



Appeal Decisions

Site visit made on 31 July 2019

by E Brownless BA (Hons) Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 2nd December 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 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 City of Westminster Council.
 - The development proposed in each case is described as a 'call box'.
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Appeal A Ref: APP/X5990/W/18/3211293

98 Victoria Street, London SW1E 5JL

Grid Reference Easting 529139 Grid Reference Northing 179175

- The application Ref: 18/00912/TELCOM, dated 31 January 2018, was refused by notice dated 20 March 2018.
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Appeal B Ref: APP/X5990/W/18/3211322

1 Victoria Street, London SW1H 0ET

Grid Reference Easting 529843 Grid Reference Northing 179434

- The application Ref: 18/00919/TELCOM, dated 31 January 2018, was refused by notice dated 20 March 2018.
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Appeal C Ref: APP/X5990/W/19/3229400

1 Victoria Street, London SW1H 0ET

Grid Reference Easting 529843 Grid Reference Northing 179434

- The application Ref: 18/08781/TELCOM, dated 15 October 2018, was refused by notice dated 28 November 2018.
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Appeal D Ref: APP/X5990/W/18/3211319

4 Victoria Street, London SW1H 0NJ

Grid Reference Easting 529875 Grid Reference Northing 179471

- The application Ref: 18/00917/TELCOM, dated 31 January 2018, was refused by notice dated 20 March 2018.
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Appeal E Ref: APP/X5990/W/18/3211325

10 Victoria Street, London SW1H 0NN

Grid Reference Easting 529788 Grid Reference Northing 179417

- The application Ref: 18/00918/TELCOM, dated 31 January 2018, was refused by notice dated 20 March 2018.
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Appeal F Ref: APP/X5990/W/18/3211307

54 Victoria Street, London SW1P 4ZT

Grid Reference Easting 529462 Grid Reference Northing 179259

- The application Ref: 18/00914/TELCOM, dated 31 January 2018, was refused by notice dated 20 March 2018.
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Appeal G Ref: APP/X5990/W/18/3211311

55 Victoria Street, London SW1H 0EU

Grid Reference Easting 529662 Grid Reference Northing 179332

- The application Ref: 18/00916/TELCOM, dated 31 January 2018, was refused by notice dated 20 March 2018.
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Appeal H Ref: APP/X5990/W/18/3211314

70 Victoria Street, London SW1E 6SQ

Grid Reference Easting 529324 Grid Reference Northing 179223

- The application Ref: 18/00915/TELCOM, dated 31 January 2018, was refused by notice dated 20 March 2018.
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Appeal I Ref: APP/X5990/W/18/3211308

101 Artillery Row adjacent 101 Victoria Street, Victoria Street, London SW1E 6QX

Grid Reference Easting 529505 Grid Reference Northing 179215

- The application Ref: 18/00913/TELCOM, dated 31 January 2018, was refused by notice dated 20 March 2018.
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Appeal J Ref: APP/X5990/W/18/3211627

25 Millbank, London SW1P 4QP

Grid Reference Easting 530244 Grid Reference Northing 178783

- The application Ref: 18/00939/TELCOM, dated 31 January 2018, was refused by notice dated 20 March 2018.
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Appeal K Ref: APP/X5990/W/18/3211653

62 Buckingham Gate, London SW1E 6AJ

Grid Reference Easting 529488 Grid Reference Northing 179304

- The application Ref: 18/00942/TELCOM, dated 31 January 2018, was refused by notice dated 20 March 2018.
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Appeal L Ref: APP/X5990/W/18/3211674

180 Queen's Gate, London SW7 2RH

Grid Reference Easting 526487 Grid Reference Northing 179144

- The application Ref: 18/00895/TELCOM, dated 31 January 2018, was refused by notice dated 20 March 2018.
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Appeal M Ref: APP/X5990/W/18/3211679

Brompton Road, London SW3 1DR

Grid Reference Easting 527598 Grid Reference Northing 179507

- The application Ref: 18/00860/TELCOM, dated 1 February 2018, was refused by notice dated 20 March 2018.
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Decision

1. The appeals are dismissed.

Procedural Matters and Background

2. The appeals relate to proposals for the installation of electronic communications apparatus pursuant to Class 16 of the Town and Country Planning (General Permitted Development) Order 2015 (GPDO) at thirteen sites within the City of Westminster. The proposed apparatus, described by the appellant as comprising a 'call box', are identical in all appeals save for Appeal C. However, whilst the design of the proposal in Appeal C differs from those of the other appeals, they are generally alike and as such, for the sake of conciseness, I have dealt with all appeals in the same decision.
3. For all appeals, the proposals fall to be considered against the provisions of Schedule 2, Part 16, Class A of the GPDO which includes development by or on behalf of an electronic communications code operator for the purpose of the operator's electronic communications network.
4. The judgement in the case of Westminster¹ (the New World case) concerned appeals for prior approval for telephone kiosks under Schedule 2, Part 16, Class A of the GPDO. In particular, it considered the matter of development for the purpose of an operator's network and concluded "that means 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. Otherwise, the general permission in the GPDO and the restricted range of considerations would be applied to development which falls outside of the scope of the permission"².
5. The Council refused the proposals before me based on the grounds of siting and appearance and that the proposals were not for the purpose of the electronic operator's communication network and therefore would not fall within the scope of Part 16 of the GPDO. In the New World case, it was concluded that the judgement as to whether a kiosk, as applied for, comes within the scope of Class A has to be made before siting and appearance are considered³.
6. The Council determined the applications before the judgement of the New World case was made, however, the parties have been allowed an opportunity to comment on the effect, if any, of the judgement upon these appeals. I have had regard to these comments in reaching my decision.

Main Issue

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

¹ Westminster CC v SSHCLG & New World Payphones Ltd [2019] EWHC 176 (Admin)(5 February 2019)

² Paragraph 37

³ Paragraph 46

Reasons

Appeals A-M (excluding Appeal C)

8. In each instance, the proposal includes a substantial freestanding unit. In respect of all appeals, the units would include a steel frame with clear polycarbonate and 8mm toughened glass. The unit would be in the region of 2600mm tall with an open front and shallow side panels each measuring approximately 550mm wide. Each call box would contain a solar panel within a projecting roof canopy and a centrally located telephone handset and key pad. A solid panel in the region of 1325mm wide is positioned to the rear. Albeit the structure would be wider than a traditional call box, it would allow for wheelchair access and given that the ground base area would not exceed 1.5m² it would fall within the measurements prescribed by the permitted development.
9. It is the Council's case that the rear elevation of the call box would be capable of accommodating an advertisement. The Council cites the New World case whereby, in that instance, the call boxes were deemed to be for a dual purpose of telecommunication use and advertisement display. I have had regard to the opinion of Counsel, dated 27 February 2019 and 11 March 2019, respectively, and I note Counsel's comments that the proposals are materially different to those within the New World case, in that they do not incorporate an electrified advertising panel to the rear, nor do they seek an advertisement consent. However, I have had regard to the appellant's statement of case which advises that the appellant specialises in telecommunications, connectivity and outdoor advertising. Moreover, it stipulates that the revenue from commercial advertising cross subsidises both the installation of the network and its ongoing maintenance and repair and is an integral part of the network.
10. Furthermore, the appellant's photographs provided in support of the appeals show call boxes of a similar scale and design to those within these appeals. Having particular regard to the photograph taken at 50-60 Blackfriars Road, London, this shows an advertisement contained within the panel to the rear elevation which correlates with the rear panel of the proposals.
11. Taking everything into account and based upon the evidence before me, I find that the rear elevation of the call boxes would include an area that has likely been specifically designed for the display of commercial advertisements. As such, I cannot be satisfied that the proposals within these appeals would solely be for the purpose of the operator's telecommunication network but would also be for the purpose of advertisement display. Accordingly, part of the development that prior approval is sought falls outside of the scope of Schedule 2, Part 16, Class A of the GPDO and thus they do not fall within the permitted development rights regime. Consequently, as the proposals do not satisfy this requirement, there is no need for me to consider matters relating to appearance and siting.

Appeal C

12. The proposal includes a substantial freestanding solar powered public call box. The flat unit would stand in the region of 3119mm tall. It would be constructed from a stainless steel frame incorporating solar panels to the roof, front and rear of the unit. LED lighting would highlight the edge of the frame for its full height. A centrally located telephone handset and key pad would be included to the front elevation. To its rear, a toughened and laminated safety glass panel would be present in the region of 1100mm by 1700mm. The ground base area would not exceed 1.5m² and thus it would fall within the measurements prescribed by the permitted development.
13. In this instance, it is the Council's case that the rear elevation of the call box would be capable of accommodating an advertisement and the Council cites the New World case in support of its position.
14. Whilst I have had regard to Counsel's advice dated 11 March 2019 and I note it is the appellant's case that the proposal in this appeal is materially different to the call boxes within the New World case, Drawing No. Max 2 Assembly clearly shows a 'non-illuminated display panel' to the rear elevation of the structure. Whilst I accept that the New World case involved a electrified advertising panel to the unit, based on the evidence before me, I find that the proposed display panel is specifically designed for the display of commercial advertisements and therefore the proposal would not solely be for the purpose of the operator's telecommunication network but would also be for the purpose of advertisement display. Accordingly, part of the development that prior approval is sought falls outside of the scope of Schedule 2, Part 16, Class A of the GPDO and thus it does not fall within the permitted development rights regime. Consequently, there is no requirement for me to consider matters relating to appearance and siting.

Conclusion

15. For the reasons given above and having regard to all matters raised, including in representations, I conclude that all appeals should be dismissed.

E Brownless

INSPECTOR