

Appeal Decisions

Site visit made on 21 August 2019

by Andrew McGlone BSc MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 September 2019

Appeal A Ref: APP/N5660/W/18/3213329

Adjacent 409 Kennington Road, Kennington Road, London SE11 4DE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against the 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 appeal is made by Maximus Networks Ltd against the decision of the Council of the London Borough of Lambeth.
 - The application Ref 18/00652/G24, dated 8 February 2018, was refused by notice dated 5 April 2018.
 - The development proposed is a call box.
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Appeal B Ref: APP/N5660/W/18/3213337

Kennington Lane adjacent Tesco, Kennington Lane, London SE11 5RH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against the 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 appeal is made by Maximus Networks Ltd against the decision of the Council of the London Borough of Lambeth.
 - The application Ref 18/00650/G24, dated 8 February 2018, was refused by notice dated 5 April 2018.
 - The development proposed is a call box.
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Appeal C Ref: APP/N5660/W/18/3213336

Kennington Lane adjacent Leary House, Kennington Lane, London SE11 5LH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against the 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 appeal is made by Maximus Networks Ltd against the decision of the Council of the London Borough of Lambeth.
 - The application Ref 18/00647/G24, dated 8 February 2018, was refused by notice dated 5 April 2018.
 - The development proposed is a call box.
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Appeal D Ref: APP/N5660/W/18/3212903

Lambeth Road junction Kennington Road, Kennington Road, London SE11 6NL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against the 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 appeal is made by Maximus Networks Ltd against the decision of the Council of the London Borough of Lambeth.
 - The application Ref 18/00640/G24, dated 8 February 2018, was refused by notice dated 4 April 2018.
 - The development proposed is a call box.
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Appeal E Ref: APP/N5660/W/18/3212502

412 Kennington Road, Kennington Road, London SE11 4PT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against the 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 appeal is made by Maximus Networks Ltd against the decision of the Council of the London Borough of Lambeth.
 - The application Ref 18/00651/G24, dated 8 February 2018, was refused by notice dated 3 April 2018.
 - The development proposed is a call box.
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Decisions

1. Appeals A to E are dismissed.

Procedural Matters

2. As I have set out above there are five separate appeals in this single decision letter. Each appeal relates to a different site, but the development proposed in each case is the same. In determining each appeal, I have considered each proposal on its individual merits, but given that these cases raise similar issues I have dealt with the cases in a single decision letter.
3. There is some discrepancy between the date of the applications compared to that stated on the appeal forms for each case. The latter confirms that the date of the application was 8 February 2018. I have considered each appeal based on the date from the respective appeal forms.
4. The Council, in responding to my request about Appeal A and this site's relationship with heritage assets, submitted comments in relation to the High Court ruling of Westminster CC vs SSHCLG & New World Payphones Ltd [2019] EWHC 176 (Admin). The appellant company was provided with an opportunity to comment on the Council's submissions in relation to each appeal. The appellant company states that the door referred to would be made from toughened glass and cover an access panel to prevent direct access to it. While various images of other kiosks have been cited¹, I cannot be certain, given the size and angle of the images that these are directly comparable to the appeal schemes. There is nothing contained within the evidence or shown in the structure of the call box proposed in each of the appeals that would have a dual purpose. Hence, the public call box's proposed would fall within the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GDPO).
5. The appellant company has been granted powers to install public call box as an Electronic Code Systems Operator, and permission 'in principle' for the development is granted by Part 16 of Schedule 2 of the GPDO. Article 3(1) and Schedule 2, Part 16, Class A.3(4) of the GPDO require the local planning authority to assess the proposed development solely on the basis of its siting

¹ 50-60 Blackfriars Road and Elephant and Castle Station

and appearance, taking into account any representations received. My determination has been made on the same basis, but the principle of development is not an issue².

6. The Council in some of the appeals points to the presence of other telephone kiosks nearby and the lack of need for new ones. This is only relevant in terms of assessing their benefits because the GDPO confers on the appellant company, a general planning permission for new kiosks. As the only matters for consideration are their siting and appearance, the appellant company does not have to prove a need for new telephone kiosks.
7. I recognise from the appellant company's evidence that the design of the proposed call boxes would enable people with limited mobility to access it. I also note the proposed use of solar panels on the roof to provide power and thus an energy efficient solution. However, the provisions of the GPDO require the proposed development to be assessed solely on the basis of its siting and appearance. However, if necessary, I have had regard to the purported benefits of the proposed call boxes in respect of heritage assets and paragraph 196 of the National Planning Policy Framework (the Framework).

Planning Policy

8. The Council refers to development plan policies in its reasons for refusing each of the schemes subject of the appeals. That said, prior approval applications do not require regard to be had to the development plan because section 38(6) of the Planning and Compulsory Purchase Act 2004 does not apply to them. However, insofar as the identified policies and guidance relate to siting and appearance, I have had regard to them as material considerations.
9. The Framework was revised in February 2019, shortly after the Council determined each of the applications subject of the appeals. The policies set out in the Framework are capable of being a material consideration. As the policies in relation to telecommunications have not changed significantly, I have had regard to the Framework in my decision and I am satisfied this has not prejudiced either party.

Main Issues

10. The main issues in respect of Appeals C and D are the effect of the siting and appearance of the proposed call box on: (i) the street scene; and (ii) the safe and efficient operation of the highway.
11. The main issue in respect of Appeal B is the effect of the siting and appearance of the call box on the street scene.
12. Even though the Council's reasons for refusing the scheme subject of Appeal E did not specifically relate to the proposal's effect on heritage assets, this site is opposite the location of Appeal A in which the Council raised concerns about that proposal's effect on several heritage assets. Thus, for consistency and completeness, the main issues in respect of Appeals A and E are the effect of the siting and appearance of the call box on: (i) the street scene including whether the proposal would preserve or enhance the character or appearance of the adjacent Kennington Conservation Area (KCA) and the St Marks Conservation Area (SMCA) or the setting of the Grade II Listed Kennington Park or any Listed Buildings (LB) within which the site may be located; and (ii) the safe and efficient operation of the highway.

² Murrell V Secretary of State for Communities and Local Government and Broadland District Council [2010]

Reasons

Site locations

13. The site subject of Appeal A is part of the pedestrian footpath in front of 409 Kennington Road, on the north side of the busy junction with Kennington Park Road (A3). The site subject of Appeal E is on the south side of the junction in front of 412 Kennington Road. The site is on the south-western footpath. Kennington Road and Kennington Park Road are both part of the Transport for London Road Network (TLRN) Red Route.
14. To the east of the sites subject of Appeal A and E, and on the far side of Kennington Park Road is the Grade II* listed Kennington Park Lodge. The Lodge, which was design by H Roberts for Prince Albert, is within the Grade II listed Kennington Park. The Park was opened in 1854 and has a formal layout comprising mainly of mature trees and grassed areas with cut beds for planting. The Park is situated amongst an area of high-density development. The Park and the Lodge form part of the SMCA which extends to the east and south of the site. To the north of both sites is the KCA which is around 50 metres away. There is a high footfall in and around the junction. Street furniture near to the site of Appeal A includes street-lighting columns, directional signs, traffic lights, a litter bin and a bus stop. Street furniture near to the site of Appeal E includes directional signs, equipment cabinets, a post box, cycle stands, street lighting columns and a litter bin.
15. Kennington Lane is part of the TLRN. The sites subject of Appeals B and C are located either side of a signal-controlled pedestrian crossing. The site subject of Appeal B is adjacent to a Tesco supermarket, now being demolished ready for a new development, and it would be within the deep pedestrian footway extending along the south side of Kennington Lane. To the north and west of this site is the proposed location of Appeal C which would be within the pedestrian footway extending along the northern side of Kennington Lane next to Leary House. Street trees, equipment cabinets, signposts, traffic light and/or CCTV columns populate both footways. There is also a bus stop and advertisement within the footpath near to the site subject of Appeal B.
16. The site subject of Appeal D is within the footpath on the southern side of Lambeth Road, which forms part of the London Distributor Road. The site is near to the junction of Lambeth Road and Kennington Road in front of Lambeth Towers, which is set behind railings and a row of trees. The footpath between the railings and the road is deep. A bus stop is to the west of the site, while there are street lighting columns, traffic lights, a litter bin, bollards, and other phone boxes in the general vicinity.

Design and specification

17. The design and specification of the proposed call boxes would be identical in each appeal. The proposed call boxes would have a footprint of around 1.32 metres by 1.12 metres and be 2.60 metres high. They would have a powder coated metal frame with toughened glass panels and dark coloured roof with a solar panel on top. No concerns are raised by the Council in respect of the proposed materials. I agree. The proposed call boxes have three sides, two of which are narrow in width and transparent making them highly visible and largely open, which would allow their use by a person in a wheelchair.

Appeal A

Street scene and heritage assets

18. The proposed phone box would be sited adjacent to the road in a widening section of footway next to the junction in a prominent location. It would be positioned in-between a street lighting column and a traffic light. Whilst there is little other street furniture immediately next to the proposed site, there is a litter bin, bus stop and sign, directional signs, street lighting columns and a further litter bin between the site and Stannary Street, a short distance away. On approach to the site from the north, the proposal would be viewed in conjunction with the existing street furniture, and the proposal's siting and appearance would lead to unnecessary street clutter regardless of the scheme that is subject of Appeal E being proposed on the pavement to the south-west.
19. In relation to the heritage assets in the area, I consider, due to the wide variety of street furniture which is situated around the junction, and throughout the SMCA and KCA, that the proposal would have a neutral effect on the setting of the Grade II* listed Kennington Park Lodge, the Grade II listed Kennington Park, the SMCA and the KCA as it would not unduly interrupt views of these heritage assets and how they are experienced.

Safe and efficient operation of the highway

20. The pavement is deep here and widens towards the radii of the junction. Even if there is a high footfall around this busy junction, the proposed call box would not significantly harm pedestrian movements as it would broadly be in line with street furniture between Stannary Street and the junction. The proposal would also accord with The Transport for London Streetscape Guidance (Streetscape Guidance) which advises the kerb zone should be kept free of street furniture between 450mm and 650mm. Sightlines would also not be affected due to the call box's siting away from the kerb, the bus stop and the traffic lights and pedestrian crossing, despite the Council's concerns over its orientation.

Appeal B

Street scene

21. The design of the proposed phone box is straightforward and functional. It would be sited in the centre of the pedestrian footway next to an equipment cabinet and a street tree, while a street lighting column is next to the kerb. The proposed call box would be wider than existing street furniture. Due to the siting and appearance of the proposed call box, it would be prominent on this section of pavement and viewed in conjunction with the plethora of street furniture at the junction to the west, and the two existing phone boxes sited on the opposite side of Kennington Lane in front of a petrol filling station. For these reasons, the proposal subject of Appeal B would result in clutter within the street scene.

Appeal C

Street scene

22. The proposed phone box would be sited between a row of street trees that line that road. Street furniture populates the footway to the east and west of the site, but in particular to the east around the traffic-light controlled junction. The proposed call box would have a straightforward and functional appearance. It would broadly align with existing street furniture, but it would be bulkier and

wider. This would mean that the proposed call box would be, as a result of its siting and appearance, be prominent on this section of pavement. It would also add to the existing spectrum of street furniture in the area and create unacceptable clutter.

Safe and efficient operation of the highway

23. The proposal would also accord with the Streetscape Guidance in terms of its distance from the kerb. However, pedestrians cross the road shortly before the junction even though there is a pedestrian crossing here. Thus, the size of the call box would, together with the regularity of street trees and other street furniture before the crossing, adversely affect pedestrian's visibility of traffic travelling along Kennington Lane, despite the low pedestrian flow.

Appeal D

Street scene

24. The proposed phone box would be sited within a deep pedestrian footway near to the traffic light-controlled junction which is populated by a wide variety of street furniture. The road is also characterised by mature street trees, which provide a leafy context. The proposed call box would have a straightforward and functional appearance, broadly similar to another call box found on the opposite footway to the north. The siting of the proposal would align with other street furniture in terms of its relationship with the kerb, but it would be bulkier and wider. As a result, the proposal would be a prominent addition to the pavement on approach from the east or west. Furthermore, it would unnecessarily add to the clutter of street furniture that populates the area around the junction. This includes two further call boxes to the east.
25. That said, given the site's context, I agree with the Council that the proposal would have a neutral effect on the setting of the Imperial War Museum which is a Grade II listed building to the south-east of the site, and The Three Stags Public House which is locally listed.

Safe and efficient operation of the highway

26. While the proposal would be close to a street lighting column and a public notice, it would, notwithstanding its orientation, leave an adequate footway width for pedestrians to safely use unobstructed. Also, the proposal would accord with the Streetscape Guidance in terms of its distance from the kerb.

Appeal E

Street scene and heritage assets

27. The proposed phone box would be sited next to the road. It would add to a line of existing street furniture leading from the pedestrian crossing at the junction to Bowling Green Street. This includes a road sign, two equipment cabinets, a post box, four cycle stands, a street lighting column, a litter bin and two road signs. The call box would be prominent in this context due to its comparative bulk. As such, the proposal's siting and appearance would not be sensitive and lead to a cluttered street scene. The proposal subject of Appeal A would be on the pavement to the north-east, but I have considered the scheme subject of Appeal E on its own merits.
28. Given the site's location and the array of street furniture which is situated around the junction, and throughout the SMCA and KCA, I consider that the

proposal would have a neutral effect on the setting of Kennington Park Lodge, Kennington Park, the SMCA and the KCA as it would not unduly interrupt views of these heritage assets and how they are experienced.

Safe and efficient operation of the highway

29. The proposal would accord with the Streetscape Guidance in terms of its distance from the kerb, notwithstanding the Council's stance that a 500mm gap is required from the edge of the kerb. Hence, the proposal would not harm the safe and efficient operation of the highway.

Other matter

30. My attention has been drawn by the appellant company to two other appeal decisions³. Whilst these relate to the installation of a payphone kiosk, I do not have all the details of these cases before me. Hence, I am unable to say whether they are directly comparable to the schemes that are subject of this decision. Notwithstanding these cases, I have considered the appeals on their own merits having regard to the evidence before me and the observations that I made during my site visits.

Conclusions

31. For the reasons set out above, I have found that the siting and appearance of the call box subject of Appeals A and E would not result in harm to the setting of the Kennington Park Lodge, Kennington Park, the SMCA and the KCA. As such, these proposals would accord with Policies Q20 and Q22 of the Lambeth Local Plan (LLP); which jointly seek proposals to preserve or enhance the character or appearance of conservation areas and conserve and not harm the significance of listed buildings. Furthermore, the proposals would comply with Policy 7.6 of the London Plan (LP) as the design and use of materials would be appropriate. However, I conclude that my findings in these respects are outweighed by the harm that the proposals, subject of Appeals A and E, would cause to the street scene as they would create unacceptable clutter. Thus, these proposals would be contrary to LLP Policies T10, Q5 and Q6 and LP Policy 7.5; which jointly, among other things, seek proposals to not create unacceptable clutter in the public realm. The proposals, subject of Appeals A and E would therefore not function well or add to the overall quality of the area as sought by Framework paragraph 127.
32. In the cases of Appeals B, C and D, I have found that the siting and appearance of the proposed call boxes would result in harm to the street scene. Accordingly, in those cases the proposals would conflict with LLP Policies T10, Q5 and Q6 and LP Policy 7.5 insofar as they jointly, among other things, seek developments to not create unacceptable clutter in the public realm. Moreover, the proposals, subject of Appeals B, C and D would not function well or add to the overall quality of the area as sought by Framework paragraph 127. The conflict that I have identified in respect of these appeals would outweigh my view that the proposal would accord with LP Policy 7.6 as the design and use of materials would be appropriate.
33. In respect of Appeal C, the proposal would result in harm to the safe and efficient operation of the highway even though it would accord with the Streetscape Guidance and the Transport for London Pedestrian Comfort

³ Appeal Decision Refs: APP/X5210/A/12/2178982 and APP/X5210/A/12/2187244

Guidance for London (Pedestrian Comfort Guidance). Thus, the proposal would conflict with LLP Policies T1, T2 and T10 and LP Policy 6.10(B); which jointly require development proposals, among other things, to ensure high quality pedestrian environments that reduce the level of road danger by not blocking visibility splays. No conflict would arise with LP Policy 6.9(B) as there would be no harm to the provision of a safe cycle network.

34. In terms of Appeals A, D and E, I have found no harm to the safe and efficient operation of the highway. Thus, the proposals subject of these appeals would not conflict with LLP Policies T1, T2 and T10, LP Policies 6.9(B) and 6.10(B), the Streetscape Guidance and the Pedestrian Comfort Guidance.
35. In drawing these conclusions together, given my findings set out above, I conclude that Appeals B and C should be dismissed. In respect of Appeals A and E, I have found no harm in terms of the heritage assets and the safe and efficient operation of the highway, but I conclude that these are outweighed by my findings in respect of the street scene. With regards to Appeal D, I have found no harm in terms of the safe and efficient operation of the highway, but I conclude that this is outweighed by my findings in respect of the street scene. I therefore conclude that Appeals A, B, C, D and E should be dismissed.

Andrew McGlone

INSPECTOR