
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: 30 October 2019

APPEAL A: Appeal Ref: APP/U5360/W/18/3213783

Adjacent 239 Old Street, London EC1V 9EY

- 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 2018/0537, 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/19/3230857

Adjacent 239 Old Street, London EC1V 9EY

- 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 2018/4139, dated 6 November 2018, was refused by notice dated 14 December 2018.
 - The development proposed is a public call box.
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Decision

1. Appeal A 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 call box at land adjacent 239 Old Street, London EC1V 9EY in accordance with the terms of the application Ref 2018/0537, dated 1 February 2018, subject to the standard conditions set out in the GPDO.
2. Appeal B 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 adjacent 239 Old Street, London EC1V 9EY in accordance with the terms of the application Ref 2018/4139, dated 6 November 2018, subject to the standard conditions set out in the GPDO.

Procedural Matters

3. Appeal A relates to the provision of a telephone kiosk. 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 to 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 this appeal 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 site comprises an area of pavement located adjacent to 239 Old Street. The appeal site is adjacent to a busy road junction with Great Eastern Street. The footpath is wide at this point and flanked by buildings of varied scales, designs and materials including the fire station. A dedicated cycle path runs between the pavement and the road.
11. Within the vicinity of the site are a large number of existing structures set within the pavement. These include existing telephone kiosks, litter bins, cycle racks, digital advertisement panels and a large grey utility cabinet. Overall, these form a prominent part of the character and appearance of the area, set against the backdrop of a variety of buildings and the busy road.
12. Whilst the proposed call boxes of either design would add to the amount of structures found along this part of Old Street, they would not be out of keeping with the existing phone kiosks and other street furniture. Indeed, the area is already visually busy with some reasonably large structures present, including the large grey utility cabinet. Given the overall width of the street, the expanse of footpath, the scales and designs of adjacent buildings and the existing street structures I find that the proposals could be adequately assimilated into the existing street scene.
13. Although I note the number of existing telephone call boxes and kiosks in the vicinity of the appeal site, I have had regard to paragraph 116 of the Framework which advises that the need for the telecommunications system should not be questioned by the local planning authority.
14. Accordingly, I find that the provision of a call box of either type would not give rise to any material harm to the character and appearance of the area over and above the existing structures. Accordingly, I find that the proposal complies with Section 10 of the Framework and would also meet the requirements of 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).

Other Matters

15. The proposed call boxes would be located in proximity to the South Shoreditch Conservation Area. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.
16. Views into and from the Conservation Area at this point are dominated by intervening structures and therefore I find that these views would not be materially altered as a result of either proposed call box. Accordingly, I find that the siting and appearance of the proposed call boxes would preserve the character or appearance of the Conservation Area in this instance.

Conditions

17. Any planning permission granted for the call boxes under Article 3(1) and Schedule 2, Part 16, Class A is subject to the conditions set out in Paragraphs A.3 and A.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 receive the application, and must be removed as soon as reasonably practical after it is no longer required for electronic communications purposes and the land restored to its condition before the development took place.

Conclusion

18. For the reasons given above, and having regard to all matters raised, I conclude that both Appeals A and B should be allowed and prior approval should be granted.

R Norman

INSPECTOR