



Appeal Decision

Site visit made on 10 September 2019 by L Wilson BA (Hons) MA

Decision by A U Ghafoor BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 October 2019

All Appeals

- The appeals are 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 appeals are made by Mr Paul O'Neill on behalf of Maximus Networks Ltd against the decisions of the Council of the London Borough of Hammersmith and Fulham.
 - The development proposed in each case is a public call box.
-

Appeal A Ref: APP/H5390/W/19/3228365

Uxbridge Road adjacent Oilgar Close, London, W12 0NF

Grid Reference Easting 522013, Grid Reference Northing 180119

- The application Ref 2018/03242/TEL56, dated 1 October 2018, was refused by notice dated 13 November 2018.
-

Appeal B Ref: APP/H5390/W/19/3228366

440 Uxbridge Road, London, W12 0NS

Grid Reference Easting 522318, Grid Reference Northing 180092

- The application Ref 2018/03250/TEL56, dated 1 October 2018, was refused by notice dated 13 November 2018.
-

Appeal C Ref: APP/H5390/W/19/3230550

206 Uxbridge Road, London, W12 7JD

Grid Reference Easting 523171, Grid Reference Northing 180008

- The application Ref 2018/03648/TEL56, dated 6 November 2018, was refused by notice dated 10 December 2018.
-

Appeal D Ref: APP/H5390/W/19/3230558

111 Hammersmith Road, London, W14 0QH

Grid Reference Easting 524192, Grid Reference Northing 178812

- The application Ref 2018/03646/TEL56, dated 6 November 2018, was refused by notice dated 12 December 2018.
-

Appeal E Ref: APP/H5390/W/19/3230562

66 Hammersmith Road, London, W14 8UD

Grid Reference Easting 524166, Grid Reference Northing 178810

- The application Ref 2018/03644/TEL56, dated 6 November 2018, was refused by notice dated 12 December 2018.
-

Appeal F Ref: APP/H5390/W/19/3229110

Talgarth Road corner Gliddon Road, London, W14 9BL

Grid Reference Easting 524133, Grid Reference Northing 178393

- The application Ref 2018/03239/TEL56, dated 1 October 2018, was refused by notice dated 21 November 2018.
-

Decisions – Appeals A to F

1. All the Appeals are dismissed.

Procedural Matters and Background – Appeals A to F

2. The Appeals relate to proposals by Maximus Networks Ltd for the installation of 'a public call box' at six sites in the London Borough of Hammersmith and Fulham. The proposed apparatus is identical in each case. Therefore, in the interests of conciseness, I will evaluate all these Appeals in the same decision.
3. The proposed call boxes would comprise two sides and consist of steel with a roof-mounted solar panel. They would have a footprint of approximately 1.32 metres by 0.98 m, and they would be 3.12 m high. The call boxes would have a phone pocket on one side and a non-illuminated display panel on the other. LED lighting strips would be located on the outside edges of the call box. The submitted details indicate that the overall colour of the kiosk is customisable, but would typically be gun metal grey or black, and would have a sheen through the integral use of toughened glass and photovoltaic glass in the structure.
4. The Town and Country Planning (Permitted Development, Advertisement and Compensation Amendments) (England) Regulations 2019 amends the GPDO¹ 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. For the purposes of these Appeals, the proposals fall to be considered against the provisions of Schedule 2, Part 16, Class A of the GPDO. This sets out permitted development rights for development carried out by or on behalf of an electronic communications code operator for the purpose of the operator's electronic communications network.
5. The recent *Westminster* judgement² concerned prior approval Appeals involving telephone kiosks under Part 16 Class A of the GPDO. The judgement considered the matter of development for 'the purpose' of an operator's network. The Court found that the judgement as to whether the kiosk, as applied for, comes within the scope of Class A must be made before siting and appearance are considered. *Westminster* related to a kiosk which was for a dual purpose of advertisement display and telecommunications use. Consequently, it contained features that were for advertising and not there at all for the telecommunications function.
6. The Appeals before me were determined by the Council *Westminster*. The appeal parties have however had the opportunity to comment on the bearing of the judgement upon the Appeals. I will take these comments into account.
7. The main parties dispute whether the proposed call boxes are solely for the purpose of the operator's electronic communications network. The Council consider one side of the unit would be used for advertising. It is apparent that the form and design of the proposed telecommunications apparatus is driven by its proposed functionality as a public call box. Counsel for the appellant states that none of the proposed kiosks before me include any advertising features. The submission is that the call boxes proposed would not be for a dual purpose and can be distinguished from *Westminster*. On the available evidence, it appears the design of the proposed

¹ The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

² *Westminster CC v SSHCLG & New World Payphones Ltd* [2019] EWHC 176 (Admin) (5 February 2019).

kiosks do not include elements that are there for the purpose of advertising. Consequently, the proposals would be intended for the purpose of the operator's electronic communications network and not serve a dual purpose.

8. In the reasons for refusing to grant prior approval, the Council made reference to Policies DC1, DC8 and DC10 of the Hammersmith and Fulham Local Plan (2018) (LP), Policy 6.10B of The London Plan (2016) (TLP) as well as Policies T1 and T3 and Key Principles TR12, TR13, TR22 and TR29 of the Hammersmith and Fulham Planning Guidance Supplementary Planning Document (2018) (SPD). The appellant has also referred to Policies 6.9, 7.5 and 7.6 of TLP along with The Transport for London Pedestrian Comfort Guidance (CG) and Transport for London Streetscape Guidance (SG).
9. The principle of development is established by the GPDO and permitted development rights are set out in Schedule 2 Part 16 for this type of development. The provisions do not require regard be had to the development plan. I will have regard to the policies of the development plan and any related guidance in so far as they are relevant to matters of siting and appearance. Considerations such as need for the call boxes are not relevant matters.
10. Policy TR29 of the SPD will usually require a minimum width of 3.5 m clear and unobstructed footway in town centres and 1.8 m outside town centres. The Council have not provided any evidence to demonstrate whether the appeal sites are located within town centres. I will proceed on the basis that the appeal sites are not located within town centres.
11. The National Planning Policy Framework (the 'Framework') was revised in February 2019, after the Council determined the applications. Both main parties have had the opportunity to comment on any relevant implications for the Appeals. I shall have regard to the Framework in so far as relevant to matters of siting and appearance.
12. The appellant has submitted a highways analysis. This analysis was not submitted to the Council when they determined the applications. As the Council have reviewed and commented on this additional information, I will take it into account when determining the Appeals. I note that no indication has been provided as to the precise orientation of the call boxes in each case. As such, I will determine the Appeals with reference to the identified footprint on the appellant's submitted photographs.

Main Issues

13. In respect of Appeals A, B, C and F these are (1) the effect of the siting and appearance of the proposed development upon the character and appearance of the area and (2) the effect upon the safe and efficient operation of the highway.
14. The Council's reasons for refusing Appeal E did not specifically relate to the proposal's effect on heritage assets, this site is opposite the location of Appeal D in which the Council raised concerns about the proposal's effect on the setting of listed buildings. Thus, for consistency and completeness, the main issues in respect of Appeal D and E are, the effect of the siting and appearance of the proposed development upon (1) the character and appearance of the area including the setting of nearby listed buildings, and (2) the safe and efficient operation of the highway.

Reasons for the Recommendation

Appeal A - Uxbridge Road adjacent Ollgar Close - Character and Appearance

15. The appeal site is located next to a school and residential properties. This section of the pavement has limited street clutter which results in a relatively open footway. There is an existing telephone kiosk which is stepped in from the main pavement area and is adjacent to charity donation bins and a grass verge. Along the main pavement area there is a bin and lampposts.
16. Whilst the size of the call box would adhere to that set by the GPDO the proposal would harm the character and appearance of the area due to its scale and massing. The call box would introduce a built form which is significantly more noticeable than other street furniture in the immediate street scene, because of its size and positioning, and would stand out as an unusual feature.

Highway

17. The call box would reduce the width of the pavement. During the time of my site visit, this area of pavement was relatively quiet with low levels of pedestrian flow and moderate traffic flow. I have seen nothing to suggest that my observations are untypical. The appellant has submitted a site-specific highways analysis which demonstrates that the proposal would not have a harmful effect upon the safe and efficient operation of the highway. The Council have not submitted any substantive evidence to conclude otherwise.

Appeal B - 440 Uxbridge Road - Character and Appearance

18. The proposed call box would be situated on a stretch of pavement which is defined by three-storey mixed-use properties with a commercial ground floor and residential units above. The call box would be situated between existing phone boxes. Sheffield cycle stands, street signs, shop advertisements and lampposts are also evident in the immediate street scene and therefore this part of the street already has a cluttered appearance.
19. The call box would be situated adjacent to the existing phone boxes and a street sign. Whilst it would broadly align with the existing phone boxes it would appear more dominant due to its footprint and height. The proposed spacing between other street furniture would not reflect that of the immediate street scene and due to its bulk would be a prominent addition to an already cluttered section of the pavement. Therefore, the proposal would harm the character and appearance of the area.

Highway

20. The proposed call box would reduce the width of the pavement. During the time of my site visit this area had low levels of pedestrian flow and moderate traffic flow. It was evident that the existing telephone boxes have already impacted the flow of pedestrians. I have seen nothing to suggest that my observations are untypical. The appellant has submitted a site-specific highways analysis which demonstrates that the proposal would not have a harmful effect upon the safe and efficient operation of the highway. The Council have not submitted any substantive evidence to conclude otherwise.

Appeal C - 206 Uxbridge Road - Character and Appearance

21. The proposed call box would be situated close to Shepherd's Bush Market underground station and a light controlled pedestrian crossing. The character of the surrounding street along this section of Uxbridge Road is defined by three-storey mixed-use buildings with a commercial ground floor and residential units above. In the vicinity of the appeal site are street trees, ATMs, bins, lampposts and telephone boxes. As such, this part of the street already has a cluttered appearance.
22. The call box would interrupt the existing gap between the street tree and combined ATM and phone box. The proposal would introduce a further element of clutter to the area. The existing gap provides a welcome break between the street furniture in this busy section of the pavement. The addition of the call box in this location would appear cramped and not respect the spacing and siting of existing street furniture. The proposal would therefore unacceptably harm the character of this part of the street scene.

Highway

23. The proposed call box would reduce the width of the pavement. During the time of my site visit, this area had high levels of pedestrian and traffic flow. I have seen nothing to suggest that my observations are untypical. The appellant has submitted a site-specific highways analysis which demonstrates that the proposal would not have a harmful effect upon the safe and efficient operation of the highway. The highway analysis acknowledges that the site experiences high levels of pedestrian flow. The existing street furniture has already reduced the width of the footway and affected pedestrian flow. The Council have not submitted any substantive evidence which demonstrates the proposal would be detrimental upon pedestrian movement, highway and public safety.

Appeal D - 111 Hammersmith Road - Character and Appearance

24. The existing street furniture comprises Sheffield cycle stands, tables and chairs associated with commercial uses, lampposts and street trees. The size of the call box would adhere to that set by the GPDO but due to the scale and massing of the proposal it would harm the character and appearance of the area. The call box would introduce a built form which is significantly more noticeable than other street furniture in the immediate street scene, due to its size and positioning, and would stand out as an unusual and modern feature.
25. The proposed call box would be located on the pavement outside a terrace of a Grade II listed buildings (LB). The listed group includes Nos. 99-119 Hammersmith Road. The terraces are 18th Century three-storey buildings, constructed of brick, with commercial uses at ground floor and residential units above. The first-floor windows are set within recessed arches and have iron balcony railings to the front.
26. Framework paragraph 193 states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. Framework paragraph 194 states that any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification.

27. The proposal would have a negative impact upon the setting of the LB because it would be of modern design which would detract from the architecture and character of the LB. The call box would be a prominent addition to the pavement due to its scale and massing. Accordingly, the proposal would fail to preserve or enhance the character or appearance of the setting of the LB. The harm arising would be localised and would be less than substantial, nevertheless it is of considerable importance and weight. This harm should be weighed against the public benefits of the proposal, where appropriate, securing its optimum viable use. The appellant does not assess whether the proposal would harm the heritage assets. In the appeal statement they outline the benefits of the public call box which includes improving mobile network coverage. They state the services provided by the call box would be free to users and benefit communities. That said however the proposed siting would have a visually harmful effect upon the setting of the LB. In this case, the public benefits highlighted would not outweigh or justify the harm which is required by the Framework.

Highway

28. The proposed call box would reduce the width of the pavement. During the time of my site visit, this area had moderate traffic flow and this section of the pavement had low levels of pedestrian flow. I have seen nothing to suggest that my observations are untypical. The appellant has submitted a site-specific highways analysis which demonstrates that the proposal would not have a harmful effect upon the safe and efficient operation of the highway. The Council have not submitted any substantive evidence to conclude otherwise.

Appeal E - 66 Hammersmith Road - Character and Appearance

29. The proposed call box would be situated on a stretch of pavement which is characterised by commercial buildings. A telephone box, Sheffield cycle stand, bus shelter, lamppost, street trees and street signs are located close to the appeal site.
30. The siting of the proposal would introduce a further element of furniture to the pavement. The call box would appear cramped between the lamppost and street sign. Existing street furniture is separated by gaps which ensures the pavement is not dominated by street clutter. Whilst the size of the call box would adhere to that set by the GPDO, due to its scale and massing, it would be a prominent addition to the street scene. The proposal would therefore result in the pavement appearing cluttered.
31. The proposed call box would be located on the opposite side of the highway to a terrace of a Grade II listed buildings (LB). The listed group includes Nos. 99-119 Hammersmith Road. The terraces are 18th Century three-storey buildings, constructed of brick, with commercial uses at ground floor and residential units above. The first-floor windows are set within recessed arches and have iron balcony railings to the front.
32. The proposal would have a neutral effect upon the setting of the LB. The commercial buildings on this side of Hammersmith Road alter the character of the area compared to the opposite side. The proposal would not unduly interrupt views of these heritage assets and how they are experienced. Consequently, the proposal would preserve the character and appearance of the setting of the LB.

33. While the proposed call box would not harm the setting of nearby LB, I find that the proposed siting would increase visual clutter and detract from the character of the area.

Highway

34. The proposed call box would reduce the width of the pavement. During the time of my site visit this area had moderate traffic flow and this section of the pavement had low levels of pedestrian flow. I have seen nothing to suggest that my observations are untypical. The appellant has submitted a site-specific highways analysis which demonstrates that the proposal would not have a harmful effect upon the safe and efficient operation of the highway. The Council have not submitted any substantive evidence to conclude otherwise.

Appeal F - Talgarth Road corner Gliddon Road - Character and Appearance

35. The site relates to a wide section of pavement on Talgarth Road, on the corner of Gliddon Road. The surrounding area is characterised by a college immediately next to the site and residential properties in proximity. There are a number of items of street furniture nearby, including street signs, lampposts, a telephone box, street trees, bins and a CCTV camera.
36. The call box would be situated between an existing tree and lamppost. The proposal would not relate in visual or physical terms to any of the other items of street furniture. Due to its scale and massing, along with its prominent corner location, the proposal would form a prominent visual feature in the street scene. Whilst the size of the call box would adhere to that set by the GPDO it would appear as a dominant feature in this location.

Highway

37. The proposed call box would reduce the width of the pavement, nevertheless the pavement is wide. At the time of my site visit, I observed a busy traffic flow and steady pedestrian flow along the pavement. As well as been situated next to a college the site is also located next to a pedestrian crossing and close to Barons Court underground station. It is anticipated that the pedestrian flow would increase at peak commuting times. The appellant has submitted a site-specific highways analysis which demonstrates that the proposal would not have a harmful effect upon the safe and efficient operation of the highway. The Council have not submitted any substantive evidence to conclude otherwise.

Other Matters

38. My attention has been drawn to other appeal decisions. I do not have the full details of the other cases and so cannot determine whether the circumstances are comparable to the proposals before me. Notwithstanding this, I note that the appeal sites are within other local planning authority areas, where a different character and appearance will prevail. Moreover, the proposed call boxes have their own settings. As such, the other appeal decisions referred to are not determinative points in favour of the proposals.

Conclusions and Recommendations

39. I conclude that in all the Appeals the siting and appearance of the call boxes would harm the character and appearance of the area. The proposals would not meet with the aims of Policies DC1 and DC10 of the LP and Policies 7.5 and 7.6 of TLP. In

terms of Appeal D, the proposal would not preserve or enhance the character or appearance of the setting of the LB. The public benefits do not outweigh the harm to the setting of the LB. Therefore, in addition to the above conflict, Appeal D would also be at odds with Policy DC8 of the LP. In Appeal E, I have found the proposal would not result in harm to the setting of the LB.

40. I have also found that all of the Appeals would not be harmful to the safe and efficient operation of the highway thus meeting the aims of the CG and SG. The proposed call boxes would meet with Policies 6.9 and 6.10B of TLP and Policies T1 and T3 and Key Principles TR12, TR13, TR22 and TR29 of the SPD. My findings on this main issue do not outweigh my conclusions on character and appearance as stated above.

41. For the reasons given above, I recommend that all of the Appeals should be dismissed.

L M Wilson

APPEALS PLANNING OFFICER

Inspector's Decision

42. I have considered all the submitted evidence and the Appeal Planning Officer's report, and, on that basis, I too agree that all of the Appeals should be dismissed.

A U Ghafoor

INSPECTOR