



## Appeal Decision

Site visit made on 28 August 2019 by S Witherley BA, PGDiP, PGDiP, Cert CIH, Assoc RTPI

### Decision by A U Ghafoor BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 October 2019

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#### All Appeals

- 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 Mr O'Neil on behalf of Maximus Networks Ltd against the decision of the Council of the London Borough of Tower Hamlets.
  - The development proposed in each case as described on the application form is for a call box.
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#### Appeal A – Appeal Ref: APP/E5900/W/18/3212696

##### 214 Whitechapel Road, London, E1 1BJ

- The application, Ref PA/18/00322, dated 31 January 2018, was refused by notice 3 April 2018.
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#### Appeal B – Appeal Ref: APP/E5900/W/18/3212694

##### 139 – 149 Whitechapel Road, London, E1 1DT

- The application, Ref PA/18/00289, dated 31 January 2018, was refused by notice 3 April 2018.
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#### Appeal C – Appeal Ref: APP/E5900/W/18/3212681

##### 45 Whitechapel Road, London, E1 1DU

- The application, Ref, PA/18/00345, dated 31 January 2018, was refused by notice 3 April 2018.
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#### Appeal D – Appeal Ref: APP/E5900/W/18/3212676

##### 33 Commercial Road, London, E1 1LD

- The application, Ref, PA/18/321, dated 31 January 2018, was refused by notice 3 April 2018.
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#### Appeal E – Appeal Ref: APP/E5900/W/18/3212678

##### 37-39 Commercial Road, London, E1 1LF

- The application, Ref, PA/18/00319, dated 31 January 2018, was refused by notice 3 April 2018.
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#### Appeal F – Appeal Ref: APP/E5900/W/18/3212685

##### 82 Commercial Road, London, E1 1NU

- The application, Ref, PA/18/00284, dated 31 January 2018, was refused by notice 3 April 2018.
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**Appeal G – Appeal Ref: APP/E5900/W/18/3212783**  
**Commercial Road jct. Hainton Close, London, E1 2FB**

- The application, Ref, PA/18/00329, dated 31 January 2018, was refused by notice 3 April 2018.

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**Appeal H – Appeal Ref: APP/E5900/W/18/3212785**  
**Commercial Road o/s Holiday Inn, Cavell Street, London, E1 2BP**

- The application, Ref PA/18/00332, dated 31 January 2018, was refused by notice 3 April 2018.

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**Appeal I – Appeal Ref: APP/E5900/W/18/3212718**  
**422-426 Mile End Road, London, E1 4PE**

- The application, Ref, Pa/18/00299, dated 31 January 2018, was refused by notice 3 April 2018.

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**Appeal J – Appeal Ref: APP/E5900/W/18/3212789**  
**Mile End Road adj. Queen Mary University, London, E1 4NS**

- The application, Ref Pa/18/00339, dated 31 January 2018, was refused by notice 3 April 2018.
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**Decision**

1. All the Appeals are dismissed.

**Appeal Procedure – Appeals A to J**

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 appeal.

**Procedural Matters – Appeals A to J**

3. In these Appeals, the design of the call box is the same, however, they are sited in different locations. Each proposal will be considered on its individual merits. As they raise similar issues and to avoid duplication, they 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 (GPDO) 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 these Appeals.
5. As an electronic communications code operator, the appellant benefits from deemed planning permission for a proposed telephone kiosk under Article 3(1) Schedule 2, Part 16, Class A, Paragraph A.3(4) of the GPDO. The provision requires the local planning

authority to assess the proposed development solely on the basis of its siting and appearance, taking into account any representations received.

6. A recent High Court judgment, *The Westminster judgement*<sup>1</sup>, considered the issue of the inclusion of advertising on public call boxes and the matter of development for 'the purpose' of an electronic communications code operator's electronic communications network for the purposes of Part 16, Class A of GPDO. The 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'. Therefore, there is a requirement to ensure that a proposal is solely for the purpose of the operator's electronic network and not partly for some other use.
7. Following the outcome of *Westminster*, the appellant submitted additional information relating to each appeal. They have stated the proposals are solely for the purposes of telecommunications use. The call box includes an opening rear glass panel, which the appellant claims is to house the electronic equipment and enables access for maintenance, in addition to this, the proposals are not accompanied by an application for advertisement consent. A further Counsel Opinion on behalf of the appellant was submitted which confirms the specification of the call box design. Given the available evidence, it is considered that the kiosks proposed in these Appeals are unlikely to constitute a dual purpose.
8. The principle of development is established by the GPDO. Therefore, matters such as the need for the development are not at issue. In addition, whilst the appellant has referred to the purported benefits of the proposed kiosk, these matters have not been taken into account other than in respect of heritage assets where the National Planning Policy Framework (NPPF) advises 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.
9. The appellant makes note in the appeal statement of examples of court cases and appeals relating to the siting of similar proposals. These examples will be taken into account, but there is limited information as to the detailed siting and appearance of these other proposals. In any case, each of the current proposals have been assessed on its individual merits with regard to its specific location and context.

#### *Planning Policy – Appeals A to J*

10. The principle of development is established by the GPDO and the provisions of Schedule 2, Part 16, Class A of the GPDO do not require regard to be had to the development plan. The Council have had regard to the following Policies SP09(3), SP10(1) of the Tower Hamlets Core Strategy (2019). Policies DM20, DM23(1a), and M24 of the Managing Development Document (2013). Policies 6.9(B), 6.10(B) and 7.5 of the London Plan (2016), and Transport for London adopted *Streetscape Guidance* (2017). The appellant has referred to technical guidance contained within the *Pedestrian Comfort Guidance* produced by Transport for London (TfL) and the TfL *Streetscape Guidance 2017*. Regard has been given to these policies, related guidance and the Framework only in so far as they are a consideration relevant to matters of siting and appearance, designated heritage assets and the safe and efficient operation of the highway.

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<sup>1</sup> Westminster City Council v Secretary of State for Housing, Communities and Local Government & New World Payphones Ltd [2019] EWHC 176 (Admin)

## **Main Issues – Appeals A to J**

11. In all the Appeals the common main issues are as follows: 1) the effect of the siting and appearance of the proposed call box on the character and appearance of the area, 2) the siting and appearance of the proposed call box on highway safety.

## **Reasons for the Recommendation – Appeals A to J**

12. The call boxes are of the same design and consist of 3 sides with one broad panel at the rear and two short sides. The roof would be flat and extend beyond the side elevations. The materials used in its construction include a steel frame, steel casings, clear polycarbonate, and toughened glass. No indication has been provided as to the precise orientation of the telephone kiosks in each case. As such, the appeals have been determined with reference to the identified footprint on the appellant's submitted photographs.

### **Appeal A – 214 Whitechapel Road - Character and Appearance**

13. The proposed call box would be sited outside a commercial unit on a section of pavement close to the junction of Maples Place. The area is predominately commercial and has a vibrant and busy character. The proposed call box would be positioned on a similar line as other pieces of street furniture which include a BT kiosk, a tree, and a street lighting column. The proposal would, as a result of its height, width and overall footprint, add to the proliferation of street furniture and present as a visually prominent and overbearing structure. Accordingly, as a result of its siting and appearance, the call box would have a harmful effect upon the character and appearance of the area.
14. The site is near to the Whitechapel Market Conservation Area (CA), this area contains a number of designated listed buildings. Its significance derives from its architectural appearance and layout of buildings. Given the urban appearance of the site and the modern and functional form of the call box along with the presence of other features within the streetscape, there would be no diminishing effect on the character and appearance of the CA or the setting of the nearby listed buildings. Whilst the setting and significance of the nearby CA and listed buildings would be preserved, the siting and appearance of the call box would have a harmful effect upon the areas character and appearance.

#### *Highway Safety*

15. Given the width of the pavement, along with the high flow of pedestrians seen using it at the time of the site visit, along with the proximity to other pieces of street furniture, it is considered that the call box would obstruct the free flow of pedestrian traffic. It also has the potential to obstruct views from the junction of Maples Place of oncoming cycle traffic. Accordingly, the call box would be detrimental to highway safety.

### **Appeal B – 139–149 Whitechapel Road - Character and Appearance**

16. The proposal would be located outside a fuel station in a predominately commercial area. The garage forecourt is accessed directly from Whitechapel Road with the exit onto Davenant Street. The call box would be positioned on a short stretch of pavement which sits between these access and egress points. The proposed call box would be set back from the highway and positioned on a similar line as other street furniture including an

existing BT kiosk, utilities box and waste bin. Along with the backdrop of the garage and large totem pole signage, this part of the streetscape appears visually cluttered. Given the design, scale and overall footprint of the proposal it would only add to the existing street clutter and visual discordance of the area. Accordingly, as a result of its siting and appearance, the call box would have a harmful effect upon the character and appearance of the area.

17. The site is near to the Whitechapel Market CA. Its significance derives from its architectural appearance and layout of buildings. Given the urban and functional appearance of the fuel station, along with the presence of other features within the streetscape, the design and functional form of the call box would not diminish the visual effect of the character and appearance of the CA. Whilst the setting and significance of the CA would be preserved, the siting and appearance of the call box would have a harmful effect upon the character and appearance of the area.

#### *Highway Safety*

18. At the time of the site visit, mid-morning on a week day, the flow of pedestrian traffic appeared relatively high. Given the short stretch of pavement located between the busy vehicle access/egress points, along with the pavement's width, the free flow of pedestrian traffic would be constrained by the scale and overall footprint of the call box. Accordingly, the call box would be detrimental to highway safety.

#### **Appeal C – 45 Whitechapel Road - Character and Appearance**

19. At the time of the site visit areas of the pavement were covered in construction hoarding, this did not prevent a full assessment of the site from taking place. It was also noted at the time that there was a high volume of pedestrian traffic passing through the area. The call box would be located outside a retail unit close to the outer edge of the pavement which runs parallel with a cycle way. Despite the construction hoarding, it was evident that levels of street furniture in this area were limited to street lighting columns and utility boxes and whilst there was a bus shelter beyond the cycle way the area of pavement was generally clutter free. As a result of the design, height, width and overall footprint of the call box, it would be visually intrusive and dominant in the streetscape particularly when viewed by pedestrians walking along this section of Whitechapel Road. As such it would create visual clutter in an otherwise open area and harm the character and appearance of the area.
20. The site is near to the Whitechapel Market CA. Its significance derives from its architectural appearance and layout of buildings. Given the modern appearance of the commercial facades within this part of the streetscape, the modern and functional form of the call box would not harm the character and appearance of the CA. Whilst the setting and significance of the CA would be preserved, the siting and appearance of the call box would have a harmful effect upon the character and appearance of the area.

#### *Highway Safety*

21. Given the width of the footpath at this location and the proximity of the cycle way, the call box as a result of its height, width and overall footprint, would be visually intrusive within this part of the streetscape and impede the safe and free movement of pedestrians. It would also act as a visual barrier for pedestrians crossing the cycle way to access the nearby bus stop. Accordingly, the call box would be detrimental to highway safety.

### **Appeal D – 33 Commercial Road, London** - *Character and Appearance*

22. The area surrounding the site has a largely commercial character with some residential development located nearby. The proposed call box would be sited close to the main entrance of a café which features outdoor tables and chairs. Despite the outdoor seating area, there is limited street furniture in the area other than street lighting columns. This creates an area that is open and spacious, which positively contributes to the overall character and appearance of the area. As a result of the design, scale and footprint, the call box would appear as a prominent and obtrusive structure in the otherwise open and clutter free streetscape. The call box as a result of its siting and appearance would, therefore, harm the character and appearance of the area.

#### *Highway Safety*

23. The call box would be located outside the entrance of a café. As a result of its scale and footprint it would create a pinch point along this section of highway which would be detrimental to pedestrian flow. Given the location close to the highway it may divert pedestrians onto the highway carriage endangering their safety. Accordingly, the proposal would be harmful to highway safety.

### **Appeal E – 37-39 Commercial Road** - *Character and Appearance*

24. The location of the call box would be outside a large building with commercial units at ground floor. There is a junction at either end of the building. The call box would be located just off the centre line of the pavement near to the junction of Alder Street. Within this short section of the pavement there are several pieces of street furniture including a bus stop, kiosk, a tree, signage and street lighting columns. Whilst the pavement is wide and gives the appearance of an expanse of area, due to the number and proliferation of existing pieces of street furniture the area has a cluttered appearance. The proposal would be located in a prominent position and as a result of its design, scale and footprint would introduce an additional element of street clutter to the area significantly harming its character and appearance.

#### *Highway Safety*

25. Whilst the pavement at this location is wide, as a result of the call box location, width and footprint, it would create an additional obstacle for pedestrians to manoeuvre round and would interfere with a marked desire line for pedestrian walking. Accordingly, the proposal would be harmful to highway safety.

### **Appeal F – 82 Commercial Road** - *Character and Appearance*

26. The proposal would be located outside a large building with commercial units at ground floor and residential properties above. The proposal would be sited close to the kerbside adjacent to a busy highway. Whilst this part of the streetscape has a tree, street lighting column and utility box it is relatively free from street furniture. However, it is dominated by a large overhanging canopy servicing No. 82. The call box would, as a result of its design, roof profile, scale and overall footprint appear as a prominent intrusion in an otherwise open and clutter free part of the streetscape. It would, therefore, detract from the areas openness and would add a dominant and bulky element to the streetscape. Accordingly, as a result of its siting and appearance, the call box would have a harmful effect upon the character and appearance of the area.

### *Highway Safety*

27. From observations made at the time of the site visit, mid-morning on a weekday, pedestrian flow in this area was relatively low. In the context of the site there would be sufficient room for pedestrians to be able to manoeuvre round the call box without being restricted by its footprint. The proposal would not adversely affect the safe and efficient movement of pedestrians and, therefore, would not be harmful to highway safety.

### **Appeal G – Commercial Road jct. Hainton Close - Character and Appearance**

28. The proposal would be located in an area of commercial Highstreet that is open and features a pleasant public amenity space with large planting tubs with trees. This amenity area is separated from the main Highstreet pavement by bollards and provides a welcome visual respite from the busy commercial landscape that surrounds the site. The proposal would be located in line with other pieces of street furniture including a waste bin, lighting columns, a tree and signage posts. Despite the proposed siting, the addition of the call box in this location would, as a result of its height, width and footprint reduce the visual openness of the area and reduce the visual spacing between the existing street furniture. Thus, a call box in this location would make the area unacceptably cluttered. As such, the siting and appearance of the proposal would have a harmful effect on character and appearance of this part of the streetscape.

### *Highway Safety*

29. From observations made at the time of the site visit, the area experiences high levels of pedestrian traffic. The location of the call box would be in line with other street furniture and given the scale and footprint of the call box would hinder pedestrian movement within this section of pavement. Whilst the pavement extends out to the side into the public amenity area, the bollards separating the areas acts as a barrier which would only further impede the natural direction of pedestrians. The development would, therefore, have an adverse effect on pedestrian flows and on the safe and efficient operation of the highway.

### **Appeal H – Commercial Road o/s Holiday Inn, Cavell Street -Character and Appearance**

30. The proposal would be located outside the Holiday Inn on a busy commercial Highstreet. Despite there being existing street furniture in the area including a lighting column, signage posts and waste bin, the area is open, and relatively devoid of street clutter. Given the scale, height, footprint and materials of the proposed call box it would appear as a prominent addition in this location and would create visual clutter in an otherwise uncongested area, thus eroding the current openness of the streetscape. Accordingly, the proposal, as a result of its siting and appearance, would have a harmful effect on the character and appearance of the area.

### *Highway Safety*

31. The siting of the call box would be in line with the other pieces of street furniture close to the edge of the kerb. Given its proximity to the street lighting column, its scale and overall footprint, it would visually obstruct and interfere with the free movement of pedestrians walking along this section of pavement. Accordingly, the call box would be detrimental to highway safety.

### **Appeal I – 422-426 Mile End Road - Character and Appearance**

32. The proposal would be located outside a commercial unit which has existing pieces of street furniture including street lighting columns, traffic lights, trees, and utility boxes. The pavement is wide, and despite the existing street furniture, the area appears open. The call box would be located approximately centre of the pavement area close to an existing tree. As a result of the overhead canopy, its height and footprint, the call box would appear as a prominent feature within this part of the streetscape and would visually detract from the setting of the nearby trees. Accordingly, the proposal, as a result of its siting and appearance, would have a harmful effect on the character and appearance of the area.
33. The site is near to the Whitechapel Market CA, this area contains a number of designated listed buildings. Its significance derives from its architectural appearance and layout of buildings. Due to the urban street context and the modern and functional form of the call box, along with the presence of other features within the streetscape, there would be no harmful effect on the character and appearance of the CA or the setting of the nearby listed buildings. Whilst the setting and significance of the nearby CA and listed buildings would be preserved, the siting and appearance of the call box would have a harmful effect upon the character and appearance of the area.

#### *Highway Safety*

34. The siting of the call box would be located close to an existing tree and street lighting column. Whilst it would be set centrally within the pavement, given its proximity to the tree, its scale and overall footprint, it would visually obstruct and interfere with the free movement of pedestrians walking along this section of pavement. Accordingly, the call box would be detrimental to highway safety.

### **Appeal J – Mile End Road adj. Queen Mary University - Character and Appearance**

35. The proposal would be located on the pavement outside the Queen Mary university. It would be located close to the kerbside adjacent to a cycle way. Within the immediate area there are existing pieces of street furniture including a freestanding advert, street lighting column and a number of trees which line this part of the street. Despite the existing street furniture, the area is one of openness and this positively contributes to the visual aspect of this section of the street, particularly with the setting of the trees. Given the height and overall footprint of the call box, the openness and quality of the public realm would be undermined and, therefore, the siting and appearance of the call box would have a harmful effect upon the character and appearance of the area.
36. The site is near to the Queen Mary University building which is a designated listed building. Its significance derives from its architectural appearance, layout and function. Due to the urban street context and the modern and functional form of the call box, along with the presence of other features within the streetscape, there would be no harmful effect on the setting of this listed building. Whilst the setting and significance of the listed buildings would be preserved, the siting and appearance of the call box would have a harmful effect upon the character and appearance of the area.

### *Highway Safety*

37. Whilst it was observed that pedestrian flow in the area was low, given the call box siting, its footprint, its location close to the outer kerb and the existing trees and street furniture, it would present as an obstruction to the natural flow of pedestrians using the pavement. Indeed, the location has the potential to steer pedestrians onto the highway given the close proximity to it and compromise pedestrian and cycle safety. It would, by virtue of its location, size and footprint impede the safe and free movement of pedestrians along this section of footpath. Accordingly, the call box would be detrimental to highway safety.

### **Conclusion and Recommendation - Appeals A to J**

38. Whilst it has been found that there would be no harm to the setting of the respective CAs in the cases of Appeal A, B, C, and I, nor harm to the setting of the listed buildings in Appeals A, I and J, this does not override the significant harm found as a result of the siting and appearance of each proposed call box on the character and appearance of the areas. In addition to this, in all cases apart from Appeal F, the siting and appearance of the proposed call boxes would have a harmful effect on the safe and efficient operation of the highway. Whilst no harm has been found in Appeal F in regard to highway safety, this does not override the adverse visual effect of the proposal upon the character and appearance of the area.

39. For the reasons given above, it is recommended that the Appeals A to J should be dismissed.

*S Witherley*

APPEAL PLANNING OFFICER

### **Inspector's Decision - Appeals A to J**

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

*A U Ghafoor*

INSPECTOR