedule 2, Part 16, Class A.3(4) require the local planning authority to assess the proposed development solely on the basis of its siting and appearance, taking into account any representations received. My determination has been made on the same basis.
5. The LPA refers to development plan policies in its refusal reasons. Prior approval applications do not need to be determined in accordance with the development plan because section 38(6) of the Planning and Compulsory Purchase Act does not apply to them. However, if these policies relate to siting and appearance, I have had regard to them as material considerations. Those relevant are policies CR3; CR4; CR6; CL6; CL3; CL11 and CT1(p) of the Royal Borough of Kensington and Chelsea Consolidated Local Plan (2105)(LP), which

when read together seek to ensure that design meets high standards, pavements are kept free so that there is no hindrance to pedestrian movements; telecommunication equipment is discrete in its appearance and that development preserves or enhances the character and appearance of a conservation area and heritage assets.

6. The appellant refers to the National Planning Policy Framework (the Framework) which was revised in February 2019, after the Council determined the applications. Nevertheless, the policies set out in the Framework are capable of being a material consideration. As the policies in relation to telecommunications have not changed significantly, I have had regard to the revised version of the Framework in my decision and I am satisfied this has not prejudiced either party.
7. The design and specification of the call box would be identical in each of the cases, which the Council states would measure approximately 1.32 metres by approximately 1.11 metres, with an overall height of approximately 2.6 metres. Its construction would use clear toughened glass and a polyester powder-coated steel frame, using no distinguishing colours, lettering or illumination and there would be a solar panel on the roof. The call box would have three sides, two of which are narrow in width and include transparent panels. I note that no indication has been provided as to the precise orientation of the proposed call box and as such I have based my decision on the red square box indicated on the photographs supplied by the appellant in each case.

Main Issues

8. The main issues in all cases are the effect of the siting and appearance of the call box on:
 - the street scene and,
 - the safe and efficient operation of the highway.

Reasons

Location of the appeal sites

9. Appeals A, B, C and D are located in Conservation Areas and the statutory requirements of Section 72(1) of the Planning (Listed Building and Conservation Areas) Act 1990 require that special attention shall be paid to the desirability of preserving or enhancing the character and appearance of that area. The appeals have therefore been determined on that basis.
10. Appeals A and B are located in Kensington Church Street towards its junction with Kensington Mall and Notting Hill Gate. The Council refers to this area as a secondary shopping frontage and an area characterised by retail and commercial uses on the ground floor. Both appeals are in close proximity to the nearby Notting Hill Gate underground station and are located within the Kensington Palace Conservation Area (KPCA).
11. Appeals C-I are located along Kensington High Street or in close proximity to it and all are located to the west of the junction with Kensington Church Street.

Appeal C is in Kensington CA and Appeal D is in Edwards Square/Scarsdale and Abingdon CA.

Appeal A-On highway outside of 166-168 Kensington Church Street, London W8 4BN

Street scene

12. This part of Kensington Church Street can be seen from long views in both directions and is characterised by retail uses which have retained many of their original shop front features. The Council states that the appeal site is located within the KPCA.
13. In this section of the street there is a range of street furniture which includes lamp posts, traffic signs, bollards and cycle stands which form part of the streetscape and due to their sensitive design and scale have no significant visual impact on the KPCA. The proposed call box would add to the cumulative effect of the street furniture in this location and given its design and scale, which would appear incongruous in this location, would detract from the street scene and would be detrimental to the character and appearance of the KPCA as a whole. The benefit of the additional call box would not outweigh the less than substantial harm to the setting of the KPCA.

Highway safety

14. Whilst the appellant has not provided dimensions of the clear footway after installation of the proposed call box, it would result in a reduced width of the clear footway in a location where people wait to cross the road at the junction of Kensington Church Street and Kensington Mall. Therefore, the siting of the proposed call box in this location would have a detrimental effect on the free flow and safety of pedestrians.

Appeal B-On highway outside 178 Kensington Church Street, London W8 4DP

Street scene

15. The proposed call box location is close to the junction with Kensington Mall, in front of a row of retail and café uses which have placed tables and chair on the footway during opening hours. There are trees along the edge of the footway and a relatively uncluttered array of cycle stands, lamp posts, bus stop and pedestrian crossing signs in front of an attractive five storey red brick building on the corner of the two streets.
16. Many of the commercial uses and buildings in this part of the KPCA area have retained their original shop front features and this section of the street is prominent with long views from either direction. The addition of the proposed call box in this location would add clutter to the street furniture, potentially damaging an adjacent tree and as a result have a detrimental effect on the streetscape and the visual quality of the KPCA. Its contemporary design and use of materials would appear incongruous and totally out of keeping with its surroundings. Overall, the benefit of the additional call box would not outweigh the less than substantial harm to the setting of the KPCA.

Highway safety

17. Based on my site visit observations the location of the proposed call box would be sufficiently distant from the pedestrian crossing at the junction of Kensington Church Street and Kensington Mall and therefore it would not have any adverse effect on the safe movement of pedestrians and the safety of other users of the highway.

Appeal C- Pavement outside 164-166 Kensington High Street, London W8 7RG

Street scene

18. The location of the proposed call box is close to the junction of Kensington High Street and Argyle Road. It would be adjacent to an existing telephone kiosk and adjacent to a pedestrian crossing. The street furniture in this area consists of lamp posts and a sign indicating a bus stop. It is in a prominent location and is within long views from either direction. It would be within an area which the Council states is a primary shopping frontage within the Kensington High Street Major Centre and within the Kensington CA.
19. The addition of the proposed call box alongside the existing kiosk would add an unacceptable degree of clutter to the street scene and would have a significant impact on the long views of the location from either direction. It would fail to preserve or enhance the character and appearance of the Kensington CA and the benefit of the additional call box would not outweigh the less than substantial harm to the setting of the Kensington CA as a whole.

Highway safety

20. Based on my site visit observations the proposed call box in this location would reduce the width of the footway and impede the loading and unloading of delivery vehicles serving the adjacent commercial uses. This would have an adverse effect of the safety of other users of the highway and on the free movement of pedestrians in a location which is close to the pedestrian crossings with Kensington High Street and Argyle Road. Therefore, the proposed call box would be an adverse impact on pedestrian and highway safety.

Appeal D - Pavement outside 189 Kensington High Street, London W8 6SH

Street scene

21. The location of the proposed call box is on the footway in front of Waterstone's store, close to the junction with Allen Street. The Council states the footway is located in an area which is a primary shopping frontage within the Kensington High Street Major Centre. There are retail uses at ground floor level of the attractive three storey red brick building. Generally, the street is open and spacious in this location.
22. This area of the footway has very little street furniture other than the necessary lamp post. There is a central reservation in the street which has tree planting and cycle stands. The addition of the proposed call box, which would appear incongruous in this location, due to its design and size, would add an unacceptable degree of clutter to the street and as a result would detract from

the long views of the location from either direction. Further it would have a negative visual effect on the surrounding Edwardes Square/Scarsdale and Abingdon CA and the benefit of the additional call box would not outweigh the less than substantial harm to the setting of the CA as a whole.

Highway safety

23. Based on my site visit observations the proposed call box would obstruct the unloading and loading of service vehicles for the adjacent commercial uses and would hinder the flow of pedestrians who congregate nearby in order to cross Kensington High Street at its junction with the nearby Allen Street. I therefore consider that the proposed call box would have an adverse effect on the free flow movement of pedestrians and highway safety.

Appeal E - On highway Earl's Court Road, adjacent 245-249 Kensington High Street, London W8 6SA

Street scene

24. The location of the proposed call box is close to the junction of Earl's Court Road with Kensington High Street. It would be set back from the kerbside close to the edge of the building adjacent to existing cycle stands and a litter bin. Further along the road is a bus shelter. In this location the addition of the proposed call box would appear as a prominent and incongruous addition to the street scene, given that the location is relatively free from street furniture and its design would fail to relate well to the less bulky proportions of the existing street furniture in close proximity. It would therefore have a detrimental impact on the character and appearance of the surrounding area.

Highway safety

25. The proposed call box would be set well back from the kerb edge and therefore would have no significant effect on the width of the pavement and on pedestrian flows and would not harm highway safety.

Appeal F-On highway outside 279 Kensington High Street, London W8 6NA

Street scene

26. The location of the proposed call box would be close to the front of retail and restaurant premises on the Kensington High Street near to its junction with Edwardes Square. This section of footway is relatively free of street furniture, other than the necessary lamp post and street signage close to the junction. The introduction of an incongruous call box would add clutter to the area and as a result would have a detrimental visual effect on its surroundings.
27. In close proximity are the Listed Buildings of Earls Terrace and in direct view of the proposed call box, Gate Lodge. The design and scale of the proposed call box would have a detrimental effect on the setting of Gate Lodge and the benefit of the additional call box would not outweigh the less than substantial harm to the setting of the neighbouring heritage assets.

Highway safety

28. Adjacent restaurant uses have placed tables and chairs on the footway and based on my site visit observations, the location of the proposed call box would

partially obscure visibility of traffic on Kensington High from the stop line on Edwardes Square resulting in a significant adverse effect on the safe operations of the highway

Appeal G-On highway outside 127 Kensington High Street, London W8 5SF

Street scene

29. The location of the proposed call box would be close to Kensington High Street's junction with Wrights Lane and a short distance from Kensington High Street underground station. The Council states that it is in a primary shopping frontage within the Kensington High Street Major Centre.
30. The pavement in this location is free of street furniture and is prominent from long views in both directions, except where traffic lights at the junction with Wrights Lane interfere. The addition of the proposed call box in this location would be incongruous and would add clutter to the existing street furniture. Due to the adverse visual effect on the location, due to its design and disproportionate scale, the call box would have a significant detrimental impact on the character and appearance of its surroundings.

Highway safety

31. Based on my site visit observations, the area of footway adjacent to the proposed call box would be significantly affected due to the heavy pedestrian flows experienced in the area, given its proximity to the nearby underground station. The footway width changes due to the building lines as it gets closer to the underground station and the addition of the proposed call box would hinder the efficient movement of the heavy flows of pedestrians. Further, the proposed call box would have a negative impact on visibility for vehicles leaving Wrights Lane, and there would be an obstruction on the footway for pedestrians congregating before crossing the road at this point. Therefore, the proposed call box in this location would in my opinion have a detrimental effect on the safety and free flow of carriageway users.

Appeal H-On highway outside 243 Kensington High Street, London W8 6SA

Street scene

32. The location is on the footway near the entrance to the Waitrose supermarket. The existing street furniture consists of traffic lights, a TfL plinth, a tree and traffic lights. The Council states that this is a secondary shopping frontage within the Kensington High Street Major Centre.
33. The proposed call box, due to its design and scale would result in the addition of clutter into the street scene, as all other items of street furniture tend to be much less bulky and of a slim design. Given the location's prominent position, visible from long views in either direction, the proposed call box would appear incongruous and as a result would have a significant detrimental effect on the character and appearance of its surroundings.

Highway safety

34. In the location proposed, the footway would be sufficiently wide enough to allow efficient flow of pedestrian movement, after the installation of the

proposed call box and therefore would have no adverse effect on the safety or efficient operations of the highway.

Appeal I-On highway outside 225 Kensington High Street, London W8 6SA

Street scene

35. The proposed call box would be close to the junction of Kensington High Street and Abingdon Road immediately adjacent to an existing telephone kiosk. The addition of the proposed call box would add to the clutter of the street furniture in the vicinity. Given its design, which would be markedly different from the adjacent kiosk, it would be at odds with its surroundings and would therefore appear incongruous from long views of the prominent location in either direction. As a result, the proposed call box would have a detrimental impact on the character and appearance of the surrounding area.

Highway safety

36. Following the installation of the proposed call box the width of the footway would be reduced and would have an adverse effect on the nearby pedestrian crossing point with Abingdon Road, due to its close proximity to the area where pedestrians wait to cross. As a result, its installation would have an adverse effect on the safe and efficient operation of pedestrian flows in this area.

Conclusions

37. On the first main issue I conclude that the siting and appearance of all of the appeals would have a detrimental effect on the character and appearance of the surrounding area and for those within a CA or those which would have an adverse effect on the setting of a LB, the benefits of the proposed call box would not outweigh the less than substantial harmful effect that would result.
38. With regard the second main issue, for the reasons set out above, I have concluded that, with the exception of Appeals B, E and H the installation of the proposed call box would have a detrimental effect on the safe and/or efficient operation of the highway.
39. For the reasons set out above and having had regard to all matters raised, I conclude the appeals should be dismissed.

Paul Wookey

INSPECTOR