
Appeal Decisions

Site visit made on 19 August 2019

by Alison Partington BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date:

ALL APPEALS

- The appeals are made under section 78 of the Town and Country Planning Act 1990 against refusals 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 the Council of the London Borough of Tower Hamlets.
- The development proposed is the prior approval for siting and appearance: installation of public call box.

Appeal A Ref: APP/E5900/W/18/3212745

Adj 306 Burdett Road, London E14 7DL

- The application Ref PA/18/00342, dated 31 January 2018, was refused by notice dated 3 April 2018.

Appeal B Ref: APP/E5900/W/18/3212748

Adj 70 Marsh Wall, London E14 9SL

- The application Ref PA/18/00308, dated 31 January 2018, was refused by notice dated 3 April 2018.

Appeal C Ref: APP/E5900/W/18/3212768

Burdett Road adj Leybourne House, London E14 7ED

- The application Ref PA/18/00343, dated 31 January 2018, was refused by notice dated 3 April 2018.

Appeal D Ref: APP/E5900/W/18/3212798

West India Dock Road corner Westferry Road, London E14 8AB

- The application Ref PA/18/00314, dated 31 January 2018, was refused by notice dated 3 April 2018.

Appeal E Ref: APP/E5900/W/18/3212800

West India Dock Road near jct Pennyfields, London E14 8HD

- The application Ref PA/18/00310, dated 31 January 2018, was refused by notice dated 3 April 2018.

Decisions

1. The appeals A, C, D and E are dismissed.
2. Appeal B is allowed subject to the standard conditions set out in Parts A.2 and A.3 of part 16, Class A of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 and following additional condition:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan 1:1250 and Site Plan 1:200; and Photograph showing proposed position of phone kiosk marked 'X';

Maximus Networks Ltd – Telephone Kiosk Design; Drawing containing Plan, Roof Plan, Front Elevation, Side Elevation and Rear Elevation.

Procedural Matters and Background

3. The description of development in the above heading has been taken from the appeal forms as they more accurately reflect the scope of the proposals.
4. The Westminster judgement¹ considered the matter of development for 'the purpose' of an electronic communications code operator's electronic communications network for the purposes of Part 16, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO). There is a requirement to ensure that the proposal is solely for the purposes of the operator's electronic network. From the evidence before me, there is no compelling case to confirm that the phone box proposed in each case would have a dual purpose. Moreover, the proposals are not accompanied by an application for advertisement consent. Therefore, I consider that the public call boxes proposed would fall within the permitted development rights outlined above.
5. The provisions of the GPDO, under Article 3(1) and Schedule 2, Part 16, Class A, Paragraph A.3(4) require the local planning authority to assess the proposed development solely on the basis of its siting and appearance. My determination of the appeal has been on the same basis. Therefore, whilst the appellant has referred to the purported benefits of the proposed call boxes, I have not taken these matters into account.
6. The local planning authority states in relation to some of the cases that there are other telephone kiosks nearby. The *National Planning Policy Framework 2019* (the Framework) supports high quality communications infrastructure and requires that local planning authorities must determine applications on planning grounds only. In accordance with the provisions of Schedule 2, Part 16 of the GPDO (as amended), and subject to any relevant exception, limitation or conditions specified therein, development by or on behalf of an electronic communications code operator for the purposes of the operator's electronic communications network is permitted development. Therefore, matters such as the need for the development are not at issue in these appeals.
7. In all the appeals the Council has highlighted that the appellant has not produced the necessary evidence to justify the proposal including the outcomes of consultations with organisations with an interest in the proposed development in accordance with paragraph 115 of the Framework. Whilst the appellant's evidence only provides justification for the siting and appearance of the call boxes, I agree with them that the more detailed requirements of this paragraph in the Framework relates to masts and base stations not phone kiosks.

Planning Policy

8. The principle of development is established by the GPDO and the provisions of Schedule 2, Part 16, Class A of the GPDO do not require regard to be had to the development plan. Therefore, I have had regard to the policies of the

¹ Westminster City Council v Secretary of State for Housing, Communities and Local Government & New World Payphones Ltd [2019] EWHC 176 (Admin)

development plan, namely Policies 7.5, 6.10B and 6.9B of *The London Plan (adopted March 2016)*, Policies SP09 and SP10 of the *Tower Hamlets Core Strategy Development Plan Document (adopted September 2010)*, and Policies DM23 (1a and 4d), DM24, DM20(2) and Site Allocation 17 of the *Managing Development Document Development Plan Document (adopted April 2013)* (MDD) and related guidance such as the *Transport for London Streetscape Guidance (2017)*, only in so far as they are a material consideration relevant to matters of siting and appearance.

Main Issues

9. The main issues in all the appeals are the effect of the siting and appearance of the proposed call box on:
 - The character and appearance of the area; and
 - The safe and efficient operation of the highway and/or movement of pedestrians.

Reasons

10. The design and specification of the call box would be the same in each appeal. The phone box would have 3 sides, one broad panel across the rear and 2 short sides, with the front open to allow wheel chair access. The design is simple and functional and utilises a steel frame and toughened glass, with no distinguishing colours, lettering or illumination. A canopy style roof would extend beyond the depth of the side panels and would include a solar panel.
11. Although the use of clear glass in the sides would allow views through the call box, their height and footprint would mean that they would be substantial pieces of street furniture. Moreover, the plans and submitted photographs only have a square showing the location of each proposal, with no details provided as to the orientation of each call box.
12. The rear of the kiosk would include an opening door which would enable access for maintenance. The Council have highlighted that as the orientation of the kiosks has not been specified in any of the appeals, it is unclear whether this could cause a hazard to users of the highway and/or footway. However, given the door would only be likely to be open on an infrequent basis and for short periods of time, I am satisfied that in this regard it would not have a detrimental impact on highway or pedestrian safety.

Appeal A – adj 306 Burdett Road

Character and appearance

13. The call box would be located on the pavement near to the kerb, adjacent to a supermarket car park. It would be sited in line with other street furniture which includes 2 litter bins and road signage. However, the height and footprint of the kiosk would make it far bulkier and more prominent than the other street furniture in the vicinity, and so it would add significantly to the amount of visual clutter in this stretch of pavement.
14. Given this, I consider the siting and appearance of the proposed call box would unacceptably harm the character and appearance of the area.

15. Limehouse Cut Conservation Area lies approximately 6.5m to the south of the proposed call box. However, I consider that the proposal would be a sufficient distance from this to ensure it would not have a detrimental impact on the setting of this heritage asset.

Highway and pedestrian safety

16. At the time of my visit it appeared that the section of footway was not subject to high levels of pedestrian flows. I acknowledge this was a snapshot in time and that there may be occasions when the level of pedestrian activity is higher. However, this accords with the appellant's surveys which indicate flows of less than 600 pedestrians per hour.
17. The total pavement width where the call box would be located is 3.3m but taking account of the proposal the 'footway clear zone' would be below the recommended 2m, albeit this would only be for a short distance. Given the presence of the nearby supermarket, and the likelihood of pedestrians often being encumbered with bags of shopping, the narrowing of the pavement would be an unwelcome disruption to the pedestrian environment, exacerbating that already caused by the existing street furniture.
18. Furthermore, the phone box would be located in the vicinity of the entrance/exit to the supermarket car park. In the absence of information regarding the orientation of the kiosk, it is not possible to determine whether the proposal may impact on the sightlines for this. The Council have also highlighted that the position would be such that the proposal would fail to maintain a 0.5m kerb zone which is necessary to ensure adequate separation from vehicles that may overhang the pavement.
19. As such, I consider the proposal would be detrimental to the safe and efficient operation of the highway and the movement of pedestrians.

Appeal B – Adj 70 Marsh Wall

Character and appearance

20. The call box would be located near to the kerb in close proximity and largely in line with an existing phone kiosk. This would largely obscure views of it from the east, and together with the overhead railway line would provide the context for views of the proposal from the west. The design and palette of materials would be similar to other street furniture such as the metal bollards around the nearby road junction. They would also complement many of the modern buildings in the vicinity.
21. As such, I am satisfied the proposal would not have a harmful effect on the character and appearance of the area.

Highway and pedestrian safety

22. In the area where the call box would be sited the pavement has an overall width of 5.2m. The appellant's surveys indicate a low footfall, with less than 600 pedestrians an hour. Although only a snapshot, I observed a fairly constant flow of pedestrians. Given the proximity of the site to the DLR station, at certain points of the day, I would expect footfall to be heavy. I note also the proximity to Site Allocation 17 of the MDD which when fully developed could

also add significantly to pedestrian flows in the area. Nevertheless, according to Transport for London guidance, the overall width of pavement is sufficient to accommodate high levels of footfall and taking account of the proposal the 'footway clear zone' would still be comfortably provided. Given this, in my opinion, the proposal would not be contrary to the design principle of seeking a legible, permeable and well-defined movement network.

23. Whilst the proposal would be close to a pedestrian crossing, it would not interfere with the most obvious pedestrian desire lines to or from this.
24. The proposed siting would fall slightly below the recommended 0.5m kerb zone. However, given I have found the proposal acceptable in all other regards, I consider that this slight shortfall would not be sufficient reason to refuse the proposal.
25. Overall, I am satisfied that the proposal would not adversely affect the safe and efficient operation of the highway or the movement of pedestrians.

Appeal C – Burdett Road adj Leybourne House

Character and Appearance

26. The call box would be located at the back of the pavement adjacent to the tall boundary railings for an adjacent apartment building. The street scene already contains two other phone kiosks, a telecommunication cabinet, street lighting and road signage. Given this, and bearing in mind the lack of detail regarding the orientation of the kiosk, the addition of another call box would give rise to unacceptable visual clutter, which would be exacerbated by the variation in the design of the phone boxes. This would particularly be the case in southerly views, where the call box would be seen with the collection of road signage and street lighting.
27. Given this, the siting and appearance of the proposed call box would have a detrimental impact on the character and appearance of the area.

Highway and pedestrian safety

28. The appellant's surveys indicate that pedestrian movements in the vicinity are less than 600 pedestrians per hour, which would accord with my observations. Whilst the overall pavement width is 3.3m, the proposal would reduce the footway clear zone to slightly less than the recommended 2m. I am satisfied that the proposed call box would be a sufficient distance from the nearby pedestrian crossing point not to cause an obstruction to users of this. However, in conjunction with the other nearby phone boxes, the proposal would extend the narrowed length of pavement, causing a potential obstruction and being detrimental to the free flow and safety of pedestrians and other users of the pavement.
29. Thus, the proposal would unacceptably harm the safe and efficient movement of pedestrians.

Appeal D – West India Dock Road corner Westferry Road

Character and appearance

30. The call box would be located in part of the pavement where there is already a high level of street furniture including a cycle hire station, road signs, street lights, traffic signals and various cabinets. There are also a number of mature trees within the pavement. The trees, and a number of these existing items of furniture, are located within a central part of the pavement which has a different surfacing. The kiosks proposed siting would only partially be in this area giving it an awkward juxtaposition with these items.
31. Furthermore, the proposed introduction of an additional item of furniture would add to the existing visual clutter in the area. Its bulky and substantial nature would be out of keeping with, and more visually intrusive than, the existing low level and/or slim street furniture, making it an unduly prominent feature in the streetscape.
32. Thus, the proposal would have a harmful effect on the character and appearance of the area.

Highway and pedestrian safety

33. Its location close to a DLR station, the cycle hire station and a pedestrian crossing point at the traffic controlled junction means that footfall in the area is heavy, with movements being sought in a variety of directions. Whilst the pavement is a generous width, the proposal would provide a further obstruction and hinder movements of those trying to use these various facilities. Given these specific circumstances, whilst the proposal would still allow the provision of a footway that meets the recommended unobstructed width, a departure from these guidelines is justified on this occasion.
34. Consequently, the siting of the call box would be detrimental to the safe and efficient movement of pedestrians and other users of the pavement.

Appeal E – West India Dock Road near jct Pennyfields

Character and appearance

35. The call box would be sited near the kerb of a wide and generally open area of pavement. Although there is a phone box and a telecommunication cabinet in the vicinity these are both located at the back of the pavement further towards the junction. The only other street furniture near the kerb is a single road sign. As a consequence, with its substantial and bulky structure, the proposal would be an obtrusive and overly dominant feature in the street scene, that would detract from the otherwise spacious character of this part of the road.
36. Therefore, the siting and appearance of the proposed call box would have a harmful impact on the character and appearance of the area.

Highway and pedestrian safety

37. The section of footway in which the kiosk would be located is very wide. Although the appellant's evidence indicates that the area has high levels of footfall, there would be more than sufficient space to continue to allow the unhindered passage of pedestrians.

38. The proposed siting would fall slightly below the recommended 0.5m kerb zone. However, I consider that this slight shortfall would not be sufficient reason to refuse the proposal on highway grounds.
39. As such, I am satisfied that the proposal would not adversely affect the safe and efficient operation of the highway or the movement of pedestrians.

Conclusion and Conditions

40. With regard to the first main issue, for the reasons set out above, in Appeals A, C, D and E, I conclude the siting and appearance of the proposed call boxes would have a harmful effect on the character and appearance of the area. In addition, in Appeals A, C and D, for the reasons set out above, I also conclude that the siting of the phone boxes would be detrimental to the safe and efficient operation of the highway and/or the movement of pedestrians. Whilst I conclude this would not be the case in Appeal E, this does not outweigh the harm to the first main issue of this appeal. I therefore conclude that Appeals A, C, D and E should be dismissed.
41. For the reasons set out above, I conclude that in Appeal B, the siting and appearance of the call box would be acceptable in relation to both main issues. Therefore, I consider that this appeal should be allowed. As well as the standard conditions set out in the GDPO, for certainty I have attached a condition specifying the plans which accompanied the application for prior approval of the proposed development.

Alison Partington

INSPECTOR