



Appeal Decision

Site visits made on 5 November 2019

by J D Westbrook BSc(Econ), MSC, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd December 2019

Appeal A Ref: APP/K5600/W/19/3231598

Pavement outside of 183b Kings Road, London, SW3 5EB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a development order.
 - The appeal is made by Maximus Networks Ltd against the decision of the Council of the Royal Borough of Kensington and Chelsea.
 - The application Ref PA/18/07217, dated 7 November 2018, was refused by notice dated 28 December 2018.
 - The development proposed is the siting of a public telephone kiosk.
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Appeal B Ref: APP/K5600/W/19/3231603

Old Brompton Road, outside of South Kensington Underground Station, London, SW7 2NB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a development order.
 - The appeal is made by Maximus Networks Ltd against the decision of the Council of the Royal Borough of Kensington and Chelsea.
 - The application Ref PA/18/07306, dated 7 November 2018, was refused by notice dated 31 December 2018.
 - The development proposed is the siting of a public telephone kiosk.
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Appeal C Ref: APP/K5600/W/19/3231620

Pavement outside of 20 Old Brompton Road, London, SW7 3DL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a development order.
 - The appeal is made by Maximus Networks Ltd against the decision of the Council of the Royal Borough of Kensington and Chelsea.
 - The application Ref PA/18/07241, dated 7 November 2018, was refused by notice dated 31 December 2018.
 - The development proposed is the siting of a public telephone kiosk.
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Appeal D Ref: APP/K5600/W/19/3231618

Pavement outside of 196 Kings Road, London, SW3 5XP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a development order.
 - The appeal is made by Maximus Networks Ltd against the decision of the Council of the Royal Borough of Kensington and Chelsea.
 - The application Ref PA/18/07240, dated 7 November 2018, was refused by notice dated 31 December 2018.
 - The development proposed is the siting of a public telephone kiosk.
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Appeal Decisions: APP/K5600/W/19/3231598, APP/K5600/W/19/3231603, APP/K5600/W/19/3231620, APP/K5600/W/19/3231618, APP/K5600/W/19/3231625, APP/K5600/W/19/3231599, APP/K5600/W/19/3231605

Appeal E Ref: APP/K5600/W/19/3231625

Pavement outside of 359 Kings Road, London, SW3 5UZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a development order.
 - The appeal is made by Maximus Networks Ltd against the decision of the Council of the Royal Borough of Kensington and Chelsea.
 - The application Ref PA/18/07295, dated 7 November 2018, was refused by notice dated 31 December 2018.
 - The development proposed is the siting of a public telephone kiosk.
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Appeal F Ref: APP/K5600/W/19/3231599

Pavement outside of 264 Earl's Court Road, London, SW5 9AD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a development order.
 - The appeal is made by Maximus Networks Ltd against the decision of the Council of the Royal Borough of Kensington and Chelsea.
 - The application Ref PA/18/07250, dated 7 November 2018, was refused by notice dated 28 December 2018.
 - The development proposed is the siting of a public telephone kiosk.
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Appeal G Ref: APP/K5600/W/19/3231605

Corner of Cromwell Road and Earl's Court Road, London, SW5 9GA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a development order.
 - The appeal is made by Maximus Networks Ltd against the decision of the Council of the Royal Borough of Kensington and Chelsea.
 - The application Ref PA/18/07305, dated 7 November 2018, was refused by notice dated 31 December 2018.
 - The development proposed is the siting of a public telephone kiosk.
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Decisions

Appeal A

1. The appeal is dismissed.

Appeal B

2. The appeal is dismissed.

Appeal C

3. The appeal is dismissed.

Appeal D

4. The appeal is dismissed.

Appeal E

5. The appeal is dismissed.
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Appeal F

6. The appeal is dismissed

Appeal G

7. The appeal is dismissed.

Main Issue

8. 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 proposal is solely for the purpose of the operator's electronic communications network.

Reasons

9. The appeals relate to seven freestanding payphone kiosks. All of the kiosks consist of the same design, which comprises a slimline box, 1325 mm wide by 219 mm deep, and with an overall height of 2800 mm. From information supplied by the appellants, the widest faces of the of the box would incorporate photovoltaic glass to maximise the energy generating potential. One face would include a phone pocket. The other face would include a large non-illuminated display panel with a visual area of 1700 mm by 1100 mm using safety glass.
10. Development of payphone kiosks for the purpose of electronic communications networks is dealt with by the General Permitted Development Order 2015 (GPDO) in the provisions of Schedule 2, Part 16, Class A.
11. The appellants make note in the appeal statement of the *Westminster CC v SSHCLG & New World Payphones Ltd (2019)* court case. In the light of this case, it is necessary for me to consider whether the design of the proposed kiosks, known as the MAX2 type, could be considered as having a dual purpose as both a payphone kiosk and an advertisement display.
12. From the information before me, and in particular the submitted "MAX2 Assembly" drawing, it would appear that, while the front face of the proposed box contains a phone pocket, the rear face would incorporate a glazed display panel which occupies around 50% of that face and would, therefore, be a significant element within the design of the kiosk.
13. The Westminster judgement found 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 the scope of the permission." (paragraph 37)
14. In addition, it was stated 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" and ".....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." (paragraph 39)

15. In paragraph 45, it was found that "...The application was for the purpose of the operator's telecommunications network and for the purpose of advertising, because part of what was needed for the advertising role was performed by the structure and features of the telephone kiosk..."
16. I acknowledge the New World Payphone kiosks that were the subject of the Westminster case included an illuminated display panel. However, I do not consider that the issue of illumination or non-illumination affects the fact that, in this case, a significant part of the rear face of the proposed kiosk is shown as serving a visual display purpose using a glazed element, and that this constitutes a separate purpose from that of electronic communications. In the light of the findings of the Westminster case, I conclude that the proposed kiosks would, therefore, serve a dual purpose.
17. Accordingly, the appeal proposal is not solely for the purpose of the operator's electronic communications network, and as such falls outside Schedule 2, Part 16, Class A of The Town and Country Planning (General Permitted Development) (England) Order 2015.

Conclusion

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