



Appeal Decisions

Site visit made on 17 October 2019

by Alexander Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th November 2019

Appeal Ref: APP/X5990/W/19/3231087

Public Highway, 55 Victoria Street, London SW1H 0AF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3(1), Schedule 2, Part 16 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 City of Westminster Council.
 - The application Ref 18/09375/TELCOM dated 2 November 2018, was refused by notice dated 21 December 2018.
 - The development proposed is a public call box.
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Appeal Ref: APP/X5990/W/19/3231067

Public Highway, 10 Victoria Street, London SW1H 0NN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3(1), Schedule 2, Part 16 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 City of Westminster Council.
 - The application Ref 18/09292/TELCOM, dated 31 October 2018, was refused by notice dated 19 December 2018.
 - The development proposed is a public call box.
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Appeal Ref: APP/X5990/W/19/3231065

Public Highway, 98 Victoria Street, London SW1E 5JL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3(1), Schedule 2, Part 16 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 City of Westminster Council.
 - The application Ref 18/09369/TELCOM, dated 2 November 2018, was refused by notice dated 19 December 2018.
 - The development proposed is a public call box.
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Appeal Ref: APP/X5990/W/19/3231090

Public Highway, 4 Victoria Street, London SW1H 0NJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3(1), Schedule 2, Part 16 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 City of Westminster Council.
 - The application Ref 18/09346/TELCOM, dated 1 November 2018, was refused by notice dated 21 December 2018.
 - The development proposed is a public call box.
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Appeal Ref: APP/X5990/W/19/3231089

Public Highway, Grosvenor Road Junction Bessborough Gardens, London SW1V 2HS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3(1), Schedule 2, Part 16 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 City of Westminster Council.
 - The application Ref 18/09379/TELCOM, dated 2 November 2018, was refused by notice dated 21 December 2018.
 - The development proposed is a public call box.
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Appeal Ref: APP/X5990/W/19/3231077

Public Highway, 54 Victoria Street, London, SW1E 6PA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3(1), Schedule 2, Part 16 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 City of Westminster Council.
 - The application Ref 18/09343/TELCOM, dated 1 November 2018, was refused by notice dated 19 December 2018.
 - The development proposed is a public call box.
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Decision

1. The appeals are dismissed.

Procedural Matters and Background

2. Whilst the 6 appeals relate to different sites, the proposed public call boxes are identical. I have considered each proposal on its own individual merits, but as they raise similar issues, I have dealt with them all in a single decision letter.

Main Issues

3. Following the Court's judgment in Westminster CC v SSHCLG & New World Payphones Ltd [2019] EWHC 176 (Admin), the main issue is whether or not the proposal is solely for the purpose of the operator's electronic communications network.

Reasons

4. Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) refers to, "Development by or on behalf of an electronic communications code

operator for the purpose of the operator's electronic communications network...".

5. The *Westminster* judgment found: "... that means 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. Otherwise, the general permission in the GPDO, and the restricted range of considerations would be applied to development which falls outside the scope of the permission."
6. The judgement went on to state that "A development therefore falls outside the scope of Class A Part 16 if it is not "for the purpose" of the operator's network. That means, at least in the specific context of a GPDO permission, that a proposed development falls outside it, if part of it falls outside it. It cannot be said that the whole falls within the GPDO... A development which is partly "for the purpose" of the operator's network, and partly for some other purpose, is not a development "for the purpose" of the operator's network, precisely because it is for something else as well. The single dual purpose development must be judged as a whole."
7. The proposals comprise a thin, double-sided structure with a small canopy composed of solar panels that would power the call box. The drawings submitted with the applications indicate that on one side of the call box there would be a public telephone that would accommodate a relatively small portion of this elevation. On the other side would be what is described on the drawings submitted with the applications as a 'non-illuminated display panel' and 'visual area', which would accommodate a large portion of this elevation. There is no clear explanation within the evidence before me as to what the purpose of this side of the call box would be for. The statement of case submitted by the appellant states that "A central panel on the opposite face of the call box from the phone will allow access to equipment inside for maintenance purposes and the replacement and updating of hardware within the call box as required". However, this does not correlate with the annotated drawings. Based on the drawings submitted it is not unreasonable to conclude that the clear intention for this side of the call box is for the 'non-illuminated display panel'/'visual area' to be used for the display of advertisements, which falls outside the scope of Class A Part 16 of the GPDO.
8. I acknowledge the appellant's argument, supported by Counsel's opinion, that deemed consent is granted under Regulation 6 and Class 16 of Schedule 3 to the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (the "Advertisements Regs") to display advertisements on one glazed surface of the kiosk, providing that it is not within a conservation area and is not illuminated. However, this right was removed on 25 May 2019 under regulation 17 and 19(2) of the Town and Country Planning (Permitted Development, Advertisement and Compensation Amendments)(England) Regulations 2019. I note that the appellant's Counsel's opinion was made prior to 25 May 2019.
9. Therefore, based on the drawings submitted with the application, the proposals would have a dual purpose of facilitating the public telephone as well as intentionally providing an area for the display of advertisements. Accordingly, the appeal proposal is not solely for the purpose of the operator's electronic communications network, and as such falls outside Schedule 2, Part 16, Class A

of The Town and Country Planning (General Permitted Development) (England) Order 2015.

Conclusion

10. For the reasons given above and having regard to all matters raised, including in representations, I conclude that the appeal should be dismissed.

Alexander Walker

INSPECTOR