
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/18/3213806

Pembury Road adjacent Elham House, Hackney, London E5 8LT

- 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 2018/0530, 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/19/3230812

Pembury Road adjacent Elham House, Hackney, London E5 8LT

- 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 2018/4147, dated 6 November 2018, was refused by notice dated 13 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 glazed panel would be openable, 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 public call box which would consist of a slim structure 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 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 site is located on the pavement on Pembury Road, close to the junction with Amhurst Road, the A107, and Dalston Lane. This part of Pembury Road forms a reasonably straight vista with blocks of residential and community buildings either side of the road. The proposed call boxes would be located close to Elham House, which is set back from the road with landscaping and modest open railings to the front boundary adjacent to the footpath. On the opposite side of the road is a community centre and a more modern development of flats.
11. Along this part of Pembury Road, there are limited existing structures along the pavement. There are road signs and street lights, as well as some green utility cabinets which are small in scale. In addition, there are trees set within the

pavement at regular intervals, close to the road. There are bus stops visible further along Pembury Road, but these are sited at some distance from the appeal site. The limited number of structures within the street and the presence of the trees, as well as the buildings sited either side of the road collectively give an attractive character and appearance with views along Pembury Road relatively unobstructed. The pavements are reasonably clear and contribute to the open and attractive vista.

12. The proposed call boxes, of either type, would introduce a prominent feature into a reasonably unobstructed street scene. Although they would comprise narrow structures with limited footprints, their heights and appearances would result in them being highly visible and they would contrast against the natural backdrop of the street trees. I have had regard to the fact that the height and width of the proposed call boxes are determined by the need to accommodate the telecommunications equipment. However, as a result of the proposed siting and scale and the limited number of other structures in the vicinity, the proposed call boxes would appear incongruous and would be out of character with the surroundings.
13. I find that for the above reasons the proposals would materially harm the character and appearance of the area. Moreover, the proposals 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 this does not outweigh the harm that I have identified.

Other Matters

14. 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 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.
15. 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

16. 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