



Appeal Decision

Site visit made on 27 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

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'Neill on behalf of Maximus Networks Ltd, against the decision of the Council of the Royal Borough of Kensington and Chelsea.
 - The development proposed in each case as described on the application forms is call box.
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Appeal A Ref: APP/K5600/W/18/3212063 **536 Kings Road London SW10 0LD**

- The application, Ref PA/18/00462, dated 22 January 2018, was refused by notice 29 March 2018.
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Appeal B Ref: APP/K5600/W/3212074 **adj 491 Kings Road, Outside Caple House, Kings Road, London, SW10 0TT**

- The application, Ref PA/18/00473, dated 22 January 2018, was refused by notice 29 March 2018.
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Appeal C Ref: APP/K5600/W/18/3212005 **101 Knightsbridge, London, SW1X 7RQ**

- The application, Ref PA/18/00495, dated 22 January 2018, was refused by notice 29 March 2018.
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Appeal D Ref: APP/K5600/W/18/3212057 **38 Sloane Square, London SW1W 8DL**

- The application, Ref PA/18/00487, dated 18 January 2018, was refused by notice 29 March 2018.
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Decisions

1. All the Appeals are dismissed.

Appeal Procedure – Appeals A to D

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 D

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.
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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*¹, 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 the 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 proposal will be assessed on its individual merits with regard to its specific location and context.

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

Planning Policy – Appeals A to D

10. In the reasons for refusal pursuant to Appeals A to D, the Council cite Policies CT1, CR4, CL6 and CL11 of the Consolidated Local Plan, Royal Borough of Kensington and Chelsea, (LP) (2015), and the National Planning Policy Framework (Framework). 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*. The Council has since adopted its LP partial review in September 2019. The principle of development is established by the GPDO and prior approval includes no requirement that regard be had to the development plan. The GPDO 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. Accordingly, the Appeals are not determined on the basis of Section 38(6) of the Planning and Compulsory Purchase Act 2004. Nonetheless, regard has been given to these policies, related guidance and the Framework only in so far as they are considered relevant to matters of siting and appearance, designated heritage assets and the safe and efficient operation of the highway.

Main Issues – Appeals A to D

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. In Appeal D, as the site is located within the Sloane Square Conservation Area (CA), whether the siting and appearance would preserve or enhance the character or appearance of the CA.

Reasons for the Recommendations – Appeals A to C

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 - 536 Kings Road - Character and Appearance

13. The call box would be in an area of Kings Road which contains large blocks of residential buildings. It would be located close to the kerb adjacent to a busy road. The area outside No. 536 is defined by its large open pavement which in part is due to an integrated paved ramp which services No. 536. Within the streetscape there are existing lighting columns, bike racks, trees and signage boards. However, these are spaced out from each other and overall the character of the area is one of openness. The call box would present as a modern and functional form which would mostly be open on three sides in order to enable wheelchair access. As a result of its design, height, width and overall footprint it would appear as a substantial structure. The proposal would appear as a visual and dominant intrusion in the otherwise open streetscape. Consequently, it would be at odds with the prevailing open character of this part of the street.
14. The site is close to the Sloane/Stanley CA. It is a primarily residential area. However, given the modern appearance of No. 536 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. Whilst the setting and significance of the CA would be preserved, the siting and appearance of the call box would have a harmful visual effect upon the character and appearance of the area.

Highway Safety

15. Despite the pavement being reasonably wide, the proposed siting of the call box would be relatively close to the access/egress of the integrated ramp, a set of steps outside No. 536, a tree and a set of cycle stands. From observations at the time of the site visit, levels of foot traffic were low, however, the siting of the call box in this location has the potential to visually and physically obstruct even the most modest flow of pedestrian traffic. Accordingly, the flow of pedestrian traffic would, therefore, be restricted around this area and would be detrimental to highway safety.

Appeal B - adj. 491 Kings Road, Outside Caple House, Kings Road

Character and Appearance

16. The call box would be located on the pavement outside Caple House. The buildings along this section of Kings Road are mainly blocks of residential properties. The streetscape is defined by boxed hedgerows, intermittent trees and park benches which are set back from the pavement. Despite there being an existing BT call box, street lighting column and residential barrier close to the proposed siting, the area is open, orderly and devoid of street clutter. Given the scale, height, footprint and materials of the proposed call box it would appear as a bulky addition and would create visual and physical clutter in an otherwise uncongested area thus eroding the current openness of the streetscape.
17. Whilst it is not located within a CA, it is located close to Sloane/Stanley CA, which is predominantly residential in nature. Given the location of the proposed call box and the residential backdrop of its siting, there would be no diminishing effect on the character and appearance of the CA. The setting and significance of the CA would be preserved. Nonetheless, the siting and appearance of the call box would have a harmful effect upon the character and appearance of the area.

Highway Safety

18. The siting of the call box would be in line and close to an existing BT call box and street lighting column. Whilst it would be set back from the kerbside, given its proximity to the existing BT call box, 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 C - 101 Knightsbridge - Character and Appearance

19. The proposal would be located on a busy pavement outside the Park Tower Casino. At the time of the site visit areas of the pavement were closed off to pedestrians due to construction works. Nevertheless, this did not impede the carrying out of the site visit. The proposal would be located close to the kerbside adjacent to an extremely busy highway. Within the immediate area there were existing traffic signs and lighting columns on the pavement but overall this section of the street was notably absent of street furniture. Given the height and overall footprint of the call box, the openness of the area,

which positively contributes to the visual aspect of this section of the street, would be undermined.

20. The site sits close to the Hans Town CA, which can be defined by its large residential and commercial properties of varying architecture. Whilst the call box would have a modern and functional appearance, its location adjacent to the modern façade of the Park Tower Casino, along with the distance from inside the CA, there would be no diminishing effect on the character and appearance of the CA. The setting and significance of the CA would be preserved. Nonetheless, the siting and appearance of the call box would have a harmful effect upon the character and appearance of the area.

Highway Safety

21. From observations at the time of the site visit, the level of pedestrian movement past the site was high. As a result of its overall footprint and location close to the outer kerb, 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 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.

Appeal D - 38 Sloane Square – Reasons for the Recommendation

Character and Appearance

22. The site is located on a busy thoroughfare outside a retail unit in the Sloane Square CA. Directly opposite the site is Sloane Square which is an area of open public amenity space. The call box would be sited in a section of street that has several existing pieces of street furniture including, a bus shelter, a newsagent kiosk, a phone kiosk and wi-fi kiosk. Viewed collectively, the streetscape appears extremely cluttered. Despite the proposed siting, in line with the other pieces of street furniture, the addition of the call box in this location would, as a result of its height, width and footprint reduce the visual spacing between the existing street furniture and 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.
23. The significance of the CA is defined by its architectural appearance and layout of buildings. Although there is existing street furniture in the area, an additional call box at this location would, as a result of its design and scale, add to the proliferation of existing street furniture to the visual detriment of the character and appearance of this part of the CA. Whilst the level of harm caused would be less than substantial it is, nevertheless, to be given considerable importance and weight. This harm has been weighed against the number of public benefits purported by the appellant and the NPPF which encourages electronic communications. However, moderate weight is attached to these benefits given the potential adverse visual effect of the proposal. The proposal would, therefore, fail to preserve the character and appearance of the CA.

Highway Safety

24. The location of the call box would be along a busy part of the street with a bus stop nearby. From observations at the time of the site visit, the area saw a high volume of pedestrian traffic including the use of the nearby bus stop. The introduction of another

piece of substantial street furniture along this pavement would obstruct and impair the free flow of pedestrians. By virtue of its size and footprint, the proposal would impede the safe and free movement of pedestrians along the footpath. Accordingly, the call box would be detrimental to highway safety.

Conclusions and Recommendations – Appeals A to D

25. There would be no harm to the setting of the respective CAs in Appeal A, B and C, this would not override the significant harm found as a result of the siting and appearance of each proposed call box upon the character and appearance of the areas. In Appeal D, the proposal, as a result of the visual harm found, would fail to preserve the character and appearance of the CA. The modest public benefits would not outweigh the identified harm to which substantial weight is given. In addition to this, and in all cases, the siting and appearance of the proposed call boxes would have a harmful effect on the safe and efficient operation of the highway.

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

S Witherley

APPEAL PLANNING OFFICER

Inspector's Decisions – Appeals A to D

27. 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 D should be dismissed.

A U Ghafoor

INSPECTOR