



Appeal Decision

by A Parkin BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th August 2019

Appeal Ref: APP/E5900/W/18/3212792

Pavement by Tracy House, Mile End Road, London E3 4PP

- 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 the Council of the London Borough of Tower Hamlets.
 - The application Ref PA/18/00340, dated 31 January 2018, was refused by notice dated 3 April 2018.
 - The development proposed is the installation of a public call box.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. In the banner heading above I have made minor amendments to the address to improve its accuracy.
3. I have also taken the description of the proposed development from the appeal form, with minor changes to remove superfluous words, in order to improve clarity.
4. The appellant's evidence refers to both 'kiosks' and 'public call boxes'. From the evidence it is clear that these are different names for the same structure, and I have addressed them thus in my decision.
5. 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

6. 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

7. The Appellant has provided additional information, including a Counsel Opinion on the relevance of the Judgement to similar proposals by the appellant,

including the appeal before me, and which I have had regard to. The Opinion¹ states that the Judgement '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'.

8. However, Appendix 4 of the Appellant's Statement of Case shows photographs of an existing kiosk at 50-60 Blackfriars Road, London. This kiosk is said to be a *Genie 1* kiosk, similar in appearance to the *Max 1* kiosk that is the subject of this appeal, but with modified materials and equipment². From the evidence, the design and appearance of this existing kiosk closely matches the appeal development, and shows an advertisement displayed on or behind the rear panel door.
9. Paragraph 2.13 of the appellant's statement provides a brief introduction to their business, including telecommunications and outdoor advertising and some of the synergies between them. Paragraph 3.7 of the appellant's statement goes on to say that 'The financial incentive provided by the inclusion of advertising revenue on public call boxes, provides capital for the roll out of the network initially and funds the maintenance and repair of the public call box in the longer term and can ensure that a network is provided in locations where call volumes might be low.'
10. This appeal does not concern advertisement consent. Nevertheless, from the evidence before me, the display of an advertisement on the proposed public call box would contribute towards the establishment and maintenance of a public call box network; such a display is intended by the appellant; and, the design of the public call box would be such as would enable such a display. Consequently, whilst part of the proposal would be necessary for an operator's electronic communications network, part of it would have a dual purpose for the display of advertisements, as set out above.
11. 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.

Conclusion

12. For the reasons given above and having regard to all matters raised, I conclude that the appeal should be dismissed.

Andrew Parkin

INSPECTOR

¹ Paragraph 25

² The appellant's letter to the Planning Inspectorate dated 2 April 2019.