



Appeal Decisions

Site visit made on 22 October 2019

by Helen B Hockenhull BA (Hons) B. PI MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 13th November 2019

All Appeals

- The appeals are made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeals are made by Maximus Networks Ltd against the decision of City of Westminster Council.
 - The development proposed in each case is the installation of a public call box.
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Appeal A Ref: APP/X5990/W/19/3231054

Public Highway, 268 Edgware Road, London W2 1DU

- The application Ref 18/09342/TELCOM, dated 1 November 2018 was refused by notice dated 17 December 2018.
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Appeal B Ref: APP/X5990/W/19/3231062

Public Highway, Praed Street junction Edgware Road, London W2 1JX

- The application Ref 18/09341/TELCOM, dated 1 November 2018, was refused by notice dated 18 December 2018.
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Appeal C Ref: APP/X5990/W/19/3231076

Public Highway, 43 Wigmore Street, London W1U 2DB

- The application Ref 18/09341/TELCOM, dated 1 November 2018, was refused by notice dated 18 December 2018.
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Appeal D Ref: APP/X5990/W/19/3231081

Public Highway, 12 Baker Street, London W1U 3AA

The application Ref 18/09297/TELCOM, dated 31 October 2018, was refused by notice dated 18 December 2018.

Appeal E Ref: APP/X5990/W/19/3231085

Public Highway, 55 Baker Street, London W1U 8EW

- The application Ref 18/09378/TELCOM, dated 2 November 2018, was refused by notice dated 20 December 2018.
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Decisions

1. The appeals are dismissed.

Procedural Matters

2. The appeals relate to proposals by Maximus Networks Ltd for the installation of an electronic communications apparatus comprising a telephone kiosk pursuant to Class 16 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GDPO). Whilst the appeals relate to 5 different sites in the Borough of Westminster, the proposed kiosks are identical. Therefore, in the interests of conciseness I shall consider each proposal in the same decision.
3. The Town and Country Planning (Permitted Development, Advertisement and Compensation Amendments) (England) Regulations 2019 amends the GPDO by removing permission for the installation, alteration or replacement of a public call box by, or on behalf of an electronic communication code operator. This is subject to transitional and saving provisions. For the purposes of the above appeals, the proposals fall to be considered against the provisions of Schedule 2, Part 16, Class A of the GDPO. This sets out permitted development rights for development carried out by or on behalf of electronic telecommunication code operators for the purposes of the operator's electronic communication network, subject to prior approval by the local planning authority of siting and appearance.
4. A recent High Court Case in Westminster¹, concerned prior approval appeals for telephone kiosks under Part 16 Class A of the GDPO. The judgment considered development 'for the purposes' of an operator's network. The Court found that the judgment as to whether the kiosk, as applied for, comes within the scope of Class A must be made before siting and appearance are considered. The case related to the inclusion of advertisements on public call boxes. The judgment confirmed 'that the whole development for which prior approval is sought must fall within the class relied on, and no part of it can fall outside it'.
5. The judgment went on to state that a development falls outside the scope of Part 16 Class A if it is not 'for the purpose' of the operator's network. Thus, if the development is partly for some other purpose beyond that of the operator's network, for example the display of an advert, it cannot be development 'for the purpose' of the operator's network because it is for a dual purpose.
6. In the appeals before me, the main parties disagree on whether the proposed call boxes are solely for the purpose of the operator's communications network. I have carefully considered the Counsel opinion on this matter submitted by the appellant and the description of the proposed kiosks. It is apparent that the form and design of the kiosk is driven by its proposed functionality. Whilst the proposed kiosk has a non-illuminated display panel to the rear, I have no evidence before me to suggest the proposed development includes elements that are for the purpose of advertising. Consequently, I conclude that the proposals are for the purpose of the operator's electronic communication network and not for a dual purpose.
7. In the reasons for refusing to grant prior approval, the Council referred to Policies S7, S25, S28 and S41 of the Westminster City Plan 2016 and Policies DES1, DES 7, DES9 and TRANS3 of the Unitary Development Plan (UDP) 2007. The appellant also made reference to The Transport for London Pedestrian

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

Comfort Guidance 2010 and the Transport for London Streetscape Guidance 2017.

8. The principle of development is established by the GDPO. The provisions of Schedule 2, Part 16, Class A of the GDPO 2015 do not require regard be had to the development plan. I have had regard to the policies of the development plan and any related guidance in so far as they are relevant to the matters of siting and appearance. Considerations such as need for the call boxes are not relevant matters.

Main Issues

9. The main issues are:

- the effect of the siting and appearance of the proposed kiosk on the character and appearance of the area; (All appeals)
- the effect of the development on the safe and efficient operation of the highway; (All appeals)
- the effect of the proposal on heritage assets. (Appeals C and D only)

Reasons

Appeal A – 268 Edgware Road

Character and appearance

10. The appeal site relates to a wide section of pavement in an area dominated by retail and commercial premises. On my site visit I observed that there were two existing call boxes in the vicinity of the appeal site; an older traditional design kiosk and a more modern call box, as well as cycle parking, refuse bins and street lighting columns. These features were reasonably spaced out on the footway so that the street scene did not have an overly cluttered appearance.
11. The installation of another call box in this location, would not only add to the amount of street furniture but also reduce the spacing between them. Having regard to the scale and mass of the proposed call box, with a height of around 3.1 metres and width of approximately 1.3 metres, it would appear as a prominent addition in the street scene. This would have an adverse effect of the visual amenity of the area, causing harm to character and appearance.

Highways

12. The appellant's site-specific highway analysis considers this location to have high pedestrian flows. The existing pavement in this location is around 5.3 metres wide. The proposed call box would reduce the width of the pavement; however, I have no evidence before me to suggest that the resultant pedestrian clear zone would be inadequate. Therefore, I consider that the proposal would not cause harm to the safe and efficient operation of the highway.

Appeal B – Praed Street Junction

Character and appearance

13. The proposed call box would be sited on a section of pavement on Praed Street which is relatively free from street furniture. This provides a degree of spaciousness to this area of the footway close to the junction with Edgware Road. On the footway immediately south of the appeal site, there is an existing call box as well as other street furniture including a lighting column, bollard and large traffic sign.
14. The introduction of a further call box in this more open part of Praed Street, would further consolidate the street furniture in this location. The loss of open character would impact negatively on the street scene. In addition, the siting of the proposed call box would also create a visual obstruction to the currently uninterrupted view from Praed Street towards Edgware Road.
15. In terms of scale, mass, siting and design, the proposed call box would contrast with that of the existing nearby call box. It would appear dominant and incongruous in this context and cause harm to the character and appearance of the area.

Highways

16. The approximate width of the pavement in this location is 4.8 metres. The site-specific highways analysis submitted by the appellant indicates that this area has a high pedestrian flow and the existing footway is substandard in width, falling below the Transport for London Pedestrian Comfort guidance. I acknowledge that the existing street furniture in this location already reduces the pedestrian clear zone. The proposed development would retain a clear footway width of around 3.4 metres. I have no evidence before me that this would result in a worsening of the existing situation or would unacceptably interrupt pedestrian flows. Accordingly, I consider that the proposal would not cause harm to the safe and efficient operation of the highway.

Appeal C – 43 Wigmore Street

Character and appearance

17. The appeal site forms an area of pavement close to the junction of Wigmore Street and Welbeck Road in a busy retail and commercial area. The pavement is wide, with street trees sited centrally and other items such as cycle parking facilities, refuse bins, lighting column and an existing call box positioned towards the kerb edge. On my site visit I noted advertising boards and banners on the frontage of several of the individual retail premises. Taken together all these elements give the area a cluttered appearance.
18. The call box is proposed to be positioned in a small gap between existing street furniture in this location. Due to the scale and height of the proposed structure, it would form an intrusive feature adding to the cluttered appearance of the area. This would adversely affect the quality of the townscape and cause harm to the character and appearance of the area.

Highways

19. The pavement in the location of the appeal site is wide, approximately 6.7 metres. However, as I have described above, there are existing street trees and other street furniture which reduce the pedestrian clear zone. The installation of a further call box positioned in line with existing street furniture

would not significantly impact on pedestrian desire lines or reduce the pedestrian clear zone any further in this location. In the absence of other evidence to the contrary, I consider that the proposal would not cause harm to the safe and efficient operation of the highway.

Heritage

20. The appeal site lies just outside the boundary of the Harley Street Conservation Area. The Planning Listed Buildings and Conservation Areas Act 1990 imposes a duty to preserve or enhance the character or appearance of a conservation area.
21. Paragraph 193 of the National Planning Policy Framework (the Framework) states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the assets conservation.
22. Opposite the appeal site lie elaborately decorated late nineteenth century commercial buildings of 4 and 5 storey height constructed in brick and Portland stone. The modern design of the proposed call box, together with its scale, would detract from the architecture and character of the adjacent conservation area. It would be prominent in views towards and from the conservation area, forming a distracting feature, adversely affecting how this heritage asset is experienced and therefore its setting. Accordingly, the appeal proposal would fail to preserve or enhance the character or appearance of the conservation area.
23. Taking account of the scale of the proposal and its context, the resultant harm would be localised and less than substantial. Nevertheless, it would be of considerable importance and weight. The harm must be weighed against the public benefits of the proposal. In terms of benefits, the scheme would assist to improve the mobile network coverage in this area, though I have no evidence before me of whether the network is deficient in this location. Accordingly, I conclude that the public benefits highlighted would not outweigh the harm to the heritage asset.

Appeal D - 12 Baker Street

Character and appearance

24. The proposed call box would be sited on pavement in a mixed-use area of retail and commercial properties. It would be in area largely free from street furniture though there is a street tree close to the site. The uncluttered nature of the pavement along with the street trees gives the area an attractive urban appearance.
25. The installation of a public call box in this location would be a particularly noticeable feature. It would appear as a prominent development at odds with the open character of this section of Baker Street. The proposal would add clutter undermining the quality of the urban realm. Therefore, the proposed kiosk would harm the character and appearance of the area.

Highways

26. The pavement in this location is approximately 4.4 metres wide. At the time of my visit there were moderate pedestrian flows. The site-specific highway

analysis submitted by the appellant demonstrates that the proposal would leave adequate clear footway for pedestrians. In the absence of technical evidence to the contrary, I consider that the proposal would not cause harm to the safe and efficient operation of the highway.

Heritage

27. The appeal site lies adjacent to the boundary of the Portman Estates Conservation Area. When looking south down Baker Street, views towards Portman Square are attractive with numerous mature trees, to an extent screening the buildings behind. In this context the proposed kiosk would be seen as an intrusive feature, negatively affecting how the conservation area is experienced and therefore its setting. Accordingly, the proposal would fail to preserve or enhance the character or appearance of the conservation area. As a result of the small scale of the proposal, the harm arising would be localised and less than substantial.
28. In line with paragraph 196 of the Framework I must assess whether the less than substantial harm is outweighed by the public benefits of the development. The call box would clearly contribute to the provision of a telecommunication network. However, I have no evidence before me that there is a deficiency in the network in this area or that there would be other public benefits of the scheme which would outweigh the great weight which must be given to the conservation of a heritage asset.
29. I therefore conclude that the proposal would cause harm to the character and appearance of the conservation area through its impact on setting.

Appeal E - 55 Baker Street

Character and appearance

30. The appeal site is in a mixed-use area of retail and office uses. I observed on my site visit that the existing street furniture in the area consists of street trees, lighting columns, another telephone kiosk, cycle parking, refuse bins as well as banners and A boards placed in front of the retail premises. As a result, the existing street scene has a cluttered and untidy appearance.
31. The buildings in the vicinity are of mid twentieth century design. No 55 Baker Street is a high-quality modern building contributing positively to the townscape. The contemporary design of the call box would be in keeping with the character of the area. However, the addition of a further piece of street furniture would add to the clutter and have a further negative affect on the quality of the street scene. Therefore, the proposed kiosk would cause harm to the character and appearance of the area.

Highways

32. The pavement in the vicinity of the appeal site is wide, approximately 6.4 metres. The existing street furniture in the area has already affected pedestrian flows, however bearing in mind the siting of the proposed call box, in line with other obstructions on the pavement, it would have little additional effect on pedestrian movement. This is confirmed by the site-specific highway analysis submitted by the appellant. In the absence of technical evidence to the contrary, I consider that the proposal would not cause harm to the safe and efficient operation of the highway.

Other matters

33. Both the Council and the appellant have drawn my attention to other similar appeals in the Westminster area and other London boroughs. However, I do not have the full details of these to assess their comparability to the cases before me. In any event each appeal should be considered on its individual merits having regard to its context.

Overall Conclusion

34. In all the appeals, I have concluded that the siting and appearance of the call boxes would harm the character and appearance of the areas in which they are located. The proposals would therefore not comply with Policies S25 and S28 of the Westminster City Plan or Saved Policies DES1 and DES7 of the UDP. These policies seek to achieve high quality design in all townscape.
35. With regard to Appeals C and D, I have found that the proposals would fail to preserve or enhance the character or appearance of the respective conservation areas and that the public benefits would not outweigh this harm. Accordingly, in the case of these two appeals, the proposals would conflict with the conservation objectives of Policies S25 and S28 of the Westminster City Plan and Saved Policies DES1 and DES9 of the UDP.
36. I have also concluded in each case that the proposals would not cause harm to the safe and efficient operation of the highway meeting the aims of the Transport for London Pedestrian Comfort Guidance and the Streetscape Guidance. They would therefore comply with Policies S41 and S7 of the Westminster City Plan and Saved Policy TRANS3 of the UDP which aim to create a safe and attractive environment for pedestrians. Whilst this provides support to the proposals, it does not outweigh my conclusions on the harm of the development in terms of character and appearance as stated above.
37. For the reasons outlined, and having had regard to all other matters raised, the appeals are dismissed.

Helen Hockenhull

INSPECTOR