The Planning Inspectorate

Appeal Decisions

Site visits made on 25 and 26 September 2019

by Louise Nurser BA (Hons) Dip UP MRTPI

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

Decision date:14 October 2019

Appeal A:
Appeal Ref: APP/E5900/W/19/3231307
Public highway, 37-39 Commercial Road, London, E1 1LF

- The appeal is 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 appeal is made by Maximus Ltd against the decision of the Council of the London Borough of Tower Hamlets.
- The application Ref PA/18/03154, dated 7 November 2018, was refused by notice dated 21 December 2018.
- The development proposed is a public call box.

Appeal B:
Appeal Ref: APP/E5900/W/19/3231302
Public highway, 33 Commercial Street, London, E1 6DH

- The appeal is 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 appeal is made by Maximus Ltd against the decision of the Council of the London Borough of Tower Hamlets.
- The application Ref PA/18/03157, dated 7 November 2018, was refused by notice dated 21 December 2018.
- The development proposed is a public call box.

Appeal C:
Appeal Ref: APP/E5900/W/19/3231317
Public highway, 82 Commercial Road, London, E1 1NU

- The appeal is 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 appeal is made by Maximus Ltd against the decision of the Council of the London Borough of Tower Hamlets.
- The application Ref PA/18/03168, dated 7 November 2018, was refused by notice dated 21 December 2018.
- The development proposed is a public call box.

Appeal D:
Appeal Ref: APP/E5900/W/19/3231327
Public highway, Commercial Road, O/S Holiday Inn, Cavell Street, London, E1 2BP

- The appeal is 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 appeal is made by Maximus Ltd against the decision of the Council of the London Borough of Tower Hamlets.
- The application Ref PA/18/03174, dated 7 November 2018, was refused by notice dated 21 December 2018.
- The development proposed is a public call box.

Appeal E:
Appeal Ref: APP/E5900/W/19/3231331
Public highway, Commercial Road Jct. Hainton Close, London, E1 2FB

- The appeal is 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 appeal is made by Maximus Ltd against the decision of the Council of the London Borough of Tower Hamlets.
- The application Ref PA/18/03177, dated 7 November 2018, was refused by notice dated 21 December 2018.
- The development proposed is a public call box.

Appeal F:
Appeal Ref: APP/E5900/W/19/3231333
Public highway, Bethnal Green Road, Jct. Sclater Street, London, E1 6GJ

- The appeal is 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 appeal is made by Maximus Ltd against the decision of the Council of the London Borough of Tower Hamlets.
- The application Ref PA/18/03165, dated 7 November 2018, was refused by notice dated 21 December 2018.
- The development proposed is a public call box.

Decisions

1. The appeals are dismissed.

Preliminary matters

2. On 25 May 2019, the Town and Country Planning (Permitted Development, Advertisement and Compensation Amendments) (England) Regulations 2019 came into force, amending the GPDO. 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 six appeals before me.

Main Issues

3. Following the Court's judgment in Westminster CC v SSHCLG & New World Payphones Ltd [2019] EWHC 176 (Admin), the main issue is whether or not the proposal is solely for the purpose of the operator's electronic communications network.

Reasons

4. The appellant has provided Counsel's opinion on the relevance of the Westminster judgment to the appellant's proposals. The opinion states that 'in the absence of advertising forming part of the application, those glazed parts of the call boxes cannot lead to any conclusion of there being a dual purpose for advertising', and concludes that 'the New World case is based on materially different facts from the Maximus cases, such that it is of no application to the appeals currently under consideration by the Planning Inspectorate'.

5. The Westminster judgement confirmed 'that the whole development for which prior approval is sought must fall within the class relied on, and no part of it can fall outside it'. The judgement went on to state that a development falls outside the scope of Part 16, Class A if it is partly 'for the purpose' of the operator's network, and partly for some other purpose, it is not a development 'for the purpose' of the operator's network precisely because it is for something else as well. The single dual purpose must be judged as a whole.

6. With reference to the particular appeals before me, it is evident from the drawing MAX 2 ASSEMBLY Rev C dated 6 9 18 which accompanied the applications that the rear elevation of the proposed public call box is intended to house a 'non-illuminated display panel' which would measure 1100 mm by 1700 mm. Accordingly, I conclude the appeal proposal is not solely for the purpose of the operator's electronic communications network, and as such falls outside Schedule 2, Part 16, Class A of The Town and Country Planning (General Permitted Development) (England) Order 2015.

7. I have been referred to a number of appeal decisions which I have carefully considered. However, given my conclusion above, those decision letters which relate to siting and appearance are not relevant to my consideration of the appeals before me. I note the appeal decisions set out in Table 2 of the Council's Statement of Case where an Inspector was provided with details of the appellant's business model. I have not been provided with any such details in this instance, and have, for the avoidance of doubt, determined these appeals on the basis of the particular evidence put before me. I have also considered the judgments drawn to my attention by the appellant. However, none would lead me to any other conclusion than that set out below.

Conclusions

8. For the reasons given above and having regard to all matters raised, including in representations, I conclude that the appeals should be dismissed.

L. Nurser

INSPECTOR