



Appeal Decision

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

Decision by C 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.
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Appeal A Ref: APP/E5900/W/19/3231226

214 Whitechapel Road, London, E1 1BJ

Grid Reference Easting 534873, Grid Reference Northing 181855

- The application Ref PA/18/03192, dated 7 November 2018, was refused by notice dated 21 December 2018.
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Appeal B Ref: APP/E5900/W/19/3231223

139-149 Whitechapel Road, London, E1 1DT

Grid Reference Easting 534329, Grid Reference Northing 181663

- The application Ref PA/18/03195, dated 7 November 2018, was refused by notice dated 21 December 2018.
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Appeal C Ref: APP/E5900/W/19/3231312

45 Whitechapel Road, London, E1 1DU

Grid Reference Easting 534125, Grid Reference Northing 181531

- The application Ref PA/18/03186, dated 7 November 2018, was refused by notice dated 21 December 2018.
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Decisions

1. Appeals A-C 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 C

3. The Appeals relate to proposals by Maximus Networks Ltd for the installation of 'a public call box' at three 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 would be 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. 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 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 Policies 6.9 and 7.6 of TLP along with the Transport for London Pedestrian Comfort Guidance (PCG).

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).

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.

Main Issues

15. 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 the nearby listed buildings (Appeal A only);
 - upon the safe and efficient operation of the highway (all Appeals); and
 - anti-social behaviour and crime (all Appeals).

Reasons for the Recommendation

Appeal A - 214 Whitechapel Road

³ APP/X5990/A/12/2187244

⁴ Murrell v SSCLG [2010] EWCA Civ 1367

Character and Appearance

16. The appeal site is located close to a busy junction. The quality of buildings varies within this section of Whitechapel Road. There are a mix of commercial, residential and educational uses in the area. On the opposite side of Whitechapel Road are two grade II listed buildings; Albion Brewery and a K2 telephone kiosk. Albion Brewery is a four-storey building with a brick façade, it has white stone cornicing and bands. The listed telephone box was designed by Giles Gilbert Scott and dates back to 1927.
17. The call box would be sited adjacent to an existing dual purpose kiosk. This section of the pavement already has a cluttered appearance because of the existing street furniture which comprises a waste bin, street trees, signage and existing telephone boxes. The proposal would be a prominent addition to the street scene due to its design, scale and massing. The siting of two kiosks adjacent to each other would be harmful to the character and appearance of the area because the proposal would result in two dominant features which are not characteristic of the area. For all of those reasons, the siting and appearance of the scheme would increase visual clutter and would harm the character and appearance of the area.
18. 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.
19. Whilst the proposal would cause harm to the character and appearance of the immediate vicinity, the 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 those 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.
20. The Council's reason for refusal refers to MDD Policy DM25, this policy relates to protecting amenity of existing and future residents and therefore is not relevant to this issue.

Highway

21. The call box would be located next to the cycle superhighway and would reduce the width of the pavement. Whitechapel Underground Station is a short walk from the appeal site. During the time of my site visit, this area of pavement had high levels of pedestrian flow. I have seen nothing to suggest that my observations are untypical.
22. The appellant has submitted a site-specific highways analysis which demonstrates that the proposal would not have a harmful effect upon the safe and efficient operation of the highway. The SG requires a minimum unobstructed footway of 2m in width and a clearance of 0.45m from the carriageway. The analysis shows that approximately 7.7 metres of the footway would be unobstructed following the

installation of the call box and it would be situated 0.45m from the kerb. The proposal would not create a pinch point nor impact the flow of pedestrians because the call box would broadly align with the existing street furniture and the unobstructed footway width would be adequate.

23. Accordingly, the siting of the call box would not be detrimental to the safe and efficient operation of the highway.

Anti-social behaviour and crime

24. 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 Whitechapel 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.
25. Residents have also expressed concern that the existing dual purpose kiosk, located next to the appeal site, attracts drug users and dealers and generates anti-social behaviour. Whilst that evidence is to some extent anecdotal, it tallies with the consultation response of the police and I have no reason to doubt that the responses of those living nearby are a genuine reflection of their experiences. Therefore, based on the evidence submitted, there is a likelihood that the siting and appearance of an additional call box would increase the level of anti-social behaviour and crime as a result of the increased concentration of such facilities in a compact area.
26. 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 raised by the police and local residents have been properly assessed and considered and concerns relating to the effect on crime and anti-social behaviour weigh against the proposal.

Appeal B - 139-149 Whitechapel Road

Character and Appearance

27. The proposed call box would be situated on a stretch of pavement located adjacent to a petrol station and an existing dual purpose kiosk. This section of Whitechapel Road is characterised by mainly commercial uses. Street trees, a street cabinet and street signs are within the vicinity of the site. Due to the call box's footprint and height it would be a prominent addition to this section of Whitechapel Road. There would be a lack of spacing between the proposed and existing dual purpose kiosk. The proposal would result in this section of the pavement appearing cluttered because there would be two dominant modern structures located next to each other.
28. Accordingly, the siting and appearance of the proposed call box would harm the character and appearance of the area.

Highway

29. The proposed call box would reduce the width of the pavement. During the time of my site visit this section of Whitechapel Road had high levels of pedestrian flow. I have seen nothing to suggest that my observations are untypical.
30. The appellant has submitted a site-specific highways analysis which demonstrates that the proposal would not have a harmful effect upon the safe and efficient operation of the highway. It was evident, on the site visit, that the existing dual purpose kiosk has already impacted the flow of pedestrians. The flow of pedestrians would not be adversely affected, by the proposal, because the call box would be broadly in line with the existing kiosk and adequate unobstructed footway would be maintained.
31. Accordingly, the siting of the call box would not be detrimental to the safe and efficient operation of the highway.

Anti-social behaviour and crime

32. The appellant considers the shallow profile of the call box would improve visibility and discourage any anti-social behaviour or criminal activity.
33. 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. Nothing has been presented by the appellant to indicate that the statistics referred to by the police 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.
34. 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. The absence of any form of assessment in that regard is a matter that weighs against the proposal, having regard to the statistics produced regarding the use of similar facilities for criminal purposes in the local area.

Appeal C - 45 Whitechapel Road

Character and Appearance

35. The proposed call box would be situated adjacent to a row of relatively modern retail units. On the opposite side of the road is a park and there are residential properties within the vicinity. This section of pavement is relatively uncluttered, existing street furniture consists of lampposts and a street cabinet.
36. Whilst the call box would undoubtedly introduce a more noticeable piece of street furniture, in this instance, it would not have an adverse impact upon the quality of the character and appearance of the area. The size of the call box would adhere to that set by the GPDO and its contemporary appearance would not be out of character with the modern commercial character of its surroundings. Additionally, the existing street furniture is small in scale and the proposed spacing between the

call box, street cabinet and lamppost would ensure that the pavement would not appear cluttered.

37. Accordingly, the siting and appearance of the proposed call box would not adversely affect the character and appearance of the area.

Highway

38. 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.
39. The appellant has submitted a site-specific highways analysis which demonstrates that the proposal would not result in any material impact on the capacity of this section of footway nor compromise safety. The analysis acknowledges that the site experiences high levels of pedestrian flow and the overall width of the footway does not comply with the PCG. Whilst the unobstructed width of the footway would comply with the SG, the call box would be substantially wider than existing street furniture and would interrupt the free flow of pedestrians. The proposal would have an unacceptably adverse effect on pedestrian movement because the call box would create a pinch point where the overall width of the pavement is substandard.
40. Accordingly, the siting of the scheme would be detrimental to the safe and efficient operation of the highway.

Anti-social behaviour and crime

41. The appellant considers that the shallow profile of the call box would improve visibility and discourage any anti-social behaviour or criminal activity.
42. 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. Nothing has been presented by the appellant to indicate that the statistics referred to by the police 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.
43. Nonetheless, the appellant has not provided any evidence to suggest that an 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. The absence of any form of assessment in that regard is a matter that weighs against the proposal, having regard to the statistics produced regarding the use of similar facilities for criminal purposes in the local area.

Other Matters

44. Both main parties have drawn my attention 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

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

L M Wilson

APPEALS PLANNING OFFICER

Inspector's Decision

46. 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.

C Preston

INSPECTOR