



Appeal Decisions

Site visits made on 13 and 14 August 2019

by David Cross BA(Hons) PgDip(Dist) TechIOA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 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 decision of the Council of the London Borough of Tower Hamlets.
 - The development proposed in each case is described as a call box.
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Appeal A - Ref: APP/E5900/W/18/3212673

112 Whitechapel High Street, London E1 7PT

Grid Reference Easting 533860 and Grid Reference Northing 181347

- The application Ref PA/18/00305, dated 31 January 2018, was refused by notice dated 3 April 2018.
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Appeal B - Ref: APP/E5900/W/18/3212684

5 Commercial Street, London E1 6BF

Grid Reference Easting 533846 and Grid Reference Northing 181415

- The application Ref PA/18/00317, dated 31 January 2018, was refused by notice dated 3 April 2018.
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Appeal C - Ref: APP/E5900/W/18/3212688

Mansell Street jct Braham Street, London E1 8DX

Grid Reference Easting 533776 and Grid Reference Northing 181213

- The application Ref PA/18/00291, dated 31 January 2018, was refused by notice dated 3 April 2018.
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Appeal D - Ref: APP/E5900/W/18/3212689

Middlesex Street jct Whitechapel High Street, London E1 7EX

Grid Reference Easting 533727 and Grid Reference Northing 181291

- The application Ref PA/18/00313, dated 31 January 2018, was refused by notice dated 3 April 2018.
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Appeal E - Ref: APP/E5900/W/18/3212691

Whitechapel High Street adj London Metropolitan University, London E1 7PF

Grid Reference Easting 533994 and Grid Reference Northing 181401

- The application Ref PA/18/00298, dated 31 January 2018, was refused by notice dated 3 April 2018.
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Appeal F - Ref: APP/E5900/W/18/3212693

Whitechapel High Street o/s Aldgate Tower, London E1 8FA

Grid Reference Easting 533847 and Grid Reference Northing 181317

- The application Ref PA/18/00347, dated 31 January 2018, was refused by notice dated 3 April 2018.
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Appeal G - Ref: APP/E5900/W/18/3212715

33 Commercial Street, London E1 6DH

Grid Reference Easting 533785 and Grid Reference Northing 181522

- The application Ref PA/18/00294, dated 31 January 2018, was refused by notice dated 3 April 2018.

Appeal H - Ref: APP/E5900/W/18/3212751

Bethnal Green Road jct Sclater Street, London E1 6GJ

Grid Reference Easting 533668 and Grid Reference Northing 182278

- The application Ref PA/18/00303, dated 31 January 2018, was refused by notice dated 3 April 2018.

Appeal I - Ref: APP/E5900/W/18/3212787

Mile End Road adj. Formosa House, London E1 4RG

Grid Reference Easting 535998 and Grid Reference Northing 182223

- The application Ref PA/18/00341, dated 31 January 2018, was refused by notice dated 3 April 2018.
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Decision

1. The appeals are dismissed.

Preliminary Matters

2. The description of development in the heading above has been taken from the application forms. However, in Part E of the appeal forms it is stated that the description of development has not changed but, nevertheless, a different wording has been entered. Neither of the main parties has provided written confirmation that a revised description of development has been agreed. Accordingly, I have used the one given on the original applications.
3. The provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (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 developments solely on the basis of their siting and appearance, taking into account any representations received. My determination of these appeals has been made on the same basis.
4. During the course of these appeals there has been a judgment¹ concerning prior approval for a public call box development. The main parties have had the opportunity to comment on the relevance of this judgment to their respective cases and I have taken account of the comments made in my determination of these appeals. In view of this judgment the parties disagree on whether the proposals are permitted development or not.
5. The Council expresses concern that the design of the call box goes beyond what could be considered as for the purposes of a telecommunications network operator. The Council contends that the size and the degree of enclosure on three sides goes beyond what is required for telecommunications, and at best represents wind and rain protection. However, I consider that it is reasonable for a telecommunications operator under the provisions of the GPDO to provide a degree of protection from the elements for users of the telecommunications equipment. I also note Counsel's opinion provided by the appellant which

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

refers to the form and design of the proposed telecommunications apparatus being driven by its proposed functionality as a public call box. Read objectively and in context, there is no substantive evidence before me to demonstrate that the design of the call box goes beyond the purposes of the appellant's electronic communications network.

6. Reference has also been made to the potential for advertisement consent to be sought following the approval of the call boxes. However, in each of these appeals, only the construction of the call box is being considered and the appellant is not seeking advertisement consent. Based on the evidence before me, I am of the view that the call boxes do not constitute a dual purpose. The evidence indicates that they are solely for the purpose of the operator's electronic communications network and as such would fall within the permitted development right.
7. The principle of development is established by the provisions of Schedule 2, Part 16, Class A of the GPDO and do not require regard to be had to the development plan. Although not determinative, I have had regard to the development plan, and related guidance, only where they are material considerations relevant to the matters of siting and appearance. I have therefore had regard to Policies 6.9, 6.10 and 7.5 of the London Plan 2016 (LP), Policies SP09 and SP10 of the Tower Hamlets Core Strategy 2010 (CS) and Policies DM20, DM23 and DM24 of the Tower Hamlets Managing Development Document 2013 (MDD) as material considerations insofar as they are relevant to matters of siting and appearance. I have also had regard to the Transport for London Streetscape Guidance: Fourth Edition 2019 Revision 1 as a material consideration insofar as it is relevant to those matters.
8. A revised version of the National Planning Policy Framework (the Framework) has been published since the appeal was lodged. Both main parties have had the opportunity to comment on any relevant implications for the appeal. I have had regard to the Framework insofar as it is relevant as a material consideration in reaching my decision.
9. I visited the sites of Appeals A-H on 13 August 2019 and Appeal I on 14 August 2019.

Main Issues

10. The main issues in these appeals are:

- The effect of the siting and appearance of each call box on the character and appearance of the area; and
- The effect of the siting and appearance of each call box on the safe and efficient operation of the highway.

Reasons

Call Boxes

11. The call boxes are of a simple design comprising of a 3-sided steel framed structure with a rear panel constructed of steel casings backed by a glazed door, with 2 shorter glazed panels to the side and a projecting roof. The call boxes would have a footprint of around 1.3m by 1.1m and would be

approximately 2.6m high. The design includes a large opening to facilitate universal access for users of the call boxes. The appellant refers to the degree of visibility through the panels and open design to discourage anti-social behaviour. Photovoltaic cells in the roof would provide power.

12. The appellant has not provided details as to the specific orientation of each call box. However, I have considered these appeals with reference to the submitted plans and the 'X' indicating the planned installation location.

Appeal A - 112 Whitechapel High Street

Character and Appearance

13. The appeal site is located on Whitechapel High Street, which contains a mixture of commercial and other uses as well as an entrance to a London Underground Station.
14. The call box would be located near to the kerb, some distance from the façade of buildings on Whitechapel High Street. Whilst I saw that there are other forms of street furniture adjacent to the kerb, this was limited to litter bins and service cabins at a low level, with street signs above which do not unduly protrude into or limit views along the streetscape. Due to its location near the road edge as well as its massing and design, the proposed call box would be a prominent and conspicuous feature in views along the street detached from the building line. Within this context, the introduction of a freestanding structure with the bulk of the call box would appear as an obtrusive addition to the streetscape.

Highway

15. The call box would be located close to an entrance to an Underground Station and there is also a pedestrian crossing over a busy junction in the vicinity of the site. These features contribute to the high level of pedestrian flows which I saw along the footpath, as well as general pedestrian flow through the area and access points to nearby buildings. The building line in the vicinity of the Underground Station entrance also projects forward of that immediately adjacent to the appeal site, which deflects a significant element of pedestrian flow across the proposed site of the call box. The call box would also project beyond the line of obstruction created by existing street furniture adjacent to the kerb. Even allowing for the width of the footpath that would remain, I consider that the proposal would unduly hamper the flow of pedestrians through this area.
16. The Council also refer to the proximity of the call box close to the junction and the effect on visibility for cyclists as they approach the junction. However, I saw that due to the proposed location of the call box and the separation distance from the junction, the visibility for cyclists would not be unduly harmed. Nevertheless, there is a significant possibility that the proximity of the call box close to the kerb and the extent of projection into the footpath may deflect pedestrian flow onto the adjacent cycle route, to the detriment of both pedestrian and cyclist safety.
17. I note the conclusions of the Site Specific Highways Analysis (SSHA) submitted by the appellants and the reference to tests including pedestrian comfort and streetscape guidance documents. However, consideration of this does not lead

me to a different conclusion based on my own observations of the pedestrian flow in the area and the details in respect of the call box.

Appeal B - 5 Commercial Street

Character and Appearance

18. The proposed call box would be located adjacent to the kerb on an extent of the footpath which projects from the building line on the approach to the junction with Pomell Way.
19. Due to this arrangement, the call box would be some distance from the strong frontage established by nearby buildings. Although there is some street furniture in this projecting area of footpath, the features adjacent to the kerb consist predominantly of cycle parking and bollards at a low level or signage poles which do not unduly limit views along the streetscape. Whilst there is a high level street sign supported on two poles, this would be significantly higher than the proposed call box and does not establish an overriding context for the appeal proposal. Within this setting, the proposal would introduce a prominent and free standing feature which would not integrate successfully with the features around it. This would result in an incongruous feature within the streetscape which would detract from the character and appearance of the area.

Highway

20. The proposed site of the call box is located in the vicinity of an access to an Underground Station and in close proximity to a bus stop. I saw that there were high pedestrian flows through the area in association with these features, as well as pedestrians passing through the area and accessing adjacent buildings, including a hotel.
21. The building frontage on the opposite side of the junction with Pomell Way projects slightly forward of those adjacent to the appeal site. Due to this arrangement as well as the layout of the pedestrian crossing point and street furniture in the vicinity of the junction, I saw that the call box would project into the prevailing pedestrian flow. Mindful of the high pedestrian flow through the area, this would inevitably impede the movement of pedestrians.
22. I have had regard to the conclusions of the SSHA submitted by the appellants and the tests referred to therein. However, consideration of this does not lead me to a different conclusion based on my own observations of the effect on the siting of the call box on the high pedestrian flow through this area.
23. A number of comments raised locally refer to the effect on visibility for vehicles emerging from the junction with Pomell Way. I am mindful that vehicles would be slowing down or stationary before they emerge onto Commercial Street. However, the call box would reduce the visibility for drivers of vehicles approaching the junction along Pommel Way and would particularly affect the visibility of the bus stop which is set back from the main carriageway, as well as views of traffic emerging from the busy intersection between Commercial Street and Whitechapel High Street.
24. Drawing the above together, I find that the proposal would harm the safe and efficient operation of the highway.

Appeal C - Mansell Street jct Braham Street

Character and Appearance

25. The appeal site is set adjacent to the kerb on the edge of an attractive and relatively extensive open footway. Although there are a number of features within this area, these were either set adjacent to the building line (e.g. a number of cycle racks) or were of a low height or slender vertical appearance, including a litter bin and streetlights. Tree planting along the kerb softens the appearance of this area.
26. Within this context, the siting of the call box in such a prominent location near to the kerb line would appear as an obtrusive and bulky feature. The proposal would not integrate successfully into the streetscape to the detriment of the character and appearance of the area.
27. I saw that there was an existing phone box set within the area of hard landscaping. However, this served to confirm my concerns in respect of the obtrusive appearance of such a bulky and freestanding feature and the resultant harm to this otherwise attractive streetscape.

Highway

28. The appeal site is set on the edge of a broad extent of footway. Whilst the appellant's evidence suggests that pedestrian flows are high, existing features close to the kerb, including trees as well as a litter bin and utility poles, deflect the flow of pedestrians away from the location of the appeal site. Due to this pedestrian flow and the substantial width of the footway, I conclude that the proposal would not materially affect the movement of pedestrians and would not harm the safe and efficient operation of the highway.

Appeal D - Middlesex Street jct Whitechapel High Street

Character and Appearance

29. The call box would be located on the edge of a large paved area which has an attractive open character. There is some street furniture adjacent to the kerb consisting of a limited number of sign posts and traffic lights, although there is also a line of trees set back from the kerb which soften what could otherwise be a stark hard landscaped area. The call box would be located in a particularly prominent position within this streetscape adjacent to the carriageway. Due to this position it would be a bulky and isolated feature in views from the immediate area as well as longer distance views along Middlesex Street. As a result of its siting and appearance, the call box would be an obtrusive and incongruous feature which would detract significantly from the high quality of this landscaped setting and the character and appearance of the area.

Highway

30. The appellants evidence indicates that there is a low flow of pedestrians in the area, although I saw that the flow of pedestrians may be more substantial due to people traversing the area from Middlesex Street. I also saw that pedestrians may pass over the site of the call box to access a nearby pedestrian crossing, although the number of pedestrians taking this route was

limited. Due to the arrangement of the footway leading to/from Middlesex Street and the substantial footway width, any deviation of the pedestrian flow as a result of the proposal would be limited. I do not consider that this would be of such a degree that would materially weigh against the proposal. I therefore conclude that the proposed call box would not harm the safe and efficient operation of the highway.

Appeal E - Whitechapel High Street adj London Metropolitan University

31. The details submitted by the appellant show that the appeal site would be located at the end of a low fence around an extent of cycle parking. However, at the time of my site visit, the area had been reconfigured and much of the fence and cycle parking had been removed. Furthermore, a substantial utility building had been constructed to the front of a nearby building which significantly reduced the width of the footway. The proposed call box would be located within the reduced area of footway between the utility building and the highway. This would be a significant impediment to the passage of pedestrians and would also appear as an incongruous structure placed without consideration to the features around it.
32. I acknowledge that the utility building may be a temporary structure and that further reconfiguration of this area may occur. However, even if that was the case, I have not been provided with evidence as to how the siting and appearance of the call box would relate to future development in the area. Due to the uncertainty associated with this site, it is difficult to conclude positively with regard to the siting and appearance of the proposal. I am also mindful that I must determine this appeal on the basis of the evidence before me, including my observations on my site visit. On the basis of what I have seen and read, I conclude that the proposal would harm the character and appearance of the area and the safe and efficient operation of the highway.

Appeal F - Whitechapel High Street o/s Aldgate Tower

Character and Appearance

33. The appeal site is located on the pavement in a busy commercial area, next to the kerb at the edge of the footpath and adjacent to a cycle way. The kiosk would be set some distance from the strong building line established by Aldgate Tower. Although there are a number of lighting columns and support poles in the vicinity of the site, these have a slim vertical character which the bulk and angular appearance of the call box would contrast with uncomfortably. I saw that there is a bus stop located further along the street, however this is located some distance away and does not establish a prevailing character for the streetscape in the vicinity of the appeal site. Within this context the proposed call box would appear as a prominent and obtrusive feature divorced from the strong building line and protruding into the streetscape. As a result, the proposal would be harmful to the character and appearance of the area.

Highway

34. The appeal site is close to a road junction with pedestrian crossings and an entrance to an Underground Station. I also saw that it was close to the steps to an entrance to Aldgate Tower and that there were a number of pedestrian

movements associated with this. All of these features contributed to the high pedestrian flow that I saw along the footpath.

35. The proposed call box would significantly narrow the width of the footpath and would hamper the free movement of pedestrians. I also saw that the building line to the west projects slightly forward of Aldgate tower which directs the flow of pedestrians towards the site of the call box.
36. Due to the siting of the call box as well as the volume and nature of pedestrian flows in the area, the proposal would impede pedestrian movement along this busy footway. Furthermore, as a result of the location of the call box near to the kerb, the proposal may also divert pedestrians into the cycleway to the detriment of cyclist and pedestrian safety. I note the conclusions of the SSHA submitted by the appellant and the consideration of footway widths, however this does not lead me to a different conclusion on this matter with regards to the characteristics of the site and the pedestrian flow through the area. I therefore conclude that the proposal would be harmful to the safe and efficient operation of the highway.

Appeal G - 33 Commercial Street

Character and Appearance

37. The appeal site is located within a line of trees which extend along the footway. Although it would be divorced from the façade of the adjacent building, the call box would broadly respect the linear arrangement of the trees. I saw that there were a number of other elements of street furniture in the area, including call boxes, utility cabins, a kiosk, sign pillar and advertisements. I also saw that the trees provide a welcome softening and greening effect in what would otherwise be an unduly cluttered and unattractive streetscape. The regular spacing of the trees is a feature which adds to the contribution they make to the character and appearance of the area.
38. In contrast to some elements of the existing street furniture, the call box would not project forward of the line of trees. However, the proposal would be readily visible between the trees to passing pedestrians and road users. The call box would cumulatively add to the clutter which already exists in the area. Moreover, the call box would reduce the open space between two of the trees and would contrast uncomfortably with the spacing and open views between the extent of trees in the vicinity of the site, thereby harming the contribution that they make to the street scene.
39. The siting and appearance of the call box in this location would therefore harm the character and appearance of the area.

Highway

40. I note that the SSHA submitted by the appellants indicates that there is a low pedestrian flow through this area. I acknowledge that the flow of pedestrians may not be particularly high, but the number of pedestrians I observed at the time of my visit was more active than the level suggested by the appellants. I also saw that the pedestrian flow was split relatively evenly with some pedestrians passing between the trees and the building line, and others passing along the extent of the footpath adjacent to the highway.

41. The proposed call box would not project to the front of the line of trees and it would therefore not affect pedestrians passing along the extent of footpath adjacent to the highway.
42. However, comments raised locally have referred to the relationship between the proposed call box and the entrance to Denning Point and the potential conflict with residents and visitors. I also note that the entrance door opens onto the footpath, which restricts the width of the footway. That said, such occurrences of potential conflict would be relatively infrequent and fleeting. I also consider that suitable space would be retained even with the door open to enable pedestrians to pass through the area.
43. Therefore, whilst I acknowledge the sensitive relationship between the proposal and the access to Denning Point, I conclude that the proposal would not cause undue harm to the safe and efficient operation of the highway.

Appeal H - Bethnal Green Road jct Sclater Street

Character and Appearance

44. The appeal site is located within a paved landscaped area between the building line established by buildings of an industrial appearance and the highway. There is a tree and a piece of street sculpture located within the area which provide a degree of softening and visual interest respectively, and there are lower level or vertical features including signage and cycle parking arranged adjacent to the kerb. There were a number of market stalls in the area at the time of my visit, but these appeared to be of a temporary nature as is reflected by their absence in the photographs provided by the appellant.
45. The paved area appears as an attractive and cohesive area of hard landscaping set within a relatively eclectic streetscape. However, even within such a varied context, the proposal would not relate well to any of the existing features in the area and would appear as an isolated and obtrusive feature set well forward of the building line. Within this setting it would appear as an ill-considered and obtrusive feature within this attractive relatively open area, to the detriment of the character and appearance of the streetscape.

Highway

46. Pedestrian flows were relatively high at the time of my site visit due to people accessing the market stalls. However, even with an increased pedestrian flow and the reduction in space resulting from the market stalls, I observed that there would be sufficient space to enable pedestrians to pass through the area without hindrance and that the proposal would not conflict with users of the cycle racks. I therefore conclude that the proposal would not cause harm to the safe and efficient operation of the highway.

Appeal I - Mile End Road adj. Formosa House

Character and Appearance

47. The appeal proposal would be located within the footpath at the end of a line of cycle racks. Although there is some street furniture in the area, including information boards, advertisements and bus shelters, the streetscape has a broad open character with relatively unimpeded views along the curve of the

highway. Whilst the proposal would be located next to a line of cycle parking, the parking points represent low level features and the proposal would project uncomfortably above them. I saw that there were existing free-standing advertisements in the footpath on both sides of the road some distance from the appeal site. However, they do not establish a prevailing context for the proposal and in any event served to demonstrate the obtrusive and incongruous nature of angular isolated features within this streetscape.

48. Within this context, the siting and appearance call box would be an incongruous feature which would detract from the relatively open and uncluttered streetscape with resultant harm to the character and appearance of the area.

Highway

49. The SSHA submitted by the appellants indicates that this is an area of low pedestrian flow and this reflects my observations on my site visit. Although the proposal would be located near to the kerb, the existing cycle parking presents a barrier to pedestrians and the proposal would not exacerbate this. Whilst the proposal would shield some of the cycle racks in some views, the effect of shielding would be limited and I do not consider that this would be harmful to the security of users of the racks. Moreover, the proposal would not conflict with people wishing to access the racks. I therefore conclude that the proposal would not cause harm to the safe and efficient operation of the highway.

Conclusions

50. With regard to the first main issue, I conclude that in all of the appeals the siting and appearance of the call boxes would harm the character and appearance of the area and so, insofar as they are a material consideration, would be contrary to the design aims of Policies 7.5 of the LP, SP10 of the CS and DM24 of the MDD.
51. In relation to the second main issue, I conclude that with regards to Appeals A, B, E and F that the siting and appearance of the call boxes would harm the safe and efficient operation of the highway and so, insofar as they are a material consideration, would be contrary to the highway and transport aims of Policies SP09 and SP10 of the CS, DM20 and DM23 of the MDD, as well as 6.9 and 6.10 of the LP. Notwithstanding my conclusions on this issue in respect of Appeals C, D, G, H and I, this does not outweigh my conclusions with regards to character and appearance.
52. For the reasons given above, I conclude that the appeals should be dismissed.

David Cross

INSPECTOR