



Appeal Decisions

Desk based assessment undertaken on 25 November 2019

by Elizabeth Lawrence BTP MRTPI

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

Decision date: 27th November 2019

Appeal A Ref: APP/A5840/W/19/3228174

Public highway outside 364-366 Lordship Lane, London, SE22 8NA.

- 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 Ltd against the decision of the Council to the London Borough of Southwark.
 - The application Ref 18/AP/3176, dated 1 October 2018, was refused by notice dated 8 November 2018.
 - The development proposed is described as "*prior approval for siting and appearance: Installation of Public Call Box*"
-

Appeal B Ref: APP/A5840/W/19/3228178

East Dulwich Grove junction Townley Road, London, SE22 8SU.

- 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 Ltd against the decision of the Council of the London Borough of Southwark
 - The application Ref 18/AP/3180, dated 1 October 2018, was refused by notice dated 8 November 2018.
 - The development proposed is described as "*prior approval for siting and appearance: Installation of Public Call Box*"
-

Decisions

Appeal A - Decision

1. The appeal is dismissed.

Appeal B - Decision

2. The appeal is dismissed.

Procedural matters

3. I have not undertaken a site visit, but instead made a desk-based assessment of the proposal, to determine whether or not the proposal is solely for the purpose of the operator's electronic communications network.

Main Issue

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

Reasons

5. With both appeals the appellant submitted a letter dated 1 October 2018 with the applications for prior approval which state:

"The design of the call box to be installed is detailed within the technical specification document, plans and illustrative images enclosed with this application."

6. The covering letters also state:

"In addition to the requirements under the GDPO the following have also been provided to further support the application:

- *A written description, set out in this letter, and visual representation of the public call box to be installed."*

7. The List of application documents submitted by the appellant with each of the appeals similarly refers to:

- "A written description and visual representation of the public call box to be installed."

8. With both appeals the submitted written description for the proposed public call box does not refer to the non-illuminated display panel or the display of advertisements. Despite this it does state that the proposal is for the latest version of the Maximus public call box (referred to as "MAX 2").

9. The scaled drawing submitted with each of the appeal applications is referenced "MAX2 ASSEMBLY Rev C" and clearly identifies a "non-illuminated display panel" measuring 1100mm wide and 1700 millimetres tall on the rear side of the proposed public call box. The three-dimensional drawing that was submitted with each of the appeal applications shows an advertisement¹ being displayed within the identified "non-illuminated display panel".

10. The appellant has stated that the rear panel on both public call boxes would provide access to the inner workings of the call box. Notwithstanding this, it is apparent from the submitted plans that, with both appeals, the proposal includes a display panel designed and intended for the display of advertisements. No other function for the inbuilt "non-illuminated display panel" has been identified by the appellant.

11. I have taken into account that at the time the appeal applications were submitted, Regulation 6 and Class 16 of Schedule 3 to the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 granted deemed consent for the display of non-illuminated advertisements on the glazed surface of most telephone kiosks. However, that legislation is independent to the application of Schedule 2, Part 16, Class A of the Town and

¹ See 'advertisement' as defined in section 336(1) of the Town and Country planning Act 1990 (as amended) and in paragraph 002 Reference ID: 18b-002-20140306 of the Planning Practice Guidance.

Country Planning (General Permitted Development) (England) Order 2015, under which these appeals need to be determined.

12. Finally, in reaching this view I have taken into consideration the legal opinion submitted by the appellant concerning various appeals relating to "MAX 2" public phone boxes. At paragraphs 19 and 20 the legal opinion states that it is clear from the description for the design of the "MAX 2" call box, as attached to their opinion, that all of the design elements proposed form part of the telecommunications function and that the "MAX 2" appeal schemes do not include any advertising features. However, it is noted that the opinion does not refer to the detailed plan which includes a "non-illuminated display panel" or the illustrative plan submitted with the appeal applications. Neither of these plans are included in the description for the design of the "MAX 2" call boxes attached to the opinion.
13. Accordingly, I find that neither of the appeal proposals are solely for the purpose of the operator's electronic communications network, and as such fall outside Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015.

Conclusions

14. For the reasons given above and have regard to all matters raised, including in representations, I conclude that Appeals A and B should both be dismissed.

Elizabeth Lawrence

INSPECTOR