
Appeal Decisions

Site visit made on 18 July 2019

by A Spencer-Peet BSc(Hons) PGDip.LP Solicitor (Non Practicing)

an Inspector appointed by the Secretary of State

Decision date: 02 August 2019

All Appeals

- 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, Schedule 2, Part 16 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeals are made by Maximus Networks Ltd against the decision of the Council of the London Borough of Wandsworth.
 - The development proposed in each case is described as prior approval for siting and appearance: installation of public call box.
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Appeal A - Ref: APP/H5960/W/18/3210669

Adjacent to 209 Balham High Road, London SW17 7BQ

- The application Ref 2018/0319, dated 18 January 2018, was refused by notice dated 13 March 2018.
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Appeal B - Ref: APP/H5960/W/18/3210796

Outside 256 Balham High Road, London SW17 7AW

- The application Ref 2018/0328, dated 18 January 2018, was refused by notice dated 15 March 2018.
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Appeal C - Ref: APP/H5960/W/18/3210801

271 Balham High Road, London SW17 7BD

- The application Ref 2018/0331, dated 18 January 2018, was refused by notice dated 15 March 2018.
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Appeal D - Ref: APP/H5960/W/18/3210817

296-300 Balham High Road, London SW17 7AA

- The application Ref 2018/0317, dated 18 January 2018, was refused by notice dated 16 March 2018.
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Appeal E - Ref: APP/H5960/W/18/3210692

Adjacent to 522 Garratt Lane, London SW17 0NZ

- The application Ref 2018/0321, dated 18 January 2018, was refused by notice dated 14 March 2018.
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Appeal F - Ref: APP/H5960/W/18/3210690
44 Upper Tooting Road, London SW17 7PD

- The application Ref 2018/0318, dated 18 January 2018, was refused by notice dated 14 March 2018.
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Appeal G - Ref: APP/H5960/W/18/3210696
45 Upper Tooting Road, London SW17 7TR

- The application Ref 2018/0327, dated 18 January 2018, was refused by notice dated 14 March 2018.
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Appeal H - Ref: APP/H5960/W/18/3210704
49 Upper Tooting Road, London SW17 7TL

- The application Ref 2018/0316, dated 18 January 2018, was refused by notice dated 15 March 2018.
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Appeal I - Ref: APP/H5960/W/18/3210698
52 Upper Tooting Road, London SW17 7PD

- The application Ref 2018/0329, dated 18 January 2018, was refused by notice dated 14 March 2018.
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Appeal J - Ref: APP/H5960/W/18/3210798
213 Upper Tooting Road, London SW17 7TG

- The application Ref 2018/0330, dated 18 January 2018, was refused by notice dated 15 March 2018.
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Decisions

1. The appeals are dismissed.

Preliminary Matters

2. As set out above in the headings, there are ten separate appeals for the installation of electronic communications apparatus comprising a telephone kiosk pursuant to Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) Order 2015 (the GPDO). Whilst each appeal relates to a different site, the proposed kiosks on the ten sites are identical. I have considered each proposal on its individual merits but, as they raise similar issues, I have dealt with the cases in a single decision letter.
3. The provisions of the GDPO 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.
4. The Council has referred to several development plan policies within its reasons for refusal. However, applications for prior approval are determined in relation to the criteria set out within the development order and as such do not require regard to be had to the development plan. Nonetheless and although not determinative I have had regard to those development plan policies cited in the

reasons for refusal insofar as they are relevant to the siting and appearance of the kiosks and the conservation of heritage assets.

Main Issues

5. Having regard to the above, the main issues in these appeals are:

- In all cases, whether or not the proposed kiosks are for the purpose of the operator's electronic communications network;
- In all cases, the effect of the siting and appearance of each proposed telephone kiosk on the safe and efficient operation of the highway; and
- In all cases, the effect of the siting and appearance of each proposed telephone kiosk on the character and appearance of the area, and additionally in the case of appeal A whether the proposal would preserve the setting of the nearby listed buildings and further in the case of appeal C whether the proposal would preserve or enhance the character or appearance of the Heaver Estate Conservation Area (the Conservation Area).

Reasons

Proposed Kiosks and Purpose

6. The telephone kiosks for all the appeals are identical, and would measure approximately 1.3m wide, 1.1m deep and 2.6m high. The kiosks would be three sided structures with frames constructed in PPC steel. The overhanging roof would incorporate photovoltaic modules. It is noted that it is the appellant's intention to provide kiosks that have uniformity of design throughout the network.
7. Schedule 2, Part 16, Class A of the GPDO refers to development '...by or on behalf of an electronic communications code operator for the purpose of the operator's electronic communications network...'. During the course of these appeals there has been a judgment¹ (the Westminster Judgement) concerning prior approval for telephone kiosk development. The Westminster Judgement confirmed that 'the judgement as to whether the kiosk, as applied for, comes within the scope of Class A has to be made before siting and appearance are considered'. The main parties in this matter have been given the opportunity to provide comments on the relevance of this judgment in respect of the proposals.
8. It is acknowledged within the appellant's submissions that whilst it would be possible to display a non-illuminated advert on the surface and rear of the proposed kiosks, it is only the construction of the kiosks that is being considered and that the appellant is not seeking to obtain advertisement consent for any of the kiosks relevant to these appeals. In my view, having regard for the evidence before me, by reason of its design, features and materials used in their construction, the proposed kiosks do not constitute a dual purpose. Consequently, and in respect of all these appeals, the proposals are solely for the purpose of the operator's electronic communications network and, accordingly, the proposals fall within the scope of Schedule 2, Part 16, Class A of the GPDO.

¹ Westminster CC v SSHCLG & New World Payphones Ltd [2019] EWHC 176 (Admin)

Appeal A – 209 Balham High Road

9. The appeal site is located on a section of Balham High Road where the pavement is wide and relatively uncluttered by street furniture. At the time of my site visit I was aware of the significant level of footfall of pedestrians in the area who were able to pass along this section of pavement with minimal interference from obstructions.
10. Given the proposed location of the kiosk in relation to the highway, and the width of the footway, I am satisfied that the proposed kiosk would not obstruct pedestrian movements. Furthermore, and for the same reasons, I am also satisfied that the proposal would not be a distraction to drivers of vehicles using the highway and would not hinder inter-visibility between vehicles and pedestrians to the detriment of highway safety.
11. However, the proposed kiosk would not visually, or physically, relate to any other items of street furniture and would stand alone as an isolated structure within the wide section of pavement, with the functional, tall and bulky nature of the proposed kiosk being in stark contrast to the architectural quality of the nearby listed buildings. The proposal would introduce an incongruous and discordant feature which would be visually intrusive and which would harm the openness of the street scene in a prominent location adjacent to the carriageway and near to a pedestrian crossing and junction between Balham High Road and Marius Road.
12. Whilst the proposed kiosk would not interrupt views of the listed buildings at 207 and 211 Balham High Road when approached on the carriageway and would have only a very slight effect on views from the footway, the tall utilitarian form of the proposed kiosk would create a discordant element of clutter within the street scene and would detract from the open setting of the listed buildings, and in particular 211 Balham High Road, when viewed from the junction with Marius Road opposite the appeal site. I therefore find that the proposal would cause harm to the setting of the nearby listed buildings.
13. For these reasons, whilst the proposed kiosk would not hinder the safe passage of pedestrians, the proposal would harm the character and appearance of the area and, consequently, this harm justifies the refusal of prior approval and the dismissal of appeal A.

Appeal B – 256 Balham High Road

14. The proposed kiosk would be located close to the junction with Balham High Road and Marius Road, adjacent to an existing digital information sign and bicycle stands and would be sited in very close proximity to a bicycle lane which forms part of the adjacent carriageway. North of the appeal site, the pavement narrows significantly close to a traffic light controlled pedestrian crossing, with this narrow section of the pavement being further constrained by the presence of a post box, a lamppost and an existing telephone kiosk.
15. The siting of a tall and bulky structure with a sizeable footprint close to the kerb edge would be a jarring feature in a prominent location at a junction and would be visually intrusive. Furthermore, it would create a considerable physical obstruction which would hinder pedestrian movement and the use of the adjacent bicycle stands by adding to the considerable amount of street clutter in this location.

16. Whilst I acknowledge the submissions made by the appellant regarding footfall, there appeared to be a significant level of footfall of pedestrians and a number of cyclists at the time of my site visit, and, in my view, the introduction of any additional obstruction at the site would potentially impede the safe movement of people in this area.
17. For these reasons the proposed kiosk would harm the character and appearance of the area and would hinder the safe passage of pedestrians and cycle users and, consequently, this harm justifies the refusal of prior approval and the dismissal of appeal B.

Appeal C – 271 Balham High Road

18. The appeal site is located within the Conservation Area 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.
19. This part of Balham High Road can be seen from long views in both directions due to its location on the outside of a gentle curve in the road. It is characterised by retail shops and restaurants which have retained many of their original shop front features, as well as being characterised by the tall buildings which are attached to the rear of the line of shops.
20. In this section of the street there is a considerable amount and range of street furniture which includes lampposts, traffic signs, bicycle stands, telephone kiosks and advertising boards which form part of the streetscape. Given the proposed location of the kiosk in relation to the existing street furniture, I am satisfied that the proposed kiosk would not obstruct or hinder pedestrian movements in this section of Balham High Road.
21. However, the proposed kiosk would add to the cumulative effect of the street furniture in this location and given its tall and bulky appearance, would appear incongruous in this location detracting from the street scene and would be detrimental to the character and appearance of this part of the Conservation Area. The benefit of the additional energy efficient telephone kiosk would not outweigh the less than substantial harm to the setting of the Conservation Area.

Appeal D – 296-300 Balham High Road

22. The proposed kiosk would be located adjacent to the kerb edge and on a wide section of pavement where nearby commercial premises are set back significantly from the road. Whilst the pavement is wide and uncluttered on this section of Balham High Road, the pavement significantly narrows close to the appeal site and in both directions.
23. Given the proposed location of the kiosk in relation to the highway, and the width of the pavement which provides sufficient space for pedestrians to move in both directions, I am satisfied that the appeal proposal would not hinder or obstruct pedestrian movements.
24. However, in my view, the siting of a kiosk in this position would create a visual obstruction which would restrict the openness of this section of pavement. The structure would stand alone as an isolated feature at the edge of the pavement

and it would, by reason of its tall and bulky nature, form a visually intrusive feature in the streetscape which would be harmful to the character and appearance of the area. Notwithstanding the above in respect of the convenient and safe passage of pedestrians, the harm to the character and appearance of the area justifies the refusal of prior approval and the dismissal of appeal D.

Appeal E – 522 Garratt Lane

25. The appeal site is located on a wide section of pavement and close to the junction between Garratt Lane and Littleton Street. The proposed kiosk would be sited away from the kerb edge and abutting a high brick wall. Nearby the pavement is relatively uncluttered and the proposal would fill a gap between the crossing for the junction with Littleton Street and a lamppost which is positioned at the kerb edge close to a pedestrian crossing.
26. By reason of its position abutting a high brick wall, and due to the presence of some street furniture such as the existing telephone kiosk located further south along Garratt Lane positioned on a similar alignment away from the kerb edge, the proposed kiosk would not necessarily look out of place within the street scene. Consequently, in my view, the proposal would not be harmful to the character and appearance of the area.
27. Nonetheless, the location of the proposed kiosk would be close to the junction with Littleton Street and would reduce the width of the pavement close to a sharp corner. This would have an adverse effect on the safe and efficient passage of pedestrians due to its close proximity to areas where pedestrians want to use the nearby crossing point on Garratt Lane and for those pedestrians wanting to cross the junction with Littleton Street. Consequently, the proposal would be detrimental to the safe and efficient operation of the highway.

Appeal F – 44 Upper Tooting Road

28. The proposal would be located close to commercial premises and retail units on Upper Tooting Road where the width of the pavement is narrow. As above, whilst I acknowledge the appellant's submissions with regards to levels of footfall, at the time of site visit there was a considerable level of pedestrian footfall due to customers entering and exiting the retail and restaurant premises which are located close to the appeal site.
29. The proposed kiosk would be positioned close to a bus stop, litter bins, an existing telephone kiosk and lamppost. In addition to the existing street furniture and clutter, the kiosk would reduce the available space on the pavement for pedestrians to use in this busy area. Whilst the kiosk would be adjacent to existing street clutter, the installation of a tall, bulky and solid structure with a sizeable footprint in a section of pavement with limited width, would be likely to impair the free flow of pedestrian movement in this busy area close to the junction with Mandrake Road.
30. Furthermore, and by reason of its location, the proposed kiosk would introduce an additional structure which would be visually and physically intrusive in this prominent and highly visible location close to a junction. Therefore, I conclude that it would fail to comply with the relevant requirements of the GPDO.

Appeal G – 45 Upper Tooting Road

31. The kiosk would be positioned close to the kerb edge and adjacent to a parade of shop fronts and restaurants. Close to the site is located a waste bin, a lamppost with parking restriction signage and what appeared to be an electronic junction box. Further as noted above, whilst I acknowledge the details provided by the appellant regarding levels of pedestrian footfall, it was apparent from my visit that the footfall of pedestrians was constant with customers entering and exiting from a variety of commercial premises and shops.
32. Notwithstanding the above, by reason of its tall bulky form, substantial footprint and utilitarian appearance, the proposed kiosk would appear as a jarring feature in the street scene and its siting close to the kerb edge would create an additional physical obstruction which would hinder pedestrian movement by adding to the considerable amount of street clutter in this location. Consequently, the identified harm justifies the refusal of prior approval and the dismissal of appeal G.

Appeal H – 49 Upper Tooting Road

33. The appeal site is located on a wide section of pavement in front of a large impressive building with substantial sized windows, which appeared to have been used as a telephone exchange. Given the proposed position of the kiosk in relation to the highway, and the width of the pavement at this location, I am satisfied that the proposed kiosk would not hinder or obstruct pedestrian movements.
34. However, the proposed kiosk would not visually, or physically, relate to any other items of street furniture and would stand alone as an isolated structure within the wide section of pavement, with the tall and bulky nature of the proposed kiosk reducing the more open nature of this section of pavement which also provides public seating, to the detriment to the character and appearance of the area. The proposal would introduce an incongruous and discordant feature which would be visually intrusive in a prominent location. Consequently, this harm would justify refusal of prior approval and the dismissal of this appeal.

Appeal I – 52 Upper Tooting Road

35. The site is located close to the kerb edge to the front of retail premises and on a section of pavement which is uncluttered by street furniture. This open section of pavement with few obstacles save for a waste bin, provides clear sightlines for pedestrians and vehicles approaching the junction with Mandrake Road.
36. A kiosk in this position would create a visual obstruction which would restrict the more open nature of this section of the pavement. As the kiosk would be an isolated feature at the edge of the pavement, it would, by virtue of its height and scale, form a visually intrusive feature in the streetscape which would have a negative effect upon the character and appearance of the area.
37. Furthermore, the presence of the proposed kiosk in this position would create an obstruction for pedestrians at the kerbside. This, in addition to creating an obstruction to the clear sightlines described above, would have a detrimental effect upon the safe and efficient operation of the highway. Consequently, this harm justifies refusal of prior approval and the dismissal of appeal I.

Appeal J – 213 Upper Tooting Road

38. The proposed kiosk would be sited close to the kerb edge and adjacent to a lamppost and a post upon which a CCTV camera is fixed. The site is close to the junction with Kellino Street and would be positioned to the front of retail premises.
39. A kiosk in this position would add to the existing clutter in the area and would create a pinch-point between the street furniture and shop frontages. This would hinder the free movement of pedestrians at a point in the pavement close to where it crosses the junction with Kellino Street. As noted above in relation to those appeals, whilst I acknowledge the details and submission from the appellant regarding levels of footfall, I observed on my visit that the footfall of pedestrians was constant with customers, employees and deliveries entering and exiting from the variety of shops which front onto this section of Upper Tooting Road.
40. Furthermore, and by reason of its location, the proposed kiosk would introduce an additional structure which would be visually intrusive in this prominent and highly visible location close to a junction. Therefore, I conclude that this harm would justify refusal of prior approval of the proposed kiosk at this location and, consequently, would justify the dismissal of appeal J.

Other Matters

41. My attention has been drawn to a number of other appeal decisions on other prior approval applications. I do not have the full details of these cases and so cannot determine whether the circumstances are analogous to the present cases. Notwithstanding this, I note that several of the appeals cited relate to areas within different local planning authorities where a different character is likely to prevail. Accordingly, I have determined the cases on their individual merits and based upon the evidence before me.
42. The appellant refers to guidance provided by Transport for London - the Pedestrian Comfort Guidance for London - regarding the suggested minimum unobstructed width for pedestrians. Whilst, in a number of the appeals, the proposals are broadly consistent with this guidance, this factor does not outweigh the harm I have identified in relation to the individual appeals as described above.

Conclusion

43. With regard to the first main issue, for the reasons given above, and in all cases, I conclude that the proposed kiosks are not for a dual purpose and consequently all of the proposed kiosks fall within the scope of Schedule 2, Part 16, Class A of the GPDO.
44. With regard to the second main issue, for the reasons given above, in appeals B, E, F, G, I and J, the siting and appearance of each proposed kiosk would have a harmful effect on the safe and efficient operation of the highway.
45. With regard to the third main issue, for the reasons set out above, in appeals A, B, C, D, F, G, H, I and J, I conclude that the siting and appearance of each kiosk would have a harmful effect upon the character and appearance of the area.

46. For the reasons set out above, and having had regard to other matters raised, I conclude that the appeals should be dismissed.

A Spencer-Peet

INSPECTOR