
Appeal Decisions

by **D J Barnes MBA BSc(Hons) DipTP MRTPI**

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

Decisions date: 26th November 2019

Appeal Ref: APP/K5600/W/19/3231600

Public Highway, 279 Kensington High Street, London W8 6NA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015.
 - The appeal is made by Maximus Networks Limited against the decision of the Council of the Royal Borough of Kensington and Chelsea.
 - The application Ref PA/18/07262, dated 7 November 2018, was refused by notice dated 28 December 2018.
 - The development proposed is a public call box.
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Appeal Ref: APP/K5600/W/19/3231613

Public Highway, 127 Kensington High Street, London W8 5SF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015.
 - The appeal is made by Maximus Networks Limited against the decision of the Council of the Royal Borough of Kensington and Chelsea.
 - The application Ref PA/18/07206, dated 7 November 2018, was refused by notice dated 31 December 2018.
 - The development proposed is a public call box.
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Appeal Ref: APP/K5600/W/19/3231614

Public Highway, 166 Kensington Church Street, London W8 4BN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015.
 - The appeal is made by Maximus Networks Limited against the decision of the Council of the Royal Borough of Kensington and Chelsea.
 - The application Ref PA/18/07213, dated 7 November 2018, was refused by notice dated 31 December 2018.
 - The development proposed is a public call box.
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Appeal Ref: APP/K5600/W/19/3231615

Public Highway, 178 Kensington Church Street, London W8 4DP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015.
 - The appeal is made by Maximus Networks Limited against the decision of the Council of the Royal Borough of Kensington and Chelsea.
 - The application Ref PA/18/07215, dated 7 November 2018, was refused by notice dated 31 December 2018.
 - The development proposed is a public call box.
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Appeal Ref: APP/K5600/W/19/3231621

Public Highway, 225 Kensington High Street, London W8 6SA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015.
 - The appeal is made by Maximus Networks Limited against the decision of the Council of the Royal Borough of Kensington and Chelsea.
 - The application Ref PA/18/07243, dated 7 November 2018, was refused by notice dated 31 December 2018.
 - The development proposed is a public call box.
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Appeal Ref: APP/K5600/W/19/3231622

Public Highway, 243 Kensington High Street, London W8 6SA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015.
 - The appeal is made by Maximus Networks Limited against the decision of the Council of the Royal Borough of Kensington and Chelsea.
 - The application Ref PA/18/07244, dated 7 November 2018, was refused by notice dated 31 December 2018.
 - The development proposed is a public call box.
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Decisions

1. The appeals are dismissed.

Procedural Matters

2. These appeals relate to separate proposals for the installation of similarly designed public call boxes which would be located within the public highway at varying locations along Kensington High Street and Kensington Church Street. For simplicity, the appeals have been included on the same decision letter.
3. As a licenced electronic communications code operator, the appellant benefits from deemed planning permission for the proposed public call boxes erected as communications apparatus that fall within the permitted development rights of Schedule 2, Part 16, Class A, paragraph A.1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO), subject to the prior approval requirements under paragraph A.3. The appellant applied to the Council on that basis. The Council determined that prior approval was required for the siting and appearance of the communication apparatus.
4. On 25 May 2019, the Town and Country Planning (Permitted Development, Advertisement and Compensation Amendments) (England) Regulations 2019 came into force, amending the GPDO. This amendment removes the permitted development right to install a public call box under Schedule 2, Part 16, Class A of the GPDO. However, transitional and saving provisions at Part 5 of the 2019 Regulations provide that where an appeal has been made within 6 months of the date of notice of refusal of a prior approval application submitted before 25 May 2019, the planning permission granted by Schedule 2, Part 16, Class A of the GPDO continues to have effect in relation to a public call box as if the amendments made to the GPDO by the 2019 Regulations had not been made. This is the case in respect of these appeals.

5. Class A of Part 16, Schedule 2 of 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*'. The judgement in *Westminster City Council v Secretary of State for Housing, Communities and Local Government & New World Payphones Ltd* [2019] EWHC 176 (Admin) (the Westminster judgement) considered the matter of development for the purpose of an electronic communications code operator's electronic communications network for the purposes of Part 16, Class A of the GPDO.
6. The Council reached their decisions on the appeal applications prior to the passing down of the Westminster judgement. The reasons for refusal did not refer directly to the judgement but claimed that the applications for prior approval did not fall within the ambit of Part 16, Class A of the GPDO. The basis for this claim was not fully explained in the Planning Officers' reports. The reasons for refusal did also refer to various matters relating to siting and appearance. However, the Westminster judgement confirmed that the assessment as to whether a telecommunications apparatus comes within the scope of Part 16, Class A of the GPDO has to be made before siting and appearance are considered.
7. Reference has been made by others to the potential for the proposed public call boxes to be used for the display of advertisements. The erection of a telecommunications apparatus and the display of advertisements are distinct and separate matters requiring different applications. These appeals relate to the erection of a structure only and not any advertisement consent that may otherwise be required. These appeals have, therefore, been assessed on that basis.

Main Issue

8. When taking into account the commentary above, including the Council's claim, it is considered that the main issue for these appeals is whether or not the proposals are solely for the purpose of the operator's electronic communications network.

Reasons

9. Each appeal scheme is described by the appellant as including the erection of a public call box which is an electronic communication apparatus comprising a public telephone, Wi-Fi and other technology related to mobile telecommunications. The design of the proposed developments is referred to by the appellant as being a Max 2 public call box.
10. The appellant has provided Counsel's opinion on the relevance of the Westminster judgment to the appellant's various appeals involving the Max 2 design. The opinion states that '*in the absence of advertising forming part of the application, those glazed parts of the call boxes cannot lead to any conclusion of there being a dual purpose for advertising*'. It concludes that '*the New World case is based on materially different facts from the Maximus cases, such that it is of no application to the appeals currently under consideration by the Planning Inspectorate*'.
11. However, the Westminster judgement 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'. 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.'

12. It is evident from the drawing MAX 2 ASSEMBLY Rev C dated 6 September 2018, which accompanied the appeal applications, that the rear elevation of each of the proposed public call boxes is designed to house a '*non-illuminated display panel*' with a '*visual area*' measuring 1100mm by 1700mm. From this evidence the rear elevations of the proposed developments would incorporate panels which are specifically designed for display purposes and thereby resulting in these structures at least falling partly outside Part 16, Class A of the GPDO. This assessment is irrespective of whether such display panels might also be used to access the internal equipment within the structures for maintenance purposes.
13. Accordingly, these are appeal cases where it is concluded that the proposals are not solely for the purpose of the operator's electronic communications network and, as such, they fall outside Schedule 2, Part 16, Class A of the GPDO. For this reason, it is not necessary to consider issues relating to their siting or appearance, with no site visits being deemed necessary, because these appeals should be dismissed.

D J Barnes

INSPECTOR