



Appeal Decisions

Site visit made on 20 November 2019

by L Fleming BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 December 2019

Appeal A - Ref: APP/K5600/W/19/3231638

Public Highway, Adj 205 Warwick Road, London W14 8PU

- 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 Maximus Networks Ltd against the decision of the Royal Borough of Kensington and Chelsea.
 - The application Ref PA/18/07302 dated 7 November 2018, was refused by notice dated 31 December 2018.
 - The development proposed is a public call box.
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Appeal B - Ref: APP/K5600/W/19/3231628

Public Highway, 47 Notting Hill Gate, London W11 3JS

- 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 Maximus Networks Ltd against the decision of the Royal Borough of Kensington and Chelsea.
 - The application Ref PA/18/07264 dated 7 November 2018, was refused by notice dated 31 December 2018.
 - The development proposed is a public call box.
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Appeal C - Ref: APP/K5600/W/19/3231611

Public Highway, 124 Notting Hill Gate, London W11 3QG

- 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 Maximus Networks Ltd against the decision of the Royal Borough of Kensington and Chelsea.
 - The application Ref PA/18/07199, dated 7 November 2018, was refused by notice dated 31 December 2018.
 - The development proposed is a public call box.
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Appeal D - Ref: APP/K5600/W/19/3231608

Public Highway, Warwick Road Corner Kensington High Street, London W14 8QZ

- 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 Maximus Networks Ltd against the decision of the Royal Borough of Kensington and Chelsea.
 - The application Ref PA/18/07310, dated 7 November 2018, was refused by notice dated 31 December 2018.
 - The development proposed is a public call box.
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Appeal E - Ref: APP/K5600/W/19/3229141

Public Highway, Ladbroke Grove Corner St. Charles Square, London W10 6HB

- 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 Maximus Networks Ltd against the decision of the Royal Borough of Kensington and Chelsea.
 - The application Ref PA/18/06048, dated 1 October 2018, was refused by notice dated 21 November 2018.
 - The development proposed is a public call box.
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Appeal F - Ref: APP/K5600/W/19/3231610

Public Highway, 100 Notting Hill Gate, London W11 3QA

- 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 Royal Borough of Kensington and Chelsea.
 - The application Ref PA/18/07193, dated 7 November 2018, was refused by notice dated 31 December 2018.
 - The development proposed is a public call box.
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Decisions

1. Appeals A-F are dismissed.

Procedural Matters, Background and Main Issue

2. Appeals A-F relate to public call boxes of the same design in the same Borough with the same appellants. Whilst I have considered each scheme on its merits, to avoid duplication I have dealt with them in a single decision letter.
3. The Town and Country Planning (Permitted Development, Advertisement and Compensation Amendments) (England) Regulations 2019 (the GPDO amendments) 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. However, this is subject to transitional and saving provisions. Therefore, these appeals were validly made and all fall to be considered against the provisions of Article 3(1) and Schedule 2, Part 16, Class A of the GPDO.
4. Schedule 2, Part 16, Class A of 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."

5. In *Westminster CC v SSHCLG & New World Payphones Ltd* [2019] EWHC 176 (Admin) it was 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.” Furthermore, it was found “a development therefore falls outside the scope of Class A, Part 16 if it is not for the purpose of the operator's network”. Moreover, it was found “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.”
6. Whether or not the proposed call boxes would have a dual purpose is disputed between the main parties. Therefore, the main issue for Appeals A-F is whether or not the proposal is solely for the purpose of the operator's electronic communications network.

Reasons

Appeals A-F

7. The proposed call box would comprise a tall, wide, shallow cuboid with two main sides. Solar panels would be fixed to the top and would form part of the casing. One of the main sides would accommodate the proposed communication equipment. However, the second main side would be dominated by a large area identified on the plans as a non-illuminated display panel and visual area.
8. I acknowledge that deemed consent was previously granted under Regulation 6, 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 a kiosk, providing that it is not within a conservation area and is not illuminated. However, these provisions were removed on 25 May 2019 under regulation 17 and 19(2) of the GPDO amendments and thus do not apply to these cases.
9. There is no substantive evidence before me which clearly explains what the proposed non-illuminated display panel and visual area would be used for, what it would display and why it needs to be so large. Indeed, both main sides of the call box would have small phone icons which could have the effect of advertising its purpose. Without any substantive evidence to the contrary, due to the size, positioning and description on the plans¹ as a non-illuminated display panel and visual area, I find it highly likely that this element is intended to be used to display advertisements even if it is also used as an access panel for call box maintenance.
10. Consequently, without substantive evidence to the contrary, I find the proposed call box would have a dual purpose of providing electronic communications and facilitating advertising. Accordingly, I must conclude appeal proposals A-F are not solely for the purpose of the operator's electronic

¹ Specifically Drawing No. MAX 2 ASSEMBLY REV C dated 06.09.2018

communications network, and as such all fall outside Schedule 2, Part 16, Class A of the GPDO.

Conclusion

11. For the reasons given, having had regard to all matters raised, appeals A-F should be dismissed.

L Fleming

INSPECTOR