
Appeal Decisions

Site visit made on 8 October 2019

by R Norman BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 October 2019

APPEAL A: Appeal Ref: APP/U5360/W/18/3213810

Vestry Street, adjacent 42 Provost Street, Hackney, London N1 7SU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under 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 Maximus Networks Ltd against the decision of the Council of the London Borough of Hackney.
 - The application Ref 2018/0543, dated 1 February 2018, was refused by notice dated 21 May 2018.
 - The development proposed is a call box.
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APPEAL B: Appeal Ref: APP/U5360/W/19/3230595

Vestry Street, adjacent 42 Provost Street, Hackney, London N1 7SU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under 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 Maximus Networks Ltd against the decision of the Council of the London Borough of Hackney.
 - The application Ref 2018/4127, dated 6 November 2018, was refused by notice dated 11 December 2018.
 - The development proposed is a public call box.
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Decision

1. Appeal A is dismissed.
2. Appeal B is dismissed.

Procedural Matters

3. Appeal A relates to the provision of a telephone call box. It would comprise of a metal framed and glazed structure with a canopy roof to provide shelter and small side panels to ensure structural stability. The rear panel would consist of an openable glazed panel and the payphone would be powered by solar panels which would be positioned on the roof. The structure would be largely open to allow ample access.
4. Appeal B relates to a Max 2 structure which comprises a slim panel with a payphone on one side and a non-illuminated panel to the other side. It would have two projecting canopies at the top to provide shelter which would also

host solar panels for powering the payphone. It would be constructed from black stainless steel and toughened glass with LED lighting.

5. The Town and Country Planning (Permitted Development, Advertisement and Compensation Amendments) (England) Regulations 2019 came into force on the 25 May 2019 which, amongst other things, removed the permitted development rights for the installation of telephone kiosks as well as the deemed consent for the display of advertisements on these. However, as the appeals were submitted prior to 25 May 2019 they fall under the transitional and saving provisions and should therefore be considered against the previous GPDO legislation. I have considered the appeals on this basis.
6. The provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO 2015), under Article 3(1) and Schedule 2, Part 16, Class A, Paragraph A.3(4) require the local planning authority to assess the proposed development solely on the basis of its siting and appearance, taking into account any representations received. My determination of these appeals has been made on the same basis.
7. 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 regard be had to the development plan. However, insofar as the identified policies and guidance relate to siting and appearance, I have taken account of them as material considerations.
8. The Council consider that as there is an openable panel to the rear of the call boxes that it is likely that the intention is for these to be used for advertisements and thus constitute them being for a dual purpose. Following the recent High Court Judgement for Westminster City Council v Secretary of State for Housing Communities and Local Government [2019] EWHC 176 (Admin) [New World Payphones Ltd as Interested Party], consideration is given to whether the proposal falls under the remit of the GPDO or whether it is likely that the inclusion of an advertisement panel would constitute a dual purpose which would result in the proposal failing to comply with the requirements of the GPDO. I have considered this and in light of the provision of deemed consent for one advertising panel and the fact that there appears to be no accompanying advertisement proposal, I find that the appeal proposal can be considered under the Prior Approval legislation in this instance.

Main Issue

9. The main issue is the effect of the siting and appearance of the proposed call boxes on the character and appearance of the area.

Reasons

10. The appeal proposals would be sited on a prominent area of pavement on Vestry Street, close to the junction with Provost Street. The area is predominantly commercial in nature and is characterised by buildings set adjacent to the back edge of the footpaths either side of the roads. On the corner of Provost Street and Vestry Street is a café which is set back from the footpath edge at the corner leaving a wide area of public realm, which is further enhanced by mature street trees.
11. Advertising and signage are limited in the immediate surroundings, with a tasteful sign on the café facias and banners on the building on the opposite

side of the road. Within the street itself there are some small road signs, litter bins and some cycle racks, but other street furnishings are limited and generally small scale in this location meaning that the street scene is attractive and uncluttered in visual terms.

12. Both proposals would be located adjacent to the edge of the highway, meeting the required set back distance. Given the width of the pavement at this point along the road the proposals would not impact on the free flow of pedestrians and would not impair their sightlines when walking around the area.
13. Although designed to be functional, open and simple, the introduction of either of the call box proposals in this site-specific location would introduce a discordant feature into the street scene. The proposals due to their design and siting in a prominent location would be incongruous and appear visually intrusive in a largely uncluttered street scene. Furthermore, either of the proposed call boxes would significantly detract from the attractive visual qualities of the area, particularly in terms of the impact on the setting of the mature street trees.
14. I find that for the above reasons the proposals would materially harm the character and appearance of the area. Moreover, the proposal would conflict with Policies DM1 and DM30 of the Hackney Development Management Local Plan (2015), Policy 24 of the Hackney Local Development Framework Core Strategy (2010) and Policy 7.5 of The London Plan (2016). In reaching this conclusion I have taken account of Section 10 of the Framework which seeks to support, and highlights the importance of, advanced, high quality and reliable communications infrastructure, however, in this site-specific location it does not outweigh the harm that I have identified.

Other Matters

15. I have had regard to the benefits of providing call box functions to the community and achieving a better level of coverage to fill in the gaps in the existing mobile network. I also note that it is a requirement that a large number of sites are brought forward contemporaneously to ensure the roll out is carried out in a viable way. However, these considerations are not sufficient to outweigh the harm to the character and appearance arising for the above reasons in this instance.
16. I have had regard to the examples of other appeal decisions provided by the Appellants, however I have limited information before me of their histories and contexts. Nevertheless, it is likely that these would differ in their contexts to what is before me and I have therefore considered the scheme on its individual merits against the criteria of the GPDO, the Framework and any other material considerations.

Conclusion

17. For the reasons given above, and having regard to all matters raised, I conclude that both appeals A and B should be dismissed.

R Norman

INSPECTOR