



Appeal Decisions

Site visit made on 5 November 2019

by P Wookey BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27th November 2019

ALL APPEALS

- The appeals are made under Section 78 of the Town and Country Planning Act 1990 against refusals 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 Maximus Networks Ltd against the decisions of the Westminster City Council.
 - The development in each appeal is described as a public call box.
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Appeal A Ref: APP/X5990/W/19/3231086

Public Highway 66 Seymour Street, London

Grid Reference: Easting: 527676 and Northing: 181088

- The application Ref 18/09382/TELCOM, dated 2 November 2018, was refused by notice dated 20 December 2018.
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Appeal B Ref: APP/X5990/W/19/3231058

Public Highway 396 Oxford Street, London, W1C 1JX

Grid Reference: Easting 528385 and Northing: 181100

- The application Ref 18/09345/TELCOM, dated 1 November 2018, was refused by notice dated 17 December 2018.
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Appeal C Ref: APP/X5990/W/19/3231061

Public Highway 491 Oxford Street, London, W1C 2AU

Grid Reference: Easting 528099 and Northing: 181034

- The application Ref 18/09339/TELCOM, dated 1 November 2018, was refused by notice dated 17 December 2018.
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Appeal D Ref: APP/X5990/W/19/3231075

Public Highway 350 Oxford Street, London WC1 1BY

Grid Reference: Easting 528600 and Northing: 181142

- The application Ref 18/09347/TELCOM, dated 1 November 2018, was refused by notice dated 18 December 2018.
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Appeal E Ref: APP/X5990/W/19/3231068

Public Highway 136 Oxford Street, London W1D 1LX

Grid Reference: Easting 529349 and Northing: 181303

- The application Ref 18/09294/TELCOM, dated 31 October 2018, was refused by notice dated 18 December 2018.
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Appeal Ref F: APP/X5990/W/19/3231074

Public Highway 266 Oxford Street, London, W1C 1DR

Grid Reference: Easting: 528889 and Northing: 181207

- The application Ref 18/09337/TELCOM, dated 1 November 2018, was refused by notice dated 18 December 2018.

Appeal Ref G: APP/X5990/W/19/3231083

Public Highway 465 Oxford Street, London W1C 2AU

Grid Reference: Easting 528159 and Northing: 181043

- The application Ref 18/09338/TELCOM, dated 1 November 2018, was refused by notice dated 20 December 2018.

Decision

1. Appeals A, B, C, D, E, F and G are dismissed.

Procedural matters

2. The appellant has been granted powers to install public call boxes as an Electronic Code Systems Operator and benefits from permission in principle under Part 16 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO), subject to prior approval from the local planning authority in respect of siting and appearance. The principle¹ of development is not at issue.
3. Both parties have commented upon the High Court ruling of Westminster CC vs SSHCLG & New World Payphones Ltd [2019] EWHC 176 (Admin) as this was published before the parties submitted their evidence.
4. The Council has referred to other appeal decisions² which I have had regard to, but in each of those appeals the design of the kiosk differed to the call boxes proposed in the appeals of this decision. The Council states that the proposed call box is designed for the display of advertisements and a reason for refusal in each appeal is that the proposed call box would not fall within the ambit of Schedule 2, Part 16, Class A of the GPDO.
5. Based on the evidence submitted by the appellant on the design³, function and structure of the proposed call box, which is the same in each case and Counsel opinion⁴, advertising would not form part of the development proposed. I also note that the appellant has not submitted any applications for advertisement consent to accompany the original applications for prior approval. Accordingly, the proposed call box would not have a dual purpose and can be distinguished from those forming the aforementioned Westminster Judgement. As a result, the call box proposed in each appeal would fall within Schedule 2, Part 16, Class A of the GPDO and I have based my decision on that basis.
6. The description of the development proposed is taken from the original application form which differs to that shown in the Council's Decision Notice, in each case.

¹ Murrell V Secretary of State for Communities and Local Government and Broadland District Council [2010]

² PINS Appeal reference: APP/X5990/W/17/3188331; APP/X5990/W/17/3190381; APP/X5990/W/17/3190389; APP/X5990/W/17/3190402

³ Appellants evidence – Maximus Networks Ltd Public Call Box Design and Drawing No 'Max 2 Assembly'

⁴ Counsel Opinion, dated 11 March 2019

7. The Council states that in relation to all appeals that there are other telephone kiosks nearby and therefore there is no need for additional ones. Article 3(1) and Schedule 2, Part 16, Class A.3(4) of the GPDO require the local planning authority to assess the proposed development solely on the basis of its siting and appearance, taking into account any representations received. My determination has been made on that basis.
8. Whilst the appellant has referred to the purported public benefits of the proposed call boxes, I have not taken these matters into account, other than in respect of heritage assets where paragraph 196 of the National Planning Policy Framework (the Framework) advises "Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal".
9. The Framework supports high quality communications infrastructure and requires that local planning authorities must determine applications on planning grounds only. In accordance with the provisions of Schedule 2, Part 16 of the GPDO (as amended), and subject to any relevant exception, limitation or condition specified therein, development by or on behalf of an electronic communications code operator for the purpose of the operator's electronic communications network is permitted development. Therefore, matters such as the need for the development are not at issue in these appeals.
10. The principle of development is established by the GPDO and the provisions of Schedule 2, Part 16, Class A of the GPDO do not require regard to be had to the development plan. However, I have had regard to policies of the development plan, namely policies S7, S25, S28, and S41 of the Westminster City Plan (2016) (CP), DES 1, DES 7, DES 8, DES 9, DES 10 and TRANS 3 of the Unitary Development Plan (2007) (UDP) and guidance provided in the Westminster Way Supplementary Planning Document (2011) (SPD), only in so far as they are a material consideration relevant to matters of siting and appearance. I have also taken into account the Transport for London's Pedestrian Comfort Guidance for London (2010) referred to by the appellant in each of the appeals, as it is relevant to matters of siting and appearance.

Location

11. With the exception of Appeal A which is located on Seymour Street, Appeals B-G are located at sites on Oxford Street. Oxford Street is a primary shopping frontage within the West End International Shopping Centre as defined in the CP. The Council states that the Oxford, Regent and Bond Street Action Plan states that streets must be visually striking, free of congestion and that the visual impact of Oxford Street would be improved by uncluttered pavements that contain only the minimum necessary street furniture.
12. As the issues raised by each of the appeals are similar, in the interests of conciseness all of the appeals are dealt with in the same decision.
13. Appeal A is located close to, but not within the Portman Estate Conservation Area (PECA). Appeal B is located close to boundary of the Mayfair Conservation Area (MCA) and the Stratford Place Conservation Area (SPCA) and is in close proximity to No 400 Oxford Street which is a Grade II Listed Building (LB). Appeal C is located adjacent to the boundary of the PECA, the SPCA, the MCA

and the Harley Street Conservation Area (HSCA). Appeal D is in close proximity to the boundary of the SPCA, the MCA and the HSCA.

14. Appeal E is located immediately adjacent to the boundary of the East Marylebone Conservation Area (EMCA) and the Soho Conservation Area (SHA) and immediately opposite a Grade II LB at No 147 Oxford Street. Appeal F is located adjacent to the boundary of the HSCA and the MCA and Appeal G is in close proximity to the boundary of the MCA and the SPCA and the LB at No 400 Oxford Street.
15. With regards the CA's, Section 72(1) of the Planning (Listed Building and Conservation Area s) Act 1990 requires that special attention shall be paid to the desirability of preserving or enhancing the character and appearance of that area. These appeals have therefore been determined on that basis.
16. Paragraph 193 of the National Planning Policy Framework (2019) (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 asset's conservation. Paragraph 194 of the Framework states that any harm to or loss of significance of a designated asset from its alteration or destruction or from development within its setting should require clear and convincing justification.

Development Proposed

17. All of the Appeals relate to the installation of a Max 2 public call box by Maximus Networks Ltd. The appellant states that the proposed call boxes would result in public benefits by providing public call box functions for the benefit of the whole community and would provide a beneficial level of coverage which would fill gaps in the existing mobile network. The appellant states that the phone would be easily accessible by wheelchair users and the width provides an element of defensible space in the absence of a more traditional cabin.
18. The Max 2 call box proposed in each of the appeals would measure approximately 1.325 metres wide, approximately 3.119 metres high and approximately 0.976 metres deep. The canopy would serve as a shelter and is made of solar panels which would power the phone. There would be Light Emitting Diode strips on the outside edges of the structure for safety purposes during hours of darkness and the overall colour of the proposed call box would be gun metal grey or black. There would be a central panel on the opposite side of the phone panel to allow access to the equipment for maintenance purposes. The proposed call box would be located approximately 0.45 metres from the pavement edge in each case.

Main Issues

19. The main issues in each Appeal are:
 - The effect on the siting and appearance of the call box on the character and appearance of the area; and,
 - In the case of all appeals whether the call box would preserve or enhance the character or appearance of a Conservation Area (CA); and,

- In the case of Appeals B, C, E and G the effect of the call box on the significance of a Listed Building (LB) within whose setting it may be located; and,
- The effect of the call box on the safe and efficient operation of the highway.

Reasons

Appeal A - Public Highway 66 Seymour Street, London

20. The proposed call box would be located close to the edge of the pavement outside No 66 Seymour Street which is an office building, on the junction with Edgware Road. Whilst the proposed call box is not within a CA it is immediately adjacent to the boundary of the PECA which is characterised by its late eighteenth century residential character including its original grid iron layout of streets and squares with Georgian terraces lining them.
21. There is a variety of uses in the immediate vicinity of the location of the proposed call box including retail uses, cafes, restaurants and offices and from its location the vistas of Seymour Street, in either direction presents the more characteristic architectural style and pattern of development of the adjacent PECA. Therefore, the location of the proposed call box makes an important contribution to the setting of the CA.
22. There is very little existing street furniture in this part of Seymour Street, with the exception of a street lighting column and a traffic information sign closer to the junction with Edgware Road. As a result, the proposed call box, given its design, size and location on the pavement would appear as an incongruous and dominant addition to the street scene, given that the pavement is uncluttered in this location. Its visual impact would have a detrimental effect on the character and appearance of Seymour Street, and it would fail to preserve or enhance the character and appearance of the setting of the adjacent PECA.
23. The proposed call box would reduce the width of the pavement directly in front of No 66 Seymour Street at the entrance to the Marble Arch House office building which is reasonably close to the junction of Seymour Street and Edgware Road, where pedestrians entering or leaving the office building would merge with other pedestrians moving along the pavement or congregating at the nearby pedestrian crossings.
24. I have had regard to the appellants evidence⁵ on levels of pedestrian flows and the effect of the proposed call box on the reduction of pavement width, however based on my site visit, which took place around midday, the pavement was experiencing a high flow of pedestrians due to the concentration of office and other retail uses in the immediate vicinity. The effect of the proposed call box would be to create an obstruction on the pavement, which would have an adverse effect on visibility for drivers and pedestrians at the pedestrian crossing points and significantly impede pedestrian flows along the pavement.

⁵ Site Highway Analysis

Appeal B- Public Highway 396 Oxford Street, London, W1C 1JX

25. The proposed call box would be located close to the edge of the pavement outside No 396 Oxford Street and whilst not in a CA, the boundaries of the MCA and SPCA run along the opposite side of the street and the prominent façade of the adjacent LB at No 400 Oxford Street is dominant in the street scene. The Oxford Street frontage of the CA's constitute large scale buildings with some variation of architectural styles but in this location is largely dominated by Edwardian premises and the LB at No 400 Oxford Street.
26. The street scene is characterised by the vista along Oxford Street and a wide pavement which is uncluttered by existing street furniture, with the exception of low stone bench's, lighting columns and trees planted within the pavement. Due to the design and size of the proposed call box, it would appear incongruous in this location as it would introduce an additional item of street furniture into an area of pavement which is relatively free of street clutter and which as a result allows clear, uninterrupted views of Oxford Street in both directions. Given its proposed location, it would have a significant adverse impact on the setting of the LB, the MCA and SPCA. The proposed call box, due to its contemporary design would be significantly detract from the setting of the LB and its grand Portland stone façade.
27. By reason of its location on the edge of the pavement, the size and design of the proposed call box would introduce a substantial structure to the pavement in an area which experiences high pedestrian flows and is close to where pedestrians cross Oxford Street at its junction with Duke Street. The appellant's evidence⁶ acknowledges that the pavement experiences high levels of pedestrian flows but nevertheless could accommodate the proposed call box. However, based on my site visit, when there were significant congregations of pedestrians waiting to cross the road, the impediment of the proposed call box in this location would have a harmful effect on the safe and efficient operation of the highway and of its users.

Appeal C - Public Highway 491 Oxford Street, London, W1C 2AU

28. The proposed call box would be located close to the edge of the pavement outside No 491 Oxford Street, which is a relatively modern development. Whilst not within a CA, the boundaries of the adjacent PECA, MCA, HSCA and SPCA would border the location of the proposed call box. The area is characterised by large scale commercial buildings with retail frontages at ground floor level. Whilst there is a mix of architectural styles, including more recent modern architectural style in the vicinity of the proposed call box, the nearby LB at No 400 Oxford Street, is a visually prominent feature in the vista along Oxford Street from this location.
29. In the location of the proposed call box, the pavement is wide and there is a limited amount of street furniture including litter bins, lighting columns, pedestrian crossing traffic lights and at junctions with Orchard Street and Portman Street there are traffic lights. Tree planting within the pavement, on the opposite side of the street help to create an open and spacious street scene which is relatively free from extraneous street furniture.

⁶ Site Highways analysis 18/09345/TELCOM- 392-396 OXFORD STREET

30. The addition of the proposed call box, due to its design and scale in a street scene largely devoid of street furniture clutter, would therefore result in an obtrusive and dominant feature which would have a significant adverse impact on the character and appearance of the area, on the setting of the nearby CA's and on the setting of the LB.
31. The pavement in the appeal location is relatively wide and the Council states that it has an overall width of approximately 8.4 metres. Allowing for the proposed call box being set back slightly from the edge of the carriageway, after installation approximately 6.625 metres of the pavement would be clear. The appellant acknowledges that the pavement experiences high pedestrian flows and states that due to the width of the pavement the proposed call box would not compromise the capacity of this section of the footway or the safety of pedestrians. Based on my site visit, given the width of the pavement and the location of the proposed call box, there would be no adverse effect on pedestrian flows or safety and therefore there would be no harm to the safe and efficient operation of the highway.

Appeal D - Public Highway 350 Oxford Street, London WC1 1BY

32. The proposed call box would be located close to the edge of the pavement outside No 350 Oxford Street and at the junction of Oxford Street and Marylebone Lane and whilst not in a CA, it would be in close proximity to the nearby boundaries of the SPCA, the MCA and the HSCA. The area is characterised by long vistas along Oxford Street which in the immediate vicinity has a variety of architectural styles and large-scale buildings of various ages, with ground floor retail frontages, giving the area its commercial character.
33. In this location where Oxford Street and Marylebone Lane converge the area is pedestrianised and has a variety of street furniture which includes street lighting, traffic lights and litter bins. In close proximity to the proposed call box and to the rear of a gift kiosk on Marylebone Lane, there are bike racks, a number of existing telephone kiosks and a Transport for London information plinth.
34. In contrast, either side of the location of the proposed call box, trees have been planted at regular intervals close to the edge of the pavement and the street furniture along Oxford Street has been neatly aligned and is not visually obtrusive. As a result, the proposed call box due to its design, scale and prominent position close to the edge of the pavement would be visually discordant and as a result would have a significant impact on the character and appearance of the area and on the setting of the CA's which border the appeal site.
35. At the time of my site visit there were heavy flows of pedestrians walking along Oxford Street in the location of the proposed call box and congregating around the gift kiosk or waiting to cross at the nearby pedestrian crossing. Whilst the appellants states that the addition of the proposed call box would not impact on the capacity or safety of the footway in this location, the size and position of the proposed call box would significantly and unacceptably impede the safe and efficient flows of pedestrians in this location by obstructing the flow of pedestrians and impeding views of oncoming traffic at the pedestrian crossing.

Appeal E - Public Highway 136 Oxford Street, London W1D 1LX

36. The proposed call box would be located close to the edge of the pavement outside of No 136 Oxford Street and adjacent to the boundary of the EMCA, and the boundary of the SHA and directly opposite the Grade II LB at No 147 Oxford Street. The area is characterised by terraces of large-scale buildings of various architectural styles with retail frontages at ground floor level fronting Oxford Street. The proposed call box would be located close to the junction with Wells Street which at the time of my visit was busy with traffic and pedestrians crossing the roads. Trees are planted at regular intervals within the pavement softening the street scene and the street is largely devoid of street furniture other than traffic lights at the crossroads, litter bins and bollards at the interchange. There is a food kiosk located on Wells Street which would be close to the proposed call box, but on the opposite side of the street.
37. The proposed call box due to its size and prominent design would have a significant visual impact on the character and appearance of the area, being incongruous in the relatively uncluttered pavement. It would be prominent in the views in either direction, along the broad vista of Oxford Street from the location. Given the proposed call box's prominence and visibility from the surrounding area, it would have a significant harmful effect on the setting of the adjacent CA's and on the setting of the LB located immediately opposite at No 147 Oxford Street.
38. At the time of my visit there were heavy pedestrian flows along the pavement in the location of the proposed call box and large groups congregating at the traffic light controlled pedestrian crossing point with Wells Street and the opposite side of Oxford Street. The addition of the proposed call box, due to its size and proposed location, would create an obstruction to pedestrian movement and obstruct views of traffic approaching the pedestrian crossing points. This would result in an unacceptable and harmful effect on the efficient and safe operation of highway for traffic and pedestrian users.

Appeal F - Public Highway 266 Oxford Street, London, W1C 1DR

39. The proposed call box would be located close to the edge of the pavement outside No 266 Oxford Street and would be a prominent feature when viewed from the two adjacent CA's of HSCA and MCA. There is a range of architectural styles and buildings of different ages, but with retail frontages at ground floor area, which gives the area an eclectic character and appearance. Oxford Street in this location is wide and spacious with long vistas in either direction along its length.
40. The pavement in the immediate vicinity of the proposed call box is largely devoid of any street furniture with the exception of street lighting, low level stone bench's, litter bins, a bus stop and trees planted at regular intervals within the pavement.
41. The addition of the proposed call box, due to its design and size, would appear prominent and visually intrusive in an area of pavement which is largely free of street furniture clutter. The proposed call box due to its size would partially obstruct views along Oxford Street and as a result would have a significant

adverse effect on the way in which the character and appearance of the area is experienced and on the setting of the adjacent CA's.

42. Whilst the pavement is wide in this location, its efficient and safe operation is not impeded in any way by the clutter of street furniture. At the time of my site visit there was a high flow of pedestrians using the pavement and the addition of the proposed call box would narrow the width of the pavement, forming an unacceptable obstacle to the free flow of pedestrians. Therefore, the proposed call box, would impede pedestrian movement and have a significant and detrimental effect on the safe and efficient operation of the highway in this location.

Appeal G - Public Highway 465 Oxford Street, London W1C 2AU

43. The proposed call box would be located close to the edge of the pavement outside of No 465 Oxford Street and is in a highly visible location from two adjacent CA's, the MCA and the SPCA and as a result forms an important part of the setting of the LB at No 400 Oxford Street, located nearby on the corner of Orchard Street. This area is characterised by long vistas along Oxford Street, due to its broad width and open appearance. The area has a range of architectural styles with older, grander properties contrasting with more modern developments which are of the same scale. The LB at No 400 Oxford Street, within the SPCA is visually prominent from the location of the proposed call box.
44. There is a paucity of street furniture on the pavements in the immediate vicinity of the proposed call box, except for street lighting columns, pedestrian crossing poles, litter bins which are fully aligned and are of a size and design which does not intrude on the streetscape. Further, trees which have been planted at regular intervals within the pavement and soften the appearance of the street scene. As a result of the uncluttered pavement, the long vistas along Oxford Street in both directions are largely unobstructed and contribute significantly to the setting of the nearby CA's and to the setting of the LB.
45. The appearance of the proposed call box, given its design and size would be incongruous in the views of the street in this location. It would appear to be alien in the streetscape and a dominant visual feature. This would have a significant detrimental visual effect on the character and appearance of the area and given its location would be harmful to the setting of the CA's and the LB, failing to preserve or enhance the setting of the designated heritage assets.
46. The relative lack of clutter caused by street furniture on the pavement in the location of the proposed call box enables the free flow of pedestrian movement, which at the time of my visit, early afternoon on a midweek day, was busy. The proposed call box would be close to a controlled pedestrian crossing but given its design and size would obstruct the visibility of drivers approaching the pedestrian crossing and impede the visibility for drivers and pedestrians. Further, the proposed call box would narrow the pavement and act as an impediment to the high flows of pedestrians experienced in this location. The proposed call box would therefore have a significant harmful effect on the safe and efficient operation of the highway for its users.

Other Matters

47. The appellant has referred to other appeal decisions which I have had regard to but as the circumstances relating to those appeals was different, I have based my decision on the evidence before me and on the merits of each individual case.

Conclusions

48. In Appeals A-G, the proposed call box would have significant adverse effects with regards siting and appearance and Appeals A, B, D, E, F and G would also have an adverse impact on the safe and efficient operation of the highway.
49. In all Appeals, the proposed call box would not preserve or enhance the setting of the adjacent CA's or the setting of a LB in Appeals B, C, E and G. Whilst the harm to the significance of the designated asset in each case would be less than substantial, the public benefits of the proposed call box stated by the appellant would not outweigh the harm identified, which is required by the Framework.
50. For the reasons set out above and having had regards to all matters raised, Appeals A-G are dismissed.

Paul Wookey

INSPECTOR