
Appeal Decision

Site visit made on 9 September 2019.

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 25th September 2019

Appeal Ref: APP/H5960/W/19/3229170

**Public Highway, Upper Richmond Road Rear of 5 Fairdale Gardens,
London SW15 6JW**

- 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 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 Wandsworth.
 - The application Ref 2018/4761, dated 1 October 2018, was refused by notice dated 22 November 2018.
 - The development proposed is a public call box.
-

Decision

1. The appeal is allowed and approval is granted under the provisions of Article 3(1) and Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the siting and appearance of a public call box at land at Public Highway, Upper Richmond Road Rear of 5 Fairdale Gardens, London SW15 6JW in accordance with the terms of the application Ref 2018/4761, dated 1 October 2018, and the plans submitted with it including location plan and Max 2 Assembly Rev C.

Procedural Matter

2. The provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO 2015), 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, taking into account any representations received. My determination of this appeal has been made on the same basis.

Planning Policy

3. The principle of development is established by the GPDO 2015 and the provisions of Schedule 2, Part 16, Class A of the GPDO 2015 do not require regard be had to the development plan. I have had regard to the policies of the development plan and the draft London Plan 2017 only in so far as they are material considerations relevant to matters of siting and appearance.

Main Issues

4. The Council considers that the development would not amount to permitted development in part because the appellants have not demonstrated that it is

required for the purpose of the operator's electronic communications. The Council's report makes it clear that this view is based on the need for the call box. The National Planning Policy Framework (the Framework) requires that applications for communications infrastructure are determined on planning grounds only. Therefore, matters such as the need for the development are not relevant to the determination of this appeal. Therefore, the main issues are:

- The effects of the siting and appearance of the development on the character and appearance of its surroundings; and
- The effects of the siting of the development on the pedestrian environment, with particular regard to convenience and safety.

Reasons

Character and appearance

5. The call box would be located on a wide area of pavement bounded by a high brick wall which defines the rear gardens of houses facing Fairdale Gardens. This part of Upper Richmond Road is residential in character and the comparatively limited number of commercial uses gives it a sense of a quiet urban street. The depth and width of the pavement offer a wide expanse of space to the public realm and street furniture in the form of street trees, waste bins and lampposts are not dominant features within this space. However, the tall telephone masts and their associated cabinets which occupy a narrower part of the pavement, close to the junction with Fairdale Gardens, are very prominent and intrusive elements in the street scene.
6. The appeal scheme proposes the erection of a two-sided panel with angled roof which is typical of the type of kiosk found in urban areas. It would be larger in scale than the waste bin and of a greater mass than the lampposts and street trees, but it would not result in the street furniture in the immediate vicinity of it appearing cramped or cluttered. As a consequence of the distance between the masts and cabinets further along the road it would also not contribute to the visually harmful collection of features close to the Fairdale Gardens junction.
7. I conclude that the siting of the development would not have a harmful effect on the character and appearance of the surrounding area. Consequently, the proposal would accord with Policies 6.10 and 7.5 of the London Plan (2016), Policy D7 of the Draft London Plan 2017, Policy IS3 of the Wandsworth Local Plan Core Strategy (2016) (the Core Strategy) and Policies DMS1 and DMS9 of the Wandsworth Local Plan Development Management Policies Document (2016) (the DMPD) These policies, jointly, seek to maintain uncluttered public spaces that provide high quality pedestrian environments.
8. I do not find Policy PL3 of the Core Strategy which relates to transport schemes and funding to be directly relevant to the appeal scheme.

Pedestrian environment

9. On the basis of the appellants' submissions the call box would be positioned close to the kerb edge and in alignment with the waste bin and street light and the width of the pavement which would remain free of obstruction would be greater than that recommended by the Transport for London Pedestrian Comfort Guidance (TfL Guidance). Regardless of the width of the unobstructed

footway, I have very limited specific evidence to demonstrate why the proposed siting would be harmful to highway safety, with particular regard to pedestrian movement. Although there are other items of street furniture, the proposed call box would also be readily visible within the street scape and the footway would be of a width that would safely retain its functionality. The layout would also broadly comply with the TfL Guidance.

10. The Council considers that as a detailed plan was not submitted to show the precise location of the call box, it cannot be determined how much of the retained pavement would be useable for pedestrian activity. Nevertheless, on the basis of the evidence before me and my observations on site, I find the likely impacts of the development on pedestrian movements to be satisfactory.
11. I conclude that the siting of the appeal scheme would not have a harmful effect on the pedestrian environment, with particular regard to convenience and safety. On this basis the development would accord with Policies 6.10 and 7.5 of the London Plan (2016) and Policies DMS1 and DMT1 of the DMPD. Taken together, these policies seek to reduce obstructions and provide safe and suitable access for all people.

Other Matters

12. Following the Court's judgment in Westminster CC v SSHCLG & New World Payphones Ltd [2019] EWHC 176 (Admin) there is a requirement to ensure that a proposal is solely for the purpose of the operator's electronic network. The design of the call box includes a glass panel on the opposite side of the structure to the phone pocket, which is denoted as a non-illuminated display panel. The appellants describe this panel as allowing access for maintenance and there are no details of the nature of what would be displayed on the panel. In addition, the proposals are not accompanied by an application for advertisement consent.
13. I note the concerns in relation to the potential for advertisements. However, I have to assess the proposal based on the evidence that I have before me. On this basis, although advertisements are often a common feature on kiosks of this nature, there is no compelling case to confirm that advertisements would form part of the proposals. Consequently, I cannot be certain that the kiosks would provide a dual purpose.

Conditions

14. Any planning permission granted for development under Article 3(1) and Schedule 2, Part 16, Class A is subject to conditions set out in Paragraphs A.3(9), A.3(11) and A.2(2), which specify that the development must, except to the extent that the local planning authority otherwise agree in writing, be carried out in accordance with the details submitted with the application, must begin not later than the expiration of 5 years beginning with the date on which the local planning authority received the application, and must be removed as soon as reasonably practicable after it is no longer required for electronic communications purposes and the land restored to its condition before the development took place.
15. The condition requested by the Council to secure the removal of the call box and reinstatement of the footpath when it is no longer required is addressed by one of the standard conditions.

Conclusion

16. For the reasons given above, I conclude that the appeal should be allowed, and prior approval should be granted.

Sarah Dyer

Inspector