
Appeal Decisions

Site visits made on 2 September 2019 by Andreea Spataru BA (Hons) MA

Decision by Susan Ashworth BA (Hons) BPL MRTPI

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

Decision date: 06 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 Article 3(1) and Schedule 2, Part 16 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeals are made by Maximus Networks Ltd against the decision of the Council of the London Borough of Hammersmith and Fulham.
 - The development proposed in each case is the installation of a public call box.
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Appeal A Ref: APP/H5390/W/19/3230566

Public Highway Lillie Road Adj. Peabody Estate, London SW6 1UJ

Grid Reference Easting: 524998 and Grid Reference Northing: 177846

- The application Ref 2018/03643/TEL56, dated 6 November 2018, was refused by notice dated 14 December 2018.
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Appeal B Ref: APP/H5390/W/19/3230607

Public Highway 113 Lillie Road, London SW6 7SX

Grid Reference Easting: 524840 and Grid Reference Northing: 177745

- The application Ref 2018/03640/TEL56, dated 6 November 2018, was refused by notice dated 14 December 2018.
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Appeal C Ref: APP/H5390/W/19/3229119

Public Highway 654 Fulham Road, London SW6 5RU

Grid Reference Easting: 524718 and Grid Reference Northing: 176737

- The application Ref 2018/03244/TEL56, dated 1 October 2018, was refused by notice dated 21 November 2018.
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Appeal D Ref: APP/H5390/W/19/3229029

Public Highway 60 Parsons Green Lane, London SW6 4HU

Grid Reference Easting: 525053 and Grid Reference Northing: 176645

- The application Ref 2018/03259/TEL56, dated 1 October 2018, was refused by notice dated 20 November 2018.
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Appeal E Ref: APP/H5390/W/19/3229026

**Public Highway 69A Fulham High Street (Frederick Court),
London SW6 3JY**

Grid Reference Easting: 524405 and Grid Reference Northing: 175970

- The application Ref 2018/03240/TEL56, dated 1 October 2018, was refused by notice dated 20 November 2018.
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Appeal F Ref: APP/H5390/W/19/3230569

Public Highway OPP. 292 Wandsworth Bridge Road, London, SW6 2TZ

Grid Reference Easting: 525770 and Grid Reference Northing: 175979

- The application Ref 2018/03653/TEL56, dated 6 November 2018, was refused by notice dated 18 December 2018.
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Appeal G Ref: APP/H5390/W/19/3229027

Public Highway 99 Imperial Road, London SW6 2RE

Grid Reference Easting: 526152 and Grid Reference Northing: 176615

- The application Ref 2018/03255/TEL56, dated 1 October 2018, was refused by notice dated 20 November 2018.
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Decisions

1. Appeals A, C, D, E and G are dismissed.
2. The following appeals are allowed and approval is granted under the provisions of Part 16 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 for the siting and appearance of public payphones on the public highway by an electronic communications code operator at the following locations, in accordance with the applications as indicated dated 6 November 2018 , and in accordance with the plans submitted with the respective applications:
 - 1) Appeal B Ref: APP/H5390/W/19/3230607 Public Highway 113 Lillie Road, London SW6 7SX
 - 2) Appeal F Ref: APP/H5390/W/19/3230569 Public Highway OPP. 292 Wandsworth Bridge Road, London, SW6 2TZ

Appeal Procedure

3. The site visit was undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

Procedural Matters

4. The appeals relate to proposals by Maximus Networks Ltd for the installation of a call box at 7 sites across the London Borough of Hammersmith and Fulham. The proposed apparatus is identical in each case. Therefore, in the interests of conciseness, I have dealt with all the appeal decisions in the same letter.
5. Whilst the Town and Country Planning (Permitted Development, Advertisement and Compensation Amendments) (England) Regulations 2019 amends the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) by removing permission for the installation, alteration or replacement of a public call box by, or on behalf of, an electronic communications code operator, this is subject to transitional and saving provisions. Therefore, for the purposes of these appeals, which were validly made, the proposals fall to be considered against the provisions of Schedule 2, Part 16, Class A of the GPDO, which refers to development 'by or on behalf of

- an electronic communications code operator for the purpose of the operator's electronic communications network'.
6. The proposals before me were refused by the Council on grounds relating to siting and appearance. However, the *Westminster*¹ judgement found that 'the judgement as to whether the kiosk, as applied for, comes within the scope of Class A has to be made before siting and appearance are considered' (paragraph 46). Whilst the Council determined the applications before the *Westminster* judgement was handed down, both the appellant and Council have had the opportunity to comment on it. I have taken these comments into account in determining these appeals.
 7. This 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 falls outside the scope of Part 16, Class A if it is not 'for the purpose' of the operator's network. Thus, if the development is partly for some other purpose beyond that of the operator's network, it cannot be development 'for the purpose' of the operator's network precisely because it is for something else as well. In that case the proposed kiosk was for a dual purpose of advertisement display and telecommunications use and therefore contained features that were for advertising and 'not at all there for the telecommunications function'.
 8. The design of all of the proposed call boxes is the same, comprising a freestanding steel-framed call box, constructed with steel casings and toughened glass, with roof-mounted solar panels on top of each side which double as a canopy. They would be approximately 3.1m high, with a footprint of around 0.219m length by 1.325m width. Both would comprise a two-sided structure of either black or dark grey appearance. While the orientation of the call boxes is not clear from the plans, one side contains the phone itself set in a recess while the other has a non-illuminated glass panel. Whilst deemed consent allows a non-illuminated advertisement on the glazed surface of one face of the call box, in these appeals, only the construction of the call box is being considered, and the appellant is not seeking advertisement consent. There is nothing within the evidence before me to indicate that the call boxes explicitly contain provision of advertisement space. The above factors, together, lead me to find that these appeal proposals should not be considered to constitute a dual purpose. Therefore, the prior approval considerations of siting and appearance must be considered.
 9. The provisions of the GPDO, under Article 3(1) and Schedule 2, Part 16, Class A, Paragraph A.3(4) require the local planning authority to assess the proposed developments solely on the basis of their siting and appearance, taking into account any representations received. My determination of these appeals has been made on the same basis.
 10. The Council has made reference in its decision notices to Policies DC1 and DC10 of the Local Plan (2018), Policy 6.10B of the London Plan (2016) and Policies T1, T3 and key principles TR12, TR13, TR22 and TR29 of the Planning Guidance Supplementary Planning Document (2018). Similarly, the appellant

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

has introduced Streetscape Guidance (SG) and Pedestrian Comfort Guidance for London (PCG), both published by Transport for London.

11. However, applications for prior approval are determined in relation to the criteria set out within the GPDO and, as such, do not require regard to be had to the Development Plan. Nonetheless, although not determinative, I take account of the above-mentioned policies and documents in so far as they are relevant to matters of siting and appearance.

Main Issues

12. The main issues for all appeals are whether or not approval should be given in respect of the siting and appearance of the proposed development, with particular regard to its effect on the character and appearance of the area, and its effect upon the safe and efficient operation of the highway.

Reasons for the Recommendation

Appeal A - Lillie Road Adj. Peabody Estate

13. The proposed call box would be sited on the carriageway side of the wide footway adjacent to the Peabody Estate to the south of Lillie Road. Whilst there is a row of shops on the opposite side of the road giving it a commercial feel the area on the south of the road in the proximity of the proposed call box exhibits a slightly more suburban character due to the wide footway, trees at the rear of the footway and the presence of the imposing Peabody building, which extends to six stories at its highest point.
14. The footway in the vicinity of the site already accommodates a letter box, two lighting columns, a telephone box, a traffic sign post and a bus shelter with a post towards the outside of the footway and a further two telephone boxes at the rear of the footway. Furthermore, there is a modern communications installation within about 1m of the proposed site for the call box. On the opposite side of the road there is a green electronics/communications box, a bus shelter with associated post and two litter bins.
15. As such, there is already therefore a proliferation of equipment and street furniture within the immediate area. I acknowledge that the proposed call box would be of a sound functional design and would not necessarily be visually dominating in its own right. It would however fill another gap between the existing street furniture on the outside of the footway. This would only add to the sense of lack of openness and clutter that is already beginning to be experienced along this section of footway, which as I have previously noted, is not heavily commercialised. This would be harmful to the character and appearance of the area.
16. The site is located on the pavement of a wide and fairly straight stretch of highway, in line with some of the existing street furniture. Given this, the proposed call box would not significantly intrude on the sight lines of motorists travelling along Lillie Road and there would remain a sufficiently wide unobstructed footway between the development and the building edge for pedestrian movement to not be significantly hindered. Thus, the safe and efficient operation of the highway would not be harmed.

17. Nevertheless, for the above reasons, the siting and appearance of the proposed call box would harm the character and appearance of the area. The lack of harm to highway safety is a neutral matter that does not outweigh the above consideration. This justifies refusal of prior approval and the dismissal of appeal A.

Appeal B - 113 Lillie Road

18. The proposed call box would be sited outside 113 Lillie Road, one of a number of shops in a parade along the south side of the road. On the opposite side of the road there is a school set behind a relatively wide footway and hedge. In terms of existing street furniture there is an existing BT installation, a bicycle hoop and two posts in the immediate vicinity of the site for the proposed call box, and these are all on the roadside of the footway, which in this location is relatively wide.
19. The call box would be in line with the existing furniture towards the outside of the footway. Taking this and the above factors into account, and whilst acknowledging that the call box would, to an extent, diminish the openness of the area, I nonetheless consider that this would not be to such a degree that it would cause significant harm to the character and appearance of the area.
20. The site is located on the pavement of a fairly straight stretch of highway, in line with some of the existing street furniture. Given this, the proposed call box would not significantly intrude on the sight lines of motorists travelling along Lillie Road and there would remain a sufficiently wide unobstructed footway between the development and the building edge for pedestrian movement to not be significantly hindered. I noted during my late-morning visit a low footfall, and whilst I accept that this is only a snap shot in time, I find that in the absence of any evidence to the contrary the proposal would not be harmful to highway safety.
21. I note that a similar scheme² has been recently allowed in this location. This constitutes a fallback position for this appeal which carries significant weight in the determination of the appeal proposal. The proposed call box has a different, slimmer design than the previously allowed call box and arguably would be less intrusive than that which has already been granted. I have noted the Council's concern about having two call boxes in this location, however the appellant has confirmed that this proposal constitutes an alternative design and that there would not be two call boxes on the same site. Given the relative site plans, I have no reason to disagree and I have dealt with the proposal on that basis.
22. Taking into account the above factors, the siting and appearance of the proposed call box would cause no material harm to the character and appearance of its surroundings. The safe and efficient operation of the highway would also not be harmed. Accordingly, appeal B should be allowed.

Appeal C - 654 Fulham Road

23. The proposed call box would be sited outside 654 Fulham Road, one of a number of commercial units in a parade along the north-western side of the

² Appeal reference: APP/H5390/W/18/3208903

road. In terms of existing street furniture there is a lighting column and a bicycle hoop in the immediate vicinity of the site for the proposed call box. There is also a green electronics/communications box located between the lighting column and the bicycle hoop, where the call box is proposed to be sited. These are all on the roadside of the footway, in a prominent location, in close proximity to the junction of Fulham Road with Chesilton Road. Beyond this junction, is provision for cycle parking, a lamp post and a litter bin.

24. I acknowledge that the proposed call box would be of a sound functional design and would not necessarily be visually dominating in its own right. However, the siting of the proposal in this location would introduce a further element of clutter to the area. The resultant proliferation of street furniture would be harmful to the character and appearance of the area.
25. The development would reduce the width of the footway between the call box and building frontage to approximately 2.825 metres. The appellant's pedestrian survey indicates that the site experiences low levels of pedestrian flows and that the footway should therefore be 2.9 metres wide to comply with TfL's PCG. The TfL's SG recommends a preferred minimum unobstructed footway width of 2m. Given that the proposed width of the footway would be just below 2.9m, the low levels of pedestrian flows, and the fact that the call box would be relatively in line with the existing street furniture, the pedestrian movement would not be significantly hindered. The proposal would also not significantly intrude on the sight lines of motorists travelling along Fulham Road.
26. For the reasons above, the safe and efficient operation of the highway would not be harmed but the siting and appearance of the call box would harm the character and appearance of the area. This harm justifies the refusal of prior approval and the dismissal of appeal C.

Appeal D - 60 Parsons Green Lane

27. The appeal site is located in front of a retail store, on the roadside of the footway, adjacent to the Parsons Green Conservation Area and in proximity to Parsons Green tube station. In terms of existing street furniture there are lighting columns and bicycle hoops on the roadside of the footway. At the time of my visit there were also 'A' boards in the immediate vicinity of the site, next to the building frontage of the retail store, and chairs and tables a few metres away from the site in front of a restaurant.
28. During the time of my site visit the street was busy with traffic travelling past the appeal site along both carriageway directions. I have seen nothing to suggest my observations are untypical. The area around the site was also busy with pedestrians, with particularly noticeable pedestrian flows to and from the tube station.
29. I recognise that the style of the call box would be simple, however when approaching the site from both directions along the street, the addition of the mass of the proposed approximately 3.119 metres high call box would, together with the aforementioned elements, cumulatively result in an increasingly cluttered appearance to the pavement and the wider streetscene.

Therefore, the proposed call box would harm the character and appearance of the area.

30. The development would reduce the width of the footway between the call box and building frontage to approximately 1.925metres. I note the analysis of the appellant's highways consultant that the proposal would accord with the SG produced by TfL and would not compromise pedestrian movement or highway safety. Nonetheless, it is noted that the above analysis assesses the existing footway width as narrower by approximately 1 metre than that recommended by the TfL's PCG. The proposal, in combination with the aforementioned elements sited along both sides of the footway, would have an unacceptably adverse effect on pedestrian permeability in what is apparently a busy area.
31. Accordingly, the siting and appearance of the proposed call box would harm the character and appearance of the area. The proposal would also be detrimental to the safe and efficient operation of the highway. This harm justifies the refusal of prior approval and the dismissal of appeal D.

Appeal E – 69A Fulham High Street

32. The appeal site is next to a relatively tall building and within an area characterised by a mix of modern and more traditional built-form. The Bishops Park and grade II listed former Temperance Billiard Hall are nearby, on the opposite side of Fulham High Street. The call box would be located in close proximity to a locally listed building, Kings Arms Public House, and to Putney Bridge Conservation Area, which has its border to the south of the appeal site. Given its location near to a road junction, the site is in a relatively prominent position. The call box would be situated between bicycle hoops, within proximity of a lighting column that is located in the middle of the pavement. With the exception of the lighting column and bicycle hoops, the footway is relatively open and spacious, with limited other street furniture on this stretch of footway.
33. The proposed call box would be separated from the grade II listed building by Fulham High Street, which I observed on my site visit is relatively busy and wide, and from the conservation area by a group of buildings. This spacing, the simple form of the call box and the presence of other street furniture, indicates that the development would not harm the setting of the listed building or the conservation area.
34. However, when approaching the site from both directions along the street, the addition of the mass of the proposed approximately 3.119 metres high call box would, together with the existing street furniture, cumulatively result in an increasingly cluttered appearance to the pavement, and the call box would appear as an incongruous feature that would erode the spacious nature of the streetscene in this locality. Thus, the proposal would harm the character and appearance of the area.
35. The development would reduce the width of the footway between the call box and building frontage to approximately 2.825 metres. The appellant's pedestrian survey indicates that the site experiences low levels of pedestrian flows and that the footway should therefore be 2.9 metres wide to comply with TfL's PCG. The TfL's SG recommends a preferred minimum unobstructed

footway width of 2m. Given that the proposed width of the footway would be just below 2.9m, the low levels of pedestrian flows, and the fact that the call box would be relatively in line with the existing bicycle hoops, the pedestrian movement would not be significantly hindered. The proposal would also not significantly intrude on the sight lines of motorists travelling along Fulham High Street.

36. For the reasons above, the safe and efficient operation of the highway would not be harmed but the siting and appearance of the call box would harm the character and appearance of the area. This harm justifies the refusal of prior approval and the dismissal of appeal E.

Appeal F - OPP. 292 Wandsworth Bridge Road

37. The proposed location for the call box is on the outside of the footway on the opposite side of the road from 292 Wandsworth Bridge Road. Behind the metal railings that border the footway is a grassed area which in turn fronts St Mathews Church. The church is not listed and the site is not in a conservation area, although it borders the Hurlingham Conservation Area which is directly opposite.
38. In terms of street furniture within the immediate area, there is with only a litter bin, a few bollards, two trees and a post for signage. There is also a conventional style telephone kiosk some way to the south on the opposite side of the road. The proposed call box would be sited between the two trees, relatively in line with them. Whilst I acknowledge that the area exhibits a sense of openness, the proposed call box, in isolation, would not be unacceptably harmful to this sense of openness and given its slim design would not have an adverse impact upon views of the church. Furthermore, the presence of one call box on the far side of the road would not cause harm to the adjacent conservation area.
39. The development would reduce the width of the footway between the call box and the metal railings to approximately 2.5 metres. The appellant's pedestrian survey indicates that the site experiences low levels of pedestrian flows and that the footway should therefore be 2.9 metres wide to comply with TfL's PCG. The TfL's SG recommends a preferred minimum unobstructed footway width of 2m. Whilst I note that the remaining width of the footway would not comply with the TfL's PCG, given the low levels of pedestrian flows, and the fact that the call box would be relatively in line with the existing trees, the pedestrian movement would not be significantly hindered. The proposal would also not significantly intrude on the sight lines of motorists travelling along Wandsworth Bridge Road.
40. I note that a similar scheme³ has been recently allowed in this location. This constitutes a fallback position for this appeal which carries significant weight in the determination of the appeal proposal. The proposed call box has a different, slimmer design than the previously allowed call box and arguably would be less intrusive than that which has already been granted. I have noted the Council's concern about having two call boxes in this location, however the appellant has confirmed that this proposal constitutes an alternative design and

³ Appeal reference: APP/H5390/W/18/3208902

that there would not be two call boxes on the same site. Given the relative site plans, I have no reason to disagree and I have dealt with the proposal on that basis.

41. Taking into account the above factors, the siting and appearance of the proposed call box would cause no material harm to the character and appearance of its surroundings. The safe and efficient operation of the highway would also not be harmed. Accordingly, appeal F should be allowed.

Appeal G - 99 Imperial Road

42. The appeal site is next to a relatively tall building and within an area characterised by a modern built-form. The proposed call box would be located on a relatively wide and uncluttered area of pavement. The uncluttered nature of the pavement and space in front of the tall building is simple and unified. It provides a spacious feel to this part of the urban landscape and makes a positive contribution to the character and appearance of this part of the street.
43. Given the spacious nature of this part of the street, the presence of the call box would be quite noticeable to pedestrians and road users. The consequence of this is that the proposed call box would appear as a prominent and intrusive feature that would be at odds with the prevailing open character of this part of the street. Thus, the development would be harmful to the character and appearance of the area.
44. The site is located on the pavement of a wide and straight stretch of highway. Given this, the proposed call box would not significantly intrude on the sight lines of motorists travelling along Imperial Road and there would remain a sufficiently wide unobstructed footway between the development and the building edge for pedestrian movement to not be significantly hindered. Thus, the safe and efficient operation of the highway would not be harmed.
45. Notwithstanding this, the siting and appearance of the proposed call box would harm the character and appearance of the area. The lack of harm to highway safety is a neutral matter that does not outweigh the above consideration. This justifies refusal of prior approval and the dismissal of appeal G.

Other matter

46. The appellant has referred to several appeal decisions regarding similar proposals for the installation of public call boxes. However, I have considered each proposal before me on its own individual merits and the specific circumstances and context of each case.

Recommendation

47. For the reasons given above and having regard to all other matters raised, I recommend that appeals A, C, D, E and G should be dismissed and appeals B and F should be allowed.
48. Any planning permission granted for the call box under Article 3(1) and Schedule 2, Part 16, Class A is subject to conditions set out in Paragraphs A.3(9), A.3(11) and A.2(2), which specify that the development must, except to the extent that the local planning authority otherwise agree in writing, be carried out in accordance with the details submitted with the application, must

begin not later than the expiration of 5 years beginning with the date on which the local planning authority received the application, and must be removed as soon as reasonably practicable after it is no longer required for electronic communications purposes and the land restored to its condition before the development took place.

Andreea Spataru

APPEAL PLANNING OFFICER

Inspector's Decision

49. I have considered all the submitted evidence and the Appeal Planning Officer's report and on that basis the appeals A, C, D, E and G are dismissed, and appeals B and F are allowed.

S Ashworth

INSPECTOR