
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 Wandsworth.
 - The development proposed in each case is a public call box.
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Appeal A Ref: APP/H5960/W/19/3231152

Public highway adjacent to 130 West Hill, London SW15 2UF

- The application Ref 2018/5301, dated 6 November 2018, was refused by notice dated 19 December 2018.
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Appeal B Ref: APP/H5960/W/19/3231156

Public highway, Putney Hill corner with Chartfield Avenue, London SW15 6QY

- The application Ref 2018/5326, dated 6 November 2018, was refused by notice dated 19 December 2018.
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Appeal C Ref: APP/H5960/W/19/3231190

Public highway adjacent to 149 Upper Richmond Road, London SW15 2TX

- The application Ref 2018/5321, dated 6 November 2018, was refused by notice dated 20 December 2018.
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Appeal D Ref: APP/H5960/W/19/3231214

Public highway adjacent to 43 Garratt Lane, London SW18 4AD

- The application Ref 2018/5314, dated 6 November 2018, was refused by notice dated 20 December 2018.
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Decisions

1. All 4 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. The Council refused the applications in Appeals B and D partly on the grounds that the appellant failed to demonstrate that the proposal is necessary for the purpose of the operator's communications network so that the proposal was not in accordance with Part 16 Class A. A recent High Court judgement¹ is clear on this point, however - that the grant of permission through the GPDO, with its limited range of material considerations, precludes an argument about whether communications facilities such as kiosks in the street for public use are 'needed' in the public interest. National Planning Policy Framework (Framework) paragraph 116 likewise states that the need for electronic communications systems should not be questioned. I therefore take this matter no further.
4. The same court judgement 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.

Main Issues

6. The main issues for all 4 appeals are:
 - a) The effect of the siting and appearance of the proposed public call box on the character and appearance of the surrounding area; and
 - b) The effect of the siting of the proposed call box on pedestrian movement and highway safety.

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

Reasons

Background

7. 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. Although referred to as call boxes, they would not actually be box-like in form. 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.

Character and appearance

8. The proposed call boxes would be of a sleek, contemporary design and constructed of good quality materials. Although those in Appeals A, C and D would be sited near to conservation areas, there would be sufficient physical and visual separation so that the installations would not be seen as significant features in any view of those areas. I am therefore satisfied that no harm would be caused to the setting, character or appearance of the conservation areas. 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.
9. The call box in Appeal A would be positioned in an open area of pavement next to a fairly quiet road within a residential area. It would be near to attractive mature trees which give the area a pleasant, verdant character. It would not be close to any other street furniture. Some bollards and signposts at a nearby junction and a bus shelter opposite would all be set well away from the call box. As a result, it would appear as an out of place structure intruding into an open area of pavement and the leafy residential character of the local area, making it visually intrusive and harmful. It would not conform to the appellant's own submission, that call boxes should be aligned with other items of street furniture and so be well assimilated into the street scene.
10. The call box in Appeal B would be sited in a mainly residential area, across the street from a school. It would extend a cluster of street furniture that includes sign posts, a light pole, a call box and a bus shelter which is already somewhat out of keeping with the more open character of the street. The addition of a significantly sized new item of street furniture here would add to the existing visual clutter, harming the appearance of the street scene. 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.
11. The call box in Appeal C would be located in a much busier and more commercial location next to a taxi drop off/pick up zone and near to a bus stop, within a small gap between cycle racks, a bus shelter, a phone box, light poles and utilities cabinets. Although the proposed call box would align with these other items, its installation in a location that is already so cluttered with street

furniture 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, for the same basic reason as in Appeal B.

12. The call box in Appeal D would be sited in the middle of a wide area of pavement on a main shopping street, outside the wide doorway of a large modern shop and near to a supermarket. The plans submitted by the appellant are vague as to the exact position of the proposed call box, which would apparently be almost in the same position as a relatively new and similar telecommunications installation. The submitted 1:1250 scale plan is insufficient to determine the exact location of the proposal and the 1:200 scale plan does not show any street furniture or other feature that would assist. The appellant has also submitted a photo mock up purporting to show the proposed position, but as this only illustrative and is based on the situation prior to the new installation, it is of little assistance in locating the precise location of the proposal. I can only conclude that the 2 installations would be sited very close together. It furthermore appears that the 2 installations would not be fully aligned in the pavement, creating a staggered effect.
13. Although the proposed design and scale of the call box in Appeal D would fit in with this section of the street and the new installation, the apparent close interposition and lack of alignment of the 2 kiosks would create a cramped, cluttered appearance that would be out of keeping with the more spacious character of this part of Garratt Lane.
14. Although I find no objection in regard to impacts on nearby conservation areas, I conclude that the siting and appearance of all 4 proposals would unacceptably harm the character and appearance of their local areas. They therefore conflict with the aims of Policies 6.10 and 7.5 of the London Plan (LP), Policy D7 of the draft London Plan (DLP), Policy IS3 of the Core Strategy (CS) and Policies DMS1 and DMS9 of the Development Management Policies Document (DMPD), to ensure high quality design in the public realm and maintain uncluttered public spaces that provide high quality pedestrian environments. These aims align with the Framework's emphasis on securing a high quality of design which is sympathetic to local character and visually attractive.

Safety

15. The call box in Appeal A would be positioned in a wide section of pavement where pedestrian flows are comparatively light. It would not significantly impede pedestrian flows or cause any physical or visual obstruction that would prejudice the safety of highway users. I therefore find no objection to Appeal A in respect of this issue.
16. The call box in Appeal B would be positioned next to an existing call box so that it would not significantly restrict the usable width of the pavement or interfere with the views of drivers and cyclists. The appellant refers to a survey showing that pedestrian flows here are low and this was borne out to some extent by my own observations at a mid-morning site visit. On the other hand, the appellant has not confirmed the timing of its survey and it is very likely that pedestrian flows will be much higher at school opening and closing times. I

nevertheless find no conflict with the guidelines in Transport for London's *Pedestrian Comfort Guidance* (PCG) and *Streetscape Guidance* (SG) and see no reason why highway safety should be prejudiced by this proposal. I therefore find no objection to Appeal B in relation to this issue.

17. The call box in Appeal C would sit in a small gap in the existing street furniture, next to a taxi drop off and pick up zone, in a heavily trafficked section of street near to a junction and a bus stop. Due to the street's alignment and the position of the call box away from the junction, the proposal would not significantly interfere with drivers' and cyclists' views. It would, however, add an extra obstacle for pedestrians. Although the appellant's survey found pedestrian flows to be low here, my (mid-morning) observations were that this is an underestimate. This is a busy local shopping area and I consider it likely that pedestrian flows are medium to high. The proposal might still meet the guidelines in the PCG and SG, but the proposal would set up a conflict between call box users, taxi users and other pedestrians, impeding pedestrian flows and making it more likely that people would step out into the street. The proposal in Appeal C would therefore prejudice the convenience of pedestrians and the safety of highway users.
18. The call box in Appeal D would be located on a busy stretch of pavement and apparently would not be fully aligned with the new telecommunications installation nearby. Ample width would be left to either side of the call box, however, so that it would not impede pedestrian flows or cause any safety issues. I therefore find no objection to Appeal D in relation to this issue.
19. I conclude that the proposals in Appeals A, B and D would not significantly affect pedestrian movement or highway safety. They therefore accord in this respect with the aims of LP Policies 6.10 and 7.5, DLP Policy D7, CS Policy PL3 and DMPD Policies DMS1 and DMT1, to contribute to the easy movement of people through public spaces and ensure that developments do not cause road safety hazards. These aims align with the Framework's statement that the needs of the most vulnerable transport users should be considered first, starting with pedestrians. The proposal in Appeal C would, on the other hand, impede pedestrian movement and prejudice the safety of highway users. It would therefore conflict with those same policy aims.

Other matters

20. 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

21. Although I have found no objection in relation to the second main issue for Appeals A, B and D, this does not override my objection to those appeals in relation to the first main issue. For the reasons set out above I conclude that these 4 appeals should not succeed.

Les Greenwood

INSPECTOR