
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: 1 November 2019

APPEAL A: Appeal Ref: APP/U5360/W/18/3213748 159 City Road, London EC1V 1NR

- 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 2018/0532, 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/19/3231171 159 City Road, London EC1V 1NR

- 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 2018/4132, dated 6 November 2018, was refused by notice dated 19 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 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. 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 to 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 proposals, I find that the appeal proposals can be considered under the Prior Approval legislation in this instance.

Main Issues

9. 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
 - Pedestrian and highway safety.

Reasons

Character and Appearance

10. The appeal site is located on City Road, close to the junction with Britannia Walk. The surrounding area is characterised by high density development of varied scales and designs, comprising predominantly of commercial properties. City Road is a reasonably busy area for vehicular and pedestrian traffic. Along this part of City Road, existing street furniture is limited in number and comprises mainly of street lamps and road signs with some small-scale bollards

and litter bins present. A short distance away there is an advertisement panel set within the footpath and beyond this a bus stop is visible.

11. There are a number of attractive buildings set around this part of City Road and the overall appearance is of a busy, yet visually attractive area where the buildings relate well to one another on the whole. The straight footpaths which run either side of the road provide a reasonably clear and unobstructed route for pedestrians.
12. The proposed call boxes would be set within the pavement, close to the roadside. Whilst they would follow the positioning of the other items of street furnishing, in terms of the height and scale of the proposed call boxes they would appear significantly larger and more prominent against the back drop of these. Whilst there is an advertising panel further along the road, this is in a position where the adjacent building is set back from the footpath thereby retaining a degree of space. However, the bulk of the proposed call boxes would have an enclosing effect in proximity to the adjacent buildings which would fail to respect, and detract from, the character and appearance of the area.
13. The overall height and bulk of the proposed call boxes would appear as an intrusive and dominant addition to the street scene which would not be sufficiently mitigated by their limited footprints and proposed materials.
14. I therefore 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).

Pedestrian and Highway Safety

15. As a result of the number of commercial buildings and food outlets, pedestrian footfall along this part of City Road appeared to be reasonably high. The buildings adjacent to the appeal site are sited directly to the back edge of the footpath which has a channelling effect for pedestrians.
16. The Appellant has carried out a pedestrian comfort test and minimum footway clear zone test in relation to the impact of the proposed call boxes on pedestrian movement. The Council have raised concerns, however, that although the proposals meet the recommended limits for a single obstruction this has not taken into account the other structures along this part of the pavement, including the street lamps, road signs and cycle racks, and therefore an appropriate buffer has not been applied.
17. I find that as a result of the high level of pedestrian activity in this location and the width of the pavement resulting from the positioning of the buildings, that the proposals would be likely to impact upon and restrict the flow of pedestrians as a result of the remaining width of the pavement.
18. I therefore find that the proposals would materially harm highway and pedestrian safety as a result of their proposed siting and appearance.

Other Matters

19. 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 and pedestrian safety arising for the above reasons in this instance.
20. 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 schemes on their individual merits against the criteria of the GPDO, the Framework and any other material considerations.
21. 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.

Conclusion

22. 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