
Appeal Decisions

Site visit made on 16 July 2019

by Rajeevan Satheesan BSc PGCert MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9th August 2019

CASE DETAILS

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 Article 3(1) and Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeals are made by Maximus Networks Ltd against the decisions of City of Westminster Council.
 - The development proposed in each case is a 'Call Box'.
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Appeal A - Ref: APP/X5990/W/18/3211413

254 Edgware Road, London W2 1DS

Grid Reference Easting 527150, Grid Reference Northing 181617

- The application Ref 18/00931/TELCOM, dated 31 January 2018, was refused by notice dated 20 March 2018.
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Appeal B – Ref: APP/X5990/W/18/3211415

268 Edgware Road, London W2 1DU

Grid Reference Easting 527101 Grid Reference Northing 181668

- The application Ref 18/00858/TELCOM, dated 01 February 2018, was refused by notice dated 20 March 2018.
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Appeal C – Ref: APP/X5990/W/18/3211420

197 Edgware Road, London W2 1EY

Grid Reference Easting 527173 Grid Reference Northing 181571

- The application Ref 18/00865/TELCOM, dated 31 January 2018, was refused by notice dated 20 March 2018.
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Appeal D – Ref: APP/X5990/W/18/3211427

209 Edgware Road, London W2 1ES

Grid Reference Easting 527146, Grid Reference Northing 181598

- The application Ref 18/00932/TELCOM, dated 31 January 2018, was refused by notice dated 20 March 2018.
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Appeal E – Ref: APP/X5990/W/18/3211597

Praed Street junction Edgware Road, Praed Street London W2 1JX

Grid Reference Easting 527103, Grid Reference Northing 181610

- The application Ref 18/00887/TELCOM, dated 31 January 2018, was refused by notice dated 20 March 2018.
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Appeal F – Ref: APP/X5990/W/18/3211600

186 Edgware Road, London W2 2DS

Grid Reference Easting 527342, Grid Reference Northing 181414

- The application Ref 18/00934/TELCOM, dated 31 January 2018, was refused by notice dated 20 March 2018.

Appeal G – Ref: APP/X5990/W/18/3211604

168 Edgware Road, London W2 2DS

Grid Reference Easting 527294, Grid Reference Northing 181465

- The application Ref 18/00859/TELCOM, dated 31 January 2018, was refused by notice dated 20 March 2018.

Appeal H – Ref: APP/X5990/W/18/3211606

121 Edgware Road, London W2 2HX

Grid Reference Easting 527391, Grid Reference Northing 181341

- The application Ref 18/00935/TELCOM, dated 31 January 2018, was refused by notice dated 20 March 2018.

Appeal I – Ref: APP/X5990/W/18/3211607

60 Edgware Road, London W2 2EH

Grid Reference Easting 527610, Grid Reference Northing 181137

- The application Ref 18/00936/TELCOM, dated 31 January 2018, was refused by notice dated 20 March 2018.

Appeal J – Ref: APP/X5990/W/18/3211616

15-17 Edgware Road, London W2 2JE

Grid Reference Easting 527632, Grid Reference Northing 181094

- The application Ref 18/00937/TELCOM, dated 31 January 2018, was refused by notice dated 20 March 2018.

Appeal K – Ref: APP/X5990/W/18/3211619

29-31 Edgware Road, London W2 2JE

Grid Reference Easting 527603, Grid Reference Northing 181123

- The application Ref 18/00938/TELCOM, dated 31 January 2018, was refused by notice dated 20 March 2018.

Appeal L – Ref: APP/X5990/W/18/3211625

4 Praed Street, London W2 1JE

Grid Reference Easting 527004, Grid Reference Northing 181513

- The application Ref 18/00888/TELCOM, dated 31 January 2018, was refused by notice dated 20 March 2018.

Appeal M – Ref: APP/X5990/W/18/ 3211754

Harrow Road corner Edgware Road, Edgware Road, London W2 1DU

Grid Reference Easting 527103, Grid Reference Northing 181686

- The application Ref 18/00886/TELCOM, dated 31 January 2018, was refused by notice dated 20 March 2018.

Decisions

1. The appeals are dismissed.

Procedural Matters and Background

2. The appeals relate to proposals by Maximus Networks Ltd for the installation of electronic communications apparatus pursuant to Class 16 of the Town and Country Planning (General Permitted Development) Order 2015 (GPDO) at 13 sites in City of Westminster Council. The proposed apparatus, described by the appellant in section 5 of each application form as comprising a 'Call Box', is identical in each case. Therefore, in the interests of concision, I have dealt with all the appeals in the same decision.
3. For the purposes of these appeals, the proposals fall to be considered against the provisions of Schedule 2, Part 16, Class A of the GPDO, which refers to development '...by or on behalf of an electronic communications code operator for the purpose of the operator's electronic communications network...'
4. The recent *Westminster* judgement¹ concerned prior approval appeals involving telephone kiosks under Schedule 2, Part 16, Class A of the GPDO, and considered the matter of development for 'the purpose' of an operator's network. The Court found "... that means 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. Otherwise, the general permission in the GPDO, and the restricted range of considerations would be applied to development which falls outside the scope of the permission." (paragraph 37).
5. The proposals before me were refused by the Council on grounds relating to siting, appearance, and that they are not for the purpose of the electronic operator's communication network and therefore they would not fall within Part 16 of the GPDO. However, *Westminster* found 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..." (paragraph 46).
6. Whilst the Council determined the applications before the *Westminster* judgment was handed down, the appellant and Council have been offered the opportunity to comment on the bearing of the judgment upon the appeals. I have taken these comments into account in making my decision.

Main Issue

7. Following the Court's judgment in *Westminster*, the main issue is whether the proposals are solely for the purpose of the operator's electronic communications network.

Reasons

8. The *Westminster* judgment found that a development "falls outside the scope of Class A Part 16 if it is not "for the purpose" of the operator's network. That means, at least in the specific context of a GPDO permission, that a proposed development falls outside it, if part of it falls outside it. It cannot be said that the whole falls within the GPDO... A development which is partly "for the purpose" of the operator's network, and partly for some other purpose, is not a development "for the purpose" of the operator's network, precisely because it

¹ Westminster CC v SSHCLG & New World Payphones Ltd [2019] EWHC 176 (Admin) (5 February 2019)

is for something else as well. The single dual purpose development must be judged as a whole.” (paragraph 39).

9. In all cases, the proposed apparatus incorporates a sizeable freestanding rectangular unit which would be some 2600mm high and 1325mm wide with two clear polycarbonate sides some 550mm deep. The ‘front’ elevation contains a centrally located telephone handset and key pad, with a projecting canopy above. The ‘rear’ elevation of the unit features a large laminated 8mm toughened glass panel set within PPC steel frame.
10. The appendix within the appellant’s Full Statement of Case illustrates Photographs of appellant’s kiosk at 50-60 Blackfriars Road, London. This shows a design of a kiosk which corresponds with the proposed drawings. The photograph also shows an advertisement panel contained within in the rear elevation, which matches location where the ‘8mm toughened glass’ screen is shown on the proposed drawings.
11. Moreover, the appellant states² that Maximus Networks Limited, specialise in telecommunications, connectivity and outdoor advertising, and that the revenue from commercial advertising cross subsidises both the installation of the network and its ongoing maintenance and repair and is an integral part of the network.
12. I note that, in commenting on the bearing of the *Westminster* judgment on the appeals, the appellant asserts that ‘the submissions relate to communication apparatus only and are not to be used for any other purpose’. This includes a Counsel Opinion which contends that none of the ‘Maximus’ appeal cases include any advertising features. However, it is clear from all the evidence before me that the rear face of the kiosks would incorporate areas expressly and specifically designed for the display of commercial advertisements.
13. Therefore, I conclude that the apparatus would be both for the purpose of the operator's telecommunications network and for the purpose of commercial display. Accordingly, the proposals are not solely for the purpose of the operator’s electronic communications network and so fall outside Schedule 2, Part 16, Class A of the GPDO.

Conclusion

14. For the reasons given above and having regard to all matters raised, including in representations, I conclude that the appeals should be dismissed.

R Satheesan

INSPECTOR

² Paragraphs 2.13 and 3.7 of the appellant’s statement of case dated 3 September 2018