
Appeal Decisions

by Paul Thompson DipTRP MAUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th December 2019

Appeal A Ref: APP/H5960/W/19/3231126

Public Highway, Battersea Bridge Road Adjacent Musgrave Court, London SW11 3AN

Grid Reference Easting 527203, Grid Reference Northing 177036

- 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), Schedule 2, Part 16 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Maximus Networks Ltd against the decision of the Council of the London Borough of Wandsworth.
 - The application Ref 2018/5325, dated 6 November 2018, was refused by notice dated 18 December 2018.
 - The development proposed is a public call box.
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Appeal B Ref: APP/H5960/W/19/3231122

Public Highway, 127 Lavender Hill, London SW11 5QJ

Grid Reference Easting 528141, Grid Reference Northing 175653

- 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), Schedule 2, Part 16 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Maximus Networks Ltd against the decision of the Council of the London Borough of Wandsworth.
 - The application Ref 2018/5329, dated 6 November 2018, was refused by notice dated 18 December 2018.
 - The development proposed is a public call box.
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Appeal C Ref: APP/H5960/W/19/3231124

Public Highway, 491 Battersea Park Road, London SW11 4LR

Grid Reference Easting 527589, Grid Reference Northing 176418

- 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), Schedule 2, Part 16 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Maximus Networks Ltd against the decision of the Council of the London Borough of Wandsworth.
 - The application Ref 2018/5347, dated 6 November 2018, was refused by notice dated 18 December 2018.
 - The development proposed is a public call box.
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Appeal D Ref: APP/H5960/W/19/3231128

Public Highway, York Road Adjacent Wilberforce House, London SW11 3QW

Grid Reference Easting 526600, Grid Reference Northing 175732

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant [outline] planning permission.
 - The appeal is made by Maximus Networks Ltd against the decision of the Council of the London Borough of Wandsworth.
 - The application Ref 2018/5339, dated 6 November 2018, was refused by notice dated 18 December 2018.
 - The development proposed is a public call box.
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Appeal E Ref: APP/H5960/W/19/3231131

Public Highway, Opposite 154 Battersea Park Road, London SW11 5AP

Grid Reference Easting 527936, Grid Reference Northing 176586

- 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), Schedule 2, Part 16 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Maximus Networks Ltd against the decision of the Council of the London Borough of Wandsworth.
 - The application Ref 2018/5351, dated 6 November 2018, was refused by notice dated 18 December 2018.
 - The development proposed is a public call box.
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Appeal F Ref: APP/H5960/W/19/3231134

Public Highway, Adjacent 250 York Road, London SW11 3SJ

Grid Reference Easting 526414, Grid Reference Northing 175526

- 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), Schedule 2, Part 16 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Maximus Networks Ltd against the decision of the Council of the London Borough of Wandsworth.
 - The application Ref 2018/5299, dated 6 November 2018, was refused by notice dated 18 December 2018.
 - The development proposed is a public call box.
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Decision

1. The appeals are dismissed

Procedural Matters

2. Whilst the six appeals relate to different sites, the proposed public call boxes are identical. I have considered each proposal on its own individual merits, but as they raise similar issues, in the interests of brevity, I have dealt with them all together in a single decision letter.
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 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

5. Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) 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 Westminster judgment found: "... 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 the scope of the permission." (paragraph 37)
7. The judgement went on to state 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. It cannot be said that the whole falls within the GPDO... 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)
8. The proposed call boxes comprise a thin, double-sided structure with a small v-shaped roof canopy composed of solar panels that would power the call boxes. The drawings and illustrative visuals submitted with the applications indicate that on one side of the call box there would be a public telephone. This would be recessed into the structure and would constitute a relatively small portion of this elevation. On the opposing side would be what is described on the drawings submitted with the applications as a 'non-illuminated display panel' and 'visual area', covered by toughened and laminated safety glass. This would constitute a large portion of this elevation.
9. There is no clear explanation within the evidence before me, including within the appellant's statement of case or the supporting Counsel's opinion, as to what the purpose of this side of the call box would be for. The former states that "A central panel on the opposite face of the call box from the phone will allow access to equipment inside for maintenance purposes and the replacement and updating of hardware within the call box as required". However, this does not correlate with the annotated drawings and illustrative visuals. Based on the content of these, it is not unreasonable to conclude that the clear intention for this side of the call box is for the 'non-illuminated display panel'/'visual area' to be used for the display of advertisements, which falls outside the scope of Class A Part 16 of the GPDO.
10. I acknowledge the appellant's argument, supported by Counsel's opinion, that deemed consent is granted under Regulation 6 and Class 16 of Schedule 3 to the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (the "Advertisements Regs") to display advertisements on

one glazed surface of the kiosk, providing that it is not within a conservation area and is not illuminated. However, this right was removed on 25 May 2019 under regulation 17 and 19(2) of the Town and Country Planning (Permitted Development, Advertisement and Compensation Amendments)(England) Regulations 2019. I note that the appellant's Counsel's opinion was made prior to 25 May 2019.

11. Therefore, based on the evidence before me, the proposals would have a dual purpose of facilitating the public telephone as well as intentionally providing an area for the display of advertisements. 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

12. For the reasons given above, I conclude that the appeals have been dismissed.

Paul Thompson

INSPECTOR