
Appeal Decisions

Site visit made on 25 July 2019

by Mr M Brooker DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 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, 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 decision of London Borough of Lambeth Council.
- The development proposed in each case is described as prior approval for siting and appearance: installation of public call box.

Appeal A Ref: APP/N5660/W/18/3212506

Adj. 62 Wandsworth Road, London SW8 2LF

- The application Ref 18/00667/G24, dated 1 February 2018, was refused by notice dated 3 April 2018.

Appeal B Ref: APP/N5660/W/18/3212883

Adj. 272 South Lambeth Road, London SW8 1UL

- The application Ref 18/00653/G24, dated 31 January 2018, was refused by notice dated 4 April 2018.

Appeal C Ref: APP/N5660/W/18/3212909

Adj Morant House, Stockwell Road, London SW9 9AA

- The application Ref 18/00649/G24, dated 31 January 2018, was refused by notice dated 4 April 2018.

Appeal D Ref: APP/N5660/W/18/3212911

Adj. Paton House, Stockwell Road, London SW9 9ET

- The application Ref 18/00648/G24, dated 31 January 2018, was refused by notice dated 4 April 2018.

Appeal E Ref: APP/N5660/W/18/3213340

Adj. Bilton House, Wandsworth Road, London SW8 4EP

- The application Ref 18/00654/G24, dated 31 January 2018, was refused by notice dated 5 April 2018.

Appeal F Ref: APP/N5660/W/18/3212494

Adj. Hindlip House, Wandsworth Road, London SW1 2RW

- The application Ref 18/00657/G24, dated 1 February 2018, was refused by notice dated 27 March 2018.

Appeal G Ref: APP/N5660/W/18/3212635

Adj. 114 Wandsworth Road, London SW8 2LB

- The application Ref 18/00656/G24, dated 1 February 2018, was refused by notice dated 4 April 2018.

Appeal H Ref: APP/N5660/W/18/3212878
Adj. 314-318 Clapham Road, London SW9 9AE

- The application Ref 18/00666/G24, dated 1 February 2018, was refused by notice dated 4 April 2018.

Appeal I Ref: APP/N5660/W/18/3212886
Adj. 289 Clapham Road, London SW9 9BN

- The application Ref 18/00665/G24, dated 1 February 2018, was refused by notice dated 4 April 2018.

Appeal J Ref: APP/N5660/W/18/3212915
Adj. Conrad House, Wandsworth Road, London SW8 2SP

- The application Ref 18/00655/G24, dated 1 February 2018, was refused by notice dated 4 April 2018.

Appeal K Ref: APP/N5660/W/18/3213332
Adj. 438 Wandsworth Road, London SW8 3NA

- The application Ref 18/00664/G24, dated 1 February 2018, was refused by notice dated 5 April 2018.
-

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 GPDO). Whilst the appeals relate to 11 different sites in the London Borough of Lambeth, 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 GPDO. 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 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

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

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 are:
 - a) The effect of the siting and appearance of the proposed kiosk on the character and appearance of the area (All Appeals)
 - b) The effect of the development on the safe and efficient operation of the highway; (All appeals)
 - c) The effect of the development on Heritage Assets (appeal k only)

Reasons

Appeal A – adj. 62 Wandsworth Road

Character and appearance

7. The appeal site relates to a wide section of pavement in an area dominated by a large retail premise. On my site visit I observed that there were cycle parking loops, a number of street cabinets and street lighting columns. These features were concentrated near to the appeal site on the footway, but I observed that the street scene over all did not have a cluttered appearance.
8. The installation of call box in this location, would add to the existing street furniture. Having regard to the scale and mass of the proposed call box, with a height of around 2.6 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.

Highway

9. The appellant's site-specific highway analysis considers this location to have low pedestrian flows. The existing pavement in this location is around 4.8 metres wide. The proposed call box would reduce the width of the pavement to 3 metres, which the appellant details is above the preferred minimum footpath width of 2 metres. 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 - adj. 272 South Lambeth Road

Character and appearance

10. The appeal site relates to a wide section of tree and railing lined pavement adjacent to a busy road, in close proximity to a road junction. I observed at my site visit that there was signage, a bus shelter, bins and pedestrian crossings near to the appeal site. These features are spaced out in the area near the appeal site and I observed that the street scene overall did not have a cluttered appearance.
11. The installation of call box in this location, would add to the existing street furniture. Having regard to the scale and mass of the proposed call box, with a height of around 2.6 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.

Highway

12. The appellant's site-specific highway analysis considers this location to have low pedestrian flows. The existing pavement in this location is approximately 6m metres wide. The proposed call box would reduce the width of the pavement to around 4 metres, which the appellant details is above the preferred minimum footpath width of 3 metres. I acknowledge that the appeal site is near to a pedestrian crossing and road junction but I have no evidence before me to suggest that the resultant pedestrian clear zone would be inadequate or that the kiosk would obscure sightlines at the junction. Therefore, I consider that the proposal would not cause harm to the safe and efficient operation of the highway.

Appeal C - Adj Morant House, Stockwell Road

Character and appearance

13. The appeal site relates to a section of pavement to the front of Morant House on Stockwell Road. The pavement includes street trees, road signage and it appears to be very close to an electric vehicle (taxi) charging point. The street trees are located approximately centrally in the pavement. This would harm the character and appearance of the area
14. The installation of a call box in this location, out of alignment with the existing street furniture would add to the existing street furniture and create a prominent feature in the street scene.

Highway

15. The appellant's site-specific highway analysis considers this location to have low pedestrian flows. The existing pavement in this location is approximately 5.6 metres wide. The proposed call box would reduce the width of the pavement to around 4 metres, which the appellant details is above the preferred minimum footpath width of 2 metres. The proposed call box is not in alignment with the other street furniture in the immediate area around the appeal site. This results in a greater narrowing effect that referred to in the

appellant's site-specific highway analysis. I find that the resulting narrowed footpath would harm the safe and efficient operation of the highway.

Appeal D - adj. Paton House, Stockwell Road

Character and appearance

16. The appeal site relates to a section of pavement to the front of Paton House on Stockwell Road. On my site visit I observed that the pavement was narrowing in the vicinity of the appeal site and that the appeal site was near to the entrance to Paton House. Street furniture near to the appeal site included bins, lampposts and street trees.
17. The installation of call box in this location close to the pavement edge, would add to the existing street furniture, in particular with the bin, lamppost and street tree in close proximity. Having regard to the scale and mass of the proposed call box, with a height of around 2.6 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.

Highway

18. The appellant's site-specific highway analysis considers this location to have low pedestrian flows. The existing pavement in this location is approximately 5 metres wide. The proposed call box would reduce the width of the pavement to around 3.5 metres, which the appellant details is above the preferred minimum footpath width of 2 metres. The proposed call box is approximately in alignment with the other street furniture in the immediate area around the appeal site, though not the street tree. Nonetheless, I find that there would remain sufficient pavement around the proposed call box to facilitate the safe and efficient operation of the highway.

Appeal E - Adj. Bilton House, Wandsworth Road

Character and appearance

19. The appeal site relates to a section of pavement in a predominantly residential area on the busy Wandsworth Road. At my site visit I observed that there were street trees, traffic signage and lampposts. These features were spaced in a fairly regular pattern on the pavement, but I observed that the street scene over all did not have a cluttered appearance.
20. The installation of call box in this location, would interrupt the regular pattern of lampposts and street trees. Having regard to the scale and mass of the proposed call box, with a height of around 2.6 metres and width of approximately 1.3 metres, it would appear as a prominent and incongruous addition in the street scene. This would have an adverse effect of the visual amenity of the area, causing harm to character and appearance.

Highway

21. The appellant's site-specific highway analysis considers this location to have low pedestrian flows. The existing pavement in this location is around 5 metres

wide. The proposed call box would reduce the width of the pavement to about 3 metres, which the appellant details is above the preferred minimum footpath width of 2 metres. I have no evidence before me to suggest that the resultant pedestrian clear zone would be inadequate. The Council have referred to the proximity of the appeal site and the nearby road junction, I observed at my site visit that the appeal site was set some distance away from the junction and in the absence of any substantive to the contrary I find that the proposal would not cause harm to the safe and efficient operation of the highway.

Appeal F - Adj. Hindlip House, Wandsworth Road

Character and appearance

- 21 The appeal site relates to a section of pavement in a predominantly residential area on the busy Wandsworth Road. I observed that there were street trees, lampposts and two significant lengths of bikes for hire in proximity to the appeal site. Having regard to the scale and mass of the proposed call box, with a height of around 2.6 metres and width of approximately 1.3 metres, it would appear as a prominent and incongruous addition in the street scene. Therefore, the installation of call box in this location, would create a cluttered appearance in the street scene. This would have an adverse effect of the visual amenity of the area, causing harm to character and appearance.

Highway

22. The appellant's site-specific highway analysis considers this location to have low pedestrian flows. The existing pavement is over 5 metres wide. The proposed call box would reduce the width of the pavement to about 3 metres, which the appellant details is above the preferred minimum footpath width of 2 metres. I have no evidence before me to suggest that the resultant pedestrian clear zone would be inadequate.
23. However, no reference is made to the hire bikes, the presence of a dropped curb near to the appeal site and the effect that the use of the bike hire racks would have on the needed footpath width. At the site visit I noted that the bike racks appeared to be well used and that the location of a call box in the proposed location could increase conflict between cyclists and pedestrians. As such, based on the evidence before me and my observations on site I find that the proposal would cause harm to the safe and efficient operation of the highway.

Appeal G -114 Wandsworth Road

Character and appearance

24. The proposed call box would be sited on pavement in a mixed-use area of retail, commercial and residential properties. It would be sited in area that includes cycle loops, street trees and lampposts. 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 Wandsworth Road. 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.

Highway

26. The pavement in this location is almost 7 metres wide. At the time of my visit there were low pedestrian flows. The site-specific highway analysis submitted by the appellant demonstrates that the proposal would leave adequate clear footway for pedestrians. I noted at my site visit that the call box would be situated in close proximity to the back edge of the curb and in close proximity to a pedestrian crossing island. Nonetheless, the absence of technical evidence to the contrary and based on the evidence before me, I consider that the proposal would not cause harm to the safe and efficient operation of the highway.

Appeal H - 314-318 Clapham Road

Character and appearance

27. The proposed call box would be sited on a very wide pavement in a mixed-use area of retail and residential properties. It would be sited in area that includes street trees and lampposts laid out in a considered linear fashion along this part of Clapham Road. Near to the road are a number of cycle parking racks. The uncluttered nature of the pavement along with the street trees gives the area an attractive urban appearance. At my site visit I noted that there is some street seating to the front some of the local businesses.
28. The installation of a public call box in this location would be a particularly noticeable feature because it is not proposed to be positioned in line with the existing street furniture. It would appear as a prominent development at odds with the open character of this section of Wandsworth Road. 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

29. The pavement in this location is about 12 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. I note the proximity of the proposed call box and the cycle parking but 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.

Appeal I - Adj. 289 Clapham Road

Character and appearance

30. The appeal site forms an area of pavement on the western side of Clapham Road. The pavement as a whole is uncluttered with street furniture being restricted to 2no. street cabinets, a traffic safety camera and street lighting. On my site visit I noted advertising boards and banners on the frontage of a number of the individual retail premises. In the context of the street scene this creates an uncluttered appearance.

31. The call box is proposed to be positioned near to the traffic safety camera at the edge of the pavement in a prominent location that would be highly visible in the street. Due to the scale and height of the proposed structure in it would form an intrusive and incongruous feature. This would adversely affect the quality of the townscape and cause harm to the character and appearance of the area.

Highways

32. The pavement in the location of the appeal site is approximately 5 metres wide. The installation of a call box positioned in line with the existing traffic safety camera would still leave sufficient unobstructed footway to meet the pedestrian flow in this area. I therefore consider that the proposal would not cause harm to the safe and efficient operation of the highway.

Appeal J - Adj. Conrad House, Wandsworth Road

Character and appearance

The proposed call box would be sited on a section of pavement on Wandsworth Road which is relatively free from street furniture, with the exception of streetlighting and a bus stop shelter. This provides a degree of spaciousness to this area of the footway. The introduction of a call box in this more open part of Wandsworth Road, would create a prominent and discordant feature. The loss of open character would impact negatively on the street scene. As a result of the scale, mass, siting and design of the proposed call box the proposed development would appear prominent and incongruous in this context and cause harm to the character and appearance of the area.

Highway

33. The approximate width of the pavement in this location is over 5 metres. The site-specific highways analysis submitted by the appellant indicates that this area has a low pedestrian flow. The proposed development would retain a clear footway width of around 3 metres which the appellant details is above the preferred minimum footpath width of 2 metres. 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 K - Adj. 438 Wandsworth Road

Character and appearance

34. The proposed call box would be sited on a pavement in a mixed-use area of retail and residential properties. It would be sited in area largely free from street furniture though there are lampposts and a street advertisement nearby. The wider street includes a number of mature street trees. The uncluttered nature of the pavement along this section of pavement gives the area an attractive urban appearance.
35. 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 Wandsworth Road. 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.

Highway

36. At the time of my site visit the pavement was narrowed considerably by hoarding relating to construction works being undertaken at that time. It is not clear what the depth of the pavement will be once construction works have been completed. The Council details that a large proportion of the footpath is in private ownership, but no substantive details have been provided by either party.
37. The appellants statement details that the pavement at this point is over 5 metres wide. The site-specific highways analysis submitted by the appellant indicates that this area has a low pedestrian flow. The proposed development would retain a clear footway width of almost 4 metres which the appellant details is above the preferred minimum footpath width of 2 metres. I have no evidence before me to suggest that the resultant pedestrian clear zone would be inadequate. Therefore, on the basis of the evidence before me I consider that the proposal would not cause harm to the safe and efficient operation of the highway.

Heritage

38. The site is situated opposite the Wandsworth Road Conservation Area (CA), described by the Council as a "linear conservation area of mostly 19th century residential and commercial properties". The Planning (Listed Buildings and Conservation Areas) Act 1990 imposes a duty to preserve or enhance the character or appearance of a conservation area.
39. 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.
40. The appeal site is directly opposite the CA boundary, in this context the proposed kiosk would be seen as an intrusive feature, negatively affecting how the ca is experienced and therefore its setting. Accordingly, the proposal would fail to preserve or enhance the character or appearance of the CA. As a result of the small scale of the proposal, the harm arising would be localised and less than substantial.
41. 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 heritage asset.
42. I therefore conclude that the proposal would cause harm to the character and appearance of the conservation area through its impact on setting.

Other matters

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

43. In all the appeals, I have concluded that the siting and appearance of the all boxes would harm the character and appearance of the areas in which they are located. The proposals would not comply with Policies T10 and Q6 of the Lambeth Local Plan (2015) (LP). These policies seek to achieve high quality design in all townscape.
44. With regard to Appeal K, I have found that the proposals would fail to preserve or enhance the character or appearance of the CA 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 Q22 on the LP.
45. 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 T1 and T10 of the LP 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.
46. For the reasons outlined, and having had regard to all other matters raised, the appeals are dismissed.

Mark Brooker

INSPECTOR