



Appeal Decision

Site visit made on 28 October 2019 by S Witherley BA, PGDiP, PGDiP, Cert CIH, Assoc RTPI

Decision by Chris Preston BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 December 2019

All Appeals

- The appeal is 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, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr Paul O'Neil on behalf of Maximus Networks Ltd against the decision of the Council of Southwark Council.
 - The development proposed in each case as described on the application form is for: a public call box.
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Appeal A – Appeal Ref: APP/A5840/W/19/3230882

Public highway, Blackfriars Road adj. Vaughan House, London SE1 0PY

- The application, Ref 18/AP/3534, dated 31 October 2018, was refused by notice 14 December 2018.
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Appeal B – APP/A5840/W/19/3230879

Public highway, Great Dover Street, adj Johnson House, London, SE1 4EH

- The application, Ref, 18/AP/3560, dated 31 October 2018, was refused by notice 14 December 2018.
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Appeal C – Appeal Ref: APP/A5840/W/19/3230896

Public highway, adj 282-302 Borough High Street, London, SE1 1JJ

- The application, Ref, 18/AP/3566, dated 31 October 2018, was refused by notice 14 December 2018.
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Appeal D – Appeal Ref: APP/A5840/W/19/3230928

Public highway, Borough Road, corner Southwark Bridge Road, London, SE1 0AJ

- The application, Ref, 18/AP/3562, dated 31 October 2018, was refused by notice 14 December 2018.
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Appeal E – Appeal Ref: APP/A5840/W/19/3230992

Public highway, 68 – 74 Southwark Street, London, SE1 0TN

- The application, Ref, 18/AP/3530, dated 31 October 2018, was refused by notice 14 December 2018.
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Appeal F – Appeal Ref: APP/A5840/W/19/3231000

Public highway, 90-100 Southwark Street, London, SE1 0SW

- The application, Ref, 18/AP/3574, dated 31 October 2018, was refused by notice 14 December 2018.
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Appeal G – Appeal Ref: APP/A5840/W/19/3231010

Public highway, Avon House, 275 Borough High Street, London, SE1 1JE

- The application, Ref, 18/AP/3528, dated 31 October 2018, was refused by notice 14 December 2018.

Appeal H – Appeal Ref: APP/A5840/W/19/3231021

Public highway, 309-317 Borough High Street, London, SE1 1JL

- The application, Ref 18/AP/3568, dated 31 October 2018, was refused by notice 14 December 2018.
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Decision

1. All the Appeals are dismissed.

Appeal Procedure – Appeals A to H

2. 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 and Background – Appeals A to H

3. In these Appeals, the design of the call box is the same, however, they are sited in different locations. Each proposal will be considered on its individual merits. As they raise similar issues and to avoid duplication, they are dealt with in a single decision letter.
4. On 25 May 2019, the Town and Country Planning (Permitted Development, Advertisement and Compensation Amendments) (England) Regulations 2019 (GPDO) came into force, amending the GPDO. This amendment removes the permitted development right to install a public call box under Schedule 2, Part 16, Class A of the GPDO. However, transitional and saving provisions at Part 5 of the 2019 Regulations provide that where an appeal has been made within 6 months of the date of notice of refusal of a prior approval application submitted before 25 May 2019, the planning permission granted by Schedule 2, Part 16, Class A continues to have effect in relation to a public call box as if the amendments made to the GPDO by the 2019 Regulations had not been made. That is the case in respect of these Appeals.
5. As an electronic communications code operator, the appellant benefits from deemed planning permission for a proposed telephone kiosk under Article 3(1) Schedule 2, Part 16, Class A, Paragraph A.3(4) of the GPDO. The provision requires the local planning authority to assess the proposed development solely on the basis of its siting and appearance, taking into account any representations received.
6. A recent High Court judgment, *The Westminster judgement*¹, considered the issue of the inclusion of advertising on public call boxes and the matter of development for 'the purpose' of an electronic communications code operator's electronic communications network for the purposes of Part 16, Class A of GPDO. The 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'. Therefore, there is a requirement to ensure that a proposal is solely for the purpose of the operator's electronic network and not partly for some other use.

¹ Westminster City Council v Secretary of State for Housing, Communities and Local Government & New World Payphones Ltd [2019] EWHC 176 (Admin)

7. Following the outcome of *Westminster*, the appellant submitted additional information relating to each appeal. They have stated the proposals are solely for the purposes of telecommunications use. The call box includes an opening rear glass panel, which the appellant claims is to house the electronic equipment and enables access for maintenance, in addition to this, the proposals are not accompanied by an application for advertisement consent. Given the available evidence, it is considered that the kiosks proposed in these Appeals are unlikely to constitute a dual purpose.
8. The principle of development is established by the GPDO. Therefore, matters such as the need for the development are not at issue. In addition, whilst the appellant has referred to the purported benefits of the proposed kiosk, these matters have not been taken into account other than in respect of heritage assets where the National Planning Policy Framework (NPPF) 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 appellant makes note in the appeal statement of examples of court cases and appeals relating to the siting of similar proposals. These examples will be taken into account, but there is limited information as to the detailed siting and appearance of these other proposals. In any case, each of the current proposals have been assessed on its individual merits with regard to its specific location and context.
10. The Council note in their report that the location of Appeal H is outside the Metropolitan Police Station, however, the details on the site location plan and evidence submitted by the appellant, show the location of the site as being outside the neighbouring building, the International Visitors Centre (IVRO). The proposal has been assessed in accordance with the details submitted by the appellant.

Planning Policy – Appeals A to H

11. 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. The Council, in their assessment of the Appeals, have had regard to the following Policies 6.3, 6.10 7.4, 7.6 and 7.8 London Plan (2016). Policy 12 of the of the Core Strategy 2011. Policies 3.12, 3.13, 3.18, 5.2, 5.3 of the Southwark Plan (2007). The appellant has referred to technical guidance contained within the *Pedestrian Comfort Guidance* produced by Transport for London (TfL) and the TfL *Streetscape Guidance 2017*. Regard has been given to these policies, related guidance and the Framework only in so far as they are a consideration relevant to matters of siting and appearance, designated heritage assets and the safe and efficient operation of the highway.

Main Issues – Appeals A to H

12. In all Appeals the main issues are as follows: 1) the effect of the siting and appearance of the proposed call box on the character and appearance of the area, 2) the siting and appearance of the proposed call box on highway safety, 3) the effect on heritage assets in Appeal A, E and F.

Reasons for the Recommendation – Appeals A to H

13. The call boxes are of the same 'Max 2' design. This design consists of a tall two-sided structure with photovoltaic panels at the top which form a valley type canopy. The materials used in its construction include stainless steel with black laminated PV panels to

the front and rear. The telephone would be housed in the centre of the front panel. No indication has been provided as to the precise orientation of the telephone kiosks in each case. As such, the appeals have been determined with reference to the identified footprint on the appellant's submitted photographs shown in their evidence titled 'Site Highway Analysis'.

Appeal A – Blackfriars Road adj. Vaughan House - Character and Appearance

14. The proposed call box would be sited outside a large residential block in an area which contains a mix of large commercial and residential properties. The pavement is wide and contains several pieces of street furniture including a bus shelter, bins, lighting columns and utility boxes. Despite the presence of street furniture, the area is generally clutter free and has a pleasant aspect due to a number of established trees which appear evenly spaced along the central band of the pavement. The proposal would be sited between two trees, which as a result of its design and height would conflict with the even and pleasant rhythm that currently exists. It would, therefore, present as a visually intrusive and prominent structure in an otherwise open and clutter free streetscape. Accordingly, as a result of its siting and appearance, the call box would have a harmful effect upon the character and appearance of the area.
15. The site is near to a number of designated listed buildings located on Blackfriars Road. Their significance derives from the architectural appearance, layout and form. Given the urban appearance of the site and the modern and functional form of the call box along with the presence of other pieces of modern street furniture, there would be no diminishing effect on the setting of these nearby listed buildings. Whilst the setting of the nearby listed buildings would be preserved, the siting and appearance of the call box would have a harmful effect upon the areas character and appearance.

Highway Safety

16. The Council have raised no issues regarding the siting of the proposal in terms of highway safety. There is no reason to disagree with them on this matter. Accordingly, the call box would not be detrimental to highway safety.

Appeal B –Great Dover Street, adj Johnson House - Character and Appearance

17. The proposal would be located on a stretch of pavement outside a residential block of flats. This part of the streetscape is generally clutter free albeit there is a bus shelter and large established trees that line the street. The call box would be positioned near to the highway and in line with the mature trees. As a result of its modern design and height, it would appear as a substantial and prominent feature in another wise uncluttered and pleasant streetscape. Accordingly, it would be at odds with the prevailing open character of this part of the street and would therefore have a harmful effect upon the character and appearance of the area.

Highway Safety

18. At the time of the site visit, mid-afternoon on a weekday, pedestrian movement appeared relatively low. Nevertheless, as a result of the call box height, width and proximity to a tree, it would visually and physically obstruct and therefore interfere with the free movement of pedestrian traffic in this area. Throughout busier periods pedestrians would likely divert round the call box onto the pavement side, however, as a result of the

existing trees located close to the proposed call box siting, pedestrians may also find it necessary to divert round near to the highway side. Accordingly, this would be harmful to pedestrian flow and therefore be detrimental to highway safety.

Appeal C – adj 282-302 Borough High Street - Character and Appearance

19. The call box would be located outside a large residential building. The proposal would be located near to the kerbside adjacent to a busy highway. There is limited street furniture within this section of street which provides an open and welcome visual reprieve from the busy urban landscape that surrounds this section of pavement. The proposal as a result of its design and height would look prominent and at odds with the open aspect of the street, therefore, detracting from its open character. Accordingly, it would have a harmful effect upon the character and appearance of the area.

Highway Safety

20. At the time of the site visit, mid-afternoon, the area was relatively busy with a consistent flow of foot traffic. As a result of the call box height and width along with the reduction in the width of the footpath, the proposal would create a visual and physical obstruction causing a pinch point in an otherwise open streetscape. Whilst pedestrians would likely divert round the call box onto the pavement side, at busy periods it is likely that pedestrians may also find it necessary to divert round near to the highway side. Accordingly, it would impede the free flow of pedestrian traffic in this part of the streetscape and would therefore be detrimental to highway safety.

Appeal D – Borough Road, corner Southwark Bridge Road - Character and Appearance

21. The site is located next to a busy junction in a commercial area. In the area immediately surrounding the site are pieces of street furniture including bins, trees, utility boxes, and a bench with charging facilities. Despite the proliferation of street furniture, the pavement surrounding the site is wide and spacious thanks to its corner location. The proposal would be located away from the kerbside and set back in line with a row of cycle stands. Given the design, width and height of the call box, the openness and quality of the streetscape would be undermined and, furthermore, as a result of its close proximity to the cycle stands would appear as a dominate and unduly prominent feature. The siting and appearance of the call box would therefore have a harmful effect upon the character and appearance of the area.

Highway Safety

22. The Council have raised no issues regarding the siting of the proposal in terms of highway safety. There is no reason to disagree with them on this matter. Accordingly, the call box would not be detrimental to highway safety.

Appeal E – 68–74 Southwark Street - Character and Appearance

23. The proposal would be located in a commercial area close to the kerbside adjacent to a busy road. Within this part of the street there is a proliferation of street furniture including vehicle charging points, trees, lighting columns, cycle stands and highway signs. Despite the proposed siting, in line with the other pieces of street furniture, the addition of the call box in this location would, as a result of its design, scale and height, reduce the visual spacing between the existing street furniture and further add to the visual and

physical clutter in the streetscape. As such, the siting and appearance of the proposal would have a harmful effect on the character and appearance of this part of the streetscape.

24. The site sits close to the Thrale Street Conservation Area (CA) which can be defined by its large outer facing commercial properties and strong building lines. Given the call box would have a modern and functional appearance, its location adjacent to the relatively modern façade of No 68 – 74 Southwark Street, along with the distance from inside the CA, there would be no diminishing effect on the character and appearance of the CA. The setting and significance of the CA would be preserved. Nonetheless, the siting and appearance of the call box would have a harmful effect upon the character and appearance of the immediate area.

Highway Safety

25. The Council have not objected to the siting of the proposal in terms of highway safety. There is no reason to disagree with them on this matter. Accordingly, the call box would not be detrimental to highway safety.

Appeal F – 90-100 Southwark Street - Character and Appearance

26. The proposed call box would be located outside a large commercial block with various retail and café outlets at ground level. It would be located close to the highway and in line with other street furniture. The pavement here is wide, however, it is dominated by the numerous pieces of street furniture including, outdoor eating areas, trees, street lighting columns, numerous cycle stands, a kiosk and utility boxes. Whilst the area has a modern and functional appearance, as a result of the proliferation of street furniture, the streetscape appears visually cluttered. Given the design and height of the proposal it would appear prominent and would add a further element to the visual discordance of the area. Accordingly, as a result of its siting and appearance, the call box would have a harmful effect upon the character and appearance of the area.
27. The site is near to a designated listed building located on Southwark Street. Its significance derives from its layout, architectural appearance and form. Given the urban, functional appearance of the site and the modern and functional form of the call box along with the presence of other pieces of modern street furniture within the streetscape, there would be no diminishing effect on the setting of this nearby listed building. Whilst the setting of the nearby listed building would be preserved, the siting and appearance of the call box would have a harmful effect upon the areas character and appearance.

Highway Safety

28. The call box would be located near to the entrance of a café, tree and cycle stands. Despite the width of the pavement at this location, as a result of its scale and footprint it would be visually and physically obstruct pedestrians and also create a pinch point along this section of highway. This would be detrimental to pedestrian flow. Accordingly, the proposal would be harmful to highway safety.

Appeal G – Avon House, 275 Borough High Street - Character and Appearance

29. The proposed call box would be located on a busy section of street outside the British School of Osteopathy. It would be sited close to the outer edge of the pavement adjacent

to a busy road. Within this section of street there are cycle stands, a telephone box, utility box, bus shelter and a tree. Despite this existing street furniture the area appears open and uncluttered. The proposed call box as a result of its design, width and height would appear as a prominent and incongruous feature in an otherwise open street scape. It would reduce the visual openness of the area and make the area unacceptably cluttered. As such, the siting and appearance of the proposal would have a harmful effect on the character and appearance of this part of the streetscape.

Highway Safety

30. Given the proximity of the proposed call box to the entrance of No. 275 and the row of cycle stands, it has, as a result of its width and height, is likely to create a visual and physical obstacle to pedestrians and create a pinch point along this section of the pavement. Additionally, as a result of its close proximity to the highway it may divert pedestrians onto the highway. Accordingly, it would have an adverse effect on pedestrian flows and on the safe and efficient operation of the highway and be harmful to highway safety.

Appeal H – 309-317 Borough High Street -Character and Appearance

31. As noted, the proposal would be located outside the IVRO building and not the neighbouring police station as noted by the Council. This part of the streetscape is predominantly commercial in nature. The streetscape contains very little in the way of existing street furniture other than a number of trees. This presents as an open and spacious streetscape. Given the design, width and height of the proposed call box it would appear as an incongruous addition in an otherwise uncongested area. Accordingly, the proposal, as a result of its siting and appearance, would have a harmful effect on the character and appearance of the area.

Highway Safety

32. Having regard to the location of the proposed call box and its proximity to the entrance of the IVRO, in line with and close to an existing tree and near to the kerbside, the proposal has the potential to cause a visual and physical obstruction to pedestrian flow. It also has the potential, given its proposed siting, to divert pedestrians onto the highway. Accordingly, the proposal would be detrimental to highway safety. It is recognised that the Council have not objected to the proposal on highway safety, however, that is on the basis that they have misunderstood the location of the kiosk. Whilst the findings are contrary to the Council this does not introduce a new issue particularly as this type of proposal is assessed solely on its impact on the siting and appearance, and as a matter of practice, this includes highway safety.

Conclusion and Recommendation - Appeals A to H

33. Whilst it has been found that there would be no harm to the setting of the respective CA in Appeal E, nor harm to the setting of the listed buildings in Appeals A, and F, this does not override the significant harm found as a result of the siting and appearance of each proposed call box on the character and appearance of the areas. In addition to this, in Appeal B, C, F, G and H, the siting and appearance of the proposed call boxes would have a harmful effect on the safe and efficient operation of the highway. Whilst no harm has been found in Appeal A, D and E in regard to highway safety, this does not override the adverse visual effect of the proposal upon the character and appearance of the area.

34. For the reasons given above, it is recommended that the Appeals A to H should be dismissed.

S Witherley

APPEAL PLANNING OFFICER

Inspector's Decision - Appeals A to H

35. I have considered all the submitted evidence and the Appeal Planning Officer's report, and, on that basis, I agree that the Appeals A to H should be dismissed.

Chris Preston

INSPECTOR