



Appeal Decision

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29th July 2019

Appeal Ref: APP/M4510/W/18/3193095

Public highway Market Street (east) corner Pilgrim Street, Newcastle-upon-Tyne, NE1 6XA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 16 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Maximus Networks Ltd against the decision of Newcastle-upon-Tyne City Council.
 - The application Ref 2017/0862/01/NOT, dated 7 June 2017, was refused by notice dated 26 July 2017.
 - The development proposed is installation of a telephone kiosk.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. I have taken the description of the proposed development in the banner heading above from the appellant's appeal form and amended it, so as to remove superfluous wording in the interests of clarity. I have also taken the appellant's name from the appeal form since none was given on the original application form.
3. I have not undertaken a site visit, but instead made a desk-based assessment of the proposal, to determine whether or not the proposal is solely for the purpose of the operator's electronic communications network.

Main Issue

4. Following the Court's judgment in *Westminster CC v SSHCLG & New World Payphones Ltd [2019] EWHC 176 (Admin)* (the Judgement), the main issue is whether or not the proposal is solely for the purpose of the operator's electronic communications network.

Reasons

5. The appellant has provided additional information following the Judgement, including a Counsel opinion on its relevance to the appellant's proposal. The opinion states that 'in the absence of advertising forming part of the application, those glazed parts of the call boxes cannot lead to any conclusion of there being a dual purpose for advertising', and concludes that 'the New World case is based on materially different facts from the Maximus cases, such

that it is of no application to the appeals currently under consideration by the Planning Inspectorate’.

6. However, it is stated in paragraph 2.12 of the appellant’s statement that ‘Maximus Networks Limited, could best be described as a ‘Smart City’ company, specialising in telecommunications, connectivity and outdoor advertising, the latter of which will, as intended by Central Government, subsidise in part the Appellants planned roll-out in a similar manner to the outdoor media company partnerships established by BT’. Paragraph 3.7 of the appellant’s statement goes on to say that ‘The financial incentive provided by the inclusion of advertising revenue on telephone kiosks, provides capital for the roll out of the network initially and funds the maintenance and repair of the telephone kiosk in the longer term and can ensure that a network is provided in locations where call volumes might be low’.
7. Furthermore, the appellant’s submissions include photographs of an existing ‘Genie 1’ kiosk at 50 - 60 Blackfriars Road, London, which is stated to be of a similar appearance to the ‘Max 1’ kiosk proposed, and which shows an advertisement displayed on or behind the toughened glass panel door.
8. The Westminster judgement confirmed ‘that the whole development for which prior approval is sought must fall within the class relied on, and no part of it can fall outside it’. The judgement went on to state that a development falls outside the scope of Part 16, Class A if it is not ‘for the purpose’ of the operator’s network. Therefore, if the development is partly for some other purpose beyond that of the operator’s network, it cannot be development ‘for the purpose’ of the operator’s network precisely because it is for something else as well.
9. It is evident from the submissions that the rear elevation of the kiosk would incorporate an area designed for the display of advertisements and that the display of such advertisements is intended in order to fund the rollout and maintenance of the network. Accordingly, the appeal proposal is not solely for the purpose of the operator’s electronic communications network, and as such falls outside Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Conclusion

10. For the reasons given above, and having regard to all other matters raised, the appeal is dismissed.

Felicity Thompson

INSPECTOR