



Appeal Decision

Site visit made on 1 October 2019

by Jonathan Price BA(Hons) DMS DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 October 2019

Appeal Ref: APP/E5900/W/19/3225242

Public highway, 330 Roman Road, London E3 5QL

- 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 GPDO).
 - The appeal is made by Maximus Networks Limited against the decision of the Council of the London Borough of Tower Hamlets.
 - The application Ref PA/18/02008, dated 6 August 2018, was refused by notice dated 27 September 2018.
 - The development proposed is a public call box.
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Decision

1. The appeal 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 a public call box at land at public highway, 330 Roman Road, London E3 5QL in accordance with the terms of the application Ref PA/18/02008, dated 6 August 2018, and the plans submitted with it.

Preliminary Matters and Main Issue

2. The appeal is made against the Council's refusal of prior approval for a telephone kiosk previously permitted under the GPDO. On 25 May 2019 the Town and Country Planning (Permitted Development, Advertisement and Compensation Amendments) (England) Regulations 2019 (the Regulations) came into force. These Regulations amended the GPDO by removing permission for the installation of a public call box from Schedule 2, Class A of Part 16. The Regulations also removed the deemed consent granted to display an advertisement on the glazed surface of a telephone kiosk.
3. However, where a prior approval event occurs, the planning permission granted by Class A continues to have effect as if the Regulations had not been made. Such an event occurs whereby prior approval to the matters in paragraph A.3(4) of Part 16 of Schedule 2 of the GPDO may be given on or after 25 May 2019 where, as in this case, the appeal was made within six months of the Council's decision on an application submitted before the Regulations took force.
4. The provisions of the GPDO, 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 this appeal has been made on the same basis.

5. A recent judgement¹ considered the matter of dual-purpose advertisement display and telecommunications use. This confirmed that the whole development for which prior approval is sought must fall within the class relied on, and no part can fall outside. It 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. In the case of the appeal before me, I have taken into account the submitted Opinion of Counsel regarding this matter and the description of the proposed kiosk provided. It is apparent that the form and design of the proposed telecommunications apparatus is driven by its purpose as a public call box. Consequently, on the basis of the evidence provided, I consider that the proposal is for the purpose of the operator's electronic communications network.
6. As the principle of development is established by the relevant provisions of the GPDO, consideration of the need for the telephone kiosk is not a relevant matter. Accordingly, the appeal is not determined on the basis of Section 38(6) of the Planning and Compulsory Purchase Act 2004. However, whilst not determinative, I have had regard to the development plan, and related guidance, where material considerations to the issues of siting and appearance. I have therefore had regard to policies 6.9, 6.10 and 7.5 of the London Plan 2016 (LP), SP09 and SP10 of the Tower Hamlets Core Strategy 2010 (CS) and DM20, DM23 and DM24 of the Tower Hamlets Managing Development Document 2013 (MDD) as material considerations insofar as they are relevant to matters of siting and appearance. I have also had regard to the Transport for London Streetscape Guidance² as a material consideration insofar as it is relevant to those matters.
7. On the basis of the above, the main issue in the appeal is whether prior approval should be given to the siting and appearance of the telephone kiosk proposed, with particular regard to the effect on the appearance of the area and the movement of footway users.

Reasons

8. The call box would be sited close to the low walls surrounding the planted areas to the front of Clarion House, a three-storey residential block fronting Roman Road. Taller and more rectilinear residential blocks stand either side of Clarion House. The character of the built environment this side of the road is that of medium-rise apartment blocks, of quite formal, modern architectural design set back from the rear edge of the footway behind communal walled gardens. This character contrasts with that of the nineteenth century development on the opposite side of Roman Road where the two storey terraces have shops fronts and fall within the Driffield Road Conservation Area (CA).
9. The simple and functional design would be as standard for this generation of call box and comprises a rectangular panel facing each way along the street, one side housing the communication equipment, with the slim ends perpendicular to this and housing angled solar panels at the top. Rectilinear

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

² Transport for London Streetscape Guidance: Fourth Edition 2019 Revision 1

and utilitarian in character, the call box would assimilate acceptably in the street-scene of modern apartment blocks and, separated by the road, preserve the setting of the CA opposite.

10. As the principle of the call box is established, the requirements of LP Policy 7.5, CS Policy SP10 and MDD Policy DM24, insofar as these seek a good quality of design and siting that contribute positively to the streetscene, would be insufficient to outweigh my finding that the siting and appearance of the telephone kiosk proposed would be acceptable.
11. Because the footway is reasonably wide where the call box is to be sited, there would be more than the minimum clearance preferred under the Transport for London Streetscape Guidance of 2017. There is little existing street furniture within this section of footway which is away from a commercial frontage where there might reasonably be expected to be comparatively fewer and less conflicting user movements. Just beyond the proposed site of the call box the footway narrows which I consider lessens the degree of material harm the proposal has on its overall capacity and safety.
12. The call box would be sufficient distance away from the closest pedestrian and vehicular accesses not to cause any material detriment to the safety of highway users. Again, as the principle is already established, any conflict with CS Policy SP09 and MDD Policy DM20 over ensuring adequate highway safety and capacity of the would not offset my conclusion that the siting and design of call box would be satisfactory. In this location the call box would not result in excessive street clutter or add significantly to impermeability or anti-social behaviour such that the siting would be unacceptable in respect of any conflict with CS Policy SP10, MDD Policy DM23 and LP policies 6.9(B) and 6.10(B).

Conclusion

13. For the reasons given, having taken into consideration all other matters raised, I conclude that the appeal should be allowed.

Jonathan Price

INSPECTOR