



Appeal Decision

Site visit made on 19 February 2019

by Martin Andrews MA(Planning) BSc(Econ) DipTP & DipTP(Dist) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28th August 2019

Appeal A: Ref: APP/X5210/W/18/3211259

Pavement adjoining No. 1 Haverstock Hill, London NW3 2BP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a development order.
 - The appeal is made by Maximus Networks Ltd against the decision of the Council of the London Borough of Camden.
 - The application, Ref. 2018/0334/P, dated 21 January 2018, was refused by notice dated 15 March 2018.
 - The development proposed is Prior Approval for Siting and Appearance: Installation of Public Call Box.
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Appeal B: Ref: APP/X5210/W/18/3211264

Pavement adjoining No. 24 Haverstock Hill, London NW3 2BQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a development order.
 - The appeal is made by Maximus Networks Ltd against the decision of the Council of the London Borough of Camden.
 - The application Ref. 2018/0335/P, dated 21 January 2018, was refused by notice dated 15 March 2018.
 - The development proposed is Prior Approval for Siting and Appearance: Installation of Public Call Box.
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Appeal C: Ref: APP/X5210/W/18/3211449

Pavement 197 Kentish Town Road, London NW5 2JU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a development order.
 - The appeal is made by Maximus Networks Ltd against the decision of the Council of the London Borough of Camden.
 - The application Ref. 2018/0336/P, dated 21 January 2018, was refused by notice dated 15 March 2018.
 - The development proposed is Prior Approval for Siting and Appearance: Installation of Public Call Box.
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Appeal D: Ref: APP/X5210/W/18/3211457

Pavement adjoining 100 Avenue Road, London NW3 3HF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a development order.
 - The appeal is made by Maximus Networks Ltd against the decision of .
 - The application Ref. 2018/0343/P, dated 21 January 2018, was refused by notice dated 15 March 2018.
 - The development proposed is Prior Approval for Siting and Appearance: Installation of Public Call Box.
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Appeal E: Ref: APP/X5210/W/18/3211523

Pavement adjoining 131 Finchley Road, London NW3 6HY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a development order.
 - The appeal is made by Maximus Networks Ltd against the decision of the Council of the London Borough of Camden.
 - The application Ref. 2018/0350/P, dated 21 January 2018, was refused by notice dated 15 March 2018.
 - The development proposed is Prior Approval for Siting and Appearance: Installation of Public Call Box.
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Appeal F: Ref: APP/X5210/W/3211526

Pavement adjoining 104 Finchley Road, London NW3 5EY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a development order.
 - The appeal is made by Maximus Networks Ltd against the decision of .
 - The application, Ref. 2018/0353/P, dated 21 January 2018, was refused by notice dated 15 March 2018.
 - The development proposed is Prior Approval for Siting and Appearance: Installation of Public Call Box.
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Appeal G: Ref: APP/X5210/W/3211536

Pavement adjoining 108-110 Finchley Road, London NW3 5JJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a development order.
 - The appeal is made by Maximus Networks Ltd against the decision of the Council of the London Borough of Camden.
 - The application, Ref. 2018/0351/P, dated 21 January 2018, was refused by notice dated 15 March 2018.
 - The development proposed is Prior Approval for Siting and Appearance: Installation of Public Call Box.
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Decisions

1. **Appeals A, C, D, F & G** are dismissed. **Appeals B & E** are allowed.
 2. **Appeal B:** The appeal is allowed and prior approval is granted under the provisions of Article 3(1) and Schedule 2, Part 16, Class A to the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended), in respect of development by a telecommunications code system operator for the siting and appearance of electronic communications apparatus (a telephone call box) on the pavement at No. 24 Haverstock Hill, London NW3 2BQ in accordance with the terms of the application Ref. 2018/0335/P dated 21 January 2018, and the plans submitted with it comprising 2 No. OS based Site plans with grid reference of siting; Illustration: 'Maximus Networks Ltd – Telephone kiosk Design'; Drawings 01-05 showing Plan, Roof Plan, Front Elevation; Side Elevation; Rear Elevation; Photograph of pavement with position of proposed development indicated.
 3. **Appeal E:** The appeal is allowed and prior approval is granted under the provisions of Article 3(1) and Schedule 2, Part 16, Class A to the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended), in respect of development by a telecommunications code system
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operator for the siting and appearance of electronic communications apparatus (a telephone call box) on the pavement at adjoining 131 Finchley Road, London NW3 6HY in accordance with the terms of the application Ref. 2018/0350/P dated 21 January 2018, and the plans submitted with it comprising 2 No. OS based Site plans with grid reference of siting; Illustration: 'Maximus Networks Ltd – Telephone kiosk Design'; Drawings 01-05 showing Plan, Roof Plan, Front Elevation; Side Elevation; Rear Elevation; Photograph of pavement with position of proposed development indicated.

Preliminary and Procedural Matters

4. During the course of these appeals the decision of the Courts in respect of *Westminster CC v SSHCLG & New World Payphones Ltd* [2019] EWHC 176 (Admin) was issued on 5 February 2019 concerning prior approval for telephone call box development. The main parties were given the opportunity by PINS to provide comments on the relevance of this judgment to their cases. I have taken these into account during the determination of these appeals.
5. In this regard, the main focus as to the potential for a possible dual use including advertising is the toughened glass door on the rear face of the call box. This is hinged on one side to allow it to be opened in order to gain access to the service panel for regular checking and maintenance. However, from my reading of the appellant's technical description and the plans before me in these appeals, I am of the view that the detailed design and materials do not clearly facilitate a dual purpose. They appear as being solely for the purpose of the operator's electronic communications network and accordingly would fall within the permitted development rights regime under the provisions of Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ('the GPDO'). In all four of these appeals therefore, only the construction of the kiosks is under consideration and not a potential dual purpose for advertisements. ^[L]_[SEP]
6. The GPDO requires the Local Planning Authority and therefore the Secretary of State on appeal to assess the proposed development solely on the basis of its siting and appearance. Matters such as the principle of development and the need for the facilities are not issues that can be taken into account. I have therefore made my Decisions with regard to the siting and appearance of the proposed development in accordance with the GPDO. ^[L]_[SEP]
7. The Council has referred to development plan policies in its reasons for refusal. However, applications for prior approval are determined in relation to the criteria set out within the GPDO and as such do not require regard to be had to the development plan. Nonetheless and although not determinative, I have had regard to Policies A1 (Managing the impact of development), C5 (Safety and Security), C6 (Access for all), D1 (Design), D2 (Heritage), G1 (Delivery and Location of Growth) and T1 (Prioritising walking, cycling and public transport) of the London Borough of Camden Local Plan 2017 only in so far as they are a material consideration relevant to matters of siting and appearance.
8. The National Planning Policy Framework 2019 ('the Framework') sets out Government policy on telecommunications in Section 10: 'Supporting High Quality Communications'. This includes a requirement that '*Planning policies and decisions should support the expansion of electronic communications networks*' and that '*Local planning authorities must determine applications on*

planning grounds only. They should not seek to prevent competition between different operators, question the need for an electronic communications system'. I have had regard to this policy in reaching my Decisions.

9. I have additionally taken into account the representations made by third parties, including local residents as well as organisations both within and outside the Council, insofar as they do not address matters precluded for consideration by the GPDO and the Framework.

Background and Main Issues

10. Of the seven appeal applications in this Decision Letter, Appeals A and B are situated in fairly close proximity to one another on opposite sides of Haverstock Hill. This is an area of mixed character with a school, residential properties, local shopping facilities and Chalk Farm Underground station. The site of Appeal C is about 1km to the east and within the large shopping centre that stretches along Kentish Town Road.
11. Appeal sites D & E are on opposite sides of the Avenue Road / Finchley Road junction close to the Swiss Cottage underground station and within a substantial commercial centre, albeit including large blocks of flats. Appeal sites F & G are located about 400m north westwards along the Finchley Road shopping centre and are positioned about 100m apart. The area is characterised by linear ground floor commercial premises with flats of several storeys in height above.
12. The Council has refused to grant approval for all seven appeals for the same four reasons. The main issues in all the appeals are the effect of the siting and appearance of the call box on (i) the character and appearance of the street scene within which the development would be sited and (ii) pedestrian safety and convenience. However in addition, the refusal of prior approval for Appeal A includes the effect on a Grade II listed building in the form of the Chalk Farm underground station. I have addressed the submissions relating to community safety and security and the accessibility of the call box for wheelchair users in 'Other Matters' below.

Reasons

Appeal A: Pavement adjoining No. 1 Haverstock Hill

13. On the issue of the effect on the character and appearance of the street scene ('the first issue'), the call box would be sited on the pavement outside the flank wall of the underground station near its boundary with the adjoining depot. There are long views from the opposite pavement down the hill towards the site and I note that the older style BT phone kiosk shown in the appellant's site photograph is no longer there as a result of the BT rationalisation programme.
14. Although there is a bus stop with a shelter about 20 metres up the hill, I consider it important to the quality of the street scene that the openness of the pavement in the approach to the junction with the Regents Park Road is maintained. The benefit of the removal of the old kiosk in this particular location is readily apparent, not least because in my view it harmfully affected the setting of the listed building in the form of the Chalk Farm underground station. And although I regard the better design and reduced scale of the proposed call box as being less visually intrusive than the BT kiosk, it would

still detract from, and to some extent be incongruous with, the tiled flank wall of the station.

15. Turning to the issue of the effect on pedestrian safety and convenience ('the second issue'), although the pavement widens out adjacent to the depot the siting of the call box would be just within the narrower section of pavement adjoining the station, with its maximum width of about 4m. The Council says that at peak times this experiences high pedestrian flows. And bearing in mind that people will wish to walk between the bus stop and the underground and there will also be pedestrians walking to and from the school, I am minded to accept the Council's judgement that the call box would at times be an obstruction to ease of movement.
16. Overall on Appeal A I consider that prior approval should be withheld.

Appeal B: Pavement adjoining No. 24 Haverstock Hill

17. As regards the first issue, the appeal site is situated diagonally opposite the site in Appeal A in a location where the street scene is dominated by the scale, bulk and rectilinear form of the Haverstock School building. The immediate back of footpath has either the school building or a brick wall / brick wall plus fence along its length. There is existing street furniture in the form of a recently placed BT InLink Unit, a lamppost, a bus stop sign and shelter, a couple of cycle stands, a waste bin and another lamppost. The appeal site is close to the waste bin.
18. Whilst the Council refers to the appeal proposal leading to 'over-proliferation' and a severe degradation of visual amenity through the creation of further unnecessary street clutter, at my visit I formed the view that the combination of the long street views up and down the hill and the dominance of the school building are such as to diminish the visual impact of the existing street furniture. The generous spacing of the latter along the pavement is an additional factor in this regard.
19. Given this context and setting I do not consider that the proposed call box would materially affect the quality of the street scene and accordingly no harm would be caused by its siting or appearance.
20. In terms of the second issue, although the school no doubts generates an increase in normal pedestrian flow I consider that because of the substantial distance between the site and the school entrance many pedestrians will already have crossed the road to reach the bus stop on the opposite side or to walk along the opposite pavement to the underground station. The width of pavement would therefore be more than adequate to cope with the residual flow of pedestrians, especially because at this point there is only a brick wall at the back of the footpath rather than an active frontage with its potential to generate further comings and goings.

21. In summary on Appeal B, I conclude that prior approval should be granted.

Appeal C: Pavement adjoining 197 Kentish Town Road

22. On the first issue, I saw on my visit that call box would have an edge of kerb location opposite an ATM in the front wall of a Tesco Express convenience store. The existing street furniture in this section of road is for the most part

- limited to three single cycle stands and an older style phone kiosk, although there are a couple of litter bins on the pavement near the entrance to the store.
23. The appeal plans show the call box as being located within a couple of metres of the existing kiosk, although part of this gap has since been occupied by a blue coloured planter with a tree. I am unsure as to whether this planter is intended to permanently remain in this position, but in any event I consider that with the call box so close to the existing kiosk there would be an unsatisfactory consolidation of clutter on a stretch of pavement with at present mainly inconsequential items of street furniture. And there would also be an element of incongruity of two phone kiosks of entirely different design positioned so close to one another, bearing in mind that the general precedent in London is for pairs to be of the same design.
24. As regards the second issue, the Council argues that pedestrian volumes are extremely high and are forecast to increase significantly when Crossrail services become operational. There is the additional point that with the call box occupying pavement space at the kerb edge and people waiting to use the cashpoint there is the potential for the obstruction of the free flow of passers-by.
25. I have no information as to the extent to which the ATM is used but given that it is located at the entrance to a Tesco Express it seems likely that it would be popular. And on balance I consider that the Council has made a plausible case for a refusal of prior approval on the grounds of an adverse effect on pedestrian safety and convenience. In any event I have concluded against the proposal on the first issue and I therefore conclude in respect of Appeal C that prior approval should be withheld.

Appeal D: Pavement adjoining 100 Avenue Road

26. Turning firstly to the second issue, the call box is proposed at the back of the pavement edge and just within the area of a paved forecourt that facilitates an entrance to the Swiss Cottage underground subway. Because of the extensive area of pedestrian space, I do not consider that there would be obstruction to pedestrians, even allowing for the likelihood of high flows because of the proximity to the tube station.
27. However, in terms of the first issue, the site is close to a BT InLink Unit which has been erected in place of the old BT phone kiosk shown on the application photograph with the site of the call box superimposed. I consider that there are two objections to this siting in terms of the effect on the character and appearance of the street scene.
28. Firstly, as I have explained in another other appeal in this composite Decision letter, whilst twin call boxes adjoining one another can be visually acceptable I take the view that facilities of quite different design in a close juxtaposition, as would be the case here, are likely to jar in the street scene and appear somewhat incongruous.
29. Secondly, this pedestrian area which surrounds the entrance to the Swiss Cottage underground station has an open character with the large number of parked cycles (presumably by tube travellers) the primary physical and visual

obstruction. A large redevelopment to the rear is currently under construction and I consider it important that this public space which will provide the foreground for the new buildings is preserved in its present or an improved form. I acknowledge that the proposed call box would be modest in terms of its size relative to the existing and future surroundings, but nonetheless conclude that an additional feature in this prominent location has the potential to cause harm to the streetscape.

30. For these reasons I conclude that prior approval for the proposal in Appeal D should be refused.

Appeal E: Pavement adjoining 131 Finchley Road

31. Turning firstly to the second issue, the pavement area in this location is particularly extensive and services not only the commercial buildings but also a bus stop and the access to the subway giving access to the Swiss Cottage underground station. The proposed call box would be in a position close to the raised wall of the subway entrance and although not within a defined street furniture zone, the extent of public circulation space is such that the structure cannot reasonably be regarded as being any form of obstruction.
32. On the first issue, there is a clutter of street furniture along the kerbside, comprising, in sequence, a bus stop sign, a bus stop shelter, a traffic sign, four older style phone kiosks in two pairs separated by a pillar box, and a refuse bin. The bus shelter and the four kiosks result in a cumulative bulk that is somewhat oppressive given their mutual proximity.
33. However, the proposed call box would not be read with these, given its position well away from the frontage and beyond the pelican crossing. Its immediate neighbours would be a discreet advertisement within an inset into the protective barrier for the tube station subway and a similarly discreet standardised London wayfinder street map. In these circumstances I do not consider that the call box would either harmfully add to clutter or be visually intrusive.
34. Having regard to this finding and the fact that the call box would not obstruct pedestrian flow I conclude that Appeal E should be allowed.

Appeal F: Pavement adjoining 104 Finchley Road

35. On the first issue, the site is adjacent to a petrol filling station / garage which has a large scale advertisement on the corner of the return to College Crescent. As is typical of a petrol station this is of a size and design intended to make an impact on approaching drivers. Further smaller scale advertising can be found under the canopy at the customer payment area and retail outlet.
36. The pavement in front of the filling station is a pleasing contrast to the overtly commercial character of the garage. There is a narrow street furniture zone at the kerbside comprising a lamp column, a CCTV pole and a couple of traditional cast iron bollards. There is also a line of more modern bollards defining the garage forecourt's boundary with the back of the pavement. Of particular importance to the visual amenity of the area is the kerbside mature tree which has a height roughly twice that of the petrol filling station canopy.

37. I consider that in this context, the proposed call box would be out of keeping with its surroundings and visually intrusive because of its somewhat incongruous location. It would be harmful to the character and appearance of the street scene.
38. On the second issue, the call box would be situated at the rear of the pavement. As the Council has observed, the street furniture zone and the tree narrows the usable footpath width from its already limited maximum of about 4.5m. As the call box would be positioned outside of this zone, the usable area of pavement would be further reduced by more than a metre and would form an obstruction to the free flow of pedestrians. The extent to which this would happen would depend on the volume of this flow. And whilst at the time of my visit this was light, the Council has drawn my attention to higher flows as a result of the site's relative proximity to Finchley Road and Swiss Cottage underground stations.
39. My findings on both main issues lead me to conclude that I should dismiss Appeal F.

Appeal G: Pavement adjoining 108-110 Finchley Road

40. The site in the application photograph with the area for the proposed call box superimposed is a vacant area of pavement close to the kerb and near some cycle stands. I saw at my visit that this has since been used for the construction of a bus shelter, a point confirmed in the Council's evidence.
41. As the bus shelter post-dates the application it is clearly a fairly recent development and I consider it reasonable to assume that the appellant's opportunity for this particular siting has been lost. Certainly, given that the application plans have been superseded by events, I do not have reliable evidence on which to make an assessment and planning judgement.
42. I shall therefore dismiss Appeal G.

Other Matters

43. The Council also included refusal reasons relating to community safety and security and the accessibility of the call boxes wheelchair users. However, whilst I have noted that such matters have been referred to in a number of other appeal decisions, I am doubtful whether these considerations clearly fall within the restriction of the appraisal of 'siting' and 'appearance' as set out in the GPDO.
44. In the event that despite my reservations these matters do fall for consideration in these appeals, the comments made by the Metropolitan Police as regards the potential for anti-social behaviour appear to be generic in nature and not related to the particular individual siting of any of the public call boxes being considered. Furthermore, such comments appear to run counter to the prior approval principle embodied within the GPDO. And with other policy and legislative options available to tackle criminal and anti-social behaviour, including rough sleeping, I consider that I should attach only limited weight to these arguments.
45. As regards wheelchair accessibility, the Council has made a number of detailed criticisms as to the usability of the call box. However, the appellant says that

the call box was designed in consultation with user groups and specialists in design for the mobility impaired. And the argument that the detailed design could provide further improvements does not carry sufficient weight to preclude the proposal, particularly having regard to the fact that the call boxes are not applications for planning permission, with that appraisal procedure offering much wider scope for amendments to proposals.

Overall Conclusions

46. For the reasons set out above, I conclude (on balance in all cases) that

(i) the installation of public call boxes on the pavements at Nos. 1 Haverstock Hill, 197 Kentish Town Road, 100 Avenue Road, 104 Finchley Road, (Appeals A, C, D & F respectively) would have an unacceptably harmful effect on the character and appearance of the street scene (and in the case of Appeal A adversely affect the setting of a Grade II listed building; and in the case of Appeals A, C & F harmfully affect the pedestrian environment). Accordingly, I conclude that these appeals should be dismissed; and

(ii) the installation of public call boxes on the pavements at 24 Haverstock Hill and 131 Finchley Road (Appeals B & E) would not unacceptably harm either the character and appearance of the street scene or the pedestrian environment and that the appeals should be allowed and prior approval granted.

47. I additionally conclude that Appeal G, relating to a site on the pavement adjoining 108-110 Finchley Road should be dismissed for the reasons explained in paragraphs 40 & 41 above.

Conditions: Appeals B & E

48. Any approval granted for the installation of a public call box under Article 3(1) and Schedule 2, Part 16, Class A is subject to conditions set out in paragraphs A.2(2), A.3(9) and A.3(11) and which specify that the development must, except to the extent that the Local Planning Authority ('the LPA') otherwise agree in writing, be carried out in accordance with details submitted with the application; must begin not later than the expiration of 5 years beginning with the date on which the LPA received the application, and must be removed as soon as reasonably practicable after it is no longer required for electronic communication purposes and the land restored to its condition before the development took place. No other conditions are necessary or appropriate.

Martin Andrews

INSPECTOR