



Appeal Decisions

Site visits made on 2 September 2019 by Mariam Noorgat BSc (Hons)

Decisions by Andrew Owen BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 October 2019

All Appeals

- The appeals are made under section 78 of the Town and Country Planning Act 1990 as amended 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 appeals are made by 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.
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Appeal A - Ref: APP/H5390/W/19/3230545

Public Highway, Adj. 33 Shepherd's Bush Green, London W12 8QY

- The application Ref: 2018/03639/TEL56, dated 6 November 2018, was refused by notice dated 10 December 2018.
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Appeal B - Ref: APP/H5390/W/19/3230559

Public Highway, 15 Shepherd's Bush Road, London W6 7LX

- The application Ref: 2018/03642/TEL56, dated 6 November 2018, was refused by notice dated 12 December 2018.
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Appeal C - Ref: APP/H5390/W/19/3228371

Public Highway, 95 Goldhawk Road, London W12 8EG

- The application Ref: 2018/03254/TEL56, dated 1 October 2018, was refused by notice dated 13 November 2018.
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Appeal D - Ref: APP/H5390/W/19/3230554

Public Highway, 114 Goldhawk Road, London W12 8HD

- The application Ref: 2018/03654/TEL56, dated 6 November 2018, was refused by notice dated 11 December 2018.
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Appeal E - Ref: APP/H5390/W/19/3228360

Public Highway, 127 Goldhawk Road, London W12 8HH

- The application Ref: 2018/03236/TEL56, dated 1 October 2018, was refused by notice dated 13 November 2018.
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Appeal F - Ref: APP/H5390/W/19/3228369
Public Highway, Adjacent 165-169 Goldhawk Road, London W12 8EP

- The application Ref: 2018/03252/TEL56, dated 1 October 2018, was refused by notice dated 13 November 2018.

Appeal G - Ref: APP/H5390/W/19/3228372
Public Highway, Adjacent 230 Goldhawk Road, London W12 9PL

- The application Ref: 2018/03256/TEL56, dated 1 October 2018, was refused by notice dated 13 November 2018.

Appeal H - Ref: APP/H5390/W/19/3228368
Public Highway, Uxbridge Road Adjacent Askew Crescent, London W12 9DS

- The application Ref: 2018/03251/TEL56, dated 1 October 2018, was refused by notice dated 13 November 2018.

Appeal I - Ref: APP/H5390/W/19/3228361
Public Highway, 175 Uxbridge Road, London W12 9RA

- The application Ref: 2018/03237/TEL56, dated 1 October 2018, was refused by notice dated 13 November 2018.

Appeal J - Ref: APP/H5390/W/19/3228358
Public Highway, 131 Uxbridge Road, London W12 8NJ

- The application Ref: 2018/03231/TEL56, dated 1 October 2018, was refused by notice dated 13 November 2018.

Appeal K - Ref: APP/H5390/W/19/3229109
Public Highway, 104 Askew Road, London W12 9BL

- The application Ref: 2018/03238/TEL56, dated 1 October 2018, was refused by notice dated 21 November 2018.

Appeal L - Ref: APP/H5390/W/19/3230552
Public Highway, 19 Shepherd's Bush Green, London W12 8PP

- The application Ref: 2018/03652/TEL56, dated 6 November 2018, was refused by notice dated 10 December 2018.

Decisions

1. The 12 appeals are all dismissed.

Appeal Procedure

2. The site visits were undertaken by an Appeals Planning Officer whose recommendations are set out below and to which the Inspector has had regard before deciding the appeals.

Procedural Matters and Background

3. Whilst the 12 appeals relate to different sites, the proposed public call boxes on the sites are identical. I have considered each proposal on its individual merits, but as they raise similar issues, the cases are dealt with in a single decision letter.
4. On 25 May 2019, the Town and Country Planning (Permitted Development, Advertisement and Compensation Amendments) (England) Regulations 2019 came into force, amending the General Permitted Development Order (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 12 appeals before me.
5. As such, and as the appellant is an electronic communications code operator, the appellant is able to benefit from permitted development rights for a proposed call box under Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (GPDO), subject to the conditions in part A.3 which requires the prior approval of the local planning authority in respect of the siting and appearance of the development.
6. The provisions of the Order require the local planning authority to assess the proposed development solely on these matters. As such, considerations such as the need for a telephone kiosk and whether it may be used for advertising in the future are not relevant to this appeal. Accordingly, the main issues are set out below.
7. The High Court has considered the issue of the inclusion of advertising on public call boxes. A recent judgement in the Westminster case (*Westminster City Council v Secretary of State for Housing, Communities and Local Government & New World Payphones Ltd* (2019) EWHC 176 (Admin)) considered the matter of dual purpose of advertisement display and telecommunications use. 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 call box 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'.
8. In the case of the appeals before me, I have taken into account the submitted Opinion of Counsel regarding this matter and the design of the proposed public call box provided. It is apparent that the form and design of the proposed telecommunications apparatus is driven by its proposed functionality as a

public call box. I have no evidence to suggest that the proposed development includes elements that are there for the purpose of advertising. Consequently, on the basis of the evidence provided in these appeals, I consider that the proposals are for the purpose of the operator's electronic communications network, and so are able to benefit from permitted development subject to the conditions in part A.3.

9. 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 the development to be judged against the policies of development plan. Nonetheless, I have had some regard to the policies of the development plan, any related guidance and the National Planning Policy Framework (Framework) only in so far as they relate to matters of siting and appearance.

Main Issues

10. The main issues are:

- a) The effect of the siting and appearance of the proposed public call box on the character and appearance of the surrounding area; and
- b) The effect of the siting of the proposed call box on pedestrian movement, highway and public safety.

I have considered all the appeals individually in respect of the first main issue, and then considered them against the second.

Reasons

Background

11. The proposed public call boxes are relatively simple, thin, freestanding structures with a canopy which serves as a shelter and is made of the solar panels that will power the payphone. In addition, the widest faces of the call box incorporate photovoltaic glass to maximise the energy generating potential. LED lighting strips on the outside edges of the call box are included for safety purposes, solely to identify the edge of the structure on the pavement during hours of darkness and will be in a customisable contrasting colour. The submitted details indicate that the overall colour of the call box is customisable but would typically be 'gun metal' grey or black and will have a 'sheen' through the integral use of toughened glass and photovoltaic glass in the structure.

Character and appearance

Appeal A - Adj. 33 Shepherd's Bush Green

12. The appeal site is situated on a relatively wide pavement in front of a single storey community hall. The pavement is lined by small trees and two lampposts which, as these features are similarly shaped and aligned, provide a sense of rhythm.
13. Aside from these trees and lamp posts this section of pavement is largely devoid of manmade street furniture. Although the proposed call box may be aligned with present street furniture, it would be wider in comparison and as such, the presence of the call box would be conspicuous to pedestrians and road users. The consequence of this is that proposed call box would appear as

a prominent and intrusive feature that would detract from the rhythm provided by the trees. It would give the impression of adding harmful clutter to the area and would downgrade the quality of the public realm.

14. For these reasons, the siting and appearance of the proposed call box would cause unacceptable harm to the character and appearance of the surrounding area.
15. The site is opposite the Shepherds Bush Conservation Area. The Council raise no concerns in respect of the effect of the development on the setting of this conservation area, and I have no reason to consider otherwise.

Appeal B – 15 Shepherd’s Bush Road

16. The appeal site is situated on a relatively wide pavement in front of modern residential flats with a commercial unit to the ground floor. This commercial unit had several motorbikes on the forecourt of their unit. This section of pavement consists of one large tree and a parking sign. The pavement to the north and south contains similar street furniture and together the signpost, lampposts along the pavement, and trees provide a sense of rhythm.
17. The proposed call box would be located on a section of pavement on Shepherd’s Bush Road that is largely devoid of street furniture. Although it may be aligned with present street furniture, it would be wider in comparison and as such, the presence of the call box would be conspicuous to pedestrians and road users. The consequence of this is that proposed call box would appear as a prominent and intrusive feature that would detract from the general rhythm of the immediate and wider pavement. It would give the impression of adding harmful clutter to the area that would detract from the quality of the public realm. This is exacerbated by the motorbikes on the forecourt to the east of the site.
18. For these reasons, the siting and appearance of the proposed call box would cause unacceptable harm to the character and appearance of the surrounding area.
19. The site is a short distance from the southern edge of the Shepherds Bush Conservation Area. The Council raise no concerns in respect of the effect of the development on the setting of this conservation area, and I have no reason to consider otherwise.

Appeal C – 95 Goldhawk Road

20. The appeal site is situated on a very wide pavement at the junction with Hammersmith Grove in front of a single storey commercial unit which appeared disused. There is a large tree between the appeal site and the commercial unit which has a wide canopy that overreaches most of the pavement. The section of pavement to the east of the site is mostly free from street furniture however there is a variety of small items of street furniture, such as bicycle racks and enclosures for services, scattered along the back edge of the pavement in front of the commercial unit. West of the appeal site there are two lamp posts and a services cabinet which is where the pavement narrows considerably. All of these items of street furniture are fairly close to each other and are viewed collectively in the context of the street scene.

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21. The proposed call box would result in a cluttered appearance at this section of the pavement which is exacerbated by the narrowing footway shortly beyond the site. The overreaching tree branches, combined with the width and height of the call box would provide a congested view, especially when seen from the east. The resultant proliferation of street furniture and paraphernalia located relatively close to each other would unacceptably harm the character of this part of the street scene.
 22. For these reasons, the siting and appearance of the proposed call box would cause unacceptable harm to the character and appearance of the surrounding area.
 23. The site is a short distance from the Hammersmith Grove Conservation Area and the Coningham and Lime Grove Conservation Area. The Council raise no concerns in respect of the effect of the development on the setting of these conservation areas, and I have no reason to consider otherwise.

Appeal D – 114 Goldhawk Road

24. The appeal site is situated on a relatively wide pavement in front of a building with commercial units to the ground floor and residential units above this. This stretch of pavement, in-between the junctions with Devonport Road and Titmuss Street, has some street furniture at high-level like lamp posts and signage, and some at low level such as bicycle racks and a litter bin. They are all well-spaced apart and, mostly, similar in appearance.
25. The proposed call box would lead to a cluttered feel on this section of the pavement, reducing the spacing between the present street furniture and, hence disrupting the rhythm. Also, the scale of the call box differs to the surrounding street furniture in terms of its width and would appear to be a prominent and incongruous addition. In addition the call box, which is of modern design with photovoltaic glazing, would be at odds with the predominant materials within the immediate and surrounding vicinity. As such, the call box would detract from the quality of the public realm and unacceptably harm the character of this part of the street scene.
26. For these reasons, the siting and appearance of the proposed call box would cause unacceptable harm to the character and appearance of the surrounding area.
27. The site is close to the Coningham and Lime Grove Conservation Area. The Council raise no concerns in respect of the effect of the development on the setting of this conservation area, and I have no reason to consider otherwise.

Appeal E – 127 Goldhawk Road

28. The appeal site is situated on a relatively wide pavement in front of residential dwellings. The street furniture near the vicinity of the appeal site consists of a bus stop, litter bin, tree and lamp post, all of which are spaced and aligned differently. The street furniture to the east and west, mainly consisting of trees, are widely spaced and provides a sense of rhythm. In that context the immediate vicinity of the appeal site appears untidy.
29. The proposed call box would create a cluttered appearance at this section of the pavement, exacerbating the present proliferation of street furniture which has no regular alignment. The call box which, is of modern design with

photovoltaic glazing, would be at odds with the predominant materials within the immediate and surrounding vicinity. As such, it would appear to be a prominent and incongruous addition. The call box would therefore detract from the quality of the public realm and unacceptably harm the character of this part of the street scene.

30. For these reasons, the siting and appearance of the proposed call box would cause unacceptable harm to the character and appearance of the surrounding area.
31. The site is opposite the Coningham and Lime Grove Conservation Area. The Council raise no concerns in respect of the effect of the development on the setting of this conservation area, and I have no reason to consider otherwise.

Appeal F – Adjacent 165-169 Goldhawk Road

32. The appeal site is situated on a very wide pavement at the junction with Brackenbury Road, which narrows to the west. It is situated near a single storey commercial unit. The pavements to the west and south are mainly lined by small trees which are in alignment. There is other street paraphernalia at low level and one lamp post near the boundary of the commercial unit. Views from the east towards the west are neat due to the spacious, rhythmic and aligned placement of the trees which makes a positive contribution to the character and appearance of this part of the street.
33. The proposed call box would be located on a section of pavement on Goldhawk Road that is largely devoid of manmade street furniture. As such, the presence of the call box would be conspicuous to pedestrians and road users. The scale of the call box differs to the surrounding street furniture in terms of its width and would appear to be a prominent and incongruous addition which would detract from the rhythm provided by the trees. It would give the impression of adding harmful clutter to the area that would detract from the quality of the public realm.
34. For these reasons, the siting and appearance of the proposed call box would cause unacceptable harm to the character and appearance of the surrounding area.
35. The Coningham and Lime Grove Conservation Area is opposite the site to the north and the Bradmore Conservation Area is opposite the site to the east. The Council raise no concerns in respect of the effect of the development on the setting of these conservation areas, and I have no reason to consider otherwise.

Appeal G – 230 Goldhawk Road

36. The appeal site is situated on a relatively wide pavement in front of modern residential flats that contains a landscaped area at its front. The immediate vicinity of the appeal site contains an enclosed telephone box with other street furniture a significant distance away. As such, the appeal site provides an open feel, especially considering the adjacent open landscaped area at the flats.
37. In this context, the presence of the call box would be conspicuous to pedestrians and road users. Its siting near the boundary of the open forecourt would have a detrimental impact on the sense of openness. As most other surrounding street furniture is a quite a distance away, placing this near

another telephone box would look congested and would display an inconsistency of design. As such, the call box would give the impression of adding harmful clutter to the area and would detract from the quality of the public realm.

38. For these reasons, the siting and appearance of the proposed call box would cause unacceptable harm to the character and appearance of the surrounding area.
39. The site is adjacent to the Ravenscroft and Starch Green Conservation Area. The Council raise no concerns in respect of the effect of the development on the setting of this conservation area, and I have no reason to consider otherwise.

Appeal H – Uxbridge Road Adjacent Askew Crescent

40. The appeal site is situated on a very wide pavement in front of an open public footway which leads to Askew Crescent. The immediate vicinity of the appeal site contains low level bollards to the east and south, a large tree with a wide branch spread to the south and a lamppost to the west. Due to the low-level height of the majority of the manmade street furniture near the appeal site, the appeal site has an open feel, especially considering the open footway area to the south, and views of this area from the surrounding area do not appear congested.
41. The proposed call box would create a cluttered appearance at this section of the pavement. The scale of the call box differs to the majority of the surrounding street furniture in terms of its width and height and would appear to be a prominent and incongruous addition. As such, the call box would detract from the quality of the public realm and unacceptably harm the character of this part of the street scene.
42. For these reasons, the siting and appearance of the proposed call box would cause unacceptable harm to the character and appearance of the surrounding area.

Appeal I – 175 Uxbridge Road

43. The appeal site is situated on a relatively wide pavement in front of buildings with commercial units at the ground floor with residential units above. This stretch of pavement, in-between the junctions with Boscombe Road and Percy Road, has street furniture at high-level like lamp posts, traffic lights and signage. At low level there are bicycle racks and litter bins. There is one telecommunication call box to the west of the appeal site and besides this, the general nature of the street furniture is low key.
44. The proposed call box would result in a cluttered appearance at this section of the pavement as it would be placed in between two bicycle racks and would appear cramped. The scale of the call box differs to the surrounding street furniture in terms of its width and would appear to be a prominent addition. As such, the call box would detract from the quality of the public realm and unacceptably harm the character of this part of the street scene.
45. For these reasons, the siting and appearance of the proposed call box would cause unacceptable harm to the character and appearance of the surrounding area.

Appeal J – 131 Uxbridge Road

46. The appeal site is situated on a relatively wide pavement in front of residential flats that contains a spacious landscaped area to its front. The immediate vicinity of the appeal site contains low level bicycle racks, bollards and a clothing bank. Other than a nearby lamp post, the street furniture in general appears to be low-key. The appeal site has an open feel, especially considering the landscaped area at the flats.
47. In this context, the presence of the call box would be conspicuous to pedestrians and road users. It's siting near the boundary of the open landscaped area would further have a detrimental impact on the sense of openness. As the majority of the surrounding street furniture is low level, the call box would appear to be a prominent and incongruous addition to the street scene. As such, the call box would give the impression of adding clutter to the area that would detract from the quality of the public realm.
48. For these reasons, the siting and appearance of the proposed call box would cause unacceptable harm to the character and appearance of the surrounding area.

Appeal K – 104 Askew Road

49. The appeal site is situated on a relatively wide pavement in front of buildings with commercial units to the ground floor and residential units above. This stretch of pavement has street furniture at high-level like lamp posts, signage, telephone boxes and a bus stop stand. At low level there are bicycle racks. There is a café to the west of the appeal site which provides outdoor seating on the pavement. The street furniture on the section of pavement to the south of the appeal site is well spaced apart and has a rhythmic feel, however, this starts to dissolve and the furniture appears cramped north of the appeal site particularly accounting for the outdoor seating at the café.
50. The proposed call box would create a cluttered environment at this section of the pavement and would exacerbate the cramped feeling to the north. The call box which is of modern design with photovoltaic glazing is at odds with the predominant materials within the immediate vicinity. As such, it would appear to be a prominent and incongruous addition. The call box would therefore detract from the quality of the public realm and unacceptably harm the character of this part of the street scene.
51. For these reasons, the siting and appearance of the proposed call box would cause unacceptable harm to the character and appearance of the surrounding area.
52. The site is close to the Ravenscroft and Starch Green Conservation Area. The Council raise no concerns in respect of the effect of the development on the setting of this conservation area, and I have no reason to consider otherwise.

Appeal L – 19 Shepherd's Bush Green

53. The appeal site is situated on a relatively wide pavement with a range of commercial units to the south in a small shopping centre which is a largely metal clad building that stretches along most of the pavement close to the appeal site. It is situated near the heavily trafficked Shepherd's Bush Green which has a high pedestrian flow. There are various items of street furniture

running from the east to the west, including three telecommunication call boxes which are spaced considerably apart from one another, two bus stops, trees, lamp posts and traffic signals which are all relatively well spaced and aligned. There are also low-level street furniture like benches, litter bins and bicycle racks. Although there is a wide range of street furniture, views from the east to west provides a neat and balanced view with no particular section that is overly cramped.

54. The proposed call box would create a perception of clutter at this section of the pavement as it would be very close to the pedestrian crossing and a tree. Given the scale of these and the proposed callbox, this section would appear cramped compared to the wider street scene along the pavement. As the present three telecommunication call boxes are spaced a significant distance from one another, the proposed callbox would disrupt the rhythm of the street scene due to its close proximity to one of the telecommunication call boxes and would appear inconsistent with it due to the proposed box's different scale and appearance. Although I am aware that different providers would have different designs, in this instance, this difference would harm the character and appearance of the immediate vicinity due to the inconsistency it would provide. As such, the call box would appear to be an incongruous addition in a very prominent part of the local area. The call box would therefore detract from the quality of the public realm and unacceptably harm the character of this part of the street scene.
55. For these reasons, the siting and appearance of the proposed call box would cause unacceptable harm to the character and appearance of the surrounding area.
56. The site is opposite the Shepherds Bush Conservation Area. The Council raise no concerns in respect of the effect of the development on the setting of this conservation area, and I have no reason to consider otherwise.

Pedestrian movement, highway and public safety (all appeals)

57. At each site, the number of pedestrians passing on the respective sections of pavement appeared low, with the exception of the site for appeal A, where I consider the volume of pedestrians was moderate, and the site at appeal L where there was a high flow of pedestrians past the site. The appellant submitted a document as part of these appeals that shows the proposed public call boxes positions on the pavement, their distance from the road edge and the width of the remaining unobstructed footway following its installation. In all cases the boxes would adhere to Transport for London (TfL) Streetscape Guidance (footway clear zone) and TfL Pedestrian Comfort Guidance, 2010. Furthermore, the boxes would also comply with the minimum unobstructed widths identified in key principle TR29 of the Council's Planning Guidance Supplementary Planning Document (SPD).
58. Although there is not an accurate depiction of the proposed call box within this document, it still provides a good indication of their position when taking measurements of the public call box into account, sufficient to allow an accurate consideration of the effect of its siting. I do not consider the siting of the proposals would be harmful to pedestrian movement, highway and public safety, and I have no contrary evidence before me to suggest otherwise.

Other Matters (All Cases)

59. I have taken into account the benefits advanced by the appellant in favour of the proposed call boxes, including public benefits. However, these do not outweigh the harm associated with these proposals.
60. The appellant has referred to some appeal decisions, and court cases, regarding similar proposals for the installation of telephone call boxes. However, I do not have the full details of those cases and so have considered each proposal before me on its own individual merits and the specific circumstances and context of each case.
61. The appellant states the term 'clutter' would suggest the public call box is not needed. However, need and clutter are different considerations, and whilst the need for the boxes in principle is not disputed, the effect of their siting on their context is a matter that needs consideration.
62. The appellant states the design of the call box has been designed to be less visually intrusive and dominant than a previous version design. However, consideration of the appearance of the box in its context, as well as its siting, go beyond just the design of the development.

Overall balances and Conclusions

63. Although I do not find there to be detrimental harm to pedestrian movement, highway and public safety with regards to the siting of the proposed call boxes, this would not outweigh the harms created by their siting and appearance in relation to their effect on the character and appearance of their surroundings.
64. I have had regard to Policy DC1 of the Hammersmith and Fulham Local Plan, February 2018, (Local Plan), which seeks to achieve high quality urban design Policy DC10 of the Local Plan which seeks to minimise impact on visual amenity from telecommunication apparatus, and Policies T1 and T3 of the Local Plan which seek to increase opportunities for cycling and walking. I have also had regard to key principles TR12, TR13, TR22 and TR29 of the SPD and policy 6.10B of the London Plan which all generally seek to protect the pedestrian environment.
65. For the reasons given above, and having regard to all other matters raised, I conclude that all 12 appeals should be dismissed.

Mariam Noorgat

APPEAL PLANNING OFFICER

Inspector's Decision

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

Andrew Owen

INSPECTOR