
Appeal Decisions

Site visit made on 11 January 2019

by Martin H Seddon BSc DipTP MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd September 2019

Appeal A Ref: APP/N4720/W/17/3191994

Public Highway, 32 George Street, adjacent Kirkgate Market, Leeds, LS2 7HY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) Order 2015.
 - The appeal is made by Maximus Networks Limited against the decision of Leeds City Council.
 - The application Ref: 17/03206/DTM, dated 11 May 2017, was refused by notice dated 6 July 2017.
 - The development proposed is a call box.
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Appeal B Ref: APP/N4720/W/17/3191996

Public Highway, New York Street, adjacent Leeds Central Bus Station, Leeds, LS2 7HU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) Order 2015.
 - The appeal is made by Maximus Networks Limited against the decision of Leeds City Council.
 - The application Ref: 17/03210/DTM, dated 11 May 2017, was refused by notice dated 6 July 2017.
 - The development proposed is a call box.
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Appeal C Ref: APP/N4720/W/17/3191999

Public Highway, O/S 1 Merrion Way adjacent the Merrion Centre, Leeds, LS2 8BT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) Order 2015.
 - The appeal is made by Maximus Networks Limited against the decision of Leeds City Council.
 - The application Ref: 17/03239/DTM, dated 11 May 2017, was refused by notice dated 6 July 2017.
 - The development proposed is a call box.
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Appeal D Ref: APP/N4720/W/17/3192001

Public Highway, 53 New Briggate, Leeds, LS2 8JD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) Order 2015.

- The appeal is made by Maximus Networks Limited against the decision of Leeds City Council.
 - The application Ref: 17/03243/DTM, dated 11 May 2017, was refused by notice dated 6 July 2017.
 - The development proposed is a call box.
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Appeal E Ref: APP/N4720/W/17/3192002

Public Highway, Merrion Street, adjacent St John's Centre, 20-21 St John's Centre, 110-118 Albion Street, Leeds, LS2 8HP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) Order 2015.
 - The appeal is made by Maximus Networks Limited against the decision of Leeds City Council.
 - The application Ref: 17/03245/DTM, dated 11 May 2017, was refused by notice dated 6 July 2017.
 - The development proposed is a call box.
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Appeal F Ref: APP/N4720/W/17/3192051

Public Highway, Dyer Street, in front of Leeds National Express Coach Bus Station, LS2 7LA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) Order 2015.
 - The appeal is made by Maximus Networks Limited against the decision of Leeds City Council.
 - The application Ref: 17/03212/DTM, dated 11 May 2017, was refused by notice dated 30 June 2017.
 - The development proposed is a call box.
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Appeal G Ref: APP/N4720/W/17/3192098

Public Highway, 30-32 Woodhouse Lane, Leeds, LS2 8LX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) Order 2015.
 - The appeal is made by Maximus Networks Limited against the decision of Leeds City Council.
 - The application Ref: 17/03247/DTM, dated 11 May 2017, was refused by notice dated 6 July 2018.
 - The development proposed is a call box.
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Appeal H Ref: APP/4720/W/17/3192108

Public Highway, St Peter's Street, adjacent West Yorkshire Playhouse, Leeds, LS2 7UP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) Order 2015.
 - The appeal is made by Maximus Networks Limited against the decision of Leeds City Council.
 - The application Ref: 17/03248/DTM, dated 11 May 2017, was refused by notice dated 10 July 2017.
 - The development proposed is a call box.
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Decisions:

Appeal A

1. The appeal is dismissed.

Appeal B

2. The appeal is dismissed.

Appeal C

3. The appeal is dismissed.

Appeal D

4. The appeal is dismissed.

Appeal E

5. The appeal is dismissed.

Appeal F

6. The appeal is dismissed.

Appeal G

7. The appeal is dismissed.

Appeal H

8. The appeal is dismissed.

Procedural Matters

9. As an electronic communications code operator, the appellant benefitted from deemed planning permission for a call box under Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) Order 2015 (GPDO), subject to prior approval by the local planning authority of siting and appearance. The appellant applied to the Council on that basis. The Council determined that prior approval was required and refused prior approval for the siting and appearance of the call box subject to each of Appeals A - H.
10. On 25 May 2019, the Town and Country Planning (Permitted Development, Advertisement and Compensation Amendments) (England) Regulations 2019 came into force, amending the General Permitted Development Order. This amendment removes the permitted development right to install a public call box under Schedule 2, Part 16, Class A of the GPDO. However, transitional and saving provisions at Part 5 of the 2019 Regulations provide that where an

appeal has been made within 6 months of the date of notice of refusal of a prior approval application submitted before 25 May 2019, the planning permission granted by Schedule 2, Part 16, Class A continues to have effect in relation to a public call box as if the amendments made to the GPDO by the 2019 Regulations had not been made. That is the case in respect of the eight appeals before me.

11. The Council has made reference to development plan policies within its decision notices relating to each of Appeals A – H, including Leeds Unitary Development Plan Review policy GP5 and policies P10, P11 and T2 of the Local Development Framework Core Strategy. However, the principle of development is established by the GPDO and a prior approval relating to paragraph A.3 of Schedule 2, Part 16, Class A of the GPDO includes no requirement that regard be had to the development plan. The provisions of the GPDO require the local planning authority to assess the proposed development solely upon the basis of its siting and appearance taking into account any representations received. Nevertheless, I have taken account of the above-mentioned policies in so far as they are relevant to my assessment of matters of siting and appearance.
12. The National Planning Policy Framework (the Framework) was revised and published on 24 July 2018. Chapter 10 deals with supporting high quality communications infrastructure, including applications for prior approval. Paragraph 116 advises that local planning authorities must determine applications on planning grounds only. They should not seek to prevent competition between different operators or question the need for an electronic communication system. As the principle of development is established, considerations such as need for the call box are not a relevant matter. The appellant and the Council were given the opportunity to comment on the revised Framework but did not respond. The Framework was further revised in February 2019. I have taken this revised Framework into account in determining these appeals. In view of its content compared to that of the previously revised Framework, I consider that to do so would not prejudice the interests of the main parties.
13. Concerns have been expressed regarding the prospect of outside panels of the call boxes being used for advertisements. However, in the case of *Murrell v SSCLG & Broadland District Local Planning Authority (2010) ECWA Civ 1367* it was judged that "*the assessment of siting, design and external appearance has to be made in a context where the principle of development is itself not an issue*". Furthermore, the case of *Infocus Public Networks Ltd v SSCLG & The Mayor and Commonality of the Citizens of London (2010) EWHC 3309 (Admin)* established that the term "appearance" would ordinarily be thought to be the intrinsic appearance of the kiosk itself. Appeals A – H relate to the construction of a call box only and not any advertisement consent that may otherwise be required. The construction of a kiosk and the display of advertisements are distinct and separate matters requiring different applications. I, therefore, have determined these appeals based upon the siting and appearance of the proposed call boxes.
14. I have also considered the judgement in *Westminster CC v SSHCLG & New World Payphones Ltd [2019] WHC176* and taken the appellant's response to

this judgement into account. However, the proposed call boxes before me do not include a digital advertising panel and there is no accompanying application for advertisement consent. On that basis I conclude that the proposals are solely for the purpose of the operator's electronic communications network. I, therefore, have determined these appeals based upon the siting and appearance of the proposed call boxes.

Main Issues

15. I consider that the main issue for each of Appeals A - H is whether or not approval should be given in respect of the siting and appearance of the development, with particular regard where relevant to whether it would preserve or enhance the setting of listed buildings, and the effect upon highway and pedestrian safety.

Reasons

Background

16. The appeals relate to eight proposed freestanding call boxes. The call box kiosks consist of the same design. They would comprise a broadly rectangular structure with a footprint of approximately 1.125m by 1.325m and with an approximate maximum height of 2.6m. The main structure would be three sided, with panels of toughened glass in a steel frame. The design of the kiosk would allow accessibility for people with limited mobility, including wheelchair users and would be powered by solar units on the roof. The use of solar power and mobile network communication, plus the fact that the kiosks would be attached to paved areas, means that no invasive work would be required for their installation. The Council appears to have been uncertain of the precise siting for the call boxes. However, the appellant has provided annotated photographs which illustrate the proposed siting in each instance.
17. Having regard to the above and Schedule 2, Part 16, Class A of the GPDO, I am satisfied that the call box kiosk and its constituent parts fall under paragraph A.5 and are reasonably required for the purposes of electronic telecommunications apparatus. The proposed freestanding call box kiosks, therefore, fall within the permitted development right under Part 16, Class A. However, prior approval under paragraph A.3 is required in terms of siting and appearance for each of the kiosks by virtue of paragraph A.2(3) of Part 16.

Appeal A: 32 George Street, adjacent Kirkgate Market

18. The proposed call box would be located in the footway near to shopfronts for the indoor market. Across George Street is the entrance to the Victoria Gate Shopping Centre and the John Lewis Store. Near the site is a litter bin, street lighting columns and traffic lights for a pedestrian crossing. The proposed call box would add to this clutter at a key point where footfall is high because pedestrians are crossing George Street between the indoor and outdoor markets and the Victoria Gate Shopping Centre and John Lewis Store. In view of its scale, bulk and height the proposed call box would detract from the visual quality of the street scene, including the high standard of public areas created around the Shopping Centre.

19. The call box would be sited quite close to the kerb edge and carriageway of George Street. George Street is one way downhill from Vicar Lane and has a parking/loading bay near the appeal site. The call box would be near the zig-zag markings for the pedestrian crossing and could restrict views of pedestrians using the crossing for vehicles approaching from the direction of Vicar Lane, because of its siting, height and bulk. It would also reduce the available area of footway for pedestrians at this busy location and would be harmful to highway and pedestrian safety.
20. These considerations relating to siting and appearance justify refusal of prior approval and dismissal of Appeal A.

Appeal B: New York Street, adjacent Leeds Central Bus Station

21. The proposed call box would be sited within a spur of pavement between a bus shelter and an access to the National Express coach park. It would be near to 'no entry', 'give way' and road direction signage and would add clutter to the street scene. Its siting and bulk would make it an intrusive feature at the front of the bus station. I find that the proposal would harm the character and appearance of the area.
22. The proposed call box would be sited very near to a crossing point to the bus station entrance, potentially restricting views of approaching pedestrians for drivers leaving the bus park. It would narrow the area of pavement available for pedestrians in this location with a high footfall. At the site visit it was apparent that coaches load and unload passengers and their baggage next to the proposed site.
23. I conclude for appeal B that the proposal would be detrimental to the character and appearance of the area and would be harmful to the safety and free flow of pedestrians because of its siting and bulk. These considerations relating to siting and appearance justify refusal of prior approval and dismissal of Appeal B.

Appeal C: O/S 1 Merrion Way opposite Merrion Centre

24. The callbox would be sited near the edge of the pavement outside a modern Pure Gym building near to the Merrion Shopping Centre. On the opposite side of the road are the Arena Park tower block and the Leeds Arena.
25. The pavement is relatively uncluttered at this point. There is a street tree set in a metal grid near the proposed site as well as metal safety railings for Merrion Way and pedestrian crossing signal lights. The proposed call box would appear visually intrusive because of its scale, bulk and height at this location, which has been the subject of improvements to the public realm. I find that it would harm the character and appearance of the area.
26. The siting of the kiosk would significantly decrease the width of the footway to around 2.1 m and less than the 3 m width recommended by the Council. This is because it would be near the street tree. This could cause potential pedestrian safety problems at times of high footfall, such as when groups of people are visiting the Leeds Arena. The reduction in footway width would pose difficulties for pedestrians, particularly when in groups, carrying shopping or luggage or when using pushchairs. This could result in people using the

edge of the road to pass, or tripping. It would also reduce the visibility for pedestrians of traffic approaching the pedestrian crossing from the left at the appeal site side of Merrion Way, because of the proximity of the proposed call box to the crossing and road kerb line. For these reasons, I consider that the proposal would be detrimental to pedestrian safety.

27. I conclude that the call box proposed in Appeal C would have a harmful effect on the character and appearance of the street scene. It would also be detrimental to pedestrian safety. Taken together, these considerations justify refusal of prior approval and dismissal of Appeal C.

Appeal D: 53 New Briggate

28. The site for the proposed call box is within the pavement outside a short parade of shops and a restaurant. There are litter bins at either side of the site, a large highway direction sign and bus stops with shelters. There are traffic signals at the junction of New Briggate and Merrion Street. The grade II* listed building of the Grand Theatre and grade II listed building of the Grand Arcade are located on the opposite side of New Briggate.
29. The proposed call box would add unduly to the clutter of street furniture at this point. It would appear visually intrusive because of its height, scale and bulk within the context of a relatively narrow footway. Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires special regard to be paid to the desirability of preserving listed buildings or their setting or any features of special architectural or historic interest that they possess. The Framework directs that when considering the impact of a proposal on the significance of designated heritage assets, great weight should be given to the asset's conservation and that significance can be harmed or lost through development within their setting. I consider that the proposal would result in harm to the setting of the grade II* listed building of the Grand Theatre and grade II listed building of the Grand Arcade. This is because of the special importance of these buildings and their proximity to the appeal site. Moreover, the proposed call box would potentially hinder views of the ornate building frontages. Under the Framework, the proposal would result in less than substantial harm. The need for electronic communications is not in dispute. However, considerable importance and weight is attached to the desirability of preserving the setting of a heritage asset. Accordingly, the harm to the heritage assets' significance would outweigh the proposal's public benefits under the Framework.
30. The proposed call box would reduce the footway width to around 2.1 m compared to the council's recommended width of 3 m. This is a busy footway because of people using the shops and commercial premises in the vicinity, as well as visitors to the Grand Arcade and Grand Theatre. The reduction in footway width would pose problems for pedestrians, particularly when in groups, carrying shopping or luggage or when using pushchairs. This could result in people using the edge of the road to pass, or tripping. Therefore, I consider that the proposal would be detrimental to the free flow and safety of pedestrians.
31. I conclude that the call box proposed in Appeal D would have a harmful effect and would fail to preserve the setting of the Grand Theatre and Grand Arcade

ad their significance as heritage assets. The siting of the call box would also be detrimental to pedestrian safety. These considerations relating to siting and appearance justify refusal of prior approval and dismissal of Appeal D.

Appeal E: Merrion Street, adjacent St John's Centre

32. The call box would be sited in the pavement next to Merrion Street. The Council has not objected to the proposal in respect of its effect on the character and appearance of the area. There is already a call box a short distance away from the site. However, the area is relatively uncluttered by street furniture and I see no reason to disagree with the Council's opinion in this respect.
33. Merrion Street is a busy highway with three lanes approaching the site from the junction with Albion Street and Woodhouse Lane. The proposed site for the call box would be near to a pedestrian crossing. The right hand lane closest to the proposed site is marked as the access to the St Johns Shoppers Car Park. This is a location where drivers are likely to be changing lanes. The proposed call box could impede views for drivers of pedestrians using the crossing because of its siting, height, bulk and proximity to the road carriageway.
34. I conclude that the call box proposed in Appeal E would be detrimental to highway and pedestrian safety. This consideration relating to its siting and appearance justifies refusal of prior approval and dismissal of Appeal E.

Appeal F: Dyer Street, in front of Leeds National Express Coach Bus Station

35. The proposed call box would be sited in the pavement fronting the entrance to Leeds City Bus Station and National Express Coach Station. The call box would be sited close to a metal bar cycle stand and a street tree. The tree has existing call boxes at either side which would be seen in combination with the propose call box. At the opposite side of the appeal site there is a free-standing street map, a waste bin and a yellow recycling bin. The proposed call box would unduly add to the existing visual clutter from the street furniture in the paved area that fronts the Bus Station entrance. It would also detract from the improvements to the public realm that have been carried out in the area.
36. With respect to matters of highway and pedestrian safety, the location has a high pedestrian flow resulting from trips to and from the bus and coach stations and nearby city market. The proposed call box would further restrict the free flow of pedestrians that already exists as a result of the street furniture. However, the paved area in front of the bus station is relatively wide. For that reason, the effect on pedestrians would be more of an inconvenience than a risk to safety. The proposed call box would not obscure any highway sight lines and I consider that there would be no issue of highway safety
37. I conclude that the call box proposed in Appeal F would have no significant detrimental effect in terms of pedestrian or highway safety. However, it would have a harmful impact on the character and appearance of the area fronting the bus station/coach station and street scene. This consideration relating to its siting and appearance justifies refusal of prior approval and dismissal of Appeal F.

Appeal G: 30-32 Woodhouse Lane

38. The site for the proposed call box is within the pavement near a Sainsbury Local Store. The pavement narrows towards the junction with Merrion Street because of a lay-by for taxi parking. The proposed call box would be seen in the context of an existing call box and a bike rack, highway sign and lamp standard. I consider that it would be a detrimental addition to the clutter of the existing street furniture at this location and harmful to the character and appearance of the street scene because of siting and bulk.
39. Turning to highway and pedestrian safety, the call box would be next to the dual carriageway of Woodhouse Lane. Passing traffic approaches a city centre car park capacity and direction sign for the Core, Albion Street and the Arena. The existing call box already partially impedes views of the sign for drivers at a point where vehicles may be changing lanes. The proposed call box would also partly reduce visibility of the sign for drivers because of its scale, siting, bulk and proximity to the highway.
40. I conclude that the call box proposed in Appeal G would have a harmful effect on the character and appearance of the street scene. It would also be detrimental to highway and pedestrian safety because of its siting in relation to the nearby highway direction sign. Taken together, these considerations justify refusal of prior approval and dismissal of Appeal G.

Appeal H: St Peter's Street, adjacent West Yorkshire Playhouse

41. The proposed call box would be located in an area near Quarry Hill, the West Yorkshire Playhouse, College of Music and Northern Ballet buildings. It would be sited in a prominent position near the front elevation of the West Yorkshire Playhouse. There is a pedestrian crossing near the site giving access across the busy dual carriageway of St Peter's Street.
42. This is an area which has been subject to improvements to the public realm and the introduction of a cycleway. The improvements have been designed to leave the frontage of the Playhouse relatively uncluttered. There is an existing telephone kiosk in the vicinity of the appeal site, which would be seen in the context of the proposed call box. I consider that the proposed call box would be a visually intrusive feature because of its scale height and design. It would detract from the character and appearance of the area, including the improved public realm and setting of the Playhouse.
43. The Council advises that the cycleway would result in the footway being reduced to around 2.5 m. in width. This is a busy pedestrian area, particularly when people are visiting and leaving the Playhouse and other facilities in the vicinity. The reduction in footway width would pose problems for pedestrians, particularly when in group or when using pushchairs. This could result in people using the cycleway to pass, or tripping. The proposed call box could also potentially block views of pedestrians for cyclists and vice-versa.
44. I conclude for appeal H that the proposed call box would be detrimental to the character and appearance of the area and would be harmful to highway and pedestrian safety. These considerations relating to its siting and appearance justify refusal of prior approval and dismissal of Appeal H.

Other Matters

45. The appellant has provided details of a press item from 2013 in which several payphones in Leeds were the subject of theft and damage. This includes a quote from a member of the Access Committee for Leeds who indicated that payphones provided a potentially vital service for people with disabilities. This is a matter that I have taken into account as a public benefit of the proposals when reaching my conclusion against the main issue in each of the appeals. The appellant has referred to Transport for London Streetscape Guidance, however, although a general guide, this does not specifically apply to Leeds City Council and its area.

Conclusion

46. All other matters raised have been taken into account. For the reasons given above I conclude that appeals A-H should be dismissed.

Martin H Seddon

INSPECTOR