

Appeal Decisions

Site visits made on 23 July 2019

by Matthew Jones BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 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, Schedule 2, Part 16 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended).
 - The appeals are made by Maximus Networks Ltd against the decisions of City of Westminster Council.
 - The development proposed in each case is call box.
-

Appeal A Ref: APP/X5990/W/18/3211336

Marylebone High Street (near to junction with Marylebone Road), London NW1 5JD

- The application Ref 18/00863/TELCOM, dated 01 February 2018, was refused by notice dated 21 March 2018.
-

Appeal B Ref: APP/X5990/W/18/3211332

Highway outside of 19 Marylebone Road, London NW1 5LT

- The application Ref 18/00882/TELCOM, dated 01 February 2018, was refused by notice dated 20 March 2018.
-

Appeal C Ref: APP/X5990/W/18/3211334

Highway outside of 100 Marylebone Road, London NW1 5DX

- The application Ref 18/00864/TELCOM, dated 01 February 2018, was refused by notice dated 20 March 2018.
-

Appeal D Ref: APP/X5990/W/18/3211914

Highway outside of 139-151 Marylebone Road, London NW1 5QE

- The application Ref 18/00928/TELCOM, dated 31 January 2018, was refused by notice dated 20 March 2018.
-

Appeal E Ref: APP/X5990/W/18/3211402

Highway outside of 153 Marylebone Road, London NW1 5QH

- The application Ref 18/00929/TELCOM, dated 31 January 2018, was refused by notice dated 20 March 2018.
-

Appeal F Ref: APP/X5990/W/18/3211751

Highway outside of 191 Old Marylebone Road, London NW1 5DZ

- The application Ref 18/00881/TELCOM, dated 01 February 2018, was refused by notice dated 20 March 2018.
-

Appeal Ref G: APP/X5990/W/18/3211759

Highway outside of 296 Old Marylebone Road, London NW1 5RA

- The application Ref 18/00884/TELCOM, dated 31 January 2018, was refused by notice dated 20 March 2018.
-

Appeal Ref H: APP/X5990/W/18/3211922

Highway opposite 48 Chapel Street, London NW1 5DP

- The application Ref 18/00885/TELCOM, dated 31 January 2018, was refused by notice dated 20 March 2018.
-

Appeal Ref I: APP/X5990/W/18/3211919

Highway opposite 37-47 Chapel Street, London

- The application Ref 18/00930/TELCOM, dated 31 January 2018, was refused by notice dated 20 March 2018.
-

Decisions

1. Appeals A, B, C, D, E, G and I are dismissed.
2. Appeal F is allowed and approval is granted under the provisions of Article 3(1) and Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the siting and appearance of call box at land at Highway outside of 191 Old Marylebone Road, London NW1 5DZ in accordance with the terms of the application Ref 18/00881/TELCOM, dated 01 February 2018, and the plans submitted with it including the elevational drawing titled Maximus Networks Ltd Telephone Kiosk, the Block Plan and the Site Location Plan.
3. Appeal H is allowed and approval is granted under the provisions of Article 3(1) and Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the siting and appearance of call box at land at Highway opposite 48 Chapel Street, London NW1 5DP in accordance with the terms of the application Ref 18/00885/TELCOM, dated 31 January 2018, and the plans submitted with it including elevational drawing titled Maximus Networks Ltd Telephone Kiosk, the Block Plan and the Site Location Plan.

Procedural Matters

4. In the interests of accuracy, I have amended the site addresses where necessary to better reflect the location of the proposed call boxes.
5. The courts have held that where development is permitted by the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (the GDPO), the principle of development is not an issue¹. This is reflected in Paragraph 116 of the National Planning Policy Framework (the Framework).
6. As such, although I have had regard to the Council's evidence and other representations concerning the need for the call boxes, this matter has not been determinative in my assessment. Whilst the appellant has referred to the

¹ Murrell v Secretary of State for Communities and Local Government and Broadland District Council 2010

purported benefits of the proposed kiosk, I have not taken these matters into account other than in respect of heritage assets where the Framework advises at Paragraph 196, that 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.

7. It has also been held that the whole development for which prior approval is sought must fall within the Class relied on². If the whole of the proposal is not solely 'for the purpose' of the operator's network, the proposal falls outside of the GPDO and prior approval cannot be granted. In all of the appeals, only the installation of the call box is being considered and the appellant is not seeking advertisement consent. Given the proposed design of the call boxes and the absence of any evidence of advertisements, I find that they do not constitute a dual purpose and as such fall within the permitted development rights regime.
8. The Council has referred to development plan policies in its reasons for refusal. However, applications for prior approval are determined in relation to the criteria set out within the GPDO and do not require regard to be had to the development plan. I have therefore considered Policies S25, S28 and S41 of the Westminster City Plan (adopted 2016) (WCP), Policies DES 1, DES 7, DES 9, DES 10, and TRANS 3 of the Unitary Development Plan (adopted 2007) (UDP) and the London Plan (adopted 2016) only insofar as they are material considerations relevant to siting and appearance. In these terms, I have also had regard to the guidance within the Westminster Way Supplementary Planning Document (adopted 2011).
9. As permission has already been granted under the terms of Article 3(1) of the GPDO, the statutory duty under Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 does not apply to these appeals.
10. However, the heritage aims of the Framework are material to my assessment. The Framework identifies that the significance of a designated heritage derives not only from its physical presence, but also its setting.
11. Both main parties have referred to Transport for London's Pedestrian Comfort Guide (LPCG) in their submissions. I have had regard to this in my decisions insofar as relevant to matters of siting and appearance.
12. The appellant has referred to appeal decisions regarding sites at Tottenham Court Road and Harrow Road in each of its appeals. Whilst I have taken these into account, I have only given them limited weight as each of my decisions relates to the individual circumstances of each site and proposal.

Main Issues

13. In all cases the main issues are the effect of the siting and appearance of the proposed call boxes on:
 - the character and appearance of the area; and
 - the safe and efficient use of the highway.

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

Reasons

14. In each case, the proposed call box would be a largely open structure constructed in steel and polycarbonate. It would be principally formed of a 1.35m wide wall which would support a canopy and the telephone itself, with two 0.55m flank walls on either side. The roof would extend from the main wall over and beyond the flank walls for a distance of 1.125m. Its overall height, from pavement level, would be 2.6m.

Appeal A

Character and appearance

15. The appeal site is at the northern end of Marylebone High Street. The immediate area already contains a multitude of street furniture, including cabinets, cycle racks, signage and bollards.
16. The street has a relatively sinuous layout, and as it turns the small corner at the appeal site, the adjacent building inhibits visibility to a degree. As such, upon passing the appeal site, in either direction, the respective street scene opens up to view. To the north are the imposing buildings which front Marylebone Road, and fall within the Regent's Park Conservation Area (RPCA). To the south are the more modest commercial buildings which line Marylebone High Street, within the Harley Street Conservation Area (HSCA). As such, the appeal site is a pivotal location between two distinct historic environments.
17. The call box would exacerbate the dominance of street furniture in this location and would contribute cumulatively to the cluttered appearance of the area. Furthermore, owing to its siting and utilitarian appearance, the call box would diminish views into both Conservation Areas at their respective points of arrival and would therefore adversely affect their setting. That said, the level of harm would be less than substantial.
18. Paragraph 196 of the Framework states that where a development would 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. To my mind, the limited public benefits of the call box through enhancing community facilities and services would not outweigh the harm to these designated heritage assets, the conservation of which I attribute great weight.
19. I therefore find that the proposal would harm the character and appearance of the area. It would also conflict with Policies S25 and S28 of the WCP and Policies DES 1, DES 7 and DES 9 of the UDP insofar as they seek development to be well-designed and respond appropriately to its location.

Use of the Highway

20. The pavement where the call box would be located is also relatively narrow, with a total width of 4.2m. This, combined with its alignment and existing street furniture, would result in a further restriction in width which would significantly hinder pedestrian movement. Given the presence of other street furniture and the position of the adjoining building it would also restrict visibility.

21. Therefore, my finding on this main issue is that the siting of the proposed call box would have an adverse effect on the safe and efficient use of the highway. It would also conflict with Policy S41 of the WCP and Policy TRANS 3 of the UDP insofar as they seek to ensure the safety, ease, convenience and directness of pedestrian movement.

Appeal B

Character and appearance

22. In the vicinity of the appeal site, Marylebone Road is a spacious and busy public thoroughfare. It is characterised by large buildings which front wide pavements which are relatively devoid of street clutter. Lines of planted trees are set at the roadside and are the foremost features within the public realm. Their largely undisturbed rows add rhythm and status to this important public avenue and help it in its role as a unifying feature connecting the distinct areas in the locality, many of which are Conservation Areas.
23. The appeal site marks the entrance to the adjacent RPCA. The section of Marylebone Road within the RPCA is fronted on the south side by the Grade I listed building the Church of St Marylebone. Its enlarged portico is the primary feature of its roadside elevation and is enjoyed in long views across the street scene.
24. The proposed location of the call box would be within the setting of these heritage assets, at the pavement edge, within the row of trees. Its siting and utilitarian form would erode the spacious qualities of Marylebone Road and cause undue competition to its trees as a landscape feature. It would diminish views into the RPCA, and interrupt views of the Church of St Marylebone.
25. In addition to the above, I note that the Council have raised concern over potential damage to the street trees through harm to the root system. As I noted from the site visit the street trees make a significant and positive contribution to the character and appearance of the area.
26. In the absence of any arboricultural evidence to indicate that the proposal would not result in any harm to the trees, which would no doubt have a detrimental impact on the character and appearance of the area, I consider that this matter only adds weight to the harm I have already identified. In the context of Paragraph 196 of the Framework, the limited public benefits of the call box through enhancing community facilities and services would not outweigh the harm to these designated heritage assets.
27. I therefore find that the proposal would harm the character and appearance of the area. It would also conflict with Policies S25 and S28 of the WCP and Policies DES 1, DES 7, DES 9 and DES 10 of the UDP insofar as they seek development to be well-designed and respond appropriately to its location.

Use of the Highway

28. As the call box would sit outside of the main areas of movement within a wide pavement, in my view, it is unlikely to impede pedestrians. Although the space could be used for people to escape the main flow of movement, there would remain ample opportunity to do so in the area.

29. I therefore find that the call box would not have an adverse effect on the safe and efficient use of the highway. It would also accord with Policy S41 of the WCP and Policy TRANS 3 of the UDP insofar as they seek to ensure the safety, ease, convenience and directness of pedestrian movement.

Appeal C

Character and appearance

30. This call box would be located on the other side of Marylebone Road to the Appeal B site and also in a similar position in that it would be set within a row of trees and in an area which contributes to the setting of the adjacent RPCA and the Grade I listed building the Church of St Marylebone.
31. The call box would also be near to the flank wall of the Grade I listed building 8-12 York Gate. Although the building fronts away from the appeal site, its articulate flank wall presents significant features of interest, such as the large Doric columned porch and rusticated ground floor stonework. Its grounds are enclosed from the pavement by palmette-finished railings. These features are enjoyed from a relatively open and unspoilt setting on Marylebone Road.
32. Given its utilitarian appearance and proximity to the flank wall of 8-12 York Gate, the call box would clutter its setting, diminishing public enjoyment of its significance. It would also erode the spacious qualities of Marylebone Road and disrupt and cause undue competition to its trees as a landscape feature. Its placement would restrict views into the RPCA, and the setting of the Church of St Marylebone. I consider that the limited public benefits of the call box through enhancing community facilities and services would not outweigh the harm to these designated heritage assets.
33. In addition to the above, I note that the Council have raised concern over potential damage to the street trees through harm to the root system. As I noted from the site visit the street trees make a significant and positive contribution to the character and appearance of the area.
34. In the absence of any arboricultural evidence to indicate that the proposal would not result in any harm to the trees, which would no doubt have a detrimental impact on the character and appearance of the area, I consider that this matter only adds weight to the harm I have already identified.
35. I therefore find that the proposal would harm the character and appearance of the area. It would also conflict with Policies S25 and S28 of the WCP and Policies DES 1, DES 7, DES 9 and DES 10 of the UDP insofar as they seek development to be well-designed and respond appropriately to its location.

Use of the Highway

36. With the call box in situ, the pavement would retain a width of 5.6m. Considering this, and as the call box would sit outside of the main areas of transit, it is unlikely to impede pedestrian movement. Although the space could be used for people to escape the main flow of traffic, there would remain ample opportunity to do so in the area.
37. With regard to the road junction, as it is served by traffic lights, I see no substantive reason why the proposal would impair highways safety by

distracting or inhibiting the visibility of drivers. I therefore find that the call box would not have an adverse effect on the safe and efficient use of the highway. It would also accord with Policy S41 of the WCP and Policy TRANS 3 of the UDP insofar as they seek to ensure the safety, ease, convenience and directness of pedestrian movement.

Appeal D

Character and appearance

38. Despite being situated further to the west than the sites of Appeals B and C, the call box within this appeal would also be set within the linear row of trees which are the primary feature of Marylebone Road. In this case, there is a quick succession of three trees in the area to the front of 139-151 Marylebone Road, which is an imposing glass and stone building with a symmetrical frontage. Although there are already other items of street furniture in the vicinity which sit amongst the trees, such as bins and cycle racks, they maintain a low profile and provide little competition, which allows for a generally uncluttered scene.
39. Due to the siting, height and utilitarian form of the call box, I find that it would detract from the trees as the foremost landscaping feature, adding harmful clutter to the street scene. It would disrupt the symmetry of 139-151 when seen from across Marylebone Road.
40. The site is also within the settings of the Portman Estate Conservation Area (PECA) and the Dorset Square Conservation Area (PSCA), both of which intersect Marylebone Road nearby. Considering Marylebone Road's role as a unifying feature between these historic areas, which is partly derived from its linear tree punctuated form, the placement of the call box would harm the significance of these heritage assets derived from their settings. I consider that the limited public benefits of the call box through enhancing community facilities and services would not outweigh the harm to these designated heritage assets.
41. In addition to the above, I note that the Council have raised concern over potential damage to the street trees through harm to the root system. As I noted from the site visit the street trees make a significant and positive contribution to the character and appearance of the area.
42. In the absence of any arboricultural evidence to indicate that the proposal would not result in any harm to the trees, which would no doubt have a detrimental impact on the character and appearance of the area, I consider that this matter only adds weight to the harm I have already identified.
43. I therefore find that the call box would harm the character and appearance of the area. It would also conflict with Policies S25 and S28 of the WCP and Policies DES 1, DES 7 and DES 9 of the UDP insofar as they seek development to be well-designed and respond appropriately to its location.

Use of the Highway

44. Given that the call box would sit within the row of trees, outside of the main areas of movement, it is unlikely to impede pedestrians. Although the space

could be used for people to escape the main flow of movements. there would remain ample opportunity to do so in the area.

45. I therefore find that the call box would not have a harmful effect on the safe and efficient use of the highway. It would also accord with Policy S41 of the WCP and Policy TRANS 3 of the UDP insofar as they seek to ensure the safety, ease, convenience and directness of pedestrian movement.

Appeal E

Character and appearance

46. The call box would be located on the inside edge of the pavement, adjacent to the entrance to the Western Eye Hospital (WEH) and close by to the Grade II listed building the Samaritan Hospital for Women (SHW), the latter also falling within the PECA. The WEH has an attractive and symmetrical frontage centred on its entrance. Its façade is read in conjunction with the attached SHW, which is a highly decorative building of classical influence.
47. The significance of both buildings is therefore partly defined by their principal elevations and associated forward setting and relationship with Marylebone Road, including the adjacent pavement within the PECA and across the road within the DSCA. The appeal site is just outside of both designations, but, as an area of open pavement, it nonetheless contributes positively to the immediate forward setting of these two buildings and therefore the significance of the SHW, PECA and DSCA.
48. The installation of the call box would harm the street scene through its utilitarian appearance and the additional cluttering of the area directly forward of the WEH and the SHW. This is particularly the case for the WEH, as the call box would significantly detract from the primacy of its entrance and the symmetry of its design. I consider that the limited public benefits of the call box through enhancing community facilities and services would not outweigh the harm to the designated heritage assets.
49. I therefore find that the call box would harm the character and appearance of the area. It would also conflict with Policies S25 and S28 of the WCP and Policies DES 1, DES 7, DES 9 and DES 10 of the UDP insofar as they seek development to be well-designed and respond appropriately to its location.

Use of the Highway

50. I observed on site that people wishing to access the hospital from the east found a natural desire line through the appeal site. Consequently, the siting of the call box would significantly impede pedestrian movements in to and out of the eye hospital and within the area of pavement adjacent to the entrance more generally.
51. Therefore, my finding on this main issue is that the siting of the proposed call box would have an adverse effect on the safe and efficient use of the highway. It would also conflict with Policy S41 of the WCP and Policy TRANS 3 of the UDP insofar as they seek to ensure the safety, ease, convenience and directness of pedestrian movement.

Appeal F

Character and appearance

52. The appeal site is located on Old Marylebone Road, a relatively short distance to the south of the junction with Marylebone Road. There is a degree of street furniture in the area, including bollards, street trees and an existing call box.
53. However, the site is near to the corner with Harcourt Street, and the pavement at the street corner appears to have been significantly enlarged as a consequence of the realignment of the carriageway. This, combined with the already generous width of the pavements along this side of Old Marylebone Road and Harcourt Road, provides a spacious quality to the immediate vicinity of the appeal site, which reduces the effect of the existing street furniture. Furthermore, there is very little furniture on the opposite side of the street. As such, the additional call box would not harmfully add to the urban realm.
54. Turning to potential effect of the development on the nearby tree, given the proximity of the tree to the proposed call box there is some potential for root damage to occur. That said, I am also conscious that the tree is set back from the carriageway and there are several inspection chambers along the pavement which appear to run broadly parallel to the carriageway. Given the siting of the call box on the carriageway side of the likely route of the underground services, together with the distance between the call box and the tree, I consider that it is unlikely to have any significant impact on the health of the tree itself.
55. In coming to that view, I acknowledge that the tree does have some positive amenity value in the street scene. However, this is not to the same degree as the trees close to the call boxes in Appeals B, C and D. I therefore consider that, in this case, any harm to the tree (and the resultant impact to the street scene) would not be so significant to constitute a reason why the siting of the proposal is inappropriate.
56. I therefore find that the call box would have an acceptable effect on the character and appearance of the area. It would also accord with Policy S28 of the WCP and Policies DES 1 and DES 7 of the UDP insofar as they seek development to be well-designed and respond appropriately to its location.

Use of the Highway

57. With the call box in situ, the footway would maintain a width of 5.8m, which, due to the existence of the adjacent call box, is its effective usable width already. As such, the addition of the call box is unlikely to impede the free flow of pedestrians over and above the existing situation. Although the space could be used for people to escape the main flow of movements, there would remain ample opportunity to do so in the area.
58. I therefore find that the call box would not have an adverse effect on the safe and efficient use of the highway. It would also accord with Policy S41 of the WCP and Policy TRANS 3 of the UDP insofar as they seek to ensure the safety, ease, convenience and directness of pedestrian movement.

Conditions

59. Any planning permission granted for the call box under Article 3(1) and Schedule 2, Part 16, Class A is subject to conditions set out in Paragraphs A.3(9), A.3(11) and A.2(2), which specify that the development must, except to the extent that the local planning authority otherwise agree in writing, be carried out in accordance with the details submitted with the application, must begin not later than the expiration of 5 years beginning with the date on which the local planning authority received the application, and must be removed as soon as reasonably practicable after it is no longer required for electronic communications purposes and the land restored to its condition before the development took place. I consider that there are no other conditions necessary.

Appeal G

Character and appearance

60. The appeal site is at the crossroads between Old Marylebone Road and Edgware Road. It is a busy intersection and traffic lights and road signs punctuate the area. In the immediate environs, the street scene has been heavily cluttered by two existing call boxes, cabinets, lampposts, cycle racks, a collection of large commercial bins, in addition to a street tree. As such, the additional call box would create an intensive row of three separate call boxes, which would further clutter and degrade the quality of the urban environment.
61. I therefore find that the proposal would harm the character and appearance of the area. It would also conflict with Policy S28 of the WCP and Policies DES 1, and DES 7 of the UDP insofar as they seek development to be well-designed and respond appropriately to its location.

Use of the Highway

62. Although the immediate vicinity of the site is heavily cluttered, the pavement between this area and 269 Old Marylebone Road is quite deep. As such, the addition of the call box within the already cluttered area nearest to the roadside, and within the existing row of call boxes, is unlikely to have any significant effect on pedestrian movement.
63. I therefore find that the call box would not have an adverse effect on the safe and efficient use of the highway. It would also accord with Policy S41 of the WCP and Policy TRANS 3 of the UDP insofar as they seek to ensure the safety, ease, convenience and directness of pedestrian movement.

Appeal H

Character and appearance

64. The location of the proposed call box is within the straight section of pavement on the north side of Chapel Street. The immediate area is uncluttered, and the call box would not appear incongruous or add to any existing cluttered effect.
65. I therefore find that the call box would have an acceptable effect on the character and appearance of the area. There would also be no conflict with

Policy S28 of the WCP and Policies DES 1 and DES 7 of the UDP insofar as they seek development to be well-designed and respond appropriately to its location

Use of the Highway

66. Whilst the section of pavement is relatively narrow at this location, with the call box in place, the resultant width would achieve the 2m minimum requirement as set out within the LPCG. Furthermore, due to the straight alignment of the pavement, pedestrians would have ample opportunity to see oncoming people, which would reduce the potential for conflict.
67. I therefore find that the call box would not have an adverse effect on the safe and efficient use of the highway. It would also accord with Policy S41 of the WCP and Policy TRANS 3 of the UDP insofar as they seek to ensure the safety, ease, convenience and directness of pedestrian movement.

Conditions

68. Any planning permission granted for the call box under Article 3(1) and Schedule 2, Part 16, Class A is subject to conditions set out in Paragraphs A.3(9), A.3(11) and A.2(2), which specify that the development must, except to the extent that the local planning authority otherwise agree in writing, be carried out in accordance with the details submitted with the application, must begin not later than the expiration of 5 years beginning with the date on which the local planning authority received the application, and must be removed as soon as reasonably practicable after it is no longer required for electronic communications purposes and the land restored to its condition before the development took place. I consider that there are no other conditions necessary.

Appeal I

Character and appearance

69. This site is located further down Chapel Road to the west of the site of Appeal H. The street scene is similarly unremarkable and street furniture is experienced sparingly.
70. As such, I find that it could accommodate an additional call box without harm to the character and appearance of the area. The proposal would accord with Policy S28 of the WCP and Policies DES 1 and DES 7 of the UDP insofar as they seek development to be well-designed and respond appropriately to its location

Use of the Highway

71. The pavement at this appeal site is particularly narrow, at around 3m in width. The Council and appellant's evidence is contradictory with regard to what would be the available final width of the pavement with the call box in situ. However, in either case it would fall decisively below the minimum width of 2 metres as advocated within the LPCG.
72. I acknowledge that to the east is an existing call box which appears to be located in a similar position to that now proposed. However, in my view, the nearby call box illustrates the significant extent to which the pavement would be unacceptably narrowed by this proposal.

73. As such, I find that the siting of the call box would significantly impair the safe and efficient movement of pedestrians in this location. It would also conflict with Policy S41 of the WCP and Policy TRANS 3 of the UDP insofar as they seek to ensure the safety, ease, convenience and directness of pedestrian movement.

Overall Conclusions

74. In addition to all of the above, I have also considered the benefit of the proposals in supporting high quality communications which is advocated by the Framework. However, whilst I give these benefits weight in my overall decisions, I find that this does not outweigh the harm I have found in respect of Appeals A, B, C, D, E, G and I. Therefore, for the reasons outlined above I dismiss all of these appeals.

75. In respect of Appeals F and H, I have found that no harm would result and I therefore allow these appeals, and grant prior approval.

Matthew Jones

INSPECTOR