



Appeal Decision

Site visit made on 22 October 2019 by L Wilson BA (Hons) MA

Decision by Chris Preston BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 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 Mr Paul O'Neill on behalf of Maximus Networks Ltd against the decisions of the Council of the London Borough of Tower Hamlets.
 - The development proposed in each case is a public call box.
-

Appeal A Ref: APP/E5900/W/19/3225249

Jubilee Street corner Stepney Way, London, E1 3EB

Grid Reference Easting 535178, Grid Reference Northing 181599

- The application Ref PA/18/02005, dated 6 August 2018, was refused by notice dated 28 September 2018.
-

Appeal B Ref: APP/E5900/W/19/3231315

5 Commercial Street, London, E1 6BF

Grid Reference Easting 533846, Grid Reference Northing 181415

- The application Ref PA/18/03160, dated 7 November 2018, was refused by notice dated 21 December 2018.
-

Appeal C Ref: APP/E5900/W/19/3231309

422-426 Mile End Road, London, E1 4PE

Grid Reference Easting 536111, Grid Reference Northing 182275

- The application Ref PA/18/03173, dated 7 November 2018, was refused by notice dated 21 December 2018.
-

Appeal D Ref: APP/E5900/W/19/3231323

Mile End Road adj. Formosa House, London, E1 4RG

Grid Reference Easting 535998, Grid Reference Northing 182223

- The application Ref PA/18/03158, dated 7 November 2018, was refused by notice dated 21 December 2018.
-

Appeal E Ref: APP/E5900/W/19/3231344

Mile End Road adj. Queen Mary University, London, E1 4NS

Grid Reference Easting 535988, Grid Reference Northing 182238

- The application Ref PA/18/03193, dated 7 November 2018, was refused by notice dated 21 December 2018.
-

Decisions – Appeals A to E

1. All the Appeals are dismissed.

Appeal Procedure

2. The site visit was undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

Procedural Matters and Background – Appeals A to E

3. The Appeals relate to proposals by Maximus Networks Ltd for the installation of 'a public call box' at five sites in the London Borough of Tower Hamlets. The proposed apparatus is identical in each case. Therefore, in the interests of conciseness, I will evaluate all these Appeals in the same decision.
4. The proposed call boxes would comprise two sides and consist of steel with a roof-mounted solar panel. They would have a footprint of approximately 1.32 metres by 0.98m, and they would be 3.12m high. The call boxes would have a phone pocket on one side and a non-illuminated display panel on the other. LED lighting strips would be located on the outside edges of the call box. The submitted details indicate that the overall colour of the kiosk is customisable, but would typically be gun metal grey or black, and would have a sheen through the integral use of toughened glass and photovoltaic glass in the structure.
5. The Town and Country Planning (Permitted Development, Advertisement and Compensation Amendments) (England) Regulations 2019 amends the GPDO¹ by removing permission for the installation, alteration or replacement of a public call box by, or on behalf of an electronic communications code operator. This is subject to transitional and saving provisions. For the purposes of these 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 an electronic communications code operator for the purpose of the operator's electronic communications network.
6. The recent *Westminster* judgement² concerned prior approval Appeals involving telephone kiosks under Part 16 Class A of the GPDO. The judgement considered the matter of development for 'the purpose' of an operator's network. The Court found that the judgement as to whether the kiosk, as applied for, comes within the scope of Class A must be made before siting and appearance are considered. *Westminster* related to a kiosk which was for a dual purpose of advertisement display and telecommunications use. Consequently, it contained features that were for advertising and not there at all for the telecommunications function.
7. The applications were determined prior to the *Westminster* judgement. The appeal parties have however had the opportunity to comment on the bearing of the judgement upon the Appeals. I will take these comments into account.
8. The main parties dispute whether the proposed call boxes are solely for the purpose of the operator's electronic communications network. The Council consider one side of the unit would be used for advertising. It is apparent that the form and design of the proposed telecommunications apparatus is driven by its proposed functionality as a public call box. Counsel for the appellant states that none of the proposed kiosks before me include any advertising features. The submission is that the call boxes proposed would not be for a dual purpose and can be distinguished from *Westminster*. On the available evidence, it appears the design of the proposed kiosks would not include elements that are there for the purpose of advertising.

¹ The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

² *Westminster CC v SSHCLG & New World Payphones Ltd* [2019] EWHC 176 (Admin) (5 February 2019).

Consequently, the proposals would be intended for the purpose of the operator's electronic communications network and not serve a dual purpose.

9. In the reasons for refusing to grant prior approval, the Council made reference to Policies 6.10, 7.4, 7.5, 7.6 and 7.8 of the London Plan (2016) (TLP); Policies SP09, SP10 and SP12 of the Core Strategy: Development Plan Document (2010) (CS); Policies DM20, DM23, DM24, DM25 and DM27 of the Managing Development Document: Development Plan Document (2013) (MDD); and the Transport for London Streetscape Guidance (2016) (SG). The appellant has also referred to Policy 6.9 of TLP and The Transport for London Pedestrian Comfort Guidance (PCG).
10. The principle of development is established by the GPDO and permitted development rights are set out in Schedule 2 Part 16 for this type of development. The provisions do not require regard be had to the development plan. I will have regard to the policies of the development plan and any related guidance in so far as they are relevant to matters of siting and appearance. Considerations such as need for the call boxes are not relevant matters.
11. The National Planning Policy Framework (the 'Framework') was revised in February 2019, after the Council determined the applications. Both main parties have had the opportunity to comment on any relevant implications for the Appeals. I shall have regard to the Framework in so far as relevant to matters of siting and appearance.
12. The appellant has submitted a highways analysis. This analysis was not submitted to the Council when they determined the applications. As the Council have reviewed and commented on this additional information, I will take it into account when determining the Appeals. I note that no indication has been provided as to the precise orientation of the call boxes in each case. As such, I will determine the Appeals with reference to the identified footprint on the appellant's submitted photographs.
13. The appellant contends that concerns relating to the potential for crime and anti-social behaviour are not matters that can be considered under the scope of the prior approval process. Reference has been made to an appeal decision from 2013³ in which the Inspector stated that the potential for anti-social behaviour was not relevant to the appeal in question. That decision is of some vintage. Whilst the reasoning suggested that the matter was not relevant to the case in question it does not follow that a conclusion in a single case has wider application.
14. Having regard to the Murrell judgement⁴ any decision must be confined to matters of siting and appearance. Those matters are quite broad in scope and the judgement does not dictate precisely what kind of detailed considerations will be relevant when considering the issues. No explicit reason to exclude crime or disorder has been provided and, if the siting or location of a call box would have an effect in respect of those matters, I see no reason to discount such matters from the broad consideration of the siting of the proposed development. Whether a specific proposal would have any impact in those respects will be dependent on the circumstances of the case.
15. Similarly, when considering the siting of the proposals, I am satisfied that it is within the scope of the appeals to take account of the likely effect on the living

³ APP/X5990/A/12/2187244

⁴ Murrell v SSCLG [2010] EWCA Civ 1367

conditions of any adjacent residents. In other words, to assess whether there is anything about the specific location that would have an impact in that regard.

Main Issues

16. These are, the effect of the siting and appearance of the proposed development upon:

- the character and appearance of the area (all Appeals), and linked to that, the setting of nearby listed buildings (Appeals C, D and E);
- the safe and efficient operation of the highway (all Appeals);
- the living conditions of neighbouring residents with particular regard to noise and disturbance (Appeal A); and
- anti-social behaviour and crime (Appeals B, C, D and E).

Reasons for the Recommendation

Appeal A - Jubilee Street corner Stepney Way - Character and Appearance

17. The appeal site is located within a residential area on the corner of Jubilee Street and Stepney Way. The surrounding buildings are of a domestic scale and design. Aside from the existing telephone box, street lights and bollards, the pavement in the vicinity contains limited street clutter which results in a relatively open footway. As one would expect in a residential area, the street has a quiet and open character which is largely free from furniture other than small scale functional items.
18. Whilst the size of the call box would adhere to that set by the GPDO, the proposal would be a dominant addition to the pavement due to its scale and massing. The scheme would introduce a built form which is significantly more noticeable than the existing street furniture and would stand out as an unusual modern and commercial feature because of its footprint and height. Accordingly, the siting and appearance of the proposed call box would harm the established residential character and appearance of the area.

Highway

19. The call box would reduce the width of the pavement. During the time of my site visit, this area of pavement had low levels of pedestrian flow. I have seen nothing to suggest that my observations are untypical.
20. The appellant has submitted a site-specific highways analysis to demonstrate that the proposal would not have a harmful effect upon the safe and efficient operation of the highway. The Council have not submitted any substantive evidence to conclude otherwise. The proposal would not have an adverse effect on pedestrian flow due to the pavement being wide and the scheme would broadly align with the existing telephone box. Accordingly, the siting and appearance of the call box would not be detrimental to the safe and efficient operation of the highway.

Living Conditions

21. The Council are concerned that the call box would cause harm to residential properties through increased noise and disturbance. The proposed call box would be located close to the rear boundary of No.151 Ashfield Street. Compared to the existing, more traditional, telephone box it is likely that the proposed call box would generate more noise as when a user makes a call the noise would not be enclosed within a box.

22. A high boundary wall would be situated between the call box and No.151 Ashfield Street. There would be adequate distance to other neighbouring properties to ensure that the proposal would not have an adverse effect upon their living conditions. There is no compelling evidence to demonstrate that the proposal would result in unacceptable levels of noise and disturbance; therefore, dismissal of the appeal on these grounds would not be justified. Accordingly, the siting and appearance of the call box would not be detrimental to the living conditions of neighbouring residents.

Appeal B - 5 Commercial Street - Character and Appearance

23. The proposed call box would be situated in primarily a retail and commercial area, close to Aldgate East Station and a bus stop. On the opposite side of Commercial Street is Canon Barnett School. Existing street furniture comprises Sheffield cycle stands, bollards and a street cabinet.
24. Whilst the call box would broadly align with the existing street furniture, it would appear visually dominant due to its solid modern design, footprint and height. The proposal would be visually intrusive because it would appear considerably larger than the existing street furniture. Thus, even in the context of the commercial area in which it would be situated, the proposal would appear as a substantial and bulky item of street furniture. Accordingly, the siting and appearance of the proposed call box would harm the character and appearance of the area.

Highway

25. The proposed call box would reduce the width of the pavement. During the time of my site visit this area had high levels of pedestrian flow. I have seen nothing to suggest that my observations are untypical. The appellant has submitted a site-specific highways analysis to demonstrate that the proposal would not have a harmful effect upon the safe and efficient operation of the highway.
26. The analysis highlights that the footway is 3.9 metres in width and does not comply with the PCG which indicates that the overall footway should have a width of 5.3m. The proposal would accord with the minimum footway clear zone recommended by the SG. The analysis does not take into account the existing street furniture, including a number of cycle stands immediately adjacent to the proposed location. At the time of my visit those cycle stands were well used and, in combination with those features, the call box would create a pinch point and act as an obstacle for pedestrians to move around. The proposal would result in additional street furniture in an area where the overall width of the pavement is substandard. The proposal would interrupt the free flow of pedestrians and have an adverse effect on pedestrian movement. Accordingly, the siting and appearance of the call box would be detrimental to the safe and efficient operation of the highway.

Anti-social behaviour and crime

27. The appellant states that the shallow profile of the call box would improve visibility and discourage any anti-social behaviour or criminal activity.
28. The Metropolitan Police have provided a detailed consultation response objecting to the proposal. Police figures and intelligence show an increase in the visible presence of drug related activity as a consequence of existing, and similarly designed, free phone call kiosks within the Borough and throughout London. An interested party has similar concerns and believe a nearby kiosk has increased anti-social behaviour and facilitated illegal activity. Whilst that evidence is to some extent anecdotal, it tallies with the police's consultation response. Nothing has been presented by the appellant to indicate

that the statistics referred to by the police and the interested party's consultation response are inaccurate or misleading. However, I recognise that the response from the police is of a general nature rather than being specific to the location in question. As set out above, the principle of call boxes is not a matter for consideration and I am mindful that a dismissal based on general concerns relating to crime and disorder, rather than concerns specifically relating to the site, may run counter to that established principle.

29. Nonetheless, the appellant has not provided any evidence to suggest that any assessment has been undertaken with regard to the suitability of the location from a crime and anti-social behaviour perspective, notwithstanding the fact that the matter has been raised by the Police and an interested party. The absence of any form of assessment in that regard is a matter that weighs against the proposal.

Appeal C - 422-426 Mile End Road - Character and Appearance

30. The proposed call box would be located adjacent to retail units. The area is characterised by various architectural styles and a mix of uses including residential, commercial and educational. On the opposite side of Mile End Road are Grade II listed buildings which includes the former New People's Palace, which is now the Queen's Building of Queen Mary University, drinking fountain and clock tower, Administration Building at Queen Mary College, St Benet's Chapel and boundary walls to Jewish Burial Ground. Both St Benet's Chapel and the white stone drinking fountain and clock tower are prominent in this section of Mile End Road due to their siting. St Benet's Chapel is distinctive due to its circular shape with a blind drum and elongated dome.
31. In the vicinity of the appeal site is a pedestrian crossing, street trees, waste bins and lampposts. The trees are a particular feature within the local street scene and their regular spacing creates an avenue of greenery which adds substantially to the character of the area. In contrast, the other street furniture is small in scale and discreetly located. The call box would be a prominent addition to this section of Mile End Road because of its design, scale and massing. The scheme would not align with the existing street furniture or trees and would stand out as a dominant feature because of its appearance and size. Its modern and bulky design would contrast awkwardly with the greenery provided by the street trees. For all of those reasons, the siting and appearance of the scheme would be visually intrusive and would harm the character and appearance of the area.
32. Framework paragraph 193 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 asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. Framework paragraph 194 states that any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification.
33. Whilst the proposal would cause harm to the character and appearance of the immediate vicinity, the busy wide highway would provide a clear separation between the appeal site and the heritage assets. The proposal would not unduly interrupt views of the Grade II listed buildings, nor would it have any notable impact on how the heritage assets are experienced. Consequently, the scheme would have a neutral effect on the heritage assets and would preserve the character and appearance of the setting of the listed buildings.

Highway

34. The proposed call box would be adjacent to the cycle superhighway and would reduce the width of the pavement. During the time of my site visit, this area had moderate levels of pedestrian flow and the pedestrian crossing, located close to the appeal site, was well used.
35. The appellant has submitted a site-specific highways analysis to demonstrate that the proposal would not have a harmful effect upon the safe and efficient operation of the highway. The analysis states that the site experiences low levels of pedestrian flow. In contrast the Council consider that the surrounding area experiences a high level of footfall given the proximity to the Queen Mary University of London, commercial uses and a variety of local buses. Given the surrounding uses and what I was able to witness at my site visit, the footpaths are clearly well used.
36. The analysis does not take into account the existing street furniture or the street trees. The proposed call box would not align with the existing street furniture or trees and would create a pinch point and act as an obstacle for pedestrians to move around due to its size and siting. Consequently, the proposal would interrupt the free flow of pedestrians and have an adverse effect on pedestrian movement. The scheme would not have a detrimental impact upon the movement of cyclists as adequate distance would be maintained to the cycle superhighway. Accordingly, the siting and appearance of the call box would be detrimental to the safe and efficient operation of the highway.

Anti-social behaviour and crime

37. The Council consider that the proposal could encourage anti-social behaviour in the area and create a concealment point which would negatively impact the public safety of this part of Mile End Road. The Metropolitan Police have objected to the proposal due to the visible presence of drug related activity as a consequence of existing and similarly designed free phone call kiosks within the borough and elsewhere in London. The reported crime figures for a 11 month period of October 2017-2018 showed that the highest rate of crime committed within the vicinity of the proposed postcode concerned anti-social behaviour. The Council highlights that the SG requires an analysis of local anti-social behavioural issues. The appellant has not submitted any analysis or demonstrable evidence to indicate that the concerns, relating to the effect on crime and anti-social behaviour, raised by the police have been properly assessed and considered. The absence of any form of assessment in this regard is a matter that weighs against the proposal.

Appeal D - Mile End Road adj. Formosa House - Character and Appearance

38. The area is characterised by residential and educational uses. The call box would be located next to a cycle docking station. Adjacent to the appeal site is a grass verge lined with an attractive avenue of trees and a further footpath. The sense of openness provided by the verge and the rhythm and greenery introduced by the street trees are essential elements in the character of the area. In the vicinity there is an advertisement display and lampposts. On the opposite side of Mile End Road are Grade II listed buildings including the former New People's Palace, which is now the Queen's Building of Queen Mary University, and further east is also a Grade II listed drinking fountain and clock tower. The Mile End Road façade of the Queen's Building is clad in buff-coloured brick and Portland stone which has five tall, vertical windows.
39. The call box would appear significantly more dominant than the adjacent cycle docking station due to its scale and massing. The existing street furniture is separated by gaps

which ensures that the pavement is not dominated by street clutter. The proposal would not respect the spacing and siting of existing street furniture; the call box would appear uncomfortably close to the cycle docking station and would result in this section of the pavement appearing dominated by street clutter. That clutter would contrast awkwardly against the established rhythm provided by the avenue of trees. For these reasons, the scheme would be visually intrusive and would harm the character and appearance of the area.

40. Whilst the proposal would cause harm to the character and appearance of the immediate vicinity, it would not unduly interrupt views of the Grade II listed buildings, on the opposite side of Mile End Road, and how they are experienced. The scheme would be clearly separate to the heritage assets due to the width of the road and distance to the listed buildings. Consequently, the proposal would have a neutral effect upon the setting of the heritage assets and would preserve the setting of the listed buildings.

Highway

41. The proposed call box would reduce the width of the pavement. During the time of my site visit, this area had moderate levels of pedestrian flow. The appellant has submitted a site-specific highways analysis to demonstrate that the proposal would not have a harmful effect upon the safe and efficient operation of the highway. The analysis states that the site experiences low levels of pedestrian flow. Contrastingly, the Council state that the surrounding area experiences a high level of footfall given the proximity to the Queen University of London, commercial uses and a variety of local buses.
42. The call box would be broadly aligned with the cycle docking station. The Council are concerned there would be conflict between the proposed structure and the cycle docking station. No substantive evidence has been submitted to demonstrate how the proposal would conflict with the docking station.
43. The cycle docking station has substantially reduced the width of the footway and affected pedestrian flow. The call box would not result in a pinch point as it would align with the docking station; thus, the proposal would not have a detrimental impact upon pedestrian movement. Accordingly, the siting and appearance of the call box would not be detrimental to the safe and efficient operation of the highway.

Anti-social behaviour and crime

The Council consider that the proposal could encourage anti-social behaviour in the area and create a concealment point which would negatively impact the public safety of this part of Mile End Road. The Metropolitan Police have objected to the proposal due to the visible presence of drug related activity as a consequence of existing and similarly designed free phone call kiosks within the borough and elsewhere in London. The reported crime figures for a 11 month period of October 2017-2018 showed that the highest rate of crime committed within the vicinity of the proposed postcode concerned anti-social behaviour. The Council highlights that the SG requires an analysis of local anti-social behavioural issues. The appellant has not submitted any analysis or demonstrable evidence to indicate that the concerns, relating to the effect on crime and anti-social behaviour, raised by the police have been properly assessed and considered. The absence of any form of assessment in this regard is a matter that weighs against the proposal. .

Appeal E - Mile End Road adj. Queen Mary University - Character and Appearance

44. The proposed call box would be located adjacent to the Engineering Building of Queen Mary University of London and close to its main entrance. A short distance to the east of the appeal site is a Grade II listed building; the former New People's Palace, originally a recreation and leisure hall but now the Queen's Building of Queen Mary University, and further east is a Grade II listed drinking fountain and clock tower. The Mile End Road façade of the Queen's Building is clad in buff-coloured brick and Portland stone and has five tall, vertical windows. The proposed kiosk would sit immediately to the front of a faculty building for the School of Engineering which is itself attached to the Queen's building via a modern link extension. Whilst not listed independently, there is a strong horizontal and vertical rhythm to the faculty building on account of its design and fenestration and the facing in Portland Stone matches that of the listed building.
45. An avenue of attractive street trees runs immediately to the front of the building and those trees and the lampposts help to accentuate the vertical rhythm of the adjacent building. An existing advertisement closely adjacent is less sympathetic on account of its position on the pavement. The addition of the proposed call box, located close to the existing advertisement display, would result in the pavement being dominated by two large items of street furniture, neither of which would reflect the established vertical rhythm of the street trees and lampposts. The proposal would be a prominent addition to this section of Mile End Road due to its modern design, scale and massing. For these reasons, the scheme would be visually intrusive and would harm the character and appearance of the area.
46. While the call box would cause harm to the character and appearance of the immediate vicinity, views of the Grade II listed buildings would not be unduly interrupted because of the distance between the proposal and heritage assets which lie further along the street. The existing advertisement display would be situated between the scheme and listed buildings; thus, the proposal would not have any notable impact on how the heritage assets are experienced. Consequently, the proposal would have a neutral effect on the heritage assets and would preserve the setting of the listed buildings.

Highway

47. The proposed call box would reduce the width of the pavement. During the time of my site visit this area had moderate levels of pedestrian flow. The appellant has submitted a site-specific highways analysis to demonstrate that the proposal would not have a harmful effect upon the safe and efficient operation of the highway. The analysis states that the site experiences low levels of pedestrian flow. In contrast, the Council consider the surrounding area experiences a high level of footfall given the proximity to the Queen Mary University of London, commercial uses and a variety of local buses.
48. Whilst the proposal would be located close to the entrance of the Engineering Building, the existing advertisement display has already reduced the width of the pavement and impacted the flow of pedestrians. The call box would not have a detrimental impact upon pedestrian movement because it would not result in a pinch point and would broadly align with the existing street furniture. Accordingly, the siting and appearance of the call box would not be detrimental to the safe and efficient operation of the highway.

Anti-social behaviour and crime

49. The Council consider that the proposal could encourage anti-social behaviour in the area and create a concealment point which would negatively impact the public safety of this part of Mile End Road. The Metropolitan Police have objected to the proposal due to

the visible presence of drug related activity as a consequence of existing and similarly designed free phone call kiosks within the borough and elsewhere in London. The reported crime figures for a 11 month period of October 2017-2018 showed that the highest rate of crime committed within the vicinity of the proposed postcode concerned anti-social behaviour.

The Council highlights that the SG requires an analysis of local anti-social behavioural issues. The appellant has not submitted any analysis or demonstrable evidence to indicate that the concerns, relating to the effect on crime and anti-social behaviour, raised by the police have been properly assessed and considered. The absence of any form of assessment in this regard is a matter that weighs against the proposal.

Other Matters

50. My attention has been drawn to other appeal decisions. I do not have the full details of the other cases and so cannot determine whether the circumstances are comparable to the proposals before me. Notwithstanding this, the proposed call boxes have their own settings and my conclusions are based on the site specific circumstances of each appeal. As such, the other appeal decisions referred to are not determinative points in favour of the proposals.

Conclusions and Recommendations

51. For the reasons given above, I recommend that all of the Appeals should be dismissed.

L M Wilson

APPEALS PLANNING OFFICER

Inspector's Decision

52. I have considered all the submitted evidence and the Appeal Planning Officer's report, and, on that basis, I too agree that all of the Appeals should be dismissed.

Chris Preston

INSPECTOR