The Planning Inspectorate

Appeal Decisions

Site visit made on 20 August 2019

by Rajeevan Satheesan BSc PGCert MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5th September 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'.

Appeal A - APP/X5990/W/18/3211405
350 Oxford Street, London, W1C 1JH
Grid Reference Easting 528600, Grid Reference Northing 181142

- The application Ref 18/00875/TELCOM, dated 1 February 2018, was refused by notice dated 21 March 2018.

Appeal B - APP/X5990/W/18/3211365
399-403 Oxford Street, London, W1C 2BU
Grid Reference Easting 528431, Grid Reference Northing 181096

- The application Ref 18/00880/TELCOM, dated 1 February 2018, was refused by notice dated 21 March 2018.

Appeal C - APP/X5990/W/18/3211381
491 Oxford Street, London, W1C 2AU
Grid Reference Easting 528099, Grid Reference Northing 181034

- The application Ref 18/00879/TELCOM, dated 1 February 2018, was refused by notice dated 21 March 2018.

Appeal D - APP/X5990/W/18/3211398
465 Oxford Street, London, W1C 2AU
Grid Reference Easting 528159, Grid Reference Northing 181043

- The application Ref 18/00878/TELCOM, dated 1 February 2018, was refused by notice dated 21 March 2018.

Appeal E - APP/X5990/W/18/3211410
381 Oxford Street, London, W1C 2JS
Grid Reference Easting 528508, Grid Reference Northing 181108

- The application Ref 18/00910/TELCOM, dated 1 February 2018, was refused by notice dated 21 March 2018.

Appeal F - APP/X5990/W/18/3211680
266 Oxford Street, London, W1C 1DR
Grid Reference Easting 528889, Grid Reference Northing 181207

- The application Ref 18/00945/TELCOM, dated 31 January 2018, was refused by notice dated 21 March 2018.

Appeal G - APP/X5990/W/18/3211683
Holles Street adj. 274 Oxford Street, London, W1C 1DU
Grid Reference Easting 528859, Grid Reference Northing 181215

- The application Ref 18/00867/TELCOM, dated 31 January 2018, was refused by notice dated 21 March 2018.

Appeal H - APP/X5990/W/18/3211687
263 Oxford Street, London, W1C 2DF
Grid Reference Easting 528961, Grid Reference Northing 181213

- The application Ref 18/00868/TELCOM, dated 31 January 2018, was refused by notice dated 21 March 2018.

Appeal I - APP/X5990/W/18/3211692
North Audley Street adj. 453 Oxford Street, London, W1C 2AU
Grid Reference Easting 528203, Grid Reference Northing 181040

- The application Ref 18/00862/TELCOM, dated 1 February 2018, was refused by notice dated 21 March 2018.

Appeal J - APP/X5990/W/18/3211750
396 Oxford Street, London, W1C 1JH
Grid Reference Easting 528385, Grid Reference Northing 181100

- The application Ref 18/00877/TELCOM, dated 1 February 2018, was refused by notice dated 21 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 ten 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* judgement[1] 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 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

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

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 states[2] 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