
Appeal Decisions

Site visits made on 2 September 2019 by Andreea Spataru BA (Hons) MA MRTPI

Decision by Susan Ashworth BA (Hons) BPL MRTPI

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

Decision date: 16 October 2019

Appeal A Ref: APP/V5570/W/19/3231160

Public Highway OPP.154 Pentonville Road, London N1 9JE

Grid Reference Easting: 530878 and Grid Reference Northing: 183058

- 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 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 Islington.
 - The application Ref P2018/3673/PRA, dated 30 October 2018, was refused by notice dated 18 December 2018.
 - The advertisement proposed is a public call box.
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Appeal B Ref: APP/V5570/W/19/3231166

Public Highway 17 Islington High Street, London N1 9LQ

Grid Reference Easting: 531444 and Grid Reference Northing: 183216

- 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 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 Islington.
 - The application Ref P2018/3680/PRA, dated 30 October 2018, was refused by notice dated 18 December 2018.
 - The advertisement proposed is a public call box.
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Decisions

1. The appeals are dismissed.

Appeal Procedure

2. The site visit was undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeals.

Procedural Matters

3. The appeals relate to proposals by Maximus Networks Ltd for the installation of a telephone kiosk at 2 sites in north London across the Borough of Islington. The proposed apparatus is identical in each case. Therefore, in the interests of conciseness, I have dealt with all the appeal decisions in the same letter.

4. Whilst the Town and Country Planning (Permitted Development, Advertisement and Compensation Amendments) (England) Regulations 2019 amends the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (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 Schedule 2, Part 16, Class A of the GPDO, which refers to development 'by or on behalf of an electronic communications code operator for the purpose of the operator's electronic communications network'.
5. The proposals before me were refused by the Council on grounds relating to siting and appearance. However, the *Westminster*¹ judgement found that 'the judgement as to whether the kiosk, as applied for, comes within the scope of Class A has to be made before siting and appearance are considered' (paragraph 46). Whilst the Council determined the applications before the *Westminster* judgement was handed down, I note both the appellant and Council have referenced this judgement within their respective statements of case as to its effect on the bearing of the judgement upon the appeals. I have taken these comments into account in determining these appeals.
6. This 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 not 'for the purpose' of the operator's network. Thus, if the development is partly for some other purpose beyond that of the operator's network, it cannot be development 'for the purpose' of the operator's network precisely because it is for something else as well. In that case the proposed kiosk was for a dual purpose of advertisement display and telecommunications use and therefore contained features that were for advertising and 'not at all there for the telecommunications function'.
7. Whether or not the proposed kiosks are solely for the purpose of the operator's electronic communications network is a matter of dispute between the main parties. While not given at the time of the initial decisions, the Council recommends a further refusal reason for all appeals on the basis that the kiosks are not solely for the purpose of the operator's telecommunications network as required in Schedule 2, Part 16, Class A of the GPDO as they include advertising space.
8. The design of both of the proposed kiosks is the same, comprising a freestanding steel-framed kiosk, constructed with steel casings and toughened glass, with roof-mounted solar panels on top of each side which double as a canopy. They would be approximately 3.1m high, with a footprint of around 0.219m length by 1.325m width. Both would comprise a two-sided structure of either black or dark grey appearance. While the orientation of the kiosks is not clear from the plans, one side contains the phone itself set in a recess while the other has a non-illuminated glass panel. Whilst deemed consent allows a non-illuminated advertisement on the glazed surface of one face of the kiosk, in these appeals, only the construction of the kiosks is being considered, and the appellant is not seeking advertisement consent. There is nothing within the

¹ Westminster CC v SSHCLG & New World Payphones Ltd [2019] EWHC 176 (Admin) (5 February 2019).

evidence before me to indicate that the kiosks explicitly contain provision of advertisement space. The above factors, together, lead me to find that these appeal proposals should not be considered to constitute a dual purpose. Therefore, the prior approval considerations of siting and appearance must be considered.

9. The provisions of the GPDO, under Article 3(1) and Schedule 2, Part 16, Class A, Paragraph A.3(4) require the local planning authority to assess the proposed developments solely on the basis of their siting and appearance, taking into account any representations received. My determination of these appeals has been made on the same basis.
10. The Council has made reference in its decision notices to Policies 6.10, 7.4, 7.5 of The London Plan (TLP), policies CS8 and CS9 of the Core Strategy (CS), policies DM2.1, DM2.3 and DM2.7 of the Development Management Policies (DMP), The Islington Urban Design Guide (UDG), The Islington Streetbook Supplementary Planning Document (the SPD) and the emerging draft London Plan Policies T2 and D7 (ELP). Similarly, the appellant has introduced Streetscape Guidance (SG) and Pedestrian Comfort Guidance for London (PCG), both published by Transport for London.
11. However, applications for prior approval are determined in relation to the criteria set out within the GPDO and, as such, do not require regard to be had to the Development Plan. Nonetheless, although not determinative, I take account of the above-mentioned policies and documents in so far as they are relevant to matters of siting and appearance.
12. Appeal B relates to a site that is located within a Conservation Area and the setting of a Listed Building. According to statute, Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special attention shall be paid to the desirability of conserving or enhancing the character or appearance of these areas. National planning policy, as set out in the National Planning Policy Framework (the Framework), states 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.
13. Furthermore, where the appellant has referred to the benefits of the proposal, I have only taken these matters into account in respect of the appeal where heritage assets have been cited, as the Framework advises at paragraph 196, "Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal".

Main Issues

14. The main issues are:

- a) for appeal A whether or not approval should be given in respect of the siting and appearance of the proposed development, with particular regard to its effect on the character and appearance of the area, and its effect upon the safe and efficient operation of the highway; and
- b) for appeal B whether or not approval should be given in respect of the siting and appearance of the proposed development, with particular regard to whether it would preserve or enhance the character or appearance of the

conservation area, preserve the setting of listed buildings, and its effect upon the safe and efficient operation of the highway.

Reasons for the Recommendation

Appeal A - OPP.154 Pentonville Road

15. The site is located on a section of pavement that is close to the junction of Penton Rise. Due to the road network in the proximity of the site and the car park to the residential estate behind the railings to the rear of the footway, a triangular area of public realm is formed. In this area are a variety of items comprising the street furniture, such as traffic signs / signals, bollards and a traditional telephone box and street lighting. Mature street trees are set into the pavement adjacent to the railings along Pentonville Road and return along Penton Rise.
16. Beyond the existing telephone box there is a notable reduction in street furniture towards the bus stop, apart from street lighting. This forms an important and positive feature in the character and appearance of this section of the street scene, which includes the concierge entrance to the Weston Rise Estate. Although the proposal would be located close to the existing telephone box, I find that the proposal would create an unduly cluttered appearance in this section of the street and would detract from the largely open and orderly pattern within the wider street scene.
17. The call box would be located within the middle of the pavement. It would be beyond the pedestrian crossing area and would likely not impede pedestrians using this crossing, give rise to conflict with drivers on the highway or distract drivers using the carriageway. The position of the call box would be so that pedestrians would still have the ability to pass either side of it, therefore not obstructing pedestrian flows. I noted during my early-afternoon visit a low footfall, and whilst I accept that this is only a snap shot in time, I find that in the absence of any evidence to the contrary the proposal would not be harmful to highway safety.
18. Accordingly, the siting and appearance of the proposed call box would harm the character and appearance of the area. The lack of harm to highway safety is a neutral matter that does not outweigh the above consideration. This justifies refusal of prior approval and the dismissal of appeal A.

Appeal B - 17 Islington High Street

19. The appeal site is within the Angel Conservation Area (ACA) and within the setting of a grade II listed building at no.13 and a locally listed building at no.23. The significance of the ACA derives in part from the mix of 17th, 18th, 19th, and 20th century buildings in the area. The general grain is of individual buildings with traditionally narrow plot widths and a height of two, three or four storeys.
20. The proposed call box would be sited outside a bank on a section of pavement that has a busy commercial character. The site is located where the pavement narrows due to the presence of a lay-by. The proposed development would be in line with other street furniture comprising a dual telephone box, street light with traffic sign and a street tree, with bicycle racks towards the junction of White Lion Street.

21. The proposal would be visually prominent, especially when walking towards White Lion Street. Additionally, due to the proximity of the other items located on the pavement, the proposed call box would create additional clutter, exacerbating the already visually congested appearance of the area surrounding the site. The addition of the mass of the proposed approximately 3.1m high call box would have a visually intrusive and cluttering effect on the approach to the junction of Islington High Street and White Lion Street, including this part of the ACA, and the settings of the grade II listed building at no.13 and the locally listed building at no. 23.
22. Accordingly, I find that the proposal would harm the character and appearance of the area and would fail to preserve or enhance the character or appearance of the ACA and the setting of nos.13 & 23 Islington High Street. The harm arising would be localised and, in respect of the significance of the heritage assets as a whole would be less than substantial. The extent of the benefits of the call box would be modest based on the development and its use, and therefore does not outweigh the significant weight given to the conservation of the designated heritage assets.
23. The site is located on the pavement of a wide and fairly straight stretch of highway, between sets of traffic signals. Main parties agree that the pavement is sufficiently wide to accommodate the proposal, however the Council has safety concerns about the obstruction of public views of the parking signage, which they indicate to be approximately 3m away from the proposed call box. Given the siting of the call box in relation to the parking signage and the existing street furniture, the proposal would not obstruct the public views towards the parking signage to such an extent that would adversely affect highway safety.
24. In conclusion, in relation to appeal B, the proposed call box would harm the character and appearance of the setting of the heritage assets. This justifies the refusal of prior approval and the dismissal of appeal B.

Other matter

25. The appellant has referred to appeal decisions regarding similar proposals for the installation of public call boxes. However, I have considered each proposal before me on its own individual merits and the specific circumstances and context of each case.

Recommendation

26. For the reasons given above and having regard to all other matters raised, I recommend that appeals A and B should be dismissed.

Andreea Spataru

APPEAL PLANNING OFFICER

Inspector's Decision

27. I have considered all the submitted evidence and the Appeal Planning Officer's report and on that basis the appeals are dismissed.

S Ashworth INSPECTOR

