



Appeal Decisions

Site visit made on 20 November 2019

by Lynne Evans BA MA MRTPI MRICS

an Inspector appointed by the Secretary of State

Decision date: 17th December 2019

Appeal A Ref: APP/A5840/W/19/3230966

Public Highway, Lower Road adj. Wells House, London SE16 7BN

- The appeal is 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 appeal is made by Maximus Networks Ltd against the decision of the Council of the London Borough of Southwark.
 - The application Ref: 18/AP/3523 dated 31 October 2018 was refused by notice dated 14 December 2018.
 - The development proposed is a public call box.
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Appeal B Ref: APP/A5840/W/19/3230979

Public highway, Jamaica Road adj. Casby House, London SE16 4SU

- The appeal is 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 appeal is made by Maximus Networks Ltd against the decision of the Council of the London Borough of Southwark.
 - The application Ref: 18/AP/3558 dated 31 October 2018 was refused by notice dated 14 December 2018.
 - The development proposed is a public call box.
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Appeal C Ref: APP/A5840/W/19/3230898

Public Highway, Lower Road adj Rotherhithe Church, London SE16 2TN

- The appeal is 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 appeal is made by Maximus Networks Ltd against the decision of the Council of the London Borough of Southwark.
 - The application Ref: 18/AP/3525 dated 31 October 2018 was refused by notice dated 14 December 2018.
 - The development proposed is a public call box.
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Appeal D Ref: APP/A5840/W/19/3228258
Public Highway, Queen's Road near junction Carlton Grove, London
SE15 2UE

- The appeal is 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 appeal is made by Maximus Networks Ltd against the decision of the Council of the London Borough of Southwark.
 - The application Ref: 18/AP/3181 dated 01 October 2018 was refused by notice dated 12 November 2018.
 - The development proposed is a public call box.
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Appeal E Ref: APP/A5840/W/19/3228267
Public Highway, 107 Queen's Road, London SE15 2EZ

- The appeal is 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 appeal is made by Maximus Networks Ltd against the decision of the Council of the London Borough of Southwark.
 - The application Ref: 18/AP/3188 dated 01 October 2018 was refused by notice dated 12 November 2018.
 - The development proposed is a public call box.
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Appeal F Ref: APP/A5840/W/19/3228273
Public Highway, 812-814 Old Kent Road, London SE15 1AJ

- The appeal is 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 appeal is made by Maximus Networks Ltd against the decision of the Council of the London Borough of Southwark.
 - The application Ref: 18/AP/3191 dated 01 October 2018 was refused by notice dated 12 November 2018.
 - The development proposed is a public call box.
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Appeal G Ref: APP/A5840/W/19/3228256
Public Highway, Peckham Rye adjacent Rother House, London SE15 3JD

- The appeal is 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 appeal is made by Maximus Networks Ltd against the decision of the Council of the London Borough of Southwark.
 - The application Ref: 18/AP/3175 dated 01 October 2018 was refused by notice dated 12 November 2018.
 - The development proposed is a public call box.
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Decisions

1. The appeals A – G are dismissed.

Procedural Issues

2. Whilst the 7 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, I have dealt with them all in a single decision letter.

Main Issue

3. 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

4. As an electronic communications code operator, the Appellant benefits from deemed planning permission for a proposed public call box under Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) Order 2015 (GPDO), subject to prior approval by the local planning authority of siting and appearance. The Appellant applied to the Council on that basis. The Council determined that prior approval was required and refused for the siting and appearance of the call box subject to each of Appeals A – G.
5. On 25 May 2019, the Town and Country Planning (Permitted Development, Advertisement and Compensation Amendments) (England) Regulations 2019 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 the seven appeals before me.
6. Since the applications were determined by the Council, a High Court judgement has been made in *Westminster CC v SSHCLG & New World Payphones Ltd [2019] EWHC 176 (Admin)* in February 2019. The judgement concerned whether the proposal in that case fell to be considered under the provisions of the General Permitted Development Order in terms of whether the proposal was solely for the purpose of the operator's electronic communications. 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'.

7. In its appeal statement the Council has contended that as there would be a space on the rear of the structure that could be used as advertisement space, and in the light of the above judgement, each appeal should be dismissed. I have taken into account the information and specifications submitted regarding the proposed call boxes, including the Opinion of Counsel, submitted by the Appellant, in this respect.
8. The freestanding call boxes in these appeals consist of the same design and named by the Appellant as a 'Max 2'. On the basis of the Appellant's submissions, each call box would comprise a two sided, rectangular panel with an overall width of 1325mm and height of 2800mm. The panel would be topped with two photovoltaic roof panels, increasing the overall height of the structure to 3119mm. The design of the kiosk would allow accessibility for people with limited mobility, including wheelchair users. The canopy would serve as a shelter and also house the photovoltaic solar glass panels to power the phone.
9. The drawings submitted with the applications indicate that on one side of the call box there would be a public telephone. On the other side, the drawings submitted with the applications show what is described on as a 'non-illuminated display panel' and 'visual area', which would accommodate a large portion of this elevation. There is no clear explanation within the evidence before me as to the purpose of this side of the call box. The statement of case submitted by refers to "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. Based on the drawings submitted 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. The Appellant has set out, and 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 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 Counsel's opinion submitted by the Appellant was dated 11 March 2019 and therefore prior to 25 May 2019.
11. Based on the drawings submitted with the application, it is therefore my conclusion that the proposals would have a dual purpose of facilitating the public telephone as well as providing an area intended 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 and having regard to all matters raised, including in representations, I conclude that the appeals A – G should be dismissed.

L J Evans

INSPECTOR