



Appeal Decision

Site visit made on 11 January 2019

by Martin H Seddon BSc DipTP MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th August 2019

Appeal A Ref: APP/N4720/W/17/3192000

Public Highway, Wellington Road Corner, Wellington Bridge Street, Leeds, LS3 1LW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) Order 2015.
- The appeal is made by Maximus Networks Limited against the decision of Leeds City Council.
- The application Ref: 17/03240/DTM, dated 11 May 2017, was refused by notice dated 6 July 2017.
- The development proposed is a call box.

Appeal B Ref: APP/N4720/W/17/3192068

Public Highway O/S 1 Park Lane, Corner Fountain Street, Woodhouse, Leeds, LS3 1EP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) Order 2015.
- The appeal is made by Maximus Networks Limited against the decision of Leeds City Council.
- The application Ref: 17/03241/DTM, dated 11 May 2017, was refused by notice dated 5 July 2017.
- The development proposed is a call box.

Decisions:

Appeal A

1. The appeal is dismissed.

Appeal B

2. The appeal is dismissed.

Procedural Matters

3. As an electronic communications code operator, the appellant benefitted from deemed planning permission for a call box under Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) Order 2015 (GPDO), subject to prior approval by the local planning authority of siting and appearance. The appellant applied to the Council on that basis. The Council determined that prior approval was required and refused prior approval

for the siting and appearance of the call box subject to each of Appeals A and B.

4. On 25 May 2019, the Town and Country Planning (Permitted Development, Advertisement and Compensation Amendments) (England) Regulations 2019 came into force, amending the General Permitted Development Order. This amendment removes the permitted development right to install a public call box under Schedule 2, Part 16, Class A of the GPDO. However, transitional and saving provisions at Part 5 of the 2019 Regulations provide that where an appeal has been made within 6 months of the date of notice of refusal of a prior approval application submitted before 25 May 2019, the planning permission granted by Schedule 2, Part 16, Class A continues to have effect in relation to a public call box as if the amendments made to the GPDO by the 2019 Regulations had not been made. That is the case in respect of the two appeals before me.
5. The Council has made reference to development plan policies within its decision notices relating to each of Appeals A and B, including Leeds Unitary Development Plan Review policy GP5 and policies P10 and T2 of the Local Development Framework Core Strategy. However, the principle of development was established by the 2015 GPDO and a prior approval relating to paragraph A.3 of Schedule 2, Part 16, Class A of the 2015 GPDO included no requirement that regard be had to the development plan. The provisions of the 2015 GPDO required the local planning authority to assess the proposed development solely upon the basis of its siting and appearance taking into account any representations received. Nevertheless, I have taken account of the above-mentioned policies in so far as they are relevant to my assessment of matters of siting and appearance.
6. The National Planning Policy Framework (the Framework) was revised and published on 24 July 2018. Chapter 10 deals with supporting high quality communications infrastructure, including applications for prior approval. Paragraph 116 advises that local planning authorities must determine applications on planning grounds only. They should not seek to prevent competition between different operators or question the need for an electronic communication system. As the principle of development is established, considerations such as need for the call box are not a relevant matter.
7. The main parties were given the opportunity to comment on the revised Framework but did not respond. The Framework was further revised in February 2019. I have taken this revised Framework into account in determining these appeals. In view of its content compared to that of the previously revised Framework, I consider that to do so would not prejudice the interests of the main parties.
8. The appellant has referred to relevant court judgements regarding prior approval procedures. In the case of *Murrell v SSCLG & Broadland District Local Planning Authority* [2010] ECWA Civ 1367 it was judged that "*the assessment of siting, design and external appearance has to be made in a context where the principle of development is itself not an issue*". Furthermore, the case of *Infocus Public Networks Ltd v SSCLG & The Mayor and Commonality of the Citizens of London* [2010] EWHC 3309 (Admin) established that the term "appearance" would ordinarily be thought to be the intrinsic appearance of the

kiosk itself. Appeals A and B relate to the construction of a call box only and not any advertisement consent that may otherwise be required. The construction of a kiosk and the display of advertisements are distinct and separate matters requiring different applications. I note that deemed consent allows a non-illuminated advertisement on a single face of a call box.

9. I have also considered the judgement in *Westminster CC v SSHCLG & New World Payphones Ltd [2019] WHC176* and taken the appellant's response to this judgement into account. However, the proposed call boxes before me do not include a digital advertising panel and there is no accompanying application for advertisement consent. On that basis I conclude that the proposal is solely for the purpose of the operator's electronic communications network. I, therefore, have determined these appeals based upon the siting and appearance of the proposed call boxes.

Main Issues

10. I consider that the main issue for each of Appeals A and B is whether or not approval should be given in respect of the siting and appearance of the development, with particular regard where relevant to the effect upon highway and pedestrian safety.

Reasons

Background

11. The appeals relate to two freestanding call boxes. The call box kiosks consist of the same design. They would comprise a broadly rectangular structure with a footprint of approximately 1.125m. by 1.325m. and with an approximate maximum height of 2.6m. The main structure would be three sided, with panels of toughened glass in a steel frame. The design of the kiosk would allow accessibility for people with limited mobility, including wheelchair users and would be powered by solar units on the roof. The use of solar power and mobile network communication, plus the fact that the kiosks would be attached to paved areas, means that no invasive work would be required for their installation. The Council appears to have been uncertain of the precise siting for the call boxes. However, the appellant has provided annotated photographs which illustrate the proposed siting in each instance.
12. Having regard to the above and Schedule 2, Part 16, Class A of the previous GPDO 2015, I am satisfied that the call boxes and their constituent parts fell under paragraph A.5 and are reasonably required for the purposes of electronic telecommunications apparatus. The proposed freestanding call boxes, therefore, fell within the permitted development right under Part 16, Class A. However, prior approval under paragraph A.3 was required in terms of siting and appearance for each of the kiosks by virtue of paragraph A.2(3) of Part 16 of the GDPO 2015.

Appeal A: Public Highway, Wellington Road Corner, Wellington Bridge Street

13. The proposed call box would be located in the footway near to the junction of Wellington Bridge Street and a slip road comprised of two lanes leaving the Inner Ring Road A58(M). Wellington Bridge Street serves industrial units, a 5 a side football complex, small retail units and car parking at the rear of a Premier Inn. It would be sited close to a freestanding eight sided advertisement unit

and near to a bus stop sign, pole mounted highway direction sign and a lamp standard. The Council has not raised any objection in relation to the effect of the proposal on the character and appearance of the area. I see no reason to disagree, because, although the call box would add to the clutter in the street scene, it would cause no significant harm to the amenity of this mainly commercial area.

14. Traffic using the slip road next to the appeal site is approaching the left hand junction with Wellington Bridge Street, a set of traffic lights next to the Premier Inn and a 30 mph zone. Vehicles travelling downhill on the slip road from the A58(M) have to slow in a relatively short distance. I observed that in some cases, vehicles have to switch lanes on the slip road as they approach the traffic lights and the relatively large and complex roundabout.
15. The proposed call box would be sited only a short distance from the slip road carriageway. It would obscure the view of cyclists and pedestrians who are crossing the un-signalised entrance to Wellington Bridge Street, thereby increasing the potential for an accident when vehicles approach down the slip road and turn left into Wellington Bridge Street. Similarly, pedestrians using this crossing point may not see the approaching vehicles from the right if they are screened by the proposed call box. Vehicles approaching to access the Wellington Road junction may also have to slow or stop at the last minute because of obscured visibility from the call box, in order to allow pedestrians to cross Wellington Bridge Street or to allow large vehicles to exit. This could require other following vehicles on the slip road to brake suddenly with the possibility of being involved in a collision.
16. The call box would also block visibility to the right for vehicles emerging from Wellington Bridge Street onto the slip road. The Council advises that a sightline of 120m is required in view of the speed limit, measured 2.4m back from the give way line. It is likely that part of the call box would be within the envelope of the visibility splay. In the all above circumstances, the proposed siting of the call box would result in an unacceptable increase in risk of accidents and therefore, would have a detrimental impact upon highway and pedestrian safety.
17. I conclude for appeal A that the proposed call box would be detrimental to highway and pedestrian safety because of its siting near to the Wellington Bridge Street junction. This harm related to siting justifies refusal of prior approval and dismissal of Appeal A.

Appeal B: public Highway O/S 1 Park Lane, Corner Fountain Street, Woodhouse

18. The proposed call box would be sited at the back of the footway, next to a low wall and near to an existing green freestanding equipment cabin. To the rear of the appeal site is No.1 Park Lane, which is a modern office building. The call box would be near a connecting road to a slip road for the Inner Ring Road.
19. The call box would be within the pedestrian desire line for the footway fronting No.1 Park Road and would significantly reduce its available width from around 3.8 m. to approximately 2.1 m. This likely to cause problems for people passing with pushchairs or with shopping bags. Pedestrians would have to walk close to the busy highway, particularly at times of high footfall and when pedestrians were passing each other, next to the call box.

20. The proposed call box would obstruct visibility to the right for vehicles emerging from Fountain Street, especially for vehicles on the slip road from the Inner Ring Road and West Street, where visibility is only 30m. The call box would reduce this visibility to 20m. The junction of the slip road with Park Lane is a priority give way arrangement. The opposing traffic is under signal control and vehicles can be emerging at speeds of up to 30mph.
21. No.1 Park Lane is a modern office building with a mainly glazed elevation facing the appeal site and passing highways. The design of the boundary wall and hedge for the premises reflect the clean cut lines of the building. Apart from the existing equipment cabinet, the pavement at this bend is uncluttered. The siting of the proposed call box would introduce a discordant element in the street scene because of its form and height, to the detriment of the setting of the building of No.1 Park Lane and the visual amenity of the locality.
22. I conclude for appeal B that the siting of the proposed call box would be detrimental to highway and pedestrian safety because of its effect of reducing the width of the footway and reducing visibility for traffic emerging from Fountain Street. There would also be harm from its prominent appearance. This harm justifies refusal of prior approval and dismissal of Appeal B.

Other Matters

23. The appellant has provided details of a press item from 2013 in which several payphones in Leeds were the subject of theft and damage. This includes a quote from a member of the Access Committee for Leeds who indicated that payphones provided a potentially vital service for people with disabilities. This is a matter that I have taken into account as a public benefit of the proposals when reaching my conclusion against the main issue in each of the appeals.
24. I have taken all the other benefits from the proposed call boxes and telecommunications equipment referred to by the appellant into account. However, none on its own, or in combination would outweigh the harm which I have identified above.

Conclusion

25. All other matters raised have been taken into account. For the reasons given above I conclude that appeals A and B should be dismissed.

Martin H Seddon

INSPECTOR