
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: 6 November 2019

APPEAL A: Appeal Ref: APP/U5360/W/18/3213752

227 City Road, Hackney, London EC1V 1JT

- 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 2018/0534, 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/19/3230809

227 City Road, Hackney, London EC1V 1JT

- 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 2018/4092, 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 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 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 within the pavement on City Road, in proximity to the junction with Windsor Terrace. Adjacent to the proposed location is a modern building of varied heights with commercial premises to the ground floor. The ground floor is set in leaving a degree of overhang from the upper floors which results in a reasonably wide stretch of pavement in this location. City Road is busy with pedestrians and vehicular traffic. The immediate area is characterised by buildings of varied designs, scales and materials, with some high-rise buildings set in the distance. The varied buildings give a visually interesting character which is complemented by mature trees set along the pavements.

11. Along City Road there are several items of street furniture set within the pavements including bus shelters, road signs, litter bins and advertisement panels. The stretch of pavement where the proposed call boxes would be located currently hosts two existing call boxes, set reasonably close to one another, as well as lamp posts and traffic signs set on narrow poles. The proposed call boxes would be aligned with the existing phone boxes, towards the kerb.
12. The proposed call boxes would have relatively limited footprints and I have had regard to the width of the footpath in this location. However, along this stretch of the pavement the two existing call boxes are the only substantial items of street furniture present and as such, the views in either direction are largely clear and unobstructed. Whilst the proposed call boxes would sit in line with these, they would be significantly bulkier and higher than the existing call boxes. As such, they would have an intrusive and dominant visual impact which would detract from the character and appearance of the surroundings. They would appear incongruous and prominent within the public realm which would not be sufficiently mitigated by the proposed materials.
13. Consequently, 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 of the area 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 schemes on their 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