
Appeal Decisions

Site visit made on 21 October 2019

by Les Greenwood MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7th November 2019

All Appeals

- The appeals are made under section 78 of the Town and Country Planning Act 1990 as amended against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 16 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeals are made by Maximus Networks Ltd against the decisions of the Council of the London Borough of Lambeth.
 - The development proposed in each case is a public call box.
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Appeal A Ref: APP/N5660/W/19/3231304

Public highway adjacent to 199 Westminster Bridge Road, London SE1 7FR

- The application Ref 18/04818/G24, dated 5 November 2018, was refused by notice dated 18 December 2018.
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Appeal B Ref: Appeal A Ref: APP/N5660/W/19/3231314

Public highway at 102-107 Waterloo Road, London SE1 8UL

- The application Ref 18/04817/G24, dated 5 November 2018, was refused by notice dated 19 December 2018.
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Appeal C Ref: Appeal A Ref: APP/N5660/W/19/3231316

Public highway at 157 Waterloo Road, London SE1 8XA

- The application Ref 18/04790/G24, dated 5 November 2018, was refused by notice dated 19 December 2018.
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Decisions

1. All 3 appeals are dismissed.

Preliminary matters

2. In May 2019 the Town and Country Planning (Permitted Development, Advertisement and Compensation Amendments) (England) Regulations 2019 came into force, amending the General Permitted Development Order (the GPDO). The amendment removes the permitted development right to install a public call box under Schedule 2, Part 16, Class A of the GPDO (Part 16 Class A). These appeal cases fall, however, within the transitional provisions of the 2019 Regulations so that Part 16 Class A continues to have effect for these proposals, as if the amendments in the 2019 Regulations had not been made.

3. The appellant is an electronic communications code operator benefitting from the permitted development rights for call boxes under Part 16 Class A, which requires the proposals to be assessed solely on the basis of the matters of siting and appearance. National Planning Policy Framework (Framework) paragraph 116 confirms that the need for electronic communications systems should not be questioned.
4. A court judgement¹ confirms that the whole development for which prior approval is sought must fall within the Part 16 Class A. If a proposal is not solely for the purpose of the operator's network, then it is not permitted development and prior approval cannot be granted. In that case, the kiosk application was accompanied by an application for advertisement consent. The current appeal cases differ significantly in that no advertisements are proposed here. In my assessment, the proposed design of the call boxes is for the purpose of telecommunications. I have no evidence to suggest that the proposed development includes elements that are there for the purpose of advertising. I therefore find that the proposals are able to benefit from the permitted development provisions of Part 16 Class A. The possibility of future use for advertising is not material to these decisions.
5. The GPDO does not require the development to be judged against the development plan. I have had regard to development plan policies as material considerations, insofar as they relate to matters of siting and appearance.
6. The Council argues that the submitted plans for these appeals are insufficient to precisely locate the exact position of the proposed call boxes. I agree that the plans are somewhat lacking in detail, but have sufficient information in front of me to adequately locate the proposed sites.

Main Issues

7. The main issues for all 3 appeals are:
 - i) The effect of the siting of the proposed call box on pedestrian movement, highway and public safety; and
 - ii) The effect of the siting and appearance of the proposed public call box on the character and appearance of the surrounding area.

Reasons

Background

8. The proposed call boxes would be identical in design and size: relatively simple, thin, black coloured, freestanding structures sited perpendicular to the pavement and the carriageway. They would measure 1.325m wide and 3.119m tall, with a 0.219m deep main body and a small overhanging canopy. They would nevertheless be tall and bulky items of partially illuminated street furniture. LED lighting strips on the outside edges of the call boxes would be included for safety purposes, to mark out the structure during hours of darkness. Photovoltaic solar panels and glazing would maximise energy generation. Although the design is the same in each case, the siting is different and I have considered each appeal on its own merits.

¹ Westminster CC v SSHCLG & New World Payphones Ltd [2019] EWHC 176 (Admin)

Pedestrian movement and public safety

9. The call box in Appeal A is proposed to be sited on a heavily trafficked section of Westminster Bridge Road that was altered in recent years to provide a cycle lane which is separated from both the pavement and the main carriageway. This important change is not shown on the submitted plans. Based on the appellant's plans, measurements and photofit, the proposed call box would sit at least partly within this well used cycleway where it would seriously obstruct cyclists and cause substantial danger to both highway users and call box users. This is clearly unacceptable. Due to the proposed siting and the curve of the road, the call box would also interfere with cyclists' and drivers' views of nearby traffic lights, further prejudicing highway safety.
10. The call box in Appeal B would be sited 0.45m from the kerb on a very busy section of pavement opposite Waterloo Station, outside a row of well used shops and next to the heavily trafficked A301 Waterloo Road. The appellant accepts that pedestrian flows here are heavy and that the overall pavement width would not meet the standard set out in Transport for London's *Pedestrian Comfort Guidance* (PCG). I note that the proposal would more than meet the minimum clear width standard of 2.0m set out in Transport for London's *Streetscape Guidance* (SG) and would sit in line with other street furniture, including lamp poles, a bus shelter and cycle racks, within a small gap. These other items of street furniture do, however, already create a cramped and somewhat dangerous situation, with some pedestrians stepping out into the carriageway in order to make progress.
11. I observed on my weekday morning visit that the existing gap is well used by pedestrians, helping to relieve the pinch points caused by the other street furniture. The proposed call box would further constrict the space available on the footway, seriously hindering the flow of pedestrians and further encouraging people to step out into the busy roadway, causing a safety hazard.
12. The call box in Appeal C would sit well away from the kerb, near to the wall of a hotel on a wide section of pavement. Although just down the street from the site of Appeal B, this area appears to be somewhat less heavily used. I agree with the appellant that this proposal would meet the PCG and SG guidelines. The call box would, however, sit well away from the roadway where it would only align with much smaller and less significant items of street furniture. I observed at my site visit that it would sit across a strong desire line for pedestrians, in a position where such an obstruction would not normally be expected. I therefore find that it would unduly interfere with the flow of pedestrians.
13. The Council also objects to these call boxes due to concerns about community safety, in line with concerns raised by the Metropolitan Police about their potential to increase opportunities for crime and anti-social behaviour in their immediate areas. Submitted statistics indicate that the areas where the call boxes are proposed to be sited are subject to high levels of crime. Although this is an important matter, these locations are not unique - the data also shows other areas with high crime levels locally.

14. I note the appeal decisions referenced by the Council² in regard to proposals in Camden Borough. The proposals in some of those cases were for more enclosed structures, which the Inspector considered could encourage rough sleeping. One was for an advertisement on a call box. The current proposals for slim, almost 2 dimensional, structures without advertisements are not comparable. I recognise that there is some evidence that call boxes, especially those offering free calls, can attract criminal activity, but I am not convinced that there are sufficiently clear site-specific links to reasonably preclude the development of new call boxes in these particular locations. I therefore find no objection on this count.
15. I conclude that the siting of the proposals in all these appeals would unacceptably affect the free flow of pedestrians and that the proposals in Appeals A and B would also obstruct other highway users and unduly prejudice highway safety. These appeal proposals therefore conflict with the aims of Lambeth Local Plan (LP) Policies T10 and Q6, to create pedestrian and cycle-priority environments and to ensure that telecommunications equipment does not cause an obstruction in the highway. These policy aims align with the Framework's emphasis on considering the needs of the most vulnerable users including pedestrians and cyclists.
16. On the other hand, I find no objection in regard to public safety in respect of any potential increase in crime and anti-social behaviour. The proposals would not conflict with the aim of LP Policy Q3, to design out opportunistic crime, antisocial behaviour and fear of crime or the Framework's aim to ensure that crime and disorder and the fear of crime do not undermine the quality of life. This matter does not, however, alter my overall conclusion that the proposals are unacceptable in relation to this main issue.

Character and appearance

17. The proposed call boxes would be of a sleek, contemporary design and constructed of good quality materials. None would be positioned in a designated conservation area and all would sit near to modern buildings or shopfronts. Although the call boxes in Appeals B and C would be positioned in the vicinity of substantial listed buildings (the grade II* Old Vic Theatre, the grade II Fire Station and the grade II 133-155 Waterloo Road) they would not be seen as significant features in any view of these buildings. I am satisfied that no harm would be caused to the settings of these listed buildings.
18. My assessments centre on the impact the proposals would have on their immediate street scenes. In this respect I note the appellant's aim to ensure that its proposals are not visually intrusive or dominant, to the point where they could be considered to be clutter.
19. The call box in Appeal A would be positioned in an open area of pavement (and cycle lane) where it would not relate well to other street furniture. As a result, this call box would appear as an out of place structure intruding into an area of otherwise substantially clear pavement, making it visually intrusive and harmful. It would not conform to the appellant's own submission, that call

² APP/X5210/W/18/3195004 and linked decisions; APP/X5210/Z/18/3204104

boxes should be aligned with other items of street furniture and so be well assimilated into the street scene.

20. The call box in Appeal B would sit in an area that is already so cluttered with street furniture and so busy that adding another item of this significant size would harmfully contribute to the cramped, disorderly character of this section of the street. The design would not be co-ordinated with any nearby street furniture and the scale would be large in relation to the area of pavement available. It would not conform to the appellant's submission, that call boxes should be sited in an area that is not unusually or excessively cluttered with street furniture.
21. As in Appeal A, the call box in Appeal C would be sited in an open area of pavement. Its positioning close to buildings and away from the kerbside zone where most other nearby street furniture is located would mean that it would look very much out of character. The presence of a couple of items of much smaller street furniture nearby would not significantly help to integrate the proposal into the street scene. As in Appeal A, this call box would be visually intrusive and out of character with its immediate surroundings.
22. Although I find no objection in regard to impacts on the settings of listed buildings, I conclude that the siting and appearance of all 3 proposals would unacceptably harm the character and appearance of their local areas. In this respect they also conflict with the aims of LP Policies T10 and Q6, to secure an attractive, uncluttered public realm and to ensure that telecommunications equipment does not cause unacceptable harm to the character and appearance of the area. These aims align with the Framework's emphasis on securing a high quality of design which is sympathetic to local character and visually attractive.

Other matters

23. I have taken note of the various other appeal decisions and court cases cited by the appellant and the Council. All of those appeal decisions relate to different locations with different circumstances and therefore have limited applicability to my assessment of these proposals, especially in terms of siting. I have considered these appeals on their own merits.

Conclusions

24. For the reasons set out above, I conclude that these 3 appeals should not succeed.

Les Greenwood

INSPECTOR