



Appeal Decisions

Site visits made on 28 August 2019

by Thomas Hatfield BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 4th October 2019

All Appeals

- The appeals are 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 Royal Borough of Kensington & Chelsea.
 - The development proposed in each case is described as a call box.
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Appeal A - Ref: APP/K5600/W/18/3212000 **100 Notting Hill Gate, London, W11 3QA**

- The application Ref PA/18/00507, dated 22 January 2018, was refused by notice dated 29 March 2018.
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Appeal B - Ref: APP/K5600/W/18/3212009 **124 Notting Hill Gate, London, W11 3QG**

- The application Ref PA/18/00514, dated 22 January 2018, was refused by notice dated 29 March 2018.
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Appeal C - Ref: APP/K5600/W/18/3212061 **47 Notting Hill Gate, London, W11 3JS**

- The application Ref PA/18/00506, dated 22 January 2018, was refused by notice dated 29 March 2018.
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Appeal D - Ref: APP/K5600/W/18/3212073 **205 Warwick Road, London, W14 8PU**

- The application Ref PA/18/00515, dated 22 January 2018, was refused by notice dated 29 March 2018.
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Appeal E - Ref: APP/K5600/W/18/3212082 **Warwick Road corner Kensington High Street, London, W14 8QZ**

- The application Ref PA/18/00517, dated 22 January 2018, was refused by notice dated 29 March 2018.
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Decisions

1. Appeals A to E are dismissed.

Procedural Matters

2. The 5 appeals relate to proposals by Maximus Networks Ltd within The Royal Borough of Kensington & Chelsea. In terms of their design and appearance, the proposed call boxes are identical in each case. Given the similarities between these proposals, I have dealt with them in a single decision letter.
3. My attention has been drawn to the High Court judgement *Westminster CC v SSHCLG & New World Payphones Ltd* [2019] EWHC 176 (Admin). In this regard, it is argued that the appeal proposals would have a dual purpose and would therefore fall outside of Article 3(1) and Schedule 2, Part 16, Class A of the GPDO. However, the proposals do not seek advertising consent and no advertisements are indicated on the submitted plans. From the evidence before me, I am also satisfied that the rear opening panel is necessary for servicing and maintenance, and to allow for the installation of new apparatus. Accordingly, I consider that the proposals would be solely for the purposes of the operator's electronic communications network.
4. Whilst The Town and Country Planning (Permitted Development, Advertisement and Compensation Amendments) (England) Regulations 2019 amends the GPDO by removing permission for the installation, alteration or replacement of a public call box by, or on behalf of, an electronic communications code operator, this is subject to transitional and saving provisions. Therefore, for the purposes of these appeals, which were validly made, the proposals fall to be considered against the provisions of Article 3(1) and Schedule 2, Part 16, Class A of the GPDO.
5. It is implied in the Council's submissions that there is no need for some of the proposed call boxes given the proximity of existing telephone kiosks nearby. Separately, the appellant sets out a number of benefits of the proposals, including the creation of new facilities for public use that would be accessible to those with limited mobility. However, the GPDO requires that proposals under Part 16, Class A be assessed solely on the basis of their siting and appearance. I have therefore determined the appeals on this basis.
6. The Council has drawn my attention to the policies and guidance it considers to be relevant to this appeal and I have taken them into account as material considerations relevant to the matters of siting and appearance. However, Part 16, Class A of the GPDO establishes the principle of development and it does not require that regard to be had to the development plan. In my determination of this appeal, the Council's policies have not therefore, by themselves, been decisive.
7. The address given above for Appeal D is taken from the Decision Notice rather than the planning application form. This is because the application form incorrectly states that the site is on 'Warwick Lane' rather than Warwick Road.

Main Issues

8. The main issues are:
 - (a) In the case of Appeals A-E, the effect of the proposed call box on the character and appearance of the area; and

- (b) In the case of Appeals A, B and C, the effect of the siting and appearance of the proposed call box on the safe and efficient operation of the highway.

Reasons

Appeal A

9. The proposed call box would be positioned between a street tree and a bench, and next to an existing telephone kiosk. It would be set within a relatively wide section of pavement in front of a parade of shops.
10. The proposal would be a relatively tall and wide structure that would be prominent in views along the footway. It would be bulkier than any item of street furniture in the immediate vicinity and it would have an awkward relationship with the adjoining kiosk. It would visually intrude into views along the footway, which currently has a relatively open character, and it would be a discordant feature within the street. Moreover, it would harmfully disrupt the rhythm created by the regular spacing of street trees and benches on this side of Notting Hill Gate, which contributes to a pleasant street scene.
11. In addition, the proposed call box would be positioned next to a mature tree that is an important feature within the street and contributes to its attractive tree lined character. In this regard, no details have been provided to show how the call box could be installed without damaging the tree's roots. In the absence of this information, I am unable to conclude that the longer term existence and visual contribution of this tree would not be undermined.
12. Separately, the proposal would protrude slightly beyond the existing bench and street tree on either side. However, it would mostly be located in an area of the footway between the bench and street tree that would not ordinarily be used by pedestrians. It would not significantly narrow the existing footway, which would remain generous in width in this location. Accordingly, I do not consider that the siting of the call box would harm the safe and efficient operation of the highway. However, that does not alter my concerns in relation to character and appearance, as set out above.
13. For the above reasons, I conclude that the siting and appearance of the proposed call box would significantly harm the character and appearance of the area.

Appeal B

14. The proposed call box would be positioned between 2 existing street trees, close to a pedestrian crossing. It would be set within a broad section of pavement in front of a parade of shops. Street trees are placed at regular intervals and contribute to a pleasant rhythm along the street in this location. Aside from a bus stop a short distance to the east, the footway is relatively open with mostly slender street furniture such as lampposts and traffic lights. In contrast, the proposed call box would introduce a large, bulky feature that would be prominent in views along the footway. This would disrupt the existing rhythm along the pavement that is established by the street trees, and would create a discordant feature that would draw the eye.
15. In addition, the proposed call box would be positioned in close proximity to a mature tree that is an important feature within the street and contributes to its

attractive tree lined character. In this regard, no details have been provided to show how the call box could be installed without damaging the tree's roots. In the absence of this information, I am unable to conclude that the longer term existence and visual contribution of this tree would not be undermined.

16. Separately, the proposed call box would protrude beyond the existing street trees on either side and out into an area of the footway that is currently used by pedestrians. Whilst it would obstruct some existing desire lines, the footway in this location would remain generous in width. Accordingly, I do not consider that the siting of the call box would harm the safe and efficient operation of the highway. However, that does not alter my concerns in relation to character and appearance, as set out above.
17. For the above reasons, I conclude that the siting and appearance of the proposed call box would significantly harm the character and appearance of the area.

Appeal C

18. The proposed call box would be positioned on a relatively narrow section of the footway close to the entrance to Notting Hill Gate Underground Station. It would be sited between an existing parking ticket machine and a cycle stand, and in an area that contains a significant amount of street furniture. However, the existing street furniture is relatively low level and generally slender in design. In contrast, the proposal would introduce a tall and wide structure that would be significantly bulkier than the existing street furniture in this location. This would appear disproportionately large and dominant on this narrow stretch of pavement, and would harmfully intrude into views along the street. In my view, it would be an incongruous addition that would unacceptably add to visual clutter in this location.
19. The proposal would be located on a relatively busy section of pavement on the approach to Notting Hill Gate Underground Station. The adjoining cycle stands already serve to restrict the width of the footway in this location, and the submitted drawings show that the call box would largely be positioned behind these. Whilst this part of the footway is currently used as a waiting area by pedestrians, the area immediately to the rear of the appeal site is also relatively open and could be used for that purpose. Accordingly, I do not consider that the siting of the call box would harm the safe and efficient operation of the highway. However, that does not alter my concerns in relation to character and appearance, as set out above.
20. For the above reasons, I conclude that the siting and appearance of the proposed call box would significantly harm the character and appearance of the area.

Appeal D

21. The proposed call box would be positioned on a relatively wide section of pavement next to Kensington Primary Academy. At present, this area is relatively open and uncluttered, aside from 2 street trees, a lamppost and a directional sign. In comparison to the surrounding street furniture, the proposal would appear bulky and discordant and it would dominate the footway in this location. It would also be a highly prominent feature that would draw

the eye in views along Warwick Road. In this location, it would have an incongruous appearance that would be out of keeping with its surroundings.

22. In addition, the proposed call box would be positioned in close proximity to a semi-mature tree that is an attractive feature within the street. In this regard, no details have been provided to show how the call box could be installed without damaging the tree's roots. In the absence of this information, I am unable to conclude that the longer term existence and visual contribution of this tree would not be undermined.
23. For the above reasons, I conclude that the siting and appearance of the proposed call box would significantly harm the character and appearance of the area.

Appeal E

24. The proposed call box would be positioned near to the corner between Warwick Road and Kensington High Street. It would be in close proximity to a number of existing pieces of street furniture including 2 existing call boxes, a TfL information stand, lamp posts, cycle stands, and a pedestrian crossing.
25. The proposal would occupy a prominent corner location on a major road junction that would be visible in longer views from a number of directions. It would be a relatively tall, solid structure that would have a larger, bulkier appearance than the street furniture nearby. In my view, it would be an unduly dominant and discordant feature that would harmfully contribute to an excessively cluttered street environment in this location.
26. Separately, the Council state that the appeal site is within the Edwards Square/Scarsdale & Abingdon Conservation Area. However, from the map that has been provided, that does not appear to be the case as the westernmost boundary of the conservation area is shown to correspond to Warwick Gardens. The appeal site is not prominent in views into the conservation area and I do not consider that it would result in any harm to its setting. However, that does not alter my other concerns in relation to character and appearance, as set out above.
27. For the above reasons, I conclude that the siting and appearance of the proposed call box would significantly harm the character and appearance of the area.

Other Matter

28. My attention has been drawn to 2 recent appeal decisions¹ that also relate to proposals under Part 16, Class A of the GPDO. However, the full details of those cases including their surrounding contexts are not before me, and so I am unable to assess any direct comparability to the current appeal proposals. I have therefore determined the appeals on their own merits.

Conclusion

29. I conclude that the siting and appearance of each proposed call box would significantly harm the character and appearance of the area surrounding it. I have taken into account Policies CR 4, CL 6 and CL 11 of the Kensington and Chelsea Consolidated Local Plan (2015) which seek to protect character and

¹ APP/X5210/A/12/2178982 and APP/X5990/A/12/2187244

appearance and so are material in this case. Given I have concluded that the proposals are harmful in this regard, they also conflict with these policies.

30. For the reasons given above I conclude that Appeals A-E should be dismissed.

Thomas Hatfield

INSPECTOR